

CONTROLLING OFFICER'S REPLY

CSO015

(Question Serial No. 0064)

Head: (94) Legal Aid Department

Subhead (No. & title): (-) Not Specified

Programme: (1) Processing of Legal Aid Applications

Controlling Officer: Director of Legal Aid (Chris YT CHONG)

Director of Bureau: Director of Administration

Question:

With regard to the processing of legal aid applications, please provide the following information:

1. how many legal aid applications lodged by non-refoulement claimants were received, approved or refused by the Legal Aid Department (LAD) respectively; and what are the numbers of legal aid cases related to judicial review (JR) and the amounts of expenditure involved in each of the past 3 years?
2. among the people prosecuted for having participated in the riots against the extradition bill 3 years ago, some might have received financial aid for legal costs from a third party while at the same time being eligible for legal aid. When assessing these applications, did the LAD check whether the applicants had received any financial aid from a third party? How does the new computerised system help identify defendants who have received financial aid and improve the procedures and arrangements for granting legal aid to ensure that public money is properly spent?
3. the number of counsel's chambers from which the counsel who were assigned JR-related legal aid cases came in the past 3 years; the details of the top 5 chambers whose counsel were assigned the highest numbers of such cases (including the names of the chambers, particulars of the cases and the amounts of the legal aid costs involved); and
4. for releasing more data and information about legal aid cases, whether the LAD will, by once again drawing reference from the practice of the Judiciary in making public judgments and reasons for verdict on its website, make public on the Internet the justifications for granting or rejecting legal aid applications on the premise of not violating the principles of privacy protection and confidentiality, so as to enhance transparency?

Asked by: Hon QUAT Elizabeth (LegCo internal reference no.: 10)

Reply:

1. The number of legal aid applications lodged by non-refoulement claimants, certificates granted and notices of refusal issued in the past 3 years are set out in the table below –

Year	No. of legal aid applications lodged by non-refoulement claimants	No. of legal aid certificates granted to non-refoulement claimants*	No. of legal aid refusal issued#
2019	690	71	620
2020	351	63	272
2021	427	70	320

* Certificates may not be granted in the same year as the applications were received.
Refusal may not be issued in the same year as the applications were received.

The number of legal aid certificates related to judicial review (JR) cases and the expenditure of JR cases in the past 3 years are set out in the tables below –

Year	No. of legal aid certificates related to JR
2019	81
2020	82
2021	84

Financial Year	Legal expenditure on JR cases (\$ million)
2018-19	29.5
2019-20	37.6
2020-21	34.0

- The Legal Aid Department (LAD) assesses all criminal legal aid applications in accordance with the Legal Aid in Criminal Cases Rules (Cap. 221D). Any person who can satisfy both the merits test and the means test will be granted legal aid.

In relation to the means test, the Director of Legal Aid (DLA) considers the financial resources of the applicants for all legal aid cases in accordance with the Legal Aid (Assessment of Resources and Contributions) Regulations (Cap. 91B). When applying for legal aid, applicants are required to declare alternative source(s) of financial aid received from a third party, whether by way of income or capital, which will be taken into account when calculating the applicants' financial resources. The aided persons are also required to inform LAD of any changes to their financial resources, including the provision of financial aid from any third party, during the course of the legally aided proceedings. Should any applicant fail the means test (i.e. financial resources exceeding the prevailing limit of \$420,400), DLA will refuse granting legal aid or discharge legal aid.

LAD introduced a new 'Declaration System' in December 2021 for legal aid applicants to declare alternative source(s) of financial aid for their cases before and after the legal aid applications have been approved. The Declaration System seeks to ensure that public fund is properly spent.

All legal aid applicants have a duty to make full and frank disclosure of their income and capital. According to the Legal Aid Ordinance (Cap. 91), any person seeking or receiving legal aid who knowingly furnishes false statement or false representation shall be guilty of an offence and liable to a fine of \$10,000 and imprisonment for 6 months. Where necessary, LAD will refer the cases to the Police for further investigation.

The revamped Case Management and Case Accounting System and the related query system, Knowledge Support System, will as a whole increase LAD's efficiency and effectiveness in processing legal aid applications and managing legally aided cases. With the enhanced functions in the revamped system, LAD will be able to more efficiently assess legal aid applicants' and aided persons' financial resources and determine their eligibility on means after their disclosure of alternative sources of financial aid, if any.

3. Counsel work independently in the chambers and therefore LAD does not maintain statistics on the number of cases assigned on the basis of counsel's chambers.
4. The legal system in Hong Kong is based on common law, which is based on a system of case precedents to gradually establish legal principles in detail. Under the common law legal system, it is an established practice to make public the judgments and the related records handed down by judges. In addition, as the trial of cases is mostly held in public, the practice of making judgments public does not violate the principles of privacy protection and confidentiality.

However, LAD is restricted by the provisions of the Legal Aid Ordinance and the Personal Data (Privacy) Ordinance (Cap. 486) and should not disclose any information involving an individual applicant without consent of the applicant or aided person concerned, including LAD's reasons for refusing or granting legal aid. Also, if the legal proceedings are ongoing, disclosure of relevant information or reasons may also affect the proceedings and cause unfairness to parties to the proceedings. We therefore need to handle the matter with great caution. To enhance the transparency of LAD's work and better address the community's concern over certain JR-related legal aid cases, LAD has since December 2021 been requesting legal aid applicants for JR cases to give their written consent to LAD for disclosing the result and/or the reason for granting or refusing their applications whenever DLA considers appropriate. Most of the applicants have provided consent. Without contravention to the provisions of the Personal Data (Privacy) Ordinance and relevant legislation, LAD will disclose relevant information as appropriate through press release or other suitable channel to address public concerns.