

**For discussion**

**LegCo Panel on Administration of Justice and Legal Services**

**Annual and Biennial Review of Financial Eligibility Limits  
of Legal Aid Applicants**

**PURPOSE**

The Administration has completed the annual review of the financial eligibility limits of legal aid applicants to take account of inflation; and the biennial review to take account also of the changes in litigation costs. This paper reports on the Administration's findings.

**BACKGROUND**

2. At present, a person whose financial resources<sup>1</sup> do not exceed \$169,700 is financially eligible for legal aid under the Ordinary Legal Aid Scheme (OLAS). The corresponding limit for the Supplementary Legal Aid Scheme (SLAS) is \$471,600.

3. Following the 1992 review of legal aid services, the financial limits were subject to review once every two years in light of inflation. Adjustments made to the financial limits following the biennial reviews in 1994 and 1996 are as follows –

OLAS –

- (a) The accumulated inflation rate during the period from July 1992 to June 1994 was 20%. The financial limit was increased from \$120,000 to \$144,000 accordingly in July 1995 through legislative amendments;
- (b) The accumulated inflation rate for the period from July 1994 to June 1996 was 17.9%. The financial limit

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<sup>1</sup> Financial Resources means the aggregate of an applicant's yearly disposable income and disposable capital. A person's **disposable income** is his gross income minus his personal allowances, rent/mortgage payments and salary tax payments. A person's **disposable capital** is defined as the sum of his credit balance, the market value of non-money resources and the value of business or share in a company.

was increased from \$144,000 to \$169,700 accordingly in May 1997 through legislative amendments;

SLAS

- (c) Taking into account inflation since the inception of the Scheme in 1984 and July 1994, the financial limit was increased from \$280,000 to \$400,000 in July 1995 through legislative amendments;
- (d) The accumulated inflation rate for the period from July 1994 to June 1996 was 17.9%. The financial limit was increased from \$400,000 to \$471,600 accordingly in May 1997 through legislative amendments.

4. In 1997, a Working Group was set up to review the financial eligibility of applicants for legal aid. Among the recommendations put out for consultation in December 1997 was a proposal to increase the personal allowances deductible of the legal aid applicants, in order to allow more households to become financially eligible for legal aid.

5. The Working Group's final recommendation to adopt the expenditure patterns of households (of various sizes) in the 35-percentile, to replace the Comprehensive Social Security Assistance rate, as the benchmark for personal allowances deductible from an applicant's gross income, had received the community's support and that of the Legislative Council. As this revised method for assessing disposable income, which was implemented in July 2000 through legislative amendments, has enabled more people to be financially eligible for legal aid, the financial limits for OLAS and SLAS were not adjusted then, and were maintained at \$169,700 and \$471,600 respectively.

6. In the context of this same exercise, the Administration accepted the Working Group's recommendation to revamp the financial limits review cycle. Financial limits should be reviewed annually, rather than once every two years, to take account of inflation so as to better maintain the real value of the limits. A biennial review should be conducted to take account also of changes in litigation costs. The revised review cycle was implemented in 2000.

7. We conducted the first annual review of financial limits under the revised review cycle in the second half of 2001. The

accumulated inflation rate for the period from July 2000 to July 2001 was -1.2%. In light of this small change in consumer prices, we decided to defer the downward adjustments to the financial limits until the annual review in 2002.

8. To comply with the review cycle, we have completed both the second annual review of financial limits to take account of inflation during the period July 2001 to July 2002; and the first biennial review to take account also of the changes in litigation costs during the period July 2000 to July 2002, and have consulted the Legal Aid Services Council on the review findings. Our findings and recommendations, which have been accepted by the Legal Aid Services Council, are set out in the following paragraphs.

### **ANNUAL REVIEW**

9. As in the case of the annual review conducted in 2001, we have, in the current exercise, looked at the changes in the CPI(C) from July 2001 to July 2002.

#### Findings

10. There is an increasing decline in consumer prices during the period July 2001 to July 2002, as compared with the slight decrease identified in the last exercise. The changes in CPI(C) during July 2001 to July 2002; during July 2000 to July 2001 as well as the cumulative decreases since July 2000 are tabulated as follows -

<b>Changes in CPI(C)</b>		
<b>July 2000 to July 2001</b>	<b>July 2001 to July 2002</b>	<b>July 2000 to July 2002</b>
-1.2%	-2.7%	-3.9%

#### Observations

11. In light of this significant and persistent decrease in consumer prices, there is a need to adjust the financial eligibility limits

downward to reflect the change in the real value of the limits.

## **BIENNIAL REVIEW**

### Review Methodology

12. In conducting the biennial review, we have attempted to ascertain the changes in litigation costs for the period from July 2000 to July 2002 from the following sources -

- (a) the two legal professional bodies;
- (b) the Judiciary; and
- (c) the Legal Aid Department (LAD).

Our findings are as follows : -

### Information from the two legal professional bodies

13. We sought assistance from the two legal professional bodies on the actual fees/costs currently charged by legal professionals for criminal proceedings, and those civil proceedings which fall within the scope of the legal aid services, including matrimonial cases; personal injuries cases; employees compensation; employment disputes; running down cases; wage claim; and judicial review matters. We have also invited the two professional bodies to advise us their observation about changes in litigation costs since July 2000.

14. The Law Society replied that it does not have information on the actual fees/costs currently charged by the profession in respect of the categories of proceedings we have identified. While referring us to the Taxing Officer in the Judiciary for assistance, the Law Society has cautioned that there is a strong view held within the profession that since July 2000, if not earlier, costs have been cut back by the courts in ways which many practitioners consider as unrealistic and unreasonable.

15. As to the Bar Association, it has replied to the effect that the Bar Association does not have the information requested and is unable to assist.

### Information from the Judiciary

16. We also sought assistance from the Judiciary on the average litigation costs as taxed by the courts in respect of non-legally aided cases. On the basis of what they have readily available, the Judiciary has provided statistics on taxed costs for some non-legally aided cases in 2002, and made comparison between the costs in July 2000 and July 2002. Because of the small number of cases sampled, we are unable to come to the view that the statistics covered in the Judiciary's return could be regarded as representative of the private litigation costs during the relevant period.

### Information from LAD

#### *Civil Cases*

17. The LAD has compiled the relevant median litigation costs of legal aid cases in four major types of proceedings viz. matrimonial, employees compensation, personal injuries and wage claim in insolvency. In general, these proceedings represent about 90% of civil legal aid cases approved. The costs figures compiled were based on costs information derived from costs taxed or agreed in respect of cases closed during the period January to July 2000. The LAD then compared these with figures compiled during the 7 months covering January to July 2002. Details are at Annex A.

18. Members may wish to note that the median costs in respect of matrimonial proceedings were taken from costs incurred and paid by LAD in all assigned-out cases closed during the survey periods. The median costs in respect of employees compensation and personal injuries cases were taken from costs taxed or agreed between the parties involved based on a sample size of 50% of the assigned-out cases closed during the survey periods. The median costs in respect of wages claim in insolvency cases were taken from bills of costs taxed based on a sample size of 50% of cases in which allocateurs (certificates of taxed costs) were received during the survey periods.

19. As shown in Annex A, in gist, the median litigation costs for matrimonial legal aid cases, which constitute around 53% of the cases closed during the survey periods, had witnessed the biggest drop in cost at 25%. This material decrease can be attributed to the fact that an

increasing number of solicitors are willing to elect fixed costs as prescribed in District Court (Fixed Costs in Matrimonial Causes) Rules in conducting matrimonial proceedings in the District Court, following the revamp of the scale in March 2000. For the remaining types of cases, the increase in median litigation costs ranges from 0.1% to 14.9%. The weighted average of the changes in median litigation cost is worked out to be -0.16%.

### *Criminal Cases*

20. The LAD has also compiled the median litigation costs statistics on criminal cases. The findings are at Annex B and Annex C.

### Observations

21. Members may note from the statistics in Annex A that despite the deflationary pressure, the last two years have not seen a drop in the litigation costs for civil legal aid cases, save for matrimonial proceedings, which was brought about following a wider acceptance of the fixed costs arrangements by legal practitioners.

22. Based on the information to hand, we do not see a case of recommending adjustments to the financial limits to reflect changes in litigation costs over the past two years. As Members may appreciate, hard evidence of litigation cost is difficult to come by. The inherent difficulties involved include -

- (a) Neither the two professional bodies nor the Judiciary are in possession of case statistics compiled on equal basis and of sufficient details during the reference periods, to enable us to establish a definite trend on changes in litigation costs;
- (b) Fixed costs are available to matrimonial cases only. The fact that an increasing number of solicitors are willing to elect fixed costs in cases assigned by LAD does not mean that they will also charge fixed costs for cases they handle for their private clients. The same difficulty also applies to criminal legal aid cases for which the fees and rates are prescribed by statutory rules. We are unable to assume from those legal aid statistics

that they represent also the costs of private litigation.

- (c) While the litigation costs payable to assigned lawyers in employees compensation and personal injuries cases and costs incurred and charged by LAD in insolvency cases are calculated by reference to the hourly rates generally adopted by the legal profession or allowed by the taxing masters (see paragraphs 24 to 26), there is no clear evidence to show that there have been significant changes in such rates in the past five years.
- (d) The change in the median litigation costs may not be indicative or conclusive of the increase or reduction in litigation costs, as the costs of each case may be greatly affected by the amount of work done, length of hearing or trial or complexity of the case.

23. In the course of conducting this biennial review, our attention is drawn to the linkages between the litigation costs and the rates or range of fees adopted by or allowed for counsel/solicitors, in both civil and criminal cases. Our observations are set out below.

### **FEES PAYABLE TO COUNSEL/SOLICITOR ACTING FOR LEGAL AID PERSONS IN CIVIL CASES**

24. Under the Legal Aid (Scale of Fees) Regulations, the fees in civil cases payable by the Director of Legal Aid (DLA) are closely linked to the amount allowed, or would have been allowed in the opinion of DLA, on taxation. Extract of the relevant legislative provisions is at Annex D. In determining the amount of fees payable to counsel/solicitor acting on behalf of the legally aided persons, DLA is obliged to have regard to the rates or range of fees as generally allowed by the Taxing Masters, having regard to the indicative rates as set out in the letter from the Registrar of the High Court to the Law Society in July 1997. In this connection, it is noteworthy that such indicative rates or range of fees have remained applicable as of today, despite the cumulative deflation recorded at 10.1% during the period.

25. The Administration notes that from time to time during 1985 to 1997, the Law Society made representations to the Registrar of the High Court seeking revisions of these indicative rates. We understand

that these representations were usually backed up by findings of comprehensive surveys of commercial rates collected by qualified consultants with the cooperation of members of the Law Society.

26. The Taxing Masters considered these representations and the supporting information carefully, before giving an indication, as requested by the Law Society, on the hourly rate that solicitors might expect to receive on taxation for work within the normal range expected of a solicitor of that experience.

27. The Judiciary clarified that what was agreed was not a scale but simply an indication. Such indication was issued merely for the purpose of assisting solicitors in the preparation of their bills of costs. It was not imposed by the Taxing Masters.

28. The Judiciary stressed that taxation was a judicial function. No Taxing Master is bound by the indicative rates. Each Taxing Master retains his judicial discretion to apply higher or lower rates when he considers it appropriate to do so. In exercising his judicial discretion, the Taxing Masters give more regard to the work that was done, rather than the number of years in practice of the fee earner concerned.

29. Our enquiry with the Judiciary also points to the fact that it has not been the practice for the rates to be reviewed regularly. In conducting past reviews, the Judiciary takes into account many factors including the rate of inflation, prevailing market condition, the profit margins, application of modern technology, the method of practice etc.

30. The Administration's observation is that the accumulated decreases in consumer prices over the past 5 years should have an impact on the rates or fees, but have yet to be so reflected. In this regard, following the advice of the Legal Aid Services Council, we have enquired with the Law Society as to whether they are planning to submit representations on the indicative rates for the Judiciary's consideration of making adjustments, if any, to these indicative rates. Any subsequent changes to the rates will have an impact on the litigation costs involved in legal aid cases. In response, the Law Society has indicated that it is not planning to submit representations as the Judiciary takes judicial notice of the prevailing economic situation when conducting taxations.

31. As regards the fees for counsel, we note that there is no similar indicative hourly rates. In this connection, the Administration is



also enquiring whether the Bar Association would consider making representations to the Judiciary on indicative rates on legal fees for counsel, so as to facilitate the Judiciary's consideration of the fees generally allowed by Taxing Masters on taxation. We are awaiting a reply from the Bar Association.

## **WAY FORWARD**

32. We propose that –

- (a) The financial eligibility limits for the OLAS and SLAS should be revised from \$169,700 to \$163,080; and from \$471,600 to \$453,200 respectively, to take into account price changes so as to preserve the real value of the limits; and
- (b) No change to the financial eligibility limits should be made on account of changes in the litigation costs during July 2000 to July 2002.

Administration Wing  
Chief Secretary for Administration's Office  
June 2003

## Annex A

### Change in Median Litigation Costs for Major Types of Civil Legal Aid Cases

Type of Case	Median (\$)		Change (\$) (%)
	Jan – Jul 2000	Jan – Jul 2002	
Matrimonial Cases	20,710	15,524	-5,186 (-25%)
Employee Compensation Cases	71,063	75,014	+3,951 (+5.6%)
Miscellaneous Personal Injuries	245,523	282,070	+36,547 (+14.9%)
Wage Claim in Insolvency Cases	40,637	40,669	+32 (+0.1%)

Weighted average<sup>#</sup> of the changes in median costs: -0.16%

<sup>#</sup> Weighted average is calculated by summing up the weighted percentage change of each type of case calculated as follows: Percentage Change x (Median Litigation Costs x Total number of Cases) / Total Litigation Costs of all four types of Cases.

**Median Litigation Costs  
for Criminal Legal Aid Cases  
Jan – Jul 2000**

Type of Case		Median (\$)	No. of cases (Total Population)
Court of First Instance	Trial	97,190	116
	Plea and Sentence	20,925	71
District Court	Trial	35,562	234
	Plea and Sentence	6,122	250
Appeal from Court of First Instance		29,400	35
Appeal from District Court		29,020	32
Magistracy Appeal		22,600	48
Appeal to Court of Final Appeal		258,780	1
Weighted median #		\$32,926	

# Weighted median costs per case is calculated by summing up the “Median litigation costs per case x number of cases” of respective case type and divided by the total number of cases of all case types.

**Median Litigation Costs  
for Criminal Legal Aid Cases  
Jan – Jul 2002**

Type of Case		Median (\$)	No. of cases (Total Population)
Court of First Instance	Trial	55,960	134
	Plea and Sentence	20,642	80
District Court	Trial	35,997	498
	Plea and Sentence	6,260	434
Appeal from Court of First Instance		32,824	44
Appeal from District Court		26,855	29
Magistracy Appeal		21,860	78
Appeal to Court of Final Appeal		168,156	4
Weighted median #		\$26,437	

# Weighted median costs per case is calculated by summing up the “Median litigation costs per case x number of cases” of respective case type and divided by the total number of cases of all case types.

## Annex D

Chapter:	91C	Title:	LEGAL AID (SCALE OF FEES) REGULATIONS	Gazette Number:	
Regulation:	4	Heading:	<b>Fees payable to counsel generally</b>	Version Date:	30/06/1997

The fees payable by the Director to counsel acting for an aided person shall be such as may be allowed on taxation or, in default of taxation, as may be fixed by the Director, not exceeding such amount as in the opinion of the Director would have been allowed if there had been taxation.

(Enacted 1989)

Chapter:	91C	Title:	LEGAL AID (SCALE OF FEES) REGULATIONS	Gazette Number:	
Regulation:	5	Heading:	<b>Fees and costs payable to solicitor</b>	Version Date:	30/06/1997

The amount payable by the Director to a solicitor acting for an aided person shall be-

- (a) the full amount allowed on taxation on account of disbursements;
- (b) the full amount allowed on taxation on account of profit costs; and
- (c) in cases where fixed costs are applicable and the solicitor has made an election to take fixed costs, the full amount of such fixed costs,

or, in default of taxation or where an election to take fixed costs has not been made, an amount as may be fixed by the Director, not exceeding such amount as in the opinion of the Director would have been allowed if there had been taxation or would have applied if there had been an election to take fixed costs.

(Enacted 1989)