

Dear Mr Cheung,

I refer to your request for access to information. In consultation with the Duty Lawyer Service (DLS), our consolidated reply is provided as below, please.

### **Training Course**

2. There were 236 duty lawyers (including 143 barristers and 93 solicitors) who attended the training course on “Representing Child Claimants under the USM: Post-Fabio”, jointly presented by the Hong Kong Bar Association and the Clinical Legal Education Department of the University of Hong Kong, held on 30 April 2021. Among these attendees, 230 duty lawyers (including 141 barristers and 89 solicitors) are still listed under the Scheme and receiving assignments from DLS to-date, or as of 15 February 2022. Starting from 3 May 2021, assignment of cases involving minors to duty lawyers has been based on the new assignment policy, i.e. non-refoulement claims involving minor claimants will only be assigned to duty lawyers listed under the Scheme who attended the abovementioned training course.

### **Cases involving minor claimants**

3. The respective number of cases involving minor claimants referred to DLS by the Immigration Department (ImmD) and the Torture Claims Appeal Board (TCAB) since May 2021 is tabulated as below-

<b>Month</b>	<b>Minor cases referred by ImmD</b>	<b>Minor cases referred by TCAB</b>
May-21	2	12
Jun-21	13	7
Jul-21	9	12
Aug-21	6	18
Sep-21	7	11
Oct-21	5	4
Nov-21	3	14
Dec-21	7	8
Jan-22	14	3
Feb-22	1	4
Mar-22	0	0
25 Apr-22	4	2
<b>Total</b>	<b>71</b>	<b>95</b>

4. The average time needed for DLS' assignment of non-refoulement claims to duty lawyers between 2010 and 2021 is tabulated as below –

<b>Years</b>	<b>Average no. of days required for assignment</b>
2010	16.48
2011	16.71
2012	4.36
2013	2.18
2014	2.03
2015	2.65
2016	3.66
2017	2.73
2018	2.93
2019	3.43
2020	3.31
2021	4.10

5. In 2021, there were 157 cases referred to DLS by TCAB and the duty lawyers were separately assigned for the minor claimants. The average time needed for DLS to assign duty lawyers to the claims made by minors and their parents in 2021 was 2.06 days and that needed for DLS to assign duty lawyers to the appeals was 6.38 days.

6. As for those cases where duty lawyers deem meritorious to file an appeal, the relevant claimants would be represented by the same duty lawyers and hence it is not necessary to have assignment again.

### **Legal representation for minor claimants**

7. As stated in our earlier reply on 5 January 2022, all cases related to non-refoulement claims handled by DLS are referred to DLS by ImmD. DLS will provide legal assistance to minor claimants in proceedings under the Unified Screening Mechanism (USM) if their cases are referred by ImmD. It would however be subject to the advice given by the assigned duty lawyers as to whether it is meritorious to file an appeal at the appeal stage. DLS' Non-refoulement Scheme, as an administrative body, has to defer to the legal advice and professionalism of the duty lawyers. Apart from the training course on USM organised by the Law Society of Hong Kong or the Hong Kong Bar Association, duty lawyers assigned to represent minor claimants are also required to have full attendance of the abovementioned training course held on 30 April 2021. With solid experience in dealing with claims made by adult claimants over the years, duty lawyers assigned to represent minor claimants are undoubtedly eligible.

8. The abovementioned training course provided duty lawyers with a substantive understanding of the law pertaining to minor claimants and the necessary practical skills for handling claims involving minors. Guidance on child-specific risks or the child-appropriate threshold for harm was discussed and presented in depth in the training course from which duty lawyers should have gained sufficient and comprehensive knowledge in relation to the child-specific risks or the child-appropriate threshold for harm.

### **Second opinion**

9 As for the option of seeking a second opinion, we have earlier replied that if duty lawyers opine that it is not meritorious to file an appeal in the concerned cases and to continue representing the relevant claimants for such appeal, DLS normally will not re-assign these cases to other duty lawyers unless the relevant claimants request for a second opinion. The same applies to minor claimants. DLS will not proactively suggest the relevant minor claimants and their parents/guardians seeking a second opinion, unless such request is made by the minor claimants and/or their parents/guardians as DLS did not yet know at that stage whether the claimants would

like to file an appeal on their own or through DLS. If they file an appeal to TCAB on their own, TCAB will refer their cases to DLS for considering whether it is meritorious to offer legal representation for their appeals. DLS will then re-assign the concerned cases to other duty lawyers seeking their second opinion of the merit of their appeals. If the duty lawyers giving their second opinion are also of their professional view that there is no ground for appeal by the relevant minor claimants, DLS will refer the cases to the Official Solicitor's Office (OSO) for their assistance though OSO is not one of the agents providing publicly-funded legal assistance to non-refoulement claimants. In 2021, there were 157 minor claimants who were given second opinion by duty lawyers.

10. Based on the fact that all duty lawyers offering legal representation to minors claimants are experienced professionals who will do their own research to acquire updated Country of Origin Information, DLS will not set out any criteria or guidance in this regard. In general, DLS will approve all research costs claimed by duty lawyers unless those research items were previously claimed by the same duty lawyers.

11. All cases (including those involve minor claimants) are handled by duty lawyers with the assistance of DLS' Court Liaison Officers. Court Liaison Officers will immediately report to their seniors if they find any inappropriateness regarding the quality of legal representation of the duty lawyers. The Chief Court Liaison Officer or the Assistant Chief Court Liaison Office will be well noted of their advice and action. The Administrator, being a qualified lawyer of 36 years standing with experience in private practice, will examine all the unusual cases reported to her and give due directions and advice accordingly. In addition, all minor claimants involved are referred and accompanied by their parents/guardians when being interviewed by duty lawyers. If their parents/ guardians find any inappropriateness regarding the legal representation during the process, they may voice out anytime.

12. In 2021, 11 claimants contacted DLS after having received letters from TCAB for fresh appeal and legal assistance providing second opinion was arranged for them.

### **Referral to Official Solicitor's Office**

13. Regarding the particular case involving a minor claimant that DLS referred to OSO for separate legal representation on 15 January 2021, upon receipt of the written reply from OSO informing that they were not in a position to assist, DLS sent the same to the assigned duty lawyer for consideration and advice. Since the relevant duty

lawyer did not provide any further advice, DLS provided a copy of the reply from OSO to the claimant with the content explained via the assistance of an interpreter.

14. On 18 February 2021, the relevant minor claimant was referred to DLS by TCAB asking DLS to consider if legal representation would be offered. In response, another duty lawyer was assigned to provide a second opinion to the minor claimant and it was considered not meritorious to file an appeal. TCAB was informed that no legal representation would be offered to the minor claimant.

15. Despite OSO's refusal as mentioned above, DLS has been maintaining a policy to refer cases involving minor claimants to OSO for assistance under the said circumstances. As at 27 April 2022, DLS issued 147 letters to OSO seeking their assistance to minor claimants, however all of which were given a negative reply.

### **Others**

16. The number of appeals before TCAB with DLS representation in 2021 with quarterly breakdown is tabulated as below-

<b>Quarters in 2021</b>	<b>No. of appeals represented by DLS</b>	<b>No. of claimants (adult &amp; minor) represented by DLS</b>
<b>Jan-Mar 2021</b>	20	23
<b>Apr-Jun 2021</b>	15	17
<b>Jul - Sep 2021</b>	21	21
<b>Oct - Dec 2021</b>	23	25
<b>Total</b>	<b>79</b>	<b>86</b>

17. The respective number of adult claimants and minor claimants who received DLS representation on appeal to TCAB in 2021 with quarterly breakdown is tabulated as below-

<b>Quarters in 2021</b>	<b>No. of adult claimants represented by DLS</b>	<b>No. of minor claimants represented by DLS</b>
<b>Jan-Mar 2021</b>	13	10
<b>Apr-Jun 2021</b>	7	10
<b>Jul - Sep 2021</b>	12	9
<b>Oct - Dec 2021</b>	16	9
<b>Total</b>	<b>48</b>	<b>38</b>

18. The respective number of adult claimants and minor claimants who were declined DLS representation on appeal to TCAB in 2021 with quarterly breakdown is tabulated as below-

<b>Quarters in 2021</b>	<b>No. of adult claimants declined by DLS</b>	<b>No. of minor claimants declined by DLS</b>
<b>Jan-Mar 2021</b>	352	29
<b>Apr-Jun 2021</b>	490	28
<b>Jul - Sep 2021</b>	436	22
<b>Oct - Dec 2021</b>	434	15
<b>Total</b>	<b>1712</b>	<b>94</b>

19. Among those who were declined DLS representation before TCAB above, the respective number of adult claimants and minor claimants who requested a second opinion in 2021 with quarterly breakdown is tabulated as below-

<b>Quarters in 2021</b>	<b>No. of adult claimants provided with second opinion (claimants took initiative to seek second opinion)</b>	<b>No. of minor claimants provided with second opinion (referred by TCAB)</b>
<b>Jan-Mar 2021</b>	4	15
<b>Apr-Jun 2021</b>	2	27
<b>Jul - Sep 2021</b>	9	22
<b>Oct - Dec 2021</b>	1	9
<b>Total</b>	<b>16</b>	<b>74</b>

20. Among those who requested a second opinion above, the respective number of adult claimants and minor claimants who were eventually provided with DLS representation in 2021 with quarterly breakdown is tabulated as below-

<b>Quarters in 2021</b>	<b>No. of adult claimants provided with second opinion who were eventually provided with DLS representation</b>	<b>No. of minor claimants provided with second opinion who were eventually provided with DLS representation</b>
<b>Jan-Mar 2021</b>	3	9
<b>Apr-Jun 2021</b>	2	6
<b>Jul - Sep 2021</b>	8	5
<b>Oct - Dec 2021</b>	1	4
<b>Total</b>	<b>14</b>	<b>24</b>

21. As reiterated above, if the relevant claimants decide to file an appeal on their own, their cases will be referred back to DLS by TCAB to see if DLS will provide legal representation to the minors involved, who are unrepresented or only represented by their parents/guardians, in their appeal proceedings before TCAB. DLS will then re-assign the cases to other duty lawyers seeking their second opinion of the merit of their appeals. All duty lawyers are eligible and competent enough to handle cases related to non-refoulement claims, including cases involving minor claimants. Their professionalism and expertise are the basis on which DLS can fully rely on.

22. As at 27 April 2022, DLS represented 73 minor claimants in their appeals after they were referred by TCAB and second opinion was provided to them. As at 27 April 2022, 89 minor claimants were referred to us by TCAB and were declined legal representation after second opinion was sought. So far, none of the said minor claimants have approached DLS or been referred again by TCAB for DLS's further action.

Security Bureau