

For information

Legislative Council
Panel on Administration of Justice and Legal Services

**Annual Reviews of Financial Eligibility Limits of Legal Aid Applicants
and Director of Legal Aid's First Charge**

PURPOSE

This paper informs members of the outcome of the annual reviews of the financial eligibility limits (“FELs”) of legal aid applicants and Director of Legal Aid’s (“DLA’s”) first charge completed for the reference period from July 2019 to July 2020 and the proposed way forward.

THE REVIEW MECHANISM*FELs*

2. At present, a person whose financial resources¹ do not exceed \$420,400 is financially eligible for legal aid under the Ordinary Legal Aid Scheme (“OLAS”) which covers committal proceedings in the Magistrates’ Courts (“MC”), civil and criminal proceedings in the District Court (“DC”) or courts above. Apart from OLAS, the Legal Aid Department (“LAD”) also operates a Supplementary Legal Aid Scheme (“SLAS”) to provide legal aid on certain types of civil cases² to the “sandwich class” who may not meet the means test criterion of OLAS. Those with financial resources exceeding the FEL of OLAS (i.e. \$420,400) but below \$2,102,000 may apply for legal aid under SLAS.

¹ “Financial resources” means the aggregate of an applicant’s yearly disposable income and disposable capital. A person’s disposable income is his/her gross income minus deductible items as allowed under the Legal Aid (Assessment of Resources and Contributions) Regulations (“the Regulations”) (Cap. 91B). A person’s disposable capital consists of all assets of a capital nature, such as the sum of his / her credit balance, money due to him / her, the value of the person’s interest in non-money resources, the value of business or share in a company etc, unless such items should be excluded from calculation under the Regulations.

² OLAS covers committal proceedings in the Magistrates’ Courts, civil and criminal proceedings in the District Court or courts above in accordance with the LAO and the Legal Aid in Criminal Cases Rules (Cap. 221D), while the scope of SLAS is more limited and covers only certain types of civil cases, e.g., cases involving personal injury or death, professional negligence claims against eleven professions including medical, dental and legal professional negligence. It also covers negligence claims against insurers or their intermediaries in respect of the taking out of the personal insurance products; and monetary claims against vendors in the sale of completed or uncompleted first-hand residential properties, where the claim for damages is likely to exceed \$75,000.

3. The Government reviews FELs under OLAS and SLAS annually to take into account general price movement as reflected by the Consumer Price Index (C) (“CPI(C)”). An upward adjustment of FELs by 5.1% was made effective from 26 June 2020 to reflect the accumulated changes in CPI(C) from July 2017 to July 2019³.

DLA’s First Charge

4. A legally aided person who is successful in recovering or preserving any money or property in the legally aided proceedings will be required to repay DLA all the costs and expenses incurred by DLA in the proceedings, as required under the Legal Aid Ordinance (“LAO”) (Cap. 91), out of the money or property so recovered or preserved in such proceedings⁴. The sum of these costs and expenses is called the DLA’s first charge. In practice, if money is recovered for the aided person, such costs and expenses will be deducted from the money first before the balance is released to the legally-aided person. If the property involved is a piece of landed property, the DLA’s first charge will operate by way of registering it against the property in the Land Registry so as to secure repayment of the costs and expenses to DLA. However, according to section 18A(5) of the LAO, DLA’s first charge does not apply to maintenance payment for spouse or former spouse up to the first \$9,100 of each payment per month. Separately, upon receipt of all moneys paid to DLA pursuant to section 19 or 19A of the LAO⁵, DLA may exercise discretion under the proviso to section 19B(1)(a) of the LAO to reduce the amount to be retained by DLA by an amount not exceeding \$108,850 in cases of serious hardship to any person and that it is in all the circumstances just and equitable to do so.

³ The same legislative exercise also made effective an increase of about 30% in the FELs as an initiative announced in the 2019 Policy Address Supplement.

⁴ According to section 18A(1) of the LAO,
“Subject to this section—

- (a) the amount of a contribution to the extent that it is unpaid; and
- (b) except where legal aid has been granted under the Supplementary Legal Aid Scheme, if the total contribution is less than the net liability of the Director on the aided person’s account, a sum equal to the deficiency, shall be a first charge for the benefit of the Director on any property, whether situated in Hong Kong or otherwise, which is recovered or preserved for the aided person in the proceedings or in any other proceedings in respect of which the person was aided and which, in the opinion of the Director, were substantially related to or connected with the proceedings in which property was recovered or preserved.”

⁵ According to section 19B(1)(a) of the LAO, “upon receipt of all moneys paid to him pursuant to section 19 or 19A, the Director shall retain ... provided that where the Director is satisfied that it would cause serious hardship to any person to retain any such sum under this paragraph and that it is in all the circumstances just and equitable to reduce the sum to be so retained, the amount to be so retained shall be reduced by such amount not exceeding \$108,850 as the Director may determine”.

5. Pursuant to a one-off review the result of which was reported to this Panel on 30 April 2018, the two specified amounts were adjusted upwards by 89.6% with effect from 26 June 2020. The Government has also reported that the two amounts would be subject to an annual review to reflect the changes in CPI(C)⁶.

THE CURRENT REVIEWS

6. The Government has completed the latest round of annual reviews on FELs and DLA's first charge. Both reviews have made reference to the CPI(C) for the same reference period (i.e. July 2019 to July 2020), which has decreased by 0.1%.

7. If we apply this negative adjustment, the corresponding impact on the FELs of OLAS and SLAS would be a decrease of \$420 (from \$420,400) and \$2,100 (from \$2,102,000) respectively. For DLA's first charge, the corresponding impact on the two specified amounts would likewise be minor, i.e. a decrease of \$9 (from \$9,100) under section 18A(5) and \$109 (from \$108,850) under section 19B(1)(a) of the LAO.

WAY FORWARD

8. In view of the insignificant change in CPI(C) recorded during the reference period and minimal corresponding impact on FELs and the two specified amounts for DLA's first charge, the time and administrative costs involved in the requisite legislative processes may not be commensurate with the need for keeping up with the market. We therefore see merits to reserve the 0.1% decrease and consider it together with the outcome of the next annual reviews. We will monitor the change in CPI(C) and report to the Panel when the result of the next reviews covering the period July 2020 – July 2021 is ready.

⁶ See paragraph 7 of the Legislative Council Brief on "Review of Director of Legal Aid's First Charge" (File Ref: CSO/ADM CR/2/3230/17(18)) for the introduction of an annual review.

ADVICE SOUGHT

9. Members are invited to note the outcome of the review and the way forward.

**Chief Secretary for Administration's Office
Legal Aid Department
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