

立法會
Legislative Council

LC Paper No. CB(4)966/14-15(01)

Ref : CB4/SS/12/14

**Subcommittee on Legal Aid (Assessment of Resources and Contributions)
(Amendment) Regulation 2015**

Background brief prepared by the Legislative Council Secretariat

Purpose

This paper gives an account of the past discussions of the Panel on Administration of Justice and Legal Services ("the AJLS Panel") on the proposed amendments to the Legal Aid (Assessment of Resources and Contributions) Regulations (Cap. 91B).

Background

2. The Legal Aid Department ("LAD") administers the Ordinary Legal Aid Scheme ("OLAS") and the Supplementary Legal Aid Scheme ("SLAS") in accordance with the Legal Aid Ordinance (Cap. 91). Under section 5(1) of Cap. 91, OLAS is available for any person whose assessed financial resources¹ do not exceed \$269,620 for specified civil proceedings. Under section 5A of Cap. 91, SLAS is available for any person to whom legal aid is not available under section 5 because his/her financial resources are in excess of \$269,620 but not in excess of \$1,348,100.

3. As legal aid services are supported by public funds, aided persons, depending on the level of their assessed financial resources, are required to pay a contribution proportionate to their means. The scales of contribution rates under the OLAS are prescribed in Part I of Schedule 3 to Cap. 91B.

4. Section 18(1)(b) of Cap. 91 provides that an aided person shall pay to the Director of Legal Aid ("DLA") a contribution in a case other than SLAS, i.e. OLAS, if so required by the Director, towards the sums that may be or become

¹ Under regulation 2A of Cap. 91B, the financial resources of an aided person shall be assessed by multiplying that person's monthly disposable income by 12 and adding his/her disposable capital to that sum.

payable on his/her account by the Director. Regulation 13 of Cap. 91B provides that the maximum contribution of an aided person under section 18(1)(b) of Cap. 91 shall be a contribution in respect of his/her financial resources assessed in accordance with Part 1 of Schedule 3 to Cap. 91B. Both the maximum contribution and the ranges of financial resources are expressed in absolute amounts.

Proposed amendments to Schedule 3 to Cap. 91B

5. At the meeting of the AJLS Panel held on 16 February 2015, members were briefed by the Administration on the proposed amendments to Schedule 3 to Cap. 91B to revise the bandwidths of assessed financial resources of aided persons in relation to the contributions payable under the OLAS, so that:

- (a) the bandwidths would be represented as percentages of the financial eligibility limit ("FEL") of the OLAS rather than the current absolute figures; and
- (b) a more evenly distribution of bandwidths could be maintained.

6. According to the Administration, the proposed amendments to Schedule 3 to Cap. 91B would avoid the need of regular legislative amendments in future to keep the bandwidths up-to-date with the FEL under the OLAS as might be revised from time to time.

Deliberations of the AJLS Panel

7. Members noted that under the proposal, the threshold of assessed financial resources which contributions began to be payable would be changed to 12.5% of the OLAS FEL (i.e. \$33,702.5 by applying the current OLAS FEL) as opposed to the current threshold setting at \$20,000. According to the Administration, in 2013, 7 195 out of 10 024 aided persons (or 72%) needed not pay any contribution at all as their assessed financial resources were assessed to be below \$20,000. Under the proposal, the percentage of aided persons who did not need to pay any contribution would increase by 9% to 7 847 based on the statistics in 2013. Aided persons with assessed financial resources exceeding 12.5% of the OLAS FEL would need to pay a contribution ranging from \$674 (i.e. \$269,620 x 12.5% x 2%) to \$67,405 (i.e. \$269,620 x 25%). Further, for aided persons of cases in which a breach of the Hong Kong Bill of Rights Ordinance (Cap. 383) or an inconsistency with the International Covenant on Civil and Political Rights as applied to Hong Kong was an issue ("human rights cases"), their contribution amount would range from \$80,886 (i.e. \$269,620 x 30%) to 67% of his/her assessed financial resources.

8. Members generally supported the proposed amendments to Schedule 3 to Cap. 91B. Other views expressed by members on the legal aid services and the Administration's responses are set out in the ensuing paragraphs.

9. A member urged the Administration to do more in helping the "sandwich" class to gain access to justice. The Administration was urged to waive the FELs of OLAS and SLAS for applicants in cases which sought to clarify a point of law/legal principle which affected the general public, and to consider adopting the contingency fee regime in Hong Kong so that persons not qualified for legal aid could still have access to legal services from lawyers in the private sector.

10. The Administration advised that the policy objective of legal aid was to ensure that no one with reasonable grounds for pursuing or defending a legal action was denied access to justice because of a lack of means. As legal aid services were funded by public funds, applicants were required by law to satisfy both the means and merits tests in order to be qualified for legal aid. There were statutory allowances and deductibles applicable when assessing the financial resources of the legal aid applicants. However, DLA had the discretion under section 5AA of Cap. 91 to waive the OLAS FEL for applicants in meritorious human rights cases. A statutory appeal mechanism was also in place as appeals against LAD's decisions in legal aid applications could be lodged with the Registrar of the High Court whose decision should be final. The existing legal aid framework had already strived to balance the prudent use of public resources and applicants' access to justice.

11. Whilst agreeing that DLA should have the discretion to waive the OLAS FEL for applicants in meritorious human rights cases, question was raised as to whether there was any mechanism in place to ensure legal aid would not be abused by such applicants. For instance, it was noted that certain applicants applied legal aid on multiple occasions and that a selected group of legal professionals would often be nominated to handle the cases.

12. The Administration advised that there were multiple mechanisms and safeguards to ensure the independent and fair handling of legal aid cases. In particular, LAD had to assess legal aid applications in accordance with the statutory means and merits tests. Safeguards were also in place to ensure the proper and fair provision of legal aid services, and LAD's provision of legal aid services was overseen by the independent Legal Aid Services Council ("LASC").

13. The Administration was urged to review the mechanism for seeking opinion from lawyers in private practice on the merits of legal aid applications, as well as the appeal mechanism against DLA's decisions.

14. A member was of the view that in order to improve access to justice for

persons of limited means, the existing FELs of OLAS and SLAS should be raised and the scope of SLAS should also be expanded to cover more types of cases, such as defamatory libel cases. The LAD should also review the assessment of financial resources of applicants to enable more people to gain access to legal aid. The member pointed out that at present, the determination of an applicant's financial resources would include those of the applicant's spouse, even though the applicant had separated from his/her spouse. Another example was that in determining an application for a probate case, the LAD would assess the financial resources of all of the beneficiaries of the estate concerned. As such, if, say, only the financial resources one of the five beneficiaries exceeded the FEL of OLAS or SLAS, legal aid would be refused.

15. The Administration advised that the scope of SLAS had been substantially expanded in November 2012 and the Government had already invited the LASC to further examine the scope of SLAS with a view to presenting a new round of recommendations to the Government.

Advice sought

16. Members are invited to note the above deliberations of the AJLS Panel.

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13 May 2015