

**For discussion on
30 September 2010**

**Legislative Council Panel on
Administration of Justice and Legal Services**

**Five-yearly Review of the Criteria for Assessing the Financial Eligibility (FEL)
of Legal Aid Applicants**

PURPOSE

The Administration has completed the five-yearly review on the criteria for assessing the financial eligibility of legal aid applicants (“the five-yearly review”). This paper briefs Members on the Administration’s final recommendations pursuant to the five-yearly review.

BACKGROUND

2. The purpose of the five-yearly review is to examine the criteria used to assess the financial eligibility limits of legal aid applicants. We consulted this Panel on the Administration’s initial proposals in March 2007, May 2008, March 2009, March 2010, May 2010 and July 2010 respectively.

3. At present, applicants with financial resources not exceeding \$175,800 are eligible for the Ordinary Legal Aid Scheme (OLAS). Applicants with financial resources above \$175,800 but not exceeding \$488,400 are eligible for the Supplementary Legal Aid Scheme (SLAS), under which legal aid is available to applicants for claims involving personal injury and death, or medical, dental and legal professional negligence, where the claim for damages exceeds or is likely to exceed \$60,000 (also covers claims under Employees’ Compensation Ordinance irrespective of the amount claimed).

4. In response to the calls from the community, and having consideration to the views expressed by this Panel, the legal profession and relevant stakeholders, the Administration proposes that the following package of improvement measures be implemented which aim at bringing about across-the-board improved eligibility criteria for legal aid recipients.

PROPOSALS

5. It is recommended that the following proposals arising from the five-yearly review be implemented –

- (a) the median monthly household expenditure be used to replace the 35-percentile household expenditure as a deductible component in calculating disposable income;
- (b) the FEL for OLAS be raised from the present \$175,800 by about 50% to \$260,000 and that for SLAS from \$488,400 by about 100% to \$1.3 million; and
- (c) an amount equivalent to the FEL of OLAS be disregarded from the savings of the elderly legal aid applicants who have reached the age of 60 at the time of the applications, irrespective of their employment status, when calculating their disposable capital.

6. Details of our proposals are set out in the following paragraphs.

Median household expenditure as deductible allowance

7. We reported to this Panel on 29 March 2010 that in calculating the disposable income of legal aid applicants for assessing their eligibility for legal aid, a personal allowance is deducted to recognize that applicants should be allowed to keep an amount required for other expenses of households of a particular size. The personal allowance is currently set at a level equivalent to the “35-percentile household expenditure” (which varies depending on household size).

8. The 35-percentile household expenditure was adopted in 2000 to replace the Comprehensive Social Security Assistance rates as the deductible personal allowance. The aim was to reflect more realistically the expenditure level of households of the population that require assistance in funding legal proceedings. The Legal Aid Service Council (LASC) has taken the view that there is room to raise the allowance. We agree with the LASC that there is room to raise the allowances and we propose to replace the 35-percentage household expenditure with the median household expenditure as deductible allowance.

Relaxing the FEL for SLAS

9. We reported to this Panel on 29 March 2010 that the FEL for SLAS be

raised to \$1 million. We note that the LASC has suggested that the FEL for SLAS should be pitched at \$1.3 million. While the Bar Association proposed that \$3 million should be a more suitable level, we note that Panel Members generally supported LASC's view.

10. Unlike OLAS, where the scope is much wider, the existing SLAS case coverage provides a greater assurance of damages and cost recovery. There is more room for raising the FEL without compromising the financial viability of the scheme. In view of the support from the Panel and the legal professional bodies for the LASC's proposal, we now propose to adjust the suggested FEL for SLAS from \$1 million to \$1.3 million.

Calculation of financial resources for elderly persons

11. We recognize that elderly applicants generally lack earning power, and those who are still employed face a genuine prospect of diminishing earnings upon retirement. Elderly applicants are more reluctant to deploy their capital for defending or taking legal action, hence arguably undermining their access to justice. Furthermore, it is not uncommon in overseas legal aid jurisdictions for the financial resources of elderly applicants to be treated more favorably. We consider there is a case for more favorable treatment of the disposable capital for elderly applicants for OLAS and SLAS.

12. We reported to this Panel at the meeting on 29 March 2010 that the age requirement for elderly persons to be entitled to a disregard in calculating their disposable capital should be 65. We note that Panel Members and the LASC proposed that this age requirement should be lowered.

13. We wish to emphasise that the underlying policy consideration of our proposal is to better protect elderly citizens' right of access to justice by providing more favorable treatment of the disposable capital assets owned by elderly applicants when calculating their disposable capital, taking into account their general lack of earning power and the prospect of diminishing earnings. Taking into account views from LegCo Members and the LASC, we propose to set the age requirement for the concerned legal aid arrangement at 60.

OTHER STUDIES

Expansion of the scope of SLAS

14. We note that there are requests for expanding the scope of SLAS by increasing the types of cases covered.

15. In considering the case for expansion of the scope of SLAS to cover more cases, it is important that we take into account the objective of the scheme. When SLAS was first introduced in 1984, it only covered claims arising from personal injuries or death. The scope was extended subsequently to include employees' compensation claims and medical, dental and legal professional negligence claims. To maintain its financial viability, SLAS was by design aimed at cases that carry a high chance of success with good damages to costs ratio. SLAS covers mainly cases where the defendants are insured or where there is assured payment of damages (i.e. claims for personal injuries or death and work-related accidents). The high chance of recovery of damages helps ensure, to a large extent, the financial sustainability of the scheme.

16. We note that the LASC is currently examining the possibilities for expansion of the scope of SLAS without undermining or jeopardizing the financial viability of the scheme. The study being conducted by the LASC is expected to conclude by late 2010. The Administration will further consider the feasibility of expanding the scope of SLAS having regard to the recommendations of the LASC.

WAY FORWARD

17. Members are invited to note the final proposals put forth by the Administration. We will formulate legislative proposals with a view to putting the recommendations into effect as soon as possible.

**Home Affairs Bureau
Legal Aid Department
September 2010**