

**For the meeting on
27 November 2006**

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 2006 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 informs Members of the intended way forward.

BACKGROUND

2. At present, a person whose financial resources¹ do not exceed \$158,300 is financially eligible for legal aid under the Ordinary Legal Aid Scheme (OLAS), which covers civil proceedings at District Court and above. The eligibility limit also applies to criminal legal aid under the Legal Aid in Criminal Cases Rules of the Criminal Procedure Ordinance. The corresponding limit for the Supplementary Legal Aid Scheme (SLAS) is \$439,800. The SLAS is a self-financing legal aid scheme available to those whose financial resources are above \$158,300 but do not exceed \$439,800. It covers cases involving personal injury or death and medical, dental or legal professional negligence, where the claim for damages is likely to exceed \$60,000 and employees' compensation claims irrespective of amount.

3. Our policy is to review the limits annually to take account of movements in CPI(C), and biennially to take account of changes in litigation costs. We last revised the limits by +1.6% in June 2006 to reflect the cumulative change in CPI(C) recorded in the 2004 and 2005 annual reviews.

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.

THE 2006 ANNUAL REVIEW

4. The purpose of the annual reviews is to take into account CPI(C) changes so as to maintain the real value of the limits. The change in CPI(C) during July 2005 to July 2006 is +2.5%. Accordingly, we intend to adjust the limits upward by 2.5%, i.e. from \$158,300 to \$162,300 for OLAS and criminal legal aid. For the SLAS, the limit would be adjusted from \$439,800 to \$450,800. This means that those with financial resources above \$162,300 but not exceeding \$450,800 will be financially eligible for SLAS. With the increase, the percentage of households covered by the OLAS will remain at about 55% and that under OLAS and SLAS together will remain at above 70%.

THE 2006 BIENNIAL REVIEW

5. The biennial review of the limits is meant to take account of changes in private litigation costs. In line with established practice, we have sought information from the two legal professional bodies, the Judiciary and the Legal Aid Department (LAD). As explained below, the findings are not conclusive to justify a change on account of changes in litigation costs during the reference period.

The two legal professional bodies

6. The Bar Association advised that it did not have cost information on civil cases. For criminal cases, a survey amongst 20 counsel indicated that the fees could range drastically from \$6,000 to \$100,000 per brief, depending on the seniority of the counsel and the level of court. The Law Society has not replied. At the last biennial review, it advised that it did not have any information on the actual fees/costs charged by its members.

7. Whilst information on counsel's charges for criminal cases is helpful, 80% or so of legal aid applications are for civil litigation. In criminal cases, LAD may, in the interest of justice, grant legal aid to defendants who do not pass the means test, and in practice, LAD seldom refuses applications for legal aid on means ground in criminal trial cases.

The Judiciary

8. The Judiciary can only provide cost statistics of cases which have been taxed by Taxing Masters. It does not possess information on

cases where costs are agreed between the two parties. There were only 33 non-legal aid cases that were taxed in January to July 2006 in respect of matrimonial, employees' compensation and personal injuries cases, which are the three major categories of civil cases covered by legal aid. They represent less than 1% of the over 7,000 non-legal aid cases disposed of by courts in these categories in the period. We are unable therefore to draw any meaningful conclusion from the data as regards the trend of private litigation costs.

Legal Aid Department

9. The comparison between the median litigation costs of civil legal aid cases closed in January to July 2004 and those closed in January to July 2006 is set out below. Costs for employees' compensation cases have increased by 13.2% (median being \$79,205 per case), but are still well within the existing limit of OLAS. Costs for personal injuries cases, which have been decreasing since 2002, have further decreased by 19% (median being \$185,136 per case); whilst higher than the limit of OLAS, they are well within the limit of SLAS. The changes in costs for matrimonial cases and wage claim cases are insignificant. In overall terms, the median LAD costs for civil cases handled in January to July 2006 has **dropped by 1.9%** over the comparable costs in January to July 2004.

Type of Case	Median (\$) (No. of Cases)		Change (\$) (%)
	Jan – July 2004	Jan – July 2006	
Matrimonial (MAT) Cases	14,420 (3,337)	14,540 (2,438)	(0.8%)
Employees' Compensation (EC) Cases	70,000 (429)	79,205 (362)	(13.2%)
Miscellaneous Personal Injuries (PI) Cases	228,500 (312)	185,136 (353)	(-19%)
Wage Claim in Insolvency (WC) Cases	40,143 (298)	40,000 (135)	(-0.4%)
Other OLAS cases	134,843 (341)	150,000 (291)	(11.2%)
Weighted average of the changes in median costs	-- (4,717)	-- (3,579)	(-1.9%)

10. The cost trend of civil legal aid cases should broadly be indicative of the trend in private litigation costs, because in determining the amount of fees payable to lawyers in civil legal aid cases, LAD is required by law to have regard to the amount allowed or would have been allowed by the Taxing Masters of the Judiciary, or fixed costs if applicable. However, legally aided civil cases account for only about 30% of all civil cases (there were over 3,000 closed legal aid matrimonial, employees' compensation and personal injury cases in January to July 2006, while there were over 7,000 non-legal aid cases disposed of by courts in these categories in the period). As such, we cannot safely assume that the magnitude of change in the costs of legal aid cases reflect precisely that of the change in private litigation costs. In any case, the cost variation that can be captured for legal aid cases is not significant (-1.9%).

WAY FORWARD

11. To reflect the findings of the 2006 annual review, we will move a Resolution in the LegCo full Council to raise the financial eligibility limits for legal aid, as set out in section 5 and 5A of the Legal Aid Ordinance, by 2.5%. We will also make consequential amendments to the scale of contributions payable by legally aided persons, which is set out in the Legal Aid (Assessment of Resources and Contributions) Regulations (the Regulations). In this connection, to enable future review results to be implemented as soon as possible, we intend to replace the dollar figure of the limits in the scale of contributions by a phrase which refers to the limits as appeared in the Legal Aid Ordinance. This will obviate the need to make consequential amendments to the Regulations every time the limits in Legal Aid Ordinance are amended.

Administration Wing
Chief Secretary for Administration's Office
November 2006