

For information

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

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

INTRODUCTION

This paper briefs members on the outcome of the 2020 biennial review of criminal legal aid fees, prosecution fees and duty lawyer fees (collectively referred to as “the Fees”).

PROPOSAL

2. We propose to adjust the Fees upwards by 2.7% to reflect the accumulated change in the Consumer Price Index (C) (“CPI(C)”) recorded between July 2018 and July 2020. The increase in criminal legal aid fees will be implemented by amending Rule 21 and Part 2 of the Schedule to the Legal Aid in Criminal Cases Rules (Cap. 221 sub. leg. D) (“LACCR”), while prosecution fees and duty lawyer fees will be adjusted administratively.

JUSTIFICATIONS

The Fees

3. The Legal Aid Department (“LAD”) provides legal aid for representation in committal proceedings in the Magistrates’ Courts (“MC”), civil and criminal proceedings in the District Court (“DC”) or courts at levels above in accordance with the Legal Aid Ordinance (Cap. 91) and the LACCR. LAD will pay criminal legal aid fees to counsel and solicitors in private practice undertaking criminal litigation work on behalf of it. The fee levels are prescribed in the LACCR under the Criminal Procedure Ordinance (Cap. 221).

4. To complement the legal aid services provided by LAD, the Duty Lawyer Scheme, administered by the Duty Lawyer Service (“DLS”),

provides legal representation to any defendant in the MC (except committal proceedings) where the interests of justice require, and without payment by the defendant in any such case if he/she does not have sufficient means to pay for it. The Scheme also provides, either with the agreement or at the request of the Government, other forms of legal assistance and advice, including assigning lawyers to advise and represent defendants facing extradition and persons who are at risk of criminal prosecution as a result of giving incriminating evidence in Coroner's inquest. Duty lawyer fees are the fees payable to duty lawyers engaged under the Duty Lawyer Scheme.

5. On the prosecution side, the Department of Justice ("DoJ") also engages lawyers in private practice to prosecute criminal cases on fiat and draws reference to the same scale of criminal legal aid fees as that of LAD, so as to ensure that neither LAD nor DoJ would have unfair advantage in competing for the same pool of lawyers. At the MC level, the briefing out rates of MC "A" List¹ counsel make reference to criminal legal aid fees, while the rates for fiat counsel on DoJ's MC "B" List is tied to that for duty lawyer fees to maintain equality of arms.

Biennial review mechanism

6. Pursuant to the report by the then Secretary for the Treasury to the Legislative Council ("LegCo") Finance Committee in October 1992, the Fees are subject to review on a biennial basis to take into account changes in CPI(C) during the reference period. In conducting the biennial reviews, the Government takes into account mainly general price movement during the reference period and whether there has been difficulty in engaging the services of counsel and solicitors.

7. In the previous biennial review of 2018, the Government proposed to increase the Fees by 4.0% in accordance with the movement in CPI(C) during the reference period from July 2016 to July 2018. The proposed adjustments to criminal legal aid fees were approved by LegCo in June 2020. The new Fees came into effect on 20 July 2020.

¹ DoJ maintains two briefing-out lists for the magistracy level, i.e. the MC "A" List and MC "B" List. On the MC "B" List are counsel-on-fiat who substitute Court Prosecutors (CPs) to prosecute cases which are not on the list of "Scheduled Duties", whereas counsel-on-fiat on the MC "A" List are briefed to prosecute relatively more complicated cases which would otherwise be handled by Government Counsel.

2020 biennial review

8. The Government has completed the 2020 biennial review. Noting that the CPI(C) for the reference period (i.e. July 2018 to July 2020) increased by 2.7%, we propose to adjust the Fees upwards by 2.7% accordingly. The existing and proposed criminal legal aid fees and corresponding prosecution fees, rounded down to the nearest ten dollars, are listed in **Annex**.

9. For duty lawyer fees, the proposed adjustments are set out below –

| Fees categories | Existing fees | Proposed duty lawyer fees pursuant to the biennial review (to be adjusted upwards by 2.7%) |
|-------------------------------|----------------------|---------------------------------------------------------------------------------------------------|
| (a) Whole-day fee | \$11,850 | \$12,160 |
| (b) Half-day fee | \$5,900 | \$6,050 |
| (c) Pre-trial preparation fee | \$1,420 per hour | \$1,450 per hour |

10. As explained in paragraph 5 above, the briefing out rate for fiat counsel on the MC “B” List maintained by DoJ is tied to that for duty lawyers for equality of arms. In this connection, the fees for MC “B” List counsel will be adjusted according to the corresponding upward adjustments to duty lawyer fees as set out in paragraph 9 above. The existing and proposed fees (also rounded down to the nearest ten dollars) are as follows –

| Fees categories | Existing fees | Proposed prosecution fees (MC “B” list) pursuant to the biennial review (to be adjusted upwards by 2.7%) |
|------------------------|----------------------|-----------------------------------------------------------------------------------------------------------------|
| (a) Whole-day fee | \$11,850 | \$12,160 |
| (b) Half-day fee | \$5,900 | \$6,050 |

CONSULTATION

11. We have informed the Legal Aid Services Council, the Hong Kong Bar Association and the Law Society of Hong Kong of the outcome of the 2020 biennial review of the Fees.

FINANCIAL IMPLICATIONS

12. The proposed increase in criminal legal aid fees, prosecution fees and duty lawyer fees is estimated to incur an additional recurrent expenditure of around \$6.75 million each by LAD and DoJ on average and around \$2.7 million by DLS in a full year. The two departments and DLS will include the necessary provisions in the 2021-22 draft Estimates to meet the costs of the proposed fee increases and absorb the workload in effecting the changes in the Fees with their existing manpower resources.

WAY FORWARD

13. As regards criminal legal aid fees, we will submit the proposed amendments to the LACCR to the Criminal Procedure Rules Committee² (“Rules Committee”) chaired by the Chief Judge of the High Court for approval. Subject to the Rules Committee’s approval, we will move a resolution in LegCo to effect the legislative changes in the second quarter of 2021. Prosecution fees and duty lawyer fees will be adjusted administratively on the same date as for the implementation of the increased criminal legal aid fees.

² Section 9(1) of the Criminal Procedure Ordinance (Cap. 221) provides that “Rules and orders regulating the practice and procedure under this Ordinance shall be made by the Criminal Procedure Rules Committee, which shall consist of - (a) the Chief Judge, who shall be chairman; (b) a Justice of Appeal appointed by the Chief Judge; (c) a judge of the Court of First Instance appointed by the Chief Judge; (d) the Secretary for Justice or a legal officer nominated by him; (e) the Director of Legal Aid or a legal aid officer nominated by him; (f) a barrister nominated by the Hong Kong Bar Association; (g) a solicitor nominated by The Law Society of Hong Kong; (h) the Registrar, or a Senior Deputy Registrar or Deputy Registrar of the High Court appointed by the Chief Judge, who shall be secretary.”

ADVICE SOUGHT

14. Members are invited to note the outcome of the biennial review.

**Chief Secretary for Administration's Office
Legal Aid Department
February 2021**

Annex

Comparison of Current and Proposed Criminal Legal Aid Fees and Prosecution Fees (Current fees in force since 20 July 2020)

| Fee item | Department/ Service | Current maximum fee (\$) | Proposed maximum fee (\$) |
|-----------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------|--------------------------------|---------------------------------|
| 1. Magistrates' Courts | | | |
| (a) <u>Counsel or solicitor acting as advocate in committal proceedings</u> | | | |
| (i) Brief ⁱ | Legal Aid Department (LAD)/ Department of Justice (DoJ) | 15,890 | 16,310 |
| (ii) Refresher ⁱⁱ | LAD/DoJ | 7,930 per day | 8,140 per day |
| (iii) Conference | DoJ | 1,260 per hour | 1,290 per hour |
| (iv) Pre-trial Review (per review) | DoJ | 2,200 | 2,250 |
| (b) <u>Counsel or solicitor acting as advocate in preliminary inquiry</u> | | | |
| (i) Brief ⁱ | LAD | 15,890 | 16,310 |
| (ii) Refresher ⁱⁱ | LAD | 7,940 per day | 8,150 per day |
| (c) <u>Instructing solicitor in committal proceedings (including preliminary inquiry)</u> | | | |
| (i) Brief ⁱ | LAD | 3,560 | 3,650 |
| (ii) Refresher ⁱⁱ | LAD | 2,920 per day | 2,990 per day |
| (d) <u>Counsel or solicitor acting as advocate in place of court prosecutor in committal proceedings</u> | | | |
| (i) Brief | DoJ | 11,850 per day | 12,160 per day |

| Fee item | Department/ Service | Current maximum fee (\$) | Proposed maximum fee (\$) |
|-------------------------------------------------------------------------------------------------------------------|------------------------|----------------------------------------|----------------------------------------|
| | | 5,890 half day | 6,040 half day |
| (e) <u>Counsel or solicitor acting as advocate in committal proceedings</u> (Newly qualified lawyers) | | | |
| (i) Brief (for 2 weeks engagement) | DoJ | 79,520 | 81,660 |
| (ii) Brief after 2 weeks engagement (part-heard case) | DoJ | 11,850 per day 5,890 half day | 12,160 per day 6,040 half day |
| (f) <u>Counsel or solicitor acting as advocate in committal proceedings</u> (Newly qualified monolingual lawyers) | | | |
| (i) Brief | DoJ | 11,850 per day 5,890 half day | 12,160 per day 6,040 half day |

2. District Court (DC)

| | | | |
|------------------------------------|---------|--------------------------|--------------------------|
| (a) <u>Counsel</u> | | | |
| (i) Preparation ⁱⁱⁱ | LAD | 13,220 | 13,570 |
| (ii) Additional preparation | LAD | 6,830 per 4-hour unit | 7,010 per 4-hour unit |
| (iii) Court hearing | LAD/DoJ | 13,220 per day | 13,570 per day |
| (iv) Conference | LAD/DoJ | 1,680 per hour | 1,720 per hour |
| (v) Brief ^f | DoJ | 26,460 | 27,170 |
| (vi) Pre-trial Review (per review) | DoJ | 3,310 | 3,390 |
| (vii) Mention | DoJ | 2,200 | 2,250 |

| | Fee item | Department/ Service | Current maximum fee (\$) | Proposed maximum fee (\$) |
|--------|----------------------------------------------------------------------|--------------------------------|--------------------------------------------------------------------|------------------------------------------------------------------------------------------------|
| (viii) | Plea | DoJ | 2,200 | 2,250 |
| (ix) | Sentence | DoJ | 2,200 | 2,250 |
| (x) | Plea & Sentence | DoJ | 3,310 | 3,390 |
| (b) | <u>Instructing solicitor</u> | | | |
| (i) | Reading | LAD | 900 per hour | 920 per hour |
| (ii) | Preparation | LAD | 3,700 per 4-hour unit | 3,790 per 4-hour unit |
| (iii) | Court hearing | LAD | 7,410 per day | 7,610 per day |
| (iv) | Conference | LAD | 900 per hour | 920 per hour |
| (c) | <u>Solicitor acting as both advocate and instructing solicitor</u> | | | |
| (i) | Preparation ⁱⁱⁱ | LAD | 15,270 | 15,680 |
| (ii) | Additional preparation | LAD | 7,610 per 4-hour unit | 7,810 per 4-hour unit |
| (iii) | First day Court hearing | LAD | 15,270 per day | 15,680 per day |
| (iv) | Refresher ^{iv} | LAD | 16,940 per day | 17,390 per day |
| (d) | <u>Attendance at DC (other than for the trial, plea or sentence)</u> | | | |
| | | LAD | At a rate that appears to DLA to be reasonable and proper | At a rate that appears to the Director of Legal Aid (DLA) to be reasonable and proper |

| | Fee item | Department/ Service | Current maximum fee (\$) | Proposed maximum fee (\$) |
|-----------|------------------------------------------------------------------------------------------------------------------|--------------------------------|-----------------------------------------|------------------------------------------|
| 3. | Court of First Instance (CFI) | | | |
| (a) | <u>Counsel</u> | | | |
| (i) | Preparation ⁱⁱⁱ | LAD | 19,880 | 20,410 |
| (ii) | Additional preparation | LAD | 8,330 per 4-hour unit | 8,550 per 4-hour unit |
| (iii) | Court hearing | LAD/DoJ | 19,880 per day | 20,410 per day |
| (iv) | Conference | LAD/DoJ | 2,050 per hour | 2,100 per hour |
| (v) | Brief ^f | DoJ | 39,780 | 40,850 |
| (vi) | Pre-trial Review / other case management hearing, as appropriate (per hearing) | DoJ | 3,920 | 4,020 |
| (vii) | Mention | DoJ | 5,940 | 6,100 |
| (viii) | Plea | DoJ | 5,940 | 6,100 |
| (ix) | Sentence | DoJ | 5,940 | 6,100 |
| (x) | Plea & Sentence | DoJ | 7,070 | 7,260 |
| (b) | <u>Solicitor advocate with higher rights of audience (HRA) acting as both advocate and instructing solicitor</u> | | | |
| (i) | Preparation ⁱⁱⁱ | LAD | 22,960 | 23,570 |
| (ii) | Additional preparation | LAD | 9,290 per 4-hour unit | 9,540 per 4-hour unit |
| (iii) | First day Court hearing | LAD | 22,960 per day | 23,570 per day |
| (iv) | Refresher ^{iv} | LAD | 25,450 per day | 26,130 per day |

| | Fee item | Department/ Service | Current maximum fee (\$) | Proposed maximum fee (\$) |
|-------|-----------------------------------------------------------------------|--------------------------------|--------------------------------------------------------------------|-----------------------------------------------------------------|
| (c) | <u>Instructing solicitor</u> | | | |
| (i) | Reading | LAD | 1,080 per hour | 1,100 per hour |
| (ii) | Preparation | LAD | 4,360 per 4-hour unit | 4,470 per 4-hour unit |
| (iii) | Court hearing | LAD | 8,750 per day | 8,980 per day |
| (iv) | Conference | LAD | 1,080 per hour | 1,100 per hour |
| (d) | <u>Attendance at CFI (other than for the trial, plea or sentence)</u> | | | |
| | | LAD | At a rate that appears to DLA to be reasonable and proper | At a rate that appears to DLA to be reasonable and proper |

4. Appeals from a magistrate to CFI

Rates for counsel, solicitors and solicitor advocates with HRA are the same as those applicable to proceedings in CFI as set out in (3) above.

5. Appeals to the Court of Appeal (CA)

| | | | | |
|-------|--------------------------------------------------------------|---------|--------------------------|--------------------------|
| (a) | <u>Counsel (appeals from magistrates^v or CFI)</u> | | | |
| (i) | Preparation ⁱⁱⁱ | LAD | 26,530 | 27,240 |
| (ii) | Additional preparation | LAD | 8,330 per 4-hour unit | 8,550 per 4-hour unit |
| (iii) | Brief ^f | DoJ | 53,050 | 54,480 |
| (iv) | Court hearing | LAD/DoJ | 26,530 per day | 27,240 per day |
| (v) | Conference | LAD/DoJ | 2,050 per hour | 2,100 per hour |

| | Fee item | Department/ Service | Current maximum fee (\$) | Proposed maximum fee (\$) |
|-------|---------------------------------------------------------------------------------------------------------|--------------------------------|-----------------------------------------|------------------------------------------|
| (b) | <u>Counsel (appeals from DC)</u> | | | |
| (i) | Preparation ⁱⁱⁱ | LAD | 21,200 | 21,770 |
| (ii) | Additional preparation | LAD | 8,330 per 4-hour unit | 8,550 per 4-hour unit |
| (iii) | Brief ^f | DoJ | 42,400 | 43,540 |
| (iv) | Court hearing | LAD/DoJ | 21,200 per day | 21,770 per day |
| (v) | Conference | LAD/DoJ | 2,050 per hour | 2,100 per hour |
| (c) | <u>Solicitor advocate with HRA acting as both advocate and instructing solicitor (appeals from CFI)</u> | | | |
| (i) | Preparation ⁱⁱⁱ | LAD | 30,620 | 31,440 |
| (ii) | Additional preparation | LAD | 9,290 per 4-hour unit | 9,540 per 4-hour unit |
| (iii) | First day Court hearing | LAD | 30,620 per day | 31,440 per day |
| (iv) | Refresher ^{iv} | LAD | 33,950 per day | 34,860 per day |
| (d) | <u>Solicitor advocate with HRA acting as both advocate and instructing solicitor (appeals from DC)</u> | | | |
| (i) | Preparation ⁱⁱⁱ | LAD | 24,480 | 25,140 |
| (ii) | Additional preparation | LAD | 9,290 per 4-hour unit | 9,540 per 4-hour unit |
| (iii) | First day Court hearing | LAD | 24,480 per day | 25,140 per day |
| (iv) | Refresher ^{iv} | LAD | 27,140 per day | 27,870 per day |

| Fee item | Department/ Service | Current maximum fee (\$) | Proposed maximum fee (\$) |
|------------------------------------------------------------------------|--------------------------------|--------------------------------------------------------------------|-----------------------------------------------------------------|
| (e) <u>Instructing solicitor</u> | | | |
| (i) Reading | LAD | 1,460 per hour | 1,490 per hour |
| (ii) Preparation | LAD | 5,920 per 4-hour unit | 6,070 per 4-hour unit |
| (iii) Court hearing | LAD | 11,860 per day | 12,180 per day |
| (iv) Conference | LAD | 1,460 per hour | 1,490 per hour |
| (f) <u>Attendance at CA (other than for the appeal hearing)</u> | LAD | At a rate that appears to DLA to be reasonable and proper | At a rate that appears to DLA to be reasonable and proper |
| (g) <u>Counsel or solicitor settling notice of appeal^{vi}</u> | LAD | 5,250 | 5,390 |

6. Appeals (or applications for leave to appeal) to the Court of Final Appeal

| | | | |
|------------------------------|-----|--------------------------------------------------------------|-----------------------------------------------------------|
| <u>Counsel and solicitor</u> | LAD | Fees that appear to DLA to be reasonable and proper | Fees that appear to DLA to be reasonable and proper |
|------------------------------|-----|--------------------------------------------------------------|-----------------------------------------------------------|

7. Proceedings in DC or CFI or appeals

| | | | |
|-----------------------|-----|------------------------------------------------------------------------------------|---------------------------------------------------------------------------------|
| <u>Senior Counsel</u> | LAD | Fees at an hourly rate that appears to DLA to be reasonable and proper | Fees at an hourly rate that appears to DLA to be reasonable and proper |
|-----------------------|-----|------------------------------------------------------------------------------------|---------------------------------------------------------------------------------|

-
- i Covering preparation (regardless of duration) and the first day of attendance in Court.
 - ii For additional day(s) of attendance in Court subsequent to the first day as covered under the Brief fee.
 - iii Covering the first eight hours of preparation.
 - iv For additional day(s) of attendance in Court subsequent to the first day of Court hearing.
 - v In respect of an appeal, or any point in an appeal, reserved to be argued before CA under section 118 of the Magistrates Ordinance (Cap. 227).
 - vi That is, for preparing the notice of appeal for filing with the Court.