



## 防止法律援助制度 被不當使用和委派 律師處理法律援助個案

# Prevention of the Misuse of the Legal Aid System and Assignment of Lawyers in Legal Aid Cases

法律援助服務是法律制度重要的一環，對維護香港法治起着重要的作用。法援政策的目的是確保所有符合《法律援助條例》（《法援條例》）（第91章）規定和具備合理理據在香港法院提出訴訟或抗辯的人士，不會因缺乏經濟能力而無法尋求公義。因此，任何人如欲獲得法援，必須同時通過《法援條例》規定的經濟審查和案情審查。

由2018年2月9日起，凡本身財務資源不超過302,000元的人，在經濟上均符合資格根據普通法律援助計劃（「普通計劃」）申請法援，普通計劃適用於在區域法院或較高級別法院進行的民事法律程序。該財務資格限額亦適用於申請刑事法援的個案。法律援助輔助計劃（「輔助計劃」）的相應財務資源上限為1,509,980元。

「財務資源」意指申請人每月可動用收入乘以12，再加上可動用資產的總和。可動用收入是指個人的總收入在減去《法律援助（評定資源及分擔費用）規例》（《分擔費用規例》）（第91B章）所規定可扣除項目後的餘額。除非

Legal aid services form an integral part of the legal system and play an important role in contributing towards upholding the rule of law in Hong Kong. The policy objective of legal aid is to ensure that all those who comply with the regulations of the Legal Aid Ordinance, Cap. 91 (LAO) and have reasonable grounds for pursuing or defending a legal action in the courts of Hong Kong will not be denied access to justice because of a lack of means. Thus, to qualify for legal aid, a person is required to satisfy both the means test and merits test as provided by the LAO.

From 9 February 2018, a person whose financial resources do not exceed \$302,000 is financially eligible for legal aid under the Ordinary Legal Aid Scheme which covers civil proceedings in the District Court or higher courts, and legal aid in criminal cases. The corresponding upper limit for the Supplementary Legal Aid Scheme is \$1,509,980.

“Financial resources” means the aggregate of a person’s monthly disposable income multiplied by 12 and disposable capital. A person’s disposable income is his gross income minus deductible items as specified in the Legal Aid (Assessment of Resources and Contributions) Regulations, Cap. 91B (“the Regulations”). A person’s disposable capital consists of all assets of a capital nature, such as the sum of his credit balance, money due to him, the value of the person’s interest in non-money resources, the

《分擔費用規例》訂明在計算可動用資產時應剔除某些項目，否則可動用資產須包括以下一切屬資本性質的資產，例如申請人的貸方結餘總和、其他人須付予該申請人的款項、申請人名下非金錢資源權益的價值、其業務或在公司的業務中所佔份額的價值等。

近年，不當使用 / 濫用法援服務的情況引起了社會的關注。為回應立法會司法及法律事務委員會（「事務委員會」）的要求，民政事務局（「民政局」）在2017年7月的會議上，向事務委員會簡報法律援助署（「法援署」）為防止法援制度被不當使用而推行的措施，以及委派私人執業律師處理法援個案的準則，並於同月通報本局。詳情見下文。

## 防止不當使用法援的措施

### 處理申請

《法援條例》第10(3)條規定民事案件須進行案情審查，內容如下：「任何人均須顯示他有合理理由進行法律程序、在法律程序中抗辯、反對或繼續法律程序或作為其中一方，否則不可獲發給法律援助證書，進行該等法律程序」。為確保只有具合理理由的個案方可獲批法援，所有法援申請均須由法援署的法援律師審核。

在進行案情審查時，法援署會考慮案件的背景、現有證據和適用於該案件的法律原則。法援署必須研究該案件是否有合理理據或所涉及的法律觀點足以讓法援署信納宜於批給法援，以便使有關事宜得以交予法庭作出裁決或判決，然後才發出法援證書。倘申請個案涉及複雜的法律問題，法援署可根據《法援條例》第9(d)條，就有關申請個案的案情向私人執業大律師徵詢獨立的法律意見（「第9條意見」）。

value of business or share in a company etc., unless such items should be excluded under the Regulations.

In recent years, there have been concerns over the misuse/abuse of the legal aid system in Hong Kong. In response to the requests of the Legislative Council Panel on Administration of Justice and Legal Services (AJLS), the Home Affairs Bureau (HAB) briefed the Panel in July 2017 on measures implemented by the Legal Aid Department (LAD) to prevent the misuse of the legal aid system. The briefing also covered the criteria for assigning lawyers in private practice to handle legal aid cases. The LASC was informed about this in the same month of the year. Details are reproduced in the ensuing paragraphs.

## Measures to Prevent Misuse of Legal Aid

### Processing of applications

The merits test for civil cases is stipulated in section 10(3) of the LAO which reads “A person shall not be granted a legal aid certificate in connection with any proceedings unless he shows that he has reasonable grounds for taking, defending, opposing or continuing such proceedings or being a party thereto”. To ensure that only those cases with reasonable grounds are granted legal aid, all legal aid applications are processed by Legal Aid Counsel of LAD.

In conducting the merits test, LAD will consider the background, evidence available and legal principles applicable to the case. Before issuing a legal aid certificate, LAD must be satisfied that there are reasonable grounds or points of law involved which makes it desirable to grant legal aid so that the matter may be submitted to the Court for decision or judgment. If complicated legal issues are involved in the application, LAD may seek independent legal opinion from counsel in private practice on the merits of the application under section 9(d) of the LAO (“section 9 opinion”).

《法援條例》第10(3)條訂明法律援助署署長（「署長」）可拒絕給予法援的準則，例如申請人在該等法律程序中只會得到輕微好處，或申請人未能向法援署提供《法援條例》第9(b)條所規定的相關文件。根據《法援條例》第26條，倘法援申請被拒，申請人可向高等法院司法常務官提出上訴，由司法常務官以內庭聆訊方式處理，其決定為最終決定。

有關法援申請的統計數據表列如下：

Section 10(3) of the LAO sets out the criteria where the Director of Legal Aid (DLA) may refuse legal aid. These include cases where only a trivial advantage would be gained by the applicant from such proceedings, or the applicant has failed to provide relevant documents to LAD as required under section 9(b) of the LAO. According to section 26 of the LAO, if an application for legal aid is refused, the applicant may appeal to the Registrar of the High Court in Chambers whose decision is final.

Statistics relating to legal aid applications are set out in the table below –

	2014	2015	2016
<b>民事法援 Civil legal aid</b>			
接獲的申請數目 No. of applications received	16 288	15 165	14 733
批出的證書數目 No. of certificates granted	7 526	7 058	6 878
申請被拒的數目 No. of applications refused:			
- 基於財務資源理由 on means	912	814	786
- 基於案情理由 on merits	5 583	5 227	5 294
上訴推翻署長決定的數目 No. of appeals against DLA's decisions:			
- 經聆訊的上訴 appeals heard	809	705	750
- 上訴得直 appeals allowed	32	38	28
<b>刑事法援 Criminal legal aid</b>			
接獲的申請數目 No. of applications received	3 717	3 630	3 567
批出的證書數目 No. of certificates granted	2 690	2 521	2 641
申請被拒的數目 No. of applications refused:			
- 基於財務資源理由 on means	38	47	25
- 基於案情理由 on merits	823	921	817
法官批出的證書數目 No. of certificates granted by the Judge	8	4	10

註：證書未必在接獲申請的同一年內批出。

Note: Certificates may not be granted in the same year as the applications were received.

## 監察獲批的申請

為確保有充足理據因應案情繼續給予法援，法援署會向獲批的申請發出有限度法援證書，訂明適用的範圍只限於某些工作範疇或法律程序中某些特定的步驟。法援署會因應所發現或取得的更多資料和證據，持續檢討有關案件的案情，以決定是否延續該法援證書。倘法援署認為有關案件不再有合理理據繼續進行法律程序，例如所得的事實證據或醫學證據對受助人的申索不利、或在法律程序中所招致的訟費跟預計會討回的賠償金額不成比例，法援署將取消對有關案件提供法援。

## 不當使用 / 濫用法援

《法援條例》及其附屬法例訂有防止不當使用 / 濫用法援的機制。根據《法援條例》第23條，任何尋求或接受法援的人士，如在提供所需資料時明知而作出任何虛假陳述或虛假申述，即屬犯罪，循簡易程序定罪後，可處第三級罰款（即10,000元）和監禁六個月。任何人如認為申請人或受助人曾就案情審查或經濟審查提供虛假資料，可向法援署提供有關詳情。按照《法援條例》第11條和《法律援助規例》（《法援規例》）（第91A章）第8條規定，署長如信納受助人曾明知而就其所提供的資料作出虛假陳述、曾故意不披露其財務資源或關於其財務資源的任何重要事實等，署長可撤回其法援證書。根據《法援規例》第9條，法援署可向受助人追討所有已繳付或須繳付的訟費，亦可把個案轉介警方跟進。《法援條例》第17條規定，有關法院或法官亦可命令該受助人繳付署長的訟費。法援署會向所有申請人發出「重要告示」，藉以通知 / 提醒他們須注意《法援條例》的相關規例。在2014至2016年間，法援署

## Monitoring approved applications

To ensure the continuation of legal aid is justified in terms of the merits of the case, LAD will issue legal aid certificates that are limited to certain scope of work or specific steps in the proceedings for approved applications. Any extension of the certificate will be subject to ongoing review on the merits of the case when more information and evidence is unfolded or obtained. Legal aid certificates will be discharged if LAD considers that there are no longer reasonable grounds to continue the proceedings, such as cases in which the factual or medical evidence is unfavourable to the aided person, or costs to be incurred in the proceedings are disproportionate to the estimated amount of damages to be recovered.

## Misuse / Abuse of Legal Aid

The LAO and its subsidiary legislation provides mechanisms to prevent misuse/abuse of legal aid. Under section 23 of the LAO, any person seeking or receiving legal aid who knowingly makes any false statement or representation when furnishing the information required shall be guilty of an offence and liable on summary conviction to a fine at level 3 (i.e. \$10,000) and imprisonment for 6 months. Anyone who believes that an applicant or aided person has furnished false information on the merits or means may provide relevant details to LAD. Pursuant to section 11 of the LAO and regulation 8 of the Legal Aid Regulations, Cap. 91A (LAR), the DLA may revoke a legal aid certificate if he is satisfied that the aided person has knowingly made a false statement concerning any information furnished by him; or has wilfully failed to disclose his financial resources or any material fact concerning his financial resources, etc. Under regulation 9 of the LAR, LAD may recover from that person all costs paid or payable. LAD may also refer the case to the Police for follow-up actions. According to section 17 of the LAO, a court or judge may also order the aided person to pay the costs of DLA. Applicants are informed/reminded of the relevant regulations by an "Important Notice" provided by LAD. Follow-

就不當使用 / 濫用法援的情況採取了以下的跟進行動：

up actions taken by LAD regarding misuse/abuse of legal aid in 2014 to 2016 are summarized below –

	2014	2015	2016
撤回法援證書的數目 Revocation of legal aid certificate	27	24	33
在取消或撤回證書後轉介警方跟進的個案數目 Referral to the Police after discharging or revoking certificate	26	25	20
被定罪的個案數目 Conviction	4	2	2

註：被取消或撤回證書的個案未必在同一年內轉介警方跟進和被法院定罪。

Note: Referrals to the Police and convictions may not be made in the same year as the certificates were discharged or revoked.

根據《法援規例》第11條，倘任何人在申請法援被拒後曾反覆多次提出申請，而署長覺得其行為構成濫用根據《法援條例》提供的服務，署長可命令法援署不予考慮該名人士提出的任何申請，最長為期三年。在考慮有關申請人的行為是否構成濫用法援時，法援署會研究該名人士以往被拒的申請、該些申請的案情，以及法援上訴的結果。法援申請人如因署長根據《法援規例》第11條作出的命令或決定而感到受屈，可向高等法院司法常務官提出上訴，其決定為最終決定。

### 涉及司法覆核案件的法援個案

社會就不當使用 / 濫用法援服務的情況提出的關注，多涉及司法覆核案件。因此，民政局向事務委員會提交了有關處理司法覆核的法援申請的資料和相關統計數字。

如民政局文件所述，申請人須證明有合理理由進行司法覆核法律程序，才會獲批法援。處理涉及司法覆核的法援申請而採用的案情審查準則，跟其他對民事

Pursuant to regulation 11 of the LAR, if anyone applies for legal aid after repeated refusals, DLA may order that no consideration shall be given to any future application made by that person for a period of up to 3 years if it appears to DLA that his conduct has amounted to an abuse of the services provided by the LAO. In considering whether the conduct has amounted to an abuse of legal aid, LAD will examine the applicant's previously refused applications, the merits of those applications and the outcomes of any legal aid appeals therefrom. A legal aid applicant aggrieved by any order or decision made by LAD may, pursuant to section 26 of the LAO, appeal to the Registrar of the High Court whose decision will be final.

### *Legally-aided cases involving judicial review*

Concerns about the misuse/abuse of the legal aid system are mainly related to cases of judicial review (JR). Hence, HAB has submitted information on processing legal aid applications involving JR and related statistics to the AJLS Panel.

As explained in the HAB's submission, legal aid will only be granted to applicants who can show reasonable grounds for conducting JR proceedings. The criteria for conducting the merits test for legal aid applications involving JR are the same as those for other civil legal aid applications. The number of legal aid applications involving JR received by LAD and the number

法援申請所採用的準則相同。在2014至2016年間，法援署接獲涉及司法覆核的法援申請數目和批出的法援證書數目表列如下：

of legal aid certificates granted in 2014 to 2016 are tabulated below –

	2014	2015	2016
接獲涉及司法覆核的法援申請數目 <sup>#</sup> : No. of legal aid applications involving JR received <sup>#</sup> :			
(i) 與免遣返聲請有關的申請數目* cases related to non-refoulement claims*	98	248	144
(ii) (i)以外涉及司法覆核的申請數目 cases other than (i)	168	252	293
總數 Total	266	500	437
就司法覆核案件批出的法援證書數目 <sup>#</sup> : No. of legal aid certificates granted for cases involving JR <sup>#</sup> :			
(i) 與免遣返聲請有關的法援證書數目* cases related to non-refoulement claims*	52	62	9
(ii) (i)以外涉及司法覆核的法援證書數目 cases other than (i)	22	45	18
總數 Total	74	107	27

註 Notes:

# 法援證書未必在接獲申請的同一年內批出。

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

\* 就免遣返聲請而提供的公費法律支援，不在法援署提供的法援範圍內。不過，倘聲請人因入境事務處或酷刑聲請上訴委員會的決定而感到受屈，並希望透過司法覆核提出質疑，他們可根據《法援條例》申請法援。倘聲請人被有關當局羈留，他們亦可要求提供法援以申請獲釋放，並就非法羈留一事追討損害賠償。

The provision of publicly-funded legal assistance for non-refoulement claims is not within the scope of the legal aid services provided by LAD. However, if claimants are aggrieved by the decisions of the Immigration Department or Torture Claims Appeal Board and wish to challenge them by way of judicial review, they may apply for legal aid in accordance with the LAO. They may also apply for legal aid for applying for release from the detention by relevant authorities and recovering damages for unlawful detention.

在2014-2015、2015-2016及2016-2017財政年度中，有關獲批法援的司法覆核案件所涉及的法律費用支出總額表列如下：

Total legal expenditure on legally-aided cases involving JR in the financial years 2014-15, 2015-16 and 2016-17 is also tabulated below –

財政年度 Financial year	涉及司法覆核案件的法律費用支出總額 (百萬元) Total legal expenditure on cases involving JR (\$ million)	涉及司法覆核案件的法律費用支出 佔該年度法援費用總額的百分率 Expenditure on JR cases as a percentage of total legal aid costs of the year
2014-15	22.7	4.00%
2015-16	29.4	5.17%
2016-17	36.3	5.02%

註： 涉及司法覆核案件的法律費用支出總額可能包括並非在該年度內獲批法援證書的個案所需開支。

Note: The total legal expenditure on cases involving JR may include the expenditure for cases where the legal aid certificates were not granted in the same year.

## 委派律師的準則

### 委派律師予受助人

《法援條例》第13條訂明，凡署長發給法援證書，他可透過法援律師代受助人行事；或除非受助人希望自行挑選，否則會由署長指派在《法律援助律師名冊》（《名冊》）內挑選的私人執業律師代為行事。為此，法援署已制訂一套委派律師辦理法援個案的準則，並已上載至法援署的網站。

法援署亦已發出一份《法律援助律師手冊》，載述有關辦理法援個案的指引。該指引訂明，外委律師有責任進行法律程序和作出符合受助人利益的決定，因此，他們應熟讀《法援條例》的條文和與辦理法援個案有關的相關規例。其中，外委律師必須查看有關法援證書的範圍，因為只有執行範圍內的工作才會獲付酬金。倘遇有招致異常巨額開支的需要，外委律師須於事前取得法援署的批准。外委律師亦有責任向法援署匯報

## Assignment Criteria of Lawyers

### Assignment of lawyers to aided persons

Section 13 of the LAO provides that where a legal aid certificate is granted, DLA may act for the aided person through Legal Aid Counsel or assign any lawyers in private practice on the Legal Aid Panel selected by either the aided person if he so desires, or DLA. To this end, LAD has devised a set of criteria on the assignment of legal aid cases and uploaded it onto the LAD's website.

LAD has also issued a "Manual for Legal Aid Practitioners" setting out the guidelines for conducting legal aid cases. The guidelines state that it is the duty of assigned lawyers to conduct proceedings and decide on what steps to take in the interests of the aided person. To this end, they should familiarise themselves with the provisions of the LAO and related regulations that are relevant to the conduct of legal aid cases. Assigned lawyers are required to check, among other things, the scope of the legal aid certificate and will be remunerated only for the work done within the scope. If there is a need to incur unusual and large expenditure, assigned lawyers should obtain prior approval from LAD. Assigned lawyers are also under a duty to report to LAD

有關個案的進展情況和懷疑受助人不當使用 / 濫用法援服務的個案。他們必須明白本身對運用法援撥款所負的責任，並須留意法援署相關規定內有關執行署長第一押記的事宜。

法援署在委派《名冊》內的律師辦理法援案件時，會恪守把受助人利益放在首位的基本原則。根據法律意見和過往案例，倘受助人依據《法援條例》第13條自行提名律師，法援署認為應充分尊重有關提名；而除非有令人信服的理由，否則不應拒絕有關提名。令人信服的理由包括：獲提名的律師過往的工作表現欠佳和曾受到紀律處分；或法律程序中規定採用的語言很可能會損害受助人在法律程序中的利益及 / 或對法援基金造成損害；又或受助人在沒有合理理由的情況下，曾多次或很遲才要求更換律師。法援署會依據上述準則去衡量所選律師是否合適，倘法援署認為獲提名的律師並非適當人選，或該名律師所獲委派處理的個案數目超出上限，法援署會要求受助人從《名冊》內提名另一名律師，並審視新提名的律師是否適合。在此情況下，最終獲委派的律師均會是受助人和法援署所接受的人選。

### 律師獲委派的個案數目上限

由2013年起，法援署加緊執行《法律援助律師手冊》內所訂的上限規定，即每名律師可獲委派處理的個案數目上限和可獲支付的累積法援費用上限（如適用），有關規定適用於所有類別的民事和刑事案件。倘獲提名的律師所接辦的個案數目已超出上限，法援署會要求受助人從《名冊》中提名另一名律師。在2014至2016年間，獲委派最多個案的律師和大律師所處理的個案數目表列如下：

on progress of the cases and any suspected misuse/abuse of legal aid by the aided persons. They must also understand their responsibility to the legal aid fund and pay attention to relevant provisions on the operation of DLA's first charge.

In assigning cases to lawyers on the Legal Aid Panel, LAD adheres to the fundamental principle that an aided person's interest is of paramount importance. In light of legal advice and precedent cases, when an aided person nominates by himself a lawyer pursuant to section 13 of the LAO, LAD takes the view that the nomination should be given due weight and should not be rejected unless there are compelling reasons. These include unsatisfactory past performance and disciplinary action taken against the nominated lawyer, or language requirements of the proceedings which are likely to undermine the aided person's interest in the proceedings and/or to put the legal aid fund in jeopardy, or the aided person has made repeated or late requests for change of lawyer without reasonable grounds. LAD will base on the above criteria to determine whether the choice of lawyer is appropriate. If the nominated lawyer is considered not appropriate or is handling a number of cases exceeding the assignment limit, LAD will ask the aided person to nominate another Panel lawyer and assess the newly nominated lawyer for appropriateness. In this way, the lawyer eventually assigned will be agreeable to both the aided person and LAD.

### *Limits on assignment of lawyers*

Since 2013, LAD has tightened up enforcement of the limits set on the number of assignments handled by a lawyer and the cumulative amount of legal aid fees payable (where applicable) as stipulated in the Manual for Legal Aid Practitioners, covering civil and criminal cases of all categories. If the number of assignments taken up by a nominated lawyer has exceeded the limit, LAD will ask the aided person to nominate another Panel lawyer. The number of cases handled by the solicitors and counsel with most assignments in 2014 to 2016 is tabulated below:



## 民事案件 Civil Cases

排名 Rank	2014		2015		2016	
	律師 Solicitor	大律師 Counsel	律師 Solicitor	大律師 Counsel	律師 Solicitor	大律師 Counsel
1	129	29 (0)	46	31 (0)	43	28 (3)
2	82	28 (8)	45	30 (0)	42	28 (2)
3	65	28 (0)	45	29 (1)	41	25 (1)
4	50	28 (1)	44	27 (1)	40	25 (1)
5	50	27 (10)	43	26 (0)	40	25 (0)
6	49	27 (1)	43	25 (4)	40	25 (0)
7	49	26 (0)	42	25 (0)	40	25 (2)
8	47	26 (0)	42	25 (0)	40	25 (0)
9	47	26 (1)	41	25 (0)	40	24 (1)
10	47	26 (0)	41	25 (0)	39	23 (0)

註： ( )號內的數字表示根據第9條獲委派個案的數目。在陰影部分的數字代表已超出當時可獲委派處理的個案數目上限（律師：45宗個案；大律師：25宗個案）。在2016年，有兩名大律師由於要處理有關連的個案，因此即使獲委派的工作會超出上限，但仍獲委派處理有關個案。

Note: The figure in ( ) indicates the number of section 9 assignment(s). Figures in the shaded areas have exceeded the then assignment limits of 45 cases for solicitors and 25 cases for counsel. In 2016, two counsel were assigned civil cases despite exceeding the assignment limit as the newly assigned cases were related to the cases assigned to them earlier.

## 刑事案件 Criminal Cases

排名 Rank	2014		2015		2016	
	律師 Solicitor	大律師 Counsel	律師 Solicitor	大律師 Counsel	律師 Solicitor	大律師 Counsel
1	25	23	29	25	31	23
2	18	21	21	18	30	23
3	18	21	19	18	27	20
4	16	19	19	17	19	19
5	16	17	17	17	17	18
6	16	17	16	17	17	17
7	15	16	15	14	15	17
8	15	16	14	14	15	16
9	14	16	14	14	15	16
10	14	16	13	13	15	16

註： 上述數字不包括在批出法援證書前獲委派提供意見的個案的數目。在陰影部分的數字代表已超出當時可獲委派處理的個案數目上限（30宗個案）。在2016年，有一名律師由於要處理有關連的個案，因此即使獲委派的工作會超出上限，但仍獲委派處理有關個案。

Note: The above figures do not include the number of pre-certification advice assignment. Figure in the shaded area has exceeded the then assignment limit of 30 cases. In 2016, one solicitor was assigned a criminal case despite exceeding the assignment limit as the newly assigned case was related to the cases assigned to him earlier.

為回應有關委派太多法援個案予少數律師的關注，法援署在2017年就律師可獲委派的個案數目上限進行檢討及提出修訂。如本局去年年報所載，有關修訂如下：

To address the concern about the assignment of too many legal aid cases to a small number of lawyers, LAD conducted a review on the assignment limits recommended revisions in 2017. As reported in the last report, relevant revisions as follows –

	修訂前 Before Revision	經修訂後 After Revision
律師 Solicitor	民事：45宗個案 Civil: 45 cases 刑事：30宗個案或60萬元法援費用（以最先到達上限者為準） Criminal: 30 cases or \$600,000 in legal aid costs (whichever occurs first)	民事：35宗個案 Civil: 35 cases 刑事：25宗個案或75萬元法援費用（以最先到達上限者為準） Criminal: 25 cases or \$750,000 in legal aid costs (whichever occurs first)
大律師 Counsel	民事：25宗個案 Civil: 25 cases 刑事：30宗個案或120萬元法援費用（以最先到達上限者為準） Criminal: 30 cases or \$1.2 million in legal aid costs (whichever occurs first)	民事：20宗個案 Civil: 20 cases 刑事：25宗個案或150萬元法援費用（以最先到達上限者為準） Criminal: 25 cases or \$1.5 million in legal aid costs (whichever occurs first)

除修訂律師可獲委派個案數目的上限外，法援署亦建議作為一般政策，倘大律師曾於較早前給予有利案情的第9條意見，而其後該宗案件獲批法援，則該名大律師將不會獲委派接辦有關案件；不過，在特殊情況下可不受此限，例如沒有其他大律師具備所需的經驗和專業知識處理該案件，又或者是為了維護受助人的利益（例如在損害索償案件中避免受助人要承擔更多的第一押記金額）。

經修訂的律師可獲委派個案數目上限和委派大律師提供第9條意見的一般政策已於2018年1月2日起生效。

### 法援申請的申報機制

為打擊不當兜攬或包攬訴訟的活動，法援署在諮詢本局和兩個法律專業團體

Apart from revising the assignment limits, LAD also proposed 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. However, exceptions could be made 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. in containing the amount of first charge to be borne by the aided person as in damages claim cases).

Both the new assignment limits and the general policy of assigning counsel to provide section 9 opinions took effect from 2 January 2018.

### Declaration system for legal aid applications

As a measure to combat improper touting or champertous activities, LAD introduced a declaration system for legal aid applications in September 2013 after consulting the Council and the two legal professional bodies. The system seeks to ensure

後，於2013年9月為法援申請引入申報制度，以確保受助人是按其意願提名律師，而且並無與任何人（包括獲提名的律師、其僱員、代理或索償代理）達成協議，攤分在法律程序中可能討回的任何損害賠償、財產或訟費。法援署亦會提醒法援申請人，如有任何人接觸他們，聲稱可協助申請法援或向他們建議提名某一名律師，他們應向法援署職員舉報。受助人在選擇代表律師時如需要尋求意見，他們可聯絡和諮詢法援署。

### 監察外委律師的工作表現

法援署設有既定機制監察外委律師的工作表現，由署長擔任主席的部門監察委員會，負責評核外委律師辦辦法援個案的工作表現和委派予個別律師的法援個案數目。法援署的首長級人員亦會定期檢閱所有委派個案，以確保有關律師在辦辦法援個案時沒有出現不當行為或無故拖延的情況。在2014至2016年間，對於《名冊》內的律師在辦辦法援個案時出現不當行為，法援署採取的紀律處分如下：

that aided persons nominate lawyers of their own free will and that they have not agreed to share with any person(s) (including nominated lawyers or their employees, agents or claims agents) any damages, property or costs which they may recover in the proceedings. LAD also reminds legal aid applicants to report to LAD staff if they are approached by any person claiming to offer assistance in applying for legal aid or suggesting nomination of a particular lawyer. Aided persons may contact and consult LAD if they need advice on the choice of legal representatives.

### Monitoring performance of assigned lawyers

LAD has an established system to monitor the performance of assigned lawyers. The Departmental Monitoring Committee chaired by DLA evaluates the performance of assigned lawyers in handling legal aid cases and the number of legal aid cases assigned to individual lawyers. LAD's directorate officers also keep all assigned cases under regular review to ensure that there are no improprieties or undue delays in the handling of legal aid cases. Disciplinary actions taken by LAD against Panel lawyers in relation to handling of legal aid cases in 2014 to 2016 are shown below –

	2014	2015	2016
發出勸誠信的宗數 No. of advisory letters issued	4	0	2
在「工作表現及行為操守欠佳記錄冊」內作出記錄的宗數 No. of lawyers placed on the Record of Unsatisfactory Performance/Conduct	11	7	14
從《名冊》中除名的律師人數 No. of lawyers removed from the Legal Aid Panel	0	0	3

此外，廉政公署在2015年完成一項就委派民事案件予私人執業律師和專家的防止貪污研究，並提出多項建議以加強監督委派個案的程序，法援署已落實所有主要建議。

## 公眾教育

政府一直透過不同途徑加強宣傳和教育的工作，包括提醒市民切勿濫用法援。法援署致力推廣法援服務，每年均舉辦和參與多項活動，並透過網站、小冊子、電視宣傳短片、電台宣傳聲帶等，增加公眾對法援服務的了解。除了解釋案情審查的運作外，法援署亦積極向公眾傳達信息，讓公眾明白適當地申請和使用法援服務的重要性，其中包括提醒法援申請人如作出虛假陳述或提供不正確資料可被檢控；以及如有人曾多次申請法援，而有關行為足以構成濫用該服務，署長可命令法援署對該名人士日後提出的申請不予考慮，有效期最長為三年。法援署在未來會繼續推行有關公眾教育的工作。

本局非常感謝法援署為防止法援制度被不當使用和濫用，以及增強公眾對委派律師處理法援個案的認識所作出的努力。被拒法援個案上訴推翻署長決定的成功率並不高，涉及司法覆核的被拒法援個案的上訴成功率亦同樣不高，可見法援申請得到妥善和公正的處理。與臆測相反，獲批法援進行司法覆核的個案數目其實不多，在2016年，在接獲的437宗申請中，只有27宗獲批；不過值得注意的是，一些司法覆核案件如沒有獲批法援，也許不能上訴至終審法院，而有關案件的法院裁決實有助澄清 / 建立相關法例，例如，在兩個關於居留權資格的法援案件中（一宗是涉及在中國內地出生而被香港永久居民領養的人

Furthermore, in 2015 the Independent Commission Against Corruption completed a corruption prevention study on the assignment of civil cases to private practitioners and experts and made a number of recommendations on strengthening procedural supervision. LAD has implemented the key recommendations.

## Public Education

The Government has been stepping up publicity and educational efforts through various channels, including reminding the public not to abuse the use of legal aid. LAD is committed to promoting legal aid services by organising and participating in various activities, and enhancing public understanding of such services via websites, booklets, announcements in public interest on television and radio, etc. Apart from explaining how the merits test works, LAD emphasizes to the public the importance of proper application for and use of legal aid services. These include a reminder that legal aid applicants may be prosecuted for making false statements or furnishing incorrect information; and if a person has repeatedly applied for legal aid to the extent that his conduct has amounted to an abuse, DLA may order that no consideration shall be given to any future application made by that person for a period of up to three years. LAD will continue with its efforts on public education in future.

The Council appreciates the efforts of LAD to prevent the misuse and abuse of the legal aid system and to enhance public understanding of the assignment of lawyers in legal aid cases. The low success rates of appeals against DLA's decisions to refuse legal aid and legal aid appeals in JR cases reveal that legal aid applications have been properly and impartially processed. Contrary to speculations, not many legal aid applications for JR have been approved. In 2016, only 27 out of 437 applications were approved. It is also noted that but for legal aid, some of the JR cases may not have been able to reach the Court of Final Appeal (CFA) for a decision which clarifies/develops the law in the relevant area. For instance, in two leading legal aid test cases concerning the eligibility for right of abode of: i) persons born in Mainland China adopted by Hong Kong permanent residents; and ii) domestic helpers who have lived in Hong Kong



士，另一宗是涉及在港居住超過7年的外籍家庭傭工），終審法院的裁決有助建立或重申有關的入境政策。

為進一步增加公眾的認識，法援署已落實本局的建議，在該署的年報中披露更多統計數據。有關已經發放的法律援助資訊及相關建議，可在本年報的「法律援助資訊的傳遞」章節中查看。

for more than 7 years, the CFA judgments have resulted in immigration policies being either established or reaffirmed.

To further enhance public understanding, LAD has implemented the Council's suggestion that more statistics be published in its annual report. Greater detail of the legal aid information that has been disseminated and is suggested to be disseminated by LAD may be found in the "Dissemination of Legal Aid Information" section of this report.