

# **CHAPTER 1**

## **Home Affairs Bureau**

<h3><b>Duty Lawyer Service</b></h3>
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**Audit Commission  
Hong Kong  
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*This audit review was carried out under a set of guidelines tabled in the Provisional Legislative Council by the Chairman of the Public Accounts Committee on 11 February 1998. The guidelines were agreed between the Public Accounts Committee and the Director of Audit and accepted by the Government of the Hong Kong Special Administrative Region.*

Report No. 58 of the Director of Audit contains 8 Chapters which are available on our website at <http://www.aud.gov.hk>.

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# DUTY LAWYER SERVICE

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## PART 1: INTRODUCTION

1.1 This PART describes the background to the audit and outlines the audit objectives and scope.

### Background

1.2 The **Duty Lawyer Service (DLS)** is a company limited by guarantee. It is fully subvented by the Government and is independently managed and administered jointly by the **Hong Kong Bar Association (Bar Association — Note 1)** and the **Law Society of Hong Kong (Law Society — Note 2)** through the Council of the DLS. The DLS was incorporated under the Companies Ordinance (Cap. 32) in August 1993 to take over the then legal assistance schemes (see (a) to (c) below). It currently operates four legal assistance schemes to complement the legal aid services provided by the Legal Aid Department (LAD — Note 3):

- (a) ***Duty Lawyer Scheme.*** Under this Scheme, legal representation is provided by qualified lawyers in private practice to eligible defendants appearing in Magistrates' Courts, including Juvenile Courts. To be eligible for legal representation, a person has to pass a merits test and a means test, and pay a fixed handling charge;
- (b) ***Free Legal Advice Scheme.*** It provides preliminary legal advice to members of the public as to their legal position in genuine cases. It will not offer any follow-up service or legal representation to clients. There is no means test and the service is free of charge;
- (c) ***Tel-Law Scheme.*** It provides free recorded legal information to members of the public through telephone. The information covers a wide range of legal topics and is available in Cantonese, Putonghua and English. The information can also be listened to or read on the DLS website; and

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**Note 1:** *The Bar Association is a professional organisation for barristers in Hong Kong. It was founded in 1949 and registered under the Societies Ordinance (Cap. 151).*

**Note 2:** *The Law Society is a professional association for solicitors in Hong Kong. It was incorporated in 1907 as a company limited by guarantee.*

**Note 3:** *The LAD is the government department which provides legal aid services for civil and criminal proceedings at District Court level and above, and committal proceedings in Magistrates' Courts. On the other hand, the DLS provides legal assistance primarily to defendants appearing in Magistrates' Courts.*

- (d) ***Convention Against Torture (CAT) Scheme.*** It provides free legal assistance to persons (primarily overstayers and illegal immigrants facing repatriation) who have made a claim to the Immigration Department (ImmD) under Article 3 of the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. It has been operated on a pilot basis since December 2009.

### ***Structure of the DLS***

1.3 The Council is the governing board responsible for managing the business and affairs of the DLS (including directing operations and formulating policies). As agreed between the Bar Association and the Law Society, the chairmanship of the Council is rotated annually between Council members nominated by the two legal professional bodies.

1.4 As at December 2011, the DLS had a staff establishment of about 110, comprising primarily a team of Court Liaison Officers (CLOs), headed by an Administrator. The DLS has set up seven Court Liaison Offices (one at each Magistracy) for operating the Duty Lawyer Scheme, and a CAT Scheme Office for operating the CAT Scheme. An organisation chart of the DLS is at Appendix A.

### ***Funding arrangement***

1.5 The **Home Affairs Bureau (HAB)** has the overall policy responsibility for legal aid services (Note 4), including the work of the DLS. The DLS receives annual subventions from the HAB for operating the legal assistance schemes. The DLS entered into two Memoranda of Administrative Arrangements (MAAs) with the HAB, one covering the Duty Lawyer Scheme, the Free Legal Advice Scheme and the Tel-Law Scheme, and the other covering the CAT Scheme. According to the MAAs:

- (a) the normal rules of government subvention (Note 5), where applicable, would apply;
- (b) the DLS must use the subvention solely for the purpose of the schemes and maximise value for money obtained from the subvention;

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**Note 4:** *The Secretary for Home Affairs took over the policy responsibility for legal aid services from the Director of Administration in July 2007.*

**Note 5:** *Such rules relate to delineation of funded services, submission of annual budgets, financial arrangements, preparation of accounts, etc.*



- (c) for the Duty Lawyer Scheme, the Free Legal Advice Scheme and the Tel-Law Scheme, the annual subvention will be paid in four equal quarterly instalments. The cumulative reserve carried by the DLS at the end of a financial year shall not exceed 5% of the recurrent subvention in that year; and
- (d) for the CAT Scheme, the subvention will be paid on a monthly reimbursement basis.

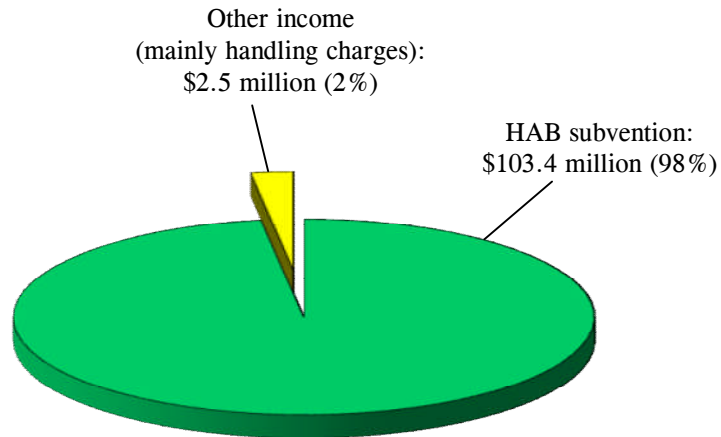
***Income and expenditure***

1.6 In 2010-11, for operating the Duty Lawyer Scheme, the Free Legal Advice Scheme and the Tel-Law Scheme, the DLS had a total income of \$105.9 million and a total expenditure of \$101.5 million. Figure 1 shows the details.

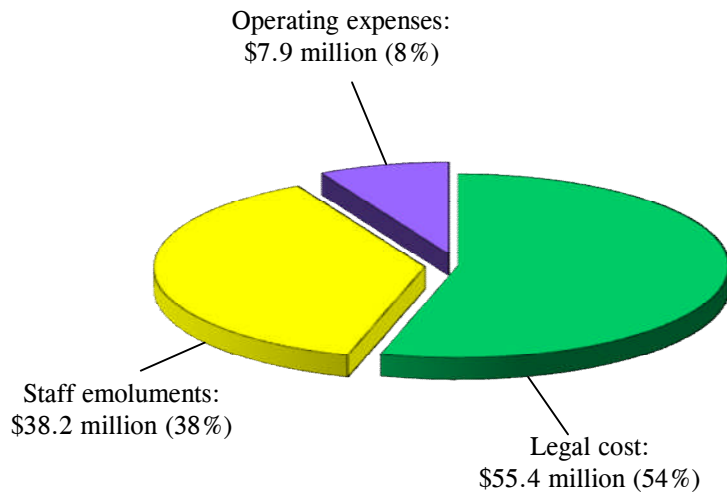
Figure 1

**Income and expenditure of the DLS  
(2010-11)**

**(A) Income: \$105.9 million (Note)**



**(B) Expenditure: \$101.5 million (Note)**



Source: DLS records

Note: The income and expenditure relating to the CAT Scheme are not included (see para. 1.7).

1.7 For operating the CAT Scheme, the DLS receives from the HAB monthly reimbursements of the expenditure incurred (Note 6). In 2010-11, the expenditure incurred amounted to \$16.8 million.

### **Audit review**

1.8 The Audit Commission (Audit) has recently conducted a review of the DLS, focusing on the following areas:

- (a) corporate governance (PART 2);
- (b) Duty Lawyer Scheme (PART 3);
- (c) other legal assistance schemes (PART 4);
- (d) administrative issues (PART 5); and
- (e) performance measurement and reporting (PART 6).

Audit has found room for improvement in the above areas and has made a number of recommendations to address the issues.

### **General response from the Duty Lawyer Service**

1.9 The **Administrator, DLS** has said that the DLS is in principle agreeable to all the audit recommendations, the implementation of which would require additional manpower. She has also said that the DLS had written to the HAB in March, November and December 2011 to restructure its staff establishment, including a proposal for additional manpower for the CAT Scheme (paras. 4.7 to 4.11 are relevant). The DLS will take into account the audit recommendations in further consultations with the HAB about the staffing proposal.

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**Note 6:** *The subvention for the CAT Scheme is charged to the vote of the Security Bureau, but paid by the HAB to the DLS.*

## **General response from the Administration**

1.10 The **Secretary for Home Affairs** welcomes and agrees in principle with the audit recommendations which can help the DLS enhance its services. He has said that:

- (a) on the improvement measures recommended on the DLS, the HAB will closely liaise with the DLS with a view to offering advice and assistance;
- (b) the HAB will follow up on the audit recommendations on areas which fall within its ambit;
- (c) the HAB will review the MAAs with the DLS to incorporate the audit recommendations as appropriate; and
- (d) the DLS is independently managed and administered jointly by the Bar Association and the Law Society through the Council of the DLS (see para. 1.2). As a subvented organisation, the DLS needs to ensure a high standard of corporate governance. The HAB will render advice and assistance when necessary.

## **Acknowledgement**

1.11 Audit would like to acknowledge with gratitude the full cooperation of the staff of the DLS and the HAB during the course of the audit review.

## **PART 2: CORPORATE GOVERNANCE**

2.1 This PART examines the following issues relating to corporate governance of the DLS:

- (a) tenure of Council members (paras. 2.7 to 2.13);
- (b) attendance at Council meetings (paras. 2.14 to 2.21);
- (c) management of conflicts of interest (paras. 2.22 to 2.29);
- (d) corporate governance guidelines and procedures (paras. 2.30 to 2.42); and
- (e) strategic management (paras. 2.43 to 2.47).

### **Governance structure**

#### ***Membership***

2.2 According to the DLS's Memorandum and Articles of Association (M&A):

- (a) ***DLS members.*** The maximum number of DLS members shall be 50. At present, the membership of the DLS consists of 24 members nominated by the Bar Association and the Law Society (each nominating 12 members), and all 11 Council members (see (b) below). DLS members have the right to attend general meetings (both annual and extraordinary). Their liabilities are each limited to \$100 in the event of the winding up of the DLS; and
- (b) ***Council members.*** The number of Council members shall be 3 to 11. At present, Council members consist of four barristers nominated by the Bar Association, four solicitors nominated by the Law Society, and three lay members nominated by Council members.

#### ***Council and committees***

2.3 According to the M&A, the Council:

- (a) is responsible for managing the business and affairs of the DLS; and
- (b) may delegate any of its powers or discretions to committees consisting of at least three persons, one or more of whom is a Council member. Any committee so formed shall report to the Council from time to time on its activities.

Apart from an ad hoc committee set up in January 2012 for the appointment of senior executives at the top three tiers, no other committees were formed under the Council.

### *The Administrator*

2.4 The Administrator, assisted by a Chief CLO, is responsible for the day-to-day administration and operations of the DLS. The Administrator is an ex-officio non-voting member of the Council.

### **Best practices for corporate governance**

2.5 The DLS is fully subvented by, but operates independently of, the Government. The DLS Council does not have any observers, representatives, or non-official members appointed by the Government. Notwithstanding this, a high standard of corporate governance is expected of the DLS which is fully funded by government subventions.

2.6 In May 2010, the Efficiency Unit issued the “Guide to Corporate Governance for Subvented Organisations” (the Corporate Governance Guide). It sets out principles and best practices on corporate governance for organisations receiving government subventions. The Guide aims to help sustain public trust in organisations which use public funds.

### **Tenure of Council members**

2.7 Normally, a member of the governing board of an organisation is appointed for a fixed tenure and will be considered for re-appointment when the tenure ends. According to the Corporate Governance Guide, non-official members are normally appointed to sit in an advisory/statutory body for not more than six years (the six-year rule).

### **Audit observations and recommendations**

2.8 The M&A of the DLS does not specify the tenure of a Council member. As such, there is no specified term in which a Council member may hold office. Audit noted that as at December 2011, of the 11 Council members:

- (a) four (36%) had served the Council for 10 to 18 years (including one who was appointed on the DLS’s incorporation in 1993); and
- (b) seven (64%) were appointed in the past four years for replacing resigned members (who had served the Council for 8 to 14 years).

2.9 At a meeting in February 2007, the Council discussed whether the six-year rule should be adopted when appointing members to the Council. In May 2007, the Administrator informed the Council that, according to the M&A, the appointment and removal of lawyer members (barristers or solicitors — see para. 2.2(b)) were vested with the Bar Association and the Law Society, but not the DLS Council. The Administrator also said that whether the six-year rule should be followed or not was a matter vested with the two legal professional bodies. In July 2007, the Council agreed that it only had the authority to decide on the tenure of lay Council members. However, the DLS did not take forward the matter. The tenure for both lawyer members and lay members of the Council remained not fixed.

**2.10 Following good governance practices, there is merit for the DLS to put in place a system for appointing Council members for a fixed tenure and setting a limit on the total length of service (see para. 2.7). This arrangement can facilitate a healthy turnover of Council membership by injecting new blood, and provide opportunities for more people to serve the DLS and the community. The DLS needs to follow up the matter with the Bar Association and the Law Society.**

2.11 In this connection, Audit notes that:

- (a) for the Bar Association, its council members shall retire after holding office for two years, with provisions for re-election, subject to a maximum length of service of six consecutive years; and
- (b) for the Law Society, its council members shall retire after holding office for four years, with provisions for re-election.

#### *Audit recommendations*

2.12 **Audit has recommended that the DLS should, in consultation with the Bar Association and the Law Society, consider setting:**

- (a) **a fixed tenure for the appointment of Council members; and**
- (b) **a limit on the total length of service for Council members.**

#### **Response from the Duty Lawyer Service**

2.13 The DLS agrees with the audit recommendations.

## Attendance at Council meetings

2.14 The effectiveness of the governing board of an organisation in fulfilling its responsibilities is largely dependent on its members' knowledge, experience, competence and, most important of all, commitment to serving the organisation. Attendance at meetings is a key indicator to reflect board members' commitment to serving the organisation.

## Audit observations and recommendations

### *Declining attendance rates*

2.15 Audit examined the attendance rates of DLS Council meetings during the period 2007 to 2011. Table 1 shows the details.

**Table 1**  
**Attendance rates of Council meetings**  
**(2007 to 2011)**

	2007	2008	2009	2010	2011
<b>Number of Council meetings</b>	5	7	9	7	8
<b>Overall attendance rate (Note)</b>	65%	70%	<b>71%</b>	<b>67%</b>	<b>61%</b>
<b>Number of members with an attendance rate of 50% or below</b>	3	2	2	3	5

*Source: Audit analysis of DLS records*

*Note: The Administrator, who is an ex-officio non-voting member of the Council, is not included in calculating the attendance rate.*

2.16 Table 1 shows that in the past three years, the overall attendance rate was on the decline, from 71% to 61%. Also, the attendance rates of some members were 50% or below. For example, in 2011, five (45%) of the 11 Council members attended 25% to 50% of the meetings. In particular, one lawyer member attended 22% to 43% of the meetings for three consecutive years from 2009 to 2011.



2.17 **The DLS needs to closely monitor the attendance rates of Council members at meetings, and take appropriate improvement measures (e.g. issuing reminders to those with low attendance rates).**

*Managing long absence from Council meetings*

2.18 According to the M&A, if a Council member is absent from meetings for **four consecutive months** without leave, the Council can resolve that his office be vacated. As far as Audit could ascertain from DLS records, no such resolution was made during the period 2007 to 2011. However, Audit noted one case of long absence of a lay member from Council meetings (see Case 1).

**Case 1**

**Long absence of a lay member from Council meetings**

1. In December 2005, the Council was informed by a member that another member (Member A) was very weak physically after undergoing a major operation. During the four-year period July 2005 to June 2009, Member A only attended two of the 24 meetings, with long periods of absence over four months in between.

2. At a meeting held in June 2009, the Council discussed the long absence of Member A, and requested the Administrator to make an enquiry of Member A's views on future service in the Council. In the same month, the Administrator wrote to Member A about the matter. Member A tendered his resignation four days later.

*Audit comments*

3. The M&A of the DLS has provisions dealing with long absence of Council members from meetings. In this case, it took the DLS four years to initiate action. There is a need for the DLS to closely monitor long absence of Council members for taking prompt remedial actions (e.g. issuing reminders).

Source: DLS records

### ***Publishing attendance rates of Council members***

2.19 According to the Corporate Governance Guide, a good annual report of a subvented organisation should disclose for public information the number of board meetings held and the meeting attendance rates of individual board members. This will enhance transparency and public accountability. For example, the Law Society has adopted the practice of publishing the meeting attendance rates of individual Council members in its annual reports, which are available on its website. The DLS has not yet adopted such practice.

### ***Audit recommendations***

2.20 **Audit has recommended that the DLS should:**

- (a) **closely monitor the attendance rates of Council members at meetings;**
- (b) **issue reminders to Council members with low attendance rates, requesting them to make efforts to attend meetings as far as possible;**
- (c) **closely monitor long absence of Council members from meetings for taking prompt remedial actions; and**
- (d) **publish on its website the meeting attendance rates of Council members.**

### **Response from the Duty Lawyer Service**

2.21 The DLS agrees with the audit recommendations.

### **Management of conflicts of interest**

2.22 A governing board has to properly manage conflicts of interest of its members. According to the Corporate Governance Guide, an organisation should set out requirements to avoid conflicts of interest, including a system for declaration of interests by board members which may have two tiers:

- (a) upon joining the board, all board members have to declare their general interests. They also have to update the declarations on a periodic (e.g. annual) basis; and
- (b) when there is a special instance involving a probable threat of a conflict of interest, the board member concerned has to declare the conflict of interest.

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## Audit observations and recommendations

### *System for declaration of interests*

2.23 The DLS operates in an environment where actual or perceived conflicts of interest can undermine its reputation. The DLS has adopted a one-tier system for declaration of interests by Council members, which requires a Council member to declare a conflict of interest as and when it arises (Note 7). Declarations of general interests are not required to be made upon joining the Council and annually thereafter.

2.24 In August 2005, the HAB issued a memorandum to government bureaux and departments promulgating a set of guidelines for introducing a system for declaration of interests for advisory and statutory bodies. The guidelines advocate the adoption of a two-tier system (see para. 2.22) for advisory and statutory bodies which:

- (a) have a high degree of management and financial autonomy;
- (b) have extensive executive powers on matters of public interest; or
- (c) are responsible for the control and disbursement of substantial public funds.

To a large extent, the DLS meets the above criteria. The HAB guidelines also recommend good practices which are worth considering by the DLS for reporting declarations of interests (such as keeping a register of all declarations, and making the register available for public inspection).

### *Council members serving as duty lawyers*

2.25 According to the M&A, a Council member is not allowed to be appointed to any salaried office of the DLS or any office of the DLS paid by fees, except performing the duties of a duty lawyer to whom normal fees are payable.

2.26 In its Annual Report and on its website, the DLS published a list of its Council members. In its Annual Report, the DLS also published a list of duty lawyers participating in its legal assistance schemes.

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**Note 7:** *According to the M&A, a Council member has to declare his interest by a general notice if he has material interest in a contract, arrangement or transaction which is of significance in relation to the DLS. He shall not vote and shall absent himself from any discussion. The declaration should be made at the earliest meeting of the Council at which it is practicable for him to do so.*

2.27 Audit noted that, as at December 2011, seven of the eight lawyer members of the Council were also participating in the Duty Lawyer Scheme, with one of them in the CAT Scheme too. As such, they were entitled to legal fees for their services rendered. However, there were no declarations of interests in DLS records to reflect the potential conflicts of interest between their roles as Council members and as duty lawyers. Moreover, the information was not disclosed in any DLS publications or on its website. To enhance transparency and public accountability, the DLS needs to disclose this information in its financial statements and Annual Report, and on its website.

### *Audit recommendations*

2.28 **Audit has recommended that the DLS should:**

- (a) **consider adopting a two-tier system for declaration of interests which requires, among other things, Council members to make declarations of general interests on appointment and annually thereafter;**
- (b) **consider keeping a register of all declarations of interests and making it available for public inspection; and**
- (c) **publish in its financial statements and Annual Report, and on its website relevant information about Council members participating in its legal assistance schemes.**

### **Response from the Duty Lawyer Service**

2.29 The DLS agrees with the audit recommendations.

### **Corporate governance guidelines and procedures**

2.30 According to the Corporate Governance Guide, a subvented organisation should establish effective arrangements for its board of directors to ensure that:

- (a) it has the necessary skills and experience available;
- (b) board meetings are conducted in a professional manner; and
- (c) board decisions are implemented in a timely and effective way.

2.31 The Corporate Governance Guide also mentions that corporate governance is an evolving concept. Many good governance practices are recent developments. Some old guidelines and requirements may need to be reviewed in the light of these developments. Subvented organisations are advised to conduct regular reviews of their corporate governance practices to take account of changes in need and expectation.

## **Audit observations and recommendations**

### *Corporate governance manual*

2.32 The operation of the DLS Council is governed by its M&A which lays down some basic guidelines on corporate governance. At present, the DLS does not have a corporate governance manual which sets out more detailed guidelines and procedures.

2.33 **Following good governance practices, the DLS needs to compile a corporate governance manual to facilitate the professional and effective functioning of its Council and provide guidelines to Council members (particularly new members).** The manual should cover, among other things:

- (a) the aims, roles and functions of the DLS;
- (b) the rules and procedures for Council meetings (e.g. frequency of meetings, lead time for distributing meeting notices and papers, and requirements concerning absence from meetings);
- (c) the ethical requirements for Council members (e.g. avoiding conflicts of interest, and adhering to confidentiality requirements); and
- (d) a framework of delegated and reserved powers of the Council (see para. 2.36).

### *Documentation of adopted practices*

2.34 Over the years, the DLS has adopted some practices which have not been incorporated in the M&A or a corporate governance manual. For example, Case 2 shows the practice adopted in electing the Council Chairman.

## Case 2

### Adopted practice in electing the Council Chairman

1. According to the M&A, Council members may elect among themselves a Chairman and determine the period for which he is to hold office.
2. In November 2009, the Administrator informed the Council that:
  - (a) since 1993, the Chairmanship of the DLS Council had been rotated annually between the nominees of the Bar Association and those of the Law Society. The practice was based on the understanding between the Bar Association and the Law Society made in October 1993; and
  - (b) the practice of writing to the two legal professional bodies for them to nominate the Chairman seemed not to be in accordance with the M&A.
3. In the event, the Council agreed to adopt the practice that the Chairman would be formally elected by Council members, with the understanding that the Chairmanship would be rotated annually between the nominees of the two legal professional bodies.

#### *Audit comments*

4. Election of the Council Chairman is a key corporate governance matter. The current practice should be clearly laid down in the M&A or a corporate governance manual.

*Source: DLS records*

2.35 The DLS needs to formally document the practices adopted by the Council in a corporate governance manual. This will facilitate the professional and effective functioning of the Council.

#### *Framework of delegated and reserved powers of the Council*

2.36 According to the Corporate Governance Guide, a governing board is responsible for establishing and maintaining an up-to-date framework of delegated and reserved powers, including a formal schedule of the powers delegated to the management and those specifically reserved for the board. However, the DLS has not established such a framework.

2.37 The Corporate Governance Guide suggests that certain matters should be specifically reserved for the governing board's approval. Audit noted that for some of these matters, the DLS did not seek the Council's approval, as follows:

- (a) *Significant staff remuneration matters.* Case 3 is an example that the DLS did not seek the Council's approval for the revision of the starting salaries of posts, which should have been a significant staff matter;

### Case 3

#### Revision of the starting salaries of posts

1. In July 2007, the Finance Committee of the Legislative Council approved, based on the 2006 Starting Salaries Survey, the revision of the starting salaries of civil service posts, which would increase the starting salaries of many civil service posts.

2. In the same month, the HAB wrote to enquire whether the DLS would revise the starting salaries of its posts in line with the revision of the civil service. **Without consulting the Council**, the Administrator responded to the HAB that the DLS would adopt the revision and use its reserve to meet the additional expenditure. In September 2007, the HAB gave approval for the DLS to implement the revised starting salaries with retrospective effect from 1 August 2007.

3. In October 2007, the Council was informed of the event.

#### *Audit comments*

4. Revision of the starting salaries of posts is a significant staff matter that should require the approval of the governing board of an organisation. The DLS should have sought the Council's approval before replying to the HAB on the revision of the starting salaries of posts.

*Source: DLS records*

- (b) *Appointment of senior officers.* The appointment or promotion to senior posts was decided and approved by the Administrator. In line with good governance practices, the appointment of senior officers should be approved by the Council; and

- (c) **Approval of estimates.** According to the MAA, the DLS has to submit to the HAB estimates of income and expenditure for each financial year. Audit found that the DLS's estimates submitted to the HAB were not examined and approved by the Council.

2.38 Audit considers that the DLS needs to establish a framework of delegated and reserved powers, delineating clearly the authorities and responsibilities between the Council and the Administrator, particularly regarding the matters mentioned in paragraph 2.37.

### ***Functional committees***

2.39 According to the Corporate Governance Guide, functional committees can support the governing board on specific matters and provide internal checks and balances that are necessary for an effective system of internal control. They can also capitalise on the specific expertise and experience of individual members. It is a good practice for an organisation to have functional committees to support the governing board in carrying out its functions.

2.40 According to the M&A, the Council may delegate its powers to committees (see para. 2.3(b)). Up to December 2011, the DLS Council had not established any functional committees. In February 2012, the DLS informed Audit that the DLS Council had resolved, at a meeting held in January 2012, to set up an ad hoc committee for the appointment of senior executives at the top three tiers. **Audit considers that the DLS needs to consider setting up functional committees to support its Council in carrying out other important functions, e.g.:**

- (a) a Human Resource Committee for approving remuneration policies and other important personnel matters (see para. 2.37(a)); and
- (b) a Finance Committee for approving the annual estimates and other important financial matters (see para. 2.37(c)).

### ***Audit recommendations***

2.41 **Audit has recommended that the DLS should:**

- (a) **compile a corporate governance manual covering, among other things:**
  - (i) **detailed rules and procedures for the proceedings of Council meetings;**



- (ii) **established practices of the Council in managing the business and affairs of the DLS (e.g. the election of the Council Chairman); and**
  - (iii) **a framework of delegated and reserved powers, delineating clearly authorities and responsibilities between the Council and the Administrator; and**
- (b) **consider setting up functional committees (e.g. Human Resource Committee and Finance Committee) to support the Council in performing its functions.**

### **Response from the Duty Lawyer Service**

2.42 The DLS agrees with the audit recommendations.

### **Strategic management**

2.43 Effective strategic planning is vital to an organisation in meeting new demands and challenges of a changing environment. It is a good management practice for an organisation to adopt a structured approach to reviewing its strategic objectives and examining its strengths/weaknesses/opportunities/threats, market position and strategic direction regularly.

### **Audit observations and recommendation**

2.44 The DLS does not have a strategic plan setting out its strategic objectives and direction over a period of time. The Council discusses strategic issues on a need basis, but a structured strategic planning process is not in place. Audit notes that the DLS is facing significant challenges in delivering its services, including:

- (a) the operation of the CAT Scheme since December 2009, requiring additional funding and staff resources (see paras. 4.7 to 4.9); and
- (b) an upsurge in the demand for services under the Free Legal Advice Scheme, resulting in a longer waiting time (see para. 4.15).

- 2.45 Audit considers that good strategic planning would enable the DLS to:
- (a) plan ahead strategically;
  - (b) engender a culture which is forward-looking and innovative, and which stimulates cooperation among different functions; and
  - (c) think positively and flexibly about the provision of legal assistance services in a proactive manner.

*Audit recommendation*

2.46 **Audit has recommended that the DLS should consider adopting a more structured approach to strategic planning which, among other things, would help it plan strategically to meet challenges ahead.**

**Response from the Duty Lawyer Service**

2.47 The DLS agrees with the audit recommendation.

## **PART 3: DUTY LAWYER SCHEME**

3.1 This PART examines the Duty Lawyer Scheme, focusing on the following areas:

- (a) means test and waiver applications (paras. 3.3 to 3.19);
- (b) assignment of work to duty lawyers (paras. 3.20 to 3.33);
- (c) assessment of the performance of duty lawyers (paras. 3.34 to 3.39); and
- (d) legal cost of the Scheme (paras. 3.40 to 3.51).

### **Background**

3.2 The Duty Lawyer Scheme provides legal representation to eligible defendants, subject to passing a merits test and a means test (see para. 1.2(a)). In practice, defendants will automatically pass the merits test if they are charged with offences on the Standard List of Offences of the Scheme (Note 8). For defendants charged with offences not on the Standard List but referred by Magistrates to the DLS in the interests of justice, the DLS will also provide service to them. **Defendants will pass the means test if their annual income does not exceed the financial eligibility limit (FEL)**, which was \$131,860 as at February 2012. The merits test and the means test are not applicable to defendants in Juvenile Courts. Defendants have to pay a handling charge of \$436 for the service.

### **Means test and waiver applications**

3.3 The first hearings of criminal cases are conducted at plea courts in which defendants can plead guilty or not. The Duty Lawyer Scheme provides, without applying the means test and the handling charge, free legal representation to defendants in their first hearings. If defendants wish to have the Scheme service after their first appearances at plea courts, they have to make applications at the Court Liaison Offices concerned. Subject to defendants' passing the means test and paying the handling charge (Note 9), the DLS will assign duty lawyers to represent them in their trials.

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**Note 8:** *The Standard List of Offences covers some 300 statutory and common law offences, which represent the majority of offences tried at Magistrates' Courts. Nevertheless, the Duty Lawyer Scheme does not cover committal proceedings, hawking offences, traffic summonses, and other "regulatory offences" such as summonses issued by government departments.*

**Note 9:** *The handling charge is not applicable to defendants who are remanded in custody and cannot arrange for anyone to pay on their behalf, illegal immigrants, or recipients of the Comprehensive Social Security Assistance.*

3.4 A defendant may apply for a waiver of the FEL requirement (i.e. the requirement that his annual income does not exceed the FEL). He may also apply for a waiver of the handling charge. The Administrator has the discretion to grant such waivers.

3.5 In 2010-11, the Duty Lawyer Scheme provided service to 33,206 defendants, mainly at plea courts. During the year, 6,621 means test were conducted, and 669 applications for waiving the FEL requirement and 278 applications for waiving the handling charge were received. The amount of handling charge collected was \$2.4 million.

### **Audit observations and recommendations**

#### ***Revision of the FEL***

3.6 It is specified in the MAA that the FEL of the Duty Lawyer Scheme is subject to annual review. In practice, the HAB and the DLS have an established mechanism to revise the FEL based on the annual review of the FELs of the LAD's legal aid schemes (Note 10).

3.7 Based on the established mechanism, the DLS will revise the FEL of the Duty Lawyer Scheme on the HAB's advice after the annual review of the LAD's FELs. The FEL of the Duty Lawyer Scheme was last revised in July 2009, by 6.1% upwards. As there were no revisions to the LAD's FELs in 2010 and 2011 after conducting the annual reviews, no revisions were made to the FEL of the Duty Lawyer Scheme accordingly.

3.8 Based on a five-yearly review (see Note 10(c) to para. 3.6), the LAD's FELs were revised upwards in May 2011 taking into account results of the annual review conducted in early 2011. However, the HAB did not advise the DLS to revise the FEL of the Duty Lawyer Scheme accordingly. Up to February 2012, the FEL of the Duty Lawyer Scheme had not been revised.

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**Note 10:** *For the LAD, the mechanism for reviewing the FELs has three components:*

- (a) *an **annual** review to take account of the change in Consumer Price Index (C) to maintain the real value of the FELs;*
- (b) *a **biennial** review to reflect other relevant factors, including the changes in litigation costs; and*
- (c) *a **five-yearly** review of the criteria used to assess financial eligibility of legal aid applicants to examine the continual propriety.*

3.9 The FEL is a key parameter of the means test for assessing the financial eligibility of applicants for legal representation under the Duty Lawyer Scheme. **The HAB and the DLS need to expedite action to revise the FEL according to the latest change in Consumer Price Index (C) to maintain its real value, and take measures to ensure that revisions to the FEL are implemented in a timely manner in accordance with the established mechanism in future.**

#### *Verification of financial means*

3.10 In undergoing the means test at a Court Liaison Office, an applicant is required to make a statutory declaration (Note 11) on the gross income in the past 12 months and the current monthly income of himself (and his spouse if applicable). If both the gross income and the current monthly income multiplied by 12 do not exceed the FEL, the means test is passed.

3.11 According to the requirements of the DLS's means test, applicants may be required to provide supporting documents of their financial means, such as bank books, salary slips, salaries tax assessments, etc. However, in practice, the DLS did not require applicants to provide any documentary evidence for verifying the declared income. This differed from the LAD's practice whereby applicants were required to provide documentary evidence for means testing. In order to strengthen the procedures to guard against possible abuses, the DLS needs to, on a risk basis, require applicants to provide supporting documents of their declared income for verification in conducting the means test.

#### *Waivers of the FEL requirement and the handling charge*

3.12 A defendant can apply for waivers of the FEL requirement and the handling charge if he has genuine hardship. The Administrator has the discretion to grant waivers. Of the 669 applications in 2010-11 for waiving the FEL requirement, 522 (78%) were approved. Of the 278 applications in the same year for waiving the handling charge, 273 (98%) were approved.

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**Note 11:** *The DLS has put a warning notice on the statutory declaration form stating that: "Any person who knowingly and wilfully makes a false statutory declaration may be prosecuted for a criminal offence under section 36 of the Crimes Ordinance (Cap. 200) and is liable on conviction to be sentenced to a term of imprisonment not exceeding 2 years and to a fine."*

3.13 On receiving a waiver application, the Court Liaison Office concerned will complete a standard memorandum (same for the FEL requirement and the handling charge) for the applicant and send it to the Administrator for decision. The standard memorandum is designed to record the particulars of the applicant and the trial case (Note 12) for the Administrator's consideration.

3.14 Audit examined the waiver applications received in January 2011 and noted the following:

- (a) 55 (93%) of the 59 applications for waiving the FEL requirement were approved. Supporting documents were obtained for only 11 (20%) of the 55 approved applications;
- (b) all 24 applications for waiving the handling charge were approved. Supporting documents were obtained for only one of these applications;
- (c) the DLS would require applicants to provide supporting documents for certain waiver applications (e.g. when the annual income of an applicant was grossly over the FEL but he claimed that he had a lot of loans and liabilities). However, the DLS had not clearly laid down the criteria for requiring waiver applicants to submit supporting documents; and
- (d) the decisions on approving or rejecting the waiver applications were stated on the memoranda, but the rationales for the decisions were not documented.

3.15 Audit considers that the DLS should clearly lay down the criteria for requiring waiver applicants to submit supporting documents. The DLS should also document the rationale for the decision on each waiver application.

#### ***Audit recommendations***

3.16 **Audit has recommended that the Secretary for Home Affairs and the DLS should:**

- (a) **expedite action to revise the FEL of the Duty Lawyer Scheme according to the latest change in Consumer Price Index (C) to maintain its real value; and**

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**Note 12:** *Examples of such information recorded include the applicant's savings, monthly rent/house mortgage payment, and the number of dependants.*

- (b) **take measures to ensure that, in future, revisions to the FEL are implemented in a timely manner in accordance with the established mechanism.**

3.17 **Audit has recommended that the DLS should:**

- (a) **in conducting the means test for the Duty Lawyer Scheme, on a risk basis, require applicants to provide supporting documents of their declared income for verification;**
- (b) **to facilitate processing waiver applications, clearly lay down the criteria for requiring applicants to submit supporting documents; and**
- (c) **properly document the rationale for the decision on each waiver application.**

### **Response from the Administration**

3.18 The **Secretary for Home Affairs** agrees with the audit recommendations in paragraph 3.16. He has said that:

- (a) the FEL is a key parameter of the means test for assessing the financial eligibility of applicants for legal representation under the Duty Lawyer Scheme. It should be revised in a timely manner; and
- (b) the HAB informed the DLS in March 2012 to revise the FEL of the Duty Lawyer Scheme upwards by 7.1% (i.e. from \$131,860 to \$141,220) in accordance with the change in Consumer Price Index (C) from July 2008 to July 2011. Subject to the DLS's agreement and taking into account the time required for the DLS to make necessary administrative arrangements, it is expected that the new FEL can be put into effect in April 2012.

### **Response from the Duty Lawyer Service**

3.19 The DLS agrees with the audit recommendations in paragraphs 3.16 and 3.17.

### **Assignment of work to duty lawyers**

3.20 As at November 2011, there were 908 barristers and 717 solicitors on the panel of duty lawyers for the Scheme. The work of duty lawyers can be classified as plea-court assignments and trial-court assignments:

- (a) ***Plea-court assignments.*** These relate to the first hearings of cases conducted at plea courts (usually in the morning) in which defendants can plead guilty or not. The DLS generally assigns at least two duty lawyers to attend a plea court each morning, and each duty lawyer will serve a number of defendants (Note 13). Plea-court assignments are generally half-day assignments; and
- (b) ***Trial-court assignments.*** These relate to the trials of cases conducted at trial courts. Two or three cases are usually listed for a trial court each day. The DLS generally assigns one duty lawyer to handle one or two cases listed for a trial court. Trial-court assignments are generally whole-day assignments.

3.21 The Assignment Officer at the DLS Administration Office is responsible for assigning work to duty lawyers. Senior CLOs take turns to act as the Assignment Officer, usually for one year. The DLS has set up a computerised roster system to assist the Assignment Officer in making plea-court assignments. The system generally assigns one plea-court assignment to a duty lawyer every 10 months.

3.22 For making trial-court assignments, the Assignment Officer operates a manual system. The assignment system works as follows:

- (a) Court Liaison Offices prepare and send to the Assignment Officer lists of trial cases at least two weeks in advance;
- (b) based on the lists received, the Assignment Officer selects duty lawyers, confirms their availability, and prepares a master chart of assignments on a weekly basis; and
- (c) the Assignment Officer informs Court Liaison Offices of the duty lawyers assigned. Court Liaison Offices will forward the documents of the cases to the duty lawyers concerned.

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**Note 13:** *For example, in March 2011, the DLS assigned on average three duty lawyers to attend a plea court each morning, and each duty lawyer served on average seven defendants.*



3.23 The DLS observes the following two principles in assigning work to duty lawyers:

- (a) safeguarding the interests of defendants by assigning duty lawyers with suitable expertise and experience to trial cases; and
- (b) maintaining a fair and even distribution of work among duty lawyers.

3.24 To strike a balance between these two principles, the DLS has set limits on trial-court assignments for duty lawyers. In January 2005, the general limit was revised to 36 whole days a year. In February 2007, a special list was set up comprising duty lawyers who were competent and willing to take up urgent assignments. For duty lawyers on the special list, the limit was set at 50 whole days a year. Both the general limit and the limit for the special list have remained unchanged for a long time.

## **Audit observations and recommendations**

### *Distribution of trial-court assignments among duty lawyers*

3.25 Audit conducted an analysis on the distribution of whole-day assignments (which are generally trial-court assignments) among duty lawyers for 2009-10 and 2010-11 (see Table 2).

Table 2

**Distribution of whole-day assignments among duty lawyers  
(2009-10 and 2010-11)**

Number of days	Number of lawyers	
	2009-10	2010-11
1 to 6	298 (45%)	279 (44%)
7 to 12	175 (26%)	214 (34%)
13 to 18	135 (20%)	93 (15%)
19 to 24	55 (8%)	32 (5%)
25 to 30	8 (1%)	12 (2%)
31 to 36	0 (0%)	1 (0%)
More than 36	0 (0%)	2 (0%)
	} 63 (9%)	} 47 (7%)
<b>Total</b>	<b>671 (100%)</b>	<b>633 (100%)</b>
<b>Total number of days</b>	5,915	5,343
<b>Average number of days per lawyer</b>	8.8	8.4

*Source: Audit analysis of DLS records*

*Note: The two duty lawyers had 37 and 39 days of assignment respectively. Both of them were on the special list of duty lawyers.*

*Remarks: Whole-day assignments are generally trial-court assignments but may also include plea-court assignments that have been extended beyond the morning.*

3.26 As can be seen from Table 2, there is room for more even distribution of whole-day assignments among duty lawyers. For example, in 2010-11, 44% of duty lawyers had only 1 to 6 days of assignment a year. On the other hand, 7% of duty lawyers had 19 or more days of assignment a year.

3.27 Audit noted the following two developing trends which might have an impact on the distribution of trial-court assignments:

- (a) *More duty lawyers.* The number of duty lawyers competent and willing to handle trial cases had increased by 13% from 437 in 2007-08 to 495 in 2010-11; and
- (b) *Fewer trial cases.* The number of trial cases had decreased by 11%, from 4,229 in 2007-08 to 3,764 in 2010-11.

3.28 Audit considers that there is a need to review the system for distributing trial-court assignments among duty lawyers. The current general limit on trial-court assignments has been adopted since January 2005 without any revision. As can be seen from Table 2, the current general limit of 36 whole days a year is much greater than the average in 2010-11 of 8.4 days of assignment per lawyer, which may not be conducive to an even distribution of case assignments. To observe the principle of maintaining a fair and even distribution of trial-court assignments among duty lawyers (see para. 3.23(b)), there is merit in revising the general limit downwards.

#### *Special list of duty lawyers*

3.29 Duty lawyers on the special list (see para. 3.24) are subject to a higher limit of 50 whole days a year. According to the DLS, the list included those duty lawyers who were competent and willing to take up urgent assignments. They were also expected to take up more trial-court assignments than those not on the special list. The incumbent Assignment Officer determined the length and composition of the special list. When the special list of duty lawyers was first established in February 2007, it contained 36 duty lawyers. In November 2011, the list contained 152 duty lawyers.

3.30 Audit noted that there were no guidelines laid down for maintaining the special list. The incumbent Assignment Officer may adopt his own practice in drawing up his special list. To ensure consistency and fairness in making trial-court assignments among all duty lawyers, Audit considers that the DLS needs to develop guidelines and control measures for the operation of the special list.

#### *Database of duty lawyers*

3.31 The Assignment Officer performed the job of assigning duty lawyers to trial cases largely based on judgement and his knowledge of individual duty lawyers. In this regard, the DLS's database of duty lawyers did not contain information on their particular expertise and experience. Audit considers that including such information in the database

would facilitate the Assignment Officer in assigning suitable duty lawyers to trial cases. Given that the post of the Assignment Officer is taken up on a rotational basis (see para. 3.21), such a database can provide a consistent basis for different officers in assigning cases to duty lawyers.

#### *Audit recommendations*

3.32 **Audit has recommended that the DLS should:**

- (a) **conduct a review of the system for distributing work among duty lawyers, with a view to maintaining a fair and even distribution of trial-court assignments. In particular, the review should examine whether the general limit of 36 whole days a year should be revised downwards;**
- (b) **develop guidelines and control measures for the operation of the special list; and**
- (c) **consider including in the database of duty lawyers information on their particular expertise and experience to facilitate the assignment of suitable duty lawyers to trial cases.**

#### **Response from the Duty Lawyer Service**

3.33 The DLS agrees with the audit recommendations.

#### **Assessment of the performance of duty lawyers**

##### *New duty lawyers*

3.34 From time to time, the DLS enrolls qualified lawyers to join the Duty Lawyer Scheme. For new duty lawyers, they have to go through the following procedures before they are considered capable of handling trial cases under the Scheme:

- (a) the Assignment Officer assigns to a new duty lawyer his first plea-court assignment (see para. 3.20(a)) six months after his joining the Scheme. Afterwards, if his performance is satisfactory, the Assignment Officer will assign to him half-day assignments (Note 14) once every two months, and then once every month starting from the second year;

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**Note 14:** *These half-day assignments include plea-court assignments and short matters for trial cases such as attending sentencing hearings of defendants.*

- (b) the Officers-in-Charge of Court Liaison Offices observe and assess the duty lawyer's performance in various assignments, and verbally report the performance assessments to the Assignment Officer for record;
- (c) about two and half years after his joining the Scheme, if the duty lawyer's performance is satisfactory, the Assignment Officer will assign to him a simple trial case; and
- (d) the Officer-in-Charge of the Court Liaison Office concerned observes and assesses the duty lawyer's performance in the first trial case, and verbally reports the performance assessment to the Assignment Officer for record. If the duty lawyer's performance is satisfactory, he is considered capable of handling trial cases and will be given trial-court assignments.

### *Existing duty lawyers*

3.35 For existing duty lawyers, the DLS does not have a system to regularly assess their performance. On receiving adverse comments or complaints on existing duty lawyers (e.g. from Magistrates, Officers-in-Charge of Court Liaison Offices, or defendants), the Administrator will conduct investigations. If the complaints are substantiated, the Administrator may instruct the Assignment Officer to assign fewer or even no assignments to the duty lawyers concerned.

### **Audit observations and recommendation**

3.36 According to the DLS, the performance of duty lawyers is assessed in a number of aspects, including quality of legal advice rendered, techniques in interviewing defendants, language proficiency and advocate skills. Audit's examination of the performance assessments provided verbally by Officers-in-Charge of Court Liaison Offices and recorded by the Assignment Officer found that:

- (a) for the 146 new duty lawyers who joined the Duty Lawyer Scheme in 2009-10 and 2010-11, the performance assessments of their half-day assignments generally contained very brief comments (e.g. "O.K.", "inexperienced but O.K.", and "O.K. but not familiar with court procedures"). In general, there were no ratings on different aspects of their performance; and
- (b) for the 72 new duty lawyers who were assigned the first trial cases in 2009-10 and 2010-11, the performance assessments of such assignments also generally contained very brief comments (e.g. "defendant pleaded guilty" and "defendant was convicted"). According to the Assignment Officer, unless the comments on a duty lawyer's first trial-court assignment were negative, he would be considered capable of handling trial cases.

3.37 To improve the performance assessment of new duty lawyers, the DLS may consider using a standard assessment form with prescribed aspects of performance for ratings and comments.

#### *Audit recommendation*

3.38 **Audit has recommended that the DLS should consider using a standard assessment form for assessing the performance of new duty lawyers.**

#### **Response from the Duty Lawyer Service**

3.39 The DLS agrees with the audit recommendation.

#### **Legal cost of the Scheme**

3.40 The legal cost of the Duty Lawyer Scheme consists of legal fees payable to duty lawyers. Such fees are determined with reference to the scale of fees payable by the LAD to lawyers in private practice who undertake litigation work in respect of criminal cases on behalf of the LAD (Note 15).

3.41 As at December 2011, the duty lawyer fees were payable at different rates for:

- (a) court assignments at \$2,930 for a half-day assignment and \$5,880 for a whole-day assignment; and
- (b) pre-trial preparation at \$720 per hour.

#### **Audit observations and recommendations**

##### *Increasing legal cost per defendant*

3.42 The DLS incurred substantial legal cost every year. In 2010-11, the legal cost amounted to \$55 million, or 54% of the DLS's total expenditure. Table 3 shows the legal cost incurred, the number of defendants represented and the average legal cost per defendant under the Duty Lawyer Scheme for the period 2006-07 to 2011-12 (up to November 2011).

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**Note 15:** *The criminal legal aid fees are prescribed in Rule 21 of the Legal Aid in Criminal Cases Rules (Cap. 221D) under the Criminal Procedure Ordinance (Cap. 221).*

**Table 3**  
**Average legal cost per defendant**  
**(2006-07 to 2011-12)**

Financial year	Legal cost (a) (\$)	No. of defendants (Note 1) (b)	Average legal cost per defendant (c) = (a) ÷ (b) (\$)
2006-07	<b>50,170,348</b>	<b>40,150</b>	<b>1,250</b>
2007-08	51,686,819	38,254	1,351
2008-09	52,363,001	37,915	1,381
2009-10	56,731,123	35,885	1,581 (Note 2)
2010-11	<b>55,350,056</b>	<b>33,206</b>	<b>1,667</b>
2011-12 (Up to November 2011)	38,953,014	21,107	1,846

*Source: Audit analysis of DLS records*

*Note 1: It was the number of defendants represented by duty lawyers at plea courts. Some of them received further service after appearing at plea courts.*

*Note 2: The rates of legal fees payable to duty lawyers for court assignments were increased by 8.3% in November 2009.*

3.43 Table 3 shows that, during the five years 2006-07 to 2010-11:

- (a) the number of defendants decreased by 17% (from 40,150 to 33,206). According to the DLS, the decrease was mainly due to a general drop in the crime rate of Hong Kong;
- (b) the legal cost increased by 10 % (from \$50.2 million to \$55.4 million). Part of the increase was due to the 8.3% increase in the rates of legal fees for court assignments in November 2009; and
- (c) the legal cost per defendant increased by 33% (from \$1,250 to \$1,667).

3.44 The above analysis indicates that there was an increasing trend in the legal cost against a decreasing trend in the number of defendants represented by the Scheme. It is a cause for concern that the average legal cost has increased substantially by 33% over the period 2006-07 to 2010-11. In 2011-12 (up to November 2011), there was a further increase of 11% in the average legal cost to \$1,846 (from \$1,667 in 2010-11). **The DLS needs to ascertain the reasons for the substantial increase in the legal cost per defendant of the Duty Lawyer Scheme.**

#### *Cost of pre-trial preparation*

3.45 The DLS encourages duty lawyers to conduct pre-trial conferences (PTCs) with defendants to better prepare for trials. PTCs are now conducted for the majority of trial cases (87% of cases heard in 2009-10, and 92% in 2010-11). For pre-trial preparation (consisting mainly of PTCs), duty lawyers are paid at an hourly rate of \$720 (on a pro-rata basis for partial hours) for the time spent. Duty lawyers have to submit standard forms for claiming pre-trial preparation payments upon conclusion of trials. The Administrator has the discretion to approve the payment claims in full or in part.

3.46 Audit noted that the average time of pre-trial preparation per case increased by 30%, from 125 minutes in 2008-09 to 162 minutes in 2011-12 (up to November 2011). Table 4 shows the details.

**Table 4**

**Average time and fee of pre-trial preparation per case  
(2008-09 to 2011-12)**

<b>Financial year</b>	<b>No. of cases with pre-trial preparation fee paid</b>	<b>Average time per case (minutes)</b>	<b>Average fee per case (\$)</b>
2008-09	3,365	125	1,391
2009-10	3,645	130	1,489 (Note)
2010-11	3,263	144	1,723
2011-12 (up to November 2011)	2,173	162	1,942

*Source: Audit analysis of DLS records*

*Note: The hourly rate for pre-trial preparation was increased by 7.5% (from \$670 to \$720) in November 2009.*



3.47 In view of the increasing trend in the average time and fee, the DLS was concerned about the time management of some duty lawyers in conducting PTCs. The DLS introduced two control measures, as follows:

- (a) a list of duty lawyers who might have time management issues was compiled. A CLO should attend all PTCs conducted by a duty lawyer on the list. This measure was introduced in 2006; and
- (b) when more than one PTC was conducted for a trial case, as a good practice, a CLO should attend the PTCs after the first one. This measure was introduced in May 2009.

3.48 Notwithstanding the implementation of these control measures, the average time for PTCs continued to increase (see Table 4). Audit found that:

- (a) 6 duty lawyers who were added to the list (see para. 3.47(a)) in June 2010 had conducted 32 PTCs from July 2010 to March 2011. However, CLOs were present at only 2 of the 32 PTCs; and
- (b) in 2010-11, there were 250 cases with two or more PTCs conducted. However, for only 4 cases, CLOs were present at the PTCs after the first ones (see para. 3.47(b)).

3.49 It appears that CLOs generally did not attend the PTCs, contrary to the requirements of the control measures. The DLS needs to remind CLOs to strictly follow such requirements.

#### *Audit recommendations*

3.50 **Audit has recommended that the DLS should:**

- (a) **conduct a review to ascertain the reasons for the increasing trend in the legal cost per defendant of the Duty Lawyer Scheme;**
- (b) **having regard to the results of the review in (a) above, take measures to contain the increasing legal cost per defendant of the Scheme; and**
- (c) **remind CLOs to strictly follow the requirements of the control measures on PTCs.**

#### **Response from the Duty Lawyer Service**

3.51 The DLS agrees with the audit recommendations.

## **PART 4: OTHER LEGAL ASSISTANCE SCHEMES**

4.1 This PART examines issues relating to other legal assistance schemes (apart from the Duty Lawyer Scheme — see PART 3) operated by the DLS, namely:

- (a) Convention Against Torture Scheme (paras. 4.2 to 4.11);
- (b) Free Legal Advice Scheme (paras. 4.12 to 4.26); and
- (c) Tel-Law Scheme (paras. 4.27 to 4.33).

### **Convention Against Torture Scheme**

#### ***Background***

4.2 The United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Note 16) has been applied to Hong Kong since 1992. Torture claims made under Article 3 of the Convention are dealt with by the ImmD. The Administration has put in place a set of administrative procedures for screening torture claims. For a torture claimant who has failed to establish his claim, he will be removed from Hong Kong. For a torture claimant who has established his claim, he will not be removed to the country where he would be in danger of being subjected to torture.

4.3 In December 2008, the Court of First Instance ruled in a judicial review case that the Administration's screening procedures for torture claims could not meet the high standards of fairness for a number of reasons, including that the Administration had not provided publicly-funded legal assistance to needy claimants. The Administration subsequently suspended the screening of torture claims and reviewed the screening mechanism, having regard to the experiences of other common law jurisdictions. The Administration also explored with the DLS on a scheme to provide publicly-funded legal assistance to claimants.

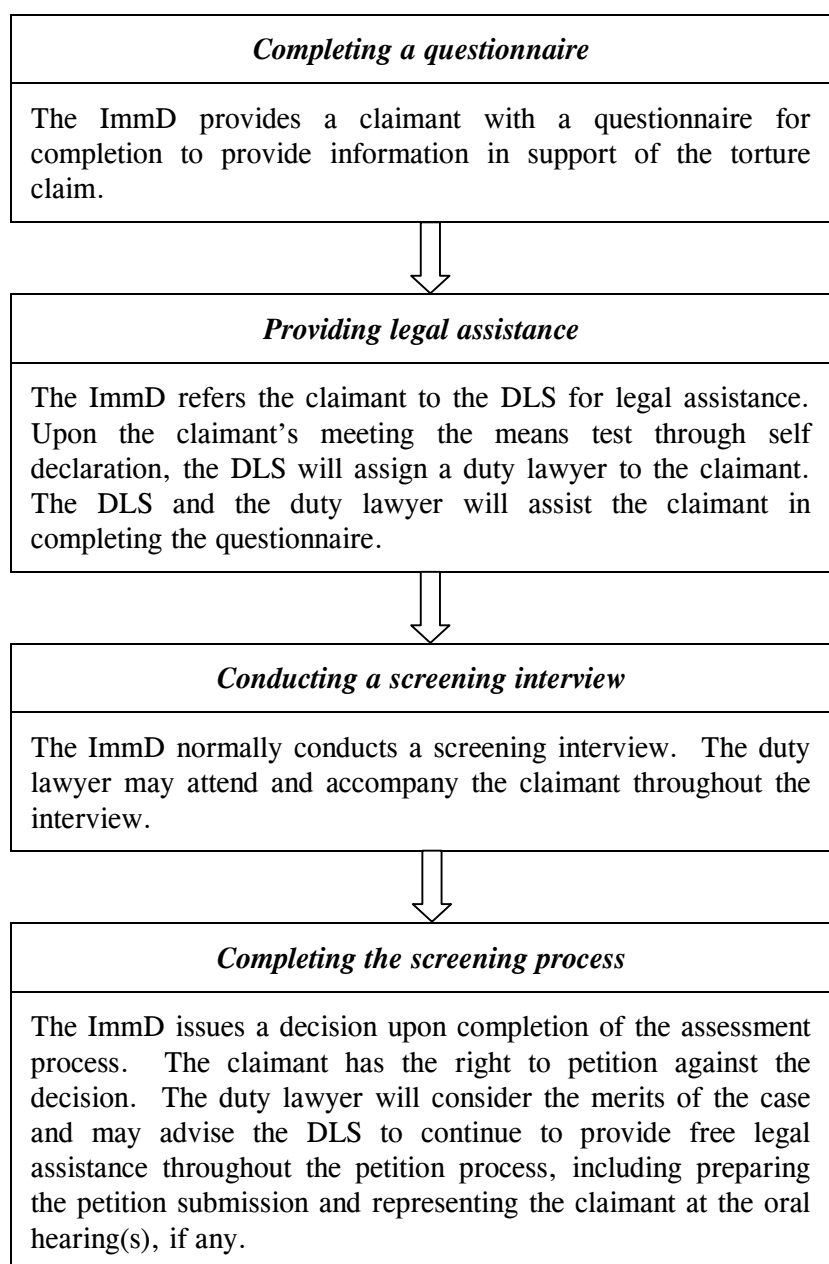
4.4 In December 2009, the DLS introduced the CAT Scheme (see para. 1.2(d)) to provide publicly-funded legal assistance to torture claimants, initially on a pilot basis for 12 months up to December 2010. At the same time, the Administration resumed the

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**Note 16:** *The Convention is an international human rights instrument that aims to prevent torture around the world. It requires signatory states (including China) to take effective measures to prevent torture within their borders, and forbids states to return people to their home country if there is reason to believe they will be tortured.*

screening of torture claims under an enhanced mechanism (see Figure 2). In December 2010, upon the expiry of the pilot period, the Administration and the DLS extended the CAT Scheme for two more years to December 2012.

**Figure 2**  
**Screening procedures for torture claims**  
**(December 2011)**



Source: *Audit analysis of DLS records*

### *Operation of the CAT Scheme*

4.5 For operating the CAT Scheme, the DLS has set up a panel of duty lawyers for the Scheme (separate from that for the Duty Lawyer Scheme) which had 272 duty lawyers as at November 2011. The DLS has also set up a CAT Scheme Office and recruited additional staff (around 20 staff as at November 2011).

4.6 Under the enhanced screening mechanism, the ImmD refers to the DLS a fixed number of torture claim cases each working day. The intake rate started at 2 cases a day in December 2009, and increased to 6 cases a day in June 2011. Since December 2009 and up to November 2011, the DLS had received 1,854 cases from the ImmD and completed processing 1,073 cases. During the same period, the DLS had incurred a total of \$41 million for operating the CAT Scheme.

### **Audit observations and recommendations**

4.7 In July 2011, the Administration introduced a bill to amend the Immigration Ordinance (Cap. 115) to underpin the enhanced screening mechanism. The proposed legislative amendments were targeted at maintaining high standards of fairness and reducing procedural abuses. These legislative amendments may affect the DLS's operation of the CAT Scheme (e.g. a time limit may be statutorily imposed on the period allowed for returning the questionnaires).

4.8 There are also other factors which may significantly affect the operation of the CAT Scheme, such as:

- (a) **Case intake rate.** As at November 2011, there were around 6,500 outstanding torture claims. In response to public concern over the large number of outstanding claims pending screening, the ImmD has targeted to complete at least 1,500 cases in 2012-13. To achieve this target, the ImmD has planned to increase the DLS's intake rate from 6 cases a day (see para. 4.6) to 8 cases a day in April 2012, an increase of 33%;
- (b) **Supply of duty lawyers.** To enrol in the panel for the CAT Scheme, a lawyer should have at least three years of post-qualification experience and successfully attended a training course on torture claims organised by the Hong Kong Academy of Law (run by the Law Society). Up to November 2011, the prerequisite training course had been held twice (in December 2009 and June 2010). The third training course was still under planning. The DLS needs to liaise closely with the Law Society to ensure that the prerequisite training course is organised regularly to facilitate recruitment of new duty lawyers. As at November 2011, there were 272 enrolled duty lawyers for the CAT Scheme.

Of them, around 30 lawyers had indicated that they were not interested in accepting more cases after taking up one or two cases; and

- (c) ***Supply of interpreters.*** The supply of interpreters is also a limiting factor for the effective operation of the CAT Scheme. The DLS noted that the number of interpreters required for communicating with torture claimants (e.g. who spoke Indian, Pakistani or African dialects) was limited, and these interpreters had to be shared with other parties (e.g. the ImmD, the Hong Kong Police Force, and the courts).

4.9 At the present pilot stage of operating the CAT Scheme, the DLS needs to closely monitor the above factors which may have a significant impact on the operation of the Scheme.

#### ***Audit recommendations***

4.10 **Audit has recommended that the DLS should:**

- (a) **closely monitor the factors which may have a significant impact on the operation of the CAT Scheme; and**
- (b) **taking into account these factors, plan ahead for the continuous provision of the service (if required) after the expiry of the pilot scheme in December 2012.**

#### **Response from the Duty Lawyer Service**

4.11 The DLS agrees with the audit recommendations.

#### **Free Legal Advice Scheme**

##### ***Background***

4.12 The objective of the Free Legal Advice Scheme is to provide, without means testing, free preliminary legal advice to members of the public who face genuine legal problems and cannot afford fees for professional legal advice. Under the Scheme, volunteer lawyers provide legal advice on a pro bono basis to such persons to help them understand the nature of their problems, their rights and obligations under the law, and the channels available for resolution. The one-off legal advice given is of a general nature.

4.13 The Free Legal Advice Scheme operates as follows:

- (a) a person who wishes to seek legal advice under the Scheme can make an appointment to meet a volunteer lawyer at one of the nine Legal Advice Centres located at District Offices (Note 17). He can approach a District Office (or a designated referral agency) for making the appointment;
- (b) clerical staff at District Offices conduct preliminary interviews with the persons seeking legal advice and prepare case summaries to be transmitted to the DLS. The DLS will vet the case summaries to see if the requests for legal advice are within the scope of service of the Scheme (see para. 4.22);
- (c) currently, the nine Legal Advice Centres provide a total of 33 sessions a week. During a session, which normally lasts for two hours (from 6:30 p.m. to 8:30 p.m.), a lawyer will give advice to five clients (in five sub-sessions); and
- (d) for each month, the DLS prepares a duty roster by assigning lawyers on a rotational basis to attend the legal advice sessions. Two weeks before the advice sessions, the DLS will deliver the case summaries to the lawyers assigned to prepare for the sessions.

***Recent improvement measures***

4.14 The Government has implemented the following measures to improve the Free Legal Advice Scheme:

- (a) additional resources (Note 18) have been provided to the Home Affairs Department to engage dedicated staff for making appointments and preparing case summaries;
- (b) since May 2011, the Wan Chai Centre has been providing service three (instead of two) evenings a week. The additional evening provides two more advice sessions;

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**Note 17:** *The Legal Advice Centres are located at nine District Offices. The centres open once a week, except the Wan Chai Centre which opens three times a week.*

**Note 18:** *In April 2011, the HAB informed the Legislative Council Panel on Administration of Justice and Legal Services that the Home Affairs Department employed nine executive assistants at an annual cost of \$1.9 million to provide support services at the District Offices for the Free Legal Advice Scheme and would seek to employ paralegals to further enhance support for the Scheme.*

- (c) since April 2011, a \$300 travelling allowance has been offered to volunteer lawyers for each pro bono legal advice session; and
- (d) a commendation scheme has been launched to recognise and promote the provision of pro bono legal services for the year July 2011 to June 2012.

## **Audit observations and recommendations**

### *Increasing waiting time*

4.15 The DLS compiles the average waiting time (in calendar days) for meeting a volunteer lawyer after making an appointment. In 2007, the average waiting time was 25.2 days. In 2010, it increased to 38.5 days. The HAB organised in March 2011 promotion activities for the Free Legal Advice Scheme. Subsequently, there was an upsurge in the demand for the service. The average waiting time in 2011 increased substantially to 55 days. For the last quarter of 2011, it increased to 73.5 days. Audit considers that the long waiting time for service under the Scheme may adversely affect the timeliness of the legal advice and undermine the effectiveness of the Scheme. **The DLS needs to closely monitor the trend of increasing waiting time and take effective measures to address the issue.**

4.16 In order to provide more advice sessions, Audit considers that improvements need to be made in two areas:

- (a) recruitment of volunteer lawyers (paras. 4.17 to 4.19); and
- (b) assignment of legal advice sessions to volunteer lawyers (paras. 4.20 and 4.21).

### *Recruitment of volunteer lawyers*

4.17 Qualified lawyers are eligible to enrol as volunteer lawyers of the Free Legal Advice Scheme. These include barristers and solicitors in private practice, as well as qualified lawyers employed by the Government or private companies. As at December 2011, there were 903 volunteer lawyers under the Scheme, of whom 744 (82.4%) were also duty lawyers.

4.18 Audit noted that the DLS only invited lawyers to join the Free Legal Advice Scheme as volunteer lawyers when they applied for enrolment for the Duty Lawyer Scheme or the CAT Scheme. In November 2003, the DLS carried out a one-off exercise to invite all serving duty lawyers to join the Free Legal Advice Scheme. Since then, no such recruitment exercise has been conducted.

4.19 Qualified lawyers in Hong Kong are members of the two legal professional bodies (i.e. the Bar Association and the Law Society — Note 19), who should be the targets of recruitment exercises. **As the Free Legal Advice Scheme is in need of more volunteer lawyers, the DLS may consider seeking the assistance of the legal professional bodies in addressing this issue.**

*Assignment of legal advice sessions to volunteer lawyers*

4.20 In assigning legal advice sessions to volunteer lawyers, the DLS adopted a system in which each lawyer would be assigned three sessions a year. In practice, some lawyers would turn down assigned sessions and some would take up additional sessions. The DLS considered that volunteer lawyers were generally reluctant to take up more than three sessions a year. Table 5 shows the number of sessions taken up by volunteer lawyers in 2011.

**Table 5**  
**Number of sessions taken up by volunteer lawyers**  
**(2011)**

Number of sessions taken up by a lawyer	Number of lawyers	Total number of sessions taken up
0	151	0
1	219	219
2	286	572
3	237	711
4	8	32
5 or more	2	16
<b>Total</b>	<b>903 (100%)</b>	<b>1,550</b>

*Source: DLS records*

**Note 19:** According to their websites, as at February 2012, the Bar Association had about 1,100 members and the Law Society had about 8,200 members.



4.21 As can be seen from Table 5, only 10 (8 + 2) volunteer lawyers took up four or more sessions in 2011. Almost all (99%) volunteer lawyers took up not more than three sessions. Audit considers that some volunteer lawyers might be willing to take up more than three sessions a year in view of the long waiting time. The DLS may appeal for the support of serving volunteer lawyers and encourage them to take up more than three sessions a year.

*Incomplete and outdated information on website*

4.22 The DLS published on its website nine situations where free legal advice would be refused (see items (1) to (9) of Appendix B).

4.23 Prospective applicants might use the published list to assess whether their cases were within the scope of the Scheme before proceeding to make an appointment. However, Audit noted that the list was incomplete. According to the Handbook of the Free Legal Advice Scheme compiled by the DLS, there were altogether 15 situations in which free legal advice would usually be refused. In other words, six situations were not included in the list published on the DLS website (see items (10) to (15) of Appendix B).

4.24 Furthermore, it was stated on the DLS website that a person should be able to meet a volunteer lawyer within two weeks of making an appointment. This information was outdated and could be misleading as the average waiting time was about 55 days in 2011. The DLS needs to provide on its website complete and updated information of the Scheme.

*Audit recommendations*

4.25 **Audit has recommended that the DLS should:**

- (a) **closely monitor the trend of increasing waiting time for service under the Free Legal Advice Scheme;**
- (b) **seek the assistance of the Bar Association and the Law Society in inviting their members to join the Scheme as volunteer lawyers;**
- (c) **appeal for the support of serving volunteer lawyers to take up more than three legal advice sessions a year; and**
- (d) **provide on its website complete and updated information of the Scheme.**

## Response from the Duty Lawyer Service

4.26 The DLS agrees with the audit recommendations.

## Tel-Law Scheme

4.27 The Tel-Law Scheme provides the public with free recorded information on a wide range of legal topics through telephone. The information is available in Cantonese, Putonghua and English. Members of the public can also listen to or read the information on the DLS website. The information covers 78 topics which are divided into eight groups (e.g. family law, criminal law, employment law and general legal information).

## Audit observations and recommendations

### *Updating of the recorded information*

4.28 According to the DLS, the recorded information of the Tel-Law Scheme would be updated as and when required. The Administrator and the Chief CLO would pay attention to new legislation to see whether the recorded information would need updating. Government gazettes provide the major source of information. The DLS might seek the assistance of outside parties (e.g. relevant government departments and duty lawyers) in updating the recorded information.

4.29 Audit considers that the DLS may improve its system of updating the recorded information (currently on an ad hoc basis) by introducing a regular review (e.g. on an annual basis) to provide:

- (a) an overall review of the recorded information to ensure that all necessary updates are incorporated; and
- (b) an assessment as to whether new topics should be added. The current number of topics has remained at 78 for over 8 years (since February 2003).

4.30 For the recorded information (in text form) placed on the DLS website, the last amendment date of each topic is provided, but not the last review date. Audit notes that the last amendment dates are generally more than 10 years ago. This may give an impression to users that regular reviews of the information are not conducted.

*Inclusion of related links*

4.31 Some topics of the recorded information of the Tel-Law Scheme contain references to other government departments and organisations related to the subject matters. For example, the topic on divorce mediation service contains references to non-governmental organisations providing such service. Audit considers that, for the recorded information on the DLS website, it will be useful to provide relevant hyperlinks to enhance user-friendliness.

*Audit recommendations*

4.32 **Audit has recommended that the DLS should:**

- (a) **conduct regular reviews of the recorded information of the Tel-Law Scheme; and**
- (b) **for the recorded information of the Scheme on the DLS website, provide the last review date of each topic as well as the hyperlinks of related government departments and organisations.**

**Response from the Duty Lawyer Service**

4.33 The DLS agrees with the audit recommendations.

## **PART 5: ADMINISTRATIVE ISSUES**

5.1 This PART examines the DLS's administrative issues, and suggests measures for improvement in the following areas:

- (a) office premises for the Administration Office (paras. 5.3 to 5.14);
- (b) procurement of goods and services (paras. 5.15 to 5.18);
- (c) inventory control (paras. 5.19 to 5.24); and
- (d) human resource management (paras. 5.25 to 5.39).

### **Administration of the Duty Lawyer Service**

5.2 The Administrator, supported by a team of CLOs and secretarial grade staff, is responsible for the administration of the DLS. The DLS has set up an Administration Office, seven Court Liaison Offices and a CAT Scheme Office. The Administration Office is responsible for performing general administrative functions (e.g. procurement, accounting, and human resource management). The Court Liaison Offices are responsible for operating the Duty Lawyer Scheme at the respective Magistracies, and the CAT Scheme Office is responsible for operating the CAT Scheme.

### **Office premises for the Administration Office**

5.3 The DLS is not required to pay rent for the Court Liaison Offices and the CAT Scheme Office which are located at government premises. Regarding the Administration Office, it is located at a Grade-A (Note 20) office building in Central (which is the central business district of Hong Kong).

5.4 Before moving to its present location, the Administration Office was located at another Grade-A office building in Central. In late 1997, when that building was to be re-developed, the DLS searched for new office premises for relocation and sought the advice of the Director of Administration, the then Controlling Officer of the DLS's subvention (see Note 4 to para. 1.5). In considering the options put up by the DLS, the Director of Administration commented that:

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**Note 20:** *According to the Rating and Valuation Department, office premises are classified into Grade A, Grade B and Grade C, in descending order of quality and property value.*

- (a) the Government had been under constant pressure to ensure proper spending of public money on the accommodation for government departments and subvented bodies;
- (b) a number of government bureaux had moved out of Central to economise on accommodation costs; and
- (c) while it would be difficult for the DLS to relocate the Administration Office out of Central (Note 21), the DLS should rent an office which had a slightly lower grading than the existing one.

5.5 The DLS identified three options (all in Central), including the present location of the Administration Office (the preferred option) and another two locations at Grade-B buildings. In making its case for the preferred option, the DLS presented to the Director of Administration justifications and analyses supporting its preference. **In April 1998, the Director of Administration approved the DLS's proposal with the remark that this should not be taken as a precedent for renting an office of such grading in future removals of the Administration Office.**

5.6 In July 1998, the DLS Administration Office moved into the present location. The first lease covered the three-year period June 1998 to May 2001. Subsequently, the lease has been renewed four times. The current lease covers the period June 2010 to May 2013, at a monthly rent of \$152,240. In 2010-11, the office accommodation cost (comprising rent, rates and management fee) of the Administration Office amounted to \$2.1 million, accounting for 27% of the DLS's total operating expenses of \$7.9 million.

### **Audit observations and recommendation**

5.7 The DLS Administration Office is currently located at Grade-A office premises in Central with a floor area of 177 square metres. The monthly rent is \$860 per square metre.

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**Note 21:** *According to the DLS, locating the Administration Office in Central would facilitate the delivery of documents to lawyers whose offices were mainly situated in Central. Locating the Administration Office out of Central would bring about operational difficulties.*

5.8 As at June 2010 (commencement of the current lease of the Administration Office), according to information published by the Rating and Valuation Department, the average monthly rent levels of office premises in Central were \$801, \$500 and \$470 per square metre for Grade-A, Grade-B and Grade-C buildings respectively.

5.9 At that time, the average monthly rent levels of Grade-B and Grade-C buildings were substantially lower than that of Grade-A buildings, by 38% and 41% respectively. Relocating the Administration Office to office premises of a lower grading would have brought about substantial savings in rental for the DLS.

5.10 According to the MAA, the DLS must use the subvention solely for the purpose of the schemes and maximise value for money obtained from the subvention (see para. 1.5(b)). In 1998, the Director of Administration commented that the Administration Office should be located at office premises of a lower grading than the then existing one (see paras. 5.4 and 5.5). **However, Audit noted that the DLS had not examined the option of relocating the Administration Office to office premises of a lower grading before it renewed the lease of the present office premises in 2001, 2004, 2007 and 2010.**

5.11 Audit notes that it is uncommon for a subvented organisation to be accommodated in Grade-A office premises in Central. The Administration Office is mainly for accommodating the Administrator, the Chief CLO and 13 supporting staff, and for providing a conference room for meetings of the DLS Council. There are no special justifications for the Administration Office to be located at a Grade-A office building in Central, at a substantially higher rent than lower-grade office buildings (Note 22). With a view to economising on accommodation cost, Audit considers that the DLS should examine options of relocating the Administration Office to:

- (a) office premises of a lower grading (in Central or districts outside Central); or
- (b) suitable government premises.

For benchmarking purpose, Audit notes that the office of the Bar Association is located at government premises at the High Court in Queensway, and the office of the Law Society is located at a Grade-B office building in Central.

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**Note 22:** *According to information published by the Rating and Valuation Department, the average monthly rent levels as at December 2011 of Grade-A, Grade-B and Grade-C office premises in Central were \$1,149, \$632 and \$473 per square metre respectively.*

### *Audit recommendation*

5.12 Audit has *recommended* that the DLS should, before the expiry of the current lease of the Administration Office (in May 2013), critically examine, in consultation with the HAB (and the Government Property Agency if necessary), the option of relocating the Administration Office to office premises of a lower grading (including those outside Central) or suitable government premises, with a view to economising on accommodation cost.

### **Response from the Duty Lawyer Service**

5.13 The DLS agrees with the audit recommendation.

### **Response from the Administration**

5.14 The **Secretary for Home Affairs** agrees with the audit recommendation. He has said that the HAB will closely liaise with the DLS with a view to offering necessary advice and assistance to implement the recommendation.

### **Procurement of goods and services**

5.15 The Administration Office is responsible for the procurement of goods and services for use in the day-to-day operations of the DLS. In 2010-11, the DLS spent about \$3.7 million in procuring goods and services.

### **Audit observations and recommendation**

5.16 Audit examined the procurement practices of the DLS and found room for improvement in the following areas:

- (a) ***General procurement practices.*** The DLS had not laid down formal guidelines and procedures for procurement of goods and services. Audit selected for examination a sample of 10 purchases made by the DLS in 2010-11, with individual amounts ranging from \$360 (for a computer accessory) to \$56,000 (for 20 computers). Audit found that:
  - (i) the DLS did not have a standard requisition form to initiate a purchase transaction and record the approving authority. For five cases, purchase requisitions were put up in memoranda for approval, showing the justifications for the purchases. For the other five cases, there were no purchase requisitions showing the justifications and approval for the purchases; and

- (ii) for all cases, there were no records showing that quotations had been obtained for comparing prices before making the purchases;
- (b) ***Procurement from the same suppliers.*** For certain items of goods and services, the DLS adopted the practice of procuring from the same suppliers without obtaining quotations from other suppliers. In some cases, the same suppliers were used for many years without evaluation of their services. For example, the DLS had used the same supplier for more than 10 years for printing the company stationery and forms; and
- (c) ***Services covered by term contracts.*** In addition to one-off purchases, the DLS also entered into term contracts with service providers. In 2009, the DLS entered into a five-year term contract with a supplier for photocopying services (including provision of photocopying machines and maintenance service). In 2010-11, the DLS paid about \$280,000 under this contract. Despite the substantial payment involved in this term contract, the DLS had not conducted a tender exercise to invite proposals from prospective service providers.

#### ***Audit recommendation***

5.17 **Audit has recommended that the DLS should develop formal guidelines and procedures for procurement of goods and services, covering areas such as proper documentation of requisitions, approving authority and financial limits, number of quotations required, and conditions for conducting tender exercises.**

#### **Response from the Duty Lawyer Service**

5.18 The DLS agrees with the audit recommendation.

#### **Inventory control**

5.19 After goods are procured, it is important to have an inventory control system for the safe custody of inventory items and control of their movements. In particular, it is necessary for an organisation to:

- (a) prepare an inventory list and update it promptly so that it can function as a control list of the organisation's inventory of equipment, furniture and other assets; and
- (b) based on the inventory list, inspect inventory items regularly.



## **Audit observations and recommendation**

5.20 Audit noted that the DLS had not developed an inventory control system for the safe custody of inventory items and control of their movements. The DLS compiled inventory lists for the Administration Office and the Court Liaison Offices. However, there was no requirement for conducting inspections of inventory items.

5.21 In November 2011, Audit examined the inventory lists and found that most of them were out-dated, with record dates ranging from July 1999 (Administration Office) to April 2007 (Shatin Court Liaison Office). Audit also noted that the CAT Scheme Office (set up in December 2009) did not have an inventory list.

5.22 In December 2011, in response to Audit's enquiry, the DLS said that the inventory lists had not been updated for several years due to a lack of manpower. The DLS subsequently updated the inventory lists and prepared one for the CAT Scheme Office. Audit noted that the updated inventory lists were apparently based on inventory items on hand and could not serve control purposes for ensuring the existence and completeness of all inventory items.

### ***Audit recommendation***

5.23 **Audit has recommended that the DLS should develop an inventory control system for the safe custody of inventory items and control of their movements, including the conduct of regular inspections.**

## **Response from the Duty Lawyer Service**

5.24 The DLS agrees with the audit recommendation.

## **Human resource management**

5.25 As at December 2011, the DLS had 74 CLOs, 29 secretarial grade staff and 8 other staff (such as accounting officers). The pay scales of DLS staff are modelled on those of the comparable ranks of the civil service remunerated on the Master Pay Scale (MPS). Some of the fringe benefits provided to DLS staff are also modelled on those of the civil service (e.g. leave entitlement).

5.26 In 2010-11, the staff emoluments of the DLS amounted to \$43.3 million (including those related to the CAT Scheme). Audit examined the DLS's human resource management and found areas for improvement, as reported in the following paragraphs.

### **Audit observations and recommendations**

#### ***Staff performance appraisal***

5.27 The DLS does not have a manual for human resource management. No guidelines are laid down for staff performance appraisal. Over the years, the DLS has adopted the following practices:

- (a) no annual appraisal of staff performance is conducted;
- (b) a staff performance appraisal is conducted as and when a staff member is due for salary increment, considered for promotion, going to be transferred to another post, or considered for confirmation or contract renewal;
- (c) a standard form is used for conducting staff performance appraisals. Completed appraisal forms will be forwarded to the Chief CLO or the Administrator for review; and
- (d) no staff performance appraisal is conducted for the Administrator and the Chief CLO (i.e. the first two tiers of the senior management).

5.28 Staff performance appraisal enhances the performance of the staff concerned and forms a fair basis for making staff management decisions (e.g. posting, promotion, etc.). Audit considers that the DLS needs to:

- (a) lay down guidelines and procedures for conducting staff performance appraisals;
- (b) conduct performance appraisals for the Administrator (with the Council Chairman as the appraising authority) and the Chief CLO (with the Administrator as the appraising authority); and
- (c) conduct performance appraisals for all staff on an annual basis.

#### ***Housing allowance***

5.29 The DLS provides a housing allowance to eligible staff. In 2010-11, the DLS incurred \$1.6 million on the housing allowance, accounting for 4% of the total staff emoluments. As at December 2011, seven DLS staff members (the Administrator, the Chief CLO and five Assistant Chief CLOs) were receiving housing allowances.

5.30 The DLS's housing allowance is modelled on the civil service's private tenancy allowance. The rates of the housing allowance are also pegged with those of the private tenancy allowance. Table 6 shows a comparison between the housing allowances provided to DLS staff and civil servants.

**Table 6**  
**Comparison between the housing allowances**  
**provided to DLS staff and civil servants**

	DLS staff	Civil servants		
	Housing allowance	Private tenancy allowance (Note)	Home financing allowance (Note)	Cash allowance
Eligibility criteria	Salary at MPS Point 34 or above	(i) Joined service before 1.10.1990  (ii) Salary at MPS Point 34 or above	(i) Joined service before 1.6.2000  (ii) Salary at MPS Point 34 or above	(i) Joined service on or after 1.6.2000  (ii) Salary at MPS Point 34 or above
Entitlement period	No limit	No limit	10 years	10 years
Accountability of the allowance	Non-accountable	100% of allowance is accountable for renting accommodation	50% of allowance is accountable for repaying a mortgage	Non-accountable

Source: DLS and HAB records

Note: Civil servants joining the service before 1 October 1990, when they become eligible for housing allowance, are required to opt for the private tenancy allowance or the home financing allowance.

5.31 Over the years, the Government has introduced changes to its housing benefits. The private tenancy allowance is no longer available to civil servants appointed on or after 1 October 1990. In 2000, the Government introduced a new housing allowance for civil servants. Officers appointed on or after 1 June 2000 are offered a non-accountable cash allowance when they become eligible for housing allowance. The rates of this non-accountable cash allowance are slightly lower than those of the private tenancy allowance. Besides, the entitlement period is limited to 10 years. **Despite the changes in the housing allowances provided to civil servants since 1990, the DLS has not revised the terms of its housing allowance accordingly.**

5.32 In the event, the terms of the DLS's housing allowance currently appear to be more favourable than those of the civil service in that:

- (a) comparing with the civil service private tenancy allowance, the DLS's housing allowance is more favourable because it is non-accountable (i.e. not restricted to using it for renting accommodation); and
- (b) comparing with the civil service home financing allowance and cash allowance, the DLS's housing allowance is also more favourable because its entitlement period has no limit.

**Given that the DLS's housing allowance has all along been modelled on that of the civil service (see para. 5.30), there is a need to keep it under regular review, taking into account significant changes in the civil service.** However, as far as could be ascertained, the DLS Council had not formally discussed such matters and, in particular, whether the terms of the housing allowance for staff who would become eligible for the allowance in future (Note 23) need to be revised.

#### *Leave entitlement of staff*

5.33 Similar to the housing allowance, the leave entitlement of DLS staff is modelled on that of civil servants. Table 7 shows a summary of the leave entitlement.

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**Note 23:** *All the seven DLS officers currently receiving the housing allowance were employed before June 2000. Changes to the terms of the housing allowance may not apply to them.*

**Table 7**  
**Leave entitlement of DLS staff**

	Days of leave per year		Maximum accumulated leave in days	
	10 years of service or more	Less than 10 years of service	10 years of service or more	Less than 10 years of service
<b>Staff employed before June 2000</b>				
Salary at MPS Point 14 or above	40.5	31	180	120
Salary below MPS Point 14	31	22	120	60
<b>Staff employed in or after June 2000</b>				
Salary at MPS Point 14 or above	22	18	44	36
Salary below MPS Point 14	18	14	36	28

Source: *Audit analysis of DLS records*

5.34 In calculating the leave balance, in the civil service, there are different treatments for the period of leave taken:

- (a) **for staff employed before June 2000**, the period of leave taken is not counted for leave-earning purpose (Note 24);
- (b) **for staff employed in or after June 2000**, the period of leave taken is counted for leave-earning purpose.

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**Note 24:** *For example, for a civil servant with a leave entitlement of 40.5 days a year, if he takes 30 days of leave in a year, his leave earned for the year will be reduced to 37.17 days, i.e.  $(40.5 \times (365 - 30) \div 365)$ .*

5.35 Audit noted that the DLS treated the period of leave taken by all staff as leave earning, including those employed before June 2000. This was not in line with the leave calculation method of the civil service. **Given that the leave entitlement of DLS staff is modelled on that of civil servants (see para. 5.33), the DLS needs to review its leave calculation method to see whether any revisions should be made to bring it in line with that of the civil service.**

*Disclosure of untaken leave*

5.36 DLS staff are allowed to accumulate untaken leave up to a prescribed limit (see Table 7 in para. 5.33). They can take the accumulated leave when they cease employment with the DLS (upon resignation or retirement). The untaken leave accumulated at the end of a financial year represents a financial liability to the DLS. According to DLS records, as at October 2011, the untaken leave amounted to 7,900 days. The financial liability was estimated to be around \$10.4 million, based on the salary rates of individual staff. According to applicable accounting standards, material financial liability arising from untaken leave should be accounted for in the financial statements. However, Audit noted that untaken leave was neither provided for nor disclosed in the financial statements of the DLS.

*Audit recommendations*

5.37 **Audit has recommended that the DLS should:**

- (a) **lay down guidelines and procedures for conducting staff performance appraisals;**
- (b) **consider conducting performance appraisals for all staff (including the Administrator and the Chief CLO) on an annual basis;**
- (c) **in consultation with the HAB, review the terms of the housing allowance for DLS staff who will become eligible for the allowance in future;**
- (d) **having regard to the results of the review in (c) above, seek the DLS Council's endorsement as to whether the terms of housing allowance need to be revised;**
- (e) **review its leave calculation method to see whether any revisions should be made to bring it in line with that of the civil service; and**
- (f) **review the accounting treatment for untaken leave of staff.**

### **Response from the Duty Lawyer Service**

5.38 The DLS agrees with the audit recommendations.

### **Response from the Administration**

5.39 The **Secretary for Home Affairs** agrees with the audit recommendation in paragraph 5.37(c). He has said that the HAB will closely liaise with the DLS with a view to offering necessary advice and assistance to implement the audit recommendation.

## **PART 6: PERFORMANCE MEASUREMENT AND REPORTING**

6.1 This PART examines performance measurement and reporting of the DLS's legal assistance schemes.

### **Performance measures**

6.2 Performance management provides a means to measure and report how well an organisation has performed, and helps enhance its performance, transparency and accountability. Performance information of the DLS's services is provided on its website and in the HAB's Controlling Officer's Report (COR).

6.3 *Performance indicators in the COR.* The HAB included in its COR for 2011-12 the following performance indicators for the DLS:

- (a) activity levels of legal assistance schemes:
  - (i) Duty Lawyer Scheme — number of defendants who received legal advice and representation;
  - (ii) Free Legal Advice Scheme — number of cases handled; and
  - (iii) Tel-Law Scheme — number of calls received; and
- (b) unit costs for cases handled under the respective schemes.

6.4 *Performance information on the DLS website.* The DLS provides information about its organisation and services on its website. The DLS Annual Report also contains performance statistics and financial information of its services.

### **Audit observations and recommendations**

#### *Performance targets*

6.5 Challenging but attainable performance targets can help enhance performance. So far, the DLS has not set any performance targets for its legal assistance schemes. In this regard, Audit notes that the LAD has set target time for processing applications for legal aid. Following good performance management practices, there is merit for the DLS to set targets for its legal assistance schemes.



### *Stakeholder surveys*

6.6 A stakeholder survey can gauge the opinions (e.g. satisfaction level) of users and other stakeholders, with a view to identifying areas for service improvement. The DLS did not assess the stakeholder satisfaction level of its legal assistance schemes. For the Free Legal Advice Scheme, the DLS reported in its Annual Report the findings of a regular questionnaire survey on the profile of users (e.g. age, sex and education level), but there was no assessment on their satisfaction level of the Scheme.

6.7 In April 2011, the HAB completed a survey on the Free Legal Advice Scheme to collect feedbacks from users and participating lawyers for reviewing the operation of the Scheme. As far as could be ascertained, there were no similar surveys conducted on other schemes operated by the DLS (i.e. Duty Lawyer Scheme, Tel-Law Scheme, and CAT Scheme). The DLS needs to consider conducting stakeholder surveys on its legal assistance schemes periodically.

### *Performance information for CAT Scheme*

6.8 The HAB has provided in its COR performance information of the DLS, covering the Duty Lawyer Scheme, the Free Legal Advice Scheme and the Tel-Law Scheme (see para. 6.3). As for the CAT Scheme, which was implemented in December 2009 on a pilot basis, performance information has not yet been provided. In 2010-11, the DLS incurred a substantial amount of \$16.8 million for operating the CAT Scheme (see para. 1.7). To enhance transparency and public accountability, performance information should also be provided for the CAT Scheme.

### *Unit costs*

6.9 The HAB provided in its COR for 2011-12 unit cost information for three legal assistance schemes operated by the DLS (see para. 6.3(b)). Audit examined the HAB's methodology for calculating the unit costs, and found the following areas for improvement:

- (a) ***Allocation of administrative overheads.*** The DLS operates four legal assistance schemes. While many cost items are directly attributable to a particular scheme, there are some administrative costs which need to be allocated among the schemes (e.g. staff cost of senior management, and rent for the Administration Office). In calculating the unit costs of the schemes, the HAB adopted a practice whereby all administrative overheads were absorbed by the Duty Lawyer Scheme. As such, no administrative overheads were allocated to the Free Legal Advice Scheme, the Tel-Law Scheme or the CAT Scheme;

- (b) ***Costs incurred by the Home Affairs Department.*** The Home Affairs Department provided venues and manpower resources (for processing applications, preparing case summaries, and manning Legal Advice Centres at District Offices, etc. — see Note 18 to para. 4.14(a)) in supporting the operation of the Free Legal Advice Scheme. However, all the costs incurred by the Department for the Scheme were not accounted for in the costing methodology; and
- (c) ***Accommodation costs not included.*** Accommodation costs of government premises (e.g. Court Liaison Offices at Magistracies and Legal Advice Centres at District Offices) were not accounted for in the costing methodology.

### ***Audit recommendations***

6.10 **Audit has recommended that the DLS should consider:**

- (a) **setting performance targets for its legal assistance schemes; and**
- (b) **conducting stakeholder surveys on its legal assistance schemes periodically in order to assess stakeholders' satisfaction level and obtain their feedbacks.**

6.11 **Audit has recommended that the Secretary for Home Affairs should:**

- (a) **in consultation with the Secretary for Security, compile performance information for the CAT Scheme; and**
- (b) **refine the HAB's costing methodology, with a view to improving the accuracy of unit costs of the DLS's legal assistance schemes.**

### **Response from the Duty Lawyer Service**

6.12 The DLS agrees with the audit recommendations in paragraph 6.10.

### **Response from the Administration**

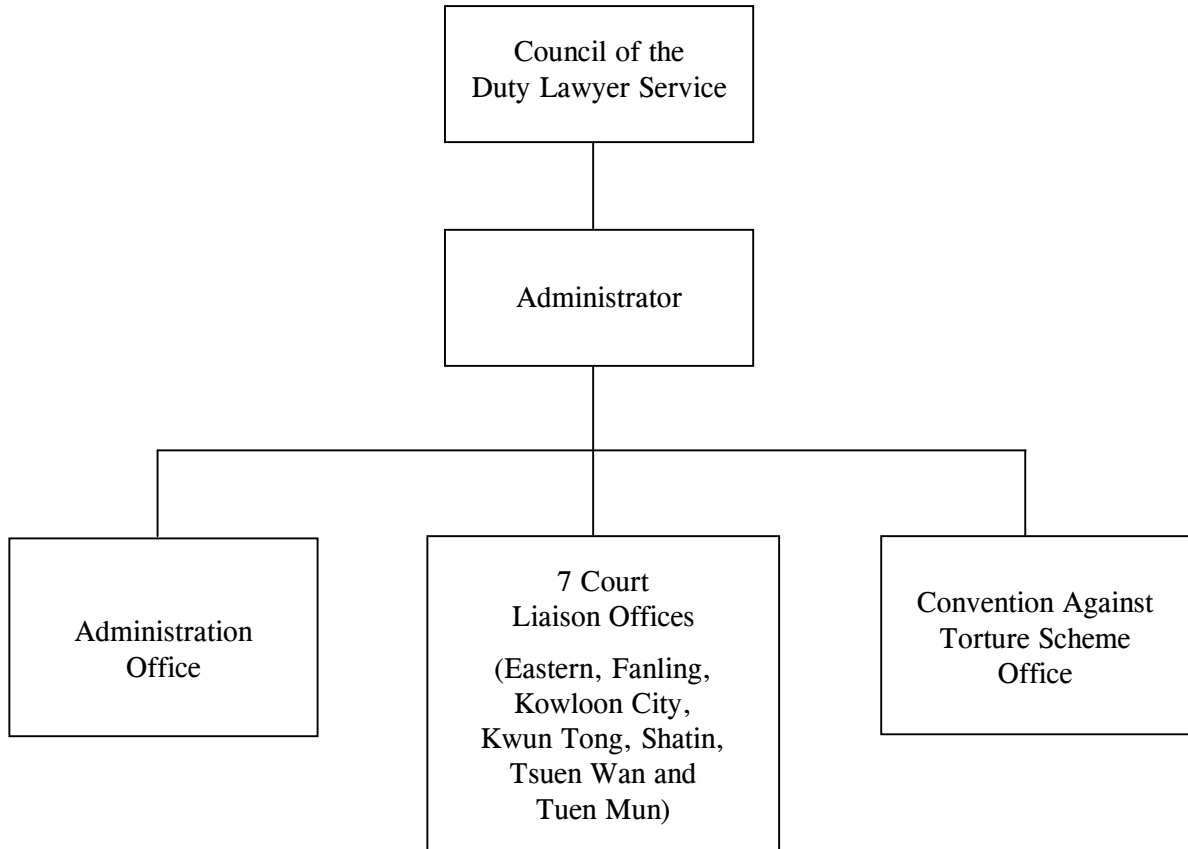
6.13 The Secretary for Home Affairs agrees with the audit recommendations in paragraph 6.11. He has said that the HAB will:

- (a) consult the Secretary for Security to compile performance information for the CAT Scheme; and
- (b) work closely with the DLS to refine the costing methodology.

6.14 The **Secretary for Financial Services and the Treasury** has said that, in preparing the draft Estimates in future, the Financial Services and the Treasury Bureau will keep in view follow-up actions (if any) taken by the HAB in setting performance targets and indicators in the COR in respect of the DLS. In doing so, the Financial Services and the Treasury Bureau expects the HAB to have due regard to the audit recommendations and consult the Security Bureau and the DLS as appropriate.

6.15 The **Secretary for Security** has no objection to the audit recommendation in paragraph 6.11(a).

**Duty Lawyer Service  
Organisation chart  
(December 2011)**



*Source: DLS records*

### **Scope of the Free Legal Advice Scheme**

#### **Situations where service is refused:**

- (1) cases involving foreign law;
- (2) cases involving building management, owners-incorporation, and deeds of mutual covenant;
- (3) cases not involving a legal problem (e.g. how to apply for public housing, or how to apply for passport in another country);
- (4) clients have been granted legal aid;
- (5) clients have already engaged private lawyers to deal with their cases;
- (6) clients wish to set up a business and request the volunteer lawyer to draft contract for their future use;
- (7) clients are officers and/or representatives of a company who seek advice on behalf of the company;
- (8) clients are officers and/or representatives of a corporation, corporation sole and/or statutory body who seek advice on behalf of the corporation or body;
- (9) clients have repeatedly sought legal advice concerning the same case and/or the same issues;
- (10)\* clients are represented by the Duty Lawyer Scheme;
- (11)\* clients request to have legal representation instead of advice;
- (12)\* clients are not able to produce the relevant documents for the volunteer lawyers' perusal;
- (13)\* problems involving hypothetical questions;
- (14)\* problems involving complicated legal issues requiring detailed study of documents; and
- (15)\* problems have been solved or superseded by events.

*Source: DLS records*

*Remarks: Items (10) to (15) (marked with an asterisk) were mentioned in the Handbook of the Scheme, but not on the DLS website.*

**Acronyms and abbreviations**

Audit	Audit Commission
CAT	Convention Against Torture
CLO	Court Liaison Officer
COR	Controlling Officer's Report
DLS	Duty Lawyer Service
FEL	Financial eligibility limit
HAB	Home Affairs Bureau
ImmD	Immigration Department
LAD	Legal Aid Department
M&A	Memorandum and Articles of Association
MAA	Memorandum of Administrative Arrangements
MPS	Master Pay Scale
PTC	Pre-trial conference