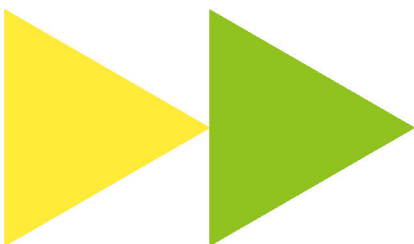


Assignment of Legal Aid Cases



In March 2017, the Legal Aid Department (LAD) sought endorsement from the Council of revising the limits set for assignment of legal aid cases to individual lawyer and the practice of assigning the case to counsel who has earlier given a favourable section 9 opinion.

Assignment limits for lawyers

Section 13 of the Legal Aid Ordinance (LAO) provides that where a legal aid certificate is granted, the Director of Legal Aid (DLA) may act for the aided person through Legal Aid Counsel or assign any counsel or solicitor to be selected by the aided person, if he/she so desires, or otherwise selected by DLA. DLA is required by virtue of section 4(1) of LAO to keep separate panels of counsel and solicitors who are willing to act for aided persons.

Legal aid work is however not distributed to counsel or solicitors on the Legal Aid Panel equally regardless of merits. The aided persons' interests are the paramount consideration. Counsel or solicitors are selected by Legal Aid Counsel having regard to the level of experience and expertise of the practitioners concerned and the type and complexity of the

particular case. In general, counsel or solicitors are selected in accordance with the established criteria, one of which is the counsel or solicitor concerned should not exceed the limit on assignments of legal aid work and/or, where appropriate, costs and fees paid or payable for such work in the past 12 months.

The assignment criteria for Panel lawyers were first introduced in 1997. Reviews on the assignment criteria and upper limits on the number of cases to be assigned and the amount of fees/costs paid to the individual Panel lawyer within a period of 12 months were conducted in 2000 and 2006 respectively.

Civil cases

The number of civil case assignments for any individual solicitor and counsel over any period of 12 months generally would not exceed 45 cases and 25 cases respectively. Provided that it is in the interests of the aided person, assignments to solicitors and counsel who exceed the assignment limits may be allowed with the approval of the directorate officer concerned.

In late 2013, LAD noted the number of assignments to a specifically small

number of Panel solicitors arising from aided persons' nomination, in particular for personal injury and related cases, had increased quite substantially. At the same time, there was also public concern that the nominations were caused by improper touting and champerty activities. Despite the fact that LAD would generally accept aided persons' nomination of lawyers when they exercise their right pursuant to section 13 of LAO, LAD is concerned that assigning too many cases to a particular Panel lawyer though nominated by the aided person may not be to the aided person's interest. In addition, it is also noted that since the Civil Justice Reform (CJR) in April 2009, personal involvement by solicitors handling civil cases including personal injuries and related proceedings has drastically increased due to the various procedural requirements under CJR and the very stringent time table for compliance. Any individual lawyer handling too many cases at one time may not be able to safeguard the interest of aided persons. To address all these concerns, LAD has since the end of 2013 adopted a strict adherence to the assignment criteria on the number of cases when assigning personal injury and related cases whereby aided person's

nomination would be turned down when the number of assignments to the nominated Panel solicitor has reached the assignment limit. The aided person would then be given an opportunity to make alternative choice of solicitor. By June 2015, LAD extended the strict adherence to the assignment criteria to cover all other types of civil cases. As a result, the total number of assignments to the top 10 lawyers has reduced substantially and in 2016, none of the Panel solicitors has assignments exceeded the maximum limit.

Following this step up measure on strict compliance with the assignment criteria on number of cases, LAD considered that the assignment limits should be reviewed.

On the other hand, the Hong Kong Independent Commission Against Corruption (ICAC) completed its study on Assignment of Civil Legal Aid Cases to Private Legal Practitioners and Experts (Assignment No. 19/2014) in 2015. Apart from making various recommendations in its report, ICAC also suggested LAD to consider reviewing the current threshold of cases assigned to each Panel lawyer.

In view of the above circumstances, LAD reviewed the civil case assignment limits for solicitors and counsel, and proposed to adjust the limits to 35 and 20 cases respectively.

Criminal cases

The criminal case assignment limits are 30 cases for both solicitors and counsel, and the fees limit for solicitors is \$0.6 million and that for counsel is \$1.2 million, whichever occurs first. Assignments to Panel lawyers who exceed the limits may be allowed with the approval of a directorate officer if it is in the

interests of the aided person.

In response to the call for change by the two legal professional bodies and in compliance with the report to the Legislative Council Finance Committee in October 1992 of conducting review biennially based on Consumer Price Index (C), the rate of fees payable to Panel lawyers handling criminal legal aid cases has been increased quite substantially since 2012.

With a view to widening the pool of lawyers handling criminal legal aid cases in particular when the

rate of fees payable to lawyers handling criminal legal aid cases being substantially increased, LAD proposed to revise the criminal case assignment limits for both counsel and solicitors to 25 cases. However, noting the recent increase in the rate of fees, it was proposed that the fees limit for solicitors be revised upward to \$750,000 and \$1.5 million for counsel.

Following is a table summarizing the LAD's proposed revision of the assignment limits on civil and criminal cases within 12 months:

	Civil Cases		Criminal Cases	
	Before Revision	After Revision	Before Revision	After Revision
Solicitor	45 cases	35 cases	30 cases or \$600,000 legal aid costs (whichever occurs first)	25 cases or \$750,000 legal aid costs (whichever occurs first)
Counsel	25 cases	20 cases	30 cases or \$1.2 million legal aid costs (whichever occurs first)	25 cases or \$1.5 million legal aid costs (whichever occurs first)

The above proposals had the support of the Council.

Assignment of counsel to prepare section 9 opinions

With a view to expanding the pool of counsel for provision of independent opinions under section 9 of LAO, LAD has since 2013 assigned those counsel on the Panel who have the relevant experience and expertise but with fewer assignments to

prepare section 9 opinions. As a step up measure, LAD proposed in March 2017 that as a general policy, a counsel who has earlier given a favourable section 9 opinion would not be assigned to handle the case if legal aid is subsequently granted save and except in special circumstances such as there is no other counsel with the required experience and expertise available to handle the case, or it is in the interest of the aided person to do so e.g. containing the amount of first charge to be borne by the aided person as in damages claim cases.

The Council welcomed the proposal.