

LCQ7: Legal representation provided by Legal Aid Department

Following is a question by the Hon Leung Kwok-hung and a written reply by the Secretary for Home Affairs, Mr Tsang Tak-sing, in the Legislative Council today (June 30):

Question:

Quite a number of members of the public who were granted legal aid have complained to me that the Legal Aid Department (LAD) has often ignored the aided persons' right to select legal representatives by refusing to assign their choice of solicitors or counsel from the relevant legal aid panel ("the Panels") to act for them. Some aided persons have even pointed out that LAD has often adopted the practice of "differentiating between close and distant relationships" in assigning solicitors or counsel, and assigned cases to those who have a good relationship or are well acquainted with staff of LAD, and that staff of LAD have also taken the initiative to persuade them to engage solicitors or counsel whom they do not trust or are unfamiliar with to handle their cases (in particular personal injuries and criminal cases). In this connection, will the Government inform this Council of:

- (a) the respective number of solicitors and counsel on the respective Panels;
- (b) the respective numbers of civil or criminal cases assigned to the solicitors or counsel on the Panels in each of the past five years (set out in the table below);

Year	Number of cases	Number of cases
	assigned	assigned
	to solicitors	to counsel
2005		
2006		
2007		
2008		
2009		

- (c) the respective numbers of solicitors or counsel on the Panels who were not assigned any civil or criminal cases in each of the past five years;

(d) the respective numbers of civil or criminal cases in each of the past five years in which the aided persons requested LAD to assign the solicitors or counsel on the Panels they had selected to act for them, and among such cases, the numbers of those in which the aided persons' requests were refused (set out in the table below); and

Year	Number of cases in which the aided persons requested LAD to assign the solicitors or counsel on the Panels they had selected to act for them	Number of cases in which the aided persons' requests were refused
2005		
2006		
2007		
2008		
2009		

(e) which five law firms and which five counsel on the Panels were assigned the greatest numbers of criminal cases by LAD in each of the past five years, and the annual total amounts of public funds involved (set out in the table below)?

Year	Names of law firms	Names of counsel	Annual total amount of public funds involved
2005			
2006			
2007			
2008			
2009			

Reply:

President,

In respect of the question raised by Hon Leung Kwok-hung on "legal aid representation provided by the Legal Aid Department", my response is as follows:

In the assignment of legal aid cases, the Legal Aid Department (LAD) adheres to the fundamental principle that the aided person's interest is of paramount importance and that LAD has a duty to assign competent lawyers to act for aided persons. Legal aid work is therefore not, and should not be, distributed to counsel or solicitors on the Legal Aid Panel evenly regardless of merits.

To this end, LAD has devised and published guidelines and criteria on assignment of legal aid cases based on experience and expertise of the practitioners. These guidelines and criteria, which have been endorsed by the Legal Aid Services Council and are available at LAD's website, seek to ensure that the Director of Legal Aid fulfils his duty of assigning competent lawyers. They possess features such as the imposition of limit on the number of assignment and amount of fees paid that aim to facilitate an equitable distribution of legal aid work, thus preventing favouritism. In addition, LAD's professional officers are required to declare whether there is a conflict of interest when undertaking assignments.

As regards nomination of lawyers by aided persons, LAD recognises that confidence in one's own legal representative is essential in the conduct of legal proceedings. As such, LAD would normally accede to and does not reject an aided person's choice of lawyer unless there are compelling reasons to do so, such as suspension of the lawyer from general practice, removal of the lawyer from the legal aid panel for poor performance, the language requirement of the proceedings, or that the aided person has made repeated/late requests for change of lawyer without any good reasons in support and where the hearing date is imminent.

The statistical information requested by Hon Leung Kwok-hung is as follows:

(a) As at June 15, 2010, the number of solicitors and counsel on the Legal Aid Panel is 2,115 and 815 respectively.

(b) The number of civil and criminal assignments to solicitors or counsel on the Legal Aid Panel in the past five years is as follows:

Year	No. of assignments	No. of assignments
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	to solicitors		to counsel	
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	Civil	Criminal	Civil	Criminal
2005	6,214	2,106	1,037	1,516
2006	7,295	1,901	925	1,416
2007	5,980	1,908	1,131	1,488
2008	5,884	1,693	1,121	1,285
2009	7,334	2,199	1,302	1,706

(c) As at June 15, 2010, the number of solicitors and counsel on the Legal Aid Panel without any assignment in the past five years is as follows:

Counsel	220
Solicitors	443

Total	663

(d) LAD does not keep any data specifically on the number of cases in respect of which the applicants made nominations and the nominations were declined.

Nonetheless, the number of assignments made in accordance with the applicants' nominations in the past five years is as follows:

Year	No. of assignments made in accordance with applicants' nominations
2005	4,178
2006	4,620
2007	4,454
2008	4,631
2009	6,256

(e) The number of assignments made to the top five assigned solicitors and counsel handling criminal cases and the amount of costs paid in the past five years are listed in Annex.

Ends/Wednesday, June 30, 2010

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