

Proposals to enhance the unified screening mechanism (USM)

The following is the initial comments of and questions posed by the Law Society of Hong Kong on the proposals by the Security Bureau to enhance the unified screening mechanism (USM)

Abridging the non-refoulement claim form

1. There is a proposal of segregating the basic information of the claimants, which can be provided by the claimants without legal assistance, from the basis of claims. We consider that that would not meet the high standards of fairness. To suggest that clients/claimants in any other context submit to questioning (and in this case 56 questions including issues of identity and travel history) without legal representation, when admissions and discrepancies will be used against them, is an unrealistic proposal. One could not imagine such a suggestion in the criminal law context and given the consequences at stake here and high standards of fairness required by law, the proposal is untenable.

Provision of screening bundles

2. The proposal of the Immigration Department (ImmD) preparing and providing every claimant a screening bundle, when the screening process begins and further, in the event that the ImmD subsequently finds a need to supplement document(s) outside the bundle that is/are relevant to the determination, the claimant may request for an extension of time, would not meet the high standards of fairness and as with (1) above would potentially be highly prejudicial and unfair to claimants. The proposal that the ImmD have access to the full file of the claimant and then for ImmD to decide which documents may be relevant has to be rejected. The ImmD decision-maker should not be deciding what is relevant from the file itself particularly when the

burden is on the claimant to make out his case. Furthermore, the extra time and work required in determining which documents may be relevant would be contrary to the aim of streamlining the procedures.

3. There is also a problematic proposal that when the claimant could not justify the document sought under the data access request (DAR), the claimant should pay the fee out of his own pocket for making the DAR. Furthermore the duty lawyers' time spent on perusing the PDPO documents should not be reimbursed as part of the publicly-funded legal assistance. This proposal is problematic and causes concern as it leaves open the question as to who would pay the above costs, and if those costs are not paid or to be paid, then could the duty lawyers still be under any obligations to peruse the documents and to assist the claimants? How could they properly discharge their duties? On the other hand, from the perspective of the claimants themselves, if they are not financially capable to seek the DAR and other documentation (which sadly is usually the case), how could they properly present their claims? Is the USM scheme more amenable to those financially resourceful claimants?

Pre-scheduling screening interviews

4. The proposal of pre-scheduling screening interviews seems to be a further attempt of being unfairly prejudicial to the claimant and her/his lawyer in the preparation of the case according to high standards of fairness. All the previous submissions from the Joint Profession (and others) have noted that the time frame of 28 days for returning the completed non-refoulement claim forms is too short. Indeed the last submission to the Security Bureau from the Joint Profession of 2 May 2014 has stated that "the HKSAR Government should re-consider extending the time frame..." (paragraph 17 thereof) Also, the underlying assumption in this proposal is that the claimant/DLS/interpreter is to be blamed for the delays in proceeding with the interview phase. We are aware of a number of cases where the non-refoulement claim form has been submitted in a timely fashion and the claimant is anxious to proceed with the interview but there has been no scheduling of the screening interview from the ImmD for long periods of time without explanation. We are also aware of further delays being caused by the ImmD in failing to arrange medical examinations for vulnerable claimants. For these reasons we cannot

endorse such a proposal and request statistics in relation to the reasons for the delay, by category, in proposing interview dates. If the claimant unreasonably prolongs the process the ImmD is entitled to proceed to a decision in the absence of any reasonable excuse from the claimant. If the assigned duty lawyer is not reasonably available to accept a case then that should be a matter for the assignment process and DLS and not the ImmD, bearing in mind that in some cases issues of fairness, potential re-traumatization and inefficiency arise if a claimant has to retell events to a new lawyer.

Standardization of legal fees

5. While the Joint Profession is concerned about public expense, we refer to our earlier submissions in this regard noting that reasonable fees should be paid to attract the requisite number of experienced lawyers to engage in this type of work for the scheme to be successful. In the negotiations with the HKSARG where the suggestions of the Joint Profession were not adopted we understand that HKSARG had accepted that there would be no capping of hours/fees. Partial comparisons, while interesting, given the cost of living etc in the Hong Kong SAR cannot form the basis for further reducing the fees (already at a discounted rate) for lawyers engaging in this type of work. We will require further information with respect to the issue of “duplication” and will also be liaising with the DLS on this issue. Fee-capping would also be particularly unfair in complex cases involving, for example vulnerable clients or those with mental health issues arising from the trauma.
6. The proposed fee-capped figures appear also to be arbitrary. We note that the HKSARG has tried to justify the fee-capped figures by drawing reference to other jurisdictions. Due to the short time available, we have not been able to have a comparative research at this stage, but we consider that if a comparison is to be made and be relied upon, all the source materials including the background, nature and operation of the schemes in those jurisdictions, as well as *their experience*, should be divulged in the consultation process. In this regard, we invite the HKSARG to make known to us the empirical data of its research and also all the above information. We reserve our comments in this regard until the above information is made available to us.

Outstanding issues

7. It is noted that the queries and suggestions raised by the Joint Profession in the submission of 2 May 2014 have not been addressed to or even acknowledged by the HKSARG, for example:
- (a) Clarification of issues on various paragraphs of the Note to Immigration Officers
 - (b) Publication of tribunal decisions
 - (c) Arranging timely medical examinations
 - (d) Provision of on-going training.

We repeat our invitation to the HKSARG to look into those issues and concerns.

The Law Society of Hong Kong
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