

Position Paper of the Local Government Counsel Association

Summary

**Application of the Findings of the Starting Salaries Survey on
Government Counsel of the Department of Justice**

On 15 May 2007, the Chief Executive-in-Council endorsed the findings of the 2006 Starting Salaries Survey (Survey). The Administration proposes to apply the findings of the Survey to Government Counsel who joined the Department of Justice (DoJ) on or after 1 April 2000 (Proposal).

2. **We strongly oppose the implementation of the Proposal on the serving Government Counsel of the DoJ. Under the Proposal, for no justifiable reason, serving government counsel will not enjoy the same level of pay with a new recruit of the same level of professional experience. We submit this is manifestly unfair and unjust.**

3. There are **45 officers** currently serving in the rank of Government Counsel in the DoJ who were appointed on or after 1 April 2000, (collectively, the **Affected Government Counsel**). The Affected Government Counsel represents **64.3%** of the total number of officers currently serving in the rank of Government Counsel in the DoJ on civil service terms.

4. Under the Proposal, (a) the starting salary of Government Counsel to be appointed from 2007 onwards will be increased by five pay points; and (b) newly appointed counsel will be given incremental credits in their entry salary commensurate with their respective level of professional experience. However, the Proposal **unfairly prejudices** against the Affected Government Counsel by **not according them with the same incremental credits from the revised starting salaries** as applicable to the new recruits.

5. The following examples illustrates the **unreasonableness, unfairness** and **absurdity** of the Proposal:

- (a) A counsel, having 5 years' of professional experience joins the DoJ in 2007. He will earn a salary of a level which is 7 pay points higher than an Affected Government Counsel with the same level

of experience who joined the DoJ in 2001. The monetary loss suffered by the Affected Government Counsel in terms of monthly salary is HKD15,270.

- (b) An Affected Government Counsel with 5 years of professional experience quits his current position but later rejoins the DoJ in the same rank. He will benefit from the revised starting salary level under the Proposal and gain a salary of 7 pay points higher than before.

6. It is **manifestly unfair and unjust** that, for no justifiable cause, counsel of the same level of professional experience do not enjoy the same level of pay in the DoJ.

7. We therefore demand that the Proposal be revised to **eliminate its unfair and prejudicial impact on the Affected Government Counsel**. We submit that:

- (a) in all circumstances, the Affected Government Counsel should be given incremental credits for their professional experience in their salary level in the same way as such credits are given to the newly appointed counsel under the Proposal; and
- (b) it follows that the existing salary level of the Affected Government Counsel should be brought up five pay points.

8. Unless and until the Proposal is revised in the way as set out above, we **strongly oppose** the implementation of the Proposal on the Affected Government Counsel of the DoJ.

**Local Government Counsel Association
May 2007**

Position Paper of the Local Government Counsel Association

Application of the Findings of the Starting Salaries Survey on Government Counsel of the Department of Justice

Summary

On 15 May 2007, the Chief Executive-in-Council endorsed the findings of the 2006 Starting Salaries Survey (Survey) and their application to various grades in the civil service, including Government Counsel who joined the Department of Justice (DoJ) on or after 1 April 2000. Details of the findings of the Survey and the Government's proposal on the application of the findings (Proposal) are set out in the Legislative Council Brief issued by the Civil Service Bureau (CSB) on 15 May 2007¹. The Administration will soon submit the Proposal to the Legislative Council for endorsement and approval.

2. **We strongly oppose the implementation of the Proposal on the serving Government Counsel of the DoJ. Under the Proposal, for no justifiable reason, serving government counsel will not enjoy the same level of pay with a new recruit of the same level of professional experience. We submit this is manifestly unfair and unjust.**

The Proposal

3. We understand it is the DoJ's policy objective that the terms of employment for Government Counsel should be comparable with Hong Kong's private legal market and hence, competitive salary should be offered to appointees for the position of Government Counsel and such salary should be commensurate with the appointee's level of post-qualification experience (PQE)². The Proposal purports to give effect to this policy and has the following impact on the newly appointed Government Counsel and serving Government Counsel of the DoJ:

¹ Ref: CSBCR/PG/4-085-001/46-2, available at the webpage of the Civil Service Bureau: <http://www.csb.gov.hk/english/info/files/leg070515e.pdf>

² In the context of legal practice, level of "Post Qualification Experience" refers to the year(s) of experience that one has gained after having acquired the qualification as a legal practitioner.

Newly Appointed Government Counsel

- (a) The starting salary of Government Counsel to be appointed from 2007 onwards will be increased by five pay points from point 27 to point 32 of the Master Pay Scale³.
- (b) The entry salary of Government Counsel to be appointed from 2007 onwards will continue to be determined with reference to the appointee's level of PQE. For a newly appointed counsel with 5 years' PQE, his entry salary will be commensurate with his level of PQE and accordingly, 5 pay points higher than the pay point of the revised starting salary for the rank, i.e. at point 40⁴.

Serving Government Counsel who was appointed on or after 1 April 2000

- (c) For Government Counsel who joined the DoJ on or after 1 April 2000 and whose current salary is below the revised starting salary (i.e. point 32), his salary will be brought up to the same level as the revised starting salary, irrespective of his level of PQE.
- (d) For Government Counsel who joined the DoJ on or after 1 April 2000 and whose current salary is the same or higher than the revised starting salary at point 32, his salary will be increased by one pay point subject to the maximum pay point of the rank of Government Counsel⁵, irrespective of his level of PQE.

For example, if the salary of a serving Government Counsel is currently at point 32, it will be increased by one pay point to point 33.

- (e) For Government Counsel who joined the DoJ on or after 1 April 2000 and whose current salary is at the maximum pay point of the rank of Government Counsel, his salary will remain unchanged, irrespective of his level of PQE.

³ Under the current Master Pay Scale, the monthly salary for point 27 is HKD33,355 and that for point 32 is HKD41,965.

⁴ Points 34, 37 and 38 of the Master Pay Scale are omitted for the rank of Government Counsel. The monthly salary for point 40 is currently HKD59,210.

⁵ The maximum pay point for Government Counsel is point 44 (monthly salary of HKD69,615).

The Affected Government Counsel

4. There are **45 officers** currently serving in the rank of Government Counsel in the DoJ who were appointed on or after 1 April 2000, with 11 in 2001, 16 in 2002 and 18 in 2006⁶ (collectively, the **Affected Government Counsel**). The Affected Government Counsel represents a **majority** group, being **64.3%** of the total number of officers currently serving in the rank of Government Counsel in the DoJ on civil service terms⁷.

Grounds of Objection

5. We **strongly oppose** the implementation of the Proposal on the Affected Government Counsel of the DoJ on the ground that the implementation of the Proposal will cause **grave injustice** to the Affected Government Counsel.

Recognition of PQE

6. It has long been recognised by the DoJ and the legal profession in Hong Kong as a whole that a lawyer's level of PQE is the most relevant factor in determining his salary level, whether for positions in various government departments requiring legal professional qualification (such as the DoJ) or positions in private practice. In particular, the hourly rate chargeable by barristers and solicitors in private practice is determined primarily according to their respective level of PQE and accordingly, the higher the level of PQE, the higher the chargeable hourly rate and the higher the level of income of the legal practitioner.

7. Since 1990, the DoJ has never departed from its established policy of recognising an appointee's level of PQE by paying the appointee a salary at a level fully commensurate with his level of PQE, i.e. for the position of Government Counsel, the entry salary of an appointee with X number of years of PQE will be X number of points higher than the applicable starting salary (subject to the maximum pay point). This policy has been regarded as **fair and reasonable** as it is fully comparable with the practice in the private legal sector and meets the DoJ's policy objective of attracting the most competent and experienced lawyers to serve in the DoJ.

⁶ No recruitment exercise for the rank of Government Counsel was conducted in the years of 2003 to 2005.

⁷ There are currently a total of 70 officers serving in the rank of Government Counsel in the DoJ on civil service terms.

Unjustifiable and Unfair Differentiation of the PQE of New Appointees and Affected Government Counsel

8. Under the Proposal, newly appointed counsel will be given incremental credits in their entry salary commensurate with their respective level of PQE. However, without any reasonable justifications, the Affected Government Counsel is not given the **same and equal treatment**.

9. The Proposal **unfairly prejudices** against the Affected Government Counsel by **not according them with the same incremental credits** from the revised starting salaries as applicable to the newly appointed counsel.

10. The following illustrates the **unreasonableness, unfairness and absurdity** of the Proposal:

- (a) A counsel, having no PQE, joins the DoJ in 2007. He will earn a salary of the same level as an Affected Government Counsel with 4 years' of PQE who joined the DoJ in 2002.
- (b) A counsel, having 5 years' of PQE joins the DoJ in 2007. He will earn a salary of a level which is 7 pay points higher⁸ than an Affected Government Counsel with the same level of PQE who joined the DoJ in 2001.
- (c) An Affected Government Counsel with 5 years of PQE quits his current position but later rejoins the DoJ in the same rank. He will benefit from the revised starting salary level under the Proposal and gain a salary of 7 pay points higher⁹ than before.

11. We submit that the prejudicial effect on the Affected Government Counsel is **real and substantive**. In the case of paragraph 10(b), the Affected Government Counsel with 5 years of PQE will suffer a monthly monetary detriment of HKD15,270, in terms of basic salary (being

⁸ Points 34, 37 and 38 of the Master Pay Scale are omitted for the rank of Government Counsel.

⁹ See above.

the salary difference between point 40 for the new recruit and point 33 for the Affected Government Counsel)¹⁰.

12. Please refer to the **Annex** for a table which illustrates, in detail, that the extent of the detrimental effect of the Proposal on the Affected Government Counsel ranges from a monthly loss of basic salary of HKD 1,975 to HKD17,825. The higher the level of PQE of the Affected Government Counsel, the more serious the detriment.

13. We submit that under the Proposal, it is **unfair and unjust** that for no justifiable cause, counsel of the same level of PQE do not enjoy the same level of pay in the DoJ.

Redress

14. We submit that all government policies should not infringe **basic principles of justice and fairness**, which are core values that the public is committed to upholding and all officers of the DoJ, irrespective of rank and position, committed to defending at all cost.

15. We therefore demand that the Proposal be revised to **eliminate its unfair and prejudicial impact on the Affected Government Counsel**. We submit that:

- (a) in all circumstances, the Affected Government Counsel should be given incremental credits for their PQE in their salary level **in the same way** as such credits are given to the newly appointed counsel under the Proposal; and
- (b) it follows that the existing salary level of the Affected Government Counsel should be brought up **five pay points**¹¹.

¹⁰ This quantification of the detrimental effect has not taken into account the fact that the newly appointed counsel with 5 years of PQE will, upon appointment in 2007 at a pay level of point 40, be entitled to a cash allowance of HKD15,230 in addition to the basic salary, whereas an Affected Government Counsel with the same level of PQE as the new recruit will not be entitled to such allowance until his salary level reaches point 34 in 2008.

¹¹ Points 34, 37 and 38 of the Master Pay Scale are currently omitted for the rank of Government Counsel. Our proposed adjustment should have no impact on the omission.

16. Unless and until the Proposal is revised in the way as set out in paragraph 15, we **strongly oppose** the implementation of the Proposal on the Affected Government Counsel of the DoJ.

**Local Government Counsel Association
May 2007**

Remarks:

1. This table below illustrates the extent of monetary loss which will be suffered by the Affected Government Counsel assuming that the Proposal was to be implemented on 17 May 2007 (excluding those who will not suffer a monetary loss as they fall under either one of the following categories: (a) they joined the DoJ in 2006 when their level of PQE is 0; or (b) their salaries have currently reached the maximum pay point for the Government Counsel Grade).
2. The monetary loss shown below only reflects the loss in terms of the difference between the monthly salary of the Affected Government Counsel and that of a new recruit having the same level of PQE with the former. For simplicity, the loss suffered by the Affected Government Counsel in terms of entitlement to housing allowance is not reflected in the table below.
3. If the loss in terms of entitlement to housing allowance is taken into account, in case 1 below, the Affected Government Counsel will not be entitled to any housing allowance until his salary reaches point 34; whereas a new recruit with the same level of PQE will be entitled to a housing allowance of HKD17,270 upon his appointment in DoJ in 2007. It follows that the total monthly loss suffered by the relevant Affected Government Counsel amounts to HKD35,095 (being HKD17,270 + HKD17,825).
4. For ease of reference, please refer to Supplement to the Annex for the latest salary scale of the Government Counsel Grade and Fringe Benefits.

Affected Govt Counsel	Year Joining DoJ	PQE upon Joining DoJ	Salary Point upon Joining DoJ	Current Salary Point	Revised Salary Point under the Proposal	Salary Point of a New Recruit having the same level of PQE as the Affected Govt Counsel	Monetary Loss in Basic Monthly Salary (HKD) Suffered by the Affected Govt Counsel
1.	Jun 01	0	25 ⁱ	32	33	41	\$17,825
2.	Sept 01	1	27	32	33	41	\$17,825
3.	Sept 02	0	27	31	32	40	\$17,245

Endnote:

i : point(s) deducted for barristers not meeting the minimum requirement of professional experience upon appointment

Affected Govt Counsel	Year Joining DoJ	PQE upon Joining DoJ	Salary Point upon Joining DoJ	Current Salary Point	Revised Salary Point under the Proposal	Salary Point of a New Recruit having the same level of PQE as the Affected Govt Counsel	Monetary Loss in Basic Monthly Salary (HKD) Suffered by the Affected Govt Counsel
4.	Sept 01	1	28	33	35	42	\$17,090
5.	Aug 02	0	27	32	33	40	\$15,270
6.	Sept 01	0	27	32	33	40	\$15,270
7.	Jun 06	5	31	32	33	40	\$15,270
8.	Sept 02	3	30	35	36	42	\$14,890
9.	July 01	2	29	35	36	42	\$14,890
10.	Apr 06	7	35	35	36	42	\$14,890
11.	Oct 02	0	27	31	32	39	\$14,800
12.	Sept 01	0	25 ⁱ	31	32	39	\$14,800
13.	Sept 02	0	25 ⁱ	30	32	36	\$14,800

Endnote:

i : point(s) deducted for barristers not meeting the minimum requirement of professional experience

Affected Govt Counsel	Year Joining DoJ	PQE upon Joining DoJ	Salary Point upon Joining DoJ	Current Salary Point	Revised Salary Point under the Proposal	Salary Point of a New Recruit having the same level of PQE as the Affected Govt Counsel	Monetary Loss in Basic Monthly Salary (HKD) Suffered by the Affected Govt Counsel
14.	Apr 06	4	30	31	32	39	\$14,800
15.	Oct 02	0	27	31	32	39	\$14,800
16.	Jul 06	6	32	33	35	41	\$14,430
17.	Jun 02	3	30	36	39	43	\$10,425
18.	Jul 01	5	32	40	41	44	\$7,850
19.	Sept 02	5	32	40	41	44	\$7,850
20.	Jun 06	3	29	30	32	36	\$7,570
21.	Oct 02	0	25 ⁱ	30	32	36	\$7,570
22.	Sept 01	6	33	41	42	44	\$5,190
23.	Sept 01	6	33	41	42	44	\$5,190

Endnote:

i : point(s) deducted for barristers not meeting the minimum requirement of professional experience

Affected Govt Counsel	Year Joining DoJ	PQE upon Joining DoJ	Salary Point upon Joining DoJ	Current Salary Point	Revised Salary Point under the Proposal	Salary Point of a New Recruit having the same level of PQE as the Affected Govt Counsel	Monetary Loss in Basic Monthly Salary (HKD) Suffered by the Affected Govt Counsel
24.	May 02	6	33	41	42	44	\$5,190
25.	Jun 02	6	33	41	42	44	\$5,190
26.	May 06	1	27	28	32	33	\$1,975
27.	Jun 06	0	27	27	32	33	\$1,975
28.	Apr 06	1	27	28	32	33	\$1,975
29.	Apr 06	0	26	27	32	33	\$1,975
30.	Oct 06	0	27	27	32	33	\$1,975
31.	May 06	0	26 ⁱ	27	32	33	\$1,975

Endnote:

i : point(s) deducted for barristers not meeting the minimum requirement of professional experience

Supplement to Annex

**Salary Scale of the Government Counsel Grade
and Fringe Benefits**

(I) Salary Scale of the Government Counsel Grade

<u>Rank</u>	<u>Total Permanent Establishment</u> (as at 1 May 2007)	<u>Pay Scale</u>	<u>\$ (per month)</u> (w.e.f. 1 January 2005)
Law Officer	5	DL6	162,650
Principal Government Counsel	16	DL3	127,900 – 135,550
Deputy Principal Government Counsel	48	DL2	110,000 – 116,800
Senior Government Counsel	176	MPS Pt. 45 - 49	72,135 – 83,105 (Please refer to the table below as appropriate)
Government Counsel	95	MPS Pt. 27 – 44 (omitted Pt. 34, 37, 38)	33,355 – 69,615 (Please refer to the table below as appropriate)

<u>MPS Pt.</u>	<u>\$ (per month)</u> (w.e.f. 1 January 2005)	<u>MPS Pt.</u>	<u>\$ (per month)</u> (w.e.f. 1 January 2005)
49	83,105	37	51,870
48	80,220	36	49,535
47	77,435	35	47,335
46	74,725	34	45,240
45	72,135	33	43,940
44	69,615	32	41,965
43	67,190	31	40,085
42	64,425	30	38,285
41	61,765	29	36,575
40	59,210	28	34,920
39	56,765	27	33,355
38	54,255		

(II) Fringe Benefits

(a) Housing Benefits – Non-accountable Cash Allowance

Rates of Allowance (w.e.f. 1 April 2007)

	<u>Rates</u> \$ per month
DL6	36,560
DL2 - DL5	27,420
MPS Pt. 45 - DL1	24,370
MPS Pt. 41 - 44	17,270
MPS Pt. 38 - 40	15,230
MPS Pt. 34 - 37	13,200

(b) Medical and Dental Treatment

(c) Leave of Absence

(d) Mandatory Provident Fund

Note : (i) For the rank of Government Counsel, increments are awarded for relevant post-qualification experience in excess of entry requirements.

(ii) Barristers with right to full practice but who do not possess one year's professional experience since attaining the right to full practice, if selected, may enter at an appropriate point below the minimum of the pay scale (i.e. MPS Pt. 26 - \$31,860).

(iii) The terms of appointment and conditions of service to be offered are subject to the provisions prevailing at the time the offer of appointment is made.