(1) List of all lawyers and law firms under the Pilot Scheme
(a) Please provide details on the respective selection process, including:
(i) The criteria for a firm to be listed under the Pilot Scheme;
(ii) The qualifications required for a lawyer/firm to be listed under the Pilot Scheme;
(iii) The registration process for firms/lawyers to be listed under the Pilot Scheme.

**Reply - (a) (i) (ii) (iii)**

**The Pilot Scheme is operated by the Pilot Scheme Office (“PSO”). PSO maintains a roster of Pilot Scheme lawyers (“PSL”) instead of law firms for providing legal assistance to non-refoulement claimants. Any person who meets the following criteria may join the Pilot Scheme as a PSL -**

* **a barrister or a solicitor with practicing certificate in Hong Kong;**
* **three years of post-qualification experience; and**
* **received dedicated training organised or approved by the Hong Kong Bar Association or the Law Society of Hong Kong.**

**The same criteria apply to lawyers who wish to join the Legal Assistance Scheme for Non-refoulement Claimants under the Duty Lawyer Service (“DLS”).**

(b) Please specify the process of how lawyers are assigned to claimants, specifically:
(i) How lawyers are assigned to each case;
(ii) Whether the assignment of lawyer to claimant is wholly random.

**Reply – (b) (i) (ii)**

**Case assignment to PSL is on a personal and rotation basis. Upon receiving a case referred to PSO by the Immigration Department (“ImmD”), PSO will by default schedule a conference (“the initial conference”) between the claimant and the PSL to be assigned to provide legal assistance for that claimant. PSO will contact the PSL according to the roster and the case will be assigned to the PSL who is first in line on the roster available to attend both the initial conference with the claimant as scheduled by PSO and the screening interview as scheduled by ImmD. If a claimant has previously received legal assistance from a specific PSL under the Pilot Scheme, the claimant will be referred to the same PSL as far as practicable.**

**A claimant may make a written request to Head/PSO (the request has to be made no later than the completion of the initial conference with the originally assigned PSL) to nominate a specific lawyer under either the rosters of PSO or DLS on the ground that there is a pre-existing lawyer-client relationship (under an immigration-related context) between the claimant and the nominated lawyer. If the request is approved by Head/PSO and the nominated lawyer is a PSL, the claimant will be referred to the specific PSL as nominated. If the nominated lawyer is a lawyer on the roster of DLS but not a PSL and on the condition that Head/PSO is satisfied that there is a pre-existing lawyer-client relationship (under an immigration-related context) between the claimant and the nominated lawyer, the case will be sent back to ImmD for follow up. If a claimant who has experienced sexual and/or gender-based violence has requested to be assisted by a PSL of the same gender, a PSL of the same gender next in line will be assigned to provide legal assistance to the claimant.**

(c)Please specify the content of the training for lawyers and firms, if any, the Pilot Scheme provides on areas of law relevant to non-refoulement claims in HK, including:
(i) The frequency of such training;
(ii) Topics that are covered.

**Reply - (c) (i) (ii)**

**PSO does not provide legal training to PSLs. PSLs must have received dedicated training organised or approved by the Hong Kong Bar Association or the Law Society of Hong Kong before joining the Pilot Scheme.**

(d) Whether there are supervision arrangements in place for the lawyers, including:
(i) Whether there is quality control in terms of work they produce, and if yes, how it is controlled;
(ii) Whether there is internal guidance, especially but not limited to guidance on working with vulnerable persons (e.g. children, people with mental health issues).
 **Reply - (d) (i) (ii)**

**PSO only provides PSLs, all of whom should have received dedicated training organised or approved by the Hong Kong Bar Association or the Law Society of Hong Kong, with administrative support in processing the non-refoulement claims (e.g. arrangement for interpretation and translation services and conference rooms for the meetings between PSL and claimants). PSO does not involve in any specific tasks relating to the actual handling of individual claims. Upon accepting a referral by PSO, the PSL is required to provide personal legal assistance to the claimant for the entire screening process, including explaining the decision of ImmD to the claimant and assessing merits of appeal and, if meritorious, providing legal assistance to the claimant during the appeal stage.**

(e) Please provide a breakdown of the fee structure of the Pilot Scheme.

**Reply – (e)**

**The Fees and Allowance Schedule which sets out the fees and allowance payable to a PSL for providing legal assistance to non-refoulement claimants is attached for your information.**

****

(2) Scope of services provided by the Pilot Scheme, including:
(a) Please specific the coverage of the Pilot Scheme, and specifically:
(i) Whether the Pilot Scheme provides publicly-funded legal assistance (PFLA) at the judicial review stage;
(ii) Whether claimants can approach the Pilot Scheme for help with the written signification;
(iii) Whether claimants can approach the Pilot Scheme before they attend the Immigration; Department’s briefing session (i.e. when claimants have submitted their written significations and expressed intention to apply for non-refoulement, whether they could approach the Pilot Scheme for assistance at that stage, and what the Pilot Scheme could help with);
(iv) Stages of Unified Screening Mechanism that the Pilot Scheme assists with (e.g. before the ImmD, on appeal, etc.)
(v) Whether, and if so, how, the Pilot Scheme obtains funding for experts, especially in relation to cases where medical experts are required.

**Reply - (a) (i) (ii) (iii) (iv) (v)**

**The scope of legal assistance to claimants under the Pilot Scheme, which is the same as the Legal Assistance Scheme for Non-refoulement Claimants under DLS, is as follows:**

* **advise the claimant on his legal right and the procedures in the process of his non-refoulement claim(s) on applicable grounds;**
* **assist the claimant to complete and submit the non-refoulement claim form;**
* **accompany the claimant to attend screening interview(s), if considered necessary by lawyer;**
* **assess merits of appeal and/or petition for claims rejected by ImmD;**
* **prepare submissions for the appellant and/or petitioner for meritorious appeal and/or petition cases;**
* **represent the claimant at oral hearing, if any;**
* **assist the claimant in making a request to re-open a non-refoulement claim or to make a subsequent claim in meritorious cases; and**
* **prepare submissions for the claimant in an objection notice on revocation in meritorious cases.**

**The Pilot Scheme does not provide publicly-funded legal assistance (“PFLA”) at the judicial review stage.**

**A person who lodges a non-refoulement claim in Hong Kong must signify to an immigration officer of ImmD in writing the intention of his or her claim. From time to time ImmD will produce a list of claims for which screening under the Unified Screening Mechanism is to commence in due course. The decision on which of the claimants in such list will receive PFLA under the DLS Scheme or the Pilot Scheme (should these claimants indicate upon commencement of screening that they would wish to receive such assistance) will be determined by way of drawing lots. ImmD will refer claimants who will receive legal assistance under the Pilot Scheme to PSO for PFLA. Claimants cannot approach PSO for PFLA direct without referral from ImmD.**

**PSO does not provide funding for experts. Section 37ZC of the Immigration Ordinance (Cap. 115) sets out the arrangement for medical examination of a claimant.**

(b) Whether the Pilot Scheme has any guideline/process in place for a claimant to obtain PFLA from a second lawyer if the first lawyer declines to assist further;
(i) If yes, please specify the procedures for a claimant to obtain a second lawyer;
(ii) If not, whether the Pilot Scheme offers any other assistance to help the claimant proceed with their claim. If so, please specify such assistance.

**Reply - (b) (i) (ii)**

**If for whatever reason a PSL can no longer provide legal assistance to a claimant referred to him or her, PSO will refer the claimant to another PSL for continued assistance.**

(c)Whether, and if so, what, the process is for a claimant to make complaints against a lawyer should there be any dissatisfaction by the claimant.

**Reply - (c)**

**If there is dissatisfaction of the claimant against the PSL, the claimant can raise it to PSO and /or the PSL for follow up actions. Where there is a serious breakdown in confidence between the assigned PSL and the claimant, and the assigned PSL can no longer provide legal assistance to the claimant, PSO will refer the claimant to another PSL for continued assistance.**

(d) Please specify the criteria for deciding whether or not to offer assistance to claimant, specifically:
(i) The average processing time for the Pilot Scheme to decide whether or not to assist with a claim;
(ii) Whether there, and if so, what, is a process for a claimant to request a second opinion/review for a negative Pilot Scheme application;
(iii) Please specify the criteria in the merits assessment process which determines whether claimant will be provided with PFLA at appeal stage.

**Reply – (d) (i) (ii) (iii)**

**Upon case referral from ImmD, a claimant is eligible for PFLA if he/she declares to PSO that he or she is without means to pay the cost for legal representation. There is no merits test for PFLA at the screening stage.**

**Whether or not PFLA will be provided at the appeal stage depends on the assigned PSL’s assessment of merits for appeal. Upon confirming the claimant’s intent to appeal and receipt of the assigned PSL’s recommendation that there are merits for appeal, Head/PSO may continue to afford PFLA to the claimant on appeal based on the PSL’s recommendation. If the assigned PSL considers that there are no merits for appeal, PFLA to the claimant will cease.**

**If the claimant does not agree with the assessment of the assigned PSL that there are no merits for appeal and wants to have PFLA at the appeal stage, he/she may apply with reason to Head/PSO for a second opinion on the merits for appeal. If the application is approved, PSO will refer the case to the next available PSL in line under the roster for a second opinion on the merits for appeal. If the second opinion is that there are merits for appeal, PFLA to the claimant will continue at the appeal stage. If the second opinion is that there are no merits for appeal, PFLA to the claimant will cease. If the claimant has already obtained a second opinion from a specific PSL that there are merits for appeal, his or her case will be referred to the PSL giving the second opinion for PFLA at the appeal stage. If the claimant has already obtained a second opinion from a lawyer under the roster of DLS that there are merits for appeal, his or her case will be referred to DLS for consideration and follow up action.**

(3) Please provide information on the following:
(a) Date of inception of the Pilot Scheme

**Reply – (a)**

**4 September 2017**
(b) Number of claims that the Pilot Scheme has handled each 12-month period since their inception, disaggregated by:
(i) Number of individuals that they represented at first instance, and percentage of those claims they continue to handle on appeal;

**Reply – (b) (i)**

|  |  |  |  |
| --- | --- | --- | --- |
| **Year** | **Number of claims referred from ImmD** | **Number of claims provided with PFLA at appeal stage[[1]](#footnote-1)** | **Percentage of claims with PFLA for appeal** |
| **2017** | **401** | **1** | **0.25%** |
| **2018** | **2 010** | **40** | **1.99%** |
| **2019** | **220** | **9** | **4.09%** |
| **2020** | **315** | **4** | **1.27%** |
| **2021[[2]](#footnote-2)** | **584** | **7** | **1.20%** |

(ii) Number of applications received to the number of applications accepted at first instance and appeal stages respectively;

**Reply – (b) (ii)**

**Upon case referral from ImmD, a claimant is eligible for PFLA if he/she declares to PSO that he or she is without means to pay the cost for legal representation. There is no merits test for PFLA at the screening stage. Whether or not PFLA will be provided at the appeal stage depends on the assigned PSL’s assessment of merits for appeal of the case. The figures are set out in the above table.**

(iii) Number of individuals who request a second opinion/review of their Pilot Scheme decisions, and of those who requested, number of individuals who were declined a second opinion/review;

**Reply – (b) (iii)**

|  |  |  |
| --- | --- | --- |
| **Year** | **Number of requests for a second opinion** | **Number of requests declined** |
| **2017** | **0** | **0** |
| **2018** | **0** | **0** |
| **2019** | **5** | **0** |
| **2020** | **1** | **0** |
| **20212** | **1** | **0** |

(iv) Of those who requested a second opinion or review, the number of individuals who were provided PFLA through the Pilot Scheme.

**Reply – (b) (iv)**

|  |  |  |
| --- | --- | --- |
| **Year** | **Number of requests for a second opinion** | **Number of individuals who were provided with PFLA at appeal stage after obtaining a second opinion** |
| **2017** | **0** | **0** |
| **2018** | **0** | **0** |
| **2019** | **5** | **1** |
| **2020** | **1** | **0** |
| **20212** | **1** | **0[[3]](#footnote-3)** |

1. According to the filing date of the Notice of Appeal as advised by respective Pilot Scheme Lawyers [↑](#footnote-ref-1)
2. As at 31 July 2021 [↑](#footnote-ref-2)
3. The second opinion on the merits for appeal is not yet available as at 31 July 2021. [↑](#footnote-ref-3)