

法律援助的政策及策略

Legal Aid Policy & Strategy

法律援助輔助計劃的檢討

Review of Supplementary Legal Aid Scheme

法律援助的目標是確保所有具合理理據提出訴訟或抗辯的人士，不會因缺乏經濟能力而無法尋求公義。任何人士如欲獲得法援，必須通過《法律援助條例》規定的經濟審查及案情審查。近年，普通法律援助計劃（「普通計劃」）及法律援助輔助計劃（「輔助計劃」）的財務資格限額已大幅提升，其援助範圍亦有所擴大。行政當局現正不斷吸收新增援助訴訟類別的經驗，並已邀請本局就「輔助計劃」的援助範圍作進一步檢討及提出新一輪的建議。為此，本局成立了一個工作小組以跟進是次檢討。

工作小組分別於2014年3月18日、2014年5月26日及2014年6月27日開會討論，其後透過電郵交流關於進一步擴大「輔助計劃」的援助範圍的必要性及可行性，以及如需擴大援助範圍，應新增哪類個案。

在檢討過程中，工作小組研究了持分者的書面意見及看法，包括立法會司法及法律事務委員會以及兩個法律專業團體，尤其是香港大律師公會於2010年7月20日及2012年11月5日發出有關議題的立場書。工作小組亦檢視了法律援助署（「法援署」）提供的相關統計數字以及其他資料。

The purpose of legal aid is to ensure that no one with reasonable grounds for pursuing or defending a legal action is denied access to justice because of a lack of means. To qualify for legal aid, a person is required to satisfy the means and merits tests as provided by the Legal Aid Ordinance. In recent years, the financial eligibility limits (FELs) of the Ordinary Legal Aid Scheme (OLAS) and the Supplementary Legal Aid Scheme (SLAS) have increased substantially, and the scope of OLAS and SLAS has also been expanded. Whilst the Administration is still gaining experience on the newly added proceedings, the Council was invited to conduct a further review on the scope of SLAS with a view to presenting a new round of recommendations to the Administration. Towards this end, the Council has formed a working group to follow up on the review.

The working group met on a total of 3 occasions i.e. 18 March 2014, 26 May 2014 and 27 June 2014, and exchanged emails thereafter to consider whether it was necessary and feasible to further expand the scope of SLAS and, if so, which type(s) of cases should be included.

In the course of the review, the working group studied the written comments and views already expressed by stakeholders including the Panel of Administration of Justice and Legal Services (AJLS) of Legislative Council (LegCo) and the two legal professional bodies, in particular the Hong Kong Bar Association's position papers on this topic dated 20 July 2010 and 5 November 2012. The working group also examined relevant statistics provided by the Legal Aid Department (LAD) and reviewed other materials.

工作小組於2015年1月在本局會議上提交了初步檢討報告。為了促進進一步討論，本局向民政事務局（「民政局」）索取補充資料，並於2015年3月收到回覆。本局會在調整報告後繼續討論。

The working group submitted its report on the preliminary findings of the review to the full Council for consideration at its meeting held in January 2015. To facilitate further discussion, supplementary information was sought from the Home Affairs Bureau (HAB). Its return was received in March 2015 and is being considered by the working group. The Council will continue the discussion after the report has been fine tuned.

在《法律援助(評定資源及分擔費用)規例》下用作釐定受助人應繳分擔費用比率的經評定財務資源組別 Bandwidths of Assessed Financial Resources for Determining Contribution Payable under the Legal Aid (Assessment of Resources and Contributions) Regulations

法律援助服務由公帑支持運作。受助人依照其經評定的財務資源水平，必須繳付與其經濟狀況相稱的分擔費用。《法律援助規例》（《規例》）中附表3第I部訂明「普通計劃」下相關分擔費用的比率。

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 the Legal Aid Regulations (LAR).

《規例》附表3第I部(a)及(b)段列出「普通計劃」下受助人一般須繳付的分擔費用比率，而(c)段則列出人權案件中受助人的財務資源如超過「普通計劃」財務資格限額時應繳付的分擔費用比率。現有《規例》的組別列表中，除了「普通計劃」的財務資格限額是以「《法律援助條例》第5(1)條指明的財務資源款額」作文字表述外，其餘各財務資源組別均以實際金額數字列出。

Paragraphs (a) and (b) of Part I of Schedule 3 to the LAR set out the contribution rates for OLAS aided persons in general, while paragraph (c) sets out the contribution rates for aided persons of human rights cases whose financial resources may exceed the OLAS FEL. Except for the references to the OLAS FEL as prescribed under Section 5(1) of the LAO, the rest of the bandwidths are set out in absolute dollar figures in the bandwidth tables of the current LAR.

鑑於現時的資源組別均以實際金額數字列出，隨著「普通計劃」的財務資格限額近年大幅調高，「普通計劃」財務資格限額因而如下表(i)列所示已幾乎達到高一級別的資源組別的上限（269,700元）：

With the current resources bandwidths set out in absolute dollar figures and the significant increase in the OLAS FEL in recent years, the OLAS FEL has now almost caught up to the ceiling of the next higher resources band (\$269,700) as shown in row (i) in the table below-

	經評定財務資源 Assessed financial resources		應繳分擔費用 - 金額 / 經評定財務資源百分比 Payable contribution – amount / percentage of assessed financial resources
	超出 Exceeding	不超過 Not exceeding	
(a)	≤ \$20,000		\$0
(b)	\$20,000	\$40,000	\$1,000
(c)	\$40,000	\$60,000	\$2,000
(d)	\$60,000	\$80,000	5%
(e)	\$80,000	\$100,000	10%
(f)	\$100,000	\$120,000	15%
(g)	\$120,000	\$144,000	20%
(h)	\$144,000	「普通計劃」 財務資格限額 OLAS FEL [\$269,620]	25%
(i)	「普通計劃」 財務資格限額 OLAS FEL [\$269,620]	\$269,700	30%
(j)	\$269,700	\$369,700	35%
(k)	\$369,700	\$469,700	40%
(l)	\$469,700	\$569,700	45%
(m)	\$569,700	\$669,700	50%
(n)	\$669,700	\$769,700	55%
(o)	\$769,700	\$869,700	60%
(p)	\$869,700	\$1,200,000	65%
(q)	\$1,200,000	-	67%



行政當局認為直至修訂資源組別前，「普通計劃」的財務資格限額將無法進一步上調，否則便會出現有關資源組別「下限」（即(i)列左欄）高於同一資源組別「上限」（即(i)列中間一欄）的異常情況。

為徹底解決問題，行政當局建議修訂組別列表，使資源組別改以相對「普通計劃」財務資格限額的百分率顯示，取代目前以實際金額數字顯示的做法。如日後「普通計劃」財務資格限額有所改動，有關組別亦會自動作出相應調整。

除此以外，由於資源組別中近年只有「普通計劃」財務資格限額曾作上調，以致現時的組別分布不均，部分組別涵蓋的經評定財務資源幅度很大，但有些組別涵蓋的幅度則相當小。

The Administration found it unable to further adjust the OLAS FEL upward until the bandwidths are amended, since otherwise, there will be an anomaly where the “lower end” of the band (i.e. left column) in row (i) will be higher than the “upper end” of that band (i.e. middle column).

To resolve the problem once and for all, the Administration proposed to amend the bandwidth tables so that the resources bandwidths will be represented as percentages of the OLAS FEL rather than absolute dollar figures. The bandwidths would then automatically be adjusted upon any future OLAS FEL adjustments.

Besides, since only the OLAS FEL has been adjusted upward in the amendment exercises in recent years, the resources bandwidths are now unevenly distributed, with some bands covering a very wide range of assessed financial resources while some other covering a very narrow range.

As such, the Administration also proposed to take the opportunity to adjust the distribution of resources bandwidths so as to maintain a more even distribution. To maintain the real value of the first two tiers of contribution payable in relation to the OLAS FEL, the Administration also proposed to amend the current fixed contribution amounts of \$1,000 and \$2,000 to 2% and 2.5% of the aided persons’ assessed financial resources respectively.

The threshold of assessed financial resources exceeding which contributions begin to be payable is currently set at \$20,000, and the Administration proposed to change it to 12.5% of the OLAS FEL (i.e. \$33,702.5 by applying the current OLAS FEL). In 2013, 7 195 out of 10 024 aided persons (or 72%) need not pay any contribution at all as their financial resources were assessed to be

因此，行政當局建議藉此機會調整資源組別，以維持較平均的分布。為維持首兩級應繳分擔費用相對「普通計劃」財務資格限額的實際價值，當局亦建議把現行1,000元和2,000元的定額分擔費用分別修訂為受助人經評定財務資源的2%和2.5%。

目前受助人的經評定財務資源如超過20,000元便須繳付分擔費用。行政當局建議把有關門檻改為「普通計劃」財務資格限額的12.5%（按現有「普通計劃」財務資格限額計算即為33,702.5元）。2013年，在10 024名受助人當中，共有7 195名受助人（即72%）因其經評定財務資源低於20,000元而無須繳付分擔費用。在此建議下，按2013年的數字計算，無須繳付任何分擔費用的受助人的百分比將上升9%至7 847人。經評定財務資源超出「普通計劃」財務資格限額的12.5%的受助人，因應其經評定的財務資源水平，則須繳付由674元（即 $269,620 \times 12.5\% \times 2\%$ ）至67,405元（即 $269,620 \times 25\%$ ）不等的分擔費用。另一方面，人權案件中財務資源超出「普通計劃」財務資格限額的受助人，其分擔費用將介乎80,886元（即 $269,620 \times 30\%$ ）至其經評定財務資源的67%不等。

民政局在2015年2月向司法及法律事務委員會簡介上述建議前，已向

below \$20,000. Under the proposal, the percentage of aided persons who do not need to pay any contribution will 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 will need to pay a contribution ranging from \$674 (i.e. $\$269,620 \times 12.5\% \times 2\%$) to \$67,405 (i.e. $\$269,620 \times 25\%$), depending on the level of their assessed financial resources. Further, for the aided persons of human rights cases whose financial resources exceed the OLAS FEL, their contribution amount would range from \$80,886 (i.e. $\$269,620 \times 30\%$) to 67% of his/her assessed financial resources.

The Council was briefed by HAB on the above proposal before its briefing to the AJLS Panel in February 2015 on



法援局簡介其就調整經評定財務資源組別而提出修訂規例的建議。與此同時，法援局獲悉行政當局在修訂《法律援助規例》後，亦將透過立法會決議案方式上調「普通計劃」及「輔助計劃」的財務資格限額，以反映丙類消費物價指數的變動。上次於2013年6月實施的調整，已計及丙類消費物價指數在2011年7月至2012年7月期間錄得的3.7%升幅。在今次的調整中，行政當局建議把「普通計劃」和「輔助計劃」的財務資格限額上調7.7%至290,380元和1,451,900元，以反映丙類消費物價指數在2012年7月至2014年7月期間錄得的累積變動。行政當局將於2015年第二季動議立法會決議案以調整「普通計劃」及「輔助計劃」的財務資格限額。

its plan to introduce the amendment regulations for the revised set of bandwidths of assessed financial resources. On the same occasion, the Council was also given to note that upon making the amendments to the LAR as set out above, the Administration would adjust the OLAS FEL, together with the SLAS FEL, upward to reflect the CPI(C) changes by way of a LegCo resolution. The last adjustment implemented in June 2013 had taken into account the CPI(C) change of +3.7% between July 2011 and July 2012. For the coming adjustment, the Administration proposed to increase the OLAS and SLAS FELs by 7.7% to \$290,380 and \$1,451,900 respectively to reflect the accumulated change in CPI(C) recorded between July 2012 and July 2014. The Administration would move the LegCo resolution to adjust the FELs of OLAS and SLAS in the second quarter of 2015.

刑事法律援助費用的檢討

Review of Criminal Legal Aid Fees

法援署聘用私人執業大律師和律師處理刑事訴訟法律援助案件。《刑事訴訟程序條例》(第221章)的附屬法例《刑事案件法律援助規則》第21條訂明支付該等律師的費用表和費用的評估機制。該費用表在法律上只對法援署具約束力，但律政司在行政上採納同一費用表聘用私人執業大律師代表政府在刑事案件中進行起訴，以確保法援署或律政司

LAD engages counsel and solicitors in private practice to undertake litigation work in respect of criminal legal aid cases. The scale of fees payable to these lawyers as well as the fee assessment mechanism are prescribed in Rule 21 of the Legal Aid in Criminal Cases Rules under the Criminal Procedure Ordinance (Cap. 221). While legally the scale of fees only binds LAD, the Department of Justice (DoJ) adopts the same fee scale on an administrative basis in engaging counsel in private practice to prosecute in criminal cases on behalf of the Government, with a view

在聘用律師時均不會較對方佔優。同樣地，當值律師根據當值律師計劃擔任法律代表的費用，亦參照律政司聘用大律師在裁判法院擔任控方律師所支付的費用計算。

政府當局自1992年起，每兩年檢討該等費用一次，當中會考慮期內消費物價的變動、聘用私人執業大律師及律師服務的實際或預計困難以及其他因素，如整體經濟狀況和辦公室租金等。上一次的兩年檢討是在2012年進行。

如去年年報所述，行政當局計劃於2014年進行一次全面檢討。民政局已於2014年3月成立一個由香港大律師公會、香港律師會、以及法律援助署和律政司的代表組成的工作小組，檢討刑事法律援助費用款額。民政局在本局2015年3月17日的會議上透露，兩個法律專業團體已經就檢討刑事法律援助費用制度提交意見書，而工作小組亦於2015年3月2日的第二次會議中檢視有關文件。行政當局會研究該意見書並在兩至三個月內召開下一次工作小組會議。行政當局會視乎工作小組的商議工作和討論進度而提交法例修訂，以落實檢討建議。民政局會繼續向本局通報有關進度。

to ensuring that neither LAD nor DoJ would have any advantage in competing for lawyers. For the same reason, fees for duty lawyers providing legal representation under the Duty Lawyer Scheme are also based on the brief fee payable by DoJ to engage counsel to appear in the Magistrates' Courts as prosecuting counsel.

Since 1992, the Administration has been reviewing these fees on a biennial basis, having regard to changes in consumer prices during the reference period, actual or anticipated difficulties in engaging the services of private counsel and solicitors, and other factors such as the state of the economy and office rentals. The last biennial review was conducted in 2012.

As stated in the last annual report, the Administration initiated a comprehensive review in 2014. In March 2014, HAB formed a working group comprising representatives from the Hong Kong Bar Association and the Law Society of Hong Kong, as well as government representatives from LAD and DoJ to review the rates of criminal legal aid fees. At the Council meeting held on 17 March 2015, HAB briefed the Council that the two legal professional bodies had made submissions on the review of criminal legal aid fees system and the working group held its second meeting on 2 March 2015 to go over the submissions. The Administration would study the submissions and aim at convening the next working group meeting in two to three months' time. Subject to the deliberations and progress of discussions at the working group, the Administration would introduce legislative amendments to implement the recommendations of the review. HAB would continue to keep the Council informed of the progress.



已除名的律師申請再次加入法律援助律師名冊 Lawyers Removed from Panel Applying to Re-join the Legal Aid Panel

法律援助證書簽發後，法律援助署署長（署長）便可委派法律援助律師代表受助人。如果署長不代表受助人行事，他或受助人可從該署管理的法律援助律師名冊中選擇一名大律師或律師作為受助人的代表。

持有有效執業證書的大律師或律師均可申請加入法律援助律師名冊，署長必須有足夠理由相信該律師曾處理案件失當或專業操守欠佳，才可拒絕他們加入名冊的申請。現時，名冊上有逾800名大律師及2 200名律師。大律師或律師在以下

Where a legal aid certificate is granted, the Director of Legal Aid may act for the aided person through lawyers employed in LAD. If the Director does not act for the aided person, he or the aided person may select a solicitor or counsel to act for him from the panels of counsel and solicitors maintained by the Department.

Counsel or solicitors holding current practising certificates may apply to join the Legal Aid Panel, unless the Director is satisfied that there is good reason to exclude them by reason of their conduct in any particular case or their professional conduct generally. Currently, there are more than 800 counsel and 2 200 solicitors on the Panel. Counsel or solicitors on the Legal Aid Panel may be

情況可能會被除名：(a)他們主動要求除名；或(b)他們不再持有有效的執業證書；或(c)由於他們表現嚴重失職而被法援署監察外判個案委員會決議除名。

因(a)或(b)原因而除名的律師，只要他們持有有效執業證書，均可以申請重新加入名冊。至於因(c)原因而除名的律師，在法援署於2014年底實施新程序前，一直沒有處理其重新加入名冊申請的指引。在新程序實施後，因(c)原因除名的律師在被除名當天起計最少三年後，可申請再次加入名冊。他們申請重新加入名冊時，須提交以下文件：

- a) 法律援助律師名冊參加表格；
- b) 所有證明他/她適宜獲重新納入名冊及處理法律援助個案的相關文件；以及
- c) 兩名資深業界人士的推薦信，其中一名必須與申請人來自不同的大律師或律師事務所，以確認申請人適合處理法律援助個案。「資深業界人士」是指取得專業資格後執業滿20年或以上的律師。

處理重新加入名冊的申請時，監察外判個案委員會將考慮該名律師所提交的資料，並按每宗申請的個別情況，審核其是否處理法律援助個案的合適人選。考慮因素包括該名律師的經驗、對法律援助要求的認識、過往處理法律援助個案的表現、被除名原因、被除名後處理個

removed if: (a) they request to be removed from the Panel; or (b) they cease to hold a current practising certificate; or (c) their unsatisfactory performance is of a serious nature that they are removed from the Panel by the decision of the Departmental Committee on Monitoring Assignments to Counsel and Solicitors (DMC).

Lawyers removed under (a) and (b) may apply to re-join the Panel if they hold a current practising certificate. For (c), there is no guideline on how to deal with applications from those lawyers to re-join the Panel until LAD implemented new procedures in late 2014. With the new procedures, lawyers removed under (c) can only apply to re-join the Panel at least 3 years since the date of their removal from the Panel. When applying to re-join the Panel, the lawyer is required to submit the following:

- a) the Panel Entry Form;
- b) all relevant information in support that he/she is suitable for readmission to the Panel and handling legal aid cases; and
- c) two references from two senior members of the profession, one of whom must be from a different firm or chamber from that of the lawyer, confirming that the lawyer is a fit and proper person to handle legal aid cases. "Senior members of the profession" refer to those lawyers who have had at least 20 years' post qualification experience.

In considering the application for re-joining the panel, the DMC will take into account the information provided by the lawyer and consider on a case by case basis whether the lawyer is a "fit and proper person" to handle legal aid cases. Factors to be considered include the lawyer's experience, knowledge of legal aid requirements, history of performance in handling legal aid cases, reasons for removal from the Panel, the lawyer's performance in

案的表現，以及其他相關資料，例如是否曾被紀律懲處或刑事檢控。

如果申請被拒絕，該名律師有一次機會向監察外判個案委員會提出申訴。委員會經評估後所作的決定為最終決議，並將以書面通知申請重新加入名冊的大律師和律師有關決定。

法援署已於本局2014年12月的會議中簡介上述有關律師申請再次加入名冊的新指引。有關指引亦已上載至法援署網頁。

handling cases since removal and any other relevant matters such as whether professional disciplinary or criminal proceedings have been found substantiated against that lawyer.

If the application is rejected, the lawyer will be given an opportunity to make representations which will be evaluated by the DMC. The decision made by DMC after evaluating the representations is final. Counsel and solicitor applying to re-join the panel will be informed of the decision of the DMC in writing.

The above-said new guidelines for lawyers removed from the Panel applying to re-join the Legal Aid Panel were briefed by LAD at the Council meeting held in December 2014. The same could also be obtained from the website of LAD.

法援個案委託對應不正當兜攬生意活動 Assignment of Legal Aid Cases vis-a-vis Improper Touting Activities

在2014年3月，民政局向本局轉述了保險、的士及公共小巴業界對《法律援助條例》第13條有關法援署的律師提名制度可能引致律師／索償代理作出不正當的兜攬生意活動的關注，並簡介了行政當局到目前為止的跟進行動。

本局在當月召開的會議上討論上述議題。在會議中，本局成員注意

In March 2014, HAB informed the Council of the concerns expressed by the insurance / taxi / minibus trades about possible touting activities by certain solicitors / recovery agents vis-a-vis the LAD's lawyer nomination system under Section 13 of the Legal Aid Ordinance (LAO), and the Administration's follow-up actions taken so far.

The above-said matter was discussed at the Council meeting held in the same month. From the meeting, Council members noted that under Section 13 of LAO,

到，根據《法律援助條例》第13條，受助人有權提名其代表律師。由於個別律師可能因為擅於處理某類個案而廣為受助人所認識，因此，即使被提名的律師曾處理的法援個案數量最多，亦不應因而假定該名律師與索償代理或兜攬生意活動有任何連繫。法援署歡迎業界提出具體個案及證據指證被提名的律師操守不當，例如故意拖延法律訴訟程序以收取更多律師費或與索償代理有關連。貫徹法援署處理有關第三方或對訟一方反對法援署向受助人批出法援而提交陳述的做法，法援署隨時準備徹底調查事件，並展開跟進工作。

本局亦知悉法援署正與兩個法律專業團體聯手打擊不當兜攬生意活動，有關工作將繼續進行。為了改善外委律師程序，在本局同意下，法援署於2013年9月推出「申報制度」。在該制度下，受助人須聲明提名是完全出自其個人意願，而且不會與任何人攤分訴訟申索所得的賠償／業權／訟費，包括被提名的律師。上述條件亦將列明於律師委任信中，如被提名的律師不願接受該等條件，便不得接受相關委派，並需向法援署交回所有個案文件。

本局亦於2014年10月在與香港律師會的會議上討論到有關不當兜攬生意活動所產生的問題，雙方就解決方法交換了意見。本局亦得悉香港律師會成立了一個小組委員會研究

aided persons has a right to nominate their own lawyers. The nominated lawyers who handled the most number of cases could not be presumed to have connection with recovery agents or be related to improper touting activities. They might be well-known in a particular field for their good service and known to the aided persons by words of mouth. LAD welcomed members of the trades to provide the Department with details of the cases or evidence of the improper conduct on the part of the nominated lawyers such as deliberately lengthening the litigation process so as to generate more legal costs or being connected to recovery agents. LAD would stand ready to conduct thorough investigation and take follow-up action as in the way in which representations against the grant of legal aid from the third party or the opposing party were handled.

The Council was also given to know that LAD had been working with the two legal professional bodies to combat improper touting activities, and the work would continue. As a measure to improve the assignment system, with the endorsement of the Council, LAD introduced a "declaration system" in September 2013. Under the system, each aided person will be asked to declare that the nomination, if any, is made entirely out of his/her own free will and he/she has not agreed to share any damages, property or costs which he/she will recover from the proceedings with any person(s) including the solicitor nominated. The nominated lawyer, if unable to accept the above condition incorporated in the assignment letter, will be obliged to return the case papers to LAD.

The issues relating to improper touting activities were also discussed at a meeting between the Council and the Law Society in October 2014. Both parties exchanged views on the ways to address the problems arising from the issues.

有關問題，並已邀請法援署署長加入委員會。

要證明法援個案外判工作是否被不當兜攬生意活動所影響，本局認為最好的方法是提高法援署的運作透明度，公布相關統計數字。為此，本局已透過其研究改善法律援助資訊傳遞的專責小組，檢視法援署的外判個案統計數字並作出建議。

It was also understood that the Law Society had set up a sub-committee to look into the issues and the Director of Legal Aid was invited to sit on the sub-committee.

To demonstrate if the assignment of legal aid work has been affected by improper touting activities or not, the Council considered that the best way was to increase the operational transparency of LAD by publicising the related statistical data. To this end, the Council through its task force on the dissemination of legal aid information has reviewed the LAD's statistics on case assignment and made recommendations on the matter.