



LEGAL AID SCHEME

Introduction

Following an extensive review, undertaken as part of the Chief Minister’s Access to Justice Review, changes are to be made to the system of Legal Aid in Jersey to ensure that access to justice continues to be made available, in key areas of personal law, to the most vulnerable members of the local community.

The current scheme, which is run by the legal profession in Jersey, for the benefit of the people of Jersey, will be replaced by a statutory scheme, administered through a formal arrangement between the Law Society of Jersey and the Judicial Greffe.

The new scheme will take effect from 1 July 2018, subject to implementation of the underlying primary legislation.

Key Principles

- Maintenance of an effective and sustainable Legal Aid Scheme which provides a ‘safety net’ of legal representation to the most vulnerable members of our community who might otherwise be deprived of access to justice.
- The establishment of an effective partnership between the Government of Jersey and the Legal Profession in Jersey to ensure that solutions are provided to meet the legal needs of the most vulnerable members of the community.
- Preservation of access to justice for the people of Jersey.
- Effective discharge, by the States of Jersey, of their human rights obligations in relation to access to justice.

Review of Scheme

- A comprehensive review of Legal Aid has been undertaken by the Law Society of Jersey, including a public consultation undertaken with the assistance of Citizen’s Advice Jersey and the Jersey Consumer Council, as part of the Chief Minister’s Access to Justice Review.
- The purpose of that review was to develop a sustainable Legal Aid model that is fit for the future, and ensures access to justice for those most in need and who cannot afford the full costs of legal representation.
- Key stakeholders, including Government, the Judiciary, the Law Officers’ Department and representatives from consumer groups including the Jersey Consumer Council and Citizens Advice Jersey, have been consulted during the course of the review and have been actively engaged in the development of a revised Legal Aid scheme.



Legal Aid Scheme: Key Features

- The Legal Aid Scheme has been simplified, enabling applicants to determine quickly whether the area of law or criminal offence for which they have a legal need is eligible for assistance and whether they qualify for free or reduced cost legal representation.
- Legal aid continues to be predicated upon the general presumption that, prior to consideration of an application for legal aid, applicants must first investigate whether they have any other means of funding their legal expenses under insurance policies (legal expenses, motor or home insurance policies) or membership of a professional association or trades union.
- The Legal Aid Scheme will be administered by a Legal Aid Administrator (unconnected to a law firm), who will be under the day-to-day supervision of the Law Society, but subject to the ultimate oversight of the Judicial Greffe. Administration will be governed by an entrustment agreement between the Law Society and the Judicial Greffier. In addition to administering the scheme, the Administrator 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. The Legal Aid Office will, additionally, administer funding payments in eligible Public Law matters.
- Other than in respect of applications in respect of Criminal proceedings, the application process will include consideration, in conjunction with the applicant, of alternative means of resolving issues that do not require legal representation, even where an individual is eligible for free or reduced cost legal aid.
- Legal Aid will be categorised as either Public Law or Private Law.
 - Public Law covers Criminal, Human Rights, Public Law Children and Mental Health matters.
 - Private Law covers Family and Civil matters.
- All Legal Aid applications (other than in respect of Youth Court, Public Children Law Proceedings and Mental Health Review Tribunal Representation) will be subject to the application of eligibility criteria:
 - Public Law (Criminal) – Financial (means test)* and Nature of Criminal Offence
 - Public Law (Human Rights) – Financial (means test)* and Nature/Merits of Claim
 - Private Law – Financial (means test)*, Residency and Area of Law[* other than where the applicant is in receipt of Income Support]
- Applications for Legal Aid in respect of Human Rights claims and matters will be assessed to determine whether the claim represents a legitimate human rights claim or entitlement, and the merits of such a claim, such as to warrant the issue of a Legal Aid certificate. Limited certificates may be issued to enable the merits of a claim to be assessed before a claim proceeds. No residency test will be applied.



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- Personal contributions may be levied in respect of Public and Private Law Legal Aid Certificates, dependent upon an applicant's level of income and financial circumstances. Where personal contributions are applicable, applicants must be given the opportunity to pay these contributions monthly, in accordance with a set scale.
- No personal contributions will be levied in relation to representation in the Youth Court or in respect of Public Law Children and Mental Health matters. Personal contributions are not required in relation to public law matters where the applicant is in receipt of Income Support.
- Legal representation in Public Law matters (Criminal, Human Rights, Public Law Children and Mental Health) will be provided by accredited specialist panels. Representation will be funded, through the Judicial Greffe, on a fixed fee/tariff basis.
- Legal representation in Private Law matters (Family and Civil) will be undertaken as hitherto, on a rota basis. Representation will not be funded but will be subject to individual contributions, in accordance with means. Entitlement to free or reduced cost representation in private law matters is subject to eligibility criteria being met.
- The Duty Advocate (Magistrate's Court) and Duty Lawyer (Police Headquarters / Customs Advisory Service) Schemes will be retained, resourced by members of the Accredited Criminal Panel, on an agreed tariff/fee basis.
- Public Law Legal Aid activity will be undertaken in all cases by specialists who have been accredited under the relevant Accreditation Scheme, overseen by the Law Society of Jersey in partnership with the Judicial Greffe.
- Practitioners who are no longer required to undertake Legal Aid (having completed 15 years' post qualification service in Jersey) will be eligible to undertake Public Law work, subject to being formally accredited under the relevant scheme.
- Allocation of Public Law Legal Aid Certificates in relation to Public Law Children and Mental Health representation will continue to be on a rota basis (administered by the Legal Aid Office) from amongst panel members. Certificates in eligible Human Rights matters will, wherever possible, be allocated to a human rights specialist lawyer in line with the circumstances and needs of the individual case, but will otherwise be allocated on a rota basis. It is further intended to enable parents and principal carers in Public Law Children matters to have a choice of representation, subject to availability and absence of any conflicts, from the accredited specialist panel of lawyers.
- Applicants who are granted Public Legal Aid Certificates in relation to Criminal matters will be able to select a lawyer from a Panel of Accredited Criminal Specialists (subject to the lawyer being available to represent the applicant and not subject to a conflict). Applicants who do not wish to choose a lawyer can elect to be represented by the next lawyer on the rota of accredited specialists. The operation of the rota will ensure that no applicant will be unable to secure representation.



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- Accredited practitioners will be able to opt in to the relevant Public Law Panel (Criminal, Human Rights, Public Law Children, Mental Health).
- Practitioners of less than 15 years' standing will continue to be obliged to discharge their obligation to undertake Private Law Legal Aid work; Public Law Legal Aid work will, going forward, effectively fall outside the scope of the Legal Aid obligation. Such work will, however, be discharged by specialist and accredited practitioners on a funded basis as part of a partnership approach between the legal profession and the States of Jersey.
- Appeals against decisions made by the Legal Aid Office (to refuse, limit the scope of, or withdraw legal aid certificates) will be considered by a panel chaired by the Bâtonnier, 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.



PUBLIC LAW

Eligibility Criteria

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

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

Applicants for a representation in respect of an eligible criminal offence must be able to demonstrate that they meet the financial test to qualify. Financial eligibility does not apply in relation to criminal matters in the Youth Court or in relation to Public Law Children or Mental Health and Capacity representation. Applicants who are in receipt of Income Support are deemed to have met the financial eligibility test.

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

Nature of Public Law Matter/Criminal Offence

ELIGIBLE

Children Law

- All Children Law proceedings brought by the Minister under the Children Law 2005
- Child abductions including applications under the Hague Convention

Mental Health

- Representation in appeals to the Mental Health Review Tribunal under the Mental Health and Capacity Laws

Human Rights

- Asylum and Immigration Exceptional cases where there is a human rights entitlement to legal representation

Criminal

- All criminal matters in the Royal Court.
- All criminal matters* in the Magistrate's Court (other than minor offences and minor motor-related offences).
- All criminal matters in the Youth Court **

* Limited to offences for which the sentencing guidelines indicate a fine with a starting point above Level 2 on the Standard Scale of Fines (in accordance with the Criminal Justice (Standard Scale of Fines) (Jersey) Law 1993) or there is a risk of a custodial sentence on



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conviction. (e.g. an offence where the starting point is at or below Level 2 on the Standard Scale, currently £1000, would not be eligible under Legal Aid.) The guidelines may provide for the inclusion of offences which, despite the penalty, involve serious damage to reputation or serious consequences e.g. loss of employment.

** 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 in all cases where a matter cannot be concluded during a first appearance, an application for Legal Aid has been made and approved prior to such first appearance or a defendant elects to be represented.

NOT ELIGIBLE

Criminal

- Minor criminal offences (where current sentencing guidelines indicate a fine with a starting point no higher than Level 2 on the Standard Scale of Fines or where there is no risk of a custodial sentence)
- Minor motor-related offences (where current sentencing guidelines indicate a fine with a starting point no higher than Level 2 on the Standard Scale of Fines or where there is no risk of a custodial sentence)



PRIVATE LAW

Eligibility Criteria

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

1. Area of Law
2. Residency
3. Financial

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 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.

Area of Law

ELIGIBLE

Family claims and proceedings

- Ancillary relief claims where there are dependent children**
- Child maintenance (including Schedule 1 claims) under Matrimonial Causes (Jersey) Law 1949 or the Children (Jersey) Law 2002
- Child maintenance claims where the applicant is on income support and has no other capital assets and no other income ++
- 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 (but the parties must have attended mediation except where there are reasonable grounds to suspect that mediation would not be appropriate due to domestic abuse)
- Injunctions, ex parte orders and ex-parte injunctions within the family law context where no criminal sanctions are being pursued by the police.
- Appeals in family proceedings (where a Legal Aid certificate has been granted), subject to a favourable second 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



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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 the age of 16 or in full-time education (until the end of a first degree only).

++ Such claims are outside the scope of Legal Aid and will be subject to separate arrangements being implemented with Social Security to process claims where there is a realistic prospect of success.

Civil Claims and proceedings

- Contractual disputes
- Actions in tort
- Professional negligence claims (other than in relation to medical negligence which is dealt with separately)
- Bankruptcy/en Désastre (in relation to personal assets and where supported by the Viscount)
- Remise de bien proceedings
- Eviction proceedings
- Personal injury claims^^
- Medical negligence claims^^
- Appeals in civil proceedings (where a Legal Aid certificate has been granted), subject to a favourable second opinion.

^^ Potential personal injury and medical negligence claimants must have had their claim assessed by a member of the Law Society Personal Injury and Medical Negligence Review Panel (referred on by the Legal Aid Office). Where a negative opinion on the prospects of success of the claim is given, an individual may apply for a second opinion under Private Legal Aid, subject to financial and residency criteria being met. Claims will not be considered under Private Legal Aid until and unless the above assessment by a member of the Panel has been undertaken.

NOT ELIGIBLE

Family

- Adoptions (other than freeing for adoption proceedings being undertaken as part of Public Law Children proceedings)
- Ancillary relief claims where there are no dependent children**
- Divorce / judicial separation/ Civil partnership dissolution / nullity proceedings where there are no dependent children**
- Enforcement of maintenance orders
- Injunctions within the family law context where there are criminal sanctions
- Legitimacy (Jersey) Law as amended – all claims (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)
- Separation and Maintenance proceedings under the 1953 law



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** 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 the age of 16 or in full-time education (until the end of a first degree only).

Civil

- All appeals save where the case involves a substantive question of law and a Jersey qualified lawyer has provided a positive opinion on the merits
- Corporate and Business matters
- Curatorships
- Conveyancing / Property / Boundary Disputes / Voisinage
- Deed polls
- Defamation / Libel / Slander
- Debt related issues
- Discrimination law (including claims at the Employment and Discrimination Tribunal)
- Employment law (including claims at the Employment and Discrimination Tribunal)
- Planning disputes
- Powers of attorney
- Probate
- Succession planning (wills)
- Taxation issues (including disputes with Comptroller of Taxes)
- Tribunal issues whatever the nature of such tribunal (Discrimination, Employment, Social Security, Housing, Motor Insurance Bureau, Criminal Injuries Compensation Board or any other type of tribunal) including any appeals^{^^^}
- Tutelles
- Wills (the making of wills or associated activity)
- Notwithstanding the above all or any other non-contentious matters

^{^^^} Excludes appeals to the Mental Health Review Tribunal which, under the Public Law Legal Aid Scheme, are eligible for legal representation.



Financial

To pass the Financial Eligibility Test, applicants must (1) have capital* with a value no greater than **£15,000** and (2) gross household income[^] of less than **£35,000**. The income test will only be applied where the capital test is passed. Legal aid will not be granted where the capital and income thresholds are exceeded. Applicants who are in receipt of Income Support are deemed to have met the financial eligibility test.

(*property, savings, investments or a financial interest in any asset, including the equity in any property, whether in Jersey or elsewhere, other than an exemption of £100,000 of equity in the applicant's principal residence in Jersey, but excluding the capital value of any pensions – see Capital below.)

([^] including pensions, benefits, maintenance and income from any source, including interest, dividends and trust fund income, from any individual within the household, including cohabitants).

Capital

Capital includes the following:

- Cash savings including joint savings;
- The market value of the applicant's principal residence in Jersey, in excess of £100,000, after the deduction of outstanding borrowings, irrespective of whether the property is in sole or joint names;
- Other Property (whether in Jersey or elsewhere) – net value after deduction of outstanding borrowings;
- National Savings certificates, National Savings capital bonds and premium bonds;
- Stocks/shares;
- Share save schemes;
- Share Incentive plans;
- Unit Trusts;
- PEP Investments;
- Fixed term investments
- Timeshares;
- Trust assets or funds;
- 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 valued at 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.



Gross Household Income and Capital

If the applicant is married, in a civil partnership or living with someone (“their partner”) as a couple, their partner’s income and capital assets will be included within the applicant’s gross household income and capital unless:

- (a) They live apart because the relationship is over; or
- (b) There is a conflict of interest between them which is the subject of the application for Legal Aid (e.g. separation or divorce).

Where, in such circumstances, applications for legal aid are received from either or both of the individual parties previously considered part of a household for these purposes and/or the principal residence in Jersey is the subject of, or is a factor in the dispute or proceedings for which legal aid is being sought, the individuals will each be considered as separate applicants. Each party will be assessed on their gross income and capital, in accordance with the defined limits, save that the equity allowance of £100,000 will be split equally between the two parties, irrespective of whether both parties make an application for legal aid.

Personal Contributions

Applicants who are granted Legal Aid in Public Law (Criminal) or Private Law matters with gross household income (as defined above) of no more than £15,000 are not required to contribute towards the cost of their legal representation. Applicants with gross income above £15,000 will be required to make a contribution in accordance with published guidelines.

Personal contributions are not payable in relation to the representation of applicants in the Youth Court, at the Mental Health Review Tribunal or in respect of the representation of children, parents or principal carers in Public Law Children matters. Applicants in public law matters who are in receipt of Income Support are not required to make personal contributions.

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.
- Fee adjudications will ordinarily proceed where requested, subject to provision by the applicant of reasons for the dispute and any supporting evidence.

Financial Hardship

- Where the amount outstanding by way of personal contribution is such that it could cause financial hardship to a legally aided client, then if it is appropriate in all circumstances of the case, the outstanding amount or level of monthly payments shall be reviewed and, where appropriate, reduced to an affordable level.



Residency – Private Law Only

- Private Law Applicants must be ordinarily resident in Jersey for a period of not less than 12 months and be registered with Social Security.

[Applicants will be required to evidence that they meet the residency test].

- Discretion will be held by the Legal Aid Office to waive or reduce the residency requirement in exceptional circumstances, where it is in the interests of justice to do so.

Personal Contributions – Public Law

Applicants who are granted Public Law Legal Aid with gross household income (as defined above) of no more than £15,000 are not required to contribute towards the cost of their legal representation. Applicants with gross household income above £15,000 (except where the applicant is in receipt of Income Support) will be required to make a contribution based on the following scale:

<u>Gross household income (as defined above)</u> <u>Payment</u>	<u>Contribution Level</u>	<u>Monthly</u>
Up to £15,000	NIL	NIL
£15,001 - £20,000	10%	£25
£20,001 - £25,000	25%	£50
£25,001 - £35,000	50%	£100

Legal Aid will not be granted where an applicant's gross household income exceeds £35,000.

The financial liability of an individual involved in criminal proceedings is limited to the above percentage of the fees paid to the lawyer who represents that individual. The contribution percentage and monthly payments 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 income. Applicants may choose to pay more than the stated monthly payments. Changes in a client's income and circumstances may result in a re-assessment of contributions. An individual's final liability will be confirmed at the conclusion of a criminal matter.

For example:

- Fee paid to a representing lawyer in a matter before the Magistrate's Court is £2,400
- Applicant's household income is £24,000
- Contribution level is 25%
- Applicant's liability will be £600, payable at £50 per month (for 12 months).

Where an applicant is acquitted of all charges or a prosecution is abandoned for any reason, no contribution is payable and any payments made will be refunded.



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Applicants are entitled to pay off the balance of their liability at any time. Outstanding fees will be subject to full immediate payment upon receipt of capital or other funds in excess of £15,000.

All fees paid to lawyers are based on a tariff/fee scale, depending on the complexity of the matter and nature of the proceedings (e.g. the fee where a guilty plea is entered in the Magistrate's Court will be much lower than that applicable to a trial in the Royal Court).

Personal Contributions – Private Law

Applicants who are granted Private Law Legal Aid with gross household income (as defined above) of no more than £15,000 are not required to contribute towards the cost of their legal representation. Applicants with gross household income above £15,000 will be required to make a contribution based on the following scale:

<u>Gross household income (as defined above)</u>	<u>Contribution Level</u>	<u>Monthly</u>
<u>Payment</u>		
Up to £15,000	NIL	NIL
£15,001 - £20,000	10%	£25
£20,001 - £25,000	25%	£50
£25,001 - £35,000	50%	£100

Legal Aid will not be granted where an applicant's gross household income exceeds £35,000.

An individual's contribution level 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 income. 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).

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 stated level. 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.

Outstanding fees are, however, subject to full immediate payment upon receipt of capital or other funds in excess of £15,000.

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



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as the charges that apply, based on the personal contribution level determined by the Legal Aid Office.

Where costs reach 75% of the initial estimate and are expected to exceed the initial estimate, a new estimate must be provided.

The percentage levels relate to the applicable Legal Aid rate. For example, if the applicable Legal Aid rate is £190 per hour, and the applicant has gross income of £23,000, the applicable contribution will be £47.50 per hour.

Examples of payments:

- Estimate of fees in a matter (at 100% of the Legal Aid rate) is £10,000
- Applicant has gross household income of £29,000 and so is assessed as being a 50% contributor
- Total liability of applicant is therefore £5,000
- Monthly payments of £100 per month are required from the commencement of a matter, which will be payable for 50 months. Higher monthly payments may be made voluntarily to reduce the payment period.

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 currently as follows:

<u>Fee earner</u>	<u>Hourly rate</u>
Partner	£235
Qualified staff (Advocates, Barristers, Jersey and English Solicitors)	£190
Other staff (Legal Executives, Paralegals and Trainee Lawyers)	£156

Fee estimates 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'.

The financial liability of the applicant will be the appropriate percentage of this amount, based on assessment of gross household income, subject to the recovery provisions in relation to family matters, where assets and/or financial settlement are obtained, and in respect of which the applicant is liable to meet fees at 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:
 - 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 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
 - The advice to a privately funded litigant of moderate means would not be to pursue or defend the claim.
- The pursuit by a legally aided client of frivolous or vexatious claims within the context of family proceedings may additionally result in the withdrawal of entitlement to Legal Aid.
- In exceptional circumstances, the Bâtonnier may appoint a lawyer to an individual who is unable to find a lawyer to represent them in Private Law matters (subject to the provision of supporting documentary evidence). Where such a 'Discretionary' appointments are made, in all circumstances, the applicant will be liable for 100% of the prevailing commercial rate that applies in relation to the appointed lawyer. There is no entitlement to compulsory adjudication of fees in relation to discretionary appointments.
- Individuals granted legal aid may be required to contribute towards the cost of their legal representation, on a sliding scale, depending on their level of income (see 'Personal Contributions').



Legal Aid Credits

- Legal Aid Credits may be allocated by the Legal Aid Office in respect of the following activities:
 - Attendance at Citizens Advice Jersey Legal Clinic (one credit per 2 x 1.5 hour session)
 - Legal representation of, or the provision of advice to, the Law Society of Jersey or the Legal Aid Office or the provision of legal services in any exceptional matters outside the scope of Legal Aid (credit allocation to be determined on a case by case basis by the Committee of the Law Society)
- Existing credits earned by practitioners may be applied against Private Law Legal Aid certificates. Credits are fully transferrable and do not have an expiry date.

Legal Aid Office

- The Legal Aid Scheme will be administered by a Legal Aid Administrator (unconnected to a law firm), who will be under the day-to-day supervision of the Law Society, but subject to the ultimate oversight of the Judicial Greffier. Administration will be governed by an entrustment agreement between the Law Society and the Judicial Greffier. In addition to administering the scheme, the Administrator 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. 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 a panel chaired by the Bâtonnier, 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 client meeting 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)
 - ✓ 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). A panel of lawyers in relation to personal injury/medical negligence claims (potentially on a 'no win no fee' basis will be available).
 - ✓ 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
 - Financial
 - Residency
 - Area of Law
- 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 of 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 Greffe) for the approval and administration of funding payments 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 Fixed 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

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

Where a matter is, or is likely to be committed to the Royal Court (irrespective of plea) a fee of £1200 will be payable in recognition of the work undertaken at the Magistrate's Court. The above fee scale will not apply in such cases.

Where an individual has commenced personal contributions and is acquitted of all charges or a prosecution is, for any reason, abandoned, any costs paid will be refunded.

In the event that a defendant is acquitted, there shall be no entitlement to additional costs. Where a defendant is privately represented and is acquitted or a prosecution is abandoned, cost recovery is limited to the level of the standard fee payable under a Public Law Criminal Legal Aid Certificate.



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

(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.

3. Royal Court cases

Guilty Pleas

(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

All Royal Court matters will have been referred by the Magistrate's Court. The applicable 'committal' fee of £1200 will apply in addition to these fees.

Not Guilty Pleas

(a)	Receive and discuss committal bundle 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.	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 Law Society of Jersey

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

Bail application (taking instructions and attending hearing)	2 hours	£330
Newton hearing (taking instructions and attending)	6 hours	£1000

In the event that a defendant is acquitted, there shall be no entitlement to additional costs. Where a defendant is privately represented and is acquitted or a prosecution is abandoned, cost recovery is limited to the level of the standard fee payable under a Public Law Criminal Legal Aid Certificate.

Claims on the Legal Aid Vote for disbursements remain unchanged.



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

(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.