

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.



有關外委個案的疑問

受助人如對外委個案有任何疑問，例如有下述事宜，應直接與外委律師聯絡：

- 案件的勝訴機會，以及須收集或提出哪些證據以支持其申索；
- 案件進度；
- 與法律責任和證據有關的法律意見；
- 如何計算申索金額；
- 揀選大律師、專家和調解員；
- 是否接受對訟人提出的和解建議；
- 已招致或可能招致的訟費數額；
- 受助人在討回／保留的金錢或物業所享有的權利如何受署長第一押記影響；
- 外委律師與對訟人商討訟費或法庭評估訟費的進度；以及
- 對訟人支付訟費的進度。

常見問題

問（一）：我的外委律師認為對訟人提出的和解建議十分合理，建議我接納和解。不過，我不想和解，寧願進行訴訟，由法官裁決。我的外委律師告訴我，會把事件告知法律援助，我的法律援助可能會被終止。如法律援助不會參與處理案件，為何該外委律師須向法律援助報告事件？法律援助是否干預我的案件？

答（一）：獲指派法律援助案件的律師和大律師有責任代受助人盡力處理案件，亦有責任保障法律援助基金。因此，如外委律師和大律師認為受助人的案件已無合理的勝訴機會或因應其他情況而須終止法律援助，如受助人不合理地要求繼續進行訴訟，他們須通知法律援助。法律援助可根據《法律援助條例》賦予的權力，終止法律援助證書。換言之，如你拒絕接受合理的和解建議並堅持繼續進行訴訟，結果可能是敗訴，或因繼續進行訴訟以致獲判的賠償金被額外招致的訟費所抵銷，這亦可能導致損失公帑。在這情況下，外委律師便有責任把事件告知法律援助，使法律援助可作出評估，以決定應否終止法律援助。法律援助所採取的跟進行動，包括考慮是否終止你的法律援助，目的並非干預案件的進行，而是履行監察外委案件的職能，確保公帑用得其所。

問（二）：如我不滿意外委律師的表現應怎樣做？

答（二）：你可通知法律援助（宜以書面方式），以便法律援助作出調查。如事件涉及外委律師的專業操守，你亦可向香港大律師公會或香港律師會投訴，並通知法律援助。

問（三）：我十分關注我的案件，我可否要求外委律師向法律援助報告他所做的每項工作，由法律援助代我監察其表現？

答（三）：法律援助的監察工作是確保個別案件仍具理據繼續進行訴訟及進度良好，法律援助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，藉此來監管法律援助。因此，只要訴訟仍在進行，而外委律師亦採取所需步驟使案件取得進展，法律援助便不會要求外委律師過於頻密報告進度，因為此舉會增加外委律師的收費，涉及費用更不能向對訟人討回，最終可能須由你承擔。🌸

Queries on Assigned Out Cases

The aided persons should contact the assigned lawyers direct if they have any queries about the assigned out cases such as:

- prospect of success, evidence to be collected or produced in support of claim;
- progress of proceedings;
- legal advice on liability and evidence;
- how to calculate the amount of claims;
- choice of counsel, expert and mediator;
- whether to accept offer for settlement from the opposite party;
- amount of costs incurred or likely to be incurred;
- how does the 1st charge affect the aided person's entitlement to the money or property recovered/preserved;
- progress of negotiation the assigned solicitor has with the opposite party over costs of the proceedings or assessment by the court; and
- progress of payment of costs by the opposite party

The assigned lawyers have a duty to keep the aided persons informed of the progress of their cases and answer their queries on their cases.

Frequently Asked Questions

Q(1): My assigned solicitor advises me to accept the settlement offered by the opposite party as he considers such settlement to be very reasonable. However, I do not want to accept the settlement and prefer to proceed to trial and let the judge decide. My assigned solicitor tells me that he would report the matter to the LAD and the LAD may discontinue my legal aid. If the LAD does not have conduct of the case, why should the assigned solicitor report the matter to the LAD? Is the LAD intervening in my case?

A(1): Solicitors and counsel who are assigned legal aid cases owe a duty to diligently conduct cases on behalf of aided persons in addition to a duty to safeguard the Legal Aid Fund. Therefore if the assigned solicitor and counsel 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 such as when an aided person has required unreasonably that the proceedings be continued, they must notify the LAD. The Legal Aid Ordinance empowers the LAD to discontinue a legal aid certificate if these should happen. In other words, if you reject a reasonable settlement and insist on continuing with the proceedings, it is possible that you may lose the case at trial or the additional costs incurred may swallow up your damages and may also cause a loss to the public fund. In such circumstances the assigned solicitor has a duty to notify LAD so that LAD can assess your case and decide if in the circumstances, legal aid should be discontinued. Any follow up action by the LAD in considering whether to discontinue your legal aid is not intervention in the conduct of your case but the discharge of its function to monitor assigned out cases to ensure public funds are used effectively.

Q(2): What should I do if I am not satisfied with the assigned lawyer's performance?

A(2): You may inform LAD, preferably in writing, so that LAD can conduct an appropriate investigation. If you are concerned about the professional conduct of the assigned lawyer, you can also refer the matter to the Hong Kong Bar Association or the Law Society of Hong Kong and notify LAD.

Q(3): I am very concerned about my case. Can I ask the assigned solicitor to report each and every step of his work to the LAD for the LAD to monitor for me?

A(3): The LAD's monitoring role is to ensure the continued merits and progress of individual cases and 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. Accordingly so long as the case progresses and the assigned solicitor has taken the necessary steps to advance your case, the LAD will not encourage excessive reporting of progress by the assigned solicitor as this will increase the charges of the assigned solicitor which will not be recoverable from the opposite party and may have to be borne by you. 🌸

擴大刑事法律援助的範圍 Criminal Legal Aid Scope Expanded

過去，任何被告人就刑事案件向上訴法庭或終審法院提出上訴，如不涉及被定罪，該上訴便不屬可獲刑事法律援助處理的案件，為此被告人不可獲批法律援助。

舉例來說，如被告人經審訊後被裁判官判處無罪，但遭拒絕判給訟費，被告人上訴至高等法院但法官維持裁判官拒絕判給訟費的決定。如該被告人欲向終審法院提出上訴，由於有關上訴不涉及被定罪，不屬刑事法律援助的範圍，被告人不會獲批法律援助。

為回應公眾對刑事上訴案件在上述情況下未能獲得法律援助的關注，當局修訂了規管刑事法律援助範圍(如申請人通過經濟審查及案情審查)的《刑事案件法律援助規則》(第221D章)第4條。

由二〇一二年三月九日起，任何被控觸犯刑事罪行的被告人，不論有否被定罪，如欲向上訴法庭或終審法院提出上訴，或就上訴抗辯，只要通過經濟審查及案情審查，便可獲批法律援助。

Up till recently a person who was involved in an appeal either to the Court of Appeal or the Court of Final Appeal on a criminal matter not involving a conviction would not be able to obtain legal aid for the appeal.

Accordingly, an Applicant who wished to appeal to the Court of Final Appeal in respect of a High Court judge's decision to uphold the refusal by a magistrate to award him costs upon his acquittal after trial was unable to obtain legal aid to do so on the basis that the Applicant's case was outside the scope of criminal legal aid because he was not convicted of any offence.

In response to concerns raised on the lack of legal aid for criminal appeal in these circumstances, Rule 4 of the Legal Aid in Criminal Cases Rules Cap.221D, which sets out the circumstances in which legal aid may be granted subject to an Applicant's eligibility on means and merits, was amended.

With effect from 9 March 2012, legal aid is available to any person charged with an offence, irrespective of whether the person was convicted of the offence, to appeal to the Court of Appeal or Court of Final Appeal or to oppose such appeal.



調整個人豁免額 Personal Allowances Adjustment

法定個人豁免額每年會按前一年的物價水平作出調整。法定個人豁免額乃在計算申請人的財務資源時，可從收入扣除的其中一個項目。本署已因應檢討結果上調本年的豁免額。

新的個人豁免額由二〇一二年二月起生效。詳情如下：

Each year, the statutory personal allowance, which is given to all applicants for legal aid as a deduction against income when calculating their financial resources, would be adjusted based on the price level of the previous year. The adjustment this year has resulted in an upward increase.

Full details of the new personal allowances effective as from February 2012 are as follows:

住戶人數 Household Size	經調整的豁免額 Adjusted Allowance	舊豁免額 Previous Allowance
申請人 Applicant only	5,540元	5,270元
申請人及一名受養人 Applicant with 1 dependant	9,500元	9,420元
申請人及兩名受養人 Applicant with 2 dependants	12,410元	11,900元
申請人及三名受養人 Applicant with 3 dependants	15,620元	14,240元
申請人及四名受養人 Applicant with 4 dependants	19,030元	17,410元
申請人及五名受養人 Applicant with 5 dependants	21,180元	19,070元
申請人及六名或以上受養人 Applicant with 6 or more dependants	22,780元	22,820元

有關計算法律援助申請人的可動用收入及財務資源的詳情，請參閱本署出版的“怎樣計算你的財務資源及分擔費”小冊子。該小冊子可於本署網站www.lad.gov.hk下載或在本署各辦事處索取。

本署網站備有經濟審查計算程式，你可利用該程式即時得知本身的經濟狀況是否符合資格申請法律援助，過程快捷方便，惟有關結果僅作參考之用。你須正式提交申請，在本署職員進行經濟審查後，本署才可確定你是否符合申請法律援助的資格。

Detailed information on the calculation of disposable income and financial resources of an applicant for legal aid can be found in the leaflet "How Your Financial Resources and Contributions are Calculated" published by the Department. It can be downloaded from the Department's website (<http://www.lad.gov.hk>) or obtained from the Department's offices.

An instant and more convenient way of finding whether you are likely to qualify for legal aid on means is to make use of the means test calculator by visiting LAD's website. The test result is for reference only and your eligibility for legal aid cannot be determined until LAD carries out a means test after you have made an application.

第一押記利率下調 Reduction of 1st Charge interest rate

由二〇一二年六月一日起，署長根據《法律援助條例》(第91章)第18A(3B)條把第一押記登記在受助人的居所所收取的息率，由1.674%下調至1.518%。新利率按照《法律援助(財產的押記)(利率)規例》的規定進行調整，在二〇一二年六月一日至二〇一三年五月三十一日期間適用。📞

With effect from 1 June 2012, the interest rate of the Director's 1st Charge registered on an aided person's home pursuant to Section 18A (3B) of the Legal Aid Ordinance, Cap. 91 is 1.518%, down from 1.674%. The adjustment is made in accordance with the provisions of the Legal Aid (Charge on Property)(Rate of Interest) Regulation. The new rate is valid from 1 June 2012 to 31 May 2013. 📞

快訊 Speed News

使用“繳費靈”繳付一次過的分擔費 PPS for One-off Payment of Contribution

本署已提升電腦系統，受助人可透過“繳費靈”繳付一次過的分擔費，無需親臨本署辦事處付款，既方便又省時。

由二〇一〇年六月起，本署接受以“繳費靈”繳付分期繳交的法援分擔費和對訟人的判定款項。受助人也可到“繳費靈”的網頁<http://www.ppsk.com>直接在網上付款。📞



To afford greater convenience to aided persons and to save time, the Department has enhanced its system so that aided persons can make use of the Payment by Phone Service (PPS) for one-off payment of contribution without attending the Department's office personally to effect payment.

The Department began accepting payments of legal aid contributions by installment and judgment sum by opposite parties through the PPS in June 2010. Aided persons can also do online payment by visiting the PPS webpage at <http://www.ppsk.com>. 📞

家事調解便覽 Fact Sheet on Mediation for Family Cases

調解是獲法庭批准，除傳統法院仲裁以外的另一類排解家事糾紛的方法。自二〇〇九年民事司法制度改革推行以來，調解已成為民事司法程序的一部分，如個案適合，法援受助人可獲資助進行調解。

為鼓勵法援受助人透過調解排解糾紛，本署特別為獲批法援進行家事訴訟或抗辯的受助人印製了家事調解便覽。該便覽旨在告知受助人，如他們決定調解，這項服務會獲得資助，以及接受調解需要注意的事項。

受助人應細閱便覽以深入了解這項服務，以及法援可怎樣協助他們。📞

Mediation is a court approved alternative method for settling family disputes instead of the traditional adjudicative process by the court. Since the implementation of the Civil Justice Reform in 2009 when mediation has become an integral part of civil proceedings, legally aided persons have been given funding support to attempt mediation in appropriate cases.

To encourage legally aided persons to settle disputes through mediation, the Department has published a fact sheet on mediation for family cases for those who have been granted legal aid to take or defend family proceedings. The fact sheet aims to advise them of the availability of funding support should they decide to attempt mediation and what they have to do as well as the matters which they have to pay attention to.

Aided persons are encouraged to read the fact sheet to know more about mediation and what legal aid can do to assist. 📞

查詢 Enquiries

香港金鐘道六十六號金鐘道政府合署二十七樓
27/F, Queensway Government Offices, 66 Queensway, Hong Kong.
二十四小時查詢熱線
24-hour Enquiries Hotline 2537 7677

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