

6

法律援助的政策及策略 Legal Aid Policy & Strategy

法律援助辅助计划的检讨

Review of Supplementary Legal Aid Scheme

法律援助的目标是确保所有具合理理据提出诉讼或抗辩的人士，不会因缺乏经济能力而无法寻求公义。任何人士如欲获得法援，必须通过《法律援助条例》规定的经济审查及案情审查。近年，普通法律援助计划（「普通计划」）及法律援助辅助计划（「辅助计划」）的财务资格限额已大幅提升，其援助范围亦有所扩大。行政当局现正不断吸收新增援助诉讼类别的经验，并已邀请本局就「辅助计划」的援助范围作进一步检讨及提出新一轮的建议。为此，本局成立了一个工作小组以跟进是次检讨。

工作小组分别于2014年3月18日、2014年5月26日及2014年6月27日开会讨论，其后透过电邮交流关于进一步扩大「辅助计划」的援助范围的必要性及可行性，以及如需扩大援助范围，应新增哪类个案。

在检讨过程中，工作小组研究了持分者的书面意见及看法，包括立法会司法及法律事务委员会以及两个法律专业团体，尤其是香港大律师公会于2010年7月20日及2012年11月5日发出有关议题的立场书。工作小组亦检视了法律援助署（「法援署」）提供的相关统计数字以及其他资料。

The purpose of legal aid is to ensure that no one with reasonable grounds for pursuing or defending a legal action is denied access to justice because of a lack of means. To qualify for legal aid, a person is required to satisfy the means and merits tests as provided by the Legal Aid Ordinance. In recent years, the financial eligibility limits (FELs) of the Ordinary Legal Aid Scheme (OLAS) and the Supplementary Legal Aid Scheme (SLAS) have increased substantially, and the scope of OLAS and SLAS has also been expanded. Whilst the Administration is still gaining experience on the newly added proceedings, the Council was invited to conduct a further review on the scope of SLAS with a view to presenting a new round of recommendations to the Administration. Towards this end, the Council has formed a working group to follow up on the review.

The working group met on a total of 3 occasions i.e. 18 March 2014, 26 May 2014 and 27 June 2014, and exchanged emails thereafter to consider whether it was necessary and feasible to further expand the scope of SLAS and, if so, which type(s) of cases should be included.

In the course of the review, the working group studied the written comments and views already expressed by stakeholders including the Panel of Administration of Justice and Legal Services (AJLS) of Legislative Council (LegCo) and the two legal professional bodies, in particular the Hong Kong Bar Association's position papers on this topic dated 20 July 2010 and 5 November 2012. The working group also examined relevant statistics provided by the Legal Aid Department (LAD) and reviewed other materials.

工作小组于2015年1月在本局会议上提交了初步检讨报告。为了促进进一步讨论，本局向民政事务局（「民政局」）索取补充资料，并于2015年3月收到回复。本局会在调整报告后继续讨论。

The working group submitted its report on the preliminary findings of the review to the full Council for consideration at its meeting held in January 2015. To facilitate further discussion, supplementary information was sought from the Home Affairs Bureau (HAB). Its return was received in March 2015 and is being considered by the working group. The Council will continue the discussion after the report has been fine tuned.

在《法律援助(评定资源及分担费用)规例》下用作厘定受助人应缴分担费用比率的经评定财务资源组别 Bandwidths of Assessed Financial Resources for Determining Contribution Payable under the Legal Aid (Assessment of Resources and Contributions) Regulations

法律援助服务由公帑支持运作。受助人依照其经评定的财务资源水平，必须缴付与其经济状况相称的分担费用。《法律援助规例》（《规例》）中附表3第I部订明「普通计划」下相关分担费用的比率。

Legal aid services are supported by public funds. Aided persons, depending on the level of their assessed financial resources, are required to pay a contribution proportionate to their means. The scales of contribution rates under the OLAS are prescribed in Part I of Schedule 3 to the Legal Aid Regulations (LAR).

《规例》附表3第I部(a)及(b)段列出「普通计划」下受助人一般须缴付的分担费用比率，而(c)段则列出人权案件中受助人的财务资源如超过「普通计划」财务资格限额时应缴付的分担费用比率。现有《规例》的组别列表中，除了「普通计划」的财务资格限额是以「《法律援助条例》第5(1)条指明的财务资源款额」作文字表述外，其余各财务资源组别均以实际金额数字列出。

Paragraphs (a) and (b) of Part I of Schedule 3 to the LAR set out the contribution rates for OLAS aided persons in general, while paragraph (c) sets out the contribution rates for aided persons of human rights cases whose financial resources may exceed the OLAS FEL. Except for the references to the OLAS FEL as prescribed under Section 5(1) of the LAO, the rest of the bandwidths are set out in absolute dollar figures in the bandwidth tables of the current LAR.

鉴于现时的资源组别均以实际金额数字列出，随着「普通计划」的财务资格限额近年大幅调高，「普通计划」财务资格限额因而如下表(i)列所示已几乎达到高一级别的资源组别的上限（269,700元）：

With the current resources bandwidths set out in absolute dollar figures and the significant increase in the OLAS FEL in recent years, the OLAS FEL has now almost caught up to the ceiling of the next higher resources band (\$269,700) as shown in row (i) in the table below-

	经评定财务资源 Assessed financial resources		应缴分担费用 - 金额 / 经评定财务资源百分比 Payable contribution – amount / percentage of assessed financial resources
	超出 Exceeding	不超过 Not exceeding	
(a)	≤ \$20,000		\$0
(b)	\$20,000	\$40,000	\$1,000
(c)	\$40,000	\$60,000	\$2,000
(d)	\$60,000	\$80,000	5%
(e)	\$80,000	\$100,000	10%
(f)	\$100,000	\$120,000	15%
(g)	\$120,000	\$144,000	20%
(h)	\$144,000	「普通计划」 财务资格限额 OLAS FEL [\$269,620]	25%
(i)	「普通计划」 财务资格限额 OLAS FEL [\$269,620]	\$269,700	30%
(j)	\$269,700	\$369,700	35%
(k)	\$369,700	\$469,700	40%
(l)	\$469,700	\$569,700	45%
(m)	\$569,700	\$669,700	50%
(n)	\$669,700	\$769,700	55%
(o)	\$769,700	\$869,700	60%
(p)	\$869,700	\$1,200,000	65%
(q)	\$1,200,000	-	67%



行政当局认为直至修订资源组别前，「普通计划」的财务资格限额将无法进一步上调，否则便会出现有关资源组别「下限」（即(i)列左栏）高于同一资源组别「上限」（即(i)列中间一栏）的异常情况。

为彻底解决问题，行政当局建议修订组别列表，使资源组别改以相对「普通计划」财务资格限额的百分率显示，取代目前以实际金额数字显示的做法。如日后「普通计划」财务资格限额有所改动，有关组别亦会自动作出相应调整。

除此以外，由于资源组别中近年只有「普通计划」财务资格限额曾作上调，以致现时的组别分布不均，部分组别涵盖的经评定财务资源幅度很大，但有些组别涵盖的幅度则相当小。

The Administration found it unable to further adjust the OLAS FEL upward until the bandwidths are amended, since otherwise, there will be an anomaly where the “lower end” of the band (i.e. left column) in row (i) will be higher than the “upper end” of that band (i.e. middle column).

To resolve the problem once and for all, the Administration proposed to amend the bandwidth tables so that the resources bandwidths will be represented as percentages of the OLAS FEL rather than absolute dollar figures. The bandwidths would then automatically be adjusted upon any future OLAS FEL adjustments.

Besides, since only the OLAS FEL has been adjusted upward in the amendment exercises in recent years, the resources bandwidths are now unevenly distributed, with some bands covering a very wide range of assessed financial resources while some other covering a very narrow range.

As such, the Administration also proposed to take the opportunity to adjust the distribution of resources bandwidths so as to maintain a more even distribution. To maintain the real value of the first two tiers of contribution payable in relation to the OLAS FEL, the Administration also proposed to amend the current fixed contribution amounts of \$1,000 and \$2,000 to 2% and 2.5% of the aided persons’ assessed financial resources respectively.

The threshold of assessed financial resources exceeding which contributions begin to be payable is currently set at \$20,000, and the Administration proposed to change it to 12.5% of the OLAS FEL (i.e. \$33,702.5 by applying the current OLAS FEL). In 2013, 7 195 out of 10 024 aided persons (or 72%) need not pay any contribution at all as their financial resources were assessed to be

因此，行政当局建议借此机会调整资源组别，以维持较平均的分布。为维持首两级应缴分担费用相对「普通计划」财务资格限额的实际价值，当局亦建议把现行1,000元和2,000元的定额分担费用分别修订为受助人经评定财务资源的2%和2.5%。

目前受助人的经评定财务资源如超过20,000元便须缴付分担费用。行政当局建议把有关门槛改为「普通计划」财务资格限额的12.5%（按现有「普通计划」财务资格限额计算即为33,702.5元）。2013年，在10 024名受助人当中，共有7 195名受助人（即72%）因其经评定财务资源低于20,000元而无须缴付分担费用。在此建议下，按2013年的数字计算，无须缴付任何分担费用的受助人的百分比将上升9%至7 847人。经评定财务资源超出「普通计划」财务资格限额的12.5%的受助人，因应其经评定的财务资源水平，则须缴付由674元（即269,620元 \times 12.5% \times 2%）至67,405元（即269,620元 \times 25%）不等的分担费用。另一方面，人权案件中财务资源超出「普通计划」财务资格限额的受助人，其分担费用将介乎80,886元（即269,620元 \times 30%）至其经评定财务资源的67%不等。

民政局在2015年2月向司法及法律事务委员会简介上述建议前，已向

below \$20,000. Under the proposal, the percentage of aided persons who do not need to pay any contribution will increase by 9% to 7 847 based on the statistics in 2013. Aided persons with assessed financial resources exceeding 12.5% of the OLAS FEL will need to pay a contribution ranging from \$674 (i.e. \$269,620 \times 12.5% \times 2%) to \$67,405 (i.e. \$269,620 \times 25%), depending on the level of their assessed financial resources. Further, for the aided persons of human rights cases whose financial resources exceed the OLAS FEL, their contribution amount would range from \$80,886 (i.e. \$269,620 \times 30%) to 67% of his/her assessed financial resources.

The Council was briefed by HAB on the above proposal before its briefing to the AJLS Panel in February 2015 on



法援局简介其就调整经评定财务资源组别而提出修订规例的建议。与此同时，法援局获悉行政当局在修订《法律援助规例》后，亦将透过立法会决议案方式上调「普通计划」及「辅助计划」的财务资格限额，以反映丙类消费物价指数的变动。上次于2013年6月实施的调整，已计及丙类消费物价指数在2011年7月至2012年7月期间录得的3.7%升幅。在今次的调整中，行政当局建议把「普通计划」和「辅助计划」的财务资格限额上调7.7%至290,380元和1,451,900元，以反映丙类消费物价指数在2012年7月至2014年7月期间录得的累积变动。行政当局将于2015年第二季动议立法会决议案以调整「普通计划」及「辅助计划」的财务资格限额。

its plan to introduce the amendment regulations for the revised set of bandwidths of assessed financial resources. On the same occasion, the Council was also given to note that upon making the amendments to the LAR as set out above, the Administration would adjust the OLAS FEL, together with the SLAS FEL, upward to reflect the CPI(C) changes by way of a LegCo resolution. The last adjustment implemented in June 2013 had taken into account the CPI(C) change of +3.7% between July 2011 and July 2012. For the coming adjustment, the Administration proposed to increase the OLAS and SLAS FELs by 7.7% to \$290,380 and \$1,451,900 respectively to reflect the accumulated change in CPI(C) recorded between July 2012 and July 2014. The Administration would move the LegCo resolution to adjust the FELs of OLAS and SLAS in the second quarter of 2015.

刑事法律援助费用的检讨

Review of Criminal Legal Aid Fees

法援署聘用私人执业大律师和律师处理刑事诉讼法律援助案件。《刑事诉讼程序条例》(第221章)的附属法例《刑事案件法律援助规则》第21条订明支付该等律师的费用表和费用的评估机制。该费用表在法律上只对法援署具约束力，但律政司在行政上采纳同一费用表聘用私人执业大律师代表政府在刑事案件中进行起诉，以确保法援署或律政司

LAD engages counsel and solicitors in private practice to undertake litigation work in respect of criminal legal aid cases. The scale of fees payable to these lawyers as well as the fee assessment mechanism are prescribed in Rule 21 of the Legal Aid in Criminal Cases Rules under the Criminal Procedure Ordinance (Cap. 221). While legally the scale of fees only binds LAD, the Department of Justice (DoJ) adopts the same fee scale on an administrative basis in engaging counsel in private practice to prosecute in criminal cases on behalf of the Government, with a view

在聘用律师时均不会较对方占优。同样地，当值律师根据当值律师计划担任法律代表的费用，亦参照律政司聘用大律师在裁判法院担任控方律师所支付的费用计算。

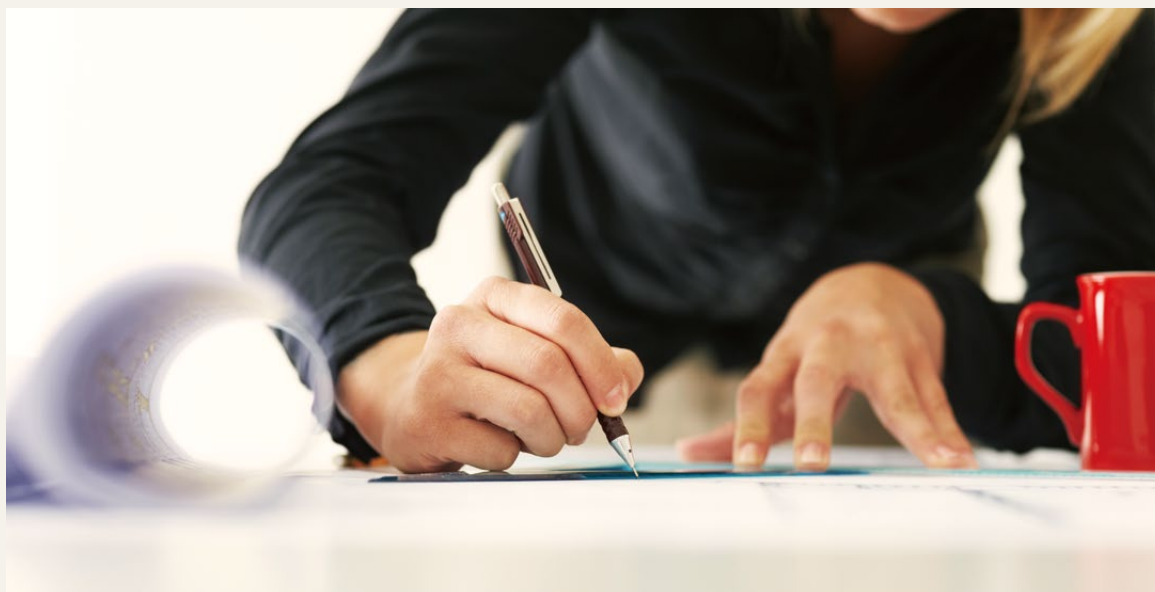
政府当局自1992年起，每两年检讨该等费用一次，当中会考虑期内消费物价的变动、聘用私人执业大律师及律师服务的实际或预计困难以及其他因素，如整体经济状况和办公室租金等。上一次的两年检讨是在2012年进行。

如去年年报所述，行政当局计划于2014年进行一次全面检讨。民政局已于2014年3月成立一个由香港大律师公会、香港律师会、以及法律援助署和律政司的代表组成的工作小组，检讨刑事法律援助费用款额。民政局在本局2015年3月17日的会议上透露，两个法律专业团体已经就检讨刑事法律援助费用制度提交意见书，而工作小组亦于2015年3月2日的第二次会议中检视有关文件。行政当局会研究该意见书并在两至三个月内召开下一次工作小组会议。行政当局会视乎工作小组的商议工作和讨论进度而提交法例修订，以落实检讨建议。民政局会继续向本局通报有关进度。

to ensuring that neither LAD nor DoJ would have any advantage in competing for lawyers. For the same reason, fees for duty lawyers providing legal representation under the Duty Lawyer Scheme are also based on the brief fee payable by DoJ to engage counsel to appear in the Magistrates' Courts as prosecuting counsel.

Since 1992, the Administration has been reviewing these fees on a biennial basis, having regard to changes in consumer prices during the reference period, actual or anticipated difficulties in engaging the services of private counsel and solicitors, and other factors such as the state of the economy and office rentals. The last biennial review was conducted in 2012.

As stated in the last annual report, the Administration initiated a comprehensive review in 2014. In March 2014, HAB formed a working group comprising representatives from the Hong Kong Bar Association and the Law Society of Hong Kong, as well as government representatives from LAD and DoJ to review the rates of criminal legal aid fees. At the Council meeting held on 17 March 2015, HAB briefed the Council that the two legal professional bodies had made submissions on the review of criminal legal aid fees system and the working group held its second meeting on 2 March 2015 to go over the submissions. The Administration would study the submissions and aim at convening the next working group meeting in two to three months' time. Subject to the deliberations and progress of discussions at the working group, the Administration would introduce legislative amendments to implement the recommendations of the review. HAB would continue to keep the Council informed of the progress.



已除名的律师申请再次加入法律援助律师名册 Lawyers Removed from Panel Applying to Re-join the Legal Aid Panel

法律援助证书签发后，法律援助署署长（署长）便可委派法援署律师代表受助人。如果署长不代表受助人行事，他或受助人可从该署管理的法律援助律师名册中选择一名大律师或律师作为受助人的代表。

持有有效执业证书的大律师或律师均可申请加入法律援助律师名册，署长必须有足够理由相信该律师曾处理案件失当或专业操守欠佳，才可拒绝他们加入名册的申请。现时，名册上有逾800名大律师及2 200名律师。大律师或律师在以下

Where a legal aid certificate is granted, the Director of Legal Aid may act for the aided person through lawyers employed in LAD. If the Director does not act for the aided person, he or the aided person may select a solicitor or counsel to act for him from the panels of counsel and solicitors maintained by the Department.

Counsel or solicitors holding current practising certificates may apply to join the Legal Aid Panel, unless the Director is satisfied that there is good reason to exclude them by reason of their conduct in any particular case or their professional conduct generally. Currently, there are more than 800 counsel and 2 200 solicitors on the Panel. Counsel or solicitors on the Legal Aid Panel may be

情况可能会被除名：(a)他们主动要求除名；或(b)他们不再持有有效的执业证书；或(c)由于他们表现严重失职而被法援署监察外判个案委员会决议除名。

因(a)或(b)原因而除名的律师，只要他们持有有效执业证书，均可以申请重新加入名册。至于因(c)原因而除名的律师，在法援署于2014年底实施新程序前，一直没有处理其重新加入名册申请的指引。在新程序实施后，因(c)原因除名的律师在被除名当天起计最少三年后，可申请再次加入名册。他们申请重新加入名册时，须提交以下文件：

- a) 法律援助律师名册参加表格；
- b) 所有证明他/她适宜获重新纳入名册及处理法律援助个案的相关文件；以及
- c) 两名资深业界人士的推荐信，其中一名必须与申请人来自不同的大律师或律师事务所，以确认申请人适合处理法律援助个案。「资深业界人士」是指取得专业资格后执业满20年或以上的律师。

处理重新加入名册的申请时，监察外判个案委员会将考虑该名律师所提交的资料，并按每宗申请的个别情况，审核其是否处理法律援助个案的合适人选。考虑因素包括该名律师的经验、对法律援助要求的认识、过往处理法律援助个案的表现、被除名原因、被除名后处理个

removed if: (a) they request to be removed from the Panel; or (b) they cease to hold a current practising certificate; or (c) their unsatisfactory performance is of a serious nature that they are removed from the Panel by the decision of the Departmental Committee on Monitoring Assignments to Counsel and Solicitors (DMC).

Lawyers removed under (a) and (b) may apply to re-join the Panel if they hold a current practising certificate. For (c), there is no guideline on how to deal with applications from those lawyers to re-join the Panel until LAD implemented new procedures in late 2014. With the new procedures, lawyers removed under (c) can only apply to re-join the Panel at least 3 years since the date of their removal from the Panel. When applying to re-join the Panel, the lawyer is required to submit the following:

- a) the Panel Entry Form;
- b) all relevant information in support that he/she is suitable for readmission to the Panel and handling legal aid cases; and
- c) two references from two senior members of the profession, one of whom must be from a different firm or chamber from that of the lawyer, confirming that the lawyer is a fit and proper person to handle legal aid cases. "Senior members of the profession" refer to those lawyers who have had at least 20 years' post qualification experience.

In considering the application for re-joining the panel, the DMC will take into account the information provided by the lawyer and consider on a case by case basis whether the lawyer is a "fit and proper person" to handle legal aid cases. Factors to be considered include the lawyer's experience, knowledge of legal aid requirements, history of performance in handling legal aid cases, reasons for removal from the Panel, the lawyer's performance in

案的表现，以及其他相关资料，例如是否曾被纪律惩处或刑事检控。

如果申请被拒绝，该名律师有一次机会向监察外判个案委员会提出申诉。委员会经评估后所作的决定为最终决议，并将以书面通知申请重新加入名册的大律师和律师有关决定。

法援署已于本局2014年12月的会议中简介上述有关律师申请再次加入名册的新指引。有关指引亦已上载至法援署网页。

handling cases since removal and any other relevant matters such as whether professional disciplinary or criminal proceedings have been found substantiated against that lawyer.

If the application is rejected, the lawyer will be given an opportunity to make representations which will be evaluated by the DMC. The decision made by DMC after evaluating the representations is final. Counsel and solicitor applying to re-join the panel will be informed of the decision of the DMC in writing.

The above-said new guidelines for lawyers removed from the Panel applying to re-join the Legal Aid Panel were briefed by LAD at the Council meeting held in December 2014. The same could also be obtained from the website of LAD.

法援个案委托对应不正当兜揽生意活动 Assignment of Legal Aid Cases vis-a-vis Improper Touting Activities

在2014年3月，民政局向本局转述了保险、的士及公共小巴业界对《法律援助条例》第13条有关法援署的律师提名制度可能引致律师/索偿代理作出不正当的兜揽生意活动的关注，并简介了行政当局到目前为止的跟进行动。

本局在当月召开的会议上讨论上述议题。在会议中，本局成员注意

In March 2014, HAB informed the Council of the concerns expressed by the insurance / taxi / minibus trades about possible touting activities by certain solicitors / recovery agents vis-a-vis the LAD's lawyer nomination system under Section 13 of the Legal Aid Ordinance (LAO), and the Administration's follow-up actions taken so far.

The above-said matter was discussed at the Council meeting held in the same month. From the meeting, Council members noted that under Section 13 of LAO,

到，根据《法律援助条例》第13条，受助人有权提名其代表律师。由于个别律师可能因为擅于处理某类个案而广为受助人所认识，因此，即使被提名的律师曾处理的法援个案数量最多，亦不应因而假定该名律师与索偿代理或兜揽生意活动有任何连系。法援署欢迎业界提出具体个案及证据指证被提名的律师操守不当，例如故意拖延法律诉讼程序以收取更多律师费或与索偿代理有关连。贯彻法援署处理有关第三方或对讼一方反对法援署向受助人批出法援而提交陈述的做法，法援署随时准备彻底调查事件，并展开跟进工作。

本局亦知悉法援署正与两个法律专业团体联手打击不当兜揽生意活动，有关工作将继续进行。为了改善外委律师程序，在本局同意下，法援署于2013年9月推出「申报制度」。在该制度下，受助人须声明提名是完全出自其个人意愿，而且不会与任何人摊分诉讼申索所得的赔偿 / 业权 / 讼费，包括被提名的律师。上述条件亦将列明于律师委任信中，如被提名的律师不愿接受该等条件，便不得接受相关委派，并需向法援署交回所有个案文件。

本局亦于2014年10月在与香港律师会的会议上讨论到有关不当兜揽生意活动所产生的问题，双方就解决方法交换了意见。本局亦得悉香港律师会成立了一个小组委员会研究

aided persons has a right to nominate their own lawyers. The nominated lawyers who handled the most number of cases could not be presumed to have connection with recovery agents or be related to improper touting activities. They might be well-known in a particular field for their good service and known to the aided persons by words of mouth. LAD welcomed members of the trades to provide the Department with details of the cases or evidence of the improper conduct on the part of the nominated lawyers such as deliberately lengthening the litigation process so as to generate more legal costs or being connected to recovery agents. LAD would stand ready to conduct thorough investigation and take follow-up action as in the way in which representations against the grant of legal aid from the third party or the opposing party were handled.

The Council was also given to know that LAD had been working with the two legal professional bodies to combat improper touting activities, and the work would continue. As a measure to improve the assignment system, with the endorsement of the Council, LAD introduced a "declaration system" in September 2013. Under the system, each aided person will be asked to declare that the nomination, if any, is made entirely out of his/her own free will and he/she has not agreed to share any damages, property or costs which he/she will recover from the proceedings with any person(s) including the solicitor nominated. The nominated lawyer, if unable to accept the above condition incorporated in the assignment letter, will be obliged to return the case papers to LAD.

The issues relating to improper touting activities were also discussed at a meeting between the Council and the Law Society in October 2014. Both parties exchanged views on the ways to address the problems arising from the issues.

有关问题，并已邀请法律援助署署长加入委员会。

要证明法援个案外判工作是否被不当兜揽生意活动所影响，本局认为最好的方法是提高法援署的运作透明度，公布相关统计数字。为此，本局已透过其研究改善法律援助资讯传递的专责小组，检视法援署的外判个案统计数字并作出建议。

It was also understood that the Law Society had set up a sub-committee to look into the issues and the Director of Legal Aid was invited to sit on the sub-committee.

To demonstrate if the assignment of legal aid work has been affected by improper touting activities or not, the Council considered that the best way was to increase the operational transparency of LAD by publicising the related statistical data. To this end, the Council through its task force on the dissemination of legal aid information has reviewed the LAD's statistics on case assignment and made recommendations on the matter.