

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**

PURPOSE

This paper informs members of the outcome of the 2022 biennial review of criminal legal aid fees, prosecution fees and duty lawyer fees (collectively referred to as “the Fees”).

THE FEES

2. 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 Legal Aid in Criminal Cases Rules (Cap. 221 sub. leg. D) (“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).

3. 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.

4. 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.

THE REVIEW MECHANISM

5. 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.

6. In the previous biennial review of 2020, the Government proposed to increase the Fees by 2.7% in accordance with the movement in CPI(C) during the reference period from July 2018 to July 2020. The proposed adjustments to criminal legal aid fees were approved by LegCo in September 2021. The new Fees came into effect on 8 October 2021.

THE CURRENT REVIEW

7. The Government has completed the 2022 biennial review. Noting that the CPI(C) for the reference period (i.e. July 2020 to July 2022) increased by 3.1%, we propose to adjust the Fees upwards by 3.1% accordingly. The increase in criminal legal aid fees will be implemented by amending Rule 21 and Part 2 of the Schedule to the LACCR, while prosecution fees and duty lawyer fees will be adjusted administratively. The existing and proposed criminal legal aid fees and corresponding prosecution fees, rounded down to the nearest ten dollars, are listed in **Annex**.

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.

8. 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 3.1%)
(a) Whole-day fee	\$12,160	\$12,530
(b) Half-day fee	\$6,040	\$6,220
(c) Pre-trial preparation fee	\$1,450 per hour	\$1,490 per hour

9. As explained in paragraph 4 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 8 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 3.1%)
(a) Whole-day fee	\$12,160	\$12,530
(b) Half-day fee	\$6,040	\$6,220

CONSULTATION

10. 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 2022 biennial review of the Fees.

FINANCIAL IMPLICATION

11. The proposal to increase criminal legal aid fees, prosecution fees and duty lawyer fees is estimated to incur an additional recurrent expenditure of around \$7.4 million each by LAD and DoJ on average and around \$3.2 million by DLS in a full year. The two departments and DLS will include the necessary provisions in the 2023-24 draft Estimates to meet the costs of the proposed fee increases and absorb the workload in effecting the changes in the Fees from within their existing manpower resources.

WAY FORWARD

12. For 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 plan to move a resolution at LegCo by early 2023 to adjust the fees upward by 3.1%. Prosecution fees and duty lawyer fees will be adjusted administratively on the same date as the implementation of the increased criminal legal aid fees.

ADVICE SOUGHT

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

Chief Secretary for Administration’s Office
Legal Aid Department
November 2022

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.”

Annex

Current and Proposed Criminal Legal Aid Fees and Prosecution Fees (Current fees in force since 8 October 2021)

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)	16,310	16,810
(ii) Refresher ⁱⁱ	LAD/DoJ	8,140 per day	8,390 per day
(iii) Conference	DoJ	1,290 per hour	1,320 per hour
(iv) Pre-trial Review (per review)	DoJ	2,250	2,310
(b) <u>Counsel or solicitor acting as advocate in preliminary inquiry</u>			
(i) Brief ⁱ	LAD	16,310	16,810
(ii) Refresher ⁱⁱ	LAD	8,150 per day	8,400 per day
(c) <u>Instructing solicitor in committal proceedings (including preliminary inquiry)</u>			
(i) Brief ⁱ	LAD	3,650	3,760
(ii) Refresher ⁱⁱⁱ	LAD	2,990 per day	3,080 per day
(d) <u>Counsel or solicitor acting as advocate in place of court prosecutor in committal proceedings</u>			
(i) Brief	DoJ	12,160 per day	12,530 per day

Fee item	Department/ Service	Current maximum fee (\$)	Proposed maximum fee (\$)
		6,040 half day	6,220 half day
(e) <u>Counsel or solicitor acting as advocate in committal proceedings</u> (Newly qualified lawyers)			
(i) Brief (for 2 weeks engagement)	DoJ	81,660	84,190
(ii) Brief after 2 weeks engagement (part-heard case)	DoJ	12,160 per day 6,040 half day	12,530 per day 6,220 half day
(f) <u>Counsel or solicitor acting as advocate in committal proceedings</u> (Newly qualified monolingual lawyers)			
(i) Brief	DoJ	12,160 per day 6,040 half day	12,530 per day 6,220 half day

2. District Court (DC)

(a) <u>Counsel</u>			
(i) Preparation ⁱⁱⁱ	LAD	13,570	13,990
(ii) Additional preparation	LAD	7,010 per 4-hour unit	7,220 per 4-hour unit
(iii) Court hearing	LAD/DoJ	13,570 per day	13,990 per day
(iv) Conference	LAD/DoJ	1,720 per hour	1,770 per hour
(v) Brief ⁱ	DoJ	27,170	28,010
(vi) Pre-trial Review (per review)	DoJ	3,390	3,490
(vii) Mention	DoJ	2,250	2,310
(viii) Plea	DoJ	2,250	2,310

	Fee item	Department/ Service	Current maximum fee (\$)	Proposed maximum fee (\$)
	(ix) Sentence	DoJ	2,250	2,310
	(x) Plea & Sentence	DoJ	3,390	3,490
(b)	<u>Instructing solicitor</u>			
	(i) Reading	LAD	920 per hour	940 per hour
	(ii) Preparation	LAD	3,790 per 4-hour unit	3,900 per 4-hour unit
	(iii) Court hearing	LAD	7,610 per day	7,840 per day
	(iv) Conference	LAD	920 per hour	940 per hour
(c)	<u>Solicitor acting as both advocate and instructing solicitor</u>			
	(i) Preparation ⁱⁱⁱ	LAD	15,680	16,160
	(ii) Additional preparation	LAD	7,810 per 4-hour unit	8,050 per 4-hour unit
	(iii) First day Court hearing	LAD	15,680 per day	16,160 per day
	(iv) Refresher ^{iv}	LAD	17,390 per day	17,920 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	20,410	21,040
(ii)	Additional preparation	LAD	8,550 per 4-hour unit	8,810 per 4-hour unit
(iii)	Court hearing	LAD/DoJ	20,410 per day	21,040 per day
(iv)	Conference	LAD/DoJ	2,100 per hour	2,160 per hour
(v)	Brief ^f	DoJ	40,850	42,110
(vi)	Pre-trial Review / other case management hearing, as appropriate (per hearing)	DoJ	4,020	4,140
(vii)	Mention	DoJ	6,100	6,280
(viii)	Plea	DoJ	6,100	6,280
(ix)	Sentence	DoJ	6,100	6,280
(x)	Plea & Sentence	DoJ	7,260	7,480
(b)	<u>Solicitor advocate with higher rights of audience (HRA) acting as both advocate and instructing solicitor</u>			
(i)	Preparation ⁱⁱⁱ	LAD	23,570	24,300
(ii)	Additional preparation	LAD	9,540 per 4-hour unit	9,830 per 4-hour unit
(iii)	First day Court hearing	LAD	23,570 per day	24,300 per day
(iv)	Refresher ^{iv}	LAD	26,130	26,940

	Fee item	Department/ Service	Current maximum fee (\$) per day	Proposed maximum fee (\$) per day
(c)	<u>Instructing solicitor</u>			
(i)	Reading	LAD	1,100 per hour	1,130 per hour
(ii)	Preparation	LAD	4,470 per 4-hour unit	4,600 per 4-hour unit
(iii)	Court hearing	LAD	8,980 per day	9,250 per day
(iv)	Conference	LAD	1,100 per hour	1,130 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	27,240	28,080
(ii)	Additional preparation	LAD	8,550 per 4-hour unit	8,810 per 4-hour unit
(iii)	Brief ^f	DoJ	54,480	56,160
(iv)	Court hearing	LAD/DoJ	27,240 per day	28,080 per day
(v)	Conference	LAD/DoJ	2,100	2,160

	Fee item	Department/ Service	Current maximum fee (\$) per hour	Proposed maximum fee (\$) per hour
(b)	<u>Counsel (appeals from DC)</u>			
(i)	Preparation ⁱⁱⁱ	LAD	21,770	22,440
(ii)	Additional preparation	LAD	8,550 per 4-hour unit	8,810 per 4-hour unit
(iii)	Brief ^f	DoJ	43,540	44,880
(iv)	Court hearing	LAD/DoJ	21,770 per day	22,440 per day
(v)	Conference	LAD/DoJ	2,100 per hour	2,160 per hour
(c)	<u>Solicitor advocate with HRA acting as both advocate and instructing solicitor (appeals from CFI)</u>			
(i)	Preparation ⁱⁱⁱ	LAD	31,440	32,410
(ii)	Additional preparation	LAD	9,540 per 4-hour unit	9,830 per 4-hour unit
(iii)	First day Court hearing	LAD	31,440 per day	32,410 per day
(iv)	Refresher ^{iv}	LAD	34,860 per day	35,940 per day
(d)	<u>Solicitor advocate with HRA acting as both advocate and instructing solicitor (appeals from DC)</u>			
(i)	Preparation ⁱⁱⁱ	LAD	25,140	25,910
(ii)	Additional preparation	LAD	9,540 per 4-hour unit	9,830 per 4-hour unit
(iii)	First day Court hearing	LAD	25,140 per day	25,910 per day
(iv)	Refresher ^{iv}	LAD	27,870 per day	28,730 per day

Fee item	Department/ Service	Current maximum fee (\$)	Proposed maximum fee (\$)
(e) <u>Instructing solicitor</u>			
(i) Reading	LAD	1,490 per hour	1,530 per hour
(ii) Preparation	LAD	6,070 per 4-hour unit	6,250 per 4-hour unit
(iii) Court hearing	LAD	12,180 per day	12,550 per day
(iv) Conference	LAD	1,490 per hour	1,530 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</u> ^{vi}	LAD	5,390	5,550

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
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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
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ⁱ Covering preparation (regardless of duration) and the first day of attendance in Court.

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- 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.