



GUERNSEY STATUTORY INSTRUMENT

2019 No. 105

The Legal Aid (Guernsey and Alderney) Rules, 2019

<i>Made</i>	<i>29th October, 2019</i>
<i>Coming into operation</i>	<i>1st November, 2019</i>
<i>Laid before the States</i>	<i>, 2019</i>

THE COMMITTEE FOR EMPLOYMENT & SOCIAL SECURITY, in exercise of the powers conferred on it by sections 30(2) and (3) and 31 of the Legal Aid (Bailiwick of Guernsey) Law, 2003 , sections 4, 5, 6, 8, 9 and 10 of the Legal Aid (Guernsey and Alderney) (Schemes and Miscellaneous Provisions) Ordinance, 2018^b and all other powers enabling it in that behalf, and following consultation with the Administrator and, where they affect the interests of Alderney, with the agreement of the Policy and Finance Committee of the States of Alderney, hereby makes the following Rules:-

Specified financial eligibility criteria and financial means – Schemes (Circular 1).

1. The financial eligibility criteria and the ways in which a person's financial means are assessed in connection with an application for -

^a Order in Council No. VI of 2004; amended by Ordinance No. XXXIII of 2003; No. XXXIX of 2015; No. IX of 2016 and Nos. XXVI and XLII of 2018.

^b Ordinance No. XLII of 2018.

- (a) legal aid under the Legal Aid Advice and Assistance ("Green Form") Scheme, or
- (b) a legal aid certificate issued by the Administrator under the Civil Legal Aid Scheme or the Criminal Legal Aid Scheme

are as specified in the Circular entitled "Circular 1 – The Legal Aid Schemes: Assessment of Financial Means of Applicants".

Specified eligibility criteria, scope, legal merits test and conditions – civil and family proceedings under Civil Legal Aid Scheme (Circular 2).

2. The eligibility criteria, scope, legal merits tests and the conditions that apply in relation to applications for legal aid in civil and family proceedings under the Civil Legal Aid Scheme are as specified in the Circular entitled "Circular 2 – The Civil Legal Aid Scheme: Scope and Legal Merits".

Specified ways in which Administrator assesses whether application within scope of Criminal Legal Aid Scheme (Circular 3).

3. The eligibility criteria, scope, legal merits tests and the conditions that apply in relation to applications for legal aid in criminal proceedings are as specified in the Circular entitled "Circular 3 – The Criminal Legal Aid Scheme: Scope and Legal Merits".

Specified rules that apply to provision of legal advice and assistance under "Green Form Scheme" (Circular 4).

4. The rules that apply to the provision of legal advice and assistance under the Legal Aid, Advice and Assistance Scheme (also known as the "Green Form

Scheme") are as specified in the Circular entitled "Circular 4 – The Legal Aid, Advice and Assistance ("Green Form") Scheme".

Specified rate of interest that may be applied to reimbursement to the Administrator of payments under the Schemes (Circular 5).

5. The rate of interest that may be applied to the reimbursement to the Administrator of payments made under any of the Schemes is as specified in the Circular entitled "Circular 5 – Interest Payable under the Legal Aid Schemes".

Specified arrangements for the remuneration of fee earners under the Schemes (Circular 6).

6. The arrangements for the remuneration of fee earners under the Schemes are as specified in the Circular entitled "Circular 6 - Remuneration of Fee Earners under the Legal Aid Schemes".

Specified ways in which Administrator assesses payments made to fee earners under the Schemes (Circular 7).

7. The ways in which the Administrator assesses whether payments made to fee earners in respect of legal services, expenses and disbursements are reasonably and necessarily rendered, incurred or made under the Schemes and whether such payments should be made by the Administrator in full or partially are as specified in the Circular entitled "Circular 7 – Costs Assessment Criteria under the Legal Aid Schemes".

Specified procedures in relation to appeal of assessment of fee earners' costs under the Schemes (Circular 8).

8. The procedures to enable Advocates to appeal an assessment of Advocates' costs in respect of legal services provided under the Schemes are as

specified in the Circular entitled "Circular 8 - Appeals Procedures Regarding Assessment of Costs under the Legal Aid Schemes".

Terms and conditions of circulars to have effect.

9. The terms and conditions set out in the Circulars referred to in these Rules shall all have effect for the purposes of the Schemes.

Interpretation.

10. In these Rules -

"Circular" means -

- (i) a numbered Circular described in the provisions of these Rules, and
- (ii) the original of which dated 29th October, 2019 and signed by the President of the States Committee for Employment & Social Security and the Administrator is held at the office of the Administrator and published on the Guernsey Legal Resources website; and

a reference to a Circular is a reference to the Circular as from time to time amended, dated when made and signed and published in the manner set out in paragraph (ii),

"Civil Legal Aid Scheme": see section 5 of the Ordinance,

"Criminal Legal Aid Scheme": see section 6 of the Ordinance,

"Legal Aid, Advice and Assistance Scheme" or "Green Form Scheme": see section 4 of the Ordinance,

"the Ordinance" means the Legal Aid (Guernsey and Alderney) (Schemes and Miscellaneous Provisions) Ordinance, 2018.

Extent.

11. These Rules have effect in Guernsey and Alderney.

Citation.

12. These Rules may be cited as the Legal Aid (Guernsey and Alderney) Rules, 2019.

Commencement.

13. These Rules come into force on the 1st November 2019.

Dated this 29th day of October, 2019



M. K. LE CLERC

President of the Committee for Employment & Social Security

For and on behalf of the Committee

EXPLANATORY NOTE

(This note is not part of the Rules)

These Rules are made under the Legal Aid (Bailiwick of Guernsey) Law, 2003 and Legal Aid (Guernsey and Alderney) (Schemes and Miscellaneous Provisions) Ordinance, 2018 and specify Circulars issued by the Administrator for the purposes of various matters under the Legal Aid Schemes established further to the 2003 Law.

The Circulars are as follows:

- Circular 1 - The Legal Aid Schemes: Assessment of Financial Means of Applicants
- Circular 2 - The Civil Legal Aid Scheme: Scope and Legal Merits
- Circular 3 - The Criminal Legal Aid Scheme: Scope and Legal Merits
- Circular 4 - The Legal Aid, Advice and Assistance (“Green Form”) Scheme
- Circular 5 - Interest Payable under the Legal Aid Schemes
- Circular 6 - Remuneration of Fee Earners under the Legal Aid Schemes
- Circular 7 - Costs Assessment Criteria under the Legal Aid Schemes
- Circular 8 - Appeals Procedures Regarding Assessment of Costs under the Legal Aid Schemes

These Rules come into force on 1st November 2019.

GUERNSEY LEGAL AID SERVICE

New Jetty, White Rock, St Peter Port, Guernsey, GY1 2LL

Telephone (01481) 747530

Email: legalaid@gov.gg

The Legal Aid Schemes are established under The Legal Aid (Bailiwick of Guernsey) Law, 2003, The Legal Aid (Guernsey and Alderney) (Schemes and Miscellaneous Provisions) Ordinance, 2018, and the Legal Aid (Guernsey and Alderney) Rules, 2019.

Guernsey Legal Aid Service (“GLAS”) is the name of the service that administers the Legal Aid Schemes. GLAS is run by the Legal Aid Administrator who is an independent statutory official appointed by the States of Guernsey.

CIRCULAR 1 – THE LEGAL AID SCHEMES: ASSESSMENT OF FINANCIAL MEANS OF APPLICANTS

This Circular specifies the financial eligibility criteria and the ways in which a person’s financial means are assessed in connection with applications for legal aid through the Legal Aid Advice and Assistance (“Green Form”) Scheme or by way of a legal aid certificate issued by the Administrator under the Civil Legal Aid or the Criminal Legal Aid Schemes. All Schemes are established by the Legal Aid (Guernsey and Alderney) (Schemes and Miscellaneous Provisions) Ordinance, 2018.

1. Definitions

In this Circular, the following definitions apply:

“the Administrator” means the person who has been appointed by the States of Guernsey to the Office of the Legal Aid Administrator in accordance with the Legal Aid (Bailiwick of Guernsey) Law, 2003.

“Advocate” means an Advocate of the Royal Court of Guernsey.

“the Alderney Firms” means those specific firms currently contracted under separate arrangements with the Legal Aid Administrator for the provision of legally aided services in Alderney.

“Applicant “or “assisted person” means a person that is applying, has applied for, or who has been granted legal advice and assistance under the Legal Aid Advice and Assistance (“Green Form”) Scheme and/or legal advice, assistance and representation under the Civil Legal Aid Scheme and/or the Criminal Legal Aid Scheme.

“application” means receipt by the Administrator of the relevant legal aid application forms and all supporting documentation.

“certificate” means a legal aid certificate that has been issued by the Legal Aid Administrator to an applicant under the Civil Legal Aid Scheme or the Criminal Legal Aid Scheme.

“contribution” refers to the percentage of legal costs and disbursements that an applicant has been assessed to pay towards their legal proceedings under the Civil or the Criminal Legal Aid Schemes.

“discharged” means when a legal aid certificate has been cancelled from a specific date. This happens automatically when the work under a legal aid certificate has concluded. A certificate can also be discharged when an assisted person becomes financially ineligible or fails to cooperate with their Advocate or the Administrator.

“financial means test” or “financial assessment” means the application of the financial eligibility criteria as specified.

“GLAS” (Guernsey Legal Aid Service) means the Office of the Legal Aid Administrator and/or any member of staff.

“Green Form” or “Green Form Scheme” means legal advice and assistance provided under the Legal Aid, Advice and Assistance Scheme.

“Guernsey firms” are all Guernsey Advocates’ firms that opt in to provide legal services under the Schemes.

“legal aid” means advice, assistance and representation provided under the Civil Legal Aid Scheme or the Criminal Legal Aid Scheme by way of a Legal Aid Certificate issued by the Administrator.

“legal merits test” means the legal merits test as appropriate and as specified under the Civil Legal Aid Scheme or the Criminal Legal Aid Scheme.

“litigant in person” means an individual who is a party to legal proceedings and who exercises their right to conduct legal proceedings on their own behalf, without the assistance of or representation by an Advocate.

“MHRT” means the Mental Health Review Tribunal as established under the Mental Health (Bailiwick of Guernsey) Law, 2010.

“the Ordinance” means The Legal Aid (Guernsey and Alderney) (Schemes and Miscellaneous Provisions) Ordinance, 2018.

“partner” means a person with whom the applicant ordinarily lives as a couple in the same household and whose resources and requirements must be aggregated with those of the applicant for the purposes of a legal aid application.

“private law proceedings” are those in which the parties to the proceedings are private individuals.

“property” is as defined in the Legal Aid (Bailiwick of Guernsey) Law, 2003.

“public law proceedings” are those in which one party to the proceedings is a public body such as the States of Guernsey.

“required documentation” is all the documentation required by the Administrator to undertake an assessment of each applicant to ascertain their eligibility for legal aid.

“resources” means all income, capital and property of any kind from any source that is owned beneficially, wholly or partially, by the applicant and any other person whose resources must be taken into account.

“revoked” or “revocation” means when a legal aid certificate is not only cancelled from a specific date but is also deemed never to have existed. If a certificate is revoked, the assisted person becomes liable for the costs of all the work undertaken by the advocate under the Schemes and the Administrator will seek from the assisted person full reimbursement of all costs incurred under the certificate and any associated green forms.

“Schemes” means The Legal Aid, Advice and Assistance (Green Form) Scheme, the Criminal Legal Aid Scheme and the Civil Legal Aid Scheme.

“specified” means rules specified by the Committee *for* Employment and Social Security.

“suspended” is where the Administrator temporarily suspends a certificate pending receipt of financial or other information from either the applicant or the Advocate. During a period of suspension, no fees or disbursements may be incurred by the Advocate under the Schemes.

PART I GENERAL PRINCIPLES

2. Purpose of the Schemes

2.1. The purpose of the Legal Aid, Advice and Assistance Scheme (also known as the "Green Form Scheme") is to enable an individual, who satisfies specified eligibility criteria, to obtain:

- (a) advice about the application of the laws of Guernsey and Alderney to specified circumstances which have arisen in relation to:
 - (i) that individual, or
 - (ii) such other individual as may be specified, and
- (b) in specified circumstances, assistance in order to:
 - (i) settle a claim,
 - (ii) defend criminal proceedings,

- (iii) bring or defend civil proceedings, or
- (iv) make any specified agreement or other document that has or is intended to have legal effect, subject to specified conditions.¹

2.2. The purpose of the Civil Legal Aid Scheme is to enable an individual, who satisfies specified eligibility criteria, to obtain advice, assistance and representation in relation to specified civil and family proceedings, subject to specified conditions.²

2.3. The purpose of the Criminal Legal Aid Scheme is to enable an individual, who satisfies specified eligibility criteria, to obtain advice, assistance and representation in relation to specified criminal proceedings, subject to specified conditions.³

3. Alderney Arrangements

There are special arrangements under the Schemes in respect of applicants who are Alderney residents.

3.1 Only the Alderney firms will be remunerated under the Schemes for:

- (a) Any Green Form that falls within the scope of the Legal Aid, Advice and Assistance (Green Form) Scheme, other than in relation to matters before the Matrimonial Causes Division (“MCD”) of the Royal Court,
- (b) Civil cases before the Court of Alderney that fall within the scope of the Civil Legal Aid Scheme, and
- (c) Duty Advocate and criminal cases before the Court of Alderney Police Court that fall within the scope of the Criminal Legal Aid Scheme.

3.2 Any Guernsey firm may be remunerated under the Criminal Legal Aid Scheme to provide telephone advice and assistance under the Duty Advocate arrangements to an applicant who usually resides Alderney or to advise, assist and represent such an applicant in criminal proceedings before the Guernsey Royal Court, in relation to a serious criminal case.

3.3 Any Guernsey firm may be remunerated under the Civil Legal Aid Scheme to advise, assist and represent an applicant who usually resides in Alderney in proceedings before the Guernsey Royal Court, MCD.

¹ The Legal Aid (Guernsey and Alderney) (Schemes and Miscellaneous Provisions) Ordinance, 2018, s4

² The Legal Aid (Guernsey and Alderney) (Schemes and Miscellaneous Provisions) Ordinance, 2018, s5

³ The Legal Aid (Guernsey and Alderney) (Schemes and Miscellaneous Provisions) Ordinance, 2018, s6

PART II
GENERAL PROVISIONS RELATING TO ELIGIBILITY FOR LEGAL AID UNDER THE SCHEMES

4. Extent and Limitations

- 4.1 Advice, Assistance or representation under the Scheme is not available to legal proceedings before a court outside Guernsey or Alderney, or any matter where the relevant governing or applicable law, is a law other than the law of Guernsey or Alderney, and the matter is a matter that is not justiciable before a court in Guernsey or Alderney.
- 4.2 Legal Aid is only available to individuals: not companies, charities or groups of people.
- 4.3 Legal Aid is only available in respect of individuals who have instructed an Advocate and funding, including any disbursements, will not be provided direct to individuals or paid out on their behalf where they are acting as a litigant in person.
- 4.4 Legal Aid may be refused if an applicant has not fully utilised all alternative methods of resolving the dispute such as any complaints procedure, mediation, ombudsman and so on; turning to the public purse for assistance should be seen as a last resort and only if all other methods of resolving a legal dispute have been exhausted.
- 4.5 Legal aid will not be available where an applicant has available to them:
 - (a) other rights and facilities making it unnecessary for them to obtain legal aid, or
 - (b) a reasonable expectation of receiving financial or other help from a body of which they are a member.

5. Issue date of certificate

- 5.1 The Schemes are means tested and the Administrator requires the production of such documents, accounts or information ("required information") from all applicants for legal aid under the provisions of a Scheme as may be required for the purposes of properly assessing or reassessing any application for legal aid and to defer determination until any such requirement is satisfied.
- 5.2 Legal aid is not available to any applicant until the Administrator is satisfied that: the applicant meets the specified financial means test and that the proposed case satisfies the specified legal merits test.
- 5.3 The date upon which the Administrator is satisfied on all of these elements is recorded as the "issue date" on the certificate. Work undertaken before the issue date of legal aid will not be remunerated under the Schemes.

6. Conditions of a certificate

The Administrator may require an applicant to comply with such conditions as are considered expedient to enable the Administrator to be satisfied from time to time that:

- (a) the applicant continues to be financially eligible for legal aid, and
- (b) the appropriate legal merits test continues to be met.

7. Reassessments

Where a reassessment results in any amendment to the terms of a certificate, any amendments, whether in respect of financial eligibility, level of contribution or meeting the legal merits test, shall be applied to the certificate from the date upon which the Administrator determines the reassessment.

8. Reporting requirements

8.1 It shall be the duty of an applicant and an Advocate acting on behalf of an applicant where the facts are within the Advocate's knowledge, immediately to inform the Administrator of:

- (a) any change in that applicant's circumstances, financial or otherwise,
- (b) any change in the circumstances, financial or otherwise, so far as known to that applicant of any other person with whom that applicant is jointly concerned, or who has the same interest in, the matter, or
- (c) any circumstance, financial or otherwise, which may affect the Administrator's determination that the applicant has probable cause or that it is reasonable in the particular circumstances of the case that that person should receive, or continue to receive, legal aid.

8.2 Where an Advocate acting for an applicant has reason to believe that that applicant has not complied with the duty under paragraph 8.1 above, the Advocate shall forthwith draw this matter to the attention of the Administrator.

8.3 No Advocate shall be precluded, by reason of any privilege arising out of the relationship between the Advocate and the applicant from informing the Administrator of, or drawing her attention to, any matter specified in paragraphs 8.1 and 8.2 above.

8.4 The Administrator from time to time may directly request from the applicant or an Advocate acting for the applicant information relating to any change in circumstances, financial or otherwise.

- 8.5 No Advocate shall be precluded, by reason of any privilege arising out of the relationship between the Advocate and the applicant from informing the Administrator of or drawing her attention to, any matter specified in paragraph 8.4 above.
- 8.6 If an applicant fails to provide information requested by the Administrator, within any time period specified, the Administrator may suspend, revoke or discharge the certificate. Where a certificate is revoked, the Administrator may recover from the applicant all costs and disbursements paid or to be paid to their advocate.

9. Contributions

Contribution refers to the percentage of legal costs and disbursements that an applicant has been assessed to pay towards their legal proceedings under any of the Schemes. The contribution rates are applied to assessed residual weekly income as specified in Table 2 of the Schedule to this Circular and as referred to at paragraph 18.

(a) *Civil matters*

In civil matters, the payment of any contribution is a matter between the applicant and the Advocate that provides legal advice and assistance under the Green Form Scheme or where the applicant is in receipt of a Legal Aid Certificate issued by the Administrator. See paragraph 18(e) below for the Administrator's discretion in exceptional civil cases.

(b) *Criminal matters*

In criminal matters the Administrator will collect any contribution at the conclusion of the proceedings. In the case of advice and assistance under the Green Form Scheme the Advocate that completes the Green Form should note the percentage contribution on the front page of the Form. If the Administrator issues a certificate, then the amount of contribution will be noted on the certificate. Repayment of contributions to the Administrator in criminal cases is required even if the defendant is acquitted or the case against the defendant is not proceeded with for any reason.

(c) *Quasi civil /criminal matters*

Any contribution to be paid by the assisted person under a quasi- civil/criminal certificate will be treated as a contribution payable in criminal proceedings and will be collected by the Administrator at the conclusion of the case.

10. Costs

If a Court awards costs against an applicant, the Administrator will not accept liability to pay those costs.

**PART III
FINANCIAL MEANS AND LEGAL MERITS TESTS**

11. Requirement for Financial Means and Legal Merits Tests

11.1 This Circular specifies the standard means test applied to all assessments undertaken in connection with all legal advice and assistance provided under the Green Form Scheme and all legal advice, assistance and representation provided under the Civil Legal Aid Scheme and the Criminal Legal Aid Schemes, save as provided for at paragraph 11.2(b) and 11.2(c).

11.2 There are three means and merits tests specified under the Schemes:

- (a) The “standard means” test as specified is the method used to assess whether an applicant is financially eligible to be given legal advice and assistance under the Green Form Scheme or to be granted a legal aid certificate provided that the appropriate legal merits test as specified under The Civil Legal Aid Scheme or The Criminal Legal Aid Scheme is also met. The standard means test applies to all applications for legal aid save as specified at paragraphs 11.2(b) and 11.2(c).
- (b) The “no means, no merits” test. This test is applied only in applications in relation to specified Public Law Children cases. A “no means, no merits” application, is one in which there is no requirement for an applicant to meet the standard means test as specified nor the reasonableness test as specified under the Civil Legal Aid Scheme. Probable cause must still be met.
- (c) The “MHRT –no means, no merits” test. This test is applied only in applications for legal aid for advice, assistance and representation at a Mental Health Review Tribunal (“MHRT”).

Publicly funded legal representation at a MHRT will be provided under the Scheme generally on a “no means, no merits” test basis whilst reserving the right for the Administrator to exceptionally apply a “means” test to an application where reasonable and in conformity with Human Rights obligations. In applications relating to the MHRT, there is no requirement for an applicant to meet the reasonableness test as specified. Probable cause must still be met.

Exceptional circumstances in relation to a means test under this sub-paragraph will be determined at the discretion of the Administrator.

12. Means and Legal Merits Tests under the Schemes

- (a) *Green Form*
The standard means test is applied to all advice and assistance provided under the Green Form Scheme save as specified in paragraphs 11.2(b) and 11.2(c). All financial means assessments for advice and assistance provided under the Green Form Scheme are undertaken by the Advocate prior to the

commencement of any work, unless the Administrator has agreed otherwise in advance of any work being undertaken.

- (b) *Legal Aid under the Civil and Criminal Legal Aid Schemes*
Before legal aid can be granted, every legal aid application, save as specified at paragraphs 11.2(b) and 11.2(c) must satisfy the following two tests:
 - (i) The standard means, and
 - (ii) The legal merits test specified by the Civil Legal Aid Scheme or the Criminal Legal Aid Scheme.

All financial means assessments for advice and assistance and representation provided under the Civil Legal Aid Scheme or Criminal Legal Aid Scheme are undertaken by the Administrator or members of the Administrator's office. The only exception is in respect of an application for legal aid to apply for a judicial review of any decision of the Administrator, when separate eligibility assessment arrangements apply.

13. Exemptions and special cases

- (a) No financial assessment is required by a Duty Advocate when giving advice to persons: detained by the Island Police, the border agency, or when a person attends the police station, border agency as a volunteer or in the Magistrate's Court or in the Court of Alderney sitting as a Police Court.
- (b) Where an application is submitted, in respect of a specified public law children case in the court of first instance, the Administrator will assess the application on a "no means, no merits" test basis.
- (c) Where an application is submitted in respect of legal representation at a MHRT, the Administrator will assess the application on the "MHRT-no means, no merits" test basis.
- (d) Where a person seeks advice and assistance under the Green Form Scheme or applies for advice and assistance and representation under the Civil or Criminal Legal Aid Scheme on behalf of a dependent child or an adult incapable of managing their own affairs, the Administrator disregards the applicant's financial resources but has regard to the personal resources of the dependent child or incapable adult.
- (e) Where a person seeks advice and assistance under the Green Form Scheme or applies for advice and assistance and representation under the Civil or Criminal Legal Aid Scheme in a representative, fiduciary or official capacity, the Administrator will disregard the applicant's personal resources but take into account:

- (i) the value of any property or any fund out of which the applicant is entitled to be indemnified, and
 - (ii) the income and capital of anyone who might benefit from the outcome of the proceedings.
- (f) *Applicants under a Restraint Order*

Where an applicant has been made subject to a restraint order issued by a court, in assessing the applicant's financial eligibility under the Schemes the Administrator will disregard the applicant's (and any partner's) restrained property whilst such property remain subject to the restraint order.

Any allowances ordered by the court to enable the applicant to support themselves will not form part of the income assessment, regardless of whether the order relates to the case in question.

Any income in excess of any allowance ordered by a court shall be taken into account by the Administrator.

Any income or property not subject to the order, including a partner's property shall be included in the assessment.

PART IV

PROVISIONS RELATING TO CALCULATING ELIGIBILITY FOR LEGAL AID UNDER THE SCHEMES

14. Definitions applicable to this Part

"assessed residual weekly income" means the difference between total net weekly income and permitted weekly requirements.

"total weekly income" means a person's income, together with the income of any other person whose income must be taken into account, calculated on a weekly basis, and derived from: any occupation, earnings welfare benefit (save for Income Support and Severe Disability Benefit) pension, investment, bank interest, or from any other source.

In so far as the income consists of salary or wages, there shall be deducted any sum in respect of income tax and social insurance contributions the deduction of which is authorised by any enactment for the time being in force. ("total net weekly income")

"Permitted weekly requirements" means:

- (a) The weekly requirements of the individual, couple or family unit set out in Table 3,
- (b) Housing allowance as calculated at paragraph 20, and any discretionary allowance as set out at Paragraph 25(g) that may be applied by the Administrator.

“Gross weekly income” means total weekly income (excluding any Family Allowance or Severe Disability Benefit received) before the deduction of any income tax or social insurance contributions, the deduction of which is authorised by any enactment for the time being in force. Gross weekly income is used in the Housing allowance Requirement calculation.

15. Financial Eligibility under the Schemes

a) *Capital Resources*

Where the applicant’s, capital resources ,exceeds the amount of capital resources which may be wholly disregarded as set out in Table 1 of the Schedule the applicant will be financially ineligible for legal aid under the Schemes.

b) *Income*

Where the applicant’s permitted weekly requirements, are equal to or in excess of the applicant’s total net weekly income, the applicant will be eligible for legal aid without the requirement to make any contribution. Where the applicant’s total net weekly income is in excess of the permitted weekly requirements, the applicant may either be financially ineligible for legal aid or may be required to make a contribution to their legal aid costs and disbursements. Contribution levels are set out in Table 2 of the Schedule.

16. The standard means test-calculation of requirements and resources

The eligibility for legal aid depends upon whether an applicant’s total net weekly income falls short of the applicant’s permitted weekly requirements resulting in the assessed residual weekly income and for the purpose of ascertaining that amount:

- (a) The weekly requirement rates of an applicant shall, except as provided for elsewhere in this Circular, be taken as the aggregate of such of the weekly requirements set out in Table 3 of the Schedule as are applicable to the applicant’s case provided that the permitted weekly requirements of any applicant- shall be nil where the applicant’s capital resources exceed the amount of capital resources which may be wholly disregarded as set out in Table 1 of the Schedule,
- (b) The weekly requirement rates set out in Table 3 of this Circular shall be amended in line with such of the Income Support Long Term weekly Requirements specified in Part II of the First Schedule of the Income Support (Implementation) Ordinance 1971, as amended,(ISIO) as are applicable,
- (c) The capital resources of an applicant shall be calculated as specified in Part V of this Circular.

17. Aggregation of requirements and resources

- (a) Where a husband and wife ordinarily live with each other as a couple in the same household their requirements and resources shall be aggregated regardless of whether or not the partner would be willing to pay the applicant's legal costs. Similarly as to two persons living together as husband and wife or two persons cohabiting in a same-sex relationship.
- (b) Persons may be members of the same household even when both parties are not ordinarily living as a couple in the same household but this physical separation is due to financial or other practical reasons rather than the relationship being at an end, or that the separation is likely to be permanent. In such cases and where the Administrator considers that in the circumstances of the particular case, it is just and equitable, the parties' requirements and resources will be aggregated.
- (c) Where it appears to the Administrator that an applicant is providing for the requirements of some other person (not falling within the preceding paragraph) who is a member of the same household, the Administrator shall take into account the aggregate requirements and aggregate resources of the applicant and the said other person.
- (d) The resources of an applicant and another person shall not be aggregated if an applicant is seeking legal aid in connection with a dispute with such a person as identified in the previous sub-paragraphs of this section or where there is a contrary interest present.
- (e) Where another person, whose resources are to be aggregated, fails to provide their financial information as required by the Administrator in respect of any applicant's application for legal aid, the Administrator shall treat the financial means test as not having been satisfied.

18. Requirement for a contribution

- (a) Where an applicant's assessed residual weekly income is zero or less there is a presumption in favour of the grant of legal aid unless, in the Administrator's opinion, the case does not have legal merit or it is one to be litigated in a court that is intended for litigants in person.
- (b) Where an applicant's assessed residual weekly income is £200.01 or more there is a presumption against the grant of legal aid. This presumption may be displaced in respect of an application made under the Criminal Legal Aid Scheme where in the Administrator's opinion the interests of justice require it, in accordance with Article 6 of the European Convention on Human Rights.
- (c) Between the limits set out in the two previous sub-paragraphs legal aid is granted at the discretion of the Administrator and, unless the Administrator

determines otherwise, subject to a contribution as specified and as set out in Table 2 of the Schedule.

- (d) The Administrator may exercise discretion to grant a certificate outside the limits set out in sub-paragraphs 18(a), (b) and (c) or to waive a contribution where:
 - (i) an applicant is a party in a private law case involving domestic abuse and children in which a Finding of Fact hearing has been ordered by the relevant Court , or
 - (ii) an applicant has been advised by the Advocate to seek the protection of a Domestic Violence Injunction and has minor children residing with them.
- (e) The Administrator may exercise discretion, in exceptional civil cases and where the payment of a contribution under the Civil Legal Aid Scheme would cause severe hardship to the applicant to permit the deferral of payment of the assessed contribution until the conclusion of that particular case, or parts of that case. Severe hardship and exceptional circumstances shall be determined by the Administrator.

19. Waiver of need for assessment

19.1 An applicant that seeks advice and assistance under the Green Form Scheme shall not be assessed in accordance with paragraphs 15 and 16 provided that they can provide the Administrator with one of the following as appropriate to their circumstances:

- (a) A certificate or other evidence from The States of Guernsey Committee *for* Employment & Social Security that the applicant is currently in receipt of Income Support,
- (b) Evidence of a request made by a court of its own motion that the applicant receives legal advice and no duty Advocate or other Advocate was present in Court to render such advice and assistance,
- (c) In relation to an applicant resident outside the Bailiwick, the provision by the Administrator of a Green Form endorsed to the effect that the requirement for assessment is waived.

19.2 An applicant that seeks advice and assistance and representation under the Civil or Criminal Legal Aid Scheme shall not be assessed in accordance with paragraphs 15 and 16 provided that they can provide the Administrator with a certificate or other evidence from the States of Guernsey Committee *for* Employment & Social Security that the applicant is currently in receipt of Income Support.

20. Housing Allowance Requirement

- (a) Where the applicant resides in rented accommodation, housing allowance is calculated as the amount of the weekly rent payable, or 20% of the gross weekly income (excluding Family Allowance and Severe Disability Benefit) of the applicant and partner, if appropriate, whichever the lesser amount respectively is.
- (b) Where the applicant resides in their property as owner-occupier, housing allowance is calculated as, 90% of the weekly mortgage repayment in respect of a charge on the dwelling in which the householder resides, or 25% of the gross weekly income of the applicant and partner, if appropriate, (excluding Family Allowance and Severe Disability Benefit) whichever is the lesser amount respectively.
- (c) Where the applicant is residing in a hospital or nursing home as a patient or is resident in a residential home by such amount, if any, as may be appropriate having regard to all the circumstances.
- (d) Where the applicant is paying an inclusive charge for board and lodging, by one half of the actual amount being paid or the amount being paid for accommodation only.
- (e) The requirements of an applicant who is in prison or otherwise detained in legal custody shall be the same as for a non-householder.
- (f) The housing allowance requirement will be applied in relation to the property that an applicant resides in as their main residence.
- (g) Only one Housing Allowance Requirement in respect of either rented accommodation or owner-occupied accommodation will be given for each application for advice and assistance under the Green Form Scheme.
- (h) Only one Housing Allowance Requirement in respect of either rented accommodation or owner-occupied accommodation will be given for each application for advice, assistance and representation under the Civil or Criminal Legal Aid Schemes.

21. Lifestyle and indebtedness

Neither the finance needed to support a person's lifestyle nor the extent of a person's indebtedness are requirements for the purposes of determining an applicant's eligibility for legal aid.

**PART V
CALCULATION OF RESOURCES.**

22. Disregard of capital value of dwelling.

In taking into account the value to any person of any interest in the dwelling in which that person resides, any sum that might be obtained by that person by selling that interest or borrowing money upon the security thereof shall, be disregarded.

23. Resources totally disregarded

There shall be totally disregarded in any financial assessment under the Schemes:

- (a) The value of any resource that is the subject matter of the dispute in respect of which legal aid is being sought,
- (b) The value of any resource that is the subject matter of any proceedings currently before a court,
- (c) Any sums payable to any person as holder of the Victoria Cross or of the George Cross,
- (d) Any grant by The States of Guernsey Committee for Education, Sport & Culture in respect of a person who would be treated as a child for the purpose of the Family Allowances (Guernsey) Law, 1950,
- (e) The cash value of any free board or free lodging or both which a person may enjoy, not being board or lodging or both which that person is enjoying under and in pursuance of a contract of service,
- (f) Any Severe Disability Benefit granted under the Severe Disability Benefit and Carer's Allowance (Guernsey) Law, 1984,
- (g) Any payment made by a third party to a residential home, a care home, a nursing home or the Guernsey Cheshire Home on behalf of a person residing in the home in respect of the home's fees as may be considered reasonable by the Administrator in all the circumstances,
- (h) Any fostering allowance, other than the contractual element paid by The States of Guernsey Committee for Health & Social Care.

24. Capital Resources

- (a) Capital resources which consist of:
 - (i) business premises or stock in trade or both which are wholly or partly used as the means of livelihood, other than by way of unearned income, or

- (ii) an interest in an asset, which cannot reasonably be converted into a sum of money by selling that interest or borrowing money upon the security thereof, may be disregarded for such period as the Administrator may so direct.
- (b) If the value of the capital resources taken into account would not exceed the amount set out in the second column of Table 1 of the Schedule to this Circular for the description of persons set out in the first column of Table 1, they shall be wholly disregarded.

25. Income

- (a) For the purposes of an application for advice and assistance under the Green Form Scheme the weekly earnings of any person shall be taken as their total net weekly income for the week immediately preceding the date of the application together with the income of any other person whose income must be taken into account.
- (b) Subject to the provisions of sub-paragraph (f) of this paragraph, for the purposes of an application for legal aid in a criminal matter the weekly income of any person shall be taken as the average total net weekly income for the 13 week period immediately preceding the date of the application together with the income of any other person whose income must be taken into account.
- (c) Subject to the provisions of sub-paragraph (f) of this paragraph, for the purposes of an application for legal aid in civil matters the weekly income of any person shall be taken as the average total net weekly income for the 13 week period immediately preceding the date of the application together with the income of any other person whose income must be taken into account.
- (d) For the purposes of this Circular, there shall be included in a person's total net weekly income:
 - (i) The cash value of any board or lodging or both which the person is enjoying under and in pursuance of a contract of service,
 - (ii) Any Carer's Allowance payable in accordance with the Severe Disability Benefit and Carer's Allowance (Guernsey) Law, 1984,
 - (iii) The contractual element of any fostering allowance paid by The States of Guernsey Committee for Health & Social Care.
 - (iv) Payments received from another person whether under a court order or otherwise for the benefit of that person or another member of the Applicant's household.

- (e) Subject to the provisions of sub-paragraph (f) of this paragraph, the total net weekly income of a person who is in business on a self-employed basis shall be determined from their total income and net profit for the three years immediately preceding the date of the application together with the income of any other person whose income must be taken into account.
- (f) Where a person's total net income for any week or period is not immediately ascertainable, sub-paragraphs (b), (c), and (e) shall not apply and the person's weekly income for that week or period shall be calculated in such manner and on such basis as the Administrator considers appropriate, having regard to the circumstances of the case, and an applicant shall provide the Administrator with such information as the Administrator requires.
- (g) The Administrator may use discretion and allow to be offset against the total net weekly income of a:
 - (i) The costs of using the services of a registered child minder or other appropriate person to enable a person to obtain an income from employment, including self-employment,
 - (ii) Any payment by way of maintenance paid to another person in accordance with a court order,
 - (iii) Any deduction from a person's wages made by a court order arresting the wages of that person.

26. Administrator's obligation to give reasons

If the Administrator refuses legal aid, or exercises discretion to grant it outside the limits as at paragraph 18 above, or to waive or defer payment of a contribution, then the Administrator shall provide reasons.

27. Administrator's reconsideration of decisions relating to the financial eligibility of an applicant

27.1 There is no statutory right of appeal against a financial determination by the Administrator.

27.2 An applicant may request the Administrator to reconsider the Administrator's financial determination that the applicant does not qualify financially or no longer qualifies financially for legal aid under the Scheme.

28. Judicial Review of a decision of the Administrator

Any application by a person for legal aid to commence proceedings to judicially review a decision of the Administrator will be subject to the standard means test and the civil merits test. In such circumstances, the assessment of the legal merits of the application for a legal

aid certificate to judicially review a decision of the Administrator, will be considered by a party independent of the Administrator.

29. Resources abandoned

If an applicant or any other person whose income must be taken into account has:

- (a) directly or indirectly deprived them self of any resources, or
- (b) neglected to claim, waived or abandoned any right or benefit to which the person is, or may be, entitled and the effect of the deprivation, neglect, waiver or abandonment, as the case may be, is to obtain legal aid for themselves or another person or increase the amount thereof or decrease any contribution that might otherwise be payable, those resources and that right or benefit may be taken into account as if they were still the person's or the person was in receipt of any sum of money due under or pursuant to or representing that right or benefit.

30. Attribution of property

- (a) Subject to the following provisions of this paragraph, a person shall be deemed for the purposes of this circular to own property if that person is absolutely entitled in possession to the whole beneficial interest therein and not otherwise.
- (b) Where two or more persons are beneficially entitled in possession to any property they shall be entitled for the purposes of this circular as if each of them were entitled to possession to the whole beneficial interest in equal shares unless it appears that their respective beneficial interests are not equal; and in that case they shall be treated as respectively entitled in possession to the whole beneficial interest in such shares as appear to be just.

31. Transitional provisions

If an applicant has been granted legal aid under any of the Schemes and there are subsequent changes in the capital resource allowances or weekly requirement rates as set out in Table 1 and Table 3 respectively, or as a result of subsequent changes to the applicant's financial circumstances, then the applicant may apply for re-assessment, and, whether in receipt of such an application or not, the Administrator may re-assess the applicant. In such events and following completion of the re-assessment, the Administrator may offer legal aid in an amended form. If the amendment is not accepted then the Administrator shall revoke the certificate. The Administrator will also revoke the certificate if, as a result of such changes, an applicant is no longer financially eligible for legal aid.

SCHEDULE

Table 1: Paragraphs 15, 16(a) and 24(b)

Capital resources to be wholly disregarded

Household	Maximum amount of capital resources
Single householder or single non householder ("Single householder")	£13,000
Married couple or other persons falling within paragraph 17 of this Circular ordinarily cohabiting as husband and wife, who are members of the same household and who are responsible for household expenses and rent/mortgage ("Couple Householder")	£15,000
Married couple or other persons falling within paragraph 17 of this Circular ordinarily cohabiting as husband and wife, who are members of the same household but who are not responsible for household necessities and rent/mortgage ("Couple Non Householder")	£15,000
Couple or single householder or non-householder with one child dependant	£17,000
Couple or single householder or non-householder with two child dependants	£21,000
Couple or single householder or non-householder with three or more child dependants	£23,000

Table 2: Paragraphs 9 and 18

Contribution rates applied to assessed residual weekly income

Assessed Residual Weekly Income (£)	Contribution Required
zero or less	0%
Between £0.01 and £50.00	20%
between £50.01 and £100.00	40%
between £100.01 and £150.00	60%
between £150.01 and £200.00	80%
more than £200.01	No award of legal aid will be given

Table 3: Paragraphs 16

Weekly requirements as from 1st January 2019

Description	Amount
Married couple or other persons falling within paragraph 17 of this circular where they (individually or jointly) are directly responsible for household necessities and rent/mortgage (if any) ("Couple Householder")	£305.84
Married couple or other persons falling within paragraph 17 of this circular where they (individually or jointly) are not responsible for household necessities and rent/mortgage ("Couple Non Householder")	£277.78
Person not falling within paragraph 17 who is directly responsible for household necessities and rent/mortgage (if any) ("Single householder")	£184.72
Person who is not a householder ("Non-householder")	£138.89
Member of a household: Aged 11 years or older	£108.29
Aged 5 years or over but less than 11	£81.37
Aged less than 5 years	£54.46

Notes

For the purposes of financial assessment under any of the Schemes:

1. A householder is someone who is directly responsible for household expenses and rent/mortgage (if any),
2. A non-householder is someone who is not responsible for household necessities and rent/mortgage(if any),
3. A person who is in prison or otherwise detained in legal custody and who has no partner is treated as a non-householder. If that person has a partner, the partner may be given a householder allowance, if appropriate,
4. A person who is of no fixed abode is treated as a non-householder,
5. A child dependant is a child who is in full time education and is living in the applicant's house,
6. A non-dependant is someone that has reached school leaving age, is not in full time education and is living in the applicant's house. This could include a person living at home with their parents, a person living with adult children, or someone living with friends,
7. No member of household allowance is given for any child who is not a dependant.

Dated this 29th day of October, 2019



M. K. LE CLERC

President of the Committee *for* Employment & Social Security
For and on behalf of the Committee



L. H. HAYWOOD
Legal Aid Administrator

GUERNSEY LEGAL AID SERVICE
New Jetty, White Rock, St Peter Port, Guernsey, GY1 2LL
Telephone (01481) 747530 Email: legalaid@gov.gg

The Legal Aid Schemes are established under The Legal Aid (Bailiwick of Guernsey) Law, 2003, The Legal Aid (Guernsey and Alderney) (Schemes and Miscellaneous Provisions) Ordinance, 2018 and the Legal Aid (Guernsey and Alderney) Rules, 2019.

Guernsey Legal Aid Service (“GLAS”) is the name of the service that administers the Legal Aid Schemes. GLAS is run by the Legal Aid Administrator who is an independent statutory official appointed by the States of Guernsey.

CIRCULAR 2 – THE CIVIL LEGAL AID SCHEME: SCOPE AND LEGAL MERITS

This Circular specifies the eligibility criteria, scope, legal merits test and the conditions that apply in relation to applications for legal aid in civil and family proceedings under the Civil Legal Aid Scheme.

1. Definitions

In this Circular the following definitions apply:

“the Administrator” means the person who has been appointed by the States of Guernsey to the Office of the Legal Aid Administrator in accordance with the Legal Aid (Bailiwick of Guernsey) Law, 2003.

“Advocate” means an Advocate of the Royal Court of Guernsey.

“the Alderney Firms” means those specific firms currently contracted under separate arrangements with the Legal Aid Administrator for the provision of legally aided services in Alderney.

“applicant” or “assisted person” means a person that is applying, who has applied for, or who has been granted legal advice and assistance and representation under the Civil Legal Aid Scheme by way of a legal aid certificate issued by the Administrator.

“certificate” means a legal aid certificate that has been issued by the Legal Aid Administrator to an applicant in connection with proceedings under the Civil Legal Aid Scheme.

“civil matters” means civil and family matters.

“contribution” means the percentage of legal costs and disbursements that an applicant has been assessed to pay towards their legal proceedings under the Civil Legal Aid Scheme.

“CYCT” means the Child, Youth and Community Tribunal as established under the Children (Guernsey and Alderney) Law, 2008.

“discharged” means when a legal aid certificate has been cancelled from a specific date. This happens automatically when the work under a legal aid certificate has concluded. A certificate can also be discharged when an assisted person becomes financially ineligible or fails to cooperate with their Advocate or the Administrator.

“financial means test” means the application of financial eligibility criteria as specified.

“GLAS” (Guernsey Legal Aid Service) means the Office of the Legal Aid Administrator and /or any member of staff.

“Green Form Scheme “or “Green Form” means advice and assistance provided to the applicant under the Legal Aid, Advice and Assistance Scheme.

“Guernsey firms” are all Guernsey Advocates’ firms that opt in to provide legal services under the Schemes.

“legal aid” means legal advice, assistance and representation provided under the Civil Legal Aid Scheme by way of a certificate issued by the Administrator.

“legal merits test “or “merits test” comprises both probable cause and reasonableness. Both aspects must be met to satisfy the legal merits test.

“liquidated damages “means cases where the sum in issue is fixed or ascertained.

“unliquidated damages” means cases where the level of damages in issue is to be determined by the proceedings.

“MHRT” means the Mental Health Review Tribunal as established under the Mental Health (Bailiwick of Guernsey) Law, 2010.

“the Ordinance” means The Legal Aid (Guernsey and Alderney) (Schemes and Miscellaneous Provisions) Ordinance, 2018.

“private law proceedings “are those in which the parties to the proceedings are private individuals.

“public law proceedings “are those in which one party to the proceedings is a public body such as the States of Guernsey.

“required documentation“ means all the documentation required by the Administrator to undertake an assessment of each applicant to ascertain their eligibility for legal aid.

“revoked” or “revocation” means when a legal aid certificate is not only cancelled from a specific date but is also deemed never to have existed.

If a certificate is revoked, the assisted person becomes liable for the costs of all the work undertaken by the Advocate under the Scheme and the Administrator will seek from the assisted person full reimbursement of all costs incurred under the certificate and any associated green forms.

“the Scheme” means the Civil Legal Aid Scheme as established under The Legal Aid (Guernsey and Alderney) (Schemes and Miscellaneous Provisions) Ordinance, 2018.

“specified” means rules specified by the Committee *for* Employment and Social Security.

“suspended” means that the Administrator may temporarily suspend a certificate pending receipt of financial or other information from either the applicant or the Advocate. During a period of suspension, no fees or disbursements may be incurred by the Advocate under the Schemes.

PART I GENERAL PRINCIPLES

2. Purpose

The purpose of the Civil Legal Aid Scheme is to enable an individual, who satisfies specified eligibility criteria, to obtain advice, assistance and representation in relation to specified civil and family proceedings, subject to specified conditions.¹

3. Alderney Arrangements

3.1 There are special arrangements under the Scheme in respect of applicants who are Alderney residents.

3.2 Only the Alderney firms will be remunerated by the Administrator for:

- (a) Any Green Form that falls within the scope of the Legal Aid, Advice and Assistance (Green Form) Scheme, other than in relation to matters before the Matrimonial Causes Division (“MCD”) of the Royal Court. See paragraph 3.3, and
- (b) Civil cases before the Court of Alderney that fall within the scope of the Civil Legal Aid Scheme.

3.3 Any Guernsey firm may be remunerated under the Scheme to advise, assist and represent an applicant who usually resides in Alderney in proceedings before the Guernsey Royal Court, MCD.

4. Limitations and Extent

4.1 Advice, Assistance or representation under the Scheme is not available to legal proceedings before a court outside Guernsey or Alderney, or any matter where the relevant governing or applicable law, is a law other than the law of Guernsey or Alderney, and the matter is a matter that is not justiciable before a court in Guernsey or Alderney.

¹The Legal Aid (Guernsey and Alderney) (Schemes and Miscellaneous Provisions) Ordinance, 2018. S.5

- 4.2 Legal Aid is only available to individuals: not companies, charities or groups of people.
- 4.3 Legal Aid will only be available in respect of individuals who have instructed an Advocate and funding, including any disbursements, will not be provided direct to individuals or paid out on their behalf where they are acting as a litigant in person. A litigant in person means an individual who is a party to legal proceedings and who exercises their right to conduct legal proceedings on their own behalf, without the assistance of or representation by an Advocate.
- 4.4 If a type of case is not specified within this Circular, it is deemed to be excluded from the scope of the Scheme, subject to any discretion the Administrator may have or if it is a case that the Administrator considers to be exceptional.
- 4.5 The Administrator may grant a certificate in respect of part only of the proceedings in respect of which legal aid has been applied for. The certificate will detail the limitations and conditions of the grant of legal aid.
- 4.6 Representation at tribunals will not ordinarily be within scope for Legal Aid, other than:
- (a) in respect of proceedings in the CYCT in exceptional circumstances, or
 - (b) in respect of proceedings in the MHRT.
- 4.7 Legal Aid may be refused if an applicant has not fully utilised all alternative methods of resolving the dispute such as any complaints procedure, mediation, ombudsman and so on; turning to the public purse for assistance should be seen as a last resort and only if all other methods of resolving a legal dispute have been exhausted.
- 4.8 Legal aid will not be available where an applicant has available to them:
- (a) other rights and facilities making it unnecessary for them to obtain legal aid, or
 - (b) a reasonable expectation of receiving financial or other help from a body of which they are a member.
- 4.9 Legal Aid will not be granted to enable an applicant to obtain advice, assistance and representation or a second opinion from an Advocate on a matter which is already covered under a certificate with a different Advocate.
- 4.10 Legal Aid will only be available for court proceedings or tribunal proceedings that fall within the scope of the Civil Legal Aid Scheme, where an application in a court or tribunal has already been issued by the applicant or his opponent or where the reason for applying for legal aid is to make an application to a court or tribunal.

5. Issue date of certificate

Legal aid is not available to any applicant until the Administrator is satisfied that; the applicant meets the specified financial eligibility test and that the proposed case satisfies the specified legal merits test. The date upon which the Administrator is satisfied on all of these

elements is recorded as the "issue date" on the certificate. Work undertaken before the issue date of legal aid will not be remunerated under the Scheme.

6. Conditions of a certificate

The Administrator may require an applicant to comply with such conditions as are considered expedient to enable the Administrator to be satisfied from time to time that:

- (a) the applicant continues to be financially eligible for legal aid, and
- (b) it is in the interests of justice for him to continue to receive legal aid.

7. Reporting requirements

7.1 It shall be the duty of an applicant and an Advocate acting on behalf of an applicant where the facts are within the Advocate's knowledge, immediately to inform the Administrator of:

- (a) any change in that applicant's circumstances, financial or otherwise,
- (b) any change in the circumstances, financial or otherwise, so far as known to that applicant of any other person with whom that applicant is jointly concerned, or who has the same interest in, the matter, or
- (c) any circumstance, financial or otherwise, which may affect the Administrator's determination that the applicant has probable cause or that it is reasonable in the particular circumstances of the case that that person should receive, or continue to receive, legal aid.

7.2 Where an Advocate acting for an applicant has reason to believe that that applicant has not complied with the duty under paragraph 7.1 above, the Advocate shall forthwith draw this matter to the attention of the Administrator.

7.3. No Advocate shall be precluded, by reason of any privilege arising out of the relationship between the Advocate and the applicant from informing the Administrator of, or drawing her attention to, any matter specified in paragraphs 7.1 and 7.2 above.

7.4 The Administrator from time to time may directly request from the applicant or an Advocate acting for the applicant information relating to any change in circumstances, financial or otherwise.

7.5 No Advocate shall be precluded, by reason of any privilege arising out of the relationship between the Advocate and the applicant from informing the Administrator of or drawing her attention to, any matter specified in paragraph 7.4 above.

7.6 If an applicant fails to provide information requested by the Administrator, within any time period specified, the Administrator may suspend, revoke or discharge the certificate. Where a certificate is revoked, the Administrator may recover from the applicant all costs and disbursements paid or to be paid to their advocate.

8. Contributions

- 8.1 If any applicant in civil proceedings is assessed to be on a contribution to their legal costs and disbursements, all contributions are collected and retained by the instructed Advocate as the case proceeds. The balance due to the Advocate will be paid by the Administrator once the case has concluded and taxation of the Advocate's costs has taken place.
- 8.2 Any contribution assessed to be payable by the applicant in quasi civil /criminal proceedings will be collected by the Administrator as specified at paragraph 22.2(c).

9. Recovery and preservation of property/ assets

If an applicant recovers, preserves or has their entitlement to any property/ asset confirmed with the use of their certificate and/or any related Green Forms, the Administrator requires the reimbursement of all costs and disbursements incurred under the Schemes.

10. Costs

If a Court awards costs against an applicant, the Administrator will not accept liability to pay those costs.

**PART II
ELIGIBILITY FOR LEGAL AID**

11. Requirement for Financial Means and Legal Merits Tests

- 11.1 The Scheme is means tested and the Administrator requires the production of such documents, accounts or information ("required documentation") from all applicants for legal aid under the provisions of the Scheme as may be required for the purposes of properly assessing or reassessing any application for legal aid and to defer determination until any such requirement is satisfied.
- 11.2 Where a reassessment results in any amendment to the terms of a certificate, any amendments, whether in respect of financial eligibility or meeting the legal merits test, shall be applied to the certificate from the date upon which the Administrator determines the reassessment.
- 11.3 Before legal aid can be granted, every legal aid application, save as specified at paragraphs 12.3-12.11 must meet the following two tests:
- (a) The financial means test -to determine whether the applicant's resources are such that, according to the specified financial criteria, the applicant cannot afford to pay for legal assistance, and
 - (b) The legal merits test -to determine whether there is probable cause and whether it is reasonable in all the circumstances for an applicant's legal assistance to be funded publicly.

- 11.4 The financial means test as specified is applicable to all applications for legal advice, assistance and representation provided under the Scheme, save as specified at paragraphs 12.3-12.11.
- 11.5 This Circular specifies the legal merits test which is applicable to all applications for legal advice, assistance and representation provided under the Scheme, save as specified at paragraphs 12.3-12.11.
- 11.6 Both tests are assessed and determined by the Administrator following receipt of all required documentation.

12. The three means and merits tests specified under the Scheme:

The “standard means and merits” test

- 12.1 The “standard means and merits” test is the method used to assess whether the applicant’s resources are such, that according to specified financial criteria, the applicant cannot afford to pay for legal assistance and that the legal merits test, as specified, must also be met. Most applications for a full certificate in civil proceedings will be subject to the standard means test and the legal merits test.
- 12.2 An applicant must meet both elements of the standard means test and the legal merits test to be eligible for legal aid.

The “no means, no merits” test

- 12.3 A “no means, no merits” application under the Scheme is one in which there is no requirement for an applicant to meet the financial eligibility criteria as specified nor the reasonableness test as specified.
- 12.4 Probable cause must be met in all “no means, no merits” applications.
- 12.5 This test is applied solely in respect of certain public law children cases in the court of first instance.

- 12.6 Legal Aid will automatically be granted upon the commencement of relevant proceedings under the Children (Guernsey and Alderney) Law, 2008 (“The Children Law”) without any requirement to take into consideration the applicant’s income, savings or property (i.e. means) or for the Advocate to provide the Administrator with an assessment of the reasonableness of the case.

The “MHRT no means, no merits” test

- 12.7 This test is applied only in applications for legal aid for advice, assistance and representation at a Mental Health Review Tribunal (“MHRT”).
- 12.8 Publicly funded legal representation at MHRTs will be provided under the Scheme generally on a “no means, no merits” test basis whilst reserving the right for the Administrator to exceptionally apply a “means test” to an application where reasonable

and in conformity with Human Rights obligations.

12.9 Exceptional circumstances will be as determined by the Administrator.

12.10 In applications for cases before the MHRT, there is no requirement for an applicant to meet the reasonableness test as specified.

12.11 Probable cause must be met in all “MHRT no means, no merits” applications.

13. Discretion exercisable by the Administrator

In applications to which the *standard means and merits* test is applicable, the Administrator has limited discretion with regard to financial eligibility. The Administrator may exercise discretion in respect of financial eligibility under this Scheme only where:

- (a) an applicant is a party in a private family law case, involving domestic abuse and children and where a finding of fact hearing has been ordered by the relevant court, or
- (b) an applicant has been advised by their Advocate to seek the protection of a domestic violence injunction and has dependent children residing with them.

14. Administrator’s obligation to give reasons

If the Administrator refuses legal aid, or exercises discretion to grant it at or to waive a contribution, then the Administrator shall provide reasons.

15. Administrator’s reconsideration of decisions relating to the financial eligibility of an applicant

There is no statutory right of appeal against a financial determination by the Administrator. However an applicant may request the Administrator to reconsider the Administrator’s financial determination that the applicant does not qualify financially or no longer qualifies financially for legal aid under the Scheme.

16. Administrator’s review of decisions other than relating to the financial eligibility of the applicant.

An applicant may require the Administrator to review a decision that the applicant does not qualify or no longer qualifies for legal aid under the Scheme.²

17. Legal Aid Commissioner’s review of decisions of the Administrator

If an applicant is not satisfied with the outcome of the review of a decision by the Administrator, other than in relation to a financial determination, the applicant may apply to the Legal Aid Commissioner for a review of the Administrator’s decision.³

² The Legal Aid (Guernsey and Alderney) (Schemes and Miscellaneous Provisions) Ordinance, 2018 S19

³ The Legal Aid (Guernsey and Alderney) (Schemes and Miscellaneous Provisions) Ordinance, 2018 S20

18. Appeal from Legal Aid Commissioner’s Review

An appeal from a decision of the Commissioner lies to the Royal Court on a question of law.⁴

19. Judicial Review of a decision of the Administrator

Any application by a person for legal aid to commence proceedings to judicially review a decision of the Administrator will be subject to the *standard means* test and the civil legal merits test. In such circumstances, the assessment of the legal merits of the application for a legal aid certificate to judicially review a decision of the Administrator will be considered by a party independent of the Administrator.

**PART III
LEGAL MERITS TEST: PROBABLE CAUSE AND REASONABLENESS**

20. General Guidelines

20.1 Every application for Legal Aid, other than “*no means, no merit*” or “*MHRT no means, no merits*” cases, will be subject to an assessment by the Administrator on the *standard means and legal merits* test basis.

20.2 The standard financial means test is as specified.

20.3 The legal merits test is as specified in this Circular and comprises two parts:

- (a) Probable cause, and
- (b) Reasonableness.

20.4 Both parts must be satisfied in order to meet the legal merits test.

21. Probable Cause

To establish probable cause:

- (a) The applicant must show that there is a sound legal basis for the proposed legal action he wishes to take, and
- (b) The Administrator will expect to be given information to establish jurisdiction and right, title and interest to raise proceedings, and
- (c) The Administrator will need specific information for certain types of cases.

⁴ The Legal Aid (Guernsey and Alderney) (Schemes and Miscellaneous Provisions) Ordinance, 2018 S20(6)

22. Reasonableness

- 22.1 The reasonableness test provides the Administrator with a very wide discretion in relation to legal merits.
- 22.2 In order to offer Civil Legal Aid, the Administrator must be satisfied that it is reasonable in the particular circumstances of the case that the applicant should receive legal aid.
- 22.3 It is impossible to give an exhaustive list of circumstances in which questions of reasonableness may apply. The Administrator has identified certain situations where it may not be reasonable to grant legal aid and in addition, has provided information on certain factors that may be taken into account in deciding whether or not it is reasonable to grant legal aid.
- 22.4 See the Schedule for examples of some factors to be taken into account in assessing whether an application is reasonable.

PART IV SCOPE OF THE CIVIL LEGAL AID SCHEME

The following types of proceedings are specified as being within the scope of the Scheme:

23. Public Law Cases

- 23.1 Public Law Children cases are assessed on a “*no means, no merit*” test basis and are referred to as “no means, no merit children cases”.
- (a) Legal aid for no means, no merit children cases will be available to the following persons, provided there is a need for representation within the proceedings:
- (i) the child or children, who are the subject of the court proceedings,
 - (ii) their mother,
 - (iii) their father,
 - (iv) any person with parental responsibility who ordinarily has day to day care of the child or children,
 - (v) any other person that the court gives leave to be joined as a party to the proceedings, provided that the interests and position of this person are not identical to those of any other party already receiving legal aid. If this person’s interests are identical to those of another legally aided party, legal aid will not be made available for their separate representation.

- (b) Legal aid will be extended until the determination of the case in the court of first instance on a *no means, no merits* test basis.
- (c) Probable cause must be established in all applications for legal aid in respect of all no means, no merit children cases.
- (d) The following public law children case proceedings arising under the Children (Guernsey and Alderney) Law, 2008, are within the scope of the Scheme and are assessed for legal aid on the *no means, no merits* test basis:
 - (i) Community Parenting Order (“CPO”) – Section 48,
 - (ii) Interim Community Parenting Order (“ICPO”) – Section 53,
 - (iii) Special Contact Order (“SCO”) – Section 50,
 - (iv) Emergency Child Protection Order (“ECPO”) – Section 55,
 - (v) Exclusion Order – Section 59, including interim orders,
 - (vi) Secure Accommodation Order – Section 69, including interim orders.
- (e) Applications to discharge any of the public law orders at 23.1(d) will be on a *no means, no merits* test basis for those persons who were parties to the proceedings in which the order was originally made.
- (f) Applications for leave to be joined as a party or for party status in relation to all public law cases relating to children are subject to the *standard means and merits* test.

23.2 The following public law proceedings relating to children will also be considered for legal aid on a no means, no *merits* test basis, provided probable cause is met:

- (a) Defending adoption proceedings following the making of a Community Parenting Order,
- (b) Child abduction matters.

23.3 The following types of public law proceedings relating to children will be considered for legal aid on the *standard means and merits* test basis:

The Child Youth and Community Tribunal (“CYCT”)

- (a) Legal aid will not generally be available for legal representation in the CYCT unless there are truly exceptional circumstances that mean that the person cannot effectively participate in a CYCT hearing without legal representation. For legal aid to be granted:

- (i) The CYCT must confirm that they consider that legal representation of the applicant is necessary, and
 - (ii) The Administrator must determine, independently of any decision reached by the CYCT regarding the necessity for legal representation, that there are truly exceptional circumstances in respect of the applicant or the case.
- (b) Referrals to the Juvenile Court from the Children’s Convenor.

23.4 Other Public Law Proceedings

Mental Health Review Tribunals (“MHRT”)

- (a) Legal Representation at MHRTs is provided under the Scheme generally under the *no means, no merits* test basis; whilst reserving the right of the Administrator to exceptionally apply a “*means test*” to an application, where reasonable and in conformity with Human Rights obligations.
- (b) Legal aid will be available to a patient to appeal to the MHRT against a compulsory detention order made under the Mental Health (Bailiwick of Guernsey) Law, 2010, generally on the MHRT *no means, no merits* test as above.
- (c) Probable cause must be established in all applications:
 - (i) Where a person’s liberty is involved, including immigration and asylum hearings,
 - (ii) Where a person has died whilst in lawful detention or in the care of a public body, including:
 - (a) Police
 - (b) Customs
 - (c) Prison
 - (d) Mental health unit
 - (e) Children’s unit
 - (iii) Judicial Review

24. Appeals in Public Law proceedings

All appeals arising from any public law proceedings (whether against an interim or final order) will be subject to the *standard means and civil merits* test.

25. Private Law Family Proceedings

25.1 Provided that both the standard means and merits tests are met, legal aid may be available in connection with the following private law family proceedings.

25.2 Proceedings in the Ordinary Division of the Royal Court, the Domestic Proceedings Court (“DPMC”) and the Court of Alderney, including:

- (a) Affiliation and/or maintenance applications which are brought at the request of the States of Guernsey Committee *for* Employment & Social Security (“ESS”),
- (b) Affiliation and/or maintenance applications which are not brought at the request of ESS but only where there are good reasons why the applicant cannot represent themselves in the DPMC,

“Good reasons” will be determined by the Administrator taking into account all of the circumstances of the case and the applicant,

- (c) Maintenance applications- but only where maintenance for any dependent child/children is being applied for, either on its own or in addition to an application for maintenance for the parent of that child or children,
- (d) Domestic violence injunctions – Legal aid may be available for ex-parte and inter-partes applications even if there are no dependent children involved but it will not ordinarily extend to cover the discharge/revocation of an injunction by consent,
- (e) The civil “prosecution” and defence of a breach or breaches of a domestic violence injunction,
- (f) Applications concerning children, including applications for leave and party status under the following sections of the Children (Guernsey and Alderney) Law 2008:
 - (i) Section 14 (order of appointment of guardian),
 - (ii) Section 17 (orders for residence, contact, specific issue, prohibited steps and parental responsibility), and
 - (iii) Section 74(2)(b) (order for leave to take a child out of the jurisdiction).
- (g) Guardianship of adults who are lacking mental capacity

25.3 The above private law proceedings, for which legal aid may be available, may include applications for interim and final orders and applications for variation of court orders, provided that the *standard means and merits* tests continue to be met throughout the proceedings.

Royal Court – Matrimonial Causes Division

25.4 Provided both the standard means and legal merits tests are met, legal aid may be available in connection with the following private law matrimonial and family proceedings:

- (a) Uncontested divorce and judicial separation by consent cases on a fixed fee basis. Cover for contested divorce and enforced separation may be available in exceptional cases,
- (b) Ancillary relief concerning financial matters may be covered but only where there are dependent children who are relevant to the case unless there are exceptional circumstances as determined by the Administrator,
- (c) Legal Aid may be available for proceedings in connection with:
 - (i) Maintenance for children,
 - (ii) Maintenance for the parent but only when maintenance for the child/children is also being sought,
 - (iii) Lump sums,
 - (iv) Transfer of property orders,
 - (v) Applications concerning children, including applications for leave and party status, brought under the following sections of the Children (Guernsey and Alderney) Law 2008:
 - (a) Section 14 – order of appointment of guardian,
 - (b) Section 17 – orders for residence, contact, specific issue, prohibited steps and parental responsibility, and
 - (c) Section 74(2)(b) – order for leave to take a child out of the jurisdiction.
- (d) Legal aid will not normally be available to adoptive parents in connection with private adoptions by consent, including inter-jurisdictional or step parental adoptions,
- (e) The above private law proceedings for which legal aid may be available may include applications for interim and final orders and applications for variation of court orders provided the *standard means and merits* tests continue to be met throughout the proceedings.

26. Separate representation of the child in private law proceedings.

26.1 Legal Aid will be considered when the separate representation of a child or children has been ordered by the Court. The separate representation will usually occur through the Family Proceedings Advisor (“FPA”) instructing an Advocate on behalf of the child.

26.2 In cases where the opinion of the child and the FPA diverge, it may be necessary for the FPA to obtain their own legal advice at the expense of the Family Proceedings Advisory Service. The funding of legal advice, assistance and representation for the FPA

separately from the child does not fall within the Scheme.

27. Other civil matters

General principles

- 27.1 There will be a general presumption against granting legal aid in other civil matters not specified above unless there are exceptional circumstances, for example where equality of arms (that there be a fair balance between the opportunities afforded the parties involved in litigation) provided an overriding reason, or where there is an issue of overriding public importance and subject to the *standard means and merits* tests being met.
- 27.2 In considering whether a case is exceptional when determining whether legal aid should be granted, the Administrator shall have regard to judgments of the European Court of Human Rights including *Airey v Ireland* and *Steel and Morris v the United Kingdom*. “Exceptional cases” will be determined by the Administrator, who will take into account all the circumstances of the case.
- 27.3 The following civil matters may attract legal aid funding under the Scheme, provided the standard means and merits tests are met:
- (a) Non-family mediation
 - (b) Housing cases: Legal Aid may be available where the applicant’s rights to reside in Guernsey are involved; are the subject of court proceedings, and provided the *standard means and merits* tests are met. Such housing cases may include:
 - (i) Eviction from the applicant’s home. Where there is no reasonable defence to the eviction proceedings, legal aid may be limited to applying for a stay of eviction only,
 - (ii) Appeals in respect of a refusal of a housing certificate/permit,
 - (iii) Saisie proceedings relating to the home that the applicant lives in.
 - (c) Quasi-civil/criminal proceedings, as below:
 - (i) A number of matters come before the Court that fall into a quasi-civil/criminal category. Such cases include:-confiscation of property allegedly obtained through criminal activity, deportation, confiscation of goods found on premises when the owner cannot account for them. These will be dealt with through the Civil Legal Aid Scheme where the Administrator has a better opportunity of recovering outlay from property preserved or recovered.
 - (ii) The standard means and civil legal merits tests apply.

- (iii) In any case that is assessed by the Administrator to fall within quasi-civil/criminal proceedings, any contribution to be paid by the applicant will be treated as a contribution payable under the Criminal Legal Aid Scheme and will be collected by the Administrator at the conclusion of the case.
- (iv) In any proceedings where property is restrained or forfeited by order of the court, if the law under which the proceedings have been brought allows the applicant to apply to the court for the release of funds to meet legal costs, the Administrator may limit any grant of legal aid in the first instance to permit the applicant to apply to the court for the release of funds to meet the applicant's legal costs.
- (d) Guardianship proceedings in respect of an adult incapable of managing their own affairs. The standard means and civil merits tests apply. In such an application, the resources to be assessed are those of the person for whom Guardianship is sought.

28. Appeals in private law family, matrimonial and civil matters

The *standard means* test and the legal merits tests must both be met in relation to all appeals to a court in private law family, matrimonial and civil matters. Appeals to tribunals will not ordinarily be within scope of the Scheme.

29. Judicial Committee of the Privy Council – (“JCPC”)

29.1 Appeals from the Guernsey Court of Appeal (Civil Division), are heard by The Judicial Committee of the Privy Council.

29.2 There is no statutory basis in Guernsey for the granting of legal aid for such appeals. However, if the applicant is financially eligible under the terms of the Scheme and the legal merits test is met, the Administrator may none the less grant legal aid subject to such limitations, terms and conditions as determined by the Administrator.

29.3 Any grant of legal aid is likely to be limited, in the first instance, to obtaining preliminary advice from specialist counsel (JCPC).

30. Matters excluded from the Scope of the Civil Legal Aid Scheme

As a general rule, legal aid will not be available for the following matters:

- (a) In relation to the sale, purchase or transfer of a property unless it is to implement a court order e.g. following ancillary relief proceedings,
- (b) In connection with leases and bonds or any litigation arising therefrom, whether in relation to commercial or domestic premises,
- (c) Any real estate dispute including: boundary issues,

- (d) Litigation arising wholly or partially from disputes concerning trusts,
- (e) Applications to the Ecclesiastical Court for a grant of probate or letters of administration,
- (f) Any case before a Tribunal, other than for a CYCT and a MHRT,
- (g) Change of name deed,
- (h) Rectification of the Register of Births,
- (i) Commercial litigation or actions arising out of a business venture (including sole proprietorship),
- (j) Services provided to an individual in relation to matters arising out of or in connection with the establishment, carrying on, termination or transfer of a business,
- (k) Inquests unless relating to deaths whilst in lawful detention or in the care of a public body (including Guernsey Police, Guernsey Border Agency, prison, mental health unit or children's unit),
- (l) Litigation where the applicant is a corporate or unincorporated body, including charities, partnerships or to individual partners of a firm to pursue/defend proceedings brought by or against the partnership,
- (m) Making a will,
- (n) Applications to the States of Guernsey Administrative Review Board,
- (o) Matters in relation to any complaint, ombudsmen or other review processes,
- (p) Private adoptions, including inter-jurisdictional or step parental adoptions,
- (q) Mediation in family cases, including in relation to financial matters,
- (r) Regulatory investigations undertaken by any regulatory agency or body in Guernsey,
- (s) Applications for legal aid made in a representative, fiduciary or official capacity and where the Administrator is of the opinion that legal aid should not be granted having regard to any source from which the applicant is or may be entitled to be indemnified in respect of the costs of proceedings concerned or any resources of the person who would be likely to benefit from a successful outcome of the proceedings for the applicant,
- (t) Any matter where an applicant has available to them: other rights and facilities making it unnecessary for them to obtain legal aid, or

- (u) a reasonable expectation of receiving financial or other help from a body of which they are a member.

31. Exceptions in other civil matters

- 31.1 Liquidated damages cases in the Magistrates court or small claims in the Court of Alderney. Liquidated damages cases with a value of less than £10,000 do not fall within the scope of the Scheme. However, the Administrator may consider granting legal aid in cases for liquidated claims below £10,000 in exceptional cases and provided the *standard means and merits* tests are met.
- 31.2 Unliquidated damages cases in the Magistrates Court or small claims in the Court of Alderney. Unliquidated damages cases in which the value is estimated by the Advocate to be less than £5,000 do not fall within the scope of the Scheme. However, the Administrator may consider granting legal aid in exceptional cases where the value is realistically estimated by the Advocate to be in excess of £5,000 and provided the *standard means and merits* tests are met.

SCHEDULE
EXAMPLES OF REASONABLENESS (See paragraph 22)

1. The nature of the proceedings appears not to be reasonable

Something about the case itself may be objectively unreasonable, even if none of the circumstances shown in the remainder of this section apply. The Administrator will determine this based on the information provided in the application.

2. The application is premature

2.1 It may be not be reasonable to grant legal aid where no or insufficient attempt has been made to resolve the dispute without litigation. The Administrator must see evidence that negotiations have been attempted and failed and that the position the applicant is adopting in the negotiations is a reasonable one. The Advocate must provide detailed evidence about the negotiations undertaken for all applications for civil legal aid, whether family or non-family applications. If this evidence is not provided or the evidence is not sufficient to show that realistic attempts have been made to settle the case without recourse to litigation, the application may be refused.

2.2 If the applicant is the respondent in the court action, the Administrator will need less evidence about whether sufficient attempts have been made to settle the case without litigation although full details of attempts made to resolve matters without further court proceedings being necessary, will need to be provided including information about any responses received from the opponent and their Advocate, given that the respondent has less opportunity to negotiate a settlement once the action has been raised.

3. Judicial Review

In relation to applications for judicial review, the Administrator still expects an applicant to demonstrate that they have made an attempt to resolve the issue without litigation. Where no such attempt has been made, an explanation for this must be provided. An inadequate or unsatisfactory explanation may have a significant bearing on the issue of whether it is reasonable to make legal aid available.

4. The proceedings are frivolous or vexatious

Applications for civil legal aid for frivolous or vexatious proceedings will not be funded at public expense. There is no reason to make public funding available to prosecute such actions where it would not be reasonable to advise privately paying clients to do so. The Administrator will consider what applicants of moderate means would be prepared to undertake were they paying for the case themselves in deciding whether to grant civil legal aid. An example of this may be where someone wants the court to look into a very minor matter that has little or no direct impact on the applicant.

5. Public sensitivity

Occasionally, some element of the background to the case or the applicant may make an application sensitive to public opinion (for example, where the applicant has been convicted of a serious crime). This does not render a case vexatious or frivolous. There may be important issues to be dealt with in the case and the application will be carefully considered by the Administrator as to whether it would be reasonable to grant legal aid.

6. Where the issues involved do not appear to be in dispute and the proposed action is unnecessary

It is not reasonable to use public funds to litigate a matter where there is no active dispute between the parties. An example may be where it is intended to raise proceedings seeking a residence order and yet the residence of a child is not actually being challenged or likely to be challenged by any other party. Such applications for legal aid will be refused.

7. The order sought is not necessary

An order might be unnecessary if, for example, the existing situation between the parties is unlikely to change and a court order is not needed to prevent it changing. This again may apply where there are issues relating to the residence of a child or where contact is being exercised without any interference.

8. A reasonable offer has been made in settlement

In assessing reasonableness, the Administrator needs to consider the reasonableness of any offer that has been made. Advocates must tell us about any offers made. The Administrator also needs to be given full information about why the Advocate or the applicant does not consider the offer reasonable with reference to awards made in similar cases. In reaching a decision on whether the offer appears reasonable the Administrator may take into account factors such as:

- (a) the likelihood of a finding of contributory negligence - where this is likely, the Advocate should estimate the percentage of claim that the court is likely to find was due to contributory negligence by the applicant, referring, if possible, to previous cases,
- (b) the likely cost of the proceedings,
- (c) the prospects of recovery of both principle sum and legal expenses,
- (d) the likelihood of additional sums being clawed back e.g. by way of contribution or where recovery/preservation may occur, and
- (e) Whether the offer appears reasonable having regard to the sum the court is likely to award.

9. The order sought will not cause significant disadvantage or prejudice

9.1 This is most likely to arise in a defendant's application, particularly for a domestic violence injunction.

9.2 Where the terms of the orders sought do not prevent any lawful act, for example if the domestic violence injunction order seeks to prevent physical harm to another person, then a defence to such an order at public expense is not warranted.

9.3 It could also arise where the applicant is a plaintiff wishing to oppose a counterclaim. If an order will not disadvantage the applicant, it would be not normally be reasonable to use public funds to resist the order.

10. The matter could be resolved in other existing proceedings

It would not be reasonable to grant legal aid for separate proceedings where a claim or dispute could be resolved within an existing action, either as it stands or by way of an amendment of the existing pleadings. It may be more appropriate for an applicant to seek an amendment to an existing grant of legal aid.

11. Undue delay in seeking a remedy

Where an applicant has failed to avail themselves of a remedy at the appropriate time, it may be not reasonable to make legal aid available at, perhaps, some considerably later date. This could arise, for example, where:

- (a) an injunction is sought many months or years after the incident complained of,
- (b) the applicant seeks to petition for judicial review in respect of a decision taken considerably earlier,
- (c) the original decision has been supplanted by a later decision,
- (d) Legal aid has already been made available to obtain the same remedy at some earlier stage.

12. The applicant is not in a position to utilise the remedy sought

If the applicant cannot utilise the remedy sought, proceedings at public expense seem somewhat pointless. For example, a spouse may demand an order transferring title in the matrimonial home, but not be in a position to meet mortgage payments, or the lender may refuse consent to the transfer from joint names on the mortgage. Whilst the remedy sought might be valid, the applicant could not utilise it.

13. Where the state of the evidence may make it is not reasonable to make legal aid available

13.1 While someone may be able to rely in court on uncorroborated evidence and hearsay evidence, the courts would normally expect an Advocate to lead corroborative evidence

and non-hearsay evidence if it is available.

13.2 The Administrator expects supporting evidence, if available, to be produced with the application for legal aid.

13.3 Where an applicant is asking the court to rely on hearsay evidence, the Administrator will have to be satisfied the court would be likely to accept it as evidence.

14. Applications by corporate or unincorporated bodies

14.1 Legal aid can only be granted to “a person”; it is not available to corporate bodies, such as a limited company, a plc or a company established by a charter or Act of Parliament or a Law.⁵ Legal aid is only available to “an individual”⁶, it is not available to an unincorporated body such as a firm or partnership, a club, society or association.

14.2 Legal aid is not available to partnerships or to the individual partners of a firm to pursue or defend actions brought by or against the partnership and where the effect of giving legal aid to a partner would be to give legal aid to the partnership itself.

14.3 Legal aid may be available to an individual, who may be a partner, but who has a separate or free-standing cause of action or basis of alleged liability (but not simply, or in respect of, liability as a partner for the partnership liabilities). In these circumstances, the application for legal aid should provide full details and any relevant explanation as appropriate as to how the individual’s interests are, in the circumstances of the case, separate and distinct from that of the partnership.

14.4 Sole traders are not corporate or unincorporated bodies, and may therefore apply for legal aid. There is no prohibition on sole traders seeking legal aid to pursue or defend proceedings relating to ‘business matters’ (for example, sums not paid under a contract, providing that the sum in issue falls within scope of the scheme).

15. Applications by persons with joint interest

15.1 Legal aid can only be granted to someone who is jointly concerned with, or has the same interest in, the matter as other people if the Administrator is satisfied that:

- (a) the applicant would be seriously prejudiced in their own right if legal aid were not granted, or
- (b) It would not be reasonable and proper for the other people concerned to pay the legal costs and disbursements that would be paid under legal aid if it were granted.

15.2 Where there are a number of individuals who all appear to share a broadly similar objective in an action, legal aid will not generally be made available to fund the case unless strong evidence is provided to show that an individual will suffer serious

⁵ The Legal Aid (Bailiwick of Guernsey) Law, 2003 S29

⁶ The Legal Aid (Guernsey and Alderney) (Schemes and Miscellaneous Provisions) Ordinance, 2018. S 3,4,5 and 6

prejudice. An example of “serious prejudice” would be an owner of a flat in a tenement faced with litigation over a bill for common repairs.

15.3 Examples of cases where an applicant will not suffer serious prejudice include closure of a school, community centre, swimming pool, or other cultural or leisure institution.

15.4 Where several people each have a claim for damages, say, arising out of a common calamity and each individual has their own distinct claim, this would not be joint interest. While the parties have similar interests, they are not the same.

15.5 Similarly, where a claim arises from a fatal accident, the claim for a child of the deceased is treated as separate and distinct from the claim of a spouse or other relative.

16. Wider public interest

16.1 When considering the reasonableness test, a relevant factor may be that a case demonstrates a wider public interest. A wider interest may be presented in an application for matters such as judicial review, appeals or damages claims where several cases arise out of the same incident, or where the outcome of the case may have a direct tangible benefit to the applicant and to others.

16.2 It may be unreasonable to make legal aid available to a person to litigate, as a private citizen, at public expense, about something that is obviously not exclusive to him or her. Examples could be fluoridation of public water supplies, noise generated by a large social or cultural event, closure of public leisure facilities.

16.3 If the Administrator is satisfied the case does demonstrate a wider public interest, this can, in the particular circumstances, be treated as a determining factor, even if the value of the claim is relatively modest. However, the Administrator must also consider questions such as prospects of success and cost-benefit.

17. Shadow applications

Applications may be received in the name of a child or impecunious relative in cases where other family members, who would not qualify for legal aid, have a direct and identical interest in the matter. Indeed, the other family members may be the true client in the case, providing the Advocate with instructions. It may not be reasonable to grant legal aid to them, in effect, through the device of granting it to an impecunious relative, thus allowing them to avoid paying towards the litigation.

18. Other rights and facilities

18.1 Legal aid will not be granted to someone who has other rights and facilities that make it unnecessary for them to obtain legal aid, or a reasonable expectation of obtaining financial or other help from a body of which they are a member. However, legal aid may be granted if the applicant has failed to enforce or get those rights, facilities or help after taking, in the Administrator’s opinion, all reasonable steps to enforce or obtain them.

18.2 Other rights or facilities may include rights to indemnity under an insurance policy (legal expenses insurance, home insurance, motor insurance) or membership of a professional association or trade union.

- (a) If an applicant is a member of a trade union or professional body that provides legal assistance to its members, the applicant must explain why they are not using its services.
- (b) If the union is refusing to assist, the Administrator needs to know why. It may have a bearing on probable cause and reasonableness.
- (c) If the applicant has not applied to their union or has decided to stop taking their advice, the Administrator needs to know why. The applicant might be able to satisfy the Administrator that they have good reasons to be dissatisfied with the past or present performance of the union-nominated Advocates.
- (d) It would not be reasonable to make legal aid available because the applicant prefers to instruct their own Advocate, rather than a union-nominated Advocate.
- (e) Advocates must ensure that they ask about all of these potential sources of funding before applying for legal aid. Where the Administrator finds that such sources of funding exist and was not told about them the Administrator will consider revoking any grant of legal aid that may have been made.

19. Matters de minimis

It would not be reasonable to grant legal aid where the amount at stake does not justify the cost of proceedings. This is obviously a variable factor, which depends on the circumstances of the individual case, including the strength of the merits of the case. Advocates should consider, in assessing the value of a claim, any likely deduction for contributory negligence. Examples of such matters will include very modest personal injuries claims which cannot be said to justify the use of public funds to pursue the claim.

20. Applicant convicted of a criminal offence arising from subject matter of application

20.1 If civil litigation arises because of a criminal offence of which an applicant has been convicted, it would not be reasonable to grant legal aid to oppose the merits of the action. Where for example a claim for damages is made arising from an incident which led to the conviction of the applicant a defence on the merits would not be likely to be reasonable even if the applicant wanted to deny certain aspects of the case.

20.2 However, it would not necessarily be unreasonable to oppose the claim on quantum, depending on the whole circumstances of the case. Advocates may also need to consider the prospects of success, where substantial questions may arise bearing upon the reliability and credibility of evidence.

21. Insufficient interest

All applicants must show they have a right, title and interest to be a party to the proceedings. Even where such an interest is demonstrated, the amount of interest the applicant has may not justify the use of public funds. As a general proposition, litigation, that would have little or no material benefit to the applicant or is brought simply to satisfy vague demands for justice or principle, would not be reasonable.

22. Prospects of success

- 22.1 An important factor in deciding whether it is reasonable to grant civil legal aid is the issue of prospects of success. Advocates must address the prospects in all applications and give the Administrator enough detail about the case and its background to allow her to examine this issue carefully.
- 22.2 In addition Advocates are required to assess the prospects of success and provide reasons for reaching this conclusion.
- 22.3 Experience shows that forms almost invariably suggest there are “excellent” or “good” prospects of success. While the Administrator will take into account the Advocate’s comments on the prospects, all the circumstances will be considered to decide whether it is reasonable to grant legal aid.
- 22.4 Advocates must send us information to satisfy the Administrator that, if the case is determined at proof or other final hearing, the client is likely to get an outcome that has some practical benefit for them.
- 22.5 Advocates must provide information on the prospects of success in the Form 1LM Civil, Form 1LM Family or Form 1LM Children as appropriate.
- 22.6 The forms asks whether prospects are “excellent”, “good”, “fair”, or “poor”.
- 22.7 Advocates must also give their view on prospects on a scale of 1-10 with 1 being minimal or no prospects of success and 10 being an almost guarantee of success. Comparing this numerical assessment against the four categories for prospects would mean that the Administrator will view cases ranked:
- (a) between 1 and 3 as having poor prospects, which means it is probable they will be unsuccessful,
 - (b) between 4 and 6 as having fair prospects, which means there is a strong possibility they will be unsuccessful,
 - (c) as 7 and 8 as having good prospects, which means there is a strong probability they will be successful, and
 - (d) as 9 and 10 as having excellent prospects, which is almost a guarantee of success.

- 22.8 Advocates will need to support this assessment with reference to the information provided to the Administrator who will use this to help to consider the application.
- 22.9 In applications for civil legal aid in non-family cases where the assessment of prospects of success are given on the Form 1LM Civil (Non-family) as “fair” or “poor” (between 1 and 6), Advocates must provide detailed information on any other significant factors that would warrant granting civil legal aid despite this. Failure to do this may lead to the application being refused.
- 22.10 In applications for civil legal aid in family cases where the assessment of prospects of success are given on the Form 1LM Family or Form 1LM Children as “fair” or “poor” (between 1 and 6), Advocates must also show there is some purpose in the applicant continuing with the proceedings despite this.
- 22.11 Prospects of success must be completed on every Form 1LM involving civil proceedings even if it is a case which does not relate to pecuniary matters e.g. relating to children or injunctive relief. This includes Public Law Children matters in the court of first instance, even though these may be on a “*No means No merit*” test basis.
- 22.12 There may be some classes of case where less emphasis would be placed on the prospects of success, but a greater emphasis placed on other factors. In looking at prospects of success, the Administrator is not looking at a guaranteed successful outcome, but rather, all things being equal, a reasonable prospect of success.
- 22.13 In assessing the prospects of success, the Administrator will also consider the following:
- (a) volenti and contributory negligence,
 - (b) evidential difficulties arising from the fading memories of witnesses,
 - (c) unsuccessful litigation of a similar nature in The Bailiwick or elsewhere in the UK,
 - (d) evidential discrepancies,
 - (e) unsupportive opinions of the applicant’s own legal advisers.

23. Prospect of recovery do not justify the use of public funds

- 23.1 The Administrator will give careful consideration to the prospects of recovery in any case.
- 23.2 If the client is unlikely to recover the principal sum and expenses, it would not be reasonable to use public money obtaining an unenforceable decree.
- 23.3 The Advocate’s opinion on the Form 1LM must indicate prospects of recovery having regard to all the circumstances. Experience indicates that Advocates tend to suggest there are “excellent” or “good” prospects of recovery. The Advocate should consider,

inter alia, whether the opponent/defendant:

- (a) is insured,
- (b) has substantial capital assets or income to satisfy a judgment or order and costs,
- (c) is en désastre, insolvent or subject to Saisie proceedings,
- (d) is not indemnified by the insurer for the particular risk or claim,
- (e) is no longer resident in the Bailiwick with no employer or capital in the Bailiwick,
- (f) has unreachable assets (for example, individual placing property behind the corporate veil) or is in receipt of legal aid.

23.4 The Administrator will note the Advocate’s comments about the prospects of recovery but will consider all of the circumstances and reach a view on whether it is reasonable to grant legal aid.

23.5 Advocates must provide information on the prospects of recovery in the Forms 1LM Civil or 1LM Family. The forms ask whether prospects are “excellent”, “good”, “fair”, or “poor”.

23.6 Advocates must also give their view on prospects on a scale of 1-10, with 1 being minimal or no prospects of recovery and 10 being an almost guarantee of a full recovery of principal sum, and expenses being made. Comparing this numerical assessment against the four categories for prospects would mean that cases ranked:

- (a) between 1 and 3 will be viewed as having poor prospects, which means it is probable that a full recovery will not be made,
- (b) between 4 and 6 will have fair prospects, which means there is a strong possibility a full recovery will not be made,
- (c) as 7 and 8 have good prospects, which means there is a strong probability that a full recovery will be made, and
- (d) as 9 and 10 have excellent prospects, which means there is almost a guarantee that a full recovery will be made.

23.7 Advocates must support this assessment with reference to the circumstances of the opponent and their ability to meet any awards that may be made.

23.8 Where an Advocate assesses the prospect of recovery as being either “fair” or “poor” (between 1 and 6), they must provide detailed information about why it is considered reasonable to grant civil legal aid. Failure to do this may lead to the application being

refused. If an order is not likely to help an applicant it would not be reasonable to spend public funds on a court action.

23.9 Information on the prospects of recovery should include the prospects of recovering expenses in addition to any damages or capital sum that may be awarded.

23.10 Expenses should be sought in all non-family cases where the legally aided party is successful.

23.11 The Advocate should also consider applying for Advocates' costs and/or Court/Greffe costs in all family cases, where appropriate.

24. Cost benefit analysis

24.1 The Administrator will always examine the Advocate's assessment of the likely costs of any case and balance these against the benefit an applicant will get from proceedings. Advocates must provide details of the potential costs of cases including those where proceedings are likely to be defended. This includes the cost of any fees, including fees for counsel together with any likely disbursements to be incurred.

24.2 Where the potential benefit to the applicant equals or is less than the likely cost of pursuing the action, the application will fail the cost benefit test e.g. if the benefit to the applicant is £10,000 and the cost of an action is likely to be £12,000, there is no costs benefit. Whilst cost alone cannot justify a refusal on reasonableness, balancing the cost of litigation against the potential benefit to the client and prospects of success where heavy expenditure of public funds was likely to be needed does not prevent the Administrator from effectively viewing the cost of the litigation as the deciding factor.

24.3 The cost benefit analysis applies to any financial claim, for example, by way of damages in personal injury cases, professional negligence (including medical negligence), financial relief in matrimonial disputes and determination of the ownership of assets. If the applicant fails to fully recover judicial expenses, property recovered or preserved by the applicant may be subject to reimbursement to GLAS, potentially leading to little or no material benefit to the applicant. The Administrator needs to be able to assess any such risk at the outset and so Advocates must provide full details on the total potential costs and disbursements.

24.4 Advocates must also satisfy the Administrator about the prospects of success in any individual case as well as the likelihood of recovering costs.

24.5 If the Administrator exceptionally grants legal aid in financial cases within the Magistrates Court, particular caution must be exercised by the Advocate to ensure that the costs benefit analysis is made out and continues to be so as the case progresses.

25. Claim likely to be within the small claims limit

25.1 Assertions of a particular value of a claim must not be taken at face value. Legal aid is not available for liquidated petty debt actions (i.e. of a value of less than £10,000)

unless in the opinion of the Administrator it is an exceptional case.

25.2 Civil legal aid is also not available in unliquidated cases with a value of less than £5,000. However, the Administrator needs to consider carefully whether the value of any unliquidated claim, such as a personal injury case, is enough to make it reasonable to grant legal aid. This will include careful consideration of the cost benefit analysis test set out above. Advocates will be required to provide a realistic estimate of quantum at the outset and as the case progresses.

26. Private client reality

26.1 Legal aid does not exist to place those receiving it in any better position than privately paying clients. The Administrator will look to see whether a privately paying client of modest means would reasonably be advised to litigate in the same circumstances.

26.2 The Administrator is entitled to take into account what a private client would do on being told that part of their case was likely to involve unusually large expenditure.

26.3 Taking this into account expensive litigation in the Royal Court or Court of Appeal on issues that, while having a legal basis, are in connection with issues that have only a modest impact on the applicant, may well not be a reasonable use of public funds.

26.4 It is important to remember that the availability of legal aid does not give entitlement to resources beyond that of the privately fee-paying client of modest means.

27. Practical benefit to the applicant

In assessing whether it is reasonable to make legal aid available, the Administrator needs to consider the practical benefit an applicant will get from any proceedings. Advocates should address what significant personal interest an applicant has in a case and its outcome. If no information is provided to show a significant practical benefit to an applicant from being involved in proceedings, the application for legal aid may be refused.

28. Legal Aid for Appellate Proceedings

28.1 The onus is on the applicant to satisfy the Administrator that there is both probable cause for the appeal and that it is reasonable to grant legal aid for the appeal. Accordingly Advocates must provide a lucid explanation of the basis upon which the court decision is susceptible to appeal. The applicant must also be financially eligible on the standard means test.

Probable cause in relation to appellate proceedings

28.2 For all appeals, including against interim and final appeals, the Administrator requires:

- (a) a copy of the judgment/order appealed against, and/or
- (b) a summary of the decision and the reasons given by the court, if the appeal is against an interim order or another decision in relation to which the reasons

for the decision are not contained in an order, and

- (c) a statement of the grounds of appeal (either in the form of a draft/principal copy of the document required in the proceedings or as a separate statement otherwise providing the detail that would be required by the appellate court).

Reasonableness in relation to appellate proceedings

- 28.3 Appellate proceedings are more expensive than those at first instance and the Administrator requires detailed information about the potential cost of such proceedings.
- 28.4 The Administrator also needs the Advocate's detailed views on the prospects for success as set out in paragraph 22 of this Schedule. The potential cost implications arising from unsuccessful appellate proceedings are a factor that the Administrator needs to take into account in assessing whether it is reasonable to make legal aid available.

29. Where more than one party is legally aided

- 29.1 Where more than one party in an action has legal aid, the Administrator needs to give careful consideration to the nature of the issues in dispute and whether it is appropriate for public funds to be made available for the proceedings. Such cases have the potential to be expensive and need to be carefully monitored to ensure that litigation is the only way of resolving matters expeditiously.
- 29.2 In family actions it is not unusual to find more than one party seeking public funding. Even if it is reasonable to grant legal aid, the Administrator needs to consider the nature of the issues in dispute and whether they can only be resolved through court proceedings. Advocates must provide detailed information on attempts made to resolve matters without resorting to court. This should show that proposals to try to settle the case without litigation have been pragmatic and were designed to achieve settlement where possible.
- 29.3 Where an application for legal aid to defend a non-family case issued by a legally aided party, is received the Administrator will revisit any existing grant of legal aid to the plaintiff in addition to considering the defendant's application. The Administrator will use all relevant information including any documentation about the other party's case to decide whether it is reasonable to make public funding available to more than one party in the action.
- 29.4 The Administrator will also examine the outcomes achieved in such cases to allow a constant review to be kept regarding the benefits achieved from proceedings where more than one party has legal aid.

30. Proceedings in a court outside the Bailiwick of Guernsey are more appropriate

- 30.1 This factor interacts with an examination of jurisdiction when assessing probable cause. There may be cases where both the Bailiwick and foreign courts have jurisdiction.

Factors which might be relevant in assessing which country is more appropriate include, for example:

- (a) place of accident,
- (b) place of business/residence of opponent,
- (c) location of witnesses,
- (d) whether there are existing related proceedings in the other jurisdiction,
- (e) existence of a statutory remedy in the Bailiwick although incident occurred abroad.

30.2 Legal aid is not available in relation to any legal matters occurring outside the Bailiwick of Guernsey.

31. Judicial Committee of the Privy Council (“JCPC”)

30.3 In what will invariably be expensive proceedings, the standard that is applied to the application for legal aid is relatively high.

- (a) The sum involved, after making appropriate allowances for any element of contributory negligence, or the importance of the point at issue, must justify the cost of proceedings.
- (b) An applicant who has been successful in the court at first instance but not before the Royal Court or Court of Appeal is on relatively stronger ground than one who has failed both at first instance and on appeal.
- (c) In any application for proceedings before the JCPC, the Administrator will also need to consider if the proposed appeal is devoid of merit and has no prospect of success and/or if the appeal is an abuse of process.

30.4 Any grant of legal aid is likely to be limited, in the first instance, to obtaining specialist JCPC counsel’s opinion on the merits of the applicant’s case and points of law at issue.

Dated this 29th day of October, 2019



M. K. LE CLERC

President of the Committee for Employment & Social Security
For and on behalf of the Committee



L. H. HAYWOOD
Legal Aid Administrator

GUERNSEY LEGAL AID SERVICE
New Jetty, White Rock, St Peter Port, Guernsey, GY1 2LL
Telephone (01481) 747530 Email: legalaid@gov.gg

The Legal Aid Schemes are established under The Legal Aid (Bailiwick of Guernsey) Law, 2003, The Legal Aid (Guernsey and Alderney) (Schemes and Miscellaneous Provisions) Ordinance, 2018 and the Legal Aid (Guernsey and Alderney) Rules, 2019.

Guernsey Legal Aid Service (“GLAS”) is the name of the service that administers the Legal Aid Schemes. GLAS is run by the Legal Aid Administrator who is an independent statutory official appointed by the States of Guernsey.

CIRCULAR 3 – THE CRIMINAL LEGAL AID SCHEME: SCOPE AND LEGAL MERITS

This Circular specifies the eligibility criteria, scope, legal merits test and the conditions that apply in relation to applications for legal aid in criminal proceedings under the Criminal Legal Aid Scheme.

1. Definitions

In this Circular the following definitions apply:

“the Administrator” means the person who has been appointed by the States of Guernsey to the Office of the Legal Aid Administrator in accordance with the Legal Aid (Bailiwick of Guernsey) Law, 2003.

“Advocate” means an Advocate of the Royal Court of Guernsey.

“the Alderney Firms” means those specific firms currently contracted under separate arrangements with the Legal Aid Administrator for the provision of legally aided services in Alderney.

“applicant” or “assisted person” means a person that is applying, who has applied for, or who has been granted legal advice, assistance and representation under the Criminal Legal Aid Scheme by way of a Legal Aid Certificate issued by the Administrator.

“application” means receipt by the Administrator of the relevant legal aid application forms and all supporting documentation.

“certificate” means a legal aid certificate that has been issued by the Legal Aid Administrator to an applicant in connection with substantive criminal proceedings under the Criminal Legal Aid Scheme.

“contribution” means the percentage of legal costs and disbursements that an applicant has been assessed to pay towards their legal proceedings under the Criminal Legal Aid Scheme.

“discharged” means when a legal aid certificate has been cancelled from a specific date. This happens automatically when the work under a legal aid certificate has concluded. A certificate can also be discharged when an assisted person becomes financially ineligible or fails to cooperate with his Advocate or the Administrator.

“financial means test” means the application of the standard means test as specified. “GLAS” (Guernsey Legal Aid Service) refers to the Legal Aid Administrator and/or any member of staff.

“Green Form Scheme” or “Green Form” means legal advice and assistance provided under the Legal Aid, Advice and Assistance Scheme.

“Guernsey firms” are all Guernsey Advocates’ firms that opt in to provide legal services under the Schemes.

“legal aid” means legal advice, assistance and representation provided to the applicant under the Criminal Legal Aid Scheme by way of a Legal Aid Certificate issued by the Administrator.

“legal aid Schemes” means the Legal Aid, Advice and Assistance (Green Form) Scheme, the Criminal Legal Aid Scheme and the Civil Legal Aid Scheme.

“legal merits test” means the legal merits test as specified in this Circular.

“the Ordinance” means The Legal Aid (Guernsey and Alderney) (Schemes and Miscellaneous Provisions) Ordinance, 2018.

“required documentation” means all the documentation required by the Administrator to undertake a financial assessment of an applicant to ascertain their eligibility for legal aid.

“revoked” or “revocation” means when a legal aid certificate is not only cancelled from a specific date but is also deemed never to have existed
If a certificate is revoked, the assisted person becomes liable for the costs of all the work undertaken by the Advocate under the Scheme and the Administrator will seek from the assisted person full reimbursement of all costs incurred under the certificate and any associated green forms.

“Royal Court” means the Royal Court of Guernsey; in criminal cases it comprises two divisions namely the Full Court and the Ordinary Court.

“the Scheme” means the Criminal Legal Aid Scheme as established under The Legal Aid (Guernsey and Alderney) (Schemes and Miscellaneous Provisions) Ordinance, 2018.

“specified” means rules specified by the Committee for Employment and Social Security.

“suspended” means that the Administrator may temporarily suspend a certificate pending receipt of financial or other information from either the applicant or the

Advocate. During a period of suspension, no fees or disbursements may be incurred by the Advocate under the Schemes.

PART I GENERAL PRINCIPLES

2. Purpose

The purpose of the Criminal Legal Aid Scheme as established under the Ordinance is to enable an individual, who satisfies specified eligibility criteria, to obtain advice, assistance and representation in relation to specified criminal proceedings, subject to specified conditions.¹

3. Alderney Arrangements

3.1 There are special arrangements under the Schemes in respect of applicants who are Alderney residents.

3.2 Only the Alderney Firms will be remunerated by GLAS for:

- (a) Any Green Form that falls within the Scope of the Legal Aid, Advice and Assistance (Green Form) Scheme,
- (b) Duty Advocate and criminal cases before the Court of Alderney Police Court that fall within the scope of the Criminal Legal Aid Scheme.

3.3 Any Guernsey firm may be remunerated under the Schemes to advise, assist and represent an applicant who usually resides in Alderney in proceedings before the Guernsey Royal Court, such as serious criminal cases.

3.4 Any Guernsey firm may be remunerated under the Criminal Legal Aid Scheme to provide telephone advice and assistance under the Duty Advocate arrangements to an applicant who usually resides Alderney or to advise, assist and represent such an applicant in criminal proceedings before the Guernsey Royal Court, in relation to a serious criminal case.

4. General Limitations and Extent

4.1 Advice, Assistance or representation under the Scheme is not available to legal proceedings before a court outside Guernsey or Alderney, or any matter where the relevant governing or applicable law, is a law other than the law of Guernsey or Alderney, and the matter is a matter that is not justiciable before a court in Guernsey or Alderney.

4.2 Legal aid will only be available to individuals; not companies, charities or groups of people.

¹ The Legal Aid (Guernsey and Alderney) (Schemes and Miscellaneous Provisions) Ordinance, 2018 S6

- 4.3 Legal aid will only be available in respect of individuals who have instructed an Advocate; funding, including any disbursements, will not be provided direct to individuals or paid out on their behalf where they are acting as a litigant in person.
- 4.4 A litigant in person means an individual who is a party to legal proceedings and who exercises their right to conduct legal proceedings on their own behalf, without the assistance of, or representation by, an Advocate.
- 4.5 Legal aid may be granted for proceedings before any Bailiwick court in favour of any individual charged with a criminal offence provided the standard means test as specified and the legal merits test as specified are both met.
- 4.6 A non-resident applicant remanded in custody by a Bailiwick court is treated as being resident in Guernsey for the purposes of the Scheme.
- 4.7 A resident applicant or a non-resident applicant who is remanded in custody in the Bailiwick must fully complete the required financial documentation.
- 4.8 A non-resident who is not remanded in custody will be provided with a specific overseas financial application form by the Administrator.
- 4.9 Criminal legal aid is not available to victims of crime or witnesses unless they are also a defendant.
- 4.10 The Administrator may grant a certificate in respect of part only of the proceedings in respect of which legal aid has been applied for. The certificate will detail the limitations and conditions of the grant of legal aid.
- 4.11 Legal Aid will not be granted to enable an applicant to obtain advice, assistance and representation or a second opinion from an Advocate on a matter which is already covered under a certificate with a different Advocate.
- 4.12 Legal aid will not be available where an applicant has available to them:
- (a) other rights and facilities making it unnecessary for them to obtain legal aid, or
 - (b) a reasonable expectation of receiving financial or other help from a body of which they are a member.
- 4.13 Legal aid can only be granted under the scheme once a criminal charge has been laid against the applicant. Advice and assistance can be provided to an applicant under the Green Form Scheme prior to charge, subject to the limitations of that Scheme.

5. Contributions

- 5.1 Any contribution in criminal matters is collected by the Administrator once the criminal proceedings are concluded.

5.2 Repayment of contributions to the Administrator is required even if the defendant is acquitted or the case against the defendant is not proceeded with for any reason.

5.3 Any contribution assessed to be payable by the applicant in quasi civil /criminal proceedings is collected by the Administrator as specified at paragraph 26.

6. Issue date of certificate

Legal aid is not available to any applicant until the Administrator is satisfied that; the applicant meets the specified financial eligibility test and that the proposed case satisfies the specified legal merits test. The date upon which the Administrator is satisfied on these elements is recorded as the "issue date" on the certificate. Work undertaken before the issue date of legal aid will not be remunerated under the Scheme.

7. Conditions

The Administrator may require an applicant to comply with such conditions as are considered expedient to enable the Administrator to be satisfied from time to time that:

- (a) the applicant continues to be financially eligible for legal aid, and
- (b) the appropriate legal merits test continues to be met.

8. Reporting requirements

8.1 It shall be the duty of an applicant and an Advocate acting on behalf of an applicant where the facts are within the Advocate's knowledge, immediately to inform the Administrator of:

- (a) any change in that applicant's circumstances, financial or otherwise,
- (b) any change in the circumstances, financial or otherwise, so far as known to that applicant of any other person with whom that applicant is jointly concerned, or who has the same interest in, the matter, or
- (c) any circumstance, financial or otherwise, which may affect the Administrator's determination that the applicant has probable cause or that it is reasonable in the particular circumstances of the case that that person should receive, or continue to receive, legal aid.

8.2 Where an Advocate acting for an applicant has reason to believe that that applicant has not complied with the duty under paragraph 8.1 above, the Advocate shall forthwith draw this matter to the attention of the Administrator.

8.3. No Advocate shall be precluded, by reason of any privilege arising out of the relationship between the Advocate and the applicant from informing the Administrator of, or drawing her attention to, any matter specified in paragraphs 8.1 and 8.2 above.

- 8.4 The Administrator from time to time may directly request from the applicant or an Advocate acting for the applicant information relating to any change in circumstances, financial or otherwise.
- 8.5 No Advocate shall be precluded, by reason of any privilege arising out of the relationship between the Advocate and the applicant from informing the Administrator of or drawing her attention to, any matter specified in paragraph 8.4 above.
- 8.6 If an applicant fails to provide information requested by the Administrator, within any time period specified, the Administrator may suspend, revoke or discharge the certificate. Where a certificate is revoked, the Administrator may recover from the applicant all costs and disbursements paid or to be paid to their advocate.

9. Recovery and preservation of property/assets

If an applicant recovers, preserves or has their entitlement to any property/asset confirmed with the use of their certificate and/or related Green Forms, the Administrator requires the reimbursement of all costs and disbursements incurred under the Schemes.

10. Costs

If a Court awards costs against an applicant, the Administrator will not accept liability to pay those costs.

**PART II
ELIGIBILITY FOR LEGAL AID**

11. Requirement for Financial Means and Legal Merits Tests

- 11.1 The Scheme is means tested and the Administrator requires the production of such documents, accounts or information (“required documentation”) from all applicants for legal assistance under the provisions of the Scheme as may be required for the purposes of properly assessing or reassessing any application for legal assistance and to defer determination until any such requirement is satisfied.
- 11.2 Where a reassessment results in any amendment to the terms of a certificate, any amendments, whether in respect of financial eligibility or meeting the legal merits test, shall be applied to the certificate from the date upon which the Administrator determines the reassessment.
- 11.3 Before legal aid can be granted, every legal aid application, must meet the following two tests:
- (a) The *standard means test* as specified to determine whether the applicant’s resources are such that, according to specified financial criteria, the applicant cannot afford to pay for legal assistance, and

- (b) The *legal merits test* to determine whether in all the circumstances of the case it is in the interests of justice that legal aid should be made available to the applicant.

11.4 Both tests are assessed and determined by the Administrator following receipt of all required documentation.

12. Legal merits test

12.1 The factors to be taken into account by the Administrator in determining whether it is in the interests of justice that criminal legal aid be made available in any case shall include:

- (a) in the event of a conviction, it is likely that the court would impose a sentence which would either deprive the accused of their liberty, or lead to loss of their livelihood, or seriously damage their reputation,
- (b) the case may involve consideration of a substantial question of law,
- (c) the accused may be unable to understand the proceedings or to state their own case, either through lack of knowledge of English, or through mental or physical disability,
- (d) the nature of the defence involves the tracing and interviewing of potential defence witnesses or expert cross-examination of the prosecution witnesses,
- (e) it is in the interests of someone other than the accused that the accused be legally represented,
- (f) the defence to be advanced by the accused does not appear to be frivolous.

12.2 The interests of justice are automatically met where:

- (a) The Court of Alderney refers a matter to the Ordinary Division of the Royal Court, the presumption is that a custodial sentence is in contemplation and thus the legal merits test is satisfied, or
- (b) Where the applicant is committed for trial before the Royal Court at the request of the Law Officers of the Crown.

13. Discretion

The Legal Aid Administrator may use discretion to grant legal aid under this Scheme when the applicant is not financially eligible or to waive or reduce a contribution if, in the Administrator's opinion, the interests of justice require it, in accordance with Article 6 of the European Convention on Human Rights.

14. Administrator’s obligation to give reasons

If the Administrator refuses legal aid, or exercises discretion to grant it as at or to waive a contribution, then the Administrator shall provide reasons.

15. Administrator’s reconsideration of decisions relating to the financial eligibility of an applicant

There is no statutory right of appeal against a financial determination by the Administrator. However an applicant may request the Administrator to reconsider the Administrator’s financial determination that the applicant does not qualify financially or no longer qualifies financially for legal aid under the Scheme.

16. Administrator’s review of decisions other than relating to the financial eligibility of the applicant

An applicant may require the Administrator to review a decision that the applicant does not qualify or no longer qualifies for legal aid under the Scheme.²

17. Legal Aid Commissioner’s review of decisions of the Administrator

If an applicant is not satisfied with the outcome of the review of a decision by the Administrator, other than in relation to a financial determination, the applicant may apply to the Legal Aid Commissioner for a review of the Administrator’s decision.³

18. Appeal from Legal Aid Commissioner’s Review

An appeal from a decision of the Commissioner lies to the Royal Court on a question of law.⁴

19. Judicial Review of a decision of the Administrator

Any application by a person for legal aid to commence proceedings to Judicially Review a decision of the Administrator will be subject to the *standard means* test and the civil merits test.

In such circumstances, the assessment of the legal merits of the application for a legal aid certificate to judicially review a decision of the Administrator will be considered by a party independent of the Administrator.

**PART III
SCOPE-TYPES OF CRIMINAL LEGAL AID AVAILABLE UNDER THE SCHEME**

² The Legal Aid (Guernsey and Alderney) (Schemes and Miscellaneous Provisions) Ordinance, 2018 S19

³ The Legal Aid (Guernsey and Alderney) (Schemes and Miscellaneous Provisions) Ordinance, 2018 S20

⁴ The Legal Aid (Guernsey and Alderney) (Schemes and Miscellaneous Provisions) Ordinance, 2018 S20(6)

20. Definitions under this section

“Court Duty Advocate” is that Advocate in attendance at sittings of the Magistrates Court or the Court of Alderney Police Court.

“detainee/volunteer” means any person detained by the Guernsey Police or Guernsey Border Agency or any person attending the police/border agency as a volunteer in respect of a matter for which they could otherwise be arrested.

“Out of hours Duty Advocate” means an Advocate from the firm which is listed either on the Out of hours Duty Advocate Rota as first or second Duty Advocate on call for out of hours work.

21. Duty Advocate Services in Guernsey

(a) *Out of Hours Duty Advocate Rota*

Free legal advice is available from the Duty Advocate during the out of hours periods to a detainee/volunteer, in respect of a matter for which they could otherwise be arrested.

- (i) Legal advice may be provided by the Duty Advocate by telephone or by personal attendance if the presentation of the client or the seriousness of the matter requires it.
- (ii) The periods covered by the out of hours duty Advocate Rota are specified.
- (iii) Free legal advice under the Duty Advocate arrangements can only be provided to a detainee/volunteer during the period of their detention. It therefore cannot go beyond a detainee/volunteer’s first appearance before the Magistrates Court.
- (iv) Legal advice provided under 21(a) is free; no financial means test will be applied providing that the person requiring advice consults the Rota Duty Advocate. If the person requiring advice wishes to consult an Advocate of their own choice, this will not be remunerated under the Scheme.

(b) *Office Hours Arrangements*

- (i) There is no specific Duty Advocate rota applicable during office hours. The Guernsey Bar maintains a list of Advocates’ firms willing to take calls from detainees/volunteers during normal office hours. These firms are also willing to take calls out of hours when it is not possible to use Duty Advocate.
- (ii) Where a detainee/volunteer requires advice and assistance from an Advocate during office hours, current arrangements are that the police or border agency will, in the first instance, contact one of the Advocates

who has confirmed, via the list, their willingness to take calls during the day. It is only none of the listed firms can provide advice by telephone or attend if required, can another firm, not on the Duty Advocate rota or the list, be remunerated under the Scheme. In such a case, the Advocate should obtain specific clearance from the Administrator before assisting (or as soon as practicable), as they may not be remunerated if a Duty Advocate was, in fact, available.

- (iii) If a detainee /volunteer requests a particular Advocate who is not noted on the list as willing to assist during office hours, then that Advocate will not be remunerated under the Scheme.
- (iv) Advice provided under 21(b) is free. No financial means test will be applied provided that the person requiring advice consults one of the listed Advocates as at 21(b)(i). If the person requiring advice wishes to consult an Advocate of their own choice, who is not on the list, this will not be remunerated under the Scheme.

22. Duty Advocate Services in Alderney

(a) *Out of Hours Duty Advocate Rota*

Free legal advice is available from the Duty Advocate to any detainee/volunteer in Alderney.

- (i) The initial phone calls and any telephone advice to a detainee/volunteer can be provided by the Rota Duty Advocate, who does not have to be member of the Alderney Firms. If it is essential for the Duty Advocate to travel to Alderney to provide advice or representation in court to a detainee then the matter must be referred to one of the two Alderney Firms that have an arrangement with the Administrator to provide legal aid services in Alderney.
- (ii) In the event of a serious incident with a requirement for a number of Advocates to attend Alderney to provide advice to a detainee/ volunteer, the Administrator must be contacted in advance of any work being undertaken by any Advocate.
- (iii) Advice provided under 22(a) is free; no financial means test will be applied provided that the person requiring advice consults the Duty Advocate. If the person requiring advice wishes to consult an Advocate of their choice, this will not be remunerated under the Scheme.

(b) *Office Hours Arrangements*

- (i) There is no specific Duty Advocate rota applicable during office hours. The Guernsey Bar maintains a list of Advocates' firms willing to take calls from detainees/volunteers during normal office hours. These firms are

also willing to take calls out of hours when it is not possible to use Duty Advocate.

- (ii) Where a detainee/volunteer in Alderney requires advice from an Advocate during office hours, current arrangements are that the police or border agency will, in the first instance, contact one of the Advocates who has confirmed, via the list, their willingness to take calls during the day. It is only none of the listed firms can provide advice by telephone or attend if required, can another firm, not on the Duty Advocate rota or the list, be remunerated under the Scheme.. In such a case, the Advocate should obtain specific clearance from the Administrator before assisting (or as soon as practicable), as they may not be remunerated if a Duty Advocate was, in fact, available.
- (iii) The initial phone calls and any telephone advice can be provided by any Advocate who is on the list as at 22(b) (i), who does not have to be member of the Alderney Firms. However if a detainee /volunteer requests a particular Advocate who is not on the list as willing to assist during office hours, then that Advocate will not be remunerated under the Scheme.
- (iv) If it is essential for the Duty Advocate to travel to Alderney to provide advice, then the matter must be passed to one of the two Alderney Firms that have an arrangement with the Administrator to provide legal aid services in Alderney.
- (v) Advice provided under 22(b) is free. No financial means test will be applied on condition that the person requiring advice consults one of the listed Advocates as at 22(b) (i). If the person requiring advice wishes to consult an Advocate of their own choice, who is not on the list, this will not be remunerated under the Scheme.

23. Court Duty Advocate - General provisions

23.1 The Court Duty Advocate can provide advice, assistance and representation, free of charge at the time of the court sitting to a defendant who is otherwise unrepresented. This is limited to only what is necessary for the immediate representation of the defendant at court

23.2 Only one Court Duty Advocate for each court sitting will be remunerated under the Scheme unless there are exceptional circumstances such that two Court Duty advocates are necessary. Exceptional circumstances may be when there is a conflict present or the Court has requested the attendance of more than one Court Duty Advocate.

23.3 In order to take advantage of the free Court Duty Advocate, the defendant requiring advice and representation must use the Court Duty Advocate provided. If the defendant wishes to consult an Advocate of their own choice, this will not be remunerated under the Scheme.

23.4 *Guernsey*

There is a Court Duty Advocate present at most sittings of the Magistrate's and Juvenile Courts.

23.5 *Alderney*

There are separate arrangements for the provision of Legal Aid services in Alderney including in relation to the Court Duty Advocate in Alderney. One of the two Alderney firms attends the scheduled monthly sittings of the Police Court in Alderney under separate arrangements with the Administrator. No Advocate, other than from one of the Alderney Firms may represent a defendant as Court Duty Advocate under the Scheme unless the Administrator has approved the same in advance.

24. Certificates for Criminal Legal Aid in the Magistrates Court, Court of Alderney and Royal Court

24.1 Every application for legal aid, including where the applicant is remanded in custody, is subject to:

- (a) The standard means test as specified , and
- (b) The legal merits test is specified.

24.2 Both tests must be met for a certificate to be granted.

24.3 All applicants, included those who are remanded in custody, must submit the required documentation to the Administrator for their application to be considered.

24.4 An application for legal aid can only be submitted to the Administrator for consideration once a charge has been laid against the applicant.

25. Alderney Court

25.1 Only an Alderney Firm will be remunerated under the Scheme in respect of criminal proceedings under a certificate in the Alderney Court. In exceptional circumstances the Administrator may consider remunerating a non-Alderney Advocate /Firm.

25.2 Exceptional circumstances shall be as determined by the Administrator.

**PART IV
SCOPE OF THE SCHEME**

26. Excluded Matters

26.1 Certain matters are excluded from receiving legal aid for representation in Court either under the Green Form Scheme or under the Scheme unless the applicant is unable to conduct their own defence due to, language difficulties, mental /physical disability or other.

26.2 *Excluded matters*

No representation in the Magistrates Court or Alderney Court is permitted under the Scheme for the following matters:

- (a) Any offence where the accused does not appear and wishes, for their own convenience, to be represented,
- (b) Minor motoring offences unless in the event of a conviction, it is likely that the court would impose a sentence which would deprive the accused of licence and livelihood,
- (c) A guilty plea for driving under the influence of drink or drugs unless, it is likely that the court would impose a sentence which would deprive the accused of their liberty,
- (d) A guilty plea for the possession of small quantities of a Class B or C drug unless it is likely that the court would impose a sentence which would deprive the accused of their liberty,
- (e) Fixed penalty offences under The Offences (Fixed Penalty) (Guernsey) Law, 2009 such as: failure to wear a seat belt; offences in relation to vehicles in disc parking places; littering; driving a car whilst holding a mobile telephone, etc.

26.3 In respect of the matters at 26.1 (a) to (d), a person may make use of the services of the Duty Advocate or seek advice and assistance, but not representation in court, under the Green Form Scheme provided the person is financially eligible.

26.4 The following matters are not within the scope of the Scheme:

- (a) *Reviews of Prison adjudications*
In appeals against an award of forfeiture or remission of sentence, or against a finding of guilt resulting in such an award, or in any other case where the interests of justice so require, the prisoner may obtain legal advice under Green Form only, to draft/redraft the written review,
- (b) *Parole – Review of dossier*
A Prisoners who wishes to apply for parole or has been recalled and who requires legal advice in order to review their dossier, is entitled to legal advice and assistance under the Green Form Scheme only.

27. **Administrator’s Discretion**

27.1 The following does not fall within the Scheme but may none the less be admitted to legal aid at the discretion of the Administrator:

27.2 Defence representation for purposes of cross-examination under The Criminal Justice (Sex Offenders and Miscellaneous Provisions) (Bailiwick of Guernsey) Law.

- 27.3 Where sections 43 and 44 of The Criminal Justice (Sex Offenders and Miscellaneous Provisions) (Bailiwick of Guernsey) Law, 2013 apply and an Advocate has been appointed by the Court to cross-examine the complainant in the interests of the accused, the Administrator may grant legal aid to the accused limited to the cross examination of the complainant.
- 27.4 Where no application for legal aid in connection with the proceedings has been submitted to the Administrator by the accused or where the accused fails to provide the required information and sections 43 and 44 as above apply, the Administrator may nevertheless grant legal aid to the accused limited to the cross examination of the complainant.

28. Appeals

- 28.1 Legal Aid for criminal appeals from a decision of the Magistrate’s Court and the Court of Alderney to the Royal Court is governed by the Magistrate’s Court (Criminal Appeals) (Guernsey) Law, 1988.(“the Law”):
- (a) An Appeal Aid Certificate is granted by the Magistrate’s Court or the Court of Alderney.
 - (b) Any Appeal Aid Certificate is effective from the given date and is not retrospective.
 - (c) Any means test in respect of an Appeal Aid Certificate is administered by the court that grants it.
- 28.2 Section 4(5) of the Law states that remuneration of an Advocate under section 4 shall be paid by the States (of Guernsey). Under current arrangements the remuneration of an Advocate who represents a person who has been granted an appeal aid certificate under section 4 is determined and paid by the Administrator.
- 28.3 Where a defendant wishes to appeal or oppose an appeal arising from a decision of the Magistrate’s Court, it is acceptable to the Administrator for reasonable costs incurred for preliminary advice to the client regarding the appeal and completion and submission of the Notice of Appeal to be claimed **either** under any existing criminal certificate for the index offence, subject to taxation **or** under a new Green Form where there has been a change of Advocate.
- 28.4 In appeals from the Royal Court to the Court of Appeal, (Criminal Division) any legal aid is both granted and remunerated by The Registry of Appeals under the Court of Appeal (Guernsey) Law, 1961 Part III and the Administrator will not remunerate any work that falls to be paid under the jurisdiction of the Court of Appeal (Guernsey) Law, 1961, Part III.
- 28.5 Reasonable costs incurred, subject to taxation, to consider and advise on the merits of an appeal will be remunerated by the Administrator under any existing certificate for the index offence.

28.6 If there has been a change of Advocate between the index offence and potential appeal, the Administrator will permit remuneration under one Green Form for the new Advocate to advise on the merits of an appeal.

29. Appeal to the Judicial Committee of the Privy Council

29.1 Appeals from the Guernsey Court of Appeal (Criminal Division) are with leave, heard by The Judicial Committee of the Privy Council.

29.2 There is no statutory basis in Guernsey for the granting of legal aid for such appeals. However, if the applicant is financially eligible under the terms of the Scheme and it is in the interests of justice that legal aid be granted to the applicant, the Administrator may none the less grant legal aid subject to such limitations, terms and conditions as determined by the Administrator.

30. Quasi-civil/criminal matters.

30.1 A number of matters come before the Court that fall into a quasi-civil/criminal category. These do not involve the determination of guilt nor do they consider sentences. Examples include confiscation of property allegedly obtained through criminal activity, deportation, confiscation of goods found on premises when the owner cannot account for them.

30.2 Application for legal aid in respect of such quasi-civil/criminal cases is made through the Civil Legal Aid Scheme.

30.3 Any contribution to be paid by the assisted person under a quasi-civil/criminal certificate will be treated as a contribution payable in criminal proceedings and will be collected by the Administrator at the conclusion of the case.

Dated this 29th day of October, 2019



M. K. LE CLERC

President of the Committee for Employment & Social Security
For and on behalf of the Committee



L. H. HAYWOOD
Legal Aid Administrator

GUERNSEY LEGAL AID SERVICE
New Jetty, White Rock, St Peter Port, Guernsey, GY1 2LL
Telephone (01481) 747530 Email: legalaid@gov.gg

The Legal Aid Schemes are established under The Legal Aid (Bailiwick of Guernsey) Law, 2003, The Legal Aid (Guernsey and Alderney) (Schemes and Miscellaneous Provisions) Ordinance, 2018 and the Legal Aid (Guernsey and Alderney) Rules, 2019.

Guernsey Legal Aid Service (“GLAS”) is the name of the service that administers the Legal Aid Schemes. GLAS is run by the Legal Aid Administrator who is an independent statutory official appointed by the States of Guernsey.

CIRCULAR 4 – THE LEGAL AID, ADVICE AND ASSISTANCE (“Green Form”) SCHEME

This Circular specifies the rules that apply to the provision of legal advice and assistance under the Legal Aid, Advice and Assistance Scheme (also referred to as the “Green Form” Scheme).

1. Definitions

In this Circular the following definitions apply:

“the Administrator” means the person who has been appointed by the States of Guernsey to the Office of the Legal Aid Administrator in accordance with the Legal Aid (Bailiwick of Guernsey) Law, 2003.

“Advocate” means an Advocate of the Royal Court of Guernsey.

“advice and assistance” means legal advice and assistance provided to the applicant under any aspect of the Legal Aid, Advice and Assistance Scheme (also referred to as the “Green Form Scheme”).

“the Alderney Firms” means those specific firms currently contracted under separate arrangements with the Legal Aid Administrator for the provision of legally aided services in Alderney.

“applicant” means a person that has been assessed by the Advocate as being financially eligible under the Scheme and in respect of a matter that is within the scope of the Scheme

“assistance by way of representation” refers to the limited situations in which representation in court or at a tribunal is permitted under any aspect of the Legal Aid, Advice and Assistance Scheme.

“certificate” means a legal aid certificate that has been issued by the Legal Aid Administrator to an applicant in connection with substantive proceedings under either the Civil or the Criminal Legal Aid Schemes.

“contribution” means the percentage of legal costs and disbursements that an applicant has been assessed by the Advocate to pay towards their legal costs under the Legal Aid Advice and Assistance (“Green Form”) Scheme.

“costs” means the total claim submitted by a fee earner and calculated on an hourly rate basis.

“CYCT” means the Child, Youth and Community Tribunal as established under the Children (Guernsey and Alderney) Law, 2008.

“DET Form” means a claim form for payment submitted by an Advocate under the Criminal Legal Aid Scheme in relation to legal services provided to a detained person.

“disbursements” means counsels’, experts’ or court fees, travel and witness expenses and other out of pocket expenses properly incurred by a fee earner which would be properly chargeable to a client. Disbursement expenses must fall within the total amount claimable under a Green Form.

“ESS” refers to the Committee *for* Employment and Social Security (previously known as Social Security).

“financial means test” means the standard means test as specified.

“GLAS” (Guernsey Legal Aid Service) refers to the Legal Aid Administrator and/or any member of staff.

“Green Form” means legal advice and assistance provided under the Legal Aid, Advice and Assistance (“Green Form”) Scheme.

“legal aid” means legal advice, assistance and representation as provided under any of the Legal Aid Schemes as established under the Legal Aid (Guernsey and Alderney) (Schemes and Miscellaneous Provisions) Ordinance, 2018.

“Legal Aid Schemes” means the Legal Aid, Advice and Assistance (Green Form) Scheme, the Criminal Legal Aid Scheme and the Civil Legal Aid Scheme.

“litigant in person” means an individual who is a party to legal proceedings and who exercises their right to conduct legal proceedings on their own behalf, without the assistance of or representation by an Advocate.

“MHRT” means the Mental Health Review Tribunal as established under the Mental Health (Bailiwick of Guernsey) Law, 2010.

“no means, no merits test” means an application for legal aid in which there is no requirement for an applicant to meet the financial eligibility criteria as specified nor the reasonableness test as specified.

This test is applied solely in respect of certain public law children cases in the court of first instance.

“the Ordinance” means the Legal Aid (Guernsey and Alderney) (Schemes and Miscellaneous Provisions) Ordinance, 2018.

“person” means an individual who is receiving or who wishes to seek advice and assistance from an Advocate under the Legal Aid, Advice and Assistance (“Green Form”) Scheme.

“Scheme” means the Legal Aid, Advice and Assistance (“Green Form”) Scheme
“specified” means rules specified by the Committee for Employment and Social Security

PART I GENERAL PROVISIONS

2. Purpose of the Scheme

2.1 The purpose of the Legal Aid, Advice and Assistance Scheme (also known as the “Green Form Scheme”) is to enable an individual, who satisfies specified eligibility criteria, to obtain:

- (a) advice about the application of the laws of Guernsey and Alderney to specified circumstances which have arisen in relation to:
 - (i) that individual, or
 - (ii) such other individual as may be specified, and
- (b) in specified circumstances, assistance in order to:
 - (i) settle a claim,
 - (ii) defend criminal proceedings,
 - (iii) bring or defend civil proceedings, or
 - (iv) make any specified agreement or other document that has or is intended to have legal effect, subject to specified conditions.¹

3. Alderney Arrangements

There are special arrangements under the Scheme in respect of applicants who are Alderney residents; only the Alderney Firms will be remunerated by the Administrator for any Green Form that falls within the scope of the Legal Aid, Advice and Assistance (Green Form) Scheme unless the Green Form is to advise, assist and represent an applicant who usually resides in

¹ The Legal Aid (Guernsey and Alderney) (Schemes and Miscellaneous Provisions) Ordinance, 2018 S4

Alderney in proceedings before the Matrimonial Causes Division of the Guernsey Royal Court or in relation to a serious criminal matter before the Guernsey Royal Court when any Guernsey firm may be remunerated under the Scheme.

4. Limitations and extent

- 4.1 Advice, Assistance or representation under the Scheme is not available to legal proceedings before a court outside Guernsey or Alderney, or any matter where the relevant governing or applicable law, is a law other than the law of Guernsey or Alderney, and the matter is a matter that is not justiciable before a court in Guernsey or Alderney.
- 4.2 Advice and assistance is only available to individuals: not companies, charities or groups of people.
- 4.3 Advice and assistance is only available in respect of individuals who have instructed an Advocate and funding, including any disbursements, will not be provided direct to individuals or paid out on their behalf where they are acting as a litigant in person.
- 4.4 Advice and assistance may not be remunerated if an applicant has not fully utilised all alternative methods of resolving the dispute such as any complaints procedure, mediation, ombudsman and so on; turning to the public purse for assistance should be seen as a last resort and only if all other methods of resolving a legal dispute have been exhausted.
- 4.5 The Scheme allow persons who might otherwise be unable to afford the services of an Advocate to obtain advice on the application of Guernsey or Alderney law to any particular circumstances which have arisen in relation to the person seeking the advice and to obtain assistance in taking any appropriate steps in settling a claim, bringing or defending any proceedings, civil or criminal, making any agreement, will or other document that has or is intended to have legal effect. This assistance can include an Advocate taking steps on behalf of the person seeking assistance or assisting that person in taking them.
- 4.6 Representation generally refers to representation by an Advocate within court or such Tribunal proceedings as fall within the Legal Aid Schemes. Such representation is more likely to require a certificate.
Assistance by way of representation is permitted under the Scheme in limited circumstance See Paragraph 14.
- 4.7 The Scheme may also be used to apply for a certificate under the Civil Legal Aid or Criminal Legal Aid Schemes.
- 4.8 *Maximum time permitted*
The total costs that can be claimed by an Advocate in connection with the provision of legal advice and assistance under any individual Green Form is limited up to a maximum value of two hours of an Advocate's hourly rate, as specified, including any disbursements that are properly incurred by the Advocate on behalf of that assisted

person.

- 4.9 In certain circumstances the maximum costs claimable under any individual Green Form may be extended by the Administrator. See paragraph 15.
- 4.10 If advice and assistance under a Green Form is excluded in respect of a particular type of case; representation in a court or tribunal under a certificate is also excluded.
- 4.11 Advice and assistance provided to an applicant in respect of a matter for which a certificate has already been granted will not be remunerated under the Scheme. There can be no co-existence of Green Form or certificate relating to the same matter. The only exception is in relation to a Green Form in respect of Divorce or Judicial Separation by consent where a fixed fee certificate has also been granted.

5. Financial Assessment

- 5.1 The Scheme is means tested by the Advocate that the applicant approaches to provide advice and assistance. The applicant has free choice of any Advocate of the Royal Court of Guernsey who is prepared to undertake the work within the remit of the Scheme.
- 5.2 The Advocate will financially assess the applicant and any partner as specified.
- 5.3 An Advocate cannot carry out any work until the financial assessment has been undertaken by the Advocate and the Green Form has been signed and dated by the applicant in the Advocate's presence. The signing of the Green Form by the applicant confirms their agreement to the terms and conditions upon which a Green Form has been granted, including the payment of any contribution that they have been assessed to pay. The relevant financial information must be provided by the applicant to the Advocate at the same time as the completion, including signing and dating, of the form.
- 5.4 The assessment period for the financial assessment under the Scheme is the week immediately preceding the applicant's first appointment with the Advocate for advice and assistance under the Scheme.
- 5.5 It is the responsibility of the Advocate to be satisfied before providing any advice and assistance that the applicant is:
- (a) financially eligible within the Scheme as specified ,
 - (b) whether any contribution is payable, **and**
 - (c) that the advice and assistance sought is on a matter of law that falls within the scope of the Scheme.
- 5.6 If the applicant satisfies the financial means test as specified, the Advocate may then proceed to provide advice and assistance for up to the maximum time limits

6. Exceptions to requirement for a means test

No financial assessment is required when the case is one to which the no means, no merits test, as specified, applies.

7. Advice for other people

- 7.1 Generally, advice and assistance must be for the assisted person alone and the means to be assessed are those of the applicant and any other person whose means must be aggregated.
- 7.2 There are a number of exceptions: where an assisted person is the legal or natural guardian of another person then a Green Form must be completed both in the name of the applicant and as best can be done in the name of the other person. For example, a guardian of a 14 year old child that has been charged with a criminal offence can obtain advice on behalf of that child, provided the child has insufficient means to pay for the service of an Advocate. A guardian of an elderly person can obtain advice on behalf of that person provided the elderly person is financially eligible to receive advice and assistance under the Scheme.
- 7.3 If a relative wishes to obtain legal advice about applying to become the guardian of an elderly person, the means to be assessed will be those of the elderly person.
- 7.4 A person under 16 years of age should as a general rule apply for advice and assistance through their parents/guardian, although there may be circumstances in which they may wish to apply for advice and assistance independently e.g. where they have a contrary interest to their parents/guardian. In such circumstances, the Advocate should ensure that the child has the capacity and understanding to instruct the Advocate and the means to be assessed will be those of the person under 16 years of age.

8. Types of Green Forms.

There are three different types of Green Form available under the Legal Aid, Advice and Assistance Scheme.

- (a) Green Form AAS 1. This is used for all general civil, family and criminal advice and assistance other than matters referred to in 8(b) and 8(c) below.
- (b) Green Form AAS 1 CL. (commonly called The Peach Form). This form is only used for the following limited subject areas arising under the Children (Guernsey and Alderney) Law, 2008:
 - (i) The duties, responsibilities and investigations of the Children's Convenor including representation at the Convenor's Meeting,
 - (ii) The duties, responsibilities and decisions of the CYCT but excluding representation at a CYCT hearing,

(iii) The public law children orders available under the Children (Guernsey and Alderney) Law, 2008.

(c) Green Form AAS 1 (ESS): This is only used for Petty Debt proceedings at the request of ESS who will issue the Green Form in respect of any such proceedings.

9. Criminal matters

Pre-charge advice and assistance may be provided to the potential defendant under a Green Form, provided the person is financially eligible and the matter is one that falls within scope of the Green Form Scheme.

10. Numbers of Green Forms permitted

10.1 An applicant cannot be given advice and assistance by the same Advocate in relation to the same criminal or civil matter (whether or not at the relevant time the subject of proceedings) more than once within a period of 3 months without the prior approval of the Administrator.

10.2 An applicant cannot be given advice and assistance in relation to the same matter by more than one Advocate (whether or not at the relevant time the subject of proceedings) within a period of 3 months without the prior authority of the Administrator.

10.3 Only one Green Form can be used to provide advice and assistance in situations where there is more than one issue all of which are “reasonably ancillary”. Reasonably ancillary, is also likely to be the position where all matters are likely to be heard together and be covered by one certificate.

10.4 There may be exceptions when more than one Green Form may be authorised in advance by the Administrator.

11. Remuneration of the Advocate

11.1 The Administrator will not remunerate any Advocate under the Scheme if an applicant has not fully utilised all alternative methods of obtaining advice and assistance such as any complaints procedure, mediation, ombudsman and so on; turning to the public purse through the Scheme for advice and assistance should be seen as a last resort.

11.2 Advice and assistance will not be remunerated under the Scheme where an applicant has available to them:

(a) other rights and facilities making it unnecessary for them to obtain advice and assistance, or

- (b) a reasonable expectation of receiving financial or other help from a body of which they are a member.

11.3 Advice and assistance will not be remunerated under the Scheme where an applicant is seeking a second opinion from an Advocate regarding a matter upon which the applicant has already received advice and assistance from a different Advocate within a period of three months or on a matter that is already covered under a certificate with a different Advocate.

11.4 Advice and Assistance will not be remunerated under the Scheme, where documentary evidence that the applicant is financially eligible, as specified, is not attached to the Green Form at the time that the Green Form is submitted for payment to the Administrator.

12. Recovery and preservation of property/assets

If an applicant recovers, preserves or has their entitlement to any property/ asset confirmed with the use of their Green Form, the Administrator requires the reimbursement of all costs and disbursements incurred under the Scheme.

13. Costs

If a Court awards costs against an applicant, the Administrator will not accept liability to pay those costs.

14. Representation under the Scheme

Representation is not permitted under the Scheme for any legal proceedings except:

- (a) Assistance by way of representation to obtain an order by consent (agreement) in family proceedings,
- (b) Assistance by way of representation for Petty Debt Proceedings in Guernsey or the Court of Alderney where such proceedings are instituted at the request of ESS to recover unpaid maintenance where the applicant is currently in receipt of Income Support,
- (c) Assistance by way of representation for criminal cases that can be fully concluded within the time limitations of the Scheme including situations where an extension to the Green Form has been approved in advance by the Administrator. See Paragraph 15.

15. Extension of Green Forms

15.1 The time permitted under a Green Form AAS 1 may be extended by the Administrator by up to a maximum additional 2 hours of an Advocate's time. This will amount to a maximum total of 4 hours at an Advocate's hourly rate, as specified.

- 15.2 A Green Form AAS 1 CL. (commonly called The Peach Form -see 8(b)) If a matter is to be referred to a Convenor's meeting, the Peach Form will automatically be extended by a maximum of two hours in total including disbursements. This extension is to cover; representation at the Convenor's Meeting, any advice following and applying for a full certificate (if required).
- 15.3 If the advocate can justify to the Administrator that the matter is exceptional due to it being significantly more complicated or there are mental health issues or language difficulties, then a further and final extension of two hours (including disbursements) may be considered. Unless there are such exceptional issues, a Peach Form is limited to a maximum of 4 hours including disbursements.
- 15.4 The maximum approved extension must include any disbursements.
- 15.5 The extension must conclude the matter in hand and no further Green Form, DET Form or certificate will subsequently be available to that assisted person in connection with that particular matter.
- 15.6 Any extension granted is in lieu of a legal aid certificate, consequently an extension can only be granted for a matter that would otherwise have been eligible for a certificate.
- 15.7 The Administrator may in very exceptional circumstances consider granting an extension in excess of the standard 2 hours.
- 15.8 The extension must be requested by the Advocate and approved by the Administrator before the matter in hand is concluded. An extension will not be approved once the matter in hand has concluded. If the extension is to conclude a criminal matter, the case has concluded once the case has been finalised in court.
- 15.9 An extension will not be approved by the Administrator if the matter for which the advice and assistance is sought is not one that would attract a certificate.
- 15.10 Assistance by way of representation in criminal cases may be permitted under an extended Green Form. See paragraph 14(c).

16. Endorsed Green Form

- 16.1 A person living outside of the Bailiwick will require the Administrator's prior authorisation before they can make an application for and receive advice and assistance under the Scheme; they can contact the Administrator directly or through their Advocate. The person must advise the Administrator why they require advice and/or assistance in matters of Bailiwick Law.
- 16.2 Before any Endorsed Green Form can be approved, the Administrator will require evidence of the financial circumstances of the person seeking advice and assistance under an Endorsed Green Form, to ensure that the applicant is financially eligible as specified.

- 16.3 Provided the Administrator is satisfied that the applicant is financially eligible, the Administrator may authorise up to 2 hours advice and assistance under an Endorsed Green Form without the requirement for the person to sign the Green Form prior to any advice or assistance being provided by the Advocate.
- 16.4 A non-resident remanded in custody by a Bailiwick Court is treated as being resident in the Bailiwick for the purposes of the Green Form Scheme.

17. Contributions

Contributions in criminal cases

- 17.1 Where any applicant in criminal proceedings is assessed to be on a contribution to their legal costs and disbursements under a Green Form, all contributions are collected by the Administrator once the criminal proceedings have concluded.
- 17.2 Repayment of contributions to the Administrator are required even if the defendant is acquitted or the case against the defendant is not proceeded with for any reason.

Contributions in quasi-civil /criminal proceedings

- 17.3 Any contribution assessed to be payable by the applicant in quasi-civil/criminal proceedings will be treated as a contribution payable in criminal proceedings and will be collected by the Administrator at the conclusion of the case.

Contributions in civil cases

- 17.4 Where any applicant in civil proceedings is assessed to be on a contribution to their legal costs and disbursements under a Green Form, all contributions are collected and retained by the instructed Advocate. The balance due to the Advocate will be paid by the Administrator once the case has concluded and taxation of the Advocate's costs has taken place.

Contributions under an extended Green Form

- 17.5 Where an assisted person has been assessed to be on a contribution and an extension to the Green Form has been approved by the Administrator, the contribution is payable on the total amount of costs incurred under both the Green Form and the extension to the Green Form. This will usually be a maximum of 4 hours at an Advocate's hourly rate as specified.

PART II
SCOPE OF THE SCHEME

18. What is included

As a general guide, provided the applicant is financially eligible under the Scheme, advice and assistance will be remunerated under the Scheme for the following:

- (a) Personal “bankruptcy” i.e. Désastre and insolvency,
- (b) Power of Attorney but only in limited circumstances such as it being required on grounds of age or mental capacity. The Advocate must seek the prior approval of the Administrator before commencing any such work,
- (c) Guardianship of adults under an incapacity,
- (d) Inquests but only relating to deaths occurring to persons whilst in lawful detention or in the care of a public body (including police/Border Agency, prison, accommodation under the direct care and control of the Committee for Health and Social Care’s Mental Health and Children’s Services),
- (e) The preparation of wills,
- (f) Divorce and Judicial Separation, ancillary relief including children arrangements and financial matters, etc. Limited assistance by way of representation, to obtain a Court order by consent within family proceedings, may also be included. See paragraph 14(a),
- (g) Private law family matters including affiliation and/or maintenance applications at the request of ESS, domestic violence injunctions, etc.,
- (h) Specified Public Law Children cases. Green Form (AAS 1 CL- referred to as the Peach Form) must be used to provide advice and assistance for specified Public Law Children cases. See paragraph 8(b),
- (i) The Children’s Convenor and CYCT. Green Form (AAS 1 CL referred to as the Peach Form) must be used in relation to advice and assistance for certain cases regarding children. See paragraph 8(b),
- (j) Private family law matters arising under the Children (Guernsey & Alderney) Law 2008,
- (k) Criminal law matters in relation to juveniles arising under the Criminal Justice (Children & Juvenile Court Reform) (Bailiwick of Guernsey) Law 2008,
- (l) Advice and assistance regarding the Mental Health (Bailiwick of Guernsey) Law, 2010, but excluding advice about the Mental Health Review Tribunal (MHRT) for which there are specific procedures,
- (m) Other civil matters, including but not limited to; personal injury, medical negligence guardianship, eviction, saisie, inheritance claims (all subject to the quantifiable value of any claim being in excess of £2,500),
- (n) Advice, assistance and assistance by way representation in criminal cases, save such representation as is excluded below at paragraph 19(2),

- (o) Review of Prison adjudications. In appeals against an award of forfeiture or remission of sentence, or against a finding of guilt resulting in such an award, or in any other case where the interests of justice so require, the prisoner may obtain legal advice to draft/redraft the written review,
- (p) Parole Review of Dossier. A prisoner who wishes to apply for parole or a parole recall review and who requires legal advice in order to review their dossier, is entitled to legal advice and assistance under the Green Form Scheme only,
- (q) Petty Debt proceedings in the Guernsey Magistrates Court or small claims proceedings in the Court of Alderney issued at the request of ESS in relation to arrears of maintenance owed to a person in receipt of Income Support. See paragraph 14(b).

19. Exclusions

19.1 As a general guide, the following are specifically excluded from remuneration under the Scheme:

- (a) Advice of a general nature as opposed to advice to an individual with a specific and current legal problem,
- (b) Advice to one person for the benefit of another except to one person as legal guardian of another or to a person on behalf of a close relative that is unable to attend in person because of infirmity,
- (c) Advice to a company official concerning the company (as opposed to their duties as an official),
- (d) Advice to a trustee concerning the trust (as opposed to their duties as a trustee),
- (e) Advice on a matter when another person is providing financial support on the matter, unless in conflict with that person,
- (f) Advice concerning the sale, purchase or transfer of real property or any associated matters, e.g. mortgages, bonds etc.
- (g) Advice concerning a commercial lease regardless of length or a lease of a home of more than 5 years' duration,
- (h) Advice on any matter involving the law of any place other than the Bailiwick of Guernsey where the applicant lives. Assistance in connection with any proceedings outside the Bailiwick of Guernsey,
- (i) Advice and assistance in respect of Magistrates Court (Petty Debts) cases with a value of less than £2,500 or making small claims in the Courts of Alderney or Sark. For the avoidance of doubt, no representation in Court in such cases will

be permitted. The only exception is where such proceedings are at the request of ESS when special procedures apply. See paragraph 14(b),

- (j) Advice and assistance in applying to the Ecclesiastical Court for a Grant of Probate/Letters of Administration,
- (k) Advice and assistance prior to or representation at any Tribunal other than in relation to proceedings in the CYCT,
- (l) Advice and assistance in relation to fixed penalty offences under The Offences (Fixed Penalty) (Guernsey) Law, 2009 such as: failure to wear a seat belt; offences in relation to vehicles in disc parking places; littering; driving a car whilst holding a mobile telephone, failure to produce documents to the police etc.
- (m) Advice and assistance regarding libel, defamation or slander except in limited cases where the person wishes to defend proceedings and equality of arms is an issue,
- (n) Advice and assistance regarding a change of name deed/Deed Poll,
- (o) Advice and assistance regarding commercial litigation or actions arising out of a business venture (including sole proprietorship),
- (p) Advice and assistance to corporate or unincorporated bodies including partnerships or to individual partners of a firm to pursue/defend proceedings brought by or against the partnership. Advice and Assistance may be available to an individual partner of a firm if they can indicate an interest distinct from the partnership,
- (q) Advice and assistance regarding inquests unless relating to deaths whilst in lawful detention or in the care of a public body (including police/customs, prison, accommodation under the direct care and control of the Committee for Health and Social Care's Mental Health and Children's Services),
- (r) Advice and assistance to pursue any complaints procedure, including but not limited to; the police, prisons or hospital complaints procedures or to correspond with the Channel Islands Financial Ombudsman Service or any other ombudsman scheme,
- (s) Any advice and assistance that could be obtained from any agency or body other than from an Advocate, including but not limited to; Citizens Advice Bureau, Greffe, the Channel Islands Financial Ombudsman Service or any other ombudsman scheme,
- (t) Advice and assistance in relation to any matter where an applicant has available to them:

- (i) other rights and facilities making it unnecessary for them to obtain legal aid, or
- (ii) a reasonable expectation of receiving financial or other help from a body of which they are a member.

19.2 No assistance by way of representation in the Magistrate's Court or the Court of Alderney is permitted under the Scheme for the following matters:

- (a) Any offence where the accused does not appear and wishes, for their own convenience to be represented,
- (b) Minor motoring offences unless in the event of a conviction, it is likely that the court would impose a sentence which would deprive the accused of licence and livelihood,
- (c) A guilty plea for driving under the influence of drink or drugs unless, it is likely that the court would impose a sentence which would deprive the accused of their liberty,
- (d) A guilty plea for the possession of small quantities of a Class B or C drug unless it is likely that the court would impose a sentence which would deprive the accused of their liberty,
- (e) An accused may make use of the services of the Duty Advocate or seek advice under the Green Form Scheme, subject to being financially eligible, but not assistance by way of representation in court for cases (a) to (d) at 19.2.

19.3 The Administrator may exceptionally agree to cover under the Schemes those matters at 19.2 if, having considered the evidence regarding the same the Administrator concludes that the accused cannot understand the proceedings because of language difficulties or because they are mentally or physically disabled.

Dated this 29th day of October, 2019



M. K. LE CLERC

President of the Committee for Employment & Social Security
For and on behalf of the Committee



L. H. HAYWOOD
Legal Aid Administrator

GUERNSEY LEGAL AID SERVICE
New Jetty, White Rock, St Peter Port, Guernsey, GY1 2LL
Telephone (01481) 747530 Email: legalaid@gov.gg

The Legal Aid Schemes are established under The Legal Aid (Bailiwick of Guernsey) Law, 2003, The Legal Aid (Guernsey and Alderney) (Schemes and Miscellaneous Provisions) Ordinance, 2018 and the Legal Aid (Guernsey and Alderney) Rules, 2019.

Guernsey Legal Aid Service (“GLAS”) is the name of the service that administers the Legal Aid Schemes. GLAS is run by the Legal Aid Administrator who is an independent statutory official appointed by the States of Guernsey.

CIRCULAR 5 – INTEREST PAYABLE UNDER THE LEGAL AID SCHEMES

This Circular specifies the rate of interest that may be applied to the reimbursement to the Administrator of payments made under any of the Schemes as established by the Legal Aid (Guernsey and Alderney) (Schemes and Miscellaneous Provisions) Ordinance, 2018.

1. Definitions

In this Circular the following definitions apply:

“the Administrator” means the person who has been appointed by the States of Guernsey to the Office of the Legal Aid Administrator in accordance with the Legal Aid (Bailiwick of Guernsey) Law, 2003.

“assisted person” means a person that is applying, has applied for, or who has been granted legal advice and assistance under the Legal Aid Advice and Assistance Scheme and/or legal advice, assistance and representation under the Civil Legal Aid Scheme and/or the Criminal Legal Aid Scheme.

“certificate” means a legal aid certificate that has been issued by the Legal Aid Administrator to an assisted person under either the Civil Legal Aid Scheme or the Criminal Legal Aid Scheme.

“contribution” means the percentage of legal costs and disbursements that an applicant has been assessed to pay towards their legal proceedings under the Legal Aid, Advice and Assistance (“Green Form”)Scheme, the Civil Legal Aid Schemes or the Criminal Legal Aid Scheme.

“GLAS” (Guernsey Legal Aid Service) means to the Legal Aid Administrator and/or any member of staff.

“Green Form” or “Green Form Scheme” means the legal advice and assistance provided under the Legal Aid, Advice and Assistance Scheme.

“revoked” or “revocation” means when a legal aid certificate is not only cancelled from a specific date but is also deemed never to have existed.

“Schemes” means the, Legal Aid, Advice and Assistance (Green Form) Scheme, the Criminal Legal Aid Scheme and the Civil Legal Aid Scheme.

“specified” means rules specified by the Committee *for* Employment and Social Security.

GENERAL PRINCIPLES

2. The Legal Aid (Bailiwick of Guernsey) Law, 2003 (“the Law”) gives power to make provision by Ordinance for reimbursement to the Administrator of payments paid or payable under the provisions of the Law. ¹
3. The Legal Aid (Guernsey and Alderney) (Schemes and Miscellaneous provisions) Ordinance, 2018 (“the Ordinance”) provides for reimbursement to the Administrator of payments made under the Legal Aid Schemes together with such interest as may be specified. ²
4. Interest may be applied in respect of a payment made under any of the Schemes which are made:
 - (a) in error,
 - (b) in respect of an assisted person who is no longer eligible under a Scheme whether under the specified financial eligibility test or the applicable specified legal merits test,
 - (c) as a result of any misrepresentation made to the Administrator,
 - (d) for the purpose of enabling a person to recover or preserve any property (and which has enabled the property to be recovered or preserved),
 - (e) in respect of any contributions that are owed to the Administrator for payments made under the Criminal Legal Aid Scheme or where contributions to be made under the Civil Legal Aid Schemes have been treated by the Administrator as contributions arising under the Criminal Legal Aid Scheme,
 - (f) in respect of any certificate or Green Form that has been revoked by the Administrator.
5. Interest may be charged, at the Administrator’s discretion at any time, at a rate not exceeding 3% above the base rate of RBS International Limited published from time to time and calculated on a daily basis, on the amount of any sum owed to the

¹ The Legal Aid (Bailiwick of Guernsey) Law, 2003. S 15

² The Legal Aid (Guernsey and Alderney) (Schemes and Miscellaneous Provisions) Ordinance, 2018.S10

Administrator for legal services provided through the Schemes to the assisted person.

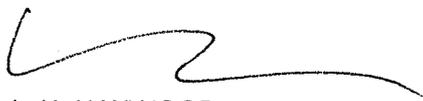
6. All interest charged by the Administrator will be simple interest and will be applied 30 days after the date of GLAS' invoice to the assisted person requesting reimbursement to Administrator of payments made under the Schemes.

Dated this 29th day of October, 2019



M. K. LE CLERC

President of the Committee for Employment & Social Security
For and on behalf of the Committee



L. H. HAYWOOD
Legal Aid Administrator

GUERNSEY LEGAL AID SERVICE
New Jetty, White Rock, St Peter Port, Guernsey, GY1 2LL
Telephone (01481) 747530 **Email: legalaid@gov.gg**

The Legal Aid Schemes are established under The Legal Aid (Bailiwick of Guernsey) Law, 2003, The Legal Aid (Guernsey and Alderney) (Schemes and Miscellaneous Provisions) Ordinance, 2018 and the Legal Aid (Guernsey and Alderney) Rules, 2019.

Guernsey Legal Aid Service (“GLAS”) is the name of the service that administers the Legal Aid Schemes. GLAS is run by the Legal Aid Administrator who is an independent statutory official appointed by the States of Guernsey.

CIRCULAR 6 – REMUNERATION OF FEE EARNERS UNDER THE LEGAL AID SCHEMES

This Circular specifies the arrangements for remuneration of fee earners under the Legal Aid Schemes.

1. Definitions

In this Circular, the following definitions apply:

“the Administrator” means the person who has been appointed by the States of Guernsey to the office of the Legal Aid Administrator in accordance with the Legal Aid (Bailiwick of Guernsey) Law, 2003.

the Alderney firms” are those specific firms currently contracted to undertake civil work before the Alderney Court and the Alderney Police Court Duty Advocate.

“applicant” or “assisted person” means a person that is applying, who has applied for, or who has been granted legal advice and assistance under the Legal Aid, Advice and Assistance (“Green Form”) Scheme and/or advice, assistance and representation under the Civil Legal Aid Scheme and/or Criminal Legal Aid Scheme by way of a Legal Aid Certificate issued by the Administrator.

“certificate” means a legal aid certificate that has been issued by the Administrator to an applicant under the Civil Legal Aid Scheme and/or the Criminal Legal Aid Scheme.

“contribution” means the percentage of legal costs and disbursements that an applicant has been assessed to pay towards their legal proceedings under the Legal Aid, Advice and Assistance (“Green Form”) Scheme, the Civil or the Criminal Legal Aid Schemes.

“costs” means the total claim submitted by a fee earner and calculated on an hourly rate basis, unless it is a matter to which fixed fees apply.

“disbursements” means counsels’, experts’ or court fees, travel and witness expenses and other out of pocket expenses properly incurred by a fee earner which would be properly chargeable to a client.

“approved disbursements” are disbursements that have been approved in advance by the Administrator or such disbursements that do not require the specific approval of the Administrator.

“discharged” means when a legal aid certificate has been cancelled from a specific date. This happens automatically when the work under a legal aid certificate has concluded. A certificate can also be discharged when an assisted person becomes financially ineligible or fails to cooperate with his Advocate or the Administrator.

“fee earner” means an Advocate of the Royal Court or other person who has been accredited by the Administrator to undertake Legal Aid work under the Schemes.

“fixed fees” means those fees specified for advice, assistance and representation in respect of: Divorce and Judicial Separation by consent proceedings and Mental Health Review Tribunal proceedings (MHRT).

“Guernsey firms” are all Guernsey Advocates’ firms that opt in to provide legal services under the Schemes.

“GLAS” (Guernsey Legal Aid Service) refers to the Office of the Legal Aid Administrator and /or any member of staff.

“Green Form Scheme” or “Green Form” means advice and assistance provided to the applicant under the Legal Aid, Advice and Assistance Scheme. (also known as the “Green Form” Scheme).

“legal aid” means legal advice and assistance provided under the Legal Aid, Advice and Assistance Scheme and/or legal advice, assistance and representation under the Civil Legal Aid Scheme or Criminal Legal Aid Scheme by way of a legal aid certificate.

“the Ordinance” means the Legal Aid (Guernsey and Alderney) (Schemes and Miscellaneous Provisions) Ordinance, 2018.

“out of hours duty advocate” means an Advocate from the Firm which is listed either on the Out of hours Duty Advocate Rota as first or second Duty Advocate on call for out of hours work.

“revoked” or “revocation” means when a certificate is not only cancelled from a specific date but is also deemed never to have existed.

“Schemes” means the Transitional Legal Aid Scheme, the Legal Aid, Advice and Assistance (Green Form) Scheme, the Civil Legal Aid Scheme and the Criminal Legal Aid Scheme as established under the Ordinance.

“taxation” means the assessment of the reasonableness of the costs claimed by the fee earner in respect of any work undertaken under any of the Schemes. The taxation may be undertaken by the Administrator, any member of GLAS law costs draftsmen, or the Costs Judge, as appointed by the Administrator.

“specified” means rules specified by the Committee *for* Employment and Social Security.

“suspended” means that the Administrator may temporarily suspend a certificate pending receipt of financial or other information from either the applicant or the Advocate. During a period of suspension, no fees or disbursements may be incurred by the Advocate under the Schemes.

2. General Principles

- 2.1 Legal aid will only be available in respect of individuals who have instructed an Advocate and funding, including any disbursements, will not be provided direct to individuals or paid out on their behalf where they are acting as a litigant in person. A litigant in person means an individual who is a party to legal proceedings and who exercises their right to conduct legal proceedings on their own behalf, without the assistance of or representation by an Advocate.
- 2.2 All legal services provided by any fee earner under the Schemes must be reasonably and necessarily rendered. All expenses must be reasonably and necessarily incurred, and all disbursements must be reasonably and necessarily made.¹
- 2.3 Unless specified otherwise in this circular, remuneration of all fees earners who opt in to advise, assist or represent persons under any of the Schemes is by way of payment calculated on an hourly rate, subject to taxation by the Administrator.
- 2.4 The Administrator will not remunerate any Advocate under the Schemes if an applicant has not fully utilised all alternative methods of obtaining advice and assistance such as any complaints procedure, mediation, ombudsman and so on; turning to the public purse through the Schemes for advice and assistance should be seen as a last resort.
- 2.5 Advice and assistance and representation under the Schemes will not be remunerated under the Schemes where an applicant has available to them:
 - (a) other rights and facilities making it unnecessary for them to obtain advice and assistance, or
 - (b) a reasonable expectation of receiving financial or other help from a body of which they are a member.
- 2.6 Advice and assistance will not be remunerated under the Schemes where an applicant is seeking a second opinion from an Advocate regarding a matter upon which the applicant has already received advice and assistance from a different Advocate within a period of three months or on a matter that is already covered under a certificate with a different Advocate.

¹ The Legal Aid (Guernsey and Alderney) (Schemes and Miscellaneous Provisions) Ordinance, 2018 S8

- 2.7 No remuneration can be made to a fee earner in relation to any legal advice, assistance or representation in connection with any legal matter arising outside of Guernsey, and Alderney under the Schemes. (Other than appeal proceedings relating to any matter dealt with at first instance before a court in Guernsey or Alderney).²
- 2.8 No uplift or increase in remuneration other than as specified at paragraph 7.1 is applicable to any work undertaken by any fee earner under the Schemes, whether by an increase to the hourly rate or by any other manner.
- 2.9 In addition to costs, a fee earner may claim approved disbursements under the certificate.
- 2.10 A fee earner who provides legal assistance under the Schemes shall not take any payment in respect of that assistance except such payment as is made by the Administrator or is authorised by or under the Legal Aid (Bailiwick of Guernsey) Law, 2003.
- 2.11 Legal aid under the Criminal Legal Aid Schemes and the Civil Legal Aid Scheme is not available to any applicant until the Administrator is satisfied that the applicant meets both the specified financial eligibility test and the applicable specified legal merits test.
- 2.12 The date upon which the Administrator is satisfied on these elements is recorded as the "issue date" on the certificate. Work undertaken before the issue date of legal aid will not be remunerated under the Schemes.
- 2.13 Where any fee earner has been overpaid by the Administrator for legal work undertaken under any of the Schemes, that fee earner shall reimburse to the Administrator any overpayment upon demand.
- 2.14 A fee earner who provides legal assistance under the Schemes shall not take any payment in respect of that assistance, except such payment as is made by the Administrator or authorised by or under the Legal Aid (Bailiwick of Guernsey) Law, 2003 or the Ordinance.

3. Legal Aid, Advice and Assistance (Green Form) Scheme

- 3.1 No enhanced rates are applicable to work undertaken under the Legal Aid, Advice and Assistance (Green Form) Scheme.
- 3.2 Remuneration for legal advice and assistance provided under the Green Form Scheme will only be claimable once the Advocate has assessed an applicant to be both financially eligible and provided the matter for which advice and assistance is sought falls within scope of the Green Form Scheme.

²The Legal Aid (Guernsey and Alderney) (Schemes and Miscellaneous Provisions) Ordinance, 2018 S7

- 3.3 The total costs that can be claimed by an Advocate in connection with the provision of legal advice and assistance under any individual Green Form is limited to a maximum value of two hours of an Advocate’s hourly rate, as specified, including any disbursements that are properly incurred by the Advocate on behalf of that assisted person.
- 3.4 In certain circumstances the maximum costs claimable under any individual Green Form may be extended by the Administrator.

4. Standard Arrangements for Costs

4.1 Save for cases that attract fixed fees as specified at paragraph 6, cases in the Court of Alderney as specified at paragraph 13, or costs claimable under a Green Form, the following standard charging method is specified:

4.2 Basic rates:

- (a) An advocate may claim £16.70 per 6 minute unit (£167.00 per hour) for properly chargeable work, subject to taxation.
- (b) A non-admitted lawyer (NAL), who has been accredited by the Administrator, may claim £8.35 per 6 minute unit (£83.50 per hour) for properly chargeable work, subject to taxation.
- (c) A paralegal (PL), who has been accredited by the Administrator, may claim £5.57 per 6 minute unit (£55.70 per hour) for properly chargeable work (subject to taxation).

5. Recording fractions of a unit-rounding up/down.

Chargeable time under the Schemes is measured in 6 minute units. Fee earners must carefully record the time that they wish to claim under the Schemes. However when time taken is not an exact multiple of 6 minutes the following rounding up or down should be applied by the fee earner.

Time in Minutes	Number of Units
0 - 8	1
9 - 14	2
15 - 20	3
21 - 26	4
27 - 32	5
33 - 38	6
39 - 44	7
45 - 50	8
51 - 56	9
57 - 62	10

6. Fixed fees

- 6.1 Fixed fees are specified for Divorce and Judicial Separation proceedings.
- 6.2 Fixed fees are specified for Mental Health Review Tribunals (MHRT). Remuneration may be claimed only by those specifically accredited by the Administrator for MHRT work.

7. Criminal Legal Aid Scheme

- 7.1 Enhanced rates of remuneration in respect work undertaken by the out of hours duty advocate.

(a) *Enhanced rates for telephone calls:*

Calls providing advice to a person by the out of hours duty advocate on a Monday to Friday from 18.00 until 7.00 the following day and calls at any time on Saturdays, Sundays and Guernsey Public Holidays (other than Christmas Day) attract an enhanced rate of double the basic rate for the first unit claimed.

(b) *Enhanced rates for attendances:*

- (i) An attendance on a person at the police station/ border agency by the out of hours duty advocate between 18.00 until 23.00, Monday to Friday, and between 07:00 until 23:00 on Saturdays, Sundays, and Guernsey Public Holidays (other than Christmas Day) attracts an enhanced rate of five times the basic rate for the first unit only, or
- (ii) An attendance on a person at the police station/ border agency by the out of hours duty advocate between 23:00 and 07:00 the following day attracts an enhanced rate of ten times the basic rate for the first unit only.

(c) Christmas Day from 00h01 until 23h59 special enhanced rates apply as follows:

- (i) An enhanced rate of five times the basic rate for the first unit only of a telephone call providing advice may be claimed.
- (ii) An enhanced rate of ten times the basic rate for the first unit only of an attendance on the client at the police station/ border agency may be claimed

- 7.2 No other enhanced rates are applicable to work undertaken under the Criminal Legal Aid Scheme.

8. Civil Legal Aid Scheme

No enhanced rates are applicable to work undertaken under the Civil Legal Aid Scheme.

9. Contributions

The circumstances in which a contribution is payable, the method of assessment and the amount of any contribution payable under the Schemes is as specified.

(a) Contributions in criminal cases

Where any applicant in criminal proceedings is assessed to be on a contribution to their legal costs and disbursements under either a Green Form or a certificate, all contributions are collected by GLAS once the criminal proceedings have concluded.

(b) Contributions in quasi-civil/criminal proceedings

Any contribution assessed to be payable by the applicant in quasi-civil/criminal proceedings will be treated as a contribution payable in criminal proceedings and will be collected by GLAS at the conclusion of the case as specified above.

(c) Contributions in civil cases

Where any applicant in civil proceedings is assessed to be on a contribution to their legal costs and disbursements under a Green Form or a certificate, all contributions are collected and retained by the instructed Advocate. The balance due to the Advocate will be paid by the Administrator once taxation of the Advocate's costs has concluded.

10. Discharge of a Certificate

A certificate remains in force until discharged. An Advocate will continue to be remunerated at legal aid rates for work properly undertaken on behalf of the applicant, subject to taxation, until the date/time of discharge.

11. Revocation of a Certificate

Where a certificate has been revoked, an Advocate will be remunerated at legal aid rates, for work properly undertaken on behalf of the applicant, subject to taxation, until the date/time of revocation. If a certificate is revoked, the assisted person becomes liable for the costs of all the work undertaken by the Advocate under the Schemes and the Administrator will seek from the assisted person full reimbursement of all costs incurred under the certificate.

12. Suspension of a Certificate

When a certificate has been suspended by the Administrator, no fees or disbursements may be incurred by the Advocate under the Schemes during the period of suspension.

13. Alderney Arrangements

13.1 There are special arrangements under the Scheme in respect of applicants who are Alderney residents.

13.2 Only the Alderney firms will be remunerated under the Schemes for:

- (a) Any Green Form that falls within the scope of the Legal Aid, Advice and Assistance (Green Form) Scheme, other than in relation to matters before the Matrimonial Causes Division (“MCD”) of the Royal Court. See paragraph 13.3, and
- (b) Civil cases before the Court of Alderney that fall within the scope of the Civil Legal Aid Scheme, and
- (c) Duty Advocate and criminal cases before the Alderney Police Court that fall within the scope of the Criminal Legal Aid Scheme.

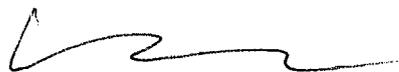
13.3 Any Guernsey firm may be remunerated under the Criminal Legal Aid Scheme to provide telephone advice and assistance under the Duty Advocate arrangements to an applicant who usually resides Alderney or to advise, assist and represent such an applicant in criminal proceedings before the Guernsey Royal Court, in relation to a serious criminal case.

13.4 Any Guernsey firm may be remunerated under the Civil Legal Aid Scheme to advise, assist and represent an applicant who usually resides in Alderney in proceedings before the Guernsey Royal Court, MCD.

Dated this 29th day of October, 2019



M. K. LE CLERC
President of the Committee for Employment & Social Security
For and on behalf of the Committee



L. H. HAYWOOD
Legal Aid Administrator

GUERNSEY LEGAL AID SERVICE
New Jetty, White Rock, St Peter Port, Guernsey, GY1 2LL
Telephone (01481) 747530 Email: legalaid@gov.gg

The Legal Aid Schemes are established under The Legal Aid (Bailiwick of Guernsey) Law, 2003, The Legal Aid (Guernsey and Alderney) (Schemes and Miscellaneous Provisions) Ordinance, 2018 and the Legal Aid (Guernsey and Alderney) Rules, 2019.

Guernsey Legal Aid Service (“GLAS”) is the name of the service that administers the Legal Aid Schemes. GLAS is run by the Legal Aid Administrator who is an independent statutory official appointed by the States of Guernsey.

CIRCULAR 7: COSTS ASSESSMENT CRITERIA UNDER THE LEGAL AID SCHEMES

This Circular specifies the ways in which the Legal Aid Administrator assesses whether payments made to Advocates or other accredited fee earner in respect of legal services, expenses and disbursements are reasonably and necessarily rendered, incurred or made under the Schemes and whether such payments should be made by the Administrator in full or partially.

1. Definitions

In this Circular, the following definitions apply:

“the Administrator” means the person who has been appointed by the States of Guernsey to the Office of the Legal Aid Administrator in accordance with the Legal Aid (Bailiwick of Guernsey) Law, 2003.

“Advocate” means an Advocate of the Royal Court of Guernsey who is providing or who has provided, legal assistance to the assisted person under any of the Legal Aid Schemes. In this Circular “Advocate” also refers to any fee earner who has been accredited by the Administrator to provide legal services under the Legal Aid Schemes

“account” means a request for payment submitted by an Advocate or an Advocate’s firm, to the Administrator under the Schemes and includes all invoices and any Green Form or Detention Form.

“applicant” or “assisted person” means a person that is applying, has applied for, or who has been granted legal advice and assistance under the Legal Aid Advice and Assistance Scheme and/or legal advice, assistance and representation under the Civil Legal Aid Scheme and/or the Criminal Legal Aid Scheme.

“assessor” means the person determining the reasonableness of the work undertaken and whether the time spent was reasonable having regard to the requirements of the relevant rules or guidance (as applicable) and applying the correct remuneration rate for each item of work.

“certificate” means a legal aid certificate that has been issued by the Legal Aid Administrator to the assisted person under either the Civil Legal Aid Scheme or the Criminal Legal Aid Scheme.

“costs” or “payments” mean:

- (a) legal fees that the Administrator pays to an Advocate for the work they do on behalf of the assisted person, and
- (b) disbursements, which are counsels’, experts’ or court fees, travel and witness expenses and other out of pocket expenses properly incurred by a fee earner which would be properly chargeable to a client.

“Costs Judge” means the person appointed by the Administrator to undertake an independent review of a taxation of Advocates’ costs claimed under the Legal Aid Schemes.

“file” means all documents and/or information comprising the entirety of an Advocate’s file in relation to any work undertaken by the Advocate, or other accredited fee earner, under the Schemes.

“GLAS” (Guernsey Legal Aid Service) means the Office of the Legal Aid Administrator and/or any member of staff.

“Green Form” or “Green Form Scheme” means the legal advice and assistance provided under the Legal Aid, Advice and Assistance Scheme.

“legal aid” means advice assistance and representation provided under the Civil Legal Aid Scheme and/or Criminal Legal Aid Scheme by way of a Legal Aid Certificate issued by the Administrator.

“the Ordinance” means the Legal Aid (Guernsey and Alderney) (Schemes and Miscellaneous Provisions) Ordinance, 2018.

“specified” means rules specified by the Committee *for* Employment and Social Security.

“Schemes” means the Legal Aid, Advice and Assistance (Green Form) Scheme, the Criminal Legal Aid Scheme and the Civil Legal Aid Scheme.

“taxation” or “costs assessment” means the assessment of the reasonableness of the costs claimed by the Advocate in respect of any work undertaken under any of the Schemes. The taxation may be undertaken by the Administrator, any member of GLAS, law costs draftsmen or the Costs Judge, as appointed by the Administrator.

**PART I
GENERAL PROVISIONS**

2. Under the provisions of The Legal Aid (Bailiwick of Guernsey) Law, 2003, Section 3 (a) (iii) the Administrator shall assess applications for payments to be made in accordance with the provisions of a Scheme.
3. The Legal Aid (Guernsey and Alderney) (Schemes and Miscellaneous Provisions) Ordinance, 2018 enables rules to be made that specify rates of remuneration which shall be paid, and the persons to whom and the circumstances and conditions in, and subject to, which payments may be made (or made on account of) in respect of:
 - (a) legal or other services reasonably and necessarily rendered,
 - (b) expenses reasonably and necessarily incurred, and
 - (c) disbursements reasonably and necessarily made,for the purposes of providing legal services under or in connection with the Schemes.¹
4. The specified matters referred to in paragraph 3 above are set out in the Circulars described in the provisions of the Legal Aid (Guernsey and Alderney) Rules, 2019.
5. The rules specified in this Circular will be applied by the assessor to determine whether payments made to Advocates in respect of legal services, expenses and disbursements are reasonably and necessarily rendered, incurred or made under the Schemes and whether such payments should be made by the Administrator in full or partially.
6. Only legal services provided by an Advocate or other fee earner who has been accredited by the Administrator will be remunerated under the Schemes.
7. Payments under the Schemes are not available in respect of legal proceedings before a court outside Guernsey or Alderney, or any matter where the relevant governing or applicable law, is a law other than the law of Guernsey or Alderney, and the matter is a matter that is not justiciable before a court in Guernsey or Alderney.
8. Payments under the Schemes are only available in respect of individuals: not companies, charities or groups of people.
9. Payments under the Schemes may not be made if an applicant has not fully utilised all alternative methods of resolving the dispute such as any complaints procedure, mediation, ombudsman and so on; turning to the public purse for assistance should be seen as a last resort and only if all other methods of resolving a legal dispute have been exhausted.

¹ The Legal Aid (Guernsey and Alderney) (Schemes and Miscellaneous Provisions) Ordinance, 2018 S8

10. Remuneration under any of the Schemes is only available in respect of individuals who have instructed an Advocate and funding, including any disbursements, will not be provided direct to individuals or paid out on their behalf where they are acting as a litigant in person.

11. *Issue Date of Certificate*

Legal aid is not available to any applicant until the Administrator is satisfied that the applicant meets the financial eligibility test as specified and the applicable legal merits test as specified. The date upon which the Administrator is satisfied on these elements is recorded as the "issue date" on the certificate. Work undertaken before the issue date of legal aid will not be remunerated under the Schemes.

PART II

PROCEDURE

12. When requested to do so by the Administrator, the Advocate shall promptly:
- (a) submit to taxation any bill of recoverable costs or indemnity for costs, between the parties to the action, and /or
 - (b) send the entirety of their files to the Administrator, and /or
 - (c) submit to the taxation of the Advocate's account or accounts.
13. The Administrator is under no obligation to require the taxation of the Advocate's account and all assisted persons release the Administrator from any such obligation.
14. The Administrator may request sight of documentation /information relating to any work undertaken for the assisted person by the Advocate under any aspect of the Schemes.² This includes any work undertaken by a previous Advocate in respect of the same matter for which a certificate has been issued or advice and assistance has been provided under a Green Form.
15. The Administrator may delegate the assessment of Advocates' costs to other appropriate members of GLAS or to expert legal costs draftsmen retained by the Administrator specifically for this task ("the assessor")
16. The rules specified herein will be applied by all assessors.
17. The Administrator may, from time to time, issue points of principle relating to costs assessment criteria arising out of any taxation or appeal to the Costs Judge.

² The Legal Aid (Guernsey and Alderney) (Schemes and Miscellaneous Provisions) Ordinance, 2018 S22

**PART III
ASSESSMENT OF COSTS UNDER THE SCHEMES**

18. General approach

18.1 Assessment takes place on the basis of determining the reasonableness of the work done and whether the time spent was reasonable having regard to the requirements of the relevant rules or guidance and applying the correct remuneration rate for each item of work.

18.2 Work can only be remunerated under the Schemes if it progresses the case.

18.3 Allowance is only made for work claimed where it is supported by appropriate evidence on the file. The onus is on the Advocate to provide evidence on the file that the work was done.

Evidence of the work done should ideally be in the form of timed and dated attendance notes but where relevant may be evidenced by relevant documentation drafted or read. Any handwritten notes must be adequately legible for the assessor to be able to assess the reasonableness, of the time claimed. Notes recorded by way of shorthand are not acceptable for taxation purposes.

18.4 The assessor must then assess whether the time spent was reasonable.

In other words would a reasonably competent Advocate have undertaken the work, has the work actually been performed with reasonable competence and was the time taken to perform the work reasonable.

18.5 The art (and it is more of an art than a science) of quantifying costs is to make a reasonable judgment as to the reasonableness of:

(a) The work done; and

(b) The time taken.

In order to make this judgment it may be necessary to carefully review the file, the records of time taken, correspondence and any other information.

18.6 The assessor is not to take into account hindsight but is to try to view the question of what is reasonable and the perspective of the average competent Advocate doing their best for their client at the particular time when the work is done.

19. Fee earners

19.1 Only fee earners will be remunerated under the Schemes. The only fee earners permitted to be remunerated under the Schemes are Advocates and non- admitted

lawyers/paralegals) who have been accredited by the Administrator for the purpose of providing legal services under the Legal Aid Schemes.

19.2 If the task is not that of a fee earner it is not remunerated under the Schemes because it is correctly part of the Advocate's overheads. If the task is for a fee earner but not undertaken competently this is dealt with when the work is assessed. An element of reasonableness is the time taken in performing a task. The fee earner does not have to spend all their time doing fee-earning work; the test is the actual work done and whether it would be appropriate to charge the client.

20. Overheads and administrative work

20.1 Payment will not be made for time spent purely on administrative matters. Payment will only be made for work directly involved in the provision of the legal services to the client. Overheads are not recoverable costs under the Schemes.

20.2 An Advocate's secretary/administrative assistant is not classed as a fee earner as the expense of their time forms part of the Advocate's overheads of running the firm.

20.3 Photocopying in-house is generally an overhead expense as are the costs of postage, stationery, typing and the actual cost of telephone calls.

20.4 Where documents are necessarily copied for the Court e.g. applications, affidavits, bundles etc. then copying may be charged at 10 pence per sheet. Copying documents for the client, an expert or any body other than the Court cannot be claimed. The time taken to photocopy documents may not be claimed. *Administration*

20.5 The costs of opening and setting up files, copying files where the original file is sent to another Advocate to whom the Certificate has been transferred, maintaining time costing records, preparing accounts and the like are all administrative costs.

20.6 A reasonable amount of time can be claimed for completion of Form's 6, 8, 9 and 12 providing the information provided by the Advocate on these forms justifies the time claimed. It is anticipated that in most cases a claim of 1 unit will be sufficient and reasonable. Alternatively, if the Advocate writes a letter incorporating this information and attaching the signed form, subject to the information justifying it, as above, a reasonable amount of time can be claimed. I

20.7 Where the Advocate is required by the Administrator to provide a review of a particular case a reasonable amount of time can be claimed for this.

20.8 Completion of the various legal opinion forms must be claimed under the Green Form and not under the certificate.

21. Recorded and unrecorded time

21.1 All time spent that the Advocate intends to claim under the Schemes must be recorded on the assisted person's file confirming:

- (a) who undertook the work,
- (b) the date the work was undertaken,
- (c) details of the work undertaken, and
- (d) the time taken for each item of work.

21.2 There are exceptions where unrecorded time may be allowed if the assessor is satisfied that it was impracticable to record the time taken. However, this will only be considered in relation to short periods of time and any substantial period of time must be recorded.

21.3 There are two forms of time recording. One centralised, the other on file. The first, centralised form of time recording seldom provides adequate information to assess costs. Often a computer printout can be produced for each client showing who did work, when the work was done, the time taken and usually the broad category of such work. Such a record may be useful but it is not determinative of reasonableness.

21.4 The main information used to assess costs is the account, records of time taken and information from the file.

Primarily such information from the file will be of three types:

- (a) letters or emails that are in place of a letter,
- (b) notes of work done, attendances on the client and others and telephone attendances,
- (c) documents.

21.5 These items need to be viewed in two ways:

- (a) The basic information upon which the claim can be arithmetically assessed: Letters and emails received are, in general, not remunerated, unless they contain complicated information. Time spent on drafting complex letters, emails and telephone attendances as well as on personal attendances, drafting documents and preparation must be recorded on attendance notes. The total time so recorded is calculated by reference to the hourly rate.
- (b) The assessor will then exercise discretion as to the reasonableness of the work done and the amount claimed.

21.6 The contents of the letters and attendance notes are the vital information in exercising this discretion. It is only by reading the file through that the assessor can make a judgment as to the weight and complexity of the case and the particular problems with which the Advocate had to deal. Time claimed for several emails written often as a dialogue (some of which may involve only one sentence written) between parties in one day/a short space of time must be reasonable and not necessarily claimed as 1 unit for

each email.

21.7 In order to be remunerated under the Schemes an Advocate must record and prepare attendance notes for all the time spent in attendance and preparation; the position may be summarised by “if you do not record you are unlikely to be paid”. .
Contemporaneous notes, are preferred and the Administrator requires the entire unedited file.

21.8 On invoices submitted where preparation time especially is claimed as “general” “estimated” or “various”, these claims will generally be disallowed if they are not recorded or backed up by an attendance note. The absence of recorded time for any substantial amount would be only allowed in the most unusual case.

21.9 If the assessor is in any doubt about time, the doubt will operate against the Advocate whose account is being assessed.

21.10 In addition to the proper recording of time, which is only the first step, the Advocate must provide adequate evidence that the work was properly and reasonably done. Where such evidence is not provided, the work in question is likely to be disallowed and remuneration for that work will not be made under the Schemes.

21.11 An Advocate’s file should be in reasonable order such that another Advocate could pick up and continue with the case.

22. Drafting and consideration of documents

Drafting and consideration of documents forms part of the general preparation of a case and includes:

- (a) drafting of court documents,
- (b) consideration of statements or documents served by the other party,
- (c) instructions to the Advocate or advice in writing and/or at a conference,
- (d) consideration of documentary evidence,
- (e) general consideration from time to time of the strategy or tactics required to bring the action to Court or to defend it,
- (f) consideration of or making offers to settle/payments into Court,
- (g) reconsideration of the Court documents, evidence and other factors in order to prepare for trial,
- (h) instructing expert witnesses and holding conferences,

- (i) identifying documents for and drafting the index to court bundles, checking, making up bundles to ensure accuracy.

23. Allowable / non-allowable work

Table 1 in the Appendix sets out examples of work or claims that will normally qualify for remuneration under the Schemes in the specific circumstances, and subject to any specific conditions indicated (first column) and work that will not be remunerated under the Schemes (second column). Even where work falls, or is claimed to fall, into a description indicated in the first column of the table, the assessor will always apply the criteria described in paragraph 18 to the work actually undertaken.

24. Assessment of costs in Criminal Matters

- 24.1 The assessor will apply the above criteria when assessing costs incurred under the Criminal Legal Aid scheme and criminal matters under the Legal Aid, Advice and Assistance Scheme but will also refer to the Guernsey Bar Costs Guidelines.
- 24.2 The Bar Costs Guidelines are set out in Table 2 of the Appendix.

APPENDIX

TABLE 1 ALLOWABLE/NON-ALLOWABLE WORK

Allowable work	Non- Allowable work
<p><i>Attendances</i> Attendances upon the client, and/or witnesses including collating information for witness statements or for a statement of means, professional or other meetings.</p> <p>The file must include a file note with the duration of the attendance noted.</p>	
<p><i>Perusal/consideration of documents received,</i> for example expert’s reports, witness statements, affidavits, and financial information. Counsel’s opinion, etc.</p> <p>Perusal of the file prior to final submission to GLAS for assessment/taxation to enable the Advocate to prepare the final invoice and ensure the file is in chronological order, legible and tidy– up to a maximum of 30 minutes per file but the time claimed should be reasonable.</p> <p>All other perusal for and preparation of accounts is considered administrative and thus not chargeable.</p>	
<p><i>Drafting documents</i> Generally claimable @ 6 minutes per A4 page. This is subject to the Administrator’s discretion.</p> <p>The file must be noted to explain any exceptional circumstances of an additional claim.</p>	<p><i>File reviews</i> The file holder is expected to be familiar with the case. File reviews by a supervisor and internal memoranda unless there is evidence to demonstrate that they progress the case.</p> <p>Claims for two fee earners in attendance at the same time cannot be claimed. This includes inter-office conferences and duplicated inter-office work. The Administrator will not fund two fee earners working on the same case other than in exceptional and pre-approved cases.</p>

	<p>The “Team” approach is discouraged and duplication arising from this approach taken to drafting documents and preparing cases for court will not be approved.</p> <p>Administrative and office overheads.</p>
<p><i>Advocacy</i> The file should be noted to confirm the length of time taken and the result of the hearing. No time will be allowed for dictating/writing a court attendance note in addition to a handwritten note. Waiting time, time taken in attendance on the client or others should be noted separately from advocacy time</p>	<p><i>Research</i> Unless the case involves a novel and developing or unusually complex point of law; Checking recent case law The file must show evidence of any research claimed, e.g. a copy of the case, notes made, conclusions drawn; the evidence must justify the claim.</p>
<p><i>Routine letters written</i> Where they progress a case routine letters written are generally claimable at 6 minutes per A4 page For example, a letter confirming or requesting a meeting would not be claimable but one setting out an offer received and advising the client upon its reasonableness would be claimable.</p>	<p><i>Routine letters received</i> Unless letters contain complicated information or enclosures, for example, letters containing complex financial information where they may be claimed on a time basis as a perusal.</p>
<p><i>Routine Telephone calls:</i> Under six minutes may be claimed as a routine call i.e. 1 unit. Over six minutes must be claimed as a timed attendance. The file must, in both cases, include a file note of the contents of the call and its duration.</p>	<p><i>Administrative telephone calls</i> Such telephone calls cannot be claimed. e.g. discussions with the client without progressing the case, unanswered calls, where a message is left asking the client to contact the Advocate or telephone calls made/received by a secretary</p>
<p><i>Emails out</i> These can be claimed if they are in place of a letter. A copy of the email must be held on file.</p>	<p><i>Emails in</i> E-mails in cannot be claimed if they merely act as acknowledgement or as a Receipt of a document. Generally they will be disallowed if they do not progress the case.</p>

	<p>Time claimed for several emails written often as a dialogue (some of which may involve only one sentence written) between parties in one day/a short space of time must be reasonable and not necessarily claimed as 1 unit for each email.</p> <p>A copy must be held on the file</p> <p><i>Internal emails cannot be claimed.</i></p>
<p><i>Travel and waiting</i> <i>Travel and waiting</i> at court, the prison, the police station or border agency is claimable.</p> <p>Travel and waiting outside Guernsey (except Alderney) is only allowed with prior approval of the Administrator.</p>	<p><i>Travel and waiting</i> Waiting time cannot be claimed where the client is late or fails to attend an appointment at the advocate’s office.</p> <p>In Mental Health Review Tribunal cases travel time is included in the specified fixed fees and cannot be claimed in addition.</p>
	<p><i>Change of Advocate</i></p> <p>Where an assisted person changes Advocate to one in a different firm, only the receiving Advocate can claim for work in connection with the change. The outgoing Advocates should keep the file in such a condition to allow another Advocate to pick up and continue working on the file.</p> <p>Where there is a change of Advocate within the same firm (whether on a permanent or temporary basis e.g. a holiday) this is viewed, as duplication and the time taken by the new Advocate to familiarise him/herself with the file will not be remunerated.</p>
	<p><i>Overheads</i> include: staffing expenses, the cost of maintaining premises, professional requirements, costs of postage, stationary, telephone call, time taken to photocopy documents, taxes and administrative expenses(such as opening and setting up files, copying files for transmission onto a new advocate, maintaining time costing records, preparing accounts)</p>

TABLE 2 GUERNSEY BAR COSTS GUIDELINES

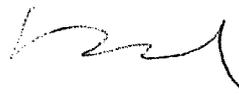
Transaction	Time
Magistrate’s Court – Guilty plea – client out of custody	2 Hours
Magistrate’s Court – guilty plea- client in custody	4 hours
Magistrate’s Court – not guilty plea – client out of custody	7 hours
Magistrate’s Court – not guilty plea – client in custody	10 hours
Additional time when a not guilty plea extends beyond a half day	4 hours per additional half day
Royal Court on appeal from Magistrate’s Court against sentence	4 hours
Royal Court on appeal from Magistrate’s Court against conviction	8 hours
Additional time when appeal against conviction extends beyond a half day	5 hours per additional half day
Royal Court – guilty plea – including committal.	10 hours
Royal Court – not guilty – one day trial – including committal.	20 hours
Additional time when not-guilty plea extends beyond a half-day	5 hours per each additional half-day.

Dated this 29th day of October, 2019



M. K. LE CLERC

President of the Committee for Employment & Social Security
For and on behalf of the Committee



L. H. HAYWOOD
Legal Aid Administrator

GUERNSEY LEGAL AID SERVICE
New Jetty, White Rock, St Peter Port, Guernsey, GY1 2LL
Telephone (01481) 747530 Email: legalaid@gov.gg

The Legal Aid Schemes are established under The Legal Aid (Bailiwick of Guernsey) Law, 2003, The Legal Aid (Guernsey and Alderney) (Schemes and Miscellaneous Provisions) Ordinance, 2018 and the Legal Aid (Guernsey and Alderney) Rules, 2019.

Guernsey Legal Aid Service (“GLAS”) is the name of the service that administers the Legal Aid Schemes. GLAS is run by the Legal Aid Administrator who is an independent statutory official appointed by the States of Guernsey.

**CIRCULAR 8 – APPEALS PROCEDURES REGARDING ASSESSMENT OF COSTS UNDER THE
LEGAL AID SCHEMES**

This Circular specifies the procedures to enable Advocates or other accredited fee earners to appeal an assessment of costs in respect of legal services provided under the Legal Aid Schemes.

1. Definitions

In this Circular, the following definitions apply:

“the Administrator” means the person who has been appointed by the States of Guernsey to the Office of the Legal Aid Administrator in accordance with the Legal Aid (Bailiwick of Guernsey) Law, 2003.

“Advocate” means an Advocate of the Royal Court of Guernsey who is providing or who has provided, legal assistance to the assisted person under any of the Legal Aid Schemes. In this Circular “Advocate” also refers to any fee earner who has been accredited by the Administrator to provide legal services under the Legal Aid Schemes.

“Advocate’s account” means a request for payment submitted to the Administrator under the Schemes and includes any invoice, Green Form or Detention Form

“applicant” or “assisted person” means a person that is applying, has applied for, or who has been granted legal advice and assistance under the Legal Aid Advice and Assistance Scheme and/or legal advice, assistance and representation under the Civil Legal Aid Scheme and/or the Criminal Legal Aid Scheme.

“the assessor” means the person determining the reasonableness of the work undertaken and whether the time spent was reasonable having regard to the requirements of the relevant rules or guidance (as applicable) and applying the correct remuneration rate for each item of work. Assessor includes the Administrator and any other person the Administrator delegates to undertake the task.

“certificate” means a legal aid certificate that has been issued by the Legal Aid Administrator under the Civil Legal Aid Scheme or the Criminal Legal Aid Scheme.

“costs” or “payment/s” mean:

- (a) legal fees that the Administrator pays to an Advocate for the work they do on behalf of the assisted person and
- (b) disbursements, which are counsels’, experts’ or court fees, travel and witness expenses and other out of pocket expenses properly incurred by a fee earner which would be properly chargeable to a client.

“costs draftsmen” mean the legal costs draftsman who have been appointed by the Administrator to tax or assess the reasonableness of costs claimed by advocates under the Legal Aid Schemes.

“Costs Judge” means the person appointed by the Administrator to undertake an independent review of a taxation of Advocates’ costs claimed under the Legal Aid Schemes.

“fee earner” means an Advocate of the Royal Court or other person who has been accredited by the Administrator to undertake Legal Aid work under the Schemes.

“file” means all documents and/or information comprising the entirety of an Advocate’s file in relation to any work undertaken by the Advocate under any aspect of any of the Schemes.

“GLAS” (Guernsey Legal Aid Service) refers to the Legal Aid Administrator and/or any member of staff.

“Green Form” or “Green Form Scheme” means the legal advice and assistance provided under the Legal Aid, Advice and Assistance Scheme.

“legal aid” means advice assistance and representation provided under the Civil Legal Aid Scheme and/or Criminal Legal Aid Scheme by way of a Legal Aid Certificate issued by the Administrator.

“oral hearing” means a hearing before the Costs Judge following a taxation on the papers.

“specified” means rules specified by the Committee *for* Employment and Social Security.

“the Schemes” means the Legal Aid, Advice and Assistance (Green Form) Scheme, the Criminal Legal Aid Scheme and the Civil Legal Aid Scheme.

“taxation” or “costs assessment” means the assessment of the reasonableness of the legal costs claimed by the fee earner in respect of any work undertaken under any of the Schemes. The taxation may be undertaken by the Administrator, any member of GLAS, costs draftsmen or the Costs Judge as appointed by the Administrator.

“taxation on the papers” means a review of the Advocate’s file and all other relevant documentation by the Costs Judge. No hearing or attendance by the Advocate, the Administrator, or the Administrator’s representative will take place.

“total costs” means the total amount of the Advocate’s profit costs under the relevant legal aid certificate or certificates and any related Green Form, Counsel’s fees and any other disbursements.

2. General Procedure

- 2.1 Following the conclusion of a case, Advocates are required to submit the files for each particular case to the Administrator. The files are reviewed to determine the reasonableness of the work done and whether the time spent was reasonable having regard to the requirements of the specified regulations and guidance and applying the correct remuneration rate for each area of work. This assessment of case files and costs being claimed is also known as ‘taxation’.
- 2.2 The Administrator or costs draftsman will provisionally assess/tax the costs of each file and the Advocate will be notified as to any suggested revisions. (The “provisional assessment”).
- 2.3. If there are no suggested revisions, and provided that the assisted person with a financial interest (see paragraphs 4-8 below) in the costs of their Advocate has raised no objections, the provisional assessment will be approved for final payment by the Administrator.

3. Procedure following the Provisional Assessment of Advocate’s Accounts

There are two stages available to an Advocate to challenge a provisional assessment of their costs: taxation on the papers and an oral hearing.

Taxation on the Papers

- 3.1 The Advocate has 28 days to make any response to the provisional assessment. If no response is received by the Administrator within the time limit, the provisional assessment of the costs will be applied; the taxation will be finalised and confirmed by the Administrator and the Advocate will be paid in that amount only. No further referral by the Advocate will then be possible.
- 3.2 Any dispute in relation to payment for work undertaken by an Advocate under the Schemes will be referred in the first instance to a Costs Judge of the Senior Court Costs Office in London for a review (taxation on the papers). The final account will remain unpaid pending resolution of the dispute between the Administrator and Advocate.
- 3.3 The Advocate has 28 days from the date of the provisional assessment to advise the Administrator in writing that they require the costs of a particular case to be reviewed by way of taxation on the papers.

- 3.4 Within a period of a further 28 days, the Advocate must provide the Administrator, with the entire file(s), a full billing guide, all of the Advocate's accounts, any document that the Costs Judge may require and any response to the provisional assessment that the Advocate wishes to make ("the required documents").
- 3.5 Failure to provide all of the required documents within the time limit at paragraph 3.4 will lead to the provisional assessment of the costs being applied and the Advocate will be paid in that amount only. No further taxation on the papers or other appeal at the request of the Advocate will then be possible.
- 3.6 The Administrator will send all of the required documents to the Costs Judge, by courier.
- 3.7 The Administrator and the Advocate may agree that the Costs Judge's review on the papers is limited to part or parts only of the costs in dispute.
- 3.8 Unless agreed otherwise by the Administrator and the Advocate, the Costs Judge will review the costs *de novo* and the review will not be limited to a consideration of the costs that are in issue.
- 3.9 The Costs Judge will review the file and costs claimed on the basis of the costs assessment criteria as specified and will issue a "notice of taxation on the papers" (which may, but is not required to, be by way of annotating the Advocate's accounts). The Administrator will forward the notice of taxation on the papers to the Advocate.

Oral Hearing

- 3.10 If the Advocate does not agree with the Costs Judge's determination following a review on the papers, the Advocate will have 28 days from receipt of the notice of taxation on the papers in which to notify the Administrator and to request an oral hearing before the Costs Judge.
- 3.11 The Advocate must make any written submissions regarding the grounds for an oral hearing within a further period of 14 days.
- 3.12 Failure by the Advocate to apply to GLAS for an oral hearing within the time limits in paragraphs 3.10 and 3.11 will lead to the taxation on the papers becoming final and confirmed as such by the Administrator; the Advocate will be remunerated in the amount of the taxation on the papers only. For the avoidance of doubt, if the amount of the taxation on the papers is less than the amount of the provisional assessment only the lower amount will be paid.
- 3.13. The Administrator will notify the Advocate of the date of the oral hearing. Oral hearings will be similar in form to the existing Royal Court Costs Taxation hearings for civil and criminal matters. Both the Advocate and the Administrator (or a representative) may attend the oral hearing. The assisted person with a financial interest may also be

present - See paragraph 5.6.

4. Assisted Persons with a Financial Interest

- 4.1 An assisted person has a financial interest in the costs situation if they have recovered and /or preserved property wholly or partly by virtue of their legal aid certificate/s and /or Green Forms. As a consequence of the recovery/preservation, the assisted person is obliged to reimburse to the Administrator any legal costs and disbursements paid or owing by the Administrator to their Advocate.
- 4.2 A financial interest also arises when an assisted person has been assessed to make a contribution to their costs and disbursements under the certificate and they have paid or are paying the contribution.

5. Limitations for Assisted Persons with a Financial Interest

5.1 *Costs or contributions less than £500*

- (a) Where the costs to be reimbursed or contributions made under a certificate are less than £500, the assisted person may make written representations **but** only where they can demonstrate to the Administrator's satisfaction that the costs and disbursements are objectively unreasonable taking into account the amount and issue at stake and also the benefit received, rather than the assisted person merely considering that the costs are too high. This will be a variable factor which will depend on the circumstances of the individual case, including the strength or otherwise of the merits of the case, its complexity and whether the benefit received is proportionate to the costs incurred.

The £500 limit may be waived or reduced at the discretion of the Administrator.

- (b) An assisted person whose financial interest occurs as a result of a Green Form only will not be invited to comment on the costs or contribution arising thereon unless the Administrator considers there are exceptional circumstances.

5.2 *Costs or contributions in excess of £500*

Where an assisted person has a financial interest in the outcome of any assessment of the Advocate's costs and the total costs to be reimbursed or contributions made are more than £500 or paragraph 5.1 is satisfied (a "qualifying assisted person") the qualifying assisted person may make written representations to GLAS regarding their Advocate's accounts.

- 5.3 If there has been a change of Advocate under one certificate, each Advocate's costs will be treated separately but they will be combined in determining whether the total costs fall below £500 or not.

- 5.4 Where an assisted person has more than one certificate and the certificates are connected by virtue of the certificate conditions, the total costs will be combined in determining whether costs fall below £500 or not.
- 5.5 Where a qualifying assisted person makes written representations, which cannot be resolved to the assisted person's satisfaction, the matter will proceed to a taxation on the papers even where the Advocate accepts the provisional assessment.
- 5.6 If the qualifying assisted person remains dissatisfied with the outcome of the taxation on the papers, the matter may proceed to an oral hearing, at such person's request. The Advocate and Administrator, or the Administrator's representative, will be entitled to attend any oral hearing in addition to the assisted person.

6. Advocates' Obligations

Advocates are required to:

- (a) Notify the assisted person that they have a financial interest and explain why,
- (b) explain that they have a right to make representations and set out how they can make those representations,
- (c) provide the assisted person with a copy of all the accounts, the billing guide for each account, any related Green Forms and confirmation of the total amount of costs and disbursements incurred, and
- (d) endorse the final account (or the last interim account if there is a change of Advocate) indicating that steps 6 (a) to (c) have been complied with.

7. Procedure for qualifying assisted persons with a financial interest

- (a) The Advocate's final account, endorsed as at paragraph 6(d) together with all other costs claimed under the Schemes, will be provisionally assessed by the assessor.
- (b) If the assisted person wishes to make written representations these must be made to GLAS within 28 days of receipt of a copy of the endorsed final account. A copy of any representations received by GLAS will be sent to both the Advocate and the Costs Judge for the taxation on the papers.
- (c) If no representations are received from the assisted person with a financial interest within the time limit of 28 days and the Advocate does not wish the matter to proceed to taxation on the papers, the final costs will be as determined between the Administrator and the Advocate.
- (d) If an assisted person with a financial interest is dissatisfied with the outcome of a taxation on the papers, the assisted person may request an oral hearing. The assisted person will be asked to provide written reasons, a copy of which must be provided at

least 28 days before the oral hearing date and which will be sent to both the Advocate and the Costs Judge before the hearing.

- (e) No particular format of written representations is required from the assisted person; a letter outlining the assisted person's views on the costs will be sufficient.

8. Fast-tracking

- 8.1 Any Advocate may fast track the costs process and above appeals procedure by obtaining written confirmation from the assisted person with a financial interest that they:
 - (a) have been notified by the Advocate that they have a financial interest and the reason why,
 - (b) have received a copy of all the Advocate's accounts and any related Green Form and have been advised as to the total amount of costs and disbursements incurred,
 - (c) accept the amount of the Advocate's costs and disbursements that they will be reimbursing to GLAS or paying by way of a contribution, and
 - (d) do not wish to make any representations regarding the Advocate's costs and disbursements.
- 8.2 If signed confirmation, as at paragraph 8.1 is submitted to the Administrator together with the Advocate's final account, the Administrator will proceed to deal with the costs without seeking any further involvement of the assisted person.
- 8.3 Where no signed confirmation is received by the Administrator or the assisted person confirms in writing that they do wish to comment on the level of the Advocate's costs and the issues are not capable of resolution between the Advocate and assisted person, the Administrator must receive the assisted person's comments within 28 days of receipt of the Advocate's endorsed final account. The matter will then proceed to taxation on the papers as at paragraph 3(a).
- 8.4 If the assisted person fails to provide written representations to the Administrator within 28 days, the assisted person will be deemed to have waived any rights to be heard and the matter will be as determined between the Administrator and the Advocate or Costs Judge as appropriate.
- 8.5. All time limits as noted above and applicable to both Advocate and assisted person with a financial limit are final unless there are exceptional circumstances why the time limits have not been adhered to, in which case the Administrator may consider extending the time limits.

9. Costs and Fees

- 9.1 GLAS will meet the cost of sending the files to the Costs Judge for taxation on the papers.
- 9.2 GLAS will also meet the Costs Judge's costs and expenses of a taxation on the papers or oral hearing **unless**:
- (a) the amount of any costs and disbursements taxed off from the Advocate's account(s) exceeds 20 per cent of the total costs claimed under the account(s), in which case the Advocate and their firm will be bound to meet all such fees and expenses, or
 - (b) the Costs Judge makes an award of costs against either the Advocate or the assisted person.
- 9.3 An application fee of £50 may be applied by the Administrator in respect of each referral to the Costs Judge for a taxation on the papers or for an oral hearing.

This fee will be payable by the party who requests the taxation on the papers or oral hearing. If both the Advocate and the qualifying assisted person with a financial interest request a taxation on the papers or an oral hearing, each party will contribute £25 in respect of each referral to the Costs Judge.

- 9.4 Any costs payable by the Advocate will be deducted from the final unpaid account. If the final account is insufficient in amount to cover any fees and expenses, then GLAS will require a refund from the Advocate/firm.
- 9.5 A qualifying assisted person with a financial interest is required to pay the application fee before the papers are sent to the Costs Judge.

10. Legal Aid

No legal aid will be available under the Schemes to an assisted person with a financial interest to participate either in taxation on the papers or at an oral hearing.

11. Points of Principle

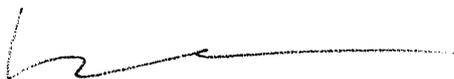
The Administrator may, from time to time, issue points of principle arising out of any taxation on the papers or oral taxation hearing

Dated this 29th day of October, 2019



M. K. LE CLERC

President of the Committee for Employment & Social Security
For and on behalf of the Committee



L. H. HAYWOOD
Legal Aid Administrator