

GD 2019/0070

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# **Isle of Man Legal Aid Committee Report**

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**2018 – 2019**

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## **Foreword from the Chair of the Legal Aid Committee**

Legal Aid is a vital part of the justice system and we aim to deliver a world class Legal Aid service, which is affordable, sustainable and fair.

We want to make sure that people, who are unable to pay for an Advocate, have access to legal advice and representation when they need it. We consider access to justice to be a fundamental human right. At times when people are most vulnerable, lack of access to justice can have long-term and life changing consequences.

The Legal Aid Committee has, over the last few years, been implementing a range of improvements to the current Legal Aid system and has been exploring whether major strategic change could further enhance access to justice. The Legal Aid Office is assisting the Attorney General's Chambers with the access to justice review. This is a broad review of Criminal & Civil Legal Aid which started in 2018, and it includes consideration of additional and alternative models such as a Public Defender Scheme and Legal Advice Centres. We are also focusing on mediation as an alternative means of resolving legal disputes, as early intervention, particularly in family law disputes, can minimise the possibility of protracted Court cases and may result in better outcomes for families.

This year we've made significant progress on practical measures which will help to improve the Legal Aid service. The Legal Aid team has moved from Murray House into Markwell House to be better integrated with the Treasury. We are working towards an efficient, paper free system and started to record more data about cases and expenditure in order to better inform policy development. The service is ensuring compliance with the General Data Protection Regulation (GDPR) and updating Legal Aid records management policies and procedures.

Last year saw the retirement of the Legal Aid Certifying Officer, Mrs Wendy Montgomerie, who had carried out the role for 16 years. We thank her for the work she did to develop and guide the service, and wish her the very best for her retirement. We welcomed a new full-time Certifying Officer, Chrissie Hunt, in January 2019. There is also now a full strength administrative team in place to support the Legal Aid Certifying Officer.

Looking ahead, we see digitisation as an important element in continuing to make the service more efficient. We have plans to carry out a review of the legislation and regulations which determine Legal Aid to ensure that Legal Aid can develop in ways which best serve those who need it and that its operation reflects and is relevant to changing circumstances. The Committee will continue to work in collaboration with the Law Society, the Attorney General's Chambers, and other key public, private and voluntary organisations to improve the quality of Legal Aid services in the Isle of Man.

The Legal Aid service is publicly funded and should be open to review in order to fully understand whether any changes should be made to support the principles of

access to justice, fairness, quality of service and value for money. We hope that by publishing our data in this report we are enabling our partners, customers and other stakeholders to become more fully informed and work towards our shared goal to ensure that the Island's model of Legal Aid is as efficient, effective, equitable and sustainable as possible.

As I come to the end of my term of office as Chair I would like to thank my fellow Committee members and the officers of the Legal Aid service for their hard work, ideas, dedication, and commitment in this important area of public service and particularly for their continued support throughout changing and challenging times.

**Andrew Swithinbank**

**Chairman, Legal Aid Committee**

[www.gov.im/legalaidcommittee](http://www.gov.im/legalaidcommittee)

6 May 2019

## 1. Overview

The Isle of Man Government spends over £3 million a year on Legal Aid for criminal and civil matters.

This funds:

- the Duty Advocate service for the police station and Courts
- advice and assistance under the Legal Advice and Assistance Regulations (Green Form)
- Civil Legal Aid for family and non-family matters; and
- Criminal Legal Aid

Legal Aid funds the Advocates costs, the costs of specialist reports that are required for a case such as psychiatric and forensic reports, other services such as mediation and interpreting, and Court fees.

## 2. The Legal Aid Committee

The Legal Aid Committee ('the Committee') is a body established under Section 23 of the Legal Aid Act 1986. Their mission statement is 'to promote access to justice in a manner which is fair, equitable, transparent and professional and which uses public resources carefully and effectively'.

The Committee's remit is to:

- set the strategic direction and to determine policy which shapes the development of the provision of Legal Aid in the Isle of Man
- overview its effective delivery
- review, as necessary, the actions of the Legal Aid Certifying Officer and their Deputy

Members of the Committee are appointed by the Appointments Commission for a period of three years, and receive attendance allowances. For the current membership of the Committee see [www.gov.im/legalaidcommittee](http://www.gov.im/legalaidcommittee).

### **Membership of the Committee for the period covered by this report:**

- Andrew Swithinbank (Chair) – two terms completed 7 May 2013 – 7 May 2019
- David Trace (Vice Chair) - appointed 1 October 2015, reappointed 1 October 2018
- Jane O'Rourke - appointed 31 July 2015, reappointed 31 July 2018
- Margaret Mansfield - appointed 1 March 2017
- Tony Jones – appointed 8 January 2014, reappointed 8 January 2017
- Tony Warham - appointed 8 January 2014, reappointed 8 January 2017
- Steph Lowe – one term completed 7 May 2016 – 7 May 2019

Administrative support for the Committee and budgets for all aspects of Legal Aid are provided by the Treasury, with the exception of cost assessments and eligibility for Criminal Legal Aid, which are managed by the General Registry.

### 3. Legal Aid Certifying Officer

The Certifying Officer ensures that public money is spent fairly and effectively on Legal Aid. They are appointed by the Legal Aid Committee and supported by an administrative team from the Treasury.

The Certifying Officer reviews applications for Civil Legal Aid and makes decisions on awarding legal aid by applying the legal merits test – that is ‘would a fee paying client of modest means take the same course of action’. The Certifying Officer is responsible for issuing certificates, approving payments to advocates for expert reports, approving extensions and refusing or revoking legal aid.

The Certifying Officer also assists and advises the Legal Aid Committee with policy development and changes to Legal Aid.

### 4. Legal Aid Panel

The Panel is the list of Advocates who have indicated that they are willing to represent people who are legally aided, and which types of matters they are able to take.

You can see the current Panel of Advocates online at [www.gov.im/legalaidpanel](http://www.gov.im/legalaidpanel). Find out more about the Advocates online at [www.iomlawsociety.co.im/advocates-database](http://www.iomlawsociety.co.im/advocates-database).

There were 61 Advocates, from 24 firms, on the Panel of Advocates during 2018/19. Two Advocates joined the Panel during this period. Advocates are paid a Legal Aid hourly rate of £115 for junior Advocates and £135 for senior Advocates.

Table 1: Types of matters that Panel Advocates are willing to represent legally aided clients on

<b>Prepared to act for:</b>	<b>Number of advocates</b>
Breach of Contract	46
Possession	45
Family matters	45
Matrimonial	39
Debt	38
Medical negligence	38
Personal injury	38
Criminal	36

Criminal Green Form	34
Human rights	31

## 5. Total costs over the last 5 years – summary

The cost of civil and criminal Legal Aid cases over the last five years is shown in the table below.

Table 2: total spend on Legal Aid cases in the last five years

	2014/15	2015/16	2016/17	2017/18	2018/19
Civil non family	£400,163	£313,448	£309,268	£280,165	£239,861
Civil family	£1,098,180	£1,173,914	£1,209,330	£1,415,684	£993,568
Criminal	£2,249,584	£2,217,500	£1,673,310	£2,033,342	£2,442,549

The total spend in Table 3 below includes the legal aid costs from Table 2, plus administration costs and committee expenses, recovered costs, contributions from assisted persons, funds from reserves, reimbursements and costs recovered.

This also includes any amounts claimed from the Legal Costs Reserve Fund so the total may be lower than the sum of the rows above. Legal Aid expenditure is not capped or restricted, however it is strictly monitored and controlled as Legal Aid is publicly funded.

Table 3: total Legal Aid spend

	2014/15	2015/16	2016/17	2017/18	2018/19
<b>Total figure as reported in the IOM Government detailed accounts *</b>	£3,611,292	£2,350,498	£2,248,745	£3,409,707	£3,789,990

Above the 'free' limit there is a sliding scale of contributions that a legally aided person is required to pay. This depends on their income and is determined following a financial assessment of their income and outgoings.

Recovered costs are the costs recovered from the opponent when they are ordered by the Court to pay costs.

Table 3: income to the Legal Aid fund through recovered costs and contributions

	2014/15	2015/16	2016/17	2017/18	2018/19
Contributions from assisted persons	£96,791	£75,192	£62,384	£103,227	£82,972
Recovered costs	£131,558	£76,492	£175,310	£116,338	£71,295
<b>Total income to Legal Aid Fund from contributions &amp; recovered costs</b>	<b>£228,349</b>	<b>£151,684</b>	<b>£237,694</b>	<b>£219,565</b>	<b>£154,267</b>

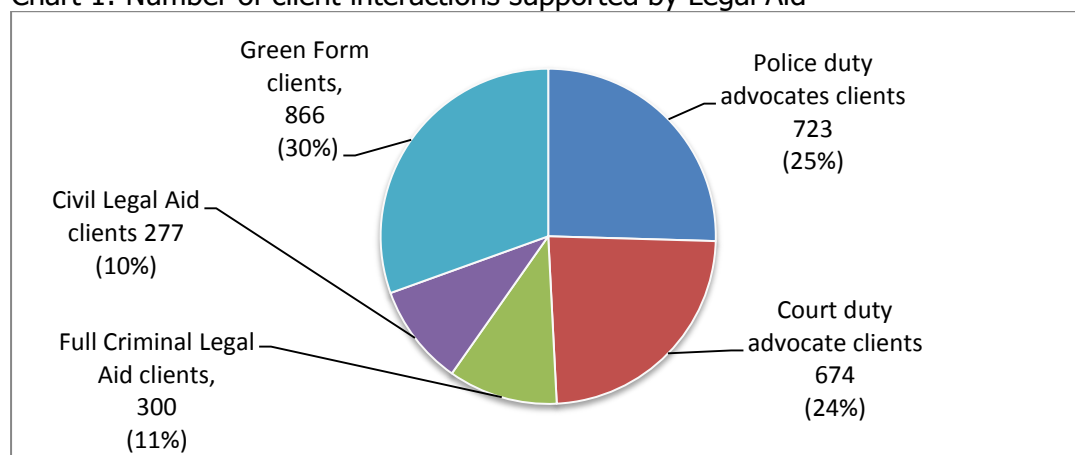
## 6. Total spend in 2018/19

Total spend in 2018/19 was £3,789,990.

- £1,233,429 for Civil Legal Aid which includes Green Form for family and non-family matters and full Civil Legal Aid matters, and includes irrecoverable VAT.
- £2,442,549 for Criminal Legal Aid which includes the Duty Advocate schemes at the Court and police station, criminal Green Forms and full Criminal Legal Aid and irrecoverable VAT. Over 50% of Legal Aid expenditure was on Criminal Legal Aid.
- £154,267 was recorded as income in 2018/19 for recovered costs and contributions made by assisted persons towards their Legal Aid.
- The remaining costs include salaries, national insurance and superannuation, plus general office expenses and Committee expenses for attending meetings.

This funded 2,640 client interactions. Some people have accessed more than one part of the service or used it for more than one case, so this cannot be taken as the number of individuals using Legal Aid.

Chart 1: Number of client interactions supported by Legal Aid



## 7. Green Form – Legal Advice and Assistance

Under the Legal Advice and Assistance Regulations 1997, commonly known as the 'Green Form', people can receive up to 3 hours legal advice, or up to 4 hours in the case of a divorce. This must be applied for by an Advocate on their client's behalf.

In 2018/19, we received 866 Green Form applications from Advocates:

- 100 (11%) criminal
- 518 (60%) family
- 248 (29%) non-family

During this financial year, the matters Green Forms have most frequently been used for are child contact and maintenance, divorce and financial matters, and wills.



The Green Form is only submitted once all work is complete and the matter is either resolved or an application is submitted for a full Legal Aid certificate. Advice given under a Green Form may, with the Legal Aid Certifying Officer's prior approval, be extended from the initial 3-4 hours to a maximum of an additional 6 hours. During the year, 73 extensions were approved.

Table 4: Spend on Advice and Assistance (Green Form)

Type	Green Form costs	VAT disbursements	Non-VAT disbursements	Total
Family	£160,070	£437	£16,620	<b>£177,127</b>
Non-family	£61,591	£10	£1,770	<b>£63,371</b>
Criminal	£41,577	£74	£215	<b>£41,866</b>
<b>Total</b>	<b>£263,238</b>	<b>£521</b>	<b>£18,605</b>	<b>£282,364</b>

Note that the information on expenditure shows payments authorised during the financial year and not necessarily the payment for work undertaken in the year. Due to the timing of the submission of forms, the number received does not correlate to the amount paid, and the work paid for may not have been carried out in the financial year that bills were submitted.

## 7. Civil Legal Aid

In 2018/19 the Legal Aid office received 276 Civil Legal Aid applications from Advocates. Around 75% of the applications received came from four firms. The remaining 25% were from a further 15 firms.

210 Civil Legal Aid applications received in 2018/19 were for family matters (76%). In a number of cases, Legal Aid funds both parties e.g. a divorce application.

66 applications (24%) were for non-family matters.

During 2018/19:

- 265 Certificates were issued (243 of which the applications were received in 2018/19)
- 290 Certificates were discharged

The number of applications received and the number of Certificates issued in a year can differ due to applications being refused, returned if they are incomplete, or abandoned by the applicant.

Of the 276 applications received in 2018/19:

- 178 Certificates were issued and the cases are ongoing
- 54 of these cases were completed and paid within the same financial year
- 18 were not awarded Legal Aid
- 20 were abandoned by the applicant
- 1 was discharged as the applicant was deceased
- 2 were discharged as the applicant no longer qualified financially
- 3 were discharged for unreasonable behaviour

£1,233,429 was spent on Civil Legal Aid:

- £993,568 was spent on family matters. This includes Green Form at £177,127 and £160,840 irrecoverable VAT.
- £239,861 was spent on non-family matters. This includes Green Form at £63,371, and irrecoverable VAT at £35,725.56.

The Legal Aid office received 174 Bills of Costs from Advocates. The costs of Legal Aid cases reported here reflect the expenditure authorised during the year, which means that the figures may include the costs of work carried out in an earlier financial year.

At present, expenditure authorised during the year, and the number of matters completed cannot be compared to extract meaningful data about spend on the specific cases completed during a year. Spend on Legal Aid is not equivalent to providers profits or earnings.

Chart 2: Family

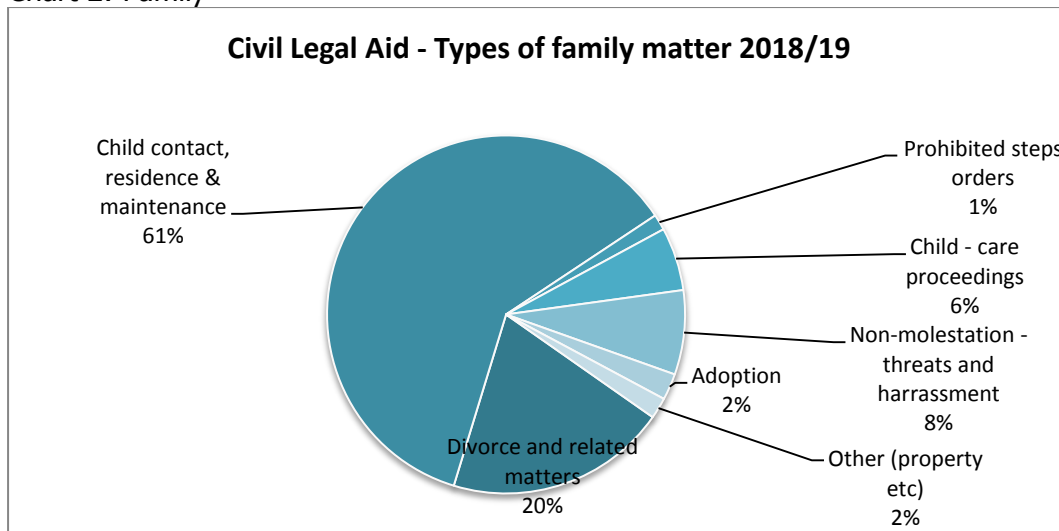
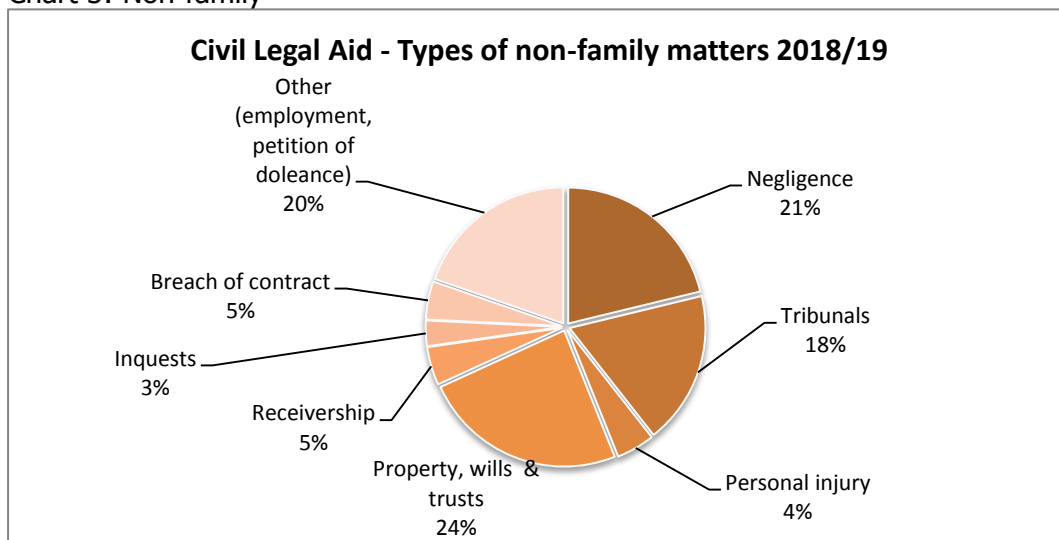


Chart 3: Non-family



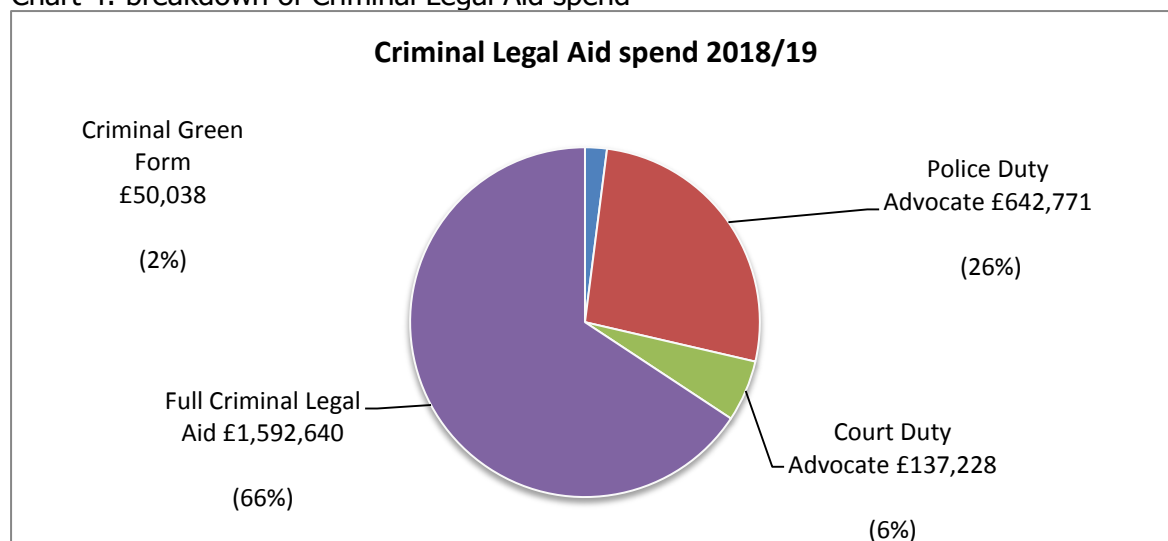
## Very high cost cases

Very high cost cases are generally complex cases that incur spend of over £20,000. Six large civil cases accounted for around 20% of total Civil Legal Aid expenditure, at a combined total cost of £136,279. One of these cases only incurred costs of £10,000 in 2018/19 but has been included as the total cost of the case reached over £35,000. When spend incurred outside financial year 2018/19 is included, the total cost of these large cases is £165,786. These cases were care proceedings, divorce matters and breach of contract/ damages.

## 8. Criminal Legal Aid

£2,442,549 was spent on Criminal Legal Aid in total across the four schemes. This includes irrecoverable VAT of £354,563. Irrecoverable VAT applies to criminal Legal Aid, Green Form and Police Duty Advocate, but not to the Court Duty Advocate scheme.

Chart 4: breakdown of Criminal Legal Aid spend



### 8.1 Duty Advocates

The daytime police station rota and Court rotas are organised by the Law Society.

#### Court

Not all defendants are in a position to instruct Advocates to appear for them when they are prosecuted. Court Duty Advocates attend Summary Court to provide representation to defendants who would otherwise have no representation at their appearances in Court.

As at the end of March 2019 there were 20 Advocates on the Court Duty Advocate rota providing this emergency service.

Advocates saw 674 clients at Court during the year. This amounted to over 846 hours at a cost of £137,228. VAT on Advocate's bills paid by Government is recoverable under this scheme.

## Police

The Police Custody Scheme is a Statutory scheme [Duty Advocate (Police Custody) Scheme 1998]. Police Duty Advocates attend the police stations to advise detained persons, and are on-call 24 hours a day, 365 days a year. The scheme's 'on call' hours are 7am-7pm during the working week and at weekends and bank holidays, and the out of hours scheme is 7pm-7am every day. There is additional cover by senior Advocates covering more serious crimes e.g. rape and murder, to support the 'on call' Duty Advocate.

As at the end of March 2019 there were 23 Advocates on the police station Duty Advocate rota providing this service, so that people who are taken to the police station can get quick access to legal advice. The service automatically provides free representation to persons who might not otherwise know how to go about this, regardless of their means.

Duty Advocates spent a total of almost 3,000 hours with 723 detained persons at the police station during 2018/19.

This was funded by Legal Aid, costing £642,771 (including £105,584 irrecoverable VAT).

## 8.2 Full Criminal Legal Aid

23 Advocates at 14 firms carried out Criminal Legal Aid work during the year under a full Criminal Legal Aid Certificate. Legal Aid paid £1,592,640 (including VAT where applicable).

Table 5: Full Criminal Legal Aid spend (Bills of Costs including disbursements)

	Costs	Disbursement (VAT)	Disbursement (non-VAT)	Irrecoverable VAT (apportioned)	Total
<b>Full Criminal Legal Aid</b>	£1,225,165	£54,307	£72,362	£240,806	£1,592,640

Disbursements refer to payments made to other parties. The most common disbursements requested are for psychiatric and medical reports, interpreters, transcription and forensic analysis.

Disbursements may be paid before the final bills is submitted so not all the spend will necessarily have been incurred in 2018/19.

400 interim and final Bills of Costs were received in 2018/19 for 294 cases.

### **Very high cost cases**

Very high cost cases are those costing over £20,000. During the year, 11 large cases cost a combined total of £461,200 which includes the costs of expert witnesses. This is almost 29% of the total spend of £1,592,640.

These cases were for theft and false accounting, indecent assault, child sex abuse allegations, rape, public order offences and conspiracy.

## **9. Conclusions**

People in the Isle of Man have benefited from Legal Aid during 2018/19 for a wide range of matters and this access to legal representation helps to achieve fairness and 'equality of arms', while assisting the Courts and the Police to operate efficiently.

The Legal Aid service spent £3,789,990 to help around 2,000 people to access legal representation for criminal, civil and family matters.

## **10. Future**

We will continue to develop the Legal Aid service, ensuring quality customer service and value for money.

Over the coming year we will:

- Continue to record more data and management information to inform policy development and help us to monitor expenditure and performance.
- Fully engage with the Attorney General's [Access to Justice review](#).
- Embrace digitisation to make the service as efficient as possible and offer the best possible customer service, delivering value for money for the public funding spent on Legal Aid.
- Seek feedback from partners and customers to improve the service.

May 2019

[www.gov.im/legalaidcommittee](http://www.gov.im/legalaidcommittee)

### **Further information:**

[Chief Constable's Annual Report 2018/19 – Department of Home Affairs](#)

[Isle of Man in Numbers 2019 – Economic Affairs Division, Cabinet Office](#)

[Isle of Man Government accounts - Treasury](#)