

## 外委民事個案

### 法援署外委律師 - 各司其職

#### Legal Aid Department and Assigned Lawyers Perform Different Duties in Assigned Out Civil Cases

#### 對於法援署與外委律師在外委民事個案所擔當的角色的一般誤解

獲法援提出民事申索或提出抗辯的人士，其個案一般會外委予《法律援助律師名冊》內的私人執業律師辦理。這些個案的受助人往往不大了解外委律師與法律援助署（法援署）的角色。由於法援署為受助人安排法律代表及承擔案件的訟費，受助人往往以為案件是由外委律師和法援署共同處理，事實上這想法是不正確的。

扼要來說，外委律師和大律師的角色是代表受助人處理案件，法援署的角色則是確保為受助人提供的法援服務符合成本效益，因為法援服務的經費來自公帑。本文旨在闡述法援署與外委律師在處理外委法援個案各自的職能和職責。

#### 法援署的職責和職能

法援署的主要職責是管理法律援助計劃，使公帑得以有效運用。法援案件一經外委，法援署除負責行政職務（例如審批和支付專家費用和其他費用）外，亦負責監察外委個案，確保案件仍具理據繼續進行訴訟及進度良好。法援署不會指令或強行規定外委律師採取或不應採取某個步驟以進行訴訟，藉此來監管法援訴訟。

#### 外委律師的責任

名冊內的律師在接獲法援署指派的案件後，便有責任盡力為受助人行事，以維護受助人的權益。外委律師和大律師（如有的話）會全權辦理案件，並可自行決定採取哪些步驟。法援署的職責和職能並不包括就外委個案提供意見或參與處理訴訟。

除了對受助人負責外，外委律師亦須對法律援助基金負責。換言之，如外委律師認為受助人的個案已無合理勝訴機會或因應其他情況而須終止法援，便須告知法援署。

#### General Misconception on the role of the LAD and Assigned Lawyers in Assigned Out Cases

For persons who are granted legal aid to defend or pursue civil claims, their cases are usually assigned out to be handled by solicitors in private practice who are on the Legal Aid Panel. Legally aided persons with assigned out cases are often uncertain about the role of the assigned solicitor and the Legal Aid Department (LAD). Although it may appear that aided persons' cases are jointly handled by assigned solicitors and the LAD since it made the arrangements for their legal representation and are responsible for the costs, this is in fact a misconception.

Simply put, the role of the assigned solicitor and barrister is to conduct the case on behalf of the aided person and the role of the LAD is to ensure that the provision of legal aid services to the aided person are met in a cost effective manner since such services are paid out of public funds. This article aims to set out the respective functions and duties of the LAD and the assigned lawyers in assigned out legally aided cases.

#### Duties and functions of the LAD

The primary duty of LAD is to administer the legal aid schemes in such a way that public funds are used effectively. Once a legally aided case is assigned out, LAD's role, besides carrying out administrative functions such as approval and payment of expert and other fees, is to monitor assigned out cases to ensure the continued merits and progress of individual cases. The role of the LAD is not to exercise supervisory control over the legally aided proceedings by issuing orders or dictating what steps should or should not be taken in litigation.

#### Responsibilities of Assigned Lawyers

Once a panel solicitor is assigned to act for an aided person, that assigned solicitor is bound to act with diligence in the interests of the aided person. He/she and counsel if one is assigned have sole control of the case and will decide on the steps to be taken. It is not the LAD's duty or function to give advice on or be involved in the conduct of assigned out cases.

In addition to their duty to aided persons, assigned lawyers owe a duty to the Legal Aid Fund. What this means is that if the assigned lawyers are of the view that the aided person's case no longer has a reasonable prospect of success or that other circumstances warrant the discontinuation of legal aid, they must notify the LAD.

