

For Information

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

**The Biennial Review of Criminal Legal Aid Fees,
Prosecution Fees and Duty Lawyer Fees**

PURPOSE

The Administration has completed the 2012 biennial review of the following fees –

- (a) Criminal Legal Aid Fees – payable to lawyers in private practice who undertake litigation work in respect of criminal cases on behalf of the Legal Aid Department (LAD);
- (b) Prosecution Fees – payable to counsel in private practice engaged by the Department of Justice (DoJ) to appear for the Government in criminal cases; and
- (c) Duty Lawyer Fees – payable to duty lawyers providing legal assistance under the Duty Lawyer Service (DLS)¹.

2. This paper reports on the Administration’s findings of the review of the criminal legal aid fees, the prosecution fees and the duty lawyer fees (collectively referred to as “the Fees”) and proposed way forward.

BACKGROUND

3. The criminal legal aid fees are prescribed in Rule 21 of the Legal Aid in Criminal Cases Rules (Cap. 221D) under the Criminal Procedure Ordinance (Cap. 221). The DoJ draws reference to the same scale of fees to engage counsel in private practice to appear for the Government in criminal cases. The duty lawyer fees are also determined with reference to the same scale of fees.

¹ The Duty Lawyer Scheme of the Duty Lawyer Service was established in 1979 to supplement the legal aid service provided by the Legal Aid Department under the Legal Aid Ordinance by providing legal representation to eligible defendants who appear in Magistrates’ Courts, Juvenile Courts and the Coroners’ Court.

4. Pursuant to the decision of the Legislative Council (LegCo) Finance Committee in October 1992, the Fees are subject to review by the Administration on a biennial basis. The Finance Committee also delegated in June 2003 the authority to approve future adjustments to the Fees to the Administration, provided that the extent of adjustment is no greater than the movement of the Consumer Price Index (C) (CPI(C)) during the reference period.

THE PREVIOUS REVIEWS

5. In conducting the biennial reviews, the Administration takes into account mainly inflation/deflation during the reference period and whether there has been difficulty in engaging the services of counsel and solicitors. The last biennial review was conducted in 2010, and the results were reported to the LegCo Panel on Administration of Justice and Legal Services in April 2011 (vide LC Paper No. CB(2)1480/10-11(04)).

THE 2012 REVIEW

6. The Administration has completed the 2012 biennial review. We note that the CPI(C) for the reference period (i.e. July 2010 to July 2012) has increased by 9.3%, and propose to adjust the Fees upward by 9.3 % accordingly.

7. The following table summarises the adjustment to the Fees in the past five reviews and the adjustment proposed for the current review –

Year	Adjustment	CPI(C) Movement
2002 review	-4.3%	-4.3%
2004 review	Nil	-4.4%
2006 review	Nil	+3.4%
2008 review	+8.3%	+8.3%
2010 review	+1.6%	+1.6%
2012 review	+9.3% (proposed)	+9.3%

8. Following the established practice, the Administration will need to move a resolution in the LegCo to amend the Legal Aid in Criminal Cases Rules to adjust the criminal legal aid fees upward by 9.3% to

reflect the result of the review. The prosecution fees and the duty lawyer fees, although not specified in the Legal Aid in Criminal Cases Rules, will be adjusted administratively by drawing reference to the updated set of criminal legal aid fees to reflect the +9.3% change in CPI(C). The existing fees and the proposed fees, rounded to the nearest \$10, are listed in the **Annex**.

WAY FORWARD

9. The Legal Aid Services Council noted the outcome of the review. To reflect the findings of the review, the Administration will invite the Criminal Procedure Rules Committee to amend Rule 21 of the Legal Aid in Criminal Cases Rules to give effect to the proposed new fees. Subject to the Criminal Procedure Rules Committee's decision, we will move a Resolution in the LegCo to effect the legislative changes.

ADVICE SOUGHT

10. Members are invited to note the outcome of the review and the proposed legislative and administrative amendments.

**Home Affairs Bureau
Legal Aid Department
June 2013**

**The Biennial Review of
Criminal Legal Aid Fees,
Prosecution Fees and Duty Lawyer Fees**

<u>Nature of fee</u>	<u>Department/ Service</u>	<u>Current Maximum fee (\$)</u>	<u>With a 9.3% increase (\$)</u>
1. <u>Court of First Instance Cases</u>			
(a) Counsel			
(i) brief fee	LAD*/DOJ	22,440	24,520
(ii) additional preparation fee	LAD	4,710 per unit for every 4-hour unit (or part of it)	5,140 per unit for every 4-hour unit (or part of it)
	DOJ	11,220 per day if more than 1 day is required for preparation	12,260 per day if more than 1 day is required for preparation
(iii) refresher fee per day	LAD*/DOJ	11,220	12,260
(b) Solicitor			
(i) reading fee	LAD	740 per hour	800 per hour
(ii) preparation fee	LAD	2,960 per unit for every 4-hour unit (or any part of it)	3,230 per unit for every 4-hour unit (or any part of it)
(iii) court hearing day fee	LAD*	5,930 per day	6,480 per day
(c) Conference (counsel)	LAD/DOJ	1,170 per hour	1,270 per hour
(d) Conference (solicitor)	LAD	740 per hour	800 per hour
(e) Pre-trial review (per review)	DOJ	2,220	2,420
(f) Pre-trial review (per review)	LAD*	a rate that appears to the Director to be reasonable and proper	a rate that appears to the Director to be reasonable and proper
(g) Mention (while appearing before the same judge on another matter)	DOJ	3,360	3,670
	LAD*	a rate that appears to the Director to be reasonable and proper	a rate that appears to the Director to be reasonable and proper

<u>Nature of fee</u>	<u>Department/ Service</u>	<u>Current Maximum fee (\$)</u>	<u>With a 9.3% increase (\$)</u>
(h) Plea (while appearing before the same judge on another matter)	DOJ	3,360	3,670
(i) Sentence (while appearing before the same judge on another matter)	DOJ	3,360	3,670
(j) Plea & Sentence (while appearing before the same judge on another matter)	DOJ	3,990	4,360

2. **District Court Cases**

(a) Counsel			
(i) brief fee	LAD*/DOJ	14,940	16,320
(ii) additional preparation fee	LAD	3,860 per unit for every 4-hour unit (or part of it)	4,210 per unit for every 4-hour unit (or part of it)
	DOJ	7,470 per day if more than 1 day is required for preparation	8,160 per day if more than 1 day is required for preparation
(iii) refresher fee per day	LAD*/DOJ	7,470	8,160
(b) Solicitor acting as instructing solicitor			
(i) reading fee	LAD	620 per hour	670 per hour
(ii) preparation fee	LAD	2,510 per unit for every 4-hour unit (or part of it)	2,740 per unit for every 4-hour unit (or part of it)
(iii) court hearing day fee	LAD*	5,030 per day	5,490 per day
(c) Solicitor acting as advocate as well as instructing solicitor			
(i) brief fee	LAD*	18,480	20,190

<u>Nature of fee</u>	<u>Department/ Service</u>	<u>Current Maximum fee (\$)</u>	<u>With a 9.3% increase (\$)</u>
(ii) additional preparation fee	LAD	4,610 per unit for every 4-hour unit (or part of it)	5,030 per unit for every 4-hour unit (or part of it)
(iii) refresher fee per day	LAD*	10,240	11,190
(d) Conference (counsel)	LAD/DOJ	960 per hour	1,040 per hour
(e) Conference (instructing solicitor only)	LAD	620 per hour	670 per hour
(f) Pre-trial review (per review)	DOJ	1,880	2,050
	LAD*	a rate that appears to the Director to be reasonable and proper	a rate that appears to the Director to be reasonable and proper
(g) Mention (while appearing before the same judge on another matter)	DOJ	1,250	1,360
	LAD*	a rate that appears to the Director to be reasonable and proper	a rate that appears to the Director to be reasonable and proper
(h) Plea (while appearing before the same judge on another matter)	DOJ	1,250	1,360
(i) Sentence (while appearing before the same judge on another matter)	DOJ	1,250	1,360
(j) Plea & Sentence (while appearing before the same judge on another matter)	DOJ	1,880	2,050

<u>Nature of fee</u>	<u>Department/ Service</u>	<u>Current Maximum fee (\$)</u>	<u>With a 9.3% increase (\$)</u>
3. <u>Magistrates' Court Cases</u>			
(a) Counsel			
(i) brief fee	DOJ	8,970	9,800
(ii) additional preparation fee (per day)	DOJ	4,480	4,890
(iii) refresher fee per day	DOJ	4,480	4,890
(iv) conference (per hour)	DOJ	730	790
(v) pre-trial review (per review)	DOJ	1,250	1,360
(b) Counsel or solicitor acting as advocate in committal proceedings			
(i) brief fee	LAD*	8,970	9,800
(ii) refresher fee per day	LAD*	4,480	4,890
(c) Solicitor for instructing counsel in committal proceedings/preliminary inquiry			
(i) brief fee	LAD*	2,420	2,640
(ii) refresher fee per day	LAD*	1,990	2,170
(d) Counsel or solicitor acting as advocate in preliminary inquiry			
(i) brief fee	LAD*	8,970	9,800
(ii) refresher fee per day	LAD*	4,480	4,890
(e) Brief in place of court prosecutor	DOJ	5,970 per day 2,980 half day	6,520 per day 3,250 half day
(f) Duty Lawyer Fee	DLS	5,970 per day 2,970 half day	6,520 per day 3,240 half day
(g) Pre-trial fee per hour	DLS	730	790

<u>Nature of fee</u>	<u>Department/ Service</u>	<u>Current Maximum fee (\$)</u>	<u>With a 9.3% increase (\$)</u>
(h) Engagement of newly qualified lawyers	DOJ		
Brief for 2 weeks engagement		40,000	43,720
Brief after 2 weeks engagement (Part-heard case)		5,970 per day 2,980 half day	6,520 per day 3,250 half day
(i) Engagement of newly qualified monolingual lawyers	DOJ	5,970 per day 2,980 half day	6,520 per day 3,250 half day
4. <u>Appeals</u>			
(a) Settling notice of appeal	LAD	2,970	3,240
(b) Instructing solicitors for appeals to the Court of Appeal			
(i) from the Court of First Instance			
(1) reading fee	LAD	1,000 per hour	1,090 per hour
(2) preparation fee	LAD	4,020 per unit for every 4-hour unit (or part of it)	4,390 per unit for every 4-hour unit (or part of it)
(3) conference fee	LAD	1,000 per hour	1,090 per hour
(4) court hearing day fee	LAD*	8,040 per day	8,780 per day
(5) Mention/delivery of judgment	LAD*	a rate that appears to the Director to be reasonable and proper	a rate that appears to the Director to be reasonable and proper
(ii) from the District Court			
(1) reading fee	LAD	1,000 per hour	1,090 per hour
(2) preparation fee	LAD	4,020 per unit for every 4-hour unit (or part of it)	4,390 per unit for every 4-hour unit (or part of it)
(3) conference fee	LAD	1,000 per hour	1,090 per hour

<u>Nature of fee</u>	<u>Department/ Service</u>	<u>Current Maximum fee (\$)</u>	<u>With a 9.3% increase (\$)</u>
(4) court hearing day fee	LAD*	8,040 per day	8,780 per day
(5) Mention/delivery of judgment	LAD*	a rate that appears to the Director to be reasonable and proper	a rate that appears to the Director to be reasonable and proper
(c) Counsel for appeals to the Court of Appeal			
(i) from the Court of First Instance			
(1) brief fee	LAD*/DOJ	29,920	32,700
(2) additional preparation fee	LAD	4,710 per unit for every 4-hour unit (or part of it)	5,140 per unit for every 4-hour unit (or part of it)
	DOJ	14,960 per day if more than 1 day is required for preparation	16,350 per day if more than 1 day is required for preparation
(3) refresher fee per day)	LAD*/DOJ	14,960	16,350
(4) Mention/delivery of judgment	LAD*	a rate that appears to the Director to be reasonable and proper	a rate that appears to the Director to be reasonable and proper
(ii) from the District Court			
(1) brief fee	LAD*/DOJ	23,920	26,140
(2) additional preparation fee	LAD	4,710 per unit for every 4-hour unit (or part of it)	5,140 per unit for every 4-hour unit (or part of it)
	DOJ	11,960 per day if more than 1 day is required for preparation	13,070 per day if more than 1 day is required for preparation
(3) refresher fee per day	LAD*/DOJ	11,960	13,070

<u>Nature of fee</u>	<u>Department/ Service</u>	<u>Current Maximum fee (\$)</u>	<u>With a 9.3% increase (\$)</u>
(4) Mention/delivery of judgment	LAD*	a rate that appears to the Director to be reasonable and proper	a rate that appears to the Director to be reasonable and proper
(d) Instructing solicitors for appeals to the Court of First Instance			
(i) from the Magistrate			
(1) reading fee	LAD	740 per hour	800 per hour
(2) preparation fee	LAD	2,960 per unit for every 4-hour unit (or part of it)	3,230 per unit for every 4-hour unit (or part of it)
(3) conference fee	LAD	740 per hour	800 per hour
(4) court hearing day fee	LAD*	5,930 per day	6,480 per day
(5) Mention/delivery of judgment	LAD*	a rate that appears to the Director to be reasonable and proper	a rate that appears to the Director to be reasonable and proper
(e) Counsel for appeals to the Court of First Instance			
(i) from the Magistrate			
(1) brief fee	LAD*	22,440	24,520
(2) additional preparation fee	LAD	4,710 per unit for every 4-hour unit (or part of it)	5,140 per unit for every 4-hour unit (or part of it)
(3) refresher fee per day	LAD*	11,220	12,260
(4) Mention/delivery of judgment	LAD*	a rate that appears to the Director to be reasonable and proper	a rate that appears to the Director to be reasonable and proper
(f) Conference (counsel)	LAD/DOJ	1,170 per hour	1,270 per hour

Note :

LAD Legal Aid Department

DOJ Department of Justice

DLS Duty Lawyer Service

* Subject to an increase of 10% on the base figures for each of the second to sixth defendant or appellant.