

LCQ11: Legal aid cases related to claims for traffic accidents or work-related injuries

Following is a question by the Hon Chan Kin-por and a written reply by the Secretary for Home Affairs, Mr Tsang Tak-sing, in the Legislative Council today (May 23):

Question:

Some members of the insurance industry have reflected to me that in recent years, some law-breakers abetted persons involved in traffic accident or occupational injury claims to apply for legal aid, and made use of the right of the aided persons to be represented by the solicitors or counsel nominated by them in court to use the huge resources of legal aid to make fraudulent insurance claims through champerty. In this connection, will the Government inform this Council:

(a) of the number of legal aid cases in each of the past five years involving traffic accident or occupational injury claims, which had been handled by the solicitors or counsel nominated by the aided persons; and the total amount of compensation involved;

(b) of the criteria adopted by the Legal Aid Department (LAD) in vetting and approving applications from the aided persons for nominating solicitors or counsel to represent them; the number of legal aid cases in the past five years involving traffic accident or occupational injury claims, the aided persons of which had requested to nominate solicitors or counsel to represent them, but their requests had been rejected by LAD;

(c) at present, when LAD discovers cases of champerty which make use of legal aid, how it handles such cases, together with an illustration by examples of the relevant cases it had handled; and

(d) whether LAD has assessed if there is any loophole in the operation of the system of allowing the aided persons to nominate solicitors and counsel to represent them; whether it will consider revising the system, or what measures are in place to effectively prevent acts of champerty which make use of legal aid?

Reply:

President,

(a) In the past five years, the numbers of legal aid cases related to claims for traffic accidents or work-related injuries, the numbers of cases where the assigned solicitors and counsel were nominated by the aided persons, and the amounts of damages awarded by the court are at the Annex.

LAD does not have record on the total amount of claims made in respect of cases involving traffic accidents or work-related injuries. It only maintains record on the total amount of damages awarded by the court in the relevant legally aided proceedings.

(b) When assigning legal aid cases to lawyers, the aided person's interests are of paramount importance to the Director of Legal Aid (DLA). When aided persons decide to nominate lawyers in accordance with Section 13 of the Legal Aid Ordinance (LAO), LAD takes the view that the aided person's nominations should be given due weight and should not be rejected unless there are compelling reasons to do so. Such compelling reasons include previous unsatisfactory performance by the nominated lawyers, disciplinary actions by the Law Society of Hong Kong or the Hong Kong Bar Association, language requirements of the proceedings which may undermine the aided person's interest, and/or the assignment would jeopardise the legal aid fund, or the aided person has made repeated or late requests for change of lawyer without any good reasons in support and where the hearing date is imminent. LAD normally accedes to the aided person's nomination if there is no compelling reason to decline the request.

LAD does not maintain separate record on cases involving traffic accidents or work-related injuries where the aided person's nomination was rejected. Generally speaking, if LAD does not accept the aided person's nomination and assigns another private practitioner on the Legal Aid Panel (the Panel), the aggrieved aided person can, pursuant to Section 26 of the LAO, lodge an appeal against LAD's decision to the Registrar of the High Court whose decision is final.

(c) So far, LAD has not come across any legal aid case involving champerty. As champerty is a criminal offence, if such cases are discovered, LAD will refer them to the Police and the relevant legal professional bodies for follow-up. If the allegations are established, the solicitors or counsel concerned will be removed from the Panel.

(d) The nomination system as prescribed under the LAO has embodied the principle of selection of lawyers by the aided persons. As mentioned above, the exercise of nominations of solicitors or counsel is subject to veto by DLA when there are compelling reasons to do so. If an application has no merit and DLA is not satisfied that it meets the criteria as provided in the LAO, legal aid will not be granted. Furthermore, LAD adopts the practice of issuing limited legal aid certificates which specify the scope of legal aid covered. LAD also has in place a comprehensive monitoring system whereby assigned lawyers are required to report progress of the cases to the responsible legal aid counsel regularly and the cases are subject to internal review, so that LAD can review the merits and costs of all cases to ensure that it is justifiable to continue granting legal aid to the aided persons.

We note that there have been calls for LAD to further improve its existing legal aid processing and monitoring systems. In this regard, LAD is considering the suggestion of putting in place a "declaration system" to ensure that the aided person's choice of solicitors or counsel has not been affected by any improper conduct on the part of the solicitors or counsel nominated. LAD will consult the Legal Aid Services Council before implementing the proposed "declaration system".

Ends/Wednesday, May 23, 2012

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