

立法會
Legislative Council

LC Paper No. CB(2)1529/08-09

Ref. : CB2/SS/10/08

**Paper for the House Committee meeting
on 15 May 2009**

**Report of the Subcommittee on Proposed Resolution under
Section 7(a) of the Legal Aid Ordinance (Cap. 91)**

Purpose

This paper reports on the deliberations of the Subcommittee on Proposed Resolution under Section 7(a) of the Legal Aid Ordinance (Cap. 91) (LAO).

Background

2. Under section 5 of LAO, a person whose financial resources do not exceed \$165,700 is eligible for legal aid which is commonly known as the Ordinary Legal Aid Scheme (OLAS). The limit for OLAS also applies to criminal legal aid under rule 4(1) of the Legal Aid in Criminal Cases Rules (Cap. 221 sub. leg. D). Under section 5A of LAO, a person whose financial resources exceed \$165,700 but do not exceed \$460,300 is eligible for legal aid under the Supplementary Legal Aid Scheme (SLAS). SLAS is a self-financing legal aid scheme available to those whose financial resources are above \$165,700 but do not exceed \$460,300. SLAS covers cases involving personal injury or death and medical, dental or legal professional negligence, and where the claim for damages is likely to exceed \$60,000 and employees' compensation claims irrespective of amount. Section 7 of LAO provides that the Legislative Council (LegCo) may by resolution amend the amounts of financial resources specified in these two sections.

3. According to the Administration, the limits are reviewed annually to take into account movements in Consumer Price Index (C) (CPI(C)), and biennially to take into account changes in private litigation costs. The limits were last revised by +2.1% in December 2007 to reflect the change in CPI(C) during July 2006 to July 2007.

The proposed resolution

4. The Secretary for Home Affairs (SHA) gave notice to move a motion at the Council meeting on 29 April 2009 to seek LegCo's approval of the upward adjustment of the financial eligibility limits of legal aid applicants so as to maintain the real value of these limits. According to the Administration, the cumulative increase in CPI(C) for the period from July 2007 to July 2008 is 6.1%. To maintain the real values of

the financial eligibility limits, the Administration proposes to adjust upwards the limit for OLAS from \$165,700 to \$175,800 and that for SLAS from \$460,300 to \$488,400 in accordance with the cumulative increase in consumer prices.

The Subcommittee

5. At the House Committee meeting on 17 April 2009, Members formed a Subcommittee to study the proposed resolution under section 7(a) of LAO (the proposed resolution). The membership list of the Subcommittee is in the **Appendix**. At the request of the House Committee, SHA withdrew his notice for moving the motion at the Council meeting on 29 April 2009 to allow time for the Subcommittee to study in detail the proposed resolution. Under the chairmanship of Hon LEE Cheuk-yan, the Subcommittee held one meeting with the Administration.

Deliberations of the Subcommittee

The annual review

6. Members are of the view that as the financial eligibility limits for legal aid are too low even after the proposed upward adjustment, a vast majority of ordinary employees are denied access to legal aid. They are particularly concerned that many employees have failed to obtain legal aid in employees' compensation claims and employer insolvency cases as they could not pass the means test. Members have pointed out that for employer insolvency cases, employees concerned would need to present a bankruptcy or winding-up petition against their insolvent employers before they can apply for ex gratia payment from the Protection of Wages on Insolvency Fund and/or recover debts owed by their insolvent employers. They consider that the Administration should introduce measures to help these employees obtain legal aid in filing the bankruptcy or winding-up petition against the insolvent employer.

7. Members have agreed that a review of the policy concerning provision of publicly-funded legal aid services to employees in respect of employees' compensation claims and employer insolvency cases should be referred to the Panel on Administration of Justice and Legal Services (the AJLS Panel) for follow-up. Members have also agreed that the views of the Panel on Manpower should also be considered in the review. Members have further suggested that the AJLS Panel should invite the Panel on Manpower to join future discussions on policy issues relating to legal aid.

The biennial review

8. According to the Administration, the biennial review takes into account changes in private litigation costs. Assistance has been sought from the two legal professional bodies, the Judiciary and the Legal Aid Department (LAD) in conducting the exercise. Information on private litigation costs is not available from the two legal professional bodies. The Judiciary provides information on the median litigation costs of the non-legally aided cases where costs were taxed by the Taxing

Masters¹, and such information is not representative of the overall private litigation costs. As for legally aided civil cases, they account for about 34% of all civil cases, and such information is also not representative of the overall private litigation costs. In view of the above, no adjustment is made to the financial eligibility limits on account of changes in private litigation costs.

9. Members take a strong view that the Administration should have come up with viable means to obtain information on private litigation costs for the purpose of conducting the biennial review, such as conducting a survey among litigants or lawyers on the hourly rate currently charged by lawyers or making reference to the taxation rates for lawyers' fees. The Administration has reiterated that it has attempted to seek assistance from the two legal professional bodies on the actual fees/costs currently charged by lawyers but could not obtain such information. The Administration has further explained that the taxation rates for solicitors have remained unchanged in the last 10 years and there are no similar hourly rates for counsel's fees. The Administration stress that the biennial review should be conducted on the basis of reliable information.

10. Members are of an unanimous view that it is incumbent upon the Administration to obtain reliable information for conducting a meaningful review on the trend of private litigation costs. Otherwise, the biennial review would not serve any purpose. The Administration has undertaken to review the methodology on collecting information on private litigation costs in the context of the current five-yearly review of the criteria for assessing the financial eligibility of legal aid applicants (five-yearly review). Members have agreed that a review of the mechanism for conducting biennial reviews of financial eligibility limits of legal aid applicants, in particular the viable means for collecting information on private litigation costs, should be referred to the AJLS Panel for follow-up.

Recommendation

11. The Subcommittee supports SHA giving fresh notice to move the motion on the proposed resolution at the Council meeting on 27 May 2009.

Advice sought

12. Members are invited to note the deliberations of the Subcommittee.

Council Business Division 2
Legislative Council Secretariat
14 May 2009

¹ The Judiciary does not possess information on cases where costs are agreed between the parties. There were only 21 non-legal aid cases that were taxed in January to July 2008 in respect of matrimonial, employees' compensation and personal injuries cases, which are the three major categories of civil cases covered by legal aid, which represented less than 1% of the corresponding cases disposed of during the period.

**Subcommittee on Proposed Resolution under
Section 7(a) of the Legal Aid Ordinance (Cap. 91)**

Membership list

Chairman Hon LEE Cheuk-yan

Members Hon Albert HO Chun-yan
Dr Hon Margaret NG
Hon LI Fung-ying, BBS, JP
Hon Audrey EU, SC, JP
Dr Hon Priscilla LEUNG Mei-fun
Hon IP Wai-ming, MH
Hon IP Kwok-him, GBS, JP
Hon Paul TSE Wai-chun

Total : 9 Members

Clerk Miss Flora TAI

Legal Adviser Mr YICK Wing-kin

Date 4 May 2009