
STATES OF JERSEY



PUBLICATION OF LEGAL AID GUIDELINES

**Presented to the States on 23rd December 2021
by the Chief Minister**

STATES GREFFE

REPORT

In accordance with Article 7 (7) of the Access to Justice (Jersey) Law 2019, the Chief Minister lays the Legal Aid Guidelines (as set out in appendix 1) before the States Assembly, which are intended to take effect on 1st April 2022.

Background

The Access to Justice (Jersey) Law 2019 (“the Law”) was adopted by the States Assembly on 1st May 2019, granted Royal Assent on 8th October 2019 and registered by the Royal Court on 18th October 2019.

Full details regarding the background to, and purpose of, the Law were included in the report to P.23/2019.

The Access to Justice (Jersey) Law 2019 (Appointed Day) Act 2021 was adopted by the States on 21st July 2021 (through P.63/2021). This Appointed Day Act brought Articles 1, 6, 7, 8 and 9 of the 2019 Law into effect, with the remaining Articles (other than Article 11) to come into effect on the day on which the first Legal Aid Guidelines published by the Chief Minister come into effect (intended to be 1st April 2022).

The Law provides, for the first time in Jersey, a statutory basis for the Legal Aid Scheme in Jersey. As provided by Article 4 (1) of the Law, the Judicial Greffier is responsible for the administration of the scheme, which is to be carried out in accordance with the Legal Aid Guidelines, except that the Judicial Greffier may, in exceptional circumstances, provide legal aid to any person where the interests of justice requires it. The Law sets out, in Article 7 (1), that the Chief Minister shall make and publish guidelines for the purpose of providing for the administration of the Legal Aid Scheme. The Chief Minister is assisted and advised in this responsibility by the Legal Aid Guidelines Advisory Committee. The Guidelines Committee is Chaired by the Judicial Greffier and consists of the following Members:

The Attorney General, the Magistrate’s Court Greffier, the Bâtonnier, the President of the Law Society, the Chief Executive of the Law Society, two nominees of the Bailiff (Matthew Thompson and Peter Harris), two nominees of the Chief Minister (Dr Helen Miles and Lisa Hart) and two nominees of the States Assembly (Deputy Montfort Tadier and Deputy Kirsten Morel).

The report to P.63/2021 provided some background as to the work of the Guidelines Committee, which has been conducted largely in shadow form, prior to the adoption of the Appointed Day Act. The Committee completed the majority of its work by March 2020 and, following further work to refine the Committee’s proposed Scheme and present it in a publishable form (itself delayed primarily by the onset of the Covid-19 pandemic and discussions as to the funding of the scheme), completed the process required by Article 6 of the Law and submitted a recommended scheme to the Chief Minister in November 2020.

Article 7 of the Law then sets out a clear process for the proposed legal aid scheme, as recommended by the Guidelines Committee, to be published and brought into effect. The first requirement (Article 7 (4)) is for the Chief Minister to publish the proposed Legal Aid Guidelines and seek representations from the public. The proposed scheme

was accordingly published on 4th August 2021 and the period for representations to be made ended on 29th September 2021. This consultation period saw six written responses submitted by email, none by post and one by means of a telephone conversation. The responses received did not invoke any consideration that the proposed scheme should be subject to amendment.

The next requirement (as per Article 7 (7)) is for the Chief Minister to lay the proposed Legal Aid Guidelines before the States Assembly for a period of at least four weeks, after which time the Guidelines will come into effect on the date specified (1st April 2022). During the four-week period, a Member of the States may lodge a proposition requesting that the States annul the proposed Guidelines (Article 7 (8)). With this report being laid before the States on 23rd December 2021, this four-week period during which such a proposition can be lodged will cease at 23:59 on 20th January 2022.

In the event that such a proposition were lodged, and successful, the Guidelines shall not come into effect on 1st April 2022 and the process for agreeing the scheme would need to start afresh.

The proposed Guidelines

As mentioned above, the proposed Guidelines are appended. Should any Member wish to be briefed on the proposals, or have any particular questions, please contact the Chief Minister. If it is the wish of Members, a private briefing for all Members can also be arranged.

The below offers a broad summary of the proposals, and how these differ from the existing scheme provided by the Law Society.

Public/Criminal Law

Funding

Public/Criminal Law legal aid is currently provided at the cost of the legal profession, albeit that public funding is presently available for public law children's cases and for allocation by the Judicial Greffier in certain other onerous cases (where the provision of legal aid is likely to cause significant hardship to a lawyer).

This would change under the proposed scheme, where public/criminal law legal aid would be publicly funded. It is estimated that this would represent an additional cost of between £750,000 to £1.5 million per annum. Provision for this anticipated additional resource was made in the Government Plan 2022-25.

It should be noted, accordingly, that the agreement of the Government to contribute public funds towards meeting the cost of the criminal legal aid scheme will reduce the existing financial burden of legal aid on the profession. The extent of this reduction cannot be easily calculated, given that the percentage divide between criminal and civil legal aid certificates fluctuates and that the new criminal scheme will involve the profession providing a more tailored service than at present, on the basis of enhanced eligibility criteria and at still reduced rates. It is therefore difficult to make a direct comparison between the estimated additional public resource required for the criminal scheme and the reduced burden on the profession, but this new commitment from the taxpayer should nevertheless not go unrecognised.

Coverage/eligible areas of law

The Public/Criminal Law Legal Aid Scheme would cover all Children Law proceedings brought by the Minister, all criminal cases in the Royal Court, Magistrate's Court and Youth Court (excluding offences for which the maximum sentence is a Level 2 fine). Certain mental health/capacity and human rights cases are also covered. Please see page 1 of the appended scheme for the full details.

The "Tour de Role" will come to an end for criminal law legal aid and be replaced by accredited panels of specialist legal representatives (covering Criminal, Mental Health and Public Children Law). This arrangement includes the facilitation of a choice of representation for the client in respect of criminal matters. A rota scheme will operate where a client does not wish to operate a choice of representation from the Panel.

Financial eligibility

Financial eligibility criteria will move from being based on a household to being based on an individual. The current household income limit of £45,000 will be replaced by an individual limit of £48,000. The capital limit (which includes, most significantly, equity in a property) moves from a £15,000 household limit (excluding £100,000 of equity) to a £48,000 individual limit (which includes equity).

At present, personal contributions are due under the criminal/public law scheme. No contributions will be due from those eligible for legal aid under the proposed scheme. Lawyers working under the criminal legal aid scheme will receive fixed fee payments for their work, as set out in the scheme.

This new public funding on a fixed fee basis will accordingly end the current arrangements where a legal aid lawyer can make a claim for costs in the event that their client is acquitted or the charges are withdrawn by the prosecution (and reciprocally often receive little or no payment where a case is lost). Payment will now be made for representation in all cases, which is seen as a fairer arrangement given that the nature of a legal aid case allocated to a lawyer is on a random basis. Regulations under the Costs in Criminal Cases (Jersey) Law 1961 will be brought forward early in 2022 to ensure this arrangement is reflected in statute.

Residency test

There will be no residency test for public law legal aid, which represents a change from the current process where a residency test applies in criminal matters, except where there is a risk of a custodial sentence. This ensures that anyone who might be subject to criminal proceedings in a Court in Jersey has access to legal representation.

Private/Civil Law

Funding

Private Law legal aid will continue to be funded by the legal profession, with no public contribution. Lawyers will continue to provide representation based on the "Tour de Role".

Coverage/eligible areas of law

Please refer to pages 2, 3 and 4 of the appended scheme.

Financial eligibility

The capital financial threshold for private/civil law legal aid will be equal to that for criminal legal aid, at £48,000 for an individual (it is currently £15,000 for the household, excluding the first £100,000 of equity).

The income limit will be £32,000 for an individual, which is a change from the existing £45,000 for a household.

Personal contributions, on a sliding scale depending on income, will be due.

Residency test

A residency test will apply – a requirement to have been ordinarily resident in Jersey for at least 12 months and be registered with social security.

Judicial Greffier discretion

As referenced above, the Judicial Greffier will have a discretion (underpinned by Article 4(4) of the 2019 Law) to provide legal aid in exceptional circumstances to any person where the interests of justice requires it.

Conclusion

The process to agree and implement a revised Legal Aid Scheme for Jersey (from the existing scheme which dates back to 2005) has been ongoing since the adoption by the Assembly of P.158/2013 (Access to Justice in Jersey: Review) which included a commitment to undertake a review of legal aid in Jersey which would “examine the scope for alternative approaches” and “make proposals for developing further an efficient and effective legal system, which would improve access to justice and the resolution of complaints, whilst delivering value for money in the use of public funds”. The Third Interim Report of the Access to Justice Review (presented to the States on 1st August 2016) recommended that “the Access to Justice Review should continue with a special focus on legal aid, affordability and the working of the legal profession in Jersey once the Law Society’s Review of Legal Aid has been completed.” This work on legal aid has continued up to the present date and, having been through several stages of development in different fora, culminated in the adoption of the 2019 Law and the proposals for implementing a legal aid scheme that were made under that legislation. As outlined above, the process set out in the 2019 Law has been followed up to the point where the Chief Minister should now lay a proposed scheme before the States.

The proposed scheme has been subject to broad consultation. The Legal Aid Guidelines Committee is of itself a broad body, incorporating representatives of the courts, law officers, legal profession, Government, and States Assembly. Further, there is a requirement (which has been fulfilled) in Article 7(a) of the Law for the Guidelines Committee to consult the Bailiff and the Magistrate on the proposed Guidelines prior to them being submitted to the Chief Minister.

Consultation has also taken place with Citizens Advice Jersey and the Consumer Council (given their previous involvement in the Access to Justice Review). This preceded the public consultation period. The Council of Ministers have also, subsequently, consented that the scheme be laid before the Assembly.

It should also be noted that this does not represent the end of the process for agreeing Jersey's Legal Aid Scheme. The 2019 Law requires the Judicial Greffier to prepare an annual report in respect of the Legal Aid Scheme. Interim Reports can also be provided on specific matters arising in respect of the scheme (instigated at the motion of the Judicial Greffier or Chief Minister). For the first time, the Legal Aid Scheme is now subject to democratic accountability, and there is a clear process for considering further improvements or changes to the Scheme, which are accessible to the public via States Members.

LEGAL AID (JERSEY)

PUBLIC LAW

ELIGIBILITY CRITERIA

Applicants for **Public Law Legal Aid** must be able to satisfy two eligibility tests:

1. Financial (Criminal and Human Rights applications only)
2. Nature of Public Law Matter/Criminal Offence

Applicants for representation in respect of an eligible criminal offence or human rights matter must first be able to demonstrate that they meet the financial test to qualify. If an applicant exceeds either the capital or income limit they will not be eligible for legal aid.

Financial eligibility does not apply in relation to criminal matters in the Youth Court or in relation to Public Law Children, Mental Health and Capacity representation.

Applicants who are only in receipt of Income Support are deemed to have met the financial eligibility test.

Applicants in criminal matters will have a choice of representation from an accredited panel of criminal practitioners.

Legal aid is not available in respect of corporate or business activity, including matters of a criminal nature.

FINANCIAL

	Capital Limit (Individual)	Income Limit (Individual)
Public Law (Criminal / Human Rights)	£48,000*	£48,000**

[* Calculated as 1.5 x the current Median Average Earnings++ for Full Time Employees, rounded up to the nearest £1000.]

[** Calculated as 1.5 x the current Median Average Earnings++ for Full Time Employees, rounded up to the nearest £1000.]

++Median Average Earnings for Full Time Employees in Jersey = £31,720. (Source: Average Earnings Report, June 2020, Government of Jersey Statistics Unit). Legal Aid Limits will be adjusted in line with the annual Average Earnings Report as at June each year. The revised calculations will be effective from 1 January the following year.

NATURE OF PUBLIC LAW MATTER/CRIMINAL OFFENCE

ELIGIBLE

Children Law

- All Children Law proceedings brought by the Minister for Children & Education under the Children (Jersey) Law 2002
- Pre proceedings representation in respect of potential proceedings under the Children (Jersey) Law 2002
- Child abductions including applications under the Hague Convention

Mental Health/Capacity

- Representation in appeals to the Mental Health Review Tribunal or the Royal Court of Jersey under the Mental Health (Jersey) Law 2016 and reviews of authorisations under the Capacity and Self Determination (Jersey) Law 2016
- Exceptional cases where there are complex mental health or capacity issues that require referral to, and consideration by, the Royal Court of Jersey

Human Rights

- Asylum and Immigration applications (subject to merit)
- Exceptional cases where there are legitimate human rights entitlements

Criminal

- All criminal matters in the Royal Court
- All criminal matters* in the Magistrate's Court
- All criminal matters in the Youth Court **

* Except offences for which the maximum available sentence is a fine of Level 2 on the Standard Scale of Fines (in accordance with the Criminal Justice (Standard Scale of Fines) (Jersey) Law 1993).

** Where it is in the best interests of the defendant, and where a matter can, in all circumstances, fairly be concluded at first appearance in the Youth Court, legal assistance will be provided by the Duty Advocate. Legal Aid Certificates will be issued, on application, in all cases where a matter cannot be concluded during a first appearance or where an application for Legal Aid has been made and approved prior to such first appearance.

NOT ELIGIBLE

Criminal

- Minor motor-related and criminal offences (where the maximum available sentence is a fine at Level 2 on the Standard Scale of Fines).

PRIVATE LAW

ELIGIBILITY CRITERIA

Applicants for **Private Law Legal Aid** must be able to satisfy three eligibility tests:

1. Residency
2. Financial
3. Area of Law

Applicants for legal aid in an area of law that is eligible for support must be able to demonstrate that they meet the residency and financial tests to qualify.

Applicants who are only in receipt of Income Support are deemed to have met the financial eligibility test.

Applications can only be accepted in relation to personal law, from individuals acting in their private capacity.

Legal aid is not available in respect of corporate or business activity.

RESIDENCY

- Private Law Applicants must be ordinarily resident in Jersey. Residency must be for a period of not less than 12 months immediately prior to the application for Legal Aid. All applicants must be registered with Social Security. Applicants will be required to evidence that they meet the residency test.
- Discretion will be held by the Judicial Greffier to waive or reduce the residency requirement in exceptional circumstances, where it is in the interests of justice to do so.

FINANCIAL

	Capital Limit (Individual)	Income Limit (Individual)
Private Law (Family / Civil Matters)	£48,000*	£32,000**

[* Calculated as 1.5 x the current Median Average Earnings for Full Time Employees, rounded up to the nearest £1000.]

[** Calculated as 1.0 x the current Median Average Earnings for Full Time Employees, rounded up to the nearest £1000.]

+++ Median Average Earnings for Full Time Employees in Jersey = £31,720. (Source: Average Earnings Report, June 2019, Government of Jersey Statistics Unit).

Legal Aid Limits will be adjusted in line with the Average Earnings Report issued annually in June. The revised calculations will be effective from 1 July each year.

Financial eligibility for joint applicants in private law matters (e.g. eviction) will be assessed based on the average capital and income of the parties, against the above limits.

AREA OF LAW

ELIGIBLE

Family claims and proceedings

- Ancillary (financial) relief claims where there are dependent children**.
 - Child maintenance (including Schedule 1 claims) under the Matrimonial Causes (Jersey) Law 1949 or the Children (Jersey) Law 2002 (other than Child maintenance claims where the applicant is on income support and has no other capital assets and no other income, which are not eligible).
 - Divorce / Judicial Separation / Civil partnership / nullity proceedings where there are dependent children**.
 - Residence and contact disputes, prohibited steps orders, specific issue orders and removal from the jurisdiction under the Children Law 2002 or the Matrimonial Causes (Jersey) Law 1949 (subject to family mediation having been formally considered by the parties in appropriate cases).
 - Injunctions, ex parte orders and ex-parte injunctions within the family law context.
 - Claims by a child under the Legitimacy (Jersey) Law 1973.
 - Appeals in family proceedings (where Legal Aid has previously been granted), subject to a favourable opinion.
- ** Claims in relevant matters where there are no dependent children will be eligible (subject to financial and residency criteria being met) in circumstances where a civil injunction has been granted and/or criminal prosecution has been instigated on the grounds of domestic abuse or violence.

‘Dependent child’ is defined as a child up to and including the age of 16 or in a recognised apprenticeship (until the end of that training) or tertiary education (until the end of a first degree only) or the child has medically-diagnosed special needs that necessitates financial dependence in either parent.

Civil Claims and proceedings

- Contractual disputes/Actions in tort (subject to positive prospects of success) #
- Judicial Review applications ##
- Professional negligence claims (other than in relation to medical negligence) including claims of negligence for breach of duty in respect of Powers of Attorney, Probate or Tutelles.
- Eviction proceedings.
- Licitation proceedings where a minor child resides in the property.
- Appeals in civil proceedings (where a Legal Aid certificate was granted in the original proceedings), subject to a favourable opinion.
- Opinion on the merit of an appeal to the Royal Court against the decision of the Employment and Discrimination Tribunal, the Social Security Tribunal or determinations/orders of the Data Protection Authority against an individual.
- Appeal to the Royal Court against the decision of the Employment and Discrimination Tribunal, the Social Security Tribunal or determinations/orders of the Data Protection Authority against an individual, subject to a favourable opinion.
- Second opinion on personal injury and medical/clinical negligence claims (only where a negative opinion has been given as to the prospects of success of a claim by the specialist 'PIMED' (Personal Injury Medical Negligence) panel).

except personal injury claims (which are subject to separate arrangements), Petty Debt Court matters (other than eviction proceedings which are eligible), minor disputes/actions or where explicitly excluded/ineligible

Judicial review applications will initially be limited to an opinion on the merits of the prospects of success of an application for leave to apply for judicial review. Where a positive opinion is given, the 'application for leave' and 'application for judicial review' will fall outside the scope of Legal Aid and will be subject to funding from the Judicial Greffe on an individual case-by-case basis.

NOT ELIGIBLE

Family

- Adoptions
- Ancillary (financial) relief claims where there are no dependent children**.
- Divorce / judicial separation/ Civil partnership dissolution / nullity proceedings where there are no dependent children**.
- Child maintenance claims where the applicant is on income support and has no other capital assets and no other income ++.
- Enforcement of maintenance orders.
- Claims under the Legitimacy (Jersey) Law 1973 (except where the claim is by a child).
- Pre or post nuptial agreements.
- Separation Agreements (unless part of a settlement under an ancillary relief claim where there are dependent children).
- Maintenance claims under the Separation and Maintenance Orders (Jersey) Law 1953.

** Claims in relevant matters where there are no dependent children will be eligible (subject to financial and residency criteria being met) in circumstances where a civil injunction has been granted and/or criminal prosecution has been instigated on the grounds of domestic abuse or violence.

'Dependent child' is defined as a child up to and including the age of 16 or in a recognised apprenticeship (until the end of that training) or tertiary education (until the end of a first degree only) or the child has medically-diagnosed special needs that necessitates financial dependence in either parent.

++ Such claims are outside the scope of Legal Aid. Claims where there is a realistic prospect of success may be pursued by Social Security under separate arrangements outside the Legal Aid scheme.

Civil

- Bankruptcy/en Désastre
- Remise de bien / dégrèvement proceedings
- Licitation proceedings (other than where a minor child resides in the property)
- Personal injury claims^^
- Medical negligence claims^^

- Corporate and Business matters (including any business-related issue, contractual matters and disputes between shareholders, partners or directors)
- Delegate matters (other than claims in negligence for breach of duty)
- Conveyancing / Property / Boundary Disputes / Voisinage
- Deed polls
- Data protection matters (other than in respect of appeals to the Royal Court by an individual against determinations/orders of the Data Protection Authority)
- Defamation / Libel / Slander
- Debt related issues or proceedings
- Discrimination law (other than in respect of appeals to the Royal Court against the decision of the Employment and Discrimination Tribunal)
- Employment law (other than in respect of appeals to the Royal Court against the decision of the Employment and Discrimination Tribunal)
- Planning disputes
- Powers of attorney (other than claims in negligence for breach of duty) including Lasting Powers of Attorney
- Probate (other than claims in negligence for breach of duty)
- Succession planning (wills)
- Taxation issues (including disputes with Comptroller of Taxes)
- Tribunal issues whatever the nature of such tribunal (Employment & Discrimination, Social Security, Housing, Motor Insurance Bureau, Criminal Injuries Compensation Board or any other type of tribunal) including any appeals^{^^}
- Tutelles (other than claims in negligence for breach of duty)
- Wills (the making of wills or associated activity)
- Notwithstanding the above all or any other non-contentious matters

^{^^} Personal injury and medical negligence claims are outside the scope of the Legal Aid Scheme and will be considered, on request, by an accredited member of a specialist PIMED legal panel. Claimants who are financially eligible for legal aid and who have received a negative first opinion on the prospects of success of their claim may apply for a second opinion through the Legal Aid scheme.

^{^^^} Excludes appeals to the Mental Health Review Tribunal which, under the Public Law Legal Aid Scheme, are eligible for legal representation and appeals to the Royal Court in respect of Employment & Discrimination and Social Security Tribunals.

PERSONAL INJURY AND MEDICAL/CLINICAL NEGLIGENCE CLAIMS

- All potential personal injury and medical/clinical negligence claims will be considered, in the first instance, by a member of a specialist legal panel (the PIMED panel).
- Where the applicant holds insurance cover (e.g. legal cover through motor or household insurance) or is a member of a union that provides legal cover for certain claims, any claims will be subject to the conditions applied by the relevant insurance provider.
- The panel member will assess each claim and consider the prospects of success.
- Where the prospect of success is 51% or more, the panel member will proceed with the claim on a 'no win, no fee' basis. Fees will ordinarily be recovered from insurers in the event of a successful claim but may, in appropriate cases, be recovered from any award or settlement.
- Where the applicant is 'eligible for legal aid' (based on assessment of residency and financial eligibility against the legal aid criteria) and a positive (51%+) opinion has been received, the PIMED panel member may apply for funding of any disbursements from the Judicial Greffe (funded by the Legal Aid Vote).
- Where a claim is determined as having poor prospects of success (50% or less), the claim will not be progressed. Claimants in receipt of a negative opinion who are 'eligible for legal aid' (based on assessment of residency and financial eligibility against the legal aid criteria), may request a second opinion in respect of their claim. In the event of a positive second opinion, the claim will be progressed through the legal aid scheme, in respect of which contributions may be payable. In the event of a further negative opinion, the claim will not be pursued. No further opinions on the merit of the claim will be available.

FINANCIAL ELIGIBILITY CRITERIA – NOTES AND DEFINITIONS

- The income test will only be applied where the applicant's capital is below the maximum limit.
- Legal aid will not be granted where the relevant capital or income limits thresholds are exceeded.
- Joint applicants will be assessed based on an average of the parties' capital and income levels.
- Applicants who are only in receipt of Income Support are deemed to have met the financial eligibility test. However, where the total income (including benefits) of an applicant who is in receipt of Income Support exceeds the threshold at which personal contributions are made in respect of private law matters, the applicant remains liable for the payment of personal contributions.
- Capital (for the purposes of eligibility) includes property, savings, investments or a financial interest in any asset, including the equity in any property, whether in Jersey or elsewhere, but excluding the capital value of any pensions. All assets owned by the applicant should be included in full. Where assets are jointly owned (e.g. property, savings accounts), 50% of the total value (net of mortgage for properties) should be included in the capital calculation. [See full details below].
- Income includes pensions, benefits (including Income Support), the value of benefits in kind, maintenance and income from any source, including interest, dividends and trust fund income, as received by the applicant. Gross income is total income before any deductions for tax, social security etc.

Capital

Capital includes the following:

- Cash savings held in the sole name of the applicant or jointly with another party in Jersey or elsewhere in any currency;
- The market value of all property (whether in Jersey or elsewhere) after the deduction of outstanding borrowings, held in the sole name of the applicant or jointly with another party;
- National Savings certificates, National Savings capital bonds and premium bonds;
- Stocks/shares including share save schemes and share incentive plans;
- Unit Trusts and Personal Equity Plan (PEP) Investments;
- Fixed term investments;
- Timeshares;
- Trust assets or funds;
- Other financial assets including cryptocurrencies;
- Valuables including Boats, Paintings and Antiques;
- Jewellery other than engagement rings, wedding rings and eternity rings;
- Money owing to an applicant;
- Money due from an estate or trust fund;
- Money that can be borrowed against business assets.

The following are disregarded in the calculation of capital:

- Household furniture and effects (unless the contents include any single or collection of items with a market value of more than £10,000);
- Personal clothing/tools and equipment of trade;
- Engagement rings, wedding rings and eternity rings;
- One motor vehicle per household that is regularly used and valued less than £15,000 (any loan or HP is deducted from the value);
- Capital value of any pension.

Capital and Income

The assessment of Capital and Income is at an individual level.

Calculation examples (Capital):

If the applicant has a property, in joint names, in respect of which the equity is, say £90,000, the attributable capital (relating the property) for the applicant is £45,000. If other capital (e.g. savings) is below £3,000, the capital test will be met.

If the applicant has savings and investments, in joint names, of £50,000 and savings in their sole name of £20,000, the attributable capital for the applicant is £25,000 plus £20,000 = £45,000. The capital test will be met.

If the applicant has a property, in their sole name, in respect of which the equity is, say £90,000, the attributable capital (relating to the property) for the applicant is £90,000, even if there are other occupants of the property. The capital test will not be met.

If the applicant has savings and investments, in their sole name, of £50,000, and savings in joint names of £10,000, the attributable capital for the applicant is £50,000 plus £5,000 = £55,000. The capital test will not be met. Legal aid will not be granted in these circumstances.

Where there are joint applicants in any matter, capital will be assessed based on the average attributable capital for the applicants. If the applicants collectively have joint property (with equity of £70,000) and joint savings totalling £20,000, the attributable capital for each party is £45,000. In this case, the capital test would be met.

Where there are joint applicants in any matter, capital will be assessed based on the average attributable capital for the applicants. If the applicants collectively have joint property (with equity of £100,000) and joint savings totalling £5,000, the attributable capital for each party is £52,500. In this case, the capital test would not be met.

Legal aid will not be granted whenever the capital test is not met.

Calculation examples (Income):

- If an applicant facing Criminal charges earns £47,000 and his/her partner earns £20,000, the income test will be met.
- If an applicant facing Criminal charges earns £50,000 but his/her partner earns nothing or does not work, the income test will not be met. Legal aid will not be granted in these circumstances.
- If an applicant in a Family matter earns £31,000, the income test will be met.
- If an applicant in a Family matter earns £45,000, the income test will not be met.

Joint applicants (civil matters)

- Where there are joint applicants in a civil matter, income will be assessed based on the average income for the applicants.
- If one applicant has income of £46,000 and the second applicant has an income of £12,000, the average income of the applicants is £29,000. In this case, the income test would be met.
- If one applicant has income of £35,000 and the second applicant has an income of £30,000, the average income of the applicants is £32,500. In this case, the income test would not be met.

Where the capital and income tests have been met, Legal Aid will be granted subject to the matter for which legal representation has been requested being eligible for Legal Aid. Where the capital test has not been met, Legal Aid will not be granted. Where the capital test has been met but the income test has not been met, Legal Aid will not be granted.

PERSONAL CONTRIBUTIONS

Public Law – No personal contributions are payable in respect of public law matters which are eligible for legal aid

Private Law – Personal contributions are payable, where legal aid has been granted, on the following basis:

<u>Gross income (as defined above)</u>	<u>Contribution Level</u>	<u>Monthly Payment</u>
Up to £20,000	NIL	NIL
£20,001 - £24,000	10%	£25
£24,001 - £28,000	20%	£50
£28,001 - £32,000	30%	£100

Legal Aid (in respect of Private Law matters) will not be granted where an applicant's gross income exceeds £32,000 (other than in respect of individuals who are only in receipt of Income Support and who are deemed to have met the financial eligibility criteria).

Applicants (in private law matters) with gross annual income above £20,000 will be required to make a contribution towards the cost of their legal representation.

An individual's contribution level (and applicable monthly payment) will be assessed by the Legal Aid Office at the point of issue of a Legal Aid Certificate, based on assessment of documentary evidence in respect of an applicant's total income (including benefits). Changes in a client's income and circumstances may result in a re-assessment of contributions (which will be undertaken by the appointed law firm).

While individuals who are only in receipt of Income Support are deemed to have satisfied the financial eligibility requirements, personal contributions are payable in private law matters where total income including benefits exceeds £20,000 per annum. Where total benefit income is above the maximum threshold for private law matters (1 x median average annual income), legal aid will still be granted, but liability to fees will be limited to the maximum 30%/£100 per month contribution.

Firms will, at the outset of a matter, provide an estimate of the anticipated cost to the applicant (at the appropriate percentage rate). Monthly payments should be implemented at the commencement of a matter, at the level determined by the Legal Aid Office. Firms are required to accept monthly payments. Applicants may choose to pay more than the stated monthly payments. **Payments will continue until the cost of legal representation, at the appropriate contribution rate, has been met in full or a period of four years has elapsed since the commencement of the matter, whichever comes first, subject to the proviso that, in the event that the matter has not been completed at the end of the four year period, monthly payments will continue until representation ceases.** As such, contributions are capped at the value of 48 monthly contributions, except where representation continues beyond 48 months, in which case further payments must be made until representation is concluded. The four year period will only apply where no payments have been missed or any missed payments have been subsequently met.

Legal Aid Certificates in family matters will, in all cases, specify the specific nature of the activity or proceedings covered by the certificate (e.g. divorce, financial arrangements including maintenance, and residence and contact). Where additional actions or proceedings arise, which are outside the scope of the original certificate, a new certificate will need to be applied for. If granted, the work required under the new certificate will be undertaken by the same firm as for the original certificate. Where personal contributions are payable, the four year period commences at the start of the first certificate issued; where a second or subsequent certificate is issued for additional matters, the four year payment period will recommence with the new matter, with payments continuing for a new four year period from the start of the new matter, at the same monthly payment as previously implemented i.e. if matter 1 starts in January 2020, with payments at the appropriate contribution rate (e.g. £25, £50 or £100 per month) and then matter 2 starts in January 2021, payments will continue at the same rate from the commencement of the new matter, for a period of four years or until total costs, at the appropriate contribution rate have been met, whichever occurs first.

Where costs (at 100% of the Legal Aid rate) reach 75% of the initial estimate and are expected to exceed the initial estimate, a new estimate must be provided. Monthly contributions (which are based on an applicant's income) will remain unchanged, even if an estimate increases.

Examples of payments:

- Estimate of fees in a matter (at 100% of the Legal Aid rate) is £10,000.
- Applicant has gross income of £25,000 and so is assessed as being a 20% contributor.
- The total liability of applicant (which will be detailed within the estimate) is therefore £2,000 (excluding any court fees or disbursements, which must be met by the applicant in addition to the monthly contributions, unless an exemption certificate from the Viscount's Department has been obtained in respect of court fees).
- Monthly payments of £50 per month are required from the commencement of representation until the applicant's total fees, at the contribution rate, have been paid in full or four years has elapsed following commencement of the case, whichever comes first. Provided all monthly payments have been met, payments need only be made for a maximum period of 48 months, unless representation continues beyond the four year period. In these circumstances, payments must continue, beyond the four year period, until the completion of representation. Applicants may pay the outstanding amount (up to the 48 month cap) at the end of a matter or make higher monthly payments to reduce the payment period. Where a second or subsequent matter is required and a new Legal Aid certificate relating to that matter is issued, the four year period will recommence. However, even in the event that two or more matters are being undertaken at the same time, the amount of the monthly payment (at the appropriate contribution rate) will be unchanged, unless an individual voluntarily increases the payment to reduce the payment period.

In family matters, where funds and/or property is obtained through the division of assets or other financial settlement, including those arising from the sale or transfer of ownership of the former matrimonial home, a legally-aided client will be liable to meet the full costs of legal representation (at 100% of the Legal Aid rate).

To ensure that legal aid clients in such matters are aware of their liability in this regard, clear reference shall be made in letters of engagement issued by law firms to the circumstances under which full recovery of costs, at 100% of the Legal Aid rate can be claimed by a firm. Invoices issued to the client should detail the full costs (at 100% of the Legal Aid rate) as well as the charges that apply, based on the personal contribution level determined by the Legal Aid Office.

Outstanding fees (at the appropriate contribution rate) are, however, subject to full immediate payment upon receipt by the legally-aided individual of capital or other funds in excess of £15,000.

The law firm reserves the right to cease all work where monthly payments are not made, although work may continue at their discretion.

Legal Aid Certificates will confirm the level of monthly contribution payable in each case.

Court fees and other disbursements incurred during the course of representation must be met by the applicant in addition to the monthly contributions, unless an exemption certificate from the Viscount's Department has been obtained in respect of court fees.

However, other than in respect of cases where funds and/or property is obtained through the division of assets or other financial settlement, as detailed above, a legally-aided client's liability to fees is limited to the personal contributions payable during the course of the representation and which will be detailed at the commencement of that representation.

Fee Adjudications

Legally-aided clients may, in the event of a dispute over the level of fees charged, seek fee adjudication through the Legal Aid Office. It is anticipated, however, that the implementation of a cap on personal contributions and a limit to the period of recovery will reduce the number of fee adjudication requests made.

Fee adjudications will ordinarily proceed where requested, subject to provision by the applicant of reasons for the dispute and any supporting evidence. In all instances, fee adjudications will be undertaken by a lawyer appointed by the Legal Aid Office. The appointed lawyer must have at least 5 years' post qualification experience, and be a subject matter expert/specialist practitioner in the legal area to which the certificate relates. The adjudication must be undertaken by the appointed practitioner and not an unqualified assistant/any other individual.

Financial Hardship

Where the amount outstanding (based on the relevant contribution rate) at the end of a matter is such that it could cause financial hardship to a legally aided client, then if it is appropriate in all the circumstances of the case, the outstanding amount shall be reviewed by the firm and, where appropriate, reduced to an affordable level. Any dispute relating to an application under financial hardship provisions will be referred to the Judicial Greffier for a final decision. Financial hardship provisions do not apply where capital in excess of £15,000 has been recovered by the applicant.

Legal Aid Rates

The applicable rates for work undertaken under Legal Aid (which mirror the Factor 'A' Rates set down by the Royal Court from time to time and which reflect the 'breakeven point' for lawyers) are (effective from 1 February 2020):

<u>Fee earner</u>	<u>Hourly rate</u>
Partners (Jersey Advocates and Solicitors)	£275
Qualified staff (Advocates, Barristers, Jersey and English Solicitors) > 5yrs+ PQE	£240
Qualified staff (Advocates, Barristers, Jersey and English Solicitors) < 5yrs+ PQE	£200
Paralegal Trainee Solicitors and Barristers without pupillage	£175
Paralegal without law degree or studying for a law degree	£100

Fee estimates, which are required in all private law matters, will be based on the amount of time likely to be spent on the matter, by each fee earner, at the above rates, which represent 100% of the 'Legal Aid rate'.

CONDITIONS AND LIMITATIONS

- Initial or limited certificates may be issued to enable a lawyer to consider whether a claim has sufficient merit.
- All certificates are capable of withdrawal in the event of:
 - ✓ Material change in financial circumstances.
 - ✓ Provision of incorrect or misleading information at time of application (or at any time thereafter).
 - ✓ Failure to meet conditions of approval of certificate.
 - ✓ Failure to meet monthly contributions, where payable.
 - ✓ Failure to co-operate with, or respond to, lawyer.
 - ✓ Failure or refusal to complete due diligence or client take-on procedures.
 - ✓ Refusal to accept advice provided by lawyer.
 - ✓ Inappropriate behaviour or conduct on the part of the applicant/client
 - ✓ A negative opinion is provided in relation to the prospects of success of any claim or action.
 - ✓ The advice to a privately funded litigant of moderate means would be to not pursue or defend the claim.
 - ✓ The pursuit by a legally aided client of frivolous or vexatious claims within the context of family proceedings.

OUTSOURCING OF LEGAL AID OBLIGATIONS

- Law Society members and/or firms may outsource all or part of their Legal Aid obligations to another member and/or firm.
- Notwithstanding these outsourcing arrangements, the originally allocated member/firm retains responsibility for the discharge of legal aid certificates issued in their name. Upon receipt of notification of a legal aid certificate, the receiving member/firm must complete conflict checks. If conflicted, the legal aid certificate is returned to the Legal Aid Office for reallocation; if unconflicted, the certificate is advised by the receiving member/firm to the contracted servicing firm. Where the servicing firm is themselves conflicted at the outset, or a conflict arises during the course of the matter, the certificate must be referred back to the originally allocated member/firm, who remain unconflicted, to reallocate to another member/firm to deal with. In the event that the contractual arrangements provide for the firm that is, or becomes, conflicted to re-allocate the certificate themselves, this must be undertaken without delay, under advice to the Legal Aid Office. While conflicts that arise during the course of a matter must be advised to and agreed by the Legal Aid Office, where the original certificate is outsourced to another member/firm, the obligation for discharge of that certificate remains with the original member/firm on the basis that they are not conflicted. Responsibility for reallocation of a certificate in such circumstances rests with the original member/firm (or the servicing firm if this is their contractual responsibility) and not the Legal Aid Office.
- Any appeals in relation to the allocation of Legal Aid certificates or any decisions made by the Legal Aid Office may only be made by the member/firm to whom the certificate is originally allocated. Servicing firms do not acquire any rights of appeal against certificate allocations or decisions made by the Legal Aid Office.

LEGAL AID OFFICE

- The Judicial Greffier is responsible for the administration of the Legal Aid Scheme. The operation and day-to-day administration of the scheme is, in practice, undertaken by the Legal Aid Office, which is a division of the Law Society to whom the scheme administration is entrusted by the Judicial Greffier. In addition to administering the scheme, the Legal Aid Office will guide unsuccessful applicants towards the range of alternative solutions that are available to enable individuals to resolve their issues or to obtain legal representation, supported by providing access to procedural guides in relation to key Court processes and proceedings. Subject to agreement by the Judicial Greffier, the Legal Aid Office will, additionally, administer funding payments in eligible matters.
- Appeals against decisions made by the Legal Aid Office (to refuse, limit the scope of, or withdraw legal aid certificates) will be considered by the Bâtonnier (or a Bâtonnier Substitute) in accordance with published guidelines.
- Complaints relating to any aspect of legal aid, other than appeals against decisions made by the Legal Aid Office and professional misconduct complaints will be considered by the Law Society of Jersey in conjunction with the Bâtonnier, in accordance with published procedures. All complaints of professional misconduct will be considered by the Law Society of Jersey in accordance with the provisions of The Law Society of Jersey Law 2005.

Responsibilities

- Administration of applications for Public Law and Private Law Legal Aid
- Review of applications (with applicant meetings where appropriate)
- Decision on application
 - Approval: Issue of certificate (including lawyer details*, terms and conditions and contribution level)
 - Notification to lawyer of appointment (nature of appointment/issue covered, terms and contribution level)
 - Decline:
 - Notification to applicant of refusal to grant certificate (and reason for refusal)
 - Details of process for appealing against decision
 - Details of alternative solutions for client (depending on nature of issue):
 - ✓ Free legal clinics run by firms (covering family, personal injury, etc.)
 - ✓ Personal Injury Clinic (through Jersey Citizens Advice)
 - ✓ Referral to Personal Injury and Medical Negligence Panel
 - ✓ Citizens Advice Jersey Legal Clinic
 - ✓ Details of law firms specialising in key law areas: Personal Injury, Family, Criminal (who are prepared to provide initial assessment of claim/issue).
 - ✓ Community Mediation (via Citizens Advice Jersey) / Family Mediation Jersey / JACS (Employment issues) / Citizens Advice Jersey
 - ✓ Use of Legal Expenses Cover provided through Union Membership, Motor Insurance, Household Insurance (Insurers will direct applicant to law firm for assessment of claim)
- Provision of Litigant in Person Guides and other procedural guides in relation to all types of proceedings in Jersey.

(* in relation to Criminal certificates, details of accredited lawyers will be provided to enable the applicant to make a choice of representation, unless the applicant wishes to be represented by the next lawyer on the rota of accredited specialists).

The Legal Aid Office will be supported by an interactive website which will assist applicants, particularly in providing an initial assessment of eligibility for Legal Aid and, for ineligible applicants, provide effective signposting to the alternative solutions available.

Application Process

- A clear and transparent applications process will be implemented in relation to Private Law Legal Aid, supported by the operation of a Legal Aid Clinic, at which, in conjunction with applicants, consideration will be given to:
 - Alternative sources of funding of legal services e.g. insurance policies, union membership, obviating the need for legal aid;
 - Alternative sources of dispute or issue resolution e.g. Petty Debts Court, Community or Family Mediation;
 - Procedural guidance (e.g. re Divorce process) where legal representation is not needed or appropriate.
 - Criteria Based Assessment of Eligibility
 - Residency (private law matters only)
 - Financial
 - Area of Law / Nature of Criminal Offence
- Confirmation of eligibility and issue of certificate or signposting of alternative sources of legal representation or assistance and/or provision of procedural guidance as appropriate.
- A separate applications process will be implemented in relation to Public Law Legal Aid, providing for prompt allocation of representation in Public Law Children and Mental Health matters (where no qualifying criteria applies). Attendance of applicants at a Legal Aid Clinic is not required.
- Eligibility for Criminal Legal Aid will generally be considered based on assessment of a bespoke application form, detailing financial circumstances (except for Youth Court matters) and the nature of criminal offence. Attendance at a Legal Aid Clinic will not generally be required, other than in specific cases where evidence of eligibility needs to be explored.
- Confirmation of eligibility and issue of certificate or signposting of alternative sources of legal representation or assistance and/or provision of procedural guidance as appropriate.
- Details of accredited practitioners provided to successful applicants to enable them to choose their lawyer (subject to availability and absence of conflicts). Where an applicant does not wish to choose their lawyer, allocation will be made on a rota basis (subject to availability and absence of conflicts).

Funding administration

The Legal Aid Office will be responsible (on behalf of the Judicial Greffier) for the approval and administration of funding payment of fixed/tariff fees to practitioners for the following activities:

- Public Law Children proceedings
- Mental Health Review Tribunal appeals
- Criminal proceedings (in the Youth Court, the Magistrate's Court (in eligible cases) and the Royal Court).

All the above payments will be on a fixed fee or tariff basis.

Administration of Duty Lawyer and Duty Advocate Schemes

The Legal Aid Office will administer the rota for the Duty Advocate and Duty Lawyer schemes and the funding payments associated with this activity.

The Duty Advocate (Citizens Advice) is a separate scheme. Credits will be allocated on an agreed basis for the provision of assistance at the Citizens Advice Clinic. Credits can be utilised against the allocation of Private Law Legal Aid Certificates.

Benefits of Centralisation

The benefits of centralisation include:

- Independent interpretation of Legal Aid Guidelines
- Improved accountability, ensuring fairness to applicants
- Consistency of approach
- Reduction in conflicts of interest
- Effective signposting of alternative solutions where applicant or area of law ineligible for Legal Aid
- Gateway for provision of procedural advice (e.g. Litigant in Person Guide, Family Law Procedures)
- Effective administration of funding arrangements for Children Law Proceedings, Mental Health representation and Criminal Proceedings
- Administration of Duty Lawyer and Duty Advocate schedules
- Single point of contact for legal assistance and information
- Improvement in public confidence.

Public Legal Aid – Application of Fees in Criminal Matters

Duty Lawyer Scheme**1. PHQ / Customs and all similar interviews (under caution):**

(a)	A flat fee to be paid for each day (9am – 5pm) that the duty lawyer is on call. If the duty advocate is required to attend, this allowance to be subsumed within the visit flat fee but not otherwise.	Flat fee £50
(b)	During normal business hours, i.e. 9am - 5pm, a fixed fee is paid for each visit where attendance is required.	Flat fee £200
(c)	A flat fee to be paid for each evening (5pm – 11pm) that the duty lawyer is on call. If the duty advocate is required to attend, this allowance to be subsumed within the visit flat fee but not otherwise.	Flat fee £50
(d)	Outside normal office hours, a fixed fee paid for each visit where attendance is required.	Flat fee £400
(e)	A flat fee to be paid for each weekend day (7am – 11pm) that the duty lawyer is on call. If the duty advocate is required to attend, this allowance to be subsumed within the visit flat fee but not otherwise.	Flat fee £100
(f)	At weekends (Saturday and Sunday), a fixed fee paid for each visit where attendance is required.	Flat fee £400

Duty Advocate Scheme

The Duty Advocate Scheme is restricted to a first appearance before the Court only.

2. Magistrate's Court and Youth Court Work

(a)	Duty Advocate (irrespective of time spent) per duty	Flat fee £400
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Magistrate's Court or Youth Court Representation

(a)	Flat fee (irrespective of time spent)	£1200
(b)	Uplift where a matter proceeds to trial in Magistrate's or Youth Court	£1200

Appeals against Magistrate's Court or Youth Court decisions to the Royal Court

		<u>Flat fee</u>
(a)	Appeal on point of law (case stated)	£1000
(b)	Appeal against conviction only	£1000
(c)	Appeal against conviction and sentence	£1500
(d)	Appeal against sentence only	£750

Where an appeal is abandoned prior to a hearing, in respect of any basis of appeal, a flat fee of £500 will apply.

Applications under Article 5(5) of the Sex Offences (Jersey) Law 2010

(a)	Application to the Magistrate's Court for removal from notification requirements	Flat fee £750
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3. Royal Court casesGuilty Pleas

		Indicative time	Fixed fee per stage (irrespective of time spent)
(a)	Receive and discuss committal bundle with defendant and attend indictment hearing	3 hours	£500
(b)	Prepare for sentencing hearing (including deportation and/or confiscation hearings)	4 hours	£660
(c)	Attend sentencing hearing	2 hours	£330
(d)	Advice on appeal against sentence	1 hour	£165
	Total	10 hours	£1655

Not Guilty Pleas

		Indicative time	Fixed fee per stage (irrespective of time spent)
(a)	Receive and discuss case papers with defendant and attend indictment hearing	6 hours	£1000
(b)	Take detailed instructions from defendant as to his defence and consider all issues involved in conducting case including gathering of evidence and the appointment of any experts. Draft defence case statement	10 hours	£1650
(c)	General preparation of defence case for plea and directions hearing	3 hours	£500
(d)	Attendance at plea and directions hearing	2 hours	£330
(e)	Further preparation for trial (e.g. statements/bundles etc.) (2 days preparation to be allowed for every 1 day of trial in any event)	14 hours	£2350
(f)	Attendance at trial (per day)	7 hours	£1175
(g)	Preparing for sentencing hearing (including deportation and/or confiscation hearings) and attending thereon. Any divergence from the above to be dealt with as for guilty pleas above	6 hours	£1000
(h)	If the defendant is convicted, providing an opinion on the merits of an appeal	1 hour	£165
	Total	49 hours	£8170

The above bands take no account of bail applications or the occasional need for a Newton hearing. It is proposed that these will be subject to the following fixed fees:

	Indicative time	Fixed fee per stage (irrespective of time spent)
Bail application (taking instructions and attending hearing)	2 hours	£330
Newton hearing (taking instructions and attending)	6 hours	£1000

Claims on the Legal Aid Vote for disbursements in criminal matters remain unchanged. In the event that a defendant (who is legally aided) is acquitted, there shall be no entitlement to additional costs or fees.

4. Criminal Appeal cases (Sentence only) (Superior Number and Court of Appeal)

		Indicative time	Fixed fee per stage (irrespective of time spent)
(a)	Considering grounds for appeal and discussing same with client. Preparing and filing notice of appeal	3 hours	£500
(b)	Preparing appeal contentions and filing same together with necessary bundles	8 hours	£1340
(c)	Preparation for appeal hearing	6 hours	£1000
(d)	Attendance at appeal hearing	3 hours	£500
	Total	20 hours	£3340

An appeal against conviction and sentence is almost always much more demanding than one just against sentence and for the sake of simplicity it is suggested that the tariff for such appeals should be double for that for sentence only so £6,680 based on 40 hours or such lesser time as actually is spent.

5. Applications under Article 5(5) of the Sex Offences (Jersey) Law 2010

(a)	Application to the Royal Court for removal from notification requirements	Flat fee £1000
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Exceptional case funding

Discretion is held by the Judicial Greffier to agree funding over and above the standard fee/tariff rates in respect of exceptional/highly complex matters. Eligibility for, and the level of, additional funding will be determined in all instances by the Judicial Greffier, whose decision is final.