

For information

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

**Annual Reviews of Financial Eligibility Limits of Legal Aid Applicants
and Director of Legal Aid's First Charge**

PURPOSE

This paper informs members of the outcome of the annual reviews of the financial eligibility limits (“FELs”) of legal aid applicants and Director of Legal Aid’s (“DLA’s”) first charge.

THE REVIEW MECHANISM

FELs

2. At present, a person whose financial resources¹ do not exceed \$420,400 is financially eligible for legal aid under the Ordinary Legal Aid Scheme (“OLAS”) which covers civil proceedings in the District Court or higher courts as set out in the Legal Aid Ordinance (“LAO”) (Cap. 91) and criminal legal aid under the Legal Aid in Criminal Cases Rules (Cap. 221D). The corresponding upper limit for the Supplementary Legal Aid Scheme (“SLAS”) is \$2,102,000 as specified in the LAO.
3. Pursuant to the Government’s report to the Legislative Council (“LegCo”) on the Legal Aid (Amendment) Bill 1999 in September 1999, FELs under OLAS and SLAS are subject to review annually to take into account general price movement as reflected by the Consumer Price Index (C) (CPI(C)). On 26 June 2020, an upward adjustment of FELs by 5.1% was made effective to reflect the accumulated changes in CPI(C) from July 2017 to July 2019².
4. In the previous round of annual review conducted in 2021, the reference

¹ “Financial resources” means the aggregate of an applicant’s yearly disposable income and disposable capital. A person’s disposable income is his/her gross income minus deductible items as allowed under the Legal Aid (Assessment of Resources and Contributions) Regulations (“the Regulations”) (Cap. 91B). A person’s disposable capital consists of all assets of a capital nature, such as the sum of his / her credit balance, money due to him / her, the value of the person’s interest in non-money resources, the value of business or share in a company etc, unless such items should be excluded from calculation under the Regulations.

² The same legislative exercise also made effective an increase of about 30% in the FELs as an initiative announced in the 2019 Policy Address Supplement.

period was from July 2019 to July 2020. Owing to the minimal change of -0.1% in CPI(C) during the reference period, the FELs were frozen. We informed this Panel in February 2021 that we would reserve this review result for consideration in the next round of review.

DLA's first charge

5. A legally aided person who is successful in recovering or preserving any money or property in the legally aided proceedings will be required to repay DLA all the costs and expenses incurred by DLA in the proceedings, as required under the LAO, out of the money or property so recovered or preserved in such proceedings³. The sum of these costs and expenses is called the DLA's first charge. In practice, if money is recovered for the aided person, such costs and expenses will be deducted from the money first before the balance is released to the legally-aided person. If the property involved is a piece of landed property, the DLA's first charge will operate by way of registering it against the property in the Land Registry so as to secure repayment of the costs and expenses to DLA. However, according to section 18A(5) of the LAO, DLA's first charge does not apply to maintenance payment for spouse or former spouse up to the first \$9,100 of each payment per month. Separately, upon receipt of all moneys paid to DLA pursuant to section 19 or 19A of the LAO⁴, DLA may exercise discretion under the proviso to section 19B(1)(a) of the LAO to reduce the amount to be retained by DLA by an amount not exceeding \$108,850 in cases of serious hardship to any person.

6. Pursuant to a one-off review the results of which were reported to this Panel on 30 April 2018, the two specified amounts under section 18A(5) and the proviso to section 19B(1)(a) were adjusted upwards by 89.6% to the current amounts of \$9,100 and \$108,850 respectively with effect from 26 June 2020. It has also been decided that the two specified amounts will also be subject to an annual review to reflect the changes in CPI(C)⁵.

³ According to section 18A(1) of the LAO,
"Subject to this section—

(a) the amount of a contribution to the extent that it is unpaid; and

(b) except where legal aid has been granted under the Supplementary Legal Aid Scheme, if the total contribution is less than the net liability of the Director on the aided person's account, a sum equal to the deficiency, shall be a first charge for the benefit of the Director on any property, whether situated in Hong Kong or otherwise, which is recovered or preserved for the aided person in the proceedings or in any other proceedings in respect of which the person was aided and which, in the opinion of the Director, were substantially related to or connected with the proceedings in which property was recovered or preserved."

⁴ According to section 19B(1)(a) of the LAO, "upon receipt of all moneys paid to him pursuant to section 19 or 19A, the Director shall retain ... provided that where the Director is satisfied that it would cause serious hardship to any person to retain any such sum under this paragraph and that it is in all the circumstances just and equitable to reduce the sum to be so retained, the amount to be so retained shall be reduced by such amount not exceeding \$108,850 as the Director may determine".

⁵ See paragraph 7 of the Legislative Council Brief on "Review of Director of Legal Aid's First Charge" (File Ref: CSO/ADM CR/2/3230/17(18)) for the introduction of an annual review.

7. Same as FELs, given the minimal change in CPI(C) during the reference period from July 2019 to July 2020, the two specified amounts were frozen upon the last review. We informed this Panel in February 2021 that we would reserve this review result for consideration in the next round of review.

THE CURRENT REVIEWS

8. The Government has completed the latest round of annual reviews of FELs and DLA's first charge. Both reviews have made reference to the CPI(C) for the reference period from July 2020 to July 2022, which has increased by 3.1%.

9. Taking into account the cumulative changes in CPI(C) for the three-year period from July 2019 to July 2022, we propose to adjust the FELs and the two specified amounts of DLA's first charge upwards by 3.0%⁶ accordingly. The impact of the change in CPI(C) after July 2022 will be reflected in the next review.

10. The existing and proposed FELs are as follows: -

	Existing FEL	Proposed FEL⁷
OLAS	\$420,400	\$433,010
SLAS	\$2,102,000	\$2,165,060

11. For DLA's first charge, the existing and proposed amount of the two specified amounts are as follows: -

	Existing amount of DLA's first charge	Proposed amount of DLA's first charge⁸
S.18A(5)	\$9,100	\$9,370
S.19B(1)(a)	\$108,850	\$112,120

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 current

⁶ The changes in CPI(C) in July 2019 – July 2020, July 2020 – July 2021 and July 2021 – July 2022 were -0.1%, +1.1% and +2.0% respectively. Taking into account the cumulative changes in CPI(C) of +3.0% for the three-year period from July 2019 to July 2022, we propose to adjust the FELs and the two specified amounts of DLA's first charge upwards by 3.0% accordingly.

⁷ The figures are rounded to the nearest \$10.

⁸ The figures are rounded to the nearest \$10.

annual review.

FINANCIAL IMPLICATION

13. The proposal to increase FELs is estimated to incur an additional recurrent expenditure not exceeding \$2.01 million in a full year by the Legal Aid Department (“LAD”). LAD will absorb the additional expenditure and workload in effecting the changes to FELs and DLA’s first charge from within its existing resources.

WAY FORWARD

14. Section 7 of the LAO provides that LegCo may, by resolution, amend the amounts of financial resources specified in sections 5 and 5A of the LAO. Section 22A of the LAO similarly provides that LegCo may, by resolution, amend the rate of maintenance payments specified in Section 18A(5) and the amount specified in the proviso to Section 19B(1)(a). In accordance with these provisions, we plan to move resolutions at LegCo by early 2023 to adjust the FELs and the two specified amounts of DLA’s first charge upwards by 3.0%.

ADVICE SOUGHT

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

Chief Secretary for Administration’s Office
Legal Aid Department
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