

For information on
25 February 1999

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

Legal Aid Policy Review 1997

Purpose

This paper sets out the Administration's considerations on certain issues of interest to Members. These issues are, namely, maintaining DLA's first charge, and our proposals on contribution rate and assessment of disposable income.

Issues and Considerations

A. *DLA's First Charge*

2. Under section 18A of the Legal Aid Ordinance, DLA will have a first charge on property recovered or preserved if there is unpaid contribution or the total contribution is less than the net liability of DLA in the case. A 10% interest will also be charged per year until the outstanding sum is repaid where such has been agreed to by the client. This arrangement allows aided persons who cannot fulfil their obligation to defer payment until they can afford to do so. The Working Group recommended that the above arrangement should be retained and that DLA should have the discretion to waive or reduce the interest accrued on the DLA's first charge if he is satisfied that it would cause serious hardship to the aided person, and that in the circumstances it is just and equitable to do so.

3. We appreciate that some aided persons may be in a difficult financial situation and have no other financial resources apart from the property recovered. We are aware of the views of some interested parties that in cases where the property recovered or preserved is the principal residence of the aided persons (such as persons involved in matrimonial cases), it is unlikely that the aided persons would dispose of the property and discharge the first charge. The first charge will not therefore facilitate contribution to DLA but will instead create a psychological burden on the aided persons.

4. We have considered alternative arrangements such as waiving the payment or reducing the amount due. However, it is important to treat all aided

persons fairly. Introducing alternative arrangements for the persons described in paragraph 3 above will be unfair to those who are able to pay up because the damages recovered are in cash. It should also be noted that the first charge in favour of the Government is not unique to legal aid cases. In other instances, the Government will also register a first charge on an individual's property if he cannot pay off the liability owed to the Government. One example is where the Government has carried out urgent and necessary building repair works and owners subsequently refuse to pay. Altering the arrangement for legal aid cases may entail wider implications than originally contemplated. We therefore propose to maintain our recommendation at paragraph 2 above.

B. Contribution Rates

5. One of the primary principles of our legal aid policy is that those with financial resources should contribute to the legal costs incurred by the Legal Aid Department ("LAD") in litigation engaged on the person's behalf. The Working Group recommended that, with the exception of applicants receiving CSSA, we should retain the current method of determining the contribution payable by a legally aided person under the standard scheme based on his financial resources. For cases under the Supplementary Legal Aid Scheme ("SLAS"), the Working Group recommended that aided persons should also be required to pay an interim contribution to the legal costs upon the granting of legal aid regardless of the outcome of the proceedings and that we retain the current arrangement for successful cases under which the aided persons have to contribute the sum of total legal costs incurred by the LAD and 15% of the property recovered or preserved, less costs recovered from the opposite party.

6. Some of the comments we received during the consultation exercise suggested that we should establish a non-contribution level, below which the aided person need not contribute towards the legal costs. The reasoning is that the legal aid scheme should not create an undue burden on aided persons with little financial resources. Some commented on the contribution arrangement for SLAS cases and suggested that the aided persons should not be asked to contribute both the legal costs and 15% of the property recovered and preserved. We are considering the implications of setting a non-contribution level and comments regarding contributions by persons aided by the SLAS, and welcome Members' views in this regard.

C. Assessment of Disposable Income

7. Under the existing arrangement, resources of a person applying for legal aid is determined by adding together his annual disposable income and disposable capital. For the purpose of determining disposal income, it is defined as the net income left after various permitted deductions such as rent, rates, and living expenses

for the applicant and his/her dependants have been made. For living expenses, while CSSA rates are used under the current arrangement, the Working Group recommended using the average expenditure of the lowest 50% households as revealed in the Household Expenditure Survey. The respective personal allowances by household size under the two different indices are as follows -

| <u>Scenario</u> | <u>Personal allowances by household size</u> | | | |
|-----------------|--|----------|----------|----------|
| | <u>1</u> | <u>2</u> | <u>3</u> | <u>4</u> |
| Current Index | 1,760 | 3,202 | 4,643 | 6,084 |
| Proposed Index | 3,651 | 5,847 | 7,750 | 8,666 |

The new index is considered to be more appropriate than the CSSA rates in describing the expenditure pattern of lower-middle class households (being the target group for our legal aid services). Our data also indicates that more households will become financially eligible for legal aid under the new index. Comments on this proposal suggested that we should use the median household expenditure. We do not consider this to be an appropriate indicator since the median figure also includes the wealthiest sector of the society which is not the target group for our legal aid services.

Way Forward

8. Subject to Members' comments, the Working Group aims to finalise its recommendations as soon as practicable and proceed with the necessary legislative amendments. In the process, we shall also take into account the views expressed by Members at the meeting of 15 December 1998 on the extension of legal aid to next of kin involved in coroner's inquests ordered to be held by the Secretary for Justice, and on enhanced protection of Legal Aid Fund. It is our intention to introduce the relevant amendment bill within this current legislative session since the recommendation will improve existing legal aid services and enable more households to benefit from such services.

Administration Wing
Chief Secretary for Administration's Office
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