

Legal Aid Committee

Code of Conduct

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FOREWORD

This Code of Conduct sets out the standards of behaviour for individual members of the Legal Aid Committee ("the Committee) in the Isle of Man, includes guidance, principles and rules of conduct which reflects their wider responsibilities.

This Code applies to all members of the Committee.

Members of the Committee are expected to abide by the relevant parts of this Code as agreed with the Chairman of the Committee.

Committee members should familiarise themselves with this Code and are encouraged to seek clarification on any aspect from the Chairman.

BACKGROUND

Constitution and Primary Functions

The Committee is a body which is established under the Legal Aid Act 1986.

The functions of the Committee are:-

- To determine the general policy with respect to legal aid;
- To oversee the administration of legal aid, with specific responsibility to review the actions of the Legal Aid Certifying Officer.
- To adjudicate on any complaints (other than matters within the jurisdiction of the Legal Aid Tribunal)
- To make regulations and schemes under the Legal Aid Act.

The Committee will also from time to time be required to review expenditure of the various legal aid schemes and advise the Council of Ministers of issues relevant to budget provisions for legal aid.

Appointment

Members of the Committee are appointed by the Appointments Commission under section 23 of the Legal Aid Act 1986 (as amended). The Committee consists of neither less than 5 nor more than 7 members. The Appointments Commission are responsible for the appointment of the Chairman and Vice Chairman

Quorum

At any meeting of the Committee the Chairman or Vice Chairman shall preside and at least 2 other members shall be present. The majority of members present at each meeting shall not be lawyers. Members are expected to abide by the Legal Aid Committee Attendance Policy (Version 2 issued July 2023).

Term of Appointment

Each member of the Committee (including the Chairman and Vice Chairman) will be appointed for a period of three years from the date of appointment. No member may serve more than 2 consecutive terms.

KEY PRINCIPLES

The Committee and all of its members must at all times comply with the Seven Principles of Public Life (also known as the Nolan Principles¹):

- Follow the Seven Principles of Public Life set out below:

Selflessness

Holders of public office should take decisions solely in terms of the public interest. They should not do so in order to gain financial or other material benefits for themselves, their family, or their friends.

Integrity

Holders of public office should not place themselves under any financial or other obligation to outside individuals or organisation that might influence them in the performance of their official duties.

Objectivity

In carrying out the public business, including making public appointments, awarding contracts, or recommending individuals for rewards or benefits, holders of public office should make choices on merit.

Accountability

Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.

Openness

Holders of public office should be as open as possible about all the decisions and actions that they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands.

Honesty

Holders of public office have a duty to declare any private interests relating to public duties and to take steps to resolve any conflicts arising in a way that protects the public interests.

Leadership

Holders of public office should promote and support these principles by leadership and example.

¹ So named after Lord Nolan, who chaired the Committee on Standards in Public Life, whose report contained the 7 principles.

- Observe the highest standards of propriety ensuring impartiality, integrity and objectivity in relation to the stewardship of public funds.
- Maximise value for money by ensuring that services are delivered in the most economical, efficient and effective way, within available resources, and with independent validation of performance achieved wherever practicable.
- Be accountable to Tynwald, Council of Ministers, service users, and members of the public and staff for its activities and the stewardship of public funds.
- Act in accordance with Government policy on openness and responsiveness.

GENERAL CONDUCT

Individual members of the Committee must act in accordance with their wider responsibilities to:

- ensure that high standards of corporate governance are observed at all times;
- act in good faith and in the best interests of the Committee;
- undertake on appointment to comply at all times with the Code of Conduct and with the rules relating to the use of public funds;
- ensure that they understand fully the terms of their appointment, their duties and their responsibilities
- bring independent judgment to bear on all issues considered by the Committee
- ensure that information gained in the course of the public service is not used for personal gain or for political profit and that the opportunity of public service is not used to promote their private interests or the interests of connected persons or organisations; and
- ensure that they comply with the guidance and requirements in relation to conflicts of interest, including political activities and gifts and hospitality.

Relationship with support staff

Committee members are expected to treat all staff with courtesy and respect. It is expected that staff will show the same consideration in return.

Allowances

Members of the Committee will be remunerated in accordance with the provisions of the Payment of Members Expenses Act 1989. The Attendance Allowances Order 2008 specifies a rate of £89.50 per hour for a legally qualified Chairman (with a minimum of £156.00 per meeting) and £78 for all other members per session. These expenses must be declared for income tax purposes, but are not taxable.

'Session' means any of the following periods:

- i) 9.00 a.m. to 1.30 p.m.;
- ii) 2.00 p.m. to 6.30 p.m.;
- iii) 6.00 p.m. to 12 midnight.

The following travel allowance is also paid, in accordance with the "Payment of Members' Expenses (Travelling Allowances) Order 2022":

Motor vehicle 57p per mile

Motorcycle 30p per mile

Gifts and/or hospitality

Committee members should not accept any gift, hospitality or services from anyone which would, or might appear to, place him/her under an obligation.

All offers of gifts, hospitality or services must be disclosed.

Details of the offer are recorded in a register of gifts and hospitality maintained by the Civil Legal Aid Office. The register includes: the name of the member receiving the offer or invitation; details of the gift, hospitality or service; its originator; the estimated value; whether the offer was accepted or not and, for gifts, its ultimate destination.

Gifts and hospitality may be accepted only in the circumstances set out below but will still need to be reported and recorded in the register:

- isolated gifts of a trivial character or inexpensive seasonal gifts, such as calendars
- conventional hospitality, provided it is normal and reasonable in the circumstances

What is normal and reasonable will largely depend on the extent to which a Committee member is personally involved. There is no objection to the acceptance of, for example, an invitation to the annual dinner of an organisation (like the Law Society) with which the Committee has regular contact, or to working lunches in the course of official visits or business relationships but it must not be frequent, regular or lavish. At all times, Committee members must make it clear to the person or organisation offering the gift, that gifts and hospitality are not accepted in return for, or in anticipation of, any action or inaction.

Confidentiality

Committee members must comply with section 14 of the Legal Aid Act 1986 which reads as follows:

14 Confidentiality of information

(1) No information furnished for the purposes of this Act to the Committee or to any person acting on its behalf may be disclosed, —

(a) in the case of such information furnished by, or by any person acting for, a person seeking or receiving legal aid or advice and assistance, without the consent of the person seeking or receiving legal aid or advice and assistance; or

(b) in the case of such information furnished otherwise than as mentioned in paragraph (a), without the consent of the person who furnished it, and any person who, in contravention of this subsection, discloses any information obtained by that person when an officer or servant of, or acting on behalf of, the Committee, commits an offence.

*This subsection is subject to subsection (2).
Maximum penalty (summary) a fine of level 4.*

(2) Subsection (1) above does not apply to the disclosure of information, —

(a) for the purpose of, or in connection with, the proper performance or facilitating the proper performance by the Treasury, the Committee, any court or tribunal or by any other person or body of duties or functions under this Act;

(b) for the purpose of investigating, prosecuting or determining any complaint against an advocate under Part IV of the Advocates Act 1976;

(c) for the purpose of investigating or prosecuting any offence or for the report of any proceedings in relation to such an offence;

(d) for the purposes of any investigation by the Tynwald Commissioner for Administration under the Tynwald Commissioner for Administration Act 2011;

(e) for the purpose of complying with an information notice under section 45 of the Freedom of Information Act 2015.

All papers sent to members of the Committee must be treated as confidential and members have a responsibility to ensure that all papers and information sent to them are kept safe and that confidentiality is respected.

Members are encouraged to debate any issues on which they do not agree with the rest of the Committee in order to try and resolve the issue. If a member does not agree with a decision they should not show this publicly, though he/she can continue to argue the point at further Committee meetings.

All Committee business should be treated in strictest confidence. Members should resist any request for information from the public or for their personal explanation of how a particular decision was reached.

CONFLICTS OF INTEREST AND BIAS

Public Appointments require the highest standards of propriety, involving impartiality, integrity and objectivity, in relation to the stewardship of public funds and the oversight and management of all related activities. This means that any private, voluntary, charitable or political interest which might be material and relevant to the work of the body concerned should be declared.

There is always the possibility for real or perceived conflicts of interest or bias to arise. Both are a problem, as the perceived inference of a conflict or bias may, on occasions, be as damaging as the existence of a real conflict or real bias.

A conflict of interest is a situation where there is a conflict, a risk of conflict or the appearance of a conflict, between an individual's personal interests (financial or otherwise) and the interests of the Committee, to the extent that a member might not act at all times in the best interests of the Committee. Conflicts of interest should always be considered in terms of how a reasonable third party might perceive the situation.

Committee members must take steps to ensure that any conflict of interest which might arise relating to their work does not influence, nor appear to affect, any decisions or actions taken by the Committee. In addition, members must not make use of their appointment to the Committee to further their private interests, or receive gifts, hospitality or benefits of any kind from a third party which might be seen to compromise their personal judgement or integrity.

Bias, or apparent bias, arises where there is an unfair tendency or prejudice, either for or against, one person, group or view point.

The test which should be applied in relation to a potential case of perceived bias is:

“whether the ascertained relevant circumstances would lead a fair-minded and informed observer to conclude that there is a real possibility that the decision-maker was biased.”

Re Manx National Heritage, judgement delivered by Deemster Kerruish on 12 February 2007.

It is necessary for the standing of the individual and the Committee, that members of the public have confidence in their independence and impartiality. Even a perceived conflict of interest on the part of a member can potentially be damaging to the Committee's reputation and it is therefore essential that these are declared and explored in the same way as an actual conflict would be. The fact that a member acted impartially may be no defence against accusations of potential bias.

How to make general declarations of conflicts of interests

The Chairman and other members of the Committee should declare any personal or business interests that may conflict with their responsibilities as members of the Committee.

Committee members must use the Register of Interests form to disclose conflicts of interests and any relevant financial information, such as any sponsorships or financial or material support that members or their close family receive from any organisation falling within the Committee's sphere of statutory responsibility.

Members must also disclose any interests of which they are aware about their close family members and any other persons living in the same households. In addition, members should consider whether they need to disclose relevant interests of other persons or organisations which the public might reasonably think could influence the members' judgement.

The Civil Legal Aid Office maintains the register of interests and requests updates to members' declarations of interests on a regular basis. Members are required to inform the Civil Legal Aid Office of any changes to their declarations as and when changes occur so that the register may be updated accordingly.

How to record a conflict in relation to a meeting

Members should declare as soon as practicable at, or preferably before, a meeting if they have any conflict of interest about a matter being considered. A member need not attend a Legal Aid Committee meeting in person to make a disclosure of a conflict of interest if he/she takes reasonable steps to secure that the disclosure is made by a notice which is brought up and read out at the meeting.

The nature of the disclosure will allow the Chairman of the meeting and other members present to determine whether the member is able to participate in the discussion or any decisions about the matter.

The conflict of interest and the level of participation in discussions by the member will be recorded in the minutes of the meeting.

Guidance for resolving potential conflicts of interest

The guidance below refers particularly to member who are lawyers (advocates, solicitors or barristers) but the general principles are applicable to any conflict of interests.

Lawyer members providing services funded by Legal Aid

Members are not prohibited from providing services funded by legal aid in their private capacity during their term of appointment to the Committee.

Discussions on general policy

Members would not normally be expected to withdraw from discussions on general policy (e.g. concerning the development of the terms of various legal aid provisions and/or remuneration) even if they, or their firm or other organisation, have represented/are representing/will represent clients under any of the various legal aid schemes and/or receive

monies from the same. Their particular expertise on these issues would be valuable to the Committee's discussions. If in doubt it may be helpful to consider how those outside the organisation would perceive the decision.

Personal involvement in cases or issues

Occasionally, lawyer members will be involved as a practitioner in individual cases or issues that arise during the day-to-day work of the Committee. Where a matter relating to one of these matters is raised at a Committee meeting, a member who has had involvement in the case should declare a potential conflict of interest.

The Chairman will make an assessment according to its circumstances.

A member may only participate fully when such cases or issues are discussed at Committee meetings where there is not considered to be a real danger or perception of bias. Where this is the case, the member will be required to declare an interest and withdraw from the discussion.

Attendance before the Legal Aid Appeals Tribunal

Lawyer members required to attend the Legal Aid Appeals Tribunal on any appeal matter as an appellant or as a representative of an appellant should take into consideration whether there is a potential conflict of interest to. It *could* be perceived that their presence before the Tribunal could unduly influence the adjudication of the Tribunal. The member may consider it is preferable to provide written submissions and/or opinions before the Tribunal and/or arrange for someone else from his/her firm to attend on their behalf/that of the client.

Membership of policy-making groups

It is suggested that members of the Legal Aid Committee should resign from membership or offices of policy making groups involved in the delivery of legal services if their role could involve them endorsing a policy of that body in contradiction to a policy endorsed by the Legal Aid Committee.

Advice/prosecution of proceedings against the Committee

Lawyer members should not accept instructions to advise or represent parties involved in any proceedings taken against the Committee, the Legal Aid Certifying Officer or members of the legal aid administration team. Should they find themselves in such a position, they should withdraw from the case.

Professional obligation on lawyer members to report any serious breach of conduct

In certain circumstances, lawyers appointed to the Committee may be under a professional obligation to report to their professional bodies any misconduct of other advocates, solicitors or barristers that they may learn of during their work on the Committee.

The Committee will not interfere with these professional obligations. However, no member may release legal aid/Committee papers without the Committee's express consent and without the relevant requirements of section 14 of the Legal Aid Act 1986 being fulfilled.

Political activities

Committee members, whether full-time or part-time, are expected not to occupy paid party political posts or hold particularly sensitive or high profile unpaid roles in a political party.

All Committee members should be free to maintain associations with Trade Unions, Co-operative Societies, trade associations, professional bodies etc., to the extent that such associations do not conflict with the interests of the Committee.

Any Committee member, who is in any doubt about the application of these rules, or about the propriety of any political activity, should seek guidance from the Chairman, who will if necessary consult with the Council of Ministers.

Public appointments

It is necessary to prevent conflicts of interest arising from the acceptance of outside appointments during the tenure of appointment as a Committee member. In general, the holding of a public appointment should not restrict Committee members from taking up employment after their appointment to the Committee.

Committee members are obliged to seek advice from the Chairman if they are in any doubt about acceptance of an outside appointment during or after their appointment to the Committee.

Personal Liability

By virtue of section 3(2) of the Personal Liability (Ministers, Members and Officers) Act 2007 members of the Committee are specified as designated persons and shall not therefore be personally liable in respect of any act done in the performance or purported performance of his or her functions if the designated person acted in good faith and in honest belief.



Ruth Costain
Chairman, Legal Aid Committee

09th August 2023

