

CSO/ADM/CR 3/3221/02(04)

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17 March 2006

Mrs Percy Ma
Clerk to the Panel on Administration
of Justice and Legal Services
Legislative Council Building
8 Jackson Road
Hong Kong

By Fax: 2509 9055

Dear Mrs Ma,

**2005 Annual Review of Financial Eligibility Limits
of Legal Aid Applicants**

Pursuant to the 2005 review, the Administration consulted the Panel on Administration of Justice and Legal Services (the Panel) on 23 January 2006 on our proposal to adjust the financial eligibility limits of legal aid applicants (the limits) upward by 1.6%. The adjustment is to take account of the 0.4% increase kept in the 'reserve' since the 2004 review and the 1.3% increase captured in the 2005 review. Three methods for calculating the revised limits were discussed at the meeting. We undertook to give further consideration to the methodology used. I am writing now to set out our response.

BACKGROUND

To recap, we conduct annual review of the limits, to take account of movements in CPI(C) during the 12-month interval from July to July. The objective of the annual review is to maintain the real value of the limits. The limits were last adjusted in 2004 to reflect the change in CPI(C) pursuant to the 2001, 2002 and 2003 annual reviews, covering the three-year period from July 2000 to July 2003. In the 2004 annual review, the CPI(C) change from July 2003 to July 2004 is recorded at +0.4%. Following consultation with the Panel, no adjustment to the limits was made due to the small increase in the price level. The Administration undertook to reserve the +0.4% and consider it together with the outcome of the 2005 annual review.

The change in the CPI(C) captured in the 2005 annual review, covering the period from July 2004 to July 2005, is +1.3%. The change in CPI(C) from July 2003 to July 2005 is +1.6%. To reflect the change in the CPI(C) from July 2003 to July 2005, we proposed to adjust upward the limits by 1.6%, from \$155,800 to \$158,300 under the Ordinary Legal Aid Scheme (OLAS), and from \$432,900 to \$439,800 under the Supplementary Legal Aid Scheme (SLAS).

THE THREE METHODS

The three methods discussed at the Panel meeting held on 23 January 2006 are set out below –

Methodology A : To adjust the limits to reflect the CPI(C) changes over the two-year period from July 2003 to July 2005

This is the methodology adopted by the Administration to deal with changes to the limits. Since the most recent adjustment took into account CPI(C) change up to July 2003, we propose to adjust the limits to reflect the change in CPI(C) from July 2003, and up to July 2005, recorded at 1.6%. Accordingly, the revised limits are worked out to be:

For OLAS:

$$\$155,800 \times (1+1.6\%) = \$158,292.8 = \mathbf{\$158,300}$$
 (rounded to the nearest hundred)

For SLAS:

$$\$432,900 \times (1+1.6\%) = \$439,826.4 = \mathbf{\$439,800}$$
 (rounded to the nearest hundred)

Methodology B : To adjust the limits in two steps, to reflect first changes in CPI(C) recorded in the 2004 annual review, then changes recorded in the 2005 annual review

This is the methodology proposed by the Hong Kong Bar Association (Bar Association). Accordingly, the revised limits are worked out to be:

For OLAS:

Step 1

$$\$155,800 \times (1+0.4\%) = \$156,423.2 = \$156,400$$
 (rounded to the nearest hundred)

Step 2

$$\$156,400 \times (1+1.3\%) = \$158,433.2 = \mathbf{\$158,400}$$
 (rounded to the nearest hundred)

For SLAS:

Step 1

$$\$432,900 \times (1+0.4\%) = \$434,631.6 = \$434,600$$
 (rounded to the nearest hundred)

Step 2

$$\$434,600 \times (1+1.3\%) = \$440,249.8 = \mathbf{\$440,200}$$
 (rounded to the nearest hundred)

Methodology C : To adopt whichever methodology that produces revised limits which are more favourable to the legal aid applicants

This is the methodology proposed by some Panel members.

THE ADMINISTRATION'S RESPONSE

We have given the three methodologies careful consideration. For reasons explained below, we propose to maintain status quo, i.e. to continue to adopt Methodology A to adjust the limits pursuant to annual reviews.

We should start by recapping the Bar Association's observations. The Bar Association does not favour Methodology A, as it believes that the approach seems to produce a result which is marginally less favourable to legal aid applicants, and has the effect of distorting the real value of the limits. It also comments that in a scenario where the methodology is adopted say after the limits have remained unadjusted for three or four consecutive years because of insubstantial increases in CPI(C), the accumulated difference in the revised limits may no longer be de minimis.

We have consulted the Census and Statistics Department on the validity of the above concerns. The advice is that both Methodology A and Methodology B are mathematically the same and should produce the same revised limits if full figures for the CPI(C) and the limits are used. The minor difference in the revised limits worked out under Methodology A and Methodology B above is the result of the rounding of figures, rather than the choice of methodology. While this time round Methodology B produces higher revised limits under both OLAS and SLAS, the same may not be true in future adjustment exercises. It all depends on the actual figures in question and the rounding effect.

Also, as the difference is the result of rounding of figures, it would at best be minor and its impact on the number of applicants financially eligible for legal aid is also immaterial in any event. Indeed, for the current exercise, with the revised limits, the estimated increase in the number of legal aid applicants passing the means tests is the same under either Methodology A or Methodology B for both OLAS and SLAS.

We therefore conclude that neither Methodology would necessarily produce a result which is marginally less favourable to applicants for legal aid. It all hinges on the rounding up and rounding down effect based on actual limits.

As to reflecting the real value of the limits, since it would be difficult to avoid rounding of figures under either methodology, Methodology A, rather than Methodology B, helps to reflect more accurately the real value of the limits on the basis of the actual CPI(C) movement over the reference period, because less rounding is involved in the calculation process. Also, Methodology A is simpler and easier to understand, as compared with Methodology B.

Members may wish to note that using Methodology A, where cumulative index changes over several review periods are taken into account, is not unique in the Government. For instance, the adjustment of the Comprehensive Social Security Assistance rates, as approved by the Finance Committee, adopts similar methodology.

According to the precedent established with the Panel through the 2004 annual review, the Administration will adjust the limits when the change in CPI(C) reaches or exceeds 1% during the reference period. Hence, the need to reserve the CPI(C) for three or four consecutive years in a row before adjustment, as envisaged by the Bar Association, should be rather exceptional. In any event, even if there is such a need, the accumulative difference in the revised limits for Methodology A and B may not necessarily be more significant. As we have explained above, it depends on the actual figures in question and the rounding effect.

As regards Methodology C, the actual calculation method to be adopted may vary from year to year, as the choice depends on the revised limits worked out under Methodology A and Methodology B with suitable rounding up and down as the case may be. The lack of consistency may cause confusion. It may be particularly confusing when the revised limits worked out under OLAS and SLAS point to different methods to be adopted in the same review exercise. In cases like the current exercise when the estimated increase in the legal aid applicants under the revised limits is the same for both methodologies, there is no basis to choose the method that would benefit more legal aid applicants.

WAY FORWARD

In sum, the Administration considers it more appropriate to continue to adopt Methodology A to calculate the revised limits, as proposed in the Panel Paper discussed at the 23 January meeting. The Administration will give notice to move the relevant Resolution in LegCo accordingly. We will endeavour to do it as soon as practicable in order that the revised limits could be implemented shortly.

I should be grateful if you would keep Members informed of the above.

Yours sincerely,

(Mrs Alice Cheung)
for Director of Administration

c.c. DLA