

Legal Aid Department's replies to written questions raised by Finance Committee Members in examining the Estimates of Expenditure 2021-22

**Director of Bureau : Director of Administration
Session No. : 6**

Reply No.	Question No.	Name of Member
Programme 1 – Processing of Legal Aid Applications		
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CONTROLLING OFFICER'S REPLY

CSO027

(Question Serial No. 1978)

Head: (94) Legal Aid Department
Subhead (No. & title): (000) Operational expenses
Programme: (1) Processing of Legal Aid Applications
Controlling Officer: Director of Legal Aid (Thomas Edward KWONG)
Director of Bureau: Director of Administration

Question:

Among the people prosecuted for having participated in the riots since June 2019, some might have received financial aid for legal costs from a third party; and among them, some might be eligible for legal aid. When assessing applications, did the Legal Aid Department check whether the applicants had received any financial aid from a third party? Had any such case been found and therefore rejected? Among those prosecuted, how many had applied for and granted legal aid?

Asked by: Hon CHAN Hak-kan (LegCo internal reference no.: 102)

Reply:

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

In relation to means test, the Director must consider the financial resources of the applicant for all legal aid cases in accordance with the Legal Aid (Assessment of Resources and Contributions) Regulations. When applying for legal aid, applicants should inform LAD of any financial aid received from a third party, whether by way of income or capital, which will be taken into account when calculating the applicant's financial resources. The aided persons should also 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), the Director will refuse granting legal aid or discharge legal aid. So far, LAD has not rejected an applicant's application on the ground that his or her level of financial resources has exceeded the statutory limit because of financial aid received from a third party.

An applicant has a duty to make full and frank disclosure of his/her income and capital. According to the Legal Aid Ordinance, 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.

The number of criminal legal aid applications and certificates granted ^{Note 1} related to the Fugitive Offenders and Mutual Legal Assistance in Criminal Matters Legislation (Amendment) Bill 2019 are as follows:

Year	Applications received ^{Note 1}	Certificates granted ^{Note 2}
2019	70	48
2020	930	775
2021 (up to 28.2.2021)	59	80
Total	1 059	903

Note 1: Include appeal case(s).

Note 2: Legal aid certificates may not be granted in the same year when the respective applications were received.

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CONTROLLING OFFICER'S REPLY

CSO029

(Question Serial No. 1777)

Head: (94) Legal Aid Department

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

Programme: (1) Processing of Legal Aid Applications

Controlling Officer: Director of Legal Aid (Thomas Edward KWONG)

Director of Bureau: Director of Administration

Question:

1. For civil cases, the numbers of legal aid certificates granted in 2019 and 2020 were 5 406 and 4 754 respectively. Please set out the numbers (broken down by case types and public expenditures incurred) of legal aid certificates granted in those 2 years. Also, how many legal aid certificates granted in 2019 and 2020 involved judicial review cases? Among them, how many cases involved a lawsuit against the Government?
2. For criminal cases, the numbers of legal aid certificates granted by the Department in 2019 and 2020 were 2 328 and 2 751 respectively. Please set out the numbers (broken down by case types and public expenditures incurred) of legal aid certificates granted in those 2 years.
3. Please set out the amounts of legal aid costs and the numbers of cases granted in the past 3 financial years.

Asked by: Hon LAU Ip-keung, Kenneth (LegCo internal reference no.: 22)

Reply:

1. For civil cases, the numbers of legal aid certificates granted in 2019 and 2020 and the public expenditure incurred in 2018-19 and 2019-20 broken down by case types are as follows -

Year	Number of civil legal aid certificates							Total
	Personal Injuries Claims	Matrimonial Cases	Land and Tenancy Disputes	Employment Disputes	Immigration Matters	Wage Claims	Others	
2019	2 646	2 385	110	5	7	19	234	5 406
2020	2 359	1 832	74	209	0	30	250	4 754

Financial Year	Expenditure of civil legal aid cases							
	Personal Injuries Claims	Matrimonial Cases	Land and Tenancy Disputes	Employment Disputes	Immigration Matters	Wage Claims	Others	Total
	\$'000	\$'000	\$'000	\$'000	\$'000	\$'000	\$'000	\$'000
2018-19	353,419	84,273	40,075	1,451	8,036	266	78,455	565,975
2019-20	487,711	126,251	64,155	2,230	5,026	340	119,942	805,655

The numbers of legal aid certificates granted in 2019 and 2020 involving judicial review cases are 81 and 82 respectively. The proceedings of judicial review cases may involve different government departments, public authorities or persons exercising public powers as respondents. The Legal Aid Department (LAD) does not maintain separate statistics of these cases in which the Government was the respondent.

- For criminal cases, the LAD does not maintain separate statistics of legal aid certificates or the public expenditure broken down by nature of the offences or the type of cases.

Expenditure of criminal legal aid cases	
Financial Year	(\$M)
2018-19	239.5
2019-20	327.3

- Legal aid costs involved in the past 3 financial years are as follows -

Financial Year	Legal Aid Costs		
	Civil ^{Note} (\$M)	Criminal (\$M)	Total (\$M)
2017-18	517.8	174.6	692.4
2018-19	567.0	239.5	806.5
2019-20	806.5	327.3	1,133.8

Note : The total civil legal aid costs in this column include civil legal aid expenditure, as well as legal costs incurred for the Official Solicitor's Office.

The number of legal aid certificates granted in the past 3 years are as follows -

Year	Number of legal aid certificates granted (civil and criminal)
2018	8 252
2019	7 734
2020	7 505

CONTROLLING OFFICER'S REPLY

CSO028

(Question Serial No. 0751)

Head: (94) Legal Aid Department

Subhead (No. & title): (000) Operational expenses

Programme: (1) Processing of Legal Aid Applications; (2) Litigation Services

Controlling Officer: Director of Legal Aid (Thomas Edward KWONG)

Director of Bureau: Director of Administration

Question:

Please set out the numbers (broken down by the outcomes of proceedings) of employees' compensation claims with legal aid granted and heard by the court in the past 3 years.

Please provide the numbers of cases in which legal aid was discharged by the Legal Aid Department in the course of proceedings; and the highest, lowest and median amounts of compensation granted in the cases ruled in favour of the claimants or in which settlement agreements were reached by both parties in the past 3 years.

Asked by: Hon CHENG Chung-tai (LegCo internal reference no.: 34)

Reply:

The numbers of legal aid certificates granted by the Legal Aid Department (LAD) in respect of employees' compensation (EC) claims and the number of such certificates discharged / revoked in the course of proceedings, irrespective of whether they were heard by the court, from 2018 to 2020 are set out below. LAD does not maintain statistics on the number of such EC cases subsequently heard by the court:

Year	Number of legal aid certificates granted in respect of EC claims	Number of legal aid certificates discharged / revoked in respect of EC claims in the course of the proceedings ^{Note 1}
2018	1 157	23
2019	1 105	32
2020	933	20

Note 1: Legal aid certificates discharged / revoked in a year may not correspond to the legal aid certificates granted in that year.

From 2018 to 2020, the highest, lowest and median amounts of compensation received in legal aid cases in respect of EC claims that were closed in each year are appended below:

Year	Amounts of compensation received in EC claims (\$) ^{Note 2}		
	Highest	Lowest	Median
2018	3,031,120	1,800	145,800
2019	1,032,370	17,500	150,000
2020	4,638,930	5,000	200,000

Note 2: The amount of compensation received in some EC claims was low due to various reasons, e.g., the percentage of loss of earning capacity assessed was low or the final compensation was made after deducting a large amount of advance payment such as sick leave payment already received.

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CSO031

CONTROLLING OFFICER'S REPLY

(Question Serial No. 1489)

Head: (94) Legal Aid Department

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

Programme: (3) Support Services

Controlling Officer: Director of Legal Aid (Thomas Edward KWONG)

Director of Bureau: Director of Administration

Question:

My office has received from time to time requests for assistance from members of the public regarding legal aid services. Many help-seekers said that they were unsure about how to fill in the legal aid application forms and the documents to be submitted when applying for legal aid.

Of the Legal Aid Department's Estimate of \$1,673.7 million in 2021-22, has provisions been made for measures, such as recruitment of staff, to help answer enquiries from members of the public and assist them to fill in application forms. If yes, please provide the details, the manpower and expenditure involved. If no, what are the reasons?

Asked by: Hon TSE Wai-chun, Paul (LegCo internal reference no.: 52)

Reply:

The Legal Aid Department (LAD) attaches great importance to customer service. To facilitate members of the public to apply for legal aid, the Application and Processing Division provides an information and enquiry service through the Information and Application Services Unit (IASU).

Applicants who have queries or need help in completing the application forms are advised to approach our staff at the reception counters of IASU for assistance. Guidance notes on how to complete an application form and a checklist setting out the necessary accompanying documents are provided to the applicants along with the application form. Samples of completed application forms are available from our staff at the reception counter and may also be viewed or downloaded from LAD's website. In addition, leaflets regarding the eligibility criteria for legal aid are available at the counter and LAD's website.

Completed application forms and documents received by LAD are vetted by our staff. Where information/documents in support of an application is found missing, an interview will be arranged for the applicants so that they would be assisted in completing the application process and advised on the documents required to be submitted.

The expenditure on support and clerical services provided to the applicants is absorbed within the existing resource provisions of LAD.

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CONTROLLING OFFICER'S REPLY

CSO032

(Question Serial No. 3097)

Head: (94) Legal Aid Department

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

Programme: (3) Support Services

Controlling Officer: Director of Legal Aid (Thomas Edward KWONG)

Director of Bureau: Director of Administration

Question:

Despite the economic downturn, the costs of legal proceedings have been increasing instead of decreasing. Many people from the middle-income group or the sandwich class are unable to benefit from legal aid services due to the financial eligibility limits.

In the new financial year, is there any provision made for studying the feasibility of further adjusting upwards the financial eligibility limits for legal aid applicants, so as to benefit members of the public who cannot afford expensive legal costs? If yes, what will be the expenditure and manpower involved in the study?

Asked by: Hon TSE Wai-chun, Paul (LegCo internal reference no.: 53)

Reply:

It has been the Government's policy to ensure that all those who comply with the provisions of the Legal Aid Ordinance (LAO) (Cap. 91) 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. To qualify for legal aid, a person has to satisfy both the means test and the merits test as stipulated in LAO.

For the purpose of means test, an applicant's financial resources comprising his/her disposable capital and annual disposable income must not exceed the relevant financial eligibility limits (FELs) under the Ordinary Legal Aid Scheme (OLAS) and the Supplementary Legal Aid Scheme (SLAS).

The FELs of OLAS and SLAS are subject to an annual review to take into account the changes in Consumer Price Index (C) (CPI(C)), as well as other ad hoc, one-off reviews and adjustments where the situations warranted. In fact, over the past 10 years, the FEL for OLAS has substantially increased by about 140% from \$175,800 to \$420,400, while the FEL for SLAS has substantially increased by about 330% from \$488,400 to \$2,102,000. The most recent adjustment was made on 26 June 2020, when an upward adjustment of FELs by 5.1% was made effective to reflect the accumulated changes in CPI(C) from July 2017 to July 2019.

In addition, a one-off upward adjustment of FELs by about 30% was also made effective on the same date having regard to the higher increase in legal costs than that of general price movement since the last one-off adjustment in 2011, as well as the affordability of private litigation services to legal aid applicants.

The Government has completed its 2020 annual review on FELs and reported the outcome to the Legislative Council Panel on Administrative Justice and Legal Services (the Panel) recently in February 2021. In view of the insignificant change of -0.1% in CPI(C) recorded during the reference period from July 2019 to July 2020 and minimal corresponding impact on FELs, the time and administrative costs involved in the requisite legislative processes may not be commensurate with the need for keeping up with the market. We therefore see merits to reserve the 0.1% decrease and consider it together with the outcome of the next annual review. We will monitor the change in CPI(C) and report to the Panel when the result of the next review covering the period from July 2020 to July 2021 is ready. There are no separate breakdown figures on the expenditure and manpower for conducting the annual reviews, which are among the duties of existing staff.

- End -

CONTROLLING OFFICER'S REPLY

CSO030

(Question Serial No. 3139)

Head: (94) Legal Aid Department

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

Programme: (-) Not Specified

Controlling Officer: Director of Legal Aid (Thomas Edward KWONG)

Director of Bureau: Director of Administration

Question:

Will the Bureau please provide the balance, government injection amount, investment or other income and total expenditure of the following funds in 2019-20? If there are other funds within the purview of the Bureau not being listed below, please also provide information as per the items above.

1. Supplementary Legal Aid Fund

Asked by: Hon MA Fung-kwok (LegCo internal reference no.: 72)

Reply:

The Supplementary Legal Aid Fund (SLAF) is administered by the Legal Aid Department under the Supplementary Legal Aid Scheme.

As at 30 September 2020, the fund balance, income and expenditure of SLAF for the 2019-20 financial year were \$213.0 million, \$13.6 million and \$5.6 million¹ respectively. There was no injection of fund from the government in 2019-20.

¹ The figures have yet to be audited by the Director of Audit.

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