

**For discussion on
28 January 2019**

**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 2018 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 4.0% to reflect the accumulated change in the Consumer Price Index (C) (CPI(C)) recorded between July 2016 and July 2018. 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 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 2016, the Government proposed to increase the Fees by 4.0% in accordance with the movement in CPI(C) during the reference period from July 2014 to July 2016. We briefed this Panel on the outcome of the biennial review in December 2016 and the proposed adjustments to criminal legal aid fees were approved by LegCo in November 2017. The new Fees came into effect on 3 April 2018.

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 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.

2018 biennial review

8. The Government has completed the 2018 biennial review. Noting that the CPI(C) for the reference period (i.e. July 2016 to July 2018) increased by 4.0%, we propose to adjust the Fees upwards by 4.0% accordingly. The impact of general price movement between July 2018 and July 2020 will be reflected in the next biennial review. 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, as set out in another paper for this Panel for the meeting on 28 January 2019, the Government has completed a review and aims to adjust the fees upwards by 56.2% with effect from 1 April 2019. The existing and proposed duty lawyer fees (also rounded down to the nearest ten dollars), reflecting the adjustments pursuant to both this duty lawyer fees review and the current biennial review, are set out below –

Fees categories	Existing fees	Proposed duty lawyer fees pursuant to the duty lawyer fees review completed in 2018 (to be adjusted upwards by 56.2% with effect from 1 April 2019)	Proposed duty lawyer fees pursuant to the biennial review (to be adjusted upwards by 4.0%)
(a) Whole-day fee	\$7,300	\$11,400	\$11,860
(b) Half-day fee	\$3,630	\$5,670	\$5,900
(c) Pre-trial preparation fee	\$880 per hour	\$1,370 per hour	\$1,420 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 review of duty lawyer fees completed in 2018	Proposed prosecution fees (MC “B” list) pursuant to the biennial review (to be adjusted upwards by 4.0%)
(d) Whole-day fee	\$7,300	\$11,400	\$11,860
(e) Half-day fee	\$3,630	\$5,670	\$5,900

11. The following table summarises the adjustments to the Fees in the past five biennial reviews (which were all based on the CPI(C) movement of the then reference period) and the adjustment proposed for the current review –

Year	Adjustment
2008 review	+8.3%
2010 review	+1.6%
2012 review	+9.3%
2014 review	+7.7%
2016 review	+4.0%
2018 review	+4.0% (proposed)

CONSULTATION

12. 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 2018 biennial review of the Fees.

FINANCIAL IMPLICATIONS

13. The proposed increase in criminal legal aid fees, prosecution fees and duty lawyer fees is estimated to incur an additional recurrent expenditure of around \$9.0 million each by LAD and DoJ and around \$2.5 million by DLS in a full year. The two departments and DLS will

include the necessary provisions in the 2019-20 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

14. 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 2019 and appoint the commencement date as soon as possible upon LegCo's approval. 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.

ADVICE SOUGHT

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

Chief Secretary for Administration's Office
Legal Aid Department
January 2019

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."

**Comparison of Current and Proposed
Criminal Legal Aid Fees and Prosecution Fees**
(Current fees in force since 3 April 2018)

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)	15,280	15,890
(ii)	Refresher ⁱⁱ	LAD/DoJ	7,630 per day	7,930 per day
(iii)	Conference	DoJ	1,220 per hour	1,260 per hour
(iv)	Pre-trial Review (per review)	DoJ	2,120	2,200
(b) <u>Counsel or solicitor acting as advocate in preliminary inquiry</u>				
(i)	Brief ⁱ	LAD	15,280	15,890
(ii)	Refresher ⁱⁱ	LAD	7,640 per day	7,940 per day
(c) <u>Instructing solicitor in committal proceedings (including preliminary inquiry)</u>				
(i)	Brief ⁱ	LAD	3,430	3,560
(ii)	Refresher ⁱⁱ	LAD	2,810 per day	2,920 per day
(d) <u>Counsel or solicitor acting as advocate in place of court prosecutor in committal proceedings</u>				
(i)	Brief	DoJ	7,300 per day	7,590 per day

	Fee item	Department/ Service	Current maximum fee (\$) 3,620 half day	Proposed maximum fee (\$) 3,760 half day
(e)	<u>Counsel or solicitor acting as advocate in committal proceedings</u> (Newly qualified lawyers)			
(i)	Brief (for 2 weeks engagement)	DoJ	48,960	50,910
(ii)	Brief after 2 weeks engagement (part-heard case)	DoJ	7,300 per day 3,620 half day	7,590 per day 3,760 half day
(f)	<u>Counsel or solicitor acting as advocate in committal proceedings</u> (Newly qualified monolingual lawyers)			
(i)	Brief	DoJ	7,300 per day 3,620 half day	7,590 per day 3,760 half day

2. District Court (DC)

(a)	<u>Counsel</u>			
(i)	Preparation ⁱⁱⁱ	LAD	12,720	13,220
(ii)	Additional preparation	LAD	6,570 per 4-hour unit	6,830 per 4-hour unit
(iii)	Court hearing	LAD/DoJ	12,720 per day	13,220 per day
(iv)	Conference	LAD/DoJ	1,620 per hour	1,680 per hour
(v)	Brief ^f	DoJ	25,450	26,460
(vi)	Pre-trial Review (per review)	DoJ	3,190	3,310
(vii)	Mention	DoJ	2,120	2,200

	Fee item	Department/ Service	Current maximum fee (\$)	Proposed maximum fee (\$)
	(viii) Plea	DoJ	2,120	2,200
	(ix) Sentence	DoJ	2,120	2,200
	(x) Plea & Sentence	DoJ	3,190	3,310
(b)	<u>Instructing solicitor</u>			
	(i) Reading	LAD	870 per hour	900 per hour
	(ii) Preparation	LAD	3,560 per 4-hour unit	3,700 per 4-hour unit
	(iii) Court hearing	LAD	7,130 per day	7,410 per day
	(iv) Conference	LAD	870 per hour	900 per hour
(c)	<u>Solicitor acting as both advocate and instructing solicitor</u>			
	(i) Preparation ⁱⁱⁱ	LAD	14,690	15,270
	(ii) Additional preparation	LAD	7,320 per 4-hour unit	7,610 per 4-hour unit
	(iii) First day Court hearing	LAD	14,690 per day	15,270 per day
	(iv) Refresher ^{iv}	LAD	16,290 per day	16,940 per day
(d)	<u>Attendance at DC (other than for the trial, plea or sentence)</u>			
		LAD	At a rate that appears to the Director of Legal Aid (DLA) to be reasonable and proper	At a rate that appears to 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	19,120	19,880
(ii)	Additional preparation	LAD	8,010 per 4-hour unit	8,330 per 4-hour unit
(iii)	Court hearing	LAD/DoJ	19,120 per day	19,880 per day
(iv)	Conference	LAD/DoJ	1,980 per hour	2,050 per hour
(v)	Brief ⁱ	DoJ	38,250	39,780
(vi)	Pre-trial Review / other case management hearing, as appropriate (per hearing)	DoJ	3,770	3,920
(vii)	Mention	DoJ	5,720	5,940
(viii)	Plea	DoJ	5,720	5,940
(ix)	Sentence	DoJ	5,720	5,940
(x)	Plea & Sentence	DoJ	6,800	7,070
(b) <u>Solicitor advocate with higher rights of audience (HRA) acting as both advocate and instructing solicitor</u>				
(i)	Preparation ⁱⁱⁱ	LAD	22,080	22,960
(ii)	Additional preparation	LAD	8,940 per 4-hour unit	9,290 per 4-hour unit
(iii)	First day Court hearing	LAD	22,080 per day	22,960 per day

	Fee item	Department/ Service	Current maximum fee (\$)	Proposed maximum fee (\$)
	(iv) Refresher ^{iv}	LAD	24,480 per day	25,450 per day
(c)	<u>Instructing solicitor</u>			
	(i) Reading	LAD	1,040 per hour	1,080 per hour
	(ii) Preparation	LAD	4,200 per 4-hour unit	4,360 per 4-hour unit
	(iii) Court hearing	LAD	8,420 per day	8,750 per day
	(iv) Conference	LAD	1,040 per hour	1,080 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	25,510	26,530
	(ii) Additional preparation	LAD	8,010 per 4-hour unit	8,330 per 4-hour unit
	(iii) Brief ^f	DoJ	51,010	53,050

	Fee item	Department/ Service	Current maximum fee (\$)	Proposed maximum fee (\$)
(iv)	Court hearing	LAD/DoJ	25,510 per day	26,530 per day
(v)	Conference	LAD/DoJ	1,980 per hour	2,050 per hour
(b)	<u>Counsel (appeals from DC)</u>			
(i)	Preparation ⁱⁱⁱ	LAD	20,390	21,200
(ii)	Additional preparation	LAD	8,010 per 4-hour unit	8,330 per 4-hour unit
(iii)	Brief ⁱ	DoJ	40,770	42,400
(iv)	Court hearing	LAD/DoJ	20,390 per day	21,200 per day
(v)	Conference	LAD/DoJ	1,980 per hour	2,050 per hour
(c)	<u>Solicitor advocate with HRA acting as both advocate and instructing solicitor (appeals from CFI)</u>			
(i)	Preparation ⁱⁱⁱ	LAD	29,450	30,620
(ii)	Additional preparation	LAD	8,940 per 4-hour unit	9,290 per 4-hour unit
(iii)	First day Court hearing	LAD	29,450 per day	30,620 per day
(iv)	Refresher ^{iv}	LAD	32,650 per day	33,950 per day
(d)	<u>Solicitor advocate with HRA acting as both advocate and instructing solicitor (appeals from DC)</u>			
(i)	Preparation ⁱⁱⁱ	LAD	23,540	24,480
(ii)	Additional preparation	LAD	8,940 per 4-hour	9,290 per 4-hour

	Fee item	Department/ Service	Current maximum fee (\$) unit	Proposed maximum fee (\$) unit
(iii)	First day Court hearing	LAD	23,540 per day	24,480 per day
(iv)	Refresher ^{iv}	LAD	26,100 per day	27,140 per day
(e)	<u>Instructing solicitor</u>			
(i)	Reading	LAD	1,410 per hour	1,460 per hour
(ii)	Preparation	LAD	5,700 per 4-hour unit	5,920 per 4-hour unit
(iii)	Court hearing	LAD	11,410 per day	11,860 per day
(iv)	Conference	LAD	1,410 per hour	1,460 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	5,050	5,250

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
------------------------------	-----	---	---

Fee item	Department/ Service	Current maximum fee (\$)	Proposed maximum fee (\$)
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.