

ACCESS
to Justice



Legal Aid Handbook

Civil Legal Aid Administration

Table of Contents

| | |
|--|-----------|
| PART 1 ORGANISATION | 7 |
| 1.1 THE COMMITTEE | 7 |
| 1.1.1 STATUTORY FUNCTION | 7 |
| 1.1.2 MISSION STATEMENT | 7 |
| 1.1.3 PRIORITIES | 7 |
| 1.1.4 CONTACT THE COMMITTEE | 7 |
| 1.1.5 STAFFING RESOURCES | 8 |
| 1.2 LEGAL AID CERTIFYING OFFICER AND DEPUTY LEGAL AID CERTIFYING OFFICER | 8 |
| 1.2.1 CONTACT THE CERTIFYING OFFICER: | 8 |
| 1.3 LEGAL AID COSTS OFFICER | 9 |
| 1.3.1 CONTACT THE COSTS OFFICER | 9 |
| 1.4 LEGAL AID ADMINISTRATION | 9 |
| 1.4.1 CONTACT LEGAL AID ADMINISTRATION | 10 |
| 1.5 LEGAL AID APPEALS TRIBUNAL | 10 |
| 1.5.1. MAKING AN APPEAL | 10 |
| 1.5.2 CONSIDERATION OF THE APPEAL | 11 |
| 1.5.3 CONTACT THE LEGAL AID APPEALS TRIBUNAL | 11 |
| PART 2 MANAGEMENT | 12 |
| 2.1 STRATEGIC MANAGEMENT | 12 |
| 2.1.1 FUNDING: | 12 |
| 2.1.2 STRATEGIC MANAGEMENT POLICY: | 12 |
| 2.1.3 DAY TO DAY MANAGEMENT: | 12 |
| 2.2 THE PANEL OF ADVOCATES PROVIDING THE SERVICE | 12 |
| 2.2.1 REMOVAL FROM THE PANEL: | 13 |
| 2.3 QUALITY STANDARDS | 13 |
| 2.4 CASE MANAGEMENT | 13 |
| 2.4.1 THE DUTIES AND RESPONSIBILITIES OF ADVOCATES WORKING UNDER A LEGAL AID CERTIFICATE | 14 |
| 2.4.2 WHEN SHOULD AN ADVOCATE CONSIDER A REPORT TO LEGAL AID? | 15 |
| 2.4.3 MONITORING BY THE CERTIFYING OFFICER | 15 |
| 2.5 POLICY | 16 |
| 2.6 COMPLAINTS | 16 |
| 2.6.1 COMPLAINTS AGAINST THE CERTIFYING OFFICERS | 16 |
| 2.6.2 MAKING A COMPLAINT | 16 |
| 2.6.3 INTERNAL REVIEW | 17 |
| 2.6.4 EXTERNAL REVIEW | 17 |
| 2.6.5 COMPLAINTS WITH REGARD TO ASSISTED PERSONS | 18 |
| PART 3 SCOPE OF SERVICES | 20 |
| 3.1. LEGAL ADVICE AND ASSISTANCE – THE GREEN FORM SCHEME | 20 |
| 3.2. CIVIL LEGAL AID | 20 |
| 3.3 CRIMINAL LEGAL AID | 22 |
| 3.4 THE DUTY ADVOCATE SCHEMES | 22 |
| PART 4 MAKING AN APPLICATION | 23 |
| 4.1 LEGAL ADVICE AND ASSISTANCE – GREEN FORM SCHEME | 23 |
| 4.1.1 WHAT DOES LEGAL ADVICE AND ASSISTANCE COVER? | 23 |
| 4.1.2 GENERAL CRITERIA | 23 |
| 4.1.3 GREEN FORM AND PRISON VISITS | 24 |
| 4.1.4 HOW AN INDIVIDUAL SHOULD APPLY | 24 |
| 4.1.5 SCOPE OF THE SCHEME AND EXTENSIONS | 25 |
| 4.1.6 FINANCIAL MEANS TEST AND QUALIFYING CRITERIA | 25 |
| 4.1.7 CLAIMS FOR PAYMENT | 27 |
| 4.1.8 COURT FILING FEES WITHIN THE SCOPE OF THE SCHEME | 28 |

| | | |
|--------------------------------------|---|-----------|
| 4.2 | CIVIL LEGAL AID | 28 |
| 4.2.1 | WHAT DOES LEGAL AID COVER? | 29 |
| 4.2.1.1 | THE SCOPE OF LEGAL AID FOR MEDIATION | 29 |
| 4.2.1.2 | GUIDANCE IN RESPECT OF APPEALS TO THE MENTAL HEALTH TRIBUNAL | 29 |
| 4.2.2 | WHAT LEGAL AID DOES NOT COVER | 30 |
| 4.2.3 | HOW TO DEAL WITH MATTERS NOT LISTED IN THE STATUTORY PROVISIONS | 30 |
| 4.2.4 | THE APPLICATION FORM FOR CIVIL LEGAL AID | 31 |
| 4.2.5 | COMPLETION OF THE FORM: | 31 |
| PART 1 GENERAL | | 31 |
| | THE CORRECT CHOICE OF COURT | 31 |
| | THE DETAILS OF THE APPLICANT | 31 |
| | SOCIAL SECURITY BENEFITS | 32 |
| | CONTACT TELEPHONE NUMBERS | 32 |
| | CORRECT DATE OF BIRTH | 32 |
| | CASE DETAILS – WHAT ARE YOU APPLYING FOR? | 32 |
| | HAVE YOU TRIED TO SETTLE THE MATTER YET? | 32 |
| | DETAILS OF THE ADVOCATE CARRYING OUT THE WORK | 32 |
| | WHAT DOCUMENTS ARE YOU GOING TO SEND IN TO SUPPORT THE APPLICATION? | 33 |
| | HAS LEGAL AID ALREADY ASSISTED THIS PERSON BEFORE? | 33 |
| | CAN OR SHOULD SOMEONE ELSE FUND THE WORK? | 33 |
| | WHO IS THE OPPONENT AND WHO REPRESENTS THEM ? | 33 |
| PART 2 STATEMENT OF CASE | | 33 |
| | WHAT IS YOUR OPINION ON THE CASE? | 34 |
| | HOW MUCH IS IT GOING TO COST TO RUN THE CASE? | 34 |
| PART 3 FINANCIAL RESOURCES | | 35 |
| PART 3 A THE STATUTORY CHARGE | | 35 |
| | THINK ABOUT WHAT DOCUMENTS NEED TO SUPPORT THE APPLICATION | 36 |
| 4.2.6 | CONSIDERATION OF APPLICATIONS FOR CIVIL LEGAL AID | 36 |
| 4.2.7 | CRITERIA CONSIDERED – LEGAL MERITS | 36 |
| 4.2.8 | LEGAL MERITS – APPEAL PROCEDURE | 37 |
| 4.2.9 | CRITERIA CONSIDERED – FINANCIAL MEANS | 38 |
| 4.2.10 | CIVIL LEGAL AID – THE STATUTORY CHARGE | 38 |
| 4.2.11 | OVERVIEW | 38 |
| 4.2.12 | ADDITIONAL RESPONSIBILITY | 39 |
| 4.2.13 | ADDITIONAL DUTY | 39 |
| 4.2.14 | DOES THE CHARGE APPLY? | 39 |
| | THE CHECKLIST: | 39 |
| 4.2.15 | EXEMPTIONS FROM THE CHARGE | 39 |
| 4.2.16 | HOW THE CHARGE OPERATES WHEN THE CERTIFICATE HAS BEEN REVOKED OR DISCHARGED | 40 |
| 4.2.17 | HOW WE WOULD LIKE YOU TO APPROACH A SITUATION WHERE THE CHARGE MAY ARISE: | 40 |
| 4.2.18 | ENFORCEMENT: | 40 |
| 4.2.18 | MONEY | 40 |
| 4.3.18 | PROPERTY | 41 |
| 4.2.19 | POSTPONED ENFORCEMENT | 41 |
| 4.2.20 | CIVIL LEGAL AID – CHECKLIST FOR NEW APPLICATIONS | 41 |
| 4.2.21 | OVERVIEW | 41 |
| 4.2.22 | COMMON REASONS FOR REJECTION/RETURN OF APPLICATIONS | 41 |
| 4.2.23 | THE CHECKLIST | 41 |
| 4.2.24 | CASES WITH BORDERLINE PROSPECTS OF SUCCESS | 42 |
| 4.2.25 | CASES THAT ARE GENUINELY URGENT BUT NOT AN EMERGENCY APPLICATION | 43 |
| 4.2.26 | EXPERT REPORTS | 43 |

| | | |
|---------------|--|-----------|
| 4.2.27 | INFORMATION SUBMITTED TO LEGAL AID – COMMON ERRORS | 44 |
| | EXAMPLES OF ISSUES WHICH NEED TO BE ADDRESSED BEFORE FORMS ARE SUBMITTED: | 44 |
| 4.2.28 | CIVIL LEGAL AID APPLICATIONS – COMMON ERRORS: | 44 |
| 4.2.29 | GREEN FORM APPLICATIONS – COMMON ERRORS: | 45 |
| 4.2.30 | DUTY ADVOCATE SCHEME – COMMON ERRORS: | 46 |
| 4.2.31 | CORRESPONDENCE AND GENERAL ISSUES: | 46 |
| 4.2.32 | E-MAIL: | 46 |
| 4.2.33 | EMERGENCY APPLICATIONS | 46 |
| 4.2.34 | THE CERTIFICATE | 47 |
| 4.2.35 | NOTICE OF ISSUE OF LEGAL AID CERTIFICATE AND CERTIFICATE OF AMENDMENT | 48 |
| 4.2.36 | TIME/DURATION LIMITATION/CONDITIONS | 48 |
| 4.2.37 | MEDIATION CERTIFICATES | 49 |
| 4.2.38 | SECURE UNIT APPLICATIONS | 49 |
| 4.2.39 | TRANSFER OF CERTIFICATE TO ANOTHER ADVOCATE | 50 |
| 4.2.40 | AMENDMENTS TO THE CERTIFICATE | 50 |
| 4.2.41 | DISBURSEMENTS | 51 |
| 4.2.42 | DISCHARGE AND REVOCATION OF A CERTIFICATE | 52 |
| 4.2.43 | THE DIFFERENCE BETWEEN REVOCATION AND DISCHARGE | 52 |
| 4.2.44 | THE CIRCUMSTANCES IN WHICH A CERTIFICATE WILL BE REVOKED OR DISCHARGED: | 52 |
| 4.2.45 | WHAT ARE THE INCIDENTAL EFFECTS OF REVOCATION OR DISCHARGE? | 53 |
| 4.3 | LEGAL AID IN CRIMINAL MATTERS | 53 |
| 4.3.1 | OVERVIEW | 53 |
| 4.3.2 | THE DUTY ADVOCATE SCHEMES | 53 |
| 4.3.3 | THE POLICE CUSTODY SCHEME | 53 |
| 4.3.4 | THE DUTY ADVOCATE SCHEME | 54 |
| 4.3.5 | THE DUTY ADVOCATE COMMITTEE | 54 |
| 4.3.6 | HOW TO APPLY TO BE A DUTY ADVOCATE: | 54 |
| 4.3.7 | THE PERIODS OF TIME YOU MIGHT BE ASKED TO COVER: | 55 |
| 4.3.8 | DUTY ADVOCATE ACTING FOR A CLIENT AT A SUMMARY COURT IN RESPECT OF AN ALLEGED BREACH OF A DOMESTIC VIOLENCE NON MOLESTATION ORDER | 55 |
| 4.3.9 | CLAIMING FOR PAYMENT | 55 |
| 4.3.10 | USE OF THE LEGAL ADVICE AND ASSISTANCE “GREEN FORM” SCHEME IN CRIMINAL MATTERS | 55 |
| 4.3.11 | CRIMINAL LEGAL AID | 56 |
| 4.3.12 | WHAT DOES CRIMINAL LEGAL AID COVER? | 56 |
| 4.3.13 | APPLYING FOR CRIMINAL LEGAL AID | 56 |
| 4.3.14 | CRITERIA FOR THE GRANT OF CRIMINAL LEGAL AID | 57 |
| 4.3.15 | PAYMENT OF CONTRIBUTIONS | 57 |
| 4.3.16 | CHANGE OF FINANCIAL CIRCUMSTANCES | 57 |
| 4.3.17 | CHOICE OF ADVOCATE | 57 |
| 4.3.18 | THE USE OF OFF ISLAND COUNSEL | 57 |
| 4.3.19 | CRIMINAL LEGAL AID DISBURSEMENTS | 57 |
| 4.3.20 | PROVISION OF THE SERVICE | 58 |
| 4.3.21 | APPLICATIONS FOR COSTS AGAINST THE PROSECUTION | 59 |
| 4.3.22 | CONCLUDING THE MATTER, CONSIDERING AN APPEAL AND APPLYING FOR PAYMENT | 60 |
| PART 5 | HOW TO OBTAIN PAYMENT | 61 |
| 5.1 | PREPARING THE BILL OF COSTS | 61 |
| 5.2 | THE CURRENT HOURLY RATES | 62 |
| 5.3 | YOUR FILES | 63 |
| 5.4 | INTERIM OR FINAL BILL? | 63 |
| 5.5 | WHAT HAPPENS ONCE YOUR BILL HAS BEEN SUBMITTED | 63 |
| 5.6 | AVOIDING PROBLEMS WITH YOUR BILL OF COSTS | 64 |

| | | |
|-------------------|--|-----------|
| 5.7 | HOW TO GET PAID WHEN THE CERTIFICATE IS TRANSFERRED | 65 |
| 5.8 | PAYMENT OF DISBURSEMENTS | 65 |
| 5.9 | REVIEW OF ASSESSMENT | 66 |
| APPENDIX 1 | LEGISLATION: | 67 |
| | STATUTES | 67 |
| 1. | LEGAL AID ACT 1986 | 67 |
| | REGULATIONS | 67 |
| 1. | LEGAL ADVICE AND ASSISTANCE REGULATIONS 1997 | 67 |
| 2. | LEGAL AID (GENERAL) REGULATIONS 1997 | 67 |
| 3. | LEGAL AID (MATRIMONIAL PROCEEDINGS) REGULATIONS 1997 | 67 |
| 4. | LEGAL AID (FINANCIAL RESOURCES) REGULATIONS 1997 | 67 |
| 5. | LEGAL AID (PANEL OF ADVOCATES) REGULATIONS 1998 | 67 |
| 6. | CIVIL LEGAL AID ORDER 2008 | 67 |
| 7. | CRIMINAL LEGAL AID REGULATIONS 1993 | 67 |
| 8. | DUTY ADVOCATE (POLICE CUSTODY) SCHEME 1998 | 67 |
| 9. | DUTY ADVOCATE SCHEME 1997 | 67 |
| 10. | LEGAL AID (MISCELLANEOUS AMENDMENT) REGULATIONS 2008 | 67 |
| 11. | LEGAL AID (GENERAL) (AMENDMENT) REGULATIONS 2014 | 67 |
| 12. | LEGAL AID (FINANCIAL RESOURCES) (AMENDMENT) REGULATIONS 2014 | 67 |
| 13. | CRIMINAL LEGAL AID (AMENDMENT) REGULATIONS 2014 | 67 |
| 14. | LEGAL AID REMUNERATION ORDER 2014 | 67 |
| 15. | DUTY ADVOCATE (POLICE CUSTODY) (AMENDMENT) SCHEME 2014 | 67 |
| APPENDIX 2 | FORMS: | 69 |
| 1. | APPLICATION FOR GREEN FORM | 69 |
| 2. | APPLICATION TO EXTEND GREEN FORM | 69 |
| 3. | APPLICATION FOR CIVIL LEGAL AID | 69 |
| 4. | APPLICATION FOR AN EMERGENCY CERTIFICATE | 69 |
| 5. | APPLICATION FOR AMENDMENT/EXTENSION TO A LEGAL AID CERTIFICATE (TO BE DRAFTED) | 69 |
| 6. | APPLICATION FOR DISCHARGE | 69 |
| 7. | DRAFT BILL OF COSTS (USUALLY AVAILABLE IN ELECTRONIC FORM) | 69 |
| 8. | PATERNITY DECLARATION | 69 |
| 9. | APPLICATION TO BE PUT ON THE PANEL | 69 |
| 10. | STANDING ORDER MANDATE FOR LEGAL AID CONTRIBUTIONS/PAYMENTS | 69 |
| 11. | COURT DUTY ADVOCATE CLAIM FOR PAYMENT (JUNIOR ADVOCATE) | 69 |
| 12. | COURT DUTY ADVOCATE CLAIM FOR PAYMENT (SENIOR ADVOCATE) | 69 |
| 13. | POLICE STATION DUTY ADVOCATE CLAIM FOR PAYMENT (JUNIOR ADVOCATE) | 69 |
| 14. | POLICE STATION DUTY ADVOCATE CLAIM FOR PAYMENT (SENIOR ADVOCATE) | 69 |
| APPENDIX 3 | MISCELLANEOUS: | 72 |
| 1. | PANEL LIST | 72 |
| 2. | GUIDE TO PRESCRIBED AMOUNTS | 72 |
| 3. | LEGAL AID HANDBOOK AMENDMENT REQUEST FORM | 72 |

PART 1 ORGANISATION

1.1 The Committee

The Legal Aid Committee (“The Committee”) was recently reconstituted under Section 23 of the Legal Aid Act 1986.

1.1.1 Statutory Function

- To determine and review Legal Aid legislation 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 Tribunal
- To identify appropriate regulatory amendment or management action within the constraints of the Legal Aid Act 1986

1.1.2 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.

1.1.3 Priorities

- The existing Legal Aid schemes and processes, identifying areas for streamlining, simplification and improved efficiency through legislative or regulatory amendment or management action
- The current structure of Legal Aid certification and delivery and exploration of other managerial structures to balance independence and support/direction
- The cost of Legal Aid and exploration of alternative approaches and whether they would deliver better value for money and service
- Exploration of alternative forms of dispute resolution enabling early agreed settlement rather than adversarial court cases
- The fairness, equity and social implications of Legal Aid and ascertaining how to ensure it is targeted at those in greatest need and is accessible to vulnerable groups
- The position of Legal Aid within the wider justice system to ensure broader developments take into account and are influenced by the Committee’s principles and priorities
- Informing and educating politicians, professionals and the public about legal aid and the challenges the Committee is tackling

1.1.4 Contact the Committee

Correspondence from Advocates concerning the Committees remit may be addressed to:

The Secretary,
Legal Aid Committee,
General Registry,
Isle of Man Courts of Justice
Deemsters Walk
Douglas IM1 3AR

1.1.5 Staffing Resources

The Legal Aid Office has the following staff resources:

| Position | No | Coverage | Area of responsibility |
|---------------------------------|----|-----------|-----------------------------|
| Certifying Officer | 1 | 0.8 | Certification |
| Deputy Certifying Officer | 1 | 0.8 | Certification |
| Section Manager & Costs Officer | 1 | Full | Costs Assessments |
| Manager | 1 | Full | Financial Determination |
| Administration Officers | 3 | Part time | Admin, Financial & Payments |

1.2 Legal Aid Certifying Officer and Deputy Legal aid Certifying Officer

The Legal Aid Certifying Officer and Deputy are appointed by the Legal Aid Committee by virtue of Regulation 2 of the Legal Aid (General) Regulations 1997. They are not Civil Servants but are appointed to discharge all the functions conferred on them by the regulations. This includes, amongst others, the function of deciding whether or not an application passes the Legal aid merits tests.

The Certifying Officer and Deputy are non-practising Advocates. Their hours are performed within the normal working hours of the Legal Aid Office. The Deputy Legal Aid Certifying Officer primarily covers the absences of the Certifying Officer.

1.2.1 Contact the Certifying Officer:

Unless otherwise advised, Advocates should address their enquiries and applications to:

The Certifying Officer
Civil Legal Aid
Isle of Man Courts of Justice
Deemsters Walk
Bucks Road
Douglas
Isle of Man
IM1 3AR
Telephone: 685977

Web: www.gov.im/registries/legal

Email: legalaid@registry.gov.im

You should be aware that, whilst staff in the Legal Aid Administration office will do everything they can to assist with your enquiry they cannot exercise the functions of the Certifying Officer and may not always be able to assist you as a result. With all enquiries you should allow sufficient time for the Certifying Officer to give the matter full and proper consideration taking into account that your enquiry will be placed in priority with the other matters ongoing at the time.

1.3 Legal Aid Costs Officer

The Legal Aid Costs Officer is an authorised officer with delegated authority from the Chief Registrar who conducts the assessment process in relation to 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 prior to payment being authorised. The process involves an examination of a fully itemised list of work against the Advocates file of papers. This is to ensure that the work claimed is necessary, reasonable and within the scope, conditions and limitations of the Legal Aid Certificate.

Advocates should be aware that any work not needed to progress the matter is disallowed at assessment.

1.3.1 Contact the Costs Officer

The Legal Aid Costs Officer
Costs Section
Isle of Man Courts of Justice
Deemster's Walk
Bucks Road,
Douglas
Isle of Man
IM1 3AR

Telephone 685977

Web www.gov.im/registries/legal

Email legalaid@registry.gov.im

1.4 Legal Aid Administration

The Legal Aid office is staffed by four Civil Servants who cover a vast range of administrative functions in support of the Certifying Officer and the Costs Officer. As a small but very efficient team they handle the administrative support for all the Legal Aid files on the Island. Opening hours: 9.00a.m. to 5.30pm Monday to Thursday 9.00a.m to 5.00pm Friday

Advocates should be aware that, on a daily basis, staff will handle a large number of enquiries amongst their other allotted tasks. Whilst they will always do their best to help, at peak times it may not always be possible to provide an immediate response to your enquiry.

1.4.1 Contact Legal Aid Administration

Civil Legal Aid
Isle of Man Courts of Justice
Deemsters Walk
Bucks Road
Douglas
Isle of Man
IM1 3AR
Telephone 685977

Web www.gov.im/registries/legal
Email legalaid@registry.gov.im

1.5 Legal Aid Appeals Tribunal

Established by Section 23A of the Legal Aid Act 1986 the Legal Aid Appeals Tribunal (“The Tribunal”) consists of a Chairman and 2 members drawn from a panel.

The Tribunal is a Part 2 Tribunal within the meaning of the Tribunals Act 2006.

The Tribunal deals with appeals arising out of decisions of the Certifying Officer to either refuse, grant, revoke or discharge a Legal Aid Certificate. The precise provisions relating to appeals are set out in Regulation 11 of the Legal Aid (General) Regulations 1997 as amended by the Legal Aid (General) (Amendment) Regulations 2014

1.5.1. Making an appeal

Appeals must be made in writing. By way of guidance only, the written appeal should normally be submitted within 14 days of the receipt of the notice of grant, refusal, revocation or discharge. The Tribunal may allow a longer period.

The applicant must give a copy of the appeal notice to the Certifying Officer.

An appeal shall be by way of a review of the general circumstances in which the application for a Legal Aid certificate or for the amendment of a Legal Aid certificate was made.

An appellant may furnish further statements in support of his application with the notice of appeal.

The Tribunal may require the appellant to appear in support of his application.

An appellant may conduct the appeal himself, be represented by an Advocate or be assisted by some other person whom he may appoint for the purpose.

1.5.2 Consideration of the appeal

The Tribunal will determine the appeal in such manner as seems to be just and may:

- a) Dismiss the appeal
- b) Direct the Certifying Officer to offer a Legal Aid Certificate subject to such terms and conditions as they think fit
- c) Instead of settling terms and conditions, direct the Certifying Officer to do so
- d) Refer the matter or any part of it back to the Certifying Officer for determination and report

Any decision of the Tribunal with regard to an appeal will be final and the notice of the decision will be given to the Appellant and any Advocate acting for him.

1.5.3 Contact the Legal Aid Appeals Tribunal

Write to:

The Clerk,
Legal Aid Appeals Tribunal
Probate and Tribunals Section,
General Registry
Isle of Man Courts of Justice
Deemsters Walk
Douglas
Isle of Man IM1 3AR

Telephone 685941

Email: Tribunals@gov.im

PART 2 MANAGEMENT

2.1 Strategic Management

2.1.1 Funding:

Legal Aid is funded by the Treasury out of money provided by Tynwald under Section 26 of the Legal Aid Act 1986

2.1.2 Strategic Management policy:

This area of Management falls within the Statutory functions of the Legal Aid Committee

2.1.3 Day to day Management:

The day to day Management of Legal Aid is divided into two areas of responsibility:

1. The General Registry provides the administrative management and administrative staff necessary to assess financial eligibility, assess Legal Aid bills of costs, attend to the necessary administrative and secretarial functions related to the maintenance of the Legal Aid files and the day to day administrative functions of the Legal Aid Office. Civil Service staff are answerable to senior management of the General Registry
2. The Legal Aid Certifying Officer provides the day to day management function of deciding whether or not an application passes the Civil Legal Aid merits tests together with attendance to ancillary matters of certification, assessment, review and the authorisation of both Civil and Criminal Legal Aid disbursements. The Legal Aid Certifying Officer is answerable to the Legal Aid Committee and decisions made by the Legal Aid Certifying Officer may be appealed to the Legal Aid Appeals Tribunal.

2.2 The Panel of Advocates providing the service

The Legal Aid Committee maintains a panel of advocates who have signified that they are prepared to act for persons who are given Legal aid in respect of any proceedings and who are prepared to give advice and assistance to any person.

Advocates who wish to be a member of the panel may apply to the Certifying Officer.

The Chief Registrar maintains the list of Advocates who for the time being are members of the panel and a copy is kept at the General Registry/Legal Aid Office and made available for inspection by any person free of charge. There is no obligation for an Advocate on the panel to accept any particular case.

An Advocate may resign from the panel by giving notice in writing to the Chief Registrar and, having given notice, shall cease to be a member of the panel when he has disposed of all cases in which he was, at the time of giving the notice, providing legal aid or advice and assistance and may not give legal aid or advice and assistance in any other case.

2.2.1 Removal from the panel:

An Advocate may be removed from the panel by the Legal Aid Committee following a reference by the Certifying Officer. The Legal Aid Committee will not remove an Advocate from the Panel without giving the Advocate concerned an opportunity of appearing before it and hearing any representations made.

2.3 Quality Standards

Throughout the provision of Legal Aid there is an expectation that the service will be delivered to a high standard of professionalism presented with the most effective use of limited resources presenting value for tax payer's money.

Every effort should be made to make full and expeditious use of established methods of alternative dispute resolution.

Mediation should always be a cost effective remedy to be considered when appropriate.

Advocates should be continuously mindful of avoiding delay and ensuring wherever possible a swift and successful outcome for the assisted person.

The standard of service delivery has to be kept under constant review and the extent of work provided should equate to that which could be expected in respect of a prudent fee paying client of modest means.

Legal Aid monitors the quality of service delivery through regular file reviews and case management meetings.

On review and at case management meetings Advocates will need to demonstrate that the standard of service delivery is consistently and cost effectively maintained and that they are regularly reporting to the Certifying Officer on the progress of the case.

2.4 Case Management

Nothing in this section undermines or interferes with the relationship between Advocate and Legally assisted Client.

When a Legal Aid Certificate is in place the work is carried out within a regulatory framework. This can mean that the scope of work may be curtailed, the hours limited and timescale defined. The objective is to ensure the efficient and cost effective delivery of the service. Case management aims to avoid the escalation of a dispute, to utilise cost effective alternative dispute resolution wherever possible and to curtail excessive time and expense.

2.4.1 The duties and responsibilities of Advocates working under a Legal Aid Certificate

Advocates are encouraged to fully consider the Legal Aid legislation set out in the appendix and should be particularly aware of some of the provisions set out in the Legal Aid (General) Regulations 1997.

Where a legal aid certificate is in place:

It is the **duty** of the Advocate:

- 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.

No Advocate acting for an assisted person shall entrust the conduct of any part of the case to another person save to an Advocate who is a member of the panel although this does not prevent an Advocate acting for an assisted person from entrusting a formal appearance before Court to another Advocate who is not a member of the panel.

An Advocate shall give the Certifying Officer such information regarding the progress of proceedings to which the legal aid certificate relates as the Certifying Officer may from time to time require for the purpose of discharging his function under the regulations.

No Advocate shall 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 his functions.

An Advocate **shall** report forthwith to the Certifying officer either upon the completion of the case or if for any reason he has been unable to do so.

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 the circumstances to the Certifying officer if:

- a) A legal aid certificate has been issued in connection with any proceedings and
- b) At the conclusion of the proceedings it might reasonably be expected that the court would, on an application for the purpose, make an order for costs in favour of the assisted person

and the Advocate **must** make the application.

Advocates have considerable responsibility in respect of advising the assisted person as to the operation and effect of the Statutory Charge which is explained in more detail at paragraph 4.2.10. The primary position is that the Certifying Officer needs to be satisfied that Legal Aid money is being used for proper purposes and spent in a cost effective manner. The Certifying Officer also needs to be satisfied that the merits tests continue to be met.

The Certifying Officer is entitled to receive reports from Advocates in the various circumstances so that a decision can be made as to whether or not Legal Aid should continue.

2.4.2 When should an Advocate consider a report to Legal Aid?

The main circumstances in which a report to the Certifying Officer becomes necessary are:

- a) suspected abuse of Legal Aid by the assisted person
- b) to give reasons why the Advocate is refusing to act or giving up a case or is having doubts about whether he/she should continue to act
- c) where the assisted person no longer has reasonable grounds for being involved in the proceedings
- d) where the Certifying Officer has called for information about the conduct of proceedings
- e) if the assisted person has declined to accept a reasonable offer of settlement or a sum paid into Court, or where the nominated Advocate has reason to believe that the assisted person has required his or her case to be conducted unreasonably so as to incur an unjustified expense to Legal Aid.
- f) if the assisted person has died, otherwise become incapacitated, changed address or there has been a substantial change in their circumstances
- g) work under the certificate has been completed or cannot be completed for some reason
- h) where property is recovered or preserved by someone who has or had a Legal Aid Certificate in the proceedings

2.4.3 Monitoring by the Certifying Officer

Advocates should be aware that the Certifying Officer monitors the progress of Legal Aid cases and aims to ensure that the priorities set out by the Committee are met. In particular, case management is intended to streamline, simplify and improve efficiency so that the delivery of the service fully meets the expectation of the community that it serves. Wherever possible, case management is intended to run in tandem with the rapid resolution of disputes through ADR and the programming of cases through Court directions.

Advocates are expected to adopt efficient timetabling, fully utilise all modern means of communication with their opponents and others and be proactive with ADR. Unless there are very good reasons for not doing so there is an expectation that all Court directions will be met. Files which are inactive for any unreasonable period will trigger immediate case management. It is important to note that case management is primarily about the efficient and cost effective delivery of Legal Aid on behalf of the public purse. Whilst the Certifying Officer may prompt or only approve a particular course of action 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. A case management meeting may be called for the purpose of ensuring quicker progress of complex cases or where both sides are legally aided.

2.5 Policy

This handbook now incorporates all current and relevant historic policy determined by the Legal Aid Office in conjunction with the Committee. Policy was previously communicated in Panel Letters. Future changes in policy will be notified to Panel Advocates in the form of replacement/additional pages to this book.

Significant decisions of the Legal Aid Appeals Tribunal will be notified to Panel Advocates by additional pages to be inserted in the appendix.

2.6 COMPLAINTS

2.6.1 COMPLAINTS AGAINST THE CERTIFYING OFFICERS

Legal Aid Certifying Officer and Deputy Legal Aid Certifying Officer

Complaints Handling Policy

The Legal Aid Certifying Officers are committed to providing a high-quality service administering Legal Aid. When something goes wrong, we would like you to tell us about it. This will help those who administer Legal Aid and the Legal Aid Committee ("LAC") to improve standards and service delivery.

Please note that this policy is not applicable in relation to any decision for which there is a legislative right of appeal to the Legal Aid Appeals Tribunal. In those circumstances you should send notice of your appeal to The Clerk to the Legal Aid Appeal Tribunal, Isle of Man Courts of Justice, Deemsters' Walk, Bucks Road, Douglas, IM1 3AR. <http://www.gov.im/registries/tribunals>

This policy is also not applicable in relation to decisions made by the Legal Aid Office in relation to financial eligibility for civil legal aid. Please refer to the separate guidance document entitled "A Guide to Civil Legal Aid in the Isle of Man" for further information on how to seek a review of such decisions.

2.6.2 MAKING A COMPLAINT

1. If you have a complaint, please provide the details in writing (either by post or in electronic format) to The Legal Aid Certifying Officer, Isle of Man Courts of Justice, Deemsters Walk, Bucks Road, Douglas, IM1 3AR. <http://www.gov.im/registries/Legal>
2. You should provide copies of any supporting documents. You should keep copies of any documents, letter or e-mail you send.
3. You will receive a letter or e-mail acknowledging your complaint within 7 days of its receipt, a copy of this policy will be enclosed.

2.6.3 Internal Review

1. If the complaint is about a Certifying Officer personally, the officer complained about will review it initially to try and resolve it with you. This will normally involve reviewing your file, taking into account the facts set out in your complaint and any supporting documents you submit.
2. You will receive a response within 10 days setting out the details of the review and any proposals to resolve your complaint. If these are acceptable to you, that will end the matter. If you are dissatisfied with the response, you will have 10 days to request a meeting.
3. If you request a meeting, you will be invited to meet with the Certifying Officer to discuss, and hopefully, resolve, your complaint. You will be sent an invitation within 7 days of receiving your request; any subsequent meeting will take place within 10 days.
4. Within 7 days of the meeting, you will receive correspondence confirming what took place and what solutions, if any, were agreed with you. You will be advised of any right of appeal for external review by the LAC.
5. If it is not possible to hold a meeting, you may request in writing that the initial response is reconsidered, setting out any additional grounds together with your reasons for not accepting the response and its proposals. Within 14 days of receipt of your request for reconsideration, you will be sent a detailed written reply to your complaint, including any further views and proposals or suggestions for resolving the matter. You will be advised of any right of appeal for external review by the LAC.
6. You will be informed if any of the above timescales cannot be met along with the reasons why. Equally, if you need longer to comply with any of the above timescales, please let us know.

2.6.4 External Review

1. If you are not satisfied with the internal review and its outcome, then after, and only after, it has been exhausted you may seek an external review by the LAC. This right should be exercised within 28 days of the final notification of the outcome of the review of your complaint.
2. In such circumstances you should submit your request in writing and address it to The Secretary, Legal Aid Committee, Deemsters' Walk, Bucks Road, Douglas.
<http://www.gov.im/registries/Legal>
3. Your request for a review should set out what your complaint is and why you are dissatisfied with the proposed resolution. Again you should provide copies of any supporting documents. You should keep copies of any document, letter or e-mail you send.
4. The Secretary will forward your complaint to the Chairman or Vice Chairman of the LAC within 14 days and will acknowledge receipt of your complaint.

- 5 The Chairman, or Vice Chairman, as appropriate, will ask two other members of the LAC, and, if appropriate, an external support officer, to join with them on a sub-committee in reviewing your complaint and its handling by the Certifying Officer. The sub-committee will meet within 14 days.
- 6 Ordinarily, the review will be conducted wholly on the papers submitted. In exceptional circumstances the sub-committee may ask you for written clarification or to meet with you or the Certifying Officer about whom you have complained. In those circumstances you will be advised and a timetable set.
- 7 At the end of the review by the sub-committee their findings and any recommendations will be put in front of the LAC in the form of a written report for ratification at its next sitting. You will be provided with a copy of that report and given the opportunity to put in a short submission to the LAC, if you disagree with the findings or recommendations.
- 8 The decision of the LAC shall be final. You will be notified of its decision within 7 days. No appeal shall lie from that decision and no correspondence will be entered into by the LAC with you other than notification of the outcome.

2.6.5 Complaints with regard to Assisted Persons

1. Complaints should be in writing and addressed to the Certifying Officer
2. The complainant should state the full details and relevant Legal Aid reference number (if known) of the person subject of the complaint.
3. The complaint should be accompanied by all relevant evidence that the Certifying Officer is required to consider.
4. On receipt, each complaint will be allocated a reference number which should be used in all future correspondence and which separates the correspondence concerning the complaint from the day to day matters concerning the individual file.
5. Complainants will receive an acknowledgement from the Certifying Officer indicating that the complaint will be copied to the assisted person and their Advocate and comment is invited. Consent will be requested from the complainant to this course of action.
6. Unless there are exceptional circumstances, the identity of the complainant is disclosed in all cases.
7. Section 14 of the Legal aid Act 1986 prevents the Certifying Officer from giving the precise details of the response to a complaint from the assisted person or their Advocate but does not prevent the Certifying Officer from indicating to a complainant that the response was adequate or not nor from indicating any further action that might be taken in respect of the complaint.

8. A complaint is usually discharged if:
 - a. the complainant retracts or abandons same
 - b. an adequate response is received from the assisted person
 - c. the Certificate is discharged or revoked
 - d. the matter is otherwise settled by negotiation

9. Advocates will be aware that any party to the proceedings can now appeal the grant of a Legal Aid Certificate by applying to the Legal Aid Appeals Tribunal

PART 3 SCOPE OF SERVICES

3.1. Legal Advice and Assistance – The Green Form Scheme

This covers any 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) have regard to the application of Manx law to those circumstances,

and applies to any assistance given by an Advocate to any person taking any such steps as are mentioned in paragraph (b) whether the assistance is given by taking any such steps on his behalf or by assisting him in taking them on his own behalf. It is limited to three hours work for all matters except divorce, in which case the maximum is four hours. It excludes conveyancing work and advice to companies.

The Green Form Scheme cannot be used for work already covered by a Legal Aid Certificate.

The Green Form Scheme is discussed in more detail at paragraph 4.1.

3.2. Civil Legal Aid

Civil Legal Aid is a scheme to enable representation by an Advocate in Court proceedings. The proceedings for which Civil Legal Aid are available are specified in Part 1 Schedule 1 of the Legal Aid Act 1986.

As a guide:

Primarily, Civil Legal Aid is available for all proceedings in the High Court such as personal injury, possession proceedings, family matters, breach of contract etc.

Civil Legal Aid is also available for certain other types of proceedings such as Inquests, Mental Health Tribunals, Advocates Disciplinary proceedings and Isle of Man Date Protection Tribunals.

Civil Legal Aid is also available for domestic proceedings in the Summary Court and may be available for variation and enforcement proceedings (provided that an order is produced signifying that the Summary Court does consider same to fall within the description of "Domestic proceedings").

Civil Legal Aid is not available for defamation proceedings or for small claims arbitration matters but there is a limited concession to this in respect of personal injury cases that are referred to small claims arbitration.

Civil Legal Aid is not available for the progression of an uncontested divorce application but is available to deal with such things as ancillary matters, contact, residence etc. which are dealt with after the provisional divorce order has been granted and for these matters it is essential that a copy of the provisional divorce order is presented with the application.

Civil Legal Aid cannot be granted in the Isle of Man in relation to proceedings which are taking place in another jurisdiction but is available to applicants who live outside the Isle of Man if the proceedings take place in the Isle of Man.

The contact details for the Legal Aid Authorities in adjacent jurisdictions are as follows:

| | | |
|---------------------|---|--|
| England and Wales | : | Legal Services Commission Web: www.legalservices.gov.uk Tel: 0300 200 20 20 |
| Scotland: | | Scottish Legal Aid Board Web www.slab.org.uk Email general@slab.org.uk Tel: 0131 226 7061 |
| Northern Ireland | | Northern Ireland Legal Services Commission Web: www.nilsc.org.uk Tel: 028 9040 8888 |
| Republic of Ireland | | Republic of Ireland Legal Aid Board Web: www.legalaidboard.ie Email: info@legalaidboard.ie Tel: 066 947 1000 |
| Guernsey | | Guernsey Legal Aid Service Email: legalaid@gov.gg Tel: 01481 747530 |
| Jersey | | Jersey Legal Aid Service Email: acting.batonnier@ogier.com Tel: 0845 800 1066 |

Civil Legal Aid consists of representation by an Advocate and shall usually include 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.

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

Civil Legal Aid is discussed in more detail at paragraph 4.2.

3.3 Criminal Legal Aid

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 free legal aid in the preparation and conduct of his case in the proceedings.
2. That the applicant's means are insufficient to enable him to meet the costs which he may incur in the proceedings.

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

Criminal Legal Aid is discussed in more detail at paragraph 4.3.

3.4 The Duty Advocate Schemes

There are two separate schemes which cover:

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

The Duty Advocate Schemes are discussed in more detail at paragraph 4.3.2.

PART 4 MAKING AN APPLICATION

4.1 LEGAL ADVICE AND ASSISTANCE – GREEN FORM SCHEME

This scheme is governed by Sections 7-11 of the Legal Aid Act 1986 and the Legal Advice and Assistance Regulations 1997 which are located at Appendix 1.

4.1.1 What does Legal Advice and Assistance cover?

- The Green Form Scheme enables an Advocate to give initial advice on almost every aspect of Manx Law.
- Matters that are excluded include dealing with property transactions and matters on behalf of a business or company.
- Advice and assistance cannot be given for the same matter by more than one Advocate within a period of 6 months without the prior authority of the Legal Aid Certifying Officer.

4.1.2 General Criteria

The application form should be completed in the presence of an Advocate unless the Certifying Officer authorises otherwise.

It is the responsibility of the Advocate to establish that the applicant is financially eligible. The method of assessment is that used by the DHSS for assessing Employed Persons Allowance (EPA).

It is requested that Advocates in whose presence a Green Form is signed should:

1. Specify as a separate item whether or not the client obtains Child Benefit.
2. Clarify whether or not the amount claimed as rent is a sum purely for rental for a property or whether or not it includes elements of board and lodgings or payment of heating or electricity.
3. Ensure all sections of the form have been completed.
4. Ensure that the information is in the correct section of the form. Where there is more than one separate matter, each one must be subject of a separate application, apart from those dealing with matrimonial proceedings.

An Advocate cannot carry out any work until the application form has been completed and signed by the Applicant in their presence.

An Advocate cannot carry out any work until the application form has been completed and signed by the Applicant in their presence.

A form may be posted to a non-Isle of Man resident for completion but requires the permission of the Legal Aid Certifying Officer.

An Advocate can only provide advice and assistance under the scheme if their name is included in the Legal Aid Panel of Advocates. A copy of the list is available from the Legal Aid office.

An Advocate can refuse to accept an application if they think it is right to do so. They do not have to disclose their reason but must do so to the Legal Aid Certifying Officer.

4.1.3 Green form and prison visits

Problems have arisen with the location of the Prison at Jurby in respect of Advocates advising clients under Green Form Scheme when the client cannot find anyone who would or could attend at the Advocate's office in order to sign the form on the client's behalf.

A concession stands at the present time whereby the Certifying Officer has agreed that Advocates may send a Green Form by post to the client for completion, date and return. Upon receipt of the completed signed and dated Green Form the Advocate may travel to the Prison to advise and assist the client.

Advocates should note:

1. Only one return journey to Jurby will be paid by Legal Aid
2. All other communications will be by letter or the video link at the Courthouse.

This is a concession only and has not been extended to clients who are housebound, in patients at hospital or residing in retirement homes. In this case, provided the client is eligible, payment will be made for the return journey to the Advocates office but not the outward journey ie before it was known whether the client was eligible or not.

4.1.4 How an individual should apply

A copy of the application form is at appendix A. Generally clients should call at the Advocates office. The application form can only otherwise be sent out in the post with the consent of the Certifying Officer and this is usually only given in cases of extreme difficulty or because of age or infirmity. The Advocate being asked to provide the advice will first ask about the client's capital and income and whether the client has had previous advice and assistance.

The relevant financial information must be provided at the same time as the completion, including signing and dating of the form. It is for the Advocate to calculate eligibility and there is an on-line calculator which may assist with this. The Advocate should then complete the form and if the client wishes the Advocate to advise, the client should then sign the form. Only at that stage can the Advocate start to give advice and assistance under the scheme.

In the past, some Advocates have not had their clients sign a Green Form at the initial interview and have written to them some months later asking the client to complete and return the Green Form to their office.

This practice is not acceptable and will leave the Advocate concerned liable to their claim for payment being rejected. The situation is addressed by the Legal Advice and Assistance Regulations 1997:-

- Regulation 3(1) states that an application for advice and assistance should be made by a client in person to an Advocate unless regulation 4 or 7 applies

- Regulation 4(1) states that if a client cannot attend for good reason he or she may authorise another person to attend upon the Advocate on his or her behalf
- Regulation 7(1) states that where a client resides outside the island the Chief Registrar may give the Advocate prior authority to accept a postal application for advice and assistance if he is satisfied that it is reasonable in the circumstances to do so

Accordingly, if a client resides on the Isle of Man, the Green Form must be completed and signed at an Advocate's office unless Regulation 4(1) applies

4.1.5 Scope of the scheme and extensions

The Legal Aid office has received an increasing number of applications for extension to the financial limits of Green Form where it is becoming difficult to ascertain the amount of work which has already been carried out and, as a result, the new financial limit being sought.

On many occasions no details have been given and this is not acceptable. Advocates should please note the time limits:

- 4 hours in a case where a divorce application is lodged
- 3 hours in every other matter
- The objective should be to carry out the work within the normal time limit
- A maximum of 6 extra hours may be given. The maximum hours under the Green Form can therefore extend to 10 hours if a Divorce Application is lodged and 9 hours in every other matter.
- Extensions to the maximum periods should normally only occur in exceptional circumstances for the purposes of bringing the matter to a satisfactory conclusion.

When making an application for an extension to Green Form the proper application form should be used and fully completed. These forms are available from the Legal Aid Office and a copy is in the appendix. When filing the application form for an extension please confirm that your client remains financially eligible.

4.1.6 Financial means test and qualifying criteria

The criteria for financial eligibility are laid down in the Legal Aid (Advice and Assistance) Regulations 1997 (as amended) – A copy of these regulations can be found in the appendix.

Regulation 5 of the Legal Advice and Assistance Regulations 1997, as amended, sets out how the financial determination should be undertaken by the Advocate. In some instances Advocates have simply accepted their client's statement that they were in receipt of qualifying benefit without obtaining documentary proof.

When making the initial appointment, Advocates should ensure that the client brings with them to the appointment the following evidence:

1. A copy of the current remittance evidence of state benefit
2. Copy of wages slips
3. Rent Book
4. Copy of a letter in respect of mortgage interest

5. Evidence of bank balances
6. Evidence of rates payable

The correct housing cost should be used. Advocates should not automatically use the maximum allowance if it exceeds the amount being paid by the assisted person

If the Green Form has not been completed correctly and in accordance with Regulation 5 the Legal Aid office will not make a payment to the Advocate.

If the client has been "economic with the truth" in respect of financial information the matter will be taken seriously and the police may be called in to assist in establishing whether an offence has been committed in the process.

In summary:

In order to be eligible to receive advice and assistance under the Scheme the applicant must be:

1. Over 16 years of age
2. Assessed by the Advocate as financially eligible

Proof of receipt of one of the following Isle of Man DHSC benefits provides automatic entitlement to receive free advice and assistance under the Scheme:

1. Employed Person's Allowance
2. Income Support
3. Income based Job Seekers Allowance

If there is no proof of the receipt of an automatically qualifying benefit the Advocate will then have to seek details of income and expenditure inclusive of husband, wife partner or cohabitee (if applicable) in order to calculate net resources.

Proof of income e.g. bank statement, pay slips, rent book etc. will be necessary for the calculation to be made.

The Advocate will then have to calculate the prescribed amount (depending on the circumstances of the Applicant) and then deduct the figure from the Applicant's income

An on line calculator is provided on our website to assist with the calculation

The following will be included when determining income:

- Applicant's normal wages (before deductions)
- Partner's normal wages (before deductions)
- National Insurance Contributions, Income Tax and 50% of pension scheme contributions are disregarded
- Benefits (Child benefit, Disability Living allowance, Attendance Allowance and War Disablement Pension are not taken into account)
- Private pensions

- Income from tenants
- War Widows Pension (some of this is disregarded contact Legal Aid Office for details)
- Maintenance Payments including money paid in lieu of maintenance
- Value of goods or services received in lieu of wages
- Any savings/capital over £13,000
- No account is taken of the value of any interest the Applicants has in the main and only dwelling in which the Applicant resides
- For every complete sum of £250 over £13,000 £1 is added to income
- The apportioned value of the subject matter of any claim will be left out of the calculation up to a maximum £100,000 or £250,000 if the disputed item is the normal place of residence

If net resources are greater than zero but less than £80.00 per week then the Applicant will qualify to receive Legal Advice and Assistance but will be required to make a contribution towards the cost.

The following table may be used to determine the contribution:

| Net resources (per week) | | Amount of contribution |
|--------------------------|---------|------------------------|
| Minimum | Maximum | |
| £0.01 | £10.00 | £5.00 |
| £10.01 | £20.00 | £10.00 |
| £20.01 | £40.00 | £20.00 |
| £40.01 | £80.00 | £40.00 |
| £80.01 | or more | Ineligible |

4.1.7 Claims for payment

When the work under the scheme is complete an Advocate may submit a bill for payment. The claim for payment can be submitted without the file in the first instance and the Legal Aid Office will call for the delivery of the file if it is required so that the bill can be assessed. Files should, wherever possible, be delivered on the requested date. The Legal Aid office handles large quantities of files which are processed for assessment. Experience has shown that files being delivered too early or too late result in the greatest delay and inconvenience. Owing to limited storage space Advocates are frequently finding that early delivery of files has to be refused which results in the time spent on delivery of same being wasted. Likewise, late delivery of files may result in the bill missing inclusion in a current batch of assessments and thereafter missing prompt payment as a result.

If an Advocate is dissatisfied with any decision on assessment he may within 21 days of the date of the written notification make written representations to the Certifying Officer who will review the assessment of the bill.

The following are examples of the problems that have caused difficulties on review and which should be avoided:

1. Forms not signed
2. Client seen and advice given before financial eligibility established and details of income inserted after the work has been carried out

3. Client seen on basis of qualifying benefit but no proof of benefit obtained
4. Proof of benefit only obtained a year after work completed
5. Retrospective use of an extension of time
6. Extension sought but financial eligibility no longer applicable
7. Forms not properly completed or illegible
8. Extensions and payments not clearly stated
9. Duplication of payment request when payment already made on an earlier date
10. Obscure extension/approval with no written confirmation

It has frequently been the case that further information has had to be requested from the Advocate but the response has on occasions taken many months. From the date of issue of this handbook all requests for further information arising out an assessment review will require a response within 28 days failing which the claim for payment or the request for a review will be considered to have been abandoned by the Advocate concerned.

4.1.8 Court filing fees within the scope of the scheme

Where a Divorce application is filed and upon completion the Advocate can claim:

1. To the usual maximum of 4 hours unless extensions have been given which includes disbursements
2. The Court filing fee for the Divorce
3. Any other Court fee which has been authorised by the Certifying Officer in respect of instituting proceedings and
4. VAT which is not included in the Green Form financial limited

In respect of a Green Form for all other matters the nominated Advocate may claim

1. To the usual maximum of 3 hours unless extensions have been given which includes disbursements
2. Any specifically authorised court fee (as being outside the normal Green Form financial limits) in respect of instituting proceedings
3. VAT which is not included in the Green Form financial limits

4.2 CIVIL LEGAL AID

Civil Legal Aid provides representation for specific proceedings and is available to any person whose financial resources make him/her eligible, subject to such person satisfying the Certifying Officer that he/she has 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 which are located at Part 6

4.2.1 What does Legal Aid cover?

The proceedings for which Legal Aid may be given are set out in Schedule 1 of the Legal Aid Act 1986:

1. Proceedings in:
 - a. the Judicial Committee of the Privy Council in its jurisdiction in relation to appeals from courts in the Island
 - b. the High Court
2. Domestic proceedings within the meaning of Part V of the Summary Jurisdiction Act 1989 in a Summary Court
3. Proceedings in a Summary Court under Part 4 or 5 of the Children and Young Persons Act 2001
4. Proceedings in an inquest under the Coroner of Inquests Act, 1987
5. Proceedings before the Mental Health Tribunal:
6. Proceedings before the Advocates Disciplinary Tribunal
7. Proceedings before the Isle of Man Data Protection Tribunal
8. Proceedings before the Financial Services Tribunal
9. Proceedings before the Retirement Benefits Schemes Tribunal
10. Proceedings before the Collective Investment Schemes Tribunal

4.2.1.1 The scope of Legal Aid for mediation

Legal Aid is also available for mediation following the Legal Aid (Amendment) Act 2012

The assistance given consists of representation by an Advocate and 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

4.2.1.2 Guidance in respect of Appeals to the Mental Health Tribunal

An application for Legal Aid is made by virtue of Paragraph 5 of Part 1 of Schedule 1 of the Legal Aid Act 1986

There may be little time between an Advocate interviewing the client and an appearance before the Tribunal.

If an Advocate is prepared to act then, prior to seeing the client, contact should be made with the Certifying Officer on 685977.

When seeking authority please provide details of the client's name and date of birth together with the time and date of the Tribunal hearing.

Authority to obtain your client's instructions and to appear at the Tribunal will be given but a Legal Aid Certificate will not be issued until the Certifying Officer has received an application form completed and signed by both the client or Next friend and the Nominated Advocate. The application should also include an application for an emergency certificate

Under Regulation 6(2) of the Legal Aid (General) Regulations 1997 the Certifying Officer will not issue a Legal Aid Certificate unless the person making the application on behalf of the

assisted persons signs an undertaking to pay any contribution which the assisted person is liable to pay.

By virtue of Regulation 6(5) the Certifying Officer may waive the requirement.

If it is not possible for the application to be signed by the Receiver or Next Friend and it has been signed instead by an Advocate or a member of the medical staff or a social worker, then, in those latter circumstances, the Certifying Officer will waive the need for an undertaking to be signed by the Advocate, member of medical staff or social worker.

4.2.2 What Legal Aid does not cover

The Legal aid Act 1986 specifically excludes the following proceedings

1. Proceedings wholly or partly in respect of defamation
2. Relator actions
3. Proceedings for the recovery of a penalty where the proceedings may be taken by any person and the whole or part of the penalty is payable to the persons taking the proceedings
4. Election Petitions under Part 111 of the Representation of the People Act 1995
5. Proceedings incidental to those above

4.2.3 How to deal with matters not listed in the statutory provisions

The primary position is that Civil Legal Aid is governed by statute. Unless the application comes within the statutory provisions Civil Legal Aid will not be available. However, where Civil Legal Aid is not available limited advice and assistance may still be given under the Legal Advice and Assistance "Green Form" the following are some examples:

1. undefended divorce or judicial separation
2. Small Claims Arbitration (Concession in respect of personal injury and small claims)

In personal injury matters that are, or may prove to be appropriate for Small Claims Arbitration, it is usual for any Legal Aid Certificate to carry a limitation, excluding such part of the proceedings as may be referred to arbitration. The authority for this limitation is a decision of the Legal aid Committee reported at 4MLB 13. Use of this limitation does not act as a direction to the Advocate that the claim ought to go to Small Claims Arbitration and it only takes effect if there is in fact a reference to arbitration.

Where the Arbitrator gives leave for the parties to be legally represented the limitation will be removed at the Advocate's request.

The following steps, whether taking place before or after a reference to arbitration are considered to be within the scope of the limitation:

- a. Filing an answer
- b. Steps to negotiate a settlement of the claim
- c. In an appropriate case, applying by letter to the Arbitrator for leave for the parties to be legally represented.

If an advocate wishes to take any additional steps after reference to arbitration, an application for an amendment to the certificate should be made in the normal way

3. Employment Tribunal
4. Work Permits
5. Planning Law
6. Rent and Rates Tribunal

The Certifying Officer should be consulted as to the extent of Green Form as the work usually only amounts to advice, drafting and preparation for a hearing. In particular, Green Form should not be used to circumvent the fact that Legal Aid is not available. Green Form does not include paying Court Fees.

4.2.4 THE APPLICATION FORM FOR CIVIL LEGAL AID

A copy of the application form is in appendix 2

Generally every application for Civil Legal Aid must contain the necessary information and be accompanied by the necessary documents to enable:

1. The Certifying Officer to determine the nature of the proceedings in relation to which the Applicant is seeking Legal Aid and the circumstances in which it is required.
2. The Certifying Officer to decide whether it is reasonable that a certificate should be granted
3. The Legal Aid Office to determine financial eligibility

From the date that this handbook becomes effective, forms that are not properly completed will be routinely returned to the Advocate with a pro forma indicating the nature of the problem.. Forms which are correctly completed but do not provide sufficient information to satisfy the merits test will have to be refused. Considerable care should therefore be taken to complete the forms properly and provide the necessary information.

4.2.5 COMPLETION OF THE FORM:

This section takes you through the proper completion of the form as follows:

Part 1 General

The correct choice of court

The first two boxes require the Advocate to decide whether the matter is High Court or Summary Court. The common failure to complete this section is usually the cause of initial delay and the incorrect choice of Court can result in the wrong certificate being issued and having to be changed at a later date.

The details of the applicant

The next section requires the full details of the applicant. Most frequently missed items are the postcode for addresses the absence of which delays subsequent correspondence

Social Security benefits

The Social Security reference number is required to check the receipt of qualifying benefit

Contact telephone numbers

Landline telephone numbers are frequently all that is provided but a mobile number should be included.

Correct date of birth

The date of birth is essential both for establishing the age of the Applicant and to provide clarity between individuals of similar names.

Case details – what are you applying for?

The next section concerns the case details and the first box is frequently left blank. Do please consider what the proceedings are about, what the Applicant is proposing to issue and the statutory matrix involved. All parts of the section do need to be completed.

Have you tried to settle the matter yet?

The next section concerns the attempts to settle/resolve the dispute. Applicants will be expected to provide much more information in the future in this respect including sight of other files where a matter has been litigated more than once or the matter has been protracted.

A very clear explanation should be given as to why there have been no attempts to negotiate and why the Applicant has not considered mediation. It is generally insufficient just to say that a letter has gone unanswered. Where there are Advocates instructed on both sides it is not unreasonable to expect that a telephone call between Advocates will have taken place. Before this section is completed it will be anticipated that the options of mediation will have been discussed with the Applicant.

Details of the Advocate carrying out the work

The section concerning the details of the Advocate is frequently not completed and in particular whether the Advocate has consented to represent the Applicant. It is worth noting that, when an Advocate consents to represent a client, the consent implies that the Advocate has the necessary expertise in the subject matter to conduct the proceedings on behalf of the client. This avoids the need to transfer the matter at a later date if the Advocate then states he/she does not have the necessary expertise.

What documents are you going to send in to support the application?

The supply of enclosures is another area that is frequently not completed. Applications for Legal Aid should be supported with sufficient documents to enable the matter to pass the merits test and to supply the Certifying Officer with any document that is particularly relevant to the application. The most commonly missed items are:

- Paternity statement
- Section 28 Summary Jurisdiction Act Order that the proceedings are classed as "Domestic Proceedings"
- Provisional Order of Divorce
- Copy of the original order when seeking a variation

Has Legal Aid already assisted this person before?

Details of previous applications ensure that Legal aid is fully apprised of the history surrounding the case or the history of the Applicant. It is essential that this section is completed accurately.

Can or should someone else fund the work?

The section concerning Financial and other rights available to the Applicant is frequently marked "No" but Applicants are sometimes unaware that many domestic insurance policies include cover for legal claims and access to legal advice call centres.

Who is the opponent and who represents them ?

Details of the opponent are frequently left blank but are an essential part of the form and the information is clearly necessary for proceedings to be issued or contemplated. Sometimes the information is not available or requires further research but most frequently part of a name is supplied and the remaining details left blank. Details of the opponent and their Advocate are essential for Legal Aid to be able to send out copies of certificates. If this part of the form is not fully completed the form will be returned and the application will be delayed as a result.

Part 2 Statement of Case

There are notes to this part of the form which assist in how it should be completed. There has been a trend toward three different methods of completing this section:

1. The section is left blank with reference to an accompanying letter
2. The section is fully completed by hand
3. An opportunity is taken to record a witness statement from the Applicant at the same time which stands as the statement of case and provides detailed information as a result

By way of assistance:

1. The method of providing an accompanying letter varies from being so short that no proper details are provided or so long that it takes a long time to extract the details of the case from within other comment in the letter

2. When the statement of case is completed by hand the only usual problem stems from poor and illegible handwriting usually the result of the form being completed too quickly.
3. The method of recording a witness statement provides a good legible statement but sometimes leaves the statement of case with some of the merit not fully explained.

The statement of case should be a concise and detailed account from which the Certifying Officer can establish merits. The Certifying Officer would prefer that the statement of case is type written and in a form of either a letter, separate sheet, witness statement that the Advocate best considers that the merits can be set out.

What is your opinion on the case?

The Opinion of the Advocate has considerable importance but is a section of the form that is frequently left blank and not signed. The questions should be carefully completed and the brief summary of the merits should contain sufficient detail to enable the matter to be rapidly assessed if possible. The prospect of success should, wherever possible, be graded in the following manner:

1. Very good 80% +
2. Good 60-80%
3. Reasonable 50-60%
4. Less than 50%
5. Impossible to say

Cases with prospects of success below 50% can be justifiably refused and should therefore contain some explanation as to why the Advocate considers that the case has merits. This can sometimes relate to the importance the case has to the Applicant or other significant factor in relation to the subject matter. It is very much debatable as to whether an application should routinely be made with prospects of less than 50% chance of success but applications may be considered if there are exceptional circumstances. Advocates should note that estimates expressed at 100% or more in cases that can sometimes take years to complete and then fail can be reasonably open to considerable scrutiny on assessment. Most experienced Advocates can accurately assess the prospects of success and there is an expectation that this will be carefully considered and if the percentage changes that the position will be reported to the Certifying Officer.

How much is it going to cost to run the case?

The costs evaluation is the kind of information that a fee paying client of modest means would take into account when considering the viability of issuing or defending proceedings. The matter may still have merit but the history of expenditure on the case may indicate that a fee paying client of modest means would not take the matter any further or might look at a more cost effective method of dispute resolution. Advocates should be able to provide an accurate estimate of the likely costs to be incurred. As near as possible, and in much the same way as an estimate provided to a fee paying client, an Advocate should endeavour to work within the estimate provided.

Part 3 Financial Resources

This part of the application requires considerable attention because, if it is not fully completed and all the necessary supporting documents supplied, the application will be delayed immediately for a period of at least 14 days whilst the missing information is required.

Failing to provide proper financial information to satisfy the financial eligibility test is the cause of a large percentage of long term delays in the issuing of Legal Aid Certificates it also takes administrative time from staff who might otherwise be engaged on processing payments.

From the date of issue of this manual applications that do not have this part of the form properly completed or the necessary supporting document is absent, the form will be returned to the nominated Advocate with a pro forma note detailing the shortfall and allowing 14 days for the matter to be rectified by the Applicant failing which the application will have to be refused because financial eligibility cannot be established.

In general most applicants successfully complete Sections 1 and 2.

Section 3 is usually devoid of supporting documents such as rent, mortgage etc

Section 4 is usually devoid of wage slips

Section 5 is frequently short of confirmation from the benefits office

Section 6 does frequently need the nominated Advocate to explain to the Applicant the extent of information that has to be given and the supporting documents that should be supplied.

Section 7 is usually short of the required 3 months bank statements and explanation of credits over £50.00. Applicants frequently do not understand what a life interest is and may not understand the concept of a trust fund so this may have to be explained and discussed with them.

Section 8 is usually self-explanatory.

The form has a checklist of evidence in respect of financial eligibility and this should be checked with the Applicant before the application is submitted to ensure that all supporting documents are supplied.

Part 3 A The Statutory Charge

This section consists of notes for the Applicant to read, a declaration for the Applicant to sign and a certificate for the Advocate to complete. The Statutory Charge is covered in more detail at paragraph 4.5.005.

Particular care should be taken to ensure that the Applicant is able to read and that the significance of the statutory charge is properly explained.

Think about what documents need to support the application

In general, the Certifying Officer will expect an Applicant to provide all the information which is relevant to his application. An Advocate helping a person to complete an application form should therefore consider what evidence in support of the case he himself would require before he would be prepared to advise that the proceedings should be taken or defended. It is the type of paperwork that the Applicant may not always bring with them on the first appointment but might be asked to provide in support of the case.

By way of example only, perhaps copies of:

1. Proceedings if already issued – draft if already prepared
2. Relevant correspondence
3. Relevant court orders
4. Relevant witness statement(s)
5. Relevant agreements or other papers
6. Expert reports
7. Other relevant reports
8. Relevant plans, photographs or deeds
9. Police reports

4.2.6 CONSIDERATION OF APPLICATIONS FOR CIVIL LEGAL AID

The applicant must:

1. qualify financially
2. show that he/she has reasonable grounds for taking or defending a court action and that it is reasonable to grant legal aid in the circumstances of the case.

The application will be examined as to financial eligibility and legal merits and in some cases the applicant or the Advocate may be called upon 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.

4.2.7 Criteria considered – Legal Merits

A person shall not be given legal aid in connection with any proceedings unless he shows that he has reasonable grounds for taking, defending or being a party thereto and may also be refused if it appears unreasonable that he should receive it in the particular circumstances of the case.

The assessment of Legal Merits is carried out by the Legal Aid Certifying Officer.

There are two elements to the assessment:

1. Consideration of the relevant facts and law to decide whether legal grounds exist (The legal merits test)
2. Consideration of whether it is reasonable in the particular circumstances of the case (The reasonableness test)

In deciding whether an application ought to be granted the Certifying Officer is entitled to consider what advice would be given to a fee paying client of modest, though not over abundant means.

This does mean that, although there might be merit and even though the Applicant might in fact succeed, the Certifying Officer may normally refuse the application, if, for example there were only a trivial advantage to be gained or the likely cost of taking the proceedings outweighed the potential result. This is because an Advocate would be highly unlikely to advise a fee paying client of modest means to proceed in such circumstances

4.2.8 Legal Merits – Appeal procedure

The Applicant and the Opponent have rights to appeal to the Legal Aid Appeals Tribunal (“the Tribunal”). It is of note that, at Appeals, the most frequent submission by Appellants is new or additional information that was not supplied with the original application. This would tend to suggest that many refusals can be avoided by submitting better or more detailed information with their application.

Copies of the certificates where legal aid is granted are sent to applicant and the opponent

If an application for a certificate is refused a refusal notice will be issued to the applicant

An appeal must be brought in writing within 4 days of receipt of the certificate or refusal notice although the Tribunal has discretion to extend the time limit.

There is no prescribed form for the notice of appeal. Generally, most are made by letter sent to the Clerk of the Tribunal whose contact details are set out at the end of section 1.5 of this manual.

Notice of the appeal should be copied to the Legal Aid Certifying Officer

The Tribunal will set a timetable for submissions and a formal hearing.

Appellants may conduct the Appeal themselves or instruct an Advocate. Legal Aid funding is not available for matters before the Tribunal. Individuals may also be assisted by some other person who they may appoint for the purpose.

The Tribunal can resolve the matter in one of the following ways:

Dismiss the appeal

1. Direct the Certifying Officer to offer a legal aid certificate subject to such terms and conditions, or (as the case may be) to amend the legal aid certificate in such manner as the Tribunal thinks fit

2. Instead of themselves settling such terms and conditions, direct the Certifying Officer to do so
3. Refer the matter or any part of it back to the Certifying Officer for his determination and report

Any decision of the Tribunal with regard to an Appeal is final and a notice of the decision is given to the Appellant, any Advocate acting for him and the Legal Aid Certifying Officer

The Appeal and all matters incidental thereto, must be conducted at the Appellants own expense.

4.2.9 Criteria considered – Financial Means

Details of the financial means test is outlined at 4.1.5

4.2.10 CIVIL LEGAL AID – THE STATUTORY CHARGE

4.2.11 Overview

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

In summary, the regulations make provision for imposing a charge on money or other property recovered or preserved in legal proceedings so that the cost of legal aid can be repaid out of the property. They make the amount of any legal aid, plus interest in certain cases, a first charge on the property in favour of the Treasury and require the assisted person's Advocate to give the Treasury details of the property.

The underlying principle of the Charge is to put the legally assisted person as far as possible in the same position in relation to proceedings 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.

Whilst a statutory charge is a new concept in the Isle of Man applying to all new applications since 1 December 2014 it has operated successfully in Legal Aid systems in other jurisdictions for many years.

The introduction of the Charge should not present as a heavy additional burden on Advocates but more that there is a general awareness of how and when it applies and a concentration on the importance of providing timely and accurate advice.

Since 1 December 2014 Legal Aid forms have included an additional declaration to be signed by the applicant acknowledging reading notes concerning the Charge and confirming that their Advocate has explained the Charge to them. The forms also include a certificate to be signed by the Advocate confirming that the Charge has been explained to the Applicant and that the Advocate has drawn the attention of the Applicant to the notes on the form. These two amendments currently appear as Part 3A to the existing form and care should be taken to

ensure that this part is included with all future applications. A copy of Part 3A is attached at appendix 2.

4.2.12 Additional responsibility

Advocates do now have the additional responsibility of ensuring that the assisted person is kept fully informed about the implications of the Charge throughout the duration of the matter. Likewise, Advocates should be vigilant that property recovered or preserved is not reduced, converted or otherwise lost by the assisted person before or whilst the question of the Charge is being addressed. Particular care should be taken when negotiating settlements. The relevant case is **Manley v The Law Society (1981) 1 WLR 335** .

4.2.13 Additional Duty

A significant amendment to Regulation 15 of the Legal Aid (General) Regulations 1997 creates an additional duty for Advocates the importance of which should not be underestimated. The amendment (newly inserted Section 15(12)) states as follows:

Where in the course or at the conclusion of a relevant dispute or relevant proceedings any property is recovered or preserved by the assisted person, the Advocate must notify the Treasury in writing of the nature, amount and location of the property within 7 days of the relevant decision or agreement.

In other jurisdictions the time limit is forthwith and the reasoning behind this is to avoid the possibility of the recovered property being subsequently lost in relation to the application of the Charge. The obligation to notify within 7 days does not avoid a more express notification if the Advocate considers there is a risk that the property might be lost. Preservation or recovery takes place when the order is made or agreement or compromise is reached.

4.2.14 DOES THE CHARGE APPLY?

The Checklist:

1. Has the assisted person successfully recovered or preserved property of any nature and wherever situated including any sums recovered by an order for costs in proceedings in connection with which Legal Aid has been granted?
2. Calculate the assisted persons costs
3. Account should be made of any contributions to Legal Aid if the assisted person is a contributor
4. There is no short cut to working carefully through the exemptions
5. If no exemption and costs paid by the other side are less than the assisted persons costs then the Charge will apply

4.2.15 EXEMPTIONS FROM THE CHARGE

1. Any periodic payment of maintenance
2. Other than in exceptional circumstances (quantity or value), the assisted persons clothes or household furniture or the tools or implements of his or her trade
3. Any sum or sums under Section 5 of the Inheritance (Provision for Family and Dependents) Act 1982 or Part 5 of the Matrimonial Proceedings Act 2003
4. The first £2,500 of the value of property recovered by:

- a. A Lump sum order made under Section 28(1) or(2) 38(3) 60(1) 64(1) and (5) or 69(2) of the Matrimonial Proceedings Act 2003
 - b. A property adjustment order made under Section 29 of that Act
 - c. An order altering a maintenance agreement under Section 50 of that Act
 - d. An order under Section 128 or 129 (questions as to property of that Act
 - e. An order for payment of a lump sum under Schedule 1 to the Children and Young Persons Act 2001
 - f. An order under Section 2 or 6 of the Inheritance (Provision for Family and Dependants) Act 1982
5. One-half of any redundancy payment (within the meaning of the Redundancy Payments Act 1990) recovered by the assisted person
 6. The assisted person's main or only dwelling
 7. Any sum, payment or benefit which, by virtue of any statutory provision cannot be assigned or charged

4.2.16 How the charge operates when the certificate has been revoked or discharged

It still applies:

The Charge as set out in Section 9A of The Legal Aid (Financial resources) Regulations 1997 applies to any property recovered as a result of the assisted person , or his or her personal representatives or trustee in bankruptcy, continuing to pursue the relevant dispute or take, defend or be a party to the relevant proceedings.

4.2.17 How we would like you to approach a situation where the Charge may arise:

These are new regulations and a new concept. The question as to whether the Charge arises and to what it relates is a matter that has to be clearly defined. As stated above, Advocates have 7 days in which to make a notification. Until everyone is familiar with the operation of the Charge, Advocates are invited, before or during the seven day period, to meet with the Certifying Officer to go through the circumstances and the exemptions so that, as near as possible, the risk of a dispute or errors arising can be minimised. If there is any doubt over how the regulations apply to a particular case then the matter should be addressed with the Certifying Officer as soon as possible.

4.2.18 ENFORCEMENT:

4.2.18 Money

Money, to which the Charge applies, will normally be paid direct to Legal Aid with a clear statement from the Advocate that his/her bill will not exceed the amount paid. If the Legal Aid Costs officer is satisfied that the position is sufficiently safeguarded any balance can then be released to the assisted person.

4.3.18 Property

Treasury may enforce the charge in any manner which would be available to a chargee in respect of a charge given between parties. This may be achieved in the short term as follows:

A caution in favour of the Treasury may be filed with the Land Registry in respect of registered land

A caveat in favour of the Treasury may be recorded against the title in respect of unregistered land

4.2.19 Postponed enforcement

Where the circumstances call for postponed enforcement, the assisted person may be asked to grant an interest bearing charge in favour of the Treasury at 1% above the Bank of England Base Rate. If this occurs, the assisted person may make interim repayment of interest or capital save that no payment of capital shall be made whilst there is still interest remaining unpaid.

4.2.20 CIVIL LEGAL AID – CHECKLIST FOR NEW APPLICATIONS

4.2.21 Overview

Checking work prior to submission against this checklist will help us avoid unnecessary rejects and speed up our turnaround time for processing applications.

4.2.22 Common reasons for rejection/return of applications

1. Forms not signed/dated.
2. Essential enclosures missing e.g. bank statements (covering the correct period) wage slips, statement case.
3. Forms not completed where marked – notably on means assessment forms.
4. Applicant isn't in receipt of the benefit indicated on the form.
5. Insufficient information/evidence to consider merits.

4.2.23 THE CHECKLIST

1. Have all the forms been signed and dated by the Applicant and Advocate?
2. Are the signatures original?
3. Have you submitted Part 3 of the Form?
4. Has the Applicant (and partner if applicable) completed all necessary sections of Part 3 and signed and dated it?
5. Have you submitted the relevant evidence – e.g. 3 months bank statements for each account, wage slips, rent details, evidence of childcare costs?
6. Has the Applicant provided evidence of the benefits they are receiving?
7. Has a statement of case been properly prepared and have supporting documents been included?
8. Have all the details been correctly supplied regarding the Applicant's employment?
9. Is the application missing copies of :
 - a. Proceedings (if applicable)

- b. Relevant correspondence
- c. Relevant Court Orders
- d. Relevant Witness Statement(s)
- e. Relevant agreements or other papers
- f. Expert reports
- g. Other relevant reports
- h. Relevant plans, photographs, deeds etc
- i. Police report (if applicable)

4.2.24 Cases with Borderline prospects of success

A position where there are borderline prospects of success can occur on first submitting the application for Legal Aid or, owing to a change in circumstances, during the progress of the case. The Certifying Officer continues to monitor the merits of the case and will take account of the prospects of success. Advocates should therefore ensure that care is taken with this section of the form on a new application and that the latest information on any changes in the prospects of success are reported to the Certifying Officer as quickly as possible.

In a borderline case the sum involved or the importance the matter has to the claimant is an important consideration. Advocates, advising a fee paying client of modest means are more likely to advise such an individual to take proceedings if the amount at stake is large or the consequences to the individual are of great importance. In the same way therefore it is reasonable for a Certifying Officer to be more ready to resolve an Application in favour of an Applicant where the issues involved are important or the sum concerned is considerable than when the reverse is the case. When the costs of enforcing a right are likely to be high in proportion to the amount involved it may be more reasonable to refuse the application in a doubtful case. The same applies if the issues involved are important but the costs are likewise likely to be high.

If the Certifying Officer does decide to grant a certificate in a borderline case it does not follow that the Applicant will be given a full certificate for the proceedings. It may be that in such a case the Certifying Officer may issue a certificate limited in the first instance to, for example, further investigation of the facts, assembling evidence and obtaining the opinions of experts or taking other necessary preliminary steps. This type of certificate is usually tightly restricted both as to the time allowed and as to the time period in which the work should be accomplished.

When submitting an application where the case is borderline Advocates should be careful to highlight in the statement of case any negative aspect of the case and offer information on how such a negative aspect might be addressed. It is better to highlight a difficulty at the start than to advance to a substantive position in the proceedings and then identify a problem that makes the prospect of success marginal or potentially likely to fail.

In a borderline case it is necessary for the Advocate to explain why, exceptionally, the matter has merit and to put with the application such additional evidence that will assist the Certifying Officer in reaching a decision.

4.2.25 Cases that are genuinely urgent but not an emergency application

There will be instances when a case is genuinely urgent and this should be clearly marked on the form and on the accompanying correspondence. The use of the term urgent on any matter that the applicant simply wishes to prioritise beyond the normal process of applications is to be discouraged.

Wherever possible, genuinely urgent matters and applications for emergency certificates will be processed within a timeframe consistent with the level of urgency set out in the application or the correspondence accompanying it.

Notice of a genuinely urgent matter can be discussed with Legal Aid Administration on 685977

4.2.26 Expert Reports

Please provide the expert's name and details. The area of expertise should be clearly stated and the purpose of the report specified in relation to the proceedings. Care should be taken as to the timing of the report so as to avoid, wherever possible, duplication, unnecessary updates or addendums.

Efforts should be made to obtain three competitive quotes for the services required.

Consideration should be given to local expertise being utilised first. If local expertise is not available or for some reason conflicted then the next steps should be to attempt to locate an expert within a short travelling distance of one of the sea or airports serving the Island and examining the most favourable rates of travel.

If travel is involved it is usually cheaper for the individual to travel to the expert rather than the expert travel to the individual

Costs of travel and hotels will not always be granted particularly if travel and accommodation are not strictly necessary.

Quotes must specify the hourly rates and numbers of hours for each section of the work

Duplication of both work and travel should be avoided wherever possible

The costs of obtaining additional information such as records, valuations, surveys etc. should be provided

In the current economic climate most UK experts are familiar with providing reports for Legal Aid matters and in most instances will offer a competitive rate to secure the work. Every effort should be made to secure favourable quotes. This applies to legal opinions and UK Counsel attending Manx Courts. The expectation is that, unless there is an exceptional area of specialist expertise involved, hourly rates will not exceed those of a Senior Advocate conducting Legal Aid work in the Isle of Man

Travel may, in some instances, be limited to the cost of an air fare, placing the expert with the same residual costs that he would have if working in his own area.

Some Advocates have secured favourable rates and also combined several matters with one expert. Where this has occurred, the expert has secured more work, the individual cases have been processed quicker and there has been an overall saving to Legal Aid. Consideration should therefore be given to obtaining quotes from experts who frequently serve the Isle of Man and adopting flexibility to enable the expert to deal with more than one matter on the Island at the same time. The Legal Aid Office is in the ongoing process of compiling a panel of such experts.

To avoid the situation of the "show cause" procedure being invoked unnecessarily please ensure that a copy of the Court Welfare officer's report and any comment on same is submitted to the Certifying Officer promptly and in any event with sufficient time to consider merits before an anticipated substantive hearing.

When seeking authorisation to incur a disbursement in respect of the fee for the preparation of a medico legal report please submit with the details of the expert's fees an undertaking signed by the expert indicating that they will complete the final report and attend Court if necessary. This is to avoid losses to Legal Aid when a report is commissioned and paid for and the expert then declines to prepare a final report and has to be replaced.

4.2.27 INFORMATION SUBMITTED TO LEGAL AID – COMMON ERRORS

The Legal Aid office processes a large volume of information in respect of an increasing number of matters with limited spare capacity to compensate for shortfalls in the standard of information submitted. Each shortfall generates unnecessary extra correspondence and loss of administrative time. This significantly slows down response and turnaround times and the quality of service as a result. Advocates are requested to use the correct forms, when applicable, and to complete them properly. Care is also needed in a limited number of cases with correspondence so that it is both factual and concise. Experience has demonstrated that forms and correspondence completed quickly and badly do result in substantial and unnecessary delays and a considerable loss of administrative time to the Legal Aid office. It may also result in duplication of work which may then not be paid on assessment.

EXAMPLES OF ISSUES WHICH NEED TO BE ADDRESSED BEFORE FORMS ARE SUBMITTED:

4.2.28 Civil Legal Aid Applications – common errors:

Forms not signed by Applicant and Advocate

Forms not dated

Multiple sections not completed

Lack of sufficient Financial Details

Opinion of Advocate not completed

No proper statement of case

No provisional order of divorce

Copies of paperwork missing

Handwriting illegible

Childcare proceedings but no details of children

No definition of proceedings

No paternity statement

No Section 48 Summary Jurisdiction order

No copy order when seeking to vary

No amount of claim

No statement as to whether claimant or defendant

No comment as to whether reasonable or not to take proceedings

No comment as to whether High Court or Summary Court proceedings

No prospects given as to success

Partner but no information as to finances

No relevant consents declared

Information missing that was specified within the form to be supplied

4.2.29 Green Form applications – common errors:

Illegible handwriting

Not dated

Signatures missing

Details of Advocate missing

Letters/emails/telephone call in place of properly completed form for Green Form extensions

4.2.30 Duty Advocate Scheme – common errors:

Incorrect forms used for junior/senior Advocate

4.2.31 Correspondence and general issues:

Incorrect addressees on covering letters – Advocates should refer to Part 1 of this handbook

No Legal Aid reference numbers

Incorrect name/reference numbers

The revised response in respect of the issues raised above will be a pro forma reply indicating the correction required.

Do please consider that concise factual letters enable matters to be processed more quickly. This tends to be the practice of most experienced Advocates conducting legal aid work.

Generally, calls checking for facts that should be within the knowledge of the Advocate are regularly made demonstrating that the Legal Aid office is frequently used for ease of reference on a wide range of legal issues where the Advocate has not been able to establish the information from within his/her own office

4.2.32 E-mail:

Whilst this might be the quickest method of sending a message and attachment it may not necessarily be the best method of ensuring the message and the attachment is retained on file. The Legal Aid office currently still operates on a paper based manual system. The recipient does not necessarily have the legal aid file to hand when an email is received. Emails should always be sent to the email address set out at paragraph 1.4.1 of this handbook. Incoming messages are regularly reviewed throughout the day. This ensures the message is attached to the file, the file is presented to the Certifying Officer if it is for the Certifying Officer and a copy of the reply sent to the Advocate is retained as a result. Emails can only be reliable if there is a copy of message, attachment and reply and if a copy of each is retained and produced in later correspondence. Instances frequently occur of single sided email correspondence with no record of a reply. If an email does not receive a reply by the end of a working day it should be followed up with either a telephone call (if the matter is urgent) or letter. Advocates should be aware that such is the volume of **email messages delivered to Legal Aid that emails will not normally take priority over normal paper correspondence.**

Emails may be used by the Certifying Officer in certain urgent situations to convey written confirmation to an Advocate of the terms of an amendment to or grant of a certificate.

4.2.33 EMERGENCY APPLICATIONS

The emergency application procedure is an important part of the provision of Civil Legal Aid in that it allows a person in need of legal aid as an emergency to apply for and, whilst the financial means test is still ongoing, to receive a certificate more quickly than would normally be the case

Emergency applications are made utilising the form set out at appendix E. Notice should be given to Legal Aid as early as possible so that it can be processed quickly.

Irrespective of the emergency, the legal merits test will be considered by the Certifying Officer. This applies to all cases and the test has to be satisfied. Advocates should collate sufficient basic information to accompany the application so that the test can be met.

The Certifying Officer may be satisfied as to urgency if there is insufficient time for a substantive legal aid application to be processed when representation (or other urgent work for which civil legal aid would be needed) is justified in injunctive or other emergency proceedings.

Failure by the applicant or the Advocate to apply for Legal Aid at the earliest opportunity will not constitute grounds for granting an emergency certificate particularly if the delay in applying has created or contributed to the emergency.

For those on qualifying benefits financial eligibility can be assessed very quickly and usually within the timescale of assessing legal merits. It is obviously of assistance if proof of the receipt of qualifying benefits accompanies the emergency application.

It will greatly assist if Advocates supply whatever financial information is to hand as this will enable some preliminary assessment to take place

Attention is drawn to the undertaking to be signed by the applicant in respect of emergency application. The significance of this undertaking is that it may result in the applicant becoming liable for all costs incurred under the certificate.

Emergency certificates will usually only cover the very limited scope of the emergency and be limited to attempting to negotiate a settlement. They will also be limited in terms of the maximum number of hours of work authorised and the timescale in which the work should be completed. The objective is to cover the period of the emergency until there is either a substantive certificate granted or if the urgent nature of the work be short until same is completed.

The Certifying Officer does have a discretion to extend an emergency certificate but this would only usually occur in exceptional circumstances and within the scope of the emergency proceedings for which the original certificate was granted. An emergency certificate has a maximum validity of three months during which the matter is either concluded in the very short term or the certificate made substantive.

4.2.34 THE CERTIFICATE

The certificate is the conclusive and primary authority for Legal Aid to pay the Advocate. It follows that the nominated Advocate should check the extent of cover provided by it.

In many cases, the certificate will not cover all that the Advocate has initially requested. Particular attention should be paid to timescale and duration and as to the steps in the proceedings that are authorised. Limitations and conditions are commonly used and work beyond a limitation or in breach of a condition will not be paid at assessment.

Certificates cannot be backdated

It is important to note that most initial certificates only cover attempts to negotiate a settlement or some of the preliminary steps leading to issuing proceedings and will be very restricted as to the amount of time that can be spent on the matter.

The other parties to the proceedings have an opportunity to appeal the grant of a Legal Aid certificate and Advocates should take into account that the Legal Aid Appeals Tribunal might change the nature and status of the Certificate on an appeal being heard. The Legal Aid Certifying Officer cannot amend a certificate beyond the decision of the Legal Aid Appeals Tribunal unless it is an amendment in respect of the next stage of the proceedings.

4.2.35 Notice of issue of legal aid certificate and certificate of amendment

By virtue of Regulation 17(2) of the Legal Aid (General) Regulations 1997 the Advocate for an assisted person is obliged to **forthwith** serve all other parties with notice in an approved form of the grant of a Legal Aid Certificate.*

By virtue of Regulation 17(3) the same provision applies to Notice of Revocation or Discharge of a Legal Aid Certificate or an amendment to a Legal Aid Certificate

Please also make sure that the Court is informed when a party to proceedings is or becomes legally aided and also if a party ceases to have the benefit of Legal Aid

*** Following the Legal Aid (General) (Amendment) regulations 2014 the Certifying Officer now sends a copy of a Grant of a Legal Aid Certificate to every other party to the proceedings and their Advocate together with a statement as to their right of appeal to the Legal Aid Appeals Tribunal**

4.2.36 Time/duration limitation/conditions

Following an increase in the use of mediation and instances where the nominated Advocate and assisted person have made no attempt to negotiate a settlement before launching into proceedings the established policy since June 2007 has been that Legal Aid Certificates will be issued limited to negotiating a settlement.

Before a certificate is issued without such a limitation it will be necessary for the Advocate to supply copies of any correspondence showing any attempt to settle the matter, together with a report as to the result of the negotiations, an explanation of the areas in dispute and the reasons for the failure of the said negotiations.

Every case will be considered on its merits and the limitation may not be applied if negotiations have already failed and the failure was not the fault of the assisted person.

After the issue of a Certificate containing the limitation, if negotiations do fail, the nominated Advocate may seek an amendment after supplying the Certifying Officer with a report thereon.

Time and duration limitations and conditions on a certificate are the maximum that can be incurred without further authorisation. They will usually be applied on all Certificates.

Advocates will only have Legal Aid authority to carry out work up to the time limit and within the duration. The fact that a given number of hours has been prescribed on the certificate does not mean that the work should take that length of time as the figure stated is a maximum and normal assessment will apply as to whether the time spent has been reasonably incurred.

The time/duration limitation/condition places the legally aided client in the same position as a fee paying client in that if the limitation/condition is exceeded and not extended then the Advocate may not obtain payment. This is akin to the situation where a fee paying client authorises an Advocate to only incur costs to a stated number of hours work and to carry out the work within a stated period. Advocates may seek to have limits extended but will be expected to confirm the work undertaken, the next steps and the approximate

If a Legal Aid Certificate is limited to close of pleadings, then it covers all directions hearings held until pleadings have closed. It will not cover attending directions hearings after pleadings have closed.

This policy only covers attending the directions hearing and does not cover any work ordered at the directions hearing unless the work is already authorised by the certificate. If directions are given for work that is not authorised by the certificate the nominated Advocate will need to seek an amendment to the certificate.

Payment will not be made for time spent seeking to extend the certificate for a directions hearing which is already covered in the above manner.

4.2.37 Mediation Certificates

Successful mediation is likely to shorten proceedings and to save costs. Advocates should always consider whether an application for mediation would be appropriate. Mediation Certificates will usually adopt a standard format which provides for two sessions of mediation to a fixed fee.

4.2.38 Secure unit applications

A Section 27 (Secure Unit) Application is one of the two exceptions set out in Regulation 6(6) of the Legal Aid (General) Regulations 1997 whereby a minor may apply for a Legal Aid Certificate by him or herself without any undertaking being given by an assisted person of full age under Regulation 6(2) of the Legal Aid (General) Regulations 1997. Generally there is little time between interview with the client and the Court appointment.

It is a frequent pattern that an Advocate will be approached and asked to see a client during the morning in respect of a Court hearing usually the same afternoon.

If an Advocate is prepared to act, prior to seeing the client they should telephone the Legal Aid Office on 685977 and ask to speak to the Certifying Officer

When seeking authority please be prepared to provide details of the client's name and date of birth together with the time and date of the Court appointment.

Authority to obtain the client's instructions and to appear at the Court hearing will be given but a Legal Aid Certificate will not be issued until the Certifying Officer has received an application duly completed and signed by both the client and the Nominated Advocate

Please deliver the application to the reception desk at the Courthouse and mark it as being urgent. A Legal Aid certificate can then be issued to cover the work undertaken on the day of the hearing.

In the event that a Section 27 hearing occurs over a weekend then the Advocate should:

1. Visit the client to take instructions and have the application completed and signed
2. Attend Court on behalf of the client
3. Deliver the completed application form, marked urgent to the courthouse reception desk by 1pm on the Monday immediately following the said weekend.

A Legal Aid Certificate can then be issued to cover the Section 27 application that took place over the weekend.

The High Bailiff and the Deputy High Bailiff have been notified of this.

4.2.39 Transfer of Certificate to another Advocate

If a change of Advocate becomes necessary it is essential to provide details of why the change is being requested and whether or not the complaints procedure has been instigated within the firm of the Advocate who is currently nominated on the certificate. If the proposed replacement Advocate agrees to the transfer please provide confirmation. The Certifying Officer will not automatically transfer a certificate because it does usually involve increased expense to the public purse which cannot always be justified. The increased expense usually stems from duplication of work. A full report on the circumstances is normally required and the conduct of the assisted person is frequently relevant particularly if the assisted person has required the proceedings to be conducted unreasonably. Some simple transfers occur administratively when the nominated Advocate changes firm, retires or is unable to carry out the work through illness.

4.2.40 Amendments to the Certificate

If the Certificate does not cover all the steps needed or circumstances have changed application can be made to the Certifying Officer to amend the Certificate. An amendment may also be needed to increase the time/duration limitation/condition that is already in place.

Amendments should fall within the provisions of Regulation 10 of the Legal Aid(General) Regulations 1997

Primarily if:

1. There has been some mistake
2. Except in the case of an inquest, it has become desirable to the certificate to extend to other steps or proceedings

3. Except in the case of an inquest, it has become desirable for the certificate not to extend to certain of the steps or certain of the proceedings in respect of which is was issued

Or

4. A change of Advocate should be authorised (see para 4.2.37 above)
5. It is necessary to cover attempts to negotiate a settlement (including by means of alternative dispute resolution)

Both statutory tests are applied to amendments although usually, financial eligibility may already be noted on the file. Time should be allowed for both statutory tests to be applied.

Amendments to certificates should be submitted to the Certifying Officer using the form in the appendix noting that they will usually be processed in order of delivery.

Sufficient information should be filed with an application for amendment to a certificate so that the statutory tests can be considered. If insufficient information is provided an amendment may be refused.

Please set out clearly what amendment(s) to the certificate you are seeking.

You should provide a brief summary of the work you have completed to date, details of how many hearings have been attended is also useful as well as any significant disbursements that have already been approved

Provide details of any forthcoming hearings, the length of time they are listed for and details of any disbursements that require approval. Estimates are required for all disbursements

Take care to provide an estimate of both time and cost of future hearings and preparation work

Be aware that although you may request an amendment/extension or the cost of a specific disbursement the request may not be granted or may be granted in a different manner to that which you envisaged

Do not commence work or incur an expense until you have a clear written authority

Do produce a copy of the written authority you have been given when seeking payment

If you are applying for an amendment to cover the final hearing, please provide information as to why the final hearing cannot be avoided and what matters within those proceedings specifically remain outstanding

4.2.41 Disbursements

Nominated Advocates may incur disbursements (including court filing fees) under £250 without recourse to the Certifying Officer and may seek payment upon assessment of the bill.

The costs of a mediator are excluded from this and will require authorisation by the Certifying Officer before they are incurred.

Disbursements over £250 will require specific authorisation before they are incurred.

Should the volume of minor disbursements incurred on one particular file collectively exceed £250 and be overly excessive the Nominated Advocate may contact the Certifying Officer to seek a general interim payment on account of profit costs to cover the sum involved.

4.2.42 DISCHARGE AND REVOCATION OF A CERTIFICATE

This section discusses the termination of the Legal Aid Certificate by way of either discharge or revocation. There is frequently confusion between the two methods and how each applies

4.2.43 The difference between revocation and discharge

Advocates will be paid for their work in either event. The main difference lies in the effect on the assisted person who, on revocation will be regarded as never having been legally aided and thus liable for all the assessed costs of the work carried out by the Advocate from the outset. By contrast, if the certificate is discharged, the assisted person will remain legally aided to the date of discharge and will only incur a liability to reimburse treasury after the date of discharge. Some discharges are back dated. Advocates may claim up to the date the discharge certificate is issued. Legal Aid will attempt to recover costs from the assisted person between date of issue of discharge and the date the Legal Aid Certificate is discharged from.

4.2.44 The circumstances in which a certificate will be revoked or discharged:

1. Assisted person found to be not financially eligible (emergency certificate – revocation obligatory; substantive certificate discharge obligatory)
2. Assisted person no longer having reasonable grounds for the proceedings (subject to “show cause” procedure discharge obligatory)
3. Assisted person having required proceedings to be conducted unreasonably so as to incur unjustifiable expenses to Legal Aid and this includes not maintaining instructions to the nominated Advocate (subject to “show cause” procedure discharge obligatory)
4. It being unreasonable for the assisted person to continue to receive legal aid (subject to “show cause” procedure discharge obligatory)
5. Assisted person having failed to either attend for interview or to provide documents when requested (subject to “show cause” procedure revocation or discharge is an option)
6. Abuse of Legal Aid in the form of untrue statement by the assisted person or a failure to provide material information (subject to “show cause” procedure revocation or discharge is an option)
7. The proceedings having been disposed of or work under the certificate having been completed (discharge is usual)
8. The duration of the certificate having expired (emergency certificates only revocation or discharge is an option)

4.2.45 What are the incidental effects of revocation or discharge?

1. Advocates may need to advise the Court and the other parties to the proceedings
2. The Advocate's retainer is determined so that a bill can be submitted and costs can be assessed
3. The Statutory Charge still operates in respect of costs incurred under the certificate
4. The operative date of discharge/revocation is at the discretion of the Certifying Officer
5. Ongoing financial redetermination at time of discharge:

Legal Aid regularly undertakes redeterminations in respect of financial eligibility. This process continues even if the matters have, in the eyes of the assisted person been concluded. This can result in a financial redetermination being carried out whilst the Advocate ties up the loose ends. This becomes frustrated further because an assisted person cannot always see the justification in being asked for financial information and documentation when they consider the matter might have been concluded a long time beforehand.

To reduce the incidence of unnecessary financial redetermination and thereby reduce criticism and irritation by service users, Advocates are requested to submit an application to discharge the Legal Aid Certificate as soon as all work under the Certificate has been concluded. Advocates are requested not to wait until the bill of costs has been prepared before submitting an application to discharge. Even if the Legal Aid Certificate has been discharged Advocates can still claim the cost of preparing the bill for assessment.

4.3 LEGAL AID IN CRIMINAL MATTERS

4.3.1 Overview

Legal Aid in criminal matters is comprehensively covered by a combination of The Duty Advocate Schemes, Legal Advice and Assistance "the Green Form" Scheme and Criminal Legal Aid. It is provided in appropriate cases as of right as an essential element in the Criminal Justice system and fully meets the Isle of Man's international obligations under Article 6 (3) (c) of the Human Rights Convention as incorporated into Manx Law by Section 1 of the Human Rights Act 2001

4.3.2 THE 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 "the Committee" established by Section 2 of The Duty Advocate (Police Custody) Scheme 1998:

4.3.3 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. There is no means test for such advice. A 24 hour rota is maintained for this service.

Initial advice is provided by telephone although Advocates on the rota are required to attend at the Police Station if the suspect has been arrested in connection with an arrestable offence

and the police intend to interview him, the police intend to hold an identity parade, the suspect complains of serious ill treatment by the police or the suspect is a child or young person.

4.3.4 The Duty Advocate Scheme

This scheme covers the Summary court with the objective of providing defendants with convenient access to free advice and representation on the first appearance in respect of:

1. Committal proceedings where all the evidence is adduced by written statements (Paper committal)
2. An application for Bail
3. Remand or further remand pending trial
4. An appearance for sentence following conviction
5. The trial for an offence where the individual wishes the case to be concluded at the appearance (unless the duty Advocate considers that the case should be adjourned)
6. Proceedings for a failure to pay a fine or obey an order where such failure may lead to the individual being committed to custody
7. Proceedings (binding over) in respect of a breach of the peace or other misbehaviour
8. Proceedings from a failure to comply with a condition to keep the peace or to be of good behaviour

4.3.5 The Duty Advocate Committee

The Committee consists of:

- (1) The President of the Isle of Man Law Society "the Society"
- (2) The Chairman of the Remuneration Committee of the Society
- (3) A member of the Manx Bar appointed by the President of the Society

The functions of the Committee are:

- (1) to maintain a panel of Duty Advocates
- (2) to consult with the Chief Constable as to the arrangements to be made for the provision of advice by Duty Advocates
- (3) to draw up a rota of Duty Advocates to be available to provide the service
- (4) to make any necessary reports and recommendations to the Legal Aid Committee concerning the operation of the Scheme(s)
- (5) to maintain any necessary records

4.3.6 How to apply to be a Duty Advocate:

Advocates wishing to be included on the panel should apply in writing to the Committee.

The following criteria will need to be met:

- (1) The applicant holds a certificate to practise as an Advocate
- (2) He/she has comprehensive experience of criminal defence work; including advocacy in the courts exercising criminal jurisdiction in the Island and the provision of advice to persons arrested and held in custody

Or

- (3) The Committee is satisfied that he/she has attended a relevant course and obtained relevant training to enable him/her to provide competent advice to suspects
- (4) He/she is willing to act personally as a Duty Advocate and to undertake (unless prevented by absence or illness or for other good reason) the duties allocated to him under the rota
- (5) He is otherwise suitable to act as a duty Advocate

The usual term of membership of the panel is 5 years and Advocates are usually eligible for reappointment thereafter

There is a requirement for continuing training and each member of the panel has to undergo an approved training course:

- (a) in the year immediately after he/she is first appointed to the panel
- (b) in the year following reappointment following a period exceeding 3 months during which he/she was not a member
- (c) in every second year after the year in which he/she has previously undergone a course

4.3.7 The periods of time you might be asked to cover:

The normal "on call" periods for the Police Duty Advocate Scheme are:

- (a) from 7pm to 7am on every day of the year
- (b) from 7am to 7pm on every Saturday, Sunday and Bank holidays in the year

A senior Advocate is available for every period of 7 days:

- (a) to be consulted by the Duty Advocate in any case of difficulty
- (b) to be called upon by the custody officer to act as Duty Advocate in place of the Duty Advocate in a case of serious crime

4.3.8 Duty Advocate acting for a client at a summary court in respect of an alleged breach of a domestic violence non molestation order

The case is one of civil law and falls outside the criteria for payment

The following procedure is an interim policy until a formal amendment is made to the Duty Advocate scheme:

- (1) The Duty Advocate obtains the client's instructions in respect of the financial situation and, if it appears that the client is eligible, the client signs the Green Form
- (2) The client signs a copy of the following undertaking:

I.....of.....hereby undertake to provide my Advocate.....of..... within 21 days of today's date with documentation to support my claim that I am financially eligible for advice and assistance under the Green Form Scheme

I confirm that I have been informed and I understand that if I cannot provide documentation within the period of 21 days, I must inform my Advocate so that he/she can revert to the Legal Aid Certifying Officer and seek extension of time

I confirm that I have been informed and I understand that if I do not provide the documentation, my Advocate may seek payment from the Legal Aid Fund and that the Legal Aid Office will then seek payment from me by way of reimbursement.

Signed.....

Dated.....

4.3.9 Claiming for payment

The forms for claiming payment under the two schemes are now available to complete electronically. The forms should be completed, printed and submitted in hard format and are then processed by the Legal Aid Office

4.3.10 USE OF THE LEGAL ADVICE AND ASSISTANCE "GREEN FORM" SCHEME IN CRIMINAL MATTERS

The Legal Advice and Assistance "Green Form Scheme" is described in more detail at paragraph 3.1

If a person needs legal advice and assistance about a criminal matter and they are eligible, he/she can see an Advocate under Green Form. An Advocate can also give advice and assistance in preparing the case for court. Advocates should be mindful of the scope of the scheme and the risk of running out of time and should bear in mind that an application for Criminal Legal Aid is, in most cases, a more appropriate and effective way forward. Green Form should not be used when Criminal Legal Aid has been refused.

4.3.11 CRIMINAL LEGAL AID

4.3.12 What does Criminal Legal Aid cover?

If granted, Criminal Legal Aid usually covers the cost of an Advocate preparing a client's defence before he/she goes to court and representation of that client at court. Some certificates may cover the work of Licenced Counsel and disbursements can be requested to cover the work of Counsel in otherwise assisting the nominated Advocate in conducting the case. Considerable care should be taken to ensure that work carried out is within the scope of the certificate or covered by a relevant disbursement authority.

Criminal Legal Aid **may** be granted for the following :

1. Summary trial or committal proceedings before a Summary Court
2. Proceedings in a Summary Court in respect of an anti-social behaviour order
3. Appeal to the Staff of Government Division against a decision of a summary court in respect of an anti-social behaviour order
4. Application to the High Court for Bail
5. General Gaol Trial
6. Proceedings in respect of committal from a Summary Court for sentence
7. General Gaol proceedings on committal from a Summary Court under Section 55 of the Mental Health Act 1974 where the Court does not make a hospital order
8. Appeal to Staff of Government against conviction or sentence or both including an appeal by way of case stated and an application for an order to state a case
9. Appeal to Staff of Government against a hospital order or guardianship order made by a Summary Court otherwise than on conviction under Section 48(2) of the Mental Health Act
10. Appeal to Staff of Government against a hospital order or guardianship order made by a Juvenile Court under Section 49 of the Mental Health Act 1974
11. Appeal to Staff of Government against conviction or sentence or both by a Court of General Gaol
12. Appeal to the Common Law Division under Section 49(5) 80(2) or 110(1) of the Children and Young Persons Act
13. Application to the Chancery Division for an order that sentence of a Summary Court be quashed on the ground that the court has imposed a sentence which it had no power to pass in such a case.
14. General Gaol retrial pursuant to an order under section 33 of the Criminal Jurisdiction Act 1993
15. Proceedings for an offence against discipline under custody rules under the Custody Act 1995 where the charge is referred to a board of visitors and the board determined to allow the person charged to be legally represented.
15. Proceedings before a Summary Court in respect of sexual offences prevention orders of the High Court in respect of risk of sexual harm orders under the Sex Offenders Act 2006
16. Appeals to the High Court under Section 9 of the Sex Offenders Act 2006

4.3.13 APPLYING FOR CRIMINAL LEGAL AID

An application in the form set out in Schedule 1 to the Criminal Legal Aid Regulations 1993 (see appendix) should be made 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 relation to the High Court or any Division thereof, to the Clerk to the Court in Summary Courts and to the Legal aid Certifying officer in the case of an Appeal to the Staff of Government Division. The applicant is required to give details of income and savings in a statement of means. It is necessary to attach to the statement of means the applicant's wage slips for the previous three months. Advocates should note that a shortfall in the information provided by applicants in respect of their finance means is the most common cause of delays in the grant of criminal legal aid. Every effort should be made by Advocates engaged in criminal legal aid

work to ensure that the application forms are fully completed and accompanied by all necessary supporting paperwork.

4.3.14 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 he/she needs 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 within the required limits in accordance with the Criminal Legal Aid Regulations 1993 based on the information supplied by the applicant in the statement of means form.

4.3.15 Payment of contributions

A defendant may be asked to pay towards his/her costs as a condition of criminal legal aid. No contribution shall be payable where the applicant is (directly or indirectly) in receipt of Isle of Man income related benefits.

4.3.16 Change of financial circumstances

The defendant must tell the court if his/her income or capital change

4.3.17 Choice of Advocate

In general a defendant may choose any Advocate who is willing to act. If he/she is being tried with others, the court may assign one Advocate to cover representation of all the defendants unless there is a conflict of interest or other good reason not to do so.

If the defendant wants to change Advocates he/she will have to give the court a good reason.

4.3.18 The use of Off Island Counsel

The starting point is that a Manx Advocate should be satisfied that he/she is sufficiently experienced or trained to represent clients in the Criminal Court. Whilst there are always cases that most Advocates can confidently conduct, Criminal Law tends to be an area where Advocates specialise and only considerable experience enables Advocates to deal with more complex Criminal Trials. Occasionally, a case may be of such complexity or of such serious nature that the use of Off Island Counsel has to be considered. In such cases the choice is for Counsel to obtain a Temporary Licence under Section 17 of the Advocates Act 1995 and then to apply to the Trial Deemster to have Legal Aid assigned to them or assist the nominated Advocate as and when required.

Frequently the Legal Aid Certificate will be granted in the joint names of the nominated Manx Advocate and Off Island Counsel. When this occurs care should be taken not to duplicate work and the hourly rate of Counsel and the distribution of the work should be established with the Legal Aid office from the outset.

In some instances, the nominated Advocate will be able to conduct a complex or serious case but with limited assistance from Off Island Counsel by way of a series of limited disbursements agreed with the Certifying Officer. This method tends to be more cost effective and supports members of the Manx Bar by way of enhancing local expertise.

4.3.19 Criminal Legal Aid Disbursements

Approval of the Legal Aid Certifying Officer is required for all criminal disbursements over £250. The Legal Aid Certifying Officer may give authority to:

Obtain a report or opinion of one or more experts or to tender expert evidence

Employ a person to provide a report or opinion

To bespeak transcripts or shorthand notes or recordings of any proceedings

If such authority is given, the Certifying Officer will specify the maximum fee payable for such report, opinion, expert evidence or transcript.

Advocates should be particularly mindful that requests for disbursements that are poorly prepared and incomplete are likely to be refused or at best there will be delay. This is

particularly important in a case where the application is made close to trial or at or near a particular stage in proceedings where refusal or a request for additional information may cause unacceptable delay and or an adjournment. In these cases, Advocates should be aware that the Certifying Officer can write to the court explaining the reason for refusal and/or delay. Criminal disbursements will usually be granted if the Certifying Officer is satisfied that the proper conduct of the proceedings so requires and the expenditure is reasonable in the circumstances.

Advocates should therefore supply information as to why the disbursement is required and in most instances estimates for comparison. This is particularly important in respect of very expensive disbursements.

The following table is for guidance purposes:

| | | |
|---|-----------------------|------------------------|
| Disbursement less than £250 | No Authority required | No quote required |
| Disbursement over £250 but less than £1,000 | Authority required | Quote may be requested |
| Disbursements over £1,000 | Authority required | 3 quotes required |

Advocates should be aware that disbursements may be refused if:

(a) The application is for expert evidence or reports where same have been or could be ordered by the court and might, as a result, be payable out of court funds

(b) The application is in respect of a medical assessment for which it would be reasonable to expect the assessment to be NHS funded or readily available from an NHS hospital or GP although, in these cases, the standard NHS fees may be granted if same are charged.

(c) The cost of the disbursement is excessively expensive and alternative estimates from at least two other service providers have not been provided.

Particular care should be taken in ensuring that there is sufficient authority in place and that work is properly quantified and entirely covered by the scope of a particular written authority provided by the Certifying Officer. This is of particular importance in the engagement of:

Off Island Counsel

Translators

Transcribers

Enquiry Agents

Psychological assessors

Litigation friends

In these cases there has been a tendency in the past for the work to overtake the scope of the authority given and for payment to be refused as a result. This can result in considerable financial loss to the Advocate who may be committed to pay for the service.

In the absence of authority from the Certifying Officer claims for payment of disbursements may not be made. Claims for payment should therefore always include a copy of the relevant written authority.

4.3.20 Provision of the service

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 public purse.

A large element of the annual legal aid budget is committed to the provision of Criminal Legal Aid. This budget has not been curtailed despite the current economic climate and remains as a substantial and reliable financial commitment in support of the Criminal Justice system. Advocates should be mindful of trying to avoid excessive cost whilst still endeavouring to

provide a high level of service. It remains the case that the system of Legal Aid in the Isle of Man is better funded and frequently superior to that operating in other jurisdictions. There is increasing demand and this has to be met wherever possible from within existing resources. This is achievable if there is a marginal saving made over a large throughput of cases in a financial year. There have been instances where savings of up to 50% or more have been made by using a different service provider or adopting a different approach. There is considerable expertise resident on the Island and the cost and time saving involved is frequently significant. Usually it will be prove to be more cost effective for the defendant to visit the expert rather than the expert travel to the Island. Teleconferencing can sometimes be utilised to spare unnecessary travel and video conferencing should always be considered if it is available. Some Advocates have achieved remarkable savings simply by negotiating with the service providers over time and cost and this same approach is encouraged by all those providing the service.

As with the provision of all legal aid, Advocates are responsible for the conduct of the case and owe a duty of care to the client. Criminal cases can often be complex and the court timetable strictly defined. Problems occasionally arise whereby cases are delayed through deadlines not being met or issues not being sufficiently researched or anticipated in good time. Late applications for disbursements frequently result in delay and the delay in the court process is then occasionally blamed on the Legal Aid Office. The objective is to avoid delay from the outset by careful planning, collecting all the necessary information, submitting disbursement requests in good time and setting achievable timescales.

Advocates should be mindful that provision of the service is under constant review and individual cases are regularly monitored as to progress and cost. This includes identifying the causes of delay and a cost effective approach to the delivery of the service.

Care should be taken in preparing the defence and looking at timescale particularly where it relates to securing evidence. Advocates should expedite the necessary authorities for any disbursements as soon as possible taking into account that several estimates may be required for expert work and the findings may not always be as anticipated. Medical and Scientific reports may take considerable time to prepare and witnesses may be difficult to trace. There have been several recent instances where expensive expert reports have either produced inconclusive results or results that have simply proved guilt. The outlay on these reports has been a complete loss to the public purse and a waste of time. Most of these could have been avoided by more detailed consideration of the prosecution evidence and some detailed discussion with the client. The order and timescale in which evidence is gathered is also vitally important.

There is an expectation that the Court timetable will be met in almost all cases and that all disbursement requests are made in good time and with achievable results within that timescale.

4.3.21 Applications for Costs against the Prosecution

Following the Judgments in the cases of Nightingale and Sheppard it can be seen that there is no difference whether the client is fee paying or legally aided. If appropriate, a costs application against the prosecution should be made.

The question to be asked is whether a fee paying client of modest means would pursue an application for costs in the circumstances of the case.

If the answer is "yes" then the application should be made on behalf of the assisted person.

If the answer appears to be "No" then please contact the Certifying Officer to discuss the situation and why you consider that an application for costs is not appropriate.

If the case is being presided over by an Acting Deemster from another jurisdiction the nominated Advocate is under a duty to inform the Court of the Manx position and refer to the cases of Nightingale and Sheppard. The same position arises if Counsel is appointed in conjunction with the nominated Advocate

If the matter of costs is not addressed when appropriate the Costs Officer may be informed and asked to consider the position when assessing the Advocate's bill.

4.3.22 Concluding the matter, considering an appeal and applying for payment

Currently, there is no requirement to seek the discharge of a criminal legal aid certificate. The matter comes to end with the outcome of the final hearing for which the certificate was granted. On assessment, allowance may be given for the outcome to be explained/discussed with the defendant and for advice to be given as to the right to appeal. Care should be taken to evaluate the merit of an appeal before the matter is concluded as there may be disbursements associated with the evaluation of the appeal such as the transcription of court tapes which may need to be considered within the scope of the existing certificate. Sometimes it is necessary to seek an opinion. Thereafter, a bill may be submitted to the Legal Aid Costs Officer for assessment. This process is discussed in more detail in Part 5 of this handbook.

If there is to be an appeal then an application for Legal Aid to cover the appeal should be submitted to the Legal Aid Certifying Officer as soon as possible. Considerable care should be taken not incur significant costs in considering an Appeal and to avoid delay during the appeal period and this is best achieved in the early evaluation of the merit of bringing an appeal and a smooth transition from one Criminal Legal Aid Certificate to another.

PART 5 HOW TO OBTAIN PAYMENT

5.1 Preparing the bill of costs

Generally, certificates should be discharged when a matter has been finished and before a bill of costs is prepared. The only usual exception to this is when a matter is being transferred from one Advocate and another.

The procedure for obtaining payment commences with a bill of costs which should be prepared using the electronic format which the Costs officer has supplied to all firms. A copy is available on request. A hard copy example is in the forms section in the appendix.. The electronic format provides an inbuilt calculator and attempts should not be made to adjust the pre-set figures as this will produce a distorted bill which will not produce a correct figure on assessment. The correct hourly rate should be claimed and this should be adjusted accordingly if the matter has spanned a number of years during which the rates have changed. The bill should be printed off in portrait format using a reasonable font size and a sufficient number of pages and not crammed into just a couple of pages. The bill of costs is a working document and bills which appear crammed onto a couple of pages with small font sizes will be routinely rejected and this may cause considerable delay whilst the Advocate is called upon to prepare the bill again. Advocates should ensure for audit purposes that the bill is signed. This is important because if the bill has to be returned for signature it will join the end of the queue when it has been returned. This may cause further delay.

The format of a bill of costs is now formalised in the Criminal Legal Aid(Amendment) Regulations 2014 and the Legal Aid (General) (Amendment) Regulations 2014

as follows:

BILL OF COSTS

- (1) Title page, which must include –
 - (a) the full title of the proceedings;
 - (b) the full name of the assisted person;
 - (c) the full name and address of the nominated advocate
 - (d) date and reference of the legal aid certificate and any subsequent amendment certificates
 - (e) extent of the legal aid certificate (including limitations)
 - (f) if appropriate, the date of the court order authorising legal aid assessment; and
 - (g) if appropriate, details of any court order which requires the costs of the assisted person to be paid (in full or in part) by another party
- (2) Summary page which must include –
 - (a) the hourly rate or rates claimed;
 - (b) total claim for all work undertaken;
 - (c) disbursements (subject to VAT)
 - (d) VAT total;
 - (e) disbursements (not subject to VAT); and

(f) details of any payments received in advance of assessment

(3) If the bill covers 2 or more periods with different hourly rates, separate totals should be included for each period within the summary

(4) Chronological list which must include a full list of all work done (including preparation time, appearance time and travelling and waiting time) between the date of the legal aid certificate and the date of the discharge or revocation of the certificate.

(5) The list should comprise columns headed as follows-

(a) date;

(b) description of work done;

(c) senior advocate, junior advocate, other person

Each of the last columns being subdivided into 3 columns headed "C" (for the amount claimed) "D" (for the amount deducted on assessment) and "A" (for the net amount allowed)

Definitions:

"appearance time" means time spent in conducting the case for the assisted person

"junior advocate" means an advocate who has been in practice in the Island for less than 5 years

"senior advocate" means an advocate who has been in practice in the Island for not less than 5 years

"preparation time" means the time spent in preparing to conduct the case for the assisted person and includes all conferences, consultations, views, attendances, visits, advice given, documents settled or perused and letters written and (in the case of conviction) time spent in advising the assisted person whether or not to appeal against conviction or sentence and

"travelling and waiting time" means reasonable time spent travelling or waiting in the course of representation, pursuant to any limitation prescribed by rules of court

5.2 The current hourly rates

The current hourly rates are set out in the Legal aid (Remuneration) Order 2014 and are as follows:

Senior Advocate £135

Junior Advocate £115

Paralegal £85 (came into effect from 1st December 2014)

The following is a list of the Legal Aid rates from 1997 to date and is set out for the benefit of any claims for payment that predate the current level of remuneration.

Isle of Man Legal Aid Rates 1997 to Date

| Life Span | | Rates | | |
|--------------------------|-------------------|--------------------------------------|---|-------------|
| START | END | Prep/Travelling & Waiting/Appearance | | |
| 1997 | 1.11. 1997 | 31.10 | 1998 | |
| Junior Adv/Summary Court | | £51.00 | £30.00 | £65.00 |
| Senior Adv/High Court | | £60.00 | £30.00 | £74.00 |
| 1998 | 1.11. 1998 | 31 | 10 | 1999 |
| Junior Adv/Summary Court | | £53.00 | £31.00 | £67.50 |
| Senior Adv/High Court | | £62.00 | £31.00 | £77.00 |
| 1999 | 1.11. 1999 | 31.3. | 2001 | |
| Junior Adv/Summary Court | | £54.00 | £32.00 | £69.00 |
| Senior Adv/High Court | | £63.00 | £32.00 | £79.00 |
| 2001 | 1.4 2001 | 31.1 | 2003 | |
| Junior Adv/Summary Court | | £56.00 | £33.00 | £74.00 |
| Senior Adv/High Court | | £65.00 | £33.00 | £90.00 |
| 2002 | 1.4 2003 | 31 | July | 2004 |
| Junior Adv/Summary Court | | £58.50 | £34.50 | £77.00 |
| Senior Adv/High Court | | £67.50 | £34.50 | £94.00 |
| 2004 | 1.8 2004 | 30.11.2005 | One rate for Travelling/Waiting/Appearance | |
| Junior Advocate | | | | £77.00 |

| | | |
|-----------------------|------------------|---------|
| Senior Advocate | | £94.00 |
| 2005 1.12 2005 | 30.4.2008 | |
| Junior Advocate | | £85.00 |
| Senior Advocate | | £104.00 |
| 2008 1.5. 2008 | 31.3.2009 | |
| Junior Advocate | | £100.00 |
| Senior Advocate | | £120.00 |
| 2009 1.4.2009 | | |
| Junior Advocate | | £115.00 |
| Senior Advocate | | £135.00 |

5.3 Your files

- Advocates files are required for the purposes of assessing the bill of costs.
- Advocates should ensure that the lever arch files are in good condition and functioning properly and that they are clearly marked with the name of the client, the legal aid reference for the matter to which they relate, the content of the folder and the name of the firm.
- If there are several files they should be appropriately boxed and the boxes labelled in the same manner as the files.
- Advocates should ensure that the paperwork within each file is in the same sequential order as the items claimed in the bill of costs.
- Files should be delivered with the bill of costs unless there are more than two.
- If there are more than two files the bill should be delivered first and then the files delivered direct to the Legal Aid and Legal Costs Office only when requested. This avoids the accumulation of boxes of files when matters are waiting to be processed.

5.4 Interim or final bill?

- An interim bill may be submitted once the Legal Aid Certificate has been in existence for 12 months and may be submitted every 12 months thereafter.
- In the current economic climate, and by concession only, interim bills are being considered more frequently and on a six monthly basis, but this has to arise out of a realistic position such as difficulty with cash flow or heavy financial commitment to the file in the shorter term. In such cases an interim bill may be considered if it is for an amount exceeding £1,000. If Advocates pay no regard to this concession and unreasonable requests are made then the concession will have to be removed and the Legal Aid Office will revert back to the statutory position except in the process of interim bills in very large cases.
- Final bills are submitted when the work has been completed and the legal aid certificate has been discharged or the matter has been transferred to another Advocate. The final bill should contain details of all work, including any work previously submitted as part of an interim payment request.
- Bills should be submitted within 3 months of the certificate of discharge, revocation or transfer. It is helpful to supply a covering letter which should state if the matter is a transfer or otherwise state any other relevant information.

5.5 What happens once your bill has been submitted

- There is only one Costs Officer who assesses all legal aid bills for payment.
- Files are generally processed in in the order in which they are submitted.

- Every effort is made to process the majority of bills within one month but this does sometimes take longer. Occasionally, one or a number of large cases can affect the timescale.
- There is a tendency for Advocates to send frequent letters and emails chasing payment but these, by their very nature, actually add to any period of delay because valuable time is spent responding to them.
- If a claim for payment has been outstanding for more than 2 months this would normally justify some enquiry as to progress.
- The general rule is that, if Legal Aid has your bill or your files they are aware of your claim for payment and it is being processed as soon as possible
- Normally, if there are more than two files involved, the Legal Aid office will request your files when they are ready to commence assessment.
- Do please ensure swift delivery once your files have been requested.
- Delivery and collection of files is the responsibility of the Advocate and acknowledgements are not routinely issued. **Do not deliver the files to the Courthouse**. Files should be delivered to the Legal Aid office on the ground floor of Murray House, Mount Havelock, Douglas.
- If files have been requested **do label them correctly** please attach a compliments slip indicating the intended recipient.
- Care should be taken because files are often requested by other offices of Legal Aid including administration, Certifying officers and Payments/Disbursements.
- Delays are caused when files are delivered with either the wrong recipient name or no details at all. If this happens, the wrong recipient name is on the file, and the member of staff is on leave your files could be delayed for up to two weeks or more until the mistake in the recipient name becomes apparent.
- The assessment of Legal Aid bills is a considerable undertaking carried out in a small but efficient office.
- The co-operation of Advocates in considering and working within the system and the criteria adopted has already produced positive outcomes for those engaged in maximising cash flow and efficiency.
- Advocates should factor in the timescale of assessments when estimating likely payment and cash flow. Regular small throughput tends to produce a better and more regular income than submitting large frequently dated batches of matters with an accumulated desperation for payment. Early submission of bills tends to result in quicker resolution of problems whilst the information is still within reasonable memory.

5.6 Avoiding problems with your bill of costs

There are certain established criteria which avoid difficulties on assessment:

- **Do** work within the time scales wherever possible. 6 minutes for a letter out and 3 minutes for a letter in. Longer letters may attract a longer allowance but only usually to 6 minutes per page out and 3 minutes per page in. If you are claiming for a long meeting the expectation will be that something significant has been achieved in the timescale. Likewise, if you have written a very long item of correspondence, be sure that it has achieved something much better than a shorter more concise version.
- **Do make sure you send replies to any correspondence to the person who wrote to you.** If you send your reply generally to the Certifying Officer instead of the Costs Officer it can cause delay and confusion and result in difficulty in locating the relevant paperwork.

- **Don't** try to claim for items that have previously been deducted. Either accept the assessment or seek a review but don't keep trying to make the same claim. Claiming for the same things which have not been allowed previously wastes the time of the Costs officer and delays the progress of the assessment of not only for your bill but the bills submitted by the many other Advocates doing Legal Aid work.
- **Don't** include work within the bill of costs which predates the issue of the Legal Aid Certificate.
- **Do** make sure that you work within the terms of the certificate and any amendment. If the Certificate limits you to attempting to negotiate a settlement work may not be allowed which does not achieve that aim.
- **Do** work within the time and duration figures allowed on the certificate, these are regarded in all instances as maximum figures. They do not signify that all the time spent will be allowed on assessment or that all the time should be spent, just that you have the scope to work, if necessary, to the figures stated.
- **Do** ensure that all disbursements (even if paid ahead) are shown in the summary. Please enter a description and include when the disbursement was paid. If the disbursement is subject to VAT please record it in the relevant section of the summary and only show the NET value.
- If the Court has ordered the costs to be paid by the Opponent or from Central Funds please ensure that this is made clear when submitting the bill of costs. You should attach a copy of the relevant costs order to the bill.
- **Do** take the opportunity to make the costs officer aware of any issues that need to be considered at assessment as it may not be possible to have issues considered after assessment that should have been submitted at the time the assessment was made.
- **Don't** leave the submission of your bill for long periods.
- **Do** take care to ensure that any handwritten information is legible.
- **Do** be aware that the Costs Officer will only allow the work directly and specifically cover by the Legal Aid Certificate
- **Do** make sure that the Legal aid Certificate is extended to cover the work you intend to undertake. Be specific in the extension e.g. residence doesn't cover contact. If you are dealing with a residence application and contact is also an issue then ask to have the Certificate extended to include negotiations for contact
- **Do** consider that Legal Aid will not cover work which the assisted person could reasonably be expected to discuss themselves such as drop off times for contact. Ask yourself - "Would your client use you for this if they were paying themselves? "

5.7 How to get paid when the Certificate is transferred

- Payment on transfer cannot be achieved urgently.
- The first stage is for the Advocate to lodge the bill of costs made up to the date of the transfer certificate. Any files which have been sent on to the new Advocate will have to be retrieved by the Advocate submitting the bill for the purposes of assessment.
- The Legal Aid office will call for the files when the matter is ready to be assessed.
- It is the responsibility of the Advocate submitting the bill to collect the files from the new Advocate and return them when the assessment is complete.

5.8 Payment of disbursements

An application for the payment of disbursements over £250 can be made at any time. In every case a copy of the written authority to incur the disbursement should be attached with the application for payment.

If a copy of the authority is not attached the application for payment will be returned. Disbursements under £250 can be claimed in aggregates of £250 or more. The application should set out clearly that the disbursements concerned have been incurred as separate items each under £250.

5.9 Review of assessment

If an Advocate is dissatisfied with any decision on an assessment he/she may make written representations to the Certifying Officer who may allow such costs and fees in respect of the work to which the certificate relates as appear to represent fair remuneration according to the work actually and reasonably done.

The incidence of review tends to only occur in relatively few cases and the result of a review can result in the assessment being upheld, the assessment being reduced, or items that were disallowed being paid.

An application for a review should be very specific as to the element(s) of the bill with which there is dissatisfaction and contain all the information which the Advocate wishes the Certifying Officer to take into account. Further argument after the review has been carried out will not be considered.

The process of review cannot be quick as sufficient time has to be spent to take all the issues into account. Reviews can only therefore be carried out within the normal time constraints of a busy office and it may therefore take several weeks for the review to be completed.

APPENDIX 1 LEGISLATION:

STATUTES

1. Legal Aid Act 1986

REGULATIONS

1. Legal Advice and Assistance
Regulations 1997
2. Legal Aid (General) Regulations 1997
3. Legal Aid (Matrimonial Proceedings)
Regulations 1997
4. Legal Aid (Financial Resources)
Regulations 1997
5. Legal Aid (Panel of Advocates)
Regulations 1998
6. Civil Legal Aid Order 2008
7. Criminal Legal Aid Regulations 1993
8. Duty Advocate (Police Custody) Scheme
1998
9. Duty Advocate Scheme 1997
10. Legal Aid (Miscellaneous Amendment)
Regulations 2008
11. Legal Aid (General) (Amendment)
Regulations 2014
12. Legal Aid (Financial Resources)
(Amendment) Regulations 2014
13. Criminal Legal Aid (Amendment)
Regulations 2014
14. Legal Aid Remuneration order 2014
15. Duty Advocate (Police Custody)
(Amendment) Scheme 2014

APPENDIX 2 FORMS:

1. Application for Green Form
2. Application to extend Green Form
3. Application for Civil Legal Aid
4. Application for an Emergency Certificate
5. Application for amendment/extension to a
 Legal Aid Certificate (to be drafted)
6. Application for Discharge
7. Draft Bill of Costs (usually available in
 electronic form)
8. Paternity Declaration
9. Application to be put on the panel
10. Standing Order Mandate for Legal Aid

 Contributions/Payments
11. Court Duty Advocate Claim for Payment
 (Junior Advocate)
12. Court Duty Advocate Claim for Payment
 (Senior Advocate)
13. Police Station Duty Advocate Claim for
 Payment (Junior Advocate)
14. Police Station Duty Advocate Claim for
 Payment (Senior Advocate)

APPENDIX 3

MISCELLANEOUS:

1. Panel List
2. Guide to prescribed amounts
3. Legal Aid Handbook amendment request form