



**Isle of Man**

**Attorney General's Chambers**

**LEGAL AID REVIEW**  
**OPTIONS & RECOMMENDATIONS REPORT**  
**BY HM ATTORNEY GENERAL**

**Submitted to the Legal Aid Committee December 2021**



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# **PART 1 - INTRODUCTION**

## **1.1. ACKNOWLEDGEMENTS**

I start this Report by thanking all those who have contributed to the work undertaken.

I thank, in particular, all those people who took the time to respond to the call for evidence and those who attended the various Criminal and Civil Legal Aid workshops. The workshops were especially informative when attendees were willing to explain their work or involvement in relation to the legal aid provision here in the Island and to share their experience and thoughts.

I also mention the invaluable assistance received from those comparator jurisdictions that I contacted and my special thanks to them for their open discussions in sharing with me the Legal Aid practices and procedures they adopt.

All the views received have helped to shape this review and the recommendations now made to the Legal Aid Committee for its consideration.

I need to emphasise at the outset that the responsibility for this report and the Recommendations made in it are mine alone. The weight, if any, to be attached to any of my recommendations are for the Legal Aid Committee to balance.

Joanne Hetherington, a senior civil servant from the Cabinet Office, was seconded to me to lead the work in relation to this Review and she acted throughout on my behalf. I am indebted to her for her sterling work in leading the project, gathering the evidence and undertaking many meetings and discussions with the stakeholders and with all the people who made contact wishing to contribute to the review. Without Joanne's outstanding support and help this review would not have been possible to complete.

It has unfortunately taken longer than I had hoped to this Report and my recommendations. I am sorry about the delay not helped by the pandemic and the lockdown in February-June 2020 and then recently the circuit breakers in January-February 2021 and March-April 2021.

## **1.2. FOREWORD**

In this Report, I explain how as Attorney General I came to undertake this independent review at the behest of the Treasury Minister in his capacity as Chair of the SAVE Sub-committee of the Council of Ministers. I was content to agree to take the opportunity to review the Legal Aid provision here in the Island to see if it appears to be fit for purpose and fair. Throughout the review I had in mind the question of all people in the Island having a satisfactory opportunity to enjoy access to legal assistance when they need it.

The Island already has a mature Legal Aid system introduced in 1986 which I will outline and later I will tell you what I found in comparator jurisdictions. What I can say at this stage is

that you will read how the Island's Legal Aid system compares very well with neighbouring comparator jurisdictions. We do not, however, have what one might consider the very best of systems but I did not discover that any one jurisdiction had a system that we should simply replicate. A Manx solution is required but I do believe that the Legal Aid Committee can reflect on some improvements from the experience of others.

I acknowledge at the outset of this Report that the Law Society is an essential stakeholder and its continued support is required, and I am pleased to say it took an active role in the review process. The Society however, perhaps understandably, was rather reticent at the start of the process expressing the view and challenge that the review was only focusing on saving the Government money and that there was nothing wrong with current Legal Aid provision in the Island generally, other than challenging the level of remuneration of Manx lawyers which was long due for an increase. The Society also argued that our existing Legal Aid scope should be extended. I will address these issues.

It was proposed by the SAVE Sub-committee, at the start of this Review, that a possible solution to improving access to justice and introducing a means of controlling (not necessarily saving) cost to Government was to consider a publically funded Public Defender Scheme. I did consider this proposition and considered the comparative jurisdictions where such systems operate, namely in England and Wales (Public Defender Service) and in Scotland (Public Defence Solicitors' Office). During the Review it was suggested that the PDS in England and Wales had been a failure, but the evidence I obtained did not demonstrate this. On the contrary the PDS in the UK has proved its value as an essential "catch all" safety net, albeit limited in size, for the public being able to access legal advice and assistance when the UK's Legal Aid scheme and practitioner members of that Legal Aid scheme had been unable or unwilling to act. The Ministry of Justice was of the view that the PDS in England and Wales had proved very successful in achieving that purpose, and the same can be said in relation to Scotland where the view of the Legal Aid Administration there was that its PDSO scheme had better enabled the Scottish public to have access to justice when needed. I do not propose to dwell on the concept of a Public Defenders Scheme for the Island save to say I have considered the objections raised and do not recommend that such a Scheme at this time would be appropriate for the Island. I emphasise 'at this time' as, if our public continues to have problems accessing legal advice and assistance, the matter may need to be considered again. I do consider, as you will read as part of the recommendations I suggest for consideration, that Government might consider supporting financially different means of better enabling the public having access to legal representation and in doing so, better enable Government to use and control available financial resources.

I believe it was accepted by all who took part in the Review that our Government cannot (and indeed no Government can) simply open its cheque book to providing financial support to the public to access legal representation at any cost, and it thereby follows that consideration must be given to the level and the use of available financial resources at the same time as improving access to justice. Therefore, I considered a number of key matters and in particular whether:

- The range of services for which legal assistance is available is appropriate;
- The actual organisation of the grant and issue of Legal Aid is appropriate;
- The delivery of the Legal Aid services needs reform; and
- The approach adopted currently is the correct one.



Without doubt the public must and always will remain at the heart of the Legal Aid service. It is public money which meets the total cost and so, in the public interest, that expenditure must be controlled and the public must consider and have confidence that the service provides value for money and that there is transparency in this expenditure.

Inevitably in formulating my recommendations I have had to have regard to what Legal Aid costs have been paid over the last few years and also the level of remuneration for legal representation, which is clearly an issue of particular interest to the Law Society and its membership. I am hopeful that, when reading what I have to say in this regard, the Law Society and indeed all service providers associated with supporting those in receipt of Legal Aid will accept that in turn they have to buy in to a commitment to demonstrating that the public, as the 'payers' and as the 'users' of the system, are entitled to be satisfied as to value and quality for money spent and that a publically funded Legal Aid system is one in which the public can have confidence.

### **1.2.1 So what is publicly-funded legal assistance and why does it matter?**

This may appear to be a strange question to pose but I do believe it is necessary to have had this in mind in the Review. Our Legal Aid schemes are actually only a part of what the public needs by way of legal assistance. The broader and perhaps more apt description of 'Legal Aid' includes: funding to advocates in private practice; funding to legal advice available in a publicly-funded service; third-sector legal advice services; and alternative forms of dispute resolution, including mediation.

My recommendations have in mind this broad understanding of what 'Legal Aid' is, which I believe is in line with the UN Principles and Guidelines on Access to Legal Aid, recognising that Legal Aid today has a wide scope including legal education, access to legal information and other services provided through alternative dispute resolution and restorative justice (UNODC, 2013).

Legal Aid is an important aspect of this publicly-funded legal assistance. For many people, Legal Aid is considered only in the relatively narrow concept of publicly-funded representation delivered by private-sector advocates. In my mind, that is the wrong starting point. Where we start is the need for advice on a legal problem, which advice is on matters which potentially raise a legal issue or on matters that, if not resolved earlier, could ultimately lead to court action or some other form of legal procedure, for example, tribunals.

In my review, I have started by having in mind the wider services that include information and advice about the law and alternative means of resolving legal problems, help in preventing or resolving disputes, and help in enforcing decisions. It includes advice that is often not described as legal, for example welfare rights advice, housing advice, money and debt advice and consumer advice. This wider consideration of the advice available allows for a more strategic approach that is not rooted in the current pattern of complex service provision and user need. There are some advice services, in the third sector, which are funded partly from charitable funding and partly from the public purse. So long as there is a public funding element, such services are included in my overall approach in considering publicly-funded legal assistance.

Publicly-funded legal assistance (in whole or in part) is a critical part of our legal system. Probably the best known organisations are the Manx Citizens' Advice Service, Housing Matters, Victim Support, Manx Housing Trust, and Motiv8 Addiction Services.

This provision of publicly-funded legal assistance is anchored in a desire - and many would say a duty answered by Government - to help those who are vulnerable, often subject to some form of inequality, whether financial, educational, or social. Legal Aid services, using the broader description, provide support to some of the most vulnerable people and can be used to directly assist others tackling problems arising in family breakdown, education, employment, housing, immigration, mental health and a range of other areas.

The Review had to have in mind three fundamental aspects of the justice system:

- The rule of law
- Access to justice (in practical terms)
- Human rights

### **1.2.2 The rule of law**

The rule of law is an essential component of our Island democracy requiring that both the governed and the government are equally subject to the law of the land. We are governed by a set of rules and principles rather than by the changing tide of the influence of those in authority or power. I have adopted, therefore, the following definition:

*'In its most basic, the expression connotes a system under which the relationship between the government and citizens, and between citizen and citizen, is governed by laws which are followed and applied.'*

The rule of law requires certain preconditions:

- the law must be freely accessible to all, with free public access to the law in databases such as the Island's legislation website and the Courts' judgment website
- the law must be as easy to understand as possible
- laws must be democratically made and lawfully enacted
- laws must satisfy criteria of fairness
- the enforcement of law and order must be carried out effectively while ensuring due process
- laws must preserve the fundamental rights of citizens against the state, and regulate relationships between citizens in a fair way

Publicly-funded legal assistance contributes to ensuring that the rule of law exists in practice as well as in principle.

### **1.2.3 Access to justice**

Access to justice clearly has a number of components which are out of the scope of this Review. These components include:

- a competent and impartial judiciary
- accessible courts

- properly administered courts
- a competent, accessible and honest legal profession
- an effective procedure for getting a case before the court
- an effective legal process
- affordable justice

It is the last four components which this review will have in mind.

We take for granted many of these components in the Island. The integrity and competence of the Manx judiciary, legal profession and advice workers is of a very high order. As with any public service, there were people in their representations to me who had not had as positive an experience as they might have wished. However, my general observation is that the Island is well served by the people who work in and around the courts and in the administration of justice and I will not say any more on this issue.

I do however have to mention the increasing number of situations which have come to my attention of members of the public being unable to obtain legal representation from Manx Advocates. The Law Society need to consider means of encouraging more members of the Society being prepared to represent people in need of legal advice and assistance. Whether this may result in the Society having to implement a form of 'cab rank' rule I can only ask the Society and its membership to consider. The unfortunate fact of the matter which becomes clear in the consultation is that there are not sufficient in the number of members of the Manx Bar prepared to undertake both Civil and Criminal Legal Aid work.

#### **1.2.4 Human rights**

Taken together, the rule of law and access to justice underpin Human Rights. I have had regard to whether, in the context of this Review, the Island adopts an appropriate human rights approach.

Article 6 of the European Convention on Human Rights (ECHR) sets out the European citizen's entitlements in relation to access to justice and the Island has followed this approach. For criminal cases, the ECHR requires that Legal Aid is provided when the interests of justice so require, due to factors such as the seriousness of the offence, the severity of the expected sentence or the complexity of the case. Our courts have power to appoint a legally aided advocate when an accused faces a prison sentence for the first time. It has also been established in our legislation that anyone in Police custody has a right to consult with an advocate at any time, and has a right to have an advocate present before and during questioning if they so choose.

For civil cases, Article 6 does not specifically mention Legal Aid. Alternative solutions such as the simplification of procedures or help from advice workers may suffice unless our domestic law or our judiciary requires representation from a lawyer in a case, or the procedure or the content of the case is very complex. Age and ability are also relevant to the test of effective participation in proceedings and in these situations, an advocate may have to be made available by the state (if the citizen cannot afford one and the case has sufficient merit).

The ECHR Article 6 therefore has limitations as a safeguard to guarantee minimum standards of Legal Aid provision. The ECHR looks at access to justice for a citizen in a particular

procedure. It does not evaluate Legal Aid systems as such. Because the ECHR applies broad and open-ended tests for access to justice and does this on a case-by-case basis, there are no clear minimum criteria.

### **1.2.5 Fair society**

Giving individuals legal rights is of little value if they lack the capacity and the means to enforce them or to participate effectively in the justice system. Assisting citizens to realise their legal rights contributes to a just and fair society.

Ensuring the rule of law, access to justice and human rights comes at a cost in relation to the budgets for civil and criminal Legal Aid for our courts and for judicial salaries and tribunals administration.

## **1.3. EXECUTIVE SUMMARY**

Having listened to evidence, read the submissions made to the Review process, and considered the content of both the '*Criminal Legal Aid Consultation Results and Analysis Report*' and the '*Civil Legal Aid Results and Analysis Report*'! have no doubt, as you will read in my recommendations, that the Legal Aid Committee has an opportunity to improve the Legal Aid provision in the Island. Furthermore, when doing so, also to have regard to various broader aspects of 'Legal Aid' which I mention above. In comparison with the other jurisdictions I have looked at, I have concluded that the Island's Legal Aid is in good shape, but there are opportunities to improve our service, by learning from the feedback we have received during this Review.

From the contributions received from stakeholders there is clear evidence of a desire to help improve services. This desire is evident also from the quality and commitment of the people in the public, private and third sector I met and/or have heard from. Well known third sector groups (such as Age Concern, Hospice Care, Mencap, Salvation Army) all have dedicated individuals dealing with the vulnerable; people who need help or guidance often on matters which will lead from their advice and guidance to thereafter then requiring legal assistance. Bodies which are part of the public service (e.g. Office of Fair Trading; Consumer Protection; Probation Service) local communities, Manx Citizens Advice, again all have dedicated team members who are at the coalface offering help and guidance, which again is often a precursor to people requiring legal advice and assistance. When one considers the extent of the range of these contributions supporting the Rule of Law here in the island, one appreciates the significance of the financial contribution which our Government makes in this respect, of which our legal advice schemes play only a part albeit essentially.

The recommendations I make are intended to support and encourage fairness and flexibility whilst suggesting means of more transparency and cost control mechanisms. The Legal Aid provision and its administration alongside the delivery of court processes must also take into account technological innovation and be able to take advantage of the same.

I cannot, however, recommend all of the changes suggested to me in the submissions made. I mention at this early stage the call from the Law Society for a general increase in Legal Aid fees simply by reference to inflation factors since the fees were last fixed and the undoubted increase in office running costs since then. I do however recommend an evidence-based

review of fees payable and consideration of the income for advocates who are prepared to undertake Legal Aid work. Such an evidence-based review must be approached and committed to in an open and transparent fashion as the review would need to consider the income of advocates engaged in Legal Aid work and of their firm, not just consider in isolation the level of fee income. It is a fact that cannot be ignored by Manx Advocates that lawyers, although not qualified as Manx Advocates, could practice in the Isle of Man as Registered Legal Practitioners and provide legal advice and assistance on many issues in respect of which the Legal Aid schemes provide support, short of dealing with court proceedings and pleadings, and those foreign lawyers charge fees which are often substantially less than fees charged by Manx Advocates (even on the Legal Aid rates currently in place). I mention, for example, that Guernsey under their Legal Aid scheme set a Legal Aid charging rate for non-Guernsey advocates who the Guernsey Legal Aid Service authorise to work providing legal advice and assistance when the need arises. The Law Society and its members must also, in my opinion, have regard to encouraging all of its members to accept responsibility for an adequate provision of advocates prepared to undertake Legal Aid work to help maintain the Rule of Law here on-Island, which requires all stakeholders to play a constructive and active role. Building a persuasive and robust evidence basis for any increase in fees is important but equally so is public trust and understanding of the level of fees and value for money.

I did become concerned, during the review, about the extent of the criticism of the legal profession from those in receipt of Legal Aid in the context of quality of service and value for money. The value of our separate and distinct legal profession is important to defend and support and some of my recommendations are designed to assist with this and I am hoping that the Law Society and its members will agree to rise to the challenges recommended.

### **1.3.1 Summary of Recommendations**

The following list sets out my recommendations for actions to increase access to justice, support the delivery of quality Legal Aid services, and provide more value for money to the public purse:

**Recommendation 1** - The Legal Aid Committee should invite Treasury to consider the Legal Aid Office being established as a Statutory Board.

**Recommendation 2** - Legal Aid provision in the Island (including Criminal and Civil Legal Aid) should be centralised in one Legal Aid Office to include:

- a) the grant and issue of Criminal Legal Aid Certificates, subject to the necessary provisions and resources being put in place to ensure there are no delays in issuing Certificates in Criminal matters; and
- b) case management of Criminal cases in the context of the Legal Aid Certificate issued by the Legal Aid Certifying Officer
- c) provision for the Appeal process to also apply to Criminal Legal Aid
- d) enabling prisoners to be able to apply directly to the Legal Aid Certifying Officer to seek Legal Aid

**Recommendation 3** - The Legal Aid Committee should invite Treasury to consider amending the reference to the various authorities referenced in Column 2 of Schedule 3 to the Legal Aid Act 1986 by replacing them with the Certifying Officer as the authority to grant Legal Aid in respect of the proceedings specified in Schedule 3.

**Recommendation 4** - The Legal Aid Committee should urgently consider:

- a) the content, effectiveness and messaging of its publicity and guidance concerning all aspects of the Legal Aid offering available on the Island.
- b) reviewing whether those in receipt of Legal Aid are made sufficiently and appropriately aware of their personal responsibilities and if these obligations are being met
- c) adapting UK guides to self-representation for use in IoM Courts

**Recommendation 5** - The Legal Aid Committee should make provisions for both Civil Legal Aid and Criminal Legal Aid to have the same financial eligibility limits based upon criteria for Civil Legal Aid.

**Recommendation 6** - The Legal Aid Committee should seek to improve the processes for the selection and authorisation of experts in both Criminal and Civil proceedings to ensure that they are suitably qualified and meet the required quality standards.

**Recommendation 7** - The Legal Aid Committee should consider introducing a Code of Conduct along with a Quality Assurance Agreement/Service Level Agreement to be entered into with the Advocates who are currently serving on the Criminal and Civil Legal Aid Panels and for future members of such Panels.

**Recommendation 8** - The Legal Aid Committee should consider changes to the remuneration payable to Advocates as follows:

- (a) That fixed fees are introduced for defined processes (e.g. Summary Court proceedings, Divorce, Judicial Separation) as operated in Guernsey
- (b) That otherwise than when a fixed fee is applicable as above that the current two tier system of remuneration (rates for Junior/Senior Advocates) be abolished
- (c) That a new two tier rate be adopted based on cases which the Legal Aid Certifying Officer considers (acting reasonably) on the grant of the Legal Aid Certificate to be routine cases and/or those which are considered unusually complex. To support this that the Legal Aid Committee determine to be routine cases and those exceptional cases regarded as unusually complex which will at all times be subject (at the discretion of the Legal Aid Certifying Officer) to change if considered appropriate. The Legal Aid Committee may wish to consider criteria that Advocates should meet (e.g. in terms of relevant experience) in order to undertake complex matters at the higher hourly rate.
- (d) The hourly charging rate for all routine cases be fixed at £150 per hour and for most complex matters at £175 per hour

- (e) When a Manx Advocate is not available or able to represent a person eligible to obtain Legal Aid and the IoM Law Society confirms that this situation exists, then subject to the merits test being met and the assessment of the financial eligibility requirements then all Legal Aid schemes will be available to non-Manx qualified lawyers holding a current practising certificate in England and Wales at an hourly rate of £115 per hour

**Recommendation 9** - The Legal Aid Committee should consider improvements to the current Legal Aid Cost assessment process as follows:

- (a) Guidelines setting out the basis upon which a bill of costs will be assessed and taxed are published
- (b) Arrangements are put in place to supplement the capacity to review bills of cost (the Costs Officer is currently in the General Registry) by sending those over a certain value to a specialised 'costs draftsman' for assessment/taxation against the published guidelines
- (c) The IoM Law Society is invited to amend the Advocates Practice Rules to replicate the rule applicable to Civil Legal Aid costs so that it equally applies to Criminal Legal Aid costs that when a bill of costs is on assessment/taxation reduced by 50% or more that the matter would be referred to the Advocates Disciplinary Tribunal as a disciplinary offence
- (d) That Regulations be amended to require that Advocates submit their claim for payment under the Legal Schemes within 6 months of conclusion of the case or matter.

**Recommendation 10** - The Legal Aid Committee should not consider at this stage the establishment of a Public Defender Scheme.

**Recommendation 11** - The Legal Aid Committee should consider the issue of a Fixed Fee Legal Aid Certificate to persons whose available assets have been restrained under the Proceeds of Crime Act 2008 and that Schedule 1 of the Legal Aid Act 1986 be amended accordingly together with consideration of any amendments to the Proceeds of Crime Act 2008 (section 18 (6) (b)).

**Recommendation 12** - The Legal Aid Committee should consider changes to the existing Police Station Duty Advocate Scheme to:

- (a) Dispense with the need to have second Advocate more senior on call
- (b) Provide guidance as to the circumstances when an Advocate might need to consider physical attendance at the Police Station rather than by phone (or electronically)
- (c) Require the IoM Constabulary to arranged fixed appointment times for the Advocate to attend at the client interview

- (d) Extend the existing scheme to any formal interview held under caution whether at the Police station or elsewhere
- (e) Provide for a pilot scheme for an initial one year duration for the attendance of a Duty Advocate service, for one full day each calendar month at the Isle of Man Prison, Jurby. This should provide on a Prison-prepared appointment basis for prisoners to seek and obtain legal advice and assistance.
- (f) Provide for the charge for waiting time under the Scheme to be fixed at £50 per hour (pro rata)

**Recommendation 13** - The Legal Aid Committee should consider introducing a pilot scheme for a period of up to 3 years to employ a Duty Advocate to serve as a second Advocate under the Court Duty Advocate Scheme and to review whether such additional provision serves to improve the better administration and disposal of cases before the courts which the Court Duty Advocate Scheme currently serves.

**Recommendation 14** - The Legal Aid Committee should encourage the Department of Home Affairs to review the Appropriate Adult Scheme with a view to improving the rate paid to such persons and take steps to increase and improve the recruitment, training, retention and number of persons prepared to act as Appropriate Adults.

**Recommendation 15** - The Legal Aid Committee should encourage the Department of Home Affairs and/or the Cabinet Office to review the arrangements currently in place for Interpreters and in so doing to identify improved methods of procuring the service and its availability.

**Recommendation 16** - The Legal Aid Committee should consider amending the Legal Aid Act 1986 so as to enable unpaid contributions for Criminal Legal Aid to attract "additional days" in the same way as is currently the case for unpaid fines.

**Recommendation 17** - The Legal Aid Committee should consider liaising with the Department of Home Affairs with a view to seeking an amendment to s30 to the Criminal Jurisdiction Act 1993 so as to require that "leave" be granted before any appeal on conviction or sentence in Criminal Proceedings. An application for "leave" to be made within 28 days of conviction or sentence.

**Recommendation 18** - The Legal Aid Committee should engage with the IoM Law Society with a view to the Society establishing a 'Manx Pro Bono Pledge' by its membership.

**Recommendation 19** - The Legal Aid Committee should invite Treasury to consider the redefining and if necessary expansion of the existing Manx Citizens Advice Service.

**Recommendation 20** - The Legal Aid Committee should consider inviting Treasury to consider introducing a pilot scheme for a period of up to three years during which individuals would be directly employed within the Legal Aid Office to undertake the following functions:

- (a) Mediation Services and
- (b) Guardian Ad Litem services for children engaged in family proceedings.



The object of such a pilot would be to secure the availability of services, identify annual cost savings in Legal Aid provision and also savings in the court's time.

**Recommendation 21** - The Legal Aid Committee should consider making provision, wherever appropriate, that the granting of a full Legal Aid Certificate to be conditional upon the parties having actually made use of the Mediation service and the Legal Aid Certifying Officer reconsidering the merits test following such Mediation.

**Recommendation 22** - The Legal Aid Committee should consider the adoption of the Fixed Fee Legal Aid Certificates as operated in Guernsey.

**Recommendation 23** - The Legal Aid Committee should consider the issue of a Fixed Fee Legal Aid Certificate in respect of legal advice and assistance in cases before the Mental Health Review Tribunal.

**Recommendation 24** - The Legal Aid Committee should include the ability for a Legal Aid Certificate to be issued to the legal representative of a deceased person who has died in the custody of the State (e.g. Police Station, prison, hospital, care home) for proceedings in an inquest without the necessity of meeting either the financial eligibility test or merits test, and that Schedule 1 to the Legal Aid Act 1986 be amended accordingly.

**Recommendation 25** - The Legal Aid Committee should consider seeking amendment to the Tribunals Act 2006 and other relevant legislation to remove from its provisions the eligibility for full Legal Aid of (a) Financial Services Tribunal (b) treasure tfeve inquiries and (c) boundary disputes.

**Recommendation 26** - The Legal Aid Committee should undertake a review of the application, effectiveness and scope of the Statutory Charge.

**Recommendation 27** - The Legal Aid Committee should consider introducing measures to:

- a) Increase the scrutiny of parties' legal merits; and
- b) Reduce unnecessary costs attributed to proceedings which could have been avoided had a party responded appropriately to correspondence at an early stage.

**Recommendation 28** - The Legal Aid Committee should promote an increase in the use of technology, including video conferencing between the IoM Prison and the Courts, to increase the efficiency of Court proceedings by reducing Court time and costs; reduce the necessity of transporting prisoners between the IoM Prison and the Courts, and reduce associated security and safety risks. It could also facilitate ease of face-to-face conference between Advocates and prisoners at the IoM Prison.

**Recommendation 29** - The Legal Aid Committee should raise with the IoM Law Society the issues raised by individuals who have been through the criminal justice system regarding the ability and / or quality of Manx Advocates to deal with complex criminal matters including financial crime and seek assurances from the IoM Law Society that these matters will be considered and addressed.

**Recommendation 30** - The Legal Aid Committee should recommend to the Criminal Justice Board that Criminal Legal Aid is not considered in isolation, and instead as part of a holistic criminal justice system to ensure that there is an awareness and understanding that the policies and processes of one agency (e.g. Department of Home Affairs; IoM Constabulary; Prosecutions; Courts; IoM Prison and Probation; Legal Aid Office, IoM Law Society) can have a significant effect on one or more of the other agencies, and ultimately Criminal Legal Aid and expenditure. The Criminal Justice Board is ideally placed to achieve this, as all of the aforementioned key agencies are members.

**Recommendation 31** - The Legal Aid Committee should consider putting in place measures to:

- a) Support and protect from further risk individuals who wish to seek legal advice or representation on divorce / dissolution of a civil partnership due to domestic abuse
- b) Address the impact of a financial eligibility determination based on the joint income or co-owned assets of a couple, where one party does not have equal access to that income (e.g. in cases of domestic abuse or financial/coercive control)
- c) Better serve individuals whose ex-partners are effectively able to control their eligibility for Legal Aid by providing inconsistent financial contributions (e.g. for child support) which can cause the individual to be in a recurring cycle of eligibility / ineligibility for Legal Aid leading to significant delays and difficulties in accessing legally-aided services.

**Recommendation 32** - The Legal Aid Committee should consider a child or young person who is a party to Care Proceedings should be automatically eligible to receive Civil Legal Aid by disregarding their financial resources.

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## **PART 2 - BACKGROUND TO THE LEGAL AID REVIEW**

### **2.1 SCOPE**

The Legal Aid Review began as Public Defender Scheme feasibility project with a focus on financial savings. Its scope was extended on two occasions, as set out below, in order for the project to widen its remit to encompass access to justice and quality of service.

#### **2.1.1 Initial scope of Review: Public Defender Scheme**

The Treasury launched a 'Securing Added Value and Efficiencies' ('SAVE') initiative in 2017 which had as its remit to gather cost saving and efficiency ideas that could be introduced to achieve budgetary savings. Over 1,300 ideas were submitted, of which some 700 were money-saving suggestions. The ideas submitted included the idea of establishing a Public Defender Scheme ('PDS'). A 'SAVE Progress Report' was laid before the June 2018 sitting of Tynwald by the Treasury Minister in his capacity as Chair of the SAVE Sub-Committee of the Council of Ministers (the 'SAVE Sub-Committee'), which included a 'Proof of Concept' for a PDS, which estimated that savings of over f1m per annum could be achieved.

A commitment was made by Treasury to consider the feasibility of establishing a PDS and as HM Attorney General I agreed, at the request of the Treasury, to lead this work to provide a high level of legal oversight to the consideration of the proposal and to provide an appropriate level of separation from the Treasury.

### **2.1.2 Extension of scope of Review: Criminal Legal Aid**

Whilst the initial scope of the project by way of Review of the above remit was focused on a PDS, it soon became apparent to me that the feasibility of a PDS could not be considered in isolation as it needed to be considered in the broader context of a review of Criminal Legal Aid provision in general. Such an extended review was, in my opinion, necessary to provide a comprehensive 'baseline' for the Island's Criminal Legal Aid provision, supported by evidence provided from key stakeholders. The project would, in my view, be better informed by examining whether any aspects of Criminal Legal Aid could or should be changed or improved and whether the feasibility or advisability of a PDS would form a part of any proposed changes or improvement.

### **2.1.3 Further extension of scope Review: Civil & Family Legal Aid**

At the January 2019 sitting of Tynwald, the Treasury Minister again in his capacity as Chair of the SAVE Sub-Committee made a statement to Tynwald Court advising that following a request from the Legal Aid Committee, the SAVE Sub-Committee had agreed to extend further the scope of the Criminal Legal Aid review as described in 1.2 above to include Civil and Family Legal Aid with immediate effect. As a result, the extended project was termed the **Legal Aid Review** no longer with a prime focus on a possible PDS within the Island's Criminal Legal Aid provision but rather with a broader focus on:

#### **'Access to justice, quality of service and value for money'**

Again at the request of the Treasury Minister on behalf of the SAVE Sub-Committee I agreed to continue to lead this much broader Legal Aid Review but still in the context of providing a high level of legal oversight and to provide the necessary level of separation from the Treasury.

The Treasury Minister confirmed to Tynwald Court at the January 2019 sitting that no policy decisions pertaining to Legal Aid had then been made, and that such decisions remained the statutory responsibility of the Legal Aid Committee by virtue of the Legal Aid Act 1986.

The outcome of this Review, whilst undertaken at the behest of the Treasury Minister on behalf of the SAVE Sub-Committee, is accordingly addressed to the Legal Aid Committee for their consideration.

## **2.2 TERMS OF REFERENCE OF THE LEGAL AID REVIEW**

The terms of reference for the Legal Aid Review as advised to me and agreed by the Legal Aid Committee are set out below.

### **2.2.1 Aim**

The aim of the Review is to develop policy options, in the form of recommendations to the Legal Aid Committee, for the sustainable provision of Legal Aid in the Isle of Man, which:

- Maintain or improve access to justice;
- Support the delivery of quality services; and
- Provide value for money in the use of public funds.

### **2.2.2 Objectives**

In order to achieve the aim of the Review, a number of objectives were identified by Chambers, and agreed with the Legal Aid Committee, which were to be met through research, stakeholder engagement and public consultation:

- Examine the model of Legal Aid provision in the Island;
- Explore the models of Legal Aid provision in comparator jurisdictions;
- Identify which aspects of Legal Aid provision in the Island are considered to work well and should be continued;
- Identify which aspects of Legal Aid provision in the Island are considered not to work well (if any) and if they could benefit from improvement or change; and
- Explore the feasibility of alternative approaches to Legal Aid provision in the Island.

### **2.2.3 Governance**

The Review is a project established and sponsored by the SAVE Sub-Committee of the Council of Ministers. The Review is led by me as HM Attorney General. This arrangement was put in place to seek to ensure that the Review has the highest level of legal oversight. Whatever the outcome of the Review, legal aid policy remains the statutory responsibility of the Legal Aid Committee in accordance with s23 of the Legal Aid Act 1986 and I was not asked to consider whether this is the appropriate arrangement. My intention in preparing this Report on the outcome of the Review is to support and help inform the policy-making process of the Legal Aid Committee by developing policy options for the Legal Aid Committee's consideration. It is not my intention that the Review will seek to determine policy.

### **2.2.4 Scope**

The Review will consider all forms of Legal Aid in the Isle of Man which are:

- Criminal Legal Aid
- Civil Legal Aid (Family & Non-Family)

In addition, at my request as Attorney General, the Legal Aid Committee agreed that the Review could also consider the following two issues which had been raised with me outwith the Review as matters of concern:

- The inability of persons whose assets have been restrained under the Proceeds of Crime Act 2008 to obtain legal advice; and

- The representation of a child in family proceedings if it appears to me as Attorney General that a child is not, but should be, represented in those proceedings, in accordance with s96 of the Children and Young Persons Act 2001.

## **2.3 METHODOLOGY AND CONSULTATION PROCESS**

Due to the evolution of the Review, from a project which initially focused on the feasibility of a Public Defender Scheme, and further expanded to incorporate all aspects of Criminal Legal and then Civil Legal Aid, the public consultation process was carried out in two stages by necessity as follows:

- Part 1 - Criminal Legal Aid; *and separately*
- Part 2 - Civil (Family & Non-Family) Legal Aid

The methodology adopted up to and including the two separate consultation processes, was on the basis that the Legal Aid Review would:

- Examine the Isle of Man's current models of Legal Aid;
- Explore models of Legal Aid provision in comparator jurisdictions;
- Consolidate the qualitative and quantitative information gathered; identify gaps and gather further information as required, subject to availability;
- Undertake workshops and briefings to engage with key stakeholders, and capture feedback to shape the public consultation;
- Undertake two separate public consultations for a minimum of 8 weeks (i.e. Criminal and Civil);
- Examine and analyse consultation submissions;
- Publish consultation submissions (subject to permissions from contributors);
- Publish a report to outline key findings and 2 reports detailing the results and analysis of the Criminal and Civil Legal Aid consultations.
- Publish this Report containing recommendations

## **2.4 ENGAGEMENT WITH THE IOM LAW SOCIETY**

The Review recognised appropriately from the outset and acknowledged that Manx Advocates undertaking Legal Aid work play a significant and vital role in assisting those in need of legal representation and that their contribution necessarily contributes to the smooth operation of the justice system in the Island. Advocates often advise and represent some of the most vulnerable members of society and those who otherwise do not have the financial resources to obtain legal representation and doing so places them in the position of being a Key Stakeholder. However, despite the significant contribution and support of Manx Advocates there remains a perception, if not a fact, that the public can experience difficulties in obtaining legal representation.

Accordingly, I provided assurances to the Law Society that they would not only be able to fully engage in the consultation processes but would also be kept informed in respect of the Review's progress. In response, the Society confirmed their commitment to fully engage with the process. I believe that both the Review and the Society on behalf of its members remained

mindful throughout of the interests of the public in relation to the provision of Legal Aid and to ensuring that access to justice is maintained and supported.

The Review therefore has benefitted from the Law Society's representation and separately representations from individual members.

Advocates are, of course, the beneficiaries of most of the Legal Aid cost and expenditure under the Legal Aid schemes in place, which are funded by the public purse.

The Review has with the co-operation of the Law Society given consideration to the nature and extent of the expenditure under the Legal Aid schemes in order to fully understand whether any aspects of its provision could or should be changed or improved. I assured the Society, however, in considering costs that any changes I might recommend to the Legal Aid Committee to consider in this regard would not be made just for the sake of change or cost savings, but rather would be based upon offering and supporting the principles of maintaining and improving access to justice, quality of service and value for money. These principles rather than necessarily identifying proposed changes that might result in cost savings, which is not an objective of the Review, have been adhered to. That said, Legal Aid costs are met by public funds and the Review identifies that these funds must be targeted upon those in greatest need. It is not available in some areas of work at all and, where it is available in principle, it is for the most part subject to merits and means testing. Despite the obligation to provide and maintain a Legal Aid provision in the Island, which has never been questioned, it cannot of course and is not expected to be provided at any cost so, in a true sense, available resources must be measurable, there must be due accountability for their expenditure provided for, and there must be a means of ensuring the expenditure represents value for money. It must also be borne in mind the significant cost which Government also incurs in supporting the third sector and other bodies essential to the overall provision of 'Legal Aid' as I have explained in my opening Acknowledgements.

## **2.5 KEY STAKEHOLDERS**

Key stakeholders were identified as being fundamentally important in the Isle of Man's Legal Aid model, in addition to members of the public as a whole

In terms of Criminal Legal Aid these included:

- IoM Law Society
- IoM Constabulary
- IoM Prison & Probation
- Courts of Justice and the Judiciary
- Attorney General's Chambers
- Criminal Justice Board
- Social Security Division, Treasury
- Individuals in receipt of Criminal Legal Aid
- Agencies which support or signpost individuals

In terms of Civil and Family Legal Aid these included:

- IoM Law Society

- Courts of Justice and the Judiciary;
- Mediators;
- Department of Health and Social Care
- Social Security Division, Treasury
- Attorney General's Chambers;
- Individuals in receipt of Civil Legal Aid (recognised as a hard to reach group); and
- Agencies which support or signpost individuals;

These stakeholders listed above proved not to be exhaustive as individual and other organisations submitted their views as both public consultations were open to all.

The Legal Aid Research and Project Manager, on my behalf, committed to engaging with **all stakeholders** and did so to ensure that they were all given every opportunity to contribute to the consultation processes.

The responses to the consultations and stakeholders and the welcome extent of their engagement is self-evident from the published results forming part of this Report and enabled this Review to ensure the Legal Aid Committee is provided with the guidance offered in responses to the consultations when considering the Island's model of Legal Aid provision.

## 2.6 TIMELINE OF THE REVIEW

Timeline of the Review	
September 2018	<ul style="list-style-type: none"> <li>• The Public Defender Scheme project began</li> <li>• Legal Aid Research and Project Manager appointed to the Attorney General's Chambers (AGC)</li> <li>• Research on Criminal Legal Aid provision in Crown Dependencies began</li> </ul>
October 2018	<ul style="list-style-type: none"> <li>• Initial engagement with the IoM Law Society and Legal Aid Committee</li> <li>• AGC visits to Guernsey, Jersey and England took place</li> <li>• Scope of project extended to encompass Criminal Legal Aid as a whole</li> <li>• Research on Criminal Legal Aid provision in IoM and UK began</li> </ul>
January 2019	<ul style="list-style-type: none"> <li>• Scope of project extended further to include Civil and Family Legal Aid to encompass all Legal Aid in the IoM</li> <li>• Statement made at the January 2019 sitting of Tynwald by the Treasury Minister to reflect expansion of scope. The project become</li> </ul>

<b>Timeline of the Review</b>	
	the Legal Aid Review with the broad aim to develop policy options for the sustainable provision of Legal Aid in the IoM which maintain or improve access to justice; support the delivery of quality services and provide value for money
February 2019	<ul style="list-style-type: none"> <li>• AGC visit to Scotland took place</li> <li>• Ongoing Legal Aid research re: IoM and comparator jurisdictions</li> <li>• Ongoing engagement with the IoM Law Society</li> </ul>
March / April 2019	<ul style="list-style-type: none"> <li>• Preparations for Criminal Legal Aid workshops and public consultation</li> </ul>
May 2019	<ul style="list-style-type: none"> <li>• Criminal Legal Aid workshops held for members of IoM Law Society</li> </ul>
June 2019	<ul style="list-style-type: none"> <li>• Further engagement with Criminal Legal Aid stakeholders</li> </ul>
July / August 2019	<ul style="list-style-type: none"> <li>• Criminal Legal Aid public consultation drafted</li> </ul>
September 2019	<ul style="list-style-type: none"> <li>• 8-week Criminal Legal Aid public consultation launched (23 Sept)</li> <li>• Criminal Legal Aid workshop held with members of the IoM Constabulary</li> </ul>
October 2019	<ul style="list-style-type: none"> <li>• Further engagement with Criminal Legal Aid stakeholders, including the IoM Prison</li> <li>• Engagement with IoM Law Society re: planned Civil Legal Aid workshops &amp; consultation</li> </ul>
November / December 2019	<ul style="list-style-type: none"> <li>• Criminal Legal Aid workshops held at IoM Prison with participating prisoners</li> <li>• Criminal Legal Aid consultation closed (21 Nov)</li> <li>• Civil Legal Aid workshops held with members of IoM Law Society</li> </ul>
December / January 2020	<ul style="list-style-type: none"> <li>• Civil Legal Aid consultation drafted</li> </ul>
February 2020	<ul style="list-style-type: none"> <li>• 8-week Civil Legal Aid consultation launched (17 Feb)</li> </ul>
March 2020	<ul style="list-style-type: none"> <li>• Examination and analysis of Criminal Legal Aid consultation responses</li> </ul>



<b>Timeline of the Review</b>	
May 2020	<ul style="list-style-type: none"> <li>• Civil Legal Aid consultation closed after 13 weeks (21 May)</li> </ul> <p>[N.B The consultation was due to close on 13 April but was extended twice by the Attorney General's Chambers following requests from the IoM Law Society. The Society was concerned that the effects of the coronavirus pandemic could have a detrimental impact on its members' ability to respond to the consultation.]</p>
May / June 2020	<ul style="list-style-type: none"> <li>• Preparation of Criminal Legal Aid Consultation: Results &amp; Analysis Report</li> </ul>
June / July 2020	<ul style="list-style-type: none"> <li>• Proposal made by HM Attorney General (HMAG) to the Legal Aid Committee to publish Criminal and Civil Legal Aid consultation responses and associated Results &amp; Analysis Reports in parallel, following the submission of an Options &amp; Recommendations Report to the Legal Aid Committee by HMAG and the outcome of the Committee's considerations</li> <li>• Proposal agreed by the Legal Aid Committee</li> <li>• Isle of Man Law Society advised of decision</li> </ul>
July - September 2020	<ul style="list-style-type: none"> <li>• Examination of Civil Legal Aid consultation responses</li> <li>• Preparation of Civil Legal Aid Consultation: Results &amp; Analysis Report</li> </ul>
October 2020	<ul style="list-style-type: none"> <li>• Submission of two reports from the Attorney General's Chambers, to the Legal Aid Committee as follows: <ul style="list-style-type: none"> <li>o Criminal Legal Aid Consultation - Results &amp; Analysis Report</li> <li>o Civil Legal Aid Consultation - Results &amp; Analysis Report</li> </ul> </li> </ul>
February 2021	<ul style="list-style-type: none"> <li>• At the February 2021 sitting of Tynwald (17 February) HM Attorney General made a statement on the progress of the Legal Aid Review, following a question for written answer from Mr Hooper MHK</li> </ul>
July 2021	<ul style="list-style-type: none"> <li>• At the July 2021 sitting of Tynwald (20 July) HM Attorney General responded to a question for oral answer from Mr Moorhouse MHK, regarding the publication of this Report</li> </ul>
Winter 2021	<ul style="list-style-type: none"> <li>• Following a review of both the Criminal and Civil Legal Aid Consultation Results &amp; Analysis Reports, stakeholder feedback and comparator jurisdiction models, HMAG undertook preparation of this Report and recommendations relating to Criminal and Civil Legal Aid, for consideration and decision by the Legal Aid Committee. Subject to the completion of the above, the following will be published:</li> </ul>

## Timeline of the Review

- Criminal Legal Aid and Civil Legal Aid consultation responses published (subject to respondents' permissions) via IoM Government online consultation hub <https://consult.gov.im/>
- Criminal Legal Aid consultation: Results & Analysis Report
- Civil Legal Aid consultation: Results & Analysis Report
- Legal Aid Review: Options & Recommendations Report
- Outcome of the Legal Aid Committee's consideration of HMAG's Options & Recommendations Report

## PART 3 - THE ISLE OF MAN'S CURRENT MODEL OF LEGAL AID AND THOSE OF COMPARATOR JURISDICTIONS

In this section I will outline the Island's current Legal Aid provision and also that of the comparator jurisdictions that I have considered for the purpose of the Review. I have had regard to the models in England and Wales, Northern Ireland and Scotland, with particular reference to our fellow Crown Dependencies. Both Guernsey and Jersey, being small jurisdictions like our own, face their own challenges in relation to Legal Aid provision.

All jurisdictions considered provide a bespoke solution to the provision of Legal Aid advice and assistance. I have also consulted with the Legal Aid administration in Southern Ireland on a number of specific issues to which I will briefly refer.

Information in this section was gathered during 2018/19 to inform the Legal Aid Review consultation process, with some details updated in 2020.

### 3.1 ISLE OF MAN

#### 3.1.1 Legal Aid in the Isle of Man

This section provides an overview of Legal Aid provision in the Island and is not exhaustive. Further information is available from the Isle of Man Courts<sup>1</sup> in terms of applying for Criminal Legal Aid and the Legal Aid Office<sup>2</sup> for Civil Legal Aid.

<sup>1</sup> <https://www.gov.im/categories/benefits-and-financial-support/legal-aid/>

<sup>2</sup> <https://www.gov.im/legalaid>

In short, Legal Aid is funded by the Treasury from money provided by Tynwald under section 26 of the Legal Aid Act 1986.

- The grant and issue of Legal Aid in Civil matters and disbursements for Criminal Legal Aid is dealt with by the Legal Aid Certifying Officer and the Legal Aid Office.
- The grant and issue of Criminal Legal Aid Certificates dealt with by the Court.

The Legal Aid Office, which is part of the Social Security Division of Treasury, publishes a comprehensive Legal Aid Handbook for Advocates<sup>3</sup> which is also a useful guide for any person seeking further information regarding Legal Aid provision in the Island. Included below are extracts from the Handbook, to assist in describing the structure, processes and schemes within our system.

### **3.1.2 Legal Aid Committee**

The Legal Aid Committee (the Committee) is constituted under Section 23 of the Legal Aid Act 1986. Administrative support for the Committee and financial budgets for all aspects of Legal Aid are provided by the Social Security Division of the Treasury.

### **3.1.3 Statutory Function**

- To determine the general policy with respect to Legal Aid in the Isle of Man
- To oversee and review the actions of the Legal Aid Certifying Officer and Deputy
- To deal with complaints outside the remit of the Legal Aid Appeal Tribunal
- To identify appropriate regulatory amendment or management action within the constraints of the Legal Aid Act 1986

### **3.1.4 Mission Statement**

The Committee aims to promote access to justice in a manner which is fair, equitable, transparent and professional and which uses public resources carefully and effectively.

### **3.1.5 Legal Aid Certifying Officer (based in the Legal Aid Office, Social Security Division, Treasury)**

The Certifying Officer (and any Deputy operating at any time) is appointed by the Committee under Regulation 2 of the Legal Aid (General) Regulations 1997. All reference to the Certifying Officer in this handbook also applies to any Deputy carrying out Certifying Officer duties. The Certifying Officer is a non-practising lawyer and Public Servant (not a Civil Servant) appointed to discharge all the functions conferred on them by the regulations. This includes the function of deciding whether or not an application passes the Legal Aid merits tests.

The Certifying Officer provides decisions on whether an application passes the Civil Legal Aid merits tests as well as certification, assessment, review and the authorisation of Civil and

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<sup>3</sup> <https://www.gov.im/media/1367442/6th-edition-handbook-november-2019.pdf>

Criminal Legal Aid disbursements. The Officer reports to the Legal Aid Committee and decisions made by the Officer may be appealed to the Legal Aid Appeals Tribunal.

### **3.1.6 Legal Aid Costs Officer (General Registry)**

The Legal Aid Costs Officer has delegated authority from the Chief Registrar, to assess all Legal Aid Bills of Costs submitted for payment.

Assessment is a rigorous examination of the work that has been undertaken and claimed by an Advocate before authorising payment. The Costs Officer examines the fully itemised list of work against the Advocates file, to ensure that the work claimed is necessary, reasonable and within the scope, conditions and limitations of the Legal Aid Certificate. Any work not needed to progress the matter will be deducted at assessment.

### **3.1.7 Legal Aid Administration (Legal Aid Office, Social Security Division, Treasury)**

The Legal Aid Office provides administrative functions to support the Certifying Officer as well as providing policy advice, secretarial support and research for the Legal Aid Committee. The Legal Aid office administers payments for Civil and Criminal Legal Aid, Green Form, and Duty Advocates. Staff in the Legal Aid office cannot provide legal advice.

In the absence of a Certifying Officer Emergency Legal Aid applications can be authorised by a manager who can issue a very restricted Legal Aid Certificate for:

- an Emergency Protection Order
- a Domestic Violence Injunction (for either a Non-molestation Order or an Occupation Order, or both) or
- a Prohibited Steps Order to prevent the removal of children from the Island The case for a substantive Certificate must be submitted in time for the Certifying Officer to consider it on their return.

### **3.1.8 Legal Aid Appeals Tribunal**

The Legal Aid Appeals Tribunal is wholly independent of the Legal Aid Committee. The Tribunal is established by Section 23A of the Legal Aid Act 1986, and consists of a Chairman and two members drawn from a panel appointed by the Appointments Commission.

The Tribunal is a Part 2 Tribunal within the meaning of the Tribunals Act 2006. The Tribunal deals with appeals arising from decisions of the Certifying Officer to either refuse, grant, revoke or discharge a Legal Aid Certificate.

The provisions for appeals are set out in Regulation 11 of the Legal Aid (General) Regulations 1997 as amended by the Legal Aid (General) (Amendment) Regulations 2014. Significant decisions of the Legal Aid Appeals Tribunal will be notified to Panel Advocates and published at [www.gov.im/legalaid](http://www.gov.im/legalaid).

The Tribunal has no function with reference to appeals for Criminal Legal Aid Certificates.

### 3.1.9 Quality Standards

Legal Aid is funded by the Treasury from money provided by Tynwald under Section 26 of the Legal Aid Act 1986. It is expected that the Advocate meet our quality standards when working on Legal Aid cases.

- A high standard of professionalism coupled with the most effective use of limited resources, presenting value for taxpayer's money.
- Work provided should be equal to that which 'a prudent fee paying client of modest means' would expect.
- The Advocate must make full and prompt use of recognised methods of alternative dispute resolution, avoiding Court action wherever possible. Mediation should always be considered when appropriate.
- The Advocate must aim to ensure a swift and successful outcome for the Assisted Person, avoiding delays wherever possible.

### 3.1.10 Panel of Advocates

The Certifying Officer maintains the Panel of Advocates who have indicated that:

- they are prepared to act for persons who are given Legal Aid in respect of any proceedings; and
- they are prepared to give advice and assistance to any person.

An Advocate who wishes to be a member of the Panel may apply to the Certifying Officer and will be interviewed as part of the application process. There is no obligation for an Advocate on the Panel to accept any particular case.

Advocates may resign from the Panel by giving notice in writing to the Certifying Officer. Membership will cease when all legally aided cases have been disposed of. Once notice has been given an Advocate may not give Legal Aid or advice and assistance in any further cases. In joining the Panel of Advocates the Advocate must be prepared to act for persons who are given Legal Aid in respect of proceedings and that they are prepared to give advice and assistance to any person.

Being a member of the Panel of Advocates does not qualify an Advocate to be a member of the Criminal Duty Advocate Scheme. To become a member of the Criminal Duty Advocates Scheme an Advocate is required to satisfy the Duty Advocate Committee that they have comprehensive experience of criminal defence work or received sufficient appropriate training to provide competent advice in accordance with the Duty Advocate (Police Custody) Scheme **1998**.

At the time that the public consultations were undertaken there were 243 Advocates practising in the Isle of Man (source: IoM Law Society) with 62 on the Legal Aid Panel. Of these, 35 Advocates were registered as willing to undertake Criminal Legal Aid work, including 23 Advocates registered for Police Station Duty Advocate work and 20 for Court Duty Advocate work. 61 were willing to undertake Civil Legal Aid work.

### **3.1.11 Removal from the Panel**

An Advocate may be removed from the Panel by the Committee following a reference by the Certifying Officer. The Committee will not remove an Advocate from the Panel without giving the Advocate concerned an opportunity of appearing before it.

### **3.1.12 The duties and responsibilities of Advocates working under a Legal Aid Certificate**

The Advocate must fully consider the Legal Aid legislation listed in Appendix 1 [to the handbook] and the provisions set out in the Legal Aid (General) Regulations 1997. Where a Legal Aid Certificate is in place, it is the Advocate's duty:

- a) To consider at any stage in the proceedings if it is appropriate to negotiate a settlement or seek alternative dispute resolution
- b) To seek approval of the proposed course of action from the Certifying Officer
- c) To report to the Certifying Officer any offers made in settlement

The Advocate shall give the Certifying Officer any information which they may require from time to time. The Advocate shall not be precluded by reason of privilege from disclosing to the Certifying Officer any information, or from giving any opinion, which may enable the Certifying Officer to perform their functions.

The Advocate shall report to the Certifying Officer:

- 1) on completion of the case; and
- 2) if it appears to an Advocate that:
  - a) the Assisted Person no longer has reasonable grounds for taking, defending or being party to the proceedings or, in the case of an inquest, no longer has a reasonable interest in the proceedings; or
  - b) the Assisted Person has required the proceedings to be conducted unreasonably so as to incur an unjustifiable expense to Treasury; or
  - c) it is unreasonable in the particular circumstances that the Assisted Person should continue to receive Legal Aid.

The Advocate must report to the Certifying Officer if:

- a) a Legal Aid Certificate has been issued in connection with any proceedings and
- b) it might reasonably be expected at the conclusion of the proceedings that the Court would make an order for costs in favour of the Assisted Person if an application was made. The Advocate must make that application.

The Advocate is responsible for advising the Assisted Person about the Statutory Charge. The Certifying Officer needs to be satisfied that:

- Legal Aid funding is being used for proper purposes and spent in a cost-effective manner
- the merits tests continue to be met

The Certifying Officer is entitled to receive reports from Advocates to enable them to make decisions about whether or not Legal Aid should continue.

### **3.1.13 Case Management**

The Certifying Officer monitors the quality of service delivery and the progression of the case through regular file reviews, updates and reports. The Certifying Officer will not undermine or interfere with the professional relationship between the Advocate and the Advocate's client. On review, and at case management meetings, the Advocate will need to demonstrate that the standard of service delivery is consistently and cost-effectively maintained.

A case management meeting may be called for the purpose of ensuring quicker progress of complex cases or where both sides are legally aided. If files are inactive, the Certifying Officer will seek an update as to reasons why.

The Advocate is expected to report an Assisted Person making unreasonable demands on the Legal Aid fund. The Certifying Officer may instigate the 'show cause' procedure to revoke the Certificate. There is an expectation that all Court directions will be met unless there are very good reasons for not doing so.

The Certifying Officer may prompt or approve a particular course of action but this does not constitute legal advice from the Certifying Officer to the Assisted Person, nor does it constitute control over the conduct of the case which rests with the Advocate.

### **3.1.14 Legal Advice and Assistance {Green Form} - Scope**

Green Form is the common name for Legal Advice and Assistance governed by Sections 7-11 of the Legal Aid Act 1986 and the Legal Advice and Assistance Regulations 1997. It enables an Advocate on the Panel to give initial advice to individuals on almost every aspect of Manx Law if they meet the financial criteria.

Green Form may be used in circumstances where full Legal Aid is not available but not where it has previously been refused for the same case.

This covers any "oral or written advice given by an Advocate:

1. On the application of Manx law to any particular circumstances which have arisen in relation to the person seeking the advice.
2. As to any steps which that person might appropriately take (whether by way of settling any claim, bringing or defending any proceedings, making any agreement, will

or other instrument or transaction, obtaining further legal or other advice or assistance, or otherwise) having regard to the application of Manx law to those circumstances."

The time limits under the Legal Advice and Assistance Regulations 1997 are:

- Four hours in a case where a divorce application is lodged
- Three hours in every other matter

The objective should be to carry out the work within the normal time limit. Where this is not possible an application can be made for an extension, to increase the time by up to six hours. If an extension is refused, the Advocate can contact the Certifying Officer to ask for a review.

Green Form advice and assistance:

- cannot be given for the same matter by more than one Advocate within a period of six months, without the prior authority of the Certifying Officer.
- excludes property transactions.
- cannot be used for work already covered by a Legal Aid Certificate.
- does not include paying Court Fees.

### **3.1.15 Civil Legal Aid - Scope**

Civil Legal Aid is available to any person whose financial resources make them eligible, subject to such person satisfying the Certifying Officer that they have reasonable grounds for taking, defending or being party to proceedings which come within the legislation.

Civil Legal Aid is governed by Sections 1 to 6 of the Legal Aid Act 1986 and The Legal Aid (General) Regulations 1997.

A person will not be given Civil Legal Aid in connection with any proceedings unless they show that they have reasonable grounds for taking, defending or being a party thereto, and that the case is cost effective. Civil Legal Aid may also be refused if it appears unreasonable for it to be granted in the particular circumstances of the case.

Legal Aid is also available for mediation following the Legal Aid (Amendment) Act 2012. This includes all such assistance as is usually given by an Advocate in the steps preliminary or incidental to any proceedings, or in arriving at or giving effect to a compromise to avoid or bring to an end any proceedings.

### **3.1.16 Consideration of applications for Civil Legal Aid**

The applicant must:

1. Qualify financially (i.e. financial eligibility)
2. Show that they have reasonable grounds for taking or defending a Court action and that it is reasonable to grant Legal Aid in the circumstances of the case (i.e. legal merits)



In some cases the applicant or the Advocate may be asked to provide further information or supporting documents. The Certifying Officer will consider all questions of fact and law arising out of the application. In some instances the Certifying Officer may decide to grant a Certificate generally limited to attempting to negotiate a settlement. The Certifying Officer may also refuse Legal Aid. If Legal Aid is refused the applicant can appeal to the Legal Aid Appeals Tribunal. If Legal Aid is granted the opponent also has a right to appeal to the Tribunal.

### **3.1.17 Legal Merits Test**

A person will not be given Legal Aid in connection with any proceedings unless they show that they have reasonable grounds for taking, defending or being a party to and may also be refused if it appears unreasonable in particular circumstances of the case.

The initial merits assessment is determined by the Advocate submitting the application (and forms part of the application). The assessment of the Legal Merits Test is carried out by the Legal Aid Certifying Officer (in Civil matters) considering the relevant facts and law to decide whether legal grounds exist and whether it is reasonable in the particular circumstances of the case (the 'reasonable test').

### **3.1.18 Financial Means Test (Civil)**

There is a financial means test applied to both Green Form and Full Civil Legal Aid. People who are in receipt of any one of three income-related benefits (Income Support; Income-based Job Seekers Allowance; Employed Person's Allowance) automatically pass the means test and qualify financially.

Individuals who do not receive one of these benefits but are on a low income may still qualify, either partially or in full. Those who partially qualify will be required to pay a contribution towards their legal expenses.

Individuals can also use the online [Civil Legal Aid Eligibility Calculator](#) to provide an indication of their financial eligibility for Legal Aid.

If a person is not in receipt of a qualifying benefit, their financial eligibility is determined by calculating a person's income and then deducting a 'Prescribed Amount' which is the amount the law says a person needs to live on. Prescribed Amounts are reviewed every year and are published on the Legal Aid Office website.

A person's income includes net salary; benefits; pension income; maintenance and all other income. This includes income from capital assets (e.g. savings; shares; land) above £13,000 but does not include the value of the property in which the person lives.

The prescribed amount for a person depends on a number of factors, including:

- whether a person is single or married/ living with partner
- number of dependents/ non-dependents living at home
- cost of rent / mortgage

- cost of rates
- cost of childcare
- cost of work-based pension

### **3.1.19 Civil Legal Aid - Statutory Charge**

The underlying principle of the Statutory Charge (the Charge) is to put the legally Assisted Person as far as possible in the same position as an unassisted person, whose first responsibility at the end of the proceedings is to pay whatever legal costs are not being paid by the other side.

The Statutory provisions relating to the Charge are contained in the Legal Aid (Financial Resources) (Amendment) Regulations 2014 made under Sections 3, 4, 16 and 27 of the Legal Aid Act 1986.

The purpose of the Statutory Charge is for the benefit of the Treasury and to ensure that recovered or preserved property is used first to repay the costs of legal aid funding, where such costs are not being covered by the other side.

The charge could be imposed upon money or property recovered, including from any costs recovered and even where the proceedings are settled or compromised. The Regulations require the Advocate to give the Treasury details of the property.

Legal Aid forms include:

- a declaration to be signed by the applicant confirming they have read notes about the Charge and that the Advocate has explained the Charge to them; and
- a declaration to be signed by the Advocate confirming that the Charge has been explained to the applicant, and that they have drawn the attention of the applicant to the notes on the form.

### **3.1.20 Criminal Legal Aid**

Legal Aid in criminal matters is covered by a combination of:

- 1) the Duty Advocate Schemes
- 2) Legal Advice and Assistance (Green Form') and
- 3) Criminal Legal Aid

It is provided in appropriate cases in the Criminal Justice system and fully meets the Isle of Man's international obligations under Article 6 (3) (c), Human Rights Convention, as incorporated into Manx Law by Section 1, Human Rights Act 2001.

The provision of Criminal Legal Aid is an essential service which supports the Criminal Justice system. The delivery of the service must be efficient for the Court and others, professional for the client and cost effective for the Legal Aid Fund. Criminal Legal Aid may be granted by the Court that is dealing with the case if it appears to that Court that:

- 1) It is desirable in the interests of justice that the applicant should have Legal Aid in the preparation and conduct of their case in the proceedings.
- 2) That the applicants' means are insufficient to enable them to meet the costs which they may incur in the proceedings.

The Certifying Officer should be consulted for approval of disbursements where a criminal Legal Aid Certificate has been granted and for the grant of a Certificate for an Appeal.

### **3.1.21 Duty Advocate Schemes**

There are two schemes governed by the Duty Advocate (Police Custody) Scheme 1998 and the Duty Advocate Scheme 1997. Both schemes fall within the functions of the Duty Advocate Committee established by clause 2 of the Duty Advocate (Police Custody) Scheme 1998.

There are two separate schemes which provide:

- 1) An Advocate to provide either initial advice on the telephone or attend at a Police Station for the purposes of providing advice; and
- 2) An Advocate to attend a Court of Summary Jurisdiction to provide advice and representation without reference to the individual's financial resources.

### **3.1.22 The Police Custody Scheme**

This scheme provides assistance to a person who is questioned by the Police at a police station about an offence. Whether or not that person has been arrested, they have a right to free legal advice. This is not means tested. A 24 hour rota is maintained for this service.

### **3.1.23 Legal Advice and Assistance (Green Form) in criminal matters**

If a person needs legal advice and assistance about a criminal matter and they are eligible, they can see an Advocate under a Green Form. An Advocate can also give advice and assistance in preparing the case for Court.

An application for Criminal Legal Aid is, in most cases, a more effective way forward than using Green Form. Green Form should not be used when Criminal Legal Aid has been refused.

### **3.1.24 Scope of Criminal Legal Aid**

If granted, Criminal Legal Aid usually covers the cost of an Advocate preparing a client's defence and representation of that client at Court.

[Schedule 3 of the Legal Aid Act 1986 sets out what Criminal Legal Aid **may** be granted for (e.g. Summary trial or committal proceedings before a Summary Court; Appeal to the Staff of Government Division against a decision of a summary court in respect of an anti-social behaviour order; General Gaol Trial)

### **3.1.25 Applying for Criminal Legal Aid**

There are no application procedures to access the Police Station Duty Advocate or Court Duty Advocate Schemes. These two schemes are universal which means they are free and available to everyone.

Application forms for Green Form and Criminal Legal Aid are completed by an Advocate with the applicant. Completed applications are then submitted by an Advocate.

An application form for Criminal Legal Aid is set out in Schedule 1 to the Criminal Legal Aid Regulations 1993 should be made [by the Advocate] to the Court that is dealing with the case as soon as possible after the applicant has been summoned/charged with a criminal offence.

Application forms are available from the public counter at the Isle of Man Courts of Justice and at Police Headquarters. Completed forms should be forwarded to the Chief Registrar in the High Court; the Clerk to the Court in Summary Courts; and to the Certifying Officer in the case of an Appeal to the Staff of Government Division.

The Legal Aid Office has no role in the consideration of the grant of Criminal Legal Aid.

### **3.1.26 Financial Means Test (Criminal)**

There is a financial means test component to both the Green Form and full Criminal Legal Aid schemes. People who get any one of three income-related benefits (Income Support; Income-based Job Seekers Allowance; Employed Person's Allowance) automatically qualify financially. However, someone on a low income, who is not in receipt of one of these benefits, may partially qualify and be required to pay contributions towards their legal expenses.

The applicant is required to give details of income and savings in a statement of means. Advocates must include the applicant's wage slips for the previous three months and/ or proof of benefits. Advocates engaged in Criminal Legal Aid work must ensure that the application forms are fully completed and accompanied by all necessary supporting paperwork.

### **3.1.27 Criteria for the grant of Criminal Legal Aid**

The Court will grant Criminal Legal Aid if it decides that it is in the interests of justice that the defendant should have free legal representation and that they need help to pay the costs of the case. The Court's decision will be based on the information supplied in the Criminal Legal Aid application form and whether the applicant is financially eligible for Legal Aid.

A defendant may be asked to pay towards their costs as a condition of Criminal Legal Aid. No contribution shall be payable where the applicant is (directly or indirectly) in receipt of specified Isle of Man income related benefits.

### **3.1.28 Criminal Legal Aid Disbursements**

The Certifying Officer is required to approve all criminal disbursements over £250 and will specify the maximum fee payable for such report, opinion, expert evidence or transcript.

The Certifying Officer may give authority to:

1. Obtain a report or opinion of one or more experts or to tender expert evidence
2. Employ a person to provide a report or opinion
3. Bespeak transcripts or shorthand notes or recordings of any proceedings Supply information about why the disbursement is required and (in most instances) estimates for comparison. This is particularly important for high cost disbursements.

### 3.1.29 Off-Island Counsel

Legal Aid (either Civil or Criminal) can be considered and granted to meet the cost and disbursement of off-Island Counsel advising in very rare cases, for example in complex specialist areas of law when the Certifying Officer can be asked to consider Legal Aid meeting the cost of work carried out in assisting the Advocate who is in receipt of a Legal Aid Certificate. The costs of off-Island counsel appearing before Manx Courts may also be met if that counsel has first obtained the issue of a Temporary Advocate's Licence under section 17 of the Advocates Act 1995 in which circumstances, the off-Island counsel will be eligible to apply for Criminal and Civil Legal Aid.

### 3.1.30 Legal Aid Rates

The hourly rates set out in the Legal Aid Act (Remuneration) Order 2014 are currently:

- Senior Advocate £135.00
- Junior Advocate £115.00
- Paralegal £85.00

### 3.1.31 Legal Aid expenditure

The Legal Aid Committee Annual Report 2018/19<sup>4</sup> includes details of expenditure on Legal Aid cases; income from recovered costs and contribution, and the overall spend. Expenditure on Legal Aid cases in the Island from 2014-2019 is shown in Table 1 below:

**Table 1 Expenditure on Legal Aid cases 2014/15 to 2018/19**

<b>IoM</b>	<b>2014/15</b>	<b>2015/16</b>	<b>2016/17</b>	<b>2017/18</b>	<b>2018/19</b>
Criminal	2,249,584	2,217,500	1,673,310	2,033,342	2,442,549
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
Total (excl. admin & contributions)	<b>3,747,927</b>	<b>3,704,862</b>	<b>3,191,908</b>	<b>3,729,191</b>	<b>3,675,978</b>

Income to Legal Aid can come from recovered costs and contributions. Recovered costs are the costs recovered from the opponent when they are ordered by the Court to pay costs.

<sup>4</sup> <https://www.gov.im/media/1367528/iom-legal-aid-committee-annual-report-2018-19.pdf>

There is also a sliding scale of contributions that some legally aided individuals are required to pay above the 'free' Legal Aid limit. This depends on their income and is determined following a financial assessment of their income and outgoings. Income to Legal Aid for the same period is shown in Table 2 below:

**Table 2. Income to Legal Aid via recovered costs & contributions 2014/15 to 2018/19**

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

The Legal Aid Committee also reports that the overall Legal Aid spend which includes the legal aid costs from Table 1, plus administration costs, committee expenses, recovered costs, contributions from assisted persons, funds from reserves, reimbursements and costs recovered. The total spend taking all these factors into account and as reported in the IoM Government detailed accounts is shown in Table 3 below:

**Table 3. Total Legal Aid spend 2014/15 to 2018/19 as per IoM Government accounts**

<b>IoM</b>	<b>2014/15</b>	<b>2015/16</b>	<b>2016/17</b>	<b>2017/18</b>	<b>2018/19</b>
Total (incl. admin & contributions)	<b>£3,611,292</b>	<b>£2,350,498</b>	<b>£2,248,745</b>	<b>3,409,707</b>	<b>3,789,990</b>

## **3.2 GUERNSEY**

Guernsey is a Crown Dependency with a population of 63,000 (2019).

### **3.2.1 Basis of Legal Aid in Guernsey**

Guernsey has a statutory legal aid scheme. The scheme commenced in September 2001 for Criminal Legal Aid matters and its scope was extended in January 2002 to cover Civil Legal Aid matters. The Legal Aid (Bailiwick of Guernsey) Law 2003 was approved on 1 August 2001 and came into force on 28 September 2005.

### **3.2.2 The Guernsey Bar**

Members of the Guernsey Bar are 'Advocates of the Royal Court'. They are lawyers who advise clients on issues of local law and represent them in the courts of the Bailiwick of Guernsey. Although Advocates originally qualify in other jurisdictions they must all undertake further legal studies and a local period of apprenticeship before they can practise in the Bailiwick. Some Advocates have built up their expertise in a career based in Guernsey while others have gained experience in countries such as the United Kingdom, Australia, New Zealand, and offshore financial centres before practising in Guernsey.

### 3.2.3 Legal Aid Ordinance

The Legal Aid (Guernsey and Alderney) (Schemes and Miscellaneous Provisions) Ordinance 2018 ("the Ordinance") came into effect on 1 January 2019. It was made under the Legal Aid (Bailiwick of Guernsey) Law 2003 and had the effect of placing the current arrangements on a full statutory footing for the provision of Legal Aid in Guernsey and Alderney. The Guernsey Legal Aid Service (GLAS) which is overseen by the Committee for Employment and Social Security ("the Committee") continues to administer the scheme following the commencement of the Ordinance.

Legal Aid arrangements in Guernsey provide access to free or reduced cost legal advice, assistance, and representation, in qualifying Criminal and Civil cases, to individuals who could otherwise not afford the services of an Advocate. The facility is only available to private individuals, not companies or groups of people. It can only pay for legal advice, assistance or Court proceedings that occur within the Bailiwick of Guernsey.

The arrangements operate in three main areas comprising:

- Legal Aid, Advice and Assistance Scheme (Green Form)
  - o Provides up to 2 hours of advice and assistance on a means-tested basis and which can also include the preparation of a case or a legal document and limited representation in court. A maximum extension of 2 hours can be applied for under Green Form (i.e. maximum 4 hours).
- Criminal Legal Aid Scheme
  - o Includes the Duty Advocate Scheme, which provides free legal advice 24 hours a day to any person who is detained or who voluntarily attends at the Police Station or Border Agency offices;
- Civil Legal Aid Scheme

Criminal and Civil Legal Aid cover more prolonged or complex court cases and they are subject to both a means test and legal merits test.

### 3.2.4 Guernsey Legal Aid Service (GLAS)

The Guernsey Legal Aid Service (GLAS)<sup>5</sup> is the office that administers Legal Aid Schemes in Guernsey. GLAS is run by the Legal Aid Administrator who is responsible for granting Legal Aid. The Administrator is an independent statutory official appointed by the States of Guernsey and answerable to the Committee for Employment and Social Security. She has full discretion to grant or refuse Legal Aid within the terms of the scheme which the States prescribes.

GLAS publishes a comprehensive guide: *LEGAL AID Frequently Asked Questions about Legal Aid in the Bailiwick of Guernsey*<sup>6</sup> which provides details of who is eligible; who issues Legal

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<sup>5</sup><http://guernseyroyalcourt.gg/article/3204/Guernsey-Legal-Aid-Service>

<sup>6</sup><http://lguernseyroyalcourt.gg/CHttpHandler.ashx?id=78075&p=0>

Aid; how financial assessments are made; how decisions are appeal decisions; when Legal Aid costs must be repaid and other matters.

Legal Aid, whether provided by way of Green Form or full Certificate, must be a last resort and all other possible avenues must be exhausted before turning to the public purse for information, advice or assistance. This means that the individual seeking help should first approach any other agency or body who may be able to assist e.g. Citizens Advice Bureau, Employment Relations Service, Housing, the Greffe and H.M Sheriff, Trading Standards, Channel Islands Financial Ombudsman etc. In addition, all complaints, ombudsman or mediation procedures should have been fully followed before a person seeks publicly funded legal advice and assistance or representation.

### **3.2.5 Financial determinations**

There are no set financial limits regarding income, as each applicant for Legal Aid will have different financial circumstances. However, essentially, if the 'residual income' of the family unit is more than £200.01 per week then a person will not be eligible for Legal Aid assistance. Residual income is monies left after income tax and social security payments, a housing allowance, maintenance payments made, child-minding costs (if they are to enable a person to work) and the weekly requirements for a person and any other dependent members of the family have been taken into account. Income Support is a qualifying benefit. All other benefits, except Severe Disability Benefit are means tested.

There is a sliding scale whereby if a person is only just over the financial threshold they will have to contribute a percentage (20/40/60/80%) of the total Legal Aid costs and disbursements of their case.

### **3.2.6 Advocates undertaking Legal Aid work**

In 2018, there were 220 Advocates on the role (although this does include some who are non-practising). Of these, 26 Advocates (12% of the Bar) undertake Legal Aid. Generally if an Advocate undertakes Legal Aid work they will cover both Criminal and Civil. The Advocates who offer Legal Aid are generally from the smaller firms (the larger firms may cover big Criminal cases or limited Civil Legal Aid but overall it is work predominantly covered by the smaller firms).

The Legal Aid Administrator does not have the power to make an Advocate take on a person's case. If an individual has approached all of the Advocates' firms on the list and they still experience difficulties in securing an Advocate to represent them, they are advised to contact the Batonnier (Head of the Guernsey Bar) who may be able to assist. There have been no difficulties finding Advocates to act.

### **3.2.7 Granting Legal Aid (incl. Appeals)**

#### **GLAS:**

- Grants funding for all Criminal and Civil Legal Aid which are means and merits tested.
- Grants funding for all Civil Appeals which are also means and merits tested.
- Taxes and pays for Appeal matters from the Magistrates to the Royal Court only.



GLAS Criminal Legal Aid expenditure each year therefore includes the taxed costs of any Appeals to the Royal Court.

The Court:

- Grants Legal Aid (called an Appeal Aid Certificate) for all Criminal appeals.
- Taxes and pays for any Appeal matter from the Royal Court to the Court of Appeal.

### 3.2.8 Legal Aid hourly rates

Guernsey applies hourly rates to the majority of legally-aided work. There are three hourly rates which have been in place since 2005, as shown in Table 1.

**Table 1 Guernsey Legal Aid rates**

category	Hourly rate (£)
Single flat rate for Legal Aid Advocates	167.00
Non-admitted lawyers (NAL)	83.50
Paralegals	55.70

Non-admitted lawyers (NAL) must be accredited by GLAS and cannot attend a Police Station. Guernsey Advocates have requested an increase in the hourly rate but the Legal Aid Administrator has advised that the Committee indicated there would need to be a full review of Legal Aid and consequently the Advocates "*backed down*." Guernsey hopes to undertake a full review in 2021 which will consider the hourly rate; whether more fixed fees should be introduced; financial eligibility criteria etc.

For comparison purposes, the Isle of Man's rates have been in place since 2009 as follows: Senior Advocate £135ph; Junior Advocate £115ph; Other person £85ph.

### 3.2.9 Fixed fees

Currently, Guernsey only applies fixed fees to Divorce proceedings and Mental Health Review Tribunal Proceedings as set out below.

- **Divorce Proceedings**

Legal Aid funds Divorce and Judicial Separation (*CD* & *JS*). Both petitioner and respondent can have 2 hours Green Form advice and assistance but Guernsey only provides a fixed fee Legal Aid Certificate for the Petitioner. Guernsey does, however, provide Legal Aid funding for both parties in contested proceedings. Further information regarding the fixed number of hours for divorce are summarised in Table 2.

**Table 2 Fixed fees in divorce proceedings**

Divorce proceedings	Fixed Fees allowed
No property & no dependent children	1 hour (£167) plus disbursements
Property but no dependent children	2 hours (£334) plus disbursements
No property but dependent children	3 hours (£501) plus disbursements
Property & dependent children	4 hours (£668) plus disbursements

For all Green Forms, work must cease under it once a Legal Aid Certificate has been granted but the only exception is for Divorce proceedings where the Advocate can use the entirety of the 2 hours before they move onto the Certificate. The number of hours granted for the Certificate depends on the Petitioner's circumstances. So, for example, a Petitioner who has no property but children would be entitled to a total of 5 hours (i.e. 2 hours under the Green Form and a 3 hour (plus disbursements) certificate (5hr@ £167ph = £835).

- **Mental Health Review Tribunal**

No Green Form is available - a fixed fee Certificate is granted. There are 3 fixed fee stages the Advocate can claim depending on how far the case has progressed up to a maximum of 10 hours i.e. £1,670.

### 3.2.10 Green Form

In Guernsey, Green Form work is for up to 2 hours(@ £167ph) with a maximum extension of 2 hours (@ £167ph). Maximum Green Form costs are £668 (i.e. 4 hours @ £167ph).

For comparison purposes, in the Isle of Man, Green Form work is for up to 3 hours(@ £135ph for Senior Advocate) or 4 hours for divorce (@£135ph) with a maximum extension of 6 hours (@£135ph). Maximum Green Form costs are £1215 (i.e. 9 hours @ £135ph) or £1350 for divorce (i.e. 10 hours@ £135ph).

### 3.2.11 Annual Legal Aid expenditure

Annual Legal Aid expenditure in Guernsey from 2014-2019 is c£2.1m to £2.Sm, excluding administration costs of c£400K per annum as shown in Table 3.

**Table 3. Guernsey expenditure 2014-2019**

<b>Guernsey</b>	<b>2014</b>	<b>2015</b>	<b>2016</b>	<b>2017</b>	<b>2018</b>	<b>2019</b>
Criminal	741,000	818,000	812,350	782,506	789,083	999,918
Civil	1,542,000	1,358,000	1,310,024	1,670,509	1,697,127	1,530,863
Total(excl. admin)	2,283,000	2,176,000	2,122,374	2,453,015	2,486,210	2,530,781

Between 2015 and 2018, Criminal Legal Aid costs were going down in Guernsey, however the number of detention forms, Green Forms and Criminal Legal Aid forms appear to have been consistent.

In 2019, the Civil budget was £1,622,100 and the Criminal budget was £819,900. The increase in criminal expenditure was mainly due to 2 expensive and complex Royal Court cases which have now concluded. The overall formula-led expenditure of £2,530,781 was just over the overall budget of £2,442,000.

The Isle of Man has a comparable crime rate to Guernsey, but Criminal Legal Aid expenditure is more than double that of Guernsey. However, it is recognised that the number of crimes does not reflect their complexity which can significantly affect expenditure (e.g. a complex financial crime case vs a simple driving offence case).

### **3.2.12 Cost assessment criteria/ billing guidelines**

GLAS issues Costs Assessment Criteria to Advocates to assist with the submission of invoices. The most recent criteria (*Circular 7 - October 2019*) reiterates what was in the previous Circulars and the Legal Aid Administrator cannot say that it has made any difference to the reasonableness of costs claimed, as quite large reductions are made each year.

### **3.2.13 In-house & external taxation**

Guernsey applies in-house or external taxation to **all** files submitted under a Criminal or Civil Legal Aid certificate (not Green Form). Files are taxed against Guernsey cost guidelines.

A UK-based company undertakes external taxation for public law cases and complex criminal cases on behalf of the GLAS for large invoices (>£6,000). These services are described on the company's website as "*Comprehensive & innovative costs, pricing and legal funding services for progressive law firms*"<sup>7</sup>

Per year, Guernsey usually sends 4 batches of 20 boxes to Burcher Jennings. Guernsey considers that this external review supports the principle of good governance and also reduces potential overcharging.

### **3.2.14 Duty Advocate**

The Duty Advocate is available to any person detained by the police or customs or attending the police/Border Agency as a volunteer in respect of a matter for which they could otherwise be arrested. The Duty Advocate is on call 24 hours a day and is free of charge. There is no choice of Duty Advocate under this scheme.

A Duty Advocate is also available at most sittings of the Magistrate's and Juvenile Courts for free consultation (excluding the Traffic Court, Petty Debts Court and some Personal Injury cases in the Magistrate's Court).

### **3.2.15 Mediation & the Family Proceedings Advisory Service**

Legal Aid does not currently pay for Family Mediation. However, it can be accessed free of charge from the Family Proceedings Advisory Service<sup>7</sup> (FPAS).

FPAS was set up under the Children (Guernsey and Alderney) Law (2008) as amended, bringing together the services previously provided by the Court Welfare and Guardian ad Litem services. A Family Proceedings Adviser (FPA) is appointed by the Family Courts (Magistrate's and Royal), the Juvenile Court (Public Law) and the Child Youth and Community Tribunal (CYCT) or the Convenor as an independent professional to advise and make recommendations on current applications to the Courts. The FPA works for the Courts, independently of any other States Committees or agency, to safeguard and promote the interests of children and young people involved in Family Court proceedings and ensure that children's views are heard.

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<sup>7</sup> <https://www.gov.gg/familyproceedingsadvisoryservice>

The Family Proceedings Advisers are all fully trained mediators, and FPAS is able to offer Mediation as an alternative to a contested Court hearing when both parties agree to this. FPAS considers that the opportunity to mediate should be offered to all families that it works with under the principles of Mediation:

- Voluntary
- Impartial
- Confidential (except for child protection and safety issues)
- Decisions are made jointly by parties
- Any person can request Mediation, referrals can accepted through different channels; mainly self-referral, professional agency, Advocate or by the Court;
- Mediation can be used in different ways.

### 3.2.16 Tribunals

Generally, Legal Aid does not cover Tribunals but in exceptional circumstances, the Legal Aid Administrator may grant Legal Aid. Patients who wish to apply to a Mental Health Review Tribunal will be entitled, in most cases, to free Legal Aid for representation at that particular tribunal (as detailed above at section 10 - Fixed fees).

### 3.2.17 Cost awards

If a defendant is acquitted in a Criminal matter they are **not** able to recover costs (whether privately funded or legally aided). If they are legally aided and have paid a contribution they are **not** able to recover this contribution if they are acquitted. It is understood that there is no human rights entitlement to costs on acquittal.

In terms of Civil matters, the relevant condition of the Legal Aid Certificate is:

*"costs awarded by the Court against the Applicant are not payable by the States, nor will legal aid funding be available to the Applicant to contest or dispute the costs order or the level of costs awarded. "*

If a legally-aided person has a costs order in their favour, depending on the type of case, either GLAS or the assisted person will look to enforce it but if the assisted person has recovered the costs awarded, they are required to forward these monies onto GLAS.

### 3.2.18 Recover and preserve matters, and house bonds (Statutory Charge in IoM)

If it is a recover and preserve matter (e.g. ancillary relief where net proceeds of sale are received by the assisted person and a costs order is made in the assisted person's favour) GLAS expects to be reimbursed all costs incurred under the Legal Aid Certificate from the net proceeds of sale. It is then left to the assisted person to pursue/enforce their costs order themselves. If it is a case where GLAS will not be reimbursed at the conclusion of matters, GLAS will pursue/enforce any costs order if practicable.

A recovery can be made against any assets received or secured through the assistance provided by the Advocate under the Legal Aid certificate and any "Green Form".

A person may also be required to pay interest on money owed to GLAS. For example, if awarded any sum of money in matrimonial proceedings or compensation for a personal injury the person will have to repay the full costs of Legal Aid from the money received at the end of the case. Similarly, if in divorce proceedings a person is awarded full ownership or retains part ownership of a house. Full repayment may be required immediately or may be deferred and a bond taken out by the Legal Aid Administrator on the house at the person's expense. The purpose of the bond is to ensure that when the house is sold the Administrator will be automatically repaid from the proceeds of the sale. This works in the same way as when any mortgage is repaid when a house is sold. If the Administrator exceptionally agrees to defer the repayment in full of a person's costs to GLAS, then the person will be expected to come to an arrangement to start paying off the costs by way of manageable regular payments.

A person may also have to contribute to some of the costs of Legal Aid if they are financially assessed to be on a contribution. If a person does not pay, they will be taken to Court by the Administrator to recover the debt.

### **3.2.19 Other notes**

- The Duty Advocate scheme started in 2001. This was followed by the introduction of the Legal Aid Scheme in 2005 (Legal Aid Law 2003).
- There is a joint consultative committee comprising Legal Aid offices from Scotland, Wales, Northern Ireland, England, Guernsey and the Isle of Man which meets annually.
- There is a fused legal profession in Guernsey as in the IoM.
- The Legal Aid Committee is a statutory office created under the Legal Aid Law 2003.
- The Legal Aid Office operates on a formula led budget i.e. although they have a defined budget they are allowed to exceed this as people are statutorily entitled to legal aid.
- The budgets for Criminal and Civil Legal Aid have been reducing in recent years. In 2016, the Criminal budget was £884K and in 2018 it was £820K. In 2016, the Civil budget was £1.7m and in 2018 it was £1.6m. The admin budget/ expenditure remains at c£400K. The Legal Aid Office always spends below its budget (2019 has been an exception).
- Advocates are paid at a standard hourly rate of £167ph which was introduced in 2005. It is also possible to be accredited to provide legal aid work if you are not a qualified Guernsey Advocate - if you are accredited and are a lawyer in another jurisdiction you will be paid at a rate of £83.50ph and for paralegals the rate is £53.50ph. There are not many lawyers from other jurisdictions who are accredited.
- There is no accreditation scheme for Advocates - any Advocate can apply to be on the list to carry out criminal Legal Aid work.
- A Public Defender Scheme has not really been considered by Guernsey.
- Guernsey has considered opening up the profession to lawyers from the UK - it was this consideration that ultimately resulted in the Law Society considering and agreeing the proposals put forward by Government.

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## **3.3 JERSEY**

Jersey is a Crown Dependency with a population of 108,000 (2019).

### 3.3.1 Existing Legal Aid Scheme in Jersey

The existing Legal Aid scheme in Jersey does not have a statutory basis and is based on an historic, professional obligation on locally qualified lawyers. The scheme includes the following aspects:

- Locally qualified lawyers carry out the task of providing Legal Aid on behalf of "*widows, the poverty stricken, orphans and undefended persons*"<sup>8</sup>
- The obligation to provide legal advice and assistance as above is defined by guidelines determined by the Law Society of Jersey. This obligation constitutes the Jersey Legal Aid Scheme;
- All Jersey lawyers of less than 15 years' call in private practice are required to participate in the Legal Aid scheme. Advocates/solicitors employed within the Law Officers' Department or Judicial Greffe are exempted;
- The scheme is administered in accordance with a "Tour de Role", which is a list of participating lawyers to whom Legal Aid work is allocated in rotation;
- The administration of the scheme is the responsibility of the Batonnier (who nominates an Acting Batonnier to undertake duties);
- The Acting Batonnier's Office maintains a Legal Aid website and also maintains a rota system for providing legal advice to individuals detained at Police Headquarters or Customs and Immigration, and to individuals at the Magistrate's Court, Youth Court and Citizen's Advice Jersey;
- The Legal Aid scheme is generally **not publically funded**. On the whole, it is funded by the legal profession (accordingly on a pro bona basis), and the only fees recoverable will be ones they can reasonably charge their client, unless specified circumstances apply (e.g. lawyer receives payment pursuant to award of costs by the court following a client's acquittal in criminal case);
- Some aspects of public law are publically funded (e.g. public law children's cases);
- There is a 'Legal Aid vote fund' which is distinct from the Legal Aid system and the allocation of funds is the responsibility of the Deputy Judicial Greffier (e.g. to fund disbursements, or pay lawyers for 'exceptional' or 'unduly onerous' Legal Aid cases).
- Payment for costs in criminal cases is currently made from public funds to lawyers in respect of a defendant who is acquitted following trial in a Magistrate's, Youth or Royal Court or when the Crown abandons the prosecution in whole or in part. Payment is made at hourly rates depending on the level of experience of the legal fee earner & complexity of case. The costs obtained from public funds are the whole costs of defence so can be significant.
- Payment is made on an ex gratia basis to lawyers in a small no. of complex cases which are felt to represent an unduly onerous burden to the lawyer appointed:
- During 2017 there were 950 legal aid certificates issues, of which 537 related to criminal matters, 293 to family law matters and 120 to other civil matters (e.g. personal injury and housing matters).
- The Law Society of Jersey advises on its website<sup>8</sup> that volunteer lawyers also undertake weekly legal advice clinics on an appointments basis at Citizens Advice Jersey (CAJ).
- The Law Society of Jersey advises on its website<sup>9</sup> that:

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<sup>8</sup> <https://www.jerseylawsociety.ie/csr/citizens-advice-bureau-assistance/>

<sup>9</sup> <https://www.jerseylawsociety.ie/csr/legal-aid/>

*"Lawyers in Jersey are not paid by the States of Jersey to undertake Legal Aid work. The Legal Aid scheme is presently subsidised by the lawyers and law firms who undertake Legal Aid work. Legal Aid is only granted in certain circumstances."*

### **3.3.2 Key Changes Proposed to the Legal Aid System in Jersey**

The key changes proposed to the Legal Aid system in Jersey are set out on its Legal Aid Review webpage<sup>10</sup> as follows:

- The Legal Aid system would be put on a statutory basis.
- Public law (i.e. mainly criminal) cases would be funded centrally.
- This would be funded through existing resources in Jersey's court and case costs budget.
- A new "criminal law panel" would be formed to replace the existing "Tour de Role" system of Legal Aid made up of Jersey Advocates.
- Under the current system, lawyers can claim costs from public funds when a defendant is acquitted or the prosecution abandons the trial. This will be replaced by a fixed fee payable to lawyers in all cases.
- A Legal Aid office would be established to administer the Legal Aid system at an estimated cost of £400k per annum.
- Guidelines for the new Jersey Legal Aid system would be published by the Chief Minister on advice from the newly formed Legal Aid Guidelines Advisory Committee.
- The Chief Minister would, for the first time, be accountable for the Legal Aid system.

For public law (mainly criminal) cases it is proposed that:

- A defendant will be financially means tested (unless they are in receipt of Income Support).
- There will be fixed fees applied in criminal cases.
- Lawyers of acquitted defendants will receive the fixed fee amount.
- A new Criminal Law Panel will be established and it will be formed of specialist legal practitioners. Accredited members of the Criminal Law Panel will provide legal representation in criminal law.
- Payment to lawyers who are accredited members of the Criminal Law Panel will be administered through the new Legal Aid Office under the day-to-day supervision of the Law Society.
- The Criminal Law Panel will be overseen by the Judicial Greffe.
- The availability of specialist expertise will be extended to include Duty Lawyers and Duty Advocate Schemes to ensure improved initial support for those arrested and brought before the Courts (again overseen by the Judicial Greffe).
- Criminal Legal Aid representation will be on the basis of the Criminal Law Panel rather than the current "Tour de Role" system. Should there be insufficient numbers of lawyers on the Panel, there is provision in the draft law to revert to the Tour de Role system if necessary.
- Applicants granted Legal Aid in criminal matters with gross household income of £15,000 per annum or less are not required to contribute towards costs of legal representation. Applicants with gross income of more than £15,000 per annum (except where the

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<sup>10</sup><https://statesassembly.gov.je/scrutiny/Pages/Review.aspx?reviewid=298>

applicant is in receipt of Income Support) will be required to make a contribution in accordance with published guidelines. Legal Aid will not be granted where an applicant's gross income exceeds £35,000 per annum.

- Legal Aid will not be available for minor criminal offences or minor motor-related offences.
- Funding will be given to exceptional cases which fall outside ordinary Legal Aid Guidelines but where funding is required to ensure compliance with Convention rights.

### **3.4 SCOTLAND**

The Legal Aid provision in Scotland was first established by statute in 1950, since when it has developed significantly. For the purpose of this Report, I highlight a number of significant changes over the years which, although fit for purpose in a much larger jurisdiction than the Isle of Man and our fellow Crown Dependencies, nevertheless are of value to have considered and to help inform the recommendations to the Legal Aid Committee:

- In 2004 Scotland introduced a Public Defence Solicitors Scheme (akin to the Public Defenders Scheme considered as an option for consideration in the Isle of Man);
- The Public Defence Solicitors (PDS) officers in Scotland cover about 3% of the criminal legal defence market;
- The Out of Hours and Police Station Schemes (the equivalent being 'Duty Schemes' in the Isle of Man) are shared between the PDS and private practitioners;
- Scotland introduced fixed and block fees for private providers in relation to all Legal Aid;
- The responsibility to decide on the issue of all Legal Aid transferred from the Courts to the Scottish Legal Aid Board;
- A quality assurance scheme for civil, criminal and children's Legal Aid incorporating a peer review of solicitors' files to ensure they are meeting quality standards;
- A series of projects embedding Scottish Legal Aid Board salary solicitors into third sector organisations;
- A grant funding programme which incorporated different models for delivery and planning advice services.

I have particularly noted the published encouragement in the Scottish system to make greater use of alternative dispute resolution contributing to more efficient resolution of family cases. The Report of the Civil Courts Review (Court of Sessions 2009) recognised the importance of forms of alternative dispute resolution in many areas of law. It was argued that in family cases, mediation and early intervention should be paramount from the first grant of advice and assistance and that these options should be prioritised (Relationship Scotland 2017).

The Scottish Government provided funding for mediation services and the Scottish Legal Aid Board can cover the client's share of the mediation fee. Scotland recognised that there is clear public interest in resolving cases as quickly as possible, both for those involved and for the public purse. Noting that mediation may not be appropriate in resolving all disputes (such as in domestic abuse cases) the shift evidenced from the experience of Scotland to encourage alternative dispute resolution options being necessary to be considered should be considered by the Legal Aid Committee in line with the Equality and Human Rights Commission (of Scotland) 2017 recommendation: "We support provision of alternative dispute resolution including mediation where appropriate".



### **3.5 ENGLAND AND WALES**

England and Wales similarly has a Legal Aid provision in relation to both Civil and Criminal cases under various statutory schemes.

It operates a Public Defender Service (PDS) with 4 offices in locations with both PDS Solicitors and PDS Advocates. The PDS was not established with the intention of replacing existing and continuing Legal Aid provisions, but rather as a "service of last resort" in areas where there was insufficient provision of available legal advice and assistance, with the result that the PDS covers less than 0.2% of the criminal defence market and very few duty solicitor slots under the various out of hours schemes.

There has been significant publicity criticising the England & Wales Legal Aid schemes as to the challenges centred essentially on the level of remuneration and thus disincentive in lawyers being prepared to accept Legal Aid cases. Although it is outside the scope of this Report to consider and comment on the England & Wales legal schemes, it was apparent that the Ministry of Justice confirmed there was no shortage in solicitors and/or barristers being prepared to join the various Legal Aid schemes on offer.

## PART 4 - CRIMINAL LEGAL AID CONSULTATION

### 4.1 Overview

A public consultation on the subject of Criminal Legal Aid was undertaken by the Attorney General's Chambers from 23 September to 21 November 2019. In total, 203 responses were received.

The consultation contained 15 sections and 69 questions, and respondents could answer as many or as few questions as they wished. The 15 sections were as follows:

- About the respondents
- Awareness of Criminal Legal Aid schemes
- Advocates who do Criminal Legal Aid work
- Persons applying for Criminal Legal Aid
- Legal Advice and Assistance (Green Form)
- Police Station Duty Advocate Scheme
- Appropriate Adult Scheme
- Interpreters
- Court Duty Advocate Scheme
- Full Criminal Legal Aid, vulnerable people and criminal appeals
- Self-representation
- Legal Aid rates
- Fixed fees
- Public Defender Scheme (PDS)
- Options

Additional stakeholder engagement was undertaken by means of a series of workshops which were held with the IoM Law Society, IoM Constabulary and prisoners at the IoM Prison, Jurby. In total, 9 workshops were held, and feedback was gathered from participants.

The *Criminal Legal Aid Consultation* document is included at **Appendix 1** to this Report.

The *Criminal Legal Aid Consultation Results and Analysis Report* sets out in detail the responses to the consultation (subject to the permission of respondents) and the feedback received during the workshops, and is included at **Appendix 2**.

## PART 5 - CIVIL LEGAL AID CONSULTATION

### 5.1 Overview

A public consultation on the subject of Civil Legal Aid was undertaken by the Attorney General's Chambers from 17 February to 21 May 2020. In total, 69 responses were received.

The consultation contained 21 sections and 84 questions, and respondents could answer as many or as few questions as they wished. The sections included two particular matters that had been raised with HM Attorney General, namely restraint proceedings under the Proceeds of Crime Act 2008 and HM Attorney General's role in family proceedings.

The 21 sections were as follows:

- About the respondents
- Awareness and experience of Civil Legal Aid
- Financial means test
- Legal merits test
- Personal responsibilities & financial contributions
- Statutory Charge
- Restraint proceedings under the Proceeds of Crime Act 2008
- Scope of Family matters
- Family proceedings & the role of HM Attorney General
- Divorce & dissolution of civil partnerships
- Scope of Non-Family matters
- Tribunals
- Inquests
- Conditional Fee Arrangements - 'No Win No Fee'
- Legal Aid Panel of Advocates
- Quality of Legal Aid services
- Self-representation
- Expenditure
- Fixed fees
- Access & Legal Advice Centres
- Alternative Dispute Resolution

Additional stakeholder engagement was undertaken through two workshops which were held with the IoM Law Society, and feedback was gathered from participants. Further workshops were planned with prisoners at the IoM Prison, but unfortunately this was not possible as a result of restrictions due to the coronavirus pandemic.

The *Civil Legal Aid Consultation* document is included at **Appendix 3** to this Report.

The *Civil Legal Aid Consultation Results and Analysis Report* sets out in detail the responses to the consultation (subject to the permission of respondents) and the feedback received during the workshops, and is included at **Appendix 4**.

## **PART 6 - RECOMMENDATIONS**

In the Executive Summary (para 1.3.1) I have listed by 32 recommendations which I invite the Legal Aid Committee to consider and I now expand on my rational set out beneath subject headings for ease of reference.

### **6.1 Legal Aid Office and Legal Aid Certifying Officer**

#### **Recommendation 1 - The Legal Aid Committee should invite Treasury to consider the Legal Aid Office being established as a Statutory Board.**

Currently the Legal Aid administration sits within the Social Security Division of the Treasury with the unusual arrangement in place of there then being a Legal Aid Committee intended to create a physical separation of the functions of the legal administration from the other statutory obligations and functions of Treasury.

The Legal Aid Certifying Officer is accountable to the Legal Aid Committee and is recruited by that Committee which Committee is in turn accountable to Treasury. Decisions made by the Certifying Officer in the grant of Civil Legal Aid and the costs of the administration of such Legal Aid provision all have a financial impact for Government.

I have had particular regard to the successful structure adopted in Guernsey adopting a Legal Aid administration model akin to having a Statutory Board with political membership but not control. This type of structure works successfully on the Island in situations such as the Financial Services Authority and Financial Intelligence Unit both of which have a regulatory function and decision making role of a quasi-judicial nature which decisions are reviewable. As in the case of the Certifying Officer I consider that all quasi-judicial functions must be exercised without any prospect of actual or perceived political interference.

Establishing the Legal Aid Administration as a Statutory Board would add clarity to the independence of the Legal Aid Committee demonstrating that the Legal Aid Administration is physically separated from Treasury and enabling the public and stakeholders to identify the independence of the Certifying Officer in discharging the role without any prospect of potential influence or direction from Treasury or any other area of Government.

The need for bolstering and better demonstration the independence of Legal Aid Administration will be of more of a requirement and significance should the Legal Aid Committee support the expansion of the scope of the functions of the Legal Aid Committee which I suggest below.

#### **Recommendation 2 - Legal Aid provision in the Island (including Criminal and Civil Legal Aid) should be centralised in one Legal Aid Office to include:**

- a) the grant and issue of Criminal Legal Aid certificates, subject to the necessary provisions and resources being put in place to ensure there are no delays in issuing certificates in Criminal matters; and**

- b) case management of Criminal cases by the Legal Aid Certifying Officer**
- c) provision for the Appeal process in respect of the grant of Legal Aid to also apply to Criminal Legal Aid**
- d) enabling prisoners to be able to apply directly to the Legal Aid Certifying Officer to seek Legal Aid**

Criminal Legal Aid is currently considered and granted by the Court. There is no rationale for the Court to have to deal with the issue of the grant of Legal Aid in criminal cases, which can conveniently be dealt with by the Legal Aid Certifying Officer. Criminal Legal Aid may be granted under Schedule 3 of the Legal Aid Act 1986 which sets out the wide nature and extent of the criminal proceedings in both the summary court, General Goal and Staff of Government Division.

Schedule 1 to the Criminal Legal Aid Regulations 1993 provides the form to be used and completed when applying to the Court dealing with the case for the grant of Legal Aid which is to be made as soon as possible after the applicant has been summonsed/charged with a criminal offence.

Currently the issue of Legal Aid in Criminal matters and its administration is undertaken by first the Courts in its consideration of the grant of criminal Legal Aid and then in part by the Legal Aid Office (e.g. disbursements). In the comparator jurisdictions considered Legal Aid administration is dealt with as one centralised resource. I have in mind again the arrangements in Guernsey which successfully adopt this model. It is clear to me that centralisation of all Legal Aid Administration ought to be the function of the Legal Aid Committee acting by the Certifying Officer and that such a centralisation will create opportunities in terms of personnel resource and resilience and in terms of quality opportunities for improved consistency in approach and oversight in the delivery of all Legal Aid offerings. This Recommendation it is considered would greatly assist the Legal Aid Certifying Officer in case management and considering criminal Legal Aid disbursements which can be very expensive.

**Recommendation 3 - The Legal Aid Committee should invite Treasury to consider amending the reference to the various authorities referenced in Column 2 of Schedule 3 to the Legal Aid Act 1986 by replacing them with the Certifying Officer as the authority to grant Legal Aid in respect of the proceedings specified in Schedule 3.**

## **6.2 Legal Aid publicity and guidance**

**Recommendation 4 - The Legal Aid Committee should urgently consider:**

- a) the content, effectiveness and messaging of its publicity and guidance concerning all aspects of the Legal Aid offering available on the Island.**

- b) reviewing whether those in receipt of Legal Aid are made sufficiently and appropriately aware of their personal responsibilities and if these obligations are being met**
- c) work with courts/General Registry with a view to adapting UK guides to self-representation for use in IoM Courts**

Through the consultation process comment was made by various stakeholders that the information and guidance published by the Legal Aid Office was not adequate and that the Regulations made in relation (for example) to financial eligibility under both Civil Legal Aid and Criminal Legal Aid were unclear. Whether or not any of the recommendations which I make are progressed the Legal Aid Committee must ensure that it maintains an appropriate emphasis on all aspects of its public engagement ensuring that its publicity and guidance is easily and generally available and expanded in clear and unequivocal terms.

In relation to Recommendation (b) above although advising their clients of their personal responsibilities sits with the Advocate although it appears that this is not always the case. The Legal Aid Certifying Officer should consider providing additional guidance to Advocates on their responsibilities in this regard.

### **6.3 Financial eligibility**

**Recommendation 5 - The Legal Aid Committee should make provisions for both Civil Legal Aid and Criminal Legal Aid to have the same financial eligibility limits based upon criteria for Civil Legal Aid.**

Financial eligibility to obtain any form of Legal Aid is clearly an understandable natural hurdle to obtaining funded legal advice and assistance. It cannot of course be a free for all. Whilst I have in considering the arrangements in comparator jurisdictions noted the differing approaches adopted and different financial entry levels I have not considered it as part of the remit of this review to make any recommendations in this regard as Treasury will determine how the resources made available to it by Government are spent and allocated.

I did however note that 43% of those responding to the Criminal Legal Aid Consultation did not believe its level to be correct. I also noted that the consultations did not identify any rationale for the two schemes having differing eligibility levels and the review did not identify any. There was concern that the financial means test is more generous for Civil than Criminal Legal Aid despite the risk to a person's liberty in some criminal cases.

In the absence of any rationale my view is that the administration of both schemes would be improved and simplified if there was one approach for both schemes. This would also help greatly in the messaging and explanation offered to the public.

### **6.4 Appointment of experts**

**Recommendation 6 - The Legal Aid Committee should seek to improve the processes for the selection and authorisation of experts in both Criminal and Civil proceedings to ensure that they are suitably qualified and meet the required quality standards.**

It was suggested that there should be a procurement exercise conducted with a view to ensuring that the experts authorised by the Legal Aid Certifying Officer (i.e. under disbursements) are suitably qualified and experienced to provide the level of expert advice required. It was also suggested that external counsel, and professional services provided by forensic and psychiatry experts should be subject to bench marking and receive work on a rota basis to ensure diversity and expertise.

## 6.5 Code of Conduct and quality assurance

**Recommendation 7 - The Legal Aid Committee should consider introducing a Code of Conduct along with a Quality Assurance Agreement/Service Level Agreement to be entered into with the Advocates who are currently serving on the Criminal and Civil Legal Aid Panels and for future members of such Panels.**

Quality of service ranked as a most important factor raised in the consultation results of both the Criminal Legal Aid survey and the Civil Legal Aid Consultation. There is currently no system of assessing or monitoring the quality of publicly funded legal services. Whereas the Advocates who responded to the Consultation expressed the view that no change is required to the current arrangements this was not the outcome of the consultation. The evidence from comparable jurisdictions and responses from other stakeholders indicate that there should be a process in place to ensure and monitor quality of service and that this would bring benefits.

What I recommend is a common feature of Legal Aid Schemes in neighbouring jurisdictions; Guernsey, Scotland and England and Wales. The Code of Conduct would include minimum standards for admission to a continuing membership of the relevant Legal Aid Panel and ought to also include such matters as ad hoc peer review of files and that the Certifying Officer be enabled to conduct case management meetings if required. I further recommend that the Certifying Officer be enabled to remove Advocates from the Panel of Advocates for cause (civil and criminal - including the Panel of Duty Advocates).

The obtaining of feedback from service users to better inform the Legal Aid process going forward is also an obvious step to be considered for adoption and is again a common feature in comparable jurisdictions. 91% of respondents to the Civil Legal Aid Consultation said the Legal Aid Office should seek feedback from service users with 81% saying that feedback should also be taken from Advocates. Formalising a system for obtaining feedback is to be encouraged to support the Code of Conduct and associated Quality Assurance/Service Level Agreement.

## 6.6 Remuneration

**Recommendation 8 - The Legal Aid Committee should consider changes to the remuneration payable to Advocates as follows:**

- (a) That fixed fees are introduced for defined processes (e.g. Summary Court proceedings, Divorce, judicial Separation) as operated in Guernsey**

- (b) That otherwise than when a fixed fee is applicable as above that the current two tier system of remuneration (rates for Junior/Senior Advocates) be abolished**
- (c) That a new two tier rate be adopted based on cases which the Legal Aid Certifying Officer considers (acting reasonably) on the grant of the Legal Aid Certificate to be routine cases and/or those which are considered unusually complex. To support this that the Legal Aid Committee determine to be routine cases and those exceptional cases regarded as unusually complex which will at all times be subject (at the discretion of the Legal Aid Certifying Officer) to change if considered appropriate. The Legal Aid Committee may wish to consider criteria that Advocates should meet (e.g. in terms of relevant experience) in order to undertake complex matters at the higher hourly rate.**
- (d) The hourly charging rate for routine cases is fixed at £150 per hour and for most complex matters at £175 per hour**
- (e) When no Manx Advocate is available or able to represent a person eligible to obtain Legal Aid and the IOM Law Society confirm that situation exists then, subject to the merits test being met and the satisfaction of the financial eligibility requirements, all Legal Aid schemes will be available to non-Manx qualified lawyers holding a current practising certificate in England and Wales who are practicing at an hourly rate of £115 per hour.**

The Review provided Manx Advocates with an opportunity to voice their concerns as to the level of remuneration payable under the Legal Aid Schemes and the fact that the current rates payable had not been increased for many years despite rises in inflation and undoubted increases in office running costs and also significant increases in the cost of maintaining professional indemnity cover. The review also identified that there were insufficient in number of the Advocates willing to offer to do Legal Aid work which no doubt is due to the level of remuneration on offer.

When considering the remuneration payable in comparator jurisdictions the review noted that the Isle of Man rates of remuneration were lower than Guernsey and also lower than the rate that is proposed to be introduced in Jersey following their recent review of a potential Legal Aid scheme being introduced there. Although no absolute comparison can be drawn in considering headline figures I do believe that an increased is justified which hopefully may encourage more Advocates to join offering their services under the Schemes.

I have also had regard to the fact that the remuneration rate recommended for consideration needs not only to be set at a fair level sufficiently attractive to encourage existing members of the Manx Bar and hopefully new members to be prepared to commit to carry out Legal Aid work in both Civil and Criminal areas of practice but also to take into account my recommendation that the Legal Aid Committee considers continued professional development requirements for panel advocates and quality assurance requirements which will all come with an add on cost to advocates and their firms.



The challenge for the Legal Aid Committee considering the issue of remuneration matters is to strike the right balance as if the public do not have the ability to enjoy adequate access to quality legal advice and assistance on island, the Government will have no option but to consider looking elsewhere. It is for this reason that I ask the Legal Aid Committee to consider the principle of extending the scope and availability to non-Manx qualified legal practitioners to supplement if required the resource available here. The rationale for the differential in the Island rate for such non Manx qualified legal practitioners is the fact that they are not qualified Manx lawyers and will inevitably be as conversant with Manx law and practice. In making this recommendation I sincerely hope that the IoM Law Society might be able to persuade more of its members to *offer* their services under the Legal Aid schemes.

## 6.7 Cost assessments

**Recommendation 9 - The Legal Aid Committee should consider improvements to the current Legal Aid cost assessment process as follows:**

- (a) Guidelines setting out the basis upon which a bill of costs will be assessed and taxed are published**
- (b) Arrangements are put in place to supplement the capacity to review bills of cost (the Costs Officer is currently in the General Registry) by sending those over a certain value to a specialised 'costs draftsman' for assessment/taxation against the published guidelines**
- (c) The IoM Law Society is invited to amend the Advocates Practice Rules to replicate the rule applicable to Civil Legal Aid costs so that it equally applies to Criminal Legal Aid costs that when a bill of costs is on assessment/taxation reduced by 500/o or more that the matter would be referred to the Advocates Disciplinary Tribunal as a disciplinary offence**
- (d) That Regulations be amended to require that Advocates submit their claim for payment under the Legal Schemes within 6 months of conclusion of the case or matter.**

The Review identified the need for the recovery of costs claimed under Legal Aid Schemes to be more transparent and for the assessment or taxation of costs to be more efficient and consistent. The recommendations made reflect these objectives and, as in Scotland and Guernsey, transparency will be much assisted by the publication by the Legal Aid Committee of detailed guidance as to the basis on which costs will be assessed. It is important from the public perspective that costs assessed as recoverable are proportionate to the nature of the case. In relation to the recommendation in (b) above, I make no comment on the value of claims which will be sent for specialised assessment and leave it to the Legal Aid Committee to determine.

## 6.8 Public Defender Scheme

**Recommendation 10 - The Legal Aid Committee should not consider at this stage the establishment of a Public Defender Scheme.**

Although at the outset the Review was charged with considering establishing a Public Defenders Scheme, the remit of the Review changed as I have explained. Nevertheless I did consider this issue. I reached this conclusion that a Public Defender Scheme should not be recommended even though the Consultation clearly evidenced that the existing arrangements for the public to access legal assistance (with or without the benefit of Legal Aid) was in pressing need of improvement. The consultation also identified that perhaps there were not sufficient in number of advocates prepared to act on Legal Aid rates in both criminal and civil matters and that advocates charging rates when Legal Aid was not available were unaffordable. The consultation also criticized standards which a Public Defender Scheme may have addressed.

The question of whether or not a Public Defender Scheme may be required on the Island in the future to support the public's access to justice can I believe be deferred for the time being to see what, if any, improvement might be achieved as a consequence of any changes the Legal Aid Committee may consider making as a result of this Review and its recommendations.

The Isle of Man Law Society on behalf of its membership vehemently opposed a Public Defender Scheme and although challenging its establishment on the basis of cost and perceived conflict the Society did not answer the challenge of how it intends to better enable the public to access justice, improving access to justice cannot just be a matter for Government to address, all stakeholders have a responsibility to consider improving this. In a true sense the solution and eventual outcome as to whether a Public Defender Scheme will be required for the future will depend in a significant part in how the membership of the Law Society responds to the challenges the public currently face. As I advised the Society throughout the consultation such a Scheme was not suggested for consideration simply on the basis of cost savings.

## **6.9 Restraint proceedings under the Proceeds of Crime Act 2008**

**Recommendation 11 - The Legal Aid Committee should consider the issue of a Fixed Fee Legal Aid Certificate to persons whose available assets have been restrained under the Proceeds of Crime Act 2008 and that Schedule 1 of the Legal Aid Act 1986 be amended accordingly.**

Representations were made in the consultation that persons who had had their assets restrained under the Proceeds of Crime Act 2008 ought to be able to obtain Legal Aid (either Criminal or Civil) if they meet the financial threshold ignoring in the context of the eligibility test the capital/income which is subject to restraint. Subject to the extent of the restraining order it could be that a person is not only out of control of available funds but also at risk of permanently losing them. I do consider that such persons, if they have no recourse to any of their own funds, ought to have the right to access a degree of legal advice and assistance to enable them at least to understand the situation they face and so I suggest the issue of a Fixed Fee Legal Aid Certificate subject to the current provisions as to the merits test.

## **6.10 Police Station Duty Advocate Scheme**

**Recommendation 12 - The Legal Aid Committee should consider changes to the existing Police Station Duty Advocate Scheme to:**

- (a) Dispense with the need to have second Advocate more senior on call**
- (b) Provide guidance as to the circumstances when an Advocate might need to consider physical attendance at the Police Station rather than by phone (or electronically)**
- (c) Require the IoM Constabulary to arrange fixed appointment times for the Advocate to attend at the client interview**
- (d) Extend the existing scheme to any formal interview held under caution whether at the Police Station or elsewhere**
- (e) Provide for a pilot scheme for initial one year duration for the attendance of a Duty Advocate, for one full day each calendar month at the Isle of Man Prison, Lurby. This should be provided on a Prison-prepared appointment basis for prisoners to seek and obtain legal advice and assistance.**
- (f) Provide for the charge for waiting time under the Scheme to be fixed at £50 per hour (pro rata)**

The evidence to the Review demonstrated many difficulties being experienced in the operation of the Police Station Duty Advocates Scheme such as in contacting Advocates, the Duty Advocate at times having to spend an inordinate period of time waiting at the Police Station and at times unnecessary physical attendances at the Police Station seeming to be the norm whereas in other comparable jurisdictions most advice and assistance was provided for by telephone consultation. I suspect many of the issues can be resolved by making better arrangements and by the issue of better guidance for both Advocates (as to committing to be available when on call) and to the Police.

There was little evidence of the need to incur the cost of having a Senior Advocate on call. This can be dispensed with. The Duty Advocate can if necessary refer the matter to a more Senior Advocate when they are able and to defer the interview process if necessary to arrange this or to take any necessary advice they may require.

Concern was also voiced that the Police Station Duty Advocate Scheme did not cover attendances and the provision of legal advice and assistance at locations other than the police station (e.g. any location when being interviewed under caution for an offence which reasonably might result in a person being subject to risk of imprisonment).

Waiting time was also an issue; both as to cost and inconvenience. It may seem harsh but I recommend reducing the charge for waiting time in the hope that in applying this reduction it will prove an incentive to both advocates and most importantly the Police to better scheduling of attendances when necessary. I hope it will work on the basis that if the time is not acceptable to the advocate who understandably will not want to waste time waiting, the interview will have to then be rescheduled. I will also recommend in relation to the Court Duty

Advocate Scheme a similar reduction of the ability to charge for waiting time which I hope again will encourage the Court to also introduce better scheduling so as to avoid wasted time costs.

The representations to the consultation for and on behalf of prisoners in custody also identified the difficulties prisoners were experiencing in obtaining legal advice and assistance whilst in custody not just in relation to any charges they may be facing, their treatment whilst in custody, but also in relation to matters which might be described as being of a civil or family nature. Whilst in most cases the prisoners might be entitled to Legal Aid or advice and assistance under the green form scheme the obtaining of such advice whilst in custody is understandably problematical. Although outside the remit of the Police Station Duty Advocate Scheme it seems a convenient structure to seek to introduce on a trial basis a rota when a Duty Advocate would also commit to attend the Prison on a notice basis to provide legal advice and assistance. Providing an early opportunity to obtain such advice I reasonably expect to result in savings subsequently. The cost benefit of this proposed pilot scheme can be assessed by the Legal Aid Committee.

### 6.11 Court Duty Advocate Scheme

**Recommendation 13 - The Legal Aid Committee should consider introducing a pilot scheme for a period of up to 3 years to engage a Duty Advocate to serve as a second Advocate under the Court Duty Advocate Scheme and to review whether such additional provision serves to improve the better administration and disposal of cases before the courts which the Court Duty Advocate Scheme currently serves.**

With the assistance of those Manx Advocates who are the current members of the panel of Court Duty Advocates the consultation noted that the scheme works relatively well but that there are opportunities to improve its operation in the interest of Advocates, defendants and Government in the context of potential operational cost savings both to Legal Aid and to the courts. For the clear majority of service users the opportunity to take legal advice arises post charge and then usually on the first appearance at court where the Court Duty Advocate is in attendance. Dependant on the extent of the advice required and the number of people seeking advice that day the Duty Advocate is often placed in an impossible position in being able to satisfy demand. The result is that many cases are being adjourned for advice, if to be contested for a full Legal Aid certificate to be applied for and issued and such adjournments result in processing delays and often further adjournments and costs associated with advocates appearances at subsequent hearings.

The efficiency of the court and savings in advocates appearance costs might be improved by better scheduling of matters rather than have all defendants having to answer their summons at the same time. Better scheduling would not however necessarily afford the Court Duty Advocate with an opportunity to deal with the advice requested of him that day. If there was additional legal resource available for busy courts this would give the opportunity for better outcomes and to reduce the cases which necessarily have to be adjourned. The Legal Aid Committee might wish to engage with the Law Society to investigate with them operating on a pilot scheme basis engaging two Court Duty Advocates for certain courts. Alternatively the Committee might consider itself engaging the second Duty Advocate by the Legal Aid Administration. This proposal could be achieved by entering into a contract with individual advocates (or their firms) to provide cover for such courts as required.

## 6.12 Appropriate Adults

**Recommendation 14 - The Legal Aid Committee should encourage the Department of Home Affairs to review the Appropriate Adult Scheme with a view to improving the rate paid to such persons and take steps to increase and improve the recruitment, training, retention and number of persons prepared to act as Appropriate Adults.**

Appropriate Adults play a crucial role in the criminal justice system. At the time of the Review, the number of Appropriate Adults was less than 10, with even fewer attending on a regular basis, and this figures cannot meet the demand for their services. Appropriate Adults have asked for more training and shadowing opportunities and whilst there is no indication that they are motivated by financial recompense, the amount they receive (£12.50 per attendance, not per hour) is considered inadequate by respondents, and could impact on recruitment and retention of individuals.

There was also a low level of public awareness regarding the Appropriate Adult Scheme, but there also a genuine public interest in the work that is undertaken and an appetite for further participation.

The Review identified difficulties in relation to the operation of this Scheme and noted the need to improve both quality and availability. The administration of this scheme to ensure the availability of appropriate Adults when needed is essential to the administration of justice and to the ability of service users to have their own appropriate means of accessing justice. This is a matter of urgency and I ask the Legal Aid Committee should impress upon the Department of Home Affairs that it considers the establishment of a 'call off' list of persons suitable to act.

## 6.13 Interpreters

**Recommendation 15 - The Legal Aid Committee should encourage the Department of Home Affairs and/or the Cabinet Office to review the arrangements currently in place for Interpreters and in so doing to identify improved methods of procuring the service and its availability.**

The Review also identified difficulties in accessing suitable interpreters necessary for both the Police, the legal representatives and also the defendant in relation to the investigations being conducted and any subsequent proceedings. The availability of experienced interpreters is essential to the administration of justice and again this matter needs to be addressed urgently. I invite the Committee to consider working with the Department of Home Affairs and/or the Cabinet Office as mentioned in the review the possibility of a provision of interpreting services remotely to replace or supplement the current arrangements.

## 6.14 Unpaid contributions

**Recommendation 16 - The Legal Aid Committee should consider amending the Legal Aid Act 1986 so as to enable unpaid contributions for Criminal Legal Aid to attract "additional days" in the same way as is currently the case for unpaid fines.**

The Review identified a need for transparency in the calculation of financial contributions and the issue of a lack of incentive for individuals to repay contributions following completion of their case as no sanctions are applied, with a suggestion that days in default could be added.

If days in default could be added (as per fines) then enforcement is likely to be improved. In addition, greater clarity regarding lump sum contributions (capital) and the weekly contributions should be considered. Reg 13 states clearly that where a lump sum payable the Legal Aid Certificate shall not take effect until such payment is made. With the weekly payments it seems to be that the Legal Aid comes into force from the date of the application being received into court, but as it can take individuals/advocates several weeks sometimes to provide the information/documents needed the contributions sometimes don't start until after the individuals case has been completed in court. This removes incentive for them to pay the contribution after this date.

### 6.15 Leave to appeal

**Recommendation 17 - The Legal Aid Committee should consider liaising with the Department of Home Affairs with a view to seeking an amendment to s30 to the Criminal Jurisdiction Act 1993 so as to require that "leave" be granted before any appeal on conviction or sentence in Criminal Proceedings. An application for "leave" to be made within 28 days of conviction or sentence.**

A leave to appeal process should be introduced for criminal appeals. With the introduction of a permission stage, the decision on whether an appeal could be pursued would rest with the Court and not the Advocate. A leave to appeal process could lead to a reduction in the number of appeals which lack merit, and/or reduce the risk of a miscarriage of justice, and/or a reduction in the number of appeals in which the defendant self-represents. It was suggested that there should be adequate Legal Aid provision (e.g. under a Criminal Legal Aid Certificate the ability to issue a "through Certificate") in place to ensure all necessary work pertaining to an application for leave to appeal can be carried out subject to the eligibility and merit test determined by the Legal Aid Certifying Officer.

### 6.16 Pro-bona legal work

**Recommendation 18 - The Legal Aid Committee should engage with the IOM Law Society with a view to the Society establishing a 'Manx Pro Bono Pledge' by its Membership.**

In the context of this Review and its recommendations this may on first reading appear a rather strange recommendation. It is made in the context of seeking to quickly improve the public's access to justice enabling the Law Society to make a defined and measurable contribution.

I readily accept and acknowledge the representations made in the consultation from Members of the Manx Bar that individual members and some firms often take steps to offer differing degrees of public support at times on a pro bona basis. It may be considered crass on my part to comment that the significant contribution of the few falls on far too few shoulders and the Society should be encouraging the membership as a whole to do more. Other Law

Society's in comparator jurisdictions do much more. At the one extreme, as the Consultation noted, in Jersey its compulsory pro bona arrangements in effect have replaced our Island's Legal Aid schemes as in general terms Jersey Lawyers (in exchange for their time minimum commitment) do not get paid whereas IOM lawyers can get paid Legal Aid rates if they wish to act for Legal Aid clients (in Jersey there is no choice). {In making this comment I am of course aware that Jersey is in the process of proposing introducing its own version of limited Legal Aid provision}.

In Guernsey whilst it does not appear to have a pro bona scheme what they have provided for is an extension of their Legal Aid schemes to non-Guernsey qualified lawyers at much cheaper hourly charging rates than applicable to Guernsey Lawyers. This provision has provided a larger body of lawyers prepared to offer their services. Although I do not recommend to the Legal Aid Committee the wholesale opening up the IOM Legal Aid schemes to non-Manx qualified lawyers it is matter which may however need to be considered in the future if there are enduring difficulties in eligible persons securing legal representation. At the other end of the spectrum of a Law Society Members contributing to help public access justice I mention the Southern Irish Bar who have taken it upon themselves to introduce a voluntary scheme, the 'Pro Bono Pledge Ireland' which is supported by the Law Society of Ireland and the Dublin Solicitors Bar Association under which those volunteering commit to a minimum of 20 pro bona hours per lawyer each year. Adopting such a scheme would serve to enhance access to justice while also promoting a culture of volunteerism and corporate responsibility. The success of such a voluntary scheme is of course totally dependent on numbers and it will take more than the few who are already making a significant contribution to prove this to be a successful initiative.

I mention below opportunities to further develop the offerings and accessibility to Citizens' Advice Services which the Law Society could consider in the context of its **Manx** Pro Bono Pledge. Also the Society might wish to consider opportunities for trainee advocates as part of their formal training programme to be required to attend a minimum number of sessions at the Centres to offer informal legal assistance.

## **6.17 Manx Citizens Advice Service**

**Recommendation 19 - The Legal Aid Committee should invite Treasury to consider the redefining and if necessary expansion of the existing Manx Citizens Advice Service.**

To assist with public access to legal advice and assistance (in its wider form as I have mentioned previously) the consultation exercise identified a need to improve the services and accessibility offered by the Manx Citizens Advice Service. I have mentioned above that this may provide the Law Society with an opportunity to also contribute.

In raising the issue of looking at the Manx Citizen's Advice Service I do appreciate that Government already provides extensive financial support by way of legal assistance (in its widest format) but the existing Citizens Advice Service does provide an opportunity to offer a gateway to those in need on early guidance. However what the Consultation exercise identified was that the public does not currently make regular use of the services on offer which may be that the current offering is either not valued or is unappreciated nor sufficiently

publically promoted. 32% of respondents to the Civil Legal Aid Consultation expressed the view that delivery of legal services to the public could be improved by an enhanced provision of services via the Manx Citizen's Advice Service.

## **6.18 Mediation and Guardian ad Litem services**

**Recommendation 20 - The Legal Aid Committee should consider inviting Treasury to introduce a pilot scheme for a period of up to three years during which individuals would be directly employed:**

- a) within the Manx Industrial Relations Service (or some other suitable part of Government) to undertake Mediation Services and**
  
- b) within the Legal Aid Office to undertake Guardian Ad Litem services for children engaged in family proceedings**

**The object of such a pilot would be to secure the availability of services, identify annual cost savings in Legal Aid provision, and also savings in the court's time.**

It has been recognised for many years that reference to mediation early in legal disputes (in relation family matters in particular) results in achieving opportunities for early resolution of disputes. Such early disposal would result in cost savings for the parties involved and, in the context of this Review, savings to the cost of Legal Aid provision and cost savings in relation to the courts allocation of resources in respect of matters otherwise before the court. The challenge has always been to find a means to encourage the public and the legal profession to make use of the mediation service.

The use of mediation on the Island has without doubt not developed as anticipated. The Consultation process identified that legal practitioners agreed the use of mediation should be encouraged as a means of resolving disputes and would like to see its use expanded. Why this has not happened is perhaps explained by the results of the consultation identifying that legal practitioners were themselves reluctant to incur the cost of training to qualify to act as a Mediator and from the views expressed by some Legal practitioners that the costs of using the mediation service did not result in any measurable saving in legal costs.

The Consultation response revealed that there are currently 6 trained family mediators working in family mediation on the Island of whom only 4 mediators accept instructions in mediations from legally aided clients. The reasoning being that the current Legal Aid funding for mediation is £55 per hour for 8 hours (£440) which is intended to cover 2 hours for intake meetings, mediation for 2 sessions report writing after each session and preparation. If an additional session (90) minutes is required then a further £82.50 can be authorised by the Legal Aid Certifying Officer. It is unlikely that these rates of remuneration are going to encourage more trained mediators to come forward in the future which will as a result thwart the development and expansion of the use of such service.

Mediation is of course available to both legally aided clients and private fee paying clients. If both parties are legally aided then a solution could be to impose a condition of the grant and continued availability to Legal Aid provision that they use of the Mediation service. If this



approach was adopted and where only one party is legally aided then it would also require the Court to mandate the other private fee paying client to participate.

Assuming Mediation were required to take place the legally aided clients would have to explain to the Legal Aid Certifying Officer the outcome and clearly identify the outstanding issues which would then be considered in the context of an updated merits test before the Legal Aid provision was continued.

If the proposal to provide a mediation service established by the Legal Aid Committee was adopted this may provide a catalyst for the use of mediation for the early resolution of disputes. If successful this will result in a saving of both court time and expense in relation to the Legal Aid costs in proceedings before the court.

In relation to the proposed Guardian Ad Litem service:

Currently the responsibility for funding both the Advocates for children and Guardian Ad Litem in family proceedings falls upon the Attorney General. The Attorney maintains a list of both advocates and qualified persons to act as Guardian Ad Litem who are appointed on a call off basis. Guardians Ad Litem are not required to be lawyers and are most likely social workers who assist children to understand the legal process. The cost to the Attorney General in respect of the provision of a Guardian Ad Litem is significant (£89,856 in 2019/20) and (£85,527 in 2020/21) at an average of £60 per hour plus expenses. The personnel available to the Attorney General to consider for appointment as Guardian Ad Litem are currently all off-island based which location adds to the costs and inevitably causes difficulties and delays in the whole process before the courts which are seldom in the best interest of the child.

The Justice Reform Act 2021 amends the Legal Aid Act 1986 and when the provisions of s97 come into effect a child or young person who is the subject of family proceedings is to be treated as having no resources so far as their own Legal Aid is concerned and for the actual resources of a party to care proceedings to also be disregarded. These changes make it important to endeavour to make such proceedings more efficient to better control cost and to better protect the interests of the child by improving the provision of Guardian Ad Litem services on the Island.

Direct employment of Guardians ad Litem works well in neighbouring jurisdictions (including Jersey and Guernsey). Direct employment would also allow for training and succession planning. The recent pandemic has demonstrated issues where reliance had to be placed on 'off-island' providers of this service.

**Recommendation 21 - The Legal Aid Committee should consider making provision, wherever appropriate, that the granting of a full Legal Aid Certificate be conditional upon the parties having actually made use of the Mediation service and the Legal Aid Certifying Officer reconsidering the merits test following such Mediation.**

This Recommendation as proposed in Recommendation 20 could only be implemented if the issue of availability of Mediators is addressed. I believe that mediation is likely to provide savings but only if the scheme is widely available and people are actually required to use it. I have recommended above the development of mediation by establishing a government funded mediation service which I believe could be provided by Legal Aid Administration

engaging and retaining trained mediators prepared to act on an on-call basis. I understand that in England and Wales there exists a panel of qualified mediators approved by its Legal Aid authority which our Legal Aid Committee might equally have recourse to if there is insufficient uptake on the Island.

#### 6.19 Fixed fees

##### **Recommendation 22 - The Legal Aid Committee should consider the adoption of the Fixed Fee Legal Aid Certificates as operated in Guernsey**

In Guernsey they adopt the system of Fixed Fee Legal Aid Certificates which in relation to certain work types I am informed works well. The 3 fixed fee stages which advocates in Guernsey can claim depend on how far the matter has progressed and applies to specific cases up to a maximum of 10 hrs at the Advocate's charging rate under the Legal Aid scheme. I do not propose to recommend a definitive list of work types but I mention in Recommendation Ba Summary Court Proceedings, Divorce and Judicial Separation by reference to the Guernsey model. Setting the work types is outside the scope of this Review and I suggest the Legal Aid Committee analyse in detail where the Legal Aid budget provided by Treasury has actually been applied. I do however recommend later that such a Fixed Fee Legal Aid Certificate may be appropriate to consider when the Legal Aid Committee considers the possible extension of the current scope of the Legal Aid provision.

##### **Recommendation 23 - The Legal Aid Committee should consider the issue of a Fixed Fee Legal Aid Certificate in respect of legal advice and assistance in cases before the Mental Health Review Tribunal.**

In relation to Mental Health Tribunal cases I am concerned that interested parties should at least have the opportunity to have the benefit of legal assistance to fully understand the consequence of any such proceedings and that they are able to be made aware of the support available to them from other relevant agencies. Proceedings before the Mental Health Tribunal frequently concern vulnerable people and can have far reaching personal consequence. . The Consultation identified the concern that the vulnerable are in need of legal advice and assistance and I do not challenge this. As a first step issuing a Fixed Fee Legal Aid Certificate will enable the Legal Aid Committee to obtain data to support any case for further extension of the issue of a full Legal Aid Certificate.

#### 6.20 Scope of Civil (Non-Family) matters

##### **Recommendation 24 - The Legal Aid Committee should include the ability for a Legal Aid Certificate to be issued to the legal representative of a deceased person who has died in the custody of the State (e.g. Police Station, prison, hospital, care home) for proceedings in an inquest without the necessity of meeting either the financial eligibility test or merits test, and that Schedule 1 to the Legal Aid Act 1986 be amended accordingly.**

Proceedings in an inquest held under the Coroner of Inquest Act 1987 fall within the proceedings referenced in Schedule 1 of the Legal Aid Act 1986 as proceedings for which Civil Legal Aid may, subject to the financial eligibility test and merits test be granted. The consultation included a call for all who were interested in the limited circumstances of a death

whilst in the custody of the State to be entitled automatically to legal advice and assistance at the expense of Government. I did not identify any compelling need for 'all' who were interested in these limited circumstances to be entitled as of right to Legal Aid. I accept the equality of arms point made that Government will have available to it the shared legal service available from my Chambers and believe this issue can and ought to be addressed. I have concluded and recommend that all those interested in the outcome of the inquest can be represented at an inquest by the personal representative of the deceased who I agree ought in these limited circumstances to have automatic right to legal advice and assistance under the Legal Aid Schemes.

**Recommendation 25 - The Legal Aid Committee should consider amending the Tribunals Act 2006 and other relevant legislation to remove from its provisions the eligibility for full Legal Aid of (a) Financial Services Tribunal (b) treasure inquiries and (c) boundary disputes.**

These recommendations are based on the responses to the consultation. Albeit such matters are to be considered for removal from the ability to obtain a full Legal Aid Certificate the public will continue to be able to make use of the limited legal advice and assistance offered under the green form advice scheme.

## **6.21 Statutory Charge**

**Recommendation 26 -The Legal Aid Committee should undertake a review of the application, effectiveness and scope of the Statutory Charge.**

What became clear in the consultation exercise was that although the ability to impose and then enforce a statutory charge has been established and in place on the Island for some years, its deployment has been spasmodic and frankly from the responses to the Consultation little understood by the public and legal practitioners.

It is essential that to support the continuing and future provision of publically funded legal services that all reasonable steps are taken to enforce the statutory charge. Improved guidance to Legal Aid practitioners and to the public needs to be urgently considered by the Legal Aid Committee.

In carrying out its review I ask that the Legal Aid Committee also consider whether an assisted person's main or only dwelling should continue to be exempted from the statutory charge. Also 45% of those responding to the Civil Legal Aid survey stated that they believed that there should be a requirement to repay the statutory charge within a defined period of time unless the charge relates to a property whose sale would impact a child or vulnerable person in which event collection should be postponed rather than abandoned. This seems a sensible proposal which should assist in ensuring the effectiveness of the Statutory Charge. The defined period of repayment should also be considered generally in the suggested review.

## **6.22 Scrutiny of parties' legal merits and response to correspondence**

**Recommendation 27 - The Legal Aid Committee should consider introducing measures to:**

**a) Increase the scrutiny of parties' legal merits; and**

**b) Reduce unnecessary costs attributed to proceedings which could have been avoided had a party responded appropriately to correspondence at an early stage.**

The Consultation identified the legal merits test appropriately augments the financial eligibility test and must be maintained and conscientiously applied by Advocates. Litigants who are minded to pursue and/or defend proceedings where professional opinion is that their prospects of success are less than 50% should not be granted Legal Aid. However there will be cases where a plaintiff with deep pockets can engage in proceedings against a party who will qualify for Legal Aid notwithstanding an arbitrary test of 50:50. Faced with such a situation it would be unjust to preclude a legally aided client from obtaining the legal advice and assistance they require. Similarly where the Legal Aid Certifying Officer is of the view that the application relates to an important area of law which should be considered by the Courts Legal Aid may be granted in the wider public interest.

The legal merits test ought to be thoroughly considered by the Advocate upon the application for legal aid and the advocate and the Legal Aid Certifying Officer should keep this prospect of success in mind as a case progresses in order to minimise the possibility for wasted costs on the part of all litigants involved in proceedings.

From the evidence before the Consultation it seems clear that not enough scrutiny is put on the merits of parties cases. This is extremely common in family proceedings such as child contact matters where it is clear that one party is refusing contact and the children are used as pawns to get at the other party. More scrutiny would decrease the number of Applications, and reduce time and costs to all interested parties (Advocates, Legal Aid, the Courts, Court Welfare Officers etc.). Also, additional scrutiny of Legal Aid Applications where proceedings have been issued against a party but which could have been avoided if they responded to correspondence should be considered.

### **6.23 Use of technology**

**Recommendation 28 - The Legal Aid Committee should promote an increase in the use of technology, including video conferencing between the IoM Prison and the Courts, to increase the efficiency of Court proceedings by reducing Court time and costs; reduce the necessity of transporting prisoners between the IoM Prison and the Courts, and reduce associated security and safety risks. It could also facilitate ease of face-to-face conference between Advocates and prisoners at the IoM Prison.**

This recommendation is self-explanatory. Despite the technology being available the Legal Aid Committee may wish to do what it can to encourage ensuring its availability.

## 6.24 Complex criminal matters

**Recommendation 29 - The Legal Aid Committee should raise with the IoM Law Society the issues raised by individuals who have been through the criminal justice system regarding the ability and / or quality of Manx Advocates to deal with complex criminal matters including financial crime and seek assurances from the IoM Law Society that these matters will be considered and addressed.**

I summarise by way of example the issues raised during the Consultation:

### **From a person who had self-represented in a Criminal Court**

'I was unable to find an advocate willing to take on a **complex** part of my case after my original advocate withdrew. Time constraints - statutory time limits - coupled by lack of choice in pool of advocates/ legal aid panel forced me to self-represent.'

### **Persons who have been through the criminal justice system**

'There are more people being charged with white collar/financial crimes that Duty Advocates have no experience of.'

'UK lawyers and barristers / QC should be licensed to operate in the IOM on more serious cases. Skills are not available for a client that can pay especially in financial crimes.'

### **Feedback from Prisoners during workshop**

Concern re: equality of arms:

- Cases are unfairly weighted in favour of the Prosecution and that this is particularly true in complex cases (e.g. financial crime/ fraud)
- Some Advocates are not sufficiently experienced to defend complex cases

The issue of Access to Justice and the quality of Legal Services are addressed in the Recommendations I ask the Legal Aid Committee to consider.

## 6.25 Criminal Justice Board

**Recommendation 30 - The Legal Aid Committee should recommend to the Criminal Justice Board that Criminal Legal Aid is not considered in isolation, and instead as part of a holistic criminal justice system to ensure that there is an awareness and understanding that the policies and processes of one agency (e.g. Department of Home Affairs; IoM Constabulary; Prosecutions; Courts; IoM Prison and Probation; Legal Aid Office, IoM Law Society) can have a significant effect on one or more of the other agencies, and ultimately Criminal Legal Aid and expenditure. The Criminal Justice Board is ideally placed to achieve this, as all of the aforementioned key agencies are members.**

I share the view of the Law Society and its Members who responded to the present consultation, that the current legal aid system is the best system for the delivery of access to justice for the most vulnerable members of our society. Additional tweaks can be made to the current system to ensure the same is more efficient which I have addressed in the

recommendations I make. However, such efficiencies cannot be made in isolation and needs the buy in and support of the Prosecution, the Police, the Courts, the Department of Health and Social Care, Probation and the Prison. There is only so much that the Law Society and its members can do without others taking responsibility and streamlining their own processes to make the system as joined-up and efficient as possible, without compromising access to justice.

## 6.26 Financial coercive control & domestic abuse

**Recommendation 31 - The Legal Aid Committee should consider putting in place measures to:**

- a) Support and protect from further risk individuals who wish to seek legal advice or representation on divorce / dissolution of a civil partnership due to domestic abuse**
- b) Address the impact of a financial eligibility determination based on the joint income or co-owned assets of a couple, where one party does not have equal access to that income (e.g. in cases of domestic abuse/ financial coercive control)**
- c) Better serve individuals whose ex-partners are effectively able to control their eligibility for Legal Aid by providing inconsistent financial contributions (e.g. for child support) which can cause the individual to be in a recurring cycle of eligibility / ineligibility for Legal Aid leading to significant delays and difficulties in accessing legally-aided services.**

These recommendations were based on situations which were identified in the Consultation.

### **Member of public**

'Some individuals are on a low income which can fall short of the income that an individual has on benefits but has assets which would negate their eligibility for legal aid, for example a spouse who is a co-owner of the matrimonial home but finds it intolerable to live there.'

### **Members of public**

Just because a couple may have joint income over a certain level, it doesn't mean both parties have equal access to that income.'

'My personal experience has been quite testing. I am beyond grateful for the assistance that the Isle of Man government has afforded me. However it is a long process. Each case is different and I am sure that mine is not uncommon. I only understand in the last 3 years that my marriage was controlled and my children and I were involved in a toxic and abusive relationship. He attempts to manipulate me since the separation with erratic financial contributions. This has put me in a situation where I sometime receive EPA and sometimes I don't. I am only able to progress the divorce whilst I have legal aid via EPA. I am grateful and will continue slowly but so far I am into year 2 of a divorce with slow progress as I am unable to get legal aid for a consistent period

of time. I get legal aid then I need to wait for an appointment with the advocate - 2-3 weeks. We have the meeting and then my legal aid expires. Catch 22. I would happily pay a contribution within my means to gain consistency in this area. The children and I are unable to move on - ironically if I could get through the divorce faster I wouldn't be in a position to request legal aid as I would then be able to access the joint funds that are being withheld.'

**Member of the public who had self-represented in Court:**

'I couldn't justify the cost of paying an advocate when I wasn't working and in a financially abusive relationship and didn't qualify for legal aid due to household income. I only self-represented at the first appearance and after that the duty advocate worked pro bono.

**Recommendation 32 The Legal Aid Committee should consider a child or young person who is party to Care Proceedings should be automatically eligible to receive Civil Legal Aid by disregarding their financial resources**

The Consultation identified issues which I summarise:

Currently as Attorney I provide legal advice and assistance to children and young persons by appointing an Advocate to assist them and I meet this cost from Chambers budget. I consider whereas I am able to ring fence the work within Chambers provides for Departments and agencies of Government in such care proceedings, I ought not have any investment in appointing the advocate for the children or young persons engaged in such proceedings. The solution would be to remove my role in arranging for the legal representation of the children and for the Legal Aid Committee to maintain a list of Advocates prepared to act under a Legal Aid Certificate. As a child or young person is not competent in law to manage effectively their own financial affairs, the grant of Legal Aid should disregard the financial resources but still consider the 'merits' test.

## **PART 7 - CONCLUSIONS**

As I mention in para 2.2.1 the aim of this Review was to develop policy options for the Legal Aid Committee to consider for the sustainable provision of Legal Aid in the Isle of Man which:

- Maintain or improve access to justice;
- Support the delivery of quality services; and
- Provide value for money in the use of public funds.

To realistically have any chance of achieving these aims it will require a leap of faith from the Government if it was to accept and approve the changes which the Legal Aid Committee may recommend when it considers the Recommendations I have in turn made for them to consider. Without doubt some of the Recommendations are likely to result in a cost increase whilst some in turn are likely to result in a saving. But as seems inevitable when changes are made the cost will in the short term exceed savings and it will take time to then measure the financial impact whether cost positive, negative or neutral.

The potential cost burden has to be considered however in the light of the consultation process having identified problems with the public's access to justice, also identifying issues with

regard to the quality of services delivered by stakeholders and that without new and appropriate controls being introduced the use of the significant public funds provided to the Legal Aid Schemes cannot be adequately monitored and controlled.

Not surprisingly the consultation did not identify a quick and simple fix.

Rather as the suite of Recommendations I make for consideration demonstrate various issues need to be addressed in a holistic manner which by doing so I am hoping may lead to a much needed new and changed approach.

Even if the Legal Aid Committee were to accept many (or indeed any) of my recommendations and Government in turn supported them that approval is worthless unless the stakeholders similarly accept the need for change.

The IOM Law Society when I first qualified in 1978 had, I recall of the order of 35 or so practicing members and despite our few numbers we managed to the best of my recollection to provide legal advice and assistance to those in need of it with few exceptions. That was certainly my training and culture as a Manx Advocate and in all my days in practice I ensured that my firm took an active part in the legal aid schemes and offered the public our services in that regard. I make no claim to our then quality of legal service. What I do know is that in the years following as the bar gradually increased in number although the Society never lost sight of seeking to ensure that legal services were available to all the tide eventually changed as the Island's Commercial/International centre status evolved. We then saw more and more members of the bar withdrawing from private client work. As the consultations revealed of the (243 practicing members) only 62 are on the Legal Aid panel.

I can only hope that the Society meets the challenge of increasing the number of its members giving their support and commitment to doing legal aid work along with introducing their commitment to future training requirements and quality control mechanisms.

Essentially the Police and the Courts also need to buy-in to the changes necessary to help streamline and make more efficient the legal processes because by doing so it will go a long way to reducing and/or better controlling cost. The ability to better schedule hearings so as to reduce waiting times would benefit all concerned in the process including both the Advocate and their legally aided client. Similarly the Recommendations would require change within the legal aid office which will require it to dedicate resources in order to realise the ultimate benefits that will hopefully be realised by these changes. I do acknowledge that changes such as those set out in my Recommendations are not necessarily easy to achieve but I do believe that the efforts of all stakeholders will ultimately result in a more robust Legal Aid provision for the future.



## **PART 8 - APPENDICES**

**Appendix 1 - Criminal Legal Aid Consultation**

**Appendix 2 - Criminal Legal Aid Consultation Results and Analysis Report**

**Appendix 3 - Civil Legal Aid Consultation**

**Appendix 4 - Civil Legal Aid Consultation Results and Analysis Report**

# APPENDIX 1

## CRIMINAL LEGAL AID CONSULTATION

**Closes 21 Nov 2019**

Opened 23 Sep 2019

### Overview

This consultation is part of a wider 'Legal Aid Review' project, which is being led by HM Attorney General on behalf of the Council of Ministers. The project is being carried out in two parts to reflect both types of Legal Aid available in the Island, which are Criminal and Civil. This consultation deals with **Criminal Legal Aid** only.

The aim of the project is to develop policy options for the sustainable provision of Legal Aid in the Island which:

- maintain or improve access to justice
- support the delivery of quality services
- provide value for money for the taxpayer

These policy options will be submitted to the [Legal Aid Committee](#), which is an independent body responsible for Legal Aid policy in the Isle of Man.

### Why We Are Consulting

The purpose of this consultation is to seek people's views on the Island's current **Criminal Legal Aid** provision, and explore the feasibility of alternative approaches in the future.

In particular:

- which aspects of Criminal Legal Aid are considered to work well and should continue
- which aspects are considered not to work well and could benefit from improvement
- if any potential changes or alternative schemes could better deliver Criminal Legal Aid in future

### We would like to hear from:

- Criminal Legal Aid service users
- Members of the public
- Members of the Judiciary & the Courts
- Criminal Defence Advocates
- Prosecutors
- IoM Law Society & members
- Department of Home Affairs, IOM Constabulary, IOM Prison & Probation Service
- Charities
- Appropriate Adult Scheme volunteers
- Interpreters at the Police Station or in Court
- Tynwald Members

## Related Links

- [Background to the Legal Aid Review & SAVE initiative](#) 200.2 KB (PDF document)
- [IoM Law Society Duty Advocate Schemes Guidance \(2015\)](#) 584.5 KB (PDF document)
- [Attorney General's Chambers - Legal Aid Review](#)
- [Legal Aid Office](#)
- [Criminal Legal Aid costs 2013 - 2019](#)
- [Legal Aid Act 1986](#)
- [Legal Aid Committee - Review of Government supported access to legal advice and representation 2016](#)

## INTRODUCTION

### What is Legal Aid?

'Legal Aid' is the term for Government schemes which pay for a person's legal expenses if they cannot afford to pay themselves. Legal Aid seeks to ensure that people of limited means can receive the legal services they require and at the right time.

In the Isle of Man, Legal Aid is only available to eligible individuals for cases heard in Manx Courts. It is not available to companies or other organisations. If a person is eligible for Legal Aid, the cost of the legal services they receive will be paid by Government.

We have some Legal Aid schemes which are 'universal', which means that they are available to everyone, regardless of their financial status. There are other Legal Aid schemes which are only available to people of limited financial means.

### What is Criminal Legal Aid?

Criminal Legal Aid covers criminal matters (e.g. theft; assault; serious driving offences) which are defined in law. When a person is charged with a criminal offence in the Isle of Man, the prosecuting authority is the Attorney General's Chambers. If the case goes to Court, there is a prosecutor and a defendant. The defendant will be represented by a criminal defence Advocate (unless they choose to represent themselves). If the defendant is eligible, their legal costs will be paid for by Criminal Legal Aid (in full or in part).

### Why is Legal Aid important?

The [United Nations](#) describes Legal Aid as an essential element of a fair, humane and efficient justice system. Criminal Legal Aid can help to reduce the length of time suspects are held in Police Stations in addition to reducing prison populations, wrongful convictions, court congestion and levels of reoffending.

Legal Aid performs a vital role in the Isle of Man. It contributes to the smooth running of the Manx justice system, and it provides support for some of the most vulnerable members of our society.

**1. What is your name?**

*Giving us your name is optional. The consultation will ask if you have ever been arrested, so you may wish to consider this when deciding whether or not to provide your name.*

Name .....

**2. What is your email address? (Online only)**

If you enter your email address, you will automatically receive an acknowledgement email when you submit your response.

Email .....

**3. Are you responding on behalf of an organisation?**

*Please select one option*

- Yes
- No

Organisation (if applicable)

Your name (unless supplied above) & your role in the organisation

**4. Are you resident in the Isle of Man?**

*Please select one option*

- Yes
- No

If yes, please tell us the first three characters of your postcode

**5. Which option best describes your interest or role in responding to this consultation?**

*Please select one option*

You have been through the criminal justice system or supported someone who has	
You are a member of the public	
You are a member of the Judiciary or an Advocate	
You are a public sector employee working in the criminal justice system	
You are a voluntary sector, charity or support worker	
You are a Tynwald Member	
Other	

If other, please state below

**6. May we publish your response? (Required)**

Please read our [Privacy Policy](#) for more details and your rights

- Publish in full – your first name and surname, organisation name, along with full answers **will** be published on the hub (your email will **not** be published)
- Publish anonymously – only your responses **will** be published on the hub (your name, organisation and email will **not** be published)
- Do not publish – **nothing will** be published publically on the hub (your response will only be part of a larger summary response document)

*Response required*

- Yes, you can publish my response in full
- Yes, you may publish my response anonymously
- No, please do not publish my response

## THERE ARE FOUR CRIMINAL LEGAL AID SCHEMES IN THE ISLE OF MAN

In summary, the four Criminal Legal Aid schemes are:

**1) Legal Advice & Assistance** (also known as '**Green Form**'). An Advocate can provide up to 3 hours' initial legal advice at the start of a matter (e.g. a matter which may continue later in Court) or on a matter which can be quickly resolved. This scheme is available free of charge (or with a small contribution) to people of limited financial means only.

**2) Police Station Duty Advocate Scheme** – An Advocate can provide legal advice and assistance to a person detained at the Police Station, 24 hours a day, every day of the year. This scheme is *universal* and is automatically available to everyone, free of charge, regardless of their financial means.

**3) Court Duty Advocate Scheme** – An Advocate can advise and represent a person who has been charged with a criminal offence on the day of their first appearance in a [Summary Court](#) (on that matter). This scheme is *universal* and is automatically available to everyone, free of charge, regardless of their financial means.

**4) Full Criminal Legal Aid** – An Advocate can advise and represent a person in Court following their first appearance in a Summary Court (e.g. during a trial in a Summary Court or the [Court of General Gaol Delivery](#)). A Criminal Legal Aid Certificate is issued by the Court which gives authority for an Advocate to act on their client's behalf. This scheme is free of charge (or with a contribution) to people of limited financial means if their case is considered to be serious enough.

### 7. Of the four Criminal Legal Aid schemes in the Isle of Man, were you aware of any of them before today?

*Please select one option per line*

	<b>Yes I have received it personally</b>	<b>Yes I am involved in a professional capacity</b>	<b>Yes I have helped others to access it</b>	<b>Yes I was aware but have not received it or helped others access it</b>	<b>No I was not aware</b>
Criminal Green Form (Legal Advice & Assistance)					
Police Station Duty Advocate					
Court Duty Advocate					
Full Criminal Legal Aid (under a certificate)					

## **ADVOCATES WHO DO CRIMINAL LEGAL AID WORK**

An Advocate **must** be on the Legal Aid [Panel of Advocates](#) (the Panel) before they can carry out any Criminal Legal Aid work in the Isle of Man. The Panel is a list of Advocates who are prepared to act for a person under one or more Legal Aid schemes (this may be Criminal and/or Civil schemes).

To join the Panel, an Advocate must complete an application form, detailing the categories of Legal Aid work they would like to carry out. This application is submitted to the Legal Aid Certifying Officer (LACO) who is a lawyer employed by Government, to authorise and monitor Civil Legal Aid work and some Criminal Legal Aid work. A meeting is then held between the LACO and the applicant, following which the Advocate can be added to the Panel.

An Advocate on the Panel is only permitted to undertake Police Station and/or Court Duty Advocate work, subject to gaining the required levels of experience and training, as set out in legislation or by the IoM Law Society. More information about an Advocate's particular areas of expertise can also be found via the [Isle of Man Law Society](#), or directly from the Advocate.

### **IoM Law Society Guidance**

The IoM Law Society issues a best practice guide called the [Duty Advocate Schemes Guidance](#) which sets out the role and responsibilities of Duty Advocates (i.e. in the Police Station and Court) and includes details of training requirements and procedures.

### **Police Station Duty Advocate training requirements**

There is a legal requirement for an Advocate who is on the Panel to have comprehensive experience of criminal defence work and complete further training before they can undertake work as a Police Station Duty Advocate. They must also attend an approved training course at least once every two years (although they are encouraged to attend annually by the IoM Law Society) to continue carrying out this type of work.

### **Court Duty Advocate training requirements**

Unlike the Police Station Duty Advocate Scheme, there is no legal obligation for a qualified Advocate who is on the Panel to undertake additional training to become a Court Duty Advocate.

The IoM Law Society has determined that Advocates on the Panel should only be able to undertake Court Duty Advocate work if they have attended an approved training course and observed, under appropriate supervision, at least 6 Courts within the previous 6 months. In order to continue carrying out work as a Court Duty Advocate, the training requirement is the same as that for the Police Station Duty Advocate: training once every two years, encouraged annually.

### **How many Advocates are there and how many do Criminal Legal Aid work?**

There are:

- 243 Advocates practising in the Isle of Man (source: IoM Law Society Oct 2018)
- 62 Advocates on the Legal Aid Panel
- 35 Advocates registered as willing to undertake Criminal Legal Aid work
- 23 Advocates registered for Police Station Duty Advocate work
- 20 Advocates registered for Court Duty Advocate work

14% of Advocates are willing to provide legally-aided criminal defence work in the Isle of Man and 9% of Advocates carry out Police Station and/or Court Duty Advocate work.

**8. What do you think are the most important qualities or factors in an Advocate who is providing legal advice to a person accused of a crime?**

*Please select one response per line*

	<b>Very important</b>	<b>Quite important</b>	<b>Neither important nor unimportant</b>	<b>Quite unimportant</b>	<b>Very unimportant</b>	<b>Don't know</b>
Level of experience in criminal matters						
Independence						
Professional reputation						
Quality of service						
Qualifications						
Ease of access (location, office hours etc)						
Personal recommendation						
Continuing Professional Development						
Used the Advocate before						

Are there any other qualities we have not listed above?



**9. Would you like to see any changes to how Advocates join the Legal Aid Panel to undertake Criminal Legal Aid work?**

*Please select one option*

- Yes
- No
- Don't know
- Not applicable

Please tell us more if you can

**10. Would you like to see any changes to Advocates' training requirements, over & above those already in place, to become (or remain) qualified as a Police Station Duty Advocate?**

*Please select all that apply*

- Yes - training requirements to become a Police Station Duty Advocate
- Yes - training requirements to remain a Police Station Duty Advocate
- No - training is already adequate for becoming & remaining a Police Station Duty Advocate
- Don't know
- Not applicable

If yes, please tell us more

**11. Would you like to see any changes to Advocates' training requirements, over & above those already in place, to become (or remain) qualified as a Court Duty Advocate?**

*Please select all that apply*

- Yes - training requirements to become a Court Duty Advocate
- Yes - training requirements to remain a Court Duty Advocate
- No - training is already adequate for becoming & remaining a Court Duty Advocate
- Don't know
- Not applicable

If yes, please tell us more

**12. An Advocate can undertake other types\* of legally-aided criminal defence work by virtue of their inclusion on the Legal Aid Panel. Would you like to see any changes to the requirements to undertake other types of Criminal Legal Aid work (i.e. under Green Form or Criminal Legal Aid Certificate)?**

\*Only Senior Advocates with at least 5 years' experience can act as defence Advocates in serious crimes (e.g. attempted murder)

*Please select one option*

- Yes
- No
- Don't know
- Not applicable

If yes, please tell us more

**PERSONS APPLYING AND QUALIFYING FOR CRIMINAL LEGAL AID**

**Police Station Duty Advocate & Court Duty Advocate**

There are no application procedures to access the Police Station Duty Advocate or Court Duty Advocate Schemes. These two schemes are *universal* which means they are free and available to everyone.

### Green Form & Full Criminal Legal Aid

The application forms for Green Form and Full Criminal Legal Aid are completed by an Advocate with the applicant. Completed applications are then submitted by an Advocate.

There is a '**financial means test**' component to both the Green Form and Full Criminal Legal Aid schemes. People who get an income-related benefit (eg Income Support; Income-based Job Seekers Allowance; Employed Person's Allowance) automatically qualify financially. However, someone on a low income, who is not in receipt of one of these benefits, may partially qualify and be required to pay contributions towards their legal expenses.

There is no '**legal merits test**' for Green form but it is applied to a full Criminal Legal Aid application. The application will be considered in Court by a member of the judiciary (e.g. the High Bailiff, Magistrate). The Judge may consider factors such as whether a person may be facing a prison sentence.

The table below summarises eligibility for Criminal Legal Aid schemes:

<b>Criminal Legal Aid Scheme</b>	<b>Is there a financial means test?</b>	<b>Is there a legal merits test?</b>	<b>Who is eligible for the scheme?</b>	<b>Are financial contributions required?</b>
Green Form	Yes	No	Any individual who passes the <b>financial means test</b>	If an individual passes a means test <b>in part</b> they will be required to make a financial contribution to their legal expenses
Police Station Duty Advocate	No	No	Any individual detained in an IoM Police station	No
Court Duty Advocate	No	No	Any individual appearing in Court for the first time on that particular charge	No
Full Criminal Legal Aid	Yes	Yes - this test is undertaken by a member of the Judiciary (e.g. High Bailiff)	Any individual who passes the <b>legal merits test and</b> passes the	If an individual passes the legal merits test but only passes the means test <b>in part</b> will they

<b>Criminal Legal Aid Scheme</b>	<b>Is there a financial means test?</b>	<b>Is there a legal merits test?</b>	<b>Who is eligible for the scheme?</b>	<b>Are financial contributions required?</b>
			financial <b>means test</b>	be required to make a financial contribution to their legal expenses

**13. If you have any comments on the eligibility criteria applied to one or more of the Island's Criminal Legal Aid schemes, please tell us.**

### **GREEN FORM**

Under a Green Form, a person can get legal advice on a number of criminal matters (e.g. driving offences; criminal damage). Last year, the Legal Aid office received approximately 100 Green Forms for criminal matters from Advocates. Green Form applications are means tested but not legal merits tested.

Green Form allows an Advocate to give up to 3 hours of advice and assistance to a person. This is paid at the same hourly Legal Aid rates as the other schemes.

More information on Green Form for criminal matters - [www.gov.im/greenform](http://www.gov.im/greenform)

**14. If you have any comments or suggestions on Green Form (for criminal matters) please tell us.**

### **POLICE STATION DUTY ADVOCATE SCHEME**

In the Isle of Man, a Police Station Duty Advocate will help you if you are arrested and taken to a Police Station. They will make sure that you are treated fairly and ensure that your legal rights are protected. A member of the Police Station Duty Advocate Scheme is available 24 hours per day, every day of the year.

A Police Officer will advise you of your right to speak to a Police Station Duty Advocate, day or night, when you are 'booked in' to the Custody Suite. The Police Station Duty Advocate Scheme is *universal* and is available to everyone, free of charge.

A Police Station Duty Advocate will:

- speak to you by telephone and/or visit you at the Police Station
- consult with you in private at the Police Station
- explain what could happen with your case
- make sure your rights are protected when you are at the Police Station
- provide you with advice and accompany you when you are interviewed by the Police
- answer any legal questions you have
- act in your best interests at all times

**15. Are you, or have you ever been, a Police Station Duty Advocate in the Isle of Man?**

*Please select one option*

- Yes
- No (go to Q17)

**16. Please tell us your views on the Police Station Duty Advocate scheme (eg Are there any processes which work well at the Police Station and have assisted you in your duties as an Advocate? Have you identified any aspects of Police Station Duty Advocate work which would benefit from improvement or change?)**

**17. Should a person who is detained in a place which is not a Police Station (eg ferry port, hospital, customs) who is suspected of committing a crime & is to be cautioned, be entitled to the same free legal advice as a person detained at a Police Station?**

*Please select one option*

- Yes
- No
- Don't know

If yes or no, please tell us more if you can

**18. Have you ever been arrested and detained at a Police Station in the Isle of Man?**

*If you answer yes to this question, it does not affect how the rest of your responses are analysed for the purposes of this consultation. It is only relevant to help us to understand your experience at the Police Station and we will not ask you why you were arrested.*

*Please select one option*

- Yes
- No (go to Q 26)
- Don't know (go to Q 26)

**19. How long ago were you arrested & detained at a Police Station in the Isle of Man?**

*Please tick all that apply*

- In the last 18 months
- Between 18 months & 5 years ago
- Over 5 years ago

**20. When you were detained at the Police Station, was it made clear to you by a Police Officer that you had a right to speak to a Police Station Duty Advocate, and that it would be free of charge?**

*Please select one option*

- Yes
- No
- Don't know
- Rather not say

If no, please tell us more if you can

**21. When you were detained at the Police Station did an Advocate provide you with any legal advice?**

*Please select one option*

- Yes – it was the Police Station Duty Advocate (go to Q22)
- Yes – it was an Advocate paid for privately (go to Q26)
- No – I did not receive any legal advice (please complete the box below then go to Q26)
- Don't know
- Rather not say

If no, can you tell us why you did not receive any legal advice?

**22. When you spoke to the Police Station Duty Advocate, was it:**

*Please select one option*

- In person
- By telephone
- In person & by telephone

**23. There can be a delay between the time a detainee asks to speak to a Police Station Duty Advocate and when the detainee is able to speak to them. Such delays may be unavoidable because it takes time before the Police are in a position to interview a detainee or provide disclosure information. Bearing these matters in mind, how easy or difficult was it for you to access the Police Station Duty Advocate?**

*Please select one option*

	Very easy	Easy	Neither easy nor difficult	Difficult	Very difficult	Rather not say
Access to the Police Station Duty Advocate						

**24. Were you content with the level of access you had to the Police Station Duty Advocate when you were in custody?**

*Please select one option*

- Yes
- No
- Rather not say

If no, please tell us more if you can

**25. How helpful was the Police Station Duty Advocate to you at the Police Station?**

*Please select one option*

	Very helpful	Helpful	Neither helpful nor unhelpful	Unhelpful	Very unhelpful	Rather not say
Helpfulness of Police Station Duty Advocate						



**26. Do you have any other comments or suggestions regarding the Police Station Duty Advocate Scheme? (e.g. What works well? What doesn't work well? What could benefit from change or improvement?)**

**SUPPORT FOR YOUNG PEOPLE AND VULNERABLE ADULTS -APPROPRIATE ADULT SCHEME**

An Appropriate Adult is a volunteer whose role is to safeguard the interests, rights, and welfare of young people and vulnerable adults who have been arrested and detained at a Police Station. An Appropriate Adult can:

**An Appropriate Adult does not give legal advice.** The Police Station Duty Advocate is still available to a young person or vulnerable adult at the Police Station.

In the Isle of Man, the Appropriate Adult Scheme is run by Adult Services (Department of Health & Social Care). Volunteers are sought via the Centre for Information Resource Care and Assistance (CIRCA) IoM.

Volunteers are paid a **flat fee of £10** to attend the Police Station, irrespective of the time of day, or the length of time that they spend there. In 2018/19, 254 people under the age of 18 were arrested and there are currently 10 registered Appropriate Adults in the scheme.

Members of the Appropriate Adult Scheme cannot be a Police Officer or member of Police staff. A Social Worker can act as an Appropriate Adult for a young person to whom they are assigned, but they may not be available to attend a Police Station. Any delay in securing an Appropriate Adult can lead to delays in custody proceedings.

[CIRCA - Register as an Appropriate Adult](#)

[Apply to volunteer as an Appropriate Adult www.circa.org.im/volunteering](http://www.circa.org.im/volunteering)

**27. Have you ever volunteered as an Appropriate Adult in a Police Station?**

*Please select one option*

- Yes
- No (go to Q29)
- Rather not say (go to Q29)

**28. Please tell us about your experiences as an Appropriate Adult and any views you may have (e.g. How could the scheme be improved? How could more volunteers be recruited and/or retained? Are training needs being identified / met?)**

**29. Have you ever been supported by an Appropriate Adult at the Police Station?**

*If you answer this question, it does not affect how the rest of your responses are analysed for the purposes of this consultation. It is only relevant to help us to understand your experience at the Police Station when you were supported by an Appropriate Adult. We will not ask you why you were at the Police Station.*

*Please select one option*

- Yes
- No (go to Q31)
- Rather not say (go to Q31)

**30. Please tell us about your experience when you were supported by an Appropriate Adult at the Police Station (e.g. Did you feel you were given enough access to the Appropriate Adult? How helpful was the support you were given? Could anything have been done differently that may have helped you?)**

**31. Do you have any other comments or suggestions regarding the Appropriate Adult scheme? Please tell us your views (e.g. How could more volunteers be recruited and retained? How could the scheme be improved?)**

## INTERPRETERS

The right to a fair trial is enshrined in Article 6 to the European Convention on Human Rights and set out in Schedule 1 of the Isle of Man's [Human Rights Act 2001](#). It follows that people have the right to an **interpreter** when they are arrested and detained at a Police Station or when they appear in Court, if they are not proficient in English.

The Police and the Courts have arrangements in place for contacting interpreters, but the demand for their services can increase at certain times of year (e.g. during the TT festival). As the Island's population becomes more diverse, demand for interpreters' services may increase further.

### Registering as an interpreter

If you would like to register as an interpreter please email [change@gov.im](mailto:change@gov.im).

### 32. Have you ever acted as an interpreter at a Police Station or in Court?

*Please select one option*

- Yes – Police Station
- Yes - Court
- Yes - Police Station & Court
- No (go to Q34)
- Rather not say (go to Q34)

**33. Please tell us about your experience as an interpreter, and any suggestions or views you may have (e.g. What aspects of the recruitment worked well? How could we secure the services of more interpreters in future? How could we ensure quality services?)**

**34. The Department of Home Affairs pays interpreters an hourly rate to attend the Police Station. These rates have been in place since 2007. Do you think they should be reviewed?**

Hourly rate

- Monday - Friday £8.05 per hour (minimum fee £32.20)
- Sunday and Bank Holiday £16.25 per hour (minimum fee £65)

*Please select one option*

- Yes
- No
- Don't know

If yes, please tell us more

**35. Do you have any other comments or suggestions on the provision of interpreter services at the Police Station or in Court? (e.g. How can we access the services of more interpreters? How can we ensure the quality of these services?)**

## **COURT DUTY ADVOCATE SCHEME**

In the Isle of Man, every person who is charged with a criminal offence must appear in a Summary Court before their case can proceed further. Court Duty Advocates are fully aligned with this process and they play a vital role in the smooth running of the justice system.

On the day of a Summary Court sitting, the Court Duty Advocate is given details of individuals who are due to attend Court for their first appearance. The Duty Advocate uses a private room to meet defendants, to discuss details of the case (or matter) with the defendant, explain Court processes, provide legal advice and answer relevant questions.

The Court Duty Advocate is present throughout an individual's first appearance in Court and makes representations on their behalf. They can also assist an individual in applying for full Criminal Legal Aid (subject to being assessed by the Court).

### **Court Duty Advocate rota**

The Court Duty Advocate rota is prepared by the [IoM Law Society](#) to ensure that a Court Duty Advocate is available for all Summary Courts, which are held Monday to Saturday throughout the year. Court Duty Advocates are paid at the hourly Legal Aid rates, and they do not receive payment for being on the Duty rota.

**36. Have you ever acted as a Court Duty Advocate in the Isle of Man?**

*Please select one option*

- Yes
- No (go to Q38)
- Don't know (go to Q38)

**37. From your experiences as a Court Duty Advocate, do you have any views or suggestions on the scheme? (e.g. Are there any processes which work well in the Courts and have assisted you in your duties? Have you identified any aspects of Court Duty Advocate work which could be improved or changed?)**

**38. Have you ever appeared in Court in the Isle of Man charged with a criminal offence?**

*If you answer yes to this question, it does not affect how the rest of your responses are analysed for the purposes of this consultation. It is only relevant to help us to understand your experience with the Court Duty Advocate and we will not ask you why you were in Court.*

*Please select one option*

- Yes
- No (go to Q44)
- Rather not say (go to Q44)

**39. How long ago did you appear in Court in the Isle of Man charged with a criminal offence?**

*Please select all that apply*

- In the last 18 months
- 18 months - 5 years ago
- Over 5 years ago

**40. When you attended Court for your first appearance, did you get advice from the Court Duty Advocate?**

If you have appeared in Court on a criminal matter more than once, please answer in terms of your most recent case

*Please select one option*

- Yes - I spoke to the Court Duty Advocate
- No – I chose to pay privately for an Advocate of my choice (go to Q44)
- No – I chose to represent myself in Court (please fill in box below then go to Q44)
- No – I did not know I could speak to the Court Duty Advocate (please fill in box below then go to Q44)

If you had no-one to represent you, what happened when you went into Court?

**41. How easy or difficult was it for you to access the Court Duty Advocate on your first appearance in Court?**

*Please select one option*

	Very easy	Easy	Neither easy nor difficult	Difficult	Very difficult	Rather not say
Access to the Court Duty Advocate						

**42. Were you content with the level of access you had to the Court Duty Advocate?**

*Please select one option*

- Yes
- No
- Rather not say

**43. How helpful was the Court Duty Advocate to you on your first appearance in Court?**

*Please select one option*

	<b>Very helpful</b>	<b>Helpful</b>	<b>Neither helpful nor unhelpful</b>	<b>Unhelpful</b>	<b>Very unhelpful</b>	<b>Rather not say</b>
Helpfulness of Court Duty Advocate						

**44. Do you have any other comments or suggestions on the Court Duty Advocate Scheme? (e.g. What works well? What doesn't work well? What could benefit from change or improvement?)**

**FULL CRIMINAL LEGAL AID, VULNERABLE PEOPLE & CRIMINAL APPEALS**

An application for a defendant to receive full Criminal Legal Aid is completed by an Advocate (often the Court Duty Advocate), signed by the defendant, and submitted to the Court. The decision to grant Criminal Legal Aid is made by the Court and is based on the defendant's **financial status** and the **legal merits** of their case.

If a defendant receives certain income-related benefits (e.g. Income Support; Income-based Job Seekers Allowance) they will automatically qualify in terms of their financial status. If the defendant is not in receipt of these benefits, their financial means will be determined by the Court based on their income, disposable capital, savings, dependents and expenses. The financial limits are set out in the [Criminal Legal Aid Regulations 1993](#) (as amended). For an application to be considered sufficiently serious, the Judge may take into account factors such as the possibility of a custodial sentence or loss of the applicant's job.

Subject to the necessary approvals, a Criminal Legal Aid certificate will be issued by the Court. This certificate authorises an Advocate to provide legal services to the defendant throughout their case. Subject to the defendant's financial means, they may be granted full Criminal Legal Aid (ie 100% of their legal costs will be paid for by the IoM Govt.) or they may be required to pay a contribution.

The Advocate will then carry out work on the defendant's behalf. This may include gathering witness statements, preparing for Court and representing their client in a criminal trial. Advocates submit their 'Bills of Costs' (invoices) to the Costs Officer, who is based in the Courts. The Costs Officer reviews each invoice in detail and may approve the invoice for payment or make deductions before approval.

**45. Are you an Advocate who has carried out work under a Criminal Legal Aid certificate in the Isle of Man or would like to do so in future?**

*Please select one option*

- Yes
- No

**46. Have you ever received legal advice and representation from an Advocate under a Criminal Legal Aid certificate?**

*If you answer yes to this question, it does not affect how the rest of your responses are analysed for the purposes of this consultation. It is only relevant to help us to understand your experience of receiving legal advice / representation under a Criminal Legal Aid Certificate. We will not ask why you were receiving it.*

*Please select one option*

- Yes
- No
- Don't know
- Rather not say

**47. Would you like to see any changes to the way in which Criminal Legal Aid certificates are assessed and/or issued?**

*Please select one option*

- Yes
- No
- Don't know

If 'yes', what changes would you like to see?



**48. If a person's average weekly disposable income exceeds £191, or their disposable capital exceeds £10,000 they are legally required to pay a contribution towards their legal costs. These limits are set out in legislation - do you think they are set at the right level?**

*Please select one option*

- Yes
- No
- Don't know

If no, what income / capital amounts would you consider to be appropriate or should the financial means test be based on other criteria?

**49. A vulnerable person can be defined as a child or adult who is unable to take care of themselves or protect themselves from harm or exploitation due to age, illness, disability or trauma. Should a person who has been assessed as being vulnerable should be automatically entitled to Criminal Legal Aid, regardless of their financial means?**

*Please select one option*

- Yes
- No
- Don't know

If 'yes', which Criminal Legal Aid Scheme(s) would this apply to? (Police Station Duty Advocate & Court Duty Advocate are already universal)

*Please select all that apply*

- Criminal Green Form
- Full Criminal Legal Aid

Please tell us more if you can

**50. Assessment of vulnerability could cause delays in determining whether a person is eligible for Criminal Legal Aid. If you think vulnerability should be included as part of an individual's assessment to receive Criminal Legal Aid, how this could work in practice?**

Please tell us more

**51. There is no 'legal merits' test applied to criminal cases being brought before the Court of Appeal in the Isle of Man. This includes appeals which are funded by Criminal Legal Aid. Should someone's access to justice be interfered with if an Advocate assesses that they have a 50% chance or less of successfully appealing a conviction and/or sentence on behalf of their client?**

*Please select one option*

- Yes - the likelihood of an appeal's success should be taken into account (i.e. chances of success should be over 50%)
- No - the likelihood of an appeal's success should not be taken into account (i.e. chances of success can be under 50%)
- Don't know
- Other

Please tell us more

**52. Do you have any further comments on full Criminal Legal Aid, Certificates, vulnerability criteria or Criminal Appeals?**

## **SELF REPRESENTATION**

People sometimes appear in Criminal Courts in the Isle of Man without an Advocate to represent them. This is called self-representation.

People who self-represent:

- may choose not to have an Advocate for personal reasons, even though they are eligible for Criminal Legal Aid
- may not be financially eligible to receive Criminal Legal Aid, nor able to afford to pay an Advocate on a private basis.

Those people who do self-represent in Court may need to conduct their own research, complete legal procedures, and present their case in front of a jury.

Whilst there are no official figures for self-representation in the Isle of Man, the Criminal Courts are not set up to deal with those who self-represent, and Court time can be wasted. For an individual facing the Court without an Advocate, it can also be a daunting and stressful time.

### **Impact of increased self-representation**

If, for example, the Government stopped funding the Court Duty Advocate Scheme, it would save approximately £110,000 per year in Criminal Legal Aid.

However, it could also result in hundreds of people every year going to a Summary Court (e.g. the High Bailiff's Court) for their first hearing, with no Advocate there to advise or represent them. This would affect everyone who could not afford to pay privately for a criminal defence Advocate.

Those who could not pay would be left to represent themselves in the Summary Court. While this could reduce costs to Legal Aid, it could significantly increase costs to the Courts.

Members of the Judiciary and Officers of the Court would be left to provide extra support to people who were representing themselves. This could:

- place additional pressures on Court time and resources
- contribute to delays
- cost much more than the current Court Duty Advocate Scheme
- reduce access to justice

**53. Have you ever represented yourself (i.e. without an Advocate to defend you) in a criminal Court in the Isle of Man?**

*Please select one option*

- Yes
- No (go to Q55)

**54. Why did you represent yourself in Court?**

*Please select one option*

- It was my choice - I wanted to represent myself
- It was not my choice - I wanted a defence Advocate, but I did not qualify for Criminal Legal Aid and I could not afford to pay an Advocate myself
- Don't know
- Other

Please tell us more if you can

**55. Do you think we should try to minimise the number of people who self-represent in future?**

*Please select one option*

- Yes
- No
- Don't know

If yes, how could we do this?

**56. How could we best support people who self-represent in Criminal Courts?**

## COST OF LEGALLY-AIDED CRIMINAL CASES

The cost of legally-aided criminal cases can vary from hundreds of pounds to tens of thousands.

In order for the Isle of Man Government to continue to fund Criminal Legal Aid, we must consider how we can spend less, spend well, spend wisely and spend fairly in all aspects of Legal Aid.

[Criminal Legal Aid expenditure](#) for the last 6 financial years (2013/14 to 2018/19) has been published by the [Legal Aid Office](#). Expenditure is split between the Island's four Criminal Legal Aid schemes.

Over the past 6 years, Criminal Legal Aid costs have ranged from £1.7 million to £2.4 million per year (an average of about £2.1 million per year).

Legal Aid expenditure in the Isle of Man is **demand-led**. So, whilst there is an annual Legal Aid budget set by the Treasury, the final annual expenditure figure will depend upon the demands on the service.

### Examples of factors which impact on Criminal Legal Aid expenditure

Legal Aid expenditure depends on a range of factors, some of which are included in the table below.

Category / agency	Impacting factor
Legislation - Criminal law	<ul style="list-style-type: none"><li>• Defines criminal offences</li><li>• Sets out severity of punishment and rehabilitation</li></ul>
Members of the public	<ul style="list-style-type: none"><li>• Number of crimes committed</li><li>• Seriousness of crimes committed</li><li>• Complexity of crimes committed</li><li>• Number of crimes reported</li></ul>
Isle of Man Constabulary	<ul style="list-style-type: none"><li>• Number of arrests</li><li>• Number of crimes recorded</li><li>• Number of charges</li><li>• Seriousness of charges</li><li>• Complexity of charges</li><li>• Detection rates</li></ul>
Prosecutions Division, Attorney General's Chambers	<ul style="list-style-type: none"><li>• Number of prosecutions</li><li>• Seriousness of prosecutions</li><li>• Complexity of prosecutions</li></ul>

<b>Category / agency</b>	<b>Impacting factor</b>
Criminal Defence Advocates (undertaking Criminal Legal Aid Work)	<ul style="list-style-type: none"> <li>• Number of Criminal Green Forms</li> <li>• Number of Police Station Duty Advocate clients</li> <li>• Number of Court Duty Advocate clients</li> <li>• Number of clients under Criminal Legal Aid certificates</li> <li>• Severity of cases</li> <li>• Complexity of cases</li> <li>• Number of expert reports required</li> <li>• Number and length of trials</li> </ul>
Courts	<ul style="list-style-type: none"> <li>• Number of Criminal Legal Aid applications</li> <li>• Number of adjournments</li> <li>• Waiting times in Courts</li> </ul>
Courts / IoM Prison	<ul style="list-style-type: none"> <li>• Use of video link technology between Courts &amp; IoM Prison</li> </ul>
IoM Prison & Probation Service	<ul style="list-style-type: none"> <li>• Availability of Probation Officers in Summary Courts (to prepare Stand-Down reports for defendants &amp; reduce the no. of adjournments)</li> </ul>

### **Very High Cost Cases and non-Legal Aid costs**

When a single case costs the IoM Government over £20,000, it is categorised as a 'very high-cost case' (VHCC).

In 2018/19, there were 11 criminal VHCCs, ranging from approx. £21,000 to approx. £170,000. VHCCs appear to reflect the complexity and/or severity of cases, and they are becoming more frequent.

### **Additional non-Legal Aid costs**

The overall cost to the Isle of Man Government in any criminal case will be significantly higher than just the costs incurred by Criminal Legal Aid. This is because there are additional costs incurred by the Police, the Attorney General's Chambers (Prosecutions Division), the Courts, the Probation Service, and in some cases the Prison. Changes in policies in one agency can affect other agencies.

## **LEGAL AID RATES - HOURLY / ON-CALL / CALL-OUT**

### **Hourly rates**

Advocates who undertake Legal Aid work are paid by Government at Legal Aid rates of pay. These rates are set out in [legislation](#) and have been in place since 1 April 2009:

- £115 per hour for Junior Advocates (in practice in IoM for less than 5 years)
- £135 per hour for Senior Advocates (in practice in IoM for over 5 years)

These rates are lower than the rates Advocates could charge to private, fee-paying clients, which could range between £250 and £450 per hour - [P36 Isle of Man Law Society Legal Aid consultation submission 2016](#).

A small legal practice on the Isle of Man (e.g. with 1 Advocate and 1 administrator) may have annual operational costs of around £80,000 per year. These costs are typically associated with staff wages, property rental and personal indemnity insurance.

### **On-call payments**

'On-call' payments are made to Advocates who are on the Police Station Duty Advocate rota, which covers 24 hours a day, every day of the year. Duty Advocates receive this payment as they have to be available to attend the Police Station if called at any time of day or night.

The rota is split into two 12-hour shifts per weekday (day and night) and two 24-hour shifts per weekend (Saturday and Sunday). A Senior Advocate, who can be consulted if a serious crime is committed, is also available.

### **Call-out rates**

Police Station Duty Advocates are also paid 'Call-out' rates if they are contacted by a Custody Officer to assist a person who has been detained at a Police Station. Call-out rates are the same as hourly rates. A Police Station Duty Advocate will receive a call-out payment based on the time that they spend at the Police Station.

### **Police Station Duty Advocate rates**

The rates of pay for Police Station Duty Advocate work are:

- £1215 per week On-Call payment for a Police Station Duty Advocate
- £310 per week On-Call payment for the Senior Advocate
- £115 per hour Call-Out payment for Junior Duty Advocate
- £135 per hour Call-Out payment for Senior Duty Advocate

## Legal Aid rates of pay have remained the same since 2009

The IoM Law Society has expressed concern that the Legal Aid rates have not risen since 1 April 2009, despite a previous commitment by Government to increase the rates.

The hourly rates were due to increase on 1 April 2010 (to £125/£150 per hour for Junior/Senior Advocates) but this increase was not introduced. It is understood that this was due to the impact of the revised VAT agreement with the UK, which (in Oct 2009) the then Chief Minister announced would cause the Isle of Man to lose c£90 million in income in 2010-2011.

The IoM Law Society has in the past suggested that it could withdraw its support for Legal Aid Schemes due to the disparity between Legal Aid rates and private rates. It follows that if Advocates do not consider that they are fairly remunerated for the Legal Aid work that they do, they may choose to stop providing their services.

Whilst many Advocates remain committed to continuing to undertake legally-aided work (some have described it as *'the right thing to do'*) it is coupled with an expectation that they should be fairly paid.

### 57. Do you think that Legal Aid rates of pay should be reviewed?

*Please select all that apply*

- Yes, hourly rates
- Yes, on-call rates
- No
- Don't know

If yes, please tell us more

### 58. The hourly Legal Aid rates of pay are £115 per hour for Junior Advocates and £135 per hour for Senior Advocates. Should this two-tier model for Legal Aid rates remain in place?

*Please select one option*

- Yes - the two-tier model should remain in place
- Yes, on-call rates
- Don't know
- Other (please state)

If other, please tell us more



**59. Do you have any further comments or suggestions about Legal Aid rates of pay?**

If yes, please tell us more

**60. Do you have any comments or suggestions as to how Criminal Legal Aid could be organised, managed or overseen differently to better control expenditure in the future?**

If yes, please tell us more

## **FIXED FEES**

A 'fixed fee' is a fixed amount that is paid to an Advocate for undertaking a specific piece of work. For example, a fixed fee could be paid to an Advocate:

- to attend a Summary Court trial based on 7.5 hours per day
- to attend a sentencing hearing at Summary Court, based on 1 hours' attendance

The amount at which a fixed fee is set depends on the length of time that is allocated to a matter and the agreed hourly rate.

In the above examples, if the hourly rate was £150, the fixed fees would work out as:

- Summary Court trial per day = £1125 (i.e. 7.5 x £150)
- sentencing hearing at Summary Court = £150 (i.e. 1 x £150)

If a particular matter takes significantly longer to complete it can be considered as an exception for payment purposes.

Fixed fees can help Governments to manage their budgets more effectively. They can also make the administration of Legal Aid claims more straightforward for both Advocates and Governments as detailed breakdowns of work are no longer required for matters dealt with under a fixed fee.

In the Isle of Man, there are currently no fixed fees and Advocates are paid at an hourly rate. Some Advocates have expressed concern that only hourly rates of pay can properly reflect the work that has been undertaken (ie paid at an hourly rate for the time it takes to complete a matter). Other Advocates have suggested that if fixed fees were set at the right level, and for selected matters (eg in Summary Court) then there could be benefits for both the Advocates undertaking Criminal Legal Aid work and the IoM Government.

### **Fixed fees in other jurisdictions**

There are fixed fees in place in Scotland, England and Wales, and they are due to be introduced in Jersey (for criminal matters only) following the introduction of new legislation.

Fixed fees can be set at very different rates. For example, fixed fees in England are based on £45 per hour, and Jersey's (draft) new fixed fees are based on £165 per hour.

Guernsey's Legal Aid model is based on the Isle of Man's, but they have a single Legal Aid rate of £167 per hour. Guernsey does not have fixed fees.

**61. In principle, would you support the option of some fixed fees being introduced for Criminal Legal Aid in the Isle of Man?**

*Please select one option*

- Yes
- No
- Don't know

If yes or no, please tell us more if you can

**62. Do you have a view on which Criminal Legal Aid matters, if any, may be suitable for fixed fees in the Isle of Man?**

If yes, please tell us more

**63. Do you have any other comments on fixed fees?**

## PUBLIC DEFENDER SCHEME

A Public Defender Scheme (PDS) is a system in which lawyers are directly employed by the Government to represent the interests of defendants in criminal matters.

At present, people who are eligible for Criminal Legal Aid in the Isle of Man receive advice from an Advocate in private practice, who is paid by IoM Government. With a PDS, those people who are eligible for Criminal Legal Aid would be advised by an Advocate who is employed and paid by IoM Government.

The [SAVE Progress Report](#) submitted to Tynwald in June 2018 included a 'Proof of Concept' for a PDS, which included an **estimate** for setting up a PDS office in the Isle of Man, employing 6 Advocates and 4 administration staff. The report estimated that a PDS would cost around £1.2m per year and could deliver an **estimated** saving of £1.1m per year based on Criminal Legal Aid expenditure of £2.3m per year. The report also made reference to the importance of safeguarding the independence of a PDS from Government, and acknowledged that this would require a 'robust solution'.

The estimated savings figures have been challenged by the IoM Law Society as there is concern that a PDS with 6 Advocates and 4 administrators would not be adequately resourced to carry out the volume of work required, and cover the Police Station Duty Advocate work 24hrs a day, 365 days of the year. The IoM Law Society also expressed concern that financial savings should not be the primary aim of a PDS, and that PDS Advocates may not be sufficiently independent of Government.

### Full & partial Public Defender Schemes

If a PDS was established in the Island, it would be staffed by Manx Advocates and administrative staff who would be employed by IoM Government.

In a **full PDS**, Advocates would be responsible for providing **all** legally-aided criminal defence services to people in the Island up to and including the Court of General Gaol Delivery (which was not factored into the report). No further criminal legal aid work would be available to Advocates in private practice, so there would be no criminal legal aid payments made by Government. People who are eligible to receive Criminal Legal Aid would still receive the legal services they require, but they would be provided by Advocates working in the PDS. Services which are currently free to all (Police Station Duty Advocate and Court Duty Advocate schemes) would remain free. People who do not qualify for Legal Aid would continue to pay a private criminal defence Advocate, subject to their availability, as they do now.

In a **partial PDS** there would be fewer Advocates and administrative staff than in a full PDS. PDS Advocates would be responsible for providing **some** legally-aided criminal defence services to people in the IoM, either as a proportion of the overall work available (i.e. shared with private practice) or on specific matters only. Subject to the responsibilities of the PDS, Advocates in private practice could continue to provide legally-aided criminal defence services, which would be paid for by the IoM Government. People who are not eligible for Legal Aid would continue to pay a private criminal defence Advocate, as they do now.

### Public Defender Schemes in the UK

- **England & Wales**

In England and Wales, the PDS was established in 2001 and was the first salaried criminal defence service in England and Wales. Between 2001 and 2003, eight Public Defender Offices (PDOs) were opened in Liverpool, Middlesbrough, Birmingham, Cheltenham, Chester, Darlington, Swansea and Pontypridd. Following a series of pilots, by October 2018 there were four PDOs remaining. Each of the PDOs offers services 24 hours a day, 365 days of the year, and provides for <0.2% of the Criminal Legal Aid market. The PDS in England and Wales were not established to save money but instead to provide a guaranteed 'safety net' in areas where there was a potential market failure.

- **Scotland**

Scotland has Public Defence Solicitors' Offices (PDSO) across 7 cities and covers approximately 3% of the criminal legal aid 'market sector'. The remaining 97% of Criminal Legal Aid work is provided by solicitors in private practice. The original proof of concept was for the PDSO to provide a 'safety net' for individuals and a tripartite agreement was made in 2010 between the Scottish Legal Aid Board, Law Society of Scotland and the Scottish Government. A study which compared outcomes for cases defended by the PDSO and those in private practice showed a higher level of acquittal by PDSO Solicitors following jury trials and lighter sentences as a result of early pleas. The PDSO has also acted as a route into the profession for aspiring criminal defence solicitors and prides itself on the high quality and credibility of its staff, who are described as fearless in the defence of their clients. The work of PDSO solicitors is also fully independent and human rights compliant.

**64. To help find out more about your views on the Isle of Man's current Legal Aid system in comparison to a Public Defender Scheme, please tell us which terms you think best describe the two options.**

*Please select one option on each line*

	<b>Current system (Advocates in private practice paid by IoM Govt)</b>	<b>Public Defender Scheme (Advocates employed by IoM Govt)</b>	<b>Both the same</b>	<b>Don't know</b>
More independent				
More professional				
More experienced Advocates				
More bureaucratic				
More expensive				
More efficient				
Better career progression for Advocates				
Better job security for Advocates				
Better access to Advocates for the public				
Better quality of service				
Better value for money				

**65. In principle, would you support the establishment of a Public Defender Scheme (either full or partial) in the Isle of Man?**

*Please select one option*

- Yes
- No (go to Q67)
- Don't know

If no, please tell us why then go to Q67

**66. If you said Yes to Q65, which option(s) best describe your support in principle for the establishment of a Public Defender Scheme in the Isle of Man?**

*Please select all that apply*

- A full or partial PDS if it can be an arms-length body, independent from both the Attorney General's Chambers & Government
- A full or partial PDS if it can deliver significant financial savings to Government
- I would only support a partial PDS
- I would only support a full PDS
- Don't know
- Other (please state)

Please tell us more if you can

## OPTIONS

**67. Which option(s) for the future provision of Criminal Legal Aid in the Isle of Man would you support?**

*Please select all that apply*

- A - Do nothing. Keep the current Criminal Legal Aid system unchanged
- B - Review Legal Aid rates of pay
- C - Review Legal Aid rates & introduce Fixed Fees for specific criminal matters
- D - Introduce a partial Public Defender Scheme
- E - Introduce a full Public Defender Scheme
- F - Don't know
- G - Other (please state)

If 'Other' please tell us more

**68. If you had to choose one option from the above list as your preferred option for Criminal Legal Aid in the future, which would it be?**

*Please choose one option*

A            B            C            D            E            F            G

Preferred option

**69. Do you have any final comments or suggestions about Criminal Legal Aid in the Isle of Man?**

**Thank you for completing the consultation**





**Isle of Man**

**Attorney General's Chambers**

## **APPENDIX 2**

### **LEGAL AID REVIEW**

#### **PART 1 - CRIMINAL LEGAL AID CONSULTATION**

#### **RESULTS & ANALYSIS REPORT**

**Submitted to the Legal Aid Committee October 2020**



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## 1.0. INTRODUCTION

HM Attorney General, John Quinn QC MLC, is leading a Legal Aid Review project on behalf of the Securing Added Value and Efficiencies (SAVE) Sub-Committee of the Council of Ministers.

The aim of the Legal Aid Review is to develop policy options for the sustainable provision of Legal Aid in the Isle of Man, which:

- maintain or improve **access to justice**
- support the delivery of **quality services**
- provide **value for money**

The project is being carried out in two parts to reflect both types of Legal Aid available in the Island. These are Criminal and Civil Legal Aid. This report provides a summary and analysis of responses to a public consultation on **Criminal Legal Aid** conducted by the Attorney General's Chambers from 23 September to 21 November 2019.

A public consultation on **Civil Legal Aid** was subsequently conducted by the Attorney General's Chambers from 17 February to 21 May 2020.

### 1.1. Background

The Legal Aid Review initially began as a project, led by HM Attorney General under the remit of the SAVE Sub-Committee, to consider the feasibility of a Public Defender Scheme (PDS) in the Isle of Man. Work on the PDS project began in September 2018 following the appointment of a Project Manager to the Attorney General's Chambers.

In a statement to Tynwald in January 2019<sup>12</sup>, the Treasury Minister, Hon A L Cannan MHK, provided an update on developments pertaining to the progress and scope of the PDS project. Members were advised that following a request from the Legal Aid Committee, the SAVE Sub-Committee had agreed that the initial scope of the PDS project would be extended, and as a result would encompass all aspects of both Criminal Legal Aid and Civil Legal Aid in the Island. The Minister confirmed that HM Attorney General had agreed at the request of the SAVE Sub-Committee to continue to lead this project, with its extended remit, with immediate effect. This project became known as the Legal Aid Review.

The Minister welcomed this development as a pragmatic approach to reviewing Legal Aid as a whole, as it was recognised that a number of functions and processes that sit behind these provisions are inextricably linked. He also made particular reference to the crucial roles of Criminal and Civil Legal Aid in contributing to *Access to Justice* in the Isle of Man, which is recognised as a fundamental cornerstone of our society.

Members were then given an assurance that no policy decisions had been made on any aspects of Legal Aid, including the establishment of a PDS. The Minister advised that there had been suggestions that the creation of such a Scheme in the Island was a *fait accompli* and that the Government was determined to replace all private criminal legal aid Advocates with salaried in-house defence Advocates. He confirmed that this was "*simply not the case*".

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<sup>1</sup> <https://www.tynwald.org.im/business/hansard/20002020/t190115.pdf>

<sup>2</sup> <https://www.tynwald.org.im/business/hansard/20002020/t190115-HA-I3.pdf>

The Minister then went on to advise that HM Attorney General had been asked, as part of the original PDS project, to consider the feasibility of introducing a PDS in the Island, and it was on that basis that he would be seeking stakeholder's views on that issue as part of a public consultation on Criminal Legal Aid.

The Minister also confirmed that no decisions would be made on the future delivery of Criminal or Civil Legal Aid until a comprehensive and inclusive consultation process has been undertaken, and the views expressed by stakeholders had been fully considered. He then took the opportunity to reaffirm that Legal Aid policy decisions remain the statutory responsibility of the Legal Aid Committee, by virtue of the Legal Aid Act 1986.

Members were advised that most Legal Aid systems in the world operated with clear budget caps and explicit rationing<sup>3</sup>, but in contrast, the Isle of Man has an open-ended, uncapped, demand-led provision which helps support access to justice for its citizens. It was noted that over the previous 5 years, the average combined cost of Criminal and Civil Legal Aid and their administration had been £3.8m per annum. However, whilst this cost to the public purse was recognised, the Legal Aid Review would not simply be about cutting or better controlling public spending. The Minister said that the question we must ask ourselves is:

*"How can Government ensure that Legal Aid is applied appropriately to those who need it, whilst balancing the financial realities of the Isle of Man?"*

The Minister concluded that by extending the project's remit, an opportunity had been created to review the Island's Legal Aid provision as a whole and identify whether any aspects could or should be changed or improved. Furthermore, as the overarching principles of access to justice and quality of service should be integral to any Legal Aid system, it followed that if there were potential efficiencies or savings to be made, then the Legal Aid Review would seek to identify them.

In his closing remarks, the Treasury Minister encouraged Tynwald Members and all stakeholders, including the Isle of Man Law Society, Manx Advocates, the Judiciary, the IoM Constabulary, and equally importantly, any individuals who had received Legal Aid or wished to see changes to its provision, to engage with the Attorney General's Chambers throughout this review. He submitted that it was vital that all stakeholders should be given the opportunity to play an active part in this project, as access to justice is a fundamental principle which benefits Manx society as a whole.

## **1.2. Consultation objectives**

The objectives of this consultation have been to engage with members of the public and key stakeholders in the Isle of Man's criminal justice system, in order to seek their views on Criminal Legal Aid provision and in particular identify:

- which aspects of Criminal Legal Aid are considered to work well and should continue;
- which aspects of Criminal Legal Aid are considered not to work well and could benefit from improvement; and
- if any potential changes or alternative schemes could better deliver Criminal Legal Aid in future.

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<sup>3</sup> p.19 [Rethinking Legal Aid | An Independent Review \(Scottish Government 2018\)](#)

## 2.0. CONSULTATION APPROACH

### 2.1. Preparation

The Criminal Legal Aid consultation was prepared following research and stakeholder engagement undertaken by the Attorney General's Chambers. This included working with the IoM Constabulary, Courts of Justice, Criminal Justice Board, Legal Aid Office, and Legal Aid Committee. Custody Inspector Kevin Quirk facilitated a very helpful visit to Police Headquarters which included access to the Custody Suite facilities and information regarding the statutory provisions which apply when a person is detained. Advocate Stephen Wood provided extensive and invaluable information regarding Criminal Legal Aid in the Isle of Man, which included an opportunity to observe Court Duty Advocate work at the Courts of Justice.

Further preparation for the consultation was undertaken through meetings with the IoM Law Society, including the Chief Executive and President. Four Criminal Legal Aid workshops were also held with members of the IoM Law Society. Additional research was undertaken with the UK's Ministry of Justice, the Scottish Legal Aid Board, Guernsey and Jersey to understand Criminal Legal Aid provision in comparator jurisdictions. The consultation questions were then drafted and reviewed by the Economic Affairs Division of Cabinet Office to ensure that the questions were balanced and did not contain elements of bias.

The consultation sought to reflect the numerous aspects of Criminal Legal Aid in the Island. In particular, the different points during the criminal justice process at which Legal Aid becomes relevant, either as a free and universal scheme available to everyone (i.e. Police Station Duty Advocate and Court Duty Advocate schemes) or as a scheme subject to eligibility tests (i.e. Green Form and full Criminal Legal Aid). The consultation also sought to understand which matters, if any, may impact on a person's access to justice (e.g. access to Duty Advocates; availability of interpreters; availability of Appropriate Adults to support young people or vulnerable adults being held in custody). In addition, there were questions which explored the appetite, in principle, for alternative approaches to Criminal Legal Aid provision in the future, and responses were invited on matters including fixed fees and a PDS.

As the consultation was open to all members of the public, it was considered important to give respondents the opportunity to make informed and meaningful submissions, irrespective of their prior knowledge of Criminal Legal Aid. In an effort to achieve this, the consultation included supporting information, statistics and worked examples throughout.

In total, the consultation contained 15 sections and 69 questions, and respondents could answer as many or as few questions as they wished. The 15 sections were:

- About the respondents
- Awareness of Criminal Legal Aid schemes
- Advocates who do Criminal Legal Aid work
- Persons applying for Criminal Legal Aid
- Legal Advice and Assistance (Green Form)
- Police Station Duty Advocate Scheme
- Appropriate Adult Scheme
- Interpreters

- Court Duty Advocate Scheme
- Full Criminal Legal Aid, vulnerable people and criminal appeals
- Self-representation
- Legal Aid rates
- Fixed fees
- Public Defender Scheme (PDS)
- Options

## 2.2. Methodology

The 8-week public consultation on Criminal Legal Aid was published by the Attorney General's Chambers on 23 September 2019 and it closed on 21 November 2019.

On the launch of the consultation, the Attorney General's Chambers issued a news release via the Cabinet Office. The news release was sent to media contacts and wide range of stakeholders, including Tynwald Members, IoM Law Society and a number of charities in order to raise awareness of the consultation and encourage participation.

During the 8-week consultation period, the Criminal Legal Aid consultation was publically available via the Isle of Man Government's Consultation Hub (<https://consult.gov.im>) which gave respondents the opportunity to complete and submit their responses online. A downloadable version of the Criminal Legal Aid consultation was also published, and printed copies were available via the Attorney General's Chambers. Printed copies were also provided to the Isle of Man Prison.

## 2.3. Response rate & respondent groups

In total, **203** consultation responses were received, and of these:

- 184 submissions were made online through the IoM Government's Consultation Hub
- 17 submissions were made on printed copies
- 1 submission was made by email
- 1 submission was made by letter

The average response rates for the consultation questions were as follows:

- 96% for multi-choice answers
- 87% for targeted responses (e.g. directed at those who had indicated they were Court Duty Advocates)
- 28% for those which invited comments only

Responses which were submitted as completed printable copies and via email were manually uploaded onto the Consultation Hub to facilitate analysis. One response was submitted as a letter and it has been included in the analysis. One person completed the consultation twice and submitted both responses online, a month apart. The first submission has been included in the results but the second submission has not, however both responses have been published in line with permission from the respondent.



## 2.4. Additional stakeholder engagement

In addition to the public consultation process, the Attorney General's Chambers consulted directly with three key stakeholder groups. These were the IoM Law Society, the IoM Constabulary and prisoners at the IoM Prison.

The Attorney General's Chambers held a series of Criminal Legal Aid workshops with these stakeholder groups in the following date order:

- May 2019 – Four workshops were held with members of the IoM Law Society and 34 members attended, including the Society's President and its Chief Executive. These workshops were held **before** the Criminal Legal Aid consultation was launched, in order to ensure that feedback from the Society's membership could be taken into account during the development and drafting of the Criminal Legal Aid consultation.
- September 2019 - One workshop was held with the IoM Constabulary **during** the consultation period. 13 senior Police Officers attended, including the Chief Constable.
- November 2019 - Four workshops were held with prisoners at the IoM Prison **during** the consultation period. 34 prisoners attended including members of the Prisoners Council (the Jurby Advocates).

This report provides a summary of the feedback received during these Criminal Legal Aid workshops at sections 5.0 to 5.3. Where it has been possible to act upon feedback provided in the workshops, these details are also included.

## 2.5. Notes on reporting

Some of the consultation questions were targeted at specific groups (e.g. individuals who had been through the criminal justice system). However, all respondents were free to answer as many or as few relevant questions as they wished, with the exception of Q6 which was mandatory as it dealt with consent to publish. As a result, the number of responses to each question is invariably less than 203. The number of respondents who answered each question is clearly indicated throughout the report.

When reporting the results, if a question was open to all respondents the results are reported as a percentage of 203. If a question is targeted at a certain section of the respondents (e.g. those who have acted in the capacity of a Police Station Duty Advocate) the results are reported as a percentage of those who responded.

For ease of reference, percentages have been rounded up or down to 0 decimal places (e.g. 17.55% rounded up to 18%; 17.45% rounded down to 17%) therefore some percentage totals may not add up to 100%. If they are slightly above or below 100% they are recorded as >100% or <100% respectively.

Text boxes were included throughout the consultation to encourage respondents to leave comments in support of their answers. Some of these text boxes invited all respondents to make comments (e.g. *Please tell us more*). Other text boxes invited comments based on the respondent's answer (e.g. *If 'Yes' please tell us more*) as the consultation sought to understand people's appetite and/or motivation for change. As a result, there may be differences in the volume of qualitative information submitted by respondents based on their

answer. However, no text boxes precluded the submission of comments based on a respondent's answer. Where respondents have answers such as 'See above' (or similar) they are counted as a response as far as possible but they are not reported as quoted text in this report.

Where the appropriate permissions have been given, a wide range of respondents' comments have been included throughout this report, as directly quoted text in full or in part. The inclusion of comments seeks to reflect respondents' views and add authenticity to the report, but it is neither practicable nor desirable to include all comments. As comments can only be included if the respondent's permission has been given, some sections may refer to a certain number of comments having been received (e.g. 7), but with fewer or no comments quoted. Typographical errors in respondents' comments have been corrected as far as possible and some acronyms have been expanded for the benefit of the reader. If any additional words have been added for clarification purposes, they are clearly enclosed in square brackets [ ].

Consultation responses have been published in full or anonymously via the Consultation Hub in accordance with the level of consent indicated by the respondent. Published responses have been moderated if, for example, a respondent has referred to a named individual in a derogatory manner and/or has used offensive language. Such details have been redacted, but the rest of their submission has been published.

The IoM Law Society submitted its response in the form of a letter which is published in full via the Consultation Hub. Extracts from the letter appear throughout this report, and are attributed to the Society.

If respondents did not give permission for their consultation responses to be published, their answers to questions (e.g. *Yes / No / Don't know / Other*) are included in all analyses. In addition, comments left by these respondents are taken into account as far as possible, and may be paraphrased in a bid to reflect their views. However, their responses are not quoted in this report, and their consultation submissions are not published on the Consultation Hub.

**2.6. Amendment to consultation**

Two days after the publication of the Criminal Legal Aid consultation and in response to feedback, a text box was inserted beneath Q65 which read:

Q65. In principle, would you support the establishment of a Public Defender Scheme (either full or partial) in the Isle of Man?

Respondents could choose one of three answers to Q65: *Yes / No / Don't know*. The addition of a text box allowed respondents to leave comments, which feedback indicated could be particularly important to those who answered 'No'. Those who answered 'No' were also directed to Q67. The order of questions (i.e. subject to answering 'Yes' or 'No' to Q65) remained unchanged. The response options and text box for Q65 then appeared as shown:

- Yes
- No (go to Q67)
- Don't know

If No, please tell us why then go to Q67

[Text box for comments]

For further clarity, the words *'If you said Yes to Q65'* were added at the beginning of Q66 as shown:

Q66. If you said Yes to Q65, which option(s) best describe your support in principle for the establishment of a Public Defender Scheme in the Isle of Man?

### 3.0. KEY FINDINGS

The key findings from the Criminal Legal Aid consultation process are outlined below and follow the same order of sections as those which appear in the consultation. Full results with respondents' comments and further analysis are included in the main body of this report.

#### 3.1 About the respondents

- 94% of respondents stated that they were responding as individuals and 5% on behalf of organisations.
  - 96% of respondents stated that they were IoM residents and 3% were not.
  - 203 consultation responses were received. There were 8 respondent groups which were set out in the Criminal Legal Aid consultation. There were:
    - 33 people who had been through the criminal justice system (16%)
    - 76 members of the public (37%)
    - 46 Advocates / Judiciary members (23%)
    - 25 criminal justice system employees (12%)
    - 6 charity / support workers (3%)
    - 1 Tynwald Member (<1%)
    - 16 others (8%)
  - There was additional engagement through a series of Criminal Legal Aid workshops with three key stakeholder groups: IoM Law Society; members of the IoM Constabulary, and prisoners at the IoM Prison which served to inform the drafting of the Criminal Legal Aid consultation and add further depth to the consultation process (see sections 5.0 - 5.3).
  - Consent was given to publish 38 full responses and 139 anonymous responses (total 87%). No consent was given to publish the remaining 26 (13%) responses.
- 

#### 3.2 Awareness of Criminal Legal Aid schemes

- Between 77% and 89% of respondents indicated that they were aware of each of the Island's four Criminal Legal Aid Schemes.
- 

#### 3.3 Advocates who do Criminal Legal Aid work

- The three most important qualities / factors in an Advocate providing Criminal Legal Aid services, as chosen by respondents from a list of 9 options were:
  - i. Quality of service (most important)
  - ii. Level of experience and Independence (equally ranked)

The three least important qualities / factors were:

- i. Continuing Professional Development (CPD)
  - ii. Personal recommendation
  - iii. Used the Advocate before (least important)
- 43% of respondents said that they would not like to see any changes to how Advocates join the Legal Aid Panel to undertake Criminal Legal Aid work, and concerns included disincentivising Advocates to joining the Panel. 14% of respondents said that they would like to see changes, and suggestions included additional training requirements.
  - 45% of respondents said they would not like to see changes to training requirements to become (or remain) qualified as a Police Station Duty Advocate (PSDA) and reference was made to the adequacy of current training in place. 29% said they would like to see changes and suggestions included mock PSDA work and a 'reverse shadowing period' for those seeking to join the PSDA rota.
  - 45% of respondents said they would not like to see changes to Court Duty Advocate (CDA) training requirements. 30% said they would like to see changes and suggestions included formalisation of training requirements, on a similar footing to the PSDA Scheme.
  - 49% of respondents said they would not like to see changes to the requirements for an Advocate to work under Green Form or a Criminal Legal Aid certificate, and it was suggested that requirements were already sufficient by virtue of Advocates' inclusion on the Legal Aid Panel. 15% said they would like to see changes and concerns included an overreliance on Advocates' inclusion on the Legal Aid Panel as being a sufficient prerequisite to represent a person in a criminal case.
- 

### 3.4 Persons applying for Criminal Legal Aid

- 33% of respondents provided comments or suggestions in regard to applying for Criminal Legal Aid. Concerns included disparity of financial eligibility criteria for Criminal and Civil Legal Aid; no limitation on the number of times a person can receive Criminal Legal Aid; restraint proceedings under the Proceeds of Crime Act 2008 leaving individuals unable to pay for private legal defence and also ineligible for Legal Aid, and issues faced by those remanded in prison or serving custodial sentences in terms of accessing Criminal Legal Aid.
- 

### 3.5 Legal Advice and Assistance (Green Form)

- 24% of respondents provided comments or suggestions in regard to Legal Advice and Assistance under Green Form. Some suggested that Green Form works well in its current form and others suggested the amount of time available / eligibility / scope should be extended. It was also proposed that more limits should be in place.
-

### 3.6 Police Station Duty Advocate Scheme (PSDA)

- 24 respondents (12%) indicated that they were current or former PSDAs in the Isle of Man. There was broad support from these respondents for the PSDA Scheme. Concerns included delays at the Police Station, and securing enough PSDAs in multi-handed cases to avoid conflicts of interest. Suggestions included an increase in the on-call rate of pay for Senior Advocates; more Advocates on-call, and more training for new Police Officers in terms of understanding PSDAs' role.
- 84% of all respondents said that people detained under caution should be entitled to receive free legal advice, irrespective of location. It was suggested that the location of detention was irrelevant, and reference was made to access to justice and the right to legal advice. 9% of respondents said that people should not be entitled to the same free legal advice in locations away from the Police Station. Some expressed concern regarding costs, and others appeared to think that all detainees are ultimately taken to the Police Station thus negating the need to extend entitlement to other locations.
- 29 respondents (14%) indicated that they had been arrested and detained at a Police Station in the Isle of Man. In total, there had been 30 arrests / detainments and they were equally split across three time periods as follows:
  - 10 in the last 18 months
  - 10 between 18 month and 5 years ago
  - 10 over 5 years ago.
- 26 of those who had been arrested and detained indicated if it had been made clear to them by a Police Officer that they had a right to speak to a PSDA, and that it would be free of charge:
  - 20 (77%) said it was made clear to them
  - 5 (19%) said it was not made clear to them
  - 1 (4%) said they did not know
- 28 of those who had been arrested and detained indicated if an Advocate had provided them with any legal advice:
  - 24 (86%) said it was a PSDA
  - 2 (7%) said it was an Advocate paid for privately
  - 2 (7%) said they did not receive any legal advice
- 23 of those who had been given legal advice by a PSDA indicated if the advice was given in person or via telephone:
  - 23 (100%) said the PSDA advice was in person
- All 24 of those who had been given legal advice by a PSDA commented on ease of access to the Advocate, bearing in mind there can be unavoidable delays at the Police Station:

- 13 (54%) said access was easy or very easy
  - 6 (25%) gave a neutral response
  - 5 (21%) said it was very difficult
- All 24 of those who had been given legal advice by a PSDA commented on whether they were content with the level of access to the Advocate:
    - 16 (67%) were content with the level of access
    - 5 (21%) were not content with the level of access
    - 3 (12%) preferred not to say
  - All 24 of those who had been given legal advice by a PSDA commented on how helpful the Advocate had been.
    - 19 (79%) said they were helpful or very helpful
    - 3 (12%) gave a neutral response
    - 2 (8%) said they were very unhelpful
  - 27% of respondents submitted comments and suggestions regarding the PSDA scheme. There was broad support for the PSDA scheme; the most common issue was waiting time, and it was suggested that improved communication between all parties would be helpful.
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### 3.7 Appropriate Adult Scheme

- 9 respondents (4%) said they had volunteered as an Appropriate Adult (AA) in a Police Station.
  - 6 respondents (3%) said they had been supported by an AA at the Police Station. 1 person indicated that the support from the AA was helpful, and 2 said the support was of little help due to the presence of the Police.
  - There was broad support for the AA Scheme. There was acknowledgment of its importance in the criminal justice system and volunteers' dedication, but concern that the Scheme is at risk. Suggestions included an increase in pay for AAs; improvements in training; more publicity and increased levels of recruitment.
- 

### 3.8 Interpreters

- No respondents said they had acted as an interpreter at a Police Station or in Court and consequently there were no views provided on the service.
- 67% of respondents said rates of pay for interpreters should be reviewed, and 17% said they should not.

- Those in favour of increasing the rates of pay made reference to the importance of suitably qualified interpreters, who play a vital role in the criminal justice system. Concern was expressed that the levels of pay do not reflect the skill and specialist knowledge required.
- 

### 3.9 Court Duty Advocate Scheme

- 26 respondents (13%) said they had acted as a Court Duty Advocate (CDA). There was broad support from these respondents for the CDA Scheme as a universal form of Legal Aid which functions well. Other positive comments referred to the presence of Probation Officers in Court, and determining Criminal Legal Aid applications in situ. Concerns included Court waiting times and the requirement for a Duty Advocate to attend out of hours Courts even if they are not needed. Suggestions included more use of Fixed Penalty Notices and giving the Court the ability to check an applicant's benefit status.
- 27 respondents (13%) indicated that they had appeared in Court in the IoM charged with a criminal offence. In total there had been 28 Court appearances, and they were split across three time periods as follows:
  - 11 in the last 18 months
  - 10 between 18 month and 5 years ago
  - 7 over 5 years ago.
- 25 of those who had appeared in Court indicated if they had received advice from a CDA at their first appearance:
  - 18 (72%) said they spoke to a CDA
  - 4 (16%) said it was an Advocate paid for privately
  - 2 (8%) said they did not know they could speak to a CDA
  - 1 (4%) said they chose to self-represent in Court
- All 18 of those who had received advice from a CDA commented on ease of access to the Advocate:
  - 12 (66%) said access was easy or very easy
  - 5 (28%) gave a neutral response
  - 1 (6%) said it was difficult
- All 18 of those who had received advice from a CDA commented on whether they were content with the level of access to the Advocate:
  - 12 (67%) were content with the level of access
  - 6 (33%) were not content with the level of access
- 17 respondents who had received advice from a CDA commented on how helpful the Advocate had been:
  - 10 (59%) said they were helpful or very helpful
  - 5 (29%) said they were unhelpful or very unhelpful
  - 2 (12%) gave a neutral response



- 21% of respondents submitted comments or suggestions regarding the CDA scheme. There was broad support for the scheme in its current form. Risks to the future availability of CDAs was raised if there is no incentive for younger Advocates to undertake the work, which was linked to a call to increase Legal Aid rates of pay. Concern was expressed regarding the limited time available to defendants to spend with the CDA to discuss their case and complete Criminal Legal Aid applications. Suggestions included employing a CDA and reintroducing the process whereby CDAs could be notified of their requirement to attend Court. The importance of a CDAs' awareness and understanding of adults with learning disabilities was also raised.
- 

### 3.10 Full Criminal Legal Aid, vulnerable people and criminal appeals

- 30 respondents (15%) said they were an Advocate who had carried out work under a Criminal Legal Aid certificate in the Isle of Man or would like to do so in future.
- 22 respondents (11%) said they had received legal advice and representation under a Criminal Legal Aid certificate.
- 32% of respondents said that they would not like to see any changes to the way in which Criminal Legal Aid certificates are assessed or issued and their concerns were set out. 21% said they would like to see changes and suggestions were made.
- Comments from those respondents who were not in favour of change included concern that if these processes were moved away from the Court, they could become slower and more expensive to administer.
- Those in favour of change expressed concern that financial eligibility limits set out in 1993 legislation are no longer appropriate, and the completion of the Criminal Legal Aid application form is time consuming and repetitive. The importance of certificates and contribution notices being granted expeditiously was also highlighted and it was suggested that applications could be simplified and an online process put in place. Alternative views included issuing certificates in the name of the defendant and replacing joint with single income assessments.
- 43% of respondents said that financial limits for assessing eligibility for Criminal Legal Aid were not at the right level. 28% of respondents said they were at the right level.
- The terms 'disposable income' and 'disposable capital' (as referred to in the Criminal Legal Aid Regulations 1993<sup>4</sup>) were not easy for people to understand. There were also concerns that the means-testing process, and the calculation of financial contributions, are complex and could benefit from simplification and more transparency. It was suggested that the extension of bands and/or revision of contribution levels, could reduce the current 'cliff edge' that exists for some contributors.
- 59% of respondents said vulnerable people should be automatically entitled to Criminal Legal Aid, regardless of their financial means. 28% said vulnerable people should not be automatically entitled.

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<sup>4</sup> <https://www.gov.im/media/1351165/criminal-legal-aid-regulations-1993.pdf>

- Those who supported automatic qualification for vulnerable people raised a number of key themes including human rights and the measure of a caring society; the risk of exploitation for vulnerable people in society, and the disadvantages faced within the criminal justice system.
  - Those who did not support automatic qualification were concerned that a person's vulnerability should not in itself preclude them from contributing towards their legal costs if they have the financial means available to them. The option of 'disapplying' the means test in appropriate cases was put forward as a viable and potentially preferable solution to this matter, but a 'blanket disapplication' of the means test on the basis of vulnerability was opposed.
  - 37% of respondents commented on how an assessment of vulnerability could work in practice if it is included as part of an individual's assessment to receive Criminal Legal Aid. The most common suggestion was to use medical records to assess a person's vulnerability. Almost half of the Advocates / Judiciary members who responded considered that current processes which are already in place to determine if a person is vulnerable (e.g. at a Police Station and through the Legal Aid application process) are already sufficient.
  - In terms of criminal appeals, 40% of respondents said that likelihood of success (>50%) should be taken into account. 37% said likelihood of success should not be taken into account.
  - Those in favour of taking likelihood of success into account suggested that this could help to stop 'frivolous' appeals and there was also support for introducing a leave to appeal process. Those not in favour submitted that when a person's liberty is at stake, a benchmark of 50% or more is not appropriate, and any such imposition would be a breach of human rights.
- 

### 3.11 Self-representation

- 8 respondents (4%) said they had self-represented in an IoM criminal Court.
  - 49% of all respondents said the number of people who self-represent should be minimised, and 31% said the number should not be minimised.
  - Those who thought that self-representation was always because of lack of ability to pay suggested that eligibility for Criminal Legal Aid should be extended. Others suggested that the solution would be better remuneration for Advocates undertaking Legal Aid work, to incentivise Advocates to offer their services. Many respondents felt that if it was a choice for people to self-represent then this should be respected.
-

### 3.12 Legal Aid rates

- 65% of respondents said that hourly and/or on-call Legal Aid rates should be reviewed. 17% said that Legal Aid rates should not be reviewed.
  - Concerns from those who called for an increase to hourly rates included the lack of increase in over 10 years; cost of living and inflationary increases, and a disparity with pay increases in other sectors (e.g. public sector) over the same period. There were also concerns that without adequate remuneration, pay rates would be a disincentive for Advocates to join the criminal bar. The IoM Law Society called for the Senior Advocate hourly rate to be increased to £150 per hour with a commitment to annual inflationary increases as a minimum.
  - Comments from those who said that rates of pay should not be reviewed included concerns that the on-call (not hourly) rate for Advocates was significantly higher for Advocates than those working in the emergency services. Other views included supporting adequate payment for the work that Advocates do and a nominal payment for being on-call; concern that rates were set too high in 2009, and that reviews should not automatically result in increases.
  - 70% of respondents said the two-tier model for Legal Aid rates (currently £115 per hour / £135ph for Junior / Senior Advocates respectively) should remain in place. 13% said there should be one single rate for all Advocates, and 5% said 'Other'.
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### 3.13 Fixed fees

- 41% said in principle they would support some fixed fees being introduced for Criminal Legal Aid in the Isle of Man. 40% said they would not support fixed fees.
  - Of those in favour of some fixed fees, there was broad support if they could be introduced on a flexible and fair basis, set at the right level, and deliver efficiencies which would not disadvantage the defendant or the criminal bar. It was also suggested that delays associated with Court waiting times would need to be addressed before fixed fees could be fairly applied and suggested potential benefits included a reduction the number of guilty pleas entered on the day of a criminal trial.
  - Of those opposed to fixed fees, reference was made to every case being different and some matters inevitably being more complex than others, requiring more time than allocated under a fixed fee. There was concern that this could result in Advocates being significantly underpaid for their work and/or impact on the standard of criminal defence, which could lead to miscarriages of justice. Reference was also made to the impact of introducing fixed fees in England and Wales (including industrial action). It was suggested that the current system, based on an hourly rate with bills subject to a cost assessment, was the fairest system.
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### 3.14 Public Defender Scheme (PDS)

- Respondents were asked for their views on the Isle of Man's current Legal Aid system in comparison to a PDS and indicate which terms best describe the two systems. There were 11 terms: More independent; More professional; More experienced Advocates; More bureaucratic; More expensive; More efficient; Better career progression for Advocates; Better job security for Advocates; Better access to Advocates for the public; Better quality of service; Better value for money. The highest and lowest results in terms of the percentage point difference between the two systems were:
    - 70% of respondents thought that the current system would be more independent compared to 7% for a PDS (63 percentage point difference).
    - 33% of respondents thought a PDS would be more expensive and 33% think that the current system would be more expensive (0 percentage point difference).
  - 59% of respondents said that they would not support the establishment a PDS in the Isle of Man. 28% of respondents said in principle they would support the establishment of a PDS.
  - Those who were opposed to a PDS raised a number of concerns, including independence; conflicts of interest, and the separation of powers. Other concerns were in regard to the case put forward for a potential PDS; estimated costs of setting up and staffing a PDS; estimated savings; the ability of PDS Advocates to undertake the volume of work required, and the expansion of Government. Comparisons with the UK were also made, in addition to concerns that a PDS would reduce the quality of legal representation; have a detrimental effect on access to justice, and have an irreversible and negative impact on the Manx Bar.
  - Those respondents who supported the principle of a PDS suggested that it could improve the quality of legal representation and reduce the number of people who self-represent in the Courts.
- 

### 3.15 Options

- Respondents were asked which option (or multiple options) for the future provision of Criminal Legal Aid they would support from a list of 8 (labelled A – G). Option choices in order of preference were:
  - (B) Review Legal Aid rates of pay (31%)
  - (A) Do nothing. Keep the current system unchanged (21%)
  - (C) Review rates of pay & introduce fixed fees for specific criminal matters (20%)
  - (E) Introduce a full PDS (11%)
  - (D) Introduce a partial PDS (10%)
  - (G) Other (5%)
  - (F) Don't know (<1%)

- Respondents were asked which single option for the future provision of Criminal Legal Aid they would support from the same list of 8 options. Option choices in order of preference were:
    - (A) Do nothing. Keep the current system unchanged (31%)
    - (B) Review Legal Aid rates of pay (20%)
    - (C) Review rates of pay & introduce fixed fees for specific criminal matters (17%)
    - (E) Introduce a full PDS (15%)
    - (D) Introduce a partial PDS (5%)
    - (G) Other (>3%)
    - (F) Don't know (3%)
  - The majority of respondents (51%) chose to keep the current system unchanged (option A) or review rates of pay (option B). Whilst this combined percentage is very similar to that in the previous question (52%) the order of preference of the two options has changed.
-

## 4.0. CONSULTATION RESPONSES

Responses to consultation Q1 (*What is your name?*) and Q2 (*What is your email address?*) are not included in this report. Responses to the remaining Questions 3 to 69 are grouped into the 15 sections in which they featured in the consultation, and included in sections 4.1 to 4.15 below.

Where appropriate permissions have been given, the names of respondents and represented organisations are listed at section 4.16 and they are also published online as part of individual submissions at <https://consult.gov.im>.

### 4.1. About the respondents

#### Q3. Are you responding on behalf of an organisation?

201 respondents (99%) answered this question and the breakdown of responses is shown in Table 1 below.

**Table 1. Organisation & individual responses**

Option	No.	%
Yes - organisation	10	5
No - individual	191	94
Not answered	2	1
<b>Total</b>	203	100

There were 191 (94%) responses from individuals and 10 (5%) responses on behalf of organisations.

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#### Q4. Are you resident in the Isle of Man?

202 respondents (>99%) answered this question and the breakdown of responses is shown in Table 2 below.

**Table 2. Residency of respondents**

Option	No.	%
Yes - IoM resident	195	96
No – not IoM resident	7	3
Not answered	1	<1
<b>Total</b>	203	<100

195 respondents (96%) stated that they were Isle of Man residents and 7 (3%) were not.

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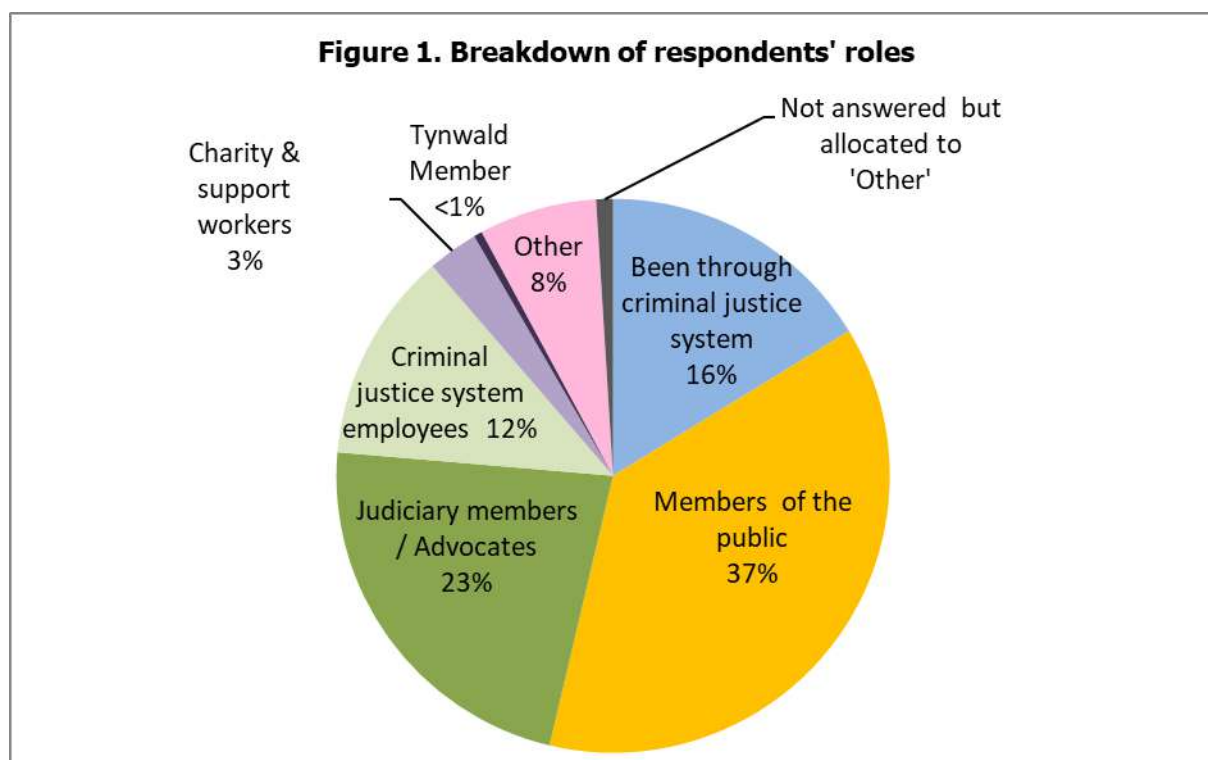
Q5. Which option best describes your interest or role in responding to this consultation?

201 respondents (99%) answered this question and the remaining 2<sup>5</sup> respondents (1%) were allocated a role. The breakdown of roles as set out in the consultation is shown in Table 3 and Figure 1 below.

**Table 3. Interest or role of respondents**

Option	No.	%
Been through the criminal justice system or supported someone who has	33	16
Member of the public	76	37
Member of the Judiciary or an Advocate	46	23
Public sector employee working in the criminal justice system	25	12
Voluntary sector, charity or support worker	6	3
Tynwald Member	1	<1
Other	16	8
<b>Total</b>	203	100

Table 3 shows that 33 respondents (16%) had been through the criminal justice system; 76 respondents (37%) were members of the public; 46 respondents (23%) were members of the Judiciary or Advocates, and 25 (12%) were public sector employees in the criminal justice system. There were 6 responses (3%) from the charity / support sector and 1 response (<1%) from a Member of Tynwald. 16 respondents (8%) were in the 'Other' category. They included a person whose child had been murdered; some members of the Appropriate Adult Scheme, and an Advocate who has a family member working in the criminal justice system. Additional responses in the 'Other' category included the General Registry, a member of the Advocates Disciplinary Tribunal and a barrister who has appeared as a QC in a number of serious cases in the Isle of Man. Figure 1 illustrates these results:



<sup>5</sup> Two respondents who did not answer Q5 are included within the 'Other' category for the purpose of analysis.

Throughout the rest of this report, the categories of respondent will be shortened for ease of reference (as shown in Figure 1) as follows:

- Those who 'have been through the criminal justice system or supported someone who has' will be referred to as those who 'have been through the criminal justice system'
  - Those who are 'a member of the Judiciary or an Advocate' will be referred to as 'Advocates / Judiciary members'
  - Those who are 'public sector employees working in the criminal justice system' will be referred to as 'criminal justice system employees'
  - Those who are 'voluntary sector, charity or support workers' will be referred to as 'charity / support workers'
- 

**Q6. May we publish your response?**

All respondents were required to answer this question and as a result there were 203 responses (100%). A breakdown of responses is shown in Table 4.

**Table 4. Consent to publish**

Option	No.	%
Yes, you can publish my response in full	55	27
Yes, you can publish my response anonymously	122	60
No, please do not publish my response	26	13
<b>Total</b>	203	100

It should be noted that of those 55 respondents who gave consent for their response to be published in full:

- 38 (19%) provided their full name and/or that of the organisation they were responding on behalf of; and
- 17 (8%) did not provide their full name, which is equivalent to giving permission to publish anonymously

As a result, consent was given to publish 38 'full' responses and 139 anonymous responses (totalling 87%). No consent was given to publish the remaining 26 (13%) responses.

All consultation responses have been taken into account and included in this analysis as far as possible. Where permission has been given by the respondent, submissions have been published in full or anonymously via the Isle of Man Government Consultation Hub (<https://consult.gov.im>).

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## 4.2. Awareness of Criminal Legal Aid schemes

Q7. Of the four Criminal Legal Aid schemes in the Isle of Man, were you aware of any of them before today?

Respondents were asked to complete a table indicating their level of awareness of four Criminal Legal Aid Schemes (i.e. Green Form; Police Station Duty Advocate; Court Duty Advocate and full Criminal Legal Aid) and invited to select one option per line (i.e. per scheme).

Between 188 (93%) and 195 (96%) respondents provided answers for each scheme and the results are shown in Table 5 below. Percentages in brackets show the results as a proportion of the total no. of responses (203) to the consultation.

**Table 5. Awareness of Criminal Legal Aid schemes**

	Yes I have received it personally	Yes I am involved in a professional capacity	Yes I have helped others access it	Yes I was aware but have not received or helped others access it	No I was not aware	Total no. responses
Green Form	22 (11%)	39 (19%)	13 (6%)	82 (40%)	37 (18%)	193 (95%)
Police Station Duty Adv.	22 (11%)	46 (23%)	15 (7%)	97 (48%)	13 (6%)	193 (95%)
Court Duty Advocate	19 (9%)	45 (22%)	12 (6%)	84 (41%)	28 (14%)	188 (93%)
Full Criminal Legal Aid	20 (10%)	45 (22%)	11 (5%)	103 (51%)	16 (8%)	195 (96%)

Table 5 shows that as a proportion of those who responded to the consultation:

- Between 9% and 11% of respondents indicated that they had received Criminal Legal Aid through one or more of the four schemes.
- Between 19% and 23% of respondents indicated that they were involved in one or more of the Criminal Legal Aid schemes in a professional capacity.
- Between 5% and 7% of respondents indicated that they had helped others to access one or more of the Criminal Legal Aid schemes.
- Between 40% and 51% of respondents indicated that they were aware of the schemes but had no direct involvement.
- Between 6% and 18% of respondents indicated that they were not aware of the schemes.

Overall, between 156 (77%) and 180 (89%) of respondents indicated their awareness of the four Criminal Legal Aid Schemes. This reflects a high level of awareness amongst those who responded to the consultation.

### 4.3. Advocates who do Criminal Legal Aid work

Q8. What do you think are the most important qualities or factors in an Advocate who is providing legal advice to a person accused of a crime?

Respondents were asked to complete a table indicating the level of importance they attributed to a range of qualities in a criminal defence Advocate. A text box was also provided and respondents were invited to suggest further qualities that had not been listed in the table and indicate why they were important to them.

Between 192 (95%) and 198 (98%) people answered this question and the results are shown in Table 6 below. The total number of responses (column 7) reflects how many people selected an option (e.g. very important) for each quality. A small number of people answered 'Don't know' and these figures are not shown in the table but they are reflected in the number of responses. All percentages are calculated as a proportion of 203 (i.e. the total no. of responses to the consultation).

**Table 6. Importance of qualities / factors in a defence Advocate**

	Very important	Quite important	Neither important nor unimportant	Quite unimportant	Very unimportant	No. of responses
Level of experience	144 (71%)	51 (25%)	3 (1%)	0 (0%)	0 (0%)	198 (98%)
Independence	162 (80%)	23 (11%)	10 (5%)	0 (0%)	1 (<1%)	196 (97%)
Professional reputation	88 (43%)	58 (29%)	46 (23%)	2 (1%)	1 (<1%)	196 (97%)
Quality of service	162 (80%)	33 (16%)	2 (1%)	0 (0%)	0 (0%)	197 (97%)
Qualifications	104 (51%)	75 (37%)	17 (8%)	2 (1%)	0 (0%)	198 (98%)
Ease of access	79 (39%)	80 (39%)	34 (17%)	3 (1%)	2 (1%)	198 (98%)
Personally recommended	34 (17%)	45 (22%)	87 (43%)	16 (8%)	13 (6%)	196 (97%)
Continuing Professional Development	70 (34%)	85 (42%)	36 (18%)	3 (1%)	1 (<1%)	197 (97%)
Used Advocate before	25 (12%)	30 (15%)	101 (50%)	16 (8%)	16 (8%)	192 (95%)

These responses were weighted<sup>6</sup> for the purposes of ranking, and the 9 qualities are set out below in order of importance to the respondents:

- i. Quality of service (most important)
- ii. Level of experience & Independence (equal scores)
- iii. -
- iv. Qualifications
- v. Ease of access (location; office hours etc)
- vi. Professional reputation
- vii. Continuing professional development (CPD)
- viii. Personal recommendation
- ix. Used the Advocate before (least important)

Respondents were also asked to suggest any other qualities or factors that were not listed in the table and 39 responses were received. The three most frequent suggestions were:

- Integrity
- Good communicator / easy to understand for all clients
- Honesty

Other suggestions including accountability, knowledge of the law, empathy, impartiality, diligence and trustworthiness. Other factors included fearlessness in defence, acquittal rates, being ethical, trustworthy and 'going the extra mile'. The importance of independence was also reiterated.

Comments included:

'Quality of Service is an understatement "Diligence" and "going the extra mile" are more like it!'

'The Advocate must be completely free and independent from the Prosecution, including on issues such as funding, disclosure and ability to conduct a Defence.'

'Integrity, alongside independence.'

'Someone who is willing to take the time required to really listen to the person they are representing and who has an awareness of the particular issues which may affect the client's ability to either fully understand the issue or to fully communicate their understanding e.g. people with autism, learning disabilities or mental health difficulties.'

'Has won over 50% of previous cases.'

'Empathy, an ability to manage expectations and the Client.'

The Chief Constable referred to Advocates' preparedness for digitalisation within the criminal justice system as an important factor:

'Advocates should be able and prepared to deal with the digitalisation of the criminal justice process, which would necessarily include being able to receive files digitally.'

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<sup>6</sup> The following 'weightings' were applied to the answers given for each quality / factor and added together to give a total score which could be ranked: 5 = Very important; 4 = Quite important; 3 = Neither important or unimportant; 2 = Quite unimportant; 1 = Very unimportant.

The IoM Law Society expressed concern that the question was subjective as the qualities which were important to some individuals may differ to those important to others:

‘Question 8 is regarded by the IOMLS as being a very subjective question which does not enable the respondent to provide a qualitative response. What one person considers important may actually not be important. For example, the question asks whether qualifications are important; simply put a person with no qualifications cannot act as an Advocate and therefore qualifications are essential, regardless of what an uninformed person might think. The IOMLS considers that all the attributes listed will have a level of importance to a defendant, but that the degree of importance of any particular skill will depend on the respondents’ experience with the system, their age, their needs and vulnerabilities, the offence with which they have been charged, whether they have been a co-defendant, whether custody is or was a likely outcome etc. What is of central importance is that there is effective access to good independent legal advice.’

**Q8 SUMMARY:** Between 192 and 198 respondents (95% - 98%) answered each part of the question.

Responses reflected a wide range of qualities and attributes which people expect or desire in Advocates, and which Advocates expect from themselves and others in the profession. Quality of service, level of experience and independence were ranked as the 3 most important factors to respondents. Other qualities were also identified as being important to respondents and the most commonly recurring themes were that Advocates should have integrity, honesty and an ability to understand and communicate effectively with all clients including those individuals who may be vulnerable.

**Q9. Would you like to see any changes to how Advocates join the Legal Aid Panel to undertake Criminal Legal Aid work?**

193 respondents (95%) answered this question, and responses are shown in Table 7. A text box was also provided for further comments.

**Table 7. Views on changes to join Legal Aid Panel**

Response	Number	%
Yes	28	14
No	87	43
Don't know	71	35
Not applicable	7	3
Not answered	10	5
<b>Total</b>	203	100

44 respondents made comments

28 respondents (14%) said that they **would like to see changes to how Advocates join the Legal Aid Panel**. Of these, 8 had been through the criminal justice system, 5 were members of the public, 7 were Advocates / Judiciary members, 4 were criminal justice system employees, 1 was a charity / support worker, 1 was a Tynwald Member and there were 2 others. 26 respondents provided further comments.

Those who had been through the criminal justice system raised concerns about the level of experience and quality of some Advocates on the Legal Aid Panel, particularly in complex criminal cases:

'I think they should have more experience in the field so to speak i.e. actually work in Criminal work on a full time basis and then join the Court Duty and Police Station rotas rather than just because they have acquired their articles and have no actual experience of being a criminal legal aid advocate.'

'The pool of advocates doing criminal legal aid work is inadequate for full and fair access to justice particularly as there is no qualitative test for membership of the legal aid panel. The pool is inadequate to cope with the range and complexity of cases dealt with in Manx Courts especially high profile financial, drugs and sexual offences cases...There is no qualitative test to assess the ability of an advocate seeking to join the panel or to monitor performance on an ongoing basis... The legal aid panel should be open to applicants from the legal profession in the UK. '

**Members of the public focussed on experience and training:**

'Should be experienced in criminal law.'

'There should be detailed training for each of the 4 areas before work' can be undertaken.'

**Advocates / Judiciary members who said they would like to see changes to how Advocates join the Legal Aid Panel gave a range of suggestions including a 'code of conduct', different training or experience requirements, and a type of accreditation:**

'Some Advocates join the Panel to undertake minimal work on the Duty Rota and do not undertake Criminal work on a more full time basis.'

'I think there does need to be an evidencing of suitability and experience in criminal matters before being able to advise clients... This could be in the form of shadowing and/or a review of the training record, together with evidence of having attended suitable training within the previous 12 months or so, e.g. mock criminal courts and advocacy training which are held annually.'

'I believe that there should be a set of written requirements for both individual advocates and for advocates' practices. The requirements for advocates could be contained within a "code of conduct" and would include (for example) a requirement for independence etc. The requirements for practices would include requirements in terms of access and IT capability (similar to that required in the UK) - this would improve the efficiency of the administration of Legal Aid and would assist access by clients.'

'Emphatically yes. Presently any advocate in the Isle of Man is able to join the Panel upon simple request and a meeting between the advocate and the certifying officer. There is no - but ought to be - a process similar to the Criminal Litigation Accreditation Scheme operating in England & Wales whereby applicants must pass a Police station Qualification (PSQ), a Magistrates Court Qualification (MCQ) and meet fitness and propriety standards to qualify for inclusion on duty rotas Duty Solicitor Arrangements. Additionally, once accredited, panel members of the Scheme are required to complete a number of Continuous Professional Development (6?) hours of criminal law related courses every year. The Accreditation Scheme is administered by the Law Society - while the IOM Law

Society claims in its "Guidance - Isle of Man Law Society Duty Advocate Schemes" to be committed "to value for money, transparency, accountability and to the delivery of the highest quality legal services to scheme users..." there is nothing put in place to give effect to such commitment. This is an embarrassing and public abdication by the IOM Law Society which, while it has the budget lacks the inclination.'

Another Advocate / Judiciary member made a suggestion with reference to the aforementioned Accreditation Scheme (although the respondent answered 'Don't know' to Q9):

'I do wonder whether it would be possible for the Isle of Man Law Society to approach the Law Society of England to see if it would be possible to use their expertise in this area to deliver the training and the assessment on behalf of the Isle of Man Law Society.'

Criminal justice system employees commented on the significance of criminal charges to an individual, and how it would be advantageous to have a higher number of Advocates willing and able to undertake Criminal Legal Aid work:

'Criminal legal matters change people's lives for the worse if the advocates get it wrong because of inexperience, this should not be taken lightly.'

'It would be beneficial to see more Advocates willing to provide legally-aided criminal defence work and carry out Police Station and/or Court Duty Advocate work.'

The General Registry made reference to demonstrable competence; continuing professional development (CPD); advocacy training and ongoing review. The response also indicated that the number of Advocates registered to undertake Criminal Legal Aid work does not correlate with those who regularly appear in Criminal Courts, and suggested that there could be a minimum number of Court appearances required for Advocates to do this work:

'Demonstrable competence and resources to deal with servicing a legally aided work load, to include: 1. relevant training and experience; and 2. ongoing training reflected in CPD. 3. Specific advocacy training and on-going review of advocacy skills.'

... note that there are 35 advocates registered as willing to undertake legal aid work; far fewer than 35 appear before the criminal courts on a regular basis. In addition to the above, it might be considered appropriate for there to be a minimum number of court appearances required for any advocate registered to do criminal legal aid work.'

'Others' suggested that Advocates registered on the Legal Aid Panel as willing to undertake Criminal work should not limit themselves to Police Station Duty and Court Duty work. Monitoring of Legal Aid Panel Advocates by the IoM Law Society was also suggested:

'Those who join the legal aid panel to undertake criminal work must be willing and actually do take on work beyond the police station and the court duty and not simply use those for additional income and court experience without being willing to take on such matters through to the end.'

'Standard of work/quality of work – a history. Monitoring by the Law Society on an ongoing basis.'

87 respondents (43%) said that they **would not like to see changes to how Advocates join the Legal Aid Panel**. Of these, 12 had been through the criminal justice system, 29 were members of the public, 32 were Advocates / Judiciary members, 7 were criminal justice

system employees, 1 was a charity / support worker, and there were 6 others. 12 respondents provided further comments.

Of those respondents who had been through criminal justice system, one made reference to independence and said that the current system seemed fair:

'The legal aid system at the moment seems fair and gives people a chance to find an independent advocate who is registered for legal aid work that they can trust.'

One member of the public also provided a comment regarding independence:

'I believe that duty solicitors should be entirely independent of the Attorney General's office'

The IoM Law Society considered that this question was most appropriate for Advocates to answer. The Society advised that it did not consider additional requirements necessary for those wishing to join the Legal Aid Panel, expressed concern that any such requirements could act as barriers to those prepared to undertake such work and believed that there were no known issues with the current arrangements:

'Question 9 is a very difficult question for anyone who is not an Advocate to answer properly. The starting point has to be what is required in order for a person to qualify as an Advocate, which is a minimum of 4 years university level education followed by a 2 year training/vocational contract during which a trainee Advocate must take and pass the Manx Bar exams, which includes a paper dedicated to Isle of Man criminal law. Once qualified an Advocate should, as a matter of professional practice, only undertake work in an area of law in which he or she has expertise and experience, which may amount to working under adequate supervision when gaining that experience.

The current mechanism to be added to the legal aid panel is a system that was put in place shortly after the introduction of the Legal Aid Handbook ("the Handbook") to ensure that Advocates on the panel understood their obligations to the Legal Aid Certifying Officer (LACO). No legal knowledge test is conducted, and, given that the Advocate must demonstrate competence to practice Isle of Man law, none should be required. The requirements to go on to the Police Station or Court Duty Advocate Rotas are requirements set and managed by the Duty Advocate Committee, as are the Rotas themselves.

Given that, in the Isle of Man, we do not operate on limited practising certificates, and all qualified Advocates are qualified to advise on all aspects of Isle of Man law, the IOMLS does not consider any additional requirements should be put in place for the purpose of an Advocate being placed on the Legal Aid panel. Legal aid work is grossly underpaid, and more Advocates should be encouraged to assist those clients eligible for legal aid. The Island should be careful not to put barriers in the way of the small number of Advocates prepared to undertake legal aid work. The IOMLS fully accepts that the priority must be to ensure that clients who require legal aid advice and assistance are properly and adequately represented, and believes that there are no known current issues with the legal aid panel joining system.'

Other Advocates / Judiciary members who said that there should not be changes to how Advocates join the Legal Aid Panel made comments which reflected three key themes. These were: the quality and adequacy of current training requirements; the personal and professional commitment of Advocates who undertake Criminal Legal Aid work despite the significant contrast between Legal Aid and private rates of pay, and concerns that changes

could act as an additional barrier to Advocates undertaking Criminal Legal Aid work and prevent others from joining the Legal Aid Panel:

'As someone who has recently done the training, it is sufficiently rigorous to provide fit for purpose advocates.'

'[Legal Aid] Panel Advocates are committed to providing an excellent service despite the abysmal rate of remuneration in Legal Aid cases. They give up prestige and money in order to provide for those most in need of representation at a crisis in their lives. Many of their Clients are vulnerable, have mental health or drug/drink related issues and are difficult to deal with. Panel Advocates undertake stringent training by more than competent trainers from the best sets of chambers in the UK.'

'I don't believe it would be helpful to potentially discourage advocates from doing Legal Aid work by adding hurdles to joining the Legal Aid Panel.'

'The imposition of any additional requirements would risk reducing the (already small) pool of advocates willing to undertake, in particular, police station duty advocate work.'

'The training developed by me, as were green form and the duty advocate schemes, are well trained and staffed at very low remuneration rates.'

'It's already become more strict with the introduction of Ms Hunt as Legal Aid Certifying Officer. If the support / experience for the type of work you are wanting to get on the panel for isn't there, you aren't approved. Previously it is my understanding that you were just put on the [Legal Aid] panel and no interview was necessary.'

78 respondents (38%) replied **did not know** or said the question was **not applicable** to them, which is likely to reflect the specialist nature of this topic. Several provided further comments to explain that they did not feel they had enough knowledge to answer this question. 6 comments were made.

'I do not have a full understanding of how they join the panel, so do not feel I could provide judgement on whether it needs to be changed.'

'I feel I cannot comment on this as I don't know if the present system ensures that those on the panel have the requisite knowledge to fully represent their clients. If it does, that is fine. If others who know how it works better feel that changes need to be made, I believe the evidence should be looked at.'

**Q9 SUMMARY:** 193 respondents (95%) answered the question.

- 87 respondents (43%) said that there should not be changes to how Advocates join the Legal Aid Panel as the current qualification and training requirements are sufficient. Concerns were expressed that additional requirements placed upon Advocates could act as a further disincentive to the already small number of Advocates willing to undertake Criminal Legal Aid work. The contrast between private and Legal Aid rates of pay was also cited as a disincentive for Advocates. The IoM Law Society's response also stated that the Society believes that there are no known current issues with the way in which Advocates join the Legal Aid Panel.
- 28 respondents (14%) indicated that they would like to see change and a number of concerns which may not have been formerly known and/or fully understood were submitted. Matters raised include a disparity between the number of Advocates



registered on the Legal Aid Panel as willing to carry out Criminal Legal Aid work and the number of Advocates who undertake this work on a regular basis. Suggested changes included more shadowing opportunities; a review of training records to ensure recent and/or ongoing training and development; a requirement for annual CPD, and a formal accreditation scheme (similar to that in place in England and Wales). Other proposals included the introduction of written requirements (e.g. in the form of a Code of Conduct); a requirement for Advocates to undertake a minimum number of Court appearances to undertake work, and more advocacy training with an ongoing reviews of skills. It was also suggested that Advocates who are on the Panel and primarily carry out Police Station and Court Duty Advocate duties should extend their work, and there were calls for the IoM Law Society to carry out performance monitoring of Legal Aid Panel Advocates.

- 71 respondents (35%) indicated that they did not know whether or not changes should be made; 10 respondents (5%) did not answer, and 7 (3%) indicated that the question was not applicable to them.

**Q10. Would you like to see any changes to Advocates' training requirements, over & above those already in place, to become (or remain) qualified as a Police Station Duty Advocate?**

195 respondents (96%) answered the question and the results are shown in Table 8 below. A text box was also provided for further comments.

Respondents could select both '*Yes to become a PSDA*' and '*Yes to remain a PSDA*' in their responses. For clarity, the results are broken down to reflect the number of respondents who chose either answer, in addition to the number of respondents who chose both answers

**Table 8. Views on changes to training for Police Station Duty Advocates**

Response	Number	%
Yes, changes to training to become a PSDA	10	5
Yes, changes to training to remain a PSDA	9	4
Yes, changes to training to become & remain a PSDA	40	20
No, training is adequate	92	45
Don't know	43	21
Not applicable	1	<1
Not answered	8	4
<b>Total</b>	203	>99

36 respondents made comments.

59 respondents (29%) said that they **would like to see changes to Police Station Duty Advocate training requirements**. Of these, 12 had been through the criminal justice system, 19 were members of the public, 12 were Advocates / Judiciary members, 10 were criminal justice system employees, 1 was a charity / support worker, 1 was a Tynwald Member and there were 4 others. 27 respondents provided further comments.

Respondents who had been through criminal justice system made reference to a number of matters including the quality of legal advice, professional oversight of Advocates and trust. There was also concern raised regarding the amount of experience Advocates have when dealing with white collar / financial crime, concerns around advice to plead guilty and a call to allow UK lawyers to practice in the Island for serious cases:

'First contact at a police station can define the conduct and ultimate outcome of a case. Therefore advocates must have undergone specific training and obtained a level of expertise that can be graded or tested by an oversight body, such as the Legal Aid Committee or Law Society.'

'There are more people being charged with white collar/financial crimes that Duty Advocates have no experience of.'

'The default mantra of plead guilty to get time off should form no part of any advice or training.'

'UK lawyers and barristers / QC should be licensed to operate in the IOM on more serious cases. Skills are not available for a client that can pay especially in financial crimes.'

Comments from members of the public focused on training and continuous professional development (CPD). Reference was also made to ensuring that adequate training is in place to equip Advocates to defend less frequent yet serious offences:

'Annual training/CPD as every 2 years may not be sufficient to have the requisite knowledge of police procedures, certain crimes etc. Advocates may see lots of e.g. assaults but only occasionally have to defend e.g. historic abuse.'

'Ongoing and yearly training to ensure standards are maintained and enforced.'

'Continuous Professional Development is required via the regulations and should not be waived in any way.'

As with question 9, the IoM Law Society considered that this question was most appropriate for Advocates to answer. The Society provided detailed information regarding current training requirements for Police Station Duty Advocates (and Court Duty Advocates as a joint response to Q10 and Q11). The Society also set out potential changes which are now under consideration, including a 'reverse shadowing period' for Advocates seeking to join the Duty Advocate rota and additional requirements for Advocates to be placed on the Police Station Duty Advocate rota as a Senior Advocate:

'Questions 10 and 11. Again, it is really only those intimately involved in the system who can answer these questions with any degree of meaningfulness. A number of years ago, at the insistence of the IOMLS, additional training requirements were put in place before an Advocate could join the Police Station or Court Duty Advocate Rotas. These are not statutory requirements, but practice based. In order to ensure that Advocates had the requisite experience and expertise to advise on either or both Rotas, a shadowing system was put in place. This requires an Advocate to shadow an experienced Advocate in the 6 months prior to being placed on the Rota for 5 sessions of Police Station and 6 sessions of the Court. One Court must be a Juvenile Court, one Court must be a Magistrates Court and two Courts must be a High, or Deputy High, Bailiff's Court. This ensures that there is a level of exposure to giving advice in constrained and sometimes pressurised circumstances and that Advocates develop the skills they will require in order to do so

competently. Prior to the introduction of this requirement Advocates could join the Rotas with no additional supervision or training.

The IOMLS is currently considering a variation to the above shadowing requirement, to include a reverse shadowing period, where the Advocate applying is supervised by an experienced Advocate in the giving of the advice themselves, in order that the experienced Advocate can establish that the applicant is in fact competent to advise, prior to being included on the Rotas. The membership of the IOMLS and the Duty Advocate Committee are in favour of adding this level of training to the requirements, notwithstanding the additional time and cost commitment the same will require.

The IOMLS provides, as it is a statutory requirement, annual Police Station Duty Advocate training. Advocates are only required to attend once every 2 years, as it would likely be impossible for all to attend every year, given Court and other commitments. The IOMLS also provides annual Court Duty Advocate training, although there is no statutory requirement for the same. This is delivered in a number of formats, but usually in the form of a Mock Court, to replicate the situation as closely as possible.

Additionally, to qualify to remain on the Rotas, Advocates must undertake more than 50% of all slots allocated to them, in order to maintain relevant and up to date experience.

Currently, the requirement to be placed on the Police Station Duty Advocate Rota as a Senior Advocate is based on a level of post-qualification experience. As part of our consultation with our members in relation to this consultation, it has been suggested that this should be changed to ensure that Senior Advocates are not only Senior in terms of post-qualification experience, but also they should have been on the Rota for a minimum of 3 of the last 5 years, including the preceding 12 months. This is something the IOMLS and the Duty Advocate Committee will consider further.'

Each Advocate / Judiciary member who said that they would like to see changes to PSDA training requirements provided additional comments to support their views. A number of concerns were expressed in relation to current training requirements and a range of suggestions were made to address these concerns. These included support of continuous professional development and best practice, more shadowing opportunities, advocacy training and mock Police Station Duty Advocate training:

'To become a Police Station Duty Advocate, the training/shadowing requirement is quite low, involving attendance on a course and shadowing a small number of cases. I think there would be more benefit to having a requirement for shadowing but then also a requirement for the Advocate to undertake a certain number of cases under supervision, where they are 'flying solo' but have the comfort of a qualified lawyer to intervene if needed. Going from watching someone else to standing on your own 2 feet can be daunting, especially as the stakes are so high at the Police Station, even with a senior Advocate on the end of the phone. In terms of remaining on the [Legal Aid] panel, I think there should be a requirement to undertake continuous professional development, e.g. the PSDA course, advocacy training, training when new legislation comes in etc.'

'As for getting on the Panel, I would suggest that a mock police station duty would be beneficial, to offer rookies an experience of being the advice provider, although this may be difficult to co-ordinate with the police. It would also be beneficial having a newly panel appointed advocate being shadowed whilst giving advice by someone with experience, but I do not believe that the experienced advocates would be willing to offer that support. I would suggest that training to remain on the panel is mandatory annually for those who have been on the panel for 3 years or less, save that if there is a genuine reason that the person cannot attend that they are permitted a bye for that year but must attend on their

fourth year. Only one bye within the first 3 years can be allowed. The bye must be allowed because the IOM Law Society only provide the training once a year and there if there is a diary clash there is no alternative option. Thereafter I believe the training is adequate. However, if someone comes off the [Police Station Duty Advocate] rota for a period greater than 1 year (to allow for maternity leave) then the Advocate must return to having the annual training for the first 3 years of returning to the Panel.'

'Training on a regular basis is required to ensure that 'bad habits' and basic mistakes are eradicated.'

'Criminal Law Procedure over the last couple of years with the introduction of new primary legislation and developments in common law have seen vast changes introduced. It would appear to me that annual training and appropriate CPD is necessary (I note that English Solicitors are expected to carry out 6 CPD hours of criminal law related courses per year.)'

'The law changes all the time and advocates should be on top of that knowledge at all times. By reviewing the advocates who provide these services it would mean that if there was a problem then it could be looked into.'

'Evidence of recent duty (similar to that applicable under the Law Society requirements for court duty advocates), because skills atrophy without use.'

'...there should be specific training made available for advocates who offer criminal legal aid work but who are not on the police station rotas (if any). I also believe that the legal aid office could offer more assistance (by providing a lecture) as part of the Manx bar training course.'

'Simple continuous professional development / refresher training required only.'

#### **Criminal justice system employees commented on the importance of ongoing training and assessment for Advocates:**

'Continuous training required to keep abreast of developments.'

'Minimum standards should not only be met but should also be maintained and checked by assessment every 2 or 3 years to ensure duty advocates keep pace with new policy, practices and legislation.'

The General Registry's response referred to its answer to Q9 and made a number of suggestions including enhanced advocacy training for Advocates with less than 5 years' post qualification experience (PQE); regular in-court advocacy assessments, and more Police Station Duty Advocate training:

- 'Enhanced advocacy training as a part of the overall training regime for all those under, say 5 years PQE who are members of any of the Schemes.
- Regular in-court assessment of advocacy skills and preparation.
- More police station duty advocate training in the form of mock police interviews and meetings with clients. Perhaps joint training with junior police officers might be considered appropriate where relevant.'

One 'Other' response made reference to standards:

'A minimum standard of representation must be assured, as for the general public or commercial legal situations.'

92 respondents (45%) said that they **would not like to see changes to Police Station Duty Advocate training requirements**. Of these, 11 had been through the criminal justice system, 30 were members of the public, 31 were Advocates / Judiciary members, 10 were criminal justice system employees, 3 were charity / support workers, and there were 7 others. 6 respondents provided further comments.

Comments from Advocates / Judiciary members referred to the levels of training already in place and the value of continuing professional development:

'All advocates wishing to join the Police Station Duty Advocate Panel are required to undertake a minimum number of sessions shadowing a more senior advocate at the Police Station. All Advocates on the panel must attend training provided by an experienced expert in Police Station Advising not less than once every two years (most in practice attend yearly) if they wish to remain on the panel.'

'However CPD is something that should be undertaken each year to show the advocate remains up to date.'

An individual who acts as a volunteer Appropriate Adult at the Police Station praised the work of the Police Station Duty Advocates:

'From my experience working with the duty advocates frequently the ones already on the rota appear to be doing their job admirably.'

Of the 43 respondents (21%) who answered **Don't know** or **Not applicable**, 3 comments were made that they had insufficient knowledge of the training requirements currently in place. However, one of these respondents described their professional work as a social care advocate, who role encompasses giving support to adults with learning disabilities who may have become involved with the criminal justice system. This respondent set out the importance of understanding hidden disabilities and the impact that they can have on an individual's ability to communicate, and suggested that if training is not currently provided to Advocates in this area then it could be beneficial to do so:

'The one thing I feel from my experience may be important is a greater awareness of disability - including hidden disability - and the barriers people with disabilities may experience when instructing an advocate. If not understood and taken account of, this may lead to unjust outcomes... In my role as a social care advocate, I have regularly supported people with autism and learning disabilities to meet with their legal advocate. My main role is to support more effective communication. Sometimes the need may be simply to talk slowly in short sentences, to use simple words etc. At other times there may be a need to find out more about the person's communication and abilities before an effective consultation can be achieved e.g. many people with learning disabilities have great difficulty understanding time so may innocently give a very wrong answer. They may have memory issues. If present training in this area is not provided, I would suggest it might be a valuable addition when we are moving towards a greater understanding of the need for equality.'

**Q10 SUMMARY:** 195 respondents (96%) answered the question.

- 92 respondents (45%) said that training is adequate to become and to remain a Police Station Duty Advocate (PSDA) and they would not wish to see changes made. In their comments, reference was made to the importance of training and a volunteer Appropriate Adult commented that PSDAs do their jobs admirably.
- 59 respondents (29%) indicated that they would like to see changes made to the training requirements of PSDAs. Suggested changes focused on more training for Advocates and included mock PSDA work; newly appointed PSDAs to be given the opportunity to be supervised / shadowed / supported by more senior PSDAs as they are giving advice at the Police Station; the introduction of CPD to ensure PSDAs are kept updated on changes to the law and procedures; enhanced advocacy training and assessments, and more oversight and monitoring of training and standards by the IoM Law Society. The IoM Law Society’s response indicated that consideration is being given to a ‘reverse shadowing period’ for Advocates seeking to join the Duty Advocate rota and additional requirements for Advocates to be placed on the PSDA rota as Senior Advocates.
- 43 respondents (21%) indicated that they did not know whether or not changes should be made, but one respondent did suggest that training which could assist Advocates in recognising and understanding the needs of clients with hidden disabilities would be helpful if it was not already in place.
- 8 respondents (4%) did not answer and <1% indicated that the question was not applicable to them.

**Q11. Would you like to see any changes to Advocates' training requirements, over & above those already in place, to become (or remain) qualified as a Court Duty Advocate?**

196 respondents (97%) answered the question and the results are shown in Table 9 below. A text box was also provided for further comments.

Respondents could select both ‘Yes to become a CDA’ and ‘Yes to remain a CDA’ in their responses. For clarity, the results are broken down to reflect the number of respondents who chose either answer, in addition to the number of respondents who chose both answers.

**Table 9. Views on changes to training for Court Duty Advocates**

Response	Number	%
Yes, changes to training to become a CDA only	17	8
Yes, changes to training to remain a CDA only	14	7
Yes, changes to training to become & remain a CDA	31	15
No, training is adequate	91	45
Don't know	42	21
Not applicable	1	<1
Not answered	7	3
<b>Total respondents</b>	203	>99

33 comments were made.

62 respondents (31%) said that they **would like to see changes to Court Duty Advocate (CDA) training requirements**. Of these, 13 had been through the criminal justice system, 19 were members of the public, 13 were Advocates / Judiciary members, 10 were criminal justice system employees, 2 were charity / support workers, 1 was a Tynwald Member and there were 4 others. 27 comments were made.

11 respondents referred to comments previously made for Q9 (joining the Legal Aid Panel) and / or Q10 (training requirements for Police Station Duty Advocates). This included the IoM Law Society, which provided a joint response for Q10 and Q11 (see Q10).

Of those respondents who had been through criminal justice system, the main themes raised in their comments focused on a CDA's capabilities and experience in defending the type of criminal matter that a person has been charged with:

'Court duty advocate gets first flavour / indication of the direction of the prosecutor's case. It is important that the advocate has the knowledge and ability to exert pressure at this early stage for appropriate evidence gathering by the police on matters beneficial to the defence and on matters requiring to be disclosed.'

'More people [are] being charged with white collar/financial crimes that Duty Advocates have no experience of.'

'A proven good quality advocate should be provided to match the crime. Being given just the one that is available is not good enough. He should be chosen for his abilities.'

One member of the public suggested that professional standards (e.g. training / experience) for CDAs should be in place and set by an independent body other than the IoM Law Society. Another also made reference to standards:

'Ongoing and yearly training to ensure standards are maintained and enforced.'

Advocates / Judiciary members made a range of suggestions, which included formalising the CDA training requirements; introduction of shadowing / supervisory training; annual CPD; increased mock Court training sessions and the provision of a handbook:

'The requirement needs to be formalised.'

'...consider putting Law Society training requirements on a similar footing as the police station scheme.'

'Criminal Law Procedure over the last couple of years with the introduction of new primary legislation and developments in common law have seen vast changes introduced. It would appear to me that annual training and appropriate CPD is necessary (I note that English Solicitors are expected to carry out 6 CPD hours of criminal law related courses per year.)'

'There should be annual training to be a court duty advocate the same as the police station scheme. Advocates should be required to attend the training course no less than every two years should they wish to remain on the scheme.'

'I think there needs to be something between shadowing and standing on your own two feet, such as being supervised for a specific number of cases (possibly only one or 2 Court sessions). The stakes are not so high as the Police Station, as the option to adjourn is there if in doubt, but that does not further the case which is the sole aim for the Court

Duty Advocate. I do not consider there needs to be any requirement to remain on the rota, as it is simply reviewing papers, giving advice and standing up in Court, which is routine work for a practising Advocate.'

'More mock court opportunities and a handbook of potential situations/fine levels etc would be extremely useful.'

#### Criminal justice system employees commented on continuous training and assessments:

'...continuous training to remain aware of developments and changes in the law and practice.'

'Minimum standards should not only be met but should also be maintained and checked by assessment every 2 or 3 years to ensure duty advocates keep pace with new policy, practices and legislation.'

'Advocates should be encouraged to keep a portfolio of work, demonstrating variety and if insufficient should be made to undertake the annual training course. Insufficiency to be assessed by an independent person / panel.'

The General Registry made reference to its previous answers (see Q9 and Q10). Additional responses from 'Others' suggested a Code of Conduct overseen by the IoM Law Society:

'Code of Conduct to which advocates are held would be a start and sanctions by the Law Society.'

91 respondents (45%) said that they **would not like to see changes to CDA Advocate training requirements**. Of these, 13 had been through the criminal justice system; 30 were members of the public; 31 were Advocates / Judiciary members; 8 were criminal justice system employees; 2 were charity / support workers and there were 7 others. 2 comments were made.

Of the 43 respondents (22%) who answered **Don't know or Not applicable** there were 4 comments, each saying that the respondent had insufficient knowledge of the training requirements currently in place to comment further. However, one of these respondents, who described their professional role as a social care advocate, made the same point for CDA training as for Police Station Duty Advocate training (as included under Q10). In summary, their suggestion was that if CDAs do not receive training to understand and communicate with those who have hidden disabilities such as learning disabilities and autism, then it could be beneficial for them to do so.

1 respondent (<1%) said the question was not applicable to them.

**Q11 SUMMARY:** 196 respondents (97%) answered the question and 33 comments were made.

- 91 respondents (45%) said that training is already adequate for becoming and remaining a Court Duty Advocate (CDA) and they would not wish to see changes made. Minimal comments were provided by this group of respondents.
- 62 respondents (31%) indicated that they would like to see changes made to the training requirements of CDAs and Advocates / Judiciary members made most of the suggestions. These included additional mock Court training sessions; supervision /



shadowing of newly appointed CDAs in Court; a requirement for continuous professional development; formalisation of CDA training requirements and the provision of a handbook for CDAs. Basing an Advocates' seniority on their experience rather than years in practice was also suggested. The IoM Law Society's response indicated (as set out under Q10) that consideration is being given to a 'reverse shadowing period' for Advocates seeking to join the CDA rota. Suggestions from others included more advocacy training with ongoing assessments, and the introduction of a Code of Conduct for Advocates.

- 42 respondents (21%) indicated that they did not know whether or not changes should be made, and one person suggested that training which could assist CDAs in recognising and understanding the needs of clients with hidden disabilities would be helpful if it was not already in place.
- 1 (<1%) indicated that the question was not applicable to them, and 7 respondents (3%) did not answer

Q12. An Advocate can undertake other types of legally-aided criminal defence work by virtue of their inclusion on the Legal Aid Panel. Would you like to see any changes to the requirements to undertake other types of Criminal Legal Aid work (i.e. under Green Form or Criminal Legal Aid Certificate)?

196 respondents (97%) answered the question and the results are shown in Table 10 below. A text box was also provided for further comments.

**Table 10. Views on changes to training for Green Form & full Criminal Legal Aid work**

Response	Number	%
Yes	30	15
No	100	49
Don't know	63	31
Not applicable	3	1
Not answered	7	3
<b>Total respondents</b>	203	>99

28 comments were made.

30 respondents (15%) said that they **would like to see changes to training to provide legal services under Green Form or full Criminal Legal Aid**. Of these, 8 had been through the criminal justice system; 9 were members of the public; 5 were Advocates / Judiciary members; 4 were criminal justice system employees; 1 was a charity / support worker; 1 was a Tynwald Member and there were 2 others. 18 respondents provided additional comments.

Of those respondents who had been through criminal justice system, the main themes raised in their comments focused on experience and ability and a call to allow lawyers who are not Manx Advocates to defend criminal cases in the Isle of Man:

'Should have experience in the offence(s) they are defending.'

'My crime was serious and my advocate was like a rabbit in the headlights. He never even managed to secure legal aid for me. He was way out of his depth unreliable and totally out of his depth and comfort zone. How long his experience was was irrelevant!'

'The embargo on issuing licences to legal representatives from the UK severely reduces and restricts access to justice. The number of Manx advocates available to take on criminal work is totally inadequate in providing the coverage for the varied range of Manx cases in terms of quality and experience.'

'Opening of the [Legal Aid] panel to non-Manx lawyers will greatly improve access to justice.'

**Members of the public suggested mandatory training and introducing a requirement for all Advocates to participate in Legal Aid schemes:**

'Training should be annual and mandatory rather than 'encouraged'.'

'All advocates should be required to take part in the legal aid schemes.'

**Advocate / Judiciary members suggested that the seniority of Advocates should be judged by ability and not years' call. Other suggestions included mandatory continuous professional development (CPD) and for training to be linked to renewal requirements for Advocates' practising certificates:**

'Senior Advocates need to only [be] 5 years called - not have 5 years dealing with criminal matters. It would make more sense that if seniority were judged on ability not number of years called.'

'Newly qualified and panel appointed Criminal Legal Aid practitioners should work in an environment where they have support of colleagues working in the same field with at least 3 years' experience in order to provide support and guidance.'

'I believe that all advocates who undertake criminal legal aid work should be required to undertake appropriate training and cpd.'

'Yes, there needs to be entry level training over and above training contract and annual professional development. This should be linked to annual practising certificate renewal requirements.'

**A criminal justice system employee suggested that Advocates' caseloads should be managed in a way that affords those accused of serious crimes the right level of legal defence:**

'Limit on case load to ensure those accused of the most serious crimes are afforded the best of the Advocate's ability.'

**A comment about capability was made by a Tynwald Member:**

'It needs to be more inclusive - experience doesn't always indicate intelligent capability.'

The General Registry's response referred to its previous answers (see Q9, Q10 and Q11) and also included comments in support of changing the way in which Advocates are assessed as being 'Senior'. In particular, reference was made to an Advocate's experience and skills (e.g. volume of Police Station Duty Advocate work; number of criminal cases; number of trials).

Concern was expressed that under the current arrangements, a Junior Advocate with extensive knowledge and experience in defending criminal matters will be paid at a lower Legal Aid rate (£115 per hour) than a Senior Advocate with less experience and/or competency in criminal defence matters (£135 per hour) and reference was made to fixed fees:

'Rather than number of years PQE being the factor to decide whether someone is a senior advocate it might be considered more appropriate to make the assessment on the number of cases/court appearances/police station duty advocate work. Advocates could be required to keep a portfolio of cases/court appearances/commendations to demonstrate their experience. An advocate may be qualified for a number of years but have relatively little court room and/or preparation for trials experience. It would appear unfair in some circumstances for a Junior Advocate who is very competent and experienced in criminal legal aid work to be paid a lower hourly rate than a Senior Advocate who perhaps has less experience or is less competent before the criminal court. Fixed fees per cases may resolve this issue. Consideration should be given to having to demonstrate some level of relevant training or experience as a prerequisite to panel membership both as junior/senior Advocates, not an automatic entitlement simply because of qualification or years post qualification alone.'

A further comment from an 'Other' respondent referred to the need for experienced, Senior Advocates to undertake Legal Aid casework:

'Senior advocates with several years' worth of experience are needed for a wider range of criminal situations; all cases.'

Of the 100 respondents (49%) who said they **would not like to see changes to training to provide legal services under Green Form or full Criminal Legal Aid**, 15 had been through the criminal justice system; 27 were members of the public; 37 were Advocates / Judiciary members; 14 were criminal justice system employees; 1 was a charity / support worker and there were 6 others. There were 6 comments made.

A person who had been through the criminal justice system asked a question about restraint proceedings<sup>7</sup>:

'If your bank accounts/assets have been restrained where do you stand?'

The IoM Law Society's response referred to their comments previously made for Q9 (joining the Legal Aid Panel), Q10 (training requirements for Police Station Duty Advocates) and Q11 (training requirements for Court Duty Advocates). It also sought to clarify that Advocates can provide legal advice and assistance under Green Form and full Criminal Legal Aid under a certificate by virtue of being on the Legal Aid Panel:

'Question 12 appears to be the same as question 9, just worded differently. Therefore, the answers to 9, 10 and 11 above apply. To be clear, a legal aid certificate cannot be issued to an Advocate unless they are on the legal aid panel, nor can an Advocate give advice under the Green Form or be included on any of the Rotas if they are not on the legal aid panel.'

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<sup>7</sup> Restraint proceedings under the Proceeds of Crime Act 2008 are considered as part of a Civil Legal Aid consultation into being undertaken by the Attorney General's Chambers (see Q21-Q23 at <https://consult.gov.im/attorney-generals-chambers/civil-legal-aid/>).

Other Advocates / Judiciary members commented on the adequacy of the Legal Aid Panel for and expressed concern about the impact on access to justice if additional requirements are placed on Advocates:

'Inclusion in the Panel is sufficient to undertake Green Form and Criminal Legal Aid.'

'Further limits may cause an erosion to access to justice.'

One Advocate / Judiciary member did qualify their response with further comments about the way in which the seniority of Advocates is currently judged:

'No - but on the basis that the training requirements as suggested above should be mandatory for all members of the Panel. Also, while "Senior Advocates" are those who have been qualified for not less than 5 years, there ought to be the requirement that he / she should have actually regularly practised criminal law for the 5 year period.'

Of the 63 respondents (31%) said they **did not know**, and were 4 comments were made.

Three people were unclear in terms of the question, including two Advocates / Judiciary members. Reference was also made to training requirements:

I am not sure I understand the question. If an Advocate is competent in criminal law, they should be able to do Legal aid and Green Form, and Duty Advocate if they have met the requirements. I am in agreement that the restriction on only senior Advocates undertaking grave offences remain in place. That said I do think there needs to be vetting at the time of an Advocate applying to go on the senior PSDA rota, to make sure they have 5 years experience in criminal law, rather than simply being 5 years call.'

One 'Other' also referred to training requirements:

'I do feel if an advocate carries out work under a criminal legal aid certificate, they should have the same training as Police station and court duty advocates.'

3 respondents (1%) said the question was not applicable to them.

**Q12 SUMMARY:** 196 respondents (97%) answered the question.

- 100 respondents (49%) including the IoM Law Society, indicated that the requirements for an Advocate to provide Legal Advice and Assistance under Green Form and full Criminal Legal Aid under a certificate were sufficient by virtue of their inclusion on the Legal Aid Panel. Concern was expressed that if further requirements are placed on Advocates who are willing to undertake Criminal Legal Aid work, this may have a detrimental effect on access to justice.
- 63 respondents (31%) indicated that they did not know whether or not changes should be made. Comments made reference to training requirements meeting those of Duty Advocates, and to Senior Advocates having 5 years' experience in criminal law rather than being of 5 years' call only.
- 30 respondents (15%) including the General Registry indicated that they would like to see changes made. Respondents suggested that it is more important to recognise

and reward Advocates who undertake Criminal Legal Aid work based on their levels of experience, competency and advocacy than on the number of years' call which is the basis of the current two-tier Legal Aid payment model for Junior / Senior Advocates. There was also concern that there was an overreliance on Advocates' inclusion on the Legal Aid Panel as being a sufficient prerequisite to represent a person in a criminal case, particularly if the case is a complex matter in which they may have limited experience. It was also suggested that the Manx Bar should be opened up to UK lawyers as a way of increasing access to justice in the Isle of Man.

- 7 respondents (3%) did not answer and 3 (1%) indicated that the question was not applicable to them.

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#### 4.4. Persons applying & qualifying for Criminal Legal Aid

Q13. If you have any comments on the eligibility criteria applied to one or more of the Island's Criminal Legal Aid schemes, please tell us.

A text box was provided for comments and 66 respondents (33%) provided further information.

Of these 66 respondents:

- 8 had been through the criminal Justice System
- 17 were members of the public
- 20 were Advocates / Judiciary members
- 13 were criminal justice system employees
- 1 was a charity / support worker
- 1 was a Tynwald Member
- 6 were 'Others'

Of those respondents who had been through criminal justice system, the main themes raised related to concerns about those whose assets are restrained under the Proceeds of Crime Act 2008 being unable to secure legal defence; joint income assessments; and loss of qualifying benefits / ability to provide financial details for those remanded in custody or in prison. Concerns that legal aid is only available to those on qualifying benefits or very low income was also raised. One answer related to Civil<sup>8</sup>, rather than Criminal Legal Aid, as reference was made to Legal Aid for fathers who wish to see their children:

'It's faulty. It is not possible for accused people to get legal aid or pay in financial crime it clearly breaches basic human rights and European guidelines.'

'The joint income is not feasible. For a couple where the highest earner has committed no offence whatsoever, should not be responsible for funding legal assistance to their partner who requires it.'

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<sup>8</sup> A public consultation on Civil Legal Aid was undertaken by the Attorney General's Chambers at <https://consult.gov.im/attorney-generals-chambers/civil-legal-aid/>.

'A prisoner on remand in most cases has no access to the financial documents / information needed to complete legal aid documentation. In this respect defendants on remand are at a severe disadvantage to defendants on bail.'

'People that are on a normal wage but obviously might have quite a few outgoings are denied free legal advice as they earn too much but in real terms they are probably on a low income - it seems free advice is only available to people on benefits or extremely low incomes so denying your normal average taxpayer help when they need it most.'

Members of the public raised a range of issues which included concerns that Criminal Legal Aid is granted to repeat offenders irrespective of the number of times they face charges and the inability of people on low or modest incomes to access Legal Aid. There were other concerns about the 'cliff edge' of financial eligibility rather than there being a sliding scale in place. The cost and affordability of privately funded legal fees was also raised and there were views that as many people as possible, or everybody, should be entitled to free Criminal Legal Aid:

'If legal aid is granted, then the 3 strikes rule should apply to stop the same criminals returning to court for similar offences, time after time.'

'...if someone is a repeat offender, for example more than 3 repeat offences, they should have to pay for their own legal aid or make a contribution which gets higher with each repeat offence.'

'Minimum wage workers tend either not to be represented by a lawyer and stand for themselves or just not fight. Equality for the public to be able to have a fair chance in a court battle should be of the upmost importance.'

'The means tested amount needs to be raised. Too many people are forced into financial hardship.'

'Why should one party receive unlimited access to assistance but another who falls just outside the criteria have to pay full legal fees? It should be in a sliding scale.'

'Given the rates charged by criminal lawyers on Island for those who do not qualify for Legal Aid, the financial threshold at which an individual qualifies should be raised annually in line with inflation.'

'I for one if I found myself in need of an advocate could not afford it due to monthly bills/mortgage but would not be eligible for assistance.'

'Legal Aid should be available for EVERYONE irrespective of income.'

The IoM Law Society raised a number of points made by Advocates / Judiciary members (below) in addition to concerns that the Police Station Duty Advocate Scheme does not extend to persons being interviewed under caution at a location other than a Police Station<sup>9</sup>. Concerns were also raised by the Society in regard to individuals who are ineligible for

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<sup>9</sup> Access to free legal advice for persons detained at locations which are not a Police Station is raised at Q17 of this consultation

Criminal Legal Aid by virtue of restraint proceedings brought under the Proceeds of Crime Act 2008<sup>10</sup>.

Extracts from the Society's response included:

'There is currently an anomaly with the financial means tests that apply to Green Form and Criminal Legal Aid. A person may be eligible for Green Form but not for Criminal Legal Aid. This makes no sense and the financial eligibility for legal aid should be the same across all schemes.... It is imperative in order to ensure that access to justice is maintained, that eligibility criteria for all legal aid schemes is reviewed and increased, at least in line with relevant inflation indices, annually.

Currently the Police Station Duty Advocate Scheme does not apply to defendants being interviewed under caution outside of a Police Station, i.e. hospital, prison, DHSS, Customs, FSA. By failing to provide free access to legal advice in such places, when an individual is being interviewed under caution (or on a voluntary basis for a criminal offence) the Government is in breach of the Police Powers and Procedures Act 1998. It is a basic and fundamental human right that free legal advice be provided in such situations...

Further, criminal legal aid does not apply to offences committed under the Proceeds of Crime Act 2008 [POCA] which offences are becoming more prevalent in our current regulatory environment... This is leading to defendants having to represent themselves in Court in what are complex and complicated POCA proceedings. The IOMLS does not consider that such a restriction of funding is human rights compliant, fair or just. We would urge the Government to immediately change the Legal Aid Act to allow for funding for such cases on a no means test basis, as restrained funds cannot be used in any event but may prevent financial eligibility...'

Advocates / Judiciary members raised a number of concerns regarding the financial means test including the limits at which it is set, its complexity and a perceived lack of transparency regarding calculations to determine an individual's eligibility. Concern was also expressed that the financial means test has not kept pace with inflation, effectively leading to annual reductions in eligibility. It was also submitted that many Advocates could not afford to pay their own private charges.

Other Advocates / Judiciary members suggested that all persons at risk of losing their liberty should be entitled to free legal advice, regardless of their financial means. Other comments were in support of maintaining the current Criminal Legal Aid schemes and in particular, universal and free access to Police Station Duty Advocates and Court Duty Advocates. There were contrasting views on Green Form with one Advocate suggesting it should be more widely available and another suggesting it should be abolished except for the provision of legal advice in certain circumstances in the interests of justice. Another expressed the view that the judiciary should not be responsible for granting Criminal Legal Aid, and there was a suggestion regarding the recovery of Court Duty Advocate costs upon conviction of a defendant:

'The financial means limit is too low.'

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<sup>10</sup> Restraint proceedings under the Proceeds of Crime Act 2008 were considered as part of a Civil Legal Aid consultation which was undertaken by the Attorney General's Chambers in 2020 (see Q21-Q23 at <https://consult.gov.im/attorney-generals-chambers/civil-legal-aid/>).

'The financial means test is not transparent enough and the calculation of any contribution is difficult to understand.'

'The prescribed amounts have not kept pace with inflation increases in costs of living. We are still using the prescribed amounts from 2014. The result being that year on year access to green form for low income families not in receipt of qualifying benefits is getting harder. It's a covert way of reducing eligibility from what it previously was.'

'The system works. The only difficulty is the financial criteria which exclude many middle income Clients who cannot afford to pay privately. Bearing in mind that in many instances their liberty and therefore their livelihoods are at risk, I would say that a revision of the means test is well overdue.'

'Absolutely everybody should be entitled to free legal advice where their liberty may be compromised or a fine of more than £1000.00 could be imposed regardless of means. Those who can afford to pay privately may wish to do so but I would suggest that most advocates could not afford their own private charges. The middle band of hard working citizens could well be left in jeopardy as they earn too much to satisfy the means test but in reality have little spare to pay for private fees.'

'Any person at risk of receiving a custodial sentence should not be required to pass the financial means test. A means test may deny a defendant from pursuing a viable defence on the grounds of affordability.'

'Green form should be more widely available.'

'I would abolish the Green Form scheme for criminal advice as it is adequately covered by the Duty Advocate Scheme except for advice to persons who are reluctant witnesses for the prosecution or defence. They get little or no support and advice from an advocate would be beneficial and in the interests of justice. Such advice should not be means tested.'

'Full Criminal Legal Aid: The judiciary ought to be concerned solely with the trial process rather than administering the granting of legal aid. The applicant's advocate is in a far better position to determine the financial means and merits inquiries (as is the case in applications for civil legal aid) and there would be a saving in court time.'

'Court Duty Advocate: ...The sum here could be recovered from the Defendant if they would fail the financial means test on the day of a hearing (i.e. would not secure full criminal legal aid) and continue to Trial defending the matter and ultimately fail in their defence. In this scenario the cost of Duty Advocate could then be recovered by the Legal Aid at the end of the case upon conviction.'

Criminal justice system employees raised a number of issues, and the principle matter of concern was their opposition to repeat offenders being granted Criminal Legal Aid due to the burden on the taxpayer and/or because it reduced the disincentive to reoffend. Another concern was that the financial means test for Criminal Legal Aid was set too low, which meant that only people who were in receipt of qualifying benefits and/or on a very low wage were eligible, leading to a society in which only the poorest (who qualified for Legal Aid) or the richest (who could afford private legal fees) could enjoy access to justice. Concern was also expressed in regard to individuals making appeals<sup>11</sup> which appear to be frivolous. There

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<sup>11</sup> Views on appeals are sought at Q51 of this consultation



was also a request for more data in terms of the percentage of the population eligible for Legal Aid:

'It should be limited. Those who cannot help themselves but to commit crime on a frequent basis should not be given the opportunity to rely on legal aid on each occasion, apart from the duty advocate schemes.'

'People should only get legal aid if there is a likelihood of receiving a custodial sentence. If legal aid is granted, then the 3 strikes rule should apply to stop the same criminals returning to court for similar offences, time after time.'

'The same people are using the legal aid scheme. Anyone can make a mistake once or even twice. However legal aid should not be granted to a person if they have already received it twice before. They are abusing the system and as a tax payer I don't support it.'

'...eligibility should not only be about financial means testing. If this remains the case, the average middle-class person will never be able to get legal representation, as it is only available to the rich, or the poor, or criminally minded.'

'Legal aid should not be made automatically available to those of limited means in cases where they wish to appeal frivolously against their conviction or sentence.'

'The financial criteria is very low. What percentage of population would be eligible for legal aid? It appears to be a very small minority on benefits. Should be higher thresholds with low levels of contribution. Access to legal aid and defence in criminal matters is a very important principle.'

The response from homelessness charity *Grain* sought to highlight the importance of ensuring that Legal Aid is made available to vulnerable members of society:

'It is important that access for the most vulnerable is maintained, free of charge, at all levels of Legal Aid. In particular thought must be given to vulnerable adults who are not in receipt of Benefits or who may struggle to communicate with the judicial system through other barriers (language, disabilities, communication difficulties, comprehension).'

The response from a Tynwald Member included questions about the financial means test which raised the issue of transparency and clarity around eligibility:

'It depends on the means test itself: how often is it checked for fairness? How is it balanced? Does it negatively affect those on the poverty line? What about those just above it? Does the means test include fixed assets and debt, and if so, is that/is that not helpful? There are a number of matters that I could add comment about should greater detail on this matter have been included in the consultation, but it wasn't.'

The General Registry made reference to Advocates' obligations to keep legally-aided cases under review in line with what would be considered reasonable for privately paying clients, and a lack of clarity regarding checks to ensure that these obligations are met. It was suggested that consideration is given to the availability of Court Duty Advocates for matters other than first appearance. The transparency and calculation of financial contributions was also raised in addition to a lack of incentive for individuals to repay contributions following completion of their case as no sanctions are applied, with a suggestion that days in default could be added. There was concern regarding disparity between the financial eligibility tests

and thresholds for Criminal and Civil Legal Aid (*Prescribed Amounts*<sup>12</sup> which are used to calculate eligibility for Civil Legal Aid are reviewed annually but there is no equivalent for Criminal Legal Aid) and that the financial thresholds used for Criminal Legal Aid, as set out in 1993 Regulations<sup>13</sup>, are outdated. Other suggestions included the need for greater clarity in regard to contributions; for Legal Aid Administration to act as one central authority which determines eligibility for all Legal Aid funding, and for Criminal Legal Aid cases to be overseen by the Legal Aid Certifying Officer:

'For any Scheme, once engaged, an Advocate must actively review the appropriateness of continuing to spend legally aided funds and not, if this said to be the position, to spend as long as it takes or to exhaust all possible avenues of research or investigation where such an approach would not be considered reasonable for a privately funded client. That obligation exists, but we query how it is actually regulated or in any way checked.

Consideration might be given to the following:

1. a financial cap on all summary court cases unless further funding is justified and granted after application
2. whether a duty advocate should be available to assist those charged with non-custody and/or non endorsable offences
3. whether the court duty advocate should be available to a defendant on more than one court appearance in any particular proceedings
4. whether there is a better way to enforce legal aid contribution orders. The current method is most often ineffective in summary court cases.

Other points to consider include:

- whether the criminal legal aid financial test needs complete overhaul – we are currently working on what was considered acceptable to live on in 1993.
- the 'punishment' if people don't pay the legal aid contributions. If days in default could be added (as per fines) then enforcement would be better/people would be more likely to pay.
- greater clarity regarding lump sum contributions (capital) and the weekly contributions. Reg 13 states clearly that the lump sum payable the legal aid certificate shall not take effect until such payment is made. With the weekly payments it seems to be that the legal aid comes into force from the date of the application being received into court, but as it can take individuals/advocates several weeks sometimes to provide us with the information/documents we need the contributions sometimes don't start until after the individuals case has been completed in court. There is absolutely no incentive for them to pay after this.
- At present there is huge disparity between the tests and thresholds in relation to financial eligibility for civil legal aid and criminal legal aid. Should the test for criminal legal aid be aligned to the same tests used by Government to assess financial hardship i.e. the test for EPA/Income Support? Whilst we are aware that there has been some discussion in relation thereto, it would appear to make sense for further consideration of whether the assessment of criminal legal aid should be conducted by

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<sup>12</sup> <https://www.gov.im/categories/benefits-and-financial-support/legal-aid/eligibility-for-civil-legal-aid/>

<sup>13</sup> <https://www.gov.im/media/1351165/criminal-legal-aid-regulations-1993.pdf>

Legal Aid Administration resulting in one central authority who determines eligibility for all types of legal aid funding.

- It is the view of the Costs Officer that the Legal Aid Certifying Officer should have oversight of how each criminal case is progressed and should, at appropriate stages, consider the strategy the defence wish to progress and give consideration as to whether such is reasonable and/or justifiable and therefore whether such approach should be funded by the taxpayer. This would be akin to the processes involved in relation to civil legal aid.'

Further comments from 'Others' included concerns regarding the level of qualifying financial thresholds; the impact of restraint proceedings under the Proceeds of Crime Act 2008 (POCA) on individuals seeking to secure criminal defence, and the loss of eligibility for Legal Aid to individuals in prison as a result of losing their qualifying benefits. Further concern was expressed that POCA does not permit the payment of legal fees for people ineligible for Criminal Legal Aid, which it was suggested could deter some wealthy people from coming to the Isle of Man:

'The current levels are ridiculously low meaning that low paid employed people very often cannot afford to access a qualified advocate when appearing in court. The levels of legal aid need to be reviewed upwards to prevent miscarriages of justice.'

'Long term freezing orders can destroy and ruin the financial situation of people who on paper have assets. People who qualify for legal aid because they are on benefits lose legal aid when remanded in prison.'

'You have got into this mess because your Proceeds of Crime Act 2008 does not permit reasonable remuneration for advocates defending people who would otherwise be ineligible for legal aid. They are therefore given legal aid (on a number of occasions in my direct experience in very expensive cases). This has a secondary effect too; rich people are deterred from coming to an Island where, if accused of crime they cannot buy the best lawyer.'

**SUMMARY Q13:** 66 respondents (33%) answered the question and a summary of the key themes is included below:

- 19 respondents (9%) commented on financial means testing matters, including 11 (17%) who commented on the eligibility criteria with some respondents expressing concern that legislation which has not kept in line with inflation or changes to benefits is still being used to calculate financial eligibility for Criminal Legal Aid. There were also concerns regarding the disparity between a person's financial eligibility for Criminal and Civil Legal Aid, in addition to that for Green Form and Criminal Legal Aid. Respondents also called for more transparency in terms of calculating eligibility (including contributions) so that people can understand how a decision on an application has been reached. 11 respondents (17%) said that financial eligibility should be broadened so more people can receive Criminal Legal Aid, with more contributions if necessary. Some of these thought it should be available to everyone or those at risk of receiving a custodial sentence. Particular reference was also made to including the most vulnerable members of society.
- 7 respondents (3%) were concerned that there was no limit to the number of times that a person could receive Criminal Legal Aid, which they considered to be a lack of disincentive to reoffend and/or a misuse of taxpayers' money.

- 5 respondents (2%) were supportive of the current Criminal Legal Aid schemes, and in particular the universality of the Police Station and Court Duty Advocate Schemes which are free to all. 3 respondents (5%) were concerned that restraint proceedings under the Proceeds of Crime Act 2008 leave individuals unable to pay for private legal defence and also ineligible to receive Criminal Legal Aid, which has significant implications in terms of access to justice.
- 3 respondents (1%) were concerned that individuals who are serving custodial sentences or who are held on remand rather than bailed are at a considerable disadvantage in terms of accessing Criminal Legal Aid.

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## 4.5. Legal Advice & Assistance (Green Form)

Q14. If you have any comments or suggestions on Green Form please tell us

A text box was provided for comments or suggestions and 48 respondents (24%) answered the question.

Of those 48 who responded:

- 9 had been through the criminal justice system
- 13 were members of the public
- 14 were Advocates / Judiciary members
- 6 were criminal justice system employees
- 1 was a charity / support worker
- 1 was a Tynwald Member
- 4 were 'Others'

Of those respondents who had been through the criminal justice system, concerns were raised around the public's awareness of Green Form for criminal matters; the fairness of paying a 'flat rate' for work undertaken, and restrictions in place if an individual wishes to seek advice under Green Form on the same matter from more than one Advocate. One respondent called for the Green Form scheme to be merged with the Duty Advocate Schemes and become universal (i.e. not means tested) and another called for UK lawyers to be given permission to appear in Manx Courts with legal fees paid by friends and family (presumably in cases where the defendant's financial assets have been restrained and as a result they are unable to pay for their own legal advice):

'This is not widely publicised!'

'Green Form is a very fair way of accessing legal advice for people on a very low income or are on benefits but should it be the same amount paid to advocates who have various levels of skill, time served etc a flat rate doesn't seem that fair as you can get a lot of work done in 3 hours.'

'There should be no restrictions on how many green forms that an individual can submit in order to get the right lawyer to represent them.'

'The Green Form scheme should be merged with the duty advocate scheme and 'means test' removed. It should be universal.'

'Let [those] accused in serious crimes employ quality lawyers and barristers from the UK where it's possible for friends and family to pay them with proven clean funds. The IOM Prosecution actively bully advocates not to take private paying clients so they will not do it to the detriment of clients.'

Members of the public raised a number of points which included general support for Green Form. There were some suggestions that it should be extended in terms of eligibility and/or time allowances, and the rate of pay for Advocates should be attractive. Others expressed the view that checks and balances should always be in place and one person suggested that driving matters should be excluded:

'Seems good sense for advice on minor criminal matters.'

'It's critical and should remain as is.'

'...the important issue is that every individual irrespective of financial means should have access to the same legal advice. Any scheme that introduces variation based on financial status reduces the validity of our legal system.'

'This should be free, and the rate for the Advocate needs to be attractive to ensure a good quality of representation.'

'The Green Form should be extended, at a specific rate, to 8 hours of advice and assistance for criminal matters, particularly those of a complex nature.'

'As long as there is a level of scrutiny involved, and the cost can be justified.'

'All applications for government finance should be subject to an assessment of merit to avoid unnecessary costs.'

'Legal aid should not be available for driving matters.'

The IoM Law Society clarified the use of Green Form for criminal matters and called for a period of 9 hours to be the default time available to Advocates to provide legal advice with no further extensions:

'... Green Forms are often used, in a criminal context, in circumstances where obtaining an extension may not be practical. Therefore, it is suggested that Green Forms should be automatically issued for 9 hours but with no extension available. Such a system would reduce unnecessary administration and inevitable delays in seeking extensions, and would allow for certainty for the Advocate, particularly if cases (such as adjudications at the prison) run for longer than anticipated.'

Other Advocates / Judiciary members also clarified the use of Green Form for criminal matters and drew on their experiences as practitioners to make suggestions for its continuation or reform. One respondent advised that in their experience Green Form had only been necessary to advise witnesses or potential witnesses on their potential criminal liability in Court. They also suggested that costs could be saved, and that the Police Station Duty Advocate Scheme could be extended to include an allowance to review large amounts of disclosure (e.g. in a complex fraud / money laundering matter) in advance of the interview.

There were a number of references to the time limits associated with Green Form (currently 3 hours' initial advice and up 6 hours' additional advice subject to approval by the Certifying

Officer) with some suggestions for increasing, or decreasing, the current limits. There were also differences in respondents' views regarding the requirement for a legal merits test. One respondent suggested that the way in which all legal aid applications are made and extended should be digitised and that it should be possible to submit bills electronically. Another expressed concern that the quality of legal advice under Green Form did not appear to be monitored as there was no required standard or accreditation in place for Advocates. They also called for data and further information regarding financial contributions made by defendants:

'Covers the period up to when full Criminal Legal Aid is granted and making the application'

'The Green Form scheme should generally not be available for Criminal Advice. It is used as a stop gap to ensure payment by an Advocate when the client would be eligible for free advice under either of the Duty Advocate schemes. If the person is to be interviewed by the police then the advice can be given at the Police Station\*. If the person is attending Court then the Duty Advocate can prepare a legal aid form and seek a short adjournment for the person to see their Advocate. This would save costs as Legal Aid is awarded from a date and not a time and date so an Advocate waiting to obtain legal aid and get an adjournment will be paid for that time. In my experience the only time Green Form advice has been necessary is when a witness or potential witness needed advice on their potential criminal liability if asked to give evidence for a defendant or the witness is summonsed by the prosecution. \*There are occasions especially in complex fraud / money laundering matters where the volume of disclosure is such that the Advocate would benefit from having early disclosure and be able to review and prepare in advance of the interview. Getting large volumes of disclosure at the Police Station clearly wastes Police time and keeps the Client locked in a cell whilst the Advocate spends time reviewing the disclosure. The Police Station Duty Advocate Scheme should be extended to include an allowance to review large amounts of disclosure in advance.'

'I think that scheme has its place but, bearing in mind the other options available for criminal matters, I think that this should be limited to the 3 hours with extensions only be granted extremely rarely.'

'I believe this should be extended as often it may take time to gather the information initially before being able to work on it therefore 3 hours is not always sufficient. Perhaps it could be 3.5 hours with the 30 mins specified as KYC [know your customer] and information gathering and this must be evidenced.'

'Green Form should increase the initial limit from 3 to 6 hours. In other words an advocate can undertake 6 hours' work without an extension being authorised. Again the scheme if used for criminal representation should not be means tested. The police and prosecution have infinite resources to mount a prosecution against a person. That person may be on the bread line financially but denied legal aid funding or asked for a contribution that they cannot afford. If they do not make the payments under a contribution scheme their legal aid certificate is automatically cancelled thereby denying the defendant access to justice.'

'The Green Form is there for advice. Therefore the merits test should be left out of the equation as the client is receiving advice which will inform him/her as to the chances of success. Again, the system works so why change it?'

'I am unaware of any reason justifying the exclusion of a merits test.'

'The interaction between Green Form and Duty Schemes is often misunderstood & there are gaps in the system which are imperfectly plugged. Such gaps should be resolved as part of any reform.'

'I would welcome confirmation as to how this is monitored and regulated given that there does not appear to be any required Standard or Accreditation for Advocates and the provision of Advice under the Green Form. I note that "often Defendants make financial contribution to their legal expenses under this system" - how often and who monitors this?'

Criminal justice system employees gave their broad support to the Green Form scheme. Suggestions were put forward from capping the use of Green Form for first offence only, to making access universal. It was also suggested that Green Form could be extended to include advocacy at first appearance, thus reducing pressure on the Court Duty Advocate. Others called for more data on costs<sup>14</sup>, the impact of receiving legal advice under Green Form and further information on invoicing:

'I think that 3hr Green Form access should be universal; otherwise those dealt with voluntarily outside of the custody arena are disadvantaged compared to those who are arrested.'

'I think this scheme works well and provides free assistance to those who need it.'

'I feel this a good scheme as it caps the legal advice and therefore cost to the tax payer.'

'People should be allowed to use the green form for their first offence only; after that you pay your way.'

'Where are the figures breakdown showing what this means in economic terms? Where is the information in stating what offences were dealt with and what the outcomes of those who received advice and assistance compared to those who had no legal representation?'

...of the approx. 100 Green Forms received, how many used the full 3 hours of legal assistance, and of those that did, how many then incurred any additional costs themselves? (i.e. are the advocates making the legal advice last exactly 3 hours to get the maximum payment from the Government?)

A Tynwald Member referred back to an annual review of means testing:

'Again, means testing needs looking at in this context, and should be under review every year in line with results from data on poverty so that there's an evidence-based understanding of exactly what people need, and at the right rate: just enough and just in time.'

The General Registry made reference to its previous responses (see Q9 – Q13):

'See above but less of an issue in real terms due to financial limits on the Green Form Scheme.'

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<sup>14</sup> Costs are published by the Legal Aid Office <https://www.gov.im/media/1366458/criminal-legal-aid-figures-2013-2019-final-aug-2019.pdf>

There was also further support for Green Form from 'Others'. Comments included clarification of the use of Green Form and a suggestion that eligible individuals should make some financial contribution as those who are ineligible must pay fees at private rates:

'I think the above would have been better put forwards with an explanation that Green Form is used by Advocates for criminal matter[s] the same as it is for civil matters. Often [an] Advocate will see a client prior to the first court appearance and therefore prior to criminal legal aid being granted to establish whether the matter will qualify for legal aid and to complete the legal aid form.'

'The Green Form Scheme is essential. It enables legal consideration at an early stage in the case and thereby reduces legal costs later on.'

'...I feel that some contribution should be made albeit in a small way from their benefits as the tax payers do become annoyed when they have to pay out extortionate fees to advocates because they earn just above the required financial level.'

**SUMMARY Q14:** 48 respondents (27%) answered the question and a summary of the key themes is included below:

- 13 respondents (6%) commented that the scheme appears to work well in its current form.
- 13 respondents (6%) suggested that the amount of time available and or/eligibility under Green Form should be extended. Some respondents suggested universal eligibility and others made reference to reviewing the financial limits in the means test. Extension of scope to include advocacy (representation in Court) was also suggested.
- 6 people (3%) held the view that the provision of Green Form should be more limited, which included two comments that it should not be available for driving matters.
- 3 people (1%) requested more information including: monitoring/regulation of legal advice provided under Green Form in the absence of any required standard; invoicing for Green Form and the impact of receiving legal advice under Green Form.

### 4.6. Police Station Duty Advocate Scheme

Q15. Are you, or have you ever been, a Police Station Duty Advocate in the Isle of Man?

191 respondents (94%) answered the question and the results are shown in Table 11 below.

**Table 11. Number of Police Station Duty Advocates**

Response	Number	%
Yes	24	12
No	167	82
Not answered	12	6
<b>Total</b>	<b>203</b>	<b>100</b>



24 respondents (12%) said that they were, or had been, a Police Station Duty Advocate in the Isle of Man and 23 identified as current or former Advocates / Judiciary members. One respondent indicated that they were in training.

Those respondents who answered 'Yes' to this question were directed to Q16. All other respondents were directed to Q17.

**Q15 SUMMARY:** 24 respondents (12%) identified as current or former Police Station Duty Advocates.

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Q16. Please tell us your views on the Police Station Duty Advocate scheme (e.g. are there any processes which work well at the Police Station and have assisted you in your duties as an Advocate? Have you identified any aspects of Police Station Duty Advocate work which would benefit from improvement or change?)

This question was specifically for the 24 respondents who had answered 'Yes' to Q15 and were, or had been, a Police Station Duty Advocate and of these, 21 (88%) provided comments.

There was broad support for the Police Station Duty Advocate scheme as a universal form of Criminal Legal Aid which is available to everyone 24 hours a day, 365 days of the year, and was considered to function well.

The IoM Law Society raised concerns around delays at the Police Station which add to Legal Aid costs, and called for Duty Advocates to have access to the detainee's medical records and risk assessments. The Society also called for Police Station Duty Advocates to be able to retain copies of detained persons' custody records which are provided to them at the Police Station, but they are currently required to return:

'The Police must only call an Advocate to attend when they are ready to proceed. Whilst the situation has improved over the last few years, there are still frequent occasions when Advocates are called to attend to find that the detained person is not ready to be dealt with for one reason or another. Advocates will ask when called, but the information relayed must be reliable. If officers are still gathering evidence, then they should not call the Advocate to attend to sit at the station and wait. If the custody clock is ticking, the officers will need to prioritise but calling an Advocate does not assist if the process is not ready to begin. It simply wastes time and increases the cost to the legal aid budget. Recently, an Advocate was waiting for an officer to make a decision on charging or bailing and the officer went off shift and could not be contacted. After an hour of trying to contact the officer, the custody sergeant decided to bail the detained person.

Advocates must have access to medical records and risk assessments in custody in order to properly assess the detained person and assess the risk the detained person poses to themselves and others. The new Connect system at the Police Station is causing significant delays which is wasting time and money. Booking in can take, on occasion, up to 30 minutes, and the same to book out. The system needs to be improved and streamlined so it is efficient.

Advocates should be permitted to keep the copy of the custody record printed for them. It is wasteful of time and cost for the same to be printed and passed to an Advocate for the Police to only require it to be handed back in for the purpose of shredding. A detained person has a legal right to a copy of the custody record and Advocates are permitted to

scan or photograph the same. Therefore, to require the same to be handed in for shredding purposes only is wasteful of resources and is nonsensical.'

The most common concern which was raised by 13 of the 21 respondents (62%) was delays at the Police Station. In particular, respondents referred to delays before and after detainee interviews, and communication issues between the Police and the Duty Advocate. Respondents expressed concern that delays can impact on individuals who are in custody in addition to increasing Legal Aid costs if the Duty Advocates spend more time at the Police Station than necessary:

'...the whole the scheme works amazingly well delivering exceptional access to qualified advice.'

'The biggest delays in my experience tend to be in waiting for officers to be ready for interview following consultation and waiting for decisions to be made post interview. Some delay is unavoidable, especially if custody becomes busy, however on occasion it appears that advocates and detainees are left waiting for significant periods for no good reason... There is also the issue that if I leave the police station and ask for a phone call for an update, despite assurances that I will be contacted I often will not be. This normally happens on a shift change. Finally, I have on more than one occasion rang the bell to ask how matters are progressing only to be told that my client has been bailed already and I was not informed. Again, this has tended to happen when shifts have changed.'

'Police efficiency in managing case loads. Advocates spend hours waiting for officers, despite being told the officers are ready to proceed before attending Police Headquarters.'

'There is lots of wasted time at the police station between being given details of the alleged offence and having taken instructions & actually proceeding to interview. The same is true post interview whilst a charging decision is being made. Reducing this would reduce the cost of duty advocate scheme.'

'Legal Aid money goes down the drain by the fact that an advocate can sit at the police station, being paid, waiting for the police to either give disclosure, start an interview or make a decision. Hours can pass by because until a client knows whether they are to be bailed or charged then a matter cannot be concluded. If the advocate has other clients to see then that's fair enough but plenty of time is wasted in police station by an advocate just waiting. As many of the duty advocates come from all over the island, it isn't as though they can "pop home" However, if they live in Douglas or the easier outskirts then there should be no excuse for an advocate not to leave and then come back. I believe that legal aid money is abused in this way and I don't believe that the police fully appreciate the money being wasted.'

Other issues which were raised included securing enough Duty Advocates in multi-handed cases to avoid conflicts of interest, the Constabulary's CONNECT digital system and working conditions for Police Station Duty Advocates. Suggestions included an increase in the on-call rate of Senior Advocates, more Advocates to be on-call and the availability of medical records. There was also a practical suggestion for improvement made in terms of increasing Police Officers' understanding of the Duty Advocate's role. Reference was also made to the interconnectedness of the different agencies within the Criminal Justice System and the impact that decisions in those agencies can have on Criminal Legal Aid. Finally, there was a comment from a barrister that the role of Police Station Duty Advocates is undertaken by legal clerks in England:

'In high volume cases the police find it difficult to source additional advocates. The result is that a detainee will go without representation. I have also seen this situation occur in juveniles being held at the station. In this situation all the police can do is bail the juvenile to another date. Given the increased number of conflicts on the Isle of Man care should be taken to ensure access to a large pool of advocates from various firms.'

'The new Connect system is also causing chaos, as a job which used to take 5 minutes now takes 25 minutes.'

'Aspects that require improvement include the rate of pay and the conditions at the police station for Advocates. This is work carried out at unsociable hours and the working conditions are poor. The on call rate for senior advocates needs to increase significantly to reflect the general inconvenience, restrictions and time set aside by Senior Advocates to attend the police station during out of hours.'

'More people on call. It is often carried out in week blocks. Advocates can be there until the early hours each morning and back in work the next day for court. Effectively you don't get a break from work for 12 days. Doing this for a week can be exhausting and the job requires an eye for detail and careful judgment which can be affected by lack of sleep. Waiting when called up as officers have gone on another job without notifying your client or self also leads to increased costs for the tax payer.'

'Availability of [Forensic Medical Examiner] FME records, with client consent, before consultation.'

'There is a lack of understanding of the Advocates role in the Police station particularly by new sergeants and constables.'

'When a defendant has instructed an advocate, decisions taken by the police to save their budget usually means the defendant is kept waiting and therefore the Advocate. So for example when a shift change happens there is at least an hour's delay for decisions to be taken or the case handed over. A lack of officers on shift can result in the Advocate arriving at Custody and left waiting for the Officers to return to the Police station or between disclosure and interview the officers are called away. Further delays occur when advice on charging is needed from the attorney general's chambers. Again this results in the Advocate waiting as there might be a request to re interview. The Criminal justice system is interlinked and the Police taking budgetary decisions such as numbers / overtime etc to reduce their budget has the knock on effect of causing costs to be incurred in paying for the Advocate from the legal aid Budget. £135 plus VAT would cover at least the overtime for 2-3 officers.'

'In England clerks do the job perfectly well at less cost.'

**Q16 SUMMARY:** 21 out of 24 respondents (88%) who indicated that they had acted as Police Station Duty Advocates provided comments in response to this question.

Of those 21 who responded, there was broad support for the Police Station Duty Advocate scheme. 13 respondents (62%) indicated that delays at the Police Station were an issue. Other issues which were raised included securing enough Duty Advocates in multi-handed cases to avoid conflicts of interest; delays associated with the Constabulary's CONNECT digital system, and working conditions at Police Headquarters for Police Station Duty Advocates. Suggestions included an increase in the on-call rate of Senior Advocates, more Advocates to be on-call, the availability of medical records, and more training for new Police Officers in terms of understanding the Duty Advocate's role. Reference was also made to the

interconnectedness of the different agencies within the Criminal Justice System, in that savings made in one area (e.g. reduced Police resources) can lead to increased costs in other areas (e.g. longer waiting times for Police Station Duty Advocate) which significantly outweigh the initial savings.

**FEEDBACK:** Concerns regarding waiting times at the Police Station were also raised during Criminal Legal Aid workshops held with Advocates prior to this consultation being launched. This feedback was passed to senior members of the IoM Constabulary by Chambers for consideration and response during a subsequent Criminal Legal Aid workshop with the Police. As a result, the Police agreed that Investigators and Custody Officers would seek to improve communications in order to reduce delays at the Police Station. It was also agreed that the Police wished to re-establish more regular meetings with the IoM Law Society in regard to the Police Station Duty Advocate Scheme to ensure that any issues arising are addressed quickly and not left without resolution. In terms of delays between interviewing and charging a detainee, the Police advised that whilst pre-planning, communications and decision-making processes can lend themselves well to an early decision, the Police are not always in a position to charge within 45 minutes.

This feedback from the Police was passed to the IoM Law Society by Chambers, and the Society’s members were formally notified of the Constabulary’s response in the Society’s weekly newsletter. Further details of the workshops held for members of the IoM Law Society are included at Section 5.1 of this report and details of the workshop held for senior officers of the IoM Constabulary are included at Section 5.2.

Q17. Should a person who is detained in a place which is not a Police Station (e.g. ferry port, hospital, customs) who is suspected of committing a crime & is to be cautioned, be entitled to the same free legal advice as a person detained at a Police Station?

197 respondents (97%) answered the question, and the results are shown in Table 12 below. A text box was also provided for comments.

**Table 12. Entitlement to free legal advice away from Police Station**

Response	Number	%
Yes	171	84
No	18	9
Don't know	8	4
Not answered	6	3
<b>Total respondents</b>	203	100

90 comments were made.

Some respondents were aware that it is not only the Police who can detain and interview individuals under caution in the Island, as it can also happen in other cases such as suspected Customs and Excise offences or suspected Social Security benefits fraud. Others considered that the question was unnecessary as they felt that the answer ‘Yes’ was obvious. However, under the current Criminal Legal Aid arrangements a person may be able to receive free legal advice if detained at a location which is not a Police Station, but this provision is not currently set out in legislation.

A significant majority of 171 respondents (84%) said that people **should be entitled to the same free legal advice irrespective of location**. Of those 171 respondents, 27 had been through the criminal justice system; 67 were members of the public; 43 were Advocates / Judiciary members; 18 were criminal justice system employees; 5 were charity / support workers; 1 was a Tynwald Member and there were 10 others. 81 comments were made.

Of those in support of giving detainees free legal advice, 81 respondents provided comments. The most commonly recurring theme which appeared in 42 comments was that the location of detention was irrelevant. Other themes were raised by respondents including access to justice, fairness, equity, and access to legal advice / representation being an important legal right. Examples of comments for each category of respondent are included below.

Those who had been through the criminal justice system referred to the importance of access to legal advice at the earliest opportunity:

'Detention is detention wherever it takes place. Coercive loss of freedom should automatically provide the right to immediate legal counsel.'

'Legal advice is vital to a defendant at the earliest opportunity. The rights of the defendant must be protected immediately he / she is taken into custody / arrested regardless of the location used for detention.'

'There should be no distinction between places of detention. Legal aid and advice is needed at once when you are arrested.'

Members of the public considered that the location of detention was irrelevant:

'Surely the fact of having your freedom curtailed is more important than where you are being held.'

'The location of detention should not change the right of access to free legal advice.'

'If a person is to be questioned about a crime they should be able to have access to a lawyer otherwise it is unfair.'

'There is no qualitative difference – detention is detention wherever it takes place.'

The IoM Law Society expressed concern regarding the question, and went on to say that the location of a person's detention is irrelevant and they are legally entitled to free legal advice:

'The question is incorrectly framed and is misleading. The right to legal advice arises from a person being interviewed under caution, not someone receiving a caution as a penalty, which is entirely different. It is imperative that this is changed immediately and without any further delay. See above. The IOMLS has been asking for these changes to be made for a number of years, but such requests have all been ignored. Regardless of whether a detained person is at a Police Station or elsewhere, if they are being investigated and interviewed in relation to any criminal offence they are legally entitled to the free services of an Advocate, pursuant to the Police Powers and Procedures Act 1998. To deny such absolute right, is a total failure to ensure access to justice is maintained and the rule of law is upheld.'

Other Advocates / Judiciary members made reference to the potential seriousness of charges and the widespread implications for a person detained under such circumstances:

'Yes, absolutely. Persons interviewed by Customs or Treasury can be facing very serious allegations e.g. large-scale benefit fraud, VAT evasion etc. They need advice more than some people in the Police Station, who might be voluntary attenders on low level driving allegations. The current regulations only cover advice at a Police Station (which is defined as anywhere the Police conduct an interview, so can include places like the Prison, if the Police attend). The regulations should be changed to include free legal advice for all persons who are interviewed under caution, irrespective of the location.'

'Yes, if they are under any kind of caution or the information they may give is not without prejudice then they should be entitled to legal advice as it may affect their future and they may not be familiar with the system.'

'Cautioning is still an admission to a criminal offence and is disclosable to employers and has wide spread implications for that person. The person who is to be cautioned must have the benefit of legal advice as the Police / other authority might have wrongly charged or would not evidentially prove the charge. Any person interviewed under caution by any authorised body such as customs, DSC investigators, marine surveyors, DEFFA, etc. is in exactly the same position as a person interviewed at the police station, sometimes for far more serious offences and should have access to free legal advice as they would if the Police interviewed them.'

The Chief Constable made particular reference to drug trafficking cases:

'This is particularly important in cases of drug trafficking where suspects are believed to have drugs intimately concealed. The Constabulary does not detain people at other premises, except insofar as is permitted under the Police Powers and Procedures Act.'

Other criminal justice system employees also made reference to drug trafficking cases in addition to immigration matters and the importance of lawful detention:

'Currently people who are detained on suspicion of internally importing drugs to the Island are taken to hospital as a medical emergency. The current scheme does not allow for legal advice as they are not at a police station or in court.'

'It is fair that someone arrested or detained should be entitled to free legal advice. This should be extended to immigration matters.'

'It's important they are fully aware that they have been detained lawfully and that they comprehend that they are still in custody regardless of whether they are in hospital or another venue.'

The General Registry's comments referred to fundamental protections and a recent case:

'The fundamental protections required, where criminal investigations are ongoing and a caution administered, should necessarily engage the Scheme regardless of the venue. A recent case in the Court of General Gaol (FSA v Alder/Kinley) highlighted the impact on issues as to investigations and cautions/an interview process generally.'

'Others' also made reference to the rights of an individual when detained:

'The important word is "Detained". It is irrelevant where someone is detained.'

'Detention anywhere should warrant the same level of advice as in a station.'

'It is pretty obvious; they have been detained without trial and are entitled under European Convention on Human Rights to representation.'

18 respondents (9%) who said that persons **should not** be entitled to the same free legal advice, 3 had been through the criminal justice system; 4 were members of the public; 2 were Advocates / Judiciary members; 6 were criminal justice system employees; 1 was a charity / support worker and there were 2 others. 8 provided comments.

Four respondents understood that all detainees would at some point be taken to a Police Station and would therefore be able access free legal advice (under the Police Station Duty Advocate scheme) prior to interview:

'Can be applied for when in Police Custody.'

'No! Because the person should be taken to Police HQ for interview.'

An Advocate / Judiciary member suggested that further data would be required:

'...without any data on the implications of doing so then if cost saving is a priority (and in the absence of a clearly documented mischief) it would be difficult to justify an extension of the scheme.'

One criminal justice sector employee was, however, keen to extend the Police Station Duty Advocate Scheme to hospitals in particular. Another expressed concern about the potential costs of extending entitlement of free legal advice to other locations

'...The Police Station Duty Advocate Scheme should, however, extend as far as any person detained within a hospital (such as those requiring hospital treatment but kept under arrest, or those believed to have concealed drugs internally). Currently there is no real way of them accessing independent legal advice due to the requirement for them to be watched by Police.'

'If this was to occur the cost to the tax payer would be astronomical and the logistics behind an advocate getting to various locations would be difficult to manage.'

8 respondents (4%) said they **did not know** if people should be entitled to the same legal advice. There was 1 comment made by an Advocate / Judiciary member who referred to difficulties in instances where a person is detained in hospital on suspicion of drug trafficking:

'A person to be questioned under caution should have access to an advocate regardless of where such questioning is to take place. It becomes more difficult in situations such as an individual is detained in hospital because it is believed they have drugs secreted internally.'

**Q17 SUMMARY:** 197 respondents (97%) answered the question and 90 comments were made.

- 171 respondents (84%) said that individuals detained under caution should be entitled to free legal advice irrespective of location. The majority of comments made in favour of extending free legal advice entitlement reflected the view that the

location of detention was irrelevant. Respondents also referred to the importance of timely advice and the potential gravity and/or complexity of charges made by agencies such as Customs and Excise and Social Security. Concerns were also raised in terms of the potential implications for a person detained under such circumstances. Particular reference was made to drug trafficking cases when individuals suspected of concealing drugs internally are taken to hospital as medical emergencies and detained.

- 18 respondents (9%) said there should be no entitlement away from a Police Station. Those who were against extending the entitlement expressed concerns in regard to potential costs and there was a call for more data. Others appeared to think that all detainees would at some point be taken to a Police Station thus negating any need to extend free legal advice entitlement to other locations.
- 8 respondents (4%) did not know.
- 6 respondents (3%) did not answer.

**Q18. Have you ever been arrested and detained at a Police Station in the Isle of Man?**

194 respondents (96%) answered the question, and the results are shown in Table 13 below.

**Table 13. Number of people arrested & detained at Police Station**

Response	Number	%
Yes	29	14
No	162	80
Rather not say	3	>1
Not answered	9	4
<b>Total</b>	203	>99

29 respondents (14%) indicated that they **had been arrested and detained** at a Police Station in the Island, all of whom had been through the criminal justice system. These respondents were directed to Q19 – Q25 which were specifically for those who had been arrested and detained at a Police Station.

162 respondents (80%) indicated that they **had not been arrested and detained**, and 12 respondents (>5%) preferred not to say or did not answer the question. All of these respondents were directed to Q26.

**Q18 SUMMARY:** 29 respondents (14%) indicated that they had been arrested and detained at a Police Station in the Isle of Man.



**Q19. How long ago were you arrested & detained at a Police Station in the Isle of Man?**

This question was specifically for respondents who had answered 'Yes' to Q18, indicating that they had been arrested and detained at a Police Station in the Isle of Man.

Of the 29 respondents who indicated in Q18 that they had been arrested and detained at a Police Station, all 29 (100%) answered this question, all of whom had been through the criminal justice system. One respondent indicated that they had been arrested and detained twice, which gave a total number of 30 responses. The results are shown in Table 14 below.

**Table 14. Length of time since arrest / detainment at Police Station**

Response	Number	%
In the last 18 months	10	>33
Between 18 months & 5 years ago	10	>33
Over 5 years ago	10	>33
Not answered	0	0
<b>Total</b>	30	100

Responses were equally split across the time periods: 10 arrests/detainments in the last 18 months; 10 arrests/detainments between 18 months and 5 years ago, and 10 arrests / detainments over 5 years ago. The time frame for respondents' arrest and detainment was sought as an indication of those who would have been held at the new Custody Suite which is a purpose-built standalone facility within the grounds of Police Headquarters which opened in 2015. Individuals arrested and detained over 5 years ago would have been held at former facilities within Police Headquarters and Lord Street Police Station (both now closed).

**Q19 SUMMARY:** All 29 respondents (100%) who indicated that they had been arrested and detained at a Police Station answered this question. These respondents reported that in total, there were 30 occasions on which they had been arrested and detained. These occasions were equally split (i.e. 10 / 10 / 10) between the three timeframes specified (i.e. <18 months ago / 18 months to 5 years ago / >5 years ago).

**Q20. When you were detained at the Police Station, was it made clear to you by a Police Officer that you had a right to speak to a Police Station Duty Advocate, and that it would be free of charge?**

Of the 29 respondents who indicated in Q18 that they had been arrested and detained at a Police Station, 26 respondents (90%) answered this question, all of whom had been through the criminal justice system. The results are shown in Table 15 below and a text box was also provided for comments.

**Table 15. No. of detainees informed of right to speak to Police Station Duty Advocate**

Response	Number	% (of 26)
Yes	20	77
No	5	19
Don't know	1	4
Rather not say	0	0
<b>Total</b>	26	100

5 comments were made.

Of those 26 people who responded, 20 (77%) said **it was made clear to them** that they had a right to speak to a Police Station Duty Advocate, and that it would be free of charge. One person expressed concern that on one occasion they could not see their own Advocate, but it is not known whether this was because the Advocate was not on the Police Station Duty Advocate rota on the day the person was brought into custody, or if there was another reason. Another said it was the only option they were given:

'But I was on one occasion refused my own advocate who is on the duty advocate's list.'

'It was the only option given though.'

5 people (19%) said **it was not made clear** to them that they had a right to speak to a Police Station Duty Advocate. 1 occurrence was in the last 18 months, 2 occurrences were 18 months to 5 years ago, and the remaining 2 were over 5 years ago. 2 comments were made. The first was from a person who was arrested / detained 18 months to 5 years ago and they described themselves as vulnerable and in poor health. They said that a Duty Advocate was called for them, but the time between their arrest and the Advocate being called was 6 hours. The other respondent was arrested / detained in the last 18 months and indicated that they had asked for legal advice:

'I had to ask to seek legal advice.'

1 person (4%) **did not know**.

**Q20 SUMMARY:** Of the 29 respondents who indicated they had been arrested and detained at a Police Station, 26 (90%) answered this question and 5 comments were made.

Of those 26 who responded:

- 20 (77%) indicated that they had been advised of their right to see a Police Station Duty Advocate free of charge.
- 5 (19%) said they had not been advised. 1 occurrence was in the last 18 months, 2 were over 18 months ago and 2 were over 5 years ago
- 1 (4%) did not know.

**FEEDBACK:** Concerns that some detainees had not been advised of their right to speak to a Police Station Duty Advocate were also raised at a Criminal Legal Aid workshop that was held with Advocates prior to this consultation being launched. This feedback was passed to senior members of the IoM Constabulary by Chambers during a subsequent Criminal Legal Aid workshop with the Police. The Police advised that any report of a detainee not being informed of their legal rights at a Police Station would be taken very seriously and asked that any such allegations are formally reported at the earliest opportunity, either by the individual who has been in custody or their Advocate. Such reports should be made to the Constabulary's Head of Professional Standards, Superintendent Phil Drowley in order that the matter can be investigated. The Police also advised that there are strict procedures in place at the Custody Suite (located at Police Headquarters, Douglas) to ensure that detainees are

made fully aware of their legal rights, and CCTV / audio recordings can be accessed as part of any investigation into a complaint.

This information was passed to the IoM Law Society by Chambers, and the Society's members were formally notified of the Constabulary's response in the Society's weekly newsletter. Further details of the workshops held for members of the IoM Law Society are included at Section 5.1 of this report, and details of the workshop held for senior officers of the IoM Constabulary are included at Section 5.2.

**Q21. When you were detained at the Police Station did an Advocate provide you with any legal advice? If no, can you tell us why you did not receive any advice?**

Of the 29 respondents who indicated in Q18 that they had been arrested and detained at a Police Station, 28 respondents (97%) answered this question, all of whom had been through the criminal justice system. The results are shown in Table 16 below and a text box was also provided for comments.

**Table 16. Legal advice received at Police Station**

Response	Number	% (of 28)
Yes – it was the Police Station Duty Advocate	24	86
Yes – it was an Advocate paid for privately	2	7
No – I did not receive any legal advice	2	7
Don't know	0	0
Rather not say	0	0
<b>Total</b>	28	100

2 comments were made.

Of those 28 people who responded, 24<sup>15</sup> (86%) of them indicated that they had **received advice from the Police Station Duty Advocate**. One respondent who received legal advice from the Duty Advocate expressed concerns about the limited time the Advocate had to review the matter and the quality of advice received:

‘The advocate did not have the knowledge or time to review the facts to provide suitable advice.’

2 respondents (7%) said that they had **paid privately for their own Advocate**.

2 respondents (7%) said they **did not receive any legal advice**. Neither gave any further details regarding their circumstances.

All respondents who spoke to the Police Station Duty Advocate were directed to Q22, and the remaining 4 respondents were directed to Q26.

<sup>15</sup>One of these respondents indicated they had not received advice from a Police Station Duty Advocate in Q21 but then answered Q23 (ease of access to Duty Advocate) and Q25 (helpfulness of Duty Advocate) so it appeared that they had received advice from a Duty Advocate and as a result were included as having received it in Q21.

**Q21 SUMMARY:** Of the 29 respondents who indicated they had been arrested and detained at a Police Station, 28 (97%) answered this question and of these:

- 24 (86%) said they received legal advice from a Police Station Duty Advocate. One respondent expressed concern about the limited time the Advocate had to review the matter and the quality of advice received.
- 2 (7%) said they received advice from an Advocate paid for privately
- 2 (7%) said they did not receive any legal advice.

**Q22.** When you spoke to the Police Station Duty Advocate, was it in person or by telephone?

This question was aimed at the 24 respondents who indicated in Q21 that they had been given advice by the Police Station Duty Advocate. Of these, 23 respondents (96%) answered the question and the results are shown in Table 17 below.

**Table 17. Method(s) of contact with Police Station Duty Advocate**

Response	Number	% (of 23)
In person	23	100
By telephone	0	0
In person & by telephone	0	0
<b>Total</b>	23	100

All 23 respondents (100%) said that they spoke to the Police Station Duty Advocate in person and none by telephone.

**Q22 SUMMARY:** 23 (96%) of 24 respondents who said they had spoken to a Police Station Duty Advocate answered this question, and of these 23:

- 23 (100%) said their contact with the Duty Advocate was in person and not by telephone.

**Q23.** There can be a delay between the time a detainee asks to speak to a Police Station Duty Advocate and when the detainee is able to speak to them. Such delays may be unavoidable because it takes time before the Police are in a position to interview a detainee or provide disclosure information. Bearing these matters in mind, how easy or difficult was it for you to access the Police Station Duty Advocate?

This question was aimed at the 24 respondents who indicated in Q21 that they had been given advice by the Police Station Duty Advocate. Respondents were asked to indicate on a scale of 'Very easy' to 'Very difficult' the level of ease with which they were able to access the Duty Advocate, taking into account the time it may have taken before the Police were in a position to provide disclosure or interview the respondent. The results are shown in Table 18 below.

**Table 18. Ease of access to Police Station Duty Advocate**

Response	Number	% (of 24)
Very easy	3	>12
Easy	10	42
Neither easy nor difficult	6	25
Difficult	0	0
Very difficult	5	21
Rather not say	0	0
<b>Total</b>	24	100

24 respondents (100%) answered this question. 3 people (12%) said access to the Police Station Duty Advocate was very easy, 10 (42%) said it was easy and 6 (25%) said it was neither easy nor difficult. No respondents said that access was difficult and 5 (21%) said it was very difficult.

**Q23 SUMMARY:** 24 (100%) of respondents who had spoken to a Police Station Duty Advocate answered this question and of these:

- 13 respondents (54%) said access to the Police Station Duty Advocate was easy or very easy.
- 6 respondents (25%) gave a neutral response.
- 5 respondents (21%) said it was very difficult to access the Police Station Duty Advocate.

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Q24. Were you content with the level of access you had to the Police Station Duty Advocate when you were in custody? If no, please tell us more if you can.

This question was aimed at the 24 respondents who indicated in Q21 that they had been given advice by the Police Station Duty Advocate. The results are shown in Table 19 below and a text box was also provided for comments:

**Table 19. Contentment with access to Police Station Duty Advocate**

Response	Number	% (of 24)
Yes	16	67
No	5	21
Rather not say	3	12
<b>Total</b>	24	100

8 comments were made.

24 respondents (100%) answered this question, all of whom had been through the criminal justice system.

16 respondents (67%) **were content with the level of access** to the Police Station Duty Advocate. One respondent, who was content with the level of access to the Police Station

Duty Advocate, had issues in regard to requesting an Advocate of their choice. It is not known whether this was because the person's preferred Advocate was not on the Police Station Duty Advocate rota on the day they were brought into custody, or if there was another reason:

'Although there was an unwillingness to ring my requested duty advocate, and in one instance for an interview I was told if I wanted my own approved duty advocate that I would have to organise him myself & to pay privately.'

5 respondents (21%) **were not content** with the level of access. A key issue was the length of time that detained individuals waited to see the Police Station Duty Advocate. One person expressed concern that they were detained for 15 hours before they could speak to a Duty Advocate and that the delay was caused by difficulties in finding a Duty Advocate who was available despite the on-call rota being in place. Another person described themselves as a vulnerable person in poor health who waited 6 hours for the Duty Advocate. One person added that they had insufficient time to spend with the Duty Advocate:

'I was arrested and taken to the police station at 12 o'clock at night. I spent from that time until 3pm the next day (15 hours) in a police cell before I was given the services of a duty advocate. I have no complaint about my treatment by the officers at the station, my main criticism was of twelve on call duty advocates only two could be accessed and these were fully stretched hence my extended period in custody.'

'Waiting time to see advocate was in excess of 12 hours.'

'I think it takes far too long for the duty advocate to arrive at the police station and then when they do arrive you don't have enough time with them.'

One comment referred to matching the Duty Advocate's skills to the charge that the respondent faced:

'I would of liked an Advocate who specialised in what I was being charged with'.

3 respondents (12%) **preferred not to answer**.

**Q24 SUMMARY:** 24 respondents (100%) who had spoken to a Police Station Duty Advocate answered this question and 8 comments were made.

Of these 24 respondents:

- 16 respondents (67%) were content with the level of access to the Police Station Duty Advocate,
- 5 respondents (21%) were not content with the level of access. Issues raised were in relation to waiting times to see the Duty Advocate; length of time spent with the Duty Advocate, and having a Duty Advocate whose area of specialism matched the criminal charge.
- 3 respondents (12%) preferred not to answer.

## Q25. How helpful was the Police Station Duty Advocate to you at the Police Station?

This question was aimed at the 24 respondents who indicated in Q21 that they had been given advice by the Police Station Duty Advocate. These respondents were asked to indicate how helpful the Police Station Duty Advocate had been on a scale of 'Very helpful' to 'Very unhelpful'. The results are shown in Table 20 below.

**Table 20. Helpfulness of Police Station Duty Advocate**

Response	Number	% (of 24)
Very helpful	14	58
Helpful	5	21
Neither helpful nor unhelpful	3	>12
Unhelpful	0	0
Very unhelpful	2	8
Rather not say	0	0
<b>Total respondents</b>	24	100

24 respondents (100%) answered this question. 14 respondents (58%) said the Duty Advocate had been very helpful and 5 (21%) said they had been helpful. 2 people (8%) said the Duty Advocate was very unhelpful and 3 people (12%) gave said they had been neither helpful nor unhelpful.

**Q25 SUMMARY:** 24 respondents (100%) who had spoken to a Police Station Duty Advocate answered this question.

Of these 24 respondents:

- 19 respondents (79%) said the Police Station Duty Advocate was helpful or very helpful.
- 3 respondents (12%) gave a neutral response.
- 2 respondents (8%) said they were very unhelpful.

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## Q26. Do you have any other comments or suggestions regarding the Police Station Duty Advocate Scheme? (e.g. What works well? What doesn't work well? What could benefit from change or improvement?)

This question was for **all respondents** and a textbox was provided. 54 respondents (27%) provided further comments regarding the Police Station Duty Advocate scheme.

Of these 54 respondents:

- 10 had been through the criminal justice system
- 7 members of the public
- 22 Advocates / Judiciary members
- 8 criminal justice system employees

- 3 charity / support workers
- 1 was a Tynwald Member
- 3 were 'others'

Of those who had been through the criminal justice system, a number of themes emerged. These included requests for there to be Police Station Duty Advocates who specialise in particular areas of criminal defence; a call for more time to be available to the Duty Advocate, and concern that advice to plead guilty is 'standard'. There was also reference to waiting times at the Police Station, limited Police resources and the value of Police Station Duty Advocates:

'Specific Advocates who specialise in specific law e.g. drugs, assaults, driving, Public Order etc.'

'More time should be allowed for them to review information and provide advice.'

'The standard advice to plead guilty to obtain a discounted time sentence should be held back until a clear picture of the allegations and evidence is known.'

'Speed the process up. The less time they waste holding a person guilty or innocent the more time police can spend on the streets catching the thieves the heroin dealers the rapists and woman beaters not spending time in the police station.'

'The police are under huge budget restraints and reduced manpower while all the time their caseload is increasing - despite being willing they may have to make 'snap judgements' some people accused of crimes may not think they need an advocate because they are innocent and telling the truth. Enabling them to access a duty advocate can reduce the cost of further action and high court trials in these cases and ensure the defendants' rights are protected.'

Four members of the public were supportive of the Police Station Duty Advocate Scheme in its current form. There was a call for more Advocates from more legal firms to be on the Police Station Duty Advocate rota to avoid conflict of interest issues, and it was suggested that the Duty Advocate should continue to represent the individual until the case is resolved or have a formal handover with the subsequent Advocate. Another expressed concern that there was corruption in the Police and called for an accountable complaints system:

'Works great as it is, and very important that [it] remains available and independent.'

'It is very necessary and should remain the same.'

'There is a rota which covers advocates during the working week, out of hours and weekends. There are enough advocates to cover multiple detained persons, however as with any instance there will always be times when individuals are not immediately available. A larger pool of advocates from a wider range of firms would prevent conflict of interest especially on a small island otherwise the individual may be denied legal representation.'

'The Police Station Advocate should where possible follow the case to resolution, and/or arrange to meet the defendant and their chosen Advocate to discuss and hand over any notes.'



'Corruption exists in the police and they are not to be trusted. Until an accountable police complaints system exists, integrity issues shall remain.'<sup>16</sup>

The IoM Law Society's response made reference to its earlier comments and included a request for a designated parking space to be provided at Police Headquarters:

'See answer to question 16 above. Our responses also indicate that it would be beneficial for there to be allocated a designated Duty Advocate parking space that is not used by the Police or others attending the Police Station, as the current space is now. This will save time on Advocates trying to find parking, particularly at busy times and also ensures the safety of the Advocate when leaving the Police Station, particularly after dark. This issue is likely to become even more pressing with the difficulties in parking in this area, as highlighted in the local press recently.'

Nine Advocates / Judiciary members raised concerns regarding delays at the Police Station, and 5 were supportive of the current scheme. Other issues raised included independence and Legal Aid rates of pay. Suggestions were made such as offering telephone / Skype advice, improving communication / streamlining and having an additional Duty Advocate on call on more occasions:

'Often the advocate is called by police too early before ready for interview, or there are long gaps between successive interviews. This wastes valuable time and resources.'

'Waiting time after the end of interview and decision on charge is too long. The Police Powers and Procedures Act empowers the custody sergeant to make the decision on charge but this routinely gets delegated to an advocate at the attorney general's. This leads to delays.'

'The scheme is a very good one, and it would be more efficient if advocates are only called to the police station (for interview) when the police are actually ready to give disclosure and are ready to interview.'

'There needs to be a stream-lining in Police processes, which cause delay and cost to the system. It has been suggested the senior PSDA could be abolished, but knowing how difficult it can be to acquire a senior Advocate if they are needed but the rostered Advocate is not available to cannot deal, I do think this needs to remain in place.'

'It is a good scheme which enables the Police to do their job and for the interviews to be Human Rights compliant and compliant with the Codes for the gathering of evidence and ensures the evidence the Police collect is not inadmissible.'

'The scheme as a whole works well and should not be substantially tampered with. The provision of an additional on call police station duty advocate would be helpful on more occasions than is presently the case.'

'It is important that this remains an independent service as anybody could find themselves in a situation in the middle of the night where something has gone wrong and needs help and assistance. It is imperative that a detained person always has someone on their side.'

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<sup>16</sup> There is a formal Police complaints procedure in place <https://www.gov.im/media/1355642/how-to-make-a-complaint.pdf>. The investigation of Police complaints is also overseen by an independent Police Complaints Commissioner in accordance with Schedule 1 to the Police Act 1993. The Commissioner prepares an annual report which is laid before Tynwald and the report for the year ended 31 March 2019 was laid before the July 2019 sitting of Tynwald <http://www.tynwald.org.im/business/opqp/sittings/20182021/2019-GD-0030.pdf>.

'Day time duties should attract a fee. Senior on call duty rates need to significantly increase. On call fees and hourly rate needs to increase for duty advocates'

'Better communications between all parties. Streamlining some processes such as charging - these decisions take a long time and therefore can result in higher costs.'

'I think that other means of offering advice e.g. telephone/skype etc should be offered.'

**The Chief Constable made reference to fees and provision of the on-call Senior Advocate:**

'There are two aspects of the scheme that require further consideration: (a) fees and (b) the need for a senior advocate to be on call.

(a) Fees: The Constabulary is mindful that it should tighten some of its procedures, notably around the management of pre-interview disclosure and the management of police station bail, and work is underway to address these matters. At the same time, consideration should be given to introducing fixed fees for work in the police station. The Constabulary fully understands the importance of suspects and defendants being able to receive good and effective legal advice; it also understands the need where possible to avoid defendants representing themselves in court. That said, though, the Constabulary can see how a fixed fee system for attendance at the police station would not interfere with the right of defendants, but would save public money. A very small number of advocates take considerably longer than their peers to undertake apparently straightforward duties at the police station.

(b) Senior advocates: The Constabulary is aware that senior advocates are paid an on-call fee. It is doubtful whether any great benefits derive from this, with senior advocates being called on a comparatively infrequent basis.'

**Other criminal justice system employees made reference to the points raised by the Chief Constable, and 5 respondents expressed concern about the availability of Police Station Duty Advocates on the duty rota, and implications of associated delays. The availability of Advocates in multi-handed cases was also raised. One respondent was supportive of a Public Defender Scheme as a means of ensuring Duty Advocate accessibility and another suggested that telephone advice could be used at the Police Station:**

'I would like to see the introduction of a fixed payment for representation at the police station. It would encourage swiftness and better value for money for taxpayers.'

'When a duty advocate is covering the Police Station they should have no prior appointments or court commitments. I have had several experiences where a person remains in Custody for longer than they should because of the time it took to get hold of the advocate or wait for them to attend the Police station due to them being tied up with other matters. If the number of advocates increased that were able to be part of the Police Station Duty Advocate Scheme then I see this issue being improved upon, especially if there were more than one duty advocate allocated per day.'

'There have been on occasion difficulties with duty advocate availability due to the duty advocate already being tied up at court on another matter. Multiple offenders place a strain on the scheme. Occasional conflicts of interest results in other duty advocates having to be called.'

'There can sometimes be quite a delay in availability of the Duty Advocate, as they may be dealing with a voluntary attender interview, which could take up to 2 hours, and whilst that is happening the detained person in Custody is just waiting, and their detention time

is ticking down, reducing the time the Police have to conduct their investigation. In my experience, this advice is almost always accessed in person - I believe costs could be reduced if more people made use of accessing this advice by telephone.'

'Day time provision is poor particularly when seeking multiple advocates.'

'Occasionally on the IOM the duty advocate can be unavailable due to others matters and it can be difficult to arrange another, costing the tax payer further money and public servants time, as well as (most importantly) extending the period that a person's liberty is removed for. A good way of working around this would be to use the public defender scheme and ensure the duty advocate is always free to attend.'

**Comments from charity / support workers made reference to waiting times, the importance of supporting those with learning difficulties, and a call for wider eligibility<sup>17</sup>:**

'I am aware there is support at the police station for people with mental health issues but last heard there was no-one who had experience in learning disabilities.'

'My previous comments on wider eligibility and communication apply here also.'

**The Tynwald Member made reference to financial estimates made for a Public Defender Unit:**

'This has a great impact on whether or not the AG's Chambers need to employ the equivalent number of prosecutors to the PDU that's suggested. Station Duty Advocacy and other areas need defence advocates. More advocates are required to fill a PDU provision, and it's likely to cost more than estimates suggest.'

**Comments from 'others' included support for the current system; a call for a review of pay rates; a suggestion to remove the Senior Advocate on-call and concern regarding Duty Advocates' availability and associated delays:**

'The Police Station Duty Advocate Scheme works very well. An Advocate is paid by the hour for undertaking the work and so the cost very accurately reflects the amount of work required. Advocates' bills are independently assessed and so the cost is always going to be fair, both to the taxpayer and the Advocate. The Bishop Enquiry in to legal aid made provision for the bills of Advocates to be assessed (and periodically increased) in line with inflation. I understand that this recommendation has not been followed by the Treasury. In the light of inflation over the last few years the Treasury should be now re-consider the position.'

'From my experience working with the duty advocates in police custody they all appear to be putting 100% into their work and the system seems to be working well as it is.'

'The fee for the junior could be increased and the senior on call is not really necessary any longer.'

'It can take hours for a duty advocate to become available particularly if engaged on an earlier case.'

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<sup>17</sup> The Police Station Duty Advocate Scheme is available to everyone, free of charge, 24 hours a day, 365 days of the year. As a result, 100% of people are eligible to receive it.

**Q26 SUMMARY:** 54 respondents (27%) made comments. Of those who responded, the most common issue which arose was waiting time at the Police Station, which was mentioned 18 times across the range of respondent categories. The cause of waiting was attributed to both the Police and the Police Station Duty Advocates. One respondent suggested improved communication between all parties would be helpful. Broad support for the Police Station Duty Advocate Scheme was also reiterated and a number of respondents cautioned against making any significant changes to the scheme.

Issues other than waiting times that were raised included:

- the importance of the Police Station Duty Advocate being independent
- the importance of supporting detainees who have learning difficulties
- the requirement, or otherwise, of an on-call Senior Advocate
- a review of Legal Aid rates of pay for Police Station Duty Advocates (on-call and call-out)

Suggestions for consideration included the following:

- more Advocates on the Duty Rota to reduce pressure on individuals, delays associated with lack of availability, and conflicts of interest in multi-handed cases
- for Police Station Duty Advocates to specialise in certain criminal matters, so that detainees can be allocated a Duty Advocate who has specific knowledge and experience in the matter under investigation
- more time available for the Duty Advocate to consider evidence and consult with the detainee
- fixed fees for Police Station work
- offering telephone / Skype or other technology enabled advice in addition to advice in person
- a designated parking space to be provided for Duty Advocates at Police Headquarters

### 4.7. Appropriate Adult Scheme

Q27. Have you ever volunteered as an Appropriate Adult in a Police Station?

193 respondents (95%) answered the question and the results are shown in Table 21 below.

**Table 21. No. of Appropriate Adults**

Response	Number	%
Yes	9	4
No	184	91
Rather not say	0	0
Not answered	10	5
<b>Total respondents</b>	203	100

9 respondents (4%) indicated that they had acted as an Appropriate Adult (AA) at a Police Station and this included 1 response on behalf of a charity. These respondents were directed

to Q28. 184 respondents (91%) indicated that they had not acted as an AA and the remaining 10 (5%) did not answer the question. These respondents were directed to Q29.

**Q27 SUMMARY:** 9 respondents (4%) said they had acted as an Appropriate Adult.

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Q28. Please tell us about your experiences as an Appropriate Adult and any views you may have (e.g. How could the scheme be improved? How could more volunteers be recruited and/or retained? Are training needs being identified / met?)

This question was specifically for the 9 respondents who answered 'Yes' to Q27 to indicate that they had acted as an AA at a Police Station. Of these, 7 (78%) provided comments.

Respondents commented on a range of matters and in particular, how rewarding it can be to act as an AA and how the role is generally appreciated both by the detainee (who is a young person or vulnerable adult) and the Police. Some concerns were expressed regarding the length of time that a matter can take (up to 11 hours in one case) and how AAs can sometimes be 'forgotten' by the Police when they are in the Custody Suite. It was suggested that a detainee with a learning disability or autism should be supported by an AA who has experience of understanding and communicating with those who have these 'invisible' disabilities to ensure fairness. Empathy and patience were also highlighted as important qualities for AAs to possess. There were also suggestions for more training to be put in place to help prepare individuals for some of the challenges they will face as AAs, which could include shadowing and more ongoing / refresher training. It was also suggested that matters involving AAs at the Police Station should be prioritised, and it was pointed out that the payment to AAs has increased from £10 to £12.50 per session. There was also concern that the reported figure of 10 registered AAs currently in the scheme does not reflect the number of AAs who regularly attend which is understood to be lower. The matter of pay was also raised, and the appropriateness of the remuneration for the level of commitment and professionalism required:

'The role is appreciated and acknowledged by police in the custody suite. However appreciating the independent role of the AA they can be 'forgotten'. Present for many hours (personal experience up to 6 hrs) with no access to food and an occasional offer of water or drink, and sometimes with no idea how long the process will take - often far longer than the police say - it can be off putting. The initial training was generally ok - but there have been no CPD/refresher sessions - these would be appreciated.'

'...priority should be given to cases where an AA is required. It is noticeable that the tendency is to give an Advocate priority. After all the AA is a volunteer and is not paid, therefore why delay the AA longer than necessary. New volunteer training could be supplied by the present participating AA's new recruits could shadow one, really it is not a difficult task. Common sense, Empathy, an understanding of requirements, along with confidentiality with an ability to be patient and flexible are essential qualities.

'I feel that the appropriate adult may need training in how to communicate effectively with a person with a learning disability and to understand their abilities or lack of them in certain areas...I also support people with Learning Disabilities and autism and autism is another area where training will be needed if the appropriate adult is to ensure fairness of interview. I feel this is a skilled job and if you want to recruit suitable people it may be that there will be a need to pay people more appropriately for their time.'

'... priority should be given to cases where an AA is required. It is noticeable that the tendency is to give an Advocate priority. After all the AA is a volunteer and is not paid, therefore why delay the AA longer than necessary. New volunteer training could be supplied by the present participating AA's new recruits could shadow one, really it is not a difficult task. Common sense, Empathy, an understanding of requirements, along with confidentiality with an ability to be patient and flexible are essential qualities.'

'The payment of £10 was increased last year to £12.50 and for this amount I work very hard indeed the longest having been in custody for over 11hrs and most are unsociable hours. Having said that I absolutely love my role which is varied. I attend the criminal courts if a juvenile requests it or if the police request it. I attend voluntary interviews, identifications, witness female intimate searches for drugs, Markwell house for benefit fraud etc. Not everyone is suited for this role and this should be brought up in the training day as it could upset some people...The current list of 10 [AAs] which was mentioned is not accurate the number is smaller. However, if the numbers were to increase dramatically there would not be enough work for everyone & people would just get fed up & come off the list... I know I am appreciated by the custody staff as they repeatedly tell me how reliable and dependable I am. The detained persons also appreciate me and their thanks & remarks makes the job worthwhile.'

*Victim Support* indicated that as a charity it has never received payment for acting in the capacity of an Appropriate Adult for victims:

'As Victim Support we have supported victims who are vulnerable and need an appropriate adult. We have never been paid for this or offered payment.'

**Q28 SUMMARY:** 7 (78%) of the 9 respondents who said they had acted as an Appropriate Adult (AA) made comments.

There was broad support for the AA Scheme as a crucial part of the criminal justice system with respondents reporting that on most occasions they felt valued by both the Police and detainees. Concerns were raised regarding the length of time that matters can sometimes take, and the risk of being 'forgotten' at the Police Station.

There were a number of suggestions for improvement which focused on training. These included shadowing of existing AAs for trainees; an increased preparedness for some of the more challenging aspects of the role; more training to support people with autism and/or learning difficulties; and regular refresher training for existing AAs. Other suggestions included the prioritisation of cases at the Police Station in which as AA is required. Whilst it was clear that AAs do not undertake their role for financial gain, it was suggested that the current rate of remuneration should be reconsidered, and payments should be made to both individuals and charities who act in the capacity of an AA.

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## Q29. Have you ever been supported by an Appropriate Adult at the Police Station?

190 respondents (94%) answered the question and the results are shown in Table 22 below:

**Table 22. No. supported by Appropriate Adults at Police Station**

Response	Number	%
Yes	6	3
No	181	89
Rather not say	3	>1
Not answered	13	6
<b>Total respondents</b>	<b>203</b>	<b>&gt;99</b>

6 respondents (3%) indicated that they had been supported by an AA at a Police Station. These respondents were directed to Q30.

181 respondents (89%) indicated that they had never been supported by an AA at a Police Station, 3 (>1%) preferred not to say and 13 (6%) did not answer the question. These respondents were directed to Q31.

**Q29 SUMMARY:** 6 people (3%) said that they had been supported by an AA at the Police Station.

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Q30. Please tell us about your experience when you were supported by an Appropriate Adult at the Police Station (e.g. Did you feel you were given enough access to the Appropriate Adult? How helpful was the support you were given? Could anything have been done differently that may have helped you?)

This question was specifically for respondents who had answered 'Yes' to Q29, indicating that they had received support from an AA at a Police Station. They were invited to leave comments in a text box. Of the 6 people who answered 'Yes' to Q29, 3 (50%) provided comments about the support they had received.

1 person was positive about the support they received. 2 people said that they found the support offered by the AA to be of very little or no help, as they were unable to speak to them without a Police Officer being present.

'Sound.'

'The A/D [Appropriate Adult] was very little help to me. The police did not let me have a private talk with him.'

'Not helpful should get more specialist training be able to talk alone without police present.'

**Q30 SUMMARY:** Of the 6 people who said that they had been supported by AA at the Police Station, 3 (50%) made further comments. 1 person indicated that the support they received was helpful, but 2 said the support was of little help due to the presence of the Police.

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Q31. Do you have any other comments or suggestions regarding the Appropriate Adult scheme? Please tell us your views (e.g. How could more volunteers be recruited and retained? How could the scheme be improved?)

This question was for **all respondents**. 70 people (34%) submitted comments and a text box was provided for further comments.

Of those 70 respondents:

- 5 had been through the criminal justice system
- 22 were members of the public
- 20 Advocates / Judiciary members
- 15 criminal justice system employees
- 4 charity / support workers
- 4 were 'Others'

Those who had been through the criminal justice system made reference to a number of matters. These included fairer payment for AAs; ensuring availability of support / counselling for AAs due to the nature of the role; ensuring adequate training to support vulnerable people; and having knowledge of the legal system:

'I think they could be paid a better rate than £10 irrespective of how long they have sat there, how can it be fair that you are paid for sitting there for 10 minutes or 5 hours - if they have to listen to very disturbing interviews is counselling offered to them? I think a knowledge of the legal system would also be very helpful.'

'Unsure as to how to answer this but I think knowledge of the law is needed by the adult.'

A common theme from members of the public was that they had not heard of the AA scheme and 10 people called for increased publicity to raise awareness and encourage recruitment to ensure more people are available on the AA list. There was recognition of the importance of the AA's role in the criminal justice system and 7 people said that there should be better pay to reflect the hours that AAs work. Other comments included the importance of adequate training and monitoring, and removing AAs from the list if they do not attend regularly. One person asked who was responsible for assessing vulnerability in adults:

'I don't know about this scheme.'

'I was unaware of the voluntary nature of this scheme. If details of this scheme were made more obviously publicly available, other volunteers amongst the general public could be recruited.'

'Marketed more effectively, recruitment campaign. Training offered including becoming familiarised with police stations.'

'Flat fee of £10 regardless of time/length of attendance seems derisory particularly as some cases may be distressing.'

'Appropriate adults should be paid more, given how important their role is.'

'The scheme works well but needs people with life skills and common sense. And to be very patient.'



'...There should be a regular review of the persons on the list and removal of those that do not attend regularly...'

'Who decides who is a vulnerable adult and what criteria do they use?'

The IoM Law Society made reference to a number of matters including training, increasing the number of AAs, and increasing pay. In addition, the Society called for a requirement for the AA to meet with the detainee before the interview to obtain an understanding of the detainee's needs and for AAs who have not attended the Police Station in the preceding 12 months to be removed from the list of AA volunteers. The Society also requested that the Police undertake a conflict of interest check before the AA attends the Police Station, and for a statutory duty of confidentiality to be introduced:

'There should be a requirement for the Appropriate Adult to meet with the detained person in advance of the interview, in order for the Appropriate Adult to obtain an understanding of the needs of the detained person as well as their abilities, vulnerabilities, illnesses etc. There should also be proper training given in order that if a detained person is behaving strangely or inappropriately, the Appropriate Adult knows what they should do, in particular raising it with the custody sergeant at the start of the interview, which is extremely important if there is no Advocate in attendance.

There needs to be more Appropriate Adults as there are currently considerable difficulties in obtaining their attendance at the Police Station, which ultimately leads to delays and increased costs. An increase in remuneration would assist, and the IOMLS suggest that the same rates as are paid to interpreters are paid to Appropriate Adults with no cap on the maximum payable, paid per hour.

There are a number of Appropriate Adults who appear on the list but have never been seen in the Police Station. There should be a requirement to have attended the Police Station within the preceding 12 month period to be included on the list. Failing such attendance, the individual should be removed from the list.

When calling an Appropriate Adult, the Police should undertake a proper conflict check, particularly if a family member is acting, before they attend at the Police Station, as this can often lead to delay and wasted costs.

Further, it should be explained to Appropriate Adults, by way of formal training, that they are under no duty to report what they have heard in consultation with the detained person to the Police. A detained person should have the benefit of absolute confidentiality in order that they can be advised correctly. The IOMLS consider a statutory duty of confidentiality should be implemented without delay to ensure that detained persons are not prejudiced by the use of an Appropriate Adult.'

6 other Advocates / Judiciary members expressed concerns about the level of pay for AAs and 5 made suggestions regarding training. Other comments included praise for the work undertaken by AAs, but concern that despite the importance of their role, AAs were being undervalued within the current scheme. One respondent expressed serious concern that the AA scheme could soon collapse unless changes are made in terms of ownership of the scheme and support for AAs and linked to this were concerns regarding overreliance on a small number of AAs who regularly attend the Police Station. It was also highlighted that family members (of a young person or vulnerable adult who is in custody) are often not suitable to act as AAs. Suggestions included the introduction of universal and standardised training as recognised in UK and Manx Courts; raising awareness of the scheme to attract

new members; introducing a duty of confidentiality, and including legal privilege as an aspect of training:

'Appropriate adults are very important and they are often undervalued, they are not paid enough for the amount of time that they are at the police station... The police station can be a very frightening place for those who are under arrest.'

'Professional appropriate adults should be available and compensated accordingly.'

'The volunteer process and lack of remuneration has a direct impact on the police accessing this resource. It is in real danger of causing problems in the station for example if the police cannot source an appropriate adult the detainee cannot be interviewed.'

'If more Appropriate Adults are required, which I would suggest there are if there is only 10 serving the entire island, then a higher fee should be offered. Ultimately Appropriate Adults are volunteers. I would suggest a fee of £50 plus travel expenses would be reasonable.'

'There needs to be payment for appropriate adults, as the system cannot work without them. A one off low-level payment is insufficient. There also needs to be a requirement for those who sign up to actually take part. There are a significant number of people on the list but the same 2 or 3 are seen time and again...'

'The Appropriate Adults play a vital role at the Police Station. They are subject to the same delays as Advocates and spend a lot of wasted time at the Police Station. They have no support from a central body either in terms of training or providing a rota etc. they are also isolated and do not have network support from other appropriate adults. I am surprised that there are any left and if no one takes ownership of the scheme it will fall again to the duty social workers to provide the service and that will incur additional cost.'

'...I have been approached by one particular dedicated appropriate adult who tells me that she ends up being asked to come to the station regularly, sometimes very late at night. This is because other appropriate adults on the panel do not respond to the officer's call or cannot attend. The volunteer process and lack of remuneration has a direct impact on the police accessing this resource. It is in real danger of causing problems in the station for example if the police cannot source an appropriate adult the detainee cannot be interviewed...'

'The appropriate adult scheme is, by and large, excellent. The volunteers are usually present extremely quickly and stay for as long as is necessary. Staffing the program from paid social workers would be astronomically more expensive and also would require more than one social worker on call at night purely for that purpose.'

'The Appropriate Adult scheme generally works well and the police are in my experience good at spotting when someone will need an appropriate adult and making arrangements to obtain one.'

'Appropriate Adults need training in order to fulfil what is a very onerous and responsible position, protecting the vulnerable at the Police Station. Such training should be universal and of a standard recognised by the Courts here and in the UK. The awful experiences of the Appropriate Adult in the [Fred] West case is a risk in this jurisdiction when there is a system of ad hoc provision.'

'...I do think there needs to be some training for appropriate adults, to help them understand their role and give them confidence to intervene. I had a client who was an adult but was mentally and emotionally very young, and struggled with adult/complex

language. When I could see my client did not understand I kept waiting for the AA to intervene but they did nothing, so I had to. That is no problem, as I was there, but if the client had been unrepresented it would have been unacceptable.'

'It is often not appropriate for parents to be the appropriate adult. Training should be provided in the same way that advocates have to attend the Duty advocate training. A rota should be instituted.'

'Often the last person that should be an appropriate adult is a family member...'

'Appropriate adults, and other persons like interpreters need to have a duty of confidentiality imposed upon them so anything incriminating said by a detained person cannot be communicated to police or used in court.'

The Chief Constable commented on the critical importance of the scheme and highlighted that it is at risk. The importance of the scheme's independence was also emphasised, and it was confirmed that efforts were being made to rebuild the scheme:

'The scheme is critically important, but also hugely endangered. It should not be run by the Constabulary in order to ensure that it is both independent and perceived to be independent. The Constabulary has begun dialogue with government departments to try to generate interest to help rebuild the scheme.'

Other criminal justice employees acknowledged how crucial AAs are, and recognised the level of responsibility and professionalism required in the role. 8 people expressed their concern about the low level of pay received by AAs and there were calls for pay to increase to better reflect the value placed on the AA's role. 5 people were concerned about the low number of AAs on the current list and the resultant overreliance on a very small number of individuals, as any lack of availability causes delays at the Police Station. Other matters that were raised included the scheme's independence and training for AAs, with particular reference to safeguarding:

'It seems that the level of responsibility expected of these volunteers far outweighs the £10 they are paid. If they are responsible for safeguarding the young person and their rights it should be properly remunerated at a professional level.'

'The appropriate adults should be paid far more than £10; they are invaluable. Without them the process grinds to a halt and they can often be at the police station for hours on end.'

'Their work is invaluable and necessary by law. The recompense is derisory and should be increased.'

'There needs to be more app adults on the scheme as it is always the same couple which are getting called in the middle of the night. This will lead to some dropping out of the scheme. I believe they should also be paid more than they currently are as without them, processes such as interviews and charging of suspects could not happen.'

'The appropriate adult scheme works independently of the police and the law society and needs to remain so.'

'There are not enough volunteers on this scheme, often causing delays. Better training is required for those volunteers.'

'...I would think it important that an appropriate adult has some degree of safeguarding training to understand the issues of vulnerable young people and adults to ensure they are treated fairly and that communication with the Police is facilitated professionally and with empathy.'

Comments from charity / support workers focused on payment, raising awareness, recruitment and training, with particular mention of 'invisible' disabilities:

'Should be paid more.'

'Let the present Appropriate Adults assist in the recruitment after all is the team within Social Services really aware of the requirements?'

'It might be that this is a role which needs a higher profile. To carry out the job in a way that is meaningful, I believe people need a good set of skills and understanding of the legal issues as related to the interview and people's rights and training re any special needs of people e.g. mental health, learning disability, autism etc. I feel you will not recruit people unless you respect the role and pay people more appropriately.'

The response from homelessness charity *Graih* recognised the importance of the AA scheme, and the challenges of recruitment:

'This is a vital scheme and recruitment should be increased, although I am well aware that it is difficult to get volunteers!'

Comments from 'Others' included calls for more publicity of the AA scheme, better payment for AAs and increased recruitment. The importance of there being processes in place to enable physical evidence to be gathered without delay was also raised:

'Publicise it more widely in 18 years on the Isle of Man in legal circles I have never heard of it until now and I am going to volunteer.'

'The payment of Appropriate Adults is dismal. They are there often for longer than the advocates having been called in for rights and entitlements and have stayed but the officers have not been ready. Most are great but I have experienced one who did give legal advice which was not helpful.'

'It obviously needs more people to volunteer as the number of appropriate adults is very small for the island's population.'

'Sexual offences must be dealt with very speedily so no evidence is lost, and support must be given to the victim asap.'

**Q31 SUMMARY:** 70 respondents (34%) provided comments.

Respondents raised 5 key themes which are set out below. Some individuals commented on more than one theme, so whilst percentages do not add up to 100% they do give an indication of how frequently they were raised. Of the 70 respondents:

- 28 respondents (40%) thought the level of payment for AAs was too low and should be increased
- 13 respondents (19%) called for improvements in training

- 12 people (17%) commented on the importance of the scheme and the value and commitment of the volunteers.
- 12 respondents (17%) said they had not heard of the AA scheme and/or suggested it should be publicised more widely.
- 9 respondents (13%) thought that more AAs should be recruited

Other issues were also raised including:

- waiting times at the Police Station and AAs being 'forgotten'
- the importance of an independent AA scheme (i.e. independent from the Police and IoM Law Society)

Suggestions for consideration included the following:

- training should include safeguarding measures
- training should encompass awareness and understanding of 'invisible' disabilities (e.g. learning difficulties; autism)
- training should be to a standard which is recognised by Manx and UK Courts
- cases involving AAs at the Police Station should be prioritised to reduce waiting times
- cases involving sexual offences should be dealt with as quickly as possible to preserve evidence
- there should be mechanisms in place to support the welfare of AAs (e.g. following exposure to details of some cases)
- there should be duty of confidentiality placed on AAs
- AAs who have not undertaken any duties within a 12 month period should be removed from the AA list of volunteers

## 4.8. Interpreters

Q32. Have you ever acted as an interpreter at a Police Station or in Court?

0 respondents answered 'Yes', 195 respondents answered 'No' and 8 respondents did not answer.

**Q32 SUMMARY:** There were no responses from people who had acted as interpreters either at the Police Station or in Court.

Q33. Please tell us about your experience as an interpreter, and any suggestions or views you may have (e.g. What aspects of the recruitment worked well? How could we secure the services of more interpreters in future? How could we ensure quality services?)

This question was aimed at those who had answered 'Yes' to Q32 and a text box was provided for comments. As there were no responses from people who had acted as interpreters either at the Police Station or in Court there were no comments provided.

**Q33 SUMMARY:** There were no comments from people with experience as an interpreter.

Q34. The Department of Home Affairs pays interpreters an hourly rate to attend the Police Station. These rates have been in place since 2007. Do you think they should be reviewed?

This question was for **all respondents**.

191 people (94%) answered the question, and the results are shown in Table 23 below. A text box was also provided for further comments.

**Table 23. Views on reviewing rates for interpreters**

Response	Number	%
Yes	135	67
No	34	17
Don't know	22	11
Not answered	12	6
<b>Total</b>	203	101

103 comments were made.

135 respondents (67%) said that the **rates of pay for interpreters should be reviewed**. Of those 135 respondents, 14 had been through the criminal justice system; 52 were members of the public; 34 were Advocates / Judiciary members; 18 were criminal justice system employees; 5 were charity / support workers; 1 was a Tynwald Member and there were 11 others. Of these, 99 respondents made comments.

Respondents who had been through the criminal justice scheme acknowledged the skills that are required to undertake the role of an interpreter, expressed concern at the rates of pay, and made a number of suggestions to encourage the recruitment and retention of more interpreters:

- 'This is a difficult job requiring skills very few of us have.'
- 'Important to the defendant that the interpreter explains fully.'
- 'Clear and unambiguous communication between any defendant and his advocate / police is essential in the interest of justice and to ensure full and fair access to justice. This can only be achieved by high quality professional interpreters being available. The current rates of pay fall woefully short in that respect.'
- 'Less than minimum wage.'
- 'Should be reviewed annually, in line with an appropriate grade of Civil Service pay scale.'

Members of the public made reference to the specialised work; inflation, and the living wage:

- 'This is specialised work and should pay much more.'
- 'If you want professional standards from people it helps if they are offered more than the basic pay rate.'

'The payment should fit the role the interpreter is undertaking considering that it is important that the translation is correct and provides a fair account of the charge. This amounts to a minimum wage payment.'

'Need to check alignment with living wage'

'£8.05 is a low rate for what could be quite complex work. I believe an 18 year old is paid more for occasional work in M&S than an interpreter would be for work at PHQ!'

'Inflation has risen and pay should also.'

'Regardless of what this pay rate is attributed to, in this case interpreters, the fact that they've been in place since 2007 without a review tells me a review is definitely required. That's 12 years of many economic changes.'

'Would government ministers and civil servants accept NO pay increase over a 12 year period? I think not. If nothing else their hourly rate should be increased and there should be a third tier which should be for outside the normal working hours of 8am to 5pm.'

### **The IoM Law Society called for an immediate review of interpreters' rates of pay:**

'The IOMLS considers that rates of pay for interpreters should be immediately reviewed. They are unchanged since 2007, notwithstanding that inflation increases year on year, cost of living has increased, and Government costs and fees have increased significantly. Such disparity between what Government is prepared to pay and how the same is reviewed, by comparison to increases in Government charging is unfair to all Isle of Man residents and is not a practice that should be allowed to continue. There should be full transparency and accountability. The current rates paid to interpreters are below the current minimum wage limits, if an interpreter is called out for more than 4 hours, which is unacceptable.'

### **Other Advocates / Judiciary members made reference to rates of pay; the technical nature of the interpreter's role; the requirement to work unsocial hours, and the importance of interpreters within the criminal justice system:**

'The rate is very low and interpreters have an important function. The rate should reflect the work they do, often at very unsociable hours.'

'The fact that this rate is barely minimum wage for an essential service speaks volumes. Interpreters often have to be out at long and unsociable hours, and their skills and time should be valued and appreciated. It is disgraceful that this is the rate.'

'They should be increased, without interpreters the police and the advocates wouldn't be able to proceed. People would be more likely to give up their time (instead of the regular Facebook appeals) if they were paid a fair hourly rate.'

'Interpreters, like advocates and appropriate adults, are required to keep the system going. A fee of barely minimum wage is not sufficient, when you are utilising someone's skill in a pressured environment. I have dealt with one interpreter who took a day off from her profession to help, and declined to help in the future as the pay was so poor.'

'They provide a skill that is required the rate is disgusting when compared to other unsocial work.'

'An interpreter is a vital link in the chain of evidence. If the interpreter is unskilled or unprofessional, there is a glaringly obvious detriment to justice. The Court and the parties

are hampered, there is a real risk of a miscarriage of justice. Thus the interpreter must be as competent as possible with the appropriate training (which again should be universal and standardised) so as to provide an excellent service.'

The Chief Constable expressed concern about the current position:

'It is difficult to source interpreters, who play a key role. Interpreters are grossly underpaid.'

Criminal justice system employees made similar comments and there was particular reference to the value of interpreters within the criminal justice system. One person referred to the risk of detainees being released without interview if a suitable interpreter cannot be found and another called for there to be a central, audited register of interpreters:

'They should be paid more than this as they are often called upon with little or no warning. The service they provide is invaluable.'

'Interpreters capable of covering criminal matters are skilled individuals. I am unsure of the current rate paid to professional interpreters in other organisations, but I believe it is likely to be far above this rate. I also believe that there could be incremental pay rises for interpreters who have years of experience with being a Police interpreter.'

'Barely minimum wage and it is difficult to get provision, there should be a centrally controlled and audited list available.'

Charity / support workers provided comments in support of increasing interpreters' pay in recognition of the important work that they do:

'I can earn more than that per hour as a waitress!! These people are skilled workers, and I imagine in short supply. That seems a very low wage when somebody's freedom hangs in the balance.'

'Basically paying the minimum wage for an important task is not encouraging those with language skills to come forward.'

'An interpreter has skills which should be recognised by way of recompense.'

A Member of Tynwald also supported an increase in rate:

'The average salary for an interpreter is £15.81 per hour in the United Kingdom... Although, looking at a number of advertisements for interpreters online indicates the average salary is slightly higher - at around £20-30 an hour for an interpreter not on an annual rate.'

The General Registry expressed concern at the current rates of pay for interpreter services and provided details of the hourly rate charged to the Court:

'£8.05 per hour seems well below the market rate for interpreters and does cause difficulties in selection. By way of comparison, they charge about £25.00 per hour when billing the court which appears to be more reflective of the market rate for their services.'

Additional comments from 'Others' included concern that pay rates are too low for a service which is essential to the criminal justice system:



'Clearly inflation has been overlooked.'

'You need reliable people to act as interpreters and the money should reflect that.'

'Please pay these people more they are essential to the justice system and are not paid anywhere near enough.'

'Decent rates will ensure decent representation and clarity.'

Comments from the public included 2 from people who supported a review of pay for interpreters but were clear that such a review should lead to a **reduction** in payments:

'Should go down as people are volunteering their time and know how it goes.'

'Compared to the flat fee paid to Appropriate Adults I think the interpreter fees are too high.'

34 respondents (17%) said that the **rates of pay for interpreters should not be reviewed**. Of those 34 respondents, 7 had been through the criminal justice system; 14 were members of the public; 5 were Advocates / Judiciary members; 5 were criminal justice system employees; 1 was a charity / support worker and there were 2 'Others'. 2 comments were left.

An Advocate / Judiciary member indicated that their response was on the proviso that there were no issues recruiting interpreters:

'I only say no on the presumption that the DHA currently has no difficulty in finding interpreters - if this is not the case (and the DHA believes that an increase in the rate would resolve this problem), I think that the rate should be reviewed.'

**Q34 SUMMARY:** 191 people (94%) answered the question and 103 comments were made.

- 135 respondents (67%) said that rates of pay for interpreters should be reviewed. Of these, 97 respondents made comments relating to the value of interpreters and /or calling for rates of pay to be increased and 2 respondents said that rates of pay should be reduced.

Those in favour of increasing the rates of pay made reference to the importance of being able to access suitably qualified interpreters who play a vital role in the criminal justice system. Respondents were concerned that the level of skill and specialist knowledge required by an interpreter was not reflected in the current rate of pay, and low levels of appointment and/or retention of interpreters can lead to delays in Police Custody if an interpreter cannot be found. Respondents also expressed concern that the rate (£8.05ph) was not at the level of the minimum wage (£8.25ph from October 2019). Suggestions for increases in pay rates were made. These included: above minimum wage; the living wage; applying inflationary rises; aligning the rate to that paid by the Legal Aid Office; aligning the hourly rate to that paid in the UK, and aligning the rate to that charged to the Court for interpreter services (£25 per hour).

- 34 respondents (17%) said that rates should not be reviewed.
- 22 respondents (11%) said they did not know
- 12 respondents (6%) did not answer.

Q35. Do you have any other comments or suggestions on the provision of interpreter services at the Police Station or in Court? (e.g. How can we access the services of more interpreters? How can we ensure the quality of these services?)

This question was for **all respondents** and a text box was provided for comments.

55 respondents (27%) submitted comments and of these:

- 3 had been through the criminal justice system
- 17 were members of the public
- 19 were Advocates / Judiciary members
- 10 were criminal justice system employees
- 2 were charity / support workers
- 1 was a Tynwald Member
- 3 were 'others'

Those who had been through the criminal justice system suggested making use of technology to access interpreters, or entering into a contract with a company that can supply the required services:

'I don't think you actually need to have a physical interpreter [interpreter] in the Police Station or the court (especially during the TT fortnight and other events where a large foreign contingent are on the Island) when there are many services online for an accredited interpreter.'

'Perhaps a contract with the likes of the Language House<sup>18</sup> to have a dedicated pool of interpreters.'

Members of the public made a range of suggestions, including more advertising and recruitment to build a database of on-island interpreters. Others supported the use of technology to access online services, and it was queried if such approaches could be more cost-effective. Another suggested that multi-lingual Police Officers should be employed. A small minority said they thought that people living in the Island should be able to speak good enough English; those who are on holiday and need an interpreter should pay, and some of those who are detained may misrepresent their level of English language skills to seek advantage:

'Make the public aware of this need, implement a register and conduct background checks that they meet the criteria of the role that they are "fit for purpose".'

'Contact schools college and businesses for more interpreters. Give training on how to support detainees and legal system.'

'A database should be held for all volunteer interpreters.'

'Should be maintained and enhanced as more non UK people come to live and visit IoM.'

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<sup>18</sup> The Language House is a local company <https://www.tlhtranslations.com/> and its website refers to full translation services in any language, including in legal matters. Translation services generally relate to written text and interpreter services generally relate to the spoken word.

'Online translation services exist and I believe, have been used by police officers on the streets. Could they be utilised in the station/courts, or telephone interpreters?'

'Would it not be cheaper to use a interpreting service i.e. Language Line?'

'If no one can be contacted, consider skype. As body language is important have a list of people that can be called by skype.'

'Police could be given translation programs to use, which would in turn increase efficiency and allow for information to be saved and also save costs.'

'Employ multi lingual police officers.'

'They are used too often. Very often defendants have adequate English, they just lie about their skills to try and create confusion.'

**The IoM Law Society raised concerns regarding the perception of bias if interpreters are appointed by the Police, and made suggestions regarding the potential technological solutions:**

'Consideration should be given to having a different interpreter for the Police and for the detained person. Currently the interpreter performs both roles but is instructed by and is paid for by the Police, which can lead to a perception of bias. In multi-handed cases each detained person should have access to their own interpreter, to maintain confidentiality and to speed up the process.'

Enquiries should also be undertaken in order to ascertain whether technology can be used to increase the availability of interpreter services, although Google translate, and other such apps are not what is being proposed. Online skype/video-conferencing services may be easier to access and more cost effective, although security will need to be checked and verified.'

**Other Advocates/ Judiciary members' comments included suggestions for state interventions regarding training and support for interpreters. Other views were expressed, including the quality of face-to-face interpretation vs phone interpretation, and the need to provide separate interpreters for the Police and Advocates. Others suggested using an external company and/or technology to provide the required services and there were further calls for interpreters' pay rates to be increased:**

'The island is too small to put this service out to tender so the state needs to provide training and support for interpreters and pay them a reasonable hourly rate.'

'Prior testing / courses for the interpreters and a comprehensive list.'

'Phone interpretation is a poor substitute for face to face. There needs to be separate interpreters for police and advocate. Their duty is confused.'

'My experience it was pretty poor as the interpreter did not know what they were meant to be doing. They appeared to be trying to answer the questions for the client in the best way that they thought the answer should be given. Some training is needed so that they understand their duties.'

'I am rarely at the police station when booking in occurs, but if it does not happen already, the Police could access a language line for the booking in, so that an interpreter is not

inconvenienced until ready for interview. An interpreter could also be used for charging and bail, as these matters are dealt with at the custody desk.'

'Would it not be cheaper to use an interpreting service i.e. Language Line<sup>19</sup>?'

'The only way to have more skilled interpreters on the books is to pay a professional fee.'

'Please pay these people more they are essential to the justice system and are not paid anywhere near enough.'

The Chief Constable made reference to the importance of there being separate interpreters for the Police and Courts to avoid any perception of bias:

'It is important that courts are able to source their own interpreters. Currently the Constabulary is asked to arrange for interpreters to attend court. This can give rise to perceptions of unfairness or of conflict of interest.'

Comments made by other criminal justice system employees included the inadequacy of current arrangements and a sense of urgency in the need to address them. These issues included an overreliance on social media to source interpreters from the general population as this can lead to conflicts of interest, and concern that interpreters should receive formal training and be vetted before undertaking such duties. Concerns regarding insufficient interpreter numbers and lack of any centralised management in place for interpreters were also raised. It was suggested that as the population is becoming more diverse, there could be a mechanism put in place and funded by Government for there to be a central register of interpreters who are available as a shared resource for different agencies (e.g. Police; Courts; defence Advocates). There was also support for more use of technology, and in particular Language Line:

'At the moment there are not enough interpreters and the Isle of Man Constabulary frequently has to use social media to appeal to members of the public who are not trained to assist. This results in people spending longer amounts of time in custody and being represented by interpreters who have had no training and have no knowledge of police procedures. As the community becomes more diverse the current service is not adequate. We need to get more trained interpreters to assist. Previously Nobles Hospital have had a list of interpreters that we used to utilise, but again, they were not adequately trained in their role at the police station. Regardless, I have been informed that this list no longer exists. We drastically need to improve the interpreter services.'

'There appears to be no central point of management of the interpreters and very little to no training provided. The scheme would benefit from review and ownership taken firmly. The development of our varied culture on the Isle of Man is out pacing the scheme.'

'Government could hold a central list of approved interpreters across Dept. of Health and Dept of Home Affairs (and any other depts. needing regular interpreters). The island's population is becoming more diverse, and I believe interpreters are being required more and more often. A social media appeal for an interpreter in a given language is causing unnecessary risk that the interpreter may know the individual or have heard about the case.'

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<sup>19</sup> Language Line is an international company <https://www.languageline.com/uk> and its website refers to full interpreter services in any language, enabled by technology.

'A central database of interpreters should be maintained by the Govt, of persons who have been vetted accordingly. Interpreters are often obtained by requests on Facebook....this is not appropriate or safe.'

'By whatever means, it needs to be improved.'

In the charity / support sector, comments received from *Victim Support* expressed concern about access to interpreters for victims of crime, and homelessness charity *Graih* indicated that statutory services can be difficult for some individuals to navigate:

'Interpreters are readily sought for those accused of crime but reluctantly sought for victims and witnesses.'

'It is vital that a broad range of interpreters are available. At *Graih* we occasionally have contact with guests who struggle with English and the availability of interpreters while navigating statutory services can be difficult.'

A Tynwald Member suggested introducing a feedback survey to monitor the quality of interpreters:

'You can ensure the quality of interpreters by providing a way for those on the receiving end to submit a survey in their own language on the service they're receiving, and keeping tabs on it (which includes a qualitative comments box for any serious complaints, that need interpreting online).'

The General Registry suggested the development of a central register of interpreters available to a range of agencies within the criminal justice system as a shared resource:

'Consideration should be given to there being a central register of interpreters available to the police, the courts and the defence advocates with a central fund to pay for the interpreter's services. The current system is ad hoc, often relying on the good will of interpreters.'

Additional comments from 'Others' included suggestions to advertise and implement increased rates of pay and use 'Google Translate':

'If the pay levels were increase[d] and that information was publicised then you would have a better uptake in volunteers willing to be on the register.'

'Google translate could be given a proper statutory footing; saving money.'

**Q35 SUMMARY:** 55 respondents (27%) answered this question. Respondents suggested that the provision of interpreting services to those in the criminal justice system could be improved by:

- increasing pay for interpreters
- advertising and encouraging more interpreters to register
- making more use of technology (e.g. video conferencing) to provide interpreter services through an accredited provider (off-island solution)
- reducing dependency on ad-hoc appointment of interpreters via social media
- ensuring there is no bias or perception of bias regarding interpreter services
- developing on-island training and accreditation for interpreters

- ensuring that one Government agency has ownership of the IoM interpreter database (on-island solution)
  - putting a mechanism in place to allow multiple agencies (e.g. Police; Courts; victims of crime; defence Advocates) to access interpreter services
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## 4.9. Court Duty Advocate Scheme

Q36. Have you ever acted as a Court Duty Advocate in the Isle of Man?

This question was for **all respondents**.

193 respondents (95%) answered the question, and the results are shown in Table 24 below:

**Table 24. No. of Court Duty Advocates**

Response	Number	%
Yes	26	13
No	166	82
Don't know	1	<1
Not answered	10	5
<b>Total respondents</b>	203	>100

26 respondents said that they were, or had been, a Court Duty Advocate in the Isle of Man and they all identified as current or former Advocates / Judiciary members. This included one respondent who was in training, and another who was a retired Advocate and had acted as a Court Duty Advocate in the past.

Respondents who answered 'Yes' were directed to Q37. All other respondents were directed to Q38.

**Q36 SUMMARY:** 26 respondents (13%) indicated that they were, or had been, a Court Duty Advocate in the Isle of Man.

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Q37. From your experiences as a Court Duty Advocate, do you have any views or suggestions on the scheme? (e.g. Are there any processes which work well in the Courts and have assisted you in your duties? Have you identified any aspects of Court Duty Advocate work which could be improved or changed?)

This question was specifically for respondents who had answered 'Yes' to Q36 and were, or had been, a Court Duty Advocate. A text box was provided for comments.

Of the 26 respondents who answered 'Yes' to Q36, there were 19 comments provided for Q37. The IoM Law Society also provided a response to this question, bringing the total to 20.

The IoM Law Society cited a number of issues and made suggestions to improve the Court Duty Advocate Scheme. These included streamlining the plea before venue system and Court lists; changing the requirement for a Duty Advocate to attend out of hours Courts if they are not required; giving the Court the ability to check an applicant's benefit status, and facilitating Advocates to address outstanding fines with defendants. Reference was also made to the Society having reduced the number of Court Duty Advocates from 2 to 1:

'Prosecutors frequently and routinely attend late for Court, particularly on extras Court days (Monday, Wednesday, Friday and Saturday), which leads to considerable and unnecessary delays increasing costs for the entire system. The introduction of connect has only compounded the issue.

It is suggested that the plea before venue system could be streamlined in order to speed up the process. Perhaps Advocates could have a defined statement that they read to their client and have signed in order that the Court can be satisfied that the process has been explained and can move straight to putting the charge, which would cut down on Court time.

The out of hours Court system could be improved in order to save costs to legal aid, whereby the Duty Advocate could contact the Prosecutor to ascertain if they are required to attend. The system currently in place requires the Advocate to attend in any event, regardless of whether there is anyone to be dealt with, and the Advocate recovers 1 hour of pay for doing so. A better system of communication could save this fee when the Advocate is not required to attend.

When defendants are in receipt of automatic qualifying benefits, the Court should have the ability to check their benefits status, in order that legal aid can be granted immediately, instead of causing delay and extra administration, resulting in increased costs, in requiring the defendant and/or the Advocate to obtain written confirmation from the benefits office. The Legal Aid office has access to such information and therefore it makes sense that the Court should similarly have such access, for the purpose of undertaking the assessment and issue of legal aid certificates.

The Courts could streamline how Court lists are dealt with by having an am and a pm list, which could avoid Advocates attending at 9.30 am and waiting all day for their matter to be called. Custody, adjournments and first appearances could be on an am list with sentencing on a pm list at 30 minute intervals, which would assist in better planning of the Court day. The Court should also enforce etiquette, with the Duty Advocate waiting until all other matters have been dealt with, unless dealing with a custody matter, so legal aid is not paying for multiple Advocates to be at Court all day waiting to be dealt with. Also, pre trial review forms could be submitted in advance with availability so the Court is only tasked with listing the date, having considered all availability in advance.

The system of bringing outstanding fines to the Advocate's attention needs to be improved so the information is available before the defendant appears in Court and the Advocate has the opportunity to address the same with the defendant.

The IOMLS reduced the number of Court Duty Advocates from 2 per Court to 1 some years ago, which change has led to a significant saving to the public purse. Now, a second Duty Advocate is only appointed by the Court, when there is a significant list and the Court deems it necessary for another Advocate to assist.'

11 other Advocates / Judiciary members (55%) expressed their support for the Court Duty Advocate scheme as a universal form of Criminal Legal Aid which they considered to function well. Other positive aspects of the Scheme were identified as the presence of a Probation Officer in Court, determining Criminal Legal Aid applications in Court, "holding over" matters, and assistance from other Legal Aid Panel Advocates

'I think the current system works...'

'The Court Duty Advocate Scheme offers an amazing first line helping those that have recently been charged with offences negotiate their first (and occasionally 2nd appearance) at court. It can be an extremely frightening time and not many people can afford the £250 - £450/hr to pay for their own advocate before legal aid is granted (if eligible).'

'Having a Probation Officer present in the court for the preparation of stand down reports has been a huge help in making the court more efficient and dealing with matters on the same day where possible.'

'The granting of legal aid by the courts works well as it is determined at the time. The defendant knows where he is with legal aid funding as opposed to civil legal aid where he would need to wait pending a review by the civil legal aid office. The process works well and if another advocate is required because of a conflict there is usual another advocate present at court which is on the panel that can assist or again there are a panel of duty advocates that the court can contact.'

'The court's co-operation in "holding over" those matters where the duty advocate is representing defendants until the end of the list is useful in allowing the duty advocate sufficient time for consultation(s) while enabling the court to dispose of other cases where defendants have their own advocates or are self-representing.'

'The process works well. Sometimes the list can be long with many clients. Other advocates often volunteer to assist the court when asked which saves the full time appointment of a second advocate.'

Another key concern which was raised by 6 respondents (30%) were Court waiting times. Whilst some respondents made suggestions to address this issue, others took the view that waiting times were a matter for the Courts (i.e. not Legal Aid). One respondent also attributed waiting times as the reason they stopped participating in the Scheme:

'I acted some 7+ years ago and there was too much time wasted waiting your turn. Civil legal aid work, with allocated time for directions, would work more effectively.'

'...The Duty Advocate scheme works well but they are kept waiting for long periods if they have one or two clients on a busy list. They might wait three or four hours to appear (they could be on quicker but then other Advocates would be waiting on the legal aid budget). The Court overall needs to ensure waiting is kept to a minimum for all Advocates so that money is not wasted sitting around.'

'... However, as the Court Duty Advocate the clients that you see will usually be seen by the Court at the end of all other advocates having dealt with their clients. Obviously there are exceptions like having clients in custody or those with a mental health professional or an interpreter. But depending on how many clients you do see, you can be waiting around in Court for a long time which means that is a bigger drain on Legal Aid funds.'

'Appointments at fixed times would lower waiting time but that is a matter for the Courts.'

'The scheme is not perfect but it is very hard to see how it could be improved. It deals often with people who for whatever reason live chaotic and difficult lives. The courts have processes we cannot change and have to fit in with them.'



'I am unable to comment as I retired from being a Court Duty Advocate. My reason for retiring from this duty was the waste of my productive time whilst waiting at Court for other cases to be dealt with.'

There were a number of suggestions as to how the Court Duty Advocate scheme could be improved. These suggestions included balancing Court lists; reducing waiting time; training; reducing demands on Court time with more Fixed Penalty Notices and improved timekeeping:

'Balancing work between the Deputy High Bailiff's Court and the Magistrates more evenly may assist in terms of efficiency as there are occasions where one list will be particularly long and the other quite small in the same week. This is probably unavoidable in many cases and would likely have to be dealt with when a defendant is summonsed.'

'The Court overall needs to ensure waiting is kept to a minimum for all Advocates so that money is not wasted sitting around.'

'Training of advocates and judiciary could speed matters greatly'

'Matters such as basic low level driving matters (Driving without Tax, Insurance etc) clog up too much Court time and cost, as well as Duty Advocate time and cost. Matters such as this should be akin to Fixed Penalty Notices, and if people wish to contest it, then they can, and then the matter proceeds to Court.'

'Some Advocates, both Prosecution and Defence, could perhaps do with a reminder than they need to be there at 9am on Monday, Wednesday, Friday and Saturday and 9.30am on Tuesday and Thursday! Tardiness creates delay and cost for all.'

**Q37 SUMMARY:** Of the 26 respondents who indicated that they had been Court Duty Advocates, 19 (73%) responded. The IoM Law Society also made a submission, which brought the total number of responses to 20 for this question.

Of these 20 responses, 11 respondents (55%) expressed broad support for the Court Duty Advocate Scheme in its current form and 6 respondents (30%) referred to issues with waiting times, which increased to 7 (35%) with the IoM Law Society's submission.

A variety of suggestions were put forward to increase the effectiveness and efficiency of the Scheme for the defendant, Duty Advocate and the Court. These included improved timekeeping; reduction of Court waiting times; more training, and increased use of Fixed Penalty Notices. Streamlining the plea before venue system; balancing Court lists; changing the requirement for a Duty Advocate to attend out of hours Court if they are not needed; giving the Court the ability to check an applicant's benefit status, and facilitating Advocates to address outstanding fines with defendants were also suggested.

**FEEDBACK:** Some comments regarding timekeeping were also raised during Criminal Legal Aid workshops held with Advocates (see section 5.1) before the consultation was launched, which HM Attorney General offered to bring to the attention of the Prosecutions Division.

Q38. Have you ever appeared in Court in the Isle of Man charged with a criminal offence?

191 respondents (94%) answered the question, and the results are shown in Table 25 below.

**Table 25. No. of people who have appeared in Court on a criminal charge**

Response	Number	%
Yes	27	13
No	162	80
Rather not say	2	1
Not answered	12	6
<b>Total</b>	203	100

27 respondents (13%) indicated that they had appeared in Court in the Isle of Man charged with a criminal offence. These respondents were directed to Questions 39 – 40 which were specifically for those who had appeared in Court.

162 respondents (80%) indicated that they had not appeared in Court and 14 respondents (7%) preferred not to say or did not answer the question. All of these respondents were directed to Q44.

**Q38 SUMMARY:** 27 respondents (13%) indicated that they had appeared in Court in the Isle of Man charged with a criminal offence.

**Q39. How long ago did you appear in Court in the Isle of Man charged with a criminal offence?**

This question was specifically for those 27 respondents who had answered 'Yes' to Q38, indicating that they had appeared in Court charged with a criminal offence.

Of the 27 respondents who answered 'Yes' to Q38, all 27 (100%) answered this question. One respondent indicated that they had been in Court twice, which gave a total number of 28 responses. The results are shown in Table 26 below.

**Table 26. Length of time since Court appearance**

Response	Number	%
In the last 18 months	11	39
Between 18 months & 5 years ago	10	36
Over 5 years ago	7	25
Not answered	0	0
<b>Total</b>	28	100

**Q39 SUMMARY:** All 27 respondents (100%) who indicated that they appeared in Court on a criminal charge answered this question. In total, there were 28 Court appearances and of these:

- 11 (39%) of these Court appearances were in the previous 18 months
- 10 (36%) were between 18 months and 5 years ago
- 7 (25%) were over 5 years ago.

Q40. When you attended Court for your first appearance, did you get advice from the Court Duty Advocate?

This question was also for those 27 individuals who had answered 'Yes' to Q38, indicating that they had appeared in Court.

Of the 27 respondents who answered 'Yes' to Q38, 25 (93%) answered this question. The results are shown in Table 27 below. A text was provided for respondents who had not had an Advocate to represent them to leave further comments on what happened when they went into Court.

**Table 27. No. who received advice from Court Duty Advocate on 1<sup>st</sup> appearance**

Response	Number	%
Yes – I spoke to the Court Duty Advocate (CDA)	18	67
No – it was an Advocate paid for privately	4	15
No – I chose to represent myself in Court	1	4
No – I did not know I could speak to the CDA	2	7
Not answered	2	7
<b>Total</b>	27	100

One comment was provided by the respondent who indicated that they had chosen to self-represent in Court. They also stated (in Q38) that this was a matter which came to Court between 18 months and 5 years ago. The respondent expressed dissatisfaction with the Court Duty Advocate as a reason for choosing to self-represent.

All those who answered 'Yes' in their response were directed to Q41. Those who answered 'No' were directed to Q44.

**Q40 SUMMARY:** Of the 27 respondents who indicated that they had appeared in Court on a criminal charge, 25 (93%) answered this question.

Of these 27:

- 18 respondents (67%) received advice from the Court Duty Advocate
- 4 respondents (15%) paid privately
- 1 respondent (4%) chose to self-represent
- 2 respondents (8%) said they did not know that they could speak to a Duty Advocate.
- 2 respondents (8%) did not answer

The individual who chose to self-represent indicated that they did so as they were dissatisfied with the advice from the Duty Advocate. No other comments were left by those who were not represented.

**Q41. How easy or difficult was it for you to access the Court Duty Advocate on your first appearance in Court?**

This question was specifically for the 18 respondents who indicated in Q40 that they had received advice from a Court Duty Advocate. Respondents were asked to indicate on a scale of 'Very easy' to 'Very difficult' the level of ease with which they were able to access the Court Duty Advocate (CDA).

24 respondents answered this question and the results are shown in Table 28a below.

**Table 28a. Ease of access to Court Duty Advocate (all 24 responses)**

Response	Number	%
Very easy	9	38
Easy	4	17
Neither easy nor difficult	8	33
Difficult	1	4
Very difficult	1	4
Rather not say	1	4
<b>Total</b>	<b>24</b>	<b>100</b>

Of these 24 respondents, 9 (38%) said access to the CDA was very easy and 4 (17%) said it was easy. 1 person (4%) said access was difficult and 1 (4%) said it was very difficult. 8 (33%) gave a neutral response and 1 person (4%) preferred not to say.

However, when these figures were examined further to identify responses from those 18 people who had indicated in Q40 that they had received advice from a Court Duty Advocate, more positive results emerged as shown in Table 28b below.

**Table 28b. Ease of access to Court Duty Advocate (18 validated responses)**

Response	Number	%
Very easy	8	44
Easy	4	22
Neither easy nor difficult	5	28
Difficult	1	6
Very difficult	0	0
Rather not say	0	0
<b>Total</b>	<b>18</b>	<b>100</b>

Of those 18 respondents, 8 people (44%) said access to the Court Duty Advocate was very easy and 4 (22%) said it was easy. 1 person (6%) said access was difficult, and no-one said it was very difficult. 5 (28%) gave a neutral response.

**Q41 SUMMARY:** Of those 18 respondents who said they had spoken to a Court Duty Advocate:

- 12 people (66%) said access was easy or very easy
- 5 people (28%) gave a neutral response
- 1 person (6%) said access was difficult.

Q42. Were you content with the level of access you had to the Court Duty Advocate?

This question was also aimed at the 18 respondents who said they had been given advice by a Court Duty Advocate in Q40.

24 respondents answered this question and the results are shown in Table 29a below.

**Table 29a. Contentment with access to Court Duty Advocate (all 24 responses)**

Response	Number	%
Yes	15	63
No	8	33
Rather not say	1	4
<b>Total</b>	24	100

Of the 24 respondents, 15 (63%) said they were content with the level of access to the Court Duty Advocate, 8 (33%) said they were not content, and 1 (4%) preferred not to answer.

Again, as in the previous question, when these figures were examined further to identify the responses from those 18 people who had indicated in Q40 that they had spoken to a Court Duty Advocate, more positive results emerged as shown in Table 29b below.

**Table 29b. Contentment with access to Court Duty Advocate (18 validated responses)**

Response	Number	%
Yes	12	67
No	6	33
Rather not say	0	0
<b>Total</b>	18	100

**Q42 SUMMARY:** Of those 18 respondents who said they had spoken to a Court Duty Advocate:

- 12 people (67%) said they were content with the level of access
- 6 people (33%) were not content.

Q43. How helpful was the Court Duty Advocate to you on your first appearance in Court?

This question was also aimed at the 18 respondents who said they had been given advice by a Court Duty Advocate in Q40. Respondents were asked to indicate how helpful the Duty Advocate had been on a scale of 'Very helpful' to 'Very unhelpful'. 24 respondents answered the question and the results are shown in Table 30a below.

**Table 30a. Helpfulness of Court Duty Advocate (all 24 responses)**

Response	Number	%
Very helpful	5	21
Helpful	6	25
Neither helpful nor unhelpful	4	17
Unhelpful	3	>12
Very unhelpful	4	17
Rather not say	2	8
<b>Total respondents</b>	24	>100

24 respondents answered this question. 5 respondents (21%) said the Duty Advocate was very helpful and 6 (25%) said they were helpful. 3 respondents (>12%) said the Duty Advocate was unhelpful and 4 (17%) said they were very unhelpful. 4 people (17%) gave a neutral answer and 2 people (8%) preferred not to answer.

Again, these figures were examined further to identify the responses from those 18 people who had indicated that they had spoken to a Court Duty Advocate and again, more positive results emerged as shown in Table 30b below:

**Table 30b. Helpfulness of Court Duty Advocate (18 validated responses)**

Response	Number	%
Very helpful	4	22
Helpful	6	33
Neither helpful nor unhelpful	2	11
Unhelpful	3	17
Very unhelpful	2	11
Rather not say	0	0
Not answered	1	6
<b>Total</b>	18	100

17 (94%) respondents out of 18 provided answers. 4 respondents said the Duty Advocate had been very helpful and 6 said they had been helpful. 3 people said the Duty Advocate was unhelpful and 2 people said they were very unhelpful. 2 people gave a neutral answer and 1 person did not answer.

**Q43 SUMMARY:** Of those 17 people had spoken to a Court Duty Advocate and responded:

- 10 people (59%) said the Court Duty Advocate was helpful or very helpful
- 5 people (29%) said they were unhelpful or very unhelpful
- 2 people (12%) gave a neutral response

Q44. Do you have any other comments or suggestions on the Court Duty Advocate Scheme? (e.g. What works well? What doesn't work well? What could benefit from change or improvement?)

In order to contextualise this question, it may be helpful to note that Q37 invited comments and suggestions from Court Duty Advocates, and this question (Q44) was aimed at **all**

respondents who were not Court Duty Advocates, but may have had experience of the Scheme. A text box was provided for comments and 43 responses (21%) were submitted.

Of these 43 who responded:

- 10 had been through the criminal justice system
- 11 were members of the public
- 11 were Advocates / Judiciary members (including 5 Court Duty Advocates)
- 4 were criminal justice system employees
- 3 were charity / support workers
- 4 were 'Others'

For those who had been through the criminal justice system, the key issue was the lack of time that individuals were afforded with the Court Duty Advocate for preparation, advice and completion of Criminal Legal Aid application forms. Different views were expressed in regard to the Scheme from broad support to concerns regarding choice:

'He did not have enough time to speak with me or review the facts and give useful advice. More time is needed to review the details and advise based on facts.'

'There is a system lack of adequate preparation time prior to the defendant being taken into court. This not only includes case preparation, but also completion of legal aid application forms.'

'Legal aid application forms are often completed with undue haste some minutes before the defendant is called into court.'

'... I understand it works rather well.'

'Some Advocates should stick to being prison law specialists and not be allowed to represent in court.'

'If I ever appeared again I would want to use my own chosen Advocate.'

Members of the public indicated their broad support for the Scheme. One individual, based on past personal experience, expressed concerns regarding the quality of Duty Advocates:

'Clearly this is a very important service and should not be tampered with.'

'I do not believe this should be changed. People have the right to a lawyer and [a] fair [and] unbiased chance at proving their innocence.'

'It is a good scheme that someone appearing in court can see a lawyer free of charge.'

'Should be maintained free for all and offer experienced advocates to those appearing as defendants in court.'

'...Having watched Court Duty Advocates from the Public Gallery many times since then, I consider Duty Advocates as generally not fit for purpose...'

Advocates / Judiciary members were supportive of the Scheme and the quality and commitment of the Duty Advocates who provide their services in Court. Concern was expressed that only a small number of Advocates currently undertake these duties, and that unless Legal Aid rates of pay increase, even fewer Advocates could be available in future. It

was also suggested that an Advocate could be employed to do this work (i.e. remove the dependency on private legal practices to supply Advocates to undertake these duties):

'The Court Duty Advocate Scheme is something that should be cherished and preserved. It provides an invaluable access to justice to all on small basic summary matters. It also provides the public with an opportunity to briefly discuss their case with an advocate, who can advise if they should obtain more detailed advice either funded by Legal Aid or privately.'

'The Court Duty Advocate Scheme demands that Advocates block out the whole of their day on occasions to ensure that they are available to represent what may be a long list of defendants. They are dedicated, flexible and skilled in advising often on the hoof in difficult matters when the defendant is under great stress. The fact that so few Advocates want to do this work is a reflection of the remuneration. If the rates were increased (bearing in mind that the last promised increase was not implemented) it may be that more junior advocates would want to become involved. In England and Wales, the remuneration is so bad that no young solicitors are becoming involved and there is an ageing population of Duty Solicitors who will retire with no skill set following on. We must be sure that this does not happen here.'

'I wonder whether it would benefit to have an employed duty advocate (possibly employed by legal aid) who is resident at the court on each day that it sits.'

Responses from those who had previously identified (in Q36) as Court Duty Advocates reiterated the value of the Scheme, and some urged caution against introducing changes to a system that works well. Concerns were expressed regarding avoidable delays, and limitations on time. Suggestions included reintroducing the process whereby Duty Advocates could be notified of their requirement to attend Court, and for details of translators to be made available:

'It is a good scheme ensures fair interim hearings in the Summary Court and achieves the early disposal of many matters by agreement and negotiation with the Prosecution.'

'The Court Duty Advocate scheme works well and I would be reluctant to interfere in a system that is currently working.'

'The Court Duty Advocate scheme works well. There is only one Duty Advocate and if there is a busy list or a conflict, there is the luxury of other panel Advocates available to step in. If anything is implemented which affects the balance, that luxury might not be available to call on. There are also issues with the Prosecution, most Prosecution Advocates arrive in time to deal with queries and questions but some do not and delays result from that. The Prosecution Advocate also has a limited time to prepare the list for Tuesday and Thursday and sometimes the evidence provided by the police leaves a lot to be desired and that causes delays.'

'I think the current system works well. That said, Duty Advocates are currently expected to attend at Court on Monday, Wednesday, Friday and Saturday to see if they are needed. They are paid an hour for that attendance, irrespective of whether they are needed. It used to be the case that they contacted the on-call Prosecutor for confirmation, and if they were not needed no charge was levied. This system was changed at the instigation of a long-departed Director of Prosecutions, who felt Prosecutors were not secretaries. A return to this system would save money.'

'A list of official translators to be made available to all duty advocates.'



The Chief Constable's comments supported the Scheme:

'This is important, particularly in comparatively minor matters that might attract a delay if a defendant were to appear without the benefit of advice.'

In terms of responses from charity / support workers, *Victim Support* was supportive of the Scheme:

'As an organisation that works in the court, our observation is that the duty advocate scheme works well at court.'

Homelessness charity *Graih* raised concerns around the limited time that vulnerable adults are able to spend with a Duty Advocate, and indicated that they have been made aware of varying standards of quality:

'In our experience vulnerable adults often have only a limited sense of what is going on in the judicial process. They are often confused and there is often little time spent with a Duty Advocate. The quality of the Duty Advocates seems to vary quite a bit. We are aware of some excellent practice but have also heard stories that seem to suggest that Duty Advocates don't really listen or represent people well; that they don't care.'

Comments from another charity / support worker reiterated the importance of Duty Advocates being able to recognise if a person has learning disabilities or autism, as they may have additional needs. There was concern that although some charities (e.g. United Response IoM Advocacy Service<sup>20</sup>) can support some individuals when they see the Duty Advocate, there could be other people who do not receive help:

'The Duty Advocate may not know a person has a learning disability or autism as their range of difficulties may not be immediately obvious... Some of these people however may have difficulties which would affect their capacity to plead for instance. This is a difficult challenge for police and advocates but perhaps more training in recognising potential learning disability and autism might be one way forward. People with learning disabilities will generally need more time than can sometimes be available on the day. When supporting a person with a learning disability, I will therefore generally support them to see an advocate prior to the court date and apply for legal aid if applicable. This gives the advocate the time to more fully consider the issues including potentially requesting capacity assessments. I am guessing there might be quite a few people who need this kind of support and who don't receive it... I feel this whole issue is worthy of further exploration.'

Comments from 'Others' were all in support of the Scheme, including one person with personal experience of the Scheme:

'It seems to work perfectly well as it is.'

**Q44 SUMMARY:** 43 people (21%) provided responses, which should be considered as adding to those provided in Q37 by Court Duty Advocates and the IoM Law Society.

- 16 respondents (36%) expressed broad support for the Court Duty Advocate Scheme in its current form and a number of respondents urged caution against making changes to a scheme that is considered to work well.

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<sup>20</sup> United Response IoM Advocacy Service is an independent service which supports adults with learning disabilities <https://www.gov.im/media/15469/uradvocacyleafletfinal2sep0.pdf>

- Concern was expressed by service users regarding the limited time that defendants have available to spend with the Court Duty Advocate to discuss their case and complete Criminal Legal Aid applications. Other issues that were raised included variability in the quality of advice provided by some Duty Advocates and their levels of experience. Risks to the future availability of Court Duty Advocates was also highlighted if there is no incentive for younger Advocates to undertake the work, and this was linked to a call for Legal Aid rates of pay to be increased. Concern was also expressed regarding the timekeeping of a small number of Prosecution Advocates.
- Suggestions included employing a Court Duty Advocate; reintroducing the process whereby Duty Advocates could be notified of their requirement to attend out of hours Courts, and for details of translators to be made available. The importance of a Duty Advocate’s awareness and understanding of adults with learning disabilities was also raised.

**FEEDBACK:** Some comments regarding timekeeping were also raised during Criminal Legal Aid workshops held with Advocates (see section 5.1) before the consultation was launched, which HM Attorney General offered to bring to the attention of the Prosecutions Division.

#### 4.10. Full Criminal Legal Aid, vulnerable people & criminal appeals

Q45. Are you an Advocate who has carried out work under a Criminal Legal Aid certificate in the Isle of Man or would like to do so in future?

This question was for **all respondents**. 194 people (96%) answered the question, and the results are shown in Table 31 below.

**Table 31. No. of Advocates who have carried out work under Criminal Legal Aid certificate**

Response	Number	%
Yes	30	15
No	164	81
Not answered	9	4
<b>Total</b>	203	100

30 respondents<sup>21</sup> (15%) said that they were an Advocate who had carried out work under a Criminal Legal Aid certificate in the Isle of Man or would like to do so in future. Of these, 29 respondents identified as Advocates / Judiciary members and 1 respondent identified as a retired Advocate.

**Q45 SUMMARY:** 194 people (96%) answered the question and 30 respondents (15%) indicated that they had carried out work under a Criminal Legal Aid certificate in the Island or would like to do so in future.

<sup>21</sup> 1 additional respondent answered ‘Yes’ but they did not identify as a current or former Advocate/Judiciary member so their response was not included.

Q46. Have you ever received legal advice and representation from an Advocate under a Criminal Legal Aid certificate?

188 respondents (93%) answered the question, and the results are shown in Table 32 below.

**Table 32. No. of people who have received legal advice/rep under Criminal Legal Aid cert.**

Response	Number	%
Yes	22	11
No	165	81
Rather not say	1	<1
Not answered	15	7
<b>Total</b>	203	<100

**Q46 SUMMARY:** 22 respondents (11%) indicated that they had received legal advice and representation from an Advocate under a Criminal Legal Aid certificate.

Q47. Would you like to see any changes to the way in which Criminal Legal Aid certificates are assessed and/or issued?

Those who answered 'Yes' were asked what changes they would like to see, and a text box was provided for all comments.

188 respondents (93%) answered the question, and the results are shown in Table 33 below.

**Table 33. Changes to assessment/issue of Criminal Legal Aid certificates**

Response	Number	%
Yes	43	21
No	64	32
Don't know	81	40
Not answered	15	7
<b>Total</b>	203	100

41 comments were made.

43 respondents (21%) said they **would like to see changes** to the assessment and/or issue of Criminal Legal Aid certificates. Of these, 10 had been through the criminal justice system, 8 were members of the public, 10 were Advocates / Judiciary members, 10 were criminal justice system employees, 1 was a Tynwald Member, and 4 were 'others'. 39 respondents provided further comments.

Comments from respondents who had been through the criminal justice system made reference to making full Criminal Legal Aid universally available and free of charge to all defendants. There was also a suggestion that an Advocate's experience and skill should be aligned to the criminal charges faced by a defendant. Others called for Criminal Legal Aid certificates to be issued in the name of the defendant and not the Advocate, and for

certificates to cover disbursements. It was also suggested that UK lawyers should be permitted to represent defendants in the IoM:

'If you cannot secure one and pay yourself one should be provided on legal aid. His experience and skills should match the crime.'

'The grant of legal aid is based on the eligibility of the defendant. The certificate should be issued in the name of the defendant and be capable of being drawn upon by the first appointed [and subsequent if any] advocate. This would avoid delays where there has to be a change of advocate or assistance required from an additional party.'

'The certificate should be in the name of the accused, & cover external expert advice (from the UK) etc.'

'Have Advocates from the mainland able to take cases on.'

There was also 1 additional respondent who had been through the criminal justice system, who answered 'Don't know' to Q47, but then suggested a change regarding joint income assessments:

'Do away with joint income assessment and appraise person affected and in need.'

Members of the public raised concerns that the current financial assessment criteria for Criminal Legal Aid are outdated (they are set out in 1993 Regulations<sup>22</sup>) and called for eligibility to be extended. Conversely, others called for stricter scrutiny and suggested that repeat offenders should not be eligible for Criminal Legal Aid:

'An update to the 1993 Act. It is outdated. Review the amounts paid to Advocates for this role. As part of their training it should be considered to do some voluntary work.'

'Fair realistic assessment of a person's financial capabilities. I don't believe people are given enough help.'

'More tighter scrutiny.'

'Repeat offenders of serious crimes should not be considered for financial help.'

The IoM Law Society made a number of suggestions including Criminal Legal Aid certificates and contribution notices to be issued within 7 days; facilitation of electronic applications; payment of Legal Aid bills within a defined period following submission, and guidelines for application:

'The IOMLS suggest that legal aid certificates and notices of contribution should be sent out within 7 days, in order not to delay the ability of the Advocate to progress the case.'

Consideration should be given to the submission of criminal legal aid applications electronically, although proper facilities would have to be made available at the Court to facilitate such online submission as it is the defendant who completes the legal aid application, assisted by the Advocate, not the Advocate who completes the application.

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<sup>22</sup> Criminal Legal Aid Regulations 1993 <https://www.gov.im/media/1351165/criminal-legal-aid-regulations-1993.pdf>

Payment of legal aid bills should be made within a defined period of time following submission, e.g. 28 days, unless the bill is large. There should also be clear guidelines to be applied by Advocates and the Costs Assessment Officer to ensure consistency of approach, for such things as collection of medical records, research of discrete points, pleas of mitigation for multiple offences etc.'

Each Advocate / Judiciary member who said they would like to see changes provided comments to support their views. The key issues were in regard to current financial thresholds; concern that completion of the application form is time consuming and repetitive, and the importance of Criminal Legal Aid being granted expeditiously to allow the Advocate to begin defending their client at the earliest opportunity. Suggestions for change included extending eligibility to allow more / all people to receive full Criminal Legal Aid; simplifying the application form and/or providing an online application with automatic assessment, and removing responsibility for issuing certificates away from the Court to allow the Judiciary to focus on the trial process rather than its funding:

'The means test threshold is too low. When charged with a criminal offence, this is probably the most stressful and difficult time of the Defendant's life. To add to that a worry about legal bills for those who are the breadwinners in a family is probably almost unbearable.'

'The threshold for qualification for Legal Aid could be raised. There are also issues with people entitled to Legal Aid through benefits receiving Legal Aid, and the bar for qualifying for benefits could also be reassessed.'

'Inclusion of further benefits for automatic qualification, higher threshold so LA is more obtainable.'

'Legal Aid should be available to all regardless of means. Those that can afford to pay privately should be encouraged to use private paying advocates but ultimately people can be wrongly accused and if they are in the middle band of working class individuals who do not qualify on the means test, criminal charges could be absolutely crippling financially with the charges themselves potentially threatening jobs and livelihoods. Everyone should have access to legal advice in order to attempt to preserve their liberty.'

'The form is long and repetitive in places - the Applicant's details are asked for twice in the same form - in Part 1 and Part 3, Section 1. Making the form easier and more straightforward to fill out and provide evidence for would make the process less stressful for applicants.'

'Legal aid should be granted expeditiously as it is often vital that work begins immediately.'

'Criminal Legal Aid certificates ought not to be issued by the court - rather by the certifying officer upon application through the defendant's proposed advocate. The judiciary is properly concerned with the trial process rather than its funding - similarly the defendant's advocate is in a far better position to assess - and react to - any changes in either the defendant's financial eligibility and/ or merits eligibility.'

Criminal justice system employees raised a number of concerns including limiting or removing the provision of Legal Aid to repeat offenders, including appeals; inconsistencies between Advocates' charges, and the potential for those who neither qualify for Criminal Legal Aid nor can afford private legal fees to plead guilty for a crime they have not committed. Suggestions included widening eligibility, and introducing Fixed Fees or caps to better control expenditure:

'Previous offences should be taken into consideration prior to granting legal aid. Why should someone that continually fails to show remorse for their actions be looked after by the hard working tax payer?'

'There seems to be recidivists who habitually contest matters with little prospect of success regardless of cost to the taxpayer, as it costs them nothing.'

'Where is the information relating to costs for an offence, eg Advocate A charged X and Advocate B charged Y? The setting of appropriate fixed fees would ensure cases are dealt with efficiently rather than to produce the highest fees.'

'Tighter regulation of the hours accounted for by advocates under the scheme. I have had observational experience of advocates claiming time under the legal aid scheme whilst they are not with their client i.e. in Court.'

'A more realistic view. The financial means test does not sufficiently take into account outgoings. I for instance could not possibly afford the services of an advocate, yet wouldn't qualify for legal aid. That position might encourage me to plead guilty to something I hadn't done just through lack of means to contest it.'

'Consideration should be given to expanding legal aid to victims of domestic abuse for child matters.'

'Level of income should be increased and the sliding scale could be extended to cover more 'bands'. It shouldn't just be disposable income either (depending on how that is determined, as prior loan commitments should not be the Court's issue).'

'I would like to see the amount of time advocates can spend be capped, or the criteria for legal aid be raised, I feel too much of the tax payers money is being used unnecessarily. As previously stated, the true cost may not be calculated correctly as legal aid is likely to increase the chances of the case going to trial.'

The Tynwald Member expressed the view that no person should be left without the opportunity to receive legal defence:

'Everyone who applies needs to be given some level of assistance - no-one should be left out of opportunity to be defended in the system. If people aren't being caught by intervention, then those managing and supporting the system need to ask; why?'

'Others' referred to concerns about requirements to reapply for a Criminal Legal Aid certificate under certain circumstances if they apply to a defendant; a call to amend the Proceeds of Crime Act 2008 to allow high net worth individuals to pay for private criminal defence; a suggestion that certificates should be made in a defendant's name, and a suggestion that contributions could be fairer:

'There is now a change where we must reapply for a legal aid certificate each time a person is charged or summons with a new offence when there is a certificate in place. For some people this will mean that certificates will be missed and the advocates will not be paid. The old system of extending to cover the new offences was much better.'

'The means test should be changed to rule out people of net high worth who in turn should be permitted by an amended POCA (as per England & Wales) to pay reasonable remuneration for their lawyers.'

'The certificates made out to the accused, and the accused should have some ability to track exactly what advocates are doing, or not doing, for the monies drawn.'

'...thinking of the hard working tax payers who may just come above the requirement for legal aid would it not be possible for the people on benefits (over 18`s) to contribute something out of their benefits as they receive far more than I do on my state pension which I contributed to my entire working life.'

64 respondents (32%) who said they **would not like to see changes** to the assessment and/or issue of Criminal Legal Aid certificates, 9 had been through the criminal justice system, 27 were members of the public, 23 were Advocates / Judiciary members, 3 were criminal justice system employees and 2 were 'Others'.

2 respondents provided further comments, both of whom were Advocates / Judiciary members who expressed their support for the current system:

'The current way the process works should not be changed. Having the court adjudicate on merits is hugely efficient and any change to it is only likely to incur further and significant administration costs.'

'The current system works well. The assessment by the Court is particularly good, and more expedient than the process for civil legal aid which goes via the Legal Aid Office.'

81 respondents (40%) **did not know**, and 15 respondents (7%) **did not answer**.

**Q47 SUMMARY:** 188 respondents (93%) answered this question and 41 comments were made.

- 81 people (40%) did not know if any changes should be made to the way in which Criminal Legal Aid Certificates are assessed and/or issued.
- 64 people (32%) said they would not like to see changes. Comments supported the current arrangements, and in particular the efficiency of the Court in assessing Criminal Legal Aid applications. Concern was also expressed that if these processes were to be moved away from the Court, they would become slower and more expensive to administer.
- 43 respondents (21%) said they would like to see changes. Concerns were expressed that limits set out in 1993 legislation form the basis of financial assessments, and that these limits are outdated and no longer fit for purpose. There was also concern that completion of the application form is time consuming and repetitive, with suggestions that it could be simplified and an online application process put in place. The importance of certificates and contribution notices being granted expeditiously was also highlighted, in addition to payment of Advocates' invoices within a defined period. It was also suggested that there should be clear guidelines to be applied by Advocates and the Costs Assessment Officer (based in the Courts) to ensure consistency of approach re: invoices.

In terms of eligibility criteria, suggestions ranged from widening it so far as to provide universal Criminal Legal Aid which would be free of charge for all, to limiting or withholding its provision for repeat offenders. The issue of access the justice was

also raised as a concern for those people who neither qualify for Criminal Legal Aid nor can afford to pay for an Advocate at private rates.

Alternative views were also received, including issuing Criminal Legal Aid certificates in the name of the defendant rather than the Advocate; replacing joint income assessments with single, and for certificates not to be issued by the Court. It was also suggested that changes should be made to the Proceeds of Crime Act 2008 to allow high net worth individuals accused of a crime to pay for their own private criminal defence. Allowing UK lawyers to provide criminal defence to IoM defendants was also suggested.

- 15 respondents (7%) did not answer.

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Q48. If a person's average weekly disposable income exceeds £191, or their disposable capital exceeds £10,000 they are legally required to pay a contribution towards their legal costs. These limits are set out in legislation - do you think they are set at the right level?

194 respondents (96%) answered the question, and the results are shown in Table 34 below. Those who answered 'No' were asked what income / capital amount would be appropriate or whether the financial means text should be based on other criteria. A text box was provided for all comments.

**Table 34. Views on whether financial eligibility limits are at the right level**

Response	Number	%
Yes	56	28
No	87	43
Don't know	51	25
Not answered	9	4
<b>Total</b>	<b>203</b>	<b>100</b>

92 comments were made.

56 respondents (28%) said that financial eligibility levels **were set at the right level**. Of these, 4 had been through the criminal justice system, 27 were members of the public, 12 were Advocates / Judiciary members, 9 were criminal justice system employees, 2 were charity / support workers; and 2 were 'Others'. 6 respondents made comments.

Members of the public who said that the financial limits were set at the right level also proposed changes to the current arrangements:

'No means testing.'

'Should be reviewed with inflation.'



An Advocate / Judiciary member made a comment in support of their response, with a suggestion that contributions and their respective bands should be the focus of consideration:

'These are the limits "triggering" the requirement for contributions and are reasonable. It may be that the enquiry should be focused not on the triggering limits but rather the amount of the contributions and their respective bands which is where it would be more effective to introduce changes.'

A criminal justice sector employee provided a response, and they expressed concern that some people of considerable financial means are able to obfuscate their wealth:

'People's disposable means are a lot lower these days and therefore some people of means will have set out their finances in a way where they can show they do not have assets in their own name but they are beneficiaries of trusts or companies and their lifestyle shows the public that they are people of means even though they may not have assets in their own name.'

One 'other' respondent provided a response. They suggested that different criteria should be used as disposable finances can diminish very quickly in some circumstances, although no further details of the alternative criteria were provided:

'It should be based on other criteria. "Disposable" capital and income very quickly reduce to nothing once assets are frozen or people incarcerated.'

87 respondents (42%) said that financial eligibility levels **were not set at the right level**. Of these, 21 had been through the criminal justice system, 26 were members of the public, 24 were Advocates / Judiciary members, 8 were criminal justice system employees, 1 was a charity / support worker, 1 was a Tynwald Member and 6 were 'others'. 73 of these respondents provided further comments.

Of those who had been through the criminal justice system, there was broad support for increasing both weekly and capital limits, with consideration given to cost of living increases. There was also concern that financial determinations lack transparency, and the definition of factors such as disposable income and disposable capital are not clear. It was also suggested that only available funds (i.e. not frozen) should be taken into consideration for the means test:

'£250+ a week. £15,000 capital'

'I think £10,000 pa is very low, based on living costs in the Isle of Man. A more reasonable level would be £15,000 at a lower contribution rate.'

'Disposable income should be raised to £250 pw, and then index linked.'

'They do not seem to have kept pace with the cost of living.'

I'm not sure but definition of disposable income is questionable & variable & why should somebody on a low income be penalised because they've been able to save.

'Any test should only take account of free funds, available and not affected by 3rd party interests or freezing orders.'

Members of the public had similar concerns regarding the limits being set too low and there was broad support for financial limits to be increased. Suggestions for change included basing eligibility on earnings above the average wage; widening the contribution bands to make the scheme fairer, and taking into account whether an individual is in debt. Some respondents also expressed uncertainty at the definition of 'disposable income' and 'disposable capital', and there was some confusion regarding the terms. One person also expressed concern that higher rent payments can enable people to qualify for Legal Aid:

'£191 is not a high amount.'

'This needs to increase with cost of living.'

'This should be raised, seems rather low.'

'The minimum wage times 40 hours per week, 10k is far too low.'

'It should be payment if they earn more than average wage on IOM. If they earn more than average wage they should pay [on a] sliding scale percentage.'

'If legal aid is to be determined by a person's income (what does "disposable" mean anyway?) then if you are just over the limit you will have to pay even though you are no more able to pay than someone just under the limit. Why not have a sliding scale of contributions starting at zero and rising to a point where a person funds their legal assistance entirely by themselves?'

The contribution should be up to a fixed amount i.e. £500 or variable depending on the overall cost of the case by % of earnings up to the fixed amount.

'An individual's debts should be considered. Heavily indebted individuals are likely to be incapable of repaying an additional lump sum in legal costs regardless of whether their disposable income exceeds £191 per week.'

'Even most working people do not have a disposable income of £191 a week. What is disposable income?'

'There are people who pay higher rent so they can still access legal aid, as their disposable income is then low enough. That needs to be addressed.'

The IoM Law Society made suggestions regarding the financial means test, including a disposable income amount beneath which individuals should receive free Criminal Legal Aid and a disposable income range within which individuals could make contributions. The Society also expressed concern that there are financial assessment disparities across different Legal Aid schemes, including Civil Legal Aid allowances being more generous than those for Criminal Legal Aid, despite the potential for an individual to lose their liberty in a criminal matter:

'Please see answer to question 13. Additionally, the IOMLS considers that it is appropriate for the financial means test to be amended. Free legal aid should be available to those with a weekly disposable income of below £250, with those of a weekly disposable income between £250 and £325 being eligible with a contribution.'

There is also a disparity between the means test for Green Form, civil legal aid and criminal legal aid, which makes no sense and is unjust. Green Form and civil legal aid do not take into account savings of below £13,000, but criminal eligibility does not ignore

such savings. There should be parity across all schemes and if one is to be more lenient, it should be criminal as a person's liberty is at stake.'

The majority of Advocates / Judiciary members indicated that the current limits, as set out in the Criminal Legal Aid Regulations 1993<sup>23</sup>, are too low and should be raised to bring them up to date. Concern was also expressed that the term 'disposable income' was misleading and does not accurately reflect the money available to an individual, which can lead to individuals being unable to afford contributions and Advocates providing pro-bono services to help their client. The disparity between capital allowances for Criminal Legal Aid (£10,000) and Civil Legal Aid (£13,000) was also raised, and suggestions for higher figures were put forward (£15,000 / £20,000 / £30,000). Other suggestions included making the means test clearer and more transparent; removing the means test for those at risk of custody, and undertaking a root and branch review to assess what financial limits would be fair, which could include consideration of the impact and cost of an individual who is ineligible for Criminal Legal Aid self-representing in Court:

'I do not know when the means test was last considered. The means test in Civil Legal aid is based upon the calculation for EPA which sets a capital amount of £13,000. The means test needs to be clearer, more transparent and brought up to date in relation to income and capital limits.'

'The limit on weekly disposable income should be increased - disposable income isn't always actually that 'disposable' particularly if people are working minimum wage and have families.'

'The green form and most benefits discount the first 13,000 capital. Disposable income' is not an accurate description as the application does not take into account many costs that an applicant may have.'

'Costs of utilities, living expenses, child care costs etc should be factored into this. Disposable in this sense should be free and clear of necessary living costs.'

'I can only go on anecdotal evidence but I have found that often clients are unable to afford the legal aid contribution when their income exceeds the £191 per week. Even where there is disposable capital over £10,000 there are often reasons why that cannot be accessed. In those circumstances I have on occasion provided services on a pro-bono basis and I'm certain other advocates do this also, however, if this is occurring then it would indicate that thresholds are perhaps set a bit low.'

'Both figures are too low. They should be higher. "Disposable income" is misleading as the calculation does not take into account bills and household expenses. It takes a long time to save £10,000 especially if your disposable income is £191 per week and needs to cover all household expenses yet it would not take long for an advocate's private rates to wipe that out. I would suggest savings limit of £15,000.00 should be preserved. The "disposable income" calculation should take into account household expenses such as rates, tv licence, phone, broadband, electricity, gas and car expenses rather than the limit.'

'The amounts should reflect the reality of the modern age and the amounts should be reviewed. The Office of Fair Trading deal with low income families and those with debts and they can probably provide some useful information.'

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<sup>23</sup> <https://www.gov.uk/media/1351165/criminal-legal-aid-regulations-1993.pdf>

'The income level is probably too low and not enough allowance taken for basic cost of living in assessing disposable income. The Capital sum of £10,000 should rise to a more sensible £20,000. The capital allowance for the family home is a ludicrous proposition as how can that person liquidate the property to pay a contribution.'

'I do not think criminal legal aid should be means tested for those at risk of custody. For other matters the limit should be set at £400 per week and saving over £30,000.'

'There would have to be a root and branch assessment of what is fair and the impact of the current levels on representation. Plucking figures out of the air without a proper analysis of the current situation is unhelpful. For instance, does someone ineligible for legal aid then try to 'go it alone' and self-represent? What impact does that have on the justice system in terms of extra resources required at Court to assist a litigant in person?'

Criminal justice system employees were also broadly supportive of a review to increase limits. Wider issues in relation to access to justice were also raised, in particular the potential cost and unfairness if a person is left with no option other than to self-represent:

'The availability of criminal legal aid should be available to all as a matter of course, but with contributions made according to income. What is the cost of the system and slowing down matters when someone is forced to defend themselves - how can this be considered fair in a decent society?'

'It should not be solely based on financial...why make it all about access to cash?'

'Need a review.'

A charity / support worker suggested an increase in disposable income and capital limits:

'Weekly £216. Capital £15,000.'

A Tynwald Member suggested potential alignment with national reference points for financial limits:

'I feel that they need to be set in line with Treasury Income Tax thresholds, or even better - with the Living Wage.'

The General Registry also suggested that financial limits should be reviewed as they appear to have been the same since 1993, and reference was made to the 'cliff edge' of contributions:

'Consideration needs to be given to these limits as they appear to have been the same for over 25 years. £10K seems OK for capital but the disposable calculations should be considered further: if a person has £191 or less per week they get legal aid free; if they have £192 per week they have to pay £33 per week for a total of 26 weeks = £858. This difference seems quite a cliff edge for an extra £1 per week.'

'Other' respondents gave a range of views and suggestions. It was apparent that the term 'disposable income' could be interpreted in different ways, as it was suggested that the figure of £191 per week was either too low or too high, depending on the respondent. It was also suggested that a person's ability to pay should be taken into account when considering their financial eligibility, as they could be supporting a family. There were suggestions to increase the limits by some, although another was concerned that the figure

was in excess of a state pension, and another suggested that the capital figure should be reduced:

'That weekly income should be compared with the person's ability to pay, are they supporting a family on that amount?'

'It should be increased, it's been the same level for quite some time.'

'Those levels are very low and should be adjusted to take into account a person working full time in a minimum wage job. Presumably you realise that a person working more than 24 hours at the minimum wage of £7.85 has to start contributing towards legal aid. That is simply unsustainable. Minimum wage is just that a subsistence amount. A full time job on minimum wage is £290 pw gross!'

'The net disposable income of £191 is quite high & a contribution could be made out of this amount, this is far in excess of a person's state pension who have contributed their entire life, including myself.'

'The capital figure should be reduced but defence costs should cover its restoration upon acquittal.'

51 respondents (25%) said that they **did not know** if financial eligibility levels were set at the right level. 13 of these respondents provided further comments.

A person who had been through the criminal justice system suggested that contributions should be graded and loss of income should be taken into account:

'The level of contribution should be graded, rather than based on the likely cost of defence. The amount of regular income lost by the accused should count - and freezing orders.'

Members of the public referred to the definition of 'disposable income' and suggested that financial limits should keep pace with inflation:

'This depends on how 'disposable' is framed.'

'Any limits set should move annually with inflation.'

Advocates / Judiciary members made observations on the implications of financial eligibility, particularly in long running cases, and there was a request for data on how many applicants are assessed as ineligible for Criminal Legal Aid by a narrow margin and the impact this has on their access to justice. Others considered that the question was outside their area of expertise or was not appropriate for them, as an Advocate, to answer although one respondent did suggest that financial limits should keep pace with inflation on an annual basis:

'I think the amount should depend upon the seriousness of the crime charged with. £10k would be eaten up fast in a long running, serious crime case.'

'I think it shouldn't necessarily be as black and white as that for those that are say on £192 but have a particularly time consuming case and wouldn't be able to afford the contribution for such a large amount of time.'

'Consideration of the impact on specific individuals whose applications were rejected on the means test in circumstances where they were close to the threshold could usefully inform an assessment of the implications for access to justice.'

'This is difficult, and outside my expertise. There will always be a point at which some fall just inside and some fall just outside. Whatever figures are set should move annually with inflation.'

'That's a political issue and not one for the advocates to answer.'

Further comments from 'Others' included the suggestion that financial limits should keep pace with inflation, and there was a request for clarification and further detail on how financial assessments are carried out (which are done by the Court):

'Where there are such limits they should always be regularly revised to take account of inflation.'

'This question is potentially unrepresentative. If you are going to make that statement then you need to say how the calculations are fully worked out. Is this the only thing that goes into the calculation????'

**Q48 SUMMARY:** 194 respondents (96%) answered this question.

- 56 respondents (28%) indicated that financial eligibility limits were set at the right level.
- 87 respondents (43%) indicated that financial eligibility limits were not at the right level. Almost half said the weekly disposable income limit should be increased to £250 or above. Others said that the disposable capital threshold should be increased to £15,000 or above, and it was also suggested that any financial limits should keep pace with annual inflation. Some caution was expressed against suggesting revised figures without further consideration of other factors, such as the cost of self-representation for a person assessed as ineligible for Criminal Legal Aid.

It was also clear that the terms 'disposable income' and 'disposable capital' (as referred to in the Criminal Legal Aid Regulations 1993<sup>24</sup>) are not easy for people to understand. There were also concerns that the means-testing process, and the calculation of financial contributions, are complex and it was suggested that they could benefit from simplification and / or more transparency. 'Banding' for financial contributions was also raised, and in particular the extension of bands and /or revision of contribution levels, which may also reduce the current 'cliff edge' that exists for contributors.

- 51 respondents (25%) said they did not know.
- 9 respondents (4%) did not answer.

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<sup>24</sup> <https://www.gov.im/media/1351165/criminal-legal-aid-regulations-1993.pdf>

Q49. A vulnerable person can be defined as a child or adult who is unable to take care of themselves or protect themselves from harm or exploitation due to age, illness, disability or trauma. Should a person who has been assessed as being vulnerable be automatically entitled to Criminal Legal Aid, regardless of their financial means?

This question was in two parts. In the first part, respondents chose one of three options to indicate whether they thought a vulnerable person should be automatically entitled to receive Criminal Legal Aid, and a text box was provided for comments.

193 respondents (95%) answered the first part of the question, and the results are shown in Table 35a below.

**Table 35a. Views on whether a vulnerable person should be automatically entitled to receive Criminal Legal Aid**

Response	Number	%
Yes	119	59
No	56	28
Don't know	18	9
Not answered	10	5
<b>Total</b>	203	101

54 comments were made.

119 respondents (59%) said that vulnerable people **should be** automatically entitled to receive Criminal Legal Aid. Of these, 22 had been through the criminal justice system, 40 were members of the public, 29 were Advocates / Judiciary members, 12 were criminal justice system employees, 5 were charity / support workers, and 11 were 'Others'. 37 provided comments.

Of those who had been through the criminal justice system, there was recognition of a person's human rights and concern that a vulnerable person should be given access to legal advice and representation:

'It's obvious everyone should be represented under basic human rights to defend themselves.'

'As they are vulnerable they should be given the best help possible.'

'Vulnerable persons are not better equipped to [deal] with financial matters than they would be in dealing with the court process. They need help.'

Members of the public made reference to vulnerable people being at risk of exploitation and the importance of supporting individuals who find themselves in the criminal justice system. Other comments sought to strike a balance between providing Criminal Legal Aid to vulnerable people and putting in place adequate checks and balances to ensure that public funds are not misused:

'By the very nature of being vulnerable to exploitation and harm, the likelihood of involvement in crime increases. Both in terms of those seeking to exploit by inflicting criminal actions upon said vulnerable individuals as well as perhaps becoming involved in their own right in criminal activity for a variety of societal reasons.'

'If the individual is vulnerable then there should be no question of checking their financial means to provided legal aid.'

'Vulnerable people need someone independent fighting their corner more than most.'

'Yes, but the costs must be monitored, like any other person eligible for legal aid, to ensure fairness.'

'It may be that people would exploit this 'vulnerable' requirement to seek access to full LA when they do in fact have the financial means to pay and are seeking to avoid using their own funds. By withholding full LA until 'vulnerability' confirmed by e.g. medical professional this may prevent some abuse of the system.'

Advocates / Judiciary members made reference to the measure of a caring society and the importance of protecting the rights of vulnerable people. There were calls for children aged 16 and under to be automatically granted Criminal Legal Aid to ensure they receive the right level of legal advice and representation without being under financial pressure from their parent(s), or placing their parent(s) under financial pressure. Another issue raised as being faced by vulnerable people included circumstances in which a vulnerable adult may be married / living with another person who may not cooperate in the Legal Aid application process and / or agree to make financial contributions. The issue of Court Duty Advocates currently providing repeated representation for children aged 16 and under was also raised as a concern:

'The measure of a caring society is the way they protect the vulnerable. All efforts should be made to ensure that the vulnerable are represented correctly and by skilled professionals. Further, if they are vulnerable, then presumably they have no means of consenting to their funds being used for their defence.'

'The purpose of advocates is to provide the public with legal advice so they know their rights. For those who aren't vulnerable they may be acutely aware of their rights however often those vulnerable members of our society do not understand the value of their co-operation to either party and need support.'

'The first issue for children is who is the contributor to their upkeep, single parent families, which parent pays? The parents will have to pay fines etc for the child making them pay for a lawyer is likely to result in children being pressurised into pleading guilty to "save" the parents money. Legal Aid should be automatic for under 16s and then assessed for those over 16 but then on the defendant's means and not their parents' means. Vulnerable people are usually in receipt of benefits so can be dealt with. A vulnerable person who is married / living with someone is again in a difficult position as the spouse / partner might not cooperate in compiling the legal aid assessment or refuse to pay a contribution particularly if the relationship, has broken down but they still live in the same house. More flexibility in the system is needed to cover these situations.'

'As a duty advocate I am aware of parents (low to middle income families) of those 16 and under who are struggling. This sometimes means they use the court duty advocate time after time which is not always appropriate or best for the vulnerable person. In particular the duty advocate can be faced with having to deal with a complex multi handed sentencing at very short notice.'

'Children should be given automatic full legal aid. They are vulnerable by their very age and should be protected. Those with disabilities who are incapable of making informed decisions themselves should be given automatic full legal aid. I struggle to see why someone should be entitled just by virtue of old age or trauma.'



A criminal justice system employee expressed concern for victims of domestic abuse:

'Victims of domestic abuse who struggle to get representation should be able to readily access the scheme.'

One charity / support worker was in favour of Criminal Legal Aid being automatically available to vulnerable people, on the basis that a workable solution for people of sufficient means to pay their own legal fees may not be easy to achieve:

'I have said yes as probably the better option. I would prefer not to risk people who need access to representation not getting it. If however a scheme could be devised which ensured people did not do without representation but people who could easily pay, did pay, that would seem reasonable. I am just not sure how easy that would be to achieve.'

Homelessness charity *Grain* referred to vulnerable people often falling through the system, and was in favour of making Criminal Legal Aid automatically available:

'Vulnerable people, by their very nature, often fall through the criteria of most systems. There are always exceptions to any set of rules and it is often the most vulnerable who suffer from a rigid set of regulations. We would be in favour of making sure that full access to legal aid, at all levels, is as easy as possible, and free, for all vulnerable adults regardless of other circumstances.'

'Others' made reference to how research has shown that children or adults with learning difficulties and/or mental health problems are particularly vulnerable within the criminal justice system. Reference was also made to the European Convention on Human Rights<sup>25</sup> and the potential for a vulnerable person who has the financial means not to be able to make a decision that may be in their own best interests:

'See ECHR'

'Yes a vulnerable person is just that and should be entitled to legal aid even if technically they have the means to pay as they may not be capable of making the correct decision in those circumstances.'

56 respondents (28%) said that vulnerable people **should not be** automatically entitled to receive free Criminal Legal Aid. Of these, 5 had been through the criminal justice system, 24 were members of the public, 12 were Advocates / Judiciary members, 11 were criminal justice system employees, 1 was a charity / support worker, and 3 were 'Others'. 14 provided comments.

An individual who had been through the criminal justice system acknowledged additional support needs, balanced against ability to pay:

'Such a person will need more support, but if they are a millionaire could pay for it.'

One member of the public referred to wealthy parents paying their child's legal fees, and another to the individual assessment of cases:

'If parents [are] rich they should pay for representation for their children.'

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<sup>25</sup> [https://www.echr.coe.int/Documents/Convention\\_ENG.pdf](https://www.echr.coe.int/Documents/Convention_ENG.pdf)

'Each case should be considered on its own merit.'

The IoM Law Society's response made reference to an individual's ability to pay, and stated that most vulnerable people entering the criminal justice system already qualify for Criminal Legal Aid by virtue of their financial circumstances:

'Vulnerability comes in many different forms and can affect members of society regardless of financial position. However, the IOMLS does not consider that there should be a blanket disapplication of the financial means test because of vulnerability. Those from an affluent background, should pay for their legal advice regardless of vulnerability. In any event, most vulnerable people entering the criminal justice system are eligible for legal aid based on their financial circumstances.'

Some Advocates / Judiciary members expressed the view that an assessment of vulnerability should not in itself preclude a person of sufficient financial means from contributing towards their legal costs. Reference was made to ensuring that additional requirements should be taken into consideration and in particular any vulnerability that could disadvantage a person within the criminal justice system. There was also an expectation that proof of vulnerability should be available in such cases to ensure that Criminal Legal Aid funds are allocated to the most vulnerable individuals:

'In principle such persons should, of course, have unfettered access to representation but it does not follow that their condition fairly does away with a means enquiry. While unlikely, in a scenario where the defendant has a mental disability (perhaps only of recent origin) but is possessed of significant means, why should he / she not be required to contribute?'

'A vulnerable person may have substantial means but in assessing eligibility their additional requirements due to their vulnerability should be taken into consideration.'

'I could be a millionaire in a wheelchair. My disability shouldn't make a difference to eligibility. When it matters is if a person's vulnerabilities put them at a disadvantage in an adversarial legal system.'

'Anyone can claim to be vulnerable. Unless there is proof that they are under the Mental Health Team or their doctors then it should not be a carte blanche that they receive full legal aid. That should be protected for those who are the most vulnerable.'

Criminal justice system employees' comments focused on affordability within the individual's wider family, and living costs being applicable to all. Concern was raised in relation to positive discrimination, and the option to 'disapply' the means test being an option which is already available in appropriate cases which could be a better route to take in cases involving vulnerable individuals:

'They should not be automatically entitled as they may have family members that can support them financially.'

'Living costs are no different to vulnerable people and everyone else.'

18 respondents (9%) said they **did not know** if a vulnerable person should be automatically entitled to Criminal Legal Aid, and 3 provided comments.

An Advocate / Judiciary member suggested that answers to this question should have already been known:

'Sorry but should this not be something you know yourselves or get expert advice on?'

A Tynwald Member sought further information on potential demand and costs:

'It needs looking into - how many people would fall into this category? How much do these people need it to keep their mental and physical health above the line? How much would it cost Treasury? Can we afford it?'

For the second part of Q49, those 119 people who answered 'Yes' to automatic entitlement were asked which Criminal Legal Aid Scheme(s) this would apply to: *Criminal Green Form / Full Criminal Legal Aid*. Respondents were invited to note that the Police Station Duty Advocate and Court Duty Advocate Scheme were already universal.

114 (96%) of 119 respondents answered this part of the question and the results are shown in Table 35b below. As respondents could choose one or both Criminal Legal Aid schemes, the number of responses does not add up to 119 and the percentage response rate is calculated as a proportion of 119.

**Table 35b. Views on Scheme entitlement for a vulnerable person**

Response	Number	%
Criminal Green Form	82	69
Full Criminal Legal Aid (under a certificate)	102	86
Not answered	5	4
<b>Total</b>	N/A	N/A

Table 35b shows that of those 119 respondents who would support automatic entitlement for vulnerable people, 82 people (69%) said this should apply to Criminal Green Form and 102 people (86%) said it should apply to full Criminal Legal Aid.

**Q49 SUMMARY:** 193 respondents (95%) answered this question and 54 comments were made.

- 119 people (59%) said that a person who has been assessed as being vulnerable should automatically qualify for Criminal Legal Aid. Comments made reference to human rights and the measure of a caring society; the risk of exploitation for vulnerable people in society and the disadvantages faced within the criminal justice system. Challenges encountered by children and young people in terms securing appropriate levels of legal advice and representation were also raised.

Of those 119 people who supported automatic qualification, 82 people (69%) said it should apply to Criminal Green Form and 102 people (86%) said it should apply to full Criminal Legal Aid.

- 56 people (28%) said that there should not be automatic qualification for those assessed as vulnerable. There were concerns that a person's vulnerability should not in itself preclude them from contributing towards their legal costs if they have the financial means available to them. Recognising whether a person's vulnerability could disadvantage them in an adversarial legal system was also raised. Proof of vulnerability was also referenced with a view that any public funding in the form of Criminal Legal Aid should be reserved for the most vulnerable in society. The option of 'disapplying' the means test in appropriate cases was put forward as being a viable

and potentially preferable solution to this matter, but a 'blanket disapplication' of the means test on the basis of vulnerability was opposed.

- 18 people (9%) said they did not know.
  - 10 people (5%) did not answer.
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Q50. Assessment of vulnerability could cause delays in determining whether a person is eligible for Criminal Legal Aid. If you think vulnerability should be included as part of an individual's assessment to receive Criminal Legal Aid, how this could work in practice?

A text box was provided for respondents to leave their comment and suggestions and 75 responses (37%) were received in total, and comments reflected that many people consider this to be a complex area.

Of these 75 who responded there were:

- 8 who had been through the criminal justice system
- 20 members of the public
- 24 Advocates / Judiciary members
- 11 criminal justice system employees
- 3 charity / support workers
- 9 'others'

Comments from those who had been through the criminal justice system included classification, keeping a register and the importance of making the correct assessment:

'It would depend on the classification of vulnerable...'

'A register could be kept and if they are on it they are automatically granted legal aid'

Time is irrelevant. It's most important it is correct and efficient.'

Members of the public suggested using medical / social care records and some assumptions were made that such records could be accessed and shared for the purpose of assessing vulnerability. Others suggested that the Legal Aid should be granted in the first instance and then costs recovered from those not deemed vulnerable:

'Medical records detailing existing condition.'

'Vulnerability can be assessed easily where there has been prior social work involvement and if no prior knowledge of the individual exists as vulnerable then a social work assessment should be made available.'

'Database of shared information that can be accessed and added to by all professionals in contact with the vulnerable person.'

'Having a working procedure in place to identify the meaning of vulnerability within the Law and the scope it covers.'

'Start off as free and if they are deemed not vulnerable, they must pick up the tab.'

Comments from Advocates / Judiciary members included the need to carefully define what is meant by a vulnerable person and there being existing assessment provision in place at the Police Station and through the Criminal Legal Aid application process. Concern was expressed that additional assessment requirements are being sought. It was also suggested that Legal Aid could be granted on the presumption that all applicants are not vulnerable and costs refunded to those subsequently deemed vulnerable:

'Clearly a definition of what is meant by a vulnerable person would be required and would need to be carefully considered.'

'The current system works. Advocates are skilled in working out whether an individual is able to give instructions and, if there is any doubt, an appropriate assessment should be available very quickly. We have experts in this jurisdiction who should be required to provide an assessment in early course.'

'If the person has been interviewed at the Police Station, they may already have assessed them as vulnerable and required an appropriate adult. All juveniles are automatically vulnerable, so this would only apply to someone who is a vulnerable adult, but who was not assessed so at the Police Station by the Custody Sergeant and the on call Doctor. These cases will be extremely rare.'

'99% of the time, vulnerable people are financially eligible for Legal Aid, as they are on benefits or in low income jobs. There are very small numbers of people in this category who would stand to pay for advice, so I cannot accept the assessment of them would cause problems for the smooth running of the process. Vulnerable people ordinarily pass the merits test, by virtue of their vulnerability, regardless of the offence.'

'The question is on the legal aid application form.'

'It is already assessed by the questions asked in the legal aid application. Is it proposed that we have a team of doctors on retainer to professionally assess drug users, alcoholics and those with mental health difficulties to see if the individual really is vulnerable?'

'It wouldn't without incurring cost and time, which is what the AGs agenda is to reduce, so people's basic rights are being infringed.'

'Legal aid could be granted on the presumption that all applicants are not vulnerable (and contributions could be required on that basis). If the person is able to prove vulnerability thereafter, the legal aid certificate could be amended and the necessary refund/reduction in contribution could be dealt with at that point.'

**Criminal justice system employees referred to potential assessment options, access to justice and expressed some concern regarding financial considerations:**

'Medical assessment / assessment by a professional in the field of proposed vulnerability.'

'Proforma details to be provided at first appearance via Court Duty and an adjournment for assessment/ appointment.'

'People at different times are vulnerable. This would be difficult to do within a reasonable time. What would the cost to the Isle of Man be if this was given as a blanket to anyone who wanted it? Is this a price we as a society should pay - defending people against prosecution by the state is a right and is the definition of access to justice.'

'If there is a general consensus at the time of the vulnerability, then provide the scheme...it can always be reassessed later. Again...we are talking about delays because it's all about the money!'

Comments from charity / support workers included concerns regarding the time and cost of some assessments, and suggestions for a fast-track system or proforma used by professionals to facilitate the assessment process:

At the moment, there is the issue of delay with a case being heard if an assessment is needed re: for instance a person's capacity to plead. There is also often a sizable cost when assessments are commissioned. I can't see any easy way through this.

*Graih's* response was:

'Perhaps some sort of fast-track system whereby people deemed as vulnerable (deemed such by other agencies such as statutory and third sector?) go through quickly.'

*Victim Support's* response was:

'A professional who is dealing with the individual could complete a section on a form that relates to vulnerability. That professional could be a mental health worker, doctor or police officer dealing with the particular case.'

The General Registry suggested enhancing existing assessments carried out by the Police when detainees are booked in at the Custody Suite, to identify vulnerable or potentially vulnerable individuals. The availability of enough Appropriate Adults was also raised:

'Consider enhanced training and flagged up awareness at the Custody book in stage as to Vulnerability – Code C of the PPP Act<sup>26</sup> Code highlights "is or may be vulnerable". This is a matter for the Custody Sergeants at Police HQ not just the Advocates to try to identify it. As "vulnerable" has such a broad potential definition, move towards a more (without limiting the categories or closing off the flexible case sensitive nature of the definition) recognised approach to this. The case law on this would be a very useful guide as to who may be vulnerable. To be meaningful, more Appropriate Adults would also have to be available.'

'Other' respondents suggested the use of medical / social care records to assess vulnerability and a potential scoring system. It was also suggested that short delays were not an issue due to the provision of the universal Duty Advocate Schemes, and that the Legal Aid should be applied for in the first instance and if granted, then costs can be recovered from those not deemed vulnerable. The importance of a coordinated multi-agency approach (e.g. Social Care / Mental Health / Youth Justice) in terms of assessing an individual's vulnerability was raised, and there was a call for there to be places of refuge, outwith the IoM Prison, for vulnerable people:

'Medical and social care records.'

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<sup>26</sup> The PPP Act is the Police Powers and Procedures Act 1998 which provides for a number of Codes of Practice to be made under the Act. Code C is the 'Code of Practice for the detention, treatment and questioning of persons by Police Officers': <https://www.tynwald.org.im/links/tls/SD/2014/2014-SD-0363.pdf>

9'A score based on age and benefits entitlement.'

'It would not matter if there was a slight delay because the initial advice has already been covered by the Police Station and Court Duty Advocate Schemes.'

'The legal aid certificate should be applied for immediately and put into place pending proof of vulnerability. The assessment can still be done and the fees then covered up to the assessment. If the person is then not entitled then a repayment for any fees incurred can be put in place if not otherwise entitled to funding.'

'Places of refuge should be found (within the Health Service) for potentially vulnerable people. However long it takes, they need protection. Having them wait in prison destroys them.'

**Q50 SUMMARY:** 75 respondents (37%) answered the question.

It appears that many respondents consider the assessment of vulnerability to be a complex area. The most common suggestion was to use medical records to assess a person's vulnerability. The use of set criteria or shared information (e.g. Social Care / Mental Health / Youth Justice) was also suggested in addition to building on existing procedures in place at the Police Station. Almost half of the Advocates / Judiciary members who responded considered that current processes which are already in place to determine if a person is vulnerable (e.g. at a Police Station / through the Legal Aid application process) are already sufficient. Others said that vulnerability should be presumed and Legal Aid put in place until a determination is made, and those who are subsequently found to be ineligible should repay Legal Aid.

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Q51. There is no 'legal merits' test applied to criminal cases being brought before the Court of Appeal in the Isle of Man. This includes appeals which are funded by Criminal Legal Aid. Should someone's access to justice be interfered with if an Advocate assesses that they have a 50% chance or less of successfully appealing a conviction and/or sentence on behalf of their client?

191 respondents (94%) answered the question, and the results are shown in Table 36 below. A text box was provided for comments.

**Table 36. Views on whether likelihood of success should be taken into account for appeals**

Response	No.	%
Yes – likelihood of success should be taken into account (success > 50%)	82	40
No – likelihood of success should not be taken into account (success < 50%)	76	37
Don't know	19	9
Other	14	7
Not answered	12	6
<b>Total</b>	<b>203</b>	<b>&gt;99</b>

78 comments were made.

Answers to Q51 were divided with an almost equal split between 'Yes' (40%) and 'No' (37%) responses. A further 9% said 'Don't know' and 7% said 'Other'.

82 people (40%) said that the likelihood of an appeal's success **should be taken into account**. Of these, 7 had been through the criminal justice system, 27 were members of the public, 20 were Advocates / Judiciary members, 21 were criminal justice system employees, 1 was a charity / support workers, 1 Tynwald Member and 5 were 'Others'. 25 respondents made comments.

Of those who had been through the criminal justice system, concerns were expressed about the operational, financial and human cost of appeals which have no hope of success. Comments were also made regarding fairness and seeking a balance of probabilities:

'You can't have people jamming up a system with cases that have simply no hope of success - it is unfair to give people hope when there isn't any and costs £1,000's.'

'It all comes down to who and how it's assessed. If fairly assessed by an 'independent' 50/50 is a good guide.'

'Perhaps a 2nd opinion should be sought and a balance of probabilities be determined.'

Members of the public expressed concerns that pursuing appeals with a limited chance of success was not a good use of taxpayers' money, and suggested that they could encourage individuals to appeal for the wrong reasons:

'If the appeal has a less than 50% success rate then it's just a waste of the tax payers money who have already paid for the initial sentencing.'

'Legal aid in such circumstances could encourage litigation to be pursued for purely vengeful purposes etc rather than because the individual has any legitimate cause for appeal.'

'No merit in appeals not deemed by an advocate as having little realistic prospect of succeeding.'

Advocates / Judiciary members expressed the importance of pursuing meritorious appeals, which can also lead to important points of law being raised, and there was a suggestion that criminal appeals should be subject to the same tests as civil appeals. Significant concerns were raised in respect of the current position in which criminal appeals without merit can be pursued, and the associated and unacceptable waste of Legal Aid funds. Reference was also made to examples of cases where the Judiciary has found it necessary to record its concerns in respect of the pursuit of appeals without merit and the impact on the public purse:

'I do not agree with a merits test in first instance proceedings, as a client's plea must be their own, even if their Advocate considers their case is doomed to fail, or else we erode Article 6 rights. However, appeals should only be pursued if meritorious. The Staff of Government Division have given numerous judgments over the years reiterating that Advocates are not mouthpieces and must not pursue hopeless appeals. This applies as much to criminal cases as anything else.'

'As leave is often not required for an appeal it is right that the public purse should not fund unmeritorious appeals.'

'It is in civil legal aid, why not in criminal?'



'Too many appeals are brought without merit. There should be a determination in the first instance (way before a court hearing) of whether that appeal is likely to be successful or not and that should impact on Legal Aid.'

'The 50% test is one that a private practitioner would advise a private paying client and in most circumstances a private paying client would not waste their money in pursuing a fruitless appeal or application. The Legal Aid budget is precious. It should not be wasted on appeals that are doomed to fail.'

'It is incomprehensible that when spending public monies in pursuing (expensive) appeal proceedings there should be no regard for the merits of a case. Any privately funded litigant (whether criminal or civil) would reasonably have regard for the legal merits of a case and its prospects of success not only when determining to embark upon but also when reviewing during the progress of a case. There is no logical reason for publicly funded litigants - and their advocates - not to carry out a similar task. Rather the fact that public monies are being spent mandates such review. There is quite evidently a problem in this regard given that our Appeal Court has on several occasions - over many years - felt it necessary to include in its judgments warnings such as, "We remind advocates that they have a responsibility to their clients and to the public purse which funds such appeals only to pursue those appeals which have merit." This is a public indictment of the present practice where it seems that there are too many publicly funded criminal appeals being pursued without sufficient legal foundation. Examples of cases where the Appeal Division has found it necessary to record its concerns are Nelson v HMAG, (4 November 2019), A v HMAG (16 March 2018) and Patterson and Barber v HMAG (12 September 2013). Where misconceived and wasteful appeals are pursued on the back of legal aid assistance there is a legitimate public interest expectation that matters should be addressed - a legal merits test is a minimum requirement although the issue is better addressed by the introduction of some kind of quality assurance / control system where meritless and wasteful legal services are rooted out well before attracting the cost of contested proceedings.'

The Chief Constable made reference to there being no 'leave to appeal' provision in place for criminal appeals, and cited examples of two appeals without merit which had been dismissed by the Court of Appeal:

'In the absence of "leave to appeal" legislation, steps need to be taken to reduce legal aid expenditure. In two cases in recent months the court of appeal has dismissed appeals as having been entirely without merit. Both matters appear to have been legally aided.'

Other Criminal justice system employees expressed concern that the pursuit of criminal appeals without merit constitutes a misuse of taxpayers' money; encourages poor legal practices, and is a waste of Court time. It was also suggested that consideration is given to awarding costs against the defendant in appeals:

'Certain regular users will waste taxpayers' money and the courts time in this way purely because they are aware it will cost them nothing. There needs to be something in place to prevent this misuse.'

'If the chances of success are low the legal aid should not apply. It is a waste of tax payers money. However only specifically for appeals.'

'This should be one of the 1st reforms made to legal aid. Far too often criminal advocates will "automatically" file and appeal against conviction or sentence without considering the merits of the case. It basically gives an advocate a 2nd free bite at the cherry. I have personally observed poorly presented case go straight to appeal and then fail. This

wastes money from the public purse, encourages lazy practices by advocates and takes up valuable court time and resource on frivolous matters. The removal of this "guarantee" will encourage criminal advocates to better prepare their cases in the Court of General Gaol. The awarding of costs against the defendant should also be considered, in appeals.'

Charity / support workers made one comment which was from *Victim Support* and which raised the issue of the impact of appeals on victims:

'It is becoming a habit of late for convicted prisoners to lodge an appeal. A number of which are spurious. Any appeal has an impact on the victim and therefore a legal merits test would reduce the number of appeals which are unlikely to succeed, as they fail the legal merits test.'

One 'other' respondent made reference to wasting public money:

'It would be a waste of public money if an appeal had no hope of succeeding.'

76 respondents (37%) said the likelihood of an appeal's success **should not be taken into account**. Of these, 17 had been through the criminal justice system, 30 were members of the public, 18 were Advocates / Judiciary members, 2 were criminal justice system employees, 3 were charity / support workers and 6 were 'Others'. 34 comments were made.

Those who had been through the criminal justice system made reference to a person's right to a fair trial; concern that a 50% bar is too high, and application of reasonable doubt. Reference was made to the appeal work undertaken by defendants themselves, and concern that there is a disincentive for Advocates to undertake appeals when the rates of pay are the same for cases in the lower courts:

'Everyone is entitled to a fair trial even if it is an appeal.'

'If the right to appeal is given then it should go ahead. There are no 'Dead Certs' in court.'

'The 50% bar is too high. A case needs merit but individuals opinions vary on borderline cases. It is better to allow lower merit cases to proceed. Our system is meant to protect the all the innocent rather than convict all the guilty.'

'Reasonable doubt should apply here if conviction not 100% safe then fund to appeal.'

'The question is who is judging the level of likelihood of success? People can be wrongly convicted and accused (myself being one of them) of a crime. A person should have a right to appeal against conviction or the level of sentence.'

'Advocates already apply the test "You could win but it will be too hard". Yet some of these 'too hard' cases do win, through the work we do ourselves.'

'The legal merits test is often used by advocates as a false reason for not appealing a verdict. Appeals cause time pressures on advocates and interfere with ongoing workloads. More importantly, the earning rate at £135 per hour is no better than the rate achievable for cases in the lower courts. In short, appeals can be too much trouble.'

Members of the public expressed concern that such decisions would be subjective and setting a benchmark at 50% would be arbitrary and unhelpful. It was also suggested that appeals should only be allowed on the basis of new or discredited evidence:

'Who decides if a person is likely to win or lose? This could be subjected to bias if it's someone opinion.'

'Different advocates could have a differing point of views about the appeal's success.'

'In any situation where a person's liberty is endangered and there is a chance, however small, of a successful appeal, this should not be dismissed on an unscientific percentage basis.'

'Regardless of the rate of success in an appeal case the person still has a chance of success and therefore should be given legal aid to cover such an eventuality.'

'I believe that the important issue is that every individual irrespective of financial means should have access to the same legal recourse. Any scheme that introduces variation based on financial status reduces the validity of our legal system.'

'Appeals should only be allowed where new evidence has become available or if previous evidence becomes discredited.'

**Advocates / Judiciary members also expressed concern that a 50% benchmark would not be appropriate, particularly when a person's liberty may be at stake. Another said that guilt was a matter for the courts, not Advocates, to decide and it was suggested that such matters could be avoided by introducing a permission stage for any appeal:**

'If you had cancer and you were told that there was a 10% chance of treatment working should you be denied treatment? Access to justice in criminal cases is too important. Literally people's liberty is at stake. It's a somewhat dystopian course to start removing people's access to justice because an advocate estimates a less than 50% chance. Should one be entitled to get a second opinion from an advocate who may estimate a 55% chance of success?'

'50% or more is not an appropriate benchmark. This is also not something that can be assessed by way of percentage at the time of the appeal application. This will only be evident when the deemsters grant the legal aid certificate - and this will clearly then show the chances of success as they will not grant it if in their view the notice of appeal does not disclose arguable grounds.'

'Even if less than 50% this means that the defendant still has a percentage chance of succeeding.'

'The reality of the situation is most appeals are likely to have a less than 50% chance of succeeding by the nature of them being appeals. Furthermore, simply because a matter might not have a greater than 50% chance of succeeding does not mean that there is not a realistic prospect of success. Even a matter with a 25% prospect of success will still succeed 1 time in 4. When applied over a large number of cases that would still amount to a significant number of successful appeals that would not otherwise have the chance to be heard. The effect of removing criminal legal aid from appeals with a prospect of success less than 50% will be that in many cases only those who can afford it will be able to appeal. In practice this is likely to mean that in many cases only the wealthy will have access to justice. This above is especially true if a party is held in custody as they will have no income to afford legal representation privately. That a person's liberty is at stake makes it ever more important that they have a right to appeal the decision of a lower court. It is also noteworthy that funding issues will not exist for the prosecution if they wish to appeal a decision. There are of course different considerations for a prosecutor but there will not be a funding issue for the crown.'

'It is for the Courts to decide guilt, not an Advocate for the Government. This is a basic fundamental Human Right under Article 6 of the European Convention on Human Rights. Therefore, imposing such a condition would be a basic breach of an Absolute Human Right.'

'Everybody has a right to a fair Trial and this is only possible if they are given a professional to put forward their case to ensure equality of arms. If they are not given Legal Aid a person (the person who has declined it) other than a member of the Judiciary has in effect dismissed the Appeal which is contrary to Human Rights legislation'

'Appeals raise important points of law, and it is difficult to assess merits in respect of criminal appeals so precisely. Given that a person's liberty is at stake.'

'I believe that this hurdle should be avoided and to avoid spurious Appeals the Staff of Government Court should introduce a Permission Stage for any Appeals. This Permission Stage would allow these to be dealt with quickly by the Court. The Legal Aid Certificate could automatically, in either way or information only offences, include cover for the drafting of this first Appeal document as I understand they already include the advice on the prospects of mounting a successful Appeal. This would allow the Court to determine whether there are sufficient grounds for the matter to continue to a full hearing of the Appeal and take the onus off the Advocate.'

#### A Criminal justice system employee referred to appeals for reduced sentences:

'Appeals may result in a lesser sentence not the conviction being quashed altogether. Any advantageous result for the defendant should be sought by revision of the facts by others, independent of the original case. We all have *off days*.'

#### One 'other' respondent expressed concern that there is no current appetite for appeals:

'Advocates currently have no appetite to undertake appeals – already they negatively apply a legal merits test which anticipates no successes at all.'

19 respondents (9%) said they **did not know** whether the likelihood of an appeal's success should be taken into account. 5 comments were made.

An Advocate / Judiciary member referred to issues of subjectivity; described the legal aid test that they apply; and suggested that a Legal Aid certificate could be granted to assess the prospects of an Appeal and file a brief summary, followed by a leave to appeal decision by the Court. Another suggested that Advocates' success rates for appeals could be taken into consideration, or their cost recoveries restricted subject to the accuracy of their assessments:

'This is a very subjective area and two Advocates usually give three different opinions on the merits of success of an appeal. When there is a deprivation of liberty there is pressure to appeal the length of sentence. Personally I always apply the legal aid test of "would you advise a fee paying client to forego the family holiday to pay for the defence / appeal" is a better test. If the person is serious after a refusal then they will, find a way to pay privately. A legal aid certificate of say one hour should be granted to assess the prospects of the Appeal and then a further hour to file a brief summary of Appeal. There does need to be a screening process either by a single Deemster or other Judicial Officer and they would grant or decline leave to appeal or alternatively by a different and senior Advocate advising Legal aid.'

'Perhaps advocates could be required to confirm their view as to the probability of success under the legal aid application before introducing a requirement in future that such probability be confirmed and that such cases be handled by advocates who were on the panel but who also had a track record of bringing successful appeals; or perhaps advocates' cost recoveries could be restricted in the event that their assessment of the chances proved incorrect.'

14 respondents said they had **other views** on whether the likelihood of an appeal's success should be taken into account. All 14 made comments.

Members of the public were also concerned about an arbitrary 50% benchmark, and the cost to the taxpayer of inconsequential appeals:

'It should be taken into account but not be the only determining factor as to whether an appeal occurs.'

'Not sure the line should be 50%+ but do think that frivolous appeals should not be funded and ones with a low chance of success should be reviewed closely before committing taxpayer monies.'

'An advocate could assess the likelihood as over 50%. Could the LACO or another independent party have another view and assess it as lower than that and therefore refuse the funding for the Appeal?'

In its response, the IoM Law Society indicated that following due consideration, the Society supported a requirement for a defendant to obtain leave to appeal in all criminal appeal matters:

'In submitting an application for legal aid an Advocate is required to apply the test of whether a fee paying client of reasonable means would take the step that funding is being sought for. This should be considered by an Advocate each and every time they take a step in legal proceedings. If the answer is no, then the Advocate should not take such step. The IOMLS has considered the suggestion of introducing a merits test for the issuance of a legal aid certificate in an appeal case, and we do not consider this to be appropriate. Assessing prospects of success is not an exact science, it can be subjective and one Advocate may certify above 50% prospects of success based on knowledge or experience that another Advocate may not have and who would not so certify, or what one Advocate may consider is a strong point, another Advocate may consider to be a weak point. The outcome of a Court hearing cannot be predicted, and even strong cases do not succeed.

The suggestion put forward by our membership, noting of course that currently the Staff of Government Division issues the legal aid certificate for an appeal with the benefit of having seen the Notice of Appeal, would be for there to be a requirement for a defendant to obtain leave to appeal in all criminal appeal matters. Such process would flush out the weaker cases but allowing the stronger cases to progress. Limited legal aid should be granted to the conclusion of the leave application, being extended if leave is granted.'

Other Advocates / Judiciary members also suggested introducing a leave to appeal process; considered that sufficient legal grounds should form the basis of appeals rather than 'chance of success', and proposed that a >51% test could be applied in addition to differentiating between 'hopeless' appeals and others:

'There should be a leave to appeal process so that the decision as to whether there is a chance of success is taken by the Court, not the Advocates. If there has been a

miscarriage of justice at first instance, then the Staff of Government should be able to say whether there is a prima facie case which goes to the second stage of a full appeal.'

'As long as there are sufficient legal grounds for an appeal to be brought the "chance of success" is irrelevant. I do not believe you can measure the "chance of success" as a percentage.'

'I am not adverse to the concept of a legal merits test but if one were applied it should be 51% or above. A distinction should be drawn between the truly hopeless appeals and those with a chance of success.'

The General Registry asked a number of questions in its response, and indicated that Courts administration does not have the expertise to undertake any form of merits test:

Query if, properly understood, either under the specifics of the regulations or Acts under which any of the Schemes operates, as well as the Advocates overriding duty to the Court, as an Officer of the Court, should the obvious mischief being focused on in this question, ever arise? If any form of merits test in the way envisaged was imposed, how would it be regulated or any sanctions/savings arise? At present Courts administration does not have the expertise to perform any form of merits test (for example, the Costs Officer is not legally qualified). Would the Advocate who expressed a positive, over 50% success view of the merits be sanctioned/not paid if the Staff of Government said "wholly without merit", but not sanctioned at all, if the end result was the same, by way of the appeal being unsuccessful, but the Staff of Government did not use that sort of phrase?'

One 'Other' respondent referred to the unpredictability of a criminal appeal outcome:

'I have been in practice at the Bar in England for over 40 Years and can guarantee that no one can predict the outcome of a criminal appeal. Less so before the preparation has been done.'

**Q51 SUMMARY:** 191 respondents (96%) answered the question and 78 comments were made. The question of whether the likely success of a criminal appeal to be funded by Legal Aid should be taken into account divided the opinion of respondents.

- 82 respondents (40%) said that chances of success should be taken into account and it was suggested that this could help to stop frivolous appeals which waste court time at a cost to the taxpayer. There was support for introducing a leave to appeal process so that the decision as to whether an appeal may proceed is determined by the Court, not the Advocates.
- 76 respondents (37%) said that chances of success should be not taken into account for an appeal. It was submitted that when a person's liberty is at stake, a benchmark of 50% or more is not appropriate, and any such imposition would be a breach of human rights. There were also concerns that such a benchmark could lead to a system in which only those who could afford to would be able to appeal.
- 19 respondents (9%) did not know.
- 14 respondents (7%) including the IoM Law Society and the General Registry indicated that they had other views. Suggestions included the requirement for a defendant to obtain leave to appeal in all criminal appeals. Concerns were also expressed that chances of success cannot be expressed as a percentage, or indeed

predicted, and they are also irrelevant if there are sufficient legal grounds on which to appeal.

- 12 respondents (6%) did not answer,

There were some overarching themes which were included in comments made for all answers (i.e. *Yes / No / Don't know / Other*). These included the challenges of subjectivity when seeking to determine the likelihood of an appeal's success, and support for the introduction of a leave to appeal process.

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#### Q52. Do you have any further comments on full Criminal Legal Aid, Certificates, vulnerability criteria or Criminal Appeals?

A text box was provided and comments were received from 22 respondents (10%)

Of these 21 who responded:

- 5 had been through the criminal justice system
- 4 were members of the public
- 8 were Advocates / Judiciary members
- 1 criminal justice system employees
- 1 charity / support workers
- 2 'others'

Of those who had been through the criminal justice system, concerns were expressed regarding the difficulties associated with pursuing appeals, and another indicated their opposition to the principle of a Public Defender Scheme. One person suggested that Criminal Legal Aid should be free to pensioners:

'Appeals are sometimes not commenced because after conviction contact with lawyers ceases; by the lack of contactability of the advocates. No follow up; no further advice; no records.'

'It's almost impossible to get an advocate to take on an appeal. The IOM system obviously actively tries to deter advocates taking on appeals.'

'No time limit should be made on when an Appeal should be made. it could take well over a month to put together evidence and grounds for appeal.'

'I do not agree with a public defender unit and feel it would mean the end of independent legal advice and access to justice on this Island. It would be a very dangerous precedent to have the AGs prosecute and defend.'

Comments from Members of the public included the view that people should not commit crime unless they can afford to pay for their legal defence, and it was suggested that individuals who are required to undertake jury duties should receive full pay if a case is over 2 weeks in length. Another commented on a person's right to choose their Advocate;

'Legal aid is vital and every person should have the right to choose their own defence advocate.'

The IoM Law Society's response made particular reference to the benefits of the current Legal Aid system, and the importance of holistic multi-agency collaboration within the criminal justice system and associated organisations. Reference was also made to ensuring that Advocates are fairly remunerated for their work. Suggestions included the introduction of referrals to the Advocates Disciplinary Tribunal of Advocates who overcharge for Criminal Legal Aid work in line with Civil Legal Aid cases. There were concerns of a disconnect between budget allocations for the Police and Criminal Legal Aid as it is recognised that the number of prosecutions will have a direct impact on the demands for legally-aided defence. Further concerns were raised in regard to the number of charges changed late in the Prosecutions process and the implications on Criminal Legal Aid costs.

'It is the view of the IOMLS and our membership who responded to the present consultation, that the current legal aid system is the best system for the delivery of access to justice for the most vulnerable members of our society. Additional tweaks can be made to the current system to ensure the same is more efficient, however, such efficiencies cannot be made in isolation and needs the buy in and support of the Prosecution, the Police, the Courts, the Department of Health and Social Care, Probation and the Prison. There is only so much that the IOMLS and its members can do without others taking responsibility and streamlining their own processes to make the system as joined-up and efficient as possible, without compromising access to justice. A holistic approach is advocated by the IOMLS.

Advocates must be fairly remunerated for their work and the hourly rates have not been increased for 10 years, notwithstanding that overheads and costs go up each year. See also response at question 34 above.

In civil cases (not limited to legal aid) if a bill of costs is reduced by more than 50% the Costs Officer must refer the Advocate to the Advocates Disciplinary Tribunal. This system does not apply in criminal cases. Although such referral is rare, the IOMLS considers that an introduction of such rule to criminal cases would be appropriate. Having such accountability will ensure that Advocates continue to be mindful of charging and undertaking work under criminal legal aid certificates. However, enquiries made by the IOMLS do not indicate that overcharging by Advocates is a commonplace issue or a cause of concern for legal aid or the Costs Officer.

It is noted that the Police budget continues to increase, yet there seems to be a desire by Government to decrease its spend on criminal legal aid. There can be no real justification for this given the two go hand in hand. The number of cases before the Court of General Gaol Delivery (the most serious cases) has increased from 64 in 2014 to 88 in 2018. In 2014, there were 296 criminal legal aid certificates issued by the Court and this has steadily increased to 353 in 2018. Most notably, legal aid costs have not increased at the same rate as cases and/or the issuance of legal aid certificates (19.26%), in fact, the legal aid expenditure has decreased notwithstanding the increases; Advocates are not milking the system. Both Police funding and legal aid funding should be treated equally and given the same importance to society. If more people are arrested and brought to Court, which is the current trend, then basic logic would say the cost to the legal aid budget would increase. An additional £3 million or so has been given to the Police in 2018/19 to recruit more officers in the Pro-Active Unit, RPU and PPU, which is a positive allocation of Government funds. However, if Police operations are to run effectively, then similar increased resources need to be available to the legal aid budget in order for access to justice to be maintained and the rule of law upheld, which in turn ensures the Isle of Man's international reputation is maintained, which is of huge benefit to the economy.

In order to ensure money is properly allocated and spent, Prosecutions must be properly brought based on the evidence available, and not on a speculative basis. A large number of cases have the charge changed late in the process, sometimes at trial, resulting in significant amounts of public funds being wasted. The Government will have access to



the relevant information as to the number and value of costs Orders issued by the Courts against the Attorney General's Chambers and from central funds, which shows the scale of the problem. In 2018, 88 cases were heard by the Court of General Gaol Delivery but only in 12 of those cases were convictions recorded in relation to all of the counts charged. In 12 of those cases no evidence was offered at trial or the trial was otherwise vacated (13.64% of cases).'

Other Advocates / Judiciary members made a range of comments. These included the benefits of the current system; the issue of access to justice for those accused of financial crimes who are unable to secure legal representation. Suggestions were made for greater protection of the vulnerable; leave to appeal and fixed fees:

'The current situation where the court assesses legal merits and financial merits works and works well. It is efficient and is decided by those who have the benefit of hearing the prosecution summary of facts and defence submissions. This process should not be changed and any such change is likely to be less just, less efficient and less cost effective than any alternative.'

'My view is that greater protections should be applied for vulnerability. The system as it is at present is fit for purpose and should be finessed rather than wholesale changes which would backfire.'

'I think vulnerability should be strongly considered. The majority of people I have encountered through the required training for DA [Duty Advocates] have been somewhat vulnerable and by having them assessed that could then lead to them being put in touch with the right people and providing them with a direction.'

'As the defence of adequate consideration has been removed it is no longer possible for a person of means who is accused of a crime to have the certainty of legal representation as the advocate is put on risk that they could be handling stolen monies and be involved in money laundering. As this change has been made by parliament legal aid should now be freely available regardless of means so that everyone has the right to legal representation. It is wrong that legal access is being restricted in this way and this needs to be reformed to avoid injustice and considerable damage to the Island's reputation.'

'Isle of Man Government may wish to consider introducing leave to appeal. Criminal Legal Aid could be available without assessment of merits for applications for leave, and if such applications fail that is the end of them and if they succeed there is clearly a reasonable prospect of success.'

'I wonder whether it would be sensible to introduce fixed fees in particular in the Summary Courts (e.g. if I recall correctly in the U.K an advocate would receive a fixed fee for 1/2 day (circa £350 plus VAT) or all day (£700 plus VAT) for Magistrates' Court matters irrespective).'

The General Registry called for the criminal justice system to be considered holistically and stated that Legal Aid should not be considered in isolation due to the interdependencies with other agencies and processes. Particular reference was made to the adequacy of resources to support crime prevention; the arrest / caution / charging processes; cost of cases not proceeded with; legislative changes (e.g. fixed penalties); increasing the age limit for a young person to be put into the criminal justice system and options to allow the Court to divert offenders to other agencies (e.g. mental health services). There was also the view that wholesale changes should not be made to Criminal Legal Aid as a result of a minority of

repeat offenders, and it was suggested that consideration is given to recovering some Legal Aid costs from those found guilty:

'The issue of Legal Aid, in any sense, and the expenditure arising from it cannot properly be considered in isolation. It is artificial and wrong to extract this as a part of the criminal justice system and hope to solve whatever perceived (real or imaginary) ills exist with the system. Legal Aid should not be considered in isolation, savings can be made by changes to the charging process, the number of cases diverted away from the CJS and the way in which cases are listed. For example when taking up her position in 2011, the new Deputy High Bailiff reduced the number of summary remand courts from 3 to 2 and the number of duty advocates in those courts from 2 to 1.

In exceptionally broad summary:

- A holistic appreciation of what the causes are and who is engaged in the system is required, in which Legal Aid has a part but is not the front end focus.
- At the most basic level: do we have enough social workers/community engaged workers who can assist in identify and working with those in school who may through either nature or nurture be heading down the criminal career path?
- The initial focus should be prevention not simply looking at dealing with the after-effects.
- Who and on what basis do the Police arrest/prosecute/caution? To what extent, beyond the type of offences where the AG's advice must be sought, is advice sought pre arrest /charge/interview etc. Could a filter be applied at that earlier point that would result in an immediate reduction of Legal Aid expenditure by virtue of either matters not being charged or the correct/lesser charge being identified at a much earlier stage?
- A review of the financial cost to the Legal Aid fund of the considerable number of cases not proceeded with after charge should be considered. A review of how the police/AGC decide to charge or summons may result in fewer weak cases which are later dropped being brought before the court in the first place and so result in a financial saving to the Legal Aid Fund (or to Treasury where costs are awarded against the Prosecution).
- Further consider legislative changes (some in the pipeline already) for enhanced/conditional cautions/fixed penalties.
- It is understood that plans are afoot to increase the age limit by which what was called the Youth Justice Team will look to put someone into the criminal justice system (to 25 years, unless lots of previous issues and a threat to life involved??).
- It would be useful to better understand the figures for matters where suspects/defendants have been arrested but then not charged/charged but had the matter withdrawn against them before plea/no evidence offered and the charge dismissed after plea/where less serious charges were put and accepted after more serious charges went through at least some aspects of the court process, up to and including the day of intended trial (after a pre-trial review 8 weeks after a not guilty plea).
- Perhaps consideration should be given to a "Community Justice" type court such as that which existed in Liverpool until relatively recently. Such would allow the court to divert offenders and provide immediate access to assistance from other agencies such as mental health services, housing, DAT.

- In the experience of Section Manager of the former Civil Legal Aid & Legal Costs Section and Costs Officer, it would seem that a high proportion of criminal legal aid expenditure is attributable to the same group of applicants. It would appear to be unfair for a system that works well for the most part, to be subject to significant changes (such as a reduction in legal aid provision) due to a number of defendants who have regular access to free, state funded representation. As such, consideration should be given, when defendants are found guilty and in receipt of legal aid funding, to be required to contribute towards all or part of their costs going forward. Clearly the cost of administering such a policy i.e. chasing default payers etc. could prove to be high and problematic; however payments could be made via deduction to benefits (already an established process in relation to payment of other penalties such as fines).'

One 'Other' respondent made a suggestion regarding Criminal Legal Aid certificates being issued in the name of individuals:

'Certificates should be issued in the name of inmates, who should then be able to track what work is needed and then what work is or isn't being done, or by the Law Society who could monitor costs or recommend work that should be done.'

**Q52 SUMMARY:** 22 respondents (11%) provided comments.

Concerns were raised in respect of difficulties faced by individuals who wish to pursue appeals, and access to justice for those accused of financial crimes and who are unable to secure private or legally aided representation. Further concerns were expressed regarding an apparent disconnect between budgets for the Police and Criminal Legal Aid, and also the number of late changes to Prosecution charges. Others expressed their support for independent defence Advocates and the current Criminal Legal Aid model.

Suggestions to give greater protection to the vulnerable were made; introducing leave to appeal; and introducing referrals to the Advocates Disciplinary Tribunal for Advocates who overcharge for Criminal Legal Aid work. The importance of considering Legal Aid as part of the overall criminal justice system, as opposed to an isolated, standalone aspect was reiterated. More information re: arrest / caution / charging processes was requested in addition to the cost of cases which do not proceed following charge. Diversion of more individuals (where applicable) away from Court and/or the criminal justice system was also suggested. Further suggestions included requiring contributions from legally aided defendants who are found guilty; consideration of Fixed Fees in the Summary Courts, and issuing Legal Aid certificates in the name of the applicant rather than the Advocate.

## 4.11. Self-representation

**Q53.** Have you ever represented yourself (i.e. without an Advocate to defend you) in a criminal Court in the Isle of Man?

190 respondents (94%) answered this question, and the results are shown in Table 37 below.

**Table 37. No. of people who have self-represented in a Criminal Court**

Response	Number	%
Yes	8	4
No	182	90
Not answered	13	6
<b>Total</b>	<b>203</b>	<b>100</b>

8 respondents (4%) indicated that they had self-represented. 182 respondents (90%) said they had not, and were directed to Q55.

**Q53 SUMMARY:** 190 respondents (94%) answered the question, and 8 (4%) said that they had represented themselves in a Criminal Court in the Isle of Man.

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#### Q54. Why did you represent yourself in Court?

Of the 8 respondents who indicated in Q53 that they had self-represented, 7 people (88%) answered the question, and the results are shown in Table 38 below. A text box was also provided for comments.

**Table 38. Reasons for self-representation**

Response	No.	%
It was my choice – I wanted to represent myself	3	>37
It was not my choice – I wanted a defence Advocate but I did not qualify for Criminal Legal Aid & I could not afford to pay an Advocate myself	1	>12
Other	3	>37
Not answered	1	>12
<b>Total</b>	<b>8</b>	<b>100</b>

5 comments were made.

3 people said they self-represented through choice; 1 person said that they did not qualify for Criminal Legal Aid and they could not afford legal representation, and 3 said it was for other reasons.

Of those who said they self-represented through choice, two people had concerns with the quality of service they had received from their Advocate(s):

‘...represented myself and did a thousand times better than the 3 advocates had done before me. One also admitted because I was on legal aid that there was no rush to get the case to court.’

‘I quickly realised that a Duty Defence Advocate represents the Court’s financial interests and not my interests in any shape or form’

Other reasons included lack of time to instruct; time constraints, and difficulty finding an Advocate for their case. One respondent said that they self-represented only at first appearance, following which they were represented by an Advocate who worked for free and which resulted in a positive outcome:

'Didn't have time to instruct an advocate.'

'I was unable to find an advocate willing to take on a complex part of my case after my original advocate withdrew. Time constraints - statutory time limits - coupled by lack of choice in pool of advocates / legal aid panel forced me to self-represent.'

'I couldn't justify the cost of paying an advocate when I wasn't working and in a financially abusive relationship and didn't qualify for legal aid due to household income. I only self-represented at the first appearance and after that the duty advocate worked pro bono. Had he not been willing to do that I would have been fined and had points on my license.'

**Q54 SUMMARY:** Of the 8 respondents who indicated that they had self-represented in a Criminal Court, 7 people (88%) answered the question and 5 comments were made.

- 3 people self-represented out of choice
- 1 person self-represented but not out of choice
- 3 gave other reasons

Comments included concerns regarding quality of service, limited choice of Advocates and lack of time to instruct an Advocate. One person self-represented for their first appearance due to their personal circumstances, following which an Advocate worked pro-bono and achieved a good result for the individual which they submitted would not have happened without the Advocate's representation.

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Q55. Do you think we should try to minimise the number of people who self-represent in future?

194 respondents (96%) answered this question, and the results are shown in Table 39 below. A text box was provided for further comments.

**Table 39. Views on whether to minimise self-representation in future**

Response	Number	%
Yes	99	49
No	63	31
Don't know	32	16
Not answered	9	4
<b>Total</b>	<b>203</b>	<b>100</b>

90 comments were made.

99 respondents (49%) said that **self-representation should be minimised**. Of those 99 respondents, 15 had been through the criminal justice system; 31 were members of the public; 30 were Advocates / Judiciary members; 11 were criminal justice system employees; 4 were charity / support workers; 1 was a Tynwald Member and there were 7 others. 73 of these respondents provided comments.

Of those who had been through the criminal justice system, there was concern that prisoners found it difficult to secure legal representation which left them with no option other than to self-represent. Conflicts of interest were also cited as a cause of self-representation

and there was a call for non-Manx lawyers to be granted licences to appear in Court. It was also suggested that an individual should be deemed psychiatrically fit before they can self-represent

'Include advice at arrest/charging point e.g. even if you believe you are innocent and want to fully cooperate with the police you should have an advocate to ensure your rights are protected'

'By positive attempts to enforce equality of arms. The means available to inmates are negligible. No one should be FORCED to self-represent. Many are.'

'It would assist if the embargo on issuing licences to non-Manx lawyers was removed. It would avoid the many conflicts that exist, such conflicts often being the cause of defendants' self-representing.'

'Self-representation should only be allowed after assessment by a qualified psychiatrist.'

Members of the public made reference to understanding and addressing an individual's motivation for self-representation, which may include lack of trust in the legal system; lack of awareness around the value of Advocates, or ineligibility for Legal Aid. There was also support for an individual's right to self-represent out of choice, but concern that lack of eligibility or funds causes inequality. Suggested solutions included extending eligibility for Criminal Legal Aid and/or increasing the scope for contributions:

'Address possible reasons as to why they choose to self-represent such as a lack of trust in the system.'

'More education to the wider public on the value of advocates; the amount of time they train for, their in-depth, specialist knowledge of law etc.'

'I believe that an individual has the right to represent themselves if they so choose. If people are forced to do this because of financial reasons then this is inequitable. Statistics should be kept and financial thresholds reviewed to ensure that everyone has access to appropriate representation.'

'Raise financial limits for eligibility for legal aid.'

'There should be a wider band of contributions based on income. Where people are of middling income they are the least likely to qualify for LA. They should still qualify for LA advice but make a contribution to the cost. This group of people are the most likely to be litigants in person in criminal and civil matters and can cause considerable additional expenses for the public purse and in civil matters, for the other side. Only those on either the lowest income or the highest income have true access to justice. Those on middling incomes do not have that same access to justice either through being unable to qualify for either free legal advice or being unable to afford an advocate's fees.'

The IoM Law Society's response highlighted some of the implications of self-representation and advocated increases to the financial means test:

'The increase in litigants in person in England and Wales has had a considerable impact on the Court system in that jurisdiction and its ability to deal with cases effectively. The Isle of Man should not take any steps that will increase the number of litigants in person as our Court system will not cope with such increase and the job of the Prosecution will increase exponentially and the costs will outstrip a properly funded legal aid system. The IOMLS refers to all of the research appended hereto, and which makes clear the benefit

to the economy and wider society of ensuring a properly funded legal aid system is in place. The IOMLS refer to the speech given by His Honour Deemster Corlett at his swearing in ceremony<sup>27</sup> in support of our concerns, together with the widespread reporting on the issues engulfing the England and Wales criminal system.

The IOMLS advocates the increase of the financial means test to more appropriate levels taking into account the cost of living on the Isle of Man.'

Other Advocates / Judiciary members suggested that those who choose to self-represent should be allowed to do so but there was concern that the majority who self-represent do so for financial reasons. It was suggested that Legal Aid is made available to more people in this position, as it could bring the additional benefits of fewer delays, lower Court costs, and fewer miscarriages of justice:

'The solution is to ensure that adequate Legal Aid is available to the largest number of persons.'

'Ensuring there are sufficient criminal advocates willing to represent those appearing before our courts and ensuring that current avenues of securing representation are not degraded.'

'I think that we should minimise the number of people who self-represent because they feel they have no option but should allow people to self-represent if that is their choice (i.e. they have access (physically and financially) to an advocate who would represent them but they choose to represent themselves in any event. I think that the number of people self-representing because there is no other choice is likely to be very small (and may be because they do not want to pay the contribution as opposed to them not being able to pay it) - the court duty advocate scheme will address some of these (both in terms of representation on first appearance and in terms of signposting an advocate to act on their behalf if the matter goes on to further hearings).'

Why do people self-represent? Is it because they choose to do so or because they can't afford legal advice? In my experience the majority of people who self-represent do so because they want to not because of financial reasons.'

'Act cautiously in making cuts to services. Some level of self-representation is expected as there will be those who choose to do so but the majority will accept representation if it was available to them.'

'If Legal aid is cut then the law of unintended consequences will apply. The time spent by the Advocate trying to reason with the unreasonable or getting a case together is then borne by the Court causing delays and costs to the Court process. Those self-representing because of cost alone are those most at risk of a miscarriage of justice as they are the ones who are compliant and defer to authority so can be railroaded into a conviction.'

A criminal justice system employee expressed concern that self-representation can lead to wasted time from both Police and witness perspectives:

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<sup>27</sup> Deemster Corlett's speech at his swearing in as First Deemster and Clerk of the Rolls, 19 September 2018 <https://www.courts.im/news/2018/sep/deemster-corlett-s-speech-at-his-swearing-in-as-first-deemster-and-clerk-of-the-rolls/>

'Due to a lack of knowledge, most people who self-represent call ALL witnesses to Court and do not agree any evidence prior to the trial. This is a waste of time for many Police Officers and witnesses.'

Homelessness charity *Grainh* focused on extending eligibility for Legal Aid

'Make the legal aid system as universal and free as possible.'

*Victim Support* made reference to serious issues associated with victims and witnesses being cross-examined by a self-representing accuser:

'If an accused person is self-representing and cross examining a victim or witness, then it is way more traumatic than a lawyer and can be worse than the crime itself. Therefore self-representing should be discouraged for hearing and trials.'

A Tynwald Member suggested that legislative changes should be made to prevent self-representation:

'By preventing it in the legislation - legislators need to recognise the need to stop this from happening. Unless they understand how to interpret legislation, the ego can't get in the way of proper justice being handed out. If a case is poorly presented, something critical may be missed. Then, there are individuals that cause secondary institutional abuse following real abuse for victims that are cross-examined by perpetrators in a courtroom (e.g. domestic abuse cases).'

The General Registry made reference to maintaining Legal Aid services and the availability of skilled, independent Advocates:

'Maintain a credible Legal Aid system/Duty Advocate system. Ensure we have suitably skilled independent advocates able to represent those in need of advice and representation.'

'Other' respondents referred to a properly funded, independent Legal Aid service. Suggestions included advice under Green Form and access to Advocates from a Public Defender Scheme:

'Properly fund the independent legal aid system accessed via advocates.'

'Assist them to seek initial advice under the Green Form Scheme.'

'By ensuring that Advocates are of a certain standard, and that they are accessible, working to a Code of Conduct. By having Public Defenders.'

63 respondents (31%) said that **self-representation should not be minimised**. Of those respondents, 11 had been through the criminal justice system; 27 were members of the public; 10 were Advocates / Judiciary members; 11 were criminal justice system employees; and there were 4 others. 14 of these respondents provided comments.

Those who had been through the criminal justice system were supportive of a person's right to choose to self-represent, but were concerned that if the person's reason was lack of access or lack of funds, then the system is flawed:

'It is a person's right to be able to defend themselves should they wish to do so.'



'As long as it is a personal chance [choice] people should be allowed to self-represent, if they are however forced to self-represent because of a lack of access or lack of funds then the system is wrong.'

'By allowing solicitors/barristers from other jurisdictions to be in court to advise people. Let them know that this is an option.'

Members of the public were also supportive of a person's right to choose

'It's a person's right to represent themselves if they wish to do so. Equally if a person wants a lawyer and is on a low wage I believe they too should have the chance to be properly represented by a lawyer.'

'If people want to represent themselves they should be allowed but the court should adjust to deal with this.'

'There is no ethical way to curb self-representation.'

An Advocate / Judiciary member also referred to the right of the individual:

'It is every person's right to do so. Should anyone not wish to, the current system provides for suitable representation.'

A criminal justice system employee suggested that those who self-represent should be given access to resources:

'Allow people to self-represent, but allow them access to legal texts and maybe a legal secretary for basic advice on procedural matters.'

One 'Other' respondent made reference to the European Convention on Human Rights (ECHR):

'It is a fundamental right of a member of the public to have access to justice. This can only be removed in very limited circumstances for example cross examination of complainants in rape allegations. See ECHR'

32 respondents (16%) said that they **did not know** if self-representation should be minimised and 3 provided comments.

A person who had been through the criminal justice system said:

'Just advise them of possible consequences.'

9 respondents (4%) **did not answer**.

**Q55 SUMMARY:** 194 respondents (96%) answered the question and 90 comments were made.

- 99 respondents (49%) said that efforts should be made to minimise the number of people who self-represent in future. The responses showed that people interpreted this question in different ways. For example for those who thought that self-representation was always because of lack of ability to pay, it was suggested that eligibility for Criminal Legal Aid should be extended. Other answers suggested that

the solution would be better remuneration for Advocates undertaking Legal Aid work, as this would lead to more Advocates being available to offer their services. Reasons cited for minimising self-representation included reducing the potential for Court time to be wasted and ensuring people are adequately represented.

- 63 respondents (31%) said that self-representation should not be minimised. Reasons for not minimising self-representation included a person's right to self-represent except under very limited circumstance, and it was suggested that legal texts and support regarding procedural matters could be made available, in addition to adjustments made by the Court.
- 32 respondents (16%) said they did not know
- 9 respondents (4%) did not answer.

What was clear from the overall comments was that many respondents felt that if it was a choice for people to self-represent then this should be respected. Furthermore, if people were self-representing because they did not qualify for Legal Aid but could not afford an Advocate, or could not secure an Advocate to represent them, then this would be a reason to try and minimise the number of people who this affected.

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#### Q56. How could we best support people who self-represent in Criminal Courts?

A text box was provided and 106 respondents (52%) submitted comments about how best to support people who self-represent in Criminal Courts.

Of those 106 who submitted comments:

- 16 had been through the criminal justice system
- 33 were members of the public
- 29 were Advocates / Judiciary members
- 15 were criminal justice system employees
- 2 were charity / support workers
- 1 was a Tynwald Member
- 10 were 'Others'

Suggestions from those who had been through the criminal justice system included access to legal representation (Manx Advocate or UK lawyer); an understanding of the consequence of self-representation; better access to resources to prepare a case; access to a Duty Advocate to ensure compliance with procedures, and access to Legal Aid funds to pay for expert reports and other resources:

'Ensure they have access to legal representation.'

'By making sure they understand the consequences of not having legal representation'

'By offering them guidance literature and advice on evidence and procedure. Their attendance at other court hearings to gain experience of what happens would also be very helpful.'

'There is a lot of support already in the Court system for people to represent themselves and allowances tend to be made by the Judge etc in their cases - maybe better access to the online sites they need for the preparation of their case, use of computers in the library or the actual Court building with free printing.'

'Access to justice would be improved if self-representing defendants had access to legal aid funds for evidence gathering, expert reports and production of transcripts of proceedings. Appoint a 'duty advocate' to assist the defendant SOLELY IN COMPLYING with court process and the rules of the court to avoid time being wasted in court proceedings.'

'Many people who cannot find a lawyer to represent them are left with no choice other to self-represent in Criminal Appeals where access to UK lawyers would give them chance to a fair trial, Appeal etc.'

Comments from members of the public reflected a range of views which included not providing support; increasing eligibility for Criminal Legal Aid and ensuring that access is given to the prosecution's case. Suggestions were also made in regard to Courtroom behaviour and concern was raised that self-representation can lead to miscarriages of justice:

'You shouldn't.'

'I am not sure. Lawyers have years of training, it is hard to teach a lay person quickly.'

'There should be no need to self-represent if free legal aid is available to all.'

'Legal aid should be more widely available thereby reducing the need for self-representation and wastage of court time. Those who would always choose this method irrespective of finances should have information on how the process works easily available.'

'Self-representers should be advised of the relevant Criminal Court processes and protocols, at no cost.'

'Ensuring they have full access to the prosecution's case would be a start.'

'By giving them the same table facilities to organise their paperwork as the Prosecution enjoys. By being willing to answer questions about Procedure and not conflate Procedure Advice with Legal Advice. By allowing Defendants to audio record the proceedings. By not threatening 'Contempt' when polite questions are asked about Procedure. By actually listening when a Defendant asks something. By not trying to twist every utterance a Defendant makes at the start of Trial into a plea of guilty.'

'In many cases self-representation is ineffective in defending oneself against criminal charges. If the reasoning is financial then a discussion should be held to allow the individual to negotiate a long term repayment plan for costs incurred in defending themselves rather than risk a miscarriage of justice by allowing them to defend themselves.'

The IoM Law Society's response focused on extending eligibility for Legal Aid and cautioned against the use of McKenzie Friends<sup>28</sup>:

'The issue is not one of supporting those individuals who wish to represent themselves in Court. Those who truly do not wish to use the services of an Advocate are unlikely to accept any form of support. The Government needs to widen the net of those eligible for legal aid, to ensure as many people as possible have access to free and independent legal advice, to ensure that access to justice is maintained. The use of McKenzie friends in England and Wales has created more problems than it has solved. There can be no substitute to independent, competent and proper legal advice, which can only be given after a minimum of 6 years of education and training.'

Other Advocates / Judiciary members made a number of suggestions. Reference was made to the provision of an effective criminal bar; access to Legal Aid, and the Court Duty Advocate. Others suggested the use of more simple language and additional time in Court; the provision of a clear guide to the Criminal Courts, and support for those who self-represent from trainee Advocates. There was also concern that there is little that can be realistically done to support individuals who have not had the benefit of extensive legal training:

'By ensuring that there is in reality an effective criminal bar - ie effective in the provision of quality legal services (where wasteful practices are eliminated) and effective in the delivery of value for money.'

'By providing access to legal aid in the first place. Advocates who appear against self-represented persons should not be prevailed upon to offer any assistance whatsoever, the burden should be placed solely on the Court/Judge to assist and guide such persons.'

'Offer them the services of a Duty Advocate and avoid wasting expensive Court time'

'More simple language, and the publishing and distribution of a straightforward guide to the courts.'

'Voluntary support from trainee advocates to give them some experience but on the understanding that they aren't duty advocate.'

'Ensure Police / prosecutors prepare cases fully and properly, allow additional time in Court to deal with matters slowly so the person is not railroaded. Possibly provide an extra duty advocate on Summary Pre Trial review hearings so they can advise on the evidence etc. At the Court of General Gaol only free legal aid would assist and perhaps that is necessary.'

'There is very little information on the criminal court system available. This literature should be improved.'

'You can't really. They are at a tremendous disadvantage especially when it comes to trials against the exceptional advocates working for the AGs.'

'I do not know how we can. The law is a complex beast and it takes years of study to make a lawyer. An untrained person is never going to be a match. Deemster Corlett

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<sup>28</sup> A McKenzie Friend can best be described as anyone who accompanies a self-representing person to Court to help them. A McKenzie Friend is able to sit with the person in Court and offer advice (not representation) and support as well as taking notes <https://www.mckenzie-friend.org.uk/>

addressed this in his speech at his swearing in as First Deemster, please see his comments<sup>29</sup>, which I echo wholeheartedly.'

Criminal justice system employees varied in their views. There was concern that nobody would self-represent by choice and that providing an Advocate would solve the issue. There was also the view that those who self-represent should not receive any support and another highlighted the difference between self-representation as a choice and a last resort:

'Give them a lawyer! Nobody would do this by choice. They are forced to as unable to afford legal representation if they earn a living wage, never mind a decent wage. Imagine if this question was about health care - How could we best support people who self-operate in Hospital Theatres? we would not allow it due to the risks, the same is true here.'

'Give full disclosure of all information pertinent to the case.'

'Why should they be supported? They chose to self-represent; leave them to it.'

'Ensure that self-representation is someone's choice, not their last resort.'

The response from homelessness charity *Grainh* focused on the accessibility of legal language in the Court:

'By ensuring the legal language is 'translated'. This really applies across the board. If we are serious about an accessible justice system that works for all people then it really needs to lose the tangle of convoluted language that currently dominates legal communications and rulings. Real work needs to be done to make sure that all aspects of the judicial system are presented and worked through in simple, clear language, free of jargon and 'legalese'. Without this basic step many people, not simply the vulnerable, who are not trained are excluded from grasping what is going on.'

A Tynwald Member suggested that legislation could be introduced to apply financial penalties to those who wish to self-represent:

'[By] Legislators preventing it in the passage through parliament of primary and secondary legislation, and potentially dissuading people from taking this route by applying financial penalties for those who wish to represent themselves in a courtroom.'

The General Registry suggested adapting a UK Government self-representation guide for IoM defendants; additional use of the Court Duty Advocate; increasing Court staff and Judiciary numbers, and ensuring adequate Legal Aid provision is in place:

'Adapt any one of the number of UK government guides to self-representing in court and make that available on the Courts website and in hard copy at the Courts/in the Prison.

Have a Duty Advocate on hand to provide overview and guidance even if not retained on the specific case to give some guidance pre or the day of any hearings.

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<sup>29</sup> Deemster Corlett's speech at his swearing in as First Deemster and Clerk of the Rolls, 19 September 2018 <https://www.courts.im/news/2018/sep/deemster-corlett-s-speech-at-his-swearing-in-as-first-deemster-and-clerk-of-the-rolls/>

Increase the number of court staff and full time members of the Judiciary to cope with the significant extra workload that self-representation matters invariably bring – thus reducing the time before their matters can be dealt with due to volumes already in the Court system.

Have in place a system-adequately funded and properly resourced of both legal aid and related Schemes to reduce the likelihood of a defendant needing or feeling they must self-represented.'

'Other' respondents made suggestions which could assist defendants and referenced existing duties within the Court:

'Let them know the advantages/disadvantages of self-representation to give them something to think about.'

'With patience and respect at every step.'

'Have a panel of voluntary McKenzie Friends?'

'By ensuring that books and forms are accessible, particularly in prison. Some form of monitoring of such cases by a court officer could be useful. Perhaps have an advocate visit the prison regularly.'

'The Deemster already has a duty to protect them.'

'That is an issue for the Court and not for legal aid.'

**Q56 SUMMARY:** 106 (52%) of respondents answered the question. As with Q55, the responses show that people interpreted the question in different ways.

Some respondents held the view that nobody would self-represent by choice, so by extending eligibility for Legal Aid to ensure that more individuals could receive legal advice and representation from an Advocate, this was considered the most appropriate solution. Other respondents suggested that if it was a person's choice to self-represent they should be left to 'get on with it'. There were also respondents who said that some people, including themselves, would choose to self-represent because they consider that they will do (or that they have done) a better job than an Advocate.

Respondents raised 5 key themes which are summarised below.

- 30 respondents (15%) said that there should be more accessible guidance on Court procedures available, and practical support given to those who self-represent
- 16 respondents (8%) said that access to Legal Aid should be increased to give those who are unrepresented access to an Advocate
- 10 respondents (5%) said that providing access to a Court Duty Advocate or other Legal Aid Advocate for advice (not representation) would be helpful
- 6 respondents (3%) said that it was not really possible to provide meaningful support to a person who self-represents in comparison to a qualified Advocate who is experienced in dealing with criminal cases
- 4 respondents (2%) said that no support should be given

Other matters were also raised including:

- The Judiciary already has a duty to protect those who self-represent
- Support for a person who is self-representing is a matter for the Courts not Legal Aid
- It is important for defendants to be given access to the prosecution's case with full disclosure
- Concern that self-representation can lead to miscarriages of justice
- Concern that Court time is wasted when defendants self-represent

Suggestions for consideration included the following:

- People should be informed of the potential implications of self-representation
- Pro-bono legal representation from trainee Advocates could be offered
- Literature and guidance on the criminal court system could be improved
- Additional time could be given in Court
- Simple language and plain English should be used as much as possible
- Legal Aid funding should be granted to the defendant to pay for evidence gathering, expert reports and transcripts of proceedings
- People could be encouraged to take out *Before Event* or *After Event* legal insurance to cover legal fees
- Long-term repayment plans for legal fees
- A panel of voluntary McKenzie Friends<sup>30</sup> could be developed to provide support to defendants in Court
- Access to UK lawyers in Manx Courts
- Separate Court lists to reduce Advocates' waiting time in other cases
- Introduction of legislation with financial sanctions for those who self-represent

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## 4.12. Legal Aid rates

Q57. Do you think that Legal Aid rates of pay should be reviewed?

Respondents were advised that the current Legal Aid rates of pay are set out in legislation and have been in place since 2009. The rates are:

- £115 per hour for Junior Advocates (in practice in IoM for <5 years)
- £135 per hour for Senior Advocates (in practice in IoM for >5 years)

Rates of pay for Police Station Duty Advocate work are:

- £1215 per week On-Call payment for Duty Advocates
- £310 per week On-Call payment for Senior Duty Advocates
- £115 per hour Call-Out payment for Junior Duty Advocates
- £135 per hour for Senior Duty Advocates

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<sup>30</sup> A McKenzie Friend can best be described as anyone who accompanies a self-representing person to Court to help them. A McKenzie Friend is able to sit with the person in Court and offer advice (not representation) and support as well as taking notes <https://www.mckenzie-friend.org.uk/>

196 people (97%) answered the question, and the results are shown in Table 40a below. A text box was also provided for comments. As people could answer 'Yes' for hourly and/or on-call rates, the respondent total does not add up to 203 and the percentage total does not add up to 100.

**Table 40a. Views on whether Legal Aid rates should be reviewed**

Response	No.	%
Yes, review hourly rates	120	59
Yes, review on-call rates	112	55
No	35	17
Don't know	29	14
Not answered	7	3
<b>Total</b>	N/A	N/A

Further analysis showed that in total, 132<sup>31</sup> people answered 'Yes' for hourly and/or on-call rates, and the respondent and percentage totals add up to 203 and 100 respectively as shown in Table 40b below.

**Table 40b. Views on whether Legal Aid rates should be reviewed (hourly + on-call)**

Response	No.	%
Yes, hourly rates and/or on-call rates	132	65
No	35	17
Don't know	29	14
Not answered	7	3
<b>Total</b>	203	>99

101 comments were made.

132 respondents (65%) were **in favour of reviewing hourly rates and / or on-call rates**. Of these respondents, 23 had been through the criminal justice system; 47 were members of the public; 34 were Advocates / Judiciary members; 17 were criminal justice system employees; 2 were charity / support workers; 1 was a Tynwald Member and there were 8 others. 97 comments were made.

Comments from these respondents who were in favour of reviewing rates could be broadly categorised into four key themes:

- Those in favour of a review leading to an **increase in hourly rates** or thought rates were too low;
- Those who were in favour of a review **in the interest of fairness and good process** but did not explicitly indicate whether rates should be increased or decreased;

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<sup>31</sup> The total number of people who answered 'Yes' for hourly and/or on-call rates was 132 (i.e. 203 – [35+29+7])



- Those in favour of a review leading to a **decrease in hourly rates and/or on-call rates** or thought rates were too high; and
- Those in favour of a review and **rates which match the skills / complexity of a case.**

51 comments (25%) were made by respondents who supported an **increase in hourly rates** or who thought rates are too low.

Those who had been through the criminal justice system expressed concern that rates which are considered inadequate or uncompetitive may be a disincentive for Advocates to undertake Legal Aid work. It was also suggested that it is not unreasonable for an Advocate to be properly remunerated for the work they do, and there was a sense that a lack of pay increase and/or review over a long period is unfair:

‘Should be reviewed upwards.’

‘The hourly rate is very low and deters many experienced Advocates from taking on Legal Aid matters.’

‘They can clearly earn more in private practice and the incentive for good advocates to do Legal Aid work is diminishing.’

‘How can we hope to encourage more advocates to go into the criminal legal system when the monies they are paid have remained stagnant for so long and you have to wonder why when the living costs on the Island have continued to rise. We need to encourage not discourage and we will end up with too many advocates only wanting to work in the civil sector which is a much more lucrative market, criminal advocates surely must have a vocation to want to work for such low rates.’

‘Advocates should feel it’s a job worth doing, so they should be properly paid.’

‘They should have a pay rise they have not had one in a long time.’

Members of the public made reference to Advocates’ level of knowledge and skill, and expressed concerns about rising costs of living; the negative impact of pay rates on attracting trainee Advocates, and unfairness when compared to those in the public sector. Notwithstanding their support for a rate increase, one person also suggested that in exchange, Advocates should be required to undertake compulsory training and evidence their specialist areas of criminal defence. If the comment contains different views for hourly / on-call rates, the relevant text is underlined:

‘Increased to encourage more advocates.’

‘A review since 2009 is unacceptable.’

‘The rate has not gone up in 10 years whereas the cost of living has! It would be difficult to attract new, young trainee advocates to work in these vital areas of law if the hourly rates are so low.’

‘Seems very unfair that advocates doing criminal work have not had a pay rise in 10 yrs! Should be increased in line with inflation since 2009, at the very least.’

‘As I am not an advocate I can again see no reason why since 2009 there has been no increase in either payments. Again I wonder how many government ministers, members of the AG’s chambers or civil servants would accept 10 years without an increase in pay. What you are paying for is their knowledge and experience.’

'These advocate[s] [a]re highly trained and skilled, the pay should be adjusted for the better periodically, but those on the scheme should complete compulsory training and prove their specialism in Criminal justice.'

'Over £1000 just on the chance you might be called out is exceptionally high, maybe the call out rate should be increased but the rate for being on call be dropped.'

The IoM Law Society set out its concerns in regard to the Legal Aid rates not having been increased since 2009 and called for an immediate increase in the Senior Advocate hourly rate to £150ph. The Society also suggested the introduction of a 3-tier model of Legal Aid rates (the current 2-tier model reflects Junior and Senior rates) to include a rate for newly-qualified Advocates, notwithstanding that their work may take longer. An annual review of all rates with inflationary increases as minimum was also requested. The Society also set out its concerns regarding the comparative financial attractiveness of criminal vs commercial work, and expressed concern that without adequate remuneration, fewer Advocates will undertake criminal work, which the Society considers is already given little recognition:

'When looking at legal aid expenditure, the IOMLS makes it clear that the costs paid to Advocates is the only element that should be considered. Notwithstanding the increased number of serious cases coming before the Court between 2014 and 2018 (19.26%) the cost of legal aid has fallen by 10.94%.

There has been no increase in the legal aid rates of pay for Advocates since 2009, notwithstanding the recommendations of the Legal Services Commission in 2004. In that time, Advocates' costs have increased significantly, many of which are beyond the control of the Advocate. Despite promises from Government that legal aid rates would be reviewed annually, no such review has taken place since 2009, and the rate applied in 2009 did not even bring Advocates up to the rate recommended in 2004, as being an immediate increase. It is therefore requested by the IOMLS that the Senior hourly rate should immediately be increased to £150 per hour and should be reviewed and increased in line with inflation (as a minimum) annually.

It is further suggested that an additional rate could be introduced to differentiate between newly qualified Advocates and those who are 2 – 5 years commissioned. Newly qualified Advocates could be paid a slightly lower rate, which would more closely mirror private charge out rates, although it should be noted that work by junior Advocates is likely to take longer than work undertaken by Senior Advocates. The hourly rates for both these categories should be reviewed and increased in line with inflation (as a minimum) annually.

It must be made clear, that the hourly rates paid do not go straight into the pockets of the Advocates. More needs to be done to encourage Advocates to undertake legal aid work to ensure the most vulnerable members of our society have representation when required. The small number of criminal Advocates becomes evident when there are multi-handed cases and defendants struggle to obtain representation. Advocates in private practice undertaking commercial litigation are paid considerably more than criminal Advocates, notwithstanding they may be far more junior and less qualified. Therefore, Government needs to ensure a career as a criminal Advocate is attractive. Criminal Advocates do not do the job for the money, but they should be adequately remunerated for what is a very difficult, unsocial and demanding job, with little recognition for the essential role played.'

Other Advocates / Judiciary members also cited inflation and increasing running costs for legal practices and the lack of increase since 2009 as issues. There were also concerns that the rates deter practices from undertaking Criminal Legal Aid work and young Advocates from gaining the skills needed to adequately maintain the criminal bar. The lack of Legal Aid

increase since 2009 was referred to as cost savings 'by stealth', and there was also a call for there to be a greater hourly pay differential between Junior and Senior Advocates rates than £20, and for the on-call rates to be aligned. If the comment contains different views for hourly / on-call rates, the relevant text is underlined:

'On the face of it £135 per hour sounds a lot. That is until you realise that office costs per year (incl. costs of staff, rent, professional insurance etc.) amount to about £80,000 per year. One has to work a lot of hours before that £80,000 is paid and the Advocate makes any money at all.'

'On call rates are very low considering that an on call Advocate in effect puts their life on hold to be available. The hourly rates should have increased as promised and should now reflect the fact that the remuneration is unattractive and is thus restricting the number of Advocates willing to undertake the work.'

'Legal Aid rates are so low that it is difficult for employed advocates to persuade their practices to allow them to do this type of work, thus restricting the availability of criminal advocates & deterring younger advocates from gaining the necessary skills in this area.'

'They should be increased in line with inflation. Not increasing the fees for over 10 years is an effective cut and a cost saving by stealth by the Government.'

'They need to be reviewed and increased Advocates haven't had the pay rise they were promised after the last review it is stressful work and unsocial hours.'

'There should be an increase in the senior advocate rate. A difference of £20 per hour does not realistically represent the difference in experience.'

'Senior on-call should be the same as the advocate on call. Both advocates are still on-call. Advocates are not paid an on-call fee for day time Monday to Friday, this is a voluntary scheme. Legal aid rates should be increased to reflect the increase of costs since 2009 and to fall in line with other similar jurisdictions. Advocates working in Government have received pay increases and yet they do not have office costs. Does the government contract out any other services where the contract rate has remained the same for 10 years?'

'...Adequate [hourly] rates would reduce need for on call fees. Time savings could be made by police and courts understanding the fact that time = increased cost.'

'I think that "on call" rates should be reduced but hourly rates should be increased. Advocates should primarily be paid for the work that they do (although I do accept that there is some disturbance in being "on call" and therefore a nominal payment for this is justified). Hourly rates are only part of the issue however - greater control needs to be given to the number of hours claimed - only a reasonable number should be allowable for the work undertaken and necessary.'

Criminal justice system employees referred to inflationary and/or cost of living considerations and fairness. Others suggested that whilst hourly rates could be increased, there should be a limit on the number of times a person can receive Legal Aid or fixed per level of offence. If the comment contains different views for hourly / on-call rates, the relevant text is underlined:

'Yes, at least in line with inflation/cost of living since 2009.'

'Should be given higher hourly rates but far fewer cases. Legal aid should be limited to twice per person.'

'The on call rates are ludicrous, how can this be value for money?... Perhaps a better hourly rate but one that is fixed per level of offence that the person has committed so the advice given is swift and limits the persons time in custody.'

A Tynwald Member also made reference to inflationary increases and fairness, in addition to the importance of placing the defendant at the centre of the system. They also indicated that some people self-represent due to an inability to secure legal representation which they considered to be cheaper but unsatisfactory:

'Because they haven't been updated for 10 years - why aren't they in line with inflationary increases/increases in line with going market rates? There are some individuals that are choosing to self-represent in courtrooms because some advocates won't take them. It's cheaper, on the whole, but not an ideal situation, and categorically unfair, but that doesn't mean this type of work shouldn't be attractive to decent advocates. We need to place fairness and the individual in need at the centre and services around them that we would expect our own family members to have access to: regardless of standing in a community, or financial prowess.'

The General Registry suggested annual reviews:

'Yes, annually, in light of RPI and known overheads of operating a legal aid practice.'

Comments from 'Other' respondents indicated that rates of pay should be at a level to attract quality Advocates, and concern that the Government processes do not sufficiently cover the legal costs incurred:

'Rates of pay need to be sufficient to draw quality advocates and encourage them to use experts and carry out tests where necessary.'

'These rates are ridiculously low for the skills and levels of expertise needed to deal with legal aid cases. They are also not a true reflection of the actual rates due to the archaic systems adopted by the government the amount of time spend on administration in relation to legal aid cases is vast and not recoverable. There are also arbitrary limits on the amount received per letter sent or received regardless of the complexity of the matter involved.'

17 comments (8%) were in favour of a **review in the interest of fairness and good process** but did not explicitly indicate whether rates should be increased or decreased.

Those who had been through the criminal justice system referred to fair processes being applied to all:

'All people should be paid fairly. Pay reviews should happen often to ensure value and quality.'

'Everyone should have their pay reviewed.'

Members of the public made similar comments:

'If not reviewed for 10 years then a little overdue now so yes review looks reasonable.'

'All fees should be regularly examined.'

An Advocate / Judiciary member referred to the costs of running a practice and expressed concern that attracting Advocates to the criminal bar in the long term may not be sustainable:

'...Most advocates who undertake criminal work do so despite the fact they could be more profitable in other areas. That may not however be sustainable in the longer term. After 10 years of rates remaining the same they should at least be looked at.'

Criminal justice system employees referred to regular reviews and fairness:

'All rates of pay should be reviewed regularly, and at the least, once every two years. Inflation over 10 years would indicate these rates require reviewing.'

'Should be fair to all.'

16 comments (8%) were from respondents in favour of a review leading to a **decrease in hourly rates and/or on-call rates** or who thought rates were too high. If the comment contains different views for hourly / on-call rates, the relevant text is underlined:

Members of the public were concerned that the current rate is too high and suggested a reduction. Another person suggested on-call payments should be made daily not weekly.

'Even the most junior rate of £115 per hour seems excessive given current pay rates within the public and private sector on Island. This should be reduced where possible to a more realistic figure.'

'Should be reduced, especially the on-call rates.'

'On call payments should be a daily rate and only paid for those days when called out as part of their hourly rate...'

'Over £1000 just on the chance you might be called out is exceptionally high, maybe the call out rate should be increased but the rate for being on call be dropped,'

A comment from an Advocate / Judiciary member suggested that 2009 rates were set too high. Another suggested that adequate hourly rates would reduce the need for on-call fees and made reference to saving time and costs within the criminal justice system. A third suggested that if hourly rates are increased then a nominal on-call payment is justified:

'Yes they should be reviewed periodically but there should be no assumption that there are only "upward" reviews. The rates in 2009 were, if anything, too generous.'

'Adequate rates would reduce need for on call fees. Time savings could be made by police and courts understanding the fact that time = increased cost.'

'I think that "on call" rates should be reduced but hourly rates should be increased. Advocates should primarily be paid for the work that they do (although I do accept that there is some disturbance in being "on call" and therefore a nominal payment for this is justified). Hourly rates are only part of the issue however - greater control needs to be given to the number of hours claimed - only a reasonable number should be allowable for the work undertaken and necessary.'

Some criminal justice system employees expressed the view that the rates are too high, particularly when compared to on-call rates for those working in the emergency services, and the hourly rates for Appropriate Adults and interpreters:

'You do realise that some emergency services employees are only paid £20 a day to be on call to deal with serious matters often involving high risk situations that could be life-or-death!? ..for £20! £1215 a week to be on-call, and still work as much as they like, plus work the call-out payment on top of that. A police officer on call for instance will earn a maximum of £140 per week for an on call period. This is a shocking amount of money!'

'There are Police officers on call to sometimes perform dangerous roles at a measly £120 per week and these guys are getting £1200 plus that huge hourly rate. It's scandalous.'

'The rate is extremely large given that they receive this money regardless of call outs. They then receive further pay on top of this.'

'£60k/yr pro rata for being the person who gets called, to then be paid £115/hr for working, cannot be good use of taxpayer money.'

'Even though it is lower than private fees that's a massive amount of money to pay someone to provide legal advice especially when compared to the translators' hourly rate and the app adults' rate.'

'The on call rates are ludicrous, how can this be value for money?... Perhaps a better hourly rate but one that is fixed per level of offence that the person has committed so the advice given is swift and limits the persons time in custody.'

3 comments (1%) were from respondents **in favour of a review and rates which match the skills / complexity of case** and they all came from individuals who had been through the criminal justice system. A call was also made to issuing licences to non-Manx lawyers to allow them to appear in Manx Courts:

'Cost is irrelevant to the accused they should have representation that matches the crimes regardless of cost. The advocate should match the crime a junior or one lacking the skills or experience is useless whatever the costs.'

'Depending on qualifications and areas of law.'

'Advocate[s] should be paid the appropriate rate for the job. Rates should be graded according to the complexity of the case. Further, opening up the licencing process for use of non-Manx representatives would redress the current deficiency in the quantity and quality of advocates available to defendants.'

35 respondents (17%) said that **Legal Aid rates of pay should not be reviewed**. Of these, 4 had been through the criminal justice system; 14 were members of the public; 8 were Advocates / Judiciary members; 5 were criminal justice system employees; 1 was a charity / support worker, and there were 3 others.

One comment was made by an Advocate / Judiciary member as part of a longer response, who felt that the current on-call rate was appropriate for what was required of Advocates on duty:

'...I do not consider the on call payments should be reviewed. Being on call for 108 hours per week, whilst doing a full working week, is extremely tiring and it can be frustrating having your life on hold. The remuneration should reflect that.'

29 respondents (14%) said that they **did not know if Legal Aid rates of pay should be reviewed**. Of these, 4 had been through the criminal justice system; 13 were members of the public; 4 were Advocates / Judiciary members; 3 were criminal justice system employees; 3 were charity / support workers, and there were 2 others. 3 comments were provided.

The Chief Constable made clear the Constabulary's position:

'The Constabulary does not [have] a view on the rates.'

A charity/ support worker referred to market rates:

'I wonder therefore if the market determines the rate as it does in other areas.'

**Q57 SUMMARY:** 196 respondents (97%) answered this question and 101 comments were made.

- 132 respondents (65%) supported the principle of a review in hourly rates and / or on-call rates. 51 comments (25%) reflected that respondents were in favour of rate increases; 17 comments (8%) were in favour of a review in the interest of fairness and good process; 16 (8%) were in favour of rate decreases, and 3 (1%) called for pay rates to reflect Advocates' skills and the complexity of cases.

Many of those who called for an increase to hourly rates expressed concern at the lack of increase since 2009; cost of living and inflationary increases, and a disparity with pay increases in other sectors (e.g. public sector) over the same period. Others commented that Government had, in effect, saved money by not increasing hourly rates. There were also concerns that without adequate remuneration, pay rates would be a disincentive for Advocates to join the criminal bar, which would be an unsustainable position for the Island. The IoM Law Society called for the Senior Advocate hourly rate to be increased to £150 per hour with a commitment to annual inflationary increases as a minimum.

Those respondents who supported a review of Legal Aid rates, but had different views on hourly and on-call rates largely favoured an increase in hourly rates and a reduction in on-call rates. However, one Advocate/Judiciary member indicated that whilst they would supported an increase in hourly rates, they did not seek a review of on-call rates which they felt was at the appropriate level for what was required of Advocates on duty.

Most of those who called for decreases to rates expressed concern about the on-call rate for Advocates and in particular how it compared to significantly lower on-call rates for those working in the emergency services. Other views included supporting adequate payment for the work that Advocates do and a nominal payment for being on-call, and concern that rates were set too high in 2009 and reviews should not automatically result in increases.

- 35 respondents (17%) said that Legal Aid rates of pay should not be reviewed.
  - 29 respondents (14%) said that they did not know if Legal Aid rates of pay should be reviewed. The Chief Constable advised that the IoM Constabulary does not have a view on rates.
  - 7 respondents (3%) did not answer.
-

Q58. The hourly Legal Aid rates of pay are £115 per hour for Junior Advocates and £135 per hour for Senior Advocates. Should this two-tier model for Legal Aid rates remain in place?

196 people (97%) answered the question, and the results are shown in Table 41 below. A text box was also provided for comments.

**Table 41. Views on whether a two-tier model for Legal Aid rates should remain**

Response	No.	%
Yes, the two-tier model should remain in place	143	70
No, there should be one single rate for all Advocates	26	13
Other (please state)	10	5
Don't know	17	8
Not answered	7	3
<b>Total</b>	203	100

35 comments were made.

143 respondents (70%) said that the **two-tier model should stay in place**. Of those, 22 had been through the criminal justice system; 52 were members of the public; 39 were Advocates / Judiciary members; 13 were criminal justice system employees; 5 were charity / support workers; 1 was a Tynwald Member and there were 11 others. 23 comments.

Those who had been through the criminal justice system supported a model in which there is a differential between Junior and Senior rates, in addition to an increase in Senior Advocate rates:

'How can you expect senior advocates to want to work at the same rate as a junior, this wouldn't happen in any other business.'

'Rates should be higher for seniors as they should match experience with the crimes.'

'If anything the senior advocates' rate should be increased and they should be used more.'

Members of the public made similar comments:

'Perhaps there should be even more of a marked difference between senior and junior to encourage the senior to continue to undertake LA work.'

'In most jobs, experience comes at a price.'

Advocates / Judiciary members made reference to the benefits of a tiered model, in terms of incentivising Junior Advocates to develop, and Senior Advocates to continue in their work. Recognition of skill and experience was also raised and it was suggested that this should also be taken into account for serious crimes. One person also suggested the option of further tiers, and another indicated that if fewer young Advocates are joining the criminal bar a two-tier system may not be appropriate:

'There needs to be some incentive for more experienced to continue to undertake this work.'

'Yes, absolutely. Many advocates begin doing Legal Aid work and shortly go onto better paid work. If experienced Advocates are to continue doing the lowest paid work available,



there needs to be some incentive, however small. It would be offensive for an advocate of 20 years criminal experience to be paid the same as someone who qualified yesterday.'

'Experience should be appreciated and valued, or we risk experienced Advocates leaving the Courts which would cause further costs and time. Another factor should be the level of work being undertaken i.e. a 'more serious' crime such as Rape or Murder should be at a higher rate again than low level driving matters.'

'Or 4 tier depending upon call.'

'...most advocates undertaking criminal legal aid work are now senior advocates with few junior members coming to practice at the criminal bar. There are numerous reasons for this but I suspect one reason is likely to be that rates have not increased for a long time and the junior rate being lower than the senior rate. There may be an argument for there being one rate at the very least in line with the senior rate in order to persuade more junior advocates to practice criminal law.'

'Although there are now not many younger advocates coming through the ranks that deal in criminal work so a two tier system may not be appropriate.'

The General Registry also supported a two-tier model, and added further suggestions in terms of types of offences and levels of Court in addition to its response to Q12 (changes to requirements to undertake Green Form and/or Criminal Legal Aid work under a certificate):

'Yes. It reflects the experience and skill sets required for different matters. A distinction could however also be drawn between types of offences and levels of court – i.e. a senior Advocate is paid a junior Advocate's rate if appearing in a Summary Court / in a matter below a prescribed level of maximum sentence? Also please note the comments above, particularly in response to Question 12.'

26 respondents (13%) said there **should be one single rate**. Of those, 4 had been through the criminal justice system; 12 were members of the public; 2 were Advocates / Judiciary members and 8 were criminal justice system employees. No comments were provided.

10 respondents (5%) indicated a preference for **'other' models**. Of these, 2 had been through the criminal justice system; 3 were members of the public; 4 Advocates / Judiciary members; and 1 'other'. 10 comments were made.

Those who had been through the criminal justice system made reference to considering cases on an individual basis (i.e. based on the amount of work required / complexity of case) and paying Advocates accordingly:

'Dependant on each individual case if justified it should remain the same depending on the amount of work involved as each case is clearly different.'

'As in Q 57 - grading of rates according to skills required for complexity or otherwise of the case is essential. A one rate fits all cannot assist access to justice.'

One member of the public sought clarification on the process for assigning Advocates to cases, if defendants would prefer advice and representation from a Senior Advocate:

'I am trying to understand the two tier system as preference for a defendant would surely be for a senior advocate to attend at the higher rate. Who makes the decision what level of advocate attends?'

The IoM Law Society's response made reference to its answer to Q57, and the following extract refers to a 3-tier model:

'... an additional rate could be introduced to differentiate between newly qualified Advocates and those who are 2 – 5 years commissioned. Newly qualified Advocates could be paid a slightly lower rate, which would more closely mirror private charge out rates, although it should be noted that work by junior Advocates is likely to take longer than work undertaken by Senior Advocates.'

Responses from other Advocates / Judiciary members included support for the Society's 3-tier model, and concern that a dual rate should only apply if appropriately aligned to the offence:

'3 rates: 0-2yrs, 2-5yrs, 5yrs+'

'It depends - if the senior advocate is only used when the offence warrants it then I think that the dual rate is correct however, if junior and senior advocates are engaged to do the same work (and their differential in pay is only because of years call) this would seem unjustified unless there is an acceptance that a more junior lawyer may take more time and allowance is made for this when taxing the file?'

The Chief Constable made reference to his answer to Q57, in which it was confirmed that the IoM Constabulary does not have a view on Legal Aid rates.

17 respondents (8%) said that they **did not know if the two-tier model should stay in place**. Two comments were made, including a suggestion from a member of the public that the tiered model is reasonable if matters are aligned to the appropriate level of seniority:

'If more matters are complex than others and more straight forward activities can be left to a junior advocate then it seems reasonable to have tiered hourly rates.'

**Q58 SUMMARY:** 196 respondents (97%) answered the question and 35 comments were made.

- 143 respondents (70%) were in favour of the current two-tier system. Comments made reference to the benefits of a rate differential which included incentivising Junior Advocates to join the criminal bar and develop professionally, in addition to recognising and retaining Senior Advocates.
- 26 respondents (13%) would like a single rate for all Advocates.
- 10 respondents (5%) had other suggestions for Legal Aid rate tiers. The IoM Law Society called for there to be an additional tier in place for newly qualified Advocates, to create a 3-tier system, which was supported by another Advocate/ Judiciary member. Reference was also made to recognition for more serious and/or complex crimes, and for Advocates with the most appropriate level of skill and experience to be assigned accordingly but it was not known if there is a mechanism in place to achieve this.
- 17 respondents (8%) did not know.
- 7 respondents (3%) did not answer.

## Q59. Do you have any further comments or suggestions about Legal Aid rates of pay?

A text box was provided for respondents to leave their comment and suggestions and 38 responses (19%) were received in total.

Of those 38 who submitted comments there were:

- 8 who had been through the criminal justice system
- 8 members of the public
- 12 Advocates / Judiciary members
- 3 criminal justice system employees
- 7 'Others'

Of those who had been through the criminal justice system, comments focused around access to justice, increasing the Legal Aid rates for Advocates, and encouraging Advocates to undertake work. Concerns were raised about Advocates' workloads and accountability, and suggestions included pay based on acquittal rates and ability, and opening up the Manx Bar:

'Cheap justice is not justice.'

'The use of senior advocates who cannot be pressurised should be encouraged.'

'I think that payment should be based on the amount of time taken and the success rate of the advocate involved as some advocates are clearly better than others and put in longer hours to represent their clients thus achieving a high success rate.'

'In keeping with advocates' experience and ability,'

'The current system encourages advocates to take on too many cases at same time to maximise income. They spread their skills too thinly. Advocates should be paid the full professional rate for the task but should be held accountable for performing. There should be oversight in relation to wasted costs.'

'Manx advocacy is an oligopoly. If Manx courts were open to competition of UK barristers/lawyers a competitive environment would reduce costs and improve service.'

Comments from members of the public included concerns about cost-cutting, and the potential implications of not increasing pay rates in terms of the availability of Advocates. One respondent expressed concerns in regard to the costs put forward for running a small legal practice compared to other sectors which stay in business:

'This shouldn't be a cost cutting exercise.'

'Lawyers spend long time training and do a difficult job at all hours, they should be properly paid.'

'Either the rates of pay need to be raised or there will be less advocates prepared to undertake LA work - but perhaps this is the intention?'

'Your example of a £80,000 costs for a small practice doesn't make sense. If you are looking at paying very generously your admin at £30K and rent for an office for 2 at an expensive £15K and insurance fees of approx. 5% of fees earned £4K (for a gross of £80K) this leaves £31K unaccounted for? Even if the cost for the practice is £80K it can be generated in a mere 15 weeks of work. Professionals in other industries with equal qualifications, levels of risk and insurance cannot charge half the legal aid figure and stay in business never mind their private practice cost.'

'Excessive.'

The IoM Law Society expressed concerns regarding pay rates and in particular the availability of Senior Advocates to undertake Legal Aid work. The Society also made reference to an increase in complex cases and the creation of new regulatory offences as examples of increasing demands on the Criminal Bar:

'Senior Advocates work more efficiently and effectively than Junior Advocates, because they have more experience and knowledge. For that reason, Senior Advocates should be remunerated at a higher level. We are currently at risk of not having sufficient numbers of experienced criminal Advocates due to the effective cuts to the legal aid rates and the uncertainty that has been hanging over the criminal bar for the last 2 years. Senior Advocates must deal with the most serious offences and we need to encourage them to undertake legal aid work.'

There has been a significant increase in the number of complex criminal cases coming before the Court and the number of new regulatory offences being created. In order to effectively deal with such increases, criminal Advocates need to be properly remunerated in order that a career in criminal law is an attractive and acceptable one. Criminal Advocates are not the poor relation, despite current perception.'

A number of Advocates / Judiciary members expressed concern about the level of Legal Aid rates of pay and called for them to be increased; in particular the Senior hourly rate. Reference was also made to gross rates of pay not reflecting take home pay. Suggestions included abolishing the Senior on-call rate (for the Police Station Duty Advocate Scheme) and investigating a different system to ensure Duty cover. It was also suggested that travel time should be limited (for the Police Station Duty Advocate Scheme) and fixed fee arrangement should be considered:

'They are abysmal.'

'A basic increase from the rate set over 10 years ago is essential.'

'Rates have not increased since 2009. Senior rate should be at least £150 per hour.'

'Senior advocate pay should be increased to encourage more advocates to undertake such work.'

'The rates of pay represent gross amounts, which are subject to substantial overheads including insurance premiums, as well as tax, national insurance, etc. They do not reflect the money which an individual duty advocate will take home.'

'Senior Advocate on call is no longer needed and should be abolished. A different system to ensure additional cover being available for the duty should be investigated. Travel time to and from police station should be limited in any claim.'

'The introduction of a fixed fee regime would benefit both advocates and the legal aid office in terms of administration and cost certainty. There would need to be exceptions for some offences and some types of clients but this would seem the most efficient method of payment in most instances.'

'Payment on an hourly rate can be seen as incentivising wasteful practices where unnecessary time can be spent in undertaking tasks and / or time spent in undertaking unnecessary tasks. A fixed fee arrangement has much to commend it in comparison.'

'Consider fixed fees.'

Criminal justice system employees referred to striking the right balance between current Legal Aid rates and private rates; value for money and suggested a legal obligation for all legal practices to cover a percentage of Legal Aid work:

'Each advocates' firm of the Island should be compelled by statute to provide a percentage of legal aid work based on the numbers of advocates in their practice.'

The General Registry suggested there should be an assessment of operating costs of a legal practice which focuses on Legal Aid, which could result in more cost sharing arrangements and criminal law expertise to be available:

'The current rates are significantly less than mid to high end civil commercial work rates charged by Advocates. However, operating costs on the IOM (staff/premises/PI) are the same for all practices, subject to location/size of practice etc. An up to date assessment of what it costs to run a predominantly legally aided focused practice should be considered to allow an appreciation of how an efficient and profitable practice can operate (Clothier revisited?). Any such review may result in more cost sharing /more chambers style offices (the Keystone Law model) to allow for a broad range of experience and expertise from those who practice criminal law to be available to the Manx public, whether legally aided or not.'

'Other' respondents expressed their views on Legal Aid rates of pay:

'They are far too low.'

'Rates of remuneration should include allowances for expert opinion and forensic work and not be a detriment to the lawyers own remuneration.'

'Much could be done by legal executives at lesser cost.'

'They will want more so they must give more.'

**Q59 SUMMARY:** 38 respondents (19%) provided comments and a number of key themes emerged.

- 11 respondents (5%) referred to raising Legal Aid rates of pay, and particular reference was made to a lack of increase since 2009. It was also suggested that Senior Advocates' hourly pay rate should be increased to support their retention and take into account increasing criminal law demands. 5 (2%) comments were also made in relation to pay rates properly reflecting the Advocates' profession and ability, and included taking into account other factors such as business overheads.
- 5 respondents (2%) expressed concerns that the current rates were too high, and hourly rates of pay may lead to inefficient working practices. One respondent made reference to business running costs applying to all sectors, not only legal practices; and another to Legal Executives undertaking some work at a lower cost.
- 3 respondents (1%) suggested that fixed fees should be considered to encourage efficiency and support 'cost certainty'. In terms of the Police Station Duty Advocate Scheme, it was suggested that the Senior Advocate on-call rate could be abolished, subject to a mechanism for adequate cover being in place, and claims for travelling to and from the Police Station should be limited. Other suggestions included opening up the Manx Bar to off-island lawyers to increase competition, and for there to be a

statutory obligation upon legal practices to provide a proportion of Legal Aid work, based on the size of their business.

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Q60. Do you have any comments or suggestions as to how Criminal Legal Aid could be organised, managed or overseen differently to better control expenditure in the future?

A text box was provided for respondents to leave their comment and suggestions and 59 responses (29%) were received in total.

Of those 59 who submitted comments there were:

- 5 who had been through the criminal justice system
- 15 members of the public
- 23 Advocates / Judiciary members
- 6 criminal justice system employees
- 1 Tynwald Member
- 9 'Others'

Of those who had been through the criminal justice system, reference was made to the value of education, prevention and early interventions. Suggestions were made to increase Police budgets to allow more time to be allocated to cases; issue Criminal Legal Aid certificates in the name of the defendant, and for Legal Aid systems to be proportionate to the charges:

'Increase police budgets so they can take more time over cases - I'm guessing police time costs less than court / advocate time. In schools make Personal, Social, Health and Economic education (PHSE) lessons compulsory (with specialist teachers and not squeezed in tutorial - there is no point pushing 6Rs<sup>32</sup> if the person ends up in court or prison!) and include specific lessons on all forms of consent - especially that consent cannot be withdrawn because it gets you out of trouble or after the event! Do a cost analysis of the most expensive cases and work out how they can be reduced / prevented before they start - early intervention schemes etc. Much, much cheaper to stop a problem with education /extra police.'

'The aid certificate should be in the name of the accused and the use of this money should be monitored by senior staff, but not controlled. If expert advice is needed for justice it should be funded, just as the Prosecution is.'

'Should be matched to charges. Simplify system for small crimes and more for larger more complex charges.'

Members of the public made comments in support of the current system; for and against a Public Defender Scheme, and suggested that salaried Court officials, quotes or contractual agreements could be considered. There was concern that some Prosecution cases, including those which are dropped, are a waste of taxpayers' money. Suggestions included more alternatives to Court for certain offences (e.g. extending the use of Fixed Penalties); less

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<sup>32</sup> 6Rs relate to 6 'Learning Dispositions' which are taught in schools.

These are: Relationships; Resourcefulness; Resilience; Remembering; Reflectiveness & Readiness.

<https://e4l.sch.im/pages/index/view/id/9/Dispositions%20%286Rs%29>

focus on controlling costs, and more investment in crime prevention education. Another suggestion was limiting the amount of Legal Aid available to an individual:

'No do not change it. The creation of a legal defence team would ensure the government is in charge of your prosecution and defence, that cannot be allowed to happen.'

Criminal legal aid is vital for democracy and should be managed independently from home affairs/police and prosecution departments.'

'Centralised system could save IOM Govt and the public purse money setting up a Public Defender Unit. The challenge is ensuring the independence and impartiality of the judiciary in that centralised administration.'

'Either make advocates quote for the work allocating rates, reduce the money on offer to them unilaterally or bring the work in house.'

'Make advocates salaried court officials or pay them a fixed fee per case with a success bonus rather than pay them an hourly rate.'

'It may be better to ask for Tenders from Advocates and based on their responses look at contractually agreeing terms for an Initial period of 1 year, with performance related.'

'Better assessment of merit of cases. Too much money is wasted on frivolous cases and cases dropped by state.'

'Criminal Legal Aid should not be about expenditure and how to save money but about proving a first class service to detained persons. Considerations should be given to more use of fixed penalty tickets and on the spot cautions rather than taking the individuals to court, ie, small levels of Class B/C drugs, minor theft and minor public order offences.'

'Rather than cost control we should consider investing in crime prevention and education. Perhaps we should consider alternatives to legal proceedings for some first offenses.'

'Perhaps there should be a financial ceiling on the amount of legal aid available to any one individual in a specific period.'

IoM Law Society referred to the assessment process (by a Costs Officer in the General Registry) for Advocates' work carried out under a Criminal Legal Aid certificate:

'There is a costs assessment process in place to ensure control of expenditure. As part of that process every single bill is assessed against the file, on a line by line basis. Generally the system works well and any tweaks have been set out in our other answers.'

Other Advocates / Judiciary members expressed broad support for the current demand-led system in the Island. Particular reference was made to the work of the Legal Aid Certifying Officer and the Costs Officer (in the General Registry), and the benefits of the Island's system compared to the UK. A concern was raised that the question was biased and the respondent outlined issues faced in England and Wales, and said that in order to deliver an efficient and fair Legal Aid system, Advocates should be placed at the heart of the process. The interconnectedness of different elements within the criminal justice system and their associated demands was also raised, including the impact that one element (or failure of that element) can have on increasing Legal Aid expenditure. Suggestions made included guidance for the Costs Officer; introducing Court appointment times; reducing the number of Court adjournments, and extending the use of Fixed Penalties to reduce the number of cases going before the Courts. Further suggestions included providing an adequate consideration

defence<sup>33</sup> and introducing quality assurance control measures with independent inspection of files by the IoM Law Society or its appointees:

'The current system with the legal aid certifying officer is a good system. The Isle of Man has a legal system and a legal aid system it can be proud of unlike the UK legal aid system which is in total disarray.'

'I think the current system controls expenditure as best as we can. All criminal legal aid bills are assessed by an independent costs officer, who is not afraid to put his red pen through time which he thinks was unnecessary or excessive. Some guidance for the costs officer might be appropriate though.'

'...The costs assessor has the power to simply not pay parts of the invoice. It's a bit like a customer having the power to decide if they pay your bill or not. The assessor does an excellent job and the system remains fit for service.'

'From an advocate's perspective Criminal Legal Aid functions well, especially when compared to the system for Civil Legal Aid. I believe it would be a mistake to make significant changes in how it is organised, managed or overseen.'

'The question is biased. It assumes that Criminal Legal Aid payments are out of control or need to be restricted. Access to Justice is a fundamental right of all citizens. The measure of a civilised society and a beacon for the free world is the fact that we have legal aid to assist those in trouble or in need of representation in the civil courts. Where Access to Justice is denied, society is under threat. A cursory look at the situation in England and Wales will show how a denial of access to justice (such as in matrimonial cases) has led to a fundamental breakdown of the legal system there. The judges are crying out for reform because they cannot cope. The Court system is in crisis. The only means of delivering an efficient and fair system is to make the Advocates the heart of the process. Skilled independent Advocates will deal with cases proportionately and efficiently so that the process does not break down.'

'The system is demand led. Police, Prosecution and the Courts can ignore the Defendant, leave them waiting, delay matters etc. This flows from their requirements to work within their budgets. However when you give the defendant an Advocate then those delays etc cost £135 per hour. So the costs of Criminal Legal Aid is the visible problem of the failures in the whole system. If all the parts of the justice system worked together then resources could be spent at the source of problems and not where the failings become apparent and the most expensive to resolve by Legal Aid.'

'...Reducing prosecutions for defendants that have £5 worth of cannabis in their pocket and juveniles stealing a packet of crisps would assist in reducing legal aid costs...Police and prosecutions should be mindful of using public funds appropriately in all matters and at all times. Advocates are only one link in a long chain in the criminal justice system. Fixed penalties should be introduced for possession of small amounts of cannabis and low level public order offences.'

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<sup>33</sup> The provision of an adequate consideration defence in the Proceeds of Crime Act 2008 was repealed by the Organised and International Crime Act 2010 as a result of the International Monetary Fund Report on the Isle of Man. Until the repeal, businesses and professional advisors (e.g. Advocates & accountants) acting in good faith were entitled to obtain payment for goods and services without fear of sanction if the source of the client's monies became suspect. The removal of the defence has been criticised in some quarters, but if it were to be reinstated, it is understood that there would be severe and far reaching implications for the Island from an international Anti-Money Laundering/ Countering the Financing of Terrorism (AML/CFT) compliance perspective. The IoM would lose its current 'Compliant' marking for the Financial Action Task Force Recommendation 3 (Money Laundering Offence) and would be seen to be reinstating a defence which had previously been addressed as a deficiency in the standards.



'Changes could be made to the system, including how the Police conduct matters, which at times is shameful, and reducing the number of very low level offences that reach the doors of Court by dealing with matters by Fixed Penalty Notices which only reach Court if denied or payment isn't received.'

'Reduce the number of adjournments the legal profession should work with the Courts to reduce the number.'

'Have an appointment system at courts and keep the first hour free i.e. 10 am till 11am for custody matters. This would save money on waiting time.'

'Put the IOM back in line with the UK and provide an adequate consideration defence and enable people to pay for their own legal representation when they have the means to do this if this is what they want to do. This will save money. This is not controversial.'

'By introduction of some quality assurance control whereby only those legal services which are necessary for the conduct of a case are undertaken - and that they are undertaken at a reasonable rate. Independent inspection of files - by the Law Society / its appointees - would be a start.'

Criminal justice system employees made a number of suggestions including limiting Legal Aid to repeat offenders, and making the system more accessible to those who commit a single crime. It was also suggested that legislative changes to allow the Police to issue fixed penalties for certain additional offences could reduce the burden on Court and Legal Aid, and Legal Aid rates could reflect the level of the charge (e.g. lower level / higher level) as in the UK. The application of fixed fees to reduce detailed invoice examination was also suggested in addition to possible additional resources for the Legal Aid Office:

'It should be limited to a number of uses / expenditure per person. Those who appear unable to stop committing criminal acts should not be afforded its use after a set time/previous costs incurred. In order that those that fall foul of the law once in their life have the opportunity to be represented without bankrupting themselves.'

'Change in legislation to allow police to deal with minor offences by way of a fixed penalty ticket i.e. possession of small amounts of personal use cannabis, low value shoplifting / theft offences, public order / drunkenness offences. This would in turn free up court time and see a reduction in legal aid expenditure.'

'Greater resource given to the Legal Aid Certifying Officer[s] office?'

'When bills are submitted, each one seems to be examined in unnecessary detail and takes huge amounts of time and cost. Fixed fees would remove need for each matter to be dealt with as if it's the first time it's ever been done.'

A Tynwald Member referred to the unpredictability of Legal Aid expenditure:

'It's entirely unpredictable, and assumptions aren't sufficient.'

The General Registry suggested a review of the policies which lead to prosecutions, with a view to reducing the number of cases charges and cases withdrawn / amended. It was also suggested that there should be a dedicated Costs Assessor within the Legal Aid Office to deal with the assessment of Criminal Legal Aid matters, and for there to be sharper focus on the need for public funds to be used reasonably and proportionately:

'Review the arrest /charging /prosecutions policy and actual numbers – see above. Consider having prosecutors available at the police station to offer advice on charging, this may reduce the number of cases charged and the number withdrawn or amended at court (we understand that positive moves are now being made in this regard). Employ a

suitably experienced costs assessor for legal aid dedicated to the criminal legal aid systems who can take a proactive view on merits/permission to instruct experts/expenditure generally on a case by case/ basis. That person should be in a position to challenge and if need be reject an Advocate's view on the merits when expenditure is sought. Amend the spirit/focus/nature of all the Schemes to emphasise/remind all those who are funded under it of the need for reasonable and proportionate time and costs expenditure relative to the matter they are instructed on.'

Comments from 'Other' respondents included financial savings associated with an Appropriate Adult (supporting a young or vulnerable detainee) rather than a Social Worker, and there were differing views on the scrutiny of expenditure. Suggestions included modernising Legal Aid administration processes; a revision to the Proceeds of Crime Act, and for the IoM Law Society to undertake more quality assurance functions:

'I myself as an appropriate adult must be saving the tax payers an enormous amount of money considering how much it would cost to pay social workers rates of pay.'

'The expenditure on legal aid is already independently and accurately controlled by taxation and assessment of legal costs.'

'More follow up and supervision of expenditure.'

'The administration processes should be modernised. Most legal practices have time recording systems but cannot submit data from those systems. The hidebound government processes requiring a specific format means that additional time has to be spent to log legal aid claims and the legal aid scheme doesn't recompense the advocates for administration work at all.'

'Bring in the UK exception to [the] Proceeds of Crime Act permitting reasonable remuneration of advocates from the suspect/defendant's funds.'

'The Law Society should play an actual active role in ensuring that standards are met.'

**Q60 SUMMARY:** 59 respondents (29%) answered this question and a number of key themes emerged.

- 11 respondents (5%) gave their support to the current Criminal Legal Aid system and processes within it.
- 5 respondents (2%) suggested extending the use of Fixed Penalty Notices to reduce the number of cases coming to Court and the associated Legal Aid costs.
- 4 respondents (2%) were against a PDS on the basis that criminal legal defence Advocates should be independent of Government
- 3 respondents (1%) were in favour of a PDS and/or bringing more services 'in house'.
- 3 respondents (1%) suggested that contractual agreements with Advocates could be considered to manage costs and deliver agreed quality standards.

Concerns included failure to consider Legal Aid expenditure as part of a holistic criminal justice system, and reference was made to the Appropriate Adult Scheme reducing costs to Legal Aid.

It was suggested that more consideration is given to which cases should and should not be pursued, and to reducing wasted costs arising from Prosecution cases which are later dropped. Other suggestions included crime prevention education; reducing Court waiting times by considering changes to the current 'block' 10am appointments, reducing the number of Court adjournments, and modernising some of the Legal Aid processes in place (e.g. moving to online applications). Further suggestions included limiting the amount of Legal Aid available to individuals; more resources to the Legal Aid Office, and consideration of fixed fees.

It was also proposed that there should be a review of the policies which lead to charging; that a dedicated individual within the Legal Aid Office should be employed to assess Criminal Legal Aid matters, and for there to be a greater focus on the reasonable and proportionate use of public funds for Legal Aid. Matters including the reinstatement of the adequate consideration defence (in POCA 2008); placing the name of the defendant (not Advocate) on a Legal Aid Certificate; and for the IoM Law Society to take a more proactive role in quality assurance were also suggested.

**4.13. Fixed fees**

Q61. In principle, would you support the option of some fixed fees being introduced for Criminal Legal Aid in the Isle of Man?

Respondents were advised that a fixed fee is an amount paid to an Advocate for undertaking a specific piece of work, and that the amount at which a fixed fee is set depends on the length of time that is allocated to a matter, and the agreed hourly rate. It was also advised that in other jurisdictions, these rates can be very different (e.g. £45 per hour in England and £165 per hour in Jersey’s draft new system) noting that Guernsey, like the Isle of Man, has hourly rates in place. Examples of fixed fees (e.g. attending a Summary Court Trial based on 7.5hr day at £150 per hour = £1125 fixed fee) were included as a basic illustration of how such a fee could be calculated.

196 people (97%) answered the question, and the results are shown in Table 42 below. A text box was also provided for comments.

**Table 42. Views in principle on introducing some fixed fees**

Response	No.	%
Yes	84	41
No	81	40
Don't know	31	15
Not answered	7	3
<b>Total</b>	203	>99

97 comments were made.

Answers were divided with an almost equal split between 'Yes' (41%) and 'No' (40%).

84 respondents (41%) said, in principle, they **would support some fixed fees being introduced**. Of those 14 had been through the criminal justice system; 28 were members of the public; 12 were Advocates / Judiciary members; 20 were criminal justice system employees; 2 were charity /support workers, and there were 8 others. 39 comments were made.

A person who had been through the criminal justice system suggested that fixed fees should be considered if they encourage Senior Advocates to undertake Criminal Legal Aid work, and another supported putting a limit in place on Legal Aid:

'Advocates should perhaps have the option to choose their payment method. Anything which encourages senior, experienced advocates should be encouraged.'

'Yes a limit should be put on criminal legal aid but the advocate must have the case finished and dealt with in that time and if they haven't they should be made to finish the case for free and still do an honest job.'

Members of the public were broadly supportive of fixed fees if they could be introduced on a flexible and fair basis, and deliver efficiencies which would not disadvantage the defendant or the criminal bar:

'Surely a significant number of court processes are clear and repetition and therefore could easily have fixed fees applied.'

'Fixed fee application will only be effective when an appropriate fee is applied to the appropriate matter. This would no doubt require assessment of average time spent on varying matters.'

'It would have to be closely monitored. You don't want advocates working to a set fee which could mean they give a lesser service under extra pressure, than if they were more able to feel less time pressure under an hourly fee.'

As long as there was some flexibility for trials/sentencing that took much longer than expected.

'Fixed fees would speed up the process and so save time and money for both advocate and the public purse. It could help streamline the process. The rate is very low in England and there has been much criticism of it - this would not be a model to follow.'

'Yes but the fixed fee should be based on a lower hourly rate as it's over £100 more than England,'

'There needs to be agreement between the Law Society and Government. The important issue is that there is an appropriate pool of talent attracted to supporting those of limited financial means.'

Advocates / Judiciary members were supportive of fixed fees for certain matters, subject to rates being set at the right level, adequate time being allocated, and sufficient flexibility. Other safeguarding issues were suggested including Court waiting times which would need to be addressed before some fixed fees could be fairly applied. It was also suggested that fixed fees could help to reduce administrative burdens; reducing elements of overcharging that may occur, and the number of guilty pleas entered on the day of a trial (i.e. in Court after preparation for the trial is in place):

'There is scope but the suggested rates are too low. A one day trial will have at least two days in time preparing that could be more if witnesses are interviewed and statements taken. The fixed fee would depend on the offence and no. of witnesses and whether there

is expert evidence. Sentencing after a first appearance should be fixed fee, provided the Court can give appointments so Advocates are not kept waiting for hours on end.”

‘At the right level and subject to safeguards regarding court listings. A hearing should be at a scheduled time to allow certainty that time will be properly compensated.’

‘The length of time set for each case would have to be decided on the facts of that case and not a blanket time for every case of a certain type. The fixed fee structure would have to be flexible to allow for circumstances which take longer than usual or a particularly complex matter.’

‘Some types of cases are similar enough and straightforward enough that the vast majority can be reasonably completed for less than a certain amount. This would help discourage advocates from overcharging on legal aid cases.’

‘I think that this offers the best to advocates (it allows them to predict their income and reduces the admin burden in preparing bills) and for the legal aid office (it reduces the need to assess bills and gives greater cost certainty).’

‘Fixed at the right level should benefit IOM Government budgets and Advocates.’

‘It may mean that advocates advise their clients more appropriately than letting things linger on until they enter a guilty plea on the day of a trial.’

The Chief Constable made reference to previous answers in that the Constabulary does not have a view on fees. Other Criminal justice system employees were broadly supportive of fixed fees in terms of introducing efficiencies, but also urged caution about the unintended consequences of incentivising faster resolutions to matters:

‘A reduction in expenditure would happen if fixed fees were introduced.’

‘It is likely to reduce the overall cost to the tax payer, and although I don’t suggest advocates are dishonest, they are likely to complete their work faster as it benefits them more to do so, giving more for the taxpayers’ money.’

‘Fixed fee should not be given for a full day where a summary court only sits for a morning.’

The General Registry suggested that fixed fees could be workable on condition that Legal Aid expenditure is not considered in isolation from the rest of the criminal justice system, and that the Police / Prosecutions ensure that all relevant issues are dealt with efficiently. It was also suggested that there should be a suitable mechanism in place for fixed fees to be dis-applied where appropriate:

It will assist in clarity of approach and efficiency of time and cost expenditure. However, this too cannot be viewed in isolation. The Police /AGCs must ensure that all relevant issues especially as to disclosure are dealt with in a timely and efficient manner to allow the fixed fee approach to be workable for the defence. In relation to the potential introduction of fixed fees per cases, there must be some form of mechanism for the Advocate to apply, by exception, to Legal Aid Administration (as budget holders/controllers) for the fixed fee to be dis-applied.

Comments from ‘Other’ respondents included the importance of fixed fees being fair, and the yielding opportunities for financial savings:

‘At an appropriate and realistic rate yes.’

‘There are a lot of similar cases, and it could work out cheaper with fixed fees.’

81 respondents (40%) said, in principle, they **would not support fixed fees being introduced**. Of these respondents, 11 had been through the criminal justice system; 31 were members of the public; 32 were Advocates / Judiciary members; 1 was a criminal justice system employee; 1 was a charity / support worker; 1 was a Tynwald Member and there were 5 others. 54 comments were made.

Of those who had been through the criminal justice system, there were concerns that fixed fees would be unfair and uneconomic for Advocates, and would disincentivise them from joining the Criminal Bar or continuing to undertake Legal Aid work. There was also concern that standards of quality would diminish, and as some Advocates already do pro bono work, that they should not have further financial constraints imposed:

'The time to be spent on court appearances varies. I do not understand how a fixed fee is of benefit. No Advocate is going to work for £45 per hour (as per the England rate), nor should they be expected to. The idea is ridiculous and would deter many Advocates from taking on any Legal Aid work.'

'Fixed fees could lead to the advocate's work effort being tailored to ensure a profit on the fee - especially in a small sole practitioner operation needing to secure budgeted income figures.'

'Again fix a price & it will not encourage lawyers to do criminal aid work or do the job to the best of their ability.'

'How do you know how the case is going to pan out so how can you know if you are going to end up out of pocket as some cases look very simple but end up much more complicated?'

'Fixed fees could lead to the advocate's work effort being tailored to ensure a profit on the fee - especially in a small sole practitioner operation needing to secure budgeted income figures.'

'Advocates are already doing pro bono work in some cases - why squeeze them more financially?'

Members of the public also expressed their concern in regard to the impact that fixed fees may have on attracting and retaining Advocates to the Criminal Bar. They also raised the issues of fairness, and uncertainty associated with predicting how long different matters would require. Further concerns in regard to the impact that fixed fees may have on quality of service were also raised, and how this could negatively impact the defendant and ultimately access to justice:

'Based on the figures above I can only assume that not many advocates in England will do Criminal Legal Aid work based at £45 per hour....Again your pool of advocates is going to get smaller because of someone counting pennies rather than providing a first class service.'

'Something could take an hour, 7 hours or 7 days so it is unfair to impose a fixed fee.'

'Not every offence of the same nature takes the same amount of time.'

'I believe hourly rates better reflect work done.'

'This would lead to more complex cases being given less attention by advocates.'

'This may limit the number of hours that a solicitor would spend on a case thus affecting the quality of the defence.'

'I can see how the advocate could benefit from a fixed rate should they manage to complete the task in less time. I don't think this will help their client who may receive a rushed job. Government will just use more public money for possibly inferior work.'

The IoM Law Society provided a detailed submission in relation to fixed fees, which in its response was grouped together as 'Questions 61-63'. The Society's response set out concerns in regard to fixed fees, and in particular that it is not possible to state with any certainty how long a matter will take to complete, or the time required in association with that matter (e.g. research and preparation; sourcing expert reports; Court waiting times) which could lead to a failure to pay Advocates fairly and adequately for their work. The Society also referred to the remit of the Government's '*Securing Added Value and Efficiencies*' (SAVE) initiative, under which the Legal Aid Review project sits, and expressed concern that the consultation is misleading the public and that Government is seeking to introduce fixed fees at a significantly lower hourly rate:

Extracts from the first part of the Society's response is included below.

'The Consultation asks participants to express a view on the imposition of fixed fees for criminal legal aid, as opposed to the current system of hourly rate payments. The setting of fixed fees presupposes that a given task will take a certain number of hours (or indeed minutes, in the case of the example given within the Consultation for a summary court sentencing hearing.)

The first, and most obvious, issue with this is that it is impossible to state with any degree of accuracy how long a particular matter will take to complete. Taking the example of the summary court sentencing hearing, to an uninformed outsider this could be completed within an hour: 20 minutes taking mitigation instructions; 20 minutes of advocacy; and 20 minutes for the Bailiff or Justices of the Peace to consider and deliver the sentence.

However, even this very basic calculation fails to take into account time spent researching sentencing guidance/precedents; the inevitable and endless waiting; sourcing and considering sentencing aids: character references, psychiatric reports, social inquiry reports etc.; and the fact that, frequently, 60 minutes simply is not enough even to complete the three main tasks of taking instructions, issuing a plea in mitigation and delivering sentence. If any fixed fee proposal fails to provide adequate remuneration for even the most straightforward task of a criminal Advocate, it is not difficult to imagine how wide the discrepancy would be if extended to more complex matters, be they within summary proceedings or the Court of General Gaol.

Further, the Consultation is silent on the rate at which fixed fees and their review would be set, giving examples of England (and Wales) and Jersey, for which the disparity is glaring. Whilst in Jersey, fixed fees are based on a rate of £165, the fixed fee regime in England and Wales is supposedly fixed at £45 per hour. We will address the specific challenges of the fixed fee regime in England and Wales in due course, but suffice it to say that even at first blush it is difficult to see how the English system could in any way be seen as being a positive influencing factor.

For its sample fixed fees, the Consultation employs the hourly rate of £150. This is £15 per hour more than a senior Advocate is currently paid under the existing system. Whilst of course this higher rate would be welcomed, it is extremely difficult, if not impossible to conceive how the Government would sanction fixed fees being assessed on the basis of an hourly rate that is greater than that currently paid, without an acceptance that the current rate is too low, which we submit it is. It is worth bearing in mind that this review forms part of the Government's SAVE initiative: '*Securing Added Value and Efficiencies*'. Whilst it is understood that the initiative carries a number of aims, there can be no dispute that one aim, if not the principal aim, is to save money; indeed the Government's own literature refers to the SAVE programme's purpose being "to encourage serious thought

to how Government could streamline its services, cut waste or do things in new and innovative ways to reduce our revenue expenditure by £25 million by 2021-22.” (Appendix 3)

In light of this, it simply does not follow that the Government’s solution would be to increase the hourly rate calculation, particularly in the knowledge that a neighbouring jurisdiction operates on the basis of a £45 hourly rate. Therefore, the IOMLS is most concerned that the consultation is misleading the public into believing that a fixed fee system is one that is a positive direction for the Island, only for Government to introduce such a system on a much reduced hourly rate. The risk of arbitrary costing is further highlighted when one factors in the various overheads experienced by Isle of Man Advocates, many of which are fixed or inflated due to lack of competition, as is the case for indemnity insurance, utilities etc. By the time appropriate deductions are made, firms are likely to find that criminal legal aid simply is not profitable enough to enable them to continue in the market. With each firm that makes this realisation, the size of the criminal Bar will shrink, to the clear detriment of the service user and access to justice in general.

The Society’s response also contains sections on *‘Parallels with Criminal Legal Aid in England and Wales’* and *‘Recruitment and Retention’*. In its *‘Conclusion’* section, the Society confirmed its opposition to fixed fees as it considered that any rates would be fixed at such a low level that Advocates would be hugely underpaid, which could adversely affect the equality of arms from a defence perspective:

‘It is difficult to reconcile the expectation that criminal practitioners act in the best interests of their client with the knowledge that, under a fixed fee regime, they will likely be vastly underpaid for the tasks they perform. It has been suggested that fixed fee regimes operate on the basis of a ‘swings and roundabouts’ approach. However, the roundabout will get stuck, and practitioners will operate at a loss time and again. Fixed fees risk an uneven and unacceptable playing field as between the prosecution and the defence.

It is submitted that the difficulties experienced by the UK Government in establishing a fixed fee system that provides proper and adequate remuneration to practitioners for work duly undertaken ought to serve as a critical warning to the Isle of Man Government. At the heart of the Government’s considerations should be a commitment to ensuring that access to justice is maintained, alongside a requirement that the public maintain faith in the criminal justice system; this includes properly funded defence practitioners. Any threat to public confidence must be viewed with utmost concern.’

The IoM Law Society’s full consultation response is published via the IoM Consultation Hub<sup>34</sup> and is also available via the Society’s website<sup>35</sup>.

Other Advocates / Judiciary members also expressed concerns that the variance between matters is not compatible with fixed fees, and that the impact on the Manx Criminal Bar could be significant based on outcomes in England and Wales, which include industrial action and fewer lawyers being prepared to undertake Criminal Legal Aid work. There was also concern that time constraints associated with fixed fees could inevitably lead to ‘corner cutting’. Advocates / Judiciary members also referred to the checks that are already in place for Legal Aid invoices through the Costs Officer (in the General Registry). The view that hourly rates are a better measurement than fixed fees in all circumstances was also put

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<sup>34</sup> <https://consult.gov.im/>

<sup>35</sup> <https://iomlawsociety.co.im/wp-content/uploads/2019/11/Criminal-Legal-Aid-Consultation-and-appendices-November-2019.pdf>



forward. The justification for considering fixed fees was also raised as a concern and a view that 'one size fits all' could lead to miscarriages of justice and 'dumbing down' of criminal defence standards:

'...There is often different levels and amounts of disclosure, hours of CCTV or Statements to trawl through, or particularly needy or vulnerable Defendants, meaning this could result in disparity in the amount of work required to conduct a case and the payment received.'

'It is bizarre to pay fixed fees for jobs which vary enormously in their complexity. A one day summary trial could have a huge amount of background work, or next to none. It does not take account of the needs of vulnerable defendants in the slightest.... If an advocate undertakes unnecessary or excessive work then the costs officer will simply not pay them for that work. Fixed costs have not worked in the UK, and have resulted in a drastic shortage of those undertaking criminal work, and disruptive industrial action, there is no reason to suspect that they would not have exactly the same effect in the Isle of Man.'

'The whole basis of fixed fees is not working in England and Wales see recent strike action the very heart of criminal work is being ripped out with the work being undertaken by fewer and fewer lawyers.'

'It is appropriate that Advocates, as qualified and experienced professionals, devote the time which a case needs rather than be constrained by the time they are being paid for. Advocates have bills to pay, like everyone else, and cannot afford to routinely work for free. Fixed fees would inevitably lead to corner-cutting, even with the most conscientious Advocates. This has happened in the UK, with barristers not reading all the papers in the case as their fixed fee only covers X hours' work. Access to justice is too important to allow this.'

'Would not support and encourage best practice.'

'In all circumstances an hourly rate is a better measurement of work done on a given matter. A fixed fee only takes into account possible time spent in court and not the significant preparation that goes into a trial which on the above proposal appears not to be remunerated. The introduction of fixed fees in England and Wales has been highly problematic and is not something that should be emulated... If the proposed fixed fee is only for the day in court then an hourly rate is more efficient anyway as if you only spend 4 hours in court you only charge 4 hours. If the proposed fixed fee is to represent preparation for a hearing and work done leading up to it the proposed figure is wholly inappropriate...If the argument is that fixed fees set an appropriate level would compensate advocates the same as hourly rates there seems little justification for the change. The only justification for fixed fees appears to be to avoid having to pay advocates for time spent on matters. I remain deeply sceptical of both the merits of fixed fees and the reasons for them being proposed.'

'Sentencing hearings in summary courts, the vast majority, dealt with under duty advocate scheme typically last 20-30 minutes. The proposal is profligate.'

'The Advocate should get paid for the amount of time they have spent. If they have a sentencing sent down for an hour but takes 15 minutes then it's a waste of money but then if it takes 2 hours but only getting paid for 1 and this is a regular occurrence then you may find that Advocates no longer wish to undertake such work.'

'Each case depends on its own particular facts. Trying to shoe horn cases into one size fits all will lead to shortcuts and denial of justice. Miscarriages are more likely and there may be a dumbing down as more junior Advocates are required to deal with more difficult cases. This must be avoided.'

A Charity / support worker was in favour of payments based on Advocates' experience:

'Payment should be based on experience, consideration should be given to having fees based on experience bands.'

A Tynwald Member expressed concern regarding the impact of fixed fees in England and Wales, and suggested that other improvements could be made to the criminal justice system in the Island:

'Fixed fees don't work in England and Wales - why would they work here? The system is a mess. I'm a bit sceptical, really. On having gathered evidence from a number of stakeholders across the Island, I'm seeing that there needs to be a whole system look at savings: looking at fixed costs and creating a PDU seems to be a bit piecemeal when there are elements of the justice system that could be made more efficient to create real savings and have us not learn the mistakes of Westminster. We're a much smaller jurisdiction, and the legal landscape is a microcosm. We don't want to follow the collapse of the English system here. Fixed fees appear to offer false economic promise.'

'Other' respondents referred to hourly rates being fairer, and concerns that any fixed fee will not be subject to inflationary increases:

'Hourly rate is the fairest way.'

'Where any fee is fixed it will inevitably fail to be revised in line with inflation thereby increasing the risk of injustice.'

31 respondents (15%) said that they **did not know if fixed fees should be introduced**. 4 comments were made.

A person who had been through the criminal justice system was concerned that cases may be more complex than initially thought:

'There is a problem, some cases which at first sight appear straightforward may turn out to be more complicated.'

An Advocate / Judiciary member expressed concern that unless the issue of waiting times at Court person could be overcome, fixed fees could not work:

'One of the issues that leads to increased costs in waiting time in court Fixed fees would only work in my view if each person received a dedicated court time for their matter. A sentencing matter if fixed at an hour could take 3 hours until it is called to be heard.'

One 'Other' person referred to payment reflecting qualification and specialism:

'The amount paid should reflect in their qualifications and specialised areas of law.'

**Q61 SUMMARY:** 196 respondents (97%) answered the question and 97 comments were made.

- 84 respondents (41%) in principle, were in favour of some fixed fees being introduced. There was broad support for fixed fees if they could be introduced on a flexible and fair basis, set at the right level, and deliver efficiencies which would not disadvantage the defendant or the criminal bar. It was also suggested that delays associated with Court waiting times would need to be addressed before some fixed fees could be fairly applied. Other considerations included the need for efficiency from Police and Prosecutions in all relevant issues (e.g. disclosure) and for there to

be a suitable mechanism for fixed fees to be dis-applied where appropriate. Other comments related to the potential benefits of fixed fees including a reduction in administrative burden; reducing elements of overcharging that may occur, and reducing the number of guilty pleas entered on the day of a trial.

- 81 respondents (40%) in principle, were not in favour of fixed fees. A wide range of concerns were expressed which included that every case is different and some matters are inevitably more complex than others, requiring more time than allocated under a fixed fee; Advocates could be significantly underpaid for their work; and there could be an impact on the standard of criminal defence, which could lead to miscarriages of justice. There was also concern that Advocates may be expected to undertake some work for free, and fixed fees could have an adverse effect on attracting and retaining Advocates to the Criminal Bar. Reference was also made to the impact of introducing fixed fees in England and Wales (including industrial action) and concern that the IoM Government would seek to introduce fees based at much lower (hourly) rates than those already in place to achieve financial savings. Others referred to the current system, based on the number of hours worked by an Advocate with bills subject to a cost assessment, as being the fairest system.
- 31 respondents (15%) did not know and 7 respondents (3%) did not answer.

**Q62. Do you have a view on which Criminal Legal Aid matters, if any, may be suitable for fixed fees in the Isle of Man?**

A text box was provided for respondents to leave their comments and suggestions, and 48 responses (24%) were received.

Of those 48 who submitted comments:

- 4 had been through the criminal justice system
- 10 were members of the public
- 22 were Advocates / Judiciary members
- 8 were criminal justice system employees
- 1 was a Tynwald Member
- 3 were 'Others'

Respondents' comments fell into 3 main categories: 'For' or 'Against' fixed fees, and 'General' comments as summarised in Table 43. A text box was provided for comments.

**Table 43. Matters, if any, which may be suitable for fixed fees**

Category	Response	No.	%
For	Suggested matters for fixed fees	23	11
Against	Comments against fixed fees	10	5
Against	'None' (i.e. no matters considered suitable for fixed fees)	6	3
Against	'See above' (i.e. answer to Q61 opposing fixed fees)	2	1
General	General (neutral) comments made	7	3
N/A	Not answered	155	76
	<b>Total</b>	203	100

Further details of those responses made for and against fixed fees are included below, but general (neutral) are not.

23 respondents (11%) were **in favour of fixed fees** and suggested a range of Criminal Legal Aid matters may be suitable. Of these, 1 respondent had been through the criminal justice system; 4 were members of the public; 9 were Advocates /Judiciary members; 6 criminal justice system employees and 3 'Others'.

A person who had been through the criminal justice system suggested that all matters may be suitable.

Members of the public suggested Summary Court trials, and those matters which require a specific amount of time to complete, on the proviso that less Legal Aid is paid if the matter takes less time. Others included cases where a custodial sentence may be limited:

'Summary Court trials.'

'Only if the matter is recognised as requiring a definite/minimum time to complete but I do not think they should be paid a standard fixed rate for say three hours if it is estimated as only going to take two to three hours. The members of the public who have worked to put money in the public funds do not earn a tenth of the advocates' hourly rate and should not also be expected to pay for extra time that wasn't needed.'

'Matters that do not include cases where a custodial sentence of 12 months or longer might be disposed.'

'Matters where a custodial sentence of no more than 26 weeks may be passed are a sensible starting point for fixed fees to be applied. Cases of this nature are unlikely to be as complex and should not require additional parties such as expert witnesses.'

Suggestions from Advocates / Judiciary members ranged from specific matters to all matters. Potential specific matters included Court Duty Advocate work; first appearances; guilty pleas and sentencing hearings, on the proviso that there were appointments which could be met by the Court. Other suggested safeguards included the flexibility to claim additional fees in certain circumstances:

'Court duty could be a fixed fee. You would be paid a daily rate.'

'Summary Courts.'

'Possibly Guilty Pleas and subsequent Sentencing hearings arising therefrom as long as there was a fixed time for the hearing so the Advocate wasn't waiting at Court all day.'

'First appearance. Allocation. Sentencing.'

'As above all Summary Court and General Gaol sentencing after a guilty plea at the first appearance. Fixed fee for a Summary Court committal and first appearance at General Gaol. This does depend on the Court providing appointments and the Court accepting that there might be gaps between appointments. If that works then look at matters with only one defendant and slowly move.'

'I would imagine that it could apply to most matters - albeit that trials would need to be a "daily" rate as it may be difficult to estimate the time that they are going to take at the start. There may need to be the ability to claim additional fees in certain circumstances (e.g. a vulnerable client) to ensure access to justice (otherwise it may not be financially viable to represent these clients).'

The Chief Constable made reference to an earlier answer regarding the Police Station Duty Advocate Scheme (Q26) which, for ease of reference, included the following comment in relation to fees for work in the Police station:

'The Constabulary is mindful that it should tighten some of its procedures, notably around the management of pre-interview disclosure and the management of police station bail, and work is underway to address these matters. At the same time, consideration should be given to introducing fixed fees for work in the police station. The Constabulary fully understands the importance of suspects and defendants being able to receive good and effective legal advice; it also understands the need where possible to avoid defendants representing themselves in court. That said, though, the Constabulary can see how a fixed fee system for attendance at the police station would not interfere with the right of defendants, but would save public money. A very small number of advocates take considerably longer than their peers to undertake apparently straightforward duties at the police station.'

Criminal justice system employees made suggestions, including Police station work; minor offences; some motoring and drug possession offences; Summary Court work and General Gaol trials:

'Minor offences could be dealt with appropriately in a short space of time, and could be covered by a fixed fee.'

'Motoring offences (except death by dangerous driving) .Possession controlled substances (not supply).'

'Summary court trial. Summary court hearing.'

'Summary court. General Gaol trial.'

The General Registry suggested a number of matters:

'Potentially all pleas in mitigation and all trials where a sensible estimate as to complexity and duration can be made in early course. Consider all summary cases where the maximum sentence is less than 6 months custody.'

'Other' respondents suggested matters, including Summary cases where the maximum custodial sentence is less than 6 months, and other Summary matters:

'Matters up to Pre-Trial Review /committal. Pre-Trial Review to trial. Summary trial.'

18 respondents provided comments **against fixed fees**; said that 'None' were suitable, or referred to previous comments (in Q61) which set out their opposition to fixed fees, including the IoM Law Society. These included 1 person who had been through the criminal justice system; 6 members of the public and 11 Advocates / Judiciary members.

One person who had been through the criminal justice system expressed concern that fixed fees would be detrimental to a person's access to justice:

'No, the idea of fixed fees is ridiculous - every case is different. Access to justice cannot be guaranteed if the Advocate representing the person is receiving a fixed fee.'

Members of the public said that 'None' of the matters would be suitable, or said that the IoM should not seek to copy England and Wales:

'Don't try and copy the broken system in the UK. Hourly rates are fair and appropriate.'

'NO see above you have provided the evidence above in what E&W provide, is this really what we want to follow here on the island!'

Advocates / Judiciary members, including the IoM Law Society said that 'None' of the matters would be suitable; referred to their previous answer (in Q61) or provided comments. These included concerns that fixed fees could be unworkable and lose-lose for IoM Government and Advocates; a disincentive for Advocates to undertake complex cases; an increase in self-litigants and a reduction in access to justice. The work of the Court Duty Advocate was suggested but revised on the basis that time spent can be variable:

'Wouldn't work and could be potentially less beneficial for the government and penalise the advocate. Any offence can't just be seen as being identical every single time. More reports could be necessary or more CCTV to review on one case that could take 4 hours extra work then the same case with no CCTV and only one report. Having it fixed fee would perhaps put off advocates from doing more complex cases.'

'There are no matters that would suit fixed fees. The English legal system is in dire straits due to fixed fees. Is this the type of scheme we want our legal system to follow? i.e. no access to justice for members of the public, courts lists and the judiciary trying to deal with all the additional work self-litigants produces.'

'Potentially the Court Duty Advocate could be on a fixed fee, but given that time spent can vary from 30 mins to 10 hours, a fixed fee is as likely to cost more than the current system as it is to save money. A time taken approach is best.'

**Q62 SUMMARY:** 48 respondents (24%) answered the question, and almost half of these (22) were Advocates / Judiciary members.

- 23 respondents (11%) made suggestions for matters which could potentially be considered for fixed fees. Suggestions included some specified motoring and drug possession offences; Police Station Duty Advocate and Court Duty Advocate work. First appearances; up to Pre-Trial Review (PTR) / committal; from PTR to trial; sentencing hearings; pleas in mitigation; Summary cases where the maximum sentence is less than 6 months custody; Summary trials; General Gaol trials, in addition to 'All' matters were also suggested.
- 18 respondents (9%) indicated that they did not consider any matter to be suitable for fixed fees and / or reiterated their response to Q61. Key concerns included the individuality of cases and the time / work required; disincentivisation of Advocates to undertake Criminal Legal Aid work and a reduction in the quality of legally-aided services and access to justice.
- 7 respondents (3%) made general (neutral) comments.

N.B. Respondents' views which fully reflect those in favour and those not in favour of the principle of fixed fees should also include those from Q61.

### Q63. Do you have any other comments on fixed fees?

A text box was provided for respondents to leave their comment and suggestions and 37 responses (18%) were received in total.

Of those 37 who submitted comments:

- 3 had been through the criminal justice system
- 11 were members of the public
- 18 were Advocates / Judiciary members
- 1 was a criminal justice system employee
- 1 was a charity / voluntary sector worker
- 3 were 'Others'

34 responses (17%) were **not in favour of fixed fees**.

A person who had been through the criminal justice system suggested that there were better ways to save money, such as extending the use of Fixed Penalty Notices for certain offences to reduce the number of cases coming to Court:

'I don't think fixed fees are the answer to save money - less trivial cases such as simple possession for own use/minor traffic violations - we should be introducing spot fines and stop clogging up Court time when they can be dealt without ending up in Court.'

Members of the public cautioned against following the system in the UK. Reference was also made to the fairness of an hourly rate, and there was concern that fixed fees would threaten the quality of legal representation:

'Don't try and copy the broken system in the UK. Hourly rates are fair and appropriate.'

'They are a ridiculous idea that would threaten the quality of representation offered as legal firms have to balance the books on these cases.'

'Definitely should not be introduced.'

Advocates / Judiciary members also drew comparisons with the UK, and expressed concern that fixed fees could lead to a reduction in the already limited number of Advocates prepared to undertake Criminal Legal Aid. Other comments included lack of clarity in terms of the advantage of fixed fees, and lack of evidence that they can save money. There was also concern that if introduced, fixed fees would not be regularly reviewed, and they could prohibit an Advocate from sufficiently progressing a case which would be detrimental for access to justice. A call was also made for more data to determine viability before any introduction of fixed fees and the IoM Law Society referred to its previous answer (at Q61):

'Look at the UK system to see that fixed fees have effectively destroyed the system there. On the Isle of Man you rarely hear about miscarriages of justice, or people not having access to justice. Our system is fair and the public have access to justice. Tinkering with the system will not make it better for the general public, and may well make it worse with less choice of advocates being willing to undertake legal aid work which is already paid at almost half the rate of private funded work.'

'They are a short sighted disaster with no clear advantage over the current system.'

'I have not seen any evidence that fixed fees would save money. If a 7 hour summary trial is paid at the current rate of £135 per hour then the cost to the tax payer for that 7 hour

trial is £945 plus VAT - advocates are paid for the time spent. If it were a fixed fee and the trial fee of £1125 was agreed in advance and the complainant then failed to attend - would the Advocate still receive £1125??'

'The danger of fixed fees is also that they are not reviewed like your other rates for considerably periods of time. The cost of living has increased. Fixed fees could cripple small practices and less criminal advocates would be able to provide the services required.'

'They are a recipe for disaster in the criminal context. Advocates should be allowed to progress the case as their professionalism dictates, proportionately but with sufficient resources to defend a case properly.'

'They will erode access to justice.'

'If you are thinking of introducing it have an independent top tier accountancy firm look at the viability. They will need to have accurate raw data to complete this exercise.'

The response from Homelessness charity *Grainh* stressed the importance of fair pay and high standards, and suggested that all qualified Advocates could undertake a proportion of Legal Aid work:

'It is important that fees and remuneration for Advocates is fair, and does not discourage Advocates from participating in this vital work. Perhaps some aspects of legal aid should be compulsory for all trained Advocates, ensuring that the burden is spread across the profession and also ensuring that people are not either doing this work for the money or avoiding it because it pays less. It is a public service that should be maintained at a high standard.'

'Others' provided comments, including the view that fixed fees would not be suitable for General Gaol matters, and reference to a reduction in the quality of representation in England:

'General Gaol cannot be contained under fixed fees.'

'They have reduced the quality of representation in England.' (Barrister, England)

The remaining 3 responses (<2%) were from 2 members the public and 1 Advocate / Judiciary member. One member of the public expressed concern that the example given of a £1125 fixed fee for a Summary Court trial per day (i.e. £150 per hour for 7.5 hours) would be excessive, and another said that a fixed fee would have to be lower than the hourly rate for hearings:

'Outrageous expenditure. £800 per day max.'

'The fee would need to be lower than the standard hourly rate in order for the system to be cost neutral as most hearings would be shorter than their allotted time in court.'

The Advocate / Judiciary member suggested that any introduction of fixed fees should be done slowly, and cautioned against using any for trials unless they prove to work for simple matters:

'Start slowly and do not implement it for trials until it works for simple sentencing.'

**Q63 SUMMARY:** 37 respondents (18%) answered the question.



- 34 responses (17%) were opposed to fixed fees and over half of these were Advocates / Judiciary members. Concerns included a reduction in the number of Advocates willing to undertake criminal Legal Aid work; a reduction in the quality of legal representation, and access to justice. Reference was also made to a lack of clarity in terms of the advantages of fixed fees; a lack of evidence that they could save money, and significant issues which have arisen in England and Wales. It was also suggested that there could be more effective and fairer ways to save money, including further use of Fixed Penalty Notices to reduce the number of matters going to Court.
- 3 responses (<2%) made reference to the level of fees, and cautioned against extending the use of any fixed fee unless it works for simple sentencing matters.

Respondents' views which fully reflect those in favour and those not in favour of the principle of fixed fees should also include those from Q61 & Q62.

#### 4.14. Public Defender Scheme

Q64. To help us find out more about your views on the Isle of Man's current Legal Aid system in comparison to a Public Defender Scheme, please tell us which terms you think best describe the two options (i.e. current system or a PDS)

Respondents were invited to complete a table to indicate their views on how the Isle of Man's current Legal Aid system, in which Advocates in private practice are paid by the Government, may compare to a Public Defender Scheme in which Advocates would be employed by the IoM Government. Respondents were invited to select one response for each of the 11 statements in the table.

Between 185 (91%) and 195 (96%) people answered each part of the question and the results are shown in Table 44. Percentages are shown in brackets next to the number of respondents, and calculated as a proportion of the total no. of consultation responses (203).

**Table 44. Views on current Criminal Legal Aid system compared to Public Defender Scheme**

	Current system (Advocates in private practice paid by IoM Govt.)	Public Defender Scheme (Advocates employed by IoM Govt.)	Both the same	Don't know	Total no. responses
More independent	142 (70%)	14 (7%)	33 (16%)	6 (3%)	195 (96%)
More professional	102 (50%)	26 (13%)	56 (28%)	9 (4%)	193 (95%)
More experienced Advocates	111 (55%)	19 (9%)	49 (24%)	15 (7%)	194 (96%)
More bureaucratic	24 (12%)	112 (55%)	27 (13%)	28 (14%)	191 (94%)

	Current system (Advocates in private practice paid by IoM Govt.)	Public Defender Scheme (Advocates employed by IoM Govt.)	Both the same	Don't know	Total no. responses
More expensive	66 (33%)	68 (33%)	19 (9%)	32 (16%)	185 (91%)
More efficient	105 (58%)	46 (23%)	14 (7%)	22 (11%)	187 (92%)
Better Advocate career progression	107 (53%)	23 (11%)	24 (12%)	37 (18%)	191 (94%)
Better job security for Advocates	63 (31%)	65 (32%)	31 (15%)	31 (15%)	190 (94%)
Better public access to Advocates	102 (50%)	48 (24%)	25 (12%)	15 (7%)	190 (94%)
Better quality of service	110 (54%)	27 (13%)	35 (17%)	18 (9%)	190 (94%)
Better value for money	92 (45%)	53 (26%)	13 (6%)	32 (16%)	190 (94%)

The results are summarised below. The higher percentage (if applicable) appears first, and the percentage point difference is in brackets. The results are shown in descending percentage point order:

- 70% of respondents think that the current system would be **more independent** compared to 7% for a PDS (63%).
- 55% of respondents think that the current system would have **more experienced Advocates** compared to 9% for a PDS (46%).
- 55% of respondents think a PDS that would be **more bureaucratic** compared to 12% for the current system (43%).
- 53% of respondents think that the current system would give **better career progression** compared to 11% for a PDS (42%).
- 54% of respondents think that the current system would give **better quality of service** compared to 13% for a PDS (41%).
- 50% of respondents think that the current system would be **more professional** compared to 13% for a PDS (37%).
- 58% of respondents think that the current system would be **more efficient** compared to 23% for a PDS (35%).
- 50% of respondents think that the current system would give the public **better access to Advocates** compared to 24% for a PDS (26%).
- 45% of respondents think that the current system would give **better value for money** compared to 26% for a PDS (19%).

- 32% of respondents think a PDS that would provide **better job security** compared to 31% for the current system (1%).
- 33% of respondents think a PDS would be **more expensive** and 33% think that the current system would be **more expensive** (0%). Whilst the percentage point difference is 0% due to rounding, 2 more people thought a PDS would be more expensive.

In addition, the IoM Law Society provided a detailed submission in relation to the Public Defender Scheme under the heading 'Questions 64 to 66'. The Society's full consultation response is published via the IoM Consultation Hub<sup>36</sup> and is also available via the Society's website<sup>37</sup>.

An extract from the first part of the Society's response which is particularly pertinent to Q64 is included below, in which concern was expressed at the way in which the table was presented:

'With regard to the PDS, the IOMLS believes that the questionnaire is presented in such a way as to invite a positive response on the question of the establishment of a PDS. It is not at all evident that potential respondents have been provided with sufficient information to allow them to provide an informed and unbiased response.'

#### Q65. In principle, would you support the establishment of a Public Defender Scheme (either full or partial) in the Isle of Man?

197 respondents (97%) answered the question, and the results are shown in Table 45 and Figure 2 below. Comments were invited from those respondents who answered 'No' (i.e. opposed the principle of a PDS) and they were then directed to Q67.

**Table 45. In principle support for establishing a PDS**

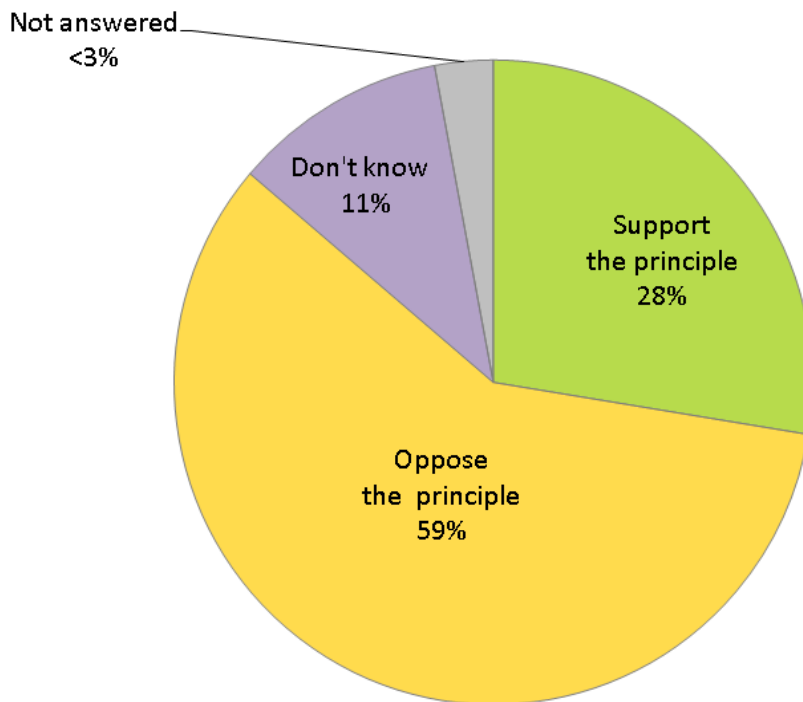
Response	No.	%
Yes	56	28
No	119	59
Don't know	22	11
Not answered	6	<3
<b>Total</b>	203	>100

59 comments were made.

<sup>36</sup> <https://consult.gov.im/>

<sup>37</sup> <https://iomlawsociety.co.im/wp-content/uploads/2019/11/Criminal-Legal-Aid-Consultation-and-appendices-November-2019.pdf>

**Figure 2. Respondents' views on the principle of establishing a Public Defender Scheme**



56 respondents (28%) **supported the principle of establishing a PDS**. Of these, 7 had been through the criminal justice system; 21 were members of the public; 7 were Advocates / Judiciary members; 16 were criminal justice system employees; and there were 5 others. 2 comments were made.

Comments were from a person who had been through the criminal justice system, and one 'Other' respondent. Both expressed concern in regard to the effectiveness of the current system and suggested that an autonomous PDS could improve the provision of legally-aided criminal defence in the Island:

'If it were properly and independently funded with reasonable salaries and court allowances, a PDS should be far superior to the services offered by junior, overworked advocates who sit at the back of court.'

'The current Criminal Legal Aid Scheme is not working and its main function would appear to be funding a small section of advocates to do an imperfect job. Proper salaried Defenders could only be an improvement, if they are independent and funded just as the Prosecution is.'

119 respondents (59%) were **opposed to the principle of establishing a PDS**. Of these, 20 had been through the criminal justice system; 42 were members of the public; 38 were Advocates / Judiciary members; 5 were criminal justice system employees; 3 were charity / support workers; 1 was a Tynwald Member and there were 10 others. 55 comments were made.

There were a number of key issues raised by those who opposed a PDS, and some people mentioned more than one issue. The primary issue, raised by 36 respondents (18%, was the matter of independence which also encompassed concerns in regard to autonomy,

impartiality, conflicts of interest, and the separation of powers. The next most common issue, raised by 25 respondents (12%), was in relation to the case for a potential PDS (as contained in the SAVE Programme Progress Report<sup>38</sup> submitted to Tynwald in June 2018) and concerns relating to the estimated costs of setting up and staffing a PDS<sup>39</sup>; estimated savings; the ability of PDS Advocates to undertake the volume of work required, and the expansion of Government.

Other matters which were raised included comparisons with the UK; concerns that a PDS would reduce the quality of legal representation, and concerns that a PDS would have a detrimental effect on access to justice, or an irreversible and negative impact on the Manx Bar.

Comments from those who had been through the criminal justice system included:

'How can Government both prosecute and defend?'

'I would not like a Public Defender for the government represent me against the government.'

'I would not like to be represented by a state worker when being prosecuted by the state. I feel it is very important that people receiving legal aid have access to independent legal advice.'

'I don't believe public defenders will be sufficiently resourced to offer proper protection for defendants.'

'Government departments have a habit of growing out of control, becoming over bureaucratic and uncompetitive. The Isle of Man is too small to guarantee autonomy.'

'PDS would be a government department, the courts are run by the government surely there would be a conflict of interest, and if not it is questionable if people would receive the proper representation they were entitled to or if the quality would be cut because of budgets cost cutting etc.'

'In a small island PDS would be totally biased and provide poor defence. More top quality advocates are required to provide defences. Quality of defence must come first not costs.'

Comments from members of the public included:

'No, prosecuting and defending should not both be done by the state especially in a small place like the isle of man. Independence is important.'

'There must be an absolute separation of state services.'

'Lack of independence and impartiality.'

'Less quality of defence lawyers and less resources available especially when busy if only 4 or 6 defence lawyers.'

'Would never be truly independent and would be constrained by costs. Employed by Government = ruled by Government.'

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<sup>38</sup> <http://www.tynwald.org.im/business/opqp/sittings/Tynwald%2020162018/2018-GD-0030.pdf>

<sup>39</sup> Staffing estimates were based on 6 defence Advocates in order to mirror the number of Prosecutors. A further 4 administration staff were also included.

'Failed utterly in England & Wales. Not independent - and therefore not congruent with basic human rights. How can the state prosecute and defend a client? An independent legal system is the cornerstone of democracy. Devastating effect on Manx Bar.'

'I do not believe that the public sector should be expanded I do not believe that this scheme would be cheaper as soon as you expand employee s of the government you expand the wonderful government pension scheme which is funded by taxpayers. Moreover I do not think justice will be served. New offices will be required so costs would be substantial.'

'Having read the Scottish PDU online I consider it to be more bureaucratic and more expensive. I think regardless of costs you get a better service from the current system of advocates on the island that a pdu can ever attain. You must also consider the numbers of advocates available now and compare to what a pdu is able to offer. To cover a full court and also be able to do Police station advocate duty I would suggest that somewhere someone is going to miss out on legal advice.'

The IoM Law Society provided a detailed submission in relation to the PDS under the heading '*Questions 64 to 66*'. The full consultation response is published via the IoM Consultation Hub<sup>40</sup> and is also available via the Society's website<sup>41</sup>. The comprehensive 8-page PDS submission is made under the headings '*The Current Consultation under SAVE*'; '*Cost*'; '*Proposal for a PDS*'; '*Return on Investment*'; '*Comparable Jurisdictions*'; '*Conflicts of interest*'; '*Independence*'; '*Quality of service and representation*'; and '*Conclusion*'.

In its conclusion, the Society said:

'Notwithstanding the absence of any significant detail concerning the Government's proposals for the creation of a Public Defender Scheme, it is clear that a number of issues immediately give cause for concern:

- i. The creation of a full PDS is a virtual impossibility in any jurisdiction, let alone one of 86,000 people.
- ii. Significant measures are required to ensure that any such service maintains both actual and perceived independence from Government.
- iii. The lack of choice of Advocate raises concerns as to the ability of a defendant to have fair trial;
- iv. In the absence of evidence to the contrary, no assumptions can be made as to the cost-effectiveness of a PDS.
- v. Any criminal justice system whereby a citizen is investigated by the state, prosecuted by the state and defended by the state is incompatible access to justice.'

Other Advocates / Judiciary members expressed concern that the creation of a PDS would do irreversible damage to the Manx bar. There was opposition to a system in which criminal defence would not be provided by independent Advocates, and concerns regarding access to justice and the potential to save money or make efficiencies:

'The English system proves this doesn't work at all. It will destroy the IOM system, which is not itself broken at The moment. It actually works well. Please put the idea of a PDS to bed - seriously.'

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<sup>40</sup> <https://consult.gov.im/>

<sup>41</sup> <https://ioplawsociety.co.im/wp-content/uploads/2019/11/Criminal-Legal-Aid-Consultation-and-appendices-November-2019.pdf>

'On a practical level it would be a disaster that the criminal justice system would never recover from. It would cost far more than the system does now and effectively kill off Manx Advocates practicing criminal law outside the PDS. That would limit access to justice for the public.'

'There should not be a situation where the state investigates, prosecutes, defends, judges and sentences a person. There is a clear conflict of interest there. A person must be entitled to legal advice independent from the state... It is far from clear how the PDS could save money as advocates would still need to be paid and an entire infrastructure of support staff would need to be put in place. Under a full PDS there would be no independent criminal advocates left or trained as there is insufficient privately paid criminal work to run a practice... Regarding a partial PDS it is difficult to see how matters could be split between the independent bar and the PDS. If there is a fair split that retains both then in practice the government will have simply set up its own criminal advocates practice. It is far from clear how that would be any more efficient than the current system... If the result of this is that the independent criminal bar does go into terminal decline this will cause much greater problems in the long term when, as will happen, a person is unable to make use of the PDS but cannot get other legal representation.'

'People will be arrested by the Government, charged by the Government and defended by the Government! More chance of conflicts of interest. Fewer access to Advocates as there will be a smaller pool. More people will self-represent.'

'Absolutely terrible idea. Would ultimately cost more in sick pay and seniority over the years. The amount of work that would be spread over significantly fewer advocates than at present would undoubtedly lead to sick leave due to stress.'

'It will cost far more money than the current pay as you go system and government should not be defending as well as Prosecuting.'

'1) There would be limited career progression for Advocates, making the PDS less attractive and potentially meaning the best Advocates are not in the PDS.

2) Clients would lose the right to choose their Advocate, and may be allocated an Advocate they are not confident in or do not trust...

3) Clients in criminal justice often need help in other areas, e.g. housing, family issues etc. The current system allows their Advocate to be a one stop shop. This would be lost with a PDS. This is particularly important for clients with complex needs.

4) Who would be filling the jobs in the PDS when vacancies arose? There would be little left of a criminal bar (and those left would be doing private work and earning more than in the PDS), so the PDS would have to train those they recruited.

5) I do not believe a PDS would save money, especially once pensions, holidays, maternity, sickness, etc. are taken into account. These costs are currently met by private practice.

6) A PDS advocate as Court Duty would inevitably have most of the cases. Currently advocates on Legal Aid or private funding deal with their cases whilst the Duty sees people, and then the Duty is ready to go into Court. This works well. With the PDS Advocate seeing most people, what time would Court start? And what is the judge doing in the meantime? There can be 40 people on a Tuesday or Thursday list!

7) A huge number of PDS Advocates would be needed to cover the Police Station 24/7 (bearing in mind the same Advocate cannot deal with multiple suspects in the same investigation), Court Duty Advocate, appearances in General Gaol, preliminary hearings, trials in Summary and General Gaol, criminal appeals, case preparation and client meetings. This cannot save money.

8) A PDS would undermine public confidence, as the state would arrest, charge, prosecute, defend, sentence and imprison people.'

A criminal justice system employee submitted a quote:

'Absolute power corrupts absolutely.'

One 'Other' respondent referred to costs and multi-handed cases:

'It would be far more costly. I particularly have in mind the staffing requirements for the situation where two or more suspects are arrested and require assistance at the Police Station. At present in this situation the Police can always request and obtain assistance from volunteer Advocates.'

22 respondents (11%) said they **did not know** and 2 comments were made.

The Chief Constable explained the Constabulary's position, and indicated the conditions under which the case for a PDS would strengthen:

'The Constabulary has mixed views about such a scheme. Whereas it does not support the view that any such scheme would provide second-class representation or that the advocates employed within it would be less independent, the Constabulary is not convinced that there is a financial case to create such a scheme. If there were to be an increase in unrepresented defendants or a reduction in advocates willing to undertake criminal legal aid work, then the case for the scheme would strengthen.'

6 respondents (3%) **did not answer**.

**Q65 SUMMARY:** 197 respondents (97%) answered the question and 59 comments were made.

- 56 respondents (28%) supported the principle of establishing a PDS. 2 respondents (1%) suggested that a PDS could improve the quality of legal representation.
- 119 respondents (59%) were opposed to the principle. 55 (27%) submitted comments which were broadly around two key issues. 36 respondents (18%) referred to concerns about the independence of a PDS, and other related matters including impartiality; conflicts of interest, and the separation of powers. The next most common issue, raised by 25 respondents (12%) was in relation to the case put forward for a potential PDS, and concerns relating to the estimated costs of setting up and staffing a PDS; estimated savings; the ability of PDS Advocates to undertake the volume of work required, and the expansion of Government. Other matters which were raised included comparisons with the UK; concerns that a PDS would reduce the quality of legal representation; have a detrimental effect on access to justice, or have an irreversible and negative impact on the Manx Bar.
- 22 respondents (11%) did not know. 2 respondents (1%) made comments. The Chief Constable said the Constabulary had mixed views on a PDS, and whilst it did not have concerns in regard to the potential independence of a PDS or quality of legal representation, it was not convinced of a financial case for creating one at this time, although indicated the conditions under which such a case would strengthen.
- 6 respondents (3%) did not answer.



Q66. If you said yes to Q65, which option(s) best describe your support in principle for the establishment of a Public Defender Scheme in the Isle of Man? (please select all that apply)

This question was aimed at the 56 respondents (28%) who answered 'Yes' to Q65 in order to understand on what basis, if any, they supported the principle of establishing a PDS.

All 56 people (100%) responded, and they were asked to chose one or more options from a list of 6 options (A to F) as shown in Table 46. The total number of responses does not equal 56 as more than one answer could be given. In order to provide an overall indication of option preferences, the total number of responses has been added together which total 90. Respondents' answers are then reflected as a percentage of 90, and the results are shown in Table 46 and Figure 3 below. A text box was also provided for comments.

**Table 46. Basis of supporting the establishment of a PDS in principle (of those who answered 'Yes' to Q66)**

Option	No.	% (of 90)
(A) A full or partial PDS if it can be an arms-length body, independent from both the Attorney General's Chambers & Government	42	47
(B) A full or partial PDS if it can deliver significant financial savings to Govt.	32	36
(C) I would only support a partial PDS	4	4
(D) I would only support a full PDS	10	11
(E) Don't know	2	2
(F) Other (please state)	0	0
<b>Total</b>	90	100

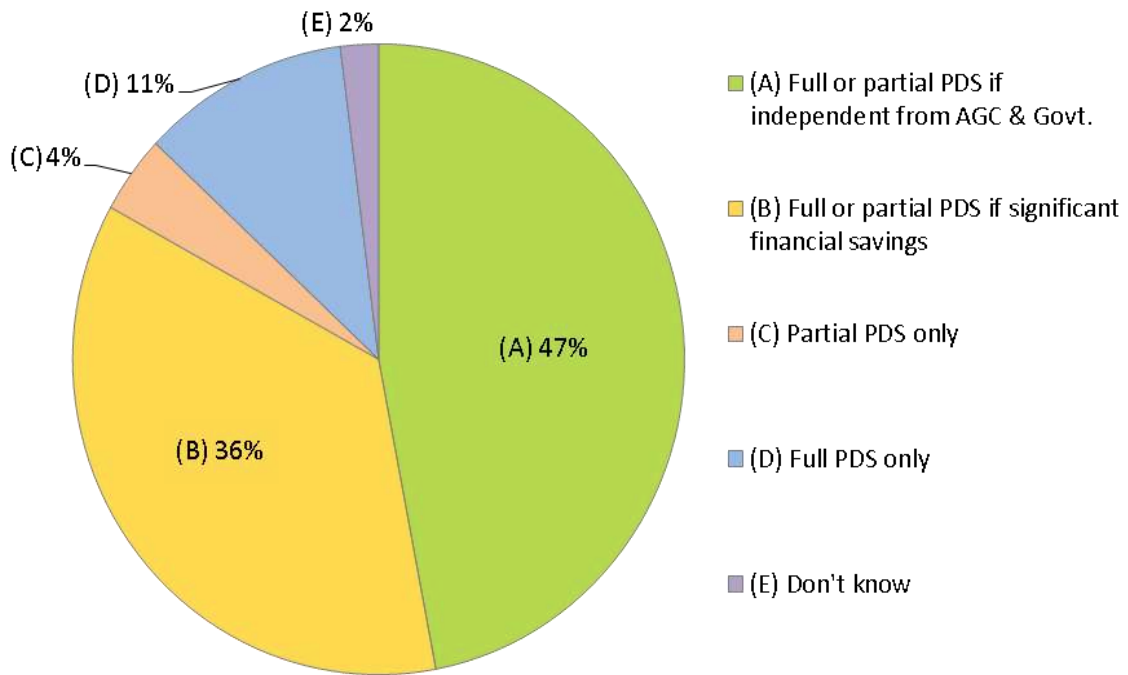
13 comments were made.

When given a choice between independence and/or cost savings, respondents indicated that the more important aspect of their support was based on the establishment of a PDS as an arms-length body, independent from both the Attorney General's Chambers and Government. The delivery of significant financial savings was of less importance.

14 respondents indicated a preference for the size of a PDS and more than twice as many people (10) supported a full PDS compared to a partial PDS (4).

Respondents also provided 13 comments. Of these, 3 had been through the criminal justice system; 4 were members of the public; 1 was an Advocate / Judiciary member; 3 were criminal justice system employees, and there were 2 others.

**Figure 3. Basis of supporting the establishment of a PDS in principle**



Those who had been through the criminal justice system made reference to the potential benefits of a partial PDS, and the conditions under which a full PDS may be considered. It was also suggested that there could be benefits in giving non-Manx legal firms the opportunity to undertake work:

'A partial PDS could operate alongside private firms providing a comprehensive pool of defence options. This position would be greatly enhanced if non-Manx legal firms could be freely licenced to carry out the work. In addition to dealing with a portion of cases, the PDS could provide assistance and evidence to the private sector particularly in the area of legal opinions on points of law.'

'I would support the introduction of a well salaried partial PDS, and then, if it were shown to work, perhaps have it made into a full PDS.'

'A full PDS would only serve to open the already heavily criticised IOM criminal legal service.'

Members of the public made reference to independence, quality of service, fairness, and justice:

'Independence vital and I believe a full system would be appropriate as a partial one would only serve to complicate access further and increase administration.'

'The advocates would need to be of the highest quality with a good work ethic and honourable. Closely monitored for fairness and justice.'

An Advocate / Judiciary member suggested that there could also be benefits in having an employed Court Duty Advocate:

'I think that an employed court duty advocate could offer improved quality and efficiency. I think that a partial PDS would offer savings and improved efficiencies - it may also

contribute towards an improvement of standards (as these advocates would be solely dealing with criminal defence work).'

A criminal justice system employee made reference to value for money and the importance of independence in a PDS, drawing comparisons with the Courts as an existing Government agency which acts with impartiality:

'PDS is a good alternative and could provide better value for money to the tax payer without a degradation of service to the defendant providing there is no interference by the AG's or the government. In a similar way to which the Courts is independent and impartial from Government, but court staff and Judiciary are paid for by the Government.'

One 'Other' respondent made reference to equality of arms:

'A fully funded PDS independent of the AG's department, would in Equality of Arms, have to be funded at a level somewhat approaching the Prosecution Department. Costs and duplications could be avoided as the same costs would do for both defence and prosecution in some cases.'

This question also elicited responses from a further 22 people who either did not answer Q65, or had indicated in Q65 that they did not support the principle of a PDS. 4 respondents expressed concern that the question was unfair and did not take into account their opposition to a PDS, and others sought to reinforce their views or make new points. For completeness, a summary of these comments is included below.

Of those 22 respondents who left comments, 7 respondents had been through the criminal justice system; 8 were members of the public; 5 was an Advocate / Judiciary member; 1 was a criminal justice system employee and 1 was a charity / support worker.

Those who had been through the criminal justice system had concerns regarding independence in a PDS, and a potential lack of incentive for Advocates to undertake Legal Aid work:

'I do not support the establishment of a PDS.'

'I do not believe it would be possible for it to be independent in the IOM.'

'Keep criminal and civil Advocates to represent you and not allow government versus government ever happen.'

'Don't support it. I think it will remove any incentives for advocates to join legal aid.'

Members of the public were supportive of the existing system and expressed concerns regarding independence and conflicts of interest in a PDS:

'I do not think the system should be changed justice is better served by the existing system.'

'I do not support a full/partial PDS. We live in very small island and I have no doubt that conflicts of interest occur even with our independent advocates. I would dread to think what it would be like with government funded PDS.'

Advocates / Judiciary members were concerned that the question was unfair and/or biased and should be discounted as part of the consultation:

'This question does not give people the ability to say why they would not be in favour of a PDU. The consultation in this part is defective. The whole point of a consultation is that

you consider arguments for and against in order to come to a decision. The most important reason that there should not be a PDU is because a member of the public would be investigated by the state, prosecuted by the state, defended by the state and then sentenced by the state. There is no separation of powers. In history there was a certain country who operated on the same principle prior to the second world war, those people were investigated, prosecuted, defended and sentenced all by the state. I would like to think that we have open justice on the Isle of Man and that members of the public would not be at the mercy of the state. The PDU puts people at the mercy of the state. The way this consultation question has been posed is highly unfair and somewhat biased. People should have independent representation separate from the government.'

'None apply. The PDU is a system that endangers the independence of legal representation to society's most vulnerable and it will not bring benefits outweighing that disadvantage. Also the question 66 is not asked in a neutral way. 4 out of the 5 possible answers are weighted in favour of the PDU. You should discount this question in your assessment.'

'This is not a fair question it presumes the person supports a PDS and there is no box to tick for somebody like me who is totally opposed to any form of PDS.'

**A criminal justice system employee also referred to bias:**

'Why is this question only asked if you support the provision of a Public Defender Scheme? This is biased. Where is the question about why someone does not support the Public Defender Scheme?'

**Victim Support** expressed concern that victims coming into contact with other parties, in addition to conflicts of interest and confidentiality:

'With a public defender system I would have concerns about parties coming into contact with one another (particularly victims). I have concerns about conflict and confidentiality when operating from one chit which also deal with victims and witnesses.'

**Q66 SUMMARY:** This question was aimed at those 56 respondents who had indicated in Q65 that in principle they supported the establishment of a PDS.

- All 56 respondents answered the question, and it was shown that the more important aspect of respondents' support for a PDS would be its establishment as an arms-length, independent body, compared to the delivery of significant financial savings. Of the 14 people who indicated a preference for the size of a PDS, less than half (4) would support a partial PDS compared to a full PDS (10). 13 of these respondents provided comments, and the most common themes were the importance of independence, quality of service and cost effectiveness in a PDS.
- An additional 22 comments were received from other respondents who either did not answer Q65, or had previously indicated that they did not support the principle of a PDS. 4 respondents expressed particular concern that Q66 was unfair and biased. Other common themes were opposition to a PDS; concerns that independence would not be attainable in a jurisdiction as small as the Isle of Man, and conflicts of interest. Concerns were also expressed in regard to the potential for victims to come into contact with other parties in a PDS; confidentiality, and a lack of incentive for Advocates to undertake Criminal Legal Aid work.

### 4.15. Options

Q67. Which option(s) for the future provision of Criminal Legal Aid in the Isle of Man would you support?

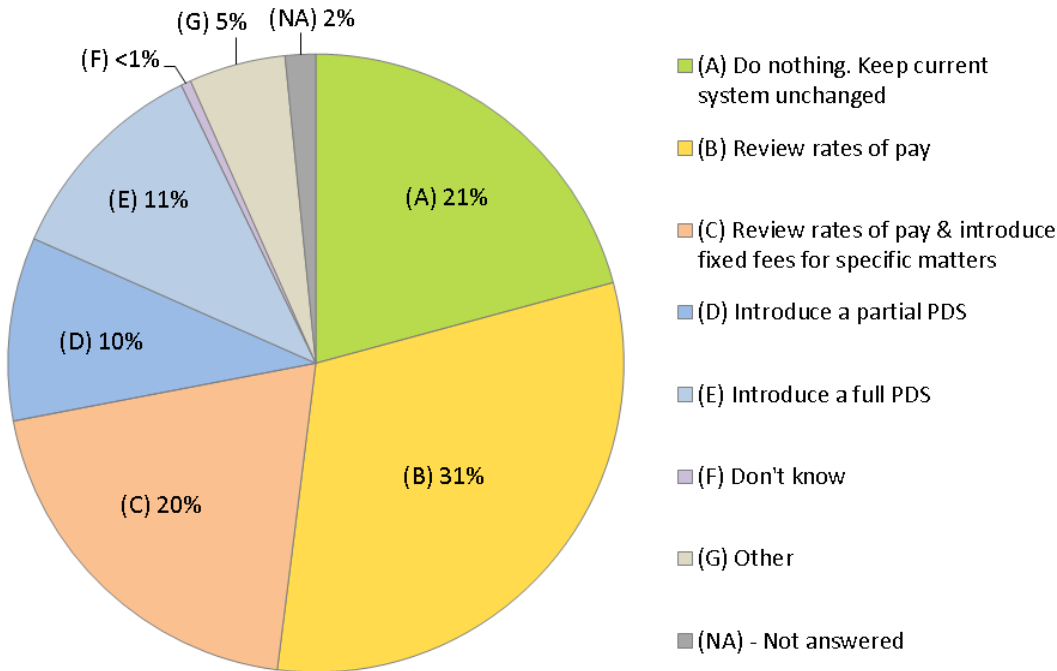
This question was for **all respondents** and sought to understand which options, if any, they would support as potential models for Criminal Legal Aid in the future.

197 people (97%) responded, and they chose **one or more options from A to G**, as shown in Table 47. The total does not equal 203 as more than one answer could be given. In order to provide an overall indication of option preferences the total number of responses has been added together to total 375. Respondents' answers are then reflected as a percentage of 375, and the results are shown in the table and Figure 4 below. A text box was also provided for comments.

**Table 47. Options for future provision of Criminal Legal Aid (multiple option choices)**

Option	No.	% (of 375)
(A) Do nothing. Keep current system unchanged	78	21
(B) Review Legal Aid rates of pay	117	31
(C) Review Legal Aid rates & introduce fixed fees for specific crim. matters	75	20
(D) Introduce a partial Public Defender Scheme	36	10
(E) Introduce a full Public Defender Scheme	42	11
(F) Don't know	2	<1
(G) Other - please state	19	5
(NA) Not answered	6	2
<b>Total</b>	375	100

**Figure 4. Options for future provision of Criminal Legal Aid in the IoM (multiple option answers)**



34 comments were made.

The results show that 21% of the option choices were for the current Criminal Legal Aid system to remain unchanged. 31% of the option choices supported a review of Legal Aid rates of pay, and 20% supported a review of rates of pay with fixed fees introduced for specific criminal matters. 10% of the option choices were for a partial PDS, and 11% for a full PDS. 1% said they did not know and 5% chose 'G - Other' and were asked to provide further information.

The 5% who chose 'G - Other' represented 19 responses, but 34 comments were provided in total. There were 7 who had been through the criminal justice system; 3 members of the public; 14 Advocates / Judiciary members; 3 criminal justice system employees; 2 charity / support workers; 1 Tynwald Member and 4 'Others'. A summary of the comments is included below.

Those who had been through the criminal justice system suggested introducing a Code of Conduct and a mechanism to monitor the quality of criminal defence. Others proposed a partial PDS to operate in partnership with Manx Advocates and/or UK lawyers; for defendants to have the ability to choose a Manx Advocate or a UK lawyer particularly in serious cases, and for UK lawyers to be able to practice in the IoM.

'A Code of Conduct governing the care and attention offered by criminal lawyers should be introduced. Perhaps a 'Quality Monitor' reviewing trial transcripts and unused evidence would improve things.'

'Improve the current system. Better and more advocates. Ensure the appointed advocate has experience, skills and time to provide a proper structured defence (fair trial).'

'Partial [public] defender scheme operating in partnership with advocates in private practice both on Isle of Man and / or UK.'

'Have the option on serious criminal matters to licensing of any UK lawyer to be able to represent you in a Manx Court. This in itself would bring the standard of defence up to a higher level.'

'Let UK lawyers in to defend.'

Members of the public suggested inflationary Legal Aid rate increases for Advocates, and an agreement negotiated between IoM Government and the IoM Law Society to encourage skilled Advocates to undertake Legal Aid work:

'Increase rates in line with inflation but keep the system as it is at the moment.'

'It is important that we can attract talent to represent individuals of limited financial means so the Government and Law Society must negotiate an agreement.'

The IoM Law Society reiterated that it does not support a Public Defender Scheme or fixed fees:

'We refer to the options as discussed in this response. In light of the foregoing the IOMLS strongly urges the Government to reconsider the reform options set out in the Consultation concerning the establishment of a Public Defender Scheme or alternatively, the introduction of a fixed fee regime for criminal legal aid. The IOMLS cannot support either proposal.'

Advocates / Judiciary members suggested there should be increases to the Legal Aid rates; that the current system should be cherished, with any changes well considered and introduced incrementally in order to ensure that their impact can be monitored appropriately. Others suggested that the criminal justice system should be reviewed in its entirety as singling out Criminal Legal Aid is flawed, and that those who are found guilty should repay Legal Aid. It was also suggested that standards in the criminal bar should be improved, and that Q67 was unfair:

'It is time the Advocates got a pay rise!'

'Advocates' pay should be increased in line with inflation.'

'Cherish, uphold and be grateful for the Legal Aid Scheme as one day it could be you who needs an advocate.'

'Adopt modest, scaled reform of the current system alongside a review of hourly rates, pausing to assess the implications of each minor adjustment (e.g. funding threshold, legal merits in appeals) before making any further changes.'

'Make the criminals pay more costs when they are convicted and make them repay the legal aid. If you are found not guilty you get it free, found guilty you pay the costs back. Keep it simple.'

'Increase the standards of those currently practising in Criminal Law in the Isle of Man. If these standards cannot be reached in the private sector then the only option will be to adopt the PDS.'

'Do nothing' has negative connotations. This is not a neutral question.'

'The question is not a fair question. The PDU could not be independent and the costs cannot be seen as a saving as the level of advocates 6 is not realistic as multi hander cases and holidays and sickness would limit the access to justice.'

The Chief Constable referred to previous suggestions relating to aspects of the Police Station Duty Advocate Scheme and a possible case for a Public Defender Scheme:

'See earlier comments about fixed fees for the police station scheme, senior advocates operating within that scheme, appeals and the possible case for a public defender scheme in certain circumstances.'

Suggestions from others working in the criminal justice system were both in relation to placing a limit on the number of times an individual can claim Criminal Legal Aid:

'Introduce an X amount of strikes and your ability to claim legal aid is withdrawn.'

'See earlier comments about fixed fees for the police station scheme, senior advocates operating within that scheme, appeals and the possible case for a public defender scheme in certain circumstances.'

Homelessness charity *Grainh* suggested a review of language used in the judicial system:

'Review language of judicial system, eligibility and communication for the most vulnerable.'

Another charity / support worker suggested that there should be a holistic approach to considering Criminal Legal Aid within the wider criminal justice system, and access to skilled advocacy was an important principle of equality:

'I believe that decisions need to be made on the basis of the whole matter being fully researched and what the true potential consequences are including the impact on other services. I believe that access to skilled advocacy is such an important principle of equality that any changes need to be fully considered for their impact on those who it will affect most.'

A Tynwald Member suggested that there should be a holistic view taken to finding savings in the criminal justice system:

'Review of LA rates of pay as an interim measure while (I hope) that a more holistic approach is taken to finding real savings in the justice system (the whole process, not just fixed fees and PDS).'

Others suggested alternatives to fixed fees, such as block fees (as introduced in Scotland); for the Proceeds of Crime Act 2008 to be amended, and for the Manx Bar to be opened to experienced UK lawyers:

'Amend Manx Proceeds of Crime Act to permit reasonable remuneration for advocates representing people of high net worth.'

'Allow rights of representation in court for experienced English or Scottish lawyers and not just on a case by case basis, but on a full time basis, for which maybe, some entry fee and test must be taken.'

**Q67 SUMMARY:** 197 respondents (97%) answered the question and indicated their support for one or more options (labelled A – G) for Criminal Legal Aid in the future. As this was a 'multi-choice' question, some people indicated their support for more than one option and 375 choices were submitted in total.

Option choices in order of preference are shown below:

- (B) Review Legal Aid rates of pay (31%)
- (A) Do nothing. Keep the current system unchanged (21%)
- (C) Review rates of pay & introduce fixed fees for specific criminal matters (20%)
- (E) Introduce a full PDS (11%)
- (D) Introduce a partial PDS (10%)
- (G) Other (5%)
- (F) Don't know (<1%)

The 5% who chose the 'Other' option represented 19 respondents, but 34 comments were received in total. Suggested options included introducing a Code of Conduct for Advocates undertaking Criminal Legal Aid and improving the current system and standards. Others proposed a partial PDS to operate in partnership with Manx Advocates and/or UK lawyers; for defendants to have the ability to choose a Manx Advocate or a UK lawyer particularly in serious cases, and for UK lawyers to be able to practice in the IoM. Others also suggested increasing the Legal Aid rates of pay; reconsidering options for a PDS and fixed fees; and reviewing the criminal justice system as a whole rather than focusing on Legal Aid costs. Limiting Legal Aid provision to repeat offenders was also suggested in addition to recovering



costs from those found guilty. Suggestions were also made in regard to considering fixed fees at the Police Station, the need for a Senior Advocate to be on-call, and the circumstances under which a possible financial case for a PDS could be strengthened. It was also proposed that any changes should be introduced gradually and their effects monitored; for judicial language to be adjusted to help vulnerable people, and there was support for access to skilled advocacy. Suggested changes to legislation included the Proceeds of Crime Act 2008 to allow people of high net worth to fund private criminal defence.

**Q68. If you had to choose on option from the above list as your preferred option for Criminal Legal Aid in the future, which would it be?**

This question sought to understand which option, if any, respondents would choose to support as a potential model for Criminal Legal Aid in the future if they had **one choice** (i.e. rather than multiple choices as in Q67).

192 people (95%) responded, and they chose **one option from A to G**, as shown in Table 48 and Figure 5.

**Table 48. Options for future provision of Criminal Legal Aid (single option choice)**

Option	No.	%
(A) Do nothing. Keep current system unchanged	63	31
(B) Review Legal Aid rates of pay	40	20
(C) Review Legal Aid rates & introduce fixed fees for specific criminal matters	34	17
(D) Introduce a partial Public Defender Scheme	11	5
(E) Introduce a full Public Defender Scheme	31	15
(F) Don't know	6	3
(G) Other - please state	7	>3
(NA) Not answered	11	5
TOTAL	203	>99

The results show that 63 respondents (31%) opted for the current Criminal Legal Aid system to remain unchanged (this is 10 percentage points higher than in Q67). 40 respondents (20%) chose a review of Legal Aid rates of pay (11 percentage points lower than in Q67) and 34 respondents (17%) chose a review of rates of pay with fixed fees for specific criminal matters (3 percentage points lower than in Q67). 31 respondents (15%) chose a full PDS (4 percentage points higher than in Q67) and 11 respondents (5%) chose a partial PDS (5 percentage points lower than in Q67). 3% said they did not know, and >3% said 'Other' and they were asked to provide further information.

Of the 7 respondents who said 'Other'. Of these there were 2 people had been through the criminal justice system; 1 Advocate / Judiciary member; the Chief Constable and one other criminal justice system employee, and 2 charity / support workers. All 7 previously provided comments in Q67 and they are set out again here for completeness:

'Partial [public] defender scheme operating in partnership with advocates in private practice both on Isle of Man and / or UK.'

(Person who has been through criminal justice system)

'Have the option on serious criminal matters to licensing of any UK lawyer to be able to represent you in a Manx Court. This in itself would bring the standard of defence up to a higher level.'

(Person who has been through criminal justice system)

'See earlier comments about fixed fees for the police station scheme, senior advocates operating within that scheme, appeals and the possible case for a public defender scheme in certain circumstances.'

(Chief Constable, referring to answers given to Q26 & Q65)

'Reduce number of times a person is eligible.'

(Criminal justice system employee)

'Make the criminals pay more costs when they are convicted and make them repay the legal aid. If you are found not guilty you get it free, found guilty you pay the costs back. Keep it simple.'

(Advocate / Judiciary member)

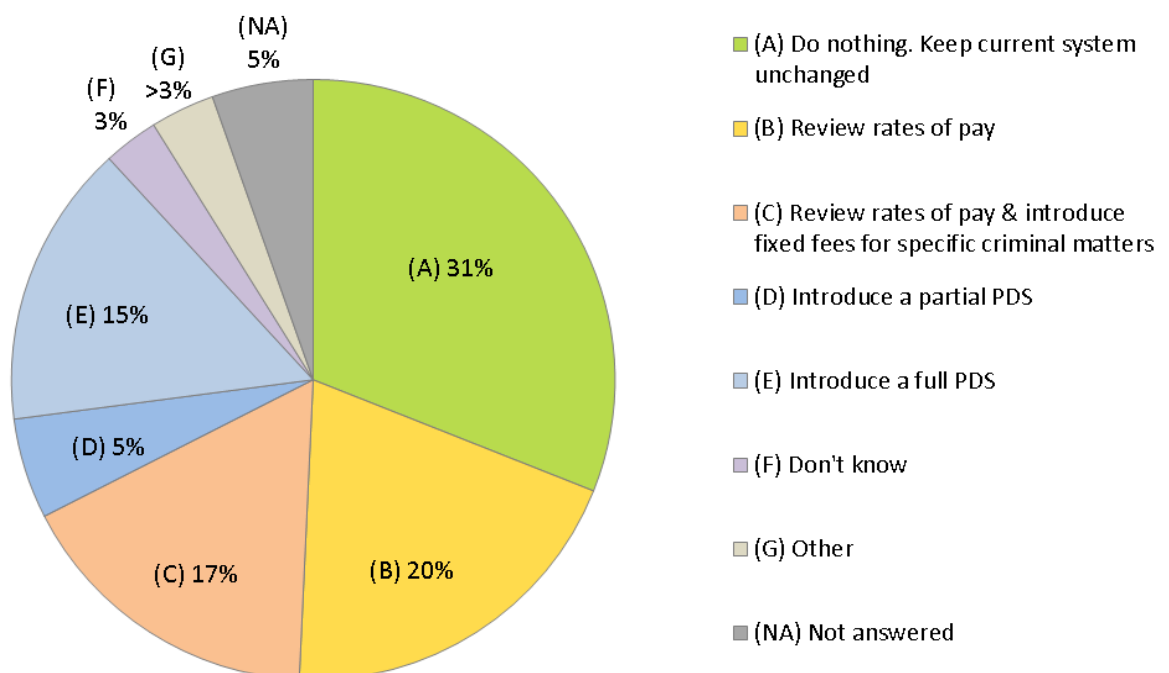
'Review language of judicial system, eligibility and communication for the most vulnerable.'

(Homelessness charity *Graih*)

'I believe that decisions need to be made on the basis of the whole matter being fully researched and what the true potential consequences are including the impact on other services. I believe that access to skilled advocacy is such an important principle of equality that any changes need to be fully considered for their impact on those who it will affect most. Whatever is decided I believe access to justice for those who need it should be the priority need in a civilised society.'

(Charity / support worker)

**Figure 5. Options for future provision of Criminal Legal Aid in the IoM (single option answer)**



**Q68 SUMMARY:** 192 respondents (95%) answered this question and indicated their support for one option (labelled A – G) for Criminal Legal Aid in the future.

The chosen options, in order of preference, were as follows:

- (A) Do nothing. Keep the current system unchanged (31%)
- (B) Review Legal Aid rates of pay (20%)
- (C) Review rates of pay & introduce fixed fees for specific criminal matters (17%)
- (E) Introduce a full PDS (15%)
- (D) Introduce a partial PDS (5%)
- (G) Other (>3%)
- (F) Don't know (3%)

The majority of respondents (51%) chose to keep the current system unchanged (option A) or review rates of pay (option B). Whilst this combined percentage is very similar to that in Q67 (52%) the order of preference of the two options has changed.

The >3% who chose 'Other' represented 7 respondents, including the Chief Constable. Suggested options from respondents included a partial PDS to operate in partnership with Manx Advocates and/or UK lawyers and for defendants to have the ability to choose a Manx Advocate or a UK lawyer, particularly in serious cases. Suggestions (from Q26) to consider two aspects of the Police Station Duty Advocate Scheme: fees and the need for a Senior Advocate to be on call were reiterated. Similarly, the circumstances under which a possible financial case for a PDS could be strengthened (from Q65) were referenced: if there is an increase in unrepresented defendants or reduction in Advocates willing to undertake Criminal Legal Aid work. Other suggestions included reducing Legal Aid eligibility for repeat offenders and recovering Legal Aid costs from those found guilty. There was also a proposal that language in the judicial system, Legal Aid eligibility and communication should be reviewed to support vulnerable people, in addition to ensuring people's access to skilled advocacy, and considering the criminal justice system at a holistic level before implementing impactful changes.

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#### Q69. Do you have any final comments or suggestions about Criminal Legal Aid in the Isle of Man?

This was the last question in the consultation and respondents were invited to submit final comments or suggestions. 67 people (33%) submitted responses.

Of those 67 respondents:

- 12 had been through the criminal justice system
- 19 were members of the public
- 22 were Advocates / Judiciary members
- 3 were criminal justice system employees
- 2 were charity / support workers
- 1 was a Tynwald Member
- 8 were 'Others'

A wide range of themes emerged in response to this question and in particular, views on a PDS; support for the Island's current Criminal Legal Aid model; Legal Aid rates of pay and quality of services. There were also suggestions to consider the criminal justice system holistically; place the defendant at the centre of the Criminal Legal Aid system, and resist copying the UK's model of Criminal Legal Aid. Other matters which were raised included self-representation; access to justice; support for the vulnerable, and licences for UK lawyers to practice in the Island.

31 comments referred to a PDS. Of these, 6 comments were in favour of a PDS and 24 were opposed to a PDS, and 1 person included a range of comments.

Of those 6 in favour of a PDS, there were 2 members of the public and 3 criminal justice system employees. 1 'Other' person also expressed the view that the provision of a PDS could potentially reduce the level of self-representation in Court and described some of their concerns in relation to quality of service:

'Nobody willingly chooses difficult, expensive unaided self-representation. The Legal system forces it on us, with no financial or practical help. Public Defenders would/could stop this. The very low number of practising, overworked but inexperienced Criminal Legal Aid advocates have a very poor success rate and seem in awe of the prosecution and the court; reluctant to deal with depth and complexities; have us finding precedents and interpreting the law for them. Advocates are exceptionally difficult to contact, or give replies, and have an almost universal history of missing meetings, deadlines or not answering phone calls and letters, on which, as far as we know, the Law Society takes no steps whatsoever...'

Of those 24 who were opposed to a PDS, there were 3 respondents who had been through the criminal justice system, 9 members of the public, 11 Advocates / Judiciary members, and 1 other. Many of the respondents expressed their concerns that as Government employees, Public Defenders could not provide independent legal advice. Respondents also challenged how a fully staffed PDS could deliver savings and expressed concerns regarding estimations set out in the SAVE Progress Report<sup>42</sup>. Concerns were also raised in regard to expanding the scope and cost of the public service.

Comments from people who had been through the criminal justice system included:

'Don't think the AG's acting for defendant and Crown would work - conflicted.'

'The Public Defender Scheme is the largest threat to the access of justice for all ever seen. It is dangerous and should be avoided at all costs. It did not work in the UK and it will not work here.'

'A Public Defender System goes against everything a democratic Island like the Isle of Man stands for - it will reduce the poorer and most vulnerable members of our society, plea bargaining will be rampant and will only bring about more bureaucracy and will end up costing the Manx community more. The Criminal Legal Aid system probably does need a bit of a tweaking but this is not the way to go about it.'

Members of the public expressed concerns about costs, democracy, bureaucracy and the separation of powers between a PDS and the Government:

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<sup>42</sup> <http://www.tynwald.org.im/business/opqp/sittings/Tynwald%2020162018/2018-GD-0030.pdf>

'PDU would only increase government costs...'

'Absolute abomination this is even being considered. Democracy itself under threat.'

'The current system needs to be looked at and working with independent advocates to find ways of making the system more efficient and fair is a much better way of improving services and saving money than increasing the number of government employees. Currently someone obtaining legal aid has confidence in the fact that they are being represented by an Independent advocate - this is an important factor in terms of a sense of justice. The whole issue of expanding the public sector to create a Public Defender System seems to go against all Government policies. The cost implications of increasing the number of Government employees to administer the system (advocates, support staff etc) with the current concerns over pensions etc. are very worrying. That is before all the additional running costs of office space etc.'

'Both defence and prosecution cannot have the same employer. It [would be] liable to corruption and coercion on such a small island even if employing Chinese walls. There will be much more money spent unknowingly because public defenders work for the government. Recruitment, HR, management, staffing... no option for private practice so IOM will lose good criminal advocates. Not everyone wants to work for AG Office.'

'I don't think criminal defence services should be run by the Government as well as the prosecution. It doesn't seem right and defendants would not trust that they were receiving independent advice. They should also have freedom of choice of who they appoint to defend their case. I don't think a public defence unit would work and I don't think it would actually save costs.'

**Advocates / Judiciary members also reiterated their opposition to a PDS, and in particular, concerns about independence; the separation of powers and the capacity of PDS Advocates to deal with the volume of work required. There were also concerns in regard to the detrimental effects of the Legal Aid Review on the Manx criminal bar; estimated cost savings; the quality of Advocates that a PDS would attract, and the position of the PDS in England and Wales:**

'PDU is a terrible idea.'

'You cannot have the state investigating, charging, prosecuting and defending.'

'The abject failure of the introduction of fixed fees in England should be a lesson to the IOM. The failure of PDU in England should also be seen as something we should avoid.'

'The Public Defender system will never enjoy the public's confidence as being independent of the government. The current costings are wildly off, however the Attorney General's Chambers have consistently refused to publish their detailed rationale. In order to provide for the current level of service, particularly in relation to matters concerning multiple defendants arrested at the Police station, the Public Defenders Unit would have to be around twice the size currently proposed.'

'The importance of a person's liberty should not be underestimated. People should be able to have access to justice which is independent of the state which is investigating them, prosecuting them and sentencing them. The system on the Isle of Man is a good system which is fair and promotes access to justice.'

'I remain convinced that to offer full cover a PDS would require 10-12 advocates, a head of service and more than 4 support staff, plus offices, equipment, library. It would attract

less able. Advocates and would result in no advocates being available with experience for private criminal work.'

'Look at access to justice on how the public can be best served. For one horrible moment consider that you have been arrested for something you didn't do. Put yourself in that person's shoes. What would you rather have? The state prosecuting and defending you? Remember the separation of powers and independence. The corner stones of democracy.'

1 'Other' comment in opposition to a PDS was received from a person who indicated that they had appeared as a QC in Manx Courts for a number of serious cases in the past. They outlined their concerns regarding the justification of a PDS and the impact that such a scheme could have on access to justice in the Island:

'It seems to me that the proposed savings to the public purse of introducing such a scheme are speculative in the extreme. At the same time a well-established scheme already operating would be destroyed overnight. The quality of justice would suffer greatly and confidence in the system would quickly erode to the point of collapse. It is a very risky undertaking and simply not worth it.'

There were a further 10 comments made in favour of maintaining the Island's current Criminal Legal Aid model from 4 members of the public, 1 charity and 5 Advocates / Judiciary members:

Comments from the public included:

'It isn't broken, don't fix it.'

'If it's not broken do not change it, I would suggest the current system is not broken.'

'Do not change the system, equality before the law does not mean we are prosecuted and defended by the same people.'

'Don't copy the broken UK system that has undermined justice as solicitors encourage defendants to plead guilty as it's financially more beneficial.'

The response from homelessness charity *Graih* referred to the importance of vulnerable people being able to access justice:

'It is a vital service that must be maintained as freely, universally and accessibly as possible for all the people on the Isle of Man, with a particular emphasis on including the most vulnerable.'

Advocates / Judiciary members made reference to how the Legal Aid Review has caused uncertainties within the criminal bar and caution was urged against introducing wholesale changes to a Criminal Legal Aid model which is considered to work well. Other concerns included retaining an independent criminal bar; conflicts of interest; lack of Legal Aid pay increase, and risk that practitioners may move away from Criminal Legal Aid work to undertake significantly more lucrative commercial work. There were also calls not to copy the UK:

'Legal Aid is not broken like it is in the UK. For goodness sakes don't break it as a result of some sort of insatiable need to tinker with what one didn't personally create. Already there are cracks showing and the criminal bar is depleting due to the uncertainties of this

review (which has been going on for about two years already - it's worse than Brexit) and the lack of any pay rise for over 10 years). Unless great care is exercised the job will become even less attractive for new graduates and senior advocates alike than it is already and it won't matter then what system is in place, the advocates will have gone off to do £400/hr commercial work instead. There is a saying that is apt, *'if it's not broke don't fix it'*.

'We cannot see the Isle of Man go the way of the UK. A society is judged on how it treats its most vulnerable. We must be a shining light in terms of access to justice for all.'

'The Isle of Man is lucky to have a Legal Aid Scheme and does not want to go down the route of its neighbours in the UK.'

'The system has worked well for many years, the rates may need to change but ultimately it has always served the public well and that is what counts. Again, sorry for the repetition, but independence is crucial. The PDS cannot effectively defend the public against the Attorney General prosecution in the same way as an independent advocate.'

'...Delivering access to justice via private firms is the most cost effective mechanism for the taxpayer. This review of criminal legal aid should not be carried out by/overseen by AG who is head of prosecution. Blatant conflict of interest. Woolmer [Wooler<sup>43</sup>] review of prosecution was carried out by independent party. Current review therefore perceived as lacking impartiality. Would the Defence be invited to carry out a review of the Prosecution? Current criminal legal aid system works well and is best model for defendants and the taxpayer.'

Legal Aid rates of pay were raised by 5 Advocates/ Judiciary Members. Concern was expressed that there are a number of factors which contribute to Criminal Legal Aid costs which may be overlooked unless a holistic view of attributing factors are considered:

'Make sure that Advocates are remunerated properly and are given sufficient funds for disbursements to defend a case.'

'Criminal legal aid is the easy option to attack when it is the budget choices in the Police, prosecutions and the courts that push the costs on to the legal aid budget. The rates of pay for Advocates within the AG's Chambers is far above that in private practice and the disparity should not get wider by taking money away from Advocates in private Practice.'

'Rates of pay need to be significantly improved if we are to attract young advocates in to the profession in order to maintain an independent criminal bar.'

Issues around quality of service were raised by 3 people who had been through the criminal justice system, and 1 other (who was in favour of a PDS and included above). They expressed concerns in regard to a number of matters including the client / Advocate relationship; communication; assessment of Advocates' seniority [years in practice]; expertise, conviction rates and accountability:

'The current legal aid scheme structure as a whole is broken. It does not provide value for money. There is no real client / lawyer relationship where legal aid is granted:

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<sup>43</sup> Stephen Wooler 2012 - Review of HM Attorney General's Chambers (Isle of Man). Executive Summary published in response to request made on 20 April 2017 under the Freedom of Information Act 2015 <https://www.gov.im/media/1357660/review-of-hm-attorney-generals-chambers-isle-of-man-executive-summary.pdf>

communications with defendants, especially those on remand, are poor at best and atrocious at worst - calls are ignored; defendants routinely go to trial without sight of the court papers, jury bundles etc.; defendants routinely are not advised of consequences of guilty verdicts, especially monetary orders; defendants routinely are not advised of the appeal options available within the statutory time limits, or not at all. Self-representing defendants have a reduced access to justice as they have no draw on legal aid funds to assist with their defence. Advocates are not accountable for failure to perform -legal aid defendants have no redress for poor performance.'

'...The conviction rate is absurdly high compared with any other major western country. These advocates are often low on real experience and expertise and overloaded with clients they have neither the time or experience to provide more than a basic defence for their clients. There seems to be no differential made between minor crime advocates and those defending serious crimes with substantial sentences. Years of service is no way to judge an advocate's ability to represent a client if he learns nothing new and constantly loses he learns nothing. Additional notes to Question 8: very few IOM advocates have sufficient skill to represent clients in serious crimes: [independence] is virtually impossible in the IOM system; [quality of service] is very poor often they do not respond or do enough work to inform any kind of defence for clients; often they do not turn up or even provide clients with information regarding their case; [ease of access] very poor in my experience especially if you are on remand...'

'For those of us experiencing the Manx Criminal legal aid System from the wrong end as it were, the main point which seems to pop up again and again is the lack of equality of arms and the very poor quality of work carried out (if at all), by defence advocates. Defence advocates appear to act in thrall to the police, the prosecutors and even the Deemsters. Thus they do, or say, nothing.'

In its response, the Isle of Man Law Society made reference to a review published by Lord Justice Leveson in January 2015, which sought to examine ways to achieve a more efficient system regarding criminal cases. It referred to the criminal justice system as not being a single system, and instead being made up of a group of agencies with different priorities and financial imperatives that are not aligned. Furthermore, and in order to effect positive change, reference was made to the need for agencies to work together to agree on initiatives to improve the whole. The Society indicated that it would also like to see a holistic focus on criminal justice in the Island, rather than focussing on Legal Aid. The work and value of criminal defence Advocates was also described in addition to some of the challenges they face. Concerns with the consultation process were also reiterated.

Extracts from the Society's response included:

'The IOMLS advocates this holistic approach to access to justice in relation to the criminal justice system. Looking at legal aid in isolation is simply not appropriate. The consultation overlooks the passion and commitment which is necessary to undertake the job that criminal Advocates do, particularly those on legal aid rates. Doing criminal legal aid work inevitably involves representing some of the most vulnerable and difficult members of society. This necessitates working unsociable hours including late nights and weekends. There is no overtime or flexitime system in operation. Holidays are often cancelled, and Advocates have to attend work early the next morning notwithstanding they may have spent all night at the Police Station.

Criminal Advocates also offer a much wider service than a purely legal service. They often act as counsellor and a gatekeeper for all other assistance and services an individual may need to access. This is all done free of charge, as it is not legal work, but has the potential to save, and no doubt does save, the Government significant 26



amounts of money and ensures our most vulnerable members of society are directed to receive the appropriate help when it is required. The consultation fails to recognise the wider contribution to society criminal Advocates provide and some of the questions posed lack any appreciation of the humanity and understanding of the role of the criminal Advocate.'

There was a detailed response from a Tynwald Member who expressed a number of views including that the service user (i.e. the legally-aided person going through the criminal justice system) should be placed at the centre of the Criminal Legal Aid system, and suggested the introduction of a Legal Aid Bill for a modernised Legal Aid service. Other comments included concerns that a PDS would not be independent or deliver savings; observations on other jurisdictions and suggestions including increased use of technology and fair fees;

'Really, the user needs to be placed at the centre of our legal aid service – with government, the public, private sector and third sector wrapped around the individual: a public service. However, it's hard to gather those opinions – voices are difficult to capture. However, once an intervention in the criminal justice system takes hold, it's likely it won't be a one off. So, we need to up our game...

I would say that more (qualitative and top-down) research into how our own system operates is greatly needed before we make a move - we need evidence-based policy-making. Really, like Scotland, we need a Legal Aid Bill to put forward a new statutory framework for a modern, forward-looking and person-centred legal aid service for the Isle of Man and place it into statute: giving people comfort in how we deliver their justice system in a fair, simple, and balanced way.

Comments from a Barrister (England) included concerns around the Manx Bar being closed:

'Part of your problem is that your legal aid people have largely shut off access to the English Bar as a referral profession; even for advice. In my experience when I have been permitted to advise I have on numerous occasions stopped people with less experience wasting public money on enquires and courses of action which are un-necessary.'

Other comments received from respondents made reference to the complexity of the current Criminal Legal Aid model; concern regarding convictions for drug use; calls for more data on prosecutions / cost awards, and the importance of accessing and achieving justice without delay:

'It's ok but very complicated.'

'Stop charging people for drug use, that would save a fortune in police and courts and prison time that would be a real saving.'

'What is the total sum awarded in costs to the Defence against the prosecution for each of the last 10 yrs? Amount to include defence costs paid by prosecution and from central funds. This will give an indication of how many cases are either dropped by the prosecution or lost at trial. Too many wrong and inappropriate prosecutions.'

'The measure of any legal system is not how quickly offenders are locked up, but how quickly the innocent are freed.'

The General Registry suggested that the Legal Aid Review considers the changes proposed in a Bill:

'The Legal Aid Review should consider the changes proposed in the Criminal Justice (Miscellaneous Provisions) Bill which, if enacted, will see many more cases tried in the summary courts which may impact on the level of legal aid funding as trials are likely to be concluded more quickly and in less time than if listed to be heard before a jury.'

The Criminal Justice Board<sup>44</sup>, which is chaired by the Department of Home Affairs, includes representatives from the Isle of Man Constabulary, Isle of Man Prison and Probation Service, Attorney General's Chambers, Treasury, Courts, General Registry and the Isle of Man Law Society. In its response, the Board made reference to its work to improve the effectiveness of the criminal justice system, welcomed the Legal Aid Review and sought to encourage debate in identifying recommendations and solutions:

'The work of the Criminal Justice Board is a key driver on the effectiveness of the criminal justice system through investment in technological solutions and removing barriers to improvement in administrative matters, however, above all is the pillar of access to justice. This means that people must be properly defended when accused by the state of crimes, and the price of that, to a fair society, is one which we must all bear to ensure confidence in the rule of law which is the basis of order and just conduct in a society. We have watched in the UK the impact of removing eligibility for legal aid assistance has had on the workload of the courts and are hopeful that this experience will be heeded as part of the consultation.

The Criminal Justice Board welcomes the attention being paid to the justice system via this review, and would encourage debate and long term thinking in the identifying of recommendations and solutions.'

**Q69 SUMMARY:** 67 people (33%) submitted responses and the key themes were views on a PDS; support for the Island's current Criminal Legal Aid model; Legal Aid rates of pay and quality of services.

6 people made comments in support of a PDS, and 24 people made comments against it. A range of concerns were reiterated in regard to independence; separation of powers; estimated cost savings and staffing numbers and threat to the criminal bar. 10 people made comments in favour of the current Criminal Legal Aid model, and cautioned against changing (or 'fixing') something that is not broken or copying the UK model. 5 people referred to Legal Aid rates of pay and the importance of remunerating Advocates fairly for their work. There were calls for the rates to be increased in order to attract and retain Advocates who are willing to undertake Criminal Legal Aid work. Concerns around the quality of legal services were raised by 4 people, and in particular the client / Advocate relationship; assessment of Advocates' seniority [years in practice]; expertise, conviction rates and accountability.

There were also suggestions to consider the criminal justice system holistically; place the defendant at the centre of the Criminal Legal Aid system, and resist copying the UK's model of Criminal Legal Aid. Other matters which were raised included access to justice; support for the vulnerable; implications of new legislation (if enacted) and the impact of the English Bar being closed as a referral profession.

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<sup>44</sup> <https://www.gov.im/about-the-government/departments/home-affairs/criminal-justice-service/criminal-justice-board/>

## 4.16. Names of respondents, charities & organisations

Of the 203 respondents to the consultation, 38 (19%) provided their full name and/or that of the organisation on which they responded and gave permission for their response to be published in full. These names are set out below and their responses have been published via the IoM Consultation Hub (<https://consult.gov.im/>).

It should also be noted that for the purposes of this consultation, those who gave permission for their responses to be published in full but did not provide their name, are equivalent to those who gave permission for their responses to be published anonymously. In total, 139 respondents (68%) gave permission for their responses to be published anonymously and 26 respondents (13%) did not give permission to publish their responses.

### Individual respondents

John Barnes  
Anthony Berry QC  
Rae Blair  
Peter Brooks  
Shane Byrne  
Paul Campbell  
Lynsey Christian  
Russell Collins  
Michelle Crystal  
Dominic Dawson  
Anthon John Glen  
Paul Glover  
Gareth John  
Graham Jones  
Ann Kelly

Ian Kermod  
Leslie Millar  
Isabel Miller  
Michael Moore  
Stephen Moore  
Kier Morris  
Andrew Morrison  
Anthony Murphy  
Julian Nutter  
Stuart Owens  
Jamie Smith  
Robert Whiteman  
Peter R Wood  
Stephen Wood  
John Wright

### Charities

Graih  
Victim Support (Isle of Man)

### Organisations / businesses

Criminal Justice Board  
General Registry  
Gray Law Advocates  
Isle of Man Constabulary  
Isle of Man Law Society

### Tynwald Members

Tanya August-Hanson MLC

## 5.0. CRIMINAL LEGAL AID WORKSHOPS

Details of six Criminal Legal Aid workshops delivered by the Attorney General's Chambers to members of the Isle of Man Law Society, the Isle of Man Constabulary and prisoners at the Isle of Man Prison are summarised below in date order.

### 5.1. Workshops with IoM Law Society members (May 2019)

#### Methodology

Arrangements for inviting members of the IoM Law Society to take part in Criminal Legal Aid workshops were made by the Attorney General's Chambers with the assistance of the Society. Due to the level of interest expressed by Advocates and their range of availabilities, four workshops were arranged at breakfast (7.30am) lunch (12.30pm) and evening times (5.30pm) in a bid to accommodate all those who wished to attend. Confirmed invitations and workshop agendas were sent to attendees in advance, and workshops were held on 15 May, 17 May, 20 May and 24 May 2019.

Initially, the workshops were scheduled for 90 minutes as Chambers sought to find a balance between providing Advocates with sufficient time to participate, whilst limiting the time taken out of their day. Following the initial workshop, sessions were extended for up to an additional 30 minutes. All workshops were held centrally in Douglas. Breakfast and evening workshops were held at the Attorney General's Chambers, Belgravia House. Lunchtime workshops were held in the Barrool Suite, Legislative Buildings, Douglas. Food and refreshments were also made available at each workshop as it was recognised that Advocates were attending before, during or after the working day.

These workshops came **before** the Criminal Legal Aid consultation was drafted, as they formed part of the pre-consultation research undertaken by the Attorney General's Chambers. It was considered important to ensure that any matters which were of key concern to Advocates could be used to shape the public consultation.

#### Participants

Each workshop was delivered by a member of the Attorney General's Chambers, and exercises with the Advocates were facilitated by another member of Chambers and / or a member of staff from the Legal Aid Office. HM Attorney General also attended each of the four workshops in order to welcome Advocates and give his opening remarks, following which his attendance was in the capacity of an observer. In total, 33 members of the IoM Law Society attended the Criminal Legal Aid workshops, including its President and Chief Executive.

#### Workshop details

Following HM Attorney General's introduction, there was a Criminal Legal Aid presentation<sup>45</sup> to Advocates and two group exercises. The presentation provided background to the Legal

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<sup>45</sup> Reference is made to the Criminal Legal Aid workshops via the Attorney General's Chambers website: <https://www.gov.im/about-the-government/offices/attorney-generals-chambers/crown-office/legal-aid-review/workshop-presentations/>

Aid Review, and details of its aims and objectives. The purpose of the workshops was also explained and in particular, how they aimed to encourage open exchanges and capture feedback from an Advocate’s perspective. The presentation also set out key stakeholders, including individuals in receipt of Criminal Legal Aid or who had been through the criminal justice system, the IoM Constabulary and the Courts. A summary of Criminal Legal Aid provision in the IoM and headlines from comparator jurisdictions including England and Wales, Scotland, Guernsey and Jersey was also provided.

Advocates then took part in two group exercises. As both lunchtime workshops had between 12 and 13 Advocates in attendance, they were asked to split into two groups for the purpose of the exercises, and then present details of their discussions to the other group. Both the morning and evening workshops each had a small group of four Advocates in attendance and they worked through the exercises together.

The facilitated exercises were:

1. Strengths and weaknesses in the current Criminal Legal Aid model
2. Changes & alternatives to the current Criminal Legal Aid

In total there were contributions from six groups of Advocates across four workshops, and a range of comments, suggestions and questions were captured. The following ‘Feedback from workshop exercises’ section seeks to summarise these contributions.

**Feedback from workshop exercises**

**Exercise 1 – Strengths & weaknesses in the current Criminal Legal Aid model**

In this exercise, Advocates were asked to consider the strengths and weaknesses in the Island’s **current** Criminal Legal Aid model from their perspective.

Advocates were asked to consider all aspects of Criminal Legal Aid from Green Form; Police and Court Duty Advocate Schemes to full Criminal Legal Aid, and any associated processes. The exercise was distilled into two broad questions about the Island’s current model, the first of which was:

**Q1. What works well from an Advocate’s perspective and should continue?**

A summary of Advocates’ feedback is set out in Table 49 below.

**Table 49. Matters which work well and should continue**

<b>Matter</b>	<b>Comments from Advocates - matters which work well &amp; should continue</b>
<i>Police Station Duty Advocate (PSDA) Scheme (access to justice)</i>	There are no issues with the Police Station Duty Advocate Scheme – it works very well. It provides cover 24/7, every day of the year and represents very good access to justice.

<b>Matter</b>	<b>Comments from Advocates - matters which work well &amp; should continue</b>
<i>PSDA Scheme (contacting the Duty Advocate )</i>	Duty Advocates are only called to Police Headquarters when the Police are ready which in an effective use of Advocates' time.
<i>PSDA Scheme (notification in multi-handed cases)</i>	Text message notifications from the Custody Suite to Police Station Duty Advocates in multi-handed cases etc. are very effective
<i>PSDA Scheme (positive working relationships)</i>	There are good working relationships in place and regular meetings between the IoM Law Society and Custody Officers to discuss matters arising are very useful.
<i>Police &amp; Court Duty Advocate rotas</i>	It is helpful for Advocates to be able to swap between Police and Court Duty Advocate rotas to avoid conflicts.
<i>Criminal Legal Aid applications</i>	It is beneficial for Criminal Legal Aid applications to be submitted to the Courts for assessment as 'on the spot' decisions are very helpful. Applications should continue to be considered by the Courts and not moved to the Legal Aid Office as this could lead to delays.
<i>Probation Officers in Court</i>	The presence of Probation Officers in Criminal Courts who prepare Stand-Down Reports is hugely beneficial. Probation Officers attend every Tuesday Court and approximately 50% of Thursday Court sittings and save significant amounts of Court time because adjournments for full Social Enquiry Reports are avoided. This can also reduce the level of stress and worry for an individual appearing in Court.
<i>Advocates' commitment</i>	Advocates can face risks when alone with clients, including potentially violent individuals. Advocates may also advise and support very vulnerable people. Advocates demonstrate considerable commitment to their clients, which may also include Civil work that arises from criminal cases (e.g. eviction, divorce) and/or signposting to other agencies for support.
<i>Training</i>	There is training in place to become a Police Station Duty Advocate. Bi-annual training is also provided by local Advocate(s) for Court Duty Advocates. There is 2-day annual advocacy training in place for Criminal and Civil matters which is free and well attended and mock Courts are also held. The quality of training is good.
<i>Manx Bar</i>	The small size of the Manx Bar allows time and cost savings through accessing advice from peers. The quality and experience of members of the Manx Bar and communication between Advocates is also helpful.

The second question in Exercise 1 also related to the Island's **current** Criminal Legal Aid model and Advocates were asked:

Q2. What does not work well from an Advocate's perspective and could benefit from improvement?

A summary of Advocates' feedback is set out in Table 50 below:

**Table 50. Matters which could benefit from improvement**

Matter	Comments from Advocates – matters which could benefit from improvement
<i>Green Form</i>	Prescribed amounts were last reviewed in 2014. There is concern that people are marginally outside the financial eligibility criteria of Green Form but cannot afford to pay.
<i>Police Station Duty Advocate on-call duties (travel rates)</i>	Duty Advocates are paid door to door (e.g. from their home to the Police Station then the Police Station to home). It can be a financial advantage for an Advocate who lives a significant distance from the Police Station in Douglas to travel there from home. A return journey of 1hr 30min for a Junior Advocate would attract a fee of £115 x 1.5 = £172.50 (plus mileage charges) and a Senior Advocate would attract a fee of £135 x 1.5 = £202.50 (plus mileage charges).  <b>It was suggested</b> that there should be a lower hourly rate for travel time, which could offset any increases to the Legal Aid rates of pay for Advocates.
<i>Police Station Duty Advocate on-call duties (day)</i>	Being an on-call Police Station Duty Advocate during the day is an issue as it means that Advocates' diaries have to be left empty, thus reducing billable hours. This can be especially difficult for small practices whose Advocate is on the Duty rota for 1 week during every 3-4 months or spread out days. Senior Advocates (>5yrs in practice) tend to do block weeks.
<i>Police Station Duty Advocate on-call duties (night)</i>	It is a huge commitment for Advocates to be on-call as a Police Station Duty Advocate during evenings and overnight and it can be very disruptive to Advocates' personal lives. It should be recognised that being called out overnight can ruin the next working day for an Advocate.
<i>Access to Police Station Duty Advocate offered to detainee</i>	Some clients have reported that they have been told that a Police Station Duty Advocate is not free of charge / is not available at night / will only speak to a detainee post-charge.

<b>Matter</b>	<b>Comments from Advocates – matters which could benefit from improvement</b>
<i>Police Station Duty Advocate (attendance at other locations)</i>	<p>There is no provision for Advocates to attend an interview if an individual is being held / interviewed by Customs or Social Security at a location which is not a Police Station. As a result, when an individual is cautioned under the Police Powers and Procedures Act 1998<sup>46</sup> there is a lack of compliance with Section 61 of that Act - <i>Access to legal advice</i>.</p> <p><b>It was suggested</b> that the services of a Police Station Duty Advocate should be extended to those held under caution and questioned away from a Police Station. It is also suggested that individuals could be taken to a Police Station for interview subject to the agreement of the Police.</p>
<i>Delays at the Police Station</i>	<p>If an Advocate is called to Police Headquarters and then told whilst travelling or on arrival that the Police are not ready for them, it can cause unnecessary delays due to Advocates' waiting times which lead to increased Legal Aid cost.</p>
<i>Interview / charge delay</i>	<p>There can be delays of over an hour between a detainee's last interview and a decision to charge/bail the detainee. A decision within 45 minutes of the last interview ending would be very helpful.</p>
<i>Bail return dates</i>	<p>Advocates and their clients may attend Police Headquarters on a bail return date to be informed that no decision has been made on how to proceed and the client is then re-bailed. This wastes time and also has an impact on Legal Aid costs.</p>
<i>Perception of Police targets for charging people</i>	<p>There is a perception that there may be targets for charging people (e.g. drug possession).</p>
<i>Use of Police powers</i>	<p>There are concerns that some matters may be coming to Court unnecessarily and that Police powers are not being used to their fullest extent</p>
<i>Court Duty Advocate (on-call duties)</i>	<p>Being on call for Court Duty could be improved. There used to be a phone system in place but now Advocates have to attend even if there is no-one at Court for them to see. In such an event, Advocates are paid for 1 hour's work but it is both disruptive for the individual and an unnecessary payment from Legal Aid funds.</p>

<sup>46</sup> Police Powers & Procedures Act 1998

[https://legislation.gov.im/cms/images/LEGISLATION/PRINCIPAL/1998/1998-0009/PolicePowersandProceduresAct1998\\_6.pdf](https://legislation.gov.im/cms/images/LEGISLATION/PRINCIPAL/1998/1998-0009/PolicePowersandProceduresAct1998_6.pdf)



<b>Matter</b>	<b>Comments from Advocates – matters which could benefit from improvement</b>
<i>Court Duty Advocate (on-call duties)</i> <i>(cont...)</i>	<b>It was suggested</b> that if a reliable process could be found in which Advocates are only required to attend Court if there is someone for them to see, and they will not be disciplined for non-attendance in the event of there being no-one to see, it would be very helpful.
<i>Court Duty Advocate (abuse of Scheme)</i>	Some people are circumventing the Court Duty Advocate Scheme and using multiple Court Duty Advocates. This can lead to affluent individuals being represented by a new Advocate at each appearance. The Court Duty Advocate Scheme is not meant to subsidise such individuals
<i>Court waiting times</i>	Waiting times in Court add to Criminal Legal Aid Costs but it is recognised that it is not easy to suggest a solution.
<i>Criminal Legal Aid applications (proof of means)</i>	Applications for full Criminal Legal Aid are passed to the Court Officer. The biggest issue in granting a Criminal Legal Aid certificate is waiting for the applicant to provide proof of means. There can be delays if evidence of income is required (e.g. 13 weeks' worth of payslips) as some individuals (e.g. fishermen) may not be able to produce the necessary paperwork. Ascertaining proof of means can be huge burden on individuals.
<i>Criminal Legal Aid applications (proof of benefits)</i>	Finding or producing evidence of benefits can be time-consuming, especially for individuals who may have a chaotic lifestyle.  <b>It was suggested</b> that it would be helpful for the Court to have a portal to Social Security to immediately check if a person is in receipt of benefits. It could be made part of the Criminal Legal Aid application process that an individual gives permission for the Court to contact Social Security on their behalf. This could expedite cases and save costs.
<i>Criminal Legal Aid applications (contributions)</i>	There are no powers in place to enforce contributions once a case has been concluded.  <b>It was suggested</b> that contributions could be enforced by ordering days in default and working through the fines.
<i>Appropriate Adult Scheme</i>	The Appropriate Adult Scheme needs coordination, proper planning and expertise. Mental Health nurses are working at the Police Station but their role does not include acting in the capacity of an Appropriate Adult. The parent of a young person or vulnerable adult who has been detained will sometimes attend as an Appropriate Adult, but this can be unsuitable in some circumstances.

<b>Matter</b>	<b>Comments from Advocates – matters which could benefit from improvement</b>
<i>Appropriate Adult Scheme</i>	Delays can be caused whilst the Police try to find an Appropriate Adult who is available to attend the Police Station. Such delays can add to the distress felt by a young person or vulnerable adult, and can also lead to more Criminal Legal Aid costs of a Police Station Duty Advocate is required to wait.
<i>Interpreters (quality)</i>	<p>The quality of interpreters is important. There is concern that anecdotally, some interpreters lack sufficient vocabulary needed to translate (e.g. a question). In other jurisdictions, interpreters are required to have a specific level of qualification to translate medical / legal matters.</p> <p><b>It was suggested</b> that a panel of appointed interpreters could be set up and they should be paid properly for their services.</p>
<i>Interpreters (availability &amp; fees)</i>	There are huge issues with accessing interpreters which can lead to delays. There is concern that the (low) level of fees payable are acting as a disincentive to potential interpreters.
<i>Legal Aid rates of pay</i>	There are concerns that the last increase in rates was in 2010.
<i>Bills of cost</i>	<p>It is acknowledged that Advocates should provide legally-aided legal services on the same basis that they would “advise a client of modest means”. It was felt that the current basis for referring Advocates to the Advocates Disciplinary Tribunal is too high (i.e. if the Costs Officer reduces invoice by &gt;50%) and concern that if invoices are reduced by 49%, there is no sanction applied and Advocates are not challenged.</p> <p><b>It was suggested</b> that the amount should be lowered (e.g. from &gt;50% to &gt;25%) to ensure that Advocates bill fairly for their work and those billing above this limit should be automatically referred to the IoM Law Society or Legal Aid Committee.</p>
<i>Non-Molestation Orders</i>	Breaches of Non-Molestation Orders are not covered by a Criminal Legal Aid certificate due to a crossover between Criminal and Civil (family matter).
<i>Egress Switch (email encryption)</i>	Advocates have issues saving / printing straight from it and it adds time to basic administration.
<i>Multi-agency Criminal Justice System</i>	Advocates would like a more holistic approach to the Criminal Justice System as a whole system, with more collaboration, less siloes and shared budgets.

## Exercise 2 – Changes & alternatives to the current Criminal Legal Aid model

The exercise was distilled into one broad question about the **future**:

Q3. Could any changes or alternatives better deliver Criminal Legal Aid in future with access to justice, quality of service and value for money at its core?

A summary of the feedback is set out in Table 51 below.

**Table 51. Suggested future changes & alternatives**

Matter	Comments from Advocates - future changes & alternatives
<i>Legal Aid Review</i>	Concern that the Legal Aid Review is not being undertaken impartially or objectively, as the idea of a Public Defender Scheme initially came from HM Attorney General (HMAG) and submitted to the Treasury. The project is now being led by the HMAG and undertaken by a Project Manager within the Attorney General's Chambers, working directly for HMAG.
<i>Public Defender Scheme (conflicts of interest)</i>	In multi-handed cases (e.g. recent case in which 5 people were arrested for attempted murder) multiple Advocates are needed to advise / represent people. Concerns were raised that there could be confidentiality and conflict of interest issues within a Public Defender Scheme (PDS) of 6 Advocates.
<i>Public Defender Scheme (as a 'safety net')</i>	View that a PDS might only be useful where there is market failure (as in the UK). View that the IoM does not need a PDS 'safety net' as there are very few people who are unrepresented. Also concern that if it was viewed as a 'last resort' it would sound like a second class service.  <b>It was suggested</b> that in those circumstances it may be preferable to bring in a UK lawyer (N.B. a temporary Manx Advocate's Licence would be required) to represent those people.
<i>Public Defender Scheme (litigants in person)</i>	Litigants in person increase costs and time taken on a case. View that a PDS could not reduce the number of litigants in person as self-representation usually happens when people 'do not trust' lawyers, do not want a lawyer or disagree with advice.
<i>Public Defender Scheme (independence of defence Advocates)</i>	Significant concerns regarding the independence of an Advocate in a system in which the state could arrest, detain, prosecute, defend and imprison a person.  <b>It was suggested</b> that criminal defence Advocates should remain independent.

Matter	Comments from Advocates - future changes & alternatives
<i>Public Defender Scheme (staffing &amp; skills)</i>	The PDS could not be staffed alongside private sector Advocates as the Manx Bar is too small. The opportunity to develop skills is seen as limited for a PDS lawyer. People want an Advocate with a good reputation for defending certain types of cases (i.e. a specialist). A PDS might be a 'dead end' career and its Advocates perceived as a 'B' team.
<i>Public Defender Scheme (impact on independent Manx Criminal Bar)</i>	A PDS would severely and permanently impact private practices and eventually lead to there being no independent Manx Criminal Bar. If a PDS was established and subsequently failed, it would leave the IoM with no alternative provision.
<i>Public Defender Scheme (relationship with client)</i>	Consideration of strategy for a trial begins from first time you meet a client in the Police Station. If the Advocate is changed after this point then the client and their case will suffer.
<i>Public Defender Scheme (costs to IoM Govt)</i>	Extra costs are associated with a PDS (e.g. IoM Govt. pensions; NI contributions; holiday & sick pay etc) which are not borne in the current model of using Advocates from private practice.
<i>Fixed Fees</i>	<p>Fixed fees are not working in the UK. They can cause lawyers to take shortcuts and not give proper advice It is assumed that any fixed fees would be set too low and give rise to the UK's position and concern that if they were set too high then the system would not save money.</p> <p>Fixed fees for criminal cases would not work as there are more exceptions than rules. There are a huge range of cases, and even when comparing the same crime, an individual could plead guilty, not guilty, extenuating circumstances etc.</p> <p>Advocates work to targets and <b>it was suggested</b> that for fixed fees to work, other parts of system would need to improve (e.g. reduced waiting times at the Police Station and in Court).</p>
<i>Financial eligibility</i>	<p>The financial means test is set too low and does not keep up with inflation.</p> <p><b>It was suggested</b> that more people should be financially eligible for Criminal Legal Aid (i.e. Green Form or full Criminal Legal Aid as Duty Advocate Schemes are already universal and free to all).</p>
<i>Quality</i>	Members of the Judiciary can refer complaints against Advocates. Advocates are also scrutinised the whole way through the Legal Aid process from application, disbursements to Bills of Costs. Current quality controls were described as onerous.
<i>External taxation</i>	There was concern that external legal taxation companies (e.g. Burcher Jennings which are used by Guernsey for significant Bills of Cost) do not understand the IoM as a jurisdiction and would therefore be unable to assess Bills of Cost.

Matter	Comments from Advocates - future changes & alternatives
<i>Per capita expenditure</i>	<p>Any per capita expenditure figures quoted for the Isle of Man, NI, Scotland, England &amp; Wales, Guernsey &amp; Jersey should be treated with caution, taking into account socio-economic and other factors.</p> <p><b>It was suggested</b> that a more reliable indicator could be expenditure per assisted person<sup>47</sup>.</p>
<i>Data</i>	<p><b>It was suggested</b> that more Legal Aid information should be published (e.g. spend, number of cases etc)<sup>48</sup>.</p>

## Closing remarks

Advocates were advised that the IoM Law Society would be notified when the public consultation on Criminal Legal Aid had been drafted and due to be published, in order to encourage members' participation. Advocates were also advised that all members of the Society would be invited to take part in Civil Legal Aid workshops which were due to take place later in 2019, following which there would be a public consultation on Civil Legal Aid. It was also noted that further information regarding the Legal Aid Review project, including details of progress and next steps, would be kept up to date at [www.gov.im/legalaidreview](http://www.gov.im/legalaidreview).

## Acknowledgements

The Attorney General's Chambers would like to thank the IoM Law Society and its members for their assistance and contributions. Chambers would also like to thank the Legal Aid Office for its support and facilitation throughout.

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<sup>47</sup> Comparable information for other jurisdictions is not known.

<sup>48</sup> IoM Legal Aid Committee Annual Report 2018-19, Criminal Legal Aid costs 2013-2019 & Civil Legal Aid costs 2014-2019 are now published by the Legal Aid Office: <https://www.gov.im/about-the-government/departments/the-treasury/social-security-division/legal-aid/la-committee/>

## 5.2. Workshop with the IoM Constabulary (Sept 2019)

### Methodology

Arrangements for inviting members of the IoM Constabulary to take part in a Criminal Legal Aid workshop were made with the assistance of the Chief Constable's Office. A single 3-hour workshop was delivered by the Attorney General's Chambers to the Constabulary **during** the Criminal Legal Aid consultation period on 25 September 2019 at The Lodge<sup>49</sup>, Strang, Braddan.

### Participants

The Chief Constable and 13 other senior Police Officers and staff attended the workshop. There were also 2 members of staff from the Attorney General's Chambers present, to deliver the presentation, facilitate discussions and take notes.

### Workshop details

The workshop consisted of a Criminal Legal Aid presentation<sup>50</sup> to the IoM Constabulary and two exercises which were facilitated by the Attorney General's Chambers.

The presentation included background to the Legal Aid Review; a list of key stakeholders and a summary of Criminal Legal Aid in the Isle of Man and comparator jurisdictions. Details of the variables which impact on Legal Aid costs (e.g. legislation; crime rates; detection rates; number / complexity of prosecutions; Court waiting times) were included, and an overview of the Criminal Legal Aid consultation was also provided.

IoM Constabulary attendees then split into two groups to undertake two exercises, following which they presented the details of their discussions to the other group. A summary of the exercises and the feedback received is set out below.

### Exercise 1 – Consideration of Advocates' comments & concerns

Both groups of attendees were asked to consider and respond to comments and concerns from Advocates in response to two Criminal Legal Aid questions asked during their workshops, and where their answers were pertinent to the Police. Constabulary attendees were also asked to be mindful that different groups of Advocates had provided feedback and as a result, there could be both positive and negative comments in regard to the same matter.

The two questions, which both related to Criminal Legal Aid, were set out for the Constabulary with a summary of Advocates' responses as shown below:

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<sup>49</sup> The Lodge is the IoM Government's centre for Learning, Education and Development.

<sup>50</sup> Reference is made to the Criminal Legal Aid workshops via the Attorney General's Chambers website: <https://www.gov.im/about-the-government/offices/attorney-general-chambers/crown-office/legal-aid-review/workshop-presentations/>

What works well from an Advocate’s perspective and should continue?

- Text message notifications from the Custody Suite to Police Station Duty Advocates in multi-handed cases etc. are very effective
- Good working relationships are in place and the regular meetings to discuss matters arising are very useful.
- Advocates are only called to Police Headquarters when the Police are ready – effective use of time
- No issues with the Police Station Duty Advocate Scheme – it works very well.

What does not work well from an Advocate’s perspective and could benefit from improvement?

- If an Advocate is called to Police Headquarters and then told whilst travelling or on arrival that the Police are not ready, it can cause unnecessary delays due to Advocates’ waiting times which lead to increased Legal Aid costs.
- There can be delays of over an hour between a detainee’s last interview and a decision to charge/bail the detainee. A decision within 45 minutes of the last interview ending would be very helpful.
- Some clients have reported that they have been told that a Police Station Duty Advocate is not free of charge / is not available at night / will only speak to a detainee post-charge.
- Some Advocates and their clients may attend Police Headquarters on a bail return date to be informed that no decision has been made on how to proceed and the client is then re-bailed. This wastes time and also has an impact on Legal Aid costs.
- There are concerns that some matters may be coming to Court unnecessarily and that Police powers are not being used to their fullest extent
- There is a perception that there may be targets for charging (e.g. drug possession).

To facilitate consideration of the above points, members of the Constabulary were asked:

- Q1. How could the Police further strengthen the positive aspects identified?
- Q2. How could Advocates’ concerns be addressed / responded to?
- Q3. How could issues be safeguarded against in the future?

A summary of the Advocates’ points, and combined responses from both groups of Constabulary attendees are set out in Table 52 below. Any agreed actions arising from the discussions are also included:

**Table 52. Matters raised by Advocates & the IoM Constabulary’s response**

<b>Matters raised by Advocates</b>	<b>Response from IoM Constabulary</b>
<p><i>Meetings between Custody Officers &amp; Duty Advocates</i>  <i>(N.B. This matter was raised by the Police)</i></p>	<p>The Police would like to re-establish more regular meetings between the Police and the IoM Law Society re: the Police Station Duty Advocate Scheme to ensure that any issues arising are addressed quickly and not left without resolution</p> <p><b>It was agreed</b> that the Police would contact the IoM Law Society (IoMLS) to make the necessary arrangements</p>



<b>Matters raised by Advocates</b>	<b>Response from IoM Constabulary</b>
<i>Delays at the Police Station</i>	<p>Investigators and Custody Officers will seek to improve communications, in order to reduce delays at the Police Station for the Duty Advocates</p> <p><b>It was agreed</b> that the Attorney General's Chambers (AGC) would advise the IoMLS accordingly</p>
<i>Interview / charge delay</i>	<p>Whilst pre-planning, communications and decision-making processes can lend themselves well to an early decision, the Police are not always in a position to charge within 45 minutes.</p> <p><b>It was agreed</b> that the Police would contact the IoMLS to discuss this matter further</p>
<i>Bail return dates</i>	<p>The Police acknowledged that there were some issues re: bail return dates at the Police Station. The responsibility for advice and updates re: a person's bail return date is with the Police and measures will be put in place to address this (e.g. intrusive supervision).</p> <p><b>It was agreed</b> that the AGC would advise the IoMLS accordingly</p>
<i>Access to Police Station Duty Advocate offered to detainee</i>	<p>The Police considered any allegation that a detainee has not been advised of their legal right to speak to a Police Station Duty Advocate to be a serious breach of professional standards which the Police would wish to investigate as a priority. The Police confirmed that CCTV footage captures the exchange of information between Police Officer(s) and detainee, and custody records will also provide important details. The Police requested that any such complaint should be raised with them at the earliest opportunity so that an investigation can be carried out. Complaints should be directed to Supt. Phil Drowley who is responsible for professional standards (Phil.Drowley@iom.pnn.police.uk).</p> <p><b>It was agreed</b> that the AGC would advise the IoMLS accordingly</p>
<i>Use of Police powers</i>	<p>The Police confirmed that they are using their fullest powers to minimise matters coming to Court. The Police only have limited powers not to charge (e.g. a Fixed Penalty Notice for drug possession is not available).</p> <p><b>It was agreed</b> that the AGC would advise the IoMLS accordingly</p>
<i>Perception of Police targets for charging people</i>	<p>The Police confirmed that there are no Police targets in place for charging people. Early intervention schemes (e.g. drug intervention) are used as much as possible. It was also noted that prosecutions reduced by approx. 1/3 when the cautioning policy was introduced.</p> <p><b>It was agreed</b> that the AGC would advise the IoMLS accordingly</p>



## Exercise 2 – Consideration of Criminal Legal Aid provision from a Police perspective

In their respective groups, members of the IoM Constabulary were asked to consider the following questions:

- Q4. What aspects of Criminal Legal Aid work well from a Police perspective and should continue?
- Q5. What are the issues associated with Criminal Legal Aid from a Police perspective?
- Q6. Could anything could be improved or done differently in future to support the work of the Police?

A summary of the matters raised by the IoM Constabulary, and combined responses from both workshop groups are summarised in Table 53 below. They cover a range of matters and include observations, concerns and suggestions:

**Table 53. Matters raised by IoM Constabulary re: current Criminal Legal Aid provision**

<b>Matters raised by IoMC</b>	<b>Comments, concerns &amp; suggestions from the IoM Constabulary</b>
<i>Police Station Duty Advocate (PSDA) Scheme</i>	<p>Positive aspects included:</p> <ul style="list-style-type: none"> <li>• Mainly prompt attendance by the Police Station Duty Advocates, which is assisted by the locality of a number of the legal practices.</li> <li>• Positive working relationships in place with the Duty Advocates.</li> <li>• Facilities at Police Headquarters are good.</li> <li>• Custody Suite CCTV, Custody records etc. show that detainees are informed of their right to free legal advice from a Police Station Duty Advocate.</li> <li>• PM duties by the Duty Advocate are covered well.</li> </ul>
<i>PSDA Scheme (AM &amp; PM duties)</i>	<p>Concern that AM (daytime) Police Station Duty Advocate duties are not covered as well as PM (evening / overnight) duties.</p>
<i>PSDA Scheme (text message notifications)</i>	<p>Concern that when the Police issue a text message notification to Police Station Duty Advocates (e.g. in a multi-handed case or if the Duty Advocate on the rota is unavailable) the Police do not receive any responses from Advocates. More often than not, an Advocate does arrive at the Police Station, but it is without advance warning.</p> <p><b>It was suggested</b> that it would be helpful if the attending Advocate(s) could send a confirmatory text to the Police in advance of their arrival.</p>

<b>Matters raised by IoMC</b>	<b>Comments, concerns &amp; suggestions from the IoM Constabulary</b>
<i>PSDA Scheme (time spent with client &amp; use of technology)</i>	<p>Concern that some Advocates appear to take more time than is needed during a consultation with their client for simple matters in order to earn more.</p> <p>Concern regarding the proportion of face-to-face attendances by the Police Station Duty Advocate in the majority of cases.</p> <p><b>It was suggested</b> that more initial advice by phone and/or video call (i.e. making use of modern technology) could be helpful.</p> <p><b>It was suggested</b> that a Duty Advocate could be based at Police Headquarters for the day.</p>
<i>PSDA Scheme (rotas)</i>	<p>Concern that there can be issues with Police Station Duty Advocate availability if the Advocate on the rota is in Court, either as a Court Duty Advocate or on other matters.</p>
<i>Interpreters (access)</i>	<p>Concern that access to interpreters has deteriorated since the Dept. of Health and Social Care and more recently the Cabinet Office took over management of the list from the Police.</p>
<i>Interpreters (conflicts of interest)</i>	<p>Concern that there can be a conflict of interest if a Police interpreter is also a witness to a crime (i.e. they are a Police witness for any interpretation service in interviews or statements).</p> <p><b>It was suggested</b> that the Courts should have access to their own interpreters.</p> <p><b>It was confirmed</b> that <i>Language Line</i> is available in the Custody Suite.</p>
<i>Early intervention schemes</i>	<p>Drug intervention schemes have worked well to reduce the number of drug-related charges.</p> <p><b>It was suggested</b> that it would be helpful for there to be more awareness of disposals (i.e. ways of dealing with an offence that does not require a prosecution in Court).</p>
<i>Courts</i>	<p>Concern that the Courts are sometimes placing a disproportionate burden on the Police by not requiring Advocates to adhere to the law re: disclosure, submission of defence statements. The outcome is that numerous Police Officers (up to 6) may be required to attend Court, when only one named Officer will be called to appear. This can have significant operational impacts for the Police.</p> <p>Concern regarding poor case management by some members of the Judiciary.</p> <p><b>It was suggested</b> that there is more scrutiny re: Court processes.</p> <p><b>It was suggested</b> to resolve case issues at Pre-Trial Review.</p>
<i>Defence statements</i>	<p>Concern that defence statements may be delayed and/or abused.</p> <p>Concern that there can also be pointless defence requests pre-trial.</p>

<b>Matters raised by IoMC</b>	<b>Comments, concerns &amp; suggestions from the IoM Constabulary</b>
<i>Early guilty pleas</i>	<p>Concern that there is no incentive for early guilty pleas. Plea before venue worked for a time and then 'fizzled out'.</p> <p><b>It was suggested</b> that making potential sentencing reductions (e.g. 30% at first appearance) more transparent could be helpful.</p>
<i>Committals</i>	<p>Concern regarding unnecessary committals - acknowledged that this will change under new legislation.</p>
<i>Experts</i>	<p>Concern regarding the use of experts. There appear to have been examples where Advocates have instructed multiple experts on a particular matter until the expert whose views align with the Advocate is found. Concern that 'shopping' for experts wastes money.</p> <p><b>It was suggested</b> that Court-appointed experts could be helpful.</p>
<i>Self-Rep</i>	<p>Acknowledged that some people who self-represent will always choose to do so, especially if they have experience of the system. Recognised that others may self-represent if they do not trust anyone to represent them.</p>
<i>Technology</i>	<p>Concern that there appear to be issues with the video link between IoM Prison and the Courts as it is not always available.</p> <p>The Police would like to know whether this is a technological or an operational matter.</p>
<i>Quality of service</i>	<p>Concern that there are differing standards of advocacy and criminal defence within the criminal bar.</p> <p><b>It was suggested</b> that consideration could be given to Advocates / Legal Aid practices being required meet a quality standard (e.g. digitisation) to be able to undertake Criminal Legal Aid work. It was recognised that some smaller practices may not be able to deal with future digitisation.</p>
<i>Costs / payments</i>	<p><b>Suggestions included:</b></p> <ul style="list-style-type: none"> <li>• Setting time limits for Advocates to submit their bills</li> <li>• Applying more rigour to the types of work that can be claimed for</li> <li>• Understanding how much is spent on repeat offenders</li> </ul>
<i>Fixed fees</i>	<p>Concern that without any fixed fees, the effective cost management of Criminal Legal Aid could be limited.</p>
<i>Bills of Cost</i>	<p><b>It was suggested</b> that a review of the time / bill (taxation) for offences could be undertaken and billing guidelines put in place which could improve cost management matters if fixed fees are not introduced.</p>
<i>Guidelines</i>	<p><b>It was suggested</b> that more guidelines on a range of issues (e.g. instructing experts; cost guidelines) would be helpful.</p>
<i>Criminal appeals</i>	<p><b>It was suggested</b> that there could be a review in terms of the number and outcome of criminal appeals (i.e. successful and unsuccessful)</p>
<i>Repeat offenders</i>	<p><b>It was suggested</b> that more awareness around advice and actions given to repeat offenders would be helpful.</p>

<b>Matters raised by IoMC</b>	<b>Comments, concerns &amp; suggestions from the IoM Constabulary</b>
<i>Public Defender Scheme</i>	View that a PDS should be 'all or nothing' (i.e. not a partial PDS). A full PDS would need to be correctly staffed and costs known at the start of the financial year. Would need to know how many overnight call-outs are made to Police Headquarters to inform feasibility.

## Participation in the public consultation

At the end of the workshop, members of the IoM Constabulary were encouraged to respond to the public consultation on Criminal Legal Aid.

## Feedback of the Constabulary's agreed actions to the IoM Law Society

During October 2019, the Attorney General's Chambers advised the IoM Law Society that a Criminal Legal Aid workshop had been held with members of the IoM Constabulary and Advocates' comments and concerns pertaining to the Police had been considered and discussed in detail.

The Constabulary's responses, as set out in *Exercise 1* (above) and the agreed actions which sought to address and/or acknowledge Advocates' concerns were provided in full. The Society welcomed the Constabulary's feedback, and published full details in its weekly newsletter dated 29 October 2019.

## Acknowledgements

The Attorney General's Chambers would like to thank the Chief Constable, Gary Roberts, and his Officers and staff for their assistance, participation and contributions.

### 5.3. Workshops with prisoners at the Isle of Man Prison (Nov 2019)

#### Methodology

Following constructive discussions with the Prison Governor, Bob McColm; Deputy Prison Governor, Leroy Bonnick and Principal Prison Officer Martin Phillips at the Isle of Man Prison, the Attorney General's Chambers' Legal Aid Research and Project Officer met with members of the Prisoners Council (the Jurby Advocates) on 23 October 2019. The Prisoners Council is a small group of prisoners who, together, represent all wings of the prison. Members of the Prisoners Council seek to facilitate clear and improved channels of two-way communication which can help foster good relations in ways that are positive for both staff and prisoners. The Prisoners Council welcomed the suggestion for Criminal Legal Aid workshops and offered to encourage other prisoners to take part.

The Prison Governor issued a notice to staff and a notice to prisoners regarding the workshops. An additional notice entitled '*Our Chance to Have a Say*' was also prepared by the Prisoners Council and issued to prisoners. Printed copies of the Criminal Legal Aid consultation were also provided to the Prisoners Council in case any prisoners wished to refer to or complete them in advance of the workshops.

The level of interest from the prisoners was significant and as a result, four 1-hour workshops were delivered by the Attorney General's Chambers at the Isle of Man Prison on 18 November 2019, which was **during** the Criminal Legal Aid consultation period. Workshops took place in the multi-faith room at the IoM Prison.

#### Participants

In total, 34 prisoners attended across four workshops. This included two members of the Prisoners Council who sat in on each of the workshops to observe, contribute and support other prisoners if necessary. There were also Prison staff members in attendance, and there were two members of staff from the Attorney General's Chambers at each workshop, to deliver the presentation, facilitate discussions and take notes. The prisoners interacted directly with Chambers' staff and also had the opportunity to participate indirectly, through a member of the Prisoners Council, if they were more comfortable doing so.

#### Workshop details

The workshops consisted of a short Criminal Legal Aid presentation<sup>51</sup> which included an overview of the Legal Aid Review and the Criminal Legal Aid consultation process. This was followed by facilitated discussions between the Attorney General's Chambers and the prisoners.

During the presentation, it was made clear that whilst there were a number of Criminal Legal Aid stakeholders (e.g. Police, defence Advocates, prosecutors, Courts, Prison and Probation, members of the public and charities) the views of prisoners and others who had been

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<sup>51</sup> Reference is made to the Criminal Legal Aid workshops via the Attorney General's Chambers website: <https://www.gov.im/about-the-government/offices/attorney-general-chambers/crown-office/legal-aid-review/workshop-presentations/>

through the criminal justice system were also important. It was recognised that prisoners had first-hand experience of the Isle of Man’s criminal justice system, and as such, they should be given the opportunity to contribute to the consultation process.

As part of the facilitated discussions, prisoners were invited to share their views and experiences of Criminal Legal Aid provision in the Isle of Man. In particular, Chambers’ staff members were interested to understand:

- Q1. What aspects of Criminal Legal Aid work well from the prisoners’ perspective and should continue?
- Q2. What are the issues associated with Criminal Legal Aid from the prisoners’ perspective?
- Q3. Could anything could be improved or done differently in future?

The discussions were constructive and many of the prisoners shared their views with the rest of the group, which generated further conversation and debate.

Each prisoner who attended a workshop was also given a printed copy of the Criminal Legal Aid consultation, a one-sheet *Quick Section Guide* (to help navigate through sections of the consultation) and a self-sealing A4 envelope addressed to the Attorney General’s Chambers.

**Exercise: Consideration of current Criminal Legal Aid provision from the prisoners’ perspective**

This exercise incorporated the 3 questions set out above, and a number of key themes emerged during the four IoM Prison workshops. Comments, concerns and suggestions made by the prisoners have been grouped together and summarised in Table 54 below.

**Table 54 – Matters raised by the prisoners regarding current Criminal Legal Aid provision**

<b>Matters</b>	<b>Comments, concerns &amp; suggestions from prisoners</b>
<i>Duty Advocate Schemes</i>	There is broad support for the Police Station Duty Advocate Scheme and the Court Duty Advocate Scheme as free, universal schemes for all.
<i>Police Station</i>	There is concern the Police Station does not have audio CCTV <sup>52</sup> installed at the Custody Suite.  <b>It was suggested</b> that audio CCTV is installed.
<i>Conflicts of interest – Police Station</i>	There is concern that there can be difficulties in getting enough Police Station Duty Advocates in multi-handed cases.

<sup>52</sup> The IoM Constabulary has confirmed that every room within the Custody Suite has CCTV and audio recording except the Advocates’ room and the Advocates’ consultation rooms. The Advocates’ rooms do not have CCTV or audio recording and they are also soundproof as they come under legal privilege. The CCTV and audio is combined and runs 24/7 and is subject to data protection legislation.

Matters	Comments, concerns & suggestions from prisoners
<i>Court Duty Advocate</i>	<p>There is concern that some individuals are only able to spend a short amount of time (e.g. 5-10 mins) with the Court Duty Advocate before they appear in Court. During this short time, individuals can be expected to consider, discuss and make decisions on matters of considerable importance. These matters may include details of their case; reviewing written statements; applying for full Criminal Legal Aid; considering / deciding on a plea, and any other issues which may arise. There is concern that the time available with the Court Duty Advocate is insufficient.</p> <p>Others reported that they had had sufficient time with the Court Duty Advocate and that the process worked well.</p>
<i>Plea</i>	<p>There is concern that advice to plead guilty in order to receive 1/3 discount on a sentence is given too frequently, and there is too much emphasis placed upon it.</p>
<i>Criminal Legal Aid applications</i>	<p>There is concern that the application process for Criminal Legal Aid is discussed and completed when the defendant meets with the Court Duty Advocate on the day of Court, and it is often rushed due to time pressures on the Duty Advocate. Further concern that individuals are asked to commit to what they say on the application which may have been rushed due to time limitations.</p> <p><b>It was suggested that</b> Criminal Legal Aid applications could be completed at an earlier stage in the criminal justice process – possibly at the Police Station with the Police Station Duty Advocate. This could give defendants more time to discuss their application and more time to produce any required documentation (e.g. proof of income / benefits) to the Court.</p>
<i>Criminal Legal Aid application decisions</i>	<p>There is concern that there is a lack of transparency in terms of Criminal Legal Aid application decisions (e.g. financial eligibility or contribution determinations) and there can be delays regarding notification of requirement to contribute to legal costs.</p> <p><b>It was suggested</b> that the processes for determining Criminal Legal Aid eligibility are more transparent and notifications regarding contributions are issued as soon as possible.</p>
<i>Criminal Legal Aid certificates</i>	<p>There is concern that Criminal Legal Aid certificates are made out in the name of the Advocate and not the defendant who is in receipt of Legal Aid. Further concern that defendants do not receive a copy of the certificate and there is no feedback to the defendant on the amount of costs being incurred.</p> <p><b>It was suggested</b> that Criminal Legal Aid certificates should be made out in the name of the defendant, which could be helpful if they wished to change their Advocate (e.g. could speed up the process).</p> <p><b>It was suggested</b> that a copy of the Criminal Legal Aid certificate should be given to the defendant.</p>



Matters	Comments, concerns & suggestions from prisoners
<i>Trial dates</i>	<p>There are concerns regarding delays in getting to trial. One person reported that they were in prison for 6 years before their trial date. It was also reported that delays are a particular issue for those who are from the UK (i.e. UK residents who are in prison in IoM).</p>
<i>Restraint proceedings under the Proceeds of Crime Act 2008 &amp; self-representation</i>	<p>There is concern that individuals whose assets are subject to restraint proceedings under the Proceeds of Crime Act 2008 are not able to use restrained funds to pay for legal defence and they are also ineligible to receive Criminal Legal Aid. This leads to individuals being left without legal advice or representation.</p> <p>One person reported that due to their ineligibility for Legal Aid, they relied on pro bono work for representation. Others referred to self-representation as their only option.</p> <p><b>It was suggested</b> that if restrained funds cannot be used by a defendant, they should be eligible to receive Criminal Legal Aid in order to access legal advice and representation.</p>
<i>Conflicts of interest - trial</i>	<p>There are concerns that some former defence Advocates are now working as Prosecutors which some prisoners consider could give rise to conflicts of interest.</p> <p>There are also concerns that Defence Advocates and Prosecutors are 'too friendly' with each other which could impact on a fair trial.</p>
<i>Equality of arms</i>	<p>There is concern that:</p> <ul style="list-style-type: none"> <li>• Cases are unfairly weighted in favour of the Prosecution and that this is particularly true in complex cases (e.g. financial crime / fraud)</li> <li>• Some Advocates are not sufficiently experienced to defend complex cases</li> </ul>
<i>Equality of arms (cont...)</i>	<p><b>It was suggested</b> that in order for criminal defence expertise to be matched to a case:</p> <ul style="list-style-type: none"> <li>• UK lawyers with experience in complex cases should be permitted to represent defendants in Manx Courts (practising under a temporary licence); or</li> <li>• the Manx Bar should be opened up to lawyers from other jurisdictions</li> </ul>
<i>Self-representation &amp; the Manx Bar</i>	<p>There is concern that it is "<i>ridiculous</i>" that individuals who are not legally qualified are permitted to self-represent in a Manx Court, but a UK lawyer is not permitted to appear on a defendant's behalf.</p> <p>The question was asked "<i>If a Deemster, the Director of Prosecutions and some Prosecutors are not Manx Advocates, then why are UK lawyers not allowed to appear in a Manx Court?</i>"</p>



<b>Matters</b>	<b>Comments, concerns &amp; suggestions from prisoners</b>
<i>Disbursements</i>	<b>It was suggested</b> that Criminal Legal Aid should cover the cost of disbursements (e.g. expert advice; reports) for individuals who self-represent.
<i>Quality of service</i>	<p>There are concerns in regard to inconsistencies in the quality of defence Advocates and that these issues are not improving due to lack of competition in a small legal community.</p> <p><b>It was suggested</b> that an increase in pay would not improve quality standards, and that more competition from UK lawyers is the only way to improve it.</p> <p><b>It was suggested</b> that there should be a mechanism for linking pay to the quality of service received.</p>
<i>Legal Aid rates of pay – complexity of cases</i>	<p>There is concern that there is no incentive for Advocates to undertake more complex Criminal Legal Aid work as the pay rates for 'simple' cases are the same as the rates for more complex cases.</p> <p><b>It was suggested</b> that Legal Aid rates of pay based on the complexity of the offence / case should be introduced.</p>
<i>Financial eligibility &amp; difficulties in accessing Legal Aid in prison</i>	<p>There is concern that individuals who, before going into prison were eligible for Criminal Legal Aid by virtue of qualifying Social Security benefits, cease to qualify once in prison as they are no longer in receipt of these benefits. There is also concern re: inequality for individuals remanded in custody compared to those released on bail in terms of receiving Legal Aid for the same reason.</p> <p><b>It was suggested</b> that eligibility criteria for prisoners formerly in receipt of Criminal Legal Aid should be reviewed.</p>

Matters	Comments, concerns & suggestions from prisoners
<p><i>Difficulties in securing an Advocate</i></p>	<p>There are concerns that it can be very difficult for individuals in prison to secure an Advocate, and in particular for:</p> <ul style="list-style-type: none"> <li>• Appeal cases</li> <li>• Matters of Prison law</li> <li>• Complaints against the Police</li> <li>• Cases against other Advocates</li> </ul> <p>It is reported that prisoners "<i>have not had any luck</i>" trying to secure legal representation via the IoM Society, which will email its members if an individual is without an Advocate and seeking to secure one. There are concerns that this inability to secure an Advocate leaves individuals with no other option than to self-represent in Court as a last resort (i.e. not out of choice). In one group of 11 prisoners, 5 reported that they had had difficulties in securing an Advocate.</p> <p>It was reported that some Advocates do not attend for appointments at IoM Prison or respond to letters from prisoners, and there is concern (from the prisoners) that they have no power of sanction or redress in such instances.</p> <p><b>It was suggested</b> that prisoners should be better able to secure the services of an Advocate to reduce levels of unwanted self-representation, and have recourse for redress should issues arise.</p>
<p><i>Access to resources &amp; papers relevant to case</i></p>	<p>It was reported that it can be difficult to access transcripts of hearings and relevant texts which could support a prisoner seeking to prepare for an Appeal (e.g. it was reported that no <i>Archbold: Criminal Pleading, Evidence &amp; Practice</i> book was available later than the 2002 version).</p> <p>There were also concerns that relevant documents pertaining to a case may not made available to the defendants before, during or after a trial.</p> <p><b>It was suggested</b> that prisoners should have better access to resources; relevant documents, and more up to date reference material.</p>
<p><i>Prison / Court video link</i></p>	<p>There is concern that some prisoners do not have the opportunity to take legal advice from their Advocate before they appear in Court, despite the 'LiveLink' technology enabled video link between IoM Prison and the Courts being in place.</p>
<p><i>Appeals</i></p>	<p>There is concern that Advocates who go to trial are not prepared to take on Appeals for the same cases. The question "<i>Why should they?</i>" was raised by prisoners, who indicated that there is little incentive for an Advocate to undertake further, often more complex, work at the same Legal Aid rates of pay as simpler cases.</p>

Matters	Comments, concerns & suggestions from prisoners
<i>Appeals (cont...)</i>	<p>There is also concern that the process for Appeals is unfair due to a 28 day limit on pulling together a case after conviction, which may be a shorter period if there is a delay between conviction and sentencing. Prisoners are concerned that this period is too short and can result in poor applications which can lead to Legal Aid being refused.</p>
<i>Acquittal rates</i>	<p>There is concern that there is no information available on acquittal rates, which an individual could use to determining their choice of Advocate.</p> <p><b>It was suggested</b> that statistics on acquittal rates should be made available.</p>
<i>Costs &amp; billing</i>	<p>There is concern that some Advocates overcharge for their time, and examples were given.</p> <p><b>It was suggested</b> that individuals should have the ability to sign-off that they have met with an Advocate for the time claimed.</p> <p><b>It was suggested</b> that billing guidelines should be introduced.</p>
<i>Public Defender Scheme</i>	<p>There are mixed views regarding a PDS.</p> <p>There is opposition to a PDS on the basis that it would be wrong for defence Advocates to be employed by Government, and a PDS would offer no choice to defendants in terms of choosing an independent defence Advocate from private practice. There is also concern that a PDS could not work in a small island.</p> <p>Others support a partial PDS if independence can be guaranteed (from Prosecution / Government etc.) and if there would be a choice between a private defence Advocate and one employed by Government. In particular, if all individuals who qualify for Criminal Legal Aid could be guaranteed the services of an Advocate for their case, there is support for a partial PDS as it could potentially reduce levels of unwanted self-representation.</p>

## Participation in the public consultation

At the end of the workshop, the prisoners were also encouraged to submit individual responses to the Criminal Legal Aid consultation and invited to take their copy of the printed consultation (plus *Quick Section Guide* and self-sealing A4 envelope addressed to Chambers) back to their cells for completion. The prisoners were advised that they could answer as many or as few questions as they wished, although particular mention was made to Q6 (consent to publish) which was the only required answer. The prisoners were also advised that if they needed any support or assistance in completing the consultation, they could speak to a member of the Prisoners' Council who would help them.

Arrangements were put in place for completed consultations to be returned to the Attorney General's Chambers in sealed A4 envelopes via the IoM Government's internal post system to ensure that there would be no financial cost to any person wishing to take part.

Assurances were also given that completed consultations would not be viewed by Prison staff, to ensure that those who wished to participate felt able to answer questions honestly and openly.

## Acknowledgements

The Attorney General's Chambers would like to thank the Prison Governor, Bob McColm and his staff for their support and assistance in enabling prisoners to attend the workshops, in addition to the Prisoners Council and other participating prisoners for their interest and contributions.

## 6.0. NEXT STEPS

HM Attorney General, John Quinn QC MLC, will consider this *Criminal Legal Aid Consultation - Results and Analysis Report* together with a parallel report arising from the Civil Legal Aid consultation<sup>53</sup>.

HM Attorney General will then prepare a *Legal Aid Review - Options and Recommendations Report* for submission to the Legal Aid Committee, which is statutorily responsible for Legal Aid policy in accordance with section 23(6)(a) of the Legal Aid Act 1986<sup>54</sup>.

The *Legal Aid Review - Options and Recommendations Report* will, if deemed appropriate, contain options and recommendations in respect of any aspects pertaining to Criminal and / or Civil Legal Aid which HM Attorney General deems could or should be changed or improved, for the Committee's consideration and decision. The report will also seek to make reference to any key legislative changes that may be required in response to any such decisions.

Reports issued by the Attorney General's Chambers will be published online through Chambers' website<sup>55</sup> in addition to the outcome of the Legal Aid Committee's considerations.

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<sup>53</sup> A Civil Legal Aid consultation was undertaken by the Attorney General's Chambers from 17 February to 21 May 2020.

<sup>54</sup> Legal Aid Act 1986 [https://legislation.gov.im/cms/images/LEGISLATION/PRINCIPAL/1986/1986-0023/LegalAidAct1986\\_7.pdf](https://legislation.gov.im/cms/images/LEGISLATION/PRINCIPAL/1986/1986-0023/LegalAidAct1986_7.pdf)

<sup>55</sup> <https://www.gov.im/about-the-government/offices/attorney-generals-chambers/crown-office/legal-aid-review/reports/>

## APPENDIX 3

### CIVIL LEGAL AID CONSULTATION

**Closes 21 May 2020**

Opened 17 February 2020

#### Overview

This consultation is part of a wider 'Legal Aid Review' project, which is being led by HM Attorney General on behalf of the Securing Added Value and Efficiencies ('SAVE') Sub-Committee of the Council of Ministers.

The project is being carried out in two parts to reflect both types of Legal Aid available in the Island, which are Civil and Criminal. This consultation focusses on **Civil Legal Aid** only. A consultation on Criminal Legal Aid was carried out last year, from 23 September to 21 November 2019.

The aim of the Legal Aid Review is to develop policy options for the sustainable provision of Legal Aid in the Isle of Man, which:

- Maintain or improve access to justice
- Support the delivery of quality services
- Provide value for money for the taxpayer

These policy options will be submitted to the [Legal Aid Committee](#), which is an independent body responsible for Legal Aid policy in the Isle of Man.

#### Why We Are Consulting

The purpose of this consultation is to seek people's views on the Island's current Civil Legal Aid provision, and explore the feasibility of alternative approaches in the future.

In particular:

- which aspects of Civil Legal Aid are considered to work well and should continue
- which aspects are considered not to work well and could benefit from improvement
- if any potential changes or alternative schemes could better deliver Civil Legal Aid in future

Your responses to this consultation will help us to further develop Civil Legal Aid in the Isle of Man. By considering the scope of Civil Legal Aid, eligibility criteria, and matters raised with the Legal Aid Office and HM Attorney General, we can seek to ensure that Civil Legal Aid funds are spent fairly and with better controlled costs.

Ultimately, the provision of Civil Legal Aid must be financially sustainable, provide access to justice, support the delivery of quality services, and ensure value for money for the taxpayer.

## Who We Would Like to Hear From

We would like to hear from anyone who has a professional or personal interest in Civil Law matters, and in particular:

- Civil Legal Aid service users (past and present)
- Members of the public
- Members of the Judiciary & Courts
- Advocates who undertake Civil Legal Aid work
- IoM Law Society & membership
- Mediation providers
- Department of Infrastructure
- Department of Health & Social Care
- Department of Home Affairs, IoM Constabulary, IoM Prison & Probation Service
- Office of Fair Trading
- Local Authorities
- Charities

## Paper copies & submission of completed consultations

This is the downloadable and printable .pdf version of the Civil Legal Aid consultation. Completed copies should be submitted on or before the closing date of **21 May 2020** to:

Ms Joanne Hetherington  
Attorney General's Chambers  
Belgravia House  
34-44 Circular Road  
Douglas  
Isle of Man  
IM1 1AE

Paper copies are also available for collection from Ground Floor Reception, Attorney General's Chambers at the above address (Tel: 01624 685452).

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## Introduction

Legal Aid describes funds paid by the Isle of Man Government to Advocates (or legal practices) for the legal services they provide to individuals who cannot afford to pay. These services may include legal advice, assistance and representation in Court.

Legal Aid plays a crucial role in the Isle of Man as it promotes the accessibility and smooth running of the Manx justice system. The availability of Legal Aid to uphold the rule of law and individual rights benefits everyone, not just those who receive it, as Legal Aid contributes to a fairer and more just society.

Civil Legal Aid falls into two main categories:

- **Family** matters
- **Non-Family** matters

Further information and examples of Family and Non-Family matters are included in this consultation for consideration. Full details of the proceedings for which Civil Legal Aid may be given are set out in Schedule 1 to the [Legal Aid Act 1986](#).

## About you

### 1. What is your name?

*Giving us your name is optional. This consultation will ask if you have ever been party to proceedings in a Civil matter or if you have had Legal Aid funding, so you may wish to consider this when deciding whether to give your name.*

Name .....

### 2. What is your email address?

*If you enter your email address it will not be published*

Email .....

### 3. Are you responding on behalf of an organisation?

Yes  No

If Yes, what is the name of the organisation?

Name of organisation .....

### 4. Are you resident in the Isle of Man?

Yes  No

If Yes, please tell us the first three characters of your postcode



## 5. Which option best describes your interest or role in responding to this consultation?

*Tick one option only*

- You have been through a Civil court, or supported someone who has (legally-aided or not)
- You are a member of the public
- You are a member of the Judiciary or an Advocate
- You are a public sector employee working in Civil legal matters
- You are a voluntary sector, charity or support worker
- You are a Tynwald Member
- Other (please state)

If 'Other' please state your interest or role .....

## 6. May we publish your response?

*Please read our [Privacy Policy](#) for more details and your rights*

- Publish in full – your first name and surname, organisation name, along with full answers **will** be published on the hub (your email will **not** be published)
- Publish anonymously – only your responses **will** be published on the hub (your name, organisation and email will **not** be published)
- Do not publish – **nothing will** be published publically on the hub (your response will only be part of a larger summary response document)

*Response required*

- Yes, you can publish my response in full
  - Yes, you may publish my response anonymously
  - No, please do not publish my response
-

## Tips for completing this consultation

You can **answer as many or as few questions as you wish**. The consultation contains 20 sections, each containing between 2 and 9 questions as follows:

- Civil Legal Aid (*3 questions*)
  - Financial means test (*2 questions*)
  - Legal merits test (*2 questions*)
  - Personal responsibilities & financial contributions (*3 questions*)
  - Statutory Charge (*4 questions*)
  - Restraint proceedings under the Proceeds of Crime Act 2008 (*3 questions*)
  - Scope of Family Matters (*3 questions*)
  - Family proceedings & the role of HM Attorney General (*3 questions*)
  - Divorce & dissolution of civil partnerships (*4 questions*)
  - Scope of Non-Family matters (*3 questions*)
  - Tribunals (*7 questions*)
  - Inquests (*6 questions*)
  - Conditional Fee Arrangements - 'No Win No Fee' (*2 questions*)
  - Legal Aid Panel of Advocates (*3 questions*)
  - Quality of Legal Aid services (*9 questions*)
  - Self-representation (*5 questions*)
  - Expenditure (*4 questions*)
  - Fixed fees (*3 questions*)
  - Access & Legal Advice Centres (*4 questions*)
  - Alternative Dispute Resolution (*5 questions*)
-

## CIVIL LEGAL AID

Civil Legal Aid is available to individuals (not companies or organisations) for Civil matters processed in the Isle of Man and subject to Manx Law. Full details of the types of matters for which Civil Legal Aid may be given are set out in Schedule 1 to the [Legal Aid Act 1986](#). The scope of Civil Legal Aid is very broad and covers proceedings:

- in the Privy Council (in relation to appeals from Courts in the Island)
- in the High Court and Summary Courts of the Island
- in an inquest
- before four specified tribunals

## Matters

Civil Legal Aid falls into two main categories: Family matters and Non-Family matters. Here are some examples of proceedings for which Civil Legal Aid may be granted in the Isle of Man:

- **Family matters** include mediation, divorce, child contact and residence, maintenance, child care proceedings, adoption, Prohibited Steps Orders and Non-Molestation Orders (these are types of Court Order which may be sought by a victim of domestic abuse to protect them from their abuser).
- **Non-Family matters** include breach of contract, personal injury, medical negligence, inquests, wills, receivership, boundary disputes, Mental Health Review Tribunals, Advocates Disciplinary Tribunals, Isle of Man Data Protection Tribunals and Financial Services Tribunals.

## Schemes

There are two types of Civil Legal Aid in the Island - Green Form and full Civil Legal Aid.

- **Green Form**

Green Form is the common name for Legal Advice and Assistance. It enables an Advocate to give oral and written advice to eligible individuals on almost every aspect of Manx Law. An Advocate can provide up to 3 hours' advice for most matters and 4 hours' advice for divorce. Extensions of up to 6 hours may also be granted, subject to approval. Green Form is available free of charge (or with a contribution) to individuals of limited financial means. All applications are subject to a financial means test and a legal merits test which is conducted by the Advocate.

- **Full Civil Legal Aid**

More complex matters may require full Civil Legal Aid, which is granted under a Civil Legal Aid Certificate. Full Civil Legal Aid can provide for individuals to receive legal advice, assistance and representation in Court. Full Civil Legal Aid is available free of charge (or with a contribution) to individuals of limited financial means. As a general rule, applications are subject to a financial means test and a legal merits test.

**7. Of the two Civil Legal Aid schemes in the Isle of Man, were you aware of either of them before today?**

*If you indicate that you have received Legal Aid, it does not affect how your responses are analysed for the purposes of this consultation. It is only relevant to help us to understand your experience. We will not ask why you sought legal advice.*

*Tick all boxes that apply*

	<b>Green Form</b>	<b>Full Civil Legal Aid</b>
Yes, I have received it personally		
Yes, I have helped others to access it		
Yes, someone has been funded by Legal Aid in a case against me		
Yes, I am involved in a professional capacity		
Yes, I am aware of the scheme but I do not have any experience of it		
No, I was not aware of it		

**8. Please tell us how much you agree with the following statements**

*Tick one box per line*

	<b>Strongly agree</b>	<b>Agree</b>	<b>Neither agree nor disagree</b>	<b>Disagree</b>	<b>Strongly disagree</b>	<b>Don't know</b>
Legal Aid is important to ensure that people can access legal advice even if they can't afford it						
Legal Aid is funded using taxpayer's money so Government should strictly enforce how it is spent						

	<b>Strongly agree</b>	<b>Agree</b>	<b>Neither agree nor disagree</b>	<b>Disagree</b>	<b>Strongly disagree</b>	<b>Don't know</b>
Someone with Legal Aid funding can pursue a case that they wouldn't if they had to pay for it themselves						
Legal Aid means a person is more likely to be successful in their case (against their opponent)						
Government should do more to raise awareness of Legal Aid						
People are aware of Legal Aid and how to apply for it						
The eligibility criteria for Legal Aid are fair and clear						
Legal Aid is taxpayers' money and people who receive it have a responsibility to use it fairly						
It is easy for people to get Legal Aid						
People should seek alternative sources of advice or remedy before applying for Legal Aid						

**9. In terms of Civil matters, have you been party to proceedings (private or legally-aided) in any of the following?**

*If you indicate that you have been party to any Civil proceedings, it does not affect how your responses are analysed for the purposes of this consultation. It is only relevant to help us to understand your experience. We will not ask why you were party to them.*

*Tick all that apply*

- Privy Council
- Court of Appeal
- Family Court
- Small Claims, Summary or Ordinary Procedure (for claims)
- Chancery Procedure
- Inquest
- Tribunal
- None
- Rather not say
- Other (please state)

Please tell us more if you wish

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**FINANCIAL MEANS TEST**

There is a **financial means test** applied to both Green Form and Full Civil Legal Aid. People who are in receipt of an income-related benefit (e.g. Income Support; Income-based Job Seekers Allowance; Employed Person's Allowance) automatically pass the means test and qualify financially.

Individuals who do not receive one of these benefits but are on a low income may still qualify, either partially or in full. Those who partially qualify will be required to pay a **contribution** towards their legal expenses.

Individuals can also use the online [Civil Legal Aid Eligibility Calculator](#) to provide an indication of their financial eligibility for Legal Aid.

## Prescribed amount & qualifying benefits

If a person is not in receipt of a qualifying benefit, their financial eligibility is determined by calculating a person's **income** and then deducting a [prescribed amount](#), which is the amount the law says a person needs to live on. Prescribed amounts are reviewed every year and are published on the [Legal Aid Office website](#).

A person's **income** includes net salary; benefits; pension income; maintenance and all other income. This includes income from capital assets (e.g. savings; shares; land) above £13,000 but does not include the value of the property in which the person lives.

The **prescribed amount** for a person depends on a number of factors, including:

- whether a person is single or married/ living with partner
- number of dependents / non-dependents living at home
- cost of rent / mortgage
- cost of rates
- cost of childcare
- cost of work-based pension

**EXAMPLE A** – A single person who pays £475 per month rent and works 37 hours per week at £7.85 per hour.

<b>Income</b>	<b>per week</b>
Salary (after NI and Income Tax)	£270.12
Other income	0
Total income	£270.12
<b>Prescribed amount</b>	<b>per week</b>
Basic allowance for a single person	£190.82
Housing allowance	£109.62
Extra allowance for > 24hr work	£34.95
Total prescribed amount	£335.39
<b>Income minus prescribed amount</b>	<b>-£65.27</b>

This person **would qualify** for free Civil Legal Aid as their total income is £65.27 less than the prescribed amount and they would not need to pay any contribution.

**EXAMPLE B** – A single person who pays £800 per month rent and works full time. Earns £425.75 pw after National Insurance and Income Tax

<b>Income</b>	<b>per week</b>
Salary (after NI and Income Tax)	£425.75
Other income	0
Total income	£425.75
<b>Prescribed amount</b>	<b>per week</b>
Basic allowance for a single person	£190.82
Housing allowance (maximum)	£119.00
Extra allowance for > 24hr work	£34.95
Total prescribed amount	£344.77
<b>Income minus prescribed amount</b>	<b>£80.98</b>

This person **would not qualify** for free full Civil Legal Aid as their net resources equate to £4,210.96 per year (i.e. £80.98 x 52) which is above the maximum limit of £4000 per year.

If their net resources were between £0.01 and £4000, they would qualify for Civil Legal Aid but they would have to pay a contribution towards their legal fees.

### Qualifying benefits

If a person receives any one of the following three income-related benefits, they will automatically qualify for Legal Aid from a financial perspective:

<a href="#">Employed Person's Allowance</a>	This is available to some people who work and have a low to moderate income – generally people working at least 16 hours a week (30 for a couple) and responsible for children; couples without children where one or both partners are severely disabled or care for a severely disabled person and one or both works at least 16 hours a week; or people classed as "disabled workers" working at least 16 hours per week.
<a href="#">Income Based Jobseeker's Allowance</a>	This is a means-tested benefit available to people who are unemployed, able to take up full-time work immediately & are actively looking for work. A person must also be capable of work & be under state pension age.
<a href="#">Income Support</a>	This is available to some people who are either not working, or who work for less than 16 hours a week, and who don't have enough money to live on. It ensures they have enough money to meet their basic needs. People who may qualify include those who have reached state pension age; a person who is incapable of work due to illness / disability or someone who cares for a disabled person full-time.



**10. Do you think income-based benefits are the correct benefits to automatically qualify a person for Green Form & Civil Legal Aid from a financial perspective?**

- Yes   
  No   
  Don't know   
  Other (please state)

Please tell us more if you wish

**11. If you have any further comments on the FINANCIAL MEANS TEST, PRESCRIBED AMOUNTS or QUALIFYING BENEFITS please tell us**

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**LEGAL MERITS TEST**

There is also a **legal merits test** applied to Civil Legal Aid applications. The test ensures that there are reasonable legal grounds for a case to be taken forward, and that it is reasonable for legal costs to be paid by the Isle of Man Government. Applications must generally have a **50% or above chance of success** in order to satisfy this part of the merits criteria.

The table below summarises eligibility for Civil Legal Aid schemes.

<b>Civil Legal Aid Scheme</b>	<b>Is there a financial means test?</b>	<b>Is there a legal merits test?</b>	<b>Who is eligible for the scheme?</b>	<b>Are financial contributions required?</b>
<b>Green Form</b>	Yes – carried out by the Advocate	Yes – carried out by the Advocate	Any individual who passes the <b>financial means test &amp; legal merits test</b>	If an individual passes the legal merits test but only passes the <b>financial means test in part</b> they will be required to make a financial contribution to their legal expenses
<b>Full Civil Legal Aid</b>	Yes – carried out by staff in the Legal Aid Office	Yes - carried out by the Legal Aid Certifying Officer	Any individual who passes the <b>financial means test &amp; legal merits test</b>	If an individual passes the legal merits test but only passes the <b>financial means test in part</b> they will be required to make a financial contribution to their legal expenses

**12. Should there be any exceptions where Legal Aid is provided for Civil cases with less than 50% chance of success? (e.g. matters of public interest where prospects of success are difficult to quantify)**

- Yes    No    Don't know    Other (please state)

Please tell us more if you wish

**13. If you have any further comments on the LEGAL MERITS TEST please tell us**

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**PERSONAL RESPONSIBILITIES & FINANCIAL CONTRIBUTIONS**

A person who receives Civil Legal Aid is advised of their responsibilities by their Advocate. They are told they must conduct their case reasonably, act in the same way as a person of moderate means not in receipt of Legal Aid, pay back their Legal Aid costs if they are awarded or retain assets (e.g. money or property) and notify their Advocate of any change in circumstances (e.g. starting work).

A person may be required to pay a financial contribution towards the cost of their Civil Legal Aid if:

- they partially qualify for Legal Aid
- they don't conduct their case in a reasonable manner
- they don't tell the Legal Aid Office when their circumstances change
- they don't respond to requests by the Legal Aid Office for financial information

If a person partially qualifies for Civil Legal Aid, the Legal Aid Office will tell them how much they have to contribute to their legal costs and the monthly payment terms. They will also be asked to accept their Legal Aid offer in writing.

**14. Do you think people are aware of their personal responsibilities when they are granted Civil Legal Aid?**

- Yes    No    Don't know    Other (please state)

Please tell us more if you wish

**15. The more people who are eligible for Civil Legal Aid, the greater the cost to the taxpayer. This cost must be balanced against the need for access to justice. Should we consider making Civil Legal Aid available to more people if they were required to pay financial contributions?**

*Tick one option only*

- Yes, Civil Legal Aid should be available to more people if they make financial contributions
- No, Civil Legal Aid should not be available to more people
- Don't know
- Other (please state)

Please tell us more if you wish

**16. If you have any further comments on PERSONAL RESPONSIBILITIES or FINANCIAL CONTRIBUTIONS please tell us.**

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## STATUTORY CHARGE

If a person receives full Civil Legal Aid for their case and they are successful in recovering money or property, the **Statutory Charge** may apply. This means they may be directed to repay the cost of their Legal Aid, in full or in part. The Statutory Charge will be explained by the Advocate as part of the process of applying for Legal Aid.

The principle of the Statutory Charge is to place the assisted (i.e. legally-aided) person in the same position as the unassisted person, as far as possible. It gives the Treasury the legal right to recover costs from the assisted person and will take account of any financial contributions already made.

If we take the example of a Statutory Charge placed on a property which has been recovered following a divorce, it currently stays in place until the property is sold (which could be after 1 year or 50+ years). It is proposed that the Government should be able to recover the Statutory Charge within a reasonable time frame.

**17. Could we improve the way in which people are made aware of the Statutory Charge and its implications when they apply for Civil Legal Aid in cases which could lead to money or property being recovered?**

Yes  No  Don't know  Other (please state)

Please tell us more if you wish

**18. Could we improve the way in which the Statutory Charge is enforced, to ensure that Government is able to recover Civil Legal Aid costs when a person is awarded money or property as a result of their legally-aided case?**

Yes  No  Don't know  Other (please state)

Please tell us more if you wish

**19. Should there be a requirement for a person to pay the Statutory Charge on the sale of a property or within a defined period (e.g. 5 years) whichever is sooner?**

- Yes    No    Don't know    Other (please state)

Please tell us more if you wish

**20. If you have any further comments on the STATUTORY CHARGE please tell us**



## RESTRAINT PROCEEDINGS UNDER THE PROCEEDS OF CRIME ACT 2008

The [Proceeds of Crime Act 2008](#) (POCA) enables the Isle of Man Government to make an application in the Civil Courts to restrain money that it is believed has been acquired by a person as a result of a criminal act.

By law, if a person's assets are restrained they cannot use these assets to pay for legal advice relating to the criminal offence under investigation or the civil restraint order. The person is also ineligible for Legal Aid. As a consequence, a person whose assets are restrained under POCA is currently **unable** to secure legal advice or representation.

### **21. Should we seek to amend legislation to enable any individual whose assets are restrained to qualify for Legal Aid?**

- Yes    No    Don't know    Other (please state)

Please tell us more if you wish

### **22. If Legal Aid is granted, should individuals be required to repay Government (similar to the Statutory Charge) if their assets are partly confiscated or not confiscated?**

- Yes    No    Don't know    Other (please state)

Please tell us more if you wish

### **23. If you have any further comments on RESTRAINT PROCEEDINGS please tell us**



## SCOPE OF FAMILY MATTERS

In the Isle of Man, there is a wide range of **Family matters** for which eligible individuals can receive Legal Aid. A list of these Family matters is set out below, and a brief description is given for each one. (Non-Family matters will be covered later in this consultation).

<b>Family matters currently covered by Civil Legal Aid</b>	<b>Description</b>
<a href="#">Mediation</a>	An alternative way to resolve a dispute without going to Court (which is adversarial). Qualified mediators can help individuals to reach cheaper, quicker and less stressful resolutions on a range of issues (e.g. arrangements for children, finances, property) compared to going to Court. It is recognised that mediation may not be appropriate for all individuals (e.g. in cases involving domestic abuse).
<a href="#">Divorce</a> (defended)	When a divorce petition is issued to the Court and the other person challenges the proceedings or does not agree that the grounds for divorce are correct.
<a href="#">Divorce</a> (ancillary matters)	Applications for financial support following the presentation of a petition for a divorce / dissolution of civil partnership
<a href="#">Children</a> (residence)	Proceedings about the main home of a child (e.g. following divorce)
<a href="#">Children</a> (contact)	Proceedings about contact with a child (e.g. following divorce)
Financial provision ( <a href="#">maintenance</a> )	Financial provision to support a child or former spouse / civil partner (e.g. following divorce / dissolution of partnership)
Variation and enforcement	Variation and enforcement of financial orders (e.g. following divorce / dissolution of civil partnership).
Children ( <a href="#">care proceedings</a> )	Proceedings when people with parental responsibility for a child come to Court to challenge the granting of a Court Order to the Department of Health & Social Care to keep a child safe (e.g. when it has been determined that a child cannot remain safely at home)
Children ( <a href="#">adoption</a> )	Application to the Court for an Adoption Order and representation in adoption proceedings.
Children ( <a href="#">Specific Issue Order</a> )	Orders from the Courts which provide instructions about a specific issue that has arisen. For example if separated /divorced parents cannot agree on whether their child should have a major operation, then one parent may apply for a Specific Issue Order. The Court can also make orders such as "Care Orders" or "Emergency Protection Orders" if a child is considered to be at risk of harm.

Family matters currently covered by Civil Legal Aid	Description
Children ( <a href="#">Prohibited Steps Order</a> )	Orders from the Courts which prevent a person from taking certain actions without the required permissions. For example, if one parent wished to take a child off-island they must apply to the Court.
Children ( <a href="#">child abduction</a> )	Proceedings to support a parent whose child has been abducted. The Hague Convention on International Child Abduction seeks to protect children from <i>abduction</i> across <i>international</i> boundaries by providing a procedure to bring about their return. HM Attorney General is the central authority under the Hague Convention in relation to abducted children.
Children ( <a href="#">appointment of Guardian</a> )	Proceedings for a person applying for parental responsibility of a child.
Domestic abuse (Non-Molestation Order)	A Non-Molestation Order is used aimed at preventing a person from using or threatening violence or to prevent a person from harassing, pestering or intimidating someone.
Domestic abuse (Occupation Order)	An Occupation Order regulates who can live in the family home. One person could effectively be required to leave the home because of his/her violence towards the other person or the effect that his/her presence is having on the children.
Interpleader	Proceedings instigated when one party holds property which he/she does not own but to which two parties are making a claim. The party holding the property is able to bring Court proceedings against the party who is claiming ownership and Legal Aid is available to any eligible party. The Court decides who the rightful owner is.
Privy Council	Appeals to the highest Court to which a person can appeal a case from the Isle of Man Courts. The Privy Council sits in the UK.
Name changes	Change of name for adult or child (e.g. following divorce proceedings).
Other (e.g. property)	Proceedings in relation to jointly owned property or property which needs to be taken into account for family arrangements

**24. Should any FAMILY matter currently in scope be removed?**

- Yes
  No
  Don't know
  Other (please state)

If Yes, please tell us which Family matter(s) should be removed from scope and why.



**25. Should any FAMILY matter be exempt from the financial means test? (i.e. so only the legal merits test applies?)**

- Yes    No    Don't know    Other (please state)

If Yes, please tell us which Family matter(s) should be exempt from the financial means test and why.

**26. If you have any further comments on the SCOPE of FAMILY MATTERS please tell us**

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**FAMILY PROCEEDINGS & THE ROLE OF HM ATTORNEY GENERAL**

Legal Aid is often sought for matters involving children, young people, parents and guardians, and it is in their best interests for these matters to be resolved quickly and fairly.

HM Attorney General has legal responsibilities under Section 96 of the [Children and Young Persons Act 2001](#) (the Act) in relation to the representation of a child in family proceedings where it appears that the child is not, but should be, represented. As a result, the Attorney General's Chambers appoints an Advocate from private practice to act on behalf of the child.

At the moment, a child or young person is not automatically entitled to receive Civil Legal Aid for representation by an Advocate in proceedings under the Act which may involve them, such as Care Proceedings.

It is proposed that in future, for the purposes of Civil Legal Aid, a child or young person should be treated as having no financial resources. This would have the effect of removing the financial means test and HM Attorney General would continue to fulfil his duties under the Act.

It is also proposed that in future, parents and guardians who are party to proceedings under the Act should be treated as having no financial resources. As a result, parents and guardians would automatically qualify for Civil Legal Aid from a financial perspective.

**27. Do you agree with the proposal that a child or young person who is party to Family Proceedings (e.g. Care Proceedings) should be automatically eligible to receive Civil Legal Aid by disregarding their financial resources?**

- Yes    No    Don't know    Other (please state)

Tell us more if you wish

**28. Do you agree with the proposal that a parent or guardian who is party to Family proceedings should be automatically eligible to receive Civil Legal Aid from a financial perspective, by disregarding their financial resources?**

- Yes    No    Don't know    Other (please state)

Tell us more if you wish

**29. If you have any further comments on Civil Legal Aid for matters involving CHILDREN please tell us.**

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## DIVORCE & DISSOLUTION OF CIVIL PARTNERSHIPS

Advice for divorce or dissolution of civil partnerships is most commonly carried out under a Green Form, which provides for up to four hours of advice. Up to six hours' additional advice can also be provided, subject to the necessary approvals.

In other jurisdictions people can file divorce proceedings online in cases where there are no financial issues or matters relating to the care of dependent children to resolve.

### Divorce in other jurisdictions

- **England and Wales** - there is a fee of £550 for a divorce. People on benefits or a low income may be able to get help with the fees. It is possible to apply for a divorce online. <https://www.gov.uk/divorce>
- **Scotland** - there are two routes. The simple 'do it yourself' procedure and the 'ordinary' non-simplified procedure. If the divorce has no issues such as dependent children or financial matters, people follow the simple procedure. Fees vary. <https://www.scotcourts.gov.uk/taking-action/divorce-and-dissolution-of-civil-partnership>
- **Northern Ireland** - If you don't use a solicitor and there is consent to divorce or dissolution, you can get information from the Northern Ireland Courts and Tribunals Service. You can ask the Matrimonial Office for guidance on bringing a petition for divorce/civil partnership/separation as a "personal petitioner". Fees to petition are £261 and court fees over £300. If the spouse doesn't agree to divorce or dissolution, the NI Government Services website advises getting a solicitor <https://www.nidirect.gov.uk/articles/getting-divorce-or-dissolving-civil-partnership>
- **Isle of Man** - If you wish to give feedback on the divorce process here, the Courts are currently conducting a survey at <https://www.surveymonkey.com/r/6MKH28Y>

### 30. Should means-tested Civil Legal Aid continue to be available to couples who are seeking a divorce or dissolution of a civil partnership?

*Tick all that apply*

- Yes, if there is a dispute regarding finances
- Yes, if there is a dispute regarding arrangements for the care of dependent children
- Yes, if a person does not agree the grounds for divorce / dissolution
- Yes, subject to attending an assessment for mediation (exemptions would apply, such as cases involving domestic abuse)
- No, Civil Legal Aid should not be available for divorce / dissolution
- Other (please state)

Tell us more if you wish

**31. Should financial mean-testing still apply if one party wishes to seek legal advice on divorce or dissolution of a civil partnership due to domestic abuse?**

*Tick one option only*

- Yes, means-testing should still apply
- No, means-testing should not apply
- Don't know
- Other (please state)

Tell us more if you wish

**32. Providing arrangements are agreed in respect of finances and (if applicable) dependent children, should the divorce process be administrative and not need Court time?**

- Yes
- No
- Don't know
- Other (please state)

Tell us more if you wish

**33. If you have any further comments on Civil Legal Aid for DIVORCE or DISSOLUTION OF CIVIL PARTNERSHIPS please tell us.**

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## SCOPE OF NON-FAMILY MATTERS

There is a wide range of **Non-Family matters** for which eligible individuals can receive Civil Legal Aid. A list of these Non-Family matters is set out below, and a brief description is given for each one.

<b>Non-Family matters covered by Civil Legal Aid</b>	<b>Description</b>
<a href="#">Tribunals</a>	<p>A Tribunal is a body established to settle a specific type of dispute. It is not a legal proceeding. In the Isle of Man, Civil Legal Aid is available for four Tribunals:</p> <ul style="list-style-type: none"> <li>• Mental Health Review Tribunal</li> <li>• Advocates Disciplinary Tribunal</li> <li>• Data Protection Tribunal</li> <li>• Financial Services Tribunal</li> </ul>
Medical negligence	<p>Medical negligence is substandard care that has been provided by a medical professional to a patient, which has directly caused injury or caused an existing condition to get worse (e.g. misdiagnosis, incorrect treatment or surgical mistakes).</p>
Negligence	<p>Negligence means any act or omission which falls short of a standard to be expected of a 'reasonable' person.</p>
<a href="#">Personal injury</a> and damages	<p>Claim for compensation (damages) by a person following an accident or injury leading to any loss, due to the unlawful act, negligence or omission of another.</p>
<a href="#">Inquests</a>	<p>An inquest is a judicial inquiry by the Coroner of Inquest. A full inquest will determine who has died, where the death occurred, when the death occurred and how the person died. An inquest is not a trial and the Coroner does not apportion blame.</p>
Inquiry	<p>The Coroner will conduct an Inquiry under the Treasure Act 2017 to determine whether an object found is treasure (e.g. historic coins).</p>
Mediation & arbitration	<p>Mediation and arbitration are ways in which a dispute may be resolved as an alternative to going to court (which is adversarial).</p>
Property	<p>Possession proceedings in which the occupant may lose their home because of rent or mortgage arrears or a different breach of their agreement with a landlord or lender. Also covers boundary line disputes with neighbour(s); wills, trusts and estates</p>
Boundary & Property Dispute (incl. partition of land)	<p>Boundary and property disputes (e.g. with neighbour). Also includes proceedings to divide / partition land under the Partition Act 1931.</p>
Trusts (Wills and testamentary)	<p>Wills, trusts and testamentary trusts (these are trusts created under a Will)</p>

<b>Non-Family matters covered by Civil Legal Aid</b>	<b>Description</b>
Breach of contract	A claim made by one party when the other person fails to fulfil its promises according to the provision of the contract.
Receivership	When a person applies to look after the assets of a company that has gone into liquidation or bankruptcy. It is also when a person looks after the assets of a family member incapable of managing their own affairs.
Petition of dolence	This is the Manx form of a judicial review into Government administrative decisions and actions that affect an individual.
Privy Council	Appeals to the highest Court to which a person can appeal a case from the Isle of Man. The Privy Council sits in the UK.

**34. Should any NON-FAMILY matter currently in scope be removed?**

- Yes
  No
  Don't know
  Other (please state)

If Yes, please tell us which Non-Family matter(s) should be removed from scope and why

**35. Should any NON-FAMILY matter be exempt from the financial means test? (i.e. so only the legal merits test applies)**

- Yes
  No
  Don't know
  Other (please state)

If Yes, please tell us which Non-Family matter(s) should be exempt from the financial means test and why

**36. If you have any further comments on the SCOPE of NON-FAMILY MATTERS please tell us**

## TRIBUNALS

In simple terms, a tribunal is a body established to settle a specific type of dispute, or provide integrity to an appeal process. **Tribunals are not Court proceedings** but they are an important part of the justice system. They provide access to justice at an appropriate level through an open, fair, impartial and accessible [Tribunals Service](#).

One of the advantages of a tribunal is that a person bringing an action can self-represent or be assisted by others who are not Advocates. Whilst it is reasonably common for individuals to represent themselves at a tribunal or be assisted by other lay-persons, they also have a choice of appointing an Advocate, to represent them at their own expense (unless Legal Aid is available).

It is recognised that there are some tribunals where it may be more appropriate for an Advocate to represent one of the parties. The most obvious example would be the Mental Health Review Tribunal (i.e. where the applicant may lack mental capacity). An argument has also previously [successfully] been made in respect of the Advocates Disciplinary Tribunal (i.e. where the applicant has made a formal complaint about an Advocate) on an 'equality of arms' basis.

**Green Form** is available for any tribunal. It provides for an Advocate to help an individual in their **preparation for a tribunal**, by providing legal advice and assistance. It does not provide for the Advocate to attend or represent the individual at the Tribunal.

**Full Civil Legal Aid** is available for four specific tribunals which are set out in Schedule 1 to the [Legal Aid Act 1986](#). It provides for an Advocate to help an individual in their preparation for a tribunal in addition to **legal representation during tribunal hearings**.

The four tribunals covered by full Civil Legal Aid are the Mental Health Review Tribunal, Advocates Disciplinary Tribunal, Data Protection Tribunal, and Financial Services Tribunal.

These tribunals are set out below with a brief summary of their purpose:

Name of Tribunal	Summary of Tribunal's purpose
<a href="#">Mental Health Review Tribunal</a>	To protect the rights of individuals receiving involuntary treatment for mental illness (e.g. persons detained under the Mental Health Act 1988). The Tribunal provides an independent review of the person's case, and makes decisions about whether the involuntary treatment will continue or not. In making these decisions, the Tribunal must balance the rights of the patient with the rights of others and the protection of the community.
<a href="#">Advocates Disciplinary Tribunal</a>	To consider formal complaints made by individuals regarding the professional conduct of Advocates.
<a href="#">Data Protection Tribunal</a>	To consider referrals from the <a href="#">Information Commissioner</a> , where it appears that the processing of personal data could contravene data protection principles; to hear appeals against certificates issued by the Chief Minister certifying the exemption of certain personal data for national security purposes; to hear appeals where certain Notices have been served by the Information Commissioner; and hear appeals concerning the processing of personal data for "special purposes".

Name of Tribunal	Summary of Tribunal's purpose
<a href="#">Financial Services Tribunal</a>	To hear and determine appeals from persons who are aggrieved with decisions made by the <a href="#">IoM Financial Services Authority</a> under parts of the Financial Services Act 2008 and Designated Businesses (Registration and Oversight) Act 2015. Functions of three other abolished Tribunals (Collective Investment Scheme; Retirement Benefits Schemes; Insurance) have also been transferred to this Tribunal.

**37. Should people on low incomes continue to be eligible for free legal advice and assistance (under Green Form) to prepare for all tribunals?**

- Yes
  No
  Don't know
  Other (please state)

Please tell us more if you wish

**38. Should ANY tribunals be covered by full Civil Legal Aid? (four are currently covered)**

- Yes
  No
  Don't know
  Other (please state)

If Yes or No, please tell us why

**39. If Yes, which of these four tribunals, if any, should we continue to fund with full Civil Legal Aid?**

*Tick all that apply*

- Mental Health Review Tribunal
- Advocates Disciplinary Tribunal
- Data Protection Tribunal
- Financial Services Tribunal
- None
- Don't know
- Other (please state)



Please explain your responses (to Q39) if possible

**40. Have you ever brought an action before a tribunal WITHOUT any legal advice or representation?**

- Yes    No    Don't know    Other (please state)

Please tell us more if you wish

**41. Was there any particular aspect of the tribunal process where you felt that legal advice would have been essential?**

- Yes    No    Don't know    Other (please state)

If Yes, what was the particular issue and how do you think legal advice would have assisted you?

**42. In addition to the four tribunals already mentioned, there are numerous other tribunals in the Isle of Man. Legal Aid under Green Form (for legal advice and assistance) is currently in place for all tribunals. Should consideration be given to extending full Civil Legal Aid to any other tribunal listed in the table on the next page?**

- Yes    No    Don't know    Other (please state)

If Yes, please tell us which tribunal from the list on the next page you think should be included in scope and why

Name of Tribunal	
Care Services Tribunal	Currently covered by Green Form (legal advice & assistance) <b>Not</b> covered by Civil Legal Aid (legal representation )
Charities Tribunal	
Copyright Tribunal	
Employment & Equality Tribunal	
Estate Agents Tribunal	
Flood Risk Management Tribunal	
Gambling Appeals Tribunal	
Harbour Works Tribunal	
Health and Safety Tribunal	
Heath Burning Tribunal	
Income Tax Commissioners	
Independent Schools Tribunal	
Interception of Communications Tribunal	
Isle of Man Rent & Rating Appeal Commissioners	
Legal Aid Appeals Tribunal	
Riding Establishments Appeal Tribunal	
Social Security Appeal Tribunal	
Tourist Premises Appeal Tribunal	
VAT & Duties Tribunal	
Work Permit Appeal Tribunal	

**43. If you have any further comments on Civil Legal Aid for TRIBUNALS please tell us.**

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## INQUESTS

In the Isle of Man, an inquest is a public Court hearing, carried out by the [Coroner of Inquests](#). The Coroner of Inquests is the High Bailiff.

An inquest is a fact-finding process and not a trial. **The Coroner of Inquests does not apportion blame.** They investigate deaths which appear violent, unnatural, sudden or unexplained and a full inquest will determine:

- who has died
- where the death occurred
- when the death occurred
- how the person died

Civil Legal Aid is available for inquests, by virtue of Schedule 1 to the [Legal Aid Act 1986](#) and applicants are subject to a financial means test.

There are some inquests where it is known, or suspected, that a person has died whilst in the care or custody of the state. In inquests such as these, the state (i.e. IoM Government) will also be represented.

The UK Government published a [Review of Legal Aid for Inquests](#) in February 2019, which identified ways to better support bereaved families before and during an inquest. Further information is available below.

### [UK Government Review of Legal Aid for Inquests 2019](#)

The UK Government's Ministry of Justice (MoJ) published a [Review of Legal Aid for Inquests](#) in February 2019. The report identified ways to better support grieving families before and during an Inquest.

The Review found that inquests can be an extremely difficult time for bereaved family members, who may be unable to navigate the unfamiliar inquest process and the Legal Aid application and eligibility processes without additional support. They need to know what will happen and when, in terms of such matters as a post-mortem; access to and release of their loved one's body and the inquest itself. What also became clear is that the whole inquest process can be stressful, upsetting and confusing for those who are bereaved.

Evidence pointed to a number of concerns regarding the provision of Legal Aid and the role of the families in the application and Inquest process. In particular, it suggested the current Legal Aid application process might not be fully understood and that there are difficulties in understanding the eligibility criteria.

It was accepted that bereaved families need better awareness of when Legal Aid is available, but whilst in some cases it is right that they should have legal representation, the MoJ was mindful that a significant expansion of Legal Aid could have the unintended consequence of undermining the inquisitorial nature of the Inquest system. It could also reinforce the commonly held misconception that an inquest's role is to apportion blame, as opposed to finding facts and learning lessons. The MoJ indicated that all the work affirmed the need to maintain an inquisitorial system and the crucial role of the Coroner in achieving this.

Following the Review, the Ministry of Justice announced a range of changes to the current system of Legal Aid for Inquests in the UK which are summarised below:

### UK MoJ actions

- As well as improving its [Guide to Coroner Services](#), the MoJ is considering with Coroner's offices other ways to distribute and publicise the new Guide;
- The MoJ will provide a separate piece of guidance literature for families, which will set out the Legal Aid system including existing definitions and criteria for funding in a way that is easy to understand;
- The MoJ will develop better signposting of support services at Coroners' courts and make sure families know who is in the Courtroom and what their role is.
- In order to make sure that lawyers are aware of how the current system works, the MoJ will explore options to raise awareness and clarify the eligibility process in the legal provider funding pack;
- In order to improve understanding of the Legal Aid eligibility criteria, the MoJ will set this out in separate guidance for families; and
- The evidence gathered will be considered by the MoJ as part of a review into the thresholds for Legal Aid entitlement

#### 44. Have you ever been party to an inquest in the Isle of Man for a family member?

- Yes  No  Rather not say

Please tell us more if you wish

#### 45. What guidance should be available to families facing an inquest?

*Tick all that apply*

- Early signposting to the IoM Law Society or Legal Aid Panel of Advocates for help finding an Advocate
- Guidance on Civil Legal Aid for inquests
- Guidance on the inquest process
- Guidance for those affected by the death of a person who was in the care or custody of the state
- Don't know
- Other (please state)

Please tell us more if you wish

**46. Should Civil Legal Aid for an inquest continue to be means-tested if a person has died whilst in the care or custody of the state, or in instances where the state may be held partly or wholly responsible for the person's death?**

*Tick one option only*

- Yes, if a person can afford to pay they should do so
- No, there should not be any financial means-testing in these circumstances
- Don't know
- Other (please state)

Please tell us more if you wish

**47. Should Legal Aid for other inquests (i.e. in which a person has died but they have NOT been in the care or custody of the state) continue to be means tested?**

- Yes, if a person can afford to pay they should do so
- No, if a person has died under certain circumstances (e.g. as a result of violence) there should not be means-testing
- No, there should not be any financial means-testing in these circumstances
- Don't know
- Other (please state)

Please tell us more if you wish

**48. When a person dies, sometimes there can be more than one person who applies for Legal Aid for the inquest (e.g. spouse and former spouse of the deceased). Do you think there are any circumstances in which Legal Aid for an inquest should be granted to more than one person?**

- Yes
- No
- Don't know
- Other (please state)

If Yes, please tell us the circumstances

**49. If you have any further comments on Civil Legal Aid for INQUESTS please tell us**



## CONDITIONAL FEE ARRANGEMENTS - 'NO WIN NO FEE'

Civil Legal Aid in the Isle of Man is currently available to eligible individuals for Medical Negligence, Negligence and Personal Injury matters. In the UK, these matters are no longer legally aided, and instead are dealt with by lawyers through Conditional Fee Arrangements, often termed 'No Win No Fee' cases. Such arrangements are unlawful in the Isle of Man, and could only be introduced if there was a change in legislation.

In the UK, if a person wins their 'No Win No Fee' case, their legal costs will mostly be paid by their opponent. A person may be asked to take out an insurance policy to cover the risk of losing their case, as they would be ordered to pay their opponent's legal costs in such an event. However, the person would not have to pay their own legal fees. UK Solicitors therefore take on the risk of losing the legal costs accrued during a case if that case is lost, and not all legal practices in the UK are prepared to undertake 'No Win No Fee' work.

Some Advocates in the Island have expressed significant concerns about 'No Win No Fee' arrangements, as they feel they would not be appropriate here. They are concerned that the 'No Win No Fee' model is based on legal practices winning some cases and losing others, and some Manx practices could go out of business. Advocates have also expressed concern that 'No Win No Fee' cases are 'clogging up' Courts in England and Wales.

### **50. Should Civil Legal Aid continue to be available for Personal Injury, Negligence and Medical Negligence or should 'No Win No Fee' arrangements be considered?**

- Civil Legal Aid should continue to be available for Personal Injury, Negligence & Medical Negligence
- 'No Win No Fee' arrangements should be considered
- Don't know
- Other (please state)

Please tell us more if you wish

### **51. If you have any further comments on 'NO WIN NO FEE' arrangements, please tell us**

## LEGAL AID PANEL OF ADVOCATES

An Advocate **must** be on the Legal Aid [Panel of Advocates](#) (the Panel) before they can carry out any Civil Legal Aid work in the Isle of Man. The Panel is a list of Advocates who are prepared to act for a person under one or more Legal Aid schemes. There are currently 61 Advocates on the Panel, all of whom are registered as willing to undertake Civil Legal Aid work.

To join the Panel, an Advocate must complete an application form, detailing the categories of Legal Aid work they would like to carry out. This application is submitted to the Legal Aid Certifying Officer who is a lawyer employed by Government to authorise and monitor Civil Legal Aid work (and some Criminal Legal Aid work). A meeting is then held between the Certifying Officer and the Advocate, following which they can be added to the Panel.

More information about an Advocate's particular areas of expertise can also be found via the [Isle of Man Law Society](#), or directly from the Advocate.

### [Number of Advocates undertaking Civil Legal Aid work](#)

There are:

- 243 Advocates practicing in the Isle of Man\*
- 61 Advocates on the Legal Aid Panel
- 61 (25%) registered as willing to undertake Civil Legal Aid work
- 43 for Family matters
- 47 for Non-Family matters

\*Source: IoM Law Society October 2018 (email)

### **52. Are you an Advocate who has carried out Civil Legal Aid work in the Isle of Man or would like to do so in future?**

- Yes  No  Rather not say

### **53. Would you like to see any changes to how Advocates join and remain on the Civil Legal Aid Panel?**

- Yes  No  Don't know  Other (please state)

Please tell us more if you wish



**54. If you have any further comments on the LEGAL AID PANEL OF ADVOCATES please tell us**

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**QUALITY OF LEGAL AID SERVICES**

The [Legal Aid Office](#) is part of the Treasury and its staff undertakes a range of functions, including responsibility for Legal Aid budgets, administration of Legal Aid schemes and secretariat support for the Legal Aid Committee. The Legal Aid Certifying Officer is also based in the Office.

The Office also provides a range of dedicated resources for members of the public and Advocates in regard to Legal Aid, a selection of which are summarised below:

Legal Aid Office resource	Description
<a href="#">Civil Legal Aid leaflet</a>	Published in 2019 following a request from a charity. Overview of Civil Legal Aid; schemes & eligibility; contact information.
<a href="#">Legal Aid website</a>	Details of the Legal Aid Committee; statutory functions; management of Civil Legal Aid
Online <a href="#">Civil Legal Aid Eligibility Calculator</a>	Interactive self-assessment tool which provides an indication as to whether a person is likely to pass the financial eligibility test for Legal Aid
<a href="#">Financial eligibility for Civil Legal Aid – prescribed amounts 2019</a>	Details of qualifying benefits & worked examples of eligibility
<a href="#">Mediation funding policy</a>	Sets out fees payable for mediation services.
<a href="#">Legal Aid Panel of Advocates</a>	Details of Advocates who are prepared to act for someone under a Legal Aid scheme (Civil & Criminal).
<a href="#">Resources for Advocates</a>	Dedicated webpage with guidance on joining the Legal Aid Panel; download links to frequently used documents (e.g. claim forms).
<a href="#">Legal Aid Handbook for Advocates (6<sup>th</sup> Edition)</a>	Legal Aid Handbook updated November 2019. Contains comprehensive details of each Legal Aid scheme; processes; assessment & payments
<a href="#">Legal Aid Committee Report 2018-2019</a>	First annual report by the Legal Aid Committee; details function of Committee & Civil and Criminal expenditure.

**55. Is the information provided by the Legal Aid Office comprehensive and clear enough?**

- Yes    No    Don't know    Other (please state)

Please tell us if you find anything particularly helpful or if you have any suggestions for improvement

**56. In the future, do you think the voice and interest of the legally-aided person should be placed at the centre of Legal Aid services?**

- Yes    No    Don't know    Other (please state)

Please tell us more if you wish

**57. If yes, how could we ensure that the legally-aided person is at the centre of Legal Aid services?**

*Tick all that apply*

- Seek feedback from legally-aided persons on the services they have received
- Seek feedback from charities on access to services for the people they support
- Seek feedback from Advocates on processes which affect their clients & the legal profession
- Don't know
- Other (please state)

Please tell us more if you wish

**58. How important to you are the following qualities or factors in an Advocate who is providing legal advice on Civil matters?**

*Tick one box per line*

	<b>Very important</b>	<b>Quite important</b>	<b>Neither important nor unimportant</b>	<b>Quite unimportant</b>	<b>Very unimportant</b>	<b>Don't know</b>
Level of experience						
Independence						
Professional reputation						
Quality of service						
Qualifications						
Ease of access (location, office hours etc.)						
Personal recommendation						
Continuing Professional Development						
Used the Advocate before						

If there are any other qualities or factors we have not listed above, please tell us what they are and how important they are to you.

The [IoM Legal Aid Handbook \(6<sup>th</sup> Edition Nov 2019\)](#) sets out **quality standards for Advocates** working on Legal Aid cases as follows:

- Advocates must provide a high standard of professionalism coupled with the most effective use of limited resources, presenting value for taxpayer's money;
- Work provided should be equal to that which 'a prudent fee paying client of modest means' would expect;
- Advocates must make full and prompt use of recognised methods of alternative dispute resolution avoiding Court action wherever possible. Mediation should always be considered when appropriate; and
- Advocates must aim to ensure a swift and successful outcome for the Assisted Person, avoiding delays wherever possible.

**59. The IoM Legal Aid Handbook sets out quality standards for Advocates undertaking Legal Aid work. These standards are set out above. Do you think an agreement, such as a Memorandum of Understanding, should be put in place between the Legal Aid Office and Advocates to support the delivery of these quality standards?**

- Yes, there should be an agreement in place
- No, an agreement is unnecessary
- Don't know
- Other (please state)

Please tell us more if you wish

**60. If you think an agreement should be put in place, what should it contain?**

**61. Any agreement would need to be balanced against the requirement to maintain the availability and willingness of Advocates to undertake Civil Legal Aid work. Do you have any comments on how this could this be achieved?**

**62. Are there any Family or Non-Family matters that Civil Legal Aid is serving LESS well than others?**

- Yes
- No
- Don't know
- Other (please state)

If Yes, please specify which matter(s) and how they could be served better

**63. If you have any further comments about QUALITY OF LEGAL AID SERVICES, please tell us**

## SELF-REPRESENTATION

People sometimes appear in Court in the Isle of Man without an Advocate to represent them. This is called **self-representation**.

People who self-represent:

- may choose not to have an Advocate for personal reasons, even though they are eligible for Civil Legal Aid
- may not be financially eligible to receive Civil Legal Aid, nor able to afford to pay an Advocate on a private basis
- may not be able to find an Advocate who is willing or able to represent them (e.g. due to a conflict of interest)

Individuals who self-represent may need to conduct their own research, complete legal procedures, and present their case. For an individual facing Court without an Advocate, it can also be a daunting and stressful time. Whilst there are no official figures for self-representation in the Isle of Man, the Courts are not set up to deal with individuals who self-represent and this can:

- place additional pressures on the Courts
- contribute to delays
- add to costs
- reduce access to justice

### **64. Have you ever represented yourself (i.e. without an Advocate) in a Civil Court in the Isle of Man?**

- Yes (go to Q65)     No (go to Q66)     Rather not say

### **65. Why did you represent yourself in Court?**

*Choose one option*

- It was my choice – I wanted to represent myself
- It was not my choice – I wanted an Advocate but I did not qualify for Legal Aid & I could not afford to pay privately
- Don't know
- Rather not say
- Other (please state)

Please tell us more if you wish

**66. Do you think we should try to minimise the number of people who self-represent in future?**

Yes  No  Don't know

If Yes, how could we do this?

**67. How could we best support people who do self-represent in Civil Courts?**

**68. If you have any further comments on SELF-REPRESENTATION please tell us**

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## EXPENDITURE

Legal Aid expenditure in the Isle of Man is **demand-led**. So, whilst there is an annual Legal Aid budget set by the Treasury, the final annual expenditure figure will depend upon the demands on the service. The cost of individual legally-aided matters can range from under one hundred pounds to tens of thousands of pounds, depending on the type of case and its complexity.

In order for the Isle of Man Government to continue to fund Civil Legal Aid, it must be a financially sustainable service. We must consider ways in which Civil Legal Aid can help to maintain or improve access to justice, make savings where possible and ensure that money is spent wisely and fairly.

### Checks & balances

Applications for Green Form are initially dealt with by the Advocate working on the matter or the Advocate's legal practice. Checks are carried out, including the financial means test and the legal merits test. The completed Green Form is submitted to the Legal Aid Office for checking and payment at the end of the matter.

Applications for full Civil Legal Aid are submitted to the Legal Aid Office. The financial means test is carried out by staff and the legal merits of a case are assessed by the Legal Aid Certifying Officer. The Certifying Officer is also responsible for issuing Civil Legal Aid Certificates, approving payments for extensions and refusing or revoking Civil Legal Aid. Final bills are submitted for assessment to the Costs Officer, who will only authorise payment for work covered by the conditions and limitations of the Legal Aid Certificate.

### Legal Aid rates of pay

Advocates who undertake Legal Aid work are paid by Government at Legal Aid rates of pay. These rates are set out in legislation and have been in place since 1 April 2009:

- £115 per hour for Junior Advocates (in practice in IoM for less than 5 years)
- £135 per hour for Senior Advocates (in practice in IoM for over 5 years)

The Isle of Man Law Society advised in 2016 that these rates are lower than the rates Advocates could charge to private, fee-paying clients, which could range between £250 and £450 per hour. In addition, a small legal practice on the Isle of Man (e.g. with 1 Advocate and 1 administrator) may have annual operational costs of around £80,000 per year. These costs are typically associated with staff wages, property rental and personal indemnity insurance.

### Civil Legal Aid costs

The [Legal Aid Committee Report 2018/19](#) details Civil Legal Aid costs for the last 5 years (2014/15 to 2018/19). Annual costs have ranged from £1.2 million to £1.7 million (an average of approx. £1.5 million a year). Every year, the majority of costs relate to Family matters and the remainder to Non-Family matters

In 2018/19, Civil Legal Aid costs were £1,233,429. Family matters cost £993,568 (81% of overall expenditure) and Non-Family matters cost £239,861 (19%). Further details of the expenditure are at [www.gov.im/legalaidcommittee](http://www.gov.im/legalaidcommittee).



**69. Would you like to see any changes to the way in which applications for Green Form and full Civil Legal Aid (under a Certificate) are assessed / granted?**

- Yes
  No
  Don't know
  Other (please state)

If yes, what changes would you like to see?

**70. There are a number of checks and balances in place to control Civil Legal Aid costs. Do you have any suggestions on how they could be done differently or more effectively?**

If so, please tell us

**71. Please tell us how much you agree with the following statements regarding hourly Legal Aid rates of pay**

*Tick one option per line*

	<b>Strongly agree</b>	<b>Agree</b>	<b>Neither agree nor disagree</b>	<b>Disagree</b>	<b>Strongly disagree</b>	<b>Don't know</b>
Rates of pay for Civil & Criminal Legal Aid work should remain aligned						
Rates of pay for Civil work should be higher than Criminal work						
Rates of pay for Civil work should be lower than Criminal work						

	Strongly agree	Agree	Neither agree nor disagree	Disagree	Strongly disagree	Don't know
Rates of pay should continue to reflect the length of time an Advocate has been in practice in the Island (i.e. under or over 5 years)						
Rates of pay should change to reflect the <b>complexity</b> of the case undertaken by the Advocate, rather than their length of time in practice						
Rates of pay should change to reflect an Advocate's <b>experience</b> rather than their length of time in practice						
Rates of pay should be reviewed						

**72. If you have any further comments on CHECKS & BALANCES or COSTS please tell us**

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## FIXED FEES

'Fixed fees' are fixed amounts of money paid to lawyers for undertaking a specific piece of work. The amount at which a fixed fee is set depends on the length of time that is allocated to the piece of work and the agreed hourly rate. If a particular matter takes significantly longer to complete it can be considered as an exception for payment purposes. In the Isle of Man, there are currently no fixed fees and Advocates are paid at an hourly rate.

Fixed fees can help Governments to manage their budgets more effectively. They can also make the administration of Legal Aid claims more straightforward for both Advocates and Governments as detailed breakdowns of work are no longer required for matters dealt with under a fixed fee.

Some Advocates have expressed concern that only hourly rates of pay can properly reflect the work that has been undertaken (i.e. paid for the time it takes to complete a matter). It has also been suggested that if fixed fees were set at the right level, and for specific matters then there could be benefits for both the Advocates undertaking Civil Legal Aid work and the IoM Government.

### **73. In principle, would you support the option of some fixed fees being introduced for some aspects of Civil Legal Aid in the Isle of Man?**

- Yes (go to Q74)    No (go to Q75)    Don't know    Other (please state)

Tell us more if you wish

### **74. Do you have a view on which Civil Legal Aid matters, if any, may be suitable for fixed fees in the Isle of Man?**

Tell us more if you wish

### **75. If you have any further comments on FIXED FEES please tell us.**

## ACCESS & LEGAL ADVICE CENTRES

In the Isle of Man, some Advocates' practices provide an initial consultation which is free of charge ('pro bono'). This can be particularly beneficial to people on low or modest incomes as it provides accessibility at the earliest opportunity. Some Advocates will also visit people in their homes to assist those who may have mobility issues.

In order to access free legal services, individuals contact an Advocate and explain that they are seeking Legal Aid funding. The Advocate will apply for Legal Aid on their client's behalf, and subject to eligibility, Legal Aid will be granted.

In other jurisdictions (e.g. Scotland, England, Wales, Republic of Ireland) Civil Legal Aid is available (although scope and eligibility varies) and legal practices may offer free initial consultations. Some legal services are also available at a low cost or no cost through organisations collectively known as 'Legal Advice Centres'. These centres come in a number of different forms. Some offer free legal services to everyone, regardless of their financial situation, and others may only offer free legal services to people who would otherwise qualify for Legal Aid. These centres are funded in a range of different ways (e.g. Lottery; Legal Aid; Law Society; city council; charitable donations etc.) and they may be located in areas where there is little access to lawyers and legal services.

A number of Advocates have expressed the view that members of the public do not have any problems accessing legal services here, as there are legal practices in the North, South, East and West of the Island. They have also suggested that a Legal Advice Centre is not necessary in a jurisdiction of the Isle of Man's size.

### Legal Advice Centres

- Scotland has four [Civil Legal Assistance Offices](#) (CLAO) in different parts of the country. They provide legal assistance to people who are eligible for Civil legal Aid and each CLAO covers specific legal problems in each area (e.g. issues with housing, homelessness, benefits).
- In Ireland, a charity called [FLAC](#) (Free Legal Advice Centres) helps people to understand and access their legal rights. Whilst FLAC promotes access to justice, it states that it cannot and does not attempt to be a substitute for Government-funded Legal Aid services.
  - FLAC provides a network of 66 [Legal Advice Clinics](#) across the country. Volunteer lawyers provide confidential, basic legal advice for free and in person across all areas of Civil law. Legal Advice Clinics are usually located in the local Citizens Information Centres and some clinics also provide specialised assistance (e.g. family law).
  - FLAC also runs a [Telephone Information & Referral Line](#) for basic legal information (not advice) and signposting over the phone. FLAC also provides [Online Legal Information](#) which provides free information guides.
- Across England and Northern Ireland there are 41 [Law Centres](#) which offer face-to-face legal advice to local residents and some run a telephone advice line. All Law Centres specialise in social welfare law (e.g. disability rights) and some also cover other areas of work (e.g. education rights). As an example, the [Merseyside Law Centre](#) provides free legal advice, assistance and representation on housing, benefits and debt to residents across Merseyside (subject to eligibility).

- [Citizens Advice UK](#) – There are 280 independent local Citizens Advice providers across the UK. Every year, millions of people get in contact with a wide range of problems such as managing debt, employment issues and housing problems. They also provide specialist support through their consumer helpline, Pension-Wise service and Witness Service (supporting people giving evidence in Court). Citizens Advice also works to fix the underlying causes of people’s problems and advocates evidence- based changes to policy, regulation and business practices. Citizens Advice reports that its service saves society money, and in [2017/18](#) the advice it delivered directly saved Government and public services at least £435 million which is almost £2 for every £1 spent on the service.

**76. If you have sought or received LEGALLY-AIDED or PRIVATE legal advice on a Civil matter in the Isle of Man, please tell us how much you agree with the following statements**

*Tick one option per line*

	Strongly agree	Agree	Neither agree nor disagree	Disagree	Strongly disagree	Not applicable
It was easy for me to access LEGALLY-AIDED legal advice on a Civil matter						
It was easy for me to access PRIVATE legal advice on a Civil matter						

Tell us more if you wish

**77. If you have ever found it difficult to access legal advice on a Civil matter in the Isle of Man (either privately or legally-aided) please tell us why it was difficult.**

**78. In addition to funding Legal Aid, should the Government consider supporting any other methods of delivering legal services to the public?**

- Yes    No    Don't know    Other (please state)

Please tell us more if you wish

**79. If you have any further comments on ACCESS or LEGAL ADVICE CENTRES please tell us.**

---

**ALTERNATIVE DISPUTE RESOLUTION**

If a person has a dispute with their ex-partner, landlord or organisation there may be ways to deal with the issue without seeking legal advice or going to Court. This is called Alternative Dispute Resolution (**ADR**) and it includes mediation services and ombudsmen. ADR is not meant to replace the Courts and it is not a substitute for legal advice, but it can bring advantages such as:

- solving problems faster
- costing less
- avoiding the stress of going to Court
- helping to maintain a positive relationship with the other party
- helping both parties to reach a mutually agreed outcome

Mediation is one of the ways to resolve a dispute without going to Court and **Civil Legal Aid is available for mediation**. Qualified mediators can help individuals to reach cheaper, quicker and less stressful resolutions on a range of issues (e.g. arrangements for children, finances, property) compared to going to Court. However, it is recognised that mediation may not be appropriate for all individuals, such as in cases involving domestic abuse.

The [Legal Aid Committee Mediation Policy](#) sets out fees payable for mediation services in the Isle of Man. The maximum total payment in usual circumstances is £805 which covers one assessment session, two mediation sessions, the drafting of necessary documents and associated administration. Some Advocates who are also trained mediators have advised that it is not cost effective for them to undertake legally-aided mediation work as the level of payment is significantly less than Legal Aid hourly rates (current Junior & Senior Advocate rates are £115 & £135 per hour respectively). As a result, some Advocates continue to do mediation work with private clients, but they do not offer mediation services to legally-aided clients.

If a person cannot afford legal representation and they do not qualify for Legal Aid, there may also be other ways to access advice but people may be unaware of the options. The Legal Aid Office has produced a helpful [Access to Advice](#) leaflet. It provides options for individuals who may be seeking advice, such as trade unions, private insurance policies, Citizens Advice, IoM Office of Fair Trading (for **free debt counselling & consumer advice**), in addition to **free Financial Services Ombudsman** and **free Pensions Ombudsman** services.

## **Family Mediation**

Family mediation can help people who are divorcing or ending a civil partnership, and applying for a Court order about a range of matters, including money, property, possessions and arrangements concerning children. In many cases, mediation can be a better way of resolving family disputes than going to Court.

### **The Family Mediators Association**

Family mediation gives separating couples an opportunity to decide for themselves what to do about their children and finances, with help and guidance from trained and impartial mediators. In family mediation, clients are encouraged to co-operate with one another to negotiate and find their own ways to move forward with their lives. Research (in the UK) shows that family mediation can cost less than a quarter of the price and take a quarter of the time of going to Court and, more importantly, it can ensure better results for families. Many people repeatedly go to Court to argue about things they would be able to sort out themselves with a little help. This is expensive and emotionally draining, impacting on everyone in the family. Many couples want to sort out what to do about their finances themselves but would like professional help in doing so. Mediation can help them to achieve this.

Unlike the Court process, where the judge makes the decisions for the family, in mediation it is the individuals, such as the divorcing couple, who are completely involved in and responsible for the decision making process. In mediation a whole range of options are open to individuals that are not available in the Court process.

Family mediators come from a wide range of backgrounds. Many are family lawyers, or have at some stage worked as family lawyers. Many come from a therapy or counselling background. Sometimes two mediators from different backgrounds work together, to combine their different specialist skills in co-mediation. All qualified family mediators are trained to work with families in conflict, and have considerable experience in helping families to work together to find practical solutions to their problems.

All FMA members have been trained to mediate the full range of issues associated with divorce and separation, including children, communication, division of capital and other financial concerns

### **Manx Family Mediation Network**

The Manx Family Mediation Network is a small group of Family Mediators Association qualified and experienced family mediators working in the Isle of Man. Some also have qualifications in law, others have backgrounds in psychology. They work together to help families find better ways of resolving disputes. Where children are involved they help couples find the best possible solutions for children.

### **80. How could we increase the availability of mediation services to individuals who qualify for Civil Legal Aid?**

*Tick all that apply*

- Work with qualified mediators to understand the barriers to providing services
- Review rates of pay for mediators
- Employ one or more mediators within Government to guarantee service provision
- Don't know
- Other (please state)

Please tell us more if you wish

### **81. Government currently meets the mediation costs of BOTH mediating parties, if at least one of the parties is in receipt of Legal Aid. What is your view on these funding arrangements?**

*Choose one option*

- Keep the arrangements
- Expand the arrangements to provide free mediation to everyone
- Reduce the arrangements so that only individuals eligible for Legal Aid can receive free mediation
- Don't know
- Other (please state)



Please tell us more if you wish

**82. Should an assessment for mediation be compulsory BEFORE an application for full Civil Legal Aid is considered?**

*Choose one option*

- Yes, unless safeguarding exemptions apply (e.g. cases involving domestic abuse)
- No, mediation should be encouraged but only entered into voluntarily
- Don't know
- Other (please state)

If it is not compulsory, how can we encourage people to enter into the mediation process?

**83. How could we encourage more individuals to seek early resolutions to legal problems without going to Court?**

**84. If you have any further comments on MEDIATION or any other method of ALTERNATIVE DISPUTE RESOLUTION please tell us**

*Thank you for completing this consultation*



**Isle of Man**

**Attorney General's Chambers**

**APPENDIX 4**

**LEGAL AID REVIEW**

**PART 2 - CIVIL LEGAL AID CONSULTATION**

**RESULTS & ANALYSIS REPORT**

**Submitted to the Legal Aid Committee October 2020**



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## 1.0 INTRODUCTION

HM Attorney General, John Quinn QC MLC, is leading a Legal Aid Review project on behalf of the Securing Added Value and Efficiencies (SAVE) Sub-Committee of the Council of Ministers.

The aim of the Legal Aid Review is to develop policy options for the sustainable provision of Legal Aid in the Isle of Man, which:

- maintain or improve **access to justice**
- support the delivery of **quality services**
- provide **value for money**

The project is being carried out in two parts to reflect both types of Legal Aid available in the Island. These are Criminal and Civil Legal Aid. This report provides a summary and analysis of responses to a public consultation on **Civil Legal Aid** conducted by the Attorney General's Chambers from 17 February to 21 May 2020.

A public consultation on **Criminal Legal Aid** was conducted by the Attorney General's Chambers from 23 September to 21 November 2019.

### 1.1 Background

The Legal Aid Review initially began as a project, led by HM Attorney General under the remit of the SAVE Sub-Committee, to consider the feasibility of a Public Defender Scheme (PDS) in the Isle of Man. Work on the PDS project began in September 2018 following the appointment of a Project Manager to the Attorney General's Chambers.

In a statement to Tynwald in January 2019<sup>12</sup>, the Treasury Minister, Hon A L Cannan MHK, provided an update on developments pertaining to the progress and scope of the PDS project. Members were advised that following a request from the Legal Aid Committee, the SAVE Sub-Committee had agreed that the initial scope of the PDS project would be extended, and as a result would encompass all aspects of both Criminal Legal Aid and Civil Legal Aid in the Island. The Minister confirmed that HM Attorney General had agreed at the request of the SAVE Sub-Committee to continue to lead this project, with its extended remit, with immediate effect. This project became known as the Legal Aid Review.

The Minister welcomed this development as a pragmatic approach to reviewing Legal Aid as a whole, as it was recognised that a number of functions and processes that sit behind these provisions are inextricably linked. He also made particular reference to the crucial roles of Criminal and Civil Legal Aid in contributing to *Access to Justice* in the Isle of Man, which is recognised as a fundamental cornerstone of our society.

Members were then given an assurance that no policy decisions had been made on any aspects of Legal Aid, including the establishment of a PDS. The Minister advised that there had been suggestions that the creation of such a Scheme in the Island was a *fait accompli* and that the Government was determined to replace all private criminal legal aid Advocates with salaried in-house defence Advocates. He confirmed that this was "*simply not the case*".

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<sup>1</sup> <https://www.tynwald.org.im/business/hansard/20002020/t190115.pdf>

<sup>2</sup> <https://www.tynwald.org.im/business/hansard/20002020/t190115-HA-I3.pdf>

The Minister then went on to advise that HM Attorney General had been asked, as part of the original PDS project, to consider the feasibility of introducing a PDS in the Island, and it was on that basis that he would be seeking stakeholder's views on that issue as part of a public consultation on Criminal Legal Aid.

The Minister also confirmed that no decisions would be made on the future delivery of Criminal or Civil Legal Aid until a comprehensive and inclusive consultation process has been undertaken, and the views expressed by stakeholders had been fully considered. He then took the opportunity to reaffirm that Legal Aid policy decisions remain the statutory responsibility of the Legal Aid Committee, by virtue of the Legal Aid Act 1986.

Members were advised that most Legal Aid systems in the world operated with clear budget caps and explicit rationing<sup>3</sup>, but in contrast, the Isle of Man has an open-ended, uncapped, demand-led provision which helps support access to justice for its citizens. It was noted that over the previous 5 years, the average combined cost of Criminal and Civil Legal Aid and their administration had been £3.8m per annum. However, whilst this cost to the public purse was recognised, the Legal Aid Review would not simply be about cutting or better controlling public spending. The Minister said that the question we must ask ourselves is:

*"How can Government ensure that Legal Aid is applied appropriately to those who need it, whilst balancing the financial realities of the Isle of Man?"*

The Minister concluded that by extending the project's remit, an opportunity had been created to review the Island's Legal Aid provision as a whole and identify whether any aspects could or should be changed or improved. Furthermore as the overarching principles of access to justice and quality of service should be integral to any Legal Aid system, it followed that if there were potential efficiencies or savings to be made, then the Legal Aid Review would seek to identify them.

In his closing remarks, the Treasury Minister encouraged Tynwald Members and all stakeholders, including the Isle of Man Law Society, Manx Advocates, the Judiciary, and equally importantly, any individuals who had received Legal Aid or wished to see changes to its provision, to engage with the Attorney General's Chambers throughout this review. He submitted that it was vital that all stakeholders should be given the opportunity to play an active part in this project, as access to justice is a fundamental principle which benefits Manx society as a whole.

## **1.2. Consultation objectives**

The objectives of this consultation have been to engage with members of the public and key stakeholders in regard to Civil Legal Aid in the Isle of Man, in order to seek their views and identify:

- which aspects of Civil Legal Aid are considered to work well and should continue;
- which aspects of Civil Legal Aid are considered not to work well and could benefit from improvement; and
- if any potential changes or alternative schemes could better deliver Civil Legal Aid in future.

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<sup>3</sup> p.19 [Rethinking Legal Aid | An Independent Review \(Scottish Government 2018\)](#)

## 2.0. CONSULTATION APPROACH

### 2.1. Preparation

The Civil Legal Aid consultation was prepared following research and stakeholder engagement undertaken by the Attorney General's Chambers. This included working with the Legal Aid Office and Legal Aid Committee. Preparation for the consultation was also undertaken through meetings with the IoM Law Society, including the Chief Executive and President and two Civil Legal Aid workshops held with members of the IoM Law Society. Further research was undertaken with the Scottish Legal Aid Board, Guernsey and Jersey to understand Civil Legal Aid provision in comparator jurisdictions.

The consultation sought to reflect the numerous aspects of Civil Legal Aid in the Isle of Man, from application and eligibility, to the scope of Family and Non-Family matters covered under current provision. The consultation also sought to understand which matters, if any, may impact on a person's access to justice and there were questions which explored the appetite, in principle, for alternative approaches to Civil Legal Aid provision in the future. A further two matters, which had been specifically raised with HM Attorney General, were also included. These were: restraint proceedings under the Proceeds of Crime Act 2008, and HM Attorney General's role in Family proceedings.

As the consultation was open to all members of the public, it was considered important to give respondents the opportunity to make informed and meaningful submissions, irrespective of their prior knowledge of Civil Legal Aid. In an effort to achieve this, the consultation included supporting information and worked examples throughout.

The consultation contained 21 sections and 84 questions. Respondents were invited to answer as many or as few questions as they wished. There was also an opportunity to leave comments at the end of each section. The 21 sections were:

- About the respondents
- Awareness and experience of Civil Legal Aid
- Financial means test
- Legal merits test
- Personal responsibilities & financial contributions
- Statutory Charge
- Restraint proceedings under the Proceeds of Crime Act 2008
- Scope of Family matters
- Family proceedings & the role of HM Attorney General
- Divorce & dissolution of civil partnerships
- Scope of Non-Family matters
- Tribunals
- Inquests
- Conditional Fee Arrangements - 'No Win No Fee'
- Legal Aid Panel of Advocates
- Quality of Legal Aid services
- Self-representation
- Expenditure
- Fixed fees
- Access & Legal Advice Centres
- Alternative Dispute Resolution



## 2.2. Methodology

The 8-week public consultation on Civil Legal Aid was published by the Attorney General's Chambers on 17 February 2020 and it was due to close on 13 April 2020. However, during this period, the Island faced the global coronavirus pandemic, and a request was received from the IoM Law Society to extend the consultation period to allow its members adequate time to make submissions during lockdown. HM Attorney General agreed to extend the closing date by 3 weeks until 30 April 2020. The Society then made a further request and an extension of an additional 3 weeks was granted by HM Attorney General. The consultation closed on 21 May 2020 after 14 weeks.

On the launch of the consultation, the Attorney General's Chambers issued a news release via the Cabinet Office. The news release was sent to media contacts and a wide range of stakeholders, including Tynwald Members, IoM Law Society and a number of charities in order to raise awareness of the consultation and encourage participation.

During the 14-week consultation period, the Civil Legal Aid consultation was publically available via the IoM Government's Consultation Hub (<https://consult.gov.im>) which gave respondents the opportunity to complete and submit their responses online. A downloadable version of the Civil Legal Aid consultation was also published, and printed copies were available via the Attorney General's Chambers. Printed copies were also provided to the Isle of Man Prison.

## 2.3. Response rate & respondent groups

In total, **69** consultation responses were received, and of these:

- 65 submissions were made online through the IoM Government's Consultation Hub
- 2 submissions were made on printable copies
- 1 submission was made by email
- 1 submission was made by letter

One of these responses was received shortly after the closing date, but HM Attorney General decided that in light of unavoidable issues arising from the coronavirus pandemic, that it should be included.

The average response rates for the consultation questions were as follows:

- 95% for multi-choice answers
- 76% for targeted responses (e.g. directed at those who had indicated they had self-represented)
- 17% for those which invited comments only

Responses which were submitted as completed printable copies and via email were manually uploaded onto the Consultation Hub to facilitate analysis. One response was submitted as a letter and it has been included in the analysis.

## 2.4. Additional stakeholder engagement

In addition to the public consultation process, the Attorney General's Chambers consulted directly with members of the IoM Law Society through two Civil Legal Aid workshops which were held in November and December 2019. An invitation to attend the workshops was made to all members of the Society and 21 members attended, including the Society's President and its Chief Executive.

The workshops were held **before** the Civil Legal Aid consultation was launched, in order to ensure that feedback from the Society's membership could be taken into account during the development and drafting of the Civil Legal Aid consultation. A summary of the feedback received during the workshops is included at section 5.1.

Further workshops with other stakeholder groups **during** the Civil Legal Aid consultation, including with prisoners at the IoM Prison, were planned but not possible due to movement restrictions arising from the coronavirus pandemic. Instead, measures were put in place to raise awareness of the extended consultation period in a bid to encourage further responses.

## 2.5. Notes on reporting

Some of the consultation questions were targeted at specific groups (e.g. individuals who have self-represented in a Civil Court). However, all respondents were free to answer as many or as few relevant questions as they wished, with the exception of Q6 which was mandatory as it dealt with consent to publish. As a result, the number of responses to each question is invariably less than 69. The number of respondents who answered each question is clearly indicated throughout the report.

When reporting the results, if a question was open to all respondents the results are reported as a percentage of 69. If a question is targeted at a certain section of the respondents (e.g. those who have self-represented in Court) the results will be reported as a percentage of those who responded.

Categories of respondent, based on their interest or role in responding to the consultation, are included at Q5 (e.g. member of the public; Advocate/Judiciary member etc). For those questions with *Yes / No / Don't Know / Other* answers, the majority of respondents often provided an answer, so in order to add sufficient detail for the reader, respondents' categories are also provided in this report (e.g. Q99. 17 respondents said 'Yes' and of these, 3 people had been through a Civil Court; 2 were members of the public; 5 were Advocates / Judiciary members; 1 was a public sector employee; 2 were charity workers and there were 4 'Others' etc). For those questions in which only a text box was included and comments were invited, there were often fewer responses. In these cases, an overall breakdown of respondents by category is also provided.

For ease of reference, percentages have been rounded up or down to 0 decimal places (e.g. 17.55% rounded up to 18%; 17.45% rounded down to 17%) therefore some percentage totals may not add up to 100%. If they are slightly above or below 100% they are recorded as >100% or <100% respectively.

Text boxes were included throughout the consultation to encourage respondents to leave comments in support of their answers. Some of these text boxes invited all respondents to make comments (e.g. *Please tell us more*). Other text boxes invited comments based on the respondent's answer (e.g. *If 'Yes' please tell us more*) as the consultation sought to understand people's appetite and/or motivation for change. As a result, there may be differences in the volume of qualitative information submitted by respondents based on their answer. However, no text boxes precluded the submission of comments based on a respondent's answer. Where respondents have answers such as 'See above' (or similar) they are counted as a response as far as possible but they are not reported as quoted text in this report.

Where the appropriate permissions have been given, a wide range of respondents' comments have been included throughout this report, as directly quoted text in full or in part. The inclusion of comments seeks to reflect respondents' views and add authenticity to the report, but it is neither practicable nor desirable to include all comments. As comments can only be included if the respondent's permission has been given, some sections may refer to a certain number of comments having been received (e.g. 7), but with fewer or no comments quoted. Typographical errors in respondents' comments have been corrected as far as possible and some acronyms have been expanded for the benefit of the reader. If any additional words have been added for clarification purposes, they are clearly enclosed in square brackets [ ].

Consultation responses have been published in full or anonymously via the Consultation Hub in accordance with the level of consent indicated by the respondent. Published responses have been moderated if, for example, a respondent has referred to a named individual in a derogatory manner and/or has used offensive language. Such details have been redacted, but the rest of their submission has been published.

The IoM Law Society submitted its response in the form of a letter which is published in full via the Consultation Hub. Extracts from the letter appear throughout this report, and are attributed to the Society.

If respondents did not give permission for their consultation responses to be published, their answers to questions (e.g. *Yes / No / Don't know / Other*) are included in all analyses. In addition, comments left by these respondents are taken into account as far as possible, and may be paraphrased in a bid to reflect their views. However, their responses are not quoted in this report, and their consultation submissions are not published on the Consultation Hub.

### 3.0. KEY FINDINGS

The key findings from the Civil Legal Aid consultation process are outlined below and follow the same order of sections as those which appear in the consultation. Full results with respondents' comments and further analysis are included in the main body of this report.

#### 3.1 About the respondents

- 84% of respondents responded as individuals and 16% on behalf of organisations.
  - 99% of respondents were Isle of Man residents and 1% were not.
  - 69 consultation responses were received. There were 7 respondent groups set out in the consultation and respective response rates are shown below:
    - 12 people had been through a Civil court or supported someone who had (17%)
    - 15 members of the public (22%)
    - 24 Advocates / Judiciary members (35%)
    - 3 public sector employees working in Civil legal matters (4%)
    - 2 charity / support workers (3%)
    - 0 Tynwald Members (0%)
    - 13 others (19%)
  - There was additional engagement through two Civil Legal Aid workshops held with 21 members of the IoM Law Society which served to inform the drafting of the Civil Legal Aid consultation and add further depth to the consultation process (see sections 5.0 - 5.1).
  - Consent was given to publish 7 consultation responses in full and 42 responses anonymously (49 in total = 71%). No consent was given to publish the remaining 20 responses (29%).
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#### 3.2 Awareness of Civil Legal Aid schemes

- Between 67% and 75% of respondents indicated that they were aware of Green Form and full Civil Legal Aid respectively.
  - 94% of respondents agreed that Legal Aid is important to ensure that people can access legal advice even if they cannot afford it; 93% agreed that Legal Aid is taxpayers' money and people who receive it have a responsibility to use it fairly, and 80% agreed that as Legal Aid is funded using taxpayer's money, Government should strictly enforce how it is spent.
  - Civil matters in which at least 10% of respondents had been party to were as follows:
    - 30% Family Court; 20% Small Claims, Summary or Ordinary Procedure (for claims); 12% Tribunals, and 10% Chancery Procedure.
-

### 3.3 Financial means test

- 61% of respondents said that income-based benefits were the correct benefits to automatically qualify a person from a financial perspective, and 29% of respondents did not think they were correct.
  - Concerns and suggestions included current financial limits within the means-test; financial contributions, and lack of clarity regarding financial determinations.
- 

### 3.4 Legal merits test

- 52% of respondents said that there should be exceptions to provide Legal Aid in Civil cases with less than 50% chance of success and a range of concerns and comments were submitted. 23% said that exceptions should not be made.
  - Comments included access to justice; scrutiny of legal merits and matters of public interest.
- 

### 3.5 Personal responsibilities & financial contributions

- 38% of respondents said that people were not aware of their personal responsibilities when they are granted Civil Legal Aid and 33% said they were aware.
  - 80% of respondents said that Civil Legal Aid should be made available to more people with financial contributions, and suggestions were made on how this could be achieved. 9% said that it should not be available to more people, and concerns regarding expansion were submitted.
- 

### 3.6 Statutory Charge

- 59% of respondents said that improvements could be made to the way in which people are made aware of the Statutory Charge, and a number of suggestions were made. 9% said that improvements could not be made.
  - 45% of respondents said that there should be a requirement for a person to pay the Statutory Charge on the sale of a property or within a defined period, and 13% said there should not be such a requirement. A recurring theme which was articulated was concern that dependent children and / or vulnerable adults who may be living at a property should not be adversely affected as a result of enforcing the Statutory Charge against a property within a fixed time limit.
- 

### 3.7 Restraint proceedings under the Proceeds of Crime Act 2008

- 67% of respondents indicated that they would support an amendment to legislation to enable individuals whose assets are restrained under the Proceeds of Crime Act 2008 to

qualify for Legal Aid. Concerns in regard to the current legal position were submitted and comments in support of change were also set out. 14% indicated that they would not support such an amendment, and a number of reasons were provided.

- 61% of respondents said that if Legal Aid is granted to individuals whose assets are restrained, they should be required to repay Government if their assets are partly or fully released, and 17% said they should not be required to repay.
  - Concerns and comments included access to justice; compliance with Human Rights, and the current provision which allows payment of legal costs from unrestrained funds.
- 

### 3.8 Scope of Family Matters

- 70% of respondents were not in support of any Family Matter being removed from the scope of Civil Legal Aid, and 17% were in support of one or more Family Matter being removed.
  - 46% of respondents said that one or more Family Matter should be exempt from the financial means test and suggestions were made. Two matters which received the most suggestions for exemption were Care Proceedings and domestic abuse cases. 30% of respondents said that no Family Matter should be exempt from the financial means test.
- 

### 3.9 Family proceedings & the role of HM Attorney General

- 80% of respondents said that children and young people should be automatically eligible to receive Civil Legal Aid if they are party to Family proceedings. 16% of respondents said that children and young people should not be automatically eligible.
  - 45% of respondents said that a parent or guardian should be automatically eligible to receive Civil Legal Aid if they are party to Family proceedings. 42% of respondents said that a parent or guardian should not be automatically eligible.
- 

### 3.10 Divorce & dissolution of civil partnerships

- 81% of respondents indicated that means-tested Civil Legal Aid should continue to be available for divorce / dissolution of civil partnership, and 17% indicated that means-tested Civil Legal Aid should not continue to be available.
- 48% of respondents said means-testing should not apply if a person is seeking legal advice on divorce / dissolution of a civil partnership due to domestic abuse, and a number of concerns regarding the ability of a person to demonstrate their financial eligibility in such circumstances were put forward. 43% of respondents said means-testing should still apply, and number of comments were submitted.

- 87% of respondents said that providing arrangements are agreed in respect of finances and any dependent children, the divorce process should be administrative only, and not need Court time. 3% said that the process should not be administrative only.
- 

### 3.11 Scope of Non-Family Matters

- 54% of respondents did not support any Non-Family Matter being removed from the scope of Civil Legal Aid. 23% were in support of one or more Non-Family matters being removed from scope and suggestions were made. Two matters which received the most suggestions were boundary disputes and Inquiries into treasure troves.
  - 49% of respondents did not support any Non-Family Matter being exempted from the financial means test. 28% said that one or more Non-Family Matter should be made exempt and suggestions were made. Two matters which received the most suggestions were the Mental Health Review Tribunal and Inquests.
- 

### 3.12 Tribunals

- 81% of respondents said that people on low incomes should continue to be eligible for free legal advice and assistance under Green Form to prepare for all Tribunals. 7% said that people on low incomes should not continue to be eligible under Green Form.
  - When asked if any Tribunals should be covered by full Civil Legal Aid (notwithstanding that four Tribunals are currently covered) 55% of respondents said that they should. 12% of respondents said that no Tribunals should be covered by full Civil Legal Aid.
  - Of the 38 respondents who said that one or more of the four Tribunals currently covered by full Civil Legal Aid should continue to be covered, 100% called for this to apply to the Mental Health Review Tribunal and 71% to the Advocates Disciplinary Tribunal, Data Protection Tribunal and Financial Services Tribunal.
  - 4% of respondents indicated that they had brought an action before a Tribunal without legal advice or representation, and all of them indicated that there were aspects of the process where they considered legal advice would have been essential.
  - 42% of respondents said that consideration should be given to extending full Civil Legal Aid to Tribunals other than those four already in scope. Suggestions were made and the Employment and Equality Tribunal was most commonly put forward. 20% of respondents said that consideration should not be given to extending full Civil Legal Aid to other Tribunals.
- 

### 3.13 Inquests

- 7% of respondents indicated that they had been party to an Inquest in the Isle of Man for a family member.

- 86% of respondents indicated that one or more types of the suggested guidance / signposting options should be available to families facing an Inquest as listed in order below:
  - i. Guidance on Civil Legal Aid for Inquests (80%)
  - ii. Guidance on the Inquest process (80%)
  - iii. Early signposting to the IoM Law Society / Legal Aid Panel of Advocates for help finding an Advocate (77%)
  - iv. Guidance for those affected by the death of a person who was in the care or custody of the state (75%)
- 61% of respondents said that Civil Legal Aid should not continue to be financially means-tested if a person has died whilst in the care or custody of the state. 22% said that means-testing should continue in such circumstances.
- 33% of respondents said that Legal Aid for other Inquests should continue to be financially means-tested. 33% of respondents said that Legal Aid should not be means-tested if people have died under certain circumstances, and 16% said that there should not be any means-testing for Inquests.
- 49% of respondents said that there are circumstances in which Legal Aid for an Inquest should be granted to more than one person, and a number of suggestions regarding these circumstances were put forward. 22% said that there are no circumstances in which Legal Aid should be granted to more than one person.

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### 3.14 Conditional Fee Arrangements - 'No Win No Fee'

- 61% of respondents said that Civil Legal Aid should continue to be available for Personal Injury, Negligence and Medical Negligence, and a number of concerns regarding Conditional Fee Arrangements (CFAs) were submitted. 28% of respondents said that CFAs should be considered.

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### 3.15 Legal Aid Panel of Advocates

- 30% of respondents indicated that they were Advocates who had carried out Civil Legal Aid work or would like to do so in future.
- 28% of all respondents said that they would like to see changes to how Advocates join and remain on the Civil Legal Aid Panel and suggestions were made including mandatory Continuing Professional Development. 25% of respondents said that they would not like to see any changes and a number of concerns were submitted including disincentivising Advocates to joining the Panel.
- Further analysis showed that of those respondents who indicated that they were Advocates who had undertaken Civil Legal Aid work (or would wish to do so in the future) 62% said they would not like to see changes to how Advocates join and remain on the Civil Legal Aid Panel. 29% said that they would like to see changes.



### 3.16 Quality of Legal Aid services

- 42% of respondents said that information provided by the Legal Aid Office was comprehensive and clear enough. 23% of respondents said that it was not and suggestions were submitted.
- 46% of respondents said that legally-aided persons should be placed at the centre of Legal Aid services, and 12% said that they should not.
- Of those respondents who said that legally-aided persons should be placed at the centre of Legal Aid services, a number of suggested feedback options were chosen and are listed in order below:
  - i. Seek feedback from legally-aided persons on the services they have received (91%)
  - ii. Seek feedback from Advocates on processes which affect their clients & the legal profession (81%)
  - iii. Seek feedback from charities on access to services for the people they support (72%)
- The three most important qualities / factors in an Advocate providing Civil Legal Aid services, as chosen by respondents from a list of 9 options were:
  - i. Quality of service (most important)
  - ii. Level of experience
  - iii. Independence

The three least important qualities / factors were:

- i. Ease of access (location; office hours etc)
  - ii. Personal recommendation
  - iii. Used the Advocate before (least important)
- 35% of respondents said that there should be an agreement in place between the Legal Aid Office and Advocates undertaking Legal Aid work to support the delivery of quality standards as set out in the Legal Aid Handbook. 32% of respondents said that there should not be an agreement in place and concerns were submitted.
  - 13% of respondents said that some matters are being served less well by Civil Legal Aid and those matters were specified. 6% of respondents said that no matters are being served less well by Civil Legal Aid.

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### 3.17 Self-representation

- 4 respondents (6%) said that they had self-represented in a Civil court in the Isle of Man. Of these, 3 (75%) had chosen to self-represent and 1 (25%) indicated that it was due to ineligibility for Legal Aid and an inability to pay private legal fees.

- 49% of all consultation respondents said that the number of people who self-represent should be minimised in future. 35% said that the number should not be minimised.
  - 46% of respondents made suggestions as to how those who self-represent in a Civil court could be supported, which included advice and guidance on Court proceedings, and provision of Legal Aid to fund legal representation.
- 

### 3.18 Expenditure

- 29% of respondents said that they would not like to see any changes to the way in which Civil Legal Aid applications are assessed or granted and their concerns were set out. 25% of respondents said that they would like to see changes and suggestions were submitted.
  - 64% agreed or strongly agreed that rates of pay for Civil and Criminal Legal Aid work should remain aligned.
  - 62% agreed or strongly agreed that Legal Aid rates of pay should be reviewed.
- 

### 3.19 Fixed fees

- 52% of respondents said in principle that they would support some fixed fees being introduced and suggestions were received. 30% said they would not support the introduction of fixed fees and concerns were set out. These concerns included a reduction in the quality of service provided to clients and a disincentive for Advocates to undertake Legal Aid work.
- 

### 3.20 Access & Legal Advice Centres

- Between 16 and 21 respondents (23% to 30% of total consultation responses) indicated that they had sought or received legally-aided or private legal advice respectively, on a Civil matter in the Isle of Man. Of these, 32% agreed that it was easy to access legally-aided advice, and 47% agreed that it was easy to access private legal advice.
  - 32% of respondents said that in addition to funding Legal Aid, the Government should consider supporting other methods of delivering legal services to the public, and suggestions were submitted. 23% of respondents said that Government should not consider supporting other methods.
  - Suggestions included free drop-in sessions provided by legally trained staff via Citizens Advice. Concerns submitted included managing client expectations, and Legal Advice Centres being unnecessary in a jurisdiction as small as the Island if adequate access to legal services is already in place.
- 

### 3.21 Alternative Dispute Resolution

- Respondents' choice of options (from a list) for increasing the availability of mediation to those eligible for Legal Aid were:
    - i. Work with qualified mediators to understand barriers to providing services (62%)
    - ii. Review rates of pay for mediators (55%)
    - iii. Employ one or more mediators within Government (42%)
  - 41% of respondents said that Government should continue to meet the costs of both mediating parties if one is in receipt of Legal Aid. 23% of respondents said that Government should expand the arrangements to provide free mediation to everyone, and 13% said that Government should reduce the arrangements to legally-aided individuals only.
  - Comments in support of the current mediation arrangements or their expansion included more incentive for parties to engage and resolve issues, and the avoidance of Court proceedings where possible.
  - 49% of respondents indicated that an assessment for mediation should be compulsory before an application for full Civil Legal Aid is considered, unless safeguarding exemptions apply. 33% said that an assessment for mediation should not be compulsory.
  - It was suggested that mediation services should be publicised further to raise awareness; more work should be done to support mediation training and provision, and mediation should be adequately funded. Concerns regarding compulsory mediation included that parties should enter into the process voluntarily.
-

## 4.0. CONSULTATION RESPONSES

Responses to consultation Q1 (*What is your name?*) and Q2 (*What is your email address?*) are not included in this report. Responses to the remaining Questions 3 to 84 are grouped into the 21 sections in which they featured in the consultation, and included in sections 4.1 to 4.21 below.

Where appropriate permissions have been given, the names of respondents and represented organisations are listed at section 4.22 and they are also published online as part of individual submissions at <https://consult.gov.im>.

### 4.1. About the respondents

#### Q3. Are you responding on behalf of an organisation?

69 respondents (100%) answered this question and the breakdown of responses is shown in Table 1 below.

**Table 1. Organisation & individual responses**

Option	No.	%
Yes - organisation	11	16
No - individual	58	84
Not answered	0	0
Total	69	100

There were 58 (84%) responses from individuals and 11 (16%) responses on behalf of organisations.

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#### Q4. Are you resident in the Isle of Man?

69 respondents (100%) answered this question and the breakdown of responses is shown in Table 2 below.

**Table 2. Residency of respondents**

Option	No.	%
Yes - IoM resident	68	99
No - not IoM resident	1	>1
Not answered	0	0
Total	69	100

68 respondents (99%) stated that they were Isle of Man residents and 1 (>1%) was not.

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Q5. Which option best describes your interest or role in responding to this consultation?

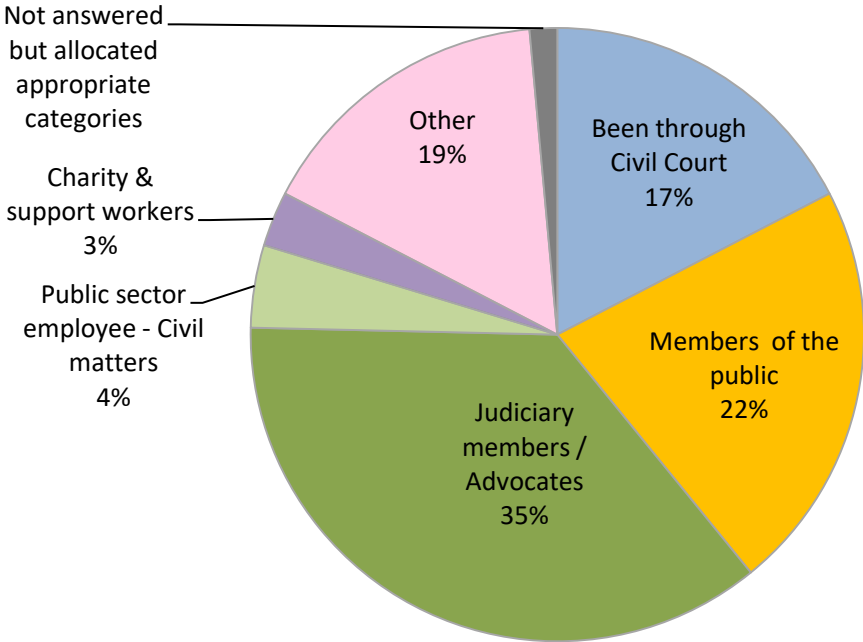
65 respondents (94%) answered this question and the remaining 4 respondents (6%) were allocated a role<sup>4</sup>. The breakdown of roles as set out in the consultation is shown in Table 3 and Figure 1 below.

**Table 3. Interest or role of respondents**

Option	No.	%
Been through a Civil court, or supported someone who has (legally aided or not)	12	17
Member of the public	15	22
Member of the Judiciary or an Advocate	24	35
Public sector employee working in Civil legal matters	3	4
Voluntary sector, charity or support worker	2	3
Tynwald Member	0	0
Other	13	19
Total	69	100

Table 3 shows that 12 respondents (17%) had been through a Civil Court or supported someone who has; 15 respondents (22%) were members of the public and 24 respondents (35%) were members of the Judiciary or Advocates, including the IoM Law Society. 3 respondents (4%) were public sector employees working in Civil legal matters; 2 (3%) were from the voluntary or charity sector. No responses were received from Tynwald Members. 13 respondents (19%) were in the 'Other' category including the General Registry; the IoM Government's Equality Advisor, and a medical member of the Mental Health Review Tribunal and the Social Security Appeal Tribunal. There was also a person who had been through a family Inquest; a person going through a divorce with the support of Civil Legal Aid, and a lay Tribunal member.

**Figure 1. Breakdown of respondents' roles**



<sup>4</sup> Two respondents who did not answer Q5 provided their names and are known to be Advocates. The remaining two who did not answer Q5 are included within the 'Other' category for the purpose of analysis.

Throughout the rest of this report, the categories of respondent will be shortened for ease of reference (as shown in Figure 1) as follows:

- Those who 'have been through a Civil Court or supported someone who has (legally aided or not)' will be referred to as those who 'have been through a Civil Court.'
- Those who are 'a member of the Judiciary or an Advocate' will be referred to as 'Advocates / Judiciary members'
- Those who are a 'public sector employee working in Civil legal matters' will be referred to as 'public sector employees'
- Those who are 'voluntary sector, charity or support workers' will be referred to as 'charity / support workers'.

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**Q6. May we publish your response?**

All respondents were required to answer this question and as a result there were 69 responses (100%). A breakdown of responses is shown in Table 4.

**Table 4. Consent to publish**

Option	No.	%
Yes, you can publish my response in full	11	16
Yes, you can publish my response anonymously	38	55
No, please do not publish my response	20	29
Total	69	100

It should be noted that of those 11 respondents who gave consent for their response to be published in full:

- 7 (10%) provided their full name and/or that of the organisation they were responding on behalf of; and
- 4 (6%) did not provide their full name, which is equivalent to giving permission to publish anonymously

As a result, consent was given to publish 7 'full' responses and 42 anonymous responses (totalling 71%). No consent was given to publish the remaining 20 (29%) responses.

All consultation responses have been taken into account and included in this analysis as far as possible. Where permission has been given by the respondent, submissions have been published in full or anonymously via the Isle of Man Government Consultation Hub (<https://consult.gov.im>).

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## 4.2. Awareness of Civil Legal Aid schemes

Q7. Of the two Civil Legal Aid schemes in the Isle of Man, were you aware of any of either before today?

Respondents were asked to complete a table indicating their level of awareness of two Civil Legal Aid Schemes (i.e. Green Form and full Civil Legal Aid) and invited to select one option<sup>5</sup> per line (i.e. per scheme).

Between 61 (88%) and 65 (94%) respondents provided answers for each scheme and the results are shown in Table 5 below. Percentages in brackets show the result as a proportion of the total no. of responses (69) to the consultation.

**Table 5. Awareness of Civil Legal Aid schemes**

	Yes, I have received it personally	Yes, I am involved in a professional capacity	Yes, I have helped others access it	Yes, I am aware but I do not have any experience	Yes, a case has been funded by Legal Aid against me	No, I was not aware	No. of responses
Green Form	4 (6%)	27 (39%)	20 (29%)	11 (16%)	2 (3%)	15 (22%)	61 (88%)
Full Civil Legal Aid	3 (4%)	27 (39%)	18 (26%)	15 (22%)	6 (9%)	13 (19%)	65 (94%)

Table 5 shows that as a proportion of those who responded to the consultation:

- Between 4% and 6% of respondents indicated that they had received full Civil Legal Aid or legal advice and assistance under Green Form respectively.
- 39% of respondents indicated that they were involved in both schemes in a professional capacity.
- Between 26% and 29% of respondents indicated that they had helped others to access full Civil Legal Aid or legal advice and assistance under Green Form respectively.
- 16% of respondents indicated that they were aware of Green Form for Civil matters, and 22% were aware of full Civil Legal Aid, without having any experience of it.
- Between 3% and 9% of respondents indicated that they had been involved in a Civil case in which the opponent was funded by Legal Aid under Green Form or full Civil Legal Aid respectively.
- Between 19% and 22% of respondents indicated that they were unaware of full Civil Legal Aid and Green Form respectively.

<sup>5</sup> Some respondents selected more than one option per scheme and as a result the number of responses does not equal the sum of the individual responses.

Overall, between 46 (67%) and 52 (75%) of respondents indicated that they were aware of Green Form and full Civil Legal Aid respectively. This reflects a high level of awareness amongst those who responded to the consultation.

**Q8. Please tell us how much you agree with the following statements:**

Respondents were asked to complete a table indicating how much they agreed or disagreed with a range of statements about Legal Aid, and invited to select one option per statement. Between 67 and 68 people (97% to 99%) responded to each question and the results are shown in Table 6.

A small number of people who answered 'Don't know' are not shown in the table but they are reflected in the total no. of responses. Percentages are calculated as a proportion of 69 (i.e. the total no. of responses to the consultation).

**Table 6. Respondents' views about Legal Aid**

	Strongly agree	Agree	Neither agree nor disagree	Disagree	Strongly disagree	No. of responses (incl. 'Don't know')
Legal Aid is important to ensure that people can access legal advice even if they cannot afford it	51 (74%)	14 (20%)	2 (3%)	1 (1%)	0 (0%)	68 (99%)
Legal Aid is funded using taxpayer's money so Government should strictly enforce how it is spent	25 (36%)	30 (43%)	5 (7%)	5 (7%)	2 (3%)	67 (97%)
Someone with Legal Aid funding can pursue a case that they wouldn't if they had to pay for it themselves	20 (29%)	21(30%)	3 (4%)	7 (10%)	17 (25%)	68 (99%)
Legal Aid means a person is more likely to be successful in their case (against their opponent)	3 (4%)	12 (17%)	16 (23%)	17 (25%)	18 (26%)	68 (99%)
Government should do more to raise awareness of Legal Aid	18 (26%)	19 (28%)	23 (33%)	6 (9%)	1 (1%)	67 (67%)
People are aware of Legal Aid and how to apply for it	2 (3%)	16(23%)	23 (33%)	17 (25%)	7 (10%)	68 (99%)



	Strongly agree	Agree	Neither agree nor disagree	Disagree	Strongly disagree	No. of responses (incl. 'Don't know')
The eligibility criteria for Legal Aid are fair and clear	2 (3%)	15 (22%)	18 (26%)	18 (26%)	10 (14%)	68 (99%)
Legal Aid is taxpayers' money and people who receive it have a responsibility to use it fairly	42 (61%)	22 (32%)	1 (1%)	2 (3%)	0 (0%)	68 (99%)
It is easy for people to get Legal Aid	4 (6%)	7 (10%)	22 (32%)	19 (28%)	10 (14%)	68 (99%)
People should seek alternative sources of advice or remedy before applying for Legal Aid	17 (25%)	16 (23%)	19 (28%)	9 (13%)	6 (9%)	68 (99%)

Headline results from Table 6 are summarised below in descending order and those results which reflect a majority view (i.e. over 50%) are in bold:

- **94% agreed or strongly agreed** that Legal Aid is important to ensure that people can access legal advice even if they cannot afford it. 1% disagreed with this statement.
- **93% agreed or strongly agreed** that Legal Aid is taxpayers' money and people who receive it have a responsibility to use it fairly. 3% disagreed that people have such a responsibility.
- **80% agreed or strongly agreed** that as Legal Aid is funded using taxpayer's money, Government should strictly enforce how it is spent. 10% disagreed or strongly disagreed that expenditure should be strictly enforced in this way.
- **59% agreed or strongly agreed** that someone with Legal Aid funding can pursue a case that they wouldn't if they had to pay for it themselves. 35% disagreed or strongly disagreed that this would be the case.
- **54% agreed or strongly agreed** that Government should do more to raise awareness of Legal Aid. 10% disagreed or strongly disagreed that Government should do more.
- **51% disagreed or strongly disagreed** that a legally-aided person is more likely to be successful in their case (against their opponent). 22% agreed or strongly agreed that they would be more likely to win their case.
- 48% agreed or strongly agreed that people should seek alternative sources of advice or remedy before applying for Legal Aid. 22% disagreed or strongly disagreed that people should seek alternatives.
- 42% disagreed or strongly disagreed that it is easy for people to get Legal Aid. 16% agreed or strongly agreed that it is easy.

- 41% disagreed or strongly disagreed that the eligibility criteria for Legal Aid are fair and clear. 25% agreed or strongly agreed that the criteria are fair and clear.
- 35% disagreed or strongly disagreed that people are aware of Legal Aid and how to apply for it. 26% agreed or strongly agreed that people are aware.

**Q8 SUMMARY:** Between 67 and 68 respondents (97% - 99%) answered each part of this question. 6 out of 10 statements elicited a majority response, and of these, 3 statements had consensus from at least 80% respondents.

For ease of reference, the 'agree' and 'strongly agree' responses have been combined as 'agreed' and the three highest results are as follows:

94% of respondents agreed that Legal Aid is important to ensure that people can access legal advice even if they cannot afford it; 93% agreed that Legal Aid is taxpayers' money and people who receive it have a responsibility to use it fairly, and 80% agreed that as Legal Aid is funded using taxpayer's money, Government should strictly enforce how it is spent.

Similarly, the 'disagree' and 'strongly disagree' responses have been combined as 'disagreed' and the four highest results are as follows:

42% of respondents disagreed that it is easy for people to get Legal Aid and 41% disagreed that the eligibility criteria are fair and clear. 35% disagreed that people are aware of Legal Aid and how to apply for it, and 35% also disagreed that someone with Legal Aid funding can pursue a case that they wouldn't if they had to pay for it themselves.

**Q9.** In terms of Civil matters, have you been party to proceedings (private or legally-aided) in any of the following?

61 respondents (88%) answered this question and their responses are shown in Table 7 below. Respondents could indicate one or more matters to which they had been party to, and as a result, the total number of responses was greater than 69 and the percentages did not add up to 100. Percentages have therefore been calculated on an individual basis for each matter:

**Table 7. Civil matters in which respondents have been party to proceedings**

Response	Number	% of 69
Privy Council	3	4
Court of Appeal	6	9
Family Court	21	30
Small Claims, Summary or Ordinary Procedure (for claims)	14	20
Chancery Procedure	7	10
Inquest	6	9
Tribunal	8	12
None	27	39
Rather not say	2	3
Other (please state)	1	1

Not answered	8	12
Total	N/A	N/A

The results show that 27 respondents (39%) had not been party to any of the Civil matters listed; 8 (12%) did not answer, and 2 (3%) preferred not to say. It follows that the remaining 32 respondents (46%) had experience of a range of Civil matters as set out in Table 7. 11 comments were submitted which indicated that respondents had been party to proceedings as participants and/or practitioners.

Respondents indicated that they had been party to proceedings, as shown in order below::

- 30% in Family Court
- 20% in Small Claims, Summary or Ordinary Procedure (for claims)
- 12% in Tribunals
- 10% in Chancery Procedure
- 9% in the Court of Appeal
- 9% at an Inquest
- 4% in the Privy Council
- 1% 'Other' (this was an Advocate who had acted for clients in proceedings)

2 respondents who had been through a Civil Court raised concerns about Civil Legal Aid in terms of 'equal footings', but from different perspectives:

One person who had self-represented against a legally-aided party expressed concern that the current arrangements are flawed as they place the legally-aided party at a significant advantage in an adversarial legal system:

'Legal aid system currently is totally flawed. In my case [my children's] mother with mental health issues on benefits was able to continually take action against me for both financial and child residency. I had to represent myself against a ruthless advocate who agreed with my stance but fought for her client, I was totally in the right but because I hold down a job I was disadvantaged, legal aid for one side should mean for the other as well... In the end the children rightly ended up with me and rightly so, but it put myself and kids through years of hell, all because their mother was on benefits and an advocate could keep putting in legal aid forms... on the money side [the] judge ruled that I had to pay out and maintenance could not be considered so I gained residency but paid out.... All of this happened due to a weak legal aid department and a weak judiciary, I made complaint and was pushed away and ignored...'

Another person had supported a legally-aided party against a privately-funded party and they expressed concern that a person who can afford to pay for their own legal representation has a significant advantage over a legally-aided party:

'I have been closely involved in a family member's case following her divorce. He is a rich man and she is not and the legal aid provided to her was disgraceful.'

22 of the 34 respondents who had been party to Civil proceedings were Advocates / Judiciary members. 2 left comments to clarify that they had been party to these proceedings in a professional capacity only, and 1 advised that they had represented individuals in most areas under Civil Legal Aid, with the exception of the Court of Appeal and Privy Council. Further comments described other matters that respondents had been party to, including divorce and child access hearings.

The General Registry provided a detailed response in relation to two of the statements included in the previous question (Q8) on which respondents' views were invited. The response acknowledged that Civil litigation is expensive, stressful and takes time to resolve, and particular reference was made as to how a case proceeds, rather than simply considering whether a proceeding is taken or defended. Reference was also made to anecdotal evidence which suggests that some legally-aided parties have been considered to have had the equivalent of 'an open cheque book' during their Civil litigation cases in comparison to their opponents who have not been in receipt of Legal Aid. Concern was also expressed that if the Government seeks to reduce access to Civil Legal Aid in any way, whilst encouraging people to seek alternative sources of advice or remedy before applying for Legal Aid, then there should be other provisions in place which would allow such alternatives to be accessed.

The General Registry's response:

'In relation to the comment above that: *"Someone with Legal Aid funding can pursue a case that they wouldn't if they had to pay for it themselves"* please see below:-

There is an existing obligation on the advocate as a custodian of the legal aid fund to ensure that funds are not spent in an un-meritorious case and that funds are spent in a proportional way with regard to the issues in dispute the importance of the issue to the client and the general interest of justice. Anecdotally, over the years there has been a concern from those on the other side of a legally aided party that they are faced with an opponent who has an open cheque book and who has no cost risk (see further comments below in relation to the statutory charge which is a relatively recent Manx concept having not been around for many years after it was introduced in England and Wales). The reality is that civil litigation is expensive, stressful, and with the best will in the world from all sides and without any administrative or procedural issues, takes time to resolve....

Whilst a balance must be struck in the interest of justice between allowing legally aided parties an equal footing (as that phrase has been understood over the years by the Courts) with non-legally aided opponents, the approach to litigation must surely be different if the parties are funding themselves as against not having any cost obligation whatsoever.

It is not as linear as "if I was having to pay for all of this myself I wouldn't run or defend the case" – it's rather more nuanced. It's more appropriate to ask the question if someone with legal aid would pursue a case in the same way in expending the time and resource they are able to with the benefit of a legal aid certificate, as contrasting that with somebody that would have to pay for it themselves...

To put it another way, we all might want to drive a car, but not everybody has a Rolls-Royce and some people are quite happy to drive a Mondeo... It isn't simply a question of taking a proceeding or defending a proceeding, it's rather more how it is run i.e. the extent to which matters are researched, every single point taken, whether there is to be extensive correspondence or argument or review or whether a more focused approach to the key issues is embarked upon recognising that with limitless time, limitless money and limitless resource other things may be considered but actually in the expert view of the advocate the key issues are rather less. A set down for 3 days trial might, on reflection, be a 1 day trial for example, if costs were in sharper focus all around.

In relation to the comment above that: *"People should seek alternative sources of advice or remedy before applying for legal aid"*:- It must be attractive to avoid confrontation which is the inevitable by-product of matters coming to Court. Adversarial positions are adopted and in any civil environment particularly family cases, finding areas of agreement and

resolution rather than defining areas of dispute and confrontation are obviously paramount. However, alternative advice or remedies must presumably be under some kind of structure of legal advice in the widest sense unless the government is going to provide greatly enhanced facilities beyond what's available in the UK for free advice and a form of free mediation or arbitration type service, it is difficult to see how these alternative sources of advice or remedy can be provided in reality.

If one of the side effects of reducing, if that be the case, the eligibility, scope and extent of legal aid is that people are looking to find alternative ways of settling disputes how is that going to be facilitated? Law centres, free advice, citizens advice bureau are all options but is it proposed that removal of access to legal advice and potentially access to justice is to take place within a vacuum without there being other provisions that would - even in this scenario being a valid one - allow people to seek meaningful alternative sources of advice or remedies?

**Q9 SUMMARY:** 61 respondents (88%) answered the question and 11 comments were submitted.

32 respondents (46%) had been party to proceedings on a professional or personal level in all areas spanning from Tribunals to Privy Council matters. 27 respondents (39%) said that they had not been party to Civil proceedings and a further 10 (15%) did not answer or preferred not to say. Other matters, including divorce and child access proceedings were specifically mentioned by respondents as being areas of law in which they have been party to proceedings.

Civil matters in which at least 10% of respondents had been party to were as follows: 30% Family Court; 20% Small Claims, Summary or Ordinary Procedure (for claims); 12% Tribunals, and 10% Chancery Procedure.

Comments included concern in terms of 'equal footings' when one party is legally-aided and the other is not. The General Registry made reference to the existing obligations on Advocates to act as custodians of Legal Aid funds and in particular the way in which a case is progressed. Concern was also raised that if there are additional requirements to pursue alternative sources of advice or remedy for Civil matters, then there should be adequate provision in place to ensure that individuals are not left in a vacuum in which they are unable to access meaningful or effective assistance.

### 4.3. Financial means test

Q10. Do you think income-based benefits are the correct benefits to automatically qualify a person for Green Form & Civil Legal Aid from a financial perspective?

69 respondents (100%) answered the question and the results are shown in Table 8 below. A text box was also provided for further comments.

**Table 8. Views on suitability of income-based benefits for automatic financial qualification**

Response	Number	%
Yes	42	61
No	20	29
Don't know	3	4

Other	4	6
Not answered	0	0
Total	69	100

12 respondents made comments.

42 respondents (61%) thought that **income-based benefits are the correct benefits** to automatically qualify a person from a financial perspective. Of these, 4 had been through a Civil Court; 6 were members of the public; 19 were Advocates / Judiciary members; 3 were public sector employees; 1 was a charity / support worker and 9 were 'Others'. 3 comments were made.

A member of the public suggested that pension income could be considered:

'Should level of pension received also be a consideration?'

The IoM Law Society provided a combined response for Q10-Q16 which is included below. The Society submitted that Legal Aid is currently available only to the poorest individuals and called for eligibility thresholds to be widened, with the opportunity for more people to qualify with contributions:

'The eligibility for legal aid, however, results in the poorest of our citizens receiving legal aid funding, but leaves a huge gap in the middle. Many families cannot afford to pay for legal services but fall outside of the eligibility criteria, which means that there is limited access to justice for our middle earners. The IOMLS would support a greater eligibility threshold being put in place, with contributions by middle earners, in order that they can access legal services when they need to, but pay their contribution over a period of time. This would provide a fairer system without significantly increasing the cost of delivery. The eligibility criteria should be reviewed annually to stay in line with cost of living and inflationary rises to ensure the gap does not widen too far. Currently, the eligibility criteria is not reviewed often enough, it is submitted.'

One Advocate / Judiciary member suggested that there could be an income-based threshold at which salaried people would automatically qualify, and also suggested that prisoners should automatically qualify. Another Advocate referred to the value of independent verification through state benefits:

'Eligibility should always be independently verifiable - entitlement to state benefits offers the assurance that a person's means have been independently considered (and thereafter monitored).'

20 respondents (29%) thought that **income-based benefits are not the correct benefits** to use. Of these, 7 had been through a Civil Court; 8 were members of the public; 2 were Advocates / Judiciary members, and 3 were 'Others'. 5 comments were made.

A person who had been through a Civil Court referred to issues of inequity in comparison with a legally-aided party:

'We have over £400k in assets but because they are in joint names my ex-wife gets legal aid and can drag proceedings on while I have to pay out over £35k just because she doesn't have a job and gets it free.'

A member of the public expressed concern that receipt of qualifying benefits may not preclude a person from having financial means:

'Some people are receiving these benefits but still have money behind them. Purely receiving benefits should not entitle a person to free legal advice.'

A legally qualified person (in the 'Other' respondent category) referred to the ineligibility for Legal Aid faced by some individuals by virtue of co-owned assets, despite being on a low income:

'Some individuals are on a low income which can fall short of the income that an individual has on benefits but has assets which would negate their eligibility for legal aid, for example a spouse who is a co-owner of the matrimonial home but finds it intolerable to live there.'

4 respondents (6%) chose the '**Other**' response, and provided further comments as detailed below:

Homelessness charity *Grainh* supported automatic qualification through income-based benefits, but called for Legal Aid to be extended in particular to those on low incomes:

'Income-based benefits should certainly automatically qualify a person for Legal Aid. However, I think that Legal Aid should be available to those outside of these benefits but still struggling. Those, for example, on low income or not eligible for benefits. Legal Aid should be available to all.'

A Medical Member of the Mental Health Review Tribunal (MHRT) and Social Security Appeal Tribunal (SSAT) called for disability benefits to be included as part of the financial eligibility assessment:

'Disability benefits should also be included; these people may be less able to adjust their income or pay back loans than others.'

A Lay Tribunal Member suggested that income-based benefits may give a false impression of what a person can afford:

'They are a useful starting point, but sometimes people's financial commitments are such as mortgage / rent / childcare / utility bills (but not disposal commitments such as entertainment etc.) are such that income-based benefits belie how much they can afford.'

3 respondents (4%) said that they **did not know**.

**Q10 SUMMARY:** 69 respondents (100%) answered the question and 12 comments were made.

- 42 respondents (61%) thought that income-based benefits are the correct benefits to automatically qualify a person from a financial perspective. It was submitted that such an approach provided independent verification of eligibility. Suggestions included widening eligibility, and automatic entitlement for prisoners.
- 20 respondents (29%) thought that income-based benefits are not the correct benefits to use. Concerns raised included inequity in comparison to legally-aided parties and ineligibility due to co-owned assets.

- 4 respondents (6%) said 'Other'. Suggestions included extending the eligibility threshold with greater contributions; extending Legal Aid to all, and taking disability benefits into account.
- 3 respondents (4%) said that they did not know.

Q11. If you have any further comments on the financial means test, prescribed amounts or qualifying benefits, please tell us

A text box was provided for comments / suggestions and 30 respondents (43%) submitted responses.

Of those 30 who responded:

- 7 had been through a Civil court
- 3 were members of the public
- 12 were Advocates / Judiciary members
- 1 was a public sector employee
- 1 was a charity / support worker
- 6 were 'Others'

Respondents who had been through a Civil court suggested that Legal Aid should be more widely available. There were also concerns that the current system is unclear and unfair and can support unreasonable behaviour on the part of the legally-aided party. One person proposed an alternative to the current system:

'Legal aid should be more widely available, it is highly unfair that those of less means have lower chances of winning court cases or even fighting them due to restrictions on legal aid.'

'When we split up my ex-husband started to receive £10 a week benefit for a daughter he had before we got together. This entitled him automatically to legal aid if he didn't earn above the threshold. He deliberately cut his hours at work to be just under the threshold so got full legal aid throughout. My parents had to fund me to the tune of £15,000. That was just not fair.'

'My son's ex-partner arbitrarily stops him from seeing his children and uses legal aid to defend her position- whilst my son has to pay huge amounts in legal costs. This is wholly unfair as she has the ability to continually delay and draw matters out without having to be concerned with the costs.'

'It is extremely unfair and unclear.'

'Scrap it all and make all aid fully 100% recoverable at the same rate the other party is paying.'

A member of the public expressed concern that those in a couple may not have equal access to their joint income:

'Just because a couple may have joint income over a certain level, it doesn't mean both parties have equal access to that income.'



Advocate / Judiciary members suggested that more guidance and clarity in relation to financial thresholds and assessments would be helpful. Concern was expressed that the current arrangements are too 'black and white', which can lead to a cliff edge in terms of eligibility and/or Legal Aid contributions. There were also calls for financial eligibility thresholds to be reviewed annually to reflect changes in the cost of living, and for a person's financial outgoings to be considered in more detail in order to give a more accurate reflection of their ability to pay. Furthermore, there was concern that without an extension to eligibility, the system would continue to limit legal representation in Court to "the rich and the very poor":

'It would be helpful to have more guidance to assist in assessing those individuals who have a non-standard presentation and, bearing in mind the range of living options now found amongst the population, better criteria for assessing rental equivalents etc.'

'The thresholds for financial assessments in Legal Aid Applications are not clear. It is impossible to advise someone not in receipt of an automatically qualifying benefit whether they may be entitled to Legal Aid funding. At the same time, there are times when someone in receipt of an automatically qualifying benefit receive Legal Aid despite their benefit being next to nothing (the lowest I have seen is little over £1 EPA). I am also aware of people manipulating their finances to ensure they get a low level of benefit to entitle them to Legal Aid. The matter is too black and white and it is unfair that those who get some level of benefit are more advantaged than those not in receipt of benefits. A sliding scale system would be fairer for all.'

'There is a cliff edge, as with most benefits.'

'The figures for the means test need to be reviewed every year, and move in line with inflation. It is pointless only reviewing every few years which is what currently happens, when the cost of living is always rising.'

'The prescribed amounts and thus financial means test are not reviewed often enough and therefore very low income individuals many not be eligible when they ought to be. These should be reviewed, in line with inflation, annually.'

'In relation to those not in receipt of automatically qualifying benefits their outgoings should be delved into further. The line is too fine in respect of no benefits = no legal aid. The average working person should still be eligible in certain circumstances and I believe their outgoings need further consideration as only limited outgoings are considered at present.'

'The bar should be raised to include those who are not on benefits as litigation may nevertheless be way beyond their means. In essence the courts are only available to the rich and the very poor.'

The IoM Government's Equality Adviser (the Equality Adviser) made reference to Scope UK's research into additional living costs of a disabled person and called for such costs to be included as part of the financial eligibility test for Civil Legal Aid in the Isle of Man:

'The UK disability charity Scope undertook 2019 research which evidences that it costs a disabled person an average of £583 to live a month compared to a non-disabled person. The report also evidenced that for 1 in 5 disabled people the cost is £1000 per month extra in the cost of living <https://www.scope.org.uk/campaigns/extra-costs/disability-price-tag/> Either this evidence should be applied for the relevant test or IOM specific research should be undertaken to ascertain the average additional cost of living amount for disabled IOM residents.'

Further comments from 'Others' included concern that the financial means test is set very low which, when set against the likelihood of high legal costs for a person who does not qualify for Legal Aid, can lead to unfairness. There were calls for financial determinations to take into account a person's overall living costs, particularly if they have dependants. Projected legal costs for a person paying privately were also suggested for inclusion in the determination, and for there to be an extension to financial eligibility with tapering. One respondent going through a divorce with the assistance of Civil Legal Aid gave details of their personal experiences and described their 'Catch 22' situation in which the other party has been able to influence the respondent's receipt of Legal Aid in such a way that it has extended the reach of their controlling behaviour and allowed them to continue to detrimentally impact the respondent's life:

'Please make the contribution system more accessible. And consider living costs are not to be excluded when assessing income. Especially when the person has dependants.'

'The financial means test is set very low. In many circumstances, the likely costs may be much greater than ordinary people can afford, and there is no taper. This enables two types of unfairness: either those with legal aid or those with more resources may exhaust the resources of those who don't by escalating litigation costs. Legal aid assessment should include judgment on likely costs as well as income, and the taper should be extended.'

'My personal experience has been quite testing. I am beyond grateful for the assistance that the Isle of Man government has afforded me. However it is a long process. Each case is different and I am sure that mine is not uncommon. I only understand in the last 3 years that my marriage was controlled and my children and I were involved in a toxic and abusive relationship. He attempts to manipulate me since the separation with erratic financial contributions. This has put me in a situation where I sometime receive EPA and sometimes I don't. I am only able to progress the divorce whilst I have legal aid via EPA. I am grateful and will continue slowly but so far I am into year 2 of a divorce with slow progress as I am unable to get legal aid for a consistent period of time. I get legal aid then I need to wait for an appointment with the advocate - 2-3 weeks. We have the meeting and then my legal aid expires. Catch 22. I would happily pay a contribution within my means to gain consistency in this area. The children and I are unable to move on - ironically if I could get through the divorce faster I wouldn't be in a position to request legal aid as I would then be able to access the joint funds that are being withheld.'

**Q11 SUMMARY:** 30 respondents (43%) answered the question.

A number of key themes were raised in Q11, and some respondents raised more than one:

- 8 respondents were concerned that financial determinations do not fully reflect a person's living costs or their ability to pay for private legal fees and/or suggested that they are unfair.
- 7 respondents called for the means test to be updated, with suggestions that this should be undertaken on an annual basis.
- 7 respondents suggested that contributions should be extended and/or for more tapering to be introduced to avoid the 'cliff edge' of eligibility / contributions / ineligibility.
- 5 respondents called for financial eligibility thresholds to be extended.

Other issues of concern included:

- The additional living costs faced by disabled persons, with a call to take these costs into consideration during financial determinations for Legal Aid.
- The ability for a coercive / controlling person to continue to control their ex-partner by means of influencing their eligibility for Civil Legal Aid through financial payments which can effectively 'switch on and switch off' a person's access to Legal Aid, thus stalling legal proceedings (e.g. divorce)
- A call for financial eligibility determinations to be clearer and more transparent.

#### 4.4. Legal merits test

Q12. Should there be any exceptions where Legal Aid is provided for Civil cases with less than 50% chance of success? (e.g. matters of public interest where prospects of success are difficult to quantify)

67 respondents (97%) answered the question, and the results are shown in Table 9 below. A text box was also provided for comments.

**Table 9. Views on exceptions for cases with <50% chance of success**

Response	Number	%
Yes	36	52
No	16	23
Don't know	11	16
Other (please state)	4	6
Not answered	2	3
Total	69	100

27 respondents provided further comments to support their answers.

36 respondents (52%) said that **there should be exceptions to provide Legal Aid in Civil cases with less than 50% chance of success.** Of these 36 respondents, 4 had been through a Civil court; 4 were members of the public; 16 were Advocates / Judiciary members; 2 were public sector employees; 1 was a charity / support worker, and there were 9 'Others'. 20 respondents provided comments.

Respondents who had been through a Civil court suggested there should be an assumption in favour of the applicants, and Legal Aid should provide equality of arms with a privately paying person who is wealthy:

'Where prospects cannot be measured there should be an assumption in favour of the applicant, until the prospects become known.'

'Legal aid should allow those with lesser means to have EXACTLY the same chance as a rich person in court and to bring or fight the same cases.'

A member of the public referred to public interest:

'Only if it is a matter of public interest.'

Advocates / Judiciary members had a range of views. Some suggested that Legal Aid should be provided in limited circumstances, and if a case is considered to be in the public interest then the (public interest) test should be vigorously applied by the Legal Aid Certifying Officer. Matters which encompass human rights issues (e.g. those which affect children) were also suggested for inclusion, including and/or in addition to the Mental Health Review Tribunal, Care Proceedings and Inquests. Others suggested that assessments based on chances of success were unjust, and that the Government was letting people down by not removing the legal merits test from public law childcare cases:

'In very limited circumstances.'

'Yes there is sometimes a need to establish a legal precedent but these should be the exception rather than the rule.'

'If something is substantially in the public interest it ought to be capable of being funded even if prospects are much more marginal, but the public interest test in this context ought to be rigorously applied.'

'Matters which affect Article 8 Human Rights and welfare of children, such as Care Proceedings and Adoption proceedings.'

'Certain matters such as care proceedings or family matters where fundamental issues such as parents and children's futures are in the balance the person ought to be able to attract legal aid funding with oversight from the Legal aid certifying officer.'

'Mental Health Review Tribunals Care Proceedings. Matters of Public Interest at the discretion of the Certifying Officer.'

'Care Proceedings. Mental Health Appeal Tribunals. Inquests (funding for those with interested party status).'

'Prospects in legal cases are not akin to a bet on a horse. Reasonable prospects is often the court's criteria on appeals but to assess on percentage to me is unjust.'

'Family Law is a very complex and wide spanning area of law. For example, Care Proceedings should always be funded even if it is clear from the outset that the child is likely be adopted. This is a very serious, complex and emotive matter and it would be unjust for a parent, many of whom are involved in care proceedings are vulnerable, to be without legal advice.'

'Matters of public interest are sometimes so important that legal aid should be granted regardless of likely success. In excess of two years ago, it was agreed that the merits test would be removed in public law childcare cases, similar to the removal of the test in mental health matters. Still however, the Manx public are being let down as a result of Government dragging its feet in changing the legislation to effect this change.'

Homelessness charity *Graih* made reference to exceptions and access to justice:

'There are always exceptions. Sometimes justice will be better served for the most vulnerable by going through proceedings even with little chance of success.'

The General Registry made reference to the difficulty in predicting the chance of success in family cases, and the importance of the Legal Aid Certifying Officer to be able to apply their discretion:

'In family cases success is often difficult to judge. There are very few black and white cases and the certifying officer should have discretion to award legal aid in the difficult cases without necessarily establishing a probability of success. Front loading in terms of early eligibility may also be of assistance to put parties on the right track initially.'

The Equality Adviser referred to matters of public interest as an exception:

'Matters of public interest should be an exception to the rule.'

16 respondents (23%) said that **there should not be exceptions to provide Legal Aid in Civil cases with less than 50% chance of success**. Of these 16 respondents, 4 had been through a Civil court; 3 were members of the public; 6 were Advocates / Judiciary members and 1 was a charity / support worker, and there were 2 'Others'. 3 respondents provided comments.

A respondent who had been through a Civil court expressed concern that Advocates undertaking Civil Legal Aid work currently proceed with cases which have little chance of success:

'And from my experience this is not enforced in any event - the Solicitors receiving the legal aid do not seem to apply this test or advise their clients accordingly where the case is deemed to fail.'

An Advocate / Judiciary member expressed concern that 'public interest' is too subjective to be helpful:

'To grant assistance regardless of financial eligibility on the basis of public interest would surely see the majority of ineligible applicants claiming that their cases should be excepted. A yard stick of "public interest" is too subjective to be helpful - I would argue that where an applicant's advocate or the certifying officer has the view that the prospects of success are less than 50%, the public interest is that the taxpayer should not be funding the cost of the proceedings.'

11 respondents (16%) said that they **did not know** and no comments were made.

4 respondents (6%) answered '**Other**' and 4 comments were made.

A member of the public suggested that exceptions will occur, but cautioned against 'money making' exercises:

'There are always some exceptions in certain circumstances not everything is black and white but they would need to be very carefully considered. It should not be a money making exercise for advocates.'

Further comments from 'Others' included made reference to the potential difficulties in accurately quantifying a case's chances of success.

'Difficulties in quantification could be avoided by talking, as the law itself does, about "balance of probabilities" instead of percentages. However, because of that uncertainty, I don't think the qualifier "strong" should be added. Public interest should be considered where an outcome might assist public life, but without funding the case might not go ahead. Thus, it might modify the taper where appropriate.'

'The 50% (or almost any percentage) is an estimate and estimates are not always correct. While administratively it might take longer, a 'case by case' assessment could be fairer and especially where there is a genuine public interest.'

**Q12 SUMMARY:** 67 respondents (97%) answered the question and 27 provided comments.

- 36 respondents (52%) said that there should be exceptions to provide Legal Aid in Civil cases with less than 50% chance of success. Issues raised included vigorous application of the public interest test and matters encompassing human rights issues. Concerns included assessments based on chances of success being unjust, and application of legal merits test in public law childcare cases.
- 16 respondents (23%) said that there should not be exceptions to provide Legal Aid in Civil cases with less than 50% chance of success. Concerns included the progression of cases with little prospect of success and the subjectivity of the public interest test.
- 11 respondents (16%) said that they did not know.
- 4 respondents (6%) answered 'Other'. Issues of concern referred to difficulties in quantifying chances of success.

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**Q13.** If you have any further comments on the legal merits test please tell us

A text box was provided for comments / suggestions and 13 respondents (19%) submitted responses.

Of these 13 respondents:

- 4 had been through a Civil court
- 2 were members of the public
- 6 were Advocates / Judiciary members
- 1 was a charity / support worker

Respondents who had been through a Civil court expressed concern that a legally aided person should have equality of arms with a privately funded opponent. Another called for prospects of success to be decided independently, and there was also concern that some cases have very little to no chance of success, and in one case this included a legally-aided appeal to the Privy Council at a cost to the public purse:

'Prospects of success should be independently measured or based upon measurable criteria rather than certified by the advocate involved who is affected by being face to face with the applicant.'

'Whilst it is subjective there are clear cases where a case is ill founded and deemed to fail - this is from personal experience.'

Whilst Legal Aid is only available to individuals, not companies or businesses, a member of the public described a position they found themselves in following the loss of their business, including significant debt. They had been advised that they had a strong case against another business that they said was responsible for this loss, with the likelihood that they would also receive compensation for the actions of the other business. However, they were unable to proceed as they could not afford the necessary legal costs, although if they could proceed and win the case, then creditors could be paid outstanding monies.

Another member of the public referred to the importance of access to affordable legal services for all:

‘Everyone should have access to affordable legal advice and/or representation.’

Advocates / Judiciary members made reference to the importance of integrity and competence of those associated with determining the legal merits of a case, and there was a call for those cases with a less than 50% chance of success to be privately funded. Others called for the legal merits test to be reviewed on an ongoing basis to prevent wasted costs, and concern was expressed that it is commonplace in Family Proceedings to have legally-aided cases which have no legal merits. There was further concern that Legal Aid may be granted in cases where proceedings (which could have been avoided) are issued as a result of an individual’s failure to respond to correspondence. There was a call for further scrutiny in such cases, to encourage more timely cooperation which could save time and public money. Reference was also made to cases which may appear to have a 50% or greater chance of success, but are subsequently overturned in the highest Court, and a view that “arbitrary tests” are therefore unjust:

‘It is dependent on integrity and competence of advocates and the person assessing the advocate’s assessment.’

‘It appropriately augments the financial eligibility test and must be maintained and conscientiously applied by advocates. Litigants who are minded to pursue and/or defend proceedings where professional opinion is that their prospects of success are less than 50% should do so solely at their own cost - to commit public resources is unreasonable.’

‘The legal merits test ought to be more thoroughly reviewed by both advocate and legal aid on an ongoing basis to minimise the possibility for wasted costs on the part of all litigants involved in proceedings.’

‘Not enough scrutiny is put on the merits of parties cases. I am aware of several current and previous matters where the legal merits of the other parties cases are zero, and it is inevitable which way the proceedings will go. This is extremely common in family proceedings such as child contact matters where it is clear that one party is refusing contact and the children as pawns to get at the other party. Parties oppose Applications with on no basis other than they don’t want the other party to have contact with the child. There is no scrutiny of these parties’ legal merits. More scrutiny would decrease the number of Applications, decrease the Court Applications and reduce time and costs to all interested parties (Advocates, Legal Aid, the Courts, Court Welfare Officers etc). Also, there is next to no scrutiny of Legal Aid Applications of parties who apply for Legal Aid who are applying because proceedings have been issued which could have been avoided if they responded to correspondence. On countless occasions I have written to the other party in proceedings using a Green Form and got no response. A Legal Aid Application has then had to be submitted seeking funding for a Court Application based on the fact that despite several correspondences, no response has been received. Once the other party gets notice of the Application then they seek funding. This adds extra unnecessary

time and costs to proceedings which would have been avoided if the party cooperated in discussions early on. This should be reviewed.'

'There are cases where what may appear to be to a legal aid assessor as fifty percent or some other prospect percentage are often surprisingly overturned often in the highest court. Ilott (Respondent) v The Blue Cross and others (Appellants) [2017] UKSC 17 on appeal from: [2015] EWCA Civ 797 is one example. In another case on a will dispute which also went to the UK Supreme Court cost were ordered to be paid by the solicitor's underwriter because the underwriter had insisted the matter be taken to the highest court in the land. Marley v Rawlings & ANO UK Supreme court [2014] UKSC 2 On appeal from: [2012] EWCA Civ 61 and specifically in relation to costs: 2015 [UKSC] 51. The defendant with deep pockets can push matters and arbitrary tests such as 50/50 are frankly unjust.'

**Q13 SUMMARY:** 13 respondents (19%) answered the question.

A number of concerns were reiterated including:

- Inequity between legally-aided and privately-funded cases.
- The pursuit of cases with little or no chance of success at a cost to the public purse.
- Subjectivity / arbitrary nature of assessing cases' prospects of success.

Suggestions included:

- Reviewing the legal merits test by both Advocate and Legal Aid on an ongoing basis.
- Increasing the scrutiny of the legal merits of particular cases where one party may be acting unreasonably (e.g. child contact matters).
- Increasing scrutiny in circumstances in which a party has failed to respond to correspondence which has led to proceedings being issued and unnecessary Legal Aid expenditure.

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## 4.5. Personal responsibilities & financial contributions

Q14. Do you think people are aware of their personal responsibilities when they are granted Civil Legal Aid?

67 respondents (97%) answered the question, and the results are shown in Table 10 below. A text box was also provided for comments.

**Table 10. Views on awareness of personal responsibilities regarding Legal Aid**

Response	Number	%
Yes, people are aware of their personal responsibilities	23	33
No, people are not aware of their personal responsibilities	26	38
Don't know	16	23
Other (please state)	2	3
Not answered	2	3
Total	69	100

21 respondents provided further comments to support their answers.



23 respondents (33%) said that **people are aware of their personal responsibilities when they are granted Legal Aid**. Of these respondents, 4 had been through a Civil court; 2 were members of the public; 15 were Advocates / Judiciary members, and there were 2 'Others'. 12 respondents provided comments.

A respondent who had been through a Civil court expressed concern that legally-aided clients are treated differently to private clients:

'I do not believe that a lawyer should even be aware that their client is in receipt of legal aid - they are treated differently and sneered at by advocates.'

A member of the public raised the question of accessibility to information:

'Is the information provided in different languages and formats i.e. Braille, access to interpreters etc.'

Advocates / Judiciary members indicated that they make clients fully aware of their responsibilities, which includes providing information at the outset of a case and as the case progresses. Reference was also made to Advocates understanding and exercising their duties in this regard, in addition to advising legally-aided clients as if they were fee-paying clients of reasonable means. It was suggested that if clients are not aware of their responsibilities, questions should be asked of the Advocate. It was also suggested that in circumstances where false claims are made by an individual during their application for / receipt of Legal Aid, a distinction should be drawn between those who inadvertently make mistakes in the process and those who intentionally make false declarations:

'They are aware of their responsibilities but often they do not have a choice.'

'Advocates explain this very clearly to all those in receipt of legal aid, not just at the outset but also throughout the progress of the matter. When legal aid is trying to obtain information from a client, the Advocate is also notified and the Advocate will also contact the client and remind them of their duty to cooperate.'

'If they are not aware, questions need to be asked of the Advocate, who should make Clients aware from the outset.'

'People are aware of their obligations, but it is difficult to tell how seriously they take these obligations as there are few well publicised incidents of legal aid enforcing against litigants who have made a false declaration. I think a distinction should be drawn between inadvertent errors in declarations and those who set out to mislead the system and the latter should be subject to rigorous prosecution which is widely publicised to act as a deterrent for others.'

One 'Other' commented that whilst clients are made aware of their responsibilities, they may be at particularly challenging or emotionally-charged times in their lives which can adversely affect their judgement. Another referred to different approaches within legal practices:

'Because the firms I have worked for explain this, but this is not always the case.'

26 respondents (38%) said that **people are not aware of their personal responsibilities**. Of these respondents, 6 had been through a Civil court; 8 were members of the public; 5 were Advocates / Judiciary members; 1 public sector employees; 1 was a charity / support worker, and there were 5 'Others'. 4 respondents provided comments.

One respondent who had been through a Civil court referred to their personal experience of a no-fault divorce in which their ex-wife was granted 75 hours' Legal Aid and took 2 years to settle at a significant cost to the respondent in terms of their private legal fees:

'My ex-wife was granted 75 hours' legal aid to resolve a simple no blame divorce and financial settlement, it took 2 years and cost me personally £17,000 not to mention as a tax payer I paid towards her legal aid only for her to drag the matter out over the 2 years and eventually come to a conclusion that we verbally decided at the start of divorce proceedings.'

One Advocate / Judiciary member called for changes to the Legal Aid forms and suggested that the Legal Aid Office should advise individuals of their personal responsibilities in more detail. Another expressed concern that there can be a lack of incentive to resolve matters on the part of the client and/or Advocate, which adds to the length of the case and its associated costs:

'The forms need to be streamlined and legal aid should have some form of pro-forma communication with the assisted person to advise them in more detail of their personal responsibilities. The Advocates applying are often dealing with very important matters that the persons often focus on and this message should be re-iterated by legal aid in my opinion.'

'Many parties (and some Advocates) are not interested in looking for a resolution to matters and run hopeless cases and delay the inevitable.'

One further comment from an 'Other' referred to some of the issues that individuals may face when they become involved in a difficult legal matter in which they have little or no experience, which may adversely affect a full understanding of their personal responsibilities:

'Those who deal with the law infrequently are less likely to know about their rights and responsibilities. When they do get involved because of an incident they are going to be wrapped up in trying to prove their innocence (or at least mitigation) more than knowing what their responsibilities are, or be able to always comprehend them cogently. I appreciate 'that is the way it is' but there are many innocent victims who end up dealing with the law because of the actions of others e.g. serious car incidents, unwarranted assaults.'

16 respondents (23%) said that they **did not know if people are aware of their personal responsibilities**. Of these, 2 had been through a Civil court; 5 were members of the public; 1 was an Advocate/ Judiciary member; 2 were public sector employees; 1 was a charity / support worker, and 5 were 'Others'. 3 respondents provided comments.

One person who had been through a Civil Court indicated that in their experience, the Advocate did not make it clear to them what their personal responsibilities were.

One Advocate / Judiciary member expressed concern in regard to a person's understanding of their responsibilities when they are granted Legal Aid, and called for contributions to be effectively collected, with sanctions applied if contributions are not received:

'I fear that too many applicants for legal aid assistance see it as "an all or nothing" option and that they do not appreciate that they might be required to contribute. Where

contributions are required they should be effectively collected so that in the event of default the legal assistance is simultaneously suspended / withdrawn.'

2 respondents (3%) said that their answer was 'Other' and both respondents were Advocates / Judiciary members. Both respondents provided comments.

One Advocate / Judiciary indicated that since the introduction of the Statutory Charge, the legal profession is duty bound to inform clients how this may impact upon a potential settlement, but suggested it may be useful to raise awareness further. They also referred to the ongoing review that is undertaken in terms of the client's position (e.g. change of circumstance) and the duty of the practitioner to inform Legal Aid regarding settlement offers. Another Advocate referred to the quality of advice provided to the client:

'It will depend upon the quality of the advice given to them when they complete the relevant documents.'

**Q14 SUMMARY:** 67 respondents (97%) answered the question and 21 provided further comments.

- 23 respondents (33%) said that people are aware of their personal responsibilities when they are granted Civil Legal Aid. Reference was made to the work that is undertaken by Advocates to inform and advise their clients of these responsibilities. Concern was expressed that some clients may not fully appreciate and/or comply with them, which in some cases may be due to the challenging circumstances they are facing. It was also suggested that a distinction should be drawn between unintentional errors made by individuals, and intentional wrongdoing.
- 26 respondents (38%) said that people are not aware of their responsibilities. Concerns included the unnecessary protraction of cases and lack of incentive to conclude cases. It was suggested that the duty of advising an assisted person of their personal responsibilities should be shared between the Advocate and the Legal Aid Office.
- 16 respondents (23%) said that they did not know if people are aware of their responsibilities. It was suggested that in cases where financial contributions are required, any such contributions should be effectively collected.

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Q15. The more people who are eligible for Civil Legal Aid, the greater the cost to the taxpayer. This cost must be balanced against the need for access to justice. Should we consider making Civil Legal Aid available to more people if they were required to pay financial contributions?

68 respondents (99%) answered the question, and the results are shown in Table 11 below. A text box was also provided for comments.

**Table 11. Views on extending availability of Civil Legal Aid with contributions**

Response	Number	%
Yes, available to more people with financial contributions	55	80

No, not available to more people	6	9
Don't know	5	7
Other (please state)	2	3
Not answered	1	1
Total	69	100

24 respondents provided further comments to support their answers.

55 respondents (80%) said that **Civil Legal Aid should be made available to more people with financial contributions**. Of these respondents, 8 had been through a Civil court; 9 were members of the public; 20 were Advocates / Judiciary members; 3 public sector employees; 2 were charity / support workers, and there were 13 'Others'. 18 respondents provided comments, including the IoM Law Society which provided a combined response to Q10-Q16 (included at Q10).

A member of the public made a suggestion regarding contributions:

'However this perhaps needs to be a tiered system re sliding scale of contributions relative to income.'

Advocates / Judiciary members made reference to access to justice and expressed concern for those who do not qualify for Legal Aid and cannot afford to pay legal fees at private rates<sup>6</sup>. There was further concern that there are frequent cases in which an individual's opponent is, for example, an insurer or the Government, which the respondent suggests is equivalent of a 'David v Goliath' situation for individuals under the current system. It was also suggested that Legal Aid costs could be reduced with proper administration and reviews:

'Absolutely, access to justice is so important. The current eligibility criteria leaves out a large proportion of society who do not fit into this category but who also can often not afford to pay for matter privately. This has so many knock-on-effects to the slowing of the Court system, people's faith in the system and prospects of success.'

'There is a huge number of people who do not qualify for legal aid but cannot afford to progress good cases through the court. Insurers and Government, being the opponent in a large number of civil cases are aware of this and, if there is no legal aid funding in place, sometimes drag matters out and make progressing cases more difficult, with the clear intention to ensure the individual cannot afford to pursue their case. By extending legal aid with a contribution to more people in our society, we can ensure that fewer people are taken advantage of in this way. Currently we operate a David v Goliath legal funding system, which disadvantages the vast majority of our population.'

'If properly administered and reviewed, costs could be reduced in other ways.'

Homelessness charity *Grain* suggested that Legal Aid should be available to all, and in particular those who are most vulnerable:

'Legal Aid should be available to all and finances should never be a barrier to access to justice. This must be borne in mind across the system, particularly with regards to the most vulnerable.'

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<sup>6</sup> It is understood that Manx Advocates' private rates vary between £250 per hour and £550 per hour (based on information provided by the IoM Law Society in 2018).

The General Registry suggested that individuals who are ineligible for qualifying benefits (and Legal Aid) but cannot afford private legal fees could still have access to justice if they were able to make reasonable contributions:

'Clearly there needs to be a cut-off point for eligibility to protect public finances but there are a number of individuals who currently don't qualify for state benefits but cannot afford to pay privately. In such circumstances reasonable contributions may assist in terms of alleviating some pressure on public finances but still providing proper access to justice.'

The Equality Adviser supported widening access to Civil Legal Aid with contributions from an access to justice perspective:

'At present the high cost of engaging legal services versus qualifying for legal aid results in a middle group who cannot access justice. Making civil legal aid available to a wider group if they were to pay financial contributions would broaden access to justice.'

Further comments from 'Others' indicated that early legal advice (e.g. Green Form) can help put an individual on the right track and potentially prevent unnecessary or protracted subsequent legal proceedings. Reference was also made to the importance of continuing to apply a legal merits test for Civil Legal Aid applications. Another respondent expressed particular concern that individuals who are subject to mistreatment either domestically or professionally should be eligible for means-tested Legal Aid:

'As long as it is means tested and that the individual is in a dire predicament - eg - a spouse trapped into a marriage where they have no independent means of helping themselves get out of it. I believe that the same should be for someone in a job who is being unfairly treated. There must be many examples of where legal aid is required that I have no idea about. Basically if there is mistreatment and the individual needs and wants to escape it.'

6 respondents (9%) were **not in support of making Civil Legal Aid available to more people**. Of these respondents, 3 had been through a Civil court and 3 were Advocates/Judiciary members. 2 respondents provided comments.

Both comments were made by Advocate / Judiciary members. One Advocate indicated that the right level of Legal Aid eligibility and contributions had already been struck. Another referred to the different emphasis on "access to justice" between Civil and Criminal proceedings, and expressed concern that the level of Advocates' private rates may be a greater barrier to access to justice than the availability of Legal Aid:

'It is my view that Legal Aid currently strikes the right balance between availability with contributions and not being eligible and I would be adverse to amendment.'

'The "access to justice" mantra does not have the same emphasis in civil proceedings as it does in criminal proceedings where the latter are initiated by the state and hold the prospect of conviction and punishment. In claiming to champion "access to justice" the Law Society appears not to recognise that the rates charged by its members are likely a far greater threat to accessing justice than the availability of legal aid. There appears to be no logical explanation for the gulf between the legal aid hourly rates accepted by advocates and the rates then charged of non-legally aided litigants.'

5 respondents (7%) said that they **did not know if Civil Legal Aid should be made available to more people**. Of these respondents, 1 had been through a Civil court and 4 were members of the public. 2 respondents provided comments.

One member of the public expressed concern that there is some abuse of the current system and questioned whether, in future, awarded costs would be paid back to Government:

'At present I feel the system is abused by some. It would depend on the contributions and if the person won the case and received costs / expenses would they be paid back in full to the taxpayer.'

2 respondents (3%) said that their answer was '**Other**'. Of these respondents, 1 was a member of the public and 1 was an Advocate / Judiciary member. Both respondents provided comments.

An Advocate / Judiciary suggested that Government should support more access to alternative means of dispute resolution:

'I don't believe that legal aid should be extended but I believe that Government should make it easier for alternative means of dispute resolution to be considered.'

**Q15 SUMMARY:** 68 respondents (99%) answered the question and 24 provided comments.

- 55 respondents (80%) said that Civil Legal Aid should be made available to more people with financial contributions. Concern was expressed for those who neither qualify for Legal Aid nor can afford to pay private legal fees, and in particular those who face a legally-represented party (e.g. insurance company / Government). Suggestions focused on widening the contribution bands to extend eligibility and provide greater access to justice.
- 6 respondents (9%) said that Civil Legal Aid should not be available to more people. Concern was expressed that the cost of private rates charged by Advocates is a significant barrier to access to justice. It was also highlighted that Civil proceedings do not hold the prospect of conviction (as in Criminal proceedings) and it was suggested that current availability / contributions are adequate.
- 5 respondents (7%) said that they did not know if Civil Legal Aid should be made available to more people.
- 2 respondents (3%) answered 'Other'.

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Q16. If you have any further comments on personal responsibilities or financial contributions please tell us

A text box was provided for comments / suggestions and 13 respondents (19%) submitted responses.

Of these 13 respondents:

- 3 had been through a Civil court

- 2 were members of the public
- 6 were Advocates / Judiciary members
- 2 were 'Others'

Respondents who had been through a Civil court had different views. One suggested that the all Legal Aid should be repaid and another suggested that cost is irrelevant to provide access to justice:

'All [legal] aid should be 100% repaid.'

*'The cost must be balanced against the need for access to justice says it all. The right to justice should trump everything, without putting a price tag on it.'*

One member of the public expressed their concern regarding the conduct of those individuals who do not accept reasonable offers from their opponent and who may not be in receipt Legal Aid. Another called for inappropriate litigation to be limited:

'Frivolous litigation should be limited.'

There were a range of comments from Advocate / Judiciary members. One respondent made reference to alternative dispute resolution (ADR) and suggested that there should be more focus on exhausting ADR options. They also expressed concern in relation to legally-aided individuals who refuse reasonable offers to settle and suggested that such persons are irresponsible. Others called for more clarity and explanation regarding financial contribution calculations and it was suggested that there should be more scrutiny to prevent abuse of the Legal Aid system by a minority. There was also concern that in divorce cases, there may instances in which a person does not defend a divorce due to their ineligibility for Legal Aid and an inability to pay for legal defence on a private basis however, costs may be awarded against them by a legally-aided claimant. Another Advocate suggested that more could be done to reassess the legal merits of a case as it proceeds through Court to encourage responsible use of Legal Aid and reduce costs:

'The calculations for financial contributions should be more clearly explained.'

'The contributions system generally works well, as does the obligation on the client to notify legal aid of changes, but there will always be a minority who abuse the system and this ought to be subject to greater scrutiny.'

'I haven't acted in divorces for a number of years but my memory is the problem arises where if the defendant in a divorce chooses not to defend the case essentially because the defendant can't afford to and [does not qualify] qualifies for legal aid, the fact the claimant is on legal aid when the decree is granted [and] cost[s] are awarded to the claimant, [and] recovered from the defendant. This seems to me to be unjust.'

'Legal merits of cases should be reviewed more. Legal Aid should do more to consider Judgements and Reports throughout proceedings to review whether a party's matter continues to have legal merits. By enforcing this more would send a message out to all that Legal Aid must be used responsibly. This in turn would reduce time and costs.'

Further comments from 'Others' included concern for the large number of people who neither qualify for Legal Aid, nor can afford to pay private legal fees for any length of time which can leave those with middle incomes at a distinct disadvantage compared to those to

qualify for Legal Aid or can afford to pay privately. Another respondent asked if contributions could be paid at the end of a case via Income Tax codings:

‘As many more prosperous families have fixed outgoings some legal cases can leave them much worse off even if they win e.g., in cases of long duration the costs can rise beyond their ability to borrow. This should be looked at, as it seems an unfair penalty which hits the middle classes more than either the very rich (who can afford it) and the poor (who have full legal aid).’

‘Would it be possible for personal contributions toward the legal aid from the individual be paid back via tax coding or at the end of the dispute?’

**Q16 SUMMARY:** 13 respondents (19%) provided comments.

A number of concerns were raised including:

- Public funding of ‘frivolous’ litigation.
- Inappropriate conduct of legally-aided individuals who do not accept reasonable offers from their opponent.
- Costs awarded against undefended individuals (e.g. in divorce cases) by legally-aided claimants.
- Access to justice being limited to the ‘very rich’ and the ‘poor’, and excluding those individuals who neither qualify for Legal Aid nor can afford to pay private legal fees.

Suggestions included:

- Repayment of all Legal Aid by recipients.
- Prioritising access to justice, irrespective of cost.
- Increasing the focus on alternative dispute resolution.
- Greater clarity and explanation of financial contribution calculations.
- Greater focus on the legal merits of cases as they proceed through Court (e.g. consideration of judgments / reports).
- Legal Aid contributions to be repaid via Income Tax codings or at the end of a dispute.

## 4.6. Statutory Charge

Q17. Could we improve the way in which people are made aware of the Statutory Charge and its implications when they apply for Civil Legal Aid in cases which could lead to money or property being recovered?

69 respondents (100%) answered the question, and the results are shown in Table 12 below. A text box was also provided for comments.

**Table 12. Views on whether awareness of Stat. Charge implications could be improved**

Response	Number	%
Yes, we could improve how people are made aware	41	59
No, we could not improve how people are made aware	6	9
Don’t know	18	26
Other (please state)	4	6



Not answered	0	0
Total	69	100

18 respondents provided further comments to support their answers.

41 respondents (59%) said **that the way in which people are made aware of the Statutory Charge could be improved**. Of these 41 respondents, 8 had been through a Civil court; 12 were members of the public; 11 were Advocates / Judiciary members; 1 was a public sector employee; and there were 9 'Others'. 10 comments were provided.

A respondent who had been through a Civil court suggested that the legally-aided person should always be kept updated of details of the Statutory Charge:

'Yes. As long as it stated from the start and all circumstances are taken in consideration and a final figure is known or updated at the earliest opportunity.'

A member of the public suggested that information should more accessible:

'There should be readily available information in different formats/languages etc to ensure full understanding.'

Other Advocates / Judiciary called for more clarity and one suggested it was a waste of time for those applying for Legal Aid:

'It could be clearer how this operates.'

'The rules are written in a way which is difficult for ordinary people to understand.'

'The criteria for this is not clear at all and never applies to people applying for Legal Aid in any event. It is a waste of time.'

Further comments from 'Others' included a suggestion to provide more Legal Aid information online, and access to the Civil Legal Aid Eligibility Calculator<sup>7</sup> was referenced:

'More detailed information about legal aid should be available online, and better organised e.g., the online legal aid calculator isn't linked to the Government website.'

6 respondents (9%) said that **the way in which people are made aware of the Statutory Charge could not be improved**. Of these 6 respondents, 1 had been through a Civil court and 5 were Advocates / Judiciary members. 2 comments were made.

Advocates / Judiciary members made reference to the adequacy of current processes in place, and the duty of the Advocate to explain this legal matter:

'The statutory charge is specifically explained by the Advocate and both the Advocate and the client sign a separate sheet, which in itself explains the statutory charge, to confirm that it has been explained, understood and accepted.'

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<sup>7</sup> The Civil Legal Aid Eligibility Calculator can provide an indication as to whether a person is likely to pass the financial test in order to be granted Civil Legal Aid in the Isle of Man. It is currently accessible via the IoM Government's 'Online Services' website <https://services.gov.im/civil-legal-aid-calculator/> which is separate from the Legal Aid Office website <https://gov.im/legalaid>.

'I am not sure what can be done beyond the current system. It is a legal issue so it continues to be appropriate that it is explained by the Advocate.'

18 respondents (26%) said they **did not know** if the way in which people are made aware of the Statutory Charge could be improved. 2 had been through a Civil court, 3 were members of the public; 5 were Advocates / Judiciary members; 2 public sector employees; 2 charity / support workers; and 4 'Others'. 2 comments were made.

One Advocate / Judiciary member indicated that whilst it is a matter for an Advocate to explain, it is rarely required:

'Again, an advocate needs to explain this. It is rarely applicable.'

An 'Other' respondent who was mid-divorce proceedings and in receipt of Legal Aid was unaware of the Charge:

'I did not know about this statutory charge.'

2 respondents (3%) answered '**Other**' and both provided comments.

One respondent had been through a Civil Court and indicated that they disagreed with the Statutory Charge and said that legal services should be free. An Advocate / Judiciary member advised that the way in which clients are made aware of the Statutory Charge is dependent on the competence of the Advocate. They also suggested that the Government could also develop its online resources (e.g. guidance videos).

The IoM Law Society and another Advocate / Judiciary member did not choose a specific answer to Q17 (i.e. Yes / No / Don't know / Other) but both submitted comments. For the purpose of analysis, both responses (3%) have been categorised as '**Other**' and their comments are included below.

The IoM Law Society provided a combined response for Q17-Q20 which is included in full below. In its response, the Society set out the objective of the Statutory Charge and expressed concern that it does not consider the Legal Aid Office to be enforcing it effectively. The Society provided details of the responsibilities of Advocates to their clients, and how these obligations are applied. Concern was expressed that costs are not being recovered if a legally-aided party has acted unreasonably and failed to recover their costs from the other side, which may have a number of consequences for Legal Aid, the unassisted party and the Court. The Society also made clear its position that it does not support the repayment of a Statutory Charge if it could 'lead to injustice to vulnerable members of society'.

'The objective of the Statutory Charge is to place an assisted person in the same position as the unassisted person. This is only right and proper. It should ensure "an equality of arms" as between assisted and unassisted parties. However, the IOMLS is concerned that it is not being applied and enforced effectively by the Legal Aid Office. Where those who have the benefit of Legal Aid successfully recover or preserve money or property and the legal costs of doing so are not recovered in full from another party, the Statutory Charge should be applied in accordance with the regulations upon that money or property. There should be an increased focus on this as it can only benefit the proper administration of the scheme.

The Statutory Charge is explained to a legally aided client by the Advocate when the legal aid form is being signed. The Statutory Charge is explained on a separate sheet, which

must be signed by the Advocate confirming that they have explained the same, and the client confirming that they understand. Advocates are explaining the meaning of the Statutory Charge to their clients, however, the same is not being enforced, which may result in legally aided persons taking less notice of the warnings and explanations provided. The role of the Advocate is to advise their client in the same way as an Advocate would advise a fee paying client of reasonable means or a client who is subrogated by insurance. There should, therefore, be no difference in advice due to the nature of funding.

Currently, where a party is in receipt of Legal Aid in a case involving another party who is not, then the assisted party is potentially at an advantage in that they have no incentive to narrow the issues in a case or look to a settlement for fear of costs consequences. The current interpretation and application of the Legal Aid Statutory Charge causes this imbalance, as the Legal Aid Office is not using the Statutory Charge to recover costs where a legally aided party has acted unreasonably and has failed to recover some or all of their costs from the other side. This results in increased cost to the Legal Aid fund and/or the unassisted party, as well as straining court resources.

For example, the cost consequences of Part 7 Chapter 6 Offers are not currently being applied to assisted parties, namely that if an offer is rejected but ultimately is not beaten at trial, the inter partes cost consequences are not applied and enforced against the property recovered or preserved by the assisted party, as a result of the Legal Aid Office not applying the Statutory Charge and thus the court not making costs Orders. Advocates should seek permission from the Legal Aid Office to reject an apparently reasonable offer and will have to justify their advice to the LACO. If the LACO agrees with the Advocate, the legal aid certificate will continue. Costs Orders can, of course, be made against the Treasury (as a result of the conduct of a legally aided party) in certain circumstances. Whilst an Advocate representing a party who is legally aided must continue to certify that the case has more than 50% prospects of success, and will report to the Legal Aid Office if a client is not prepared to accept a reasonable offer of settlement, without the added pressure of a costs Order being made against the legally aided party, and enforced via the Statutory Charge, there is not the same incentive to settle as there is on a non-legally aided party. That said, Advocates will advise their clients in such a situation that legal aid may be withdrawn if they do not behave unreasonably, which is a tool that a privately funded Advocate does not necessarily have available.

In family law financial matters, the Statutory Charge should apply against any property recovered or reserved and should be enforced, to ensure that the State is not paying for legal costs that could otherwise be paid by the individual concerned.

A proper application of and enforcement of the Statutory Charge would save cost to the Legal Aid fund, the administration of justice and unassisted litigants with no effect upon access to justice. It would ensure a proper "level playing field" in disputes.

The IOMLS however does not support the repayment of the Statutory Charge secured on an assisted person's main or only dwelling other than upon the sale of same as this can potentially lead to injustice to vulnerable members of society. If, however, there is no property upon which to secure the Statutory Charge, a repayment plan should be put in place or other mechanism agreed for the repayment of costs to legal aid. This should be actively monitored and enforced. There should, of course, be extreme caution exercised if the Statutory Charge is being repaid from damages/financial relief awarded, and care must be taken not to erode such damages/financial relief to an extent such to negate the purpose for which they were awarded.'

Another Advocate / Judiciary member suggested that it should be incumbent upon an Advocate to ensure that a legally-aided client is aware of the possibility of the Statutory

Charge being applicable. Reference was made to *'Paying for your Civil Legal Aid'* published by the Legal Aid Agency (which administers Legal Aid in England and Wales) as an example of guidance which could be provided:

'In addition to the possibility / likelihood of the applicability of the statutory charge being brought to an applicant's attention when making application for legal aid assistance, it should be incumbent upon any assisting advocate to satisfy him / herself that the assisted person is aware of the possibility. The granting of legal aid should include assisted persons being provided with literature spelling out the statutory charge - for example see [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/860909/Client\\_Legal\\_Aid\\_Leaflet.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/860909/Client_Legal_Aid_Leaflet.pdf).'

**Q17 SUMMARY:** 69 respondents (100%) answered the question and 18 provided comments.

- 41 respondents (59%) said that improvements could be made to the way in which people are made aware of the Statutory Charge. Advocates suggested that information could be clearer and easier to understand and others suggested that more accessible information (e.g. online) would be helpful.
- 6 respondents (9%) said that improvements could not be made, and referred to the adequacy of current processes which the Advocate is duty bound to undertake.
- 18 respondents (26%) said they did not know if improvements could be made. One legally-aided person who was mid-divorce indicated that they were not aware of the Statutory Charge.
- 2 respondents replied 'Other' and a further 2 provided standalone responses (totaling 6%). This included the IoM Law Society which (in its combined response to Q17-Q20) expressed concern that it does not consider the Statutory Charge to be effectively enforced by the Legal Aid Office. It also clarified the Society's position which does not support the repayment of the Statutory Charge if lead to injustice for vulnerable individuals. Another Advocate suggested that literature, similar to that issued by the Legal Aid Agency in the UK could be helpful to legally-aided persons.

Q18. Could we improve the way in which the Statutory Charge is enforced, to ensure that Government is able to recover Civil Legal Aid costs when a person is awarded money or property as a result of their legally-aided case?

68 respondents (99%) answered the question, and the results are shown in Table 13 below. A text box was also provided for comments.

**Table 13. Views on whether enforcement of Statutory Charge could be improved**

Response	Number	%
Yes, enforcement of Statutory Charge could be improved	31	45
No, enforcement of Statutory Charge could not be improved	8	12
Don't know	25	36
Other (please state)	4	6
Not answered	1	1

Total	69	100
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13 respondents provided further comments to support their answers.

31 respondents (45%) said that **the way in which the Statutory Charge is enforced to recover Civil Legal Aid costs could be improved**. Of these 31 respondents, 7 had been through a Civil court; 8 were members of the public; 8 were Advocates / Judiciary members; 2 were public sector employees; 1 was a charity / support worker, and there were 5 'Others'. 7 comments were made.

A respondent who had been through a Civil court suggested that repayment should be made within 30 days at commercial rate (i.e. not Legal Aid rates):

'Make it 30 days and repayable at commercial rates of the [other] party to make it truly fair.'

The IoM Law Society provided a combined response to Q17-Q20 which is included at Q17 above, and details the Society's concerns in regard to the enforcement of the Statutory Charge.

There were further comments from other Advocates / Judiciary members. These included a suggestion that an Advocate should be required to report to Legal Aid within 7 days of receiving a final Order to support early enforcement measures. Another suggestion was for liabilities to be secured against appropriate assets, or repayment required within a finite period, with both subject to interest. There was also a concern that the Statutory Charge is not being enforced by Government:

'There should be a requirement for the Advocate to report to Legal Aid within 7 days of receipt of a final Order in a case where the statutory charge applies. Legal Aid can then take steps in early course, if needed.'

'Liability pursuant to the operation of the statutory charge should be secured against any appropriate assets (real estate / investments) owned by the assisted person. Where there is no appropriate security available repayment should be required within a finite period. In either event interest (at a discounted rate) should accrue.'

'I understand that the Government does not currently enforce the statutory charge, which it clearly should do.'

Further comments from an 'Other' called for fairness:

'Most likely it would be possible, but would have to be fair and equitable.'

8 respondents (12%) said that **the way in which the Statutory Charge is enforced to recover Civil Legal Aid costs could not be improved**. Of these 8 respondents, 1 had been through a Civil court; 5 were Advocates / Judiciary members, and there were 2 'Others'. 2 comments were made.

An Advocate / Judiciary member made reference to the existing measures in place to enforce the Statutory Charge which they considered to work well. They indicated that there is a useful flowchart available to Advocates which sets out whether or not the Charge should be

applied and if there is any uncertainty there is the option to speak to the Certifying Officer who will provide assistance.

The General Registry made reference to Family cases in which two homes may be needed to provide for a child to stay overnight (e.g. with either parent) in which case it was suggested that enforcement should be deferred. Reference was also made to the role of the Court in the commencement and regulation of enforcement, in addition to the option to require its delay:

‘Particularly in family cases where resources are tight and housing needs in terms of the need to stretch resources if at all possible to allow two homes where a child of the family can reside overnight mean that enforcement of statutory charges should generally remain deferred.

There should be a time limit within which proceedings to enforce the statutory charge should at least be commenced, which is not wholly dependent upon a timeline and the circumstances dictated by the paying party who previously received legal aid subject to that statutory charge. To allow those persons to dictate the timeframe could be viewed as wholly unfair and open to either actual abuse or certainly the perception of abuse.

The ability to commence enforcement steps will of course be subject to regulation by the Court and delay on enforcement could be required once commenced on a case-by-case and appropriate scrutiny basis.’

25 respondents (36%) said that **they did not know** if the enforcement of the Statutory Charge should be improved. Of these 25 respondents, 3 had been through a Civil court; 6 were members of the public; 9 were Advocates / Judiciary members; 1 was a public sector employee; 1 was a charity / support worker and there were 5 ‘Others’.

4 respondents (6%) answered ‘**Other**’. Of these 4 respondents, 1 had been through a Civil court; 1 was a member of the public and there were 2 ‘Others’. 4 provided further comments.

One respondent from the ‘Other’ category called for the needs of children who may be living in the family home to be considered:

‘When enforcing house sales the needs of resident children should also be considered.’

**Q18 SUMMARY:** 68 respondents (99%) answered the question and 13 provided comments.

- 31 respondents (45%) said that the way in which the Statutory Charge is enforced to recover Civil Legal Aid costs could be improved, including the IoM Law Society.
- 8 respondents (12%) said that the way in which the Statutory Charge is enforced could not be improved. This included the General Registry which supported appropriate deferment of enforcement measures, particularly in some family cases involving children.
- 25 respondents (36%) said that they did not know if the enforcement of the Statutory Charge should be improved.
- 4 respondents (6%) answered ‘Other’.

Q19. Should there be a requirement for a person to pay the Statutory Charge on the sale of a property or within a defined period (e.g. 5 years) whichever is sooner?

66 respondents (96%) answered the question, and the results are shown in Table 14 below. A text box was also provided for comments.

**Table 14. Views on conditions for requiring Statutory Charge to be paid back**

Response	Number	%
Yes, on sale of property / within defined period	31	45
No, not on sale of property / within defined period	9	13
Don't know	17	25
Other (please state)	9	13
Not answered	3	4
Total	69	100

20 respondents provided further comments to support their answers. This included the IoM Law Society which provided a combined response to Q17-Q20 (included at Q17).

31 respondents (45%) said that **there should be a requirement for a person to pay the Statutory Charge** on the sale of a property or within a defined period. Of these 31 respondents, 7 had been through a Civil court; 7 were members of the public; 8 were Advocates / Judiciary members; 2 public sector employees; 2 were charity / support workers, and there were 5 'Others'. 4 comments were made.

An Advocate / Judiciary member suggested that a 5-year period with the opportunity to extend could work:

'5 years seems sensible, but there needs to be provision for this to be extended if the circumstances justify it.'

The Equality Adviser made reference to dependent children and adults who may be resident at a property, and suggested that in such cases enforcement within a fixed period should not apply:

'Do not enforce statutory charge within a fixed period if there are dependents (i.e. children still in full time education or disabled children or adults) living in the property.'

One 'Other' respondent was supportive but urged caution if there were mitigating circumstances that could lead to additional costs for Government:

'Unless there were mitigating circumstances such as paying the charge would result in the Govt having to pick up other costs in other areas e.g. benefits.'

9 respondents (13%) said that **there should not be a requirement for a person to pay the Statutory Charge** on the sale of a property or within a defined period. Of these 9 respondents, 3 had been through a Civil court; 1 was a member of the public; 3 were Advocates / Judiciary members, and there were 2 'Others'. 3 comments were made.

Advocates / Judiciary members made reference to the individual merits of each matter and submitted that the needs and wellbeing of a family should come before the enforcement of a statutory charge:

'Each matter should be considered on its individual merits.'

'If a client receives their house as part of a divorce, and have young children with a limited ability to work, the needs and wellbeing of the family should come before the enforcement of the statutory charge. A specific time period is therefore inappropriate, however, it could be enforced upon the youngest child reaching the age of 18, for example. In cases involving children, unwell and vulnerable individuals, there should be a proper process for enforcement, with the ability for a Judge to decide on how the charge should be enforced and when, by way of protection.'

The General Registry referred to the general adequacy of the current system, and submitted that enforcement would not be desirable if it could interfere with a family's housing need:

'The current system is about right. Sale of a property may occur to downsize but where there is need for the equity to provide for further accommodation for children of the family it would not be desirable to see enforcement interfering with the family's housing need.'

17 respondents (25%) said that **they did not know** if there should be a requirement for a person to pay the Statutory Charge on the sale of a property or within a defined period. Of these 17 respondents, 1 had been through a Civil court; 7 were members of the public; 6 were Advocates / Judiciary members; 1 public sector employee, and there were 2 'Others'. 4 comments were made.

A member of the public called for the needs of resident children and elderly people to be taken into account:

'This would have to be a case by case decision re who else has the property as their main home... children, dependent elders.'

One Advocate / Judiciary member expressed concern that such a requirement could cause undue hardship and another suggested a 'claw back' option

'Could be a percentage based claw back potentially.'

One respondent from the 'Other' category expressed concern that from experience, there can be additional and unexpected costs when a parent has dependent children to care for:

'Personally without knowing too much about this area - I would request 10 years in which to repay. My circumstances with children bring all kinds of costs that you don't expect. You get out of 1 mess and then straight back into another.'

9 respondents (13%) answered '**Other**'. Of these 9 respondents, 1 had been through a Civil court; 5 were Advocates / Judiciary members, and there were 3 'Others'. 9 comments were made.

A respondent who had been through a Civil court expressed their opposition to the Statutory Charge, and wider concern regarding the Island's justice system:

'Disagree with demanding part of people's property because they were forced to get legal aid by a justice system that only favours the rich and advocates.'



Advocates / Judiciary members made reference to the adequacy of current requirements to pay the Statutory Charge upon the sale of a property, and not within a defined period:

'There is a requirement to pay on the sale of a property, this is sufficient.'

'There is little point in asking a person to pay the statutory charge if they have no access to funds to pay it. Therefore it would make sense to attach it to for example when the property is sold.'

'Provided interest accrues and the charge is appropriately secured there would seem to be no reason to require payment prior to the sale of any property - perhaps the compromise is to require repayment but within a longer period, say 10 years. Where the debt is not secured (and therefore riskier) repayment should be required sooner even if by way periodical payments over an extended period. There should be an ongoing requirement to disclose any improvement in financial circumstances (e.g. by way of inheritance) for so long as there is outstanding liability per any statutory charge. Following this change in the legislation, Legal Aid is now to be considered as a loan and not a gift. If as a result of receiving legal aid assistance you gain property that you did not own previously, you will have 'won' or 'recovered' it. If you keep some property that someone had attempted to take from you, you will have 'kept' or 'reserved' it. Some examples include a house, shares, life policies or payment of compensation.'

'Legal Aid should have the option to be able to enforce conditions upon the statutory charge, but that this ought not to be a blanket condition on all statutory charge cases. The Certifying Officer ought to be able to use their discretion to impose conditions in some cases, in consultation with the advocate with conduct of the matter.'

One 'Other' respondent suggested that there should be flexibility based upon disposal:

'Surely the decision about repayment should be flexible based upon disposal, which may or may not include costs? I would have thought this should be subject to further assessment.'

**Q19 SUMMARY:** 66 respondents (96%) answered the question and 20 comments were provided.

- 31 respondents (45%) said that there should be a requirement for a person to pay the Statutory Charge on the sale of a property or within a defined period.
- 9 respondents (13%) said that there should not be a requirement for a person to pay the Statutory Charge on the sale of a property or within a defined period.
- 17 respondents (25%) said that they did not know.
- 9 respondents (13%) answered 'Other'.

A recurring theme which was articulated across respondent groups was concern that dependent children and/or vulnerable adults who may be living at a property should not be adversely affected as a result of enforcing the Statutory Charge against a property within a fixed time limit. It was suggested that, in such cases, discretion should be applied which may result in the deferment of enforcement, for example until such time as all children have finished full time education and are no longer considered 'dependent'.

## Q20. If you have any further comments on the Statutory Charge please tell us

A text box was provided for comments / suggestions and 12 respondents (17%) submitted responses.

Of those 12 who responded:

- 3 had been through a Civil court
- 8 were Advocates / Judiciary members
- 1 was an 'Other'

One respondent who had been through a Civil court expressed concern that Legal Aid may be open to abuse by some Advocates, and they called for stricter controls. Another called for there to be fairness:

'Make it fair to both parties.'

The IoM Law Society submitted a combined response for Q17-Q20, which is included at Q17.

A further 7 Advocates / Judiciary members made comments. It was suggested that Civil Legal Aid should be considered as "*a loan and not a gift*" to ensure that the sustainability of the Legal Aid scheme can be balanced against value for the taxpayer. It was also suggested that the scope of the Statutory Charge should be expanded and that Government should do more to enforce the Charge. It was also put forward that proactive enforcement would require resources, and it was suggested that the Statutory Charge should be proportional. It was suggested that Advocates should not be required to explain the Statutory Charge to clients if it does not apply to their case (e.g. if there are no assets against which the Charge can be fixed). Clearer guidance for clients was requested in addition to details of the frequency of applying the Statutory Charge to cases:

'Effective deployment of the statutory charge is the key to balancing the competing interests of ensuring sustainability of the legal aid scheme and delivering value for the taxpayer. Relevant to legal aid or publicly funded cases. If a publicly funded client receives financial provision as a result of a case, any property he receives or preserves as a result of those proceedings over a set level should be subject to the charge and applied in payment of his advocate's fees. Civil legal aid should wherever possible be considered as a loan and not a gift - the principle must be that the publicly funded client should be in the same position as the privately paying client.'

'The statutory charge could be increased in scope and should be properly enforced. Government should use the powers it already has to recover what it is entitled to recover instead of attacking the whole provision of legal aid, because that appears to be the easier option.'

'Proactive enforcement will need to be resourced.'

'If the legal aided party has been compensated they should in general principle be obliged to pay the costs but this should be determined on a proportional basis depending what the award is relative to the costs. If the matter in dispute is land or property rules should

be developed on a more specific basis because in many cases forcing the sale of the property may defeat the very object for which the legally aided party was successful.'

'Advocates should be able to certify that the statutory charge does not apply, rather than having to explain it to every client, most of whom do not have assets against which the statutory charge could be fixed and/or are pursuing matters where repayment of costs would never be necessary.'

'There needs to be clearer guidance notes and perhaps a document that can be provided to assisted persons. They are often overloaded with information at the beginning of a case when this is explained and a guide may help so they can re-visit when required.'

'How many times since it was introduced has the statutory charge applied to the case?'

The General Registry was the one 'Other' respondent. Reference was made to the requirement for Advocates to give their clients cost estimates at the start of a case, and/or as it proceeds. It was recognised that giving such estimates can be difficult, and it is not known how much information is relayed to a legally-aided party regarding a figure that could be charged against their home. A number of questions were also raised, including the practicalities of transferring a Statutory Charge from one property to another in the event of a sale:

'Advocates are required unless the circumstances of the case mean it's impractical to do so, to give their own client a cost estimate either at the outset of a case – often extremely difficult – or more achievable to provide ongoing estimates for particular steps in the litigation process.

Often in civil litigation as a negotiation tactic to bring home the realities of the cost of litigation, opposing parties will tell the other side how much actually they have incurred and that if they win or lose this is a costs bill that the[y are] going to be getting either in terms of interlocutory applications or the case as a whole. We are unaware of the extent to which that sort of information has been exchanged thus far in the statutory charge scenario where a legally aided party must appreciate the sort of number they are looking at that would be enforced against, in reality for most cases, their home.

We are also unaware as to the requirements both locally or in the UK for having practical comfort to the statutory charge. For example, is some form of actual mortgage type (conditional bond and security) registered against the title to the property as a warning to other potential lenders or potential purchasers as to the available equity in a property being something of an unknown if the statutory charge has to be enforced? Flowing from that are there any other issues if the relevant property is sold whilst the case is ongoing i.e. the client wants to transfer the statutory charge to another property if they are selling one property but buying another. What are the practical mechanics of all of that?'

**Q20 SUMMARY:** 12 respondents (17%) provided comments.

A number of concerns were raised including:

- Insufficient enforcement of the Statutory Charge by Government.
- Difficulties faced by Advocates in providing cost estimates to clients and /or extent of exchange of information between parties in terms of the amount of Statutory Charge that could be enforced.
- Potential issues arising for the vendor / buyer if a Statutory Charge applies to a property (e.g. if the vendor wishes to transfer it to another property).

Suggestions included:

- Legal Aid should be considered as a 'loan not a gift'.
- Greater enforcement of the Statutory Charge by Government, with appropriate resources in place.
- Ability for an Advocate to certify when the Statutory Charge does not apply.
- Clear written guidance for the assisted person regarding the Statutory Charge.

#### 4.7. Restraint proceedings under the Proceeds of Crime Act 2008

Q21. Should we seek to amend legislation to enable any individual whose assets are restrained to qualify for Legal Aid?

69 respondents (100%) answered the question, and the results are shown in Table 15 below. A text box was also provided for comments.

**Table 15. Views on amending legislation to enable those with restrained assets to qualify for Legal Aid**

Response	Number	%
Yes, the legislation should be amended	46	67
No, the legislation should not be amended	10	14
Don't know	11	16
Other (please state)	2	3
Not answered	0	0
Total	69	100

21 respondents provided further comments to support their answers.

46 respondents (67%) indicated that they **would support an amendment to legislation to enable individuals whose assets were restrained to qualify for Legal Aid**. Of these 46 respondents, 9 had been through a Civil court; 7 were members of the public; 19 were Advocates / Judiciary members; 2 were charity / support workers, and there were 9 'Others'. 14 comments were made.

Respondents who had been through a Civil court made a number of points. There was reference to the importance of assuming a person is innocent until proven guilty; the right to a fair trial, and concern that the current position does not support these rights. It was also suggested that the legal merits test and a Statutory Charge should apply:

'The situation you describe above is shocking!'

'Legal merits test should still apply, plus statutory charge if any release of funds is secured.'

The IoM Law Society provided a joint response to Q21 – Q23 and expressed concern that the current position may not be human rights compliant, and the removal of the adequate

consideration defence<sup>8</sup> in the Isle of Man. The Society called for individuals in such cases to have access to Legal Aid regardless of their means or the legal merits of their case, and for them to be able to seek a costs Order against the Government if their restraint Order is successfully challenged.

Extracts for the Society's response are included below, with the remainder under Q22:

'The IOMLS submits that individuals subjected to a Restraint Order under proceedings issued pursuant to the Proceeds of Crime Act 2008 ("POCA") should have access to legal aid regardless of means or merits. Currently, the situation results in such individuals having no access to legal advice in relation to proceedings instigated against them by the State. Whether this is Human Rights Act compliant remains to be seen. This is compounded by the removal of the Adequate Consideration Defence in the Isle of Man. This prevents (or at least severely restricts) the ability of an Advocate to accept payment directly from the individual who is subject to the Restraint Order.

Regardless, any individual subjected to a Restraint Order should have access to legal advice and the ability to ensure all procedures have been properly followed in the Application process and be able to effectively challenge the granting of the Order.

POCA also specifically prevents the use of the restrained funds to challenge and defend Restraint Order proceedings, thus leaving no access to funding open...

Notably, even if the individual subjected to the Restraint Order successfully challenges the making of such Order, the legislation prevents them from seeking a costs Order against the Government. This too should be amended, to ensure that procedures are closely followed and to put in place a penalty if they are not.'

Other Advocates / Judiciary members were also supportive of a legislative change; expressed concern in terms of human rights compliance in respect of the current legislation, and submitted that the only way for defendants to currently receive legal representation is if an Advocate is prepared to work for free. The adequate consideration defence was also raised:

'OMG YES!!!'

'Yes, absolutely. The legislation does not allow the Court to release restrained assets to pay for Legal advice. Either this needs to change or Legal Aid needs to be available. If a person has no other assets, they are rendered unable to access legal advice. They may also be outside the Island and unable to afford travel here. Access to justice is important for all.'

'The legislation is far too complex for defendants to understand most of the time and they are often not able to obtain legal representation as a result unless the advocate is prepared to act pro bono.'

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<sup>8</sup> The provision of an adequate consideration defence in the Proceeds of Crime Act 2008 was repealed by the Organised and International Crime Act 2010 as a result of an International Monetary Fund Report of the IoM. Until the repeal, businesses and professional advisors (e.g. Advocates & accountants) acting in good faith were entitled to obtain payment for goods and services without fear of sanction if the source of the client's monies became suspect. The removal of the defence has been criticised in some quarters, but if it were to be reinstated, it is understood that there would be severe and far reaching implications for the IoM from an international Anti-Money Laundering / Countering the Financing of Terrorism compliance perspective. The IoM would lose its current 'Compliant' marking for the Financial Action Task Force's Recommendation 3 (Money Laundering Offence) and would be seen to be reinstating a defence which had previously been addressed as a deficiency in the IoM's standards.

'It is questionable as to whether the current system is human rights compliant, as those clients who are subject to a restraint order are unable to obtain legal assistance and advice in relation to the same. There should be legal aid in all of these cases, regardless of the merits or means of the individual, to ensure that these draconian powers are not abused and all proper processes have been followed. Further, as there is no defence of adequate consideration within POCA, following its removal some years ago, Advocates cannot receive payment from an individual's funds in any event, if they are suspected to be the proceeds of crime, without potentially committing a criminal offence.'

One 'Other' respondent suggested that a legislative change should apply when restrained funds exceed £5000:

'Perhaps only when the proceeds of crime exceed a certain value say £5000.'

10 respondents (14%) indicated that they **would not support an amendment to legislation to enable individuals whose assets were restrained to qualify for Legal Aid**. Of these 10 respondents, 3 had been through a Civil court; 4 were members of the public; 1 was an Advocate / Judiciary member; 1 was a public sector employee, and there was 1 'Other'. 3 comments were made.

A member of the public expressed concern that any change in legislation could come at a significant cost to the public purse:

'There is a stringent process in place to restrain assets. This could cost the tax payer considerably.'

A public sector employee, whose role is Anti-Money Laundering / Countering the Financing of Terrorism Adviser for the IoM Government, made reference to the current provisions in which an individual does have the right to pay for their own legal defence from unrestrained funds derived from legal conduct:

'Only assets (or their equivalent value) believed to be derived from criminal conduct are restrained. There is nothing to stop an individual using his/her assets derived from legal conduct to fund their legal representation. So there should not be an automatic right to legal aid.'

The General Registry indicated support for applications to the Court to use restrained funds to pay for legal defence:

'There is support for applications being made to the court for reasonable utilisation of funds restrained to be used to fund defence applications.'

11 respondents (16%) indicated that they **did not know if legislation should be amended**. Of these 11 respondents; 4 were members of the public; 3 were Advocates / Judiciary members; 2 were public sector employees, and there were 2 'Others'. 2 comments were made.

A member of the public suggested that Legal Aid costs could be recovered from confiscated assets:

'If assets are stripped to such a degree that the individual is unable to fund legal advice then they would be as disadvantaged legally as someone on benefits/low income and

should have access to such, any legal aid awarded could be recouped from any further assets secured following successful prosecution.'

One 'Other' respondent expressed concern for those who may be joint account / asset holders who are unaware of any potential criminal activity on another person's part:

'Possibly if you were not aware of the assets history - joint accounts / partners without full knowledge. Both marital and also in business.'

2 respondents (3%) answered '**Other**'. 1 respondent was an Advocate / Judiciary member and there were 1 'Other'. 2 comments were made.

One Advocate / Judiciary member called for individuals to provide sworn evidence that they do not have access to assets derived from legal conduct before they are entitled to receive any Legal Aid. Reference was also made to rules being prepared by the Judiciary:

'In the event that legal aid assistance is to become available it is vital that the applicant be required to demonstrate - through sworn evidence - that he / she has no untainted assets with which to pay expenses. It is understood that Criminal Procedure Rules are in the process of being prepared by the judiciary and it is likely that they will have a bearing upon the disclosure obligations of persons having assets under restraint.'

**Q21 SUMMARY:** 69 respondents (100%) answered the question and 21 comments were made.

- 46 respondents (67%) indicated that they would support an amendment to legislation to enable individuals whose assets are restrained to qualify for Legal Aid. The key reason for respondents' support were based around concerns that the current legislative position may not be human rights compliant (i.e. the right to a fair trial) as individuals can be left unable to pay for legal defence from restrained funds whilst also ineligible for Legal Aid. It was also suggested that should the legislation be amended, Legal Aid costs could subsequently be recovered from any released funds, to minimise the net cost to Government.
- 10 respondents (14%) indicated that they would not support an amendment to legislation. It was submitted that under current legislative provision, individuals can fund their own legal defence from unrestrained assets derived from legal conduct (i.e. not restrained under the Proceeds of Crime Act 2008).
- 11 respondents (16%) indicated that they did not know if legislation should be amended.
- 2 respondents (3%) answered 'Other'. It was suggested that individuals should be required to provide sworn evidence that they do not have access to assets derived from legal conduct before they are entitled to receive any Legal Aid.

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Q22. If Legal Aid is granted, should individuals be required to repay Government (similar to the Statutory Charge) if their assets are partly confiscated or not confiscated?

69 respondents (100%) answered the question, and the results are shown in Table 16 below. A text box was also provided for comments.

**Table 16. Views on potential requirement to repay Legal Aid fees to Government if restrained funds are partially or not confiscated**

Response	Number	%
Yes	42	61
No	12	17
Don't know	7	10
Other	8	12
Not answered	0	0
Total	69	100

15 respondents provided further comments to support their answers.

42 respondents (61%) said that **if Legal Aid is granted to individuals whose assets are restrained, they should be required to repay Government if their assets are partly or fully released.** Of these 42 respondents, 8 had been through a Civil court; 9 were members of the public; 14 were Advocates / Judiciary members; 2 were public sector employees; 2 were charity / support workers, and there were 7 'Others'. 5 comments were made

A member of the public suggested that any requirements should be in line with others who repay their Legal Aid costs:

'Only insofar as any other individual would be required to repay.'

The IoM Law Society provided a combined answer to Q21 – Q23, which included the following comment in support of repayment:

'If, however, funds are later released under the Restraint Order, then the individual can and should repay the Isle of Man Government those legal costs paid by legal aid.'

Other Advocates / Judiciary members made reference to treating individuals in line with other legally-aided persons; using the means test to calculate repayments, and applying for costs to be awarded to the individual in the event of a failed confiscation:

'Provided that their asset base is above the threshold for legal aid funding. They should be treated no differently to anyone else and the means test should be used at this stage, in order to ascertain how much, if anything, should be repaid.'

'Yes on the basis that to provide otherwise would distinguish such persons from other assisted litigants. Of course the court itself is able to make costs award where warranted and so the assisted person's advocate would likely make application for costs where the confiscation attempt has failed, in whole or in part (which enables the successful assisted person to recover their outlay under the statutory charge).'

12 respondents (17%) said that **if Legal Aid is granted to individuals whose assets are restrained, they should not be required to repay Government.** Of these 12 respondents, 3 had been through a Civil court; 3 were members of the public; 5 were Advocates / Judiciary members, and there was 1 'Other'. 2 comments were made.



A respondent who had been through a Civil court called for legal services to be free:

'People should be entitled to a defence against charges and this should not cost them a PENNY.'

An Advocate / Judiciary member made reference to assets that are seized (which go into the Government's Seized Asset Fund<sup>9</sup>) rather than assets that are released:

'If their assets are seized that money is already allocated out to other Departments so far as I am aware.'

7 respondents (10%) said that they **did not know** if individuals should be required to repay Government. Of these 7 respondents, 3 were members of the public; 1 was an Advocate / Judiciary member; 1 was a public sector employee, and there were 2 'Others'. No comments were made.

8 respondents (12%) answered '**Other**'. Of these 8 respondents, 1 had been through a Civil court; 4 were Advocates / Judiciary members, and there were 3 'Others'. 8 comments were made.

A respondent who had been through a Civil court suggested that if a person's assets are confiscated, then Legal Aid should be repaid from the Seized Asset Fund, and if assets are not confiscated then Legal Aid should not be repaid.

2 Advocates / Judiciary members also made reference to repayment being dependent on the outcome of a case, and suggested it would be unfair to require an individual to repay Legal Aid if their assets are released:

'There ought to be discretion in this regard. If the litigant is recovering costs from the Attorney General, for example, they ought to be obliged to repay Legal Aid. Equally, if the court were to find that there was some element of culpability on their part, they ought to repay wherever possible. However, it would be unfair to penalise those individuals who are unwittingly brought into restraint proceedings without cause.'

The General Registry supported the recovery of Legal Aid following partial confiscation only:

'If not confiscated one would usually expect a costs order to be made against Government, and repayment in such circumstances is not advocated. Where there is partial confiscation then a proportion of any legal aid may be recovered in respect of the failed resistance.'

A further comment from an 'Other' respondent suggested that individuals should be treated in the same way as others:

'They should be placed under the same obligation as all other citizens. So, it will depend upon the proportion confiscated.'

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<sup>9</sup> The Seized Asset Fund was established by Tynwald in 1994. Its primary purpose is to enable the proceeds of drug seizures and other crimes to be applied to the specific countering of criminal activities; protect the public through community safety initiatives; fund initiatives closely related to emerging threats, and provide grant assistance to community initiatives designed to counter the undesirable effects of drugs and alcohol. [p.20 IoM Govt. Financial Regulations 2020 <https://www.gov.im/media/1366335/financial-regulations-1-july-2020.pdf>]

**Q22 SUMMARY:** 69 respondents (100%) answered the question and 15 comments were made.

- 42 respondents (61%) said that if Legal Aid is granted to individuals whose assets are restrained, they should be required to repay Government if their assets are partly or fully released. Comments referred to the importance of fairness and parity with other assisted parties required to repay Legal Aid.
  - 12 respondents (17%) said that if Legal Aid is granted to individuals whose assets are restrained, they should not be required to repay Government on full or partial release of assets. Comments included opposition against any form of Legal Aid repayment, and reference to Government's seizure of assets following conviction.
  - 7 respondents (10%) said that they did not know if individuals should be required to repay Government.
  - 8 respondents (12%) answered 'Other', and reference was made to the importance of discretion and the outcome of individual cases.
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### Q23. If you have any further comments on restraint proceedings please tell us

A text box was provided for comments on restraint proceedings, and 7 respondents (10%) submitted responses.

Of those 7 who responded:

- 1 had been through a Civil court
- 3 were Advocates / Judiciary members
- 3 were 'Others'

A respondent who had been through a Civil court expressed their opposition to the current system:

'The entire system is wrong and legal advice should be free and equal to all.'

The IoM Law Society provided a combined response to Q21 - Q23 which is included at Q21 and Q22 for most relevance.

One Advocate / Judiciary member stated that they were "*disturbed*" that Q21 had even been asked, as they considered that those whose assets are restrained should already qualify for Legal Aid. Another made reference to the complexity of legislation for those who, without access legal defence, would be left to self-represent:

'Those in restraint proceedings should be eligible for legal aid, the legislation is too complex for them to be able to deal with the matter themselves.'

The General Registry made reference to the absence of the adequate consideration defence<sup>10</sup> within the Proceeds of Crime Act 2008 (POCA); the implications for Advocates, and the implications for those persons who are ineligible for Legal Aid and unable to provide a funding source which is not restrained to pay for legal defence. The impact on those individuals' access to justice was raised, in addition to the potential impact on the Isle of Man from a jurisdictional perspective:

'When POCA was introduced the "adequate consideration" provisions within the UK equivalent were omitted. A review of the Hansard debate shows this was not scrutinised at all and when the matter was subsequently raised, there was very brief comment in Tynwald to the effect that didn't seem right to change it. The effect of it is as set out in the second paragraph above.

This creates a number of difficulties in the current situation locally. These include not only a person being unable to secure legal advice or representation, unless they can provide either directly or indirectly a bona fide source of funds to pay their advocate which are not tainted by the allegations of criminality giving rise to the POCA proceedings, but also real difficulties for the advocates.

The advocates have to spend a very considerable amount of time and money, generally, quite appropriately of course, as a cost of doing business, funding the costs of compliance.

Considerable time and effort can often be spent looking to analyse and understand often complex structures or quite a lot of material to form a view as to whether or not funds being offered are out with what is sought to be caught in the relevant POCA proceedings. The risk that they face is that the AGCs and the Police take a different view of that and they're exposing themselves to criminal prosecution when taking funding to represent a client.

Those decisions will of course vary and include the extent to which matters are scrutinised, in addition to the individual's particular risk appetite where on the one hand the advocates practice wants to do what it was set up to do, that is practice law and make a living whilst on the other hand not wanting to go to prison for doing just that!

The absence of legal aid does impact upon the access to justice of the litigants faced with these type of proceedings unless they are in the rare and enviable position of being able to demonstrate and provide a source of funds clearly not caught by the proceedings themselves (and any connected constructive trust type queries on their funds) and deal with the delays and costs to be incurred in satisfying their chosen advocate that they can actually pay them from non-tainted funds.

There is perhaps also an intangible jurisdictional reputation effect. Those wishing to set up business on the Isle of Man who are familiar with litigation in a range of jurisdictions may have had experience not only of civil litigation but also of investigation by the criminal and regulatory authorities and it may well be then emerged unscathed from all of those court room type experiences. However they may consider that doing business here is less attractive than doing it elsewhere because in the unlikely event that they are, in their minds at least, wrongly accused of matters that fall within POCA, if they are unable to instruct the lawyers that they choose because the lawyers simply cannot take their money and also where they don't have access to legal aid in the event that they are subject to this type of proceeding.

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<sup>10</sup> Further information regarding the adequate consideration defence is included at footnote 3.

It might be said that the Island certainly doesn't want to attract the sort of people who have in their minds anything that might be touched upon by way of POCA, but experienced business people particularly from far flung jurisdictions where the rule of law is rather different, may consider it a factor when they have had experience of having to deal with all types of litigation.'

A further comment from an 'Other' respondent made reference to the role of restraint proceedings in deterring crime:

'These are a necessary part of crime deterrence.'

**Q23 SUMMARY:** 7 respondents (10%) provided responses.

Concerns included:

- Access to justice implications for those unable to secure Legal Aid, particularly in complex financial crime cases.
- The lack of 'adequate consideration' defence provisions.

Reference was also made to the importance of restraint proceedings as a crime deterrent.

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## 4.8. Scope of Family Matters

Q24. Should any Family Matter<sup>11</sup> currently in scope be removed?

69 respondents (100%) answered the question, and the results are shown in Table 17 below. A text box was also provided for comments.

**Table 17. Views on removal of any Family Matter(s) from scope**

Response	Number	%
Yes	12	17
No	48	70
Don't know	8	12
Other (please state)	1	1
Not answered	0	0
Total	69	100

Respondents who answered 'Yes' were asked to indicate which Family Matter(s) should be removed from scope and why. Respondents who answered 'Other' were asked to provide further information.

13 respondents provided further comments to support their answers.

12 respondents (17%) were **in support of removing one or more Family Matter from the scope of Civil Legal Aid**. Of these 12 respondents, 4 had been through a Civil court; 2 were members of the public; 3 were Advocates / Judiciary members; and there were 3 'Others'. 10 comments were made.

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<sup>11</sup> A list and description of all Family Matters currently in scope was provided

Respondents who had been through a Civil court suggested name changes (excluding cases of domestic abuse); divorce, and child residency should be removed from scope. It was also suggested that child contact matters should be dealt with via mediation with outcomes submitted to the Courts:

'Divorce and child residency'.

'Child Contact - this could be dealt with via mediation and with the mediation outcomes submitted to the courts. This would prevent an abuse of the system during what is normally an emotionally driven episode.'

A member of the public suggested adoption:

'Adoption'.

Advocate / Judiciary members suggested name changes and divorce, subject to exclusions:

'Deed polls should not be covered by public funding.'

'Name changes - save in circumstances where the applicant can prove compelling reasoning to justify e.g. domestic violence.'

'Divorce (excluding financial provision and children issues)'.

A further comment from an 'Other' respondent added mediation, divorce (defended) and Privy Council to the matters mentioned above:

'Mediation, defended divorces, Privy Council, Name changes'

48 respondents (70%) said they were **not in support of any Family Matters being removed from the scope of Civil Legal Aid**. Of these 48 respondents, 7 had been through a Civil court; 9 were members of the public; 18 were Advocates / Judiciary members; 3 were public sector employees; 1 were charity / support workers, and there were 10 'Others'. 1 comment was made.

The General Registry made reference to no fault divorce but advised that legal advice will still be required for some matters:

'When no fault divorce becomes law such may not require legal aid per se but access to legal advice on ancillary matters is very important to prevent litigation becoming protracted.'

8 respondents (12%) said that they **did not know** if any Family Matters should be removed from scope. Of these 8 respondents, 1 had been through a Civil Court; 4 were members of the public; 2 were Advocates / Judiciary members and 1 was a charity / support worker. 1 comment was made.

A member of the public expressed concern that the costs of some legally-aided divorce cases appear be excessive, and suggested that they should be more closely controlled:

'I feel that legal aid in this area - particularly divorce is abused. I have heard of a number of cases where both parties are receiving legal aid and their cases are being drawn out over a considerable period of time with considerable advocates' fees being generated.'

There should be some sort of a cap on amount and a time limit. If there is one in place it should be reviewed. Advocates' hours / fees should be challenged.'

The remaining 1 respondent (1%) was the Isle of Man Law Society. The Society did not choose a specific answer to Q24 (i.e. *Yes / No / Don't know / Other*) and is therefore classed as '**Other**' for the purpose of this question. The Society provided a combined response for Q24 - Q33 which is included at Q25 and Q27 for the most relevance.

**Q24 SUMMARY:** 69 respondents (100%) answered the question.

- 12 respondents (17%) were in support of one or more Family Matters being removed from the scope of Civil Legal Aid. Suggestions included name changes (excluding domestic abuse cases); divorce (excluding arrangements for children and/or finances); mediation; adoption; child contact; child residency and Privy Council.
- 48 respondents (70%) said they were not in support of any Family Matters being removed from the scope of Civil Legal Aid.
- 8 respondents (12%) said that they did not know if any Family Matters should be removed from scope.

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Q25. Should any Family Matter be exempt from the financial means test? (i.e. so only the legal merits test applies?)

69 respondents (100%) answered the question, and the results are shown in Table 18 below. A text box was also provided for comments.

**Table 18. Views on whether any Family Matter(s) should be exempt from means test**

Response	Number	%
Yes	32	46
No	21	30
Don't know	13	19
Other	3	4
Not answered	0	0
Total	69	>99

Respondents who answered 'Yes' were asked to indicate which Family Matter(s) should be exempt from the financial means test and why.

31 respondents provided further comments to support their answers.

32 respondents (46%) said that **one or more Family matters should be exempt from the financial means test**. Of these 32 respondents, 7 had been through a Civil court; 5 were members of the public; 13 were Advocates / Judiciary members; 1 was a public sector employee, and there were 6 'Others'. 27 comments were made.

6 respondents who had been through a Civil court made suggestions for matters which should be exempt from the financial means test. 5 respondents suggested matters relating to children and 2 suggested matters relating to domestic abuse:

'Anything in relation to children and domestic abuse.'

'Children (Prohibited Steps Order  
Children (Child Abduction)  
Children (Appointment of Guardian)'

'Child contact - whilst one party may get legal aid the other may not qualify but still have limited means - the case I am aware of has resulted in the aggrieved party running up debts in order to pursue a child contact order - this cannot be fair.'

1 member of the public suggested domestic abuse and another suggested divorce. 1 respondent asked why there should be any means test for a service that is publically-funded:

'Why does there have to be test of affordability to a tax payer funded service?'

The IoM Law Society provided a combined response for Q24 – Q33, and the relevant extracts are included at Q27 and Q28. is included below. The Society called for the means test to be immediately removed from public law matters for all parents, and concern was expressed that this change had not already been enacted as the Society understood that a policy decision had previously been taken:

'The IOMLS is of the view that the legal aid means test should be immediately removed in relation to public law care matters for all parents. This policy decision was taken and agreed over two years ago yet, for unexplained reasons, the required legislative changes have not been undertaken to ensure the same is effected. It is therefore extremely disappointing to see this issue appears now to be up for discussion and consultation once again, notwithstanding the same was previously agreed.

The removal of a child from their parents is a significant decision and one that should not be taken lightly. All people involved in that process should have access to legal advice and representation to ensure that the most draconian remedy of all, the removal of the child, is only undertaken in the most serious and appropriate cases.

These proceedings are necessarily complex and often involve the use of experts. The hearings last a long time and can be difficult for a legally unrepresented person to follow. The Department seeking the removal of the child, whether temporary or permanent, is always represented and therefore equality of arms should be afforded to all parties.

These proceedings often involve our most vulnerable members of society, for example drug addicts, the mentally ill and those with learning disabilities, but they can very easily involve every day hard working people, who may find themselves involved in a situation where their child has suffered an unexplained injury. Navigating such proceedings, with the ultimate threat of losing custody of your child, cannot be underestimated in terms of the mental strain and upset caused. The role of the Advocate in such proceedings is therefore vital and should be available in every case..."

A further 11 Advocate / Judiciary members made comments and 8 suggested that Care Proceedings should be exempt from the means test, in particular due to the seriousness of such cases. Other suggestions included domestic abuse matters; adoption; child abduction; appointment of guardians; prohibited steps orders (PSO); child residence and child contact:.

'Care proceedings should be exempt from the means test. Care proceedings are brought by the state - equality of arms and the right to family life require families to be properly represented.'

'Care proceedings, because the balance between the state and the individual is often poles apart.'

'Care proceedings - the risk is far too high to effectively remove a parent from fully participating in proceedings due to their finances.'

'Care Proceedings and Adoption. These are where the state seeks to remove a child from their parents, potentially permanently. It is essential that people are represented for these matters. They are long and complicated matters and likely to be much more expensive than other family matters.'

'Care proceedings, child abduction, appointment of guardians, domestic abuse. These are all very serious matters which ought to have unfettered access to justice.'

'Children, residence and contact to prevent these proceedings being a collateral way to force settlement of other (mainly financial) aspects which need to be resolved on family break-up.'

'Domestic abuse and child abduction and PSO. I would suspect the high cost of privately funding any of these (defended) would put people off making applications.'

'Cases involving domestic violence.'

The General Registry was also in agreement in terms of Care Proceedings:

'Care proceedings.'

The Equality Adviser referred to matters relating to children and domestic abuse, in particular the right to a fair trial:

'Anything relating to children & domestic abuse. Important to preserve the right of access to a fair trial (Article 6 European Convention on Human Rights).'

Further comments from 'Others' included domestic abuse and mediation:

'Domestic abuse, as this is very hard to either prosecute or defend, may involve children, and multiple expert opinions may be necessary.'

'Mediation because it can save court time and money if a resolution can be achieved.'

21 respondents (30%) said that **no Family matters should be exempt from the financial means test**. Of these 21 respondents, 3 had been through a Civil court; 3 were members of the public; 7 were Advocates / Judiciary members; 1 was a public sector employee; 1 was a charity / support worker, and there were 2 'Others'. 1 comment was made.

13 respondents (19%) said they **did not know** if any Family matters should be exempt from the financial means test. Of these 13 respondents, 1 had been through a Civil court; 3 were members of the public; 3 were Advocates / Judiciary members; 1 was a public sector employee; 1 was a charity / support worker, and there were 4 'Others'. No comments were made.



3 respondents (4%) answered 'Other' and of these, 1 had been through a Civil court; 1 was an Advocate / Judiciary member, and there was 1 'Other'. 3 comments were made.

A respondent who had been through a Civil court referred to all Family matters:

'Legal aid should be free for any matter involving family.'

**Q25 SUMMARY:** 69 respondents (100%) answered the question and 31 provided comments.

- 32 respondents (46%) said that one or more Family matters should be exempt from the financial means test and 27 respondents (39%) provided suggestions which are summarised in order below showing the frequency of suggestion:

Matters suggested for means test exemption	Frequency of suggestion
Care Proceedings	9
Domestic abuse	9
All child matters	3
Children (Adoption)	3
Children (Child abduction)	3
Children (Prohibited Steps Order)	2
Children (Appointment of Guardian)	2
Children (Contact)	2
Children (Residence)	1
Child protection	1
Mediation	1
Divorce	1

- 21 respondents (30%) said that no Family matters should be exempt from the financial means test.
- 13 respondents (19%) said they did not know if any Family matters should be exempt.
- 3 respondents (4%) answered 'Other' including one person who suggested that all Family matters should be exempt.

**Q26. If you have any further comments on the scope of Family Matters please tell us**

A text box was provided for comments / suggestions and 11 respondents (16%) submitted responses. Of those:

- 2 had been through a Civil court
- 2 were members of the public
- 3 were Advocates / Judiciary members
- 1 was a public sector employee
- 3 were 'Others'

One respondent who had been through a Civil court referred to their experience during a divorce in which their former spouse was legally-aided. The respondent expressed concern

that in their view, Legal Aid was being abused due to the volume of 'pointless' letters from the Legal Aid Advocate and the number of delays. The respondent's former spouse agreed to mediation but only on condition that the respondent paid for it. The respondent was not aware that Legal Aid could have met their own mediation costs, and was concerned that if any Legal Aid was provided, it was not used to cover any of the costs.

A member of the public referred to the complexity of family and financial matters:

'Family matters are complex. Financial circumstances may appear different to the actuality. This area is even more difficult to rule on.'

The IoM Law Society provided a combined response for Q24 – Q33, and the relevant extracts are included at Q27 and Q28.

One Advocate / Judiciary member called for there to be a greater emphasis on Alternative Dispute Resolution (ADR) and scrutiny of Advocates to encourage the same, in order to reduce unnecessary Court hearings and associated costs. Another Advocate urged caution against any reduction in Legal Aid for Family matters, due to the risk of redirecting costs to the Courts. Appropriate application and enforcement of the Statutory Charge was also advocated:

'It is vitally important that family matters continue to be covered by legal aid. The UK is in a complete mess following the removal of legal aid from all family cases save for domestic abuse cases. The removal of family legal aid will not save the Government any money, it will simply shift the cost to the Court, as cases will take far longer as a result of litigants appearing without representation. There will be more breaches of Orders and the administrative workload of the Court will increase, as they will have to draft the Orders themselves. The better way to manage the cost of family legal aid is via the proper use and recovery of the statutory charge.'

A public sector employee referred to Care Proceedings and adoption, and the financial burden that may be placed on parents to pay for legal representation in such cases.

The General Registry called for Legal Aid to remain in place for private law Family Matters, and cited significant issues faced in England and Wales where provision has been reduced. Particular reference was made to the importance of both parties receiving legal advice on financial matters:

'It is vital to ensure legal aid remains available in private law family cases. Experience from England and Wales where legal aid was curtailed for such cases has seen a great rise in litigants in person (LiP) with significant negative consequences. [See Unintended Consequences: cost of Government's Legal Aid Reforms Report by Dr Graham Cookson November 2011 and Written Evidence from Judicial Executive Board July 2013 Report on LiPs). Family proceedings are the least suited to self-representation in light of the emotional element and difficulty of the parties to think objectively.

In family finance cases it is vital that both parties have access to expert legal advice even if they have "agreed" matters. Failure to take advice is a common source of further litigation when one or both of the parties realise years later that the agreement is flawed or they realise they were under the control or influence of their spouse.'

One 'Other' person who was going through a divorce with the support of Legal Aid expressed the significance of Legal Aid availability in Family matters, and the importance of continuing to fund all matters relating to children:

'Personally - I need all the help I can get. I wouldn't be able to complete the whole procedure if one or more of these items were removed. The most important thing is the children so the areas relating to them should not be removed in my opinion.'

**Q26 SUMMARY:** 11 respondents (16%) provided comments.

A number of concerns were raised including:

- Potential for abuse of the current system (e.g. protracted proceedings / unnecessary letters).
- Lack of awareness that mediation costs for both parties could be met by Legal Aid if one party is assisted.
- Implications and unintended consequences of removing Legal Aid from Family matters (e.g. significant increases in self-representation / redirecting workload and costs to the Court).
- An individual's inability to complete proceedings without Legal Aid, particularly in matters which may impact upon children (e.g. divorce proceedings).

Suggestions included:

- More effective use and recovery of the Statutory Charge as a better way to manage the cost of Legal Aid in Family matters
- Greater focus on ADR

#### 4.9. Family proceedings & the role of HM Attorney General

Q27. Do you agree with the proposal that a child or young person who is party to Family Proceedings (e.g. Care Proceedings) should be automatically eligible to receive Civil Legal Aid by disregarding their financial resources?

69 respondents (100%) answered the question, and the results are shown in Table 19 below. A text box was also provided for comments.

**Table 19. Views on automatically granting Civil Legal Aid to children / young people**

Response	Number	%
Yes, children / young people should be automatically eligible	55	80
No, children / young people should not be automatically eligible	11	16
Don't know	2	3
Other (please state)	1	1
Not answered	0	0
Total	69	100

10 respondents provided further comments to support their answers.

55 respondents (80%) said that **children and young people should be automatically eligible** to receive Civil Legal Aid if they are party to family proceedings. Of these 55 respondents, 9 had been through a Civil court; 11 were members of the public; 22 were Advocates / Judiciary members; 2 public sector employees; 2 were charity / support workers, and there were 9 'Others'. 7 comments were made.

A member of the public indicated that children and young people should be supported by society:

'Children & young people should be helped by society wherever possible. I can't imagine a situation where a child would be considered competent to make financial decisions using their own funds.'

The IoM Law Society provided a combined response for Q24 – Q33, and the relevant extract for this question (Q27) is included below. The Society indicated the appropriateness of HM Attorney General continuing to appoint an Advocate to act on behalf of a child, and suggested that the associated budget should be transferred from Chambers to Legal Aid:

'In relation to HMAG providing legal services to children in such cases, the IOMLS agrees that the child should be granted legal aid in every such case. It is appropriate for HMAG to be involved in the appointment of the Advocate; however, the cost of such engagement should properly be moved from the budget of HMAG and transferred to legal aid, with the legal aid budget being increased accordingly. There would be no increased cost for Government, as these costs are already being paid. In fact, HMAG pays Advocates at a higher rate than the current legal aid rate for undertaking this work, presumably in recognition for the difficult and testing nature of the same.'

Other Advocate / Judiciary members suggested that a child over the age of 10 should be involved in their choice of Advocate; agreed on the basis that the legal merits test should still apply, and expressed concern that there would be no practical difference to the current situation.

'If the child or young person is over the age of 10 they should have some input as to whom is going to represent them.'

'Agree on the basis that there should still be a legal merits test.'

'Currently the AG's Chambers must fund the costs of the Advocate engaged to represent the child. By automatically granting the child legal aid there will be no increase in cost to Government, but the funding will come from legal aid instead of the AG's Chambers. Given that Government is already funding, this makes no practical difference at all.'

11 respondents (16%) said that **children and young people should not be automatically eligible** to receive Civil Legal Aid if they are party to family proceedings. Of these 11 respondents, 2 had been through a Civil court; 4 were members of the public; 1 was an Advocate / Judiciary member, and there were 4 'Others'. 1 comment was made.

An Advocate / Judiciary member expressed concern that there would be no practical difference to the current situation, except to reduce Chambers' expenditure and increase that of Legal Aid:

'The current arrangement is that children receive representation funded and facilitated by the Attorney General's Chambers. These proposals are merely an attempt to reduce

expenditure for the Attorney General's Chambers and increase costs for the Legal Aid fund, and all that would come with that in terms of political and public opinion.'

2 respondents (3%) said they **did not know**. Of these, 1 person had been through a Civil Court and 1 was an Advocate /Judiciary member and 1 comment was made by the latter:

'I don't know what this means.'

1 respondent (1%) answered '**Other**', and they were also in the 'Other' respondent group. They suggested that whilst it would be unlikely for a child or young person to be in a position to pay for legal services, they should do so if they have adequate resources:

'I would be surprised if there were many children or young persons who would have significant financial resources in their own name where they could afford legal representation without legal aid. For those who do have adequate resources then they should be required to pay.'

**Q27 SUMMARY:** 69 respondents (100%) answered the question. 10 comments were made.

- 55 respondents (80%) said that children and young people should be automatically eligible to receive Civil Legal Aid if they are party to family proceedings.
- 11 respondents (16%) said that children and young people should not be automatically eligible to receive Civil Legal Aid.
- 2 respondents (3%) said they did not know, and 1 respondent (1%) said 'Other'.

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Q28. Do you agree with the proposal that a parent or guardian who is party to Family proceedings should be automatically eligible to receive Civil Legal Aid from a financial perspective, by disregarding their financial resources?

69 respondents (100%) answered the question, and the results are shown in Table 20 below. A text box was also provided for comments.

**Table 20. Views on automatically granting Civil Legal Aid to parents / guardians party to Family proceedings**

Response	Number	%
Yes, parents / guardians should be automatically eligible	31	45
No, parents / guardians should not be automatically eligible	29	42
Don't know	7	10
Other (please state)	2	3
Not answered	0	0
Total	69	100

18 respondents provided further comments to support their answers.

31 respondents (45%) said that **a parent or guardian who is party to Family proceedings should be automatically eligible to receive Civil Legal Aid from a**

**financial perspective.** Of these 31 respondents, 7 had been through a Civil court; 2 were members of the public; 13 were Advocates / Judiciary members; 1 public sector employee; 2 were charity / support workers, and there were 6 'Others'. 7 comments were made.

A respondent who had been through a Civil court submitted that cases should be decided on their merit:

'Legal advice should be freely available to any parent who needs it, so a case can be decided upon its merits and not who has the fanciest lawyer.'

The IoM Law Society provided a combined response for Q24 – Q33, and the relevant extract for this question (Q28) is included below. The Society called for the means test to be immediately removed from public law matters for all parents, and concern was expressed that this change had not already been enacted as the Society stated that a policy decision had previously been taken:

'The IOMLS is of the view that the legal aid means test should be immediately removed in relation to public law care matters for all parents. This policy decision was taken and agreed over two years ago yet, for unexplained reasons, the required legislative changes have not been undertaken to ensure the same is effected. It is therefore extremely disappointing to see this issue appears now to be up for discussion and consultation once again, notwithstanding the same was previously agreed.'

The removal of a child from their parents is a significant decision and one that should not be taken lightly. All people involved in that process should have access to legal advice and representation to ensure that the most draconian remedy of all, the removal of the child, is only undertaken in the most serious and appropriate cases.

These proceedings are necessarily complex and often involve the use of experts. The hearings last a long time and can be difficult for a legally unrepresented person to follow. The Department seeking the removal of the child, whether temporary or permanent, is always represented and therefore equality of arms should be afforded to all parties.

These proceedings often involve our most vulnerable members of society, for example drug addicts, the mentally ill and those with learning disabilities, but they can very easily involve every day hard working people, who may find themselves involved in a situation where their child has suffered an unexplained injury. Navigating such proceedings, with the ultimate threat of losing custody of your child, cannot be underestimated in terms of the mental strain and upset caused. The role of the Advocate in such proceedings is therefore vital and should be available in every case..."

Other Advocates / Judiciary members reiterated comments made by the IoM Law Society and particular reference was also made to the gravity of Care Proceedings:

'As previously stated, this policy decision was taken over two years ago. It is extremely worrying that, following a policy decision having been made and the Law Society having been informed that the delay is due to the drafting legislation due to Brexit, that this appears to be under review again. Care proceedings are extremely lengthy and complex proceedings, and cost tens of thousands of pounds to defend. They often involve multiple experts and decide the entire life path of a child, including, often the removal of a child from its parents. Every parent being subjected to such proceedings should have free access to legal advice and representation without question.'

'Yes. These are the most important proceedings in any Family Court and people should be able to defend themselves and their Human Rights. Social Services frequently manipulate proceedings to their advantage.'

The General Registry called for at least 6 hours' initial funding and also referred to Alternative Dispute Resolution (ADR):

'At the least an initial funding of legal advice (6 hours) would be useful so as to put the litigant on the right track and manage expectations of the litigant with a view to diversion into ADR.'

The Equality Adviser made reference to the protection of children:

'This is about the protection of children, which is the paramount consideration.'

29 respondents (42%) said that **a parent or guardian who is party to Family proceedings should not be automatically eligible to receive Civil Legal Aid from a financial perspective.** Of these 29 respondents, 1 had been through a Civil court; 11 were members of the public; 9 were Advocates / Judiciary members; 2 public sector employees, and there were 6 'Others'. 7 comments were made.

Advocates / Judiciary members expressed concern that automatic eligibility could be counter-productive, and it was suggested that assessments should be undertaken on the same basis as criminal cases. Another indicated that those who can afford to pay should do so, with the exception of Care Proceedings and in cases of domestic violence. One Advocate suggested that the financial eligibility threshold could be over £750K and another drew a distinction between public and private law Family proceedings, and suggested that parents should not be automatically eligible for the latter:

'I can think of no logical reason simply to abandon the financial eligibility test. I would be concerned that an automatic entitlement may serve simply to facilitate assisted persons litigating a matter "to the bitter end". Family proceedings are already frequently driven by emotion and to isolate litigants from having to have some regard for costs consequences is in no-one's interests. A legal merits requirement should remain (as should the statutory charge scheme).'

'This should be assessed in the same way as for criminal proceedings.'

'Some people can afford to pay, and in most cases they should do so. The means test should be disregarded in Care Proceedings and domestic violence cases only.'

'It should be means tested but the asset/income threshold should probably be more than say £750K.'

'Are we still talking about care proceedings? If care proceedings yes, if a special guardianship or adoption application then yes but not in private law proceedings such as contact, residence etc. Parents in Hague convention proceedings are exempt from the means test.'

One further comment from an 'Other' also supported financial means testing for parents:

'The parent's financial standing should be a consideration before granting any aid.'

7 respondents (10%) said that they **did not know** if a parent or guardian who is party to Family proceedings should be automatically eligible to receive Civil Legal Aid. Of these 7 respondents, 3 had been through a Civil court; 2 were members of the public; 1 was an Advocate / Judiciary member, and there was 1 'Other'. 2 comments were made.

A member of the public referred to the potential complexity of assessing a person's finances:

'Again, these matters can be complex. Finances can be complex. I can see that some individuals could clearly be ineligible, I can also see some appearing ineligible while being functionally unable to afford to take up representation. The latter case should never be abandoned. Any costs that can subsequently be reclaimed, fine.'

2 respondents (3%) answered '**Other**'. 1 respondent had been through a Civil Court; 1 was an Advocate/Judiciary member, and both made comments.

The person who had been through a Civil Court suggested that automatic eligibility for Legal Aid should apply to both parties:

'Yes as long as it applies to both parties i.e. in child custody during divorce.'

The Advocate / Judiciary member suggested that financial eligibility should consider outgoings (i.e. as well as income):

'Financial resources should be taken into account but should also take into account their outgoings.'

**Q28 SUMMARY:** 69 respondents (100%) answered the question.

- 31 respondents (45%) said that a parent or guardian who is party to Family proceedings should be automatically eligible to receive Civil Legal Aid from a financial perspective. Issues raised included the gravity of Care Proceedings; concern that this matter had not already been addressed, and the importance of protecting children. Suggestions included putting minimum initial funding in place and diversion to ADR as appropriate.
- 29 respondents (42%) said that a parent or guardian who is party to Family proceedings should not be automatically eligible to receive Civil Legal Aid from a financial perspective. Concern was expressed that the introduction of such a measure could be counter-productive, and a distinction was drawn between public and private proceedings. Suggestions included means test exemptions in Care Proceedings and domestic violence cases only.
- 7 respondents (10%) said that they did not know.
- 2 respondents (3%) answered 'Other'.

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Q29. If you have any further comments on Civil Legal Aid for matters involving children please tell us.

A text box was provided for comments / suggestions and 8 respondents (12%) submitted responses.

Of these 8 respondents:



- 1 had been through a Civil court
- 1 were members of the public
- 3 were Advocates / Judiciary members
- 3 were 'Others'

A respondent who had been through a Civil court submitted that the extent of financial resources should not determine legal outcomes:

'Family matters shouldn't be decided by who has the largest wallet.'

A member of the public referred to the role of the state in supporting children:

'The state must support children in access to law.'

Advocates / Judiciary members called for more mediation and family support to be made available before legal action is taken. There were also calls for children to be given adequate protection in society and the legal system, with Legal Aid granted in all matters involving children.

The General Registry gave its support to funding mediation for both parties, and suggested that as a mandatory first step this could be helpful:

'Funding of mediation for both parties is cost effective. Making mediation a mandatory first step may also assist in diversion of cases.'

Further comments from the remaining 2 'Others' included a call for the legal merits test to remain in place and for Legal Aid to be applied in cases which primarily benefit the interests of children:

'The legal criterion should remain.'

'As long as this is not abused by the parent or guardian by 'tagging' other interests onto the case. It must be purely for the children's wellbeing.'

**Q29 SUMMARY:** 8 respondents (12%) answered the question.

Comments focused on ensuring that the interests of the child are upheld at all times; the importance of funding mediation for both parties, and the retention of the legal merits test in Family matters.

## 4.10. Divorce and dissolution of Civil partnerships

**Q30.** Should means-tested Civil Legal Aid continue to be available to couples who are seeking a divorce or dissolution of a civil partnership?

68 respondents (99%) answered the question, and the results are shown in Table 21 below. As people could choose multiple answers, the respondent total does not add up to 69 and the percentage total does not add up to 100. A text box was also provided for comments.

**Table 21. Views on provision of means-tested Legal Aid for divorce/dissolution of civil partnerships**

Response	Number	% (of 69)
Yes, if there is a dispute regarding finances	39	57
Yes, if there is a dispute re: care of dependent children	45	65
Yes, if person does not agree the grounds for divorce / dissolution	26	38
Yes, subject to attending an assessment for mediation (exemptions would apply, such as cases involving domestic abuse)	33	48
No, Civil Legal Aid should not be available for divorce / dissolution	12	17
Other (please state)	7	10
Not answered	1	1
Total	N/A	N/A

19 respondents (28%) provided further comments to support their answers.

56<sup>12</sup> respondents (81%) indicated that **means-tested Civil Legal Aid should continue to be available for one or more of the four types of divorce / dispute proceedings described** and/or they answered '**Other**'. Of these 56 respondents, 11 had been through a Civil court; 11 were members of the public; 20 were Advocates / Judiciary members; 3 were public sector employees; 2 were charity / support workers, and there were 9 'Others'.

Respondents' support for proceedings are listed in order below:

- i. Disputes regarding care of dependent children (65%)
- ii. Disputes regarding finances (57%)
- iii. Divorces / civil dissolutions subject to attending a mediation assessment [safeguarding exemptions would apply] (48%)
- iv. Disputes regarding grounds for divorce / dissolution (38%)

18 respondents made comments, including 7 respondents who answered 'Other'.

Respondents who had been through a Civil court proposed that all divorce cases should continue be included, and initial mediation was also advocated. Concerns were expressed regarding fairness and in particular individuals who may reduce their hours to qualify for Legal Aid. It was also suggested that Legal Aid should be available to both parties:

'Yes in all cases.'

'Initial mediation without lawyers may promote more settlement and enable proceedings to get to mediation quicker (with less paperwork). As settlement is not required there is no injustice in people not being represented when assisted by a professional impartial mediator.'

'People should not be able to reduce their hours to qualify for legal aid. It is unfair for one party to be funded in this way.'

<sup>12</sup> The figure of 56 is calculated by subtracting those 12 respondents who answered 'No' and 1 respondent who did not answer from all 69 respondents (i.e. 69 – 13 = 56).

'It should be available to both parties no matter what salary either party are on, in my case because I was the higher earner I had to pay private legal fees and my ex-wife because she earned less, received full legal aid and that's not fair especially when she purposefully dragged the case out over 2 years.'

Members of the public suggested that mediation should be used to keep divorce proceedings out of Court; supported the provision of means-tested Legal Aid, and called for there to be strict monitoring of its provision:

'Divorce proceedings should be outside of the courts in some form of mediation process - if the recourse is to expensive law then only the lawyers win.'

'People who want to divorce but neither have the money for the divorce should be eligible for means tested legal aid.'

'If it was then it would have to be strictly limited, checked and reviewed.'

Advocates / Judiciary members expressed their support for no-fault divorce and its potential for facilitating less contentious proceedings out of Court. There was also concern that seeking a divorce should not be subject to mediation; that different divorce proceedings should be recognised accordingly, and that contested divorces should not be funded by Legal Aid:

'Perhaps not surprisingly, I am also an advocate for no fault divorce.'

'If no-fault divorce is passed then for the simple granting of the Interim Divorce Order then Legal Aid should not necessarily be available.'

'With the introduction of no fault divorce, the numbers of people requiring legal advice and assistance with divorce matters is likely to fall. As the process will be less contentious, it should result in couples being better able to resolve issues between them, in relation to finances or children, without the need for Court involvement.'

'Again this is unclear. A divorce application is conducted under a green form and so is not subject to a merits test. Seeking a divorce should not be subject to mediation and future disputes should not impact on a person's ability to get divorced.'

'As there are different levels of divorce including different matters it is unfair and wrong to tar all Divorce proceedings with the same brush.'

'Contested divorces should not be funded by Legal Aid.'

The Equality Adviser also referred to the potential for no fault divorces to reduce demands on Legal Aid:

'If no fault divorces are legislated for, as proposed by Mrs Caine MHK then this should have the effect of reducing civil legal aid burden.'

One further comment from an 'Other' made reference to the role of Legal Aid in minimising financial imbalance between individuals:

'It needs to be as full as possible to minimise the impact of financial imbalance between the divorcing couple.'

The results show that 12 respondents (17%) indicated that **means-tested Civil Legal Aid should not continue to be available** for divorce / dissolution of civil partnership. Of these 12 respondents, 1 had been through a Civil court; 4 were members of the public; 4 were Advocates / Judiciary members; and there were 3 'Others'.

1 comment was made by a respondent who had been through a Civil court, and they specified exceptions:

'With the exception of domestic abuse and child safety.'

**Q30 SUMMARY:** 68 respondents (99%) answered the question.

- 56 respondents (81%) indicated that means-tested Civil Legal Aid should continue be available for one or more of the four types of divorce / dispute proceedings described and / or they answered 'Other'. 18 comments were made and support for a number of key themes emerged, which are shown below in descending order:

Summary of key themes supported by respondents	Frequency of reference
Continued provision of Legal Aid for all divorce matters	6
No-fault divorce	4
Fairness and the need for a balanced outcome to be achieved between parties	3
More mediation in divorce cases	2

Other matters raised included:

- Concern that seeking a divorce should not be subject to undertaking mediation
  - A call for strict monitoring of Legal Aid in divorce cases
  - A suggestion that contested divorces should not be covered by Legal Aid
- 12 respondents (17%) indicated that means-tested Civil Legal Aid should not continue to be available for divorce / dissolution of civil partnership. One comment was made which referred to exceptions in cases relating to domestic abuse and child safety.
- 1 respondent (1%) did not answer.

**Q31. Should financial mean-testing still apply if one party wishes to seek legal advice on divorce or dissolution of a civil partnership due to domestic abuse?**

67 respondents (97%) answered the question, and the results are shown in Table 22 below. A text box was also provided for comments.

**Table 22. Views on application of means-test for divorce in cases of domestic abuse**

Response	Number	%
Yes, means-testing should still apply	30	43

No, means-testing should not apply	33	48
Don't know	3	4
Other (please state)	1	1
Not answered	2	3
Total	69	>99

17 respondents provided further comments to support their answers.

30 respondents (43%) said that **means-testing should still apply** if a person is seeking legal advice on divorce / dissolution of a civil partnership due to domestic abuse. Of these 30 respondents, 8 had been through a Civil court; 5 were members of the public; 11 were Advocates / Judiciary members; 1 public sector employee; 1 was a charity / support worker, and there were 4 'Others'. 5 comments were made.

A respondent who had been through a Civil court suggested that a mechanism could apply which would allow a person of means to access Legal Aid, subject to repayment of costs at a later date:

'Emergency mechanisms where a party for example has money but cannot safely access it should apply, subject to the party repaying the Govt.'

Advocate / Judiciary members advised that an allegation of domestic abuse does not make it fact. Concern was also expressed in the way that questions had been drafted, and reference was made to domestic abuse falling under 'unreasonable behaviour' in divorce proceedings:

'Domestic Abuse is usually an allegation and just because one party alleges it doesn't make it fact. Any change would be open to abuse and manipulation.'

'I really don't know who drafted these questions but it would appear they have a complete lack of understanding of family law. Domestic abuse falls under unreasonable behaviour and is regularly pleaded in divorce proceedings due to the wide definition of domestic abuse - the presence of domestic abuse should not impact on whether a party is means tested or not.'

There was 1 comment from an 'Other' who indicated that they agreed with the principle of removing the means-test to help those seeking to escape abusive relationships. However, they also expressed concern that such a change could increase the number of applications for divorce on grounds which may be difficult to verify.

33 respondents (48%) said that **means-testing should not apply** if a person is seeking legal advice on divorce / dissolution of a civil partnership due to domestic abuse. Of these 33 respondents, 4 had been through a Civil court; 9 were members of the public; 11 were Advocates / Judiciary members; 1 public sector employee; 1 was a charity / support worker, and there were 7 'Others'. 11 comments were made.

2 respondents who had been through a Civil court referred to relationships in which one person may be subject to domestic abuse, including financial control. There was concern that in such relationships, an individual may not have access to funds to pay for legal advice or representation, nor qualify for Legal Aid if their household income is above financial thresholds, and as a result they would not be able to access legal support.

1 member of the public agreed with the principle but expressed concern that the removal of the means-test could lead to an abuse of Legal Aid.

2 Advocate / Judiciary members gave the example of an abusive partner who controls access to the household finances as a means of exercising control. Concern was expressed that if, for example, a Legal Aid contribution was required, it may alert the abusive partner and put the abused person at further risk. Another Advocate expressed concern in regard to the current system:

'Someone says they are being abused and the proposition/issue hobbles them further because everyone is running around trying to determine the person alleging abuse and their means?'

Further comments from 'Others' proposed options which could support the evidencing of domestic abuse, and it was also suggested that the legal merits test should be retained in such cases:

'With the back-up of evidence from Drs and some kind of questionnaire to establish that there is confirmed abuse - physical / controlling / emotional.'

'But the legal test still should, to avoid the use of this ground to save money.'

3 respondents said they **did not know** if means-testing should still apply. Of these 3 respondents, 2 were Advocates / Judiciary members and there was 1 'Other'. No comments were made.

1 respondent who was a member of the public, answered 'Other' and they sought further information about the security of the means-testing process:

'Can means-testing be done without the abusive partner being made aware?'

**Q31 SUMMARY:** 67 respondents (97%) answered the question. The results showed an almost even split between those who said that means-testing should still apply if a person is seeking legal advice on divorce or dissolution of a civil partnership due to domestic abuse and those who said it should not:

- 30 respondents (43%) said means-testing should still apply. There was concern that any change could be open to manipulation by applicants, and it was submitted that domestic abuse falls within the category of 'unreasonable behaviour' in divorce proceedings.
- 33 respondents (48%) said means-testing should not apply. It was submitted that in abusive relationships an individual may not have access to funds, and any application for Legal Aid could alert an abuser and place the other person at further risk. Suggestions were made for gathering evidence of abuse (e.g. from a medical professional).
- 3 respondents (4%) said they did not know if means-testing should still apply and 1 respondent (1%) answered 'Other'

Q32. Providing arrangements are agreed in respect of finances and (if applicable) dependent children, should the divorce process be administrative and not need Court time?

68 respondents (99%) answered the question, and the results are shown in Table 23 below. A text box was also provided for comments.

**Table 23. Views on whether some divorces should be admin. processes only**

Response	Number	%
Yes	60	87
No	2	3
Don't know	3	4
Other (please state)	3	4
Not answered	1	1
Total	69	>99

11 respondents provided further comments to support their answers.

60 respondents (87%) said that **providing arrangements are agreed in respect of finances and dependent children, the divorce process should be administrative.** Of these 60 respondents, 10 had been through a Civil court; 15 were members of the public; 19 were Advocates / Judiciary members; 3 public sector employees; 2 were charity / support workers, and there were 11 'Others'. 7 comments were made.

Advocate / Judiciary members made reference to the potential for further administrative processes to be put in place. It was also stated that many / all such cases are already dealt with administratively:

'Much more, if not all of the process can be dealt with administratively including the pointless inquiry into the matter of fault.'

'Too much unnecessary time and cost wasted on paperwork exercises.'

'This would be the case now. Often matters are dealt with administratively.'

'The current divorce process is administrative only, if the divorce is not contested and therefore there is rarely any Court time involved in the divorce aspect of the process. The divorce Order will always need to be issued by a Court.'

The General Registry advised that such arrangements are already in place for uncontested divorces, but stressed the importance of legal advice for both parties:

'This is the case at the moment whereby the Special Procedure Listing deals with uncontested divorce and the parties can agree orders on finances and contact. The court has a quasi- inquisitorial approach in respect of such matters but it is generally rare for the Court not to approve a settlement properly reached by parties provided they have had the opportunity to seek their own independent legal advice.'

The Equality Adviser suggested that electronic applications could support administrative processes:

'Online forms with drop down answers & online submission should streamline the efficiency of this proposal.'

2 respondents (3%) said that **providing arrangements are agreed in respect of finances and any dependent children, the divorce process should not be**

**administrative.** Of these 2 respondents, 1 had been through a Civil court and 1 was an Advocate / Judiciary member. 1 comment was made.

The Advocate / Judiciary member made reference to the role of the Court as a “final sanity and safety check” and expressed concern that the absence of such checks could lead to more work in future to due to issues requiring resolution.

3 respondents (4%) said that they **did not know**. Of these 3 respondents, 1 had been through a Civil court, 1 was an Advocate / Judiciary member and there was 1 ‘Other’. 1 comment was made.

The Advocate / Judiciary member indicated that individuals would still need legal advice to ensure that they are made aware of their legal rights and entitlements.

2 respondents (3%) answered ‘**Other**’ and both were Advocates / Judiciary members. 2 comments were made. 1 respondent stated that such cases are already dealt with administratively and an another indicated that the role of the Court was important in the absence of prior mediation or legal advice:

‘It already is - no court appearances are required where all matters are agreed. What court time are you referring to?’

‘No court time should be required if the parties have come to the agreement by using a mediator or advocate. However if there has been no mediator or advocate then it should be looked at by the court.’

**Q32 SUMMARY:** 68 respondents (99%) answered the question.

- 60 respondents (87%) said that providing arrangements are agreed in respect of finances and any dependent children, the divorce process should be administrative and not need Court time.
  - 2 respondents (3%) said that providing arrangements are agreed in respect of finances and any dependent children, the divorce process should not be administrative only.
  - 3 respondents (4%) said that they did not know.
  - 2 respondents (3%) answered ‘Other’.
- 

Q33. If you have any further comments on Civil Legal Aid for divorce or dissolution of civil partnerships please tell us.

A text box was provided for comments. 2 respondents (3%) submitted comments as follows:



- 1 member of the public
- 1 'Other'

The member of the public expressed concern that the current Legal Aid system may be open to abuse, and suggested that there should be a limit to the number of times Legal Aid is provided:

'People are abusing the system by claiming to be ill (it is not hard to get a doctor's note) or unemployed (leaving their job temporarily) in order to receive legal aid. This needs to be addressed - people are playing the system. There should be a limit on how many times you can receive legal aid.'

The 'Other' respondent described how the Legal Aid application process can be overwhelming for individuals, particularly if they are already going through difficult times. It was suggested that it would be helpful if initial advice and assistance could be provided to people at the start of the process to help inform their decision to apply for Legal Aid, and potentially reduce the level of administration for an Advocate:

'I know that there are advice leaflets online - but when you need to go through this words / papers - it is all so daunting and your mind is not clear. It's overwhelming. I wish that there is an office where you could book an appointment - perhaps a nominal fee - 1 hour of advice on what the legal options are and what is involved so that you can make an informed decision. Often this is done with the first meeting with the advocate. Surely this is a waste of their time and if this service was available you would know for certain that you were comfortable going forward and that you could be prepared. Perhaps ways of doing part of the work yourself to save the admin time of the lawyers - and therefore the charges that the lawyers would then forward to legal aid. I have a friend who is about to embark on the journey - she is lost - doesn't know where turn or who to talk to - who is the right advocate and what she is entitled too. Similarly her husband walked out, left her with no money (she is currently furloughed) but a house [and] a pile of bills. If there was a person she could talk to - book an appointment - not to discuss the personal case but to see what the legal system offers and how she needs to go about it.'

**Q33 SUMMARY:** 2 respondents (3%) answered the question.

One person suggested that there should be a limit on the number of times a person can receive Legal Aid. Another person suggested that it would be helpful if people had the opportunity to seek advice and support regarding Legal Aid at the beginning of the process, which can be difficult time for those individuals.

## 4.11. Scope of Non-Family Matters

Q34. Should any Non-Family Matter<sup>13</sup> currently in scope be removed?

68 respondents (99%) answered the question, and the results are shown in Table 24 below. A text box was also provided for comments.

<sup>13</sup> A list and description of all Non-Family Matters currently in scope was provided

**Table 24. Views on removal of Non-Family matter(s) from scope**

Response	Number	%
Yes	16	23
No	37	54
Don't know	13	19
Other (please state)	2	3
Not answered	1	1
Total	69	100

Respondents who answered 'Yes' were asked to indicate which Non-Family matter(s) should be removed from scope and why. 18 respondents provided further comments to support their answers.

16 respondents (23%) were **in support of one or more Non-Family matters being removed from the scope of Civil Legal Aid**. Of these 16 respondents, 3 had been through a Civil court; 4 were members of the public; 6 were Advocates / Judiciary members; and there were 3 'Others'. 13 comments were made.

A respondent who had been through a Civil court suggested boundary disputes, and another proposed Inquests and Inquiries on the basis that there is no adjudication taking place:

'Boundary disputes.'

'Inquests and inquiries - as the court conducts an inquisition rather than adjudication no person is required to participate to enforce any right or defend any claim.'

Members of the public referred suggested boundary and property disputes, in addition to personal injury:

'Boundary & Property Dispute (incl. partition of land).'

'Personal injury.'

Advocate / Judiciary members suggested boundary disputes and particular reference was made to "often trivial matters" which can take up significant Court time. Other matters included wills; small claims court matters and inquiries. Receiverships were also suggested, subject to the process becoming easier for unrepresented individuals. It was also suggested that the majority of Tribunals should not be eligible for Legal Aid beyond Green Form as they are not formal Court processes:

'Boundary disputes.'

'The writing of Wills under green form, matters in the small claims court.'

'Preparation of wills and inquiries into treasure troves as these are services which are non-essential - many individuals falling just outside the scope of Legal Aid are unable to afford wills and it is unfair and prejudicial to them for wills to be available to legally aided persons. Receiverships possibly - would require the receivership process to become a little more user friendly for individuals to access without representation.'

'Save for the Mental Health Tribunal (where the assisted person is potentially vulnerable) and the Advocates Disciplinary Tribunal (where the assisted person's opponent will

always be legally qualified), all Tribunal work should fall outside the scope of legal aid. It is a large part of the raison d'être of the Tribunal system that its processes are designed and intended to afford easy access to justice for litigants through the provision of an efficient, timely and accessible service on the basis that litigants represent themselves. It is for this reason that the Tribunals do not make costs awards (save in very exceptional cases) i.e. to encourage self-representation. To encourage instead legal representation (by making legal aid - beyond Green form Assistance - available for such cases) will undermine the Tribunal service and make it indistinguishable from the more formal court process.'

The General Registry suggested personal injury (PI) and submitted that boundary disputes could be dealt with through initial advice and appropriate direction:

'PI could be dealt with by no win no fee. Boundary disputes should perhaps simply be covered by short initial advice geared at steering parties to ADR/pragmatism.'

Further comments from 'Others' included inquiries and petition of dolence. Caution was also urged in terms of removing matters without more data:

'Inquiry. Petition of dolence.'

'Many probably need review, but in the absence of numbers and costs only a view can only be given.'

37 respondents (54%) were **not in support of one or more Non-Family matters being removed from the scope of Civil Legal Aid**. Of these 37 respondents, 4 had been through a Civil court; 6 were members of the public; 17 were Advocates / Judiciary members; 1 was a public sector employee; 1 was a charity / support worker, and there were 8 'Others'. 3 comments were made.

The IoM Law Society provided a combined response for Q34 – Q43. An extract is included below in which the Society indicated that it does not support a reduction in scope and the rest of the Society's response is included at Q38 where it is most applicable:

'The IOMLS does not support the restriction in scope of civil legal aid. The Manx people should have access to free legal advice, where they are eligible for the same.'

An Advocate / Judiciary member considered that legal advice on all matters should be available:

'The community should be entitled to receive legal advice on all matters.'

The Equality Adviser suggested a statutory requirement for alternative dispute resolution to reduce demands on the Court:

'There should be a legislative requirement for mandatory alternative dispute resolution in many of these areas to limit the need for court hearings.'

13 respondents (19%) said they **did not know**. Of these 13 respondents, 4 had been through a Civil court; 4 were members of the public; 1 was an Advocate / Judiciary member; 2 were public sector employees; 1 was a charity / support worker, and there was 1 'Other'. No comments were made.

2 respondents (3%) answered 'Other'. 1 person was a member of the public and there was 1 'Other' person. 2 comments were made.

A member of the public suggested that Legal Aid should be recompensed if an individual receives compensation or is awarded costs and expressed concern that Advocates are the main beneficiaries in a system that is too bureaucratic:

'Again if it is granted it needs to be carefully evaluated and monitored. Funds need to be paid back if compensation / costs are received. This is an area where the only winners are the advocates who are receiving fees. If matters were made simpler it would speed up the legal process. There is too much bureaucracy.'

The 'Other' respondent suggested that boundary and property disputes could be removed from scope as they do not relate to persons facing mistreatment:

'Possibly - Boundary & Property Dispute (incl. partition of land) - its complex - I understand there are so many different factors that affect circumstances. Legal aid should be available for people facing mistreatment. Not sure boundaries on property fall within that.'

**Q34 SUMMARY:** 68 respondents (99%) answered the question.

- 16 respondents (23%) were in support of one or more Non-Family matters being removed from the scope of Civil Legal Aid.

13 comments were received, including suggestions for matters to be removed from the scope of Civil Legal Aid which are summarised below in descending order:

Matters suggested for removal from scope	Frequency of suggestion
Boundary disputes	5
Inquiries into treasure troves	4
Personal injury	2
Wills	2
Petition of dolence	1
Inquests	1
Small claims	1
Property disputes (incl. partition of land)	1
All Tribunals (with the exception of the Mental Health Appeals and Advocates Disciplinary Tribunals)	1
Receiverships subject to simplification of process	1

- 37 respondents (54%) were not in support of any Non-Family matters being removed from the scope of Civil Legal Aid.
- 13 respondents (19%) said they did not know.
- 2 respondents (3%) answered 'Other'.

Q35. Should any NON-FAMILY matter be exempt from the financial means test? (i.e. so only the legal merits test applies)

66 respondents (96%) answered the question, and the results are shown in Table 25 below. A text box was also provided for comments.

**Table 25. Views on exemption of Non-Family matter(s) from means test**

Response	Number	%
Yes	19	28
No	34	49
Don't know	8	12
Other (please state)	5	7
Not answered	3	4
Total	69	100

Respondents who answered 'Yes' were asked to indicate which Non-Family matter(s) should be exempt from the financial means test and why. 19 respondents provided further comments to support their answers.

19 respondents (28%) said that **one or more Non-Family matters should be exempt from the financial means test**. Of these 19 respondents, 1 had been through a Civil court; 3 were members of the public; 7 were Advocates / Judiciary members; 1 public sector employee, and there were 7 'Others'. 15 comments were made.

1 member of the public suggested medical negligence and personal injury should be exempt from the financial means test. Another person referred to the position that they find themselves in, having lost their business and now in significant debt, and unable to afford to pay for legal representation or qualify for Legal Aid to take action against another business which they say is responsible for the losses.

Advocate / Judiciary members suggested some Inquests, Tribunals, and petitions of doleance:

- 'Inquests where a public body is an interested party.'
- 'Inquests and Mental Health Review Tribunal (the latter is already exempt).'
- 'In some circumstances, petitions of doleance and tribunals. I would suggest these circumstances ought to be where there is a real risk of institutional unfairness to an individual or even a potential criminal sanction flowing from the decision making process eg financial services which may give rise to criminal prosecution.'

1 public sector employee suggested Inquests.

The General Registry also suggested Inquests, as did the Equality Adviser in addition to the Mental Health Review Tribunal and petitions of doleance:

- 'Inquests.'
- 'Inquests, Mental Health Tribunal & Petitions of doleance.'

Further suggestions from 'Others' included the Mental Health Review Tribunal, and 1 person suggested that all Non-Family matters should be exempt with the exception of Inquiries and petitions of dolence:

'Mental Health Review Tribunal. Any financial means test establishes a gradient of difficulty in achieving liberty, as those not aided may not be in a position to mobilise resources, even if they theoretically have them.'

'Mental Health Review Tribunal as the patients are invariably vulnerable and need legal support which few could afford without legal aid.'

'All aside from Inquiry and Petition of dolence.'

34 respondents (49%) said that **no Non-Family matter should be exempt from the financial means test**. Of these 34 respondents, 4 had been through a Civil court; 9 were members of the public; 14 were Advocates / Judiciary members; 2 were public sector employees; 2 were charity / support workers, and there were 3 'Others'. No comments were made.

8 respondents (12%) said that they **did not know** if any Non-Family matters should be exempt from the financial means test. Of these 8 respondents, 4 had been through a Civil court; 2 were members of the public; 1 was an Advocate / Judiciary member, and there was 1 'Other'. No comments were made.

5 respondents (7%) answered '**Other**'. Of these 5 respondents, 2 had been through a Civil court; 1 was an Advocate / Judiciary member, and there were 2 'Others'. 4 comments were made.

1 respondent who had been through a Civil court suggested Receivership (personal) and another was against all financial means-testing:

'Receivership (personal not company) - the receiver is not acting in their own capacity and the estate has not been settled into receivership through any choice of the patient.'

'No matter should be means tested and all matters should be in scope for free legal advice.'

Suggestions from 'Others' included matters of public interest, Tribunals, medical matters and employment issues:

'Tribunals / medical matters / employment issues.'

**Q35 SUMMARY:** 66 respondents (96%) answered the question.

- 19 respondents (28%) said that one or more Non-Family matters should be exempt from the financial means test. Of these, 15 respondents suggested matters for exemption from the financial means test which are summarised below in descending order:

Matters suggested for exemption	Frequency of suggestion
Mental Health Review Tribunal	6

Matters suggested for exemption	Frequency of suggestion
Inquests	6
Petitions of doleance	2
Medical Negligence cases	2
Personal Injury	1
Inquiries into treasure troves	1
All matters except Personal Injury & petition of doleance	1

- 34 respondents (49%) said that no Non-Family matter should be exempt from the financial means test.
- 8 respondents (12%) said that they did not know.
- 5 respondents (7%) answered 'Other'.

Q36. If you have any further comments on the scope of Non-Family Matters please tell us

A text box was provided for comments / suggestions and 6 respondents (9%) submitted responses.

Of these 6 respondents:

- 1 had been through a Civil court
- 5 were Advocates / Judiciary members

A respondent who had been through a Civil court suggested that all Legal Aid should be free and all matters in scope:

'No matter should be means tested and all matters should be in scope for free legal advice.'

Advocate / Judiciary members suggested the Employment and Equality Tribunal should be included in scope and sought clarification around the rationale for some Tribunals being covered by (full) Legal Aid and not others. Other suggestions included Inquests and amending the means test to widen eligibility:

'Consideration should be given to extending to the Employment Tribunal.'

'Employment tribunals should be included. It is confusing as to why only certain tribunals are within the scope? How has this been decided?'

'Civil legal aid with a contribution should be made available for Inquests.'

'Other than to say the means test should be set higher I agree that prospects should only be in consideration in cases of malicious litigation or where a judge determines the case is frivolous, vexatious or has little merit or prospect of success using the usual tests for summary judgment etc.'

**Q36 SUMMARY:** 6 respondents (9%) answered the question. Suggestions for Non-Family matters to be covered in scope included the Employment and Equality Tribunal, Inquests (with contributions) and all matters. It was also suggested that financial eligibility should be widened and clarification provided in regard to the exclusion / inclusion of Tribunals in scope.

### 4.12. Tribunals

Q37. Should people on low incomes continue to be eligible for free legal advice and assistance (under Green Form) to prepare for all Tribunals?

66 respondents (96%) answered the question, and the results are shown in Table 26 below. A text box was also provided for comments.

**Table 26. Views on continuing Green Form provision for Tribunals**

Response	Number	%
Yes	56	81
No	5	7
Don't know	2	3
Other (please state)	3	4
Not answered	3	4
Total	69	>99

8 respondents provided further comments to support their answers.

56 respondents (81%) said that **people on low incomes should continue to be eligible for free legal advice and assistance under Green Form to prepare for all Tribunals.** Of these 56 respondents, 8 had been through a Civil court; 12 were members of the public; 21 were Advocates / Judiciary members; 1 public sector employee; 2 were charity / support workers, and there were 12 'Others'. 4 comments were made.

1 Advocate / Judiciary member expressed concern that Green Form (i.e. 3 hours' initial advice and up to 6 hours' additional advice subject to approval) does not provide enough time for an Advocate to carry out the level of work required for a Tribunal and called for full Legal Aid to also be made available. Another Advocate / Judiciary member suggested that there should be a defined time limit available for Tribunals under Green Form:

'Subject to a defined amount (i.e. 3 hours with no extension).'

5 respondents (7%) said that **people on low incomes should not continue to be eligible for free legal advice and assistance to prepare for all Tribunals.** Of these 5 respondents, 2 had been through a Civil court; 2 were members of the public; 1 was an Advocate / Judiciary member. 2 comments were made.

A respondent who had been through a Civil court called for Green Form to be used in emergencies only:

'Merits test should always apply. Green form should be required only for emergency use.'



2 respondents (3%) said that they **did not know**. Both respondents were public sector employees. No comments were made.

3 respondents (4%) answered '**Other**'. Of these 3 respondents, 1 was a member of the public and 2 were Advocates / Judiciary members. 2 comments were made.

A member of the public suggested that the number of times and reasons a person has received Legal Aid should be taken into account when considering eligibility:

'Not always it depends on how many times they have already received legal aid / what that is for.'

An Advocate / Judiciary member expressed concern in regard to time restrictions under Green Form:

'They should be eligible under the green form but it is unfair that this is restricted to 3 or 6 hours.'

**Q37 SUMMARY:** 66 respondents (96%) answered the question and 8 provided comments.

- 56 respondents (81%) said that people on low incomes should continue to be eligible for free legal advice and assistance to prepare for all Tribunals.
- 5 respondents (7%) said that people on low incomes should not continue to be eligible for free legal advice and assistance to prepare for all Tribunals.
- 2 respondents (3%) said that they did not know.
- 3 respondents (4%) answered 'Other'.

There was some concern that there was inadequate provision under Green Form to cover the level of work required for Tribunals. Suggestions included limiting the number of times or circumstances under which a person can receive assistance, and defining / limiting the time available under Green Form.

**Q38. Should any Tribunals be covered by full Civil Legal Aid? (four are already covered)**

65 respondents (94%) answered the question, and the results are shown in Table 27 below. A text box was also provided for comments.

**Table 27. Views on provision of full Civil Legal Aid for Tribunals**

Response	Number	%
Yes (please tell us why)	38	55
No (please tell us why)	8	12
Don't know	16	23
Other (please state)	3	4
Not answered	4	6

Total	69	100
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Respondents who answered 'Yes' or 'No' were asked to indicate the reason for their response. 16 respondents provided further comments to support their answers.

38 respondents (55%) said that **some Tribunals should be covered by full Civil Legal Aid**. Of these 38 respondents, 7 had been through a Civil court; 7 were members of the public; 16 were Advocates / Judiciary members; 1 was a public sector employee; 1 was a charity / support worker, and there were 6 'Others'. 13 comments were made.

1 respondent who had been through a Civil court suggested that the Employment and Equality Tribunal should be covered to support some of the most vulnerable people in society, and help to make employers more accountable. Another respondent called for all Tribunals to be covered by full Legal Aid:

'Yes, all should be covered.'

1 member of the public also suggested the Employment and Equality Tribunal and other complex matters:

'Employment tribunals - The employer is likely to be in a better position to get legal advice than the employee is. To make it fairer the employee should also be able to get legal aid for more complex cases.'

Advocate / Judiciary members suggested the Mental Health Review Tribunal; Advocates Disciplinary Tribunal and the Employment and Equality Tribunal. It was also suggested that there should be sufficient assistance and information available to support those who self-represent. Clarification was also sought around the rationale for some Tribunals being covered by (full) Legal Aid and not others:

'As above ie only Mental Health Tribunal and Advocates Disciplinary Tribunal.'

'Mental Health Tribunals should continue to be covered. The Government should ensure that sufficient assistance is given by the Tribunal itself (and in terms of information available to applicants/respondents) to enable people to self-represent at Tribunals.'

'It does not make sense why the current four Tribunals are covered and not others. For example, why the Employment and Equality Tribunal is not covered, when the impact on a dismissed employee can be significant. A clear rationale as to why Tribunals are included in coverage needs to be set out and then applied to the vast array of Tribunal services.'

'Employment should be and all other tribunals should be considered. It cannot be right to simply cherry-pick which should be eligible for funding.'

The Equality Adviser suggested the Employment and Equality Tribunal should be covered by full Legal Aid, due to the complexity of the law. It was also suggested that alternative dispute resolution should be mandatory:

'Employment & Equality Tribunal. Both employment & equality legislation are complex areas of law. Many complainants are prevented from accessing justice because of the lack of financial support. Again, evidence of undertaking alternative dispute resolution should be mandatory before reaching Tribunal.'

8 respondents (12%) said that **Tribunals should not be covered by full Civil Legal Aid**. Of these 8 respondents, 3 were members of the public; 2 were Advocates / Judiciary members; 1 was a charity / support worker, and there were 2 'Others'. 1 comment was made.

The comment was from an 'Other' respondent who suggested that Advocates should be required to have their own insurance to pay for legal representation (e.g. at an Advocates Disciplinary Tribunal).

16 respondents (23%) said that they **did not know**. Of these 16 respondents, 3 had been through a Civil Court; 5 were members of the public; 2 were Advocates / Judiciary members; 1 was a public sector employee, and there were 4 'Others'.

3 respondents (4%) answered '**Other**' and all 3 were Advocates / Judiciary members. 2 comments were made and included a suggestion to include the Employment and Equality Tribunal:

'Consideration should be given to extending to the Employment Tribunal.'

**Q38 SUMMARY:** 65 respondents (94%) answered the question.

- 38 respondents (55%) said that some Tribunals should be covered by full Civil Legal Aid. Of these, 13 respondents made comments in support of their answer and some suggested one or more Tribunals for which they considered full Legal Aid should be available. These suggestions are summarised below in descending order:

Tribunals suggested for inclusion in scope (continuation or addition)	Frequency of suggestion
Employment and Equality Tribunal (incl. one suggestion for a Statutory Charge to be attached)	6
Mental Health Review Tribunal	2
Advocates Disciplinary Tribunal	1
Social Security Appeals Tribunal	1
All Tribunals	1

Some concern was expressed that the rationale for making some Tribunals and not others eligible for full Civil legal Aid was not clear and suggested that 'cherry picking' was not appropriate. Other suggestions included providing adequate support for those self-representing at Tribunals, and mandatory ADR before the Tribunal stage may be reached.

- 8 respondents (12%) said that Tribunals should not be covered by full Civil Legal Aid.
- 16 respondents (23%) said that they did not know.
- 3 respondents (4%) answered 'Other'.

Q39. If 'Yes' (to Q38) which of these four Tribunals, if any, should we continue to fund with full Civil Legal Aid?

This question was specifically for the 38 respondents who indicated in Q38 that one or more Tribunals should be covered by full Civil Legal Aid. A text box was also provided for comments.

56 respondents answered the question, and the results are shown in Table 28a below. As people could choose multiple answers, the respondent total does not add up to 56 and the percentage total does not add up to 100.

**Table 28a. Tribunals to continue to be funded with full Civil Legal Aid (all 56 respondents)**

Response	Number	% (of 56)
Mental Health Review Tribunal	51	91
Advocates Disciplinary Tribunal	33	59
Data Protection Tribunal	33	59
Financial Services Tribunal	31	55
None	0	0
Don't know	4	7
Total	N/A	N/A

The results show that of these 56 respondents, 51 people (91%) said that Legal Aid provision for the Mental Health Review Tribunal should continue; 33 people (59%) said the Advocates Disciplinary Tribunal and Data Protection Tribunal, and 31 people (55%) said the Financial Services Tribunal.

In total, 15 respondents provided further comments to support their answers. Of these, 3 comments were left by those who answered 'No', 'Don't know', or 'Other' to Q38.

A member of the public referred to the ADT on the basis that the defendant would be a qualified Advocate:

'You should possibly consider advocates disciplinary tribunal only for the person fighting against the advocate as they would be at an unfair disadvantage.'

One 'Other' respondent suggested that the legal merits of a case should be considered:

'The reason people use these tribunals is usually that they believe they have been treated inappropriately by a large organisation who has the resources to considerable legal representation. A legal representative acting for the claimant should be able to decide within the first 30 mins of meeting the claimant whether there is a case or whether the client is 'kite flying'. If there is case has merit then legal aid should be provided.'

Additional information:

When these 56 responses were examined further to identify those from the 38 respondents who answered 'Yes' to Q38, different results emerged as shown in Table 28b below.

**Table 28b. Tribunals to continue to be funded with full Civil Legal Aid (38 respondents who answered 'Yes' to Q38)**

Response	Number	% (of 38)
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Mental Health Review Tribunal	38	100
Advocates Disciplinary Tribunal	27	71
Data Protection Tribunal	27	71
Financial Services Tribunal	27	71
None	0	0
Don't know	0	0
Not answered	0	0
Total	N/A	N/A

The results show that of these 38 respondents, 38 (100%) indicated that Legal Aid provision for the Mental Health Review Tribunal should continue, and 27 respondents (71%) indicated the Advocates Disciplinary Tribunal, Data Protection Tribunal and Financial Services Tribunal.

As set out in the previous question (Q38) of these 38 respondents, 7 had been through a Civil court; 7 were members of the public; 16 were Advocates / Judiciary members; 1 was a public sector employee; 1 was a charity / support worker, and there were 6 'Others'. 12 comments were made.

A respondent who had been through a Civil court referred to the outcome of the Tribunals:

'On the basis that there may be quasi-judicial findings and penalties.'

An Advocate / Judiciary member (who indicated that the Mental Health Review Tribunal should continue to be funded) referred to the vulnerable:

'Often involve the vulnerable.'

Homelessness charity GriaH referred to Legal Aid covering as many matters as possible:

'It is important that Legal Aid covers as many aspects of the judicial system as possible.'

The General Registry supported the continuation of full Civil Legal Aid for the Mental Health Review Tribunal:

'MHRT- Deprivation of liberty fundamental right protection.'

Further comments from 'Others' included

'All of these tribunals can sanction, or (with the MHRT) deprive an applicant of liberty. Adequate representation is essential in ensuring fair outcomes.'

**Q39 SUMMARY:** Of those 38 respondents who said in Q38 that one or more Tribunals should continue to be covered by full Civil Legal Aid, 38 people (100%) called for this to apply to the Mental Health Review Tribunal and 27 (71%) to the Advocates Disciplinary Tribunal, Data Protection Tribunal and Financial Services Tribunal.

Overall comments in support of continuing to cover the Mental Health Review Tribunal included the importance of legal representation in proceedings which can deprive the applicant of their liberty. Comments in support of continuing to cover the other Tribunals included equality of arms in the case of the Advocates Disciplinary Tribunal, and the sanctions / penalties that can apply to the applicant in the case of the Data Protection Tribunal and Financial Services Tribunal.

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Q40. Have you ever brought an action before a Tribunal without any legal advice or representation?

61 respondents (88%) answered the question, and the results are shown in Table 29 below. A text box was also provided for comments.

**Table 29. No. of actions brought before Tribunals without legal advice/rep**

Response	Number	%
Yes	3	4
No	53	77
Don't know	0	0
Other (please state)	5	7
Not answered	8	12
Total	69	100

3 respondents provided further comments to support their answers.

3 respondents (4%) said that **they had brought an action before a Tribunal without legal advice or representation**. Of these 3 respondents, 1 had been through a Civil court and 2 were Advocates / Judiciary members. 1 comment was made.

The comment was from an Advocate / Judiciary member who made reference to their professional involvement and expressed concern that Tribunals (and some Court cases) in which individuals self-represent create more work, take longer and cost more:

'I have acted in Tribunals against litigants in person. A Tribunal process has many of the same processes and trademarks of the High Court. Law is still determined and applied by Tribunals. Every case I have dealt with (Tribunal, Small Claims Court or High Court) where there has been a litigant acting in person has taken far longer, has cost far more and has created more work and difficulty for the Tribunal/Court determining the same.'

53 respondents (77%) said that **they had not brought an action before a Tribunal without legal advice or representation**. No comments were made.

5 respondents (7%) answered '**Other**'. Of these 5 respondents, 1 had been through a Civil Court; 1 was a member of the public and 3 were Advocates / Judiciary members. 2 comments were made.

The person who had been through a Civil Court had been professionally involved with Tribunal proceedings brought by others:

'I have been professionally involved in proceedings brought before tribunals by other persons without advice or representation.'

An Advocate / Judiciary member indicated that they had brought an action without separate legal representation:

'I am an advocate so although I have brought a Tribunal action without separate legal representation I doubt this would count!'

**Q40 SUMMARY:** 61 respondents (88%) answered the question. 3 people (4%) indicated that they had brought an action before a Tribunal without legal advice or representation. A comment was made by an Advocate / Judiciary member expressing concern at the impact that a person who is self-representing can have on Tribunals (and some Court cases).

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Q41. If you said 'Yes' to Q40, was there any particular aspect of the Tribunal process where you felt that legal advice would have been essential?

This question was specifically for the 3 respondents who indicated in Q40 that they had brought an action before a Tribunal without any legal advice or representation.

Of these, 3 respondents (100%) answered the question, and the results are shown in Table 30 below. A text box was also provided for comments.

**Table 30. Views on aspects of the Tribunal process where legal advice would have been essential**

Response	Number	% (of 3)
Yes (please state)	3	100
No	0	0
Don't know	0	0
Other (please state)	0	0
Not answered	0	0
Total	3	100

Those who answered 'Yes' were asked for further information.

3 respondents (100%) said that there **were aspects of the Tribunal process where legal advice would have been essential**. As set out in Q40, of these 3 respondents, 1 had been through a Civil court and 2 were Advocates / Judiciary members. 2 comments were made.

Both comments were from Advocates / Judiciary members. One referred to unexpected formal evidence requirements in an Employment Tribunal, and the other suggested that time and costs could be saved if more legal representation was available in Tribunals due to the complexity of the issues under consideration:

'It was a matter in the employment tribunal and I had not appreciated the formalities required in terms of evidence at the time. If I had, I would have prepared in a different way.'

'Law and procedure still applies regardless of the case being dealt with by a Tribunal. Complex issues are often determined by Tribunals and time and costs could be saved by greater legal representation being available.'

There was also a comment made by an Advocate / Judiciary member who answered 'Other' to Q40 who submitted that one of the purposes of Tribunals is to adequately facilitate applicants to bring actions without the need for legal representation:

'One of the reasons for Tribunals is to allow individuals to bring actions personally without the need for legal representation. The Government should ensure that Tribunals facilitate this.'

**Q41 SUMMARY:** This question was aimed at 3 respondents who answered 'Yes' to Q40 and all 3 (100%) answered the question indicating that there were aspects of the process where they considered legal advice would have been essential. Comments from Advocates / Judiciary members referred to unexpected and formal requirements in an Employment Tribunal and another suggested that more legal representation could save time and costs. One further comment was from an Advocate / Judiciary member who answered 'Other' to Q40 and indicated that Government should facilitate Tribunals to enable people to bring actions without the need for legal representation.

Q42. In addition to the four Tribunals already mentioned, there are numerous other Tribunals<sup>14</sup> in the Isle of Man. Legal Aid under Green Form (for legal advice and assistance) is currently in place for all Tribunals. Should consideration be given to extending full Civil Legal Aid to any other Tribunal?

57 respondents (83%) answered the question, and the results are shown in Table 31 below. A text box was also provided for comments.

**Table 31. Views on extending full Civil Legal Aid to other Tribunals**

Response	Number	%
Yes (please tell us why)	29	42
No	14	20
Don't know	14	20
Other (please state)	0	0
Not answered	12	17
Total	69	>99

Respondents who answered 'Yes' were asked which Tribunal(s) they thought should be covered by full Legal Aid and why. Those who answered 'Other' were also asked to provide further information.

20 respondents (29%) provided comments to support their answers. A further 2 people (3%) reported that they could not view the list and description of 20 Tribunals currently covered by Green Form but not full Civil Legal Aid provided in the consultation.

29 respondents (42%) said that **consideration should be given to extending full Civil Legal Aid to other Tribunals**. Of these 29 respondents, 5 had been through a Civil court;

<sup>14</sup> A list and description of all Tribunals currently covered by Green Form but not Full Civil Legal Aid was provided.



3 were members of the public; 15 were Advocates / Judiciary members; 2 were charity / support workers, and there were 4 'Others'. 20 comments were made.

Respondents who had been through a Civil court suggested the addition of any Tribunal that is determining rights or settling claims. Other suggestions included the Care Services Tribunal; Employment and Equality Tribunal; Health and Safety Tribunal and all Tribunals:

'Where any tribunal is determining rights or settling claims it should be treated as equivalent to a court for this purpose (e.g. employment tribunal), but legal merits test should apply.'

'Care Services; Employment & Equality; Health & Safety. All these may be accessed by people who are on low income or have no jobs and therefore no finances to access legal advice.'

'All of them, as legal aid should be freely available to all.'

A member of the public suggested 2 Tribunals:

'Employment and Equality Tribunal. Care Services Tribunal.'

Advocates / Judiciary members made particular reference to 4 Tribunals, but suggested that subject to the required eligibility tests, all Tribunals should be included. Concern was also expressed that Advocates undertake work for the Legal Aid Appeals Tribunal which is unpaid, and in terms of the Employment and Equality Tribunal there can be an imbalance of resources between employer and employee, particularly if the latter has lost their job:

'Social Security Appeal Tribunal. Income Tax Commissioners.'

'All of them but in particular the Employment and Equality Tribunal.'

'Employment. Employment law can be very complex, as has been seen from some cases in the ET in recent years. Eligible persons should have access to legal representation, subject to the merits test.'

'Potentially all if pass financial and legal merits tests.'

'Subject to criteria depending on the function of the tribunal and the persons requiring access to them all affected participants before tribunals should be eligible for any tribunal or other legal forum.'

The Equality Adviser suggested that the Employment and Equality Tribunal should be included and made reference to 2019 research into discrimination cases by the UK's Equality and Human Rights Commission:

'Employment & Equality Tribunal. In order for the equality legislation to be effective, ordinary people need to be able to afford professional legal support to access justice. If they cannot do this, the rights mean nothing & they do not create the deterrent effect required to bring about a fairer society and remove persistent inequalities. The Equality & Human Rights Commission published research for the UK in June 2019 entitled "Access to legal aid for discrimination cases" to assess access to justice:

<https://www.equalityhumanrights.com/sites/default/files/access-to-legal-aid-for-discrimination-cases-our-legal-aid-inquiry.pdf>

One 'Other' respondent made reference to their experience as a Tribunal member, and expressed concern that lack of legal representation places an individual at a disadvantage against a legally represented Government Department:

'I sit on the Social Services Appeal Tribunal<sup>15</sup> and the absence of representation means that those coming are unfairly disadvantaged, as they do not have the legal expertise the department brings.'

14 respondents (20%) said that **consideration should not be given to extending full Civil Legal Aid to other Tribunals**. Of these 14 respondents, 1 had been through a Civil court; 4 were members of the public; 6 were Advocates / Judiciary members, and there were 3 'Others'. No comments were made.

14 respondents (20%) said that **they did not know**. Of these 14 respondents, 3 had been through a Civil court; 6 were members of the public; 1 was an Advocate / Judiciary member, 1 was a public sector employee; and there were 3 'Others'. No comments were made.

**Q42 SUMMARY:** 58 respondents (84%) answered the question.

29 respondents (42%) said that consideration should be given to extending full Civil Legal Aid to Tribunals other than those 4 already in scope.

- 20 respondents (29%) made comments in support of their answer and some suggested one or more Tribunals. These suggestions are summarised below in descending order

Tribunals suggested for full Civil Legal Aid inclusion	Frequency of suggestion
Employment and Equality Tribunal	9
All Tribunals	6
Social Security Appeal Tribunal	4
Legal Aid Appeals Tribunal	3
Care Services Tribunal	2
Health and Safety Tribunal	2
Income Tax Commissioners	2
VAT and Duties Tribunal	1
Any Tribunal which determines rights or settles claims	1

Issues of concern included lack of rationale for making some Tribunals and not others eligible for full Civil Legal Aid, and inequality between individuals who are not legally represented and a represented party (e.g. Government / employer).

- 14 respondents (20%) said that consideration should not be given to extending full Civil Legal Aid to other Tribunals.
- 14 respondents (20%) said that they did not know.
- There was 1 'Other' response (1%).

<sup>15</sup> It is understood that the respondent is referring to the Social Security Appeal Tribunal

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Q43. If you have any further comments on Civil Legal Aid for Tribunals please tell us.

A text box was provided for comments / suggestions and 2 respondents (3%) submitted responses, both of whom were 'Others'.

The General Registry made reference to some of the impacts of self-representation and suggested that Legal Aid should be available for the Employment and Equality Tribunal, which could in turn reduce the number of appeals to the High Court:

'The impact and cost of this is not only felt by the litigants themselves in the sense that they will take more time to resolve a dispute dealing with themselves which may have emotional and financial impacts directly on them, but also impacts upon the wider administration of justice within the Court administration simply because of the drain on resource, with the best possible will in the world, where litigants are trying to do everything for themselves. The Employment and Equality Tribunals are dealing with an increasingly heavy load of complex cases. Legal Aid should be available to assist the Tribunal and avoid errors, which lead in turn to more High Court appeals.'

1 'Other' respondent suggested introducing a review schedule for Tribunals to determine those which should be covered by full Civil Legal Aid:

'In fairness to the taxpayer, all tribunals should all be reviewed periodically (say every 5 years) for their appropriateness to have legal aid available.'

**Q43 SUMMARY:** 2 respondents (3%) answered the question.

Suggestions included extending full Civil Legal Aid to the Employment and Equality Tribunal, and introducing a review schedule for all Tribunals to determine which should be covered by full Civil Legal Aid.

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### 4.13. Inquests

Q44. Have you ever been party to an Inquest in the Isle of Man for a family member?

64 respondents (93%) answered the question, and the results are shown in Table 32 below. A text box was also provided for comments.

**Table 32. Respondents who have been party to an Inquest**

Response	Number	%
Yes	5	7
No	55	80
Rather not say	4	6
Not answered	5	7
Total	69	100

1 respondent provided a comment.

5 respondents (7%) said that **they had been party to an Inquest in the Isle of Man for a family member**. Of these 5 respondents, 1 had been through a Civil court; 3 were Advocates / Judiciary members, and there was 1 'Other'. No comments were made.

55 respondents (80%) said that **they had not been party to an Inquest**. Of these 55 respondents, 8 had been through a Civil court; 12 were members of the public; 19 were Advocates / Judiciary members; 3 public sector employees; 2 were charity / support workers, and there were 11 'Others'. 1 comment was made.

The General Registry referred to 'Properly Interested Persons' at an Inquest and reported that very few are legally represented:

'In our experience, in only very few Inquests have any Properly Interested Person (PIP) (as identified in Rule 14(2) of the Coroners on Inquest Rules 1988 [the Rules]) been legally represented. In the vast majority of Inquests the only PIP identified is a parent, child, spouse or personal representative of the deceased (Rule 14(2)(a) of the Rules).'

4 respondents (6%) indicated they would **rather not say**. Of these 4 respondents, 3 were members of the public and 1 was an Advocate / Judiciary member. No comments were made.

**Q44 SUMMARY:** 64 respondents (93%) answered the question and 1 comment was made.

- 5 respondents (7%) indicated that they had been party to an Inquest in the Isle of Man for a family member.
- 55 respondents (80%) indicated that they had not been party to an Inquest. 1 comment was made by the General Registry which reported that 'Properly Interested Persons' are rarely represented at an Inquest.
- 4 respondents (6%) preferred not to say.

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#### Q45. What guidance should be available to families facing an Inquest?

Respondents were given a number of suggestions for guidance and invited to choose all those that applied.

62 respondents<sup>16</sup> (90%) answered the question, and the results are shown in Table 33 below. As multiple answers could be chosen, the respondent total does not add up to 69 and the percentage total does not add up to 100. A text box was also provided for comments.

**Table 33. Views on guidance for families facing an Inquest**

Response	Number	% (of 69)
Early signposting to the IoM Law Society / Legal Aid Panel of Advocates	53	77

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<sup>16</sup> The number of respondents to Q45 (62) is calculated by subtracting the number of respondents who did not answer (7) from the total number of consultation respondents (69).

for help finding an Advocate		
Guidance on Civil Legal Aid for Inquests	55	80
Guidance on the Inquest process	55	80
Guidance for those affected by the death of a person who was in the care or custody of the state	52	75
Don't know	3	4
Other	0	0
Not answered	7	10
Total	N/A	N/A

2 respondents provided comments.

59 respondents (86%) indicated that **one or more types of guidance /signposting options should be available to families facing an Inquest**. Of these 59 respondents, 7 had been through a Civil court; 13 were members of the public; 23 were Advocates / Judiciary members; 2 were public sector employees; 2 were charity / support workers, and there were 12 'Others'. 2 respondents (3%) provided comments.

Respondents' choice of guidance / signposting options is listed in order below:

- i. Guidance on Civil Legal Aid for Inquests (80%)
- ii. Guidance on the Inquest process (80%)
- iii. Early signposting to the IoM Law Society / Legal Aid Panel of Advocates for help finding an Advocate (77%)
- iv. Guidance for those affected by the death of a person who was in the care or custody of the state (75%)

The IoM Law Society provided a combined response for Q44 – Q49 and an extract is included below as it relates to Q45. In its response, the Society observed the significant trauma that can be associated with an Inquest for a family member and supported early signposting in addition to appropriate guidance:

'The loss of a loved one is one of the most traumatic events anyone can experience. This can be greatly exacerbated when there is a coronial investigation. There is of course no place for the apportionment of blame or altering the fact-finding nature of Inquests. Early signposting to the IOMLS and/or Legal Aid Panel of Advocates for help in finding an advocate is central, as is the provision of proper guidance on the procedural, legal and evidential process in inquests. This is specially so in relation to the death of persons in the custody of the State.'

The General Registry referred to a guidance leaflet which has been made available for cases which require an Inquest and those which do not:

'Together with her clerk and the Coroner's Officer, the Coroner or Inquests has drafted a leaflet to explain the process post mortem in cases that require an inquest and those which do not. The leaflet has been made available to all officers attending sudden deaths and to those acting as Coroner's Officers.'

3 respondents (4%) said they **did not know** what guidance should be available to a family facing an Inquest. Of these 3 respondents, 2 had been through a Civil court and 1 was an Advocate / Judiciary member.

**Q45 SUMMARY:** 62 respondents (90%) answered the question and 2 comments were made.

- 59 respondents (86%) indicated that one or more types of guidance should be available to families facing an Inquest and / or they answered 'Other'.
- Between 52 and 55 respondents (75% - 80%) indicated that a range of suggested guidance / signposting options should be available to families facing an Inquest.
- 3 respondents (4%) said they did not know what guidance should be available.

Q46. Should Civil Legal Aid for an Inquest continue to be means-tested if a person has died whilst in the care or custody of the state, or in instances where the state may be held partly or wholly responsible for the person's death?

65 respondents (94%) answered the question, and the results are shown in Table 34 below. A text box was also provided for comments.

**Table 34. Views on continuation of means-testing for Civil Legal Aid for an Inquest if a person has died in the care or custody of the state**

Response	Number	%
Yes, if a person can afford to pay they should do so	15	22
No, there should not be any means-testing in these circumstances	42	61
Don't know	6	9
Other (please state)	2	3
Not answered	4	6
Total	69	>100

8 respondents provided further comments.

15 respondents (22%) said that **Civil Legal Aid should continue to be means-tested if a person has died whilst in the care or custody of the state.** Of these 15 respondents, 3 had been through a Civil court; 2 were members of the public; 6 were Advocates / Judiciary members; 2 public sector employees, and there were 2 'Others'. 2 comments were made.

1 Advocate / Judiciary member suggested that Legal Aid should only be made available to Properly Interested Persons (as defined) and another suggested that contribution bands are expanded:

'I would like to see an expansion of the bands and rates for contributions. It may mean that people who would otherwise not qualify may qualify with a contribution. The contribution element is an area that should be explored further.'

42 respondents (61%) said that **Civil Legal Aid should not continue to be means-tested if a person has died whilst in the care or custody of the state.** Of these 42 respondents, 5 had been through a Civil court; 9 were members of the public; 17 were Advocates / Judiciary members; 2 were charity / support workers, and there were 9 'Others'. 3 comments were made.

2 Advocates / Judiciary members made comments. Reference was made to the responsibility of the state in protecting those individuals who are in its care, and attention was also drawn to the families of the deceased person as not having willingly entered the Inquest process, which can be complex and also difficult for them.

1 'Other' respondent called for access to an Advocate under these circumstances:

'Everyone should have access to an advocate if a family member dies whilst in care of the state.'

6 respondents (9%) said that they **did not know**. Of these, 2 had been through a Civil court and 4 were members of the public. 1 comment was made.

The IoM Law Society and the General Registry did not choose one of the options (i.e. *Yes / No / Don't Know / Other*) but both provided explanatory comments and further information, and for reporting purposes are included here as having answered '**Other**'.

The IoM Law Society provided a combined response for Q44 – Q49 and an extract is included below for Q46. The Society called for non means-tested Legal Aid to be made available for 'Jamieson Inquests' and 'Middleton Inquests'<sup>17</sup> and Legal Aid for other Inquests on a means-tested basis:

'There are also inquests which, pursuant to Article 2 of the European Charter of Human Rights, investigate the subjective obligations of the State not to take life without justification and to do all that could be reasonable expected to avoid a real and immediate risk to life where the state knows or ought to know of the risk of a breach of Article 2.

It is the position of the IOMLS that there should be non means tested Legal Aid available in both "Jamieson Inquests" and "Middleton Inquests". In addition, where it is determined that there is a wider public interest in the determination of any inquest, there should be non means tested Legal Aid available.

The central importance of the Right to Life requires that there be Access to Justice at the expense of the State in these inquests. Non means tested Legal Aid in this category will not result in a significant expansion of the cost to Legal Aid and the increase in expense is far outweighed by the interests of justice. Legal Aid for other inquests should be available on a means tested basis.

Inquests are not an adversarial process but this does not mean that parties and indeed the Coroner does not benefit significantly from the involvement of Advocates on the behalf of Interested Persons. Advocates assist in the process and ensure that all relevant evidential and legal questions are brought to the attention of the Coroner.

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<sup>17</sup> The UK's Crown Prosecution Service specifies that Inquests where the Coroner will consider whether a lack of care or common law neglect has led to the cause of death of the deceased are often termed as 'Jamieson Inquests'. It is common for such Inquests to be heard where the death occurred in a medical context, or where the deceased was in Police or other custody immediately prior to his/her death. 'Middleton Inquests' are those in which Coroners may resume Inquests where the State's agents have been involved following criminal proceedings. This involvement of the State was raised in a UK case where an Inquest jury communicated to the Coroner that an agent of the State (the UK Prison Service) had failed in its duty of care to the deceased who had been identified as at risk, and proper safeguards were never put in place. <https://www.cps.gov.uk/legal-guidance/coroners>



There is a perceived imbalance in the system where the organs of the State and/or corporations are represented at inquests but the Interested Persons (generally, but not exclusively, the family of the deceased) are not.'

The General Registry made reference to equality of arms at an Inquest involving a person who had died whilst in prison, and in which the Government and its employees had legal representation but the deceased person's family did not. It was also indicated that there are more cases of death in the care of the state than in the custody of the state, and as each case is different it is not possible to say 'Yes' or 'No' to the question of whether means-testing should continue. It was suggested that consideration is given to allowing the Legal Aid Certifying Officer some discretion on a case by case basis:

'There is an example of conducting an inquest involving a death at the prison. The parents of the deceased did not qualify for legal aid and had to represent themselves in a complicated three week inquest which involved a number of different emanations of the state and its employees having independent legal advice such that the court was packed full of lawyers all funded by the state save for those closest to the deceased who needed answers. Although the inquisitorial system redressed the balance to a degree, for the objective observer equality of arms would have been a concern.

There are very few inquests into deaths occurring in the IOM whilst the deceased is in the custody of the state (i.e. either in prison or police custody) there are more cases of deaths occurring whilst in the care of the state (e.g. in Manannan Court) though no more than 2-3 a year and often less. The cases vary so much in detail and circumstances that it is impossible to give a simple "yes" or "no" answer. Consideration could be given to allowing the certifying officer some discretion depending upon the circumstances of death and the nature of the other PIPs and whether or not they are legally represented (they are usually represented now by an advocate from the Attorney General's Chambers), perhaps with some input from the Coroner.'

**Q46 SUMMARY:** 65 respondents (94%) answered the question and 8 comments were made.

- 15 respondents (22%) said that Civil Legal Aid for Inquests should continue to be means-tested if a person has died whilst in the care or custody of the state.
- 42 respondents (61%) said that Civil Legal Aid should not continue to be means-tested if a person has died whilst in the care or custody of the state.
- 6 respondents (9%) said that they did not know.
- 2 respondents (3%) gave 'Other' answers.

Suggestions included:

- Expanding Civil Legal Aid contributions for Inquests.
- Making non-means-tested Legal Aid available for 'Jamieson Inquests' and 'Middleton Inquests' and Legal Aid for other Inquests on a means-tested basis.
- Allowing the Legal Aid Certifying Officer some discretion with input from the Coroner if required.



Q47. Should Legal Aid for other Inquests (i.e. in which a person has died but they have not been in the care or custody of the state) continue to be means tested?

63 respondents (91%) answered the question, and the results are shown in Table 35 below. A text box was also provided for comments.

**Table 35. Views on continuation of means-testing for Civil Legal Aid for an Inquest if a person has died who was not in the care or custody of the state**

Response	Number	%
Yes, if a person can afford to pay they should do so	23	33
No, if a person has died under certain circumstances (e.g. as a result of violence) there should not be means-testing	23	33
No, there should not be any financial means-testing	11	16
Don't know	6	9
Other (please state)	0	0
Not answered	6	9
Total	69	100

2 respondents provided further comments to support their answers.

23 respondents (33%) said that **Legal Aid for other Inquests should continue to be means tested.**

Of these 23 respondents, 3 had been through a Civil court; 4 were members of the public; 11 were Advocates / Judiciary members; 2 were public sector employees; 1 was a charity / support worker, and there were 2 'Others'. 1 comment was made.

The General Registry suggested that 'care of the state' should be defined:

'Consideration should be given to the definition of "care of the state" should that mean just those detained in custody or in hospital or include those under the care of the state in the community e.g. under the care of the Community Mental Health Teams or Drug and Alcohol Team? Those inquests sometimes do involve contested issues regarding the care given (or not given) by agents of the state other cases are uncontested.'

23 respondents (33%) said that **Legal Aid for other Inquests should not be means-tested if people have died under certain circumstances.** Of these 23 respondents, 3 had been through a Civil court; 5 were members of the public; 8 were Advocates / Judiciary members, and there were 7 'Others'. No comments were made.

11 respondents (16%) said that **Legal Aid for all other Inquests should not be means tested.** Of these 11 respondents, 2 had been through a Civil court; 3 were members of the public; 4 were Advocates / Judiciary members; 1 was a charity / support workers, and there were 1 'Others'. 1 comment was made.

An Advocate / Judiciary member made reference to the purpose of an Inquest and submitted that means testing is not appropriate:

'An inquest, in my view has two objectives. Firstly to determine the real cause of death. Secondly, to identify errors and issues surrounding and arising from such death. Means

testing is not appropriate and coroners have the insight and ability to manage vexatious and inappropriate matters. The inquest court should be able to address all issues without the interposition of a buffer based on means testing.'

6 respondents (9%) said they **did not know**. Of these, 3 had been through a Civil Court; 1 was a member of the public; 1 was an Advocate / Judiciary member, and there was 1 'Other'.

**Q47 SUMMARY:** 63 respondents (91%) answered the question and 2 comments were made.

- 23 respondents (33%) said that Legal Aid for other Inquests should continue to be means tested. It was suggested that consideration should be given to defining 'care of the state'.
- 23 respondents (33%) said that Legal Aid for other Inquests should not be means-tested if people have died under certain circumstances.
- 11 respondents (16%) said that there should not be any financial means-testing for Inquests.
- 6 respondents (9%) said they did not know.

Suggestions included:

- Defining what is meant by 'care of the state'.
- Removing means-testing from Inquests.

Q48. When a person dies, sometimes there can be more than one person who applies for Legal Aid for the Inquest (e.g. spouse and former spouse of the deceased). Do you think there are any circumstances in which Legal Aid for an Inquest should be granted to more than one person?

64 respondents (93%) answered the question, and the results are shown in Table 36 below. A text box was also provided for comments.

**Table 36. Views on granting Legal Aid for an Inquest to more than one person**

Response	Number	%
Yes	34	49
No	15	22
Don't know	14	20
Other (please state)	1	1
Not answered	5	7
Total	69	>99

Respondents who answered 'Yes' were asked to describe the circumstances. 19 respondents provided further comments.

34 respondents (49%) said that **there are circumstances in which Legal Aid for an Inquest should be granted to more than one person.** Of these 34 respondents, 4 had been through a Civil court; 5 were members of the public; 17 were Advocates / Judiciary members; 1 was a public sector employee; 1 was a charity / support worker, and there were 6 'Others'. 17 comments were made.

1 respondents who had been through a Civil court suggested a surviving spouse or dependent children, and another proposed parents / grandparents following the death of a child:

'Circumstances around death of a child potentially parents and grandparents.'

The IoM Law Society provided a combined response for Q44 – Q49 and an extract is included below for Q48. The Society made reference to 'Interested Persons' and suggested the input of the Coroner should be sought in certain circumstances:

'Inquests often involve the consideration and investigation of complex factual and legal questions. Where an Interested Person is not legally represented, this only adds to their stress, upset and confusion. Justice must not only be done, but must be seen to be done.'

In relation to the question as to whether more than one person should be granted Legal Aid for an Inquest, where the circumstances warrant, Legal Aid should be granted. These circumstances will be case specific and accordingly it is difficult to provide specific guidelines. However, an obvious example of where consideration should be given to more than one person being granted Legal Aid is deaths involving possible suicide, whilst another is where there have been multiple related deaths caused in a single event. Both these circumstances potentially involve ethical conflict for the advocate involved and more importantly, conflicts of interest and/or stress as between the Interested Persons. The input of the Coroner in these circumstances should be sought in the determination of such an application for Legal Aid.'

Other Advocates / Judiciary members made reference to a range of circumstances under which more than one person could be granted Legal Aid for an Inquest, and reference was made to the Coroner's role in determining interested party status:

'Legal Aid should be granted to all those parties deemed to be interested parties by the Coroner. The Coroner has to undertake this exercise in any event. Whilst in one case it may be appropriate for only one parent to be an interested party, in another case, it may be appropriate for both parents to be an interested party. The same would apply in relation to current and ex partners.'

'If they are joint executors or it is a complex estate and none of those involved have the funds to continue.'

'Sometimes, family members' opinions and concerns differ and may even conflict with one another. In those circumstances, the family ought to be entitled to separate representation.'

'For example in the age of complex family situations it may mean that a "Father" possibly has a number of children to different partners and they those children may themselves have an interest in those proceedings.'

Homelessness charity *Griah* supported Legal Aid for those who need it:

'Legal Aid should be granted to all those who need it.'

The General Registry referred to 'Properly Interested Persons'<sup>18</sup> and suggested that if it can be shown that there is a family dispute, it should be possible for Legal Aid to be granted to more than one family member:

'Where there may be a conflict of interest between Properly Interested Persons. There are often divisions in a family. Whilst it is not agreed that a former spouse or civil partner should be given legal aid if there is a current spouse or partner living, but there is often dispute between siblings or step or half siblings or divorced parents, perhaps one accuses the other of neglect. In those circumstances it should be possible for legal aid to be granted to more than one family member but circumstances in which that occurs should be rare and only where it can be shown that there is some dispute or split in the family.'

Further examples given by 'Others' included cases in which multiple parties may be affected and other complex cases which may affect children:

'An inquest over lack of care: multiple parties may be affected.'

'Perhaps complex situations regarding the proceeds of an estate where children are involved.'

15 respondents (22%) said that there are **no circumstances in which Legal Aid for an Inquest should be granted to more than one person**. Of these 15 respondents, 2 had been through a Civil court; 5 were members of the public; 3 were Advocates / Judiciary members; 1 was a public sector employee; 1 was a charity / support worker, and there were 3 'Others'. 1 comment was made.

14 respondents (20%) said that they **did not know**. Of these 14 respondents, 3 had been through a Civil court; 5 were members of the public; 3 were Advocates / Judiciary members; 1 was a public sector employee, and there were 2 'Others'. No comments were made.

1 respondent (1%) who had been through a Civil Court answered '**Other**', and submitted a comment that Legal Aid should not be available due to the nature of the proceedings:

'Legal aid should not be available for inquests as the applicant does not have any rights to enforce or claim to defend.'

**Q48 SUMMARY:** 64 respondents (93%) answered the question and 19 comments were made.

- 34 respondents (49%) said that there are circumstances in which Legal Aid for an Inquest should be granted to more than one person.

Suggestions for circumstances under which Legal Aid should be granted to more than one person included:

- When there is conflict within a family / conflict of interest between interested parties

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<sup>18</sup> Also referred to by the General Registry in its answer to Q44

- Spouse / ex-spouse of the deceased
  - Adult children of deceased
  - Separated parents of the deceased
  - Complex family situations
  - For parents / grandparents following the death of a child
  - For a surviving spouse / dependent children
  - For cases in which multiple parties may be affected (e.g. a lack of care case)
  - Joint executors
  - Complex estates involving children
- 15 respondents (22%) said that there are no circumstances in which Legal Aid for an Inquest should be granted to more than one person.
  - 14 respondents (20%) said that they did not know.
  - 1 respondent (1%) answered 'Other'.

**Q49. If you have any further comments on Civil Legal Aid for Inquests please tell us**

A text box was provided for comments / suggestions and 2 respondents (3%) submitted responses.

Of these 2 respondents, 1 was an Advocate / Judiciary member and there was 1 'Other' (the General Registry).

The Advocate / Judiciary member expressed concern that an expansion of Legal Aid provision could detract from the inquisitorial nature of Inquests:

'I agree with much of the UK Ministry of Justice Review and in particular that an expansion of legal aid could detract from the inquisitorial nature of the inquest system and / or reinforce the commonly held misconception that an inquest's role is to apportion blame, as opposed to finding facts and learning lessons.'

The General Registry stressed the importance of the Legal Aid Certifying Officer's role, and agreed with comment from the Ministry of Justice (MoJ) in terms of the potential impact of expanding Legal Aid for Inquests:

'The circumstances in which an inquest is held are varied. Discretion to grant legal aid in inquests on the part of a fully informed certifying officer is very important. There is agreement with the finding of the MOJ that "a significant expansion of Legal Aid could have the unintended consequence of undermining the inquisitorial nature of the Inquest system". Few advocates on the IOM have experience of dealing with inquests or understanding of their inquisitorial nature.'

**Q49 SUMMARY:** 2 respondents (3%) answered the question.

Both respondents made reference to the Ministry of Justice’s review of Legal Aid<sup>19</sup> and agreed with its findings that significant expansion of Legal Aid could undermine the inquisitorial nature of Inquests.

#### 4.14. Conditional Fee Arrangements – ‘No Win No Fee’

Q50. Should Civil Legal Aid continue to be available for Personal Injury (PI), Negligence and Medical Negligence or should 'No Win No Fee' arrangements be considered?

66 respondents (96%) answered the question, and the results are shown in Table 37 below. A text box was also provided for comments.

**Table 37. Views on continuation of Legal Aid for PI, Negligence & Medical Negligence**

Response	Number	%
Civil Legal Aid should continue to be available for PI, Negligence & Medical Negligence	42	61
'No Win No Fee' arrangements should be considered	19	28
Don't know	3	4
Other (please state)	2	3
Not answered	3	4
Total	69	100

17 respondents provided further comments to support their answers.

42 respondents (61%) said that **Civil Legal Aid should continue to be available for Personal Injury, Negligence & Medical Negligence**. Of these 42 respondents, 6 had been through a Civil court; 6 were members of the public; 20 were Advocates / Judiciary members; 2 were public sector employees; 2 were charity / support workers, and there were 6 'Others'. 12 comments were made.

The IoM Law Society provided a detailed, joint response for Q50 and Q51 which is included in full below. The Society provided a description and history of Conditional Fee Arrangements (CFAs) and outlined a range of significant concerns associated with this legal model, with examples from England and Wales. In particular, the impact on access to justice for individuals; equality of arms issues, particularly in medical negligence cases, and increased Court time and associated costs. Other risks highlighted included clients’ exposure to costs which they may be unable to pay; a disincentive for individuals to bring claims for fear of incurring debt, and concerns that the introduction of success fees has led to claims that some (UK) Solicitors have been incentivised to incorrectly advise clients in order to receive payment:

‘Currently CFAs are not permitted in the Isle of Man, as Advocates who enter into CFAs or other contingency arrangements will breach the Advocates’ Practice Rules 2001, and

<sup>19</sup> Details of the Ministry of Justice ‘Final report: Review of Legal Aid for Inquests’ (Feb 2019) were included in the consultation:  
[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/777034/review-of-legal-aid-for-inquests.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/777034/review-of-legal-aid-for-inquests.pdf)

thereby risk having their commission to practice removed. Similar restrictions have also been adopted and maintained by some of our neighbouring jurisdictions as set out above. A CFA is an agreement with a legal representative which provides for his or her fees and expenses, or any part of them, to be paid only in certain circumstances - usually only if the client wins the case hence the 'no win, no fee' tagline.

Historically, all forms of contingency fees in litigation (whereby payment of the lawyer depended on the results) were considered to be unlawful and even immoral. It was felt that they could lead to a conflict of interest between the client and the lawyer. However, in the 1980s, the UK government started to review this position and eventually concluded that a particular form of contingency fee agreement, could be allowed, although all other forms of contingency fee agreements continued to amount to unlawful maintenance and champerty in contentious matters. Statutory provision for CFAs was first made in section 58 of the Courts and Legal Services Act 1990 of Parliament ("CLSA 1990").

Subsequently, on 1 April 2013, the majority of the Jackson/civil litigation reforms came into force in England and Wales. As a result of these changes, damages-based agreements (DBAs), another form of contingency fee agreements, are now permitted for all contentious business (except for criminal and most family matters) by section 45 of LASPO (which is referred to above). Section 45 provides for amendments to section 58AA of the CLSA 1990 to allow the use of DBAs without limiting this to employment matters (as was previously the case). Section 58(2)(a) of CLSA 1990 defines a CFA as: "an agreement with a person providing advocacy or litigation services which provides for his fees and expenses, or any part of them, to be payable only in specified circumstances."

In other words, the agreement will be a CFA if the client will pay different amounts for the legal services depending on the outcome of the case. Generally, if the client loses the case, it will not be liable to pay for the fees and any expenses that are subject to the CFA (the conditional fees).

If the client wins the case, it will be liable to pay all fees and expenses, including the conditional fees, and the success fee, if a success fee is provided for in the CFA.

The definition in section 58(2)(a) of the CLSA 1990 refers to "expenses", as well as "fees", and it is clear that the payment of disbursements can be made conditional on the outcome of the case. However, many law firms have a policy of never making disbursements conditional under a CFA because they do not want to run the risk of not being reimbursed for disbursements if the client should lose. They will usually make an exception for counsel's fees if counsel has agreed that his fees will be subject to a separate CFA.

If the client wins the case, the opponent will generally be ordered to pay the client's costs, including the conditional fees (unless the CFA is unenforceable).

In the case of CFAs entered into before 1 April 2013, it is also possible to recover the success fee from the opponent. In the case of CFAs entered into on or after 1 April 2013, it is no longer possible to recover the success fee from the opponent, and it will have to be paid by the successful client, with a few exceptions.

This is one of the significant changes relating to funding implemented by the Jackson/civil litigation reforms. It followed recommendations made by Sir Rupert Jackson in his Final Report (Chapter 10). Sir Rupert Jackson considered that recoverability of success fees payable under a CFA (and after the event (ATE) insurance premiums) led to disproportionate costs and should be abolished.

The change to the recoverability of success fees was introduced by section 44 of LASPO which came into force on 1 April 2013 (in so far as it was not already in force). Section 44 amended sections 58 and 58A of the CLSA 1990. It abolished the recoverability of success fees (section 58A(6) CLSA 1990, as amended by LASPO). Section 44 also introduced additional conditions for CFAs that provide for a success fee and which relate to certain specified proceedings.

Similar changes came into force on 1 April 2013 in relation to the abolition of recoverability of ATE insurance premiums. The abolition of recoverability of success fees created some uncertainties, including the following:

- There is no requirement in the legislation for a solicitor to give the client information on how the success fee has been calculated. The level of the success fee is simply a matter for agreement between the solicitor and the client (and there will be no need to show that it is reasonable in a costs assessment involving the losing side because it can no longer be recovered from the opponent).
- While CFAs are still available as a potential funding option for claimants and are still being widely used, they will not be viable in some cases. The anticipated amount of damages in lower value claims may not be sufficient to allow the claimant to fund the success fee and any ATE insurance premium now that they are no longer recoverable.

A success fee is an additional amount payable for the legal services, over and above the amount which would normally be payable if there was no CFA, in specified circumstances (usually if the client wins the case). A success fee must be expressed as a percentage uplift on the amount that would be payable if there was no CFA. Under the Conditional Fee Agreements Order 2013 (SI 2013/689) (CFA Order 2013), the maximum uplift is 100% (Article 3).

There are a number of different types of CFAs, depending on the fee arrangements between the client and the law firm, which are in principle legal, including:

From April 2013, a regime of qualified one-way costs shifting (QOCS) for personal injury cases was implemented. QOCS means that if a claimant wins a case, they recover their costs, but claimants do not pay costs orders in favour of the other side, except up to the extent of any damages and interest awarded.

The implications for a client entering into a CFA include the following:

- Depending on the terms of the CFA, liability for the legal costs of their own solicitor will be significantly lower in that if the client wins, the opposing party will usually have to pay a significant part of the client's costs (in the usual way), although the client will have to pay any success fee. If the client loses, they will not have to pay those costs which are conditional.
- If the client loses, it is likely that they will be ordered to pay a significant part of the opponent's costs in the usual way. However, it is common to take out ATE insurance with a CFA to cover this potential liability. In those circumstances, if the client loses, they will have to pay the excess costs that are not covered by the ATE insurance, as well as the insurance premium, unless it is a contingent premium (and therefore not payable if the client loses).



- There is likely to be considerable front loading of costs because of the due diligence which has to be carried out to assess whether the case is suitable for a CFA and to calculate the success fee. This might include:
  - a full review of the core documentation;
  - production of preliminary proofs of evidence from key witnesses; and
  - obtaining counsel's opinion.

All of this work will usually have to be paid for under the terms of the solicitors' usual retainer, and there is no guarantee that the solicitors will then agree to take on the case under a CFA.

- If, under the CFA, the success fee is payable on an amount being awarded by the judge, as opposed to an amount being recovered from the other side, the client will be liable to pay the legal fees and the success fee if they win, even if the opposing party does not pay the judgment award. This could mean that the client is worse off than if they had lost.

Whilst, on the face of it, CFAs appear to be a good solution to funding civil cases, there are significant downsides to their use, which have been seen in England and Wales.

In England and Wales, the introduction of CFAs has seen a significant increase in satellite litigation in relation to the applicability, enforceability and costs of CFAs. This has resulted in increased court time being used, at a cost to other court users. Such satellite litigation should be avoided wherever possible, as it only serves to restrict access to justice. No win no fee, is not in fact what a CFA is and there will still be an exposure to costs for the client, who may have no ability to pay such costs. This means that vulnerable members of our society end up in debt when they can least afford to. It also results in potential clients deciding not to bring a claim when they should, for fear of incurring debt, no matter how remote the risk. This is limiting access to justice, not ensuring it.

Further, the introduction of a success fee gives an Advocate an interest and incentive in a case. This has resulted in claims that Solicitors have incorrectly advised and encouraged clients to settle cases at an undervalue or with issues not being addressed properly, in order that they can receive payment. There is also evidence that Solicitors only take on guaranteed to win cases leaving a significant number of potential claimants, with good but difficult cases without representation, for fear of not being paid. There is a risk, particularly in medical negligence cases which are brought against Isle of Man Government, that these claimants would be left without representation at all, as the Government can use tactics to make cases unattractive to Advocates, by incurring significant costs in an environment where there will always be risks and uncertainty in claims succeeding. This situation does not arise in England and Wales. This imbalance of power and potential to interfere in access to justice, should not be allowed to occur, as it gives the impression (if not the reality) of bias. This therefore reduces access to justice and does not ensure it. The Legal Ombudsman in England and Wales has raised concerns in this regard, and the Isle of Man should be slow to blindly follow the practice and policy of England and Wales.

The introduction of CFAs in England and Wales saw Claims Management Companies increasing, together with the buying and selling of cases. People thought they had a choice in their representation, and that turned out not to be the case. Further, people thought they were dealing with a lawyer, when in fact they were merely dealing with a claims' handler. Claims to the ombudsman increased and litigants were left confused. A

whole new market opened up, which was not for the benefit of the people for whose benefit it was said to operate.

If we are looking at the primary goals of this consultation and the review of legal aid, then the current system of legal aid being available in civil cases ensures fair and proper access to justice and legal advice. The costs paid by legal aid in civil cases that would fall into CFA territory is far smaller than the cost of overhauling the system and the price the vulnerable people of the Isle of Man will have to pay in not being able to access legal advice and the courts, when they should. Further, the IOMLS cannot support any system that results in Advocates recovering fees and/or success fees from the damages of a client, which damages have been awarded for a very specific purpose. To support such a system flies in the face of justice and all that is moral.'

Other Advocates / Judiciary members expressed significant concerns in relation to Conditional Fee Arrangements (CFAs) and submitted that such a model would not work in the Island as they have not worked in England and Wales. Issues of concern included the inflation of litigation costs; the ability for Advocates to turn away cases based on the strength of their prospects, and an overall reduction in access to justice. High Cost Orders payable by the losing party were also raised as a particular matter of concern, in addition to concerns that 'after the event' (ATE) insurance policies may be difficult to secure in the Island. Another issue was the potential for Advocates having to expose themselves to significant losses in expert fees, and the risk of Advocates judging the potential merits associated with a medical negligence claim when they are not trained to do so.

One Advocate suggested that No Win No Fee could be considered in certain cases (e.g. a fall resulting in injury) but it would not be appropriate in more serious cases. Another submitted that the vast majority of personal injury and medical negligence cases that they undertake are successfully settled with costs paid by the defendant, following which Legal Aid is fully reimbursed:

'I strongly disagree with the introduction of CFAs in the IOM. I have worked extensively in the post CFA market in England and Wales and believe that CFAs are fundamentally flawed as a source of litigation funding, serving only to escalate and inflate the costs of litigation.'

'It's not about advocates going out of business, I am not a supporter of a no win no fee arrangement because advocates should not be allowed to turn away cases on the basis of what they perceive to be good prospects as opposed to bad prospects.'

'People cannot be excluded from justice like this. Businesses and Govt Depts who breach their duty of care to people will be represented so there is a strong equality of arms argument.'

'Where a case is successful, the party at fault is automatically required to pay the legal costs of the Claimant, so there is no cost to Legal Aid and any costs paid by Legal Aid are reimbursed. This is probably difficult to see in the statistics and figures, so perhaps more questions need to be asked. Unsuccessful cases often fail in early course, upon receipt of a liability report, and costs incurred are minimal. For clinical negligence in particular, it would be dangerous to get into a system where Advocates are judging the merits of medical issues, when they are not trained in that area.'

'The explanation of CFA given here is over simplified. In a CFA case, the losing party is likely to be Ordered to pay their opponent's costs. In the UK there is a large ATE

insurance market, but even when accessed (which can be difficult) they do not always pay out at the end of the case and look for every reason to not pay out. That leaves the individual exposed as the costs Order is against them personally. They may be barely able to pay their day to day bills if they are on benefits and will not be able to discharge such Orders. This could lead to individuals becoming further in debt and suffering from additional physical and mental health problems. Currently ATE policies are very difficult to put in place for Isle of Man cases as our civil law and procedure is different. Insurers would have to entirely remodel their products for the Isle of Man as we do not have the same Court processes and tracking systems. Further, we do not have the same Court rules and limits on costs Orders as they have in the UK. In a CFA environment, Advocates are likely to only take on cases that they know they can win. Medical and Professional Negligence cases, however, require expert reports to be obtained before you can ascertain the strength of a case. If operating under a CFA, an Advocate would have to expose themselves to huge losses in expert fees if they were to assist a client under a CFA, without any way of knowing whether or not the case is a good case or not. Advocates are not qualified to assess these issues. Potentially, therefore, many Manx people who have suffered an actionable wrong will be unable to pursue their case, because Advocates will not be available to assist them under a CFA system. The CFA model does not work for the Island.'

19 respondents (28%) said that '**No Win No Fee**' arrangements should be considered. Of these 19 respondents, 5 had been through a Civil court; 7 were members of the public; 4 were Advocates / Judiciary members, and there were 3 'Others'. 3 comments were made.

A member of the public suggested that there would be potential benefits associated with 'No Win No Fee' arrangements due to a reduction in the number of cases reaching Court which would otherwise have no prospect of success:

'This would stop advocates claiming big fees for their services when there is no prospect of success. It would also save court time.'

An Advocate / Judiciary member suggested that both systems could apply:

'Both no win no fee and legal aid can apply.'

Whilst the General Registry submitted that 'No Win No Fee' arrangements should be considered, caution was also urged based on evidence from England and Wales. In addition, there was support for more individuals to add inexpensive legal expenses insurance to their policies:

'Any consideration should proceed with care. No win no fee can lead to sharp practice and satellite litigation. The abolition of legal aid in England and the introduction of convoluted funding arrangements has been an unmitigated disaster. An increase in straightforward legal expenses insurance would be welcome. It is not clear why this is not more common and not used in more cases than, say, RTAs or household insurance, where legal expenses insurance is a cheap *add on*.'

3 respondents (4%) said that they **did not know**. Of these 3 respondents, 2 were members of the public, and there was 1 'Other'. No comments were made.

2 respondents (3%) answered '**Other**'. 1 was a member of the public and there was 1 'Other'. 2 comments were made.

A member of the public expressed concern that the introduction of 'No Win No Fee' would give rise to a number of issues including an incentive for litigation with increased Court time and associated costs. Caution was also urged that in the absence of an impact assessment, any such changes should not be made:

'Introducing this would create a marketplace for litigation. This would have an effect on the usage of the courts, potentially affecting the cost of running them. It may also distort the fees charged by advocates and bar practice in general. This kind of change should only be considered with some form of effect modelling - and you haven't provided it.'

The Equality Adviser suggested that there could be some access to justice benefits in certain cases, but also stressed the importance of understanding the impact of 'No Win No Fee' arrangements in England:

'No win no fee would enable access to justice where there is either no legal aid provision or a claimant is not eligible for legal aid and is not able to fund legal costs upfront or on an ongoing basis. It is important to carefully analyse both the research and recent developments in the English jurisdiction since the inception of no win no fee in the mid-90s, such as the introduction of caps on success fees claimed.'

**Q50 SUMMARY:** 66 respondents (96%) answered the question and 17 comments were made.

- 42 respondents (61%) said that Civil Legal Aid should continue to be available for Personal Injury, Negligence and Medical Negligence.

A number of concerns were raised regarding 'No Win No Fee' arrangements which included:

- Issues associated with access to justice and equality of arms
  - Impact on Court time and associated costs in England and Wales
  - Clients' exposure to costs
  - Disincentives to bring claims for fear of incurring debt
  - Incentivising the provision of incorrect legal advice in pursuit of payment
  - Inflating litigation costs
  - Difficulty securing 'After the Event' insurance on-Island
  - Exposing Advocates to significant losses in expert fees
- 19 respondents (28%) said that 'No Win No Fee' arrangements should be considered.

Suggestions included:

- Applying both 'No Win No Fee' and Legal Aid
  - Increasing levels of legal expenses insurance
- 3 respondents (4%) said that they did not know.
  - 2 respondents (3%) answered 'Other'

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Q51. If you have any further comments on 'No Win No Fee' arrangements, please tell us

A text box was provided for comments / suggestions and 15 respondents (22%) submitted responses.

Of these 15 respondents:

- 3 had been through a Civil court
- 1 was a member of the public
- 6 were Advocates / Judiciary members
- 5 were 'Others'

Respondents who had been through a Civil court expressed concern that 'No Win No Fee' arrangements would not be suitable for the Island as they would promote a 'compensation culture' and there would be risk of abuse of the market, unless strictly regulated:

'No win no fee should not be introduced here. It leads to a "compensation culture" and ambulance chasing.'

'The IOM is too small a jurisdiction for unfettered no win no fee arrangements and there is too great a prospect for abuse of the market - they should only be permitted within strictly regulated circumstances (e.g. third party or lawyer funds the case, only permitted where >50% chance of success, costs recovery at legal aid + 50% rate only OR do permit funding secured against the potential damages (as with legal aid statutory charge) but no greater than 50% of damages and no increase in damages for that cost.'

The IoM Law Society submitted a joint response for Q50 and Q51 which is included in full at Q50 above.

Advocate / Judiciary members reiterated a number of issues which were raised in Q50. In particular, there was concern that the introduction of 'No Win No Fee' arrangements in the UK had been misleading and unnecessary and had caused significant damage to the justice system, and could similarly affect the Island:

'They should not be considered. They are very misleading to the public and unnecessary when there are provisions in place, such as the statutory charge, to recover legal aid funds if needed.'

'CFAs have hugely damaged the personal injury and clinical negligence system in the United Kingdom. We do not want to follow in that glorious tradition.'

'The cost of insurance for no-win, no-fee will result in some people who have received serious injuries being unable to bring claims.'

- 1) 'CFAs are predicated on the assumption that solicitors will undertake a certain number of successful cases for every unsuccessful case and will not therefore lose out too much in terms of costs. This only works in jurisdictions where there are relatively high volumes of CFA-based litigation. There are insufficient volumes of CFA work in the IOM for this option to be feasible.
- 2) The UK insurance market is struggling to find suitable litigation funders for ATE policies for smaller litigation and there have been a number of high profile collapses of ATE providers in the UK market in the past few years. Therefore, the availability of ATE is likely to be severely limited.

- 3) CFAs are acknowledged to be responsible for an avalanche of satellite litigation in the courts of England and Wales since their introduction, with the validity of the CFA itself, the cost of insurance cover and the amount of the success fee all being subject to considerable challenge. The IOM courts do not have the capacity to deal with such an avalanche of satellite litigation and a failure to deal with these satellite litigation issues generates a culture where successful litigants can effectively write blank cheques for grossly excessive fees.
- 4) In my opinion, the ultimate outcome is that most advocates would refuse to take on CFA work or would take on CFA work and be forced out of practice as a result, causing significant detriment to the Manx bar as a whole and grossly impeding access to justice.'

The General Registry made reference to the potential impact on legal practices' business models, but was unclear how the Courts would be affected by any such arrangements. It was suggested that the scale and overall impact of dealing with (Personal Injury) matters should first be fully understood:

'This may have an impact upon advocate practices in that they will of course, as everybody else, have to reassess their business model in light of changing circumstances. We do not have any up-to-date figures or even an anecdotal understanding of what this means in the UK but do wonder does it mean fewer matters end up in court both by way of interlocutory proceedings or final proceedings because the financial imperative on both sides is to get an agreed resolution without the uncertainty of timeframe and an uncertain outcome inherent in going to Court?

Perversely, therefore contrary to how the question is framed posed, if its introduction would reduce the volume of things that are actually active before the Court even if it may have some impact upon the number of claim forms issued in the first instance.

We have not researched in terms of numbers actually how many personal injury matters are issued on any given year and really how many of those end up in a final trial. We anticipate that the final number is rather small but there is quite a lot of interlocutory proceedings for matters which don't ultimately have a final hearing.

We raise this query simply to stress that if overall impacts are being considered and the cost implications on a wider basis are being looked at, for court administration as well as anybody else, having a sense for actually how much of an issue this is and what impact it will have probably needs those sorts of figures to be fully understood.'

The Equality Adviser and 1 'Other' respondent asked if different models had been considered and in particular, arrangements in New Zealand:

'Have different models been considered? Damages based fee agreements with caps or speculative fee agreements with caps?'

'In terms of medical negligence certainly, (and perhaps negligence and PI) looking at the approach of other countries such as New Zealand, may have merit here in the IOM.'

**Q51 SUMMARY:** 15 respondents (22%) answered the question.

Of the 15 respondents, 9 were opposed to 'No Win No Fee' arrangements and 3 suggested that further research, including an impact assessment, should be undertaken before any changes are considered.

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#### 4.15. Legal Aid Panel of Advocates

Q52. Are you an Advocate who has carried out Civil Legal Aid work in the Isle of Man or would like to do so in future?

66 respondents (96%) answered the question, and the results are shown in Table 38 below.

**Table 38. No. of Advocates undertaking Civil Legal Aid work**

Response	Number	%
Yes	21	30
No	45	65
Rather not say	0	0
Not answered	3	4
Total	69	>99

21 respondents (30%) indicated that they were had carried out had carried out Civil Legal Aid work or would like to do so in future. 45 respondents (65%) indicated that they were not Advocates who had undertaken Civil Legal Aid work or would do so in future.

**Q52 SUMMARY:** 66 respondents (96%) answered the question. 21 respondents (30%) indicated that they were Advocates who had carried out Civil Legal Aid work or would like to do so in future.

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Q53. Would you like to see any changes to how Advocates join and remain on the Civil Legal Aid Panel?

63 respondents (91%) answered the question, and the results are shown in Table 39a below. A text box was also provided for comments.

**Table 39a. Views on changes to join/remain on Civil Legal Aid Panel (all respondents)**

Response	Number	%
Yes	19	28
No	17	25
Don't know	26	38
Other (please state)	1	1
Not answered	6	9
Total	69	>100

16 respondents provided further comments to support their answers. Comments from Advocates / Judiciary members who indicated in Q52 that they carry out Civil Legal Aid work are marked with an asterisk (\*):

19 respondents (28%) said that they **would like to see changes** to how Advocates join and remain on the Civil Legal Aid Panel. Of these 19 respondents, 6 had been through a Civil

court; 3 were members of the public; 7 were Advocates / Judiciary members; 1 was a charity / support worker, and there were 2 'Others'. 13 comments were made.

A respondent who had been through a Civil court referred to there being no mandatory continuing professional development (CPD) in place for Advocates and suggested that Legal Aid should be paid only to those Advocates with expertise in the relevant field. Another suggested that there should be measures in place to ensure that cases with no prospects of success are not pursued:

'Advocate's commission is lifelong with no mandatory CPD. Legal aid should only pay for someone with some degree of expertise in the relevant field, whether proven by recent experience or CPD.'

'There should be a full assessment of the cases they have claimed legal aid payments for to ensure that they are not encouraging clients to pursue legal aid for cases that are doomed to fail.'

Advocates / Judiciary members called for CPD requirements to be put in place; for a code of conduct to be introduced, and for Advocates to demonstrate their experience / knowledge when joining the Legal Aid Panel in addition to an understanding of Legal Aid processes and their own responsibilities. There was also concern that some Advocates on the Legal Aid Panel may lack interest or experience, and/or they undertake little Legal Aid work, and it was suggested that the areas of law in which Panel Advocates practice should require mandatory CPD and monitoring. Another suggestion was to introduce an additional Legal Aid rate of pay for Legal Executives, between the administrative and Junior Advocate rates.

'There ought to be a mandatory and ongoing CPD requirement.' \*

'Advocates should undertake relevant CPD each year.' \*

'A requirement for experience in order to provide legal aid services and a defined code of conduct (the breach of which would result in removal from the panel).'

'Advocates should be able to show a background in the type of work they want to join the panel to do, either in their training contract if newly qualified or in their work to date. Advocates should also be able to demonstrate an understanding of the Legal Aid process and their duties to the Legal Aid fund.' \*

'People get added to the Panel to do little work relating to the Panel. This often adds wasted time and costs as they have no interest or experience in the work.' \*

A charity / support worker suggested that an Advocate should be removed from the Legal Aid Panel if they have not undertaken work within the previous year:

'If they have not taken a Legal Aid case within the past 12 months they should be taken off the list.'

The General Registry made reference to the number of Advocates undertaking Legal Aid work:

'We would like to see a greater proportion of the profession available to carry out legal aid work.'



17 respondents (25%) said that they **would not like to see changes** to how Advocates join and remain on the Civil Legal Aid Panel. Of these 17 respondents, 14 were Advocates / Judiciary members; 1 was a public sector employee, and there were 2 'Others'. 2 comments were made.

1 Advocate / Judiciary member referred to the current system working well, and another expressed concern that fewer Advocates may undertake Legal Aid work if changes were introduced.

'The current system works well and to my knowledge there is no issue with the same.' \*

'There aren't that many that undertake the work. It would be a shame if more were put off.' \*

26 respondents (38%) said that they **did not know**. Of these 26 respondents, 4 had been through a Civil court; 12 were members of the public; 1 was an Advocate / Judiciary member; 1 was a public sector employee, and there were 8 'Others'. No comments were made.

1 Advocate / Judiciary member (1%) answered '**Other**' and they referred to the number of Advocates undertaking Legal Aid work and suggested that it should be compulsory.

'I would like to see more advocates doing legal aid work. My understanding is they don't undertake it because 'it doesn't pay' and I don't believe that that should be a choice. We should all have to take on legal aid work in our respective fields.' \*

**Additional information:**

When these results were examined further to identify responses from those those 21 respondents who indicated in Q52 that they were Advocates who had undertaken Civil Legal Aid work, different results emerged as shown in Table 39b.

**Table 39b. Views on changes to join/remain on Civil Legal Aid Panel (21 Civil Legal Aid Advocates only)**

Response	Number	%(of 21)
Yes	6	29
No	13	62
Don't know	1	5
Other (please state)	1	5
Not answered	0	0
Total	21	>100

21 (100%) answered this question. Of these 21 respondents, 6 (29%) said that they **would like to see changes** to how Advocates join and remain on the Civil Legal Aid Panel. 13 (62%) said they **would not like to see changes**. 1 (5%) said they **did not know** and 1 (5%) said '**Other**'. 9 comments were made and where consent to publish has been given, they are included above and marked with an asterisk for ease of reference.

**Q53 SUMMARY:** 63 respondents (91%) answered the question and 16 comments were made.

- 19 respondents (28%) said that they would like to see changes to how Advocates join and remain on the Civil Legal Aid Panel. Of these:
  - 4 suggested that CPD requirements should be introduced.
  - 4 suggested that experience / training should be demonstrated and/or monitored.
  - 2 suggested that Legal Aid bills should be assessed further / independently audited.

Other suggestions included a requirement for Advocates to demonstrate an understanding of Legal Aid processes and their own duties when applying to be added to the Panel; removing Advocates from the Panel if they have not done any Legal Aid work in previous 12 months; introducing a code of conduct; introducing an additional Legal Aid rate for Legal Executives, and more background checks.

Issues of concern included the low proportion of Advocates undertaking Legal Aid work and a lack of experience and/or interest in undertaking Legal Aid work when on the Panel.

- 17 respondents (25%) said that they would not like to see changes to how Advocates join and remain on the Civil Legal Aid Panel. Concern was expressed that additional requirements may disincentivise Advocates to undertake Legal Aid work.
- 26 respondents (38%) said that they did not know.
- 1 Advocate / Judiciary member (1%) answered 'Other' and called for more Advocates to undertake Legal Aid work.

Further analysis showed that all 21 respondents who indicated in Q52 that they were Advocates who had undertaken Civil Legal Aid work (or would wish to do so in the future) answered the question, and 9 comments were made. Of these 21 respondents:

- 6 (29%) said that they would like to see changes to how Advocates join and remain on the Civil Legal Aid Panel.
- 13 (62%) said they would not like to see changes.
- 1 (5%) said they did not know
- 1 (5%) said 'Other'.

Q54. If you have any further comments on the Legal Aid Panel of Advocates please tell us

A text box was provided for comments / suggestions and 5 respondents (7%) submitted response

Of these 5 respondents:

- 1 had been through a Civil court
- 1 was a member of the public
- 2 were Advocates / Judiciary members
- 1 'Other'

The respondent who had been through a Civil court suggested that all Advocates should be required to undertake some Legal Aid work, and they should not know if clients are legally aided:

'All advocates should be required to do a certain amount of legal aid, but they should not be aware of which of their clients are legal aid clients.'

The member of the public submitted that individuals should not be required to have legal representation:

'I don't believe an individual should have to have legal representation to bring a case to the justice system.'

Both Advocates / Judiciary members made reference to the number of Legal Aid practitioners. 1 submitted that Legal Aid rates are too low and suggested that higher rates could increase the availability of Advocates willing to undertake this work. The other suggested that consideration is given to requiring Advocates to become members of the Legal Aid Panel for a set period following qualification which could contribute to the development of the Bar and bring other benefits:

'The rates are at barely break-even levels and increase would widen the availability of legal aid, especially in family and children cases, where there are limited numbers of practitioners.'

'The fact that just 25% of qualified advocates have made themselves members of the legal Aid Panel makes a mockery of the Law Society's claim to be concerned by ensuring access to justice. Consideration should be given to it being a requirement of admission to the Bar / membership of the Isle of Man Law Society that advocates be members of the Legal Aid Panel for a specified period following qualification (and that they have professional obligation to accept instructions along the lines of the "cab rank rule" (see Bar Standards Handbook, rC29): in such a system assisted persons might be allocated an advocate from the panel rather than choosing a particular representative which in turn would go a long way to developing across the Bar those attributes set out in Question 58 below and could only be to the advantage of both assisted persons as well as advocates themselves.'

1 'Other' respondent expressed concern that some Advocates may 'cherry pick' cases included which can lead to a lack of representation, particularly in cases where clients may have mental health issues. It was suggested that Advocates could develop advocacy skills by requiring them to undertake legally-aided Tribunal work which could be periodically assessed:

'As in any profession, there are good and not so good practitioners. Some appear to 'cherry-pick' cases they take on, and in other areas such as mental health there is distinct lack of advocates prepared to represent clients presumably because they don't make money and the cases can be time-consuming. As good advocacy skills can be developed in these areas it would be appropriate if advocates were required to do a minimum

number of tribunals in all the areas where legal aid is provided, and be periodically assessed on their performance similar to the way doctors are revalidated to practice every 5 years.'

**Q54 SUMMARY:** 5 respondents (7%) answered the question.

Suggestions included requiring all qualified Advocates to undertake some Legal Aid work (e.g. post-qualification for a specified period); requiring Advocates to carry out some legally-aided Tribunal work; increasing Legal Aid rates of pay, and for legally-aided clients not to be identifiable to Advocates.

Concerns included the number of Advocates willing to undertake Legal Aid work; rates of pay for Legal Aid work, and 'cherry picking' legally-aided cases.

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### 4.16. Quality of Legal Aid services

Q55. Is the information provided by the Legal Aid Office comprehensive and clear enough?

64 respondents (93%) answered the question, and the results are shown in Table 40 below. A text box was also provided for comments and respondents were asked to indicate if they found any information from the Legal Aid Office particularly helpful or if they had any suggestions for improvement.

**Table 40. Views on information provided by the Legal Aid Office**

Response	Number	%
Yes	29	42
No	16	23
Don't know	15	22
Other	4	6
Not answered	5	7
Total	69	100

11 respondents provided further comments to support their answers.

29 respondents (42%) said that **information provided by the Legal Aid Office is comprehensive and clear enough**. Of these 29 respondents, 3 had been through a Civil court; 5 were members of the public; 14 were Advocates / Judiciary members; 1 was a charity / support worker, and there were 6 'Others'. 2 comments were made.

An Advocate / Judiciary member praised Legal Aid staff and Legal Aid Certifying Officers:

'Communication and timescales have become massively improved in the last year or so which is a great credit to Legal Aid and the Certifying Officers.'

One 'Other' respondent commented on the helpfulness of staff in the Legal Aid Office:

'And the staff are very helpful.'

16 respondents (23%) said that **information provided by the Legal Aid Office is not comprehensive and clear enough**. Of these 16 respondents, 5 had been through a Civil court; 4 were members of the public; 5 were Advocates / Judiciary members, and there were 2 'Others'. 5 comments were made.

A respondent who had been through a Civil court referred to the transparency of contribution calculations, and the implications of a person going to prison before payments were completed:

'Doesn't mention what / how your contribution is worked out and what happens if you go to prison before you have finished any regular payments.'

Advocates / Judiciary members referred to 'confusing' eligibility criteria and suggested that Legal Aid legislation could be easier to understand. It was also suggested that guidance on less common and/or complex matters would be helpful:

'The Act and the Regulations are difficult to read, even for lawyers.'

'It is clear enough for an Advocate, but needs to be made clearer for members of the public to handle.'

'It would be helpful for greater and more comprehensive guidance from legal aid as to more unusual, less straightforward situations such as overseas litigants or unusual housing arrangements. Instead, such information is often disseminated through the profession on a word of mouth basis.'

15 respondents (22%) said they **did not know**. Of these 15 respondents, 2 had been through a Civil court; 6 were members of the public; 1 was an Advocate / Judiciary member; 2 were public sector employees; 1 was a charity / support worker, and there were 3 'Others'. No comments were made.

4 respondents (6%) said '**Other**'. Of these, 3 were Advocates / Judiciary members, and there was 1 'Other'. 4 comments were made.

Advocate / Judiciary members suggested that guidance could be more concise. There was a call for clearer and more transparent eligibility criteria and Legal Aid qualification determinations, particularly for the self-employed, and more information on the Legal Aid calculator<sup>20</sup> In addition, it was suggested that Government information could be improved in terms of style, design and accessibility via 'modern available distribution channels':

'The guidance is largely clear in its content but not concise enough.'

The Equality Adviser sought further details regarding the accessibility of resources are:

'Are all available resources fully accessible? (large print; easy read; audio etc)'

**Q55 SUMMARY:** 64 respondents (93%) answered the question and 11 comments were made.

- 29 respondents (42%) said that information provided by the Legal Aid Office is comprehensive and clear enough. Comments included praise for the Legal Aid staff and Legal Aid Certifying Officers.
- 16 respondents (23%) said that information provided by the Legal Aid Office is not comprehensive and clear enough. Comments referred to the transparency of contribution calculations. Suggestions included clearer legislation / guidance, and the availability of more information on complex issues.
- 15 respondents (22%) said they did not know.

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<sup>20</sup> The Civil Legal Aid Eligibility Calculator can provide an indication as to whether a person is likely to pass the financial test in order to be granted Civil Legal Aid in the Isle of Man. It is accessible via the IoM Government's 'Online Services' website <https://services.gov.im/civil-legal-aid-calculator/>.

- 4 respondents (6%) said 'Other'. Suggestions included more transparency regarding Legal Aid eligibility criteria and determinations, and a question regarding accessibility was raised.

Q56. In the future, do you think the voice and interest of the legally-aided person should be placed at the centre of Legal Aid services?

63 respondents (91%) answered the question, and the results are shown in Table 41 below. A text box was also provided for comments.

**Table 41. Views on placing legally-aided person at centre of services**

Response	Number	%
Yes	32	46
No	8	12
Don't know	14	20
Other (please state)	9	13
Not answered	6	9
Total	69	100

14 respondents provided further comments to support their answers.

32 respondents (46%) said that **legally-aided persons should be placed at the centre of Legal Aid services**. Of these 32 respondents, 7 had been through a Civil court; 7 were members of the public; 10 were Advocates / Judiciary members; 2 were charity / support workers, and there were 6 'Others'. 2 comments were made.

A respondent who had been through a Civil court suggested that legal practices undertaking Legal Aid work were currently at the centre, and not the clients.

An Advocate / Judiciary member suggested that the voice and interest of the legally-aided person is already at the centre:

'Surely it is currently?'

8 respondents (12%) said that **legally-aided persons should not be placed at the centre of Legal Aid services**. Of these 8 respondents, 2 had been through a Civil court; 1 was a member of the public; 3 were Advocates / Judiciary members, and there were 2 'Others'. 2 comments were made.

A respondent who had been through a Civil court submitted that other stakeholders are also important to consider:

'The applicant should be at the centre of consideration for guidance and forms, but there are other stakeholders and policy should protect each of them (including persons who will be opposing parties to the legally aided).'

An Advocate / Judiciary member expressed concern that less meritorious cases could be pursued if the interests of legally-aided clients were prioritised:

'The current system of advocate assessment of merits has its downfalls but a system focused on recipients might lead to less meritorious cases being run to the detriment of scarce resource allocation.'

14 respondents (20%) said that they **did not know**. Of these 14 respondents, 1 had been through a Civil court; 6 were members of the public; 4 were Advocates / Judiciary members; 2 public sector employees, and there was 1 'Other'. 1 comment was made.

An Advocate / Judiciary member expressed concern about the number of issues:

'There are too many issues to balance.'

9 respondents (13%) answered '**Other**' (including 2 who provided comments without answering *Yes / No / Don't know / Other*). Of these 9 respondents, 1 was a member of the public; 5 were Advocates / Judiciary members, and there were 3 'Others'. 9 comments were made.

Advocate / Judiciary members raised a range of issues, which included balancing the needs of the legally-aided individual against protecting the public purse, and another suggested that access to justice should be placed at the centre of Legal Aid. Others expressed concern that the question itself was unclear. One respondent suggested that Advocates who undertake legally-aided work should be placed at the centre, and submitted that instead they are marginalised and mistrusted. Another suggested that legally-aided individuals are already at the centre, and set out the benefits of the current system in which an Advocate acts on their client's behalf to ensure that the Legal Aid Office receives only salient and appropriate information pertaining to a case:

'Yes, balanced against the need to use public money prudently.'

'I do not know what this means? The legally aided party's voice and interest is communicated to legal aid services through their advocates. It is the advocates that are prepared to carry out legal aid services who should be placed at the centre of legal aid services and provided with support and trust by legal aid services rather than at present where we are marginalised, mistrusted and have to fight on a daily basis to receive proper remuneration.'

'I do not understand what this question is getting at. The legally aided person is already at the centre of the legal aid service, which operates for and on their behalf. The legally aided person should, however, not have direct access to the legal aid office, as this causes increased administration and a significant waste of time and money. All communications are done via the Advocate to ensure the legal aid office receives the information they require, in a reliable and proper manner. Individuals are not always adept at understanding the legal issues in their cases and what they deem to be important is not always the legal issue that legal aid is concerned with.'

The Equality Adviser urged caution and referred to the value of professional legal services:

'Apply with care; parties to cases are emotionally charged and may not see a rational approach. This is where professional legal advice and support is invaluable.'

**Q56 SUMMARY:** 63 respondents (91%) answered the question and 14 comments were made.



- 32 respondents (46%) said that legally-aided persons should be placed at the centre of Legal Aid services.
- 8 respondents (12%) said that legally-aided persons should not be placed at the centre of Legal Aid services. Comments referred to the importance of other stakeholders in addition to legally-aided persons and the risk of less meritorious cases being pursued.
- 14 respondents (20%) said that they did not know.
- 9 respondents (13%) answered 'Other'. It was suggested that Advocates undertaking Legal Aid work should be at the centre of Legal Aid services, and concern was expressed that Advocates are currently marginalised and mistrusted. The benefits of Advocates acting on behalf of their clients, and in particular in their communications with the Legal Aid Office were also set out.

Q57. If 'Yes' (to Q56) how could we ensure that the legally-aided person is at the centre of Legal Aid services?

This question was aimed at the 32 respondents who answered 'Yes' to Q56. Respondents were given a number of options based around feedback and invited to choose all those that applied. As a result, the number of respondents does not add up to 32 and the percentages do not add up to 100. All 32 respondents (100%) answered the question, and the results are shown in Table 42a below. A text box was also provided for comments.

**Table 42a. Views on ways to help place legally-aided persons at the centre of services (32 respondents who answered 'Yes' to Q56)**

Response	Number	% (of 32)
Seek feedback from legally-aided persons on services received	29	91
Seek feedback from charities on access to services for people they support	23	72
Seek feedback from Advocates on processes which affect their clients & the legal profession	26	81
Don't know	0	0
Other (please state)	1	3
Total	N/A	N/A

Of those 32 respondents who answered 'Yes' to Q56, the choice of feedback options is listed in order below (as percentages of the total respondent number i.e. 32):

- i. Seek feedback from legally-aided persons on the services they have received (91%)
- ii. Seek feedback from Advocates on processes which affect their clients & the legal profession (81%)
- iii. Seek feedback from charities on access to services for the people they support (72%)

2 comments were made.

The General Registry supported the options to seek feedback from legally-aided persons, charities and Advocates, but also urged caution in terms of client feedback which, unavoidably, may be outcome-dependent:

‘One needs to be careful regarding Client feedback as such may be tied in to perceived success or failure. Advocates are usually very good at managing expectations in family cases but even so there may be a tendency to blame an advocate [because s/he didn’t tell the court half the things I wanted aired about how awful the other side was] when the advocate has restricted the case to the relevant.’

Additional information:

A further 13 respondents (i.e. who did not answer ‘Yes’ to Q56) also answered Q57, giving a total of 45 respondents. Their responses have been calculated for completeness and are shown in Table 42b below:

**Table 42b. Views on ways to help place legally-aided persons at the centre of services (all 45 respondents)**

Response	Number	% (of 45)
Seek feedback from legally-aided persons on services received	36	80
Seek feedback from charities on access to services for people they support	29	64
Seek feedback from Advocates on processes which affect their clients & the legal profession	36	80
Don’t know	0	0
Other (please state)	0	0
Total	N/A	N/A

The choice of feedback options is listed in order below:

- i. Seek feedback from legally-aided persons on the services they have received (80%)
- i. Seek feedback from Advocates on processes which affect their clients & the legal profession (80%)
- iii. Seek feedback from charities on access to services for the people they support (64%)

A further 5 comments were received from the additional 13 respondents.

A member of the public suggested that taxpayers’ views should be sought, and also called for consultation feedback to be actioned:

‘From the tax payer who are funding the service - i.e. this consultation but actually do something with the information don’t just pay lip service.’

An Advocate / Judiciary member suggested that feedback should be sought from Advocates. Another referred to feedback mechanisms currently in place with the Legal Aid Office, and expressed concern that feedback from legally-aided persons may be subjective and outcome-dependent, and as a result may not reflect the service that individuals have received from an Advocate:

‘Seek feedback from advocates on the processes that affect them.’

'The Law Society and Advocates already provide feedback to the legal aid office and regular meetings are held for this purpose. Whether feedback from legally-aided persons will give reliable and measurable information I do not know, as opinions are always subjective. An individual may, for example, be most unhappy with legal aid and their Advocate, because they have been told they cannot run a particular argument as it has no legal merit, or they may ultimately lose their case. They will then likely provide negative feedback in relation to the service they received, notwithstanding that the service may have been excellent. Feedback is not always instructive in contentious and highly subjective settings and may not provide any meaningful data to assist. This could lead to unnecessary resources in time and cost being expended for no tangible purpose.'

The Equality Adviser suggested that communication is the key:

'These are simply about adequate communications.'

One further comment from an 'Other' respondent supported feedback:

'Feedback is always a good idea. A lot can be learned.'

**Q57 SUMMARY:** This question was aimed at the 32 respondents who answered 'Yes' to Q56 and all 32 (100%) answered. An additional 13 responses were also received, bringing the total number of respondents to 45 and there were 7 comments in total.

Responses from both groups were analysed and showed the following choice of feedback options, which are summarised in order below:

- i. From legally-aided persons on the services they have received (80% - 91%)
- ii. From Advocates on processes which affect clients / legal profession (80% - 81%)
- iii. From charities on access to services for the people they support (64% - 72%)

**Q58. How important to you are the following qualities or factors in an Advocate who is providing legal advice on Civil matters?**

Respondents were asked to complete a table indicating the level of importance they attributed to a range of qualities in an Advocate who is providing legal advice on Civil matters. A text box was also provided and respondents were invited to suggest further qualities that had not been listed in the table and indicate why they were important to them.

Between 60 (87%) and 62 (90%) people answered each part of this question and the results are shown in Table 43 below. The total number of responses (column 7) reflects how many people selected an option (e.g. very important) for each quality. The small number of those who answered 'Don't know' are not shown but they are reflected in the number of responses. All percentages are calculated as a proportion of 69 (i.e. the total no. of responses to the consultation).

**Table 43. Importance of qualities / factors in an Advocate providing Civil legal advice**

	Very important	Quite important	Neither important nor unimportant	Quite unimportant	Very unimportant	No. of responses

	Very important	Quite important	Neither important nor unimportant	Quite unimportant	Very unimportant	No. of responses
Level of experience	40 (58%)	18 (26%)	4 (6%)	0 (0%)	0 (0%)	62 (90%)
Independence	41 (59%)	13 (19%)	6 (9%)	0 (0%)	0 (0%)	61 (88%)
Professional reputation	28 (41%)	19 (28%)	12 (17%)	1 (1%)	1 (1%)	61 (88%)
Quality of service	47 (68%)	14 (20%)	0 (0%)	0 (0%)	0 (0%)	61 (88%)
Qualifications	28 (41%)	25 (36%)	8 (12%)	0 (0%)	0 (0%)	61 (88%)
Ease of access (location, office hours etc.)	15 (22%)	28 (41%)	14 (20%)	2 (3%)	1 (1%)	61 (88%)
Personal recommend'n	7 (10%)	27 (39%)	19 (28%)	4 (6%)	4 (6%)	61 (88%)
Continuing Professional Development	24 (35%)	22 (32%)	10 (14%)	4 (6%)	0 (0%)	61 (88%)
Used Advocate before	10 (14%)	16 (23%)	27 (39%)	4 (6%)	3 (4%)	60 (87%)

These responses were weighted<sup>21</sup> for the purposes of ranking, and the 9 qualities are set out below in order of importance to the respondents:

- i. Quality of service (most important)
- ii. Level of experience
- iii. Independence
- iv. Qualifications
- v. Professional reputation
- vi. Continuing professional development (CPD)
- vii. Ease of access (location; office hours etc)
- viii. Personal recommendation
- ix. Used the Advocate before (least important)

Respondents were also asked to suggest any other qualities or factors that were not listed in the table and 6 responses were received.

<sup>21</sup> The following 'weightings' were applied to the answers given for each quality / factor and added together to give a total score which could be ranked: 5 = Very important; 4 = Quite important; 3 = Neither important or unimportant; 2 = Quite unimportant; 1 = Very unimportant.

A respondent who had been through a Civil court suggested that there should be monitoring to identify excessive costs and the number of cases lost with potential associated sanctions. Financial incentives were also suggested to encourage good practice:

'There should be scope to investigate the practice of advocates who seek costs repeatedly over taxed amounts, and if certifying >50% success if they lose 5 cases on the run, to ensure there is no abuse...potentially removing them from the panel. Or perhaps creating an enhanced rate for advocates who can demonstrate proper consideration of files and cost limitation.'

A member of the public referred to disciplinary matters<sup>22</sup>:

'Any disciplinary matters the advocate has been subject to.'

An Advocate / Judiciary member expressed concern in regard to the qualities / factors included at Q58. The importance of independence was reiterated:

'Points such as experience are a catch 22. How can someone get experience if they can't do the work? A lot of the other issues are subjective. Independence is the big issue.'

The General Registry made reference to a number of qualities including pragmatism and willingness to settle at an appropriate stage:

'Pragmatism, awareness of and utilisation of the overriding objective, focus and ability to not divert a case down interlocutory cul de sacs, firmness but also willingness to settle at an appropriate stage.'

One 'Other' respondent made reference to efficiency and expressed concern that as a legally-aided client, they were aware that their Advocate was being paid at Legal Aid rates which they felt may be impacting on the level of service they received:

'Efficiency. I sometime feel that perhaps I am bottom of the list and the clock is always being watched because I'm not 'financially rewarding them to the same level' for their time. Perhaps it's just me and my sensitivities in the situation of having to ask for help but I feel small being on legal aid and not able to raise Qs as much.'

**Q58 SUMMARY:** Between 60 and 62 respondents (87% - 90%) answered all parts of this question.

The three most important qualities / factors (from the list provided) indicated by respondents were as follows:

- i. Quality of service (most important)
- ii. Level of experience
- iii. Independence

The three least important qualities / factors were:

- i. Ease of access (location; office hours etc)

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<sup>22</sup> The Isle of Man Courts of Justice publishes details of all Tribunals at <https://www.courts.im/court-procedures/tribunals-service/tribunals/>. The 'Advocates Disciplinary Tribunal Public Record of Complaints Upheld & Decisions' is also published: <https://www.courts.im/media/1641/adt-public-record-upheld.pdf>.

- ii. Personal recommendation
- iii. Used the Advocate before (least important)

Other suggestions included monitoring of repeated excessive costs; monitoring the number of cases lost; disciplinary matters faced; pragmatism / awareness / focus on cases; willingness to settle at an appropriate stage, and efficiency.

Q59. The IoM Legal Aid Handbook sets out quality standards for Advocates undertaking Legal Aid work. These standards are set out below. Do you think an agreement, such as a Memorandum of Understanding (MOU), should be put in place between the Legal Aid Office and Advocates to support the delivery of these quality standards?

64 respondents (93%) answered the question, and the results are shown in Table 44 below. A text box was also provided for comments.

**Table 44. Views on introducing an agreement between Legal Aid Office & Advocates**

Response	Number	%
Yes, there should be an agreement in place	24	35
No, an agreement is unnecessary	22	32
Don't know	14	20
Other (please state)	4	6
Not answered	5	7
Total	69	100

14 respondents provided further comments to support their answers.

24 respondents (35%) said that **there should be an agreement in place**. Of these 24 respondents, 7 had been through a Civil court; 4 were members of the public; 6 were Advocates / Judiciary members; 1 was a public sector employee; 1 was a charity / support worker, and there were 5 'Others'. 1 comment was made.

An Advocate / Judiciary member suggested that any agreement should be actively monitored to be effective:

'There ought to be minimum quality standards - having an agreement in place is worthwhile but unless it is actively policed / measured it will have no consequence.'

22 respondents (32%) said that **there should not be an agreement in place**. Of these 22 respondents, 2 had been through a Civil court; 3 were members of the public; 12 were Advocates / Judiciary members; 1 was a public sector employee, and there were 4 'Others'. 7 comments were made.

Advocates / Judiciary members expressed concern that an MOU would lead to unnecessary bureaucracy; would break the independence and impartiality of the Advocate if advice is conditional upon an agreement; risk a reduction in Advocates willing to undertake Legal Aid work, and would be professionally insulting:

'We are professional people. I do not consider this necessary but would sign it if required.'

'Advocates are already subject to considerable professional scrutiny and further agreements are unnecessary. There are mechanisms by which the funded person and/or Legal Aid can address concerns about a particular advocate.'

'Advocates are professional individuals who are officers of the Court. If the legal aid office has a particular issue with any individual Advocate then it is for the legal aid office to deal with such issue. 'Advocates are aware of their duties and responsibilities and can be trusted to fulfil the same without more. Suggesting that a memorandum of understanding is required is offensive to our profession and is likely to result in Advocates refusing to undertake legal aid work due to the lack of trust and respect on show.'

One 'Other' respondent expressed concern that an MOU would lead to more administration and associated costs which they considered would be unnecessary as Advocates are aware of their responsibilities.

14 respondents (20%) **did not know**. Of these 14 respondents, 1 had been through a Civil court; 7 were members of the public; 3 were Advocates / Judiciary members; 1 was a charity / support worker, and there were 2 'Others'. 2 comments were made.

An advocate / Judiciary members suggested that there are already standards to which Advocates work and if an agreement is put in place, there should also be standards required from the Legal Aid Certifying Officer (LACO) and the Legal Aid Office. Another Advocate submitted that an agreement would be unenforceable and subjective, and could increase the risk of complaints:

'I have no objection to an agreement being in place, but would suggest that all advocates willing to undertake legal aid work already work to this standard and acceptance of these requirements is implicit from their acceptance on to the legal aid panel. Any memorandum should however be balanced with what advocates and clients should in turn expect from the LACO and her office.'

'Too hard to enforce and too subjective. People will complain that an Advocate did not provide good service based on issues such as they didn't like the advice given, even on issues of legal merits, therefore this could open up the risk of more wasted time and costs dealing with frivolous complaints.'

2 respondents (3%) answered '**Other**' and of these, 1 was an Advocate/Judiciary member and there was 1 'Other' who was the Equality Adviser. 2 comments were made:

An Advocate/Judiciary member suggested that an Advocate's terms and conditions of appointment should include scope and nature of work:

'Any requirements a contracting party may have when engaging an advocate should form part of the terms and conditions under which they are appointed including scope and nature of work.'

The Equality Adviser suggested that any quality standards should be captured in Advocates' professional standards to avoid bureaucracy:

'Ensure these quality standards are captured in the professional standards required of an Advocate. Introducing an MoU creates further administrative bureaucracy that could be overcome in the professional standards managed by the Law Society.'

2 respondents (3%) did not indicate whether or not an agreement should be put in place, but did provide comments and have been categorised as '**Other**' for the purposes of analysis. Of these 2 respondents, 1 was a member of the public and there was one 'Other' which was the General Registry.

A member of the public suggested that any agreement should be legally binding:

'Advocates should adhere to a code of conduct etc. you can have an agreement in place but unless it is legally binding what is the point.'

The General Registry made reference to a potential for shared resources within legal practices and indicated that the number of Advocates who undertake Civil Legal Aid work may reduce. It was suggested that there are quality matters which the IoM Law Society should address, and that more training should be provided to Advocates and in particular, advocacy training:

'There is potential that the impact will be to require advocates who work in this area to reassess their business model and might cause a more barristers chambers/Keystone Law type approach bringing together with the benefit of shared overheads and resource the fairly numerous small practices that currently exist providing predominantly legal aid based services. It may also mean that the numbers of advocates who practise in this area is reduced.

The issue of quality of advocates needs to be grasped by the IOM Law Society. Better training and continuing training (especially in advocacy) is needed to assure the taxpayer that the legal aid fund is being properly and effectively used.'

**Q59 SUMMARY:** 64 respondents (93%) answered the question and 14 comments were made.

- 24 respondents (35%) said that there should be an agreement in place. It was suggested that any agreement should be actively monitored.
- 22 respondents (32%) said that there should not be an agreement in place. Concerns were expressed that an agreement would be unnecessary and offensive to the legal profession, and could result in Advocates refusing to undertake Legal Aid work.
- 14 respondents (20%) did not know whether or not an agreement should be in place. It was suggested that if an agreement was introduced, there should be reciprocal arrangements in place with the Certifying Officer and Legal Aid Office. Concerns included enforcement difficulties; subjectivity and increased risk of complaints.
- 4 respondents (6%) answered 'Other' or did not indicate whether or not an agreement should be put in place but did provide comments and classed as 'Other'. It was suggested that quality standards should be included in professional standards in order to avoid additional bureaucracy. Concern was expressed regarding quality, and there was a call for more training for Advocates, particularly in advocacy.

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Q60. If you think an agreement should be put in place, what should it contain?



This question was aimed at those 24 respondents who answered 'Yes' to Q59. A text box was provided for comments / suggestions and of these 24 respondents, 9 people (38%) answered the question.

Of these 9 respondents:

- 4 had been through a Civil court
- 1 was a member of the public
- 3 were Advocates / Judiciary members
- 1 'Other'

Respondents who had been through a Civil court submitted that those who receive Legal Aid should receive the same level of access to justice:

'Those on legal aid should be treated the same access and availability as those who pay privately.'

'To be clear to them that pursuing cases supported by legal aid that are destined to fail is not acceptable.'

1 Advocate / Judiciary member suggested the currently quality standards should be used. 2 proposed that the Scottish model should be considered, and a description of the same was provided. Particular reference was made to maintaining and improving quality of service to legally-aided individuals:

'The current quality standards.'

'Code of conduct similar to that used in Scotland.'

'The emphasis should be on the maintenance and improvement of the quality of service and legal work provided by advocates using legal aid. I am aware of the system in Scotland where all firms providing civil legal aid must join a central register maintained by the Scottish Legal Aid Board and are subject to peer review in six-yearly cycles, by peer reviewers who are solicitors in practice, and who are trained as reviewers on behalf of the Society. They examine a sample of the firm's files and assess the quality of the work done by the firm according to the Society's published criteria. For the criteria considered by peer reviewers see <https://www.lawscot.org.uk/members/professional-support/legal-aid/civil-legal-aid/civil-quality-assurance/>.'

One 'Other' respondent referred to providing the same quality of service for all clients, irrespective of means:

'Uphold professionalism regardless of the client's financial means. Ensure that the matters are dealt with in a timely manner - don't protract the cost for legal aid.'

A further 2 comments were received from respondents who did not answer 'Yes' to Q59:

A person who had been through a Civil Court suggested that the quality of an Advocate's work could be monitored by the Legal Aid Office:

'Legal aid should be able to identify the quality of an advocate's work from a cost perspective and penalise this. This could be by agreement or written into the regulations.'

An Advocate / Judiciary member referred to achieving the through standard terms and conditions, in addition to service levels:

'This should be covered on a case by case in the standard terms and conditions although service levels can be laid down for each category of work.'

**Q60 SUMMARY:** This question was aimed at the 24 respondents who answered 'Yes' to Q59 and of these, 9 (38%) answered. An additional 2 responses were also received, bringing the total number of comments to 11.

It was submitted that there should be parity between legally-aided and private legal services, and that current quality standards are adequate.

Suggestions included referring to the Scottish model; using standards terms and conditions, with service levels for categories of work, and monitoring quality from a cost perspective.

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**Q61.** Any agreement would need to be balanced against the requirement to maintain the availability and willingness of Advocates to undertake Civil Legal Aid work. Do you have any comments on how this could this be achieved?

A text box was provided for comments / suggestions and 11 respondents (16%) submitted responses.

Of these 11 respondents:

- 3 had been through a Civil court
- 4 were Advocates / Judiciary members
- 1 was a charity / support worker
- 3 were 'Others'

A member of the public made suggestions to allocate a proportion of Advocates' time to Legal Aid with VAT incentive:

'A percentage of the advocates work time could be allocated to legal aid work & VAT free (if not already).'

An Advocate / Judiciary member suggested that practitioners would welcome an agreement which could reasonably ensure quality standards. 3 others did not support the introduction of an agreement, and concern was expressed that all Advocates should not be affected by measures which could potentially be put in place to improve the standards of only a very small number of individuals. There was further concern that an agreement could reduce the number of Advocates undertaking Legal Aid work; suggestions that time limits for Civil Legal Aid should be removed and rates of pay increased, and a call for greater recognition of the role and duties of Advocates:

'Advocates would want to ensure the quality of the work provided by the profession and should therefore be happy to sign up to an agreement that sets out reasonable quality requirements.'

'An agreement is unnecessary. If Advocates currently on the panel are not meeting the required standards, the individuals should be taken to task, not everyone.'

'I think that the introduction of additional regulation by way of an agreement could result in advocates being less amenable to joining and remaining on the panel. Therefore, it would be counter-productive.'

'Better remuneration and the removal of time limits in civil legal aid cases. Time limits prevent advocates from receiving proper remuneration for the work carried out. If the work has not been carried out in accordance with the certificate or the assessing officer believes the time spent was unnecessary or excessive then that is a matter for the assessing officer but refusal to pay purely because a time limit has been exceeded fails to acknowledge the role and duties of the advocate. This does not create a willingness amongst advocates to carry out legally aided work.'

Homelessness charity *Grain* suggested that consideration is given to requiring all Advocates to undertake some Legal Aid work:

'Perhaps it should be mandatory for all Manx Advocates to devote some time to Legal Aid (Civil and Criminal) work.'

The Equality Adviser indicated that an agreement could have a negative impact on the already low number of Advocates undertaking Legal Aid work:

'Given the number of qualified advocates versus the much smaller number registered for civil legal aid, any further bureaucracy could see the numbers registered on the panel diminished further.'

Further comments from 'Others' included reference to a possible reward scheme, and suggested employing Government Advocates to undertake Legal Aid work. Another proposed that Advocates should be required to provide at least a minimum amount of Legal Aid work each year:

'I am not sure if there is a reward scheme - perhaps if financial recognition is not possible - retainer - or even a team of government employed legal aid advocates - perhaps a more beneficial tax code.'

'It would do the profession no harm for all its members to be required do a minimum of so many hours a year of Civil Legal Aid work, say 20. Not only would it let them see the reality of the legal system for many people who cannot afford their normal fees but how justice is delivered 'at the coal face' away from the courts.'

**Q61 SUMMARY:** 11 respondents (16%) answered the question.

3 respondents suggested that Advocates should be required to undertake some Legal Aid work. Other suggestions included increasing Legal Aid rates of pay; removing time limits from Legal Aid work; employing Government Advocates to undertake this work.

3 respondents expressed concern that the introduction of an agreement could risk there being a reduction in the number of Advocates registered on the Legal Aid Panel. Another concern was a lack of acknowledgement of the role and duties of the Advocate.

Q62. Are there any Family or Non-Family matters that Civil Legal Aid is serving less well than others?

62 respondents (90%) answered the question, and the results are shown in Table 45 below.

**Table 45. Views on whether any matters are served less well than others**

Response	Number	%
Yes	9	13
No	4	6
Don't know	48	70
Other (please state)	1	1
Not answered	7	10
Total	69	100

Those who answered 'Yes' were asked to specify which matter(s) they were and how they could be better served and a text box was provided for comments.

6 respondents provided comments. 3 of these included reference to 'previous comments'.

9 respondents (13%) said that there **were matters being served less well by Civil Legal Aid**. Of these 9 respondents, 3 had been through a Civil court; 2 were members of the public, and 4 were Advocates / Judiciary members. 5 comments were made.

Advocates / Judiciary members made reference to POCA confiscations; Care Proceedings; family mediation and alternative dispute resolution (ADR):

'POCA confiscations.'

'Care Proceedings, being currently means tested.'

'Family mediation is still significantly restricted as a result of legal aid only paying a certain amount for the service. Mediation and ADR can save significant time and cost in the long run and should be encouraged as much as possible. However, there is a lack of family mediators available due to the limited amount that legal aid is prepared to pay for mediators and the other limitations placed upon them. In civil matters, mediators are generally brought in from the UK, due to a lack of civil mediators on Island, and they are rightly paid their standard charges.'

4 respondents (6%) said that **no matters were being served less well by Civil Legal Aid**. Of these 4 respondents, 3 were Advocates / Judiciary members and 1 'Other'. No comments were made.

48 respondents (70%) said they **did not know**. Of these 48 respondents, 6 had been through a Civil court; 12 were members of the public; 14 were Advocates / Judiciary members; 2 were public sector employees; 2 were charity / support workers, and there were 12 'Others'. No comments were made.

1 Advocate / Judiciary member (1%) answered 'Other'. 1 comment was made.

'Previous comments apply. In my opinion, there are ways to improve aspects of family legal aid and some civil legal aid, but such improvements are relatively minor overall.'

**Q62 SUMMARY:** 62 respondents (90%) answered the question. 6 comments were made and 3 of these made reference to 'previous comments'.

- 9 respondents (13%) said that there were matters being served less well by Civil Legal Aid. Comments referred to POCA confiscations; Care Proceedings; family mediation and alternative dispute resolution (ADR).
- 4 respondents (6%) said that no matters were being served less well by Civil Legal Aid.
- 48 respondents (70%) said they did not know.
- 1 respondent (1%) answered 'Other' and suggested that potential improvements were relatively minor.

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**Q63.** If you have any further comments about the quality of Legal Aid services, please tell us

A text box was provided for comments / suggestions and 3 respondents (4%) submitted responses.

Of these 3 respondents:

- 1 had been through a Civil court
- 2 were Advocates / Judiciary members

A respondent who had been through a Civil Court expressed concern that decisions to fund Legal Aid matters were arbitrary and unfairly favour those with financial means:

'Currently, arbitrary decisions are made by a bunch of civil servants as to what legal aid will fund. This leads to an unfair system which is weighted towards those with deep pockets.'

One Advocate / Judiciary member submitted that unless Legal Aid rates of pay are increased, there is little realistic scope to improve quality of service through a memorandum of understanding, and suggested that an increase in rates combined with market forces will ensure that "the best lawyers will win". Another Advocate suggested that there should be a requirement for continuing professional development (CPD) to support improvements in quality:

'Whilst it is outside the scope of Legal Aid, there should be an obligation to do some CPD. Some Advocates don't attend any courses, and they're often the ones who need them.'

**Q63 SUMMARY:** 3 respondents (4%) answered the question.

- 1 respondent expressed concern that decisions to fund Legal Aid are arbitrary and unfair.
- 2 respondents made suggestions to encourage improvements in quality of service which included an increase in Legal Aid rates of pay and mandatory CPD.

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#### 4.17. Self-representation (Litigants in Person)

Q64. Have you ever represented yourself (i.e. without an Advocate) in a Civil Court in the Isle of Man?

63 respondents (91%) answered the question, and the results are shown in Table 46 below.

**Table 46. No. of people who have self-represented in a Civil Court**

Response	Number	%
Yes (go to Q65)	4	6
No (go to Q66)	58	84
Rather not say	1	1
Not answered	6	9
Total	69	100

4 respondents (6%) said that they had self-represented in a Civil Court in the Isle of Man, and they were directed to Q65.

**Q64 SUMMARY:** 63 respondents (91%) answered the question. 4 respondents (6%) indicated that they had self-represented in a Civil Court.

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Q65. Why did you represent yourself in Court?

This question was specifically aimed at those 4 respondents who answered 'Yes' to Q64.

All 4 respondents (100%) answered the question, and the results are shown in Table 47 below. A text box was also provided for comments.

**Table 47. Reasons given for self-representation in a Civil Court**

Response	Number	% (of 4)
It was my choice – I wanted to represent myself	3	75
It was not my choice – I wanted an Advocate but I did not qualify for Legal Aid & I could not afford to pay privately	1	25
Don't know	0	0
Rather not say	0	0
Other (please state)	0	0
Not answered	0	0
Total	4	100

No comments were provided.

**Q65 SUMMARY:** All 4 respondents (100%) who answered 'Yes' to Q64 to indicate that they had self-represented in a Civil Court in the Isle of Man provided a response. Of these, 3 (75%) chose to self-represent and 1 (25%) indicated that it was due to ineligibility for Legal Aid and an inability to pay private legal fees.

Q66. Do you think we should try to minimise the number of people who self-represent in future?

67 respondents (97%) answered the question, and the results are shown in Table 48 below. A text box was also provided for comments.

**Table 48. Views on whether self-representation should be minimised**

Response	Number	%
Yes	34	49
No	24	35
Don't know	9	13
Not answered	2	3
Total	69	100

Those who answered 'Yes' were asked to indicate how the minimisation of self-representation could be achieved.

27 respondents provided further comments to support their answers.

34 respondents (49%) said **'Yes' we should try to minimise the number of people who self-represent in future.** Of these 34 respondents, 2 had been through a Civil court; 4 were members of the public; 19 were Advocates / Judiciary members; 1 was a public sector employee; 1 was a charity / support worker, and there were 7 'Others'. 25 comments were made.

A member of the public suggested that those who are self-representing should be entitled to a free consultation with an Advocate who undertakes Legal Aid work.

Advocates / Judiciary members raised a range of issues and put forward a number of suggestions. It was submitted that for some people who self-represent out of choice, these numbers are unlikely to go down. Whilst it was recognised individuals have a right to self-represent, there was also concern that there can be significant consequences, including increases in Court time; more work required from the represented party and members of the Judiciary; an increase in the overall cost of cases, as well as the impacts on the individual who is self-representing. There was particular concern for those who do want legal representation but are not eligible for Legal Aid and cannot afford private fees to pay for an Advocate. Suggestions to help minimise self-representation included continuing or extending Civil Legal Aid provision and contributions. Ensuring that Legal Aid rates of pay are competitive was also suggested as a way of encouraging more Advocates to undertake this work:

'Can't be done. Many don't want or trust an Advocate and can't be forced into this.'

'Many people find the court process difficult and intimidating when they are unfamiliar with the process. Due to lack of knowledge and experience court time can be wasted by proceeding with matters which have little merit.'

'People must be able to represent themselves but I'm not sure they don't end up inordinately wasting court time and often it is at real cost to themselves.'

'On the whole they are difficult to deal with and take up a lot of time. It increases our fees (private or Legal Aid). The Judiciary dislike them and actively encourage them to get representation.'

'The additional time and costs incurred as a result of litigants in person is significant. We should strive to provide legal advice and assistance to as many people as possible, by expanding access to legal aid, with contributions so that more people can access Advocates. There will always be people who decide to self-represent, but that should not be due to a lack of funding.'

'Continuing to provide legal aid.'

'Increasing eligibility for legal aid.'

'Limit any reductions to the scope for Legal Aid and maximise access to justice by abolishing means testing in certain areas. There will always be a certain level of individuals who have to self-represent as they are unable to work constructively with an advocate, but we ought to be minimising those whose only bar is financial.'

'Make Legal Aid available more widely, for those who pay. Many people could afford Legal Aid rates, but perhaps could not afford private rates.'

'By ensuring that legal aid rates remain competitive and thereby attract/retain advocates willing to undertake legal aid work. If there are sufficient advocates and funding is available then there will be fewer self-reppers.'

'Although not in the small claims court where I think self-representation should be encouraged.'

#### Homelessness charity *Grain* referred to universal access:

'Ensuring ease of access for all.'

The General Registry suggested that the continued provision of Legal Aid for private Family matters would help to minimise the level of self-representation in Courts. Particular concern was expressed that headline reductions in Legal Aid expenditure can be a false economy, which can lead to unnecessary stress, workload, and delays:

'By not withdrawing existing legal aid from private family work.'

Reducing the availability of legal aid may have a headline cost reduction but without an understanding as to its impact in other areas it harder to quantify this as an immediate easy or actual saving and benefit.

With the best will in the world litigants in person create work which is unnecessary, take points which they should not, often miss points that they should be taking, and frequently fail to understand the procedural requirements of progressing or defending a civil case. That is not fair for them in the wider sense, in that either their expectations are misconceived both as to the merits, strength and weaknesses of their cases against their opponents and what the court may be in a position to do for them.



If faced with a litigant in person, that can create additional delay stress and cost for a legally represented party. It invariably creates far more work (and cost) for court administration and the judiciary.'

The Equality Adviser suggested that Civil Legal Aid should be more widely available for early advice to facilitate the resolution of matters and reduce the burden on Courts. Data on the cost of self-representation was also called for in order to inform policy development, and reference was made to research undertaken in this area by the Law Society (England & Wales):

'By making civil legal aid available more widely for early advice. Matters that could have been resolved by early legal representation end up escalating to the courts, taking up valuable court time. Data should be collected to assess the cost implications for the courts in managing self-represented individuals (litigants in person) in order to provide a clear cost benefit analysis. Money will be saved in reducing court time (longer proceedings for lay people; deemsters time taken to explain process & law) which could instead be applied at the outset with civil legal aid. Without data analysis, how is there justification for the civil legal aid proposals? If IOM data analysis is not obtained, review the 2017 English Law Society Report 'LASPO 4 years on' which reviewed the effect and correlation of reducing access to civil legal aid resulting in an increased financial burden to the public purse from increased self-representation in the courts. <https://www.lawsociety.org.uk/support-services/research-trends/laspo-4-years-on/>.'

One 'Other' respondent submitted that it is a funding issue:

'Most people who self-represent do so because of inadequate funding. This is a funding issue.'

24 respondents (35%) said '**No**' we should not try to minimise the number of people who self-represent in future. Of these 24 respondents, 7 had been through a Civil court; 6 were members of the public; 4 were Advocates / Judiciary members; 1 was a public sector employee; 1 was a charity / support worker, and there were 5 'Others'. 1 comment was made.

A member of the public expressed their opposition to any requirement to pay for legal representation in a publicly-funded justice system:

'Absolutely not. Why should people have to pay an advocate to access the taxpayer funded Justice system?'

9 respondents (13%) said they **did not know**. Of these 9 respondents, 2 had been through a Civil Court; 5 were members of the public; 1 was a public sector employee, and there was 1 'Other'. 1 comment was made.

A member of the public submitted that people should have the choice to self-represent and expressed concern they should have to pay for an Advocate:

'People should be able represent themselves. Sometimes they do this well - on other occasions they just waste court time as they do not know the process. You should not force them to pay an advocate.'

**Q66 SUMMARY:** 67 respondents (97%) answered the question and 27 comments were made.

- 34 respondents (49%) said 'Yes' we should try to minimise the number of people who self-represent in future. Of these:
  - 12 suggested that Civil Legal Aid should be provided to those who self-represent and/or the eligibility for Legal Aid should be extended.
  - 4 expressed concern that self-representation causes more work and costs for the Court / represented party. It can also be difficult and stressful for the person who is self-representing.
  - 2 suggested that Civil Legal Aid should continue to be provided without any reduction in scope.
  - 2 suggested that early advice should be available to reduce the number of cases going to Court / advice should be available to those who chose to self-represent.

Other suggestions included a call for data to understand the cost of self-representation and inform policy; encouragement of self-representation in the Small Claims Court. There were also submissions that self-representation is primarily a funding issue; that some people will always choose to self-represent and Legal Aid rates of pay should be competitive.

- 24 respondents (35%) said 'No' we should not try to minimise the number of people who self-represent in future. 1 comment was made which supported the right to self-represent and expressed opposition to any requirement to pay for an Advocate.
- 9 respondents (13%) said they did not know. 1 comment was made which also supported the right to self-represent and expressed concern they should have to pay for an Advocate.

#### Q67. How could we best support people who do self-represent in Civil courts?

A text box was provided for comments / suggestions and 32 respondents (46%) submitted responses.

Of these 32 respondents:

- 4 had been through a Civil court
- 6 were members of the public
- 15 were Advocates / Judiciary members
- 1 was a public sector employee
- 2 were charity / support workers
- 4 were 'Others'

Respondents who had been through a Civil Court suggested free legal advice and guidance / signposting on Court proceedings. Another suggested that those who self-represent should be taken as seriously as Advocates:

'Provide them with free legal advice.'

'Advice and guidance on court proceedings and signposts as to how to research and access information required where necessary.'

Members of the public suggested that access to information and clearer, less complex Court processes would be helpful. Other suggestions included access to affordable legal advice and representation; making divorce processes more administrative and ensuring that those who self-represent are treated respectfully:

'Make sure appropriate levels of information are easily available both online and as printed copies.'

'Maybe explain the court process. However this needs to be updated it is too bureaucratic.'

'By giving everyone access to affordable legal advice. By making sure that anyone bringing a complex matter to court could have access to affordable representation. By making divorce more administrative. By making more use of a small claims court and making legal advice affordable for those cases.'

'Do not allow them to be bullied or be taken advantage of by the professionals.'

Advocates / Judiciary members made a range of comments. It was suggested that clearer information, signposting and procedural guidance should be provided, in addition to training for Deemsters and more Court resources / facilities. The option of offering the services of a Court Duty Advocate (or equivalent) for some matters could be helpful, subject to appropriate consideration. Others submitted that the law is complex and it is difficult to provide sufficient support in lieu of representation by a qualified Advocate, in addition to which any such support is matter for the Court, not Legal Aid:

'Better provision of information, more clarity in that information.'

'Better signposting and improved information from court.'

'More information e.g. guides on how to complete forms, and what the procedure is to be followed.'

'By giving deemsters training in patience and employing more deemsters and building more court rooms so that all the self reppers can be heard within a reasonable period of time.'

'You could offer them a court duty advocate on for example days when there are repossession proceedings.'

'It is difficult to support those who self-represent as, particularly in some cases, they do not absorb recommendations made to them to improve their case (or indeed abandon it). The judiciary do a good job of managing litigants in person when they appear before them. There has been some suggestion of a duty advocate equivalent for, for example, a possession list in the civil courts and I believe this could have some benefit, but would need to be investigated carefully before implementation.'

'Difficult. Someone who can afford an advocate, should pay for one.'

'I don't think more can be done. The law is complex, and there is no way to simplify it. If it weren't, Advocates would not need to spend 6 years training, and the rest of their careers learning and keeping up to date on the job.'

'You can't without massively lengthening the Court process and making the judge a part of the proceedings. Manx Law is extremely complicated (as is English Law), and to expect someone who has little or no previous knowledge to represent themselves in Court will lead to increased costs and delays.'

'This would depend on the individual, their needs, the type of case, the legal issues involved etc. This question simply cannot be answered in one way. The issue is, however, one for the Court and not one for legal aid.'

A public sector employee suggested a Court Duty Advocate.

Homelessness Charity *Graih* suggested using clearer, simpler language, particularly for those who are vulnerable:

Clear and simple language and communication. This is particularly so for the most vulnerable who may struggle with educational, linguistic and comprehension difficulties.

The General Registry suggested funding for early advice:

'Initial funding to put on right track at the outset.'

One 'Other' respondent suggested a self-funded training course and subject to attendance certification, individuals would be permitted to self-represent in Court:

'By providing training courses which they would pay for say £150/day and which would equip them with the understanding of how the court system works in principle, and what they can and cannot do. If they attended the course they would be certificated and then allowed to self-represent. If they did not attend the course then the Deemster would not be required to give them a presence, unless there were mitigation circumstances.'

**Q67 SUMMARY:** 32 respondents (46%) answered the question.

Of these:

- 11 suggested that more information and clearer guidance on form completion and Court processes should be available. The provision of an Isle of Man Civil Litigation Handbook was also suggested.
- 4 expressed concern that it is difficult to adequately support a person who self-represents due to the complexity of the law and the justice system.
- 4 suggested the provision of legal advice, particularly early advice, to guide the individual. This included a suggestion to widen the scope of Green Form (i.e. Legal Advice and Assistance).
- 3 suggested that consideration could be given to a Duty Advocate assisting in some matters

- 2 suggested that the Court should not allow any intimidation of those who self-represent.

Other suggestions included more resources for the Courts and the Judiciary; and self-funded training courses as a pre-requisite for those wishing to self-represent. It was also submitted that matters relating to support for individuals who self-represent is for the Court not Legal Aid.

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#### Q68. If you have any further comments on self-representation please tell us

A text box was provided for comments / suggestions and 8 respondents (12%) submitted responses.

Of these 8 respondents:

- 2 had been through a Civil court
- 2 were Advocates / Judiciary members
- 4 were 'Others'

One respondent who had been through a Civil court expressed concern that those who self-represent are not treated with the same level of respect as others. Another acknowledged that legal representation has a number of advantages but submitted that the level of representation should not affect the outcome and some self-representation should be encouraged:

'Puts you at a disadvantage, judge looks down at you.'

'Legal representation does ease the process of justice, ensuring parties are heard properly and the court process is not subject to unnecessary delay. However, representation ought not to affect the outcome of the case and therefore self-representation should be encouraged where the proceedings are straightforward and the judge can take some degree of control over (like Small Claims).'

The IoM Law Society provided a combined response for Q64 – Q68 which is included in full below. In its response, the Society referred to the right to self-represent; set out some of the differences between the Isle of Man and UK in terms of Legal Aid provision, and described some of the issues associated with self-representation. Reference was made to a *'Litigants in Person Grant'* put in place by the UK's Ministry of Justice, and the conclusions of research conducted in the UK to better understand the implications of self-representation. In its closing remarks the Society submitted that the best support that can be given to an individual is to be properly represented:

'Everyone has the right to represent themselves in court or tribunal proceedings if they so choose. However, it is a fundamental Human Right for them to have independent legal representation of their own choosing if they wish, and if they have insufficient means to pay for it, this must be provided free when the interests of justice so require. This is the bedrock of Access to Justice and indeed democracy. Without it, civil society is in grave danger.'

The UK has seen drastic cuts in the funding and provision of criminal, civil and family Legal Aid. This has been a disaster and has left many people unable to secure legal representation.

The current system in the Isle of Man has not gone down this route which means that, there is still Access to Justice and legal representation, although the provisions are still capable of improvement. The cost to society of our current Legal Aid system is not disproportionate to its benefits and the need it meets. We do not want to limit this and go down the UK route.

It is an accepted fact that the impact of litigants in person places increased demands upon the court system in relation to time, costs and resources. Cases take longer and become more difficult to manage and conduct. This means increased cost to other parties and increased demands on the resources of the courts. This must be taken into account in assessing the true cost saving of any cuts in the provision of Legal Aid.

The UK Ministry of Justice has put in place a Litigants in Person Grant over 2 years at a cost of £3.1m. The existing Litigants in Person Support Strategy, was put in place due to the increasing numbers of litigants in person following the Legal Aid reform in the UK. It Launched in October 2014 and is a collaborative project involving a number of legal support entities such as the Bar Pro Bono Unit and Access to Justice Foundation, however it is funded by the Ministry of Justice. (Appendix 2).<sup>23</sup>

In addition, there is a negative impact on a party who is represented in a matter involving a litigant in person. Litigants in person often have limited understanding of procedural rules and legal principles and in family cases especially, have an understandably strong emotional attachment to their case. This can result in a too subjective assessment of their claim and a reluctance to settle or at least agree non-contentious issues that are not central to the matter in hand. This will result in an increase in cost and delay. Further, the court will expect the represented party's advocate to assist, in so far as they are ethically able, the unrepresented party. This will mean, for example, the court asking them to prepare all necessary bundles of documents, drawing up of Orders etc., notwithstanding the increased time that will be spent on correspondence, communication, written and oral argument by the represented party. The removal or reduction of legal aid will have a significant impact on this.

The Courts are now taking a less lenient approach to litigants in person and will dismiss applications where procedures have not been correctly followed. Therefore, this is not furthering fair access to justice and is in turn increasing costs.

<https://www.hempsons.co.uk/news-articles/the-attitude-towards-litigants-in-person-an-end-to-latitude/>  
<https://www.theguardian.com/law/2011/feb/28/restrict-legal-access-of-rich>

Another problem is in relation to the proper instruction of experts, who are frequently central to cases. Where this is undertaken by litigants in person then due to their inexperience in securing the relevant expert input this is frequently more difficult and costly both for the represented party and the courts. Once again, this needs to be factored in to any possible cost savings in the restriction of Legal Aid.

It is commonplace for a litigant in person not to understand the distinction between evidence and submissions. As a result, many do not present their case properly, therefore

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<sup>23</sup> Appendix 2 of the IoM Law Society's submission which can be accessed via the Consultation Hub <https://www.consult.gov.im> and the IoM Law Society's website: <https://iomlawsociety.co.im/wp-content/uploads/2020/05/Isle-of-Man-Civil-Legal-Aid-Consultation-Submission-and-appendices-Man-2020.pdf>

prejudicing themselves and potentially the represented party. Once again this can involve the increased utilisation of court resources.

An Advocate's principal (overriding) duty is firstly to the court, secondly to their client and thirdly to the litigant in person where they are involved. There is invariably an increased cost and delay for the represented party when the advocate provides assistance to the litigant in person in accordance with their professional duties. There is frequently a fine line between properly acting on behalf of their client and being open to an allegation of taking unfair advantage of a party who is not represented. This frequently involves ethical conflicts and difficulties to advocates.

<https://www.hja.net/what-is-a-litigant-in-person-and-what-are-the-latest-developments/>

The UK Ministry of Justice has conducted research in this area – Research Summary 2/11 – Litigants in Person: a literature review. This concluded:

1. Litigants in person tended to be younger and have lower income and educational levels than those who have representation.  
(Isle of Man Law Society comment - they are vulnerable members of society)
2. Litigants in person face problems in court; understanding evidential requirements, identifying legally relevant facts and dealing with forms, being overwhelmed in court.  
(Isle of Man Law Society comment - they do not have proper Access to Justice)
3. Litigants in person caused extra work for court staff and the judiciary  
(Isle of Man Law Society comment this causes increased pressure on court resources)
4. Cases involving unrepresented litigants took longer and were less likely to settle.  
(Isle of Man Law Society comment – this increases the costs to other parties and increased pressure on court resources)
5. A lack of representation negatively affected cases outcomes.  
(Isle of Man Law Society comment – this denies proper Access to Justice)

Access to Justice requires the broadest possible access to legal representation. Any measures to limit this will be prejudicial to the people of the Isle of Man, potentially infringe their Article 6 Human Rights and is likely to fail any cost benefit analysis regarding the overall administration of justice. The best support any litigant can have is to be properly represented.

An Advocate / Judiciary member submitted that every person has the right to self-represent but they should also have the right to legal representation and expressed concern that those individuals who self-represent may potentially prejudice their cases.

The General Registry acknowledged that vexatious litigants will not be prevented, but submitted that the reduction of Legal Aid for private Family matters should be avoided if possible. Additional demands placed on the Advocate where the other side is self-representing (i.e. litigant in person - LiP) were also highlighted:

'One will never prevent persons who veer towards the vexatious litigant category from slowing the work of the courts and preventing access to justice for others. However, a wide scale reduction in the availability of civil legal aid in private family work should be avoided if possible. The increased costs of lawyers where the other side is a LiP should also be viewed sympathetically on the basis of the extra work expected of the lawyer in terms of drafting and the demands placed upon them by the LiP in terms of

communication, e.g. in settling practicalities as to contact. The court will also require more of the lawyer in such circumstances as an officer of the court.'

The Equality Adviser submitted that wider access to legally-aided advice at an early stage would reduce self-representation and suggested that mediation should be mandatory before a case goes to Court:

'Reduce to need for self-representation by ensuring wider access to civil legal aid early on with a mandatory requirement for mediation before accessing the court process.'

One 'Other' respondent suggested that consideration could be given to undertaking a cost / benefit analysis of Legal Aid and self-representation. Another commented on the limitations of the Island's Legal Aid provision which, whilst better than the UK, still leaves some individuals in a position in which they must self-represent not out of choice, but because they cannot afford to pay legal fees at private rates:

'When estimating the costs of legal aid, the costs accruing through longer case times & greater delay, increased Judicial support needed for self-representation should also be considered.'

'One has to ask why people self-represent in the first place. In many cases, it is most likely because of the costs of using the services of advocates which can be very high and which the costs are not transparent to the layperson. While the IOM is very good at providing legal aid in areas the UK does not, it is unfortunate those that those who often most need justice, are the ones that cannot afford it.'

**Q68 SUMMARY:** 8 respondents (12%) answered the question.

A number of concerns were expressed in terms of the disadvantages for those who self-represent. These included how individuals are treated in Court; the personal impact on those who self-represent, including vulnerable people; access to justice / case outcomes implications; increased pressure on the Court and implications for the represented party.

Suggestions included wider access to Civil Legal Aid to extend the provision of legal representation; no reductions in Civil Legal Aid, particularly in private Family matters, and mandatory mediation before accessing the Court process.

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### 4.18. Expenditure

Q69. Would you like to see any changes to the way in which applications for Green Form and full Civil Legal Aid (under a Certificate) are assessed / granted?

62 respondents (90%) answered the question, and the results are shown in Table 49 below. A text box was also provided for comments.

**Table 49. Views on whether to change assessment / granting of applications**

Response	Number	%
Yes	17	25
No	20	29
Don't know	25	36
Other (please state)	0	0
Not answered	7	10
Total	69	100

Respondents who answered 'Yes' were asked to indicate what changes they would like and 13 comments were made.

17 respondents (25%) said that they **would like to see changes to the way in which Civil Legal Aid applications are assessed / granted**. Of these 17 respondents, 6 had been through a Civil court; 5 were members of the public; 5 were Advocates / Judiciary members; and there was 1 'Other'. 13 comments were made.

One respondent who had been through a Civil Court suggested that there should be a certificate which indicates the prospects of a case's success, and another respondent suggested that individuals (not Advocates) should be able to submit applications with assistance from the Legal Aid Office:

'There should be a certification from both client and advocate indicating the percentage chance of the case being successful.'

'Green form should be emergency only. Full applications should require the provision of information to enable legal aid to assess whether the 50% threshold is met. Applicants should be able to submit applications (and pass the 50% threshold) before obtaining representation. Legal aid service should provide assistance to individuals to identify what they need to produce to show that the threshold is met (so LA may fund initial prep of witness statement, expert report, review of bank statements etc at a budget of £x and then after applicant has lawyer do those tasks the application be returned to LA).'

Members of the public suggested that the Legal Aid process should be easier to access, and assessments should be more stringent to make it fairer to those who do not qualify and have to pay. Other suggestions included advising those who do not qualify for Legal Aid to attend mediation and revising the financial eligibility thresholds:

'This whole process should be easier to access.'

'More stringent. However some people have worked hard and saved their money - they are being made to pay / use their savings when others who have just spent their money or don't earn / contribute to society get legal aid. This is wrong.'

Advocates / Judiciary members proposed changes to Green Form in terms of fewer extensions and simpler financial determinations. It was also suggested that the means test and contribution bands are reviewed and the legal merits test given further scrutiny. Another suggestion was for online applications to save time and costs:

'Less extensions to green form - introduce a regime more similar to Guernsey.'<sup>24</sup>

'The assessment under a green form, where not entitled to an automatically qualifying benefit, needs to be simplified.'

'The means test needs to be reviewed, and the level and range of contributions considered.'

'Changes to the black and white qualification criteria of financial merits [means] and more scrutiny of legal merits.'

One 'Other' respondent suggested it would be helpful if they could discuss matters directly with the Legal Aid Office:

'I would like to also have the ability to contact the legal aid office to discuss extensions for legal aid.'

20 respondents (29%) said that they **would not like to see any changes to the way in which Civil Legal Aid applications are assessed / granted**. Of these 20 respondents, 2 were members of the public; 10 were Advocates / Judiciary members; 2 were public sector employees; 1 was a charity / support worker, and there were 5 'Others'. No comments were made.

25 respondents (36%) said they **did not know**. Of these 25 respondents, 4 had been through a Civil court; 8 were members of the public; 6 were Advocates / Judiciary members; 1 was a charity / support worker, and there were 6 'Others'. No comments were made.

**Q69 SUMMARY:** 62 respondents (90%) answered the question and 13 comments were made.

- 17 respondents (25%) said that they would like to see changes to the way in which Civil Legal Aid applications are assessed / granted. Overarching suggestions included making the Legal Aid Office / Legal Aid processes easier to access; introducing online applications, reviewing the financial means test, extending contributions and increasing the scrutiny of applications. For Green Form, suggestions included fewer extensions; using it for emergencies only, and simplifying financial determinations. In terms of the prospects of success, it was suggested that they should be 50% or above and a certificate issued to confirm the assessment.
- 20 respondents (29%) said that they would not like to see any changes to the way in which Civil Legal Aid applications are assessed / granted.
- 25 respondents (36%) said they did not know.

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<sup>24</sup> In the IoM, Green Form allows up to 3 hours' initial advice (4 hours for divorce) and up to a further 6 hours (i.e. 9 or 10 hours in total) subject to approval by the Legal Aid Certifying Officer. In Guernsey, advice under Green Form is available for up to 2 hours, with a maximum extension of 2 hours (i.e. 4 hours in total).

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Q70. There are a number of checks and balances in place to control Civil Legal Aid costs. Do you have any suggestions on how they could be done differently or more effectively?

A text box was provided for comments / suggestions and 18 respondents (26%) submitted responses.

Of these 18 respondents:

- 5 had been through a Civil Court
- 1 was a member of the public
- 9 were Advocates / Judiciary members
- 3 were 'Others'

Respondents who had been through a Civil court suggested that more legally aided cases should be reviewed and submitted that centralised merits testing can encourage applicants to be more objective. Another suggested allowing online applications by individuals:

'Review more cases to establish if the legal aid funded cases actually had merit.'

'The more centralised the review of merits the less impact of the meeting with the applicant and the one-sided view the applicant will present.'

Advocates / Judiciary members suggested that current processes were adequate and effective. Others made suggestions for change including an audit of outcome; consideration of fixed fees; more effective enforcement of the Statutory Charge and fewer Green Form extensions. Another submitted that Advocates are trustworthy and they could (in theory) self-assess their own invoices in the absence of Legal Aid staff, notwithstanding that they do an excellent job:

'The current system works effectively.'

'No, the current system where a Legal Aid Officer reviews the bills and deducts any unnecessary time works well.'

'Advocates are only paid for work that the Costs Assessor deems is reasonable and necessary and within the certificate hours. Even if within the permitted hours, the Costs Assessor may deduct time claimed. Every bill is assessed by reference to the file, whether Green Form or full legal aid. This is the most appropriate and tightest check and balance there can possibly be.'

'Audit of outcomes.'

'There should be consideration given to fixed fees in place of hourly rates - the emphasis would then be upon completing the job efficiently and without delay rather than rewarding same through hourly rates.'

'More rigorous enforcement of statutory charge. Less willingness to grant extensions to green form. Removal of some areas currently covered by legal aid. Introduction of fixed fees where appropriate.'

'Advocates are trustworthy. The government could sack all the legal aid staff for the sake of budget cuts/save initiative regardless of the fact that they do an excellent job and simply let the advocates 'self-assess' their own invoices. One's bill for a new car or kitchen doesn't go to a 3rd party for independent assessment. The government could just cut out the middlemen/women and save some pennies that way! Facetious of course but expresses sentiments.'

One 'Other' respondent suggested that if an applicant could complete / submit some online forms, it could give them more time to discuss legal matters with their Advocate when time is limited:

'On-line forms - either for the individual being represented to complete themselves prior to the meeting with the advocate. This regularly takes up 10 - 15 minutes of my appointment time. Time where I need the advocate's legal knowledge, Surely I can do the form for them and click submit?'

**Q70 SUMMARY:** 18 respondents (26%) answered the question.

It was submitted that the current processes are adequate, and that Advocates can be trusted to submit invoices which properly reflect the work undertaken.

Suggestions included more legal merit reviews; auditing the outcome of cases; greater enforcement of the Statutory Charge; consideration of fixed fees, and the availability of online forms to applicants to reduce administrative demands on the Advocate.

**Q71. Please tell us how much you agree with the following statements regarding hourly Legal Aid rates of pay**

Respondents were asked to complete a table indicating how much they agreed or disagreed with a range of statements about Legal Aid rates, and were invited to select one option per statement.

Between 60 (87%) and 63 (91%) people provided responses to each statement and the results are shown in Table 50 below. A small number of people answered 'Don't know' and these figures are not shown in the table but they are reflected in the total number of responses. All percentages are calculated as a proportion of 69 (i.e. the total no. of responses to the consultation).

**Table 50. Respondents' views of a range of statements relating to Legal Aid**

	Strongly agree	Agree	Neither agree nor disagree	Disagree	Strongly disagree	No. of responses (incl. 'Don't know')

	Strongly agree	Agree	Neither agree nor disagree	Disagree	Strongly disagree	No. of responses (incl. 'Don't know')
Rates of pay for Civil & Criminal Legal Aid work should remain aligned	20 (29%)	24 (35%)	13 (19%)	3 (4%)	0 (0%)	63 (91%)
Rates of pay for Civil work should be higher than Criminal work	1 (1%)	4 (6%)	20 (29%)	21 (30%)	14 (20%)	62 (90%)
Rates of pay for Civil work should be lower than Criminal work	2 (3%)	2 (3%)	21 (30%)	24 (35%)	9 (13%)	60 (87%)
Rates of pay should <b>continue to reflect the length of time</b> an Advocate has been in practice in the Island (i.e. under or over 5 years)	10 (14%)	23 (33%)	16 (23%)	7 (10%)	3 (4%)	60 (87%)
Rates of pay should <b>change to reflect the complexity of the case</b> undertaken by the Advocate, rather than their length of time in practice	6 (9%)	24 (35%)	16 (23%)	10 (14%)	4 (6%)	61 (88%)
Rates of pay should <b>change to reflect an Advocate's experience</b> rather than their length of time in practice	2 (3%)	18 (26%)	26 (38%)	10 (14%)	4 (6%)	61 (88%)
Rates of pay should be reviewed	22 (32%)	21 (30%)	14 (20%)	2 (3%)	1 (1%)	62 (90%)

Headline results are summarised below in descending order and those results which reflect a majority view (i.e. over 50%) are shown in bold.

- **64% agreed or strongly agreed** that rates of pay for Civil and Criminal Legal Aid work should remain aligned. 4% disagreed with this statement.
- **62% agreed or strongly agreed** that rates of pay should be reviewed. 4% disagreed or strongly disagreed with this statement.

- 50% disagreed or strongly disagreed that rates of pay for Civil work should be higher than Criminal work. 7% agreed or strongly agreed with this statement.
- 48% disagreed or strongly disagreed that rates of pay for Civil work should be lower than Criminal work. 6% agreed or strongly agreed with this statement.
- 47% agreed or strongly agreed that rates of pay **should continue to reflect the length of time** an Advocate has been in practice in the Island (i.e. under or over 5 years). 14% disagreed or strongly disagreed with this statement.
- 44% agreed or strongly agreed that rates of pay **should change to reflect the complexity of the case** undertaken by the Advocate, rather than their length of time in practice. 20% disagreed or strongly disagreed with this statement.
- 29% agreed or strongly agreed that rates of pay **should change to reflect an Advocate's experience**, rather than their length of time in practice. 20% disagreed or strongly disagreed with this statement.

**Q71 SUMMARY:** Between 60 and 63 respondents (87% - 91%) answered all parts of this question. There were 2 statements which elicited a majority 'agreed or strongly agreed' response as follows:

- 64% indicated that rates of pay for Civil and Criminal Legal Aid work should remain aligned; and
- 62% indicated that rates of pay should be reviewed.

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#### Q72. If you have any further comments on checks & balances or costs please tell us

A text box was provided for comments / suggestions and 19 respondents (28%) submitted responses.

Of these 19 respondents:

- 2 had been through a Civil court
- 12 were Advocates / Judiciary members
- 5 were 'Others'

Respondents who had been through a Civil court suggested that rates of pay should be aligned to private rates and fully recoverable in order to make it fairer for legally aided and non-legally aided parties. It was also suggested that aligning the rates could be balanced against removing significant amounts of work away from the private sector:

'They should be aligned to private practise and 100% recoverable at the end within 30 days so both parties are on an equal footing and legal aid recipients are not at an advantage.'

'Given the need to balance the purpose of Legal Aid against taxpayer interests the ideal would be to increase rates to match private charging rates but to remove as much as

possible from the private sector (for example centralising duty advocate/ police station defence work, ensuring centralised merit assessment, preventing cases being progressed where the costs/benefit ratio does not warrant it).’

The IoM Law Society provided a combined response for Q69 to Q75. The first part of the response, which relates to hourly rates of pay, is included below and the second part, which relate to fixed fees, is included at Q72.

In its response, the Society set out the current Legal Aid rates of pay for Junior and Senior Advocates which are based on post-qualified experience (PQE) and expressed significant concern that these rates have not increased for over a decade. Court fee increases were also detailed. The Society submitted that Advocates who undertake Legal Aid work have been treated unfairly in comparison to Advocates who work for Government, and called for rates to be increased. Reference was also made to the diminishing number of Advocates on the Legal Aid Panel who undertake Family work and Civil work, and it was reported that some Advocates on the Panel no longer carry out Legal Aid work, or do it by exception only:

A Junior Advocate (0 – 5 years PQE) can claim costs from legal aid at the hourly rate of £115. A Senior Advocate (5 years + PQE) can claim costs from legal aid at the hourly rate of £135. Trainee Advocates and other non-qualified staff can claim costs from legal aid at the hourly rate of £85. These rates were last reviewed in 2007 and have not increased since 2009, despite the Legal Services Commission making it clear to the Council of Ministers in 2007 that Advocates were not being properly and effectively paid for the services delivered. In that independent Report, there was a recommendation that the Advocates’ hourly rate be immediately increased to £150 with the same reviewed annually thereafter.

In the 11 years since the Advocates’ hourly rates were last reviewed, Government Advocates have had a year on year pay increase of between 1.4% and 2.5%.

The Court fees charged have increased as follows: Court Matter	% increase	2009 amount	2020 amount
Small Claim Filing Fee (max)	948%	£14.50	£152.00
Small Claim Application notice	516%	£22.00	£135.50
Summary Procedure Filing fee (max)	950%	£55.00	£577.50
Ordinary Procedure Filing Fee (max)	8376%	£99.00	£8,391.50
Ordinary Procedure Application notice	307%	£55.00	£224.00
Divorce Application Filing Fee	119%	£131.00	£286.50
Appeal Filing Fee	69%	£200.00	£338.50

Advocates’ outlay in costs have increased every year, at least in line with inflation if not more, with no increase in the hourly rates charged to legal aid. Whilst it is accepted that Government needs to ensure that it spends its money fairly and reasonably, the disparity in the manner in which Government Advocates are treated and costs within the justice

system are increased, by comparison to the hourly rates paid to legal aid Advocates appears unfair and unjustified. Legal Aid Advocates are a vital part of the justice system, ensuring that access to justice is maintained and as such, they should be properly and fairly remunerated, with the hourly rates being reviewed (at least in line with inflation) every year.

Clients who privately pay for their legal advice are generally charged between £250 and £550 per hour, depending on the experience of the Advocate and the Firm.

Civil and family legal aid Advocates provide advice and assistance on a vast array of areas. Sometimes, the individual on each side of the case has the benefit of legal aid. Some areas covered by civil and family legal aid are very specialist areas and there are limited numbers of Advocates undertaking that type of work (medical negligence, public law care proceedings etc).

Of the Advocates currently listed on the legal aid panel, there are 21 family Advocates and 18 civil Advocates who routinely undertake legal aid work. Some Advocates listed on the panel are no longer practising and others only undertake a very small amount of legal aid work on an exceptional basis.

Other Advocates / Judiciary members made reference to rates of pay based on complexity and/or experience and there were differing views on whether such determinations could be successfully achieved. Many of the respondents expressed concern that Legal Aid rates of pay have not in been increased in over a decade and called for this to be addressed, citing comparisons with other sectors and the need to ensure sufficient numbers of Advocates are willing to continue to provide legally-aided services. Concern was also expressed that comparing Legal Aid rates with significantly higher private rates (which the IoM Law Society indicated in its response to this question are £250 - £550 per hour) are inappropriate:

'There may need to be different rates of pay for different levels of complexity of work (whether the work is criminal or civil).'

'You can't pay more or less based on experienced (in my experience sometimes Advocates who apparently have more experience and useless compared to a newly qualified Advocate) and complexity is too subjective to adjudge fairly.'

'The hourly rates for Legal Aid work are not really sustainable and the majority of advocates utilise private practice work to allow them to also take on legally aided matters. If there is considered to be a need for an expansion in legal aid work, then the rates will need to be increased to reflect this and to allow those advocates employed in practices to justify continuing to undertake this type of work.'

'[In] 2007 The Government promised that the rates would go up. It's now 2020. I've not had a pay rise in 13 years. I'd like to see a teacher, bus driver or politician go for 13 years without an increase they had not only been promised by the government but then the government reneged on that promise.'

'There is a vast difference between what those in private practice and legal aid earn. There should be an increase in hourly rate for legal aid practitioners. A person's liberty is the most important thing you can have, rates should not go down.'

'You ask if rates of pay should be reviewed but you do not ask whether that should be reviewed up or down. To clarify - a review of rates of pay should be a review upwards - not down.'



'The legal aid hourly rates need urgent review. Government staff salaries have increased every single year since 2009. Government fees and charges (Court fees, Registry fees etc) have increased almost every year since 2009. Advocates' costs and outgoings have increased every year as has inflation, yet the hourly rates paid have not increased. The Law Commission Report made it clear that Advocates should be properly remunerated for the work that they do. This has still not been effected. Advocates are required to ensure access to justice is maintained and that our society is properly governed and held to account. Less than 2% of the entirety of Government expenditure is spent on justice, and therefore it is very difficult to argue that the costs of the same is too high. A society is judged on how it treats its most vulnerable members of society, and if legal aid is reduced in scope or by fewer Advocates being available and willing to work for such low rates of pay or in restrained circumstances, the impact for the Isle of Man will be far larger than the tiny costs savings achieved. Isle of Man plc will be internationally damaged.'

'While the Isle of Man Law Society may well complain that the legal aid rates are lower than the rates Advocates could charge to private, fee-paying clients that is reason to review (downward) the latter rather than increasing legal hourly rates. It is disappointing that the Law Society does not recognise its own key role in delivering access to justice, instead maintaining general hourly rates largely unobtainable elsewhere outside of London. Where generous hourly rates are warranted, this would be in discreet areas of particular specialism and so equating these to legal aid hourly rates is unreal.'

The General Registry acknowledged the importance of Legal Aid and called for Advocates' rates of pay to be increased to avoid diminishing the service. Reference was made to the importance of applying an appropriate level of vigour to Civil Legal Aid applications, and proposed that stricter time limits could be placed on certain tasks whilst ensuring that the micro-management of cases is avoided. It was also suggested that there may be scope to employ another Legal Aid Certifying Officer (LACO):

'Rates of pay are undoubtedly very low. There is no incentive at all for the more senior advocates to do this important work. They should be reviewed and increased. Failure to do so will lead to the indirect dismantling of the system because of the uncommercial nature of the remuneration. Able advocates will find themselves increasingly unable to conduct such work.

There should be careful consideration of the extent to which a more vigorous assessment of the merits of an application is required. There was a time when the certifying officer sought to act as judge and jury and in effect predicted the outcome by refusing certificates in certain cases. We should not return to that system.

It is the case that on occasions advocates are granted what appears to be an excessive period of time to undertake certain tasks (e.g. 10 hours to draft a pleading). Could consideration be given to imposing stricter time limits under a legal aid certificate to focus the advocates' minds on the merits of the application and a more proportional approach to the allocation of time and resource in dealing with any claim on their client's behalf? However, the potential micro-managing of a case is harmful and has probably ceased under the current regime. There could be scope for employing a second suitably qualified LACO.'

The Equality Adviser submitted that Advocates with more experience can provide advice more quickly and therefore the pay differential between Junior / Senior Advocates (i.e. £115 / £135) does not reflect output. It was also suggested that pay based on the number of years PQE may not reflect experience of particular areas of law:

'A more experienced advocate is likely to provide advice in a shorter period of time. The differential of £20 per hour is not reflective of work output. Being qualified for a period of time is not representative of an advocate's experience in that area of law. Many advocates may change their expertise from one area to another during the lifespan of their careers.'

One 'Other' respondent had significant concerns regarding maintenance payments and reported a lack of enforcement by Social Security. They submitted that despite a Court ruling to pay maintenance, one parent may choose not to comply, forcing the other parent to (potentially repeatedly) pursue payment through the Court at a cost to the taxpayer (if legally-aided):

'Maintenance payments from one parent to another is far from robust. Social Security do not back the payment of maintenance and have no care of how many court attempts there are in order to get a payment. A parent can be pursuing maintenance costs continually at the cost of the tax payer. While the feckless parent takes the mick. There should be some consequence for not meeting criteria set out by the court after a number of defaults.'

**Q72 SUMMARY:** 19 respondents (28%) answered the question.

Of these:

- 13 respondents expressed concern that Legal Aid rates of pay are too low; they should be increased, or they should be aligned to private legal rates.
- Concern were expressed that current Legal Aid rates are a disincentive for Advocates to undertake legally-aided work; the Junior / Senior rate differential does not reflect output; payment based on experience would be difficult to achieve; some private legal fees are too high, and maintenance payments are not being effectively enforced.

## 4.19. Fixed Fees

Q73. In principle, would you support the option of some fixed fees being introduced for some aspects of Civil Legal Aid in the Isle of Man?

66 respondents (96%) answered the question, and the results are shown in Table 51 below. A text box was also provided for comments.

**Table 51. Views in principle on introducing some fixed fees**

Response	Number	%
Yes	36	52
No	21	30
Don't know	9	13
Other (please state)	0	0
Not answered	3	4
Total	69	>99

7 respondents provided comments.

36 respondents (52%) said **in principle, they would support some fixed fees being introduced**. Of these 36 respondents, 7 had been through a Civil court; 12 were members of the public; 8 were Advocates / Judiciary members; 1 was a public sector employee; 1 was a charity / support worker, and there were 7 'Others'. No comments were made.

21 respondents (30%) said **in principle, they would not support the introduction of fixed fees**. Of these 21 respondents, 2 had been through a Civil court; 15 were Advocates / Judiciary members; 1 was a public sector employee, and there were 3 'Others'. 6 comments were made.

The IoM Law Society did not give a specific answer (i.e. *Yes / No / Don't know*) but for the purposes of this report is being included under 'No'. The Society submitted that Q73 could not be answered in an informed manner and set out why the Society disagrees with the principle of fixed fees. Reference was made to the current arrangements which are based on hourly rates of pay, which the Society considers to be fairer and more cost-effective. The Society also indicated that if fixed fees were to be proposed in the future, it would expect further consultation on the same:

'The consultation poses the question to respondees, as to whether they would be in favour of fixed fees. Respectfully, no one responding to the consultation can answer this question in an informed manner, as the consultation does not set out what the fixed fee system would look like. It is also stated that the use of fixed fees assists Government in its budgeting and cuts down on administration.

Civil and family legal aid cases always turn on their facts. Whilst there are Court processes and procedures in place, to be followed, the system is not transactional in nature and the process followed depends on the facts of each case. To try and set fixed fees for such a subjective area of law would be extremely difficult if not impossible, if Advocates are to be fairly compensated for the work that they undertake. The IOMLS submits that there would be more administration in a fixed fee system than the current system, as claims for exceptional payments would be routinely made.

The current system adequately allows the legal aid office to prepare budgets. The number of issued legal aid certificates is known as is the number of approved hours on each certificate. That information for budgeting purposes is, we would suggest, far more accurate than a fixed fee system where the tasks (thus fees) are unknown until the end of the matter.

A system that pays an Advocate for the time they actually take to complete a given task is not only a fair system but a far more cost-effective system in the long run. Ultimately, if the costs assessor does not believe that the time spent completing a given task is reasonable, he can reduce the time paid for.

The only neighbouring jurisdiction that uses a fixed fee system is that of Guernsey, however, the fixed fee system appears to apply only to the recovery of costs from an opponent, in an uncontested proceeding. The Isle of Man already applies such a fixed cost recovery system in uncontested proceedings, and the same has no bearing on legal aid. The IOMLS notes, of course, that the fixed fee system referred to in this paragraph, and set out at Part 11 of the Rules of the High Court of Justice of the Isle of Man 2009 (tables 1 to 3), has not been reviewed and increased since 2010, and it is similarly out of date.

The IOMLS cannot comment with any detail on a fixed fee system as no detail has been put forward for consideration. Should there be any fixed fee system proposals following

this consultation, we would expect that the same be specifically consulted on and the IOMLS should be approached in advance for assistance.'

Other Advocates / Judiciary members expressed concern that fixed fees would make Legal Aid work unattractive to Advocates and / or result in a lower quality of service provided to clients. There was also a call for further detailed consultation if a fixed fee scheme is proposed in future:

'Fixed fees are rarely suitable as they tend to under budget for the work to be undertaken on matters. Ultimately, the introduction of fixed fees will make those areas of legal aid work unattractive to practices and make it difficult to find advocates to do those particular aspects.'

'Fixed fees were brought in, in the UK [and] we simply do not have the volume of cases to justify fixed fees. Fixed fees do not encourage people to provide a good service, they encourage them to provide the smallest amount of effort possible to gain the maximum amount of profit possible. That is not what legal aid should be about. Legal aid should be about providing a quality service to those in need.'

The General Registry made reference to the introduction and subsequent abolition of 'extremely low' fixed fees for matrimonial finance. It was also suggested that fixed fees could be applied to particular steps or proceedings:

'Matrimonial finance fixed fees were introduced many years ago but later abolished. They were extremely low and the change caused advocates to abandon doing this type of work. Fixed fees are not a panacea – it is up to the assessing officer at the end of the case to assess what is a reasonable fee. The advocate takes the risk that unnecessary work is disallowed.

Notwithstanding the above, it can be argued that savings could be made by greater consideration and use of fixed fees for particular steps or proceedings. There is an argument for the reduction in hourly rates for legal aid and the interplay between senior and junior advocate rates for particular types of proceeding.'

9 respondents (13%) said that they **did not know**. Of these 9 respondents, 1 had been through a Civil court; 3 were members of the public; 1 was an Advocate / Judiciary member; 1 was a charity / support worker, and there were 3 'Others'. 1 comment was made.

An Advocate / Judiciary submitted that every case is different and provided a hypothetical example of two road traffic collisions, pointing out that costs are subject to a range of variables making it difficult to identify which aspects could be dealt with under a fixed fee schedule:

'Every civil and family case is different and turns on its own facts and the legal issues involved. The costs involved in two rear end shut road traffic cases, for example, could differ significantly, notwithstanding the mechanism of claim is identical. Further, the variables in terms of the other side's conduct, the Court's requirements and experts and witnesses involvement, dictate the costs incurred in a matter. It is therefore hard to identify what aspects could be dealt with by way of a fixed fee.'

**Q73 SUMMARY:** 66 respondents (96%) answered the question. 7 comments were made.

- 36 respondents (52%) said in principle, they would support some fixed fees being introduced.
- 21 respondents (30%) said in principle, they would not support the introduction of fixed fees. It was submitted that the current system based on hourly rates is fairer and more cost-effective, and further detail / consultation would be required on any proposals. There were also concerns that fixed fees could cause Advocates to stop undertaking legally-aided work, and there could be a risk to the quality of legally-aided services.
- 9 respondents (13%) said that they did not know. It was submitted that due to the individuality of cases and variables outwith the Advocate’s control, it would be difficult to apply fixed fees appropriately.

**Q74. Do you have a view on which Civil Legal Aid matters, if any, may be suitable for fixed fees in the Isle of Man?**

A text box was provided for comments / suggestions and 18 respondents (26%) submitted responses.

Of these 18 respondents:

- 3 had been through a Civil Court
- 4 were members of the public
- 10 were Advocates / Judiciary members
- 1 were ‘Others’

Respondents’ comments fell into 3 main categories: ‘For’ fixed fees; ‘Against’ fixed fees, and ‘General’ comments as summarised in Table 52.

**Table 52. Summary of views on potential suitability of matters for fixed fees**

Category	Response	No.	%
For	Suggested matters for fixed fees	13	19
For	‘See above’ (if answer to Q73 was ‘Yes’)	0	0
Against	Comments against fixed fees	1	1
Against	‘None’ (i.e. no matters considered suitable for fixed fees)	3	4
Against	‘See above’ (if answer to Q73 was ‘No’)	0	0
General	‘See above’ (if answer to Q73 was ‘Don’t know’)	1	1
General	General (neutral) comments made	0	0
N/A	Not answered	51	74
	<b>Total</b>	69	>99

Further details of those responses made for and against fixed fees are included below.

13 respondents (19%) suggested **matters which may be suitable for fixed fees**. Of these, 3 had been through a Civil Court; 4 were members of the public and 6 were Advocates / Judiciary members.

Respondents who had been through a Civil Court suggested divorce and all matters:

'Divorce - two levels, uncontested or simple and contested or complex.'

'All matters can be subject to fixed fees. As a business consumer of legal services on a private basis in a number of jurisdictions most lawyers are prepared to agree fixed fees or cap fees for commercial instructions. There is no injustice so long as the original fee agreement can be reviewed when changes of circumstance come to light.'

'All of them.'

Members of the public made similar suggestions and also referred to less complex cases:

'Less complex cases.'

'Divorce.'

'Most of them.'

'All.'

Advocates / Judiciary members made a range of suggestions from matters which deal with document drafting to much more complex matters:

'Wills, Change of Name Deed - straight forward document drafting.'

'Divorce- Uncontested.'

'Probate.'

'Chancery matters could be fixed but on a basis for each action required. Counsel throughout the world agree a first day fee for a matter covering work required to prepare and appear and a daily fee thereafter.'

'Care and Family proceedings - as per the position in England and Wales per the schedules to The Legal Aid in Family Proceedings (Remuneration) Regulations 1991. <https://www.legislation.gov.uk/uksi/1991/2038/contents/made>.'

'Almost all court be eligible e.g. Divorce, court preparation, court hearing (e.g. per day).'

4 respondents suggested that **no matters would be suitable for fixed fees**. Of these 4, 3 were Advocates / Judiciary members and there was one 'Other'.

'None.'

'Can't be done as you can have some cases of the same type that vary massively in complexity and time spend. People will be paid the same when in fact someone has spent more time on one case which requires more experience to conduct which would detriment the service offered as people will be put off doing the big hard cases as there is no benefit.'

1 'Other' respondent said 'No' and indicated that further details would need to be circulated for comment.

**Q74 SUMMARY:** 18 respondents (26%) answered the question which sought suggestions from respondents for matters which may be suitable for fixed fees. 13 submissions were made with suggestions, in addition to 5 submissions from respondents who are against fixed fees.

Suggestions from 13 respondents for matters which may be suitable for fixed fees, included less complex matters; uncontested divorce / divorce, and all / most matters. Other suggestions included wills and Change of Name deed; Chancery matters for each required action; Care and Family proceedings (as per England and Wales) and Court preparation and Court hearings (per day).

5 respondents reiterated their concerns in regard to fixed fees and suggested that no matters would be suitable due to the individuality of each case due to the complexity and the time each one requires. Concern was also expressed that fixed fees would inevitably diminish access to justice as firms would feel forced to move away from areas of work that attract fixed fees.

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**Q75. [If you have any further comments on fixed fees please tell us.](#)**

A text box was provided for comments / suggestions and 8 respondents (12%) submitted responses.

Of these 8 respondents:

- 7 were Advocates / Judiciary members
- 1 'Other'

All 7 Advocate / Judiciary members were opposed to fixed fees and urged great caution. Concerns included the potential for significant reductions in the number of Advocates who would be prepared to undertake Legal Aid; the risk of Advocates "cherry picking" work for the best financial return as a result of moving away from hourly rates, and a consequential reduction in access to justice as those with more complex cases could struggle to secure representation. The variability between cases and associated workloads was also raised, in addition to the inability to predict how legal matters will progress:

'Don't do it. It would greatly reduce the number of Advocates working and as such the service offered to the public.'

'The concern with fixed fees, especially in civil/family work which is not as rigid a process as civil, is that Advocates would cherry pick the "easy" cases where they could make profit, and the more complex cases would be left struggling to find representation.'

'They would be far too difficult to implement in cases such as divorces or children matters, there are too many variables involved that hugely impact on the amount of work required.'

The General Registry made reference to the costs of running a legal practice and the circumstances in which practices may need to reassess their business models:

'We are unaware that there has been a recent assessment on the cost of running an advocate practice which many years ago (Clothier) informed the debate both as to recoverable costs and legal aid proceedings but also legal costs generally, by reference to what it cost to run an advocate practice. The local legal market, economy and the world has changed. In particular overhead costs may now not be so straightforward to assess than previously, in that an advocates practice may have far fewer secretarial /admin staff.

The recoverable hourly rate if your overheads are low, for a small practice, is rather attractive particularly where the ultimate paying party will typically be the Isle of Man government so the usual cash flow or non-recoverability issues that private practices face often do not apply.

Greater imposition of fixed fees and potentially a lowering of hourly rates would have the impact, as with any other changes to the legal aid system, of requiring those that practice in this area to reassess their business model and become more streamlined and specialist; the value of time will be far greater understood in the commercial realities of working to a more limited budget, whether that be fixed with an upper limit or a hourly rate.'

**Q75 SUMMARY:** 8 respondents (12%) answered the question. 7 Advocates / Judiciary members opposed fixed fees and the General Registry referred to legal practice costs and the potential impact of fixed fee introduction on business models.

**4.20. Access & Legal Advice Centres**

Q76. If you have sought or received legally-aided or private legal advice on a Civil matter in the Isle of Man, please tell us how much you agree with the following statements.

Respondents were asked to complete a table indicating how much they agreed or disagreed with two statements about access to legally-aided and privately funded legal advice on a Civil matter, and invited to select one option per statement. Those who had never accessed any legal advice could answer 'Not applicable' or skip the question.

As these questions were aimed specifically at those who had sought legally-aided and/or private Civil Legal Aid advice, results are shown as a proportion of the total number of responses to each s only (i.e. options Strongly agree to Strongly disagree) and 'Not applicable' responses have therefore been excluded.

The results are presented in Table 53 below and reflect the views of those who have sought /received legal advice:

**Table 53. Ease of access to legally-aided and private legal advice on a Civil matter**

	Strongly agree	Agree	Neither agree nor disagree	Disagree	Strongly disagree	No. of responses to



	Strongly agree	Agree	Neither agree nor disagree	Disagree	Strongly disagree	No. of responses to
It was easy for me to access LEGALLY-AIDED legal advice on a Civil matter	3 (19%)	2 (13%)	4 (25%)	2 (13%)	5 (31%)	16 (100%)
It was easy for me to access PRIVATE legal advice on a Civil matter	7 (33%)	3 (14%)	4 (19%)	3 (14%)	4 (19%)	21 (100%)

An analysis of respondents shows that 22 people (32%) answered the question in total. This was because 15 people indicated that they had sought/received both legally-aided and private legal advice; 1 person had sought only legally-aided advice (totalling 16), and 6 people had sought only private advice (totalling 22). These totals are shown in the last column of Table 53 above.

Further results for each statement are summarised below in the order they are shown in Table 53 and it should be noted that as sample sizes are small, percentages will be magnified accordingly:

- 5 respondents (32%) agreed or strongly agreed that it was easy to access legally-aided advice. 7 respondents (44%) disagreed or strongly disagreed with this statement.
- 10 respondents (47%) agreed or strongly agreed that it was easy to access private legal advice in the Isle of Man. 7 respondents (33%) disagreed or strongly disagreed with this statement.

A text box was also provided for comments / suggestions and 3 responses were submitted.

One member of the public strongly agreed that it was **easy to access legally-aided legal advice** but indicated that the issue was that they “just couldn’t get it”. It is understood that the individual was not eligible.

Another member of the public agreed that it was **easy to access private legal advice**, and they also commented on cost:

‘It was expensive.’

**Q76 SUMMARY:** 22 respondents (32%) answered this question and 3 comments were made.

Between 16 and 21 respondents (23% to 30% of total consultation responses) indicated that they had sought or received legally-aided or private legal advice respectively. Of these, 32% agreed / strongly agreed that it was easy to access legally-aided advice in the Isle of Man, and 47% agreed / strongly agreed that it was easy to access private legal advice.

Q77. If you have ever found it difficult to access legal advice on a Civil matter in the Isle of Man (either privately or legally-aided) please tell us why it was difficult.

This question was aimed at 8 respondents<sup>25</sup> who had answered 'disagree' or 'strongly disagree' to any part of Q76. Of these, 3 respondents (38%) submitted comments. Categories of respondent were:

- 1 had been through a Civil court
- 1 was a member of the public
- 1 'Other'

The comments referred to lack of available information, poor and/or unhelpful customer service from some Advocates and practice staff; high costs and unexplained cost variance between practices for comparable services.

**Q77 SUMMARY:** 3 respondents answered the question, and reported issues were around the availability of information, customer service and costs.

Q78. In addition to funding Legal Aid, should the Government consider supporting any other methods of delivering legal services to the public?

59 respondents (86%) answered the question, and the results are shown in Table 54 below. A text box was also provided for comments.

**Table 54. Views on whether Government should support other methods of delivering legal services to the public in addition to funding Legal Aid**

Response	Number	%
Yes	22	32
No	16	23
Don't know	19	28
Other (please state)	2	3
Not answered	10	14
<b>Total</b>	69	100

16 respondents (23%) provided further comments to support their answers.

22 respondents (32%) said that in addition to funding Legal Aid, the **Government should consider supporting other methods of delivering legal services to the public**. Of these 22 respondents, 6 had been through a Civil court; 9 were members of the public; 4 were Advocates / Judiciary members; and there were 3 'Others'. 8 comments were made.

Respondents who had been through a Civil court suggested more accessible and clearer resources should be made available in addition to support for preparation and Court appearances. It was also suggested that legal support workers could reduce the demand on

<sup>25</sup> Whilst the figures in Table 53 for those who had answered 'disagree' or 'strongly disagree' to any part of Q76 show a total of 14, further analysis of individual respondents show this to be 8 respondents in total, as 6 indicated that they had sought/received both legally-aided and private advice; 1 person sought/received legally-aided advice only, and 1 person private advice only.

Advocates undertaking Legal Aid work, which could fund an increase in Legal Aid rates of pay:

'An online resource should be available and the law should be clearer and in plain English.'

'Support for preparation of documents or appearance in Court (such as McKenzie friend) may be all that is required in certain cases. Legal support workers need not be qualified advocates but can be hired and trained given their suitability for the role. If supplied centrally this may limit the demands on legal aid lawyers and permit LA funding to be at increased rates but applied to cases where it is of most value.'

A member of the public called for the justice system to be easier and cheaper to access:

'Taxpayer funded Justice system should be easier & much more affordable for citizens to access.'

Advocates / Judiciary members referred to the value of Citizens Advice and it was suggested that a drop-on service for the public would be beneficial. Another Advocate suggested that Legal Aid should be made available to prisoners for hearings before the Parole Committee as they understood that no Legal Aid certificates have been issued although there is adequate provision within the law. It was also suggested that a 'Specialised Centre for Domestic Abuse' could operate in parallel with Legal Aid:

'Legal advice centres or citizens advice (where there is a drop in service) would be a benefit.'

The Equality Adviser suggested more resources for Citizens Advice should be made available:

'The Manx Citizens Advice Service should receive increased funding to improve their online information. It is wholly deficient when compared to the UK equivalent. With such an improvement, individuals would have better access to information and signposting, including signposting to advocates.'

16 respondents (23%) said that **Government should not consider supporting other methods of delivering legal services to the public**. Of these 16 respondents, 1 had been through a Civil court; 1 was a member of the public; 11 were Advocates / Judiciary members; 1 was a public sector employee; 1 was a charity / support worker, and there was 1 'Other'. 4 comments were made.

The IoM Law Society expressed a number of concerns in terms of Government supporting any other methods of delivering legal services to the public. The Society submitted that it would not be appropriate or cost-effective for Government to fund a Legal Advice Centre, particularly in the Isle of Man where there are already Advocates' practices in the North, South, East and West which routinely help individuals by signposting them to the service(s) they need at no charge. Reference was also made to the Society's response<sup>26</sup> to the 2016 Legal Aid Committee's consultation:

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<sup>26</sup> The IoM Law Society submission to the 2016 Legal Aid Committee consultation is published via the Legal Aid website <https://www.gov.im/legal-aid/> & the IoM Law Society website <https://www.iomlawsociety.co.im/wp-content/uploads/2016/04/Isle-of-Man-Law-Society-Legal-Aid-Consultation-Submission-November-2016.pdf>.

'The IOMLS cannot properly address and comment on a proposal for a legal advice centre as none has been set out. We refer to our submission in 2016, in this regard. If a legal advice centre is being considered as an alternative to legal aid then there must be a proper consultation in relation to the same. If a legal advice centre was to replace legal aid, and in essence become a Government legal advice office, the IOMLS would have a number of concerns. Firstly, it does not appear, given the annual civil and family legal aid spend, that the same would save any money. In order to run effectively, a minimum of 6 family Advocates would be required (to ensure representation could be given on both sides), at least 2 public law care Advocates would be required, and a minimum of 10 civil Advocates would be required to competently cover all of the different areas of law, allowing for representation on both sides, in some cases.

Given that this model would require the legal advice centre to act for both parties to a proceeding, strict conflict of interests measures would need to be put in place, which would necessarily require the employment of 2 Senior Advocates in both family and civil law, to oversee the teams representing all clients. There cannot be any cross contamination of information, without the potential for prejudice arising.

Legal advice centres, in all neighbouring jurisdictions where they have been implemented, work alongside private practice and legal aid and not in place of it. There is significant difficulty in maintaining legal advice centres in England and Wales, due to funding issues and they have now become limited in the services they can offer.

The consultation talks about accessing services and it is entirely unclear as to how moving to a legal advice centre would provide an increased legal service presence across the Island than the current offering of private law firms, who have offices in each of the North, East, South and West of the Island.

If there is a perceived issue of access to legal services, which has not been evidenced to the IOMLS despite request, then the Isle of Man Government needs to better signpost Island residents to the services on offer and the social benefits available to those who qualify. Our members advise that they routinely signpost individuals to services they need to access, when they are unclear as to what help they need and how to access the same. This work is all undertaken at no charge, as it is not legal work, and takes up significant time.

The IOMLS submit that legal advice centres is not a better or more cost effective alternative to the current legal aid scheme and the introduction of the same will not ensure better access to justice.'

Advocates / Judiciary members suggested that other methods of delivering legal services would not be used, and it would be negligent to expect Advocates to provide meaningful rather than generic advice. A question was also raised about whether the volumes of work would be sufficient to justify a Legal Advice Centre:

'Wouldn't be used.'

'I personally would never give anything more than generic advice if operating in a legal advice centre environment. It is important to have a full grasp of the issues before advising, and in more unusual areas a review of the law is required. It would be highly negligent to expect Advocates to provide meaningful advice in a legal advice centre.'

19 respondents (28%) said that they **did not know**. Of these 19 respondents, 3 had been through a Civil court; 4 were members of the public; 5 were Advocates / Judiciary members;

1 was a public sector employee; 1 was a charity / support worker, and there were 5 'Others'. 2 comments were made.

An Advocate / Judiciary members expressed concern that advice should be provided by qualified individuals:

'There needs to be caution that people are provided advice by those actually properly qualified to give it.'

2 respondents (3%) answered '**Other**' and they were both Advocates / Judiciary members and both submitted comments.

1 Advocate / Judiciary member advised that without specific details it was difficult to provide a view, but indicated that the Government could improve its signposting to the range of available services, which Advocates often undertake and at no charge. Another submitted that the Island's legal firms already advertise and provide free advice which is not legally-aided advice as it is provided by the practices, often at significant cost. They also submitted that low cost legal advice is also provided in some cases as they believe it should be available to all, regardless of their financial situation:

'Without a specific concept or idea to consider, it is very difficult to know whether the same is necessary and would add to the offering already available. Certainly, Government could undertake better signposting of all services available, not just legal services, as often Advocates spend significant time signposting people to the services they need (benefits, mental health, addiction support, office of fair trading etc) at no charge.'

**Q78 SUMMARY:** 59 respondents (86%) answered the question and 16 comments were made.

- 22 respondents (32%) said that in addition to funding Legal Aid, the Government should consider supporting other methods of delivering legal services to the public.
- 16 respondents (23%) said that Government should not consider supporting other methods of delivering legal services to the public. It was submitted that it would not be appropriate or cost-effective for IoM Government to fund a Legal Advice Centre; that access to legal services across the Island is already adequate; and that Advocates already provide signposting assistance at no charge. It was also suggested that services would not be used, and it would be negligent to expect Advocates to provide advice over and above general /generic advice.
- 19 respondents (28%) said that they did not know. It was submitted that advice should only be provided by qualified individuals.
- 2 respondents (3%) answered 'Other'. It was suggested that IoM Government could provide better signposting to individuals in terms of the range of services needed.

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Q79. If you have any further comments or suggestions on access, or Legal Advice Centres please tell us.

A text box was provided for comments / suggestions and 10 respondents (14%) submitted responses.

Of these 10 respondents:

- 1 had been through a Civil court
- 1 was a member of the public
- 6 were Advocates / Judiciary members
- 2 were 'Others'

A member of the public was supportive:

'It sounds like a good idea.'

Advocates / Judiciary members submitted that Citizens Advice services would not be used; that advice centres would not provide representation in Court, and that current provision through legal firms is already adequate. It was also submitted that popularity of advice centres in England and Wales is due to cuts in Legal Aid, which is not applicable in the Island. Another respondent suggested that it would, however, be beneficial to provide practical advice for people who are self-representing:

'Services such as Citizen Advice bureaus wouldn't be used.'

'These will not support people through Court proceedings, and there a number of Charities already performing this work.'

'Terrible idea. No way of staffing them appropriately, how would they be insured? Access is easy via local firms, large centres not needed.'

'Legal advice centres are only popular in England and Wales due to the shrinking legal aid market and the fact that this has forced a number of smaller practices out of business. Provided that legal aid continues to be funded sensibly, there is unlikely to be such a gap in provision in the Isle of Man and therefore legal advice centres would be a large cost for little tangible benefit.'

The General Registry expressed concern that a Legal Advice Centre or Law Centre would not be appropriate for a jurisdiction of the size of the Island, nor represent an appropriate use of public funds. There was significant support for adequately resourced Citizens Advice<sup>27</sup> and a suggestion that some Advocates could offer their services on a pro bono basis as a way of giving back to society and helping people to receive early advice:

'The costs of a properly funded sustainable advice centre would be too great for the Island's population. The size of the resource would likely mean that conflicts of interest would consistently arise. A Government funded law centre would be unworkable for such a small jurisdiction and an unnecessary waste of money. We would however strongly advocate the provision of an effective Citizens' Advice Bureau, staffed by volunteers,

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<sup>27</sup> In the IoM, the Citizens' Advice Bureau is the Manx Citizens' Advice Service: [www.citizensadvice.im](http://www.citizensadvice.im). It has centres in Douglas, Ramsey and Port Erin and the key aim of the service is to provide free, impartial and confidential advice to people regarding problems which they may facing. These include housing issues; benefits advice; relationship breakdowns; faulty goods and employment issues. The service is also authorised to make Food Bank referrals. No appointments are needed and people can drop into a centre or telephone for advice.

especially advocates from the larger commercial practices who would do well to give something back to society by providing their legally trained staff on a pro bono rota basis. This will ensure that those in need of advice are put on the right track at an early stage.'

The Equality Adviser submitted that in order to properly understand the current level of public access to Advocates in the Island in considering whether there may be any need for a Legal Advice Centre, a separate appraisal should be carried out:

'In order to accurately ascertain whether the public can access local advocates, a separate survey should be undertaken for this purpose. Please do not rely on the data given in this consultation, as the length and complexity of this consultation will not achieve the purpose of understanding whether there is a need for legal advice centres and/or whether people feel they can access local advocates. Using the Island Global Survey organisation may result in a better approach for this type of data collection.'

**Q79 SUMMARY:** 10 respondents (14%) answered the question and of these:

- 3 respondents suggested there is already adequate provision in the Island
- 3 respondents were against any consideration of a Government funded advice centre
- 2 respondents would support consideration of such a centre

Other suggestions included providing a service to give practical advice to individuals who are self-representing, and carrying out further research to fully understand the level of public access to legal services as part of any consideration of need for a Legal Advice Centre.

**Q80. How could we increase the availability of mediation services to individuals who qualify for Civil Legal Aid?**

Respondents were given a number of suggestions for increasing the availability of mediation services to those eligible and invited to choose all options that applied.

62 respondents<sup>28</sup> (90%) answered the question, and the results are shown in Table 55 below. As multiple answers could be chosen, the respondent total does not add up to 69 and the percentage total does not add up to 100. A text box was also provided for comments.

**Table 55. Views on increasing availability of mediation to those eligible for Legal Aid**

Response	No.	% (of 69)
Work with qualified mediators to understand barriers to providing services	43	62
Review rates of pay for mediators	38	55
Employ one or more mediators within Govt. to guarantee service provision	29	42
Don't know	6	9
Other (please state)	3	4
Not answered	7	10
<b>Total</b>	N/A	N/A

11 respondents provided further comments to support their answers.

<sup>28</sup> The number of respondents to Q80 (i.e. 62) is calculated by subtracting the number of respondents who did not answer (i.e. 7) from the total number of consultation respondents (i.e. 69).

Respondents' choice of options for increasing the availability of mediation to those eligible for Legal Aid is listed in order below:

- i. Work with qualified mediators to understand the barriers to providing services (62%)
- ii. Review rates of pay for mediators (55%)
- iii. Employ one or more mediators within Government (42%)
- iv. Other (4%)

Respondents who had been through a Civil court suggested that mediation should be free and grant assistance available for those wishing to qualify:

'Mediation should be free.'

'Provide grant assistance to encourage more people to qualify as mediators.'

The IoM Law Society referred to the value of properly funded alternative dispute resolution (ADR) and the benefits it can bring in cases where both parties are willing to engage. The Society expressed concern that mediation is currently underfunded and may not be financially viable for practitioners. It was suggested that there should be a consultation and trialling of a Family Drug and Alcohol Court in the Island to support early interventions schemes and ultimately reduce the escalation of cases to the Courts, with associated savings and societal benefits:

'ADR is routinely used by all Advocates both in the family law arena and the civil law arena. There is, however, a disparity in the funding of ADR by legal aid, with family mediation being limited in its use and scope by a restricted funding arrangement being in place. Such restrictions do not apply to civil mediation.'

ADR when properly funded and accessed can save a significant amount of time and costs overall, and limit the issues (if any) that ultimately are placed before the Court for determination. For ADR to work, however, both parties need to be prepared to resolve their case in an amicable fashion outside of the Court room. Forced ADR does not work, because there is no spirit of cooperation and therefore costs are increased by paying lip service to the same.

ADR encompasses so much more than mediation, which is the focus of the consultation. ADR can be as simple as Advocate led negotiations, which can often resolve matters without the Court becoming involved, particularly in the civil litigation field.

Family mediation could be utilised to far greater effect, by the lifting of the funding cap in place and supporting mediators in offering the service. The training and ongoing regulatory costs of mediators are such that, under the current system, developing this type of practice is not financially viable. With a lack of mediators comes a lack of mediation, and therefore the Courts are left to deal with the cases.

The introduction of a Family Drug and Alcohol Court, as trialled in England and Wales, could however, result in early intervention with problem families, offering the help and support needed at an early stage and thus preventing escalation into all of the Court areas (family, criminal and civil), which will ultimately save costs. The IOMLS is supportive of a specific consultation and trialling of a Family Drug and Alcohol Court in the Isle of Man, as it would be of huge benefit to our society.



Other Advocates / Judiciary members made a range of comments. There was support for a pay increase for mediators; a suggestion that fixed price mediation could be helpful; a suggestion that mediation should be provided to the extent determined by the professional and a call for Civil and Family mediation to be offered on the same basis. Concern was expressed that Government-employed mediators would not be independent and therefore should not be considered. It was also submitted that properly funded mediation through Legal Aid has the potential to reduce the number of cases requiring Court times and the associated costs (for Legal Aid and the Courts) and that ADR should be required as a “pre-action protocol”:

‘To increase mediation, it’s vital to increase the rates of pay.’

‘You could offer a fixed price mediation with a fixed number of hours (as opposed to sessions).’

‘Allow unfettered access to mediation trusting the Advocates and Mediators to appropriately undertake the necessary work and charge accordingly. Civil and family mediation should be offered on the same basis as the restriction to family mediation is non-sensical.’

‘Government, or big business, may be a party to the litigation, no one is going to accept that a government mediator is 100% impartial in such cases.’

‘The Govt cannot employ mediators- I think it would lose the impartiality ethos of mediation.’

The Equality Advisor referred to a public appointment rather than employee

‘If Government mediator to be used, consider public appointment and not employee.’

One ‘Other’ respondent called for more willing mediators to be available and referred to their own experiences with two mediators. They submitted that the first mediator spoke more than they listened and did little to engage with them in contrast to the second mediator who was “very calm” and “accessible” and through whom a successful outcome was reached.

**Q80 SUMMARY:** 62 respondents (90%) answered the question and 11 comments were made.

Respondents’ choice of options for increasing the availability of mediation to those eligible for Legal Aid were:

- i. Work with qualified mediators to understand the barriers to providing services (62%)
- ii. Review rates of pay for mediators (55%)
- iii. Employ one or more mediators within Government (42%)

Comments are summarised as:

- 3 respondents suggested that mediation / ADR should be properly funded and / or rates of pay for mediators should be increased
- 2 respondents expressed concern that a Government employed mediator would not be independent

Other suggestions were to make mediation free; offer fixed price mediation with a fixed number of hours; offer Civil and Family mediation on the same basis, and allow professionals to undertake the necessary work and charge accordingly. It was also suggested that grants are offered to support mediation training / qualification; to consider a public appointment rather than a Government employed mediator, and for ADR to be a pre-action protocol.

Q81. Government currently meets the mediation costs of **both** mediating parties, if at least one of the parties is in receipt of Legal Aid. What is your view on these funding arrangements?

61 respondents (88%) answered the question, and the results are shown in Table 56 below. A text box was also provided for comments.

**Table 56. Views on Government continuing to meet costs of both mediating parties**

Response	Number	%
Keep the arrangements	28	41
Expand the arrangements to provide free mediation to everyone	16	23
Reduce the arrangements so that only individuals eligible for Legal Aid can receive free mediation	9	13
Don't know	5	7
Other (please state)	3	4
Not answered	8	12
Total	69	100

10 respondents provided further comments to support their answers.

28 respondents (41%) said that Government **should continue to meet the costs of both mediating parties if one is in receipt of Legal Aid**. Of these 28 respondents, 5 had been through a Civil court; 3 were members of the public; 11 were Advocates / Judiciary members; 1 was a public sector employee; 1 was a charity / support workers, and there were 7 'Others'. 4 comments were made.

Advocates / Judiciary members were in favour of the current arrangements which they said encourage engagement and resolution of issues. Clarification was also provided that the current arrangements apply to Family cases but not Non-Family (Civil) cases:

'It encourages mediation if the two sessions are covered.'

'By having this arrangement in place in family cases (as this does not actually apply in civil cases) there is more incentive for the parties to mediate and resolve their issues. This is a positive arrangement.'

The General Registry expressed support for the current provisions and their benefits:

'This was a very useful development in family cases and has meant far greater engagement in mediation leading to narrowing of issues and savings thereafter.'

16 respondents (23%) said that Government **should expand the arrangements to provide free mediation to everyone**. Of these 16 respondents, 2 had been through a Civil court; 4 were members of the public; 5 were Advocates / Judiciary members; 1 was a public sector employee; 1 was a charity / support worker, and there were 3 'Others' 2 comments were made.

A member of the public submitted that that investment in mediation could save costs if cases do not escalate to the Courts:

'Whilst this may incur some costs if this had a maximum level payable it may actually save money if it avoids a full court case.'

An Advocate / Judiciary member made the same point, but also submitted that there should be checks in place to ensure a case justifies mediation:

'Expanding the funding to mediation for everyone would cost money on the one hand, but it would prevent those parties going to Court, so would save money there. However, there needs to be some process to check that a case justified mediation. Not every dispute needs to be mediated.'

9 respondents (13%) said that Government **should reduce the arrangements so only individuals eligible for Legal Aid receive free mediation**. Of these 9 respondents, 1 had been through a Civil court; 4 were members of the public; 3 were Advocates / Judiciary members, and there was 1 'Other'. No comments were made.

5 respondents (7%) said they **did not know**. Of these 5 respondents, 3 were members of the public; 1 was an Advocate / Judiciary member, and there were 1 'Other'. 1 comment were made.

A member of the public referred to the benefit of keeping cases out of Court:

'I can see the net benefit of funding all, if it keeps it out of court.'

3 respondents (4%) said '**Other**'. Of these 3 respondents, 2 had been through a Civil court, and 1 was an Advocate / Judiciary member. 3 comments were made.

A respondent who had been through a Civil court submitted that mediation can support access to justice for both parties and suggested that costs should not be recoverable. Another respondent advised that they were not aware of the current arrangements to meet the costs of both parties even though they had been through mediation and the other party was legally-aided:

'Whilst the mediation process could be extended and may need to take place in multiple sittings, it should be possible for a trained mediator to guide both parties independently so that there is no injustice from being unrepresented. Mediation costs should not be recoverable (like small claims).'

An Advocate / Judiciary member suggested that there could be an expansion with contributions:

'Mediation could also be expanded so that people might pay a contribution based on salary.'

**Q81 SUMMARY:** 61 respondents (88%) answered the question and 10 comments were made.

- 28 respondents (41%) said that Government should continue to meet the costs of both mediating parties if one is in receipt of Legal Aid. Comments in support of the current arrangements included there being more incentive for parties to engage and resolve issues, which can lead to positive outcomes and lower costs.
- 16 respondents (23%) said that Government should expand the arrangements to provide free mediation to everyone. Comments in support of expansion referred to investing to save and further avoidance of Court proceedings where possible, subject to appropriate checks being in place.
- 9 respondents (13%) said that Government should reduce the arrangements to legally-aided individuals only.
- 5 respondents (7%) said they did not know.
- 3 respondents (4%) said 'Other'. Suggestions included non-recoverable mediation costs and an expansion of contributions to increase eligibility.

**Q82. Should an assessment for mediation be compulsory before an application for full Civil Legal Aid is considered?**

62 respondents (90%) answered the question, and the results are shown in Table 57 below. A text box was also provided for comments.

**Table 57. Views on whether an assessment for mediation should be compulsory**

Response	No.	%
Yes, unless safeguarding exemptions apply (e.g. cases involving domestic abuse)	34	49
No, mediation should be encouraged but only entered into voluntarily	23	33
Don't know	3	4
Other (please state)	2	3
Not answered	7	10
<b>Total</b>	69	>99

15 respondents provided further comments to support their answers.

34 respondents (49%) said that an **assessment for mediation should be compulsory before an application for full Civil Legal Aid is considered**. Of these 34 respondents, 5 had been through a Civil court; 12 were members of the public; 10 were Advocates / Judiciary members; 1 was a charity / support worker, and there were 6 'Others'. 2 comments were made.

An Advocate / Judiciary member suggested that there should be increased awareness of mediation as people are often unaware of what is involved.

The General Registry made reference to the work of the Court in terms of promoting mediation for Family matters, and suggested there should be more publicity in regard to its availability. Compulsory mediation in all Family and Civil cases was advocated, with the exception of cases where there is domestic coercion or abuse:

'The Court in family matters explains the benefits of mediation at the first opportunity and people are often agreeable to follow that route. A well-publicised relaxation in terms of qualification for publicly funded advice at an earlier stage would assist to divert people earlier. Mediation is often touted as the miracle cure for legal aid expenditure. It should be compulsory in all cases (family and civil). It is not however the universal answer e.g. in a family case where there is coercive / abusive behaviour. Ultimately, if mediation does not work, the parties must be able to go to an independent court to have their dispute resolved.'

23 respondents (33%) said that an **assessment for mediation should not be compulsory before an application for full Civil Legal Aid is considered**. Of these 23 respondents, 5 had been through a Civil court; 11 were Advocates / Judiciary members; 2 were public sector employees; 1 was a charity / support worker, and there were 4 'Others'. 11 comments were made.

One respondent who had been through a Civil Court suggested there should be more information and data available on mediation, and another submitted that people should be willing and not be forced into participation. One person indicated that in their experience, their former spouse made it clear that they had "no intention of agreeing anything in mediation":

'Public information on the process and publication of statistics indicating any success rates.'

Other Advocate / Judiciary members submitted that voluntary mediation is the key to engagement and success, and suggested that people should be incentivised to participate. One Advocate described the process that they may undertake with their client before mediation can be used. They submitted that (for eligible individuals) this process requires Legal Aid and therefore by asking whether mediation suitability should be assessed before full Civil Legal Aid is considered was in itself inappropriate. Others suggested that there should be better training for Advocates to understand the benefits of mediation to pass onto clients or that clients could be advised of potential Legal Aid sanctions if they do not agree to mediate:

'You're unlikely to get an agreement if people are made to mediate. There should be incentives to encourage people to mediate.'

'It's been proven in UK not to work by forcing mediation upon them. The courts do a good job of encouraging mediation and take a dim view on people who aren't willing to participate. I would say 90% of my clients are willing to do it. Those that aren't, it is usually because of domestic violence.'

'Mediation can be relatively easily encouraged when the benefits of mediation are pointed out to clients. The difficulties tend to be that advocates have little experience of mediation to recommend it as an option, or there are hidden reasons why mediation is highly unlikely to be successful.'

'Mediation by its very nature cannot be forced on an individual. It only works if the participants buy into trying to resolve their differences. Forcing someone to participate runs the risk of them digging their heels in even deeper, which will result in mediation failing. Further, legal aid is required in order to get a case to the point where mediation can be used. A mediator cannot resolve a case if two people walk into a room with no knowledge or understanding of their legal rights and remedies and the information in support thereof. A huge amount of initial preparatory work is required, including identifying the legal issues, producing disclosure and evidence, understanding the value of a case and the Court's limitations, before a case is ready to be presented to a Mediator. A Mediator is a neutral third party and is not there to give legal advice. The Mediation cannot work if the Mediator has to step into the role of advisor as their impartiality and independence is lost as soon as they do so. Further, not all mediators are legally trained, and therefore they may not know or understand the legal issues involved in a case. Legal aid must be available at an early stage if mediation is to be properly prepared for and is likely to be successful. Advocates are a necessary and vital part of this process and to suggest that access to an Advocate and legal aid should come after a mediation shows a fundamental lack of knowledge and understanding of the legal system.'

'Better training for advocates to understand the benefits of mediation for clients and to sign post from an early stage.'

'By advising them that their funding may be reduced if they don't.'

3 respondents (4%) said they **did not know**. No comments were made.

2 respondents (3%) answered '**Other**'. 1 was a member of the public; 1 was an 'Other' and both made comments. The first respondent submitted that matters other than safeguarding could deem mediation inappropriate. The second called for there to be sufficient time under Green Form to provide advice and undertake the mediation assessment to avoid full Legal Aid (under a certificate) being limited to the assessment:

'The general principle "yes" seems attractive but there will be more cases than just safeguarding where it's not appropriate.'

**Q82 SUMMARY:** 62 respondents (90%) answered the question and 15 comments were made.

- 34 respondents (49%) indicated that an assessment for mediation should be compulsory before an application for full Civil Legal Aid is considered, unless safeguarding exemptions apply. It was suggested that mediation services should be publicised further to raise awareness, and compulsory in all Family and Non-Family (Civil) cases with recourse to Court if unsuccessful.
- 23 respondents (33%) said that an assessment for mediation should not be compulsory before an application for full Civil Legal Aid is considered. It was submitted that mediation should always be entered into voluntarily, and that most people are willing to take part if the benefits are fully explained. It was also submitted that cases may require a significant amount of preparatory legal work before mediation is considered or entered into, and it would not be appropriate to suggest that access to an Advocate providing legally-aided services should come after a mediation.

- 3 respondents (4%) said they did not know.
- 2 respondents (3%) said 'Other'. It was suggested that factors other than safeguarding could also impact on the suitability of a matter for mediation.

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Q83. How could we encourage more individuals to seek early resolutions to legal problems without going to Court?

A text box was provided for comments / suggestions and 23 respondents (33%) submitted responses.

Of these 23 respondents:

- 3 had been through a Civil court
- 2 were members of the public
- 11 were Advocates / Judiciary members
- 2 were charity / support workers
- 5 were 'Others'

Respondents who had been through a Civil court suggested that the availability of more information; details of success stories / potential benefits, and early case management with referrals to ADR could be helpful:

'Better information as to how this may be done and examples of where it has been successful - and it may / will save them money.'

'Small claims has an early hearing where parties are forced to identify the issues and potentially pushed to immediate discussion of a resolution. Early case management with potential for movement into mediation or referral to arbitration within a very short time frame (even before expert evidence etc. becomes available) may assist.'

A member of the public suggested a limit:

'Limit legal aid.'

Advocates / Judiciary members suggested that education, free mediation, arbitration and properly funded ADR would be helpful. It was also suggested that some Court applications could be prohibited unless alternative means have been considered, and Legal Aid could be removed from some matters with a view to supporting them with ADR instead. In addition, it was submitted that whilst Court may be the final option for most people, it may also be the only option. One respondent understood there to be 2 mediators who currently carry out Legal Aid mediation and they expressed concern that if mediation was to become mandatory before proceedings are issued, there "will not be enough" mediators. It was also suggested that if the Family Mediation Association training could be undertaken in the Isle of Man it could increase that availability of more mediation services:

'Make mediation free of charge. The Isle of Man should consider introducing arbitration, particularly in family cases.'

'Properly fund ADR. Advocates already explore ADR in every case they deal with.'

'Prohibit court applications in defined circumstances unless alternative means have been considered. Consider removing eligibility for legal aid from some civil areas and look to support alternative means of dispute resolution (this will then become the more cost effective solution).'

'Legal Aid currently takes a view on whether it is reasonable to fund someone who has refused mediation, and may refuse funding until it has been attempted. This works well, but could perhaps be more robust.'

'Most individuals see court as a final option. Many do not want to go to court and try all ways possible to avoid court. Sometimes however court is the only option.'

The Equality Adviser suggested a requirement for evidence to show that ADR has been attempted:

'Court process cannot be accessed unless certification of mediation acquired to evidence that alternative dispute resolution attempted (akin to UK employment tribunal process).'

One 'Other' respondent suggested compulsory ADR or binding arbitration:

'Perhaps by making ADR compulsory except in certain instances or Binding Arbitration as an additional possibility.'

**Q83 SUMMARY:** 23 respondents (33%) answered the question.

- 6 respondents suggested that there should be a requirement to demonstrate consideration of mediation / another ADR before Court processes can be accessed.
- 5 respondents called for free / properly funded mediation and ADR services.
- 3 respondents suggested more education, information and promotion of mediation / ADR services.
- 2 respondents suggested arbitration (Family cases / binding arbitration).

Other suggestions included Family Mediation Association training being delivered in the Isle of Man, access to early legal advice, and early case management.

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Q84. If you have any further comments on mediation or any other method of alternative dispute resolution (ADR) please tell us.

A text box was provided for comments / suggestions and 3 respondents (4%) submitted responses and of these:

- 1 had been through a Civil court



- 2 were 'Others'

The respondent who had been through a Civil Court indicated that mediation is not well known or understood:

'Mediation is not well known and is often confused with legal processes.'

The General Registry made a number of suggestions which included granting Legal Aid, in part, on condition that the parties have given due consideration to mediation / ADR, and in cases where this has not happened, to explain why. Government was also asked to consider how any additional demands on mediation capacity could be met. Some of the key benefits of mediation were set out, and reference was also made to the services provided by Advocates who are also trained as mediators, in addition to non-Advocate mediators. It was suggested that if cases still require Court time following mediation, then consideration could be given to offering a tighter Legal Aid budget to eligible parties:

'Serious consideration should be given to requiring that the parties expressly certify prior to being in a position to progress legal proceedings they have discussed and considered mediation or another form of ADR and if that has not been progressed to explain why. The granting of legal aid could, in part, be conditional upon this or indeed involve a limited legal aid for the purposes of having a mediation. If however that is to be introduced, is the government to provide state funded mediators (leaving aside any issues of perceptions of bias if an arm of government is one of the parties) or will it be for the private sector to provide mediators which the legal aid fund would have to pay?

It could well be that a mediator would charge a lesser hourly rate than a senior practitioner charging on an advocate-client basis would charge (because of their reduced overheads/costs and lack of costs risk as whatever the outcome of the mediation, they will be paid, usually upfront if privately paying parties engage in the process, or will be comforted by the legal aid funding guaranteeing payment for an assisted party).

Robust mediation certainly has the impact of resolving matters that seem to be incapable of resolution. A mediator will not advise any of the parties on the merits of their case as a lawyer would or akin to any form of judicial indication but they are in a position to flag up obvious areas of weakness or strength between the competing claims and highlight to the parties that on the one hand they have the opportunity to resolve matters in an agreed way with a certain outcome in a certain timeframe in the mediation process, as against the spectre of an uncertain timeframe with uncertain outcome of proceeding to a Court. There may also be the benefit of reminding the advocates engaged in the process that if matters are not resolved then the litigation will be on perhaps a more tight budget than ordinarily they would have been used to, which will assist them in informing their clients as to the commercial realities of resolving a dispute. Although perhaps unpalatable to consider interests of justice as against financial realities the two, regrettably, in the real world, are inextricably linked.'

The Equality Adviser suggested that more work is done to promote and clarify the mediation process:

'Many individuals fear that attempting to resolve a case outside of court will later damage their case going to court, not realising that any attempts at settlement are confidential. More work to promote and communicate the mediation process should be undertaken.'

**Q84 SUMMARY:** 3 respondents (4%) answered the question.

It was suggested that mediation is not adequately well known or understood, and that work should be undertaken to address this. There was a call for consideration to be given for a requirement for parties to evidence that they have discussed and considered mediation / ADR prior to being in a position to further progress Court proceedings, and if it has not progressed to explain why. However, clarity was requested in terms of the provision of mediators. The benefits of effective mediation were set out and it was suggested that if cases still require Court time following mediation, then consideration could be given to offering a tighter Legal Aid budget to eligible parties.

## **4.21. Names of respondents, charities & organisations**

Of the 69 respondents to the consultation, 7 (10%) provided their full name and/or that of the organisation on which they responded and gave permission for their response to be published in full. These names are set out below and their responses have been published via the IoM Consultation Hub (<https://consult.gov.im/>).

It should also be noted that for the purposes of this consultation, those who gave permission for their responses to be published in full but did not provide their name are equivalent to those who gave permission for their responses to be published anonymously. In total, 42 respondents (61%) gave permission for their responses to be published anonymously and 20 respondents (29%) did not give permission to publish their responses.

### **Individual respondents**

David Foreman  
Tim Henwood

### **Charities**

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### **Individuals on behalf of organisations**

Dawn Kinnish (Equality Adviser, Cabinet Office, IoM Government)  
Paul Heckles (Anti-Money Laundering / Countering the Financing of Terrorism Adviser, Cabinet Office, IoM Government)

### **Organisations**

The General Registry  
Isle of Man Law Society

## 5.0. CIVIL LEGAL AID WORKSHOPS

Details of two Civil Legal Aid workshops delivered by the Attorney General's Chambers to members of the IoM Law Society **before** the consultation was launched are summarised below.

Civil Legal Aid workshops had also been planned with prisoners at the IoM Prison **during** the consultation period to complement the Criminal Legal Aid workshops delivered in November 2019. Unfortunately, it was not possible to deliver any workshops in Spring 2020 as a result of movement restrictions during the coronavirus pandemic.

### 5.1. Workshops with IoM Law Society members (Nov / Dec 2019)

#### Methodology

Arrangements for inviting members of the IoM Law Society to take part in Civil Legal Aid workshops were made by the Attorney General's Chambers. Due to the level of interest expressed by Advocates and their range of availabilities, two lunchtime workshops were arranged. Confirmed invitations, workshop agendas and supporting documents (e.g. copies of legislation) were sent to attendees in advance, and workshops were held on 25 November 2019 and 2 December 2019.

Workshops were scheduled for two hours as Chambers sought to find a balance between providing Advocates with sufficient time to participate, whilst limiting the time taken out of their day. Workshops were held in the Barrool Suite, Legislative Buildings, Douglas. A buffet lunch and refreshments were provided as it was recognised that Advocates were attending during the working day.

These two workshops came **before** the Civil Legal Aid consultation was drafted, as they formed part of the pre-consultation research undertaken by the Attorney General's Chambers. It was considered important to ensure that any matters which were of key concern to Advocates could be used to shape the public consultation.

#### Participants

Both workshops were delivered by a member of the Attorney General's Chambers, and exercises with the Advocates were facilitated by Chambers and / or a member of staff from the Legal Aid Office. HM Attorney General also attended the workshops in order to welcome Advocates and give his opening remarks, following which his attendance was in the capacity of an observer. In total, 21 members of the IoM Law Society attended the Civil Legal Aid workshops, including its President and Chief Executive.

#### Workshop details

Following HM Attorney General's introduction, there was a presentation<sup>29</sup> to Advocates and three group exercises. The presentation provided background to the Legal Aid Review, and

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<sup>29</sup> Reference is made to Civil Legal Aid workshops via the Attorney General's Chambers website: <https://www.gov.im/about-the-government/offices/attorney-general-chambers/crown-office/legal-aid-review/workshop-presentations/>

details of its aims and objectives. The purpose of the workshops was also explained and in particular, how they aimed to encourage open exchanges and capture feedback from an Advocate’s perspective. The presentation included the scope of Civil Legal Aid in the Isle of Man; eligibility criteria for applicants, and details of two particular issues which had been raised with HM Attorney General. These issues were restraint proceedings under section 97(4) of the Proceeds of Crime Act 2008<sup>30</sup> (POCA) and the representation of a child in family proceedings under section 96 of the Children and Young Persons Act 2001<sup>31</sup> (C&YPA). The presentation also referred to Inquests, Tribunals, Legal Advice Centres and methods of Alternative Dispute Resolution (ADR).

Advocates split into two groups and took part in three facilitated exercises to discuss:

1. Scope and Eligibility
2. Restraint proceedings under POCA; Representation of a child in family proceedings, Inquests and Tribunals
3. Legal Advice Centres, ADR and other options

In total, there were contributions from four groups of Advocates across two workshops, and a range of comments, suggestions and questions were captured. The following ‘Feedback from workshop exercises’ section seeks to summarise these contributions.

## Feedback from workshop exercises

### Exercise 1 – Scope and Eligibility

In this exercise, Advocates were asked to consider the **current** scope of Civil Legal Aid, as set out Schedule 1 of the Legal Aid Act 1986 and whether any changes should be made. Advocates were also asked if there was sufficient transparency in regard to eligibility criteria; whether there was enough guidance for practitioners and members of the public, and if they were aware of any issues with the prescribed amounts<sup>32</sup> or financial contributions<sup>33</sup>.

**Table 58 – Comments on scope of Civil Legal Aid matters: maintain / expand / reduce**

Scope matter	Comments / suggestions / questions from Advocates
<i>Maintain current scope – early advice</i>	Important to maintain and not reduce the current scope as the model works well. Providing an individual with early, sensible legal advice from an Advocate saves time and Legal Aid costs at a later stage.

<sup>30</sup> POCA 2008: [https://legislation.gov.im/cms/images/LEGISLATION/PRINCIPAL/2008/2008-0013/ProceedsofCrimeAct2008\\_23.pdf](https://legislation.gov.im/cms/images/LEGISLATION/PRINCIPAL/2008/2008-0013/ProceedsofCrimeAct2008_23.pdf)

<sup>31</sup> C&YPA 2001: [https://legislation.gov.im/cms/images/LEGISLATION/PRINCIPAL/2001/2001-0020/ChildrenandYoungPersonsAct2001\\_11.pdf](https://legislation.gov.im/cms/images/LEGISLATION/PRINCIPAL/2001/2001-0020/ChildrenandYoungPersonsAct2001_11.pdf)

<sup>32</sup> ‘Prescribed amounts’ are used to determine a person’s financial eligibility for Civil Legal Aid. They are calculated by taking into consideration the amount the law says a person needs to live on, in addition to a person’s income, housing costs & childcare costs. Prescribed amounts are reviewed annually & published by the Legal Aid Office <https://www.gov.im/categories/benefits-and-financial-support/legal-aid/eligibility-for-civil-legal-aid/>

<sup>33</sup> Financial contributions can be made by individuals who are determined to be partially, rather than fully, eligible for Civil Legal Aid.

Scope matter	Comments / suggestions / questions from Advocates
<i>Maintain current scope – ADT</i>	Important to maintain the Advocates Disciplinary Tribunal within scope for equality purposes. If a person brings a case against an Advocate or legal firm then they should have legal representation.
<i>Maintain current scope – PI; negligence &amp; medical negligence</i>	<p>Opposed to the introduction of Conditional Fee Arrangements (CFAs) and any removal of personal injury (PI); negligence and medical negligence from the scope of Civil Legal Aid. Significant concerns regarding CFAs (also known as 'No Win No Fee') including:</p> <ul style="list-style-type: none"> <li>• Access to justice for the client</li> <li>• Satellite litigation leading to issues with costs and enforceability</li> <li>• Not a good idea for the IoM as the model expects that the practice "wins" certain number of cases and "loses" a certain number – IoM market too small</li> <li>• Concern that legal practices will go out of business</li> <li>• Inherent unfairness to introduce the ability for conditional fees whilst still allowing Legal Aid eligibility</li> <li>• Current IoM legislation does not allow for such agreements</li> <li>• CFAs are clogging the Courts in England &amp; Wales</li> </ul>
<i>Maintain current scope – unintended consequences of removing elements</i>	There is a risk that taking elements (e.g. divorce) out of scope may increase the financial burden elsewhere (e.g. costs may be moved to the Courts if divorce forms are incomplete / inaccurate and sent back). This may also apply in other matters.
<i>Extend scope - Tribunals</i>	<p>Extend scope to include other Tribunals:</p> <ul style="list-style-type: none"> <li>• Employment and Equality Tribunals, and in particular whistleblowing and discrimination cases</li> <li>• Work Permit Appeal Tribunals as they impact on an individual's ability to work and / or secure income and they are human rights led</li> <li>• Legal Aid Appeals Tribunals</li> <li>• Social Security Appeal Tribunals</li> </ul>
<i>Reduce scope – name changes</i>	Name changes are currently included in scope and Advocates are unable to use their discretion (e.g. for unnecessary adult name changes). Removing name changes from scope could improve public perception in regard to fairness around Legal Aid provision. Consider publishing a Government form for name changes to avoid the need for Civil Legal Aid, whereby an applicant only "fills in the gaps" to submit their own application through a simple process.

**Table 59 – Comments on eligibility for Civil Legal Aid matters: maintain / expand / reduce**

<b>Eligibility matter</b>	<b>Comments / suggestions from Advocates</b>
<i>Maintain current financial eligibility</i>	The current system for financial eligibility with contributions works well.
<i>Pre-screening &amp; online Civil Legal Aid Eligibility Calculator</i>	Some pre-screening of client eligibility is already in place. Advocates only tend to see individuals they know are eligible based on prior conversations (e.g. with secretary). People tend to know whether or not they are eligible for Legal Aid as many have used the online Civil Legal Aid Eligibility Calculator <sup>34</sup> . The majority of applicants are auto-qualifiers, based on their qualifying benefits.
<i>Qualifying benefits</i>	Note the qualifying income-related benefits (Employed Person's Allowance; Income Support; Income-Based Job Seekers Allowance). Do not understand why Incapacity Benefit is not a qualifying benefit.
<i>Transparency of financial determinations</i>	It seems particularly difficult to calculate financial eligibility for a single person with a family. Would like more transparency re: financial determination calculations. How are they done?
<i>Increase financial contributions to remove 'cliff edges'</i>	There has to be a line for eligibility somewhere, but there should be more graduated bandings for contributions as 'cliff edges' do exist. More people should be eligible with wider, sliding scales which could be offset with greater contributions and more vetting in place.
<i>Increase financial eligibility limits</i>	Financial limits are too low and should be more generous
<i>Extend eligibility – parents in Care Proceedings</i>	There should be no means testing for parents in Care Proceedings. These matters currently impact upon a small number of clients and are especially relevant where one party is in receipt of Legal Aid but the other party is not.
<i>Financial eligibility criteria – matrimonial home</i>	Consider circumstances where the value of matrimonial home is taken into account for eligibility when applicant is <u>not</u> living there
<i>Increase checks during financial determinations</i>	Concern that some individuals (an example of a 'tax-capper' <sup>35</sup> was given) submit information which makes them eligible for Legal Aid on paper but 'real' income is not reported (e.g. self-employed company director whose salary is low and therefore makes them eligible for Legal Aid, but who may benefit from significant share dividends). It was suggested that 6 or 12 months' bank statements could be required in some cases rather than 3 months to address this.

<sup>34</sup> <https://services.gov.im/civil-legal-aid-calculator/>

<sup>35</sup> In the IoM there is a 'tax cap' of £200,000 for an individual and £400,000 for a jointly assessed couple. Under the tax cap system, an individual must elect for the tax cap to be applied and if approved, it will apply to the individual for a period of five consecutive tax years. <https://www.locate.im/relocating/tax-and-ni/income-tax>

**Table 60 – Other comments raised during discussions on scope & eligibility**

<b>Other matters</b>	<b>Comments / suggestions / questions from Advocates</b>
<i>Equality of arms</i>	Legally-aided clients can afford to take more risks than private clients. Assisted clients may feel they have nothing to lose and think they have an infinite green light in terms of their legal expenses.
<i>Limits applied to Civil Legal Aid certificates</i>	Time limits applied to Civil Legal Aid certificates by the Legal Aid Certifying Officer should be removed as they are professionally discourteous to Advocates.
<i>Self-representation</i>	Lack of representation usually occurs when individuals are unreasonable or abusive. Advocates should not have to tolerate abuse in the workplace (similar to other professions)
<i>Maintenance payments</i>	Consider setting up a Child Support Agency equivalent on the IoM to avoid Advocates chasing 'errant' parents for maintenance. This could create potential savings for Social Security and Legal Aid.
<i>Statutory Charge</i>	<p>Need to resolve issues around the Statutory Charge and in particular:</p> <ul style="list-style-type: none"> <li>• There needs to be trigger point</li> <li>• There needs to be better enforcement</li> <li>• It is extremely difficult to open new client bank accounts so using a Court account could resolve this issue</li> <li>• It is helpful to communicate to the client details of enforcement and /or required application of rules provided by the Legal Aid Office</li> <li>• Consider extending the Statutory Charge to include the matrimonial home</li> </ul>
<i>Legal Aid Appeals</i>	Consider removing Legal Aid Appeals as they can be used to delay the process and Advocates do not get paid for their involvement in this process. Appeals are usually lodged by litigants in person who use it as opportunity to 'air their case'.
<i>Cost Orders in Family proceedings</i>	Consider amending legislation in Family proceedings to allow the Courts to order wealthy opponents to pay legal costs – this is the case in the UK. It can be done in the IoM but there is no specific legislative provision. One of the key advantages is that it can concentrate the minds of parties to resolve matters.



## Exercise 2 – Restraint proceedings under POCA; Representation of a child in Family proceedings; Inquests & Tribunals

In this exercise, Advocates were asked if they had any experience of practitioner and / or client issues in relation to restraint proceedings under POCA, and if they had any suggestions to resolve these issues. Comments were invited on the representation of a child in Family proceedings under C&YPA and whether children should be automatically eligible to receive Civil Legal Aid. Advocates were also asked if they had identified any issues with Civil Legal Aid for Inquests and / or Tribunals.

**Table 61 – Comments on restraint proceedings under POCA**

<b>POCA matter</b>	<b>Comments / suggestions / questions from Advocates</b>
<i>Compliance with Human Rights</i>	The current position is that a person whose assets are restrained under POCA cannot pay for legal advice or representation from restrained funds nor qualify for Legal Aid. This is not compliant with Human Rights (i.e. the right to a fair trial).
<i>Access to justice</i>	POCA should be amended to allow individuals to access Legal Aid or restrained funds should be released to pay for legal services. Could the Courts authorise the release of restrained funds to pay for legal services?
<i>Pro bono work</i>	Some Advocates have been forced to represent clients free of charge in order to provide them with legal defence.
<i>Joint assets</i>	There are also issues if restrained assets are jointly owned (e.g. when a person's spouse is accused of crime)
<i>Cost awards</i>	Should Cost Awards be limited to Legal Aid rates or should Advocates be able to charge increased / private client rates as costs?
<i>Statutory Charge</i>	If Legal Aid provision is put in place, could costs be recovered through the Statutory Charge?
<i>Seized Assets Fund</i>	If Legal Aid provision is put in place, could it be refunded from the Seized Assets Fund (SAF) or are monies in the SAF ring-fenced (e.g. for repatriation)?

**Table 62 – Comments on representation of a child in family proceedings**

<b>C&amp;YPA matter</b>	<b>Comments / suggestions / questions from Advocates</b>
<i>Eligibility</i>	How is a child's eligibility for Legal Aid calculated? Is it on the parents' finances?
<i>Rates of pay</i>	Why are Advocates for parents paid significantly less than Advocates for children? Advocates for parents are paid at Legal Aid rates by the Legal Aid Office (i.e. £115ph / £135ph for Junior / Senior Advocates respectively). Advocates for children are paid by the Attorney General's Chambers at £185ph.
<i>Panel of Advocates for children</i>	Would like membership of the 'Panel of Advocates' who represent children in family proceeding to be reviewed and opened up to more Advocates to undertake the work.
<i>Seriousness of family proceedings</i>	Losing access to a child is comparable in seriousness to a person losing their liberty.
<i>Administration &amp; budgets</i>	If the administration of Care Proceedings is moved from the Attorney General's Chambers to the Legal Aid Office, it will appear to the public that Legal Aid expenditure has increased and more is paid to Advocates. The administration could be done by Legal Aid Office but funding and accounting should be kept separate so as not to skew Legal Aid expenditure.
<i>DHSC legal representation</i>	There is an argument that the Department of Health and Social Care's legal representation should not be in the Attorney General's Chambers.
<i>Guardian ad Litem</i>	Who pays for the Guardian ad Litem <sup>36</sup> ? This should fall within the Legal Aid budget.

**Table 63 – Comments on Inquests**

<b>Inquest matter</b>	<b>Comments / suggestions / questions from Advocates</b>
<i>Eligibility for Legal Aid</i>	<p>Range of views on the financial means test for an Inquest and / or who should be eligible for Legal Aid:</p> <ul style="list-style-type: none"> <li>• Abolish the financial means test for all Inquests</li> <li>• Grant Legal Aid to all 'Properly Interested Persons'</li> <li>• Grant Legal Aid to all 'Properly Interested Persons' if the deceased person was in the care or custody of the state</li> <li>• Grant Legal Aid to any person who was financially dependent or the next of kin of the deceased.</li> <li>• Grant Legal Aid to more than one person in exceptional circumstances only</li> </ul>

<sup>36</sup> A Guardian ad Litem is a person appointed to investigate solutions in the best interests of a child

**Table 64 – Comments on Tribunals**

<b>Tribunal matter</b>	<b>Comments / suggestions / questions from Advocates</b>
<i>Scope</i>	Extend to all Tribunals or fund none.
<i>Extend scope – Tribunals</i>	Extend scope to include other Tribunals: <ul style="list-style-type: none"> <li>• Employment and Equality Tribunals, and in particular whistleblowing and discrimination cases</li> <li>• Work Permit Appeal Tribunals as they impact on an individual's ability to work and / or secure income and they are human rights led</li> <li>• Legal Aid Appeals Tribunals</li> <li>• Social Security Appeal Tribunals</li> </ul>
<i>Rationalise scope of Tribunals</i>	What is the rationale for including the Data Protection Tribunal and Financial Services Tribunal in scope? It is difficult to argue that they are valid but others are not.
<i>Advocates Disciplinary Tribunal</i>	Is it right to assume that the legal merits test is applied correctly for Advocates Disciplinary Tribunal (ADT)? An Advocate may not want to act for a person who is challenging another professional colleague. Also aware that some complaints may be vexatious. Consider whether the ADT should still be in scope.

**Exercise 3 – Legal Advice Centres, ADR and other options**

Advocates were asked if Civil Legal Aid could be delivered any differently in order to complement and support current provision (e.g. 'pop-up' sessions in the community or provision of a 'safety net' service for those unable to secure legal representation.) Advocates' views on ADR were also invited, and in particular whether ADR options (e.g. mediation) were used enough and if any elements of ADR could or should be expanded and / or mandatory.

**Table 65 – Legal Advice Centres, ADR and other options**

<b>Advice centres, ADR &amp; options</b>	<b>Comments / suggestions / questions from Advocates</b>
<i>Legal Advice Centres – not suitable for IoM</i>	Range of concerns regarding Legal Advice Centres including: <ul style="list-style-type: none"> <li>• Cannot see the benefit of Legal Advice Centres in the IoM.</li> <li>• Do not perceive there to be any problems with current delivery of publically - funded legal services.</li> <li>• Do not believe there would be any uptake for 'pop-up' advice centres around the Island as they would only be relevant if members of the public are of view that they cannot currently access legal services when they need them</li> </ul>

<b>Advice centres, ADR &amp; options</b>	<b>Comments / suggestions / questions from Advocates</b>
<i>Legal Advice Centres – not suitable for IoM (cont.)</i>	<ul style="list-style-type: none"> <li>• Advocates already offer free initial legal advice and home visits.</li> <li>• Advocates already have good links with a range of agencies (e.g. Victim Support) and can signpost vulnerable clients.</li> <li>• IoM Advocates do not need the triage element that a Legal Advice Centre would provide in the UK. IoM is different to UK.</li> <li>• Risk of conflict in a jurisdiction as small as the IoM.</li> <li>• Risk of seeing an Advocate who is inexperienced in a subject matter raised by member of the public, but who wants to help</li> <li>• Managing client expectations in respect of the level of detail and breadth of topics that Advocates would be expected to advise on.</li> <li>• If Advocates donate a few hours of their time (e.g. on a weekly / monthly rota) then people may seek advice on issues that the Advocate cannot advise on and be left disappointed.</li> <li>• Who would pick up the public indemnity risk?</li> </ul>
<i>Legal advice &amp; signposting – suggestions for improvement</i>	<ul style="list-style-type: none"> <li>• Duty Advocates should be considered for Courts where members of the public are facing eviction.</li> <li>• Better information is needed from Government to Advocates about what services are available.</li> </ul>
<i>Mediation – support &amp; expansion</i>	<ul style="list-style-type: none"> <li>• Mediation should be encouraged, especially in family proceedings and Legal Aid should pay for the self-representing party.</li> <li>• Mediation can save costs elsewhere in Civil Legal Aid.</li> <li>• The Courts love mediation, including in the most difficult cases.</li> <li>• All practitioners who deal with family law should do an element of mediation training.</li> </ul>
<i>Mediation - suggestions</i>	<ul style="list-style-type: none"> <li>• Mediation should be required before an application is made to the Court.</li> <li>• Statutory requirement to mediate would not be helpful: <ul style="list-style-type: none"> <li>○ Parties have to voluntarily engage in the process</li> <li>○ Mediation is not appropriate in some circumstances (e.g. domestic violence)</li> </ul> </li> </ul>
<i>Mediation - barriers</i>	<ul style="list-style-type: none"> <li>• Mediation is not properly funded by Legal Aid and should be.</li> <li>• More people should be trained in mediation and rates of pay increased.</li> <li>• A number of Advocates are trained as mediators and offer mediation at private rates, but not legally-aided rates, as it is not cost effective for them to do so (£750 for intake / preparation &amp; 3 sessions of 90 mins) which equates to ~£85ph.</li> </ul>

<b>Advice centres, ADR &amp; options</b>	<b>Comments / suggestions / questions from Advocates</b>
<i>Mediation – barriers (cont.)</i>	<ul style="list-style-type: none"> <li>• The cost of training for mediation is prohibitive (£5,000-£10,000).</li> <li>• The standards of training for mediation are variable. A number of Advocates are qualified with the Family Mediators Association<sup>37</sup> and are signed up to the FMA's principles and Code of Practice. There is other Advocate - provided mediation work undertaken in the IoM, but without intake sessions or summaries written up.</li> <li>• Co-mediation is difficult to set up because of a shortage of mediators</li> </ul>
<i>Dispute Resolution Hearings in Family Courts</i>	<ul style="list-style-type: none"> <li>• Would like Dispute Resolution Hearings in Family Courts to be considered in IoM Courts.</li> <li>• Hearings are very goal-focussed and help to keep people out of Court, with the added benefit of helping to save money in the long-term.</li> <li>• Cannot be done currently due to lack of Court processes in place and small size of Judiciary. Would need additional Deemsters or use team of Panel Deemsters.</li> </ul>
<i>Arbitration</i>	<ul style="list-style-type: none"> <li>• Would like expansion of arbitration in the IoM to be considered as it can be quicker than other processes and the outcome is binding.</li> </ul>

## Closing remarks

Advocates were advised that the IoM Law Society would be notified when the public consultation on Civil Legal Aid had been drafted and due to be published, in order to encourage members' participation. Reference was also made to a Private Members' Bill consultation on proposed no fault divorce legislation which at the time was being undertaken through the IoM Government's Consultation Hub, as a matter which was likely to be of interest. It was also noted that further information regarding the Legal Aid Review project, including details of progress and next steps, would be kept up to date at [www.gov.im/legalaidreview](http://www.gov.im/legalaidreview).

## Acknowledgements

The Attorney General's Chambers would like to thank the IoM Law Society and its members for their assistance and contributions. Chambers would also like to thank the Legal Aid Office for its support and facilitation throughout.

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<sup>37</sup> Family Mediators Association <https://thefma.co.uk/>

## 6.0. NEXT STEPS

HM Attorney General, John Quinn QC MLC, will consider this *Civil Legal Aid Consultation - Results and Analysis Report* together with a parallel report arising from the Criminal Legal Aid consultation<sup>38</sup>.

HM Attorney General will then prepare a *Legal Aid Review - Options and Recommendations Report* for submission to the Legal Aid Committee, which is statutorily responsible for Legal Aid policy in accordance with section 23(6)(a) of the Legal Aid Act 1986<sup>39</sup>.

The *Legal Aid Review - Options and Recommendations Report* will, if deemed appropriate, contain options and recommendations in respect of any aspects pertaining to Civil and / or Criminal Legal Aid which HM Attorney General deems could or should be changed or improved, for the Committee's consideration and decision. The report will also seek to make reference to any key legislative changes that may be required in response to any such decisions.

Reports issued by the Attorney General's Chambers will be published online through Chambers' website<sup>40</sup> in addition to the outcome of the Legal Aid Committee's considerations.

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<sup>38</sup> A Criminal Legal Aid consultation was undertaken by the Attorney General's Chambers from 23 September to 21 November 2019.

<sup>39</sup> Legal Aid Act 1986: [https://legislation.gov.im/cms/images/LEGISLATION/PRINCIPAL/1986/1986-0023/LegalAidAct1986\\_7.pdf](https://legislation.gov.im/cms/images/LEGISLATION/PRINCIPAL/1986/1986-0023/LegalAidAct1986_7.pdf)

<sup>40</sup> <https://www.gov.im/about-the-government/offices/attorney-general-chambers/crown-office/legal-aid-review/reports/>