

**For discussion on
14 December 2004**

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 2004 annual and biennial review of the financial eligibility limits of legal aid applicants (the limits). This paper reports on the outcome of the review and seeks Members' views on the proposed way forward.

BACKGROUND

2. At present, a person whose financial resources¹ do not exceed \$155,800 is financially eligible for legal aid under the Ordinary Legal Aid Scheme (OLAS). The corresponding limit for the Supplementary Legal Aid Scheme (SLAS) is \$432,900. Our policy is to review the limits annually to take account of movements in CPI(C)², so as to maintain the real value of the limits. We also conduct biennial reviews to take account of changes in litigation costs.

3. A downward adjustment of the limits by 8.2% was last made in July 2004 to reflect the accumulated changes in CPI(C) over three years from July 2000 to July 2003. No adjustment was made on account of changes in litigation costs following the 2002 biennial review due to insufficient costs statistics.

¹ 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 deductible items as allowed under the Legal Aid Ordinance. A person's **disposable capital** is the sum of his credit balance, money due to him, the market value of non-money resources and the value of business or share in a company, minus deductible items as allowed under the Legal Aid Ordinance.

² CPI(C) reflects the pattern of relatively higher household expenditure which covers approximately the top 10% of the total households. It is an appropriate indicator of the changes in litigation costs which are generally regarded as high level of expenditure item. It also has as its component the highest percentage of expenditure on "miscellaneous services". Cost for legal services is one of the miscellaneous services.

THE 2004 ANNUAL REVIEW

4. The change in the CPI(C) during July 2003 to July 2004 is recorded as **+0.4%**. The corresponding impacts on the limits of the OLAS and the SLAS would be minor, i.e. \$600 with regard to the OLAS limit of \$155,800, or \$1,700 in the case of the SLAS limit of \$432,900.

5. Taking into account the minor movement in CPI(C) and the small impacts on the financial eligibility limits, we see a case to withhold the adjustment pending the outcome of the next annual review due for August 2005. Our reasons are –

- (a) the current limits took effect in July 2004 only. Making frequent but less than substantive adjustments to the limits could cause confusion to the public; and
- (b) the time and administrative costs involved in the legislative process may not be commensurate with the marginal “benefits” for the legally aided persons³.

THE 2004 BIENNIAL REVIEW

6. In conducting the biennial review of the limits to take account of private litigation costs during July 2002 to July 2004, we have sought information from the following sources –

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

In the absence of the essential statistical inputs from the two legal professional bodies in particular, we are unable to establish a case to revise the limits on account of changes in litigation costs during the reference period. Our findings and observations are set out in the following paragraphs.

³ Based on the financial resources of the legal aid applicants whose applications were made between January 2004 and August 2004, we estimate that if the limits were revised upward by 0.4%, three more applicants may become financially eligible for OLAS and two for SLAS per year.

Costs information from the two legal professional bodies

7. We consulted the two bodies in early July 2004. The Law Society has advised that it does not have information on the actual fees/costs charged by its members. The Bar Association's response remains outstanding. When consulted in the context of the 2002 biennial review, the Bar Association's advice was that it did not have the required information and was unable to assist.

Costs information from the Judiciary on non-legal aid cases

8. The Judiciary can only provide costs statistics of cases taxed by Taxing Masters. It does not possess information on cases with costs agreed between the two parties. The total numbers of non-legal aid taxed cases that were closed in January – July 2002 and in January – July 2004 are small: 35 and 77 respectively for the three major categories of cases pertinent to legal aid, viz. matrimonial, employees compensation and miscellaneous personal injuries⁴. They represent only about 1% of some 4,500 and 5,800 of such non-legal aid cases disposed of by courts in the respective reference periods. Therefore, we are unable to draw any meaningful conclusion from the data as regards the trend of private litigation costs.

Costs information from the Legal Aid Department on legal aid cases

Civil Cases

9. The LAD has compared the median litigation costs of all the four major types of legal aid civil cases (including matrimonial, employees compensation, miscellaneous personal injuries and wage claims) closed in January – July 2002 and in January – July 2004 respectively. As in the table below, the median costs in respect of all the four categories show a general decrease, ranging from –1.3% to –19%. The weighted average change in median costs is –12.4%.

⁴ The Judiciary does not have the cost breakdown for the fourth major category of legal aid cases, i.e. wage claims in insolvency cases.

Type of Case	Median (\$) (No. of sample cases)		Change (\$) (%)
	Jan – Jul 2002	Jan – Jul 2004	
Matrimonial Cases	15,524 (3,045) ⁵	14,420 (3,337) ⁵	-1,104 (-7.1%)
Employee Compensation Cases	75,014 (157)	70,000 (429) ⁵	-5,014 (-6.7%)
Miscellaneous Personal Injuries	282,070 (105)	228,500 (312) ⁵	-53,570 (-19%)
Wage Claim in Insolvency Cases	40,669 (100)	40,143 (298) ⁵	-526 (-1.3%)
Weighted average of the changes in median costs	--	--	-12.4%

10. Notwithstanding the above, constrained by the limited cases that form the basis of the legal aid fee system, we feel unable to assume the costs statistics of legal aid cases set out above as representative of the costs of private litigation.

11. Take the first three major types of legal aid civil cases (i.e. matrimonial, employee compensation and miscellaneous personal injuries cases) as an example. The 4,078 legal aid cases disposed of by courts during January – July 2004 represent 41% of the cases, i.e. 59% were private litigation cases which we have little costs statistics. We cannot infer that the legal aid cases and the costs involved would be of a similar nature or magnitude as those under private litigation. This is particularly so for matrimonial cases where fixed costs are applicable under the relevant rules of the District Court Ordinance. The continued decrease in costs (a reduction of 25% and 7% respectively in the 2002 and 2004 biennial review) may have been attributable to the increasing number of solicitors opting for the fixed costs arrangements. It would

⁵ The number quoted represents **all** legal aid cases dealt with under the respective categories during the reference period.

not be reliable to project the trend for matrimonial cases and apply it to private litigation cases.

Criminal cases

12. The fees for counsel and solicitors in criminal legal aid cases are prescribed in the Legal Aid in Criminal Cases Rules under the Criminal Procedure Ordinance. The rates are determined having regard to, inter alia, the change in the CPI(C). As a result, changes in litigation costs in criminal legal aid cases do not necessarily reflect private litigation costs.

WAY FORWARD

13. In view of the small change in CPI(C) recorded during July 2003 to July 2004, there is a case to reserve the 0.4% increase and consider it together with the outcome of the coming annual review due in August 2005. In the light of the inconclusive reading of the biennial review for July 2002 to July 2004, there is also little basis to propose any change to the financial eligibility limits of legal aid applicants. We will monitor the change in CPI(C) and report to the Panel on the result of the annual review covering the period July 2004 – July 2005.

Administration Wing
Chief Secretary for Administration's Office
December 2004