
Legal Aid Handbook – Advocates

Legal Aid Administration

November 2019

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INTRODUCTION

This handbook is for Advocates undertaking Legal Aid work and will be reviewed annually.

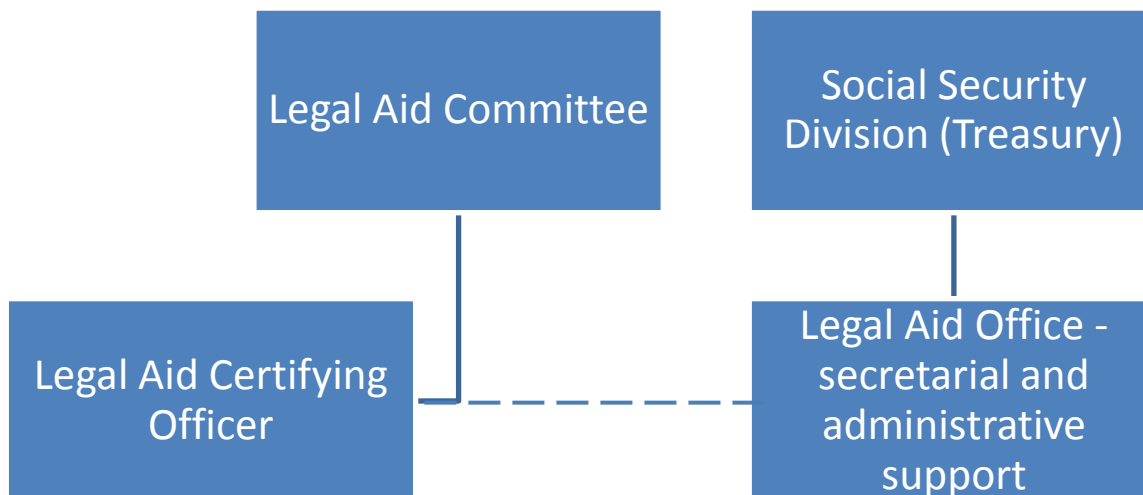
Please use this guidance alongside the relevant legislation and regulations, the information available on our website and in the Legal Aid forms.

Changes in policy and/or legislation will be notified to Panel Advocates through updates to this handbook and via the Law Society's newsletter.

If you have any feedback on the Legal Aid Handbook or the service please contact legalaid.treasury@gov.im

PART 1 ORGANISATION

Structure and contacts



Legal Aid Committee	The Secretary Legal Aid Committee Markwell House Market Street Douglas IM1 2RZ	www.gov.im/legalaidcommittee
Legal Aid Certifying Officer	Civil Legal Aid Markwell House Market Street Douglas Isle of Man IM12RZ	+44 1624 685977 (telephone calls are recorded) www.gov.im/legalaid legalaid.treasury@gov.im
Civil Legal Aid Administration Opening hours: <ul style="list-style-type: none"> • 9.00am - 5.30pm Monday to Thursday • 9.00am - 5.00pm Friday 	Civil Legal Aid Markwell House Market Street Douglas Isle of Man IM1 2RZ	+44 1624 685977 www.gov.im/legalaid legalaid.treasury@gov.im
Legal Aid Costs Officer	Costs Section Isle of Man Courts of Justice Deemsters Walk Bucks Road Douglas Isle of Man IM1 3AR	+44 1624 685977 www.gov.im/legalaid costs@registry.gov.im
Legal Aid Appeals Tribunal	Tribunals Centralised Administration General Registry Isle of Man Courts of Justice Deemsters Walk Douglas Isle of Man IM1 3AR	+44 1624 685941 www.gov.im/registries/tribunals Tribunals@gov.im

Telephone calls may be recorded.

1.1 The Legal Aid Committee

The [Legal Aid Committee](#) (the Committee) is constituted under Section 23 of the [Legal Aid Act 1986](#).

Administrative support for the Committee and financial budgets for all aspects of Legal Aid are provided by the Social Security Division of the Treasury.

1.1.1 Statutory Function

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

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

- Reviewing the existing Legal Aid schemes and processes, identifying areas for streamlining, and improved efficiency through legislative/ regulatory amendment or management action
- Auditing the cost of Legal Aid and investigating alternative approaches to consider whether they would deliver better value for money and service
- Exploring alternative means of dispute resolution enabling early agreed settlement
- Evaluating 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 people
- Considering Legal Aid and 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

1.2 Legal Aid Certifying Officer

The Certifying Officer (and any Deputy operating at any time) is appointed by the Committee under Regulation 2 of the [Legal Aid \(General\) Regulations 1997](#). All reference to the Certifying Officer in this handbook also applies to any Deputy carrying out Certifying Officer duties.

The Certifying Officer is a non-practising lawyer and Public Servant (not Civil Servant), appointed to discharge all the functions conferred on them by the regulations. This includes the function of deciding whether or not an application passes the Legal Aid merits tests.

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

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

1.3 Legal Aid Costs Officer

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

Assessment is a rigorous examination of the work that has been undertaken and claimed by an Advocate before authorising payment. The Costs Officer examines the fully itemised list of work against the Advocates file, to ensure that the work claimed is necessary, reasonable and within the scope, conditions and limitations of the Legal Aid Certificate.

Any work not needed to progress the matter will be deducted at assessment.

1.4 Legal Aid Administration

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

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

- an Emergency Protection Order
- a Domestic Violence Injunction (for either a Non-molestation Order or an Occupation Order, or both) or
- a Prohibited Steps Order to prevent the removal of children from the Island

The case for a substantive Certificate must be submitted in time for the Certifying Officer to consider it on their return.

1.5 Legal Aid Appeals Tribunal

The Legal Aid Appeals Tribunal is wholly independent of the Legal Aid Committee.

The Tribunal is established by Section 23A of the [Legal Aid Act 1986](#), and consists of a Chairman and two members drawn from a panel appointed by the Appointments Commission. The Tribunal is a Part 2 Tribunal within the meaning of the [Tribunals Act 2006](#).

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

Significant decisions of the Legal Aid Appeals Tribunal will be notified to Panel Advocates and published at www.gov.im/legalaid.

PART 2 MANAGEMENT

2.1 Quality Standards

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

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

2.2 The Panel of Advocates

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

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

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

You may resign from the Panel by giving notice in writing to the Certifying Officer. Membership will cease when all legally aided cases have been disposed of. Once notice has been given you may not give Legal Aid or advice and assistance in any further cases.

2.2.1 Removal from the Panel

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

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

You must fully consider the Legal Aid legislation listed in Appendix 1 and the provisions set out in the [Legal Aid \(General\) Regulations 1997](#).

Where a Legal Aid Certificate is in place, it is your **duty**:

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

You shall give the Certifying Officer any information which they may require from time to time.

You shall not be precluded by reason of privilege from disclosing to the Certifying Officer any information, or from giving any opinion, which may enable the Certifying Officer to perform their functions.

You shall report to the Certifying Officer:

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

You must report to the Certifying Officer if:

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

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

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

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

2.2.3 Reporting to the Certifying Officer

You are required to regularly report to the Certifying Officer on the progress of the case. Additionally, a report may become necessary:

- a) when there is suspected abuse of Legal Aid by the Assisted Person

- b) to give reasons why the you are refusing to act or giving up a case or are having doubts about whether you 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 you have reason to believe that the Assisted Person has required their 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) if 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

2.3 Case Management

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

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

You are expected to report an Assisted Person making unreasonable demands on the Legal Aid fund. The Certifying Officer may instigate the 'show cause' procedure to revoke the Certificate.

There is an expectation that all Court directions will be met unless there are very good reasons for not doing so.

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

2.4 Complaints from clients

For a copy of the full complaints policy see www.gov.im/legalaid.

2.4.1 Complaints about decisions

Notices of intention to appeal should be sent to the Clerk to the Legal Aid Appeal Tribunal. A client may wish to appeal in circumstances where:

- a Legal Aid Certificate is refused

- an amendment is refused
- when the Certificate has been discharged or revoked, if there is a legislative right of appeal

A client may seek a review of a decision about [financial eligibility](#) by contacting the Legal Aid office.

2.4.2 Complaints about Legal Aid Office staff or the Certifying Officer

The Certifying Officer is committed to providing a high-quality service administering Legal Aid. If something goes wrong, please tell us about it to help resolve the clients' complaint, and improve standards and service delivery. Advise your client of the [Legal Aid complaints policy](#).

2.4.3 Complaints from opponents about Assisted Persons

Complaints from opponents generally arise when they believe the Assisted Person is not eligible for Legal Aid and may not be giving full information about their financial circumstances. Advise your client of the [Legal Aid complaints policy](#). They may also wish to review Government information about [reporting benefit fraud](#).

2.5 Data protection

We use encrypted email. If you are a new supplier or your domain changes, please contact us to set up encrypted email using Transport Layer Security (TLS).

When you send information about your clients such as application forms and attachments, please make sure you only reference one client per email. If submitting several applications or asking for an update on a number of applications for different people, please make sure you send this in separate emails.

2.6 Equalities

We will not treat anyone applying for Legal Aid less favourably than anyone else because of their:

- sex
- legal marital or civil partnership status
- gender reassignment (whether proposed, commenced or completed)
- sexual orientation
- race (this includes colour, ethnic or national origin or nationality or caste)
- disability
- religious or political beliefs (this includes lack of religious or political beliefs)
- age
- pregnancy and maternity

We will ensure our policies do not unlawfully discriminate against any of the groups with protected characteristics.

PART 3 LEGAL ADVICE AND ASSISTANCE – 'GREEN FORM'

3.1 Scope of Services

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

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

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

1. On the application of Manx law to any particular circumstances which have arisen in relation to the person seeking the advice.
2. As to any steps which that person might appropriately take (whether by way of settling any claim, bringing or defending any proceedings, making any agreement, will or other instrument or transaction, obtaining further legal or other advice or assistance, or otherwise) having regard to the application of Manx law to those circumstances.¹

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

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

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

Green Form advice and assistance:

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

3.2 Applying for Legal Advice and Assistance

You can only carry out any work after the application form has been completed and signed by the applicant. Under regulation 3(1) the application form should be signed in the presence of an Advocate unless the Certifying Officer authorises otherwise (Regulations 4(1) and 7(1)).

¹ Section 8 Legal Aid Act 1986

You must first establish eligibility for funding by asking about the client's capital and income, and whether the client has had previous advice and assistance. You can then complete the form on the clients' behalf.

The person must sign the form if they want you to act for them.

If clients do not sign a Green Form at the initial interview, you may be liable to their claim for payment being rejected under the [Legal Advice and Assistance Regulations 1997](#):

- Regulation 3(1) 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) if a client cannot attend for good reason they may authorise another person to attend upon the Advocate on their behalf
- Regulation 7(1) where a client resides outside the island the Certifying Officer may give the Advocate prior authority to accept a postal application for advice and assistance, if they are satisfied that it is reasonable in the circumstances to do so.

You must:

1. Ensure all sections of the form have been completed.
2. Specify whether or not the client receives Child Benefit.
3. Clarify whether the amount claimed as rent is a sum purely for rental for a property, or whether it includes elements of board and lodgings or heating/ electricity.
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.

You can refuse to accept an application if they think it is right to do so, but must disclose the reason if asked to do so by the Certifying Officer.

3.3 Home, hospital and prison visits

Where a client cannot for good reason² attend your office, the client can authorise someone else to attend and complete the form on their behalf.

A form may be posted to clients who are housebound, in-patients at hospital or living in nursing or residential care homes. Payment of travel costs is only made if the client is eligible and for journeys after the form has been signed.

Where a client is in prison, you may send a Green Form by post. On receipt of the completed, signed and dated Green Form you may travel to the prison to advise the client.

1. Only one journey to and from the prison will be paid by Legal Aid
2. Letter or video link at the Courthouse should be used for all other communications

² Regulation 4 (1)

3.4 Applying for Extensions

Extensions should only be applied for in exceptional circumstances for the purposes of bringing the matter to a satisfactory conclusion.

Applications for an extension to Green Form **must** be submitted using the application form. The application must clearly show the amount of work already undertaken.

A maximum of six extra hours may be awarded at the Certifying Officer's discretion. The maximum hours under the Green Form can therefore extend to 10 hours if a divorce application is lodged and nine hours in every other matter.

The application forms are available at www.gov.im/legalaid. When applying for an extension please confirm that your client remains financially eligible.

3.5 Mediation under Green Form

Requests for mediation to seek settlement by negotiation may be made using the extension form. Please state whether you require sole or co-mediation.

The Certifying Officer may authorise one or more of the following disbursements:

1. A sole mediation assessment in the sum of £75
2. Mediation sessions – two mediation sessions with a sole mediator in the sum of £550.00 unless co-mediation is advised
3. In the event that co-mediation is required, the sum of £715.00 in respect of two sessions can be authorised with prior notice to the Certifying Officer accordingly.
4. A memorandum of understanding in the sum of £125.00
5. All disbursements expressed to be exclusive of VAT

The Certifying Officer requires an update on mediation with details of case progression and a standard form will be provided to Advocates for this feedback. The feedback form is intended to capture data about how successful mediation is, and personal information can be suitably redacted.

3.5 Qualifying criteria and financial means test

The criteria for financial eligibility are laid down in the [Legal Advice and Assistance Regulations 1997 \(as amended\)](#).

To be eligible to receive advice and assistance under the schemes the applicant must be:

1. Over 16 years of age³
2. Assessed by the Advocate as financially eligible⁴ (with supporting evidence)

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

1. [Employed Person's Allowance](#)

³ See Regulation 6 (6) in Legal Aid General Regulations 1997 for exceptions

⁴ The method of assessment is the same as a person's income is assessed for [Employed Persons Allowance \(EPA\)](#).

2. [Income Support](#)
3. [Income based Jobseeker's Allowance](#)

Note that Employed Person's Allowance is granted for a 12 week period. Contact the [Social Security office](#) to check that the client is still eligible.

If the applicant is not receiving an automatically qualifying benefit, you must determine the client's financial resources as set out in Regulation 5, Legal Advice and Assistance Regulations 1997, as amended.

Proof of income including that of the applicant's spouse/partner (if applicable) is required. Unless documentary proof is submitted with the claim for payment, there is a risk that the claim will be refused. You should ensure that the client brings evidence to their initial appointment, and keep copies for submission with the claim:

1. Current remittance evidence of state benefit
2. Recent wage slips
3. Rent book or copy of lease – correct housing costs not maximum allowance
4. Letter confirming mortgage interest
5. Evidence of bank balances
6. Evidence of rates payable

Use the [online calculator](#) to calculate the prescribed amount (depending on the circumstances of the client) and deduct the figure from the applicant's income.

The calculator provides an indication only and the outcome may be different once a full financial determination has been carried out.

3.5.1 Determining income

You must consider:

- Client (and partner) 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 (the first £25.60 is disregarded)
- 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 client has in the "main or only dwelling in which [the client] resides"⁵ where it is part of the matter.

⁵ Regulation 5 <https://www.gov.im/media/1351170/legal-advice-and-assistance-regulations-1997-as-amended.pdf>

For every complete sum of £250.00 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 of £100,000 or £250,000 if the disputed item is the normal place of residence.

3.5.2 Contributions

If net resources are greater than zero but less than £80.00 per week, the client will qualify to receive Legal Advice and Assistance, but will be required to make a contribution towards the cost. You are required to calculate the client's maximum contribution.

Net resources (per week)		
Minimum	Maximum	Amount of contribution
£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

3.5.3 Claims for payment

When the work is complete, submit your bill to the Legal Aid office for payment.

Errors or omissions can delay payment, for example:

- Forms not properly completed, illegible or not signed
- Client seen and advice given before financial eligibility established
- Client seen on basis of qualifying benefit but no proof of benefit obtained
- Retrospective use of an extension of time
- Extension sought but no longer financially eligible

3.5.4 Claims for payment of costs and court filing fees

You can claim VAT which is not included in the Green Form financial limits.

Where a divorce application is filed and upon completion you can claim:

1. To the usual maximum of four hours unless extensions have been given which include disbursements
2. The Court filing fee for the divorce which is in addition to the Green Form limit
3. Any other Court fee which has been authorised by the Certifying Officer in respect of instituting proceedings and is included in the Green Form financial limits

For a Green Form for all other matters you may claim:

1. To the usual maximum of three hours unless extensions have been given which include disbursements
2. Any specifically authorised Court fee which is included in the Green Form financial limits

PART 4 CIVIL LEGAL AID

4.1 Scope

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

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

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

4.1.2 The scope of Legal Aid for mediation

Legal Aid is also available for mediation following the [Legal Aid \(Amendment\) Act 2012](#).

This includes all such assistance as is usually given by an Advocate in the steps preliminary or incidental to any proceedings, or in arriving at or giving effect to a compromise to avoid or bring to an end any proceedings.

4.2. The application form for Civil Legal Aid

All applications for Civil Legal Aid must contain the necessary information and documents to enable the:

1. Certifying Officer to determine the nature of the proceedings for which the client is seeking Legal Aid and the circumstances in which it is required
2. Certifying Officer to decide whether the case passes the legal merits test
3. Legal Aid Office to determine financial eligibility

Forms that are not properly completed will be returned to you with guidance on what has been incorrectly completed. Forms which do not provide sufficient information to satisfy the merits test will be refused.

4.2.1 Documents needed to support the application

The Certifying Officer will expect an applicant to provide all the information which is relevant to their application. This may include 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

Ensure all evidence of the client's financial position is included and enough information given in the form to allow us to carry out the financial means test. Advise the client that they may be assessed as having to make a contribution.

4.3 Consideration of applications for Civil Legal Aid

The applicant must:

1. qualify financially
2. show that they have reasonable grounds for taking or defending a Court action and that it is reasonable to grant Legal Aid in the circumstances of the case.

In some cases the applicant or the Advocate may be asked to provide further information or supporting documents.

The Certifying Officer will consider all questions of fact and law arising out of the application. In some instances the Certifying Officer may decide to grant a Certificate generally limited to attempting to negotiate a settlement.

The Certifying Officer may also refuse Legal Aid. If Legal Aid is refused the applicant can appeal to the Legal Aid Appeals Tribunal. If Legal Aid is granted the opponent also has a right to appeal to the Tribunal.

4.3.1 Criteria considered – Legal Merits

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

1. The assessment of Legal Merits is carried out by the Certifying Officer, and there are two elements: 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)

The Certifying Officer may refuse the application, if for example, there was 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 unlikely to advise a fee paying client of modest means to proceed in such circumstances.

Copies of the Certificates granting Legal Aid are sent to the applicant and the opponent.

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

4.3.2 Legal Merits – Appeal procedure

The Assisted Person and the opponent have rights to appeal to the Legal Aid Appeals Tribunal (the Tribunal) in accordance with the provisions of the Legal Aid (General) Regulations 1997.

- An appeal must be brought in writing within 14 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.
- Notice of the appeal should be copied to the 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.

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

1. Dismiss the appeal
2. Direct the Certifying Officer to offer a Legal Aid Certificate subject to terms and conditions, or to amend the Legal Aid Certificate as the Tribunal thinks fit
3. Direct the Certifying Officer to set terms and conditions
4. Refer the matter, or any part of it, back to the Certifying Officer for their determination and report

Any decision of the Tribunal is final and a notice of the decision is given to the appellant, any Advocate acting for them and the Certifying Officer. The decision is also given to the Assisted Person or their representative.

The appeal and all matters relating to it must be conducted at the appellants own expense.

4.4 Civil Legal Aid – The Statutory Charge

4.4.1 Overview

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

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

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

The charge could be imposed upon money or property recovered, including from any costs recovered and even where the proceedings are settled or compromised.

The Regulations require you to give the Treasury details of the property.

Legal Aid forms include:

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

4.4.2 Advocate's responsibility

You are responsible for ensuring that the Assisted Person is kept fully informed about the implications of the Charge throughout the duration of the matter. You should ensure 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.

4.4.3 Advocate's Duty

Regulation 15(2) of the Legal Aid General Regulations 1997) (as inserted by Regulation 4 of the [Legal Aid \(Financial Resources\) Amendment Regulations 2014](#)) states:

“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.”

The obligation to notify within seven days does not preclude an earlier notification if you identify a risk that the property might be lost. Preservation or recovery takes place when the order is made or agreement or compromise is reached.

4.4.4 Statutory Charge checklist

1. Has the assisted person successfully recovered or preserved property of any nature, including any sums recovered by an order for costs for proceedings where Legal Aid has been granted?
2. Calculate the Assisted Persons costs
3. Take account of any contributions to Legal Aid if the Assisted Person is a contributor
4. If no exemption, and costs paid by the other side are less than the Assisted Persons costs, then the Charge will apply to any outstanding balance, which would otherwise be funded by Legal Aid.

4.4.5 Exemptions from the Charge

Exemptions are listed under Schedule 1A of the Legal Aid (Financial Resources) Regulations 2014. They are:

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 their trade
3. Any sum or sums under Section 5 of the [Inheritance \(Provision for Family and Dependants\) 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

4.4.6 How the Charge operates when the Certificate has been revoked or discharged

The Charge set out in Section 9A of the Legal Aid (Financial Resources) Regulations 1997 (as inserted by the [Legal Aid \(Financial Resources\) Amendment Regulations 2014](#)) applies to any property recovered as a result of the Assisted Person, or their personal representatives or trustee in bankruptcy, continuing to pursue the relevant dispute or take, defend or be a party to the relevant proceedings.

4.5 Enforcement of the Statutory Charge

4.5.1 Recover of money and/ or property

If you recover money or property on behalf of your client, which exceeds the value/cost of your bill and where legal costs are not covered by the other side and the exemptions under Schedule 1A do not apply, you must retain sufficient funds and confirm to the Treasury that your bill will not exceed the amount retained. You must seek the Certifying Officer's approval to release the balance.

If you recover or preserve money or property on behalf of your client, where the value is less than your bill and where legal costs are not covered by the other side and the exemptions under Schedule 1A do not apply, you must retain the entirety of the recovered/ preserved

property. The value of the recovered/preserved property shall be applied to the cost of the bill and Legal Aid will cover the balance following assessment of the bill.

4.5.2 Property

Treasury may protect the charge in one of two ways:

1. A caution in favour of the Treasury may be filed with the Land Registry in respect of registered land
2. A caveat in favour of the Treasury may be recorded against the title in respect of unregistered land

4.5.3 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 payments, whereby any monies paid will first be allocated to pay off the interest before being applied to the capital.

4.6 Cases with borderline prospects of success

The grant of Legal Aid has to be necessary and proportionate in all circumstances.

The Certifying Officer will assess the merits of the case and take account of the prospects of success. 'Borderline prospects of success' might be identified when first submitting the application for Legal Aid or during the case if there is a change of circumstances. Any changes in the prospects of success should be 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. In both legally aided and private matters, Advocates 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.

If the Certifying Officer grants a Certificate in a borderline case the applicant may be given a partial Certificate for the proceedings limited to further investigation of the facts, assembling evidence and obtaining the opinions of experts. This type of Certificate is usually tightly restricted as to the time allowed and the time period in which the work should be completed.

When submitting an application for a borderline case, highlight in the statement of case any negative aspect of the case and offer information on how it might be addressed. You should explain why the matter has merit and submit any additional evidence that will assist the Certifying Officer in reaching a decision.

4.7 Expert Reports

If the estimated cost of the expert report is over £1,000 you must obtain three competitive quotes for the services required, considering local expertise first. If local expertise is not available or is not impartial, then try to locate an expert within a short travelling distance.

Provide the expert's name and contact details, area of expertise and the purpose of the report.

- It is usually most cost effective for the individual to travel to the expert
- Costs of travel and hotels will not always be granted particularly if not strictly necessary
- Travel may be limited to the cost of an airfare, placing the expert with the same residual costs that they would have if working in their own area
- Quotes must specify the hourly rates and numbers of hours for each section of the work
- Ensure the timing of the report avoids duplication, unnecessary updates or addendums.

The costs of obtaining additional information such as records, valuations, surveys etc. should be provided. You must seek specific authorisation before incurring disbursements over £250.00 (see 4.9.7 of this Handbook).

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. Seek favourable quotes for legal opinions and off-island Counsel attending Manx Courts. Hourly rates will not exceed those of a Senior Advocate conducting Legal Aid work in the Isle of Man, unless there is an exceptional area of specialist expertise involved. See paragraph 5.4.7 for the use of off-island Counsel in criminal cases.

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

When seeking authorisation to incur a disbursement for preparation fees for a medico-legal report, please submit confirmation that the expert 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 does not prepare a final report.

4.8 Emergency Applications

An Emergency Certificate is issued before it has been established whether the applicant is financially eligible for Legal Aid, so the applicant signs an undertaking that they will repay the monies due should it transpire that they are not eligible.

Please contact the Legal Aid office when you are submitting an Emergency Application so that we know to expect it.

Emergency Certificates usually only cover the very limited scope of the emergency. The maximum number of hours of work authorised and the timescale in which the work should be completed will also be limited.

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.

Emergency Certificates may only be extended in exceptional circumstances and within the scope of the emergency proceedings for which the original Certificate was granted. Any application to extend the scope of the Emergency Legal Aid Certificate will only be considered after the Certificate has been made substantive following completion of the financial means test.

1. Apply using the emergency application form.
2. Give notice to Legal Aid as early as possible so that it can be processed quickly.
3. Collate sufficient basic information to accompany the application so that the test can be met.
4. Proof of receipt of qualifying benefits should accompany the emergency application.
5. Failure by the you or the client 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.

The legal merits test will be considered by the Certifying Officer in all cases (apart from Mental Health Review Tribunals – see 4.10 of this Handbook).

The Certifying Officer may be satisfied that an application is an emergency 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.

4.8.1 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 accompanying correspondence.

4.9 The Certificate

The Certificate is the conclusive and primary authority for Legal Aid to pay you.

You should check the extent of cover provided by it. In some cases, the Certificate will not cover everything that you have initially requested. You should check the timescale, duration and 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.

Most initial Certificates only cover attempts to negotiate a settlement or some of the preliminary steps leading to issuing proceedings. The amount of time that can be spent on the matter will be restricted.

The other parties to the proceedings have an opportunity to appeal the grant of a Legal Aid Certificate. You 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 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.

Whilst the Certificate remains in place you can still work under it within its scope.

If an opponent has appealed against a Certificate issued in respect of the first steps of proceedings, the Certifying Officer would usurp the authority of the Tribunal if, pending the appeal, the Certificate was amended to cover the second step of the proceedings. Any work undertaken by you under such circumstances would be 'at risk'.

4.9.1 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.

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

Under the [Legal Aid \(General\) \(Amendment\) Regulations 2014](#) the Certifying Officer 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.

4.9.2 Time/duration limitation/conditions

Legal Aid Certificates will be issued limited to negotiating a settlement.

Before a Certificate is issued without such a limitation you must supply copies of correspondence showing any attempt to settle the matter, together with a report on the result of the negotiations, an explanation of the areas in dispute and the reasons for the failure of negotiations.

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

If negotiations fail after the issue of a Certificate containing the limitation, you may seek an amendment after supplying the Certifying Officer with a report.

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. You will only have Legal Aid authority to carry out work up to the time limit and within the duration.

A given number of hours prescribed on the Certificate does not mean that the work should take that length of time. 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 you

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. You may seek to have limits extended but will be expected to confirm the work undertaken, the next steps and the approximate costs.

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, you will need to seek an amendment to the Certificate.

4.9.3 Mediation Certificates

Successful mediation is likely to shorten proceedings and save costs. 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.

4.9.4 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 themselves without any undertaking been 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. If you are prepared to act, you should contact the Legal Aid Office and speak to the Certifying Officer before seeing the client. When seeking authority please 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 a completed application signed by the client and you.

Please email/deliver the application to the Legal Aid office and mark it as urgent. A Legal Aid Certificate can then be issued to cover the work undertaken on the day of the hearing.

If a Section 27 hearing occurs over a weekend you should:

1. Visit the client to take instructions and have the application completed and signed
2. Attend Court on behalf of the client
3. Email the completed application form, with the subject heading 'Urgent – Secure Unit application' to the Legal Aid office immediately, so that it is received on the following Monday morning.

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

4.9.5 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 if the proposed replacement Advocate agrees to the transfer. We expect that you will discuss this with the Assisted Person.

The Certifying Officer will not automatically transfer a Certificate, because it may involve unjustified expense to the Legal Aid fund (e.g. duplication of work). A full report on the circumstances is required and the conduct of the Assisted Person may be relevant.

Some simple transfers occur when the nominated Advocate changes firm, retires or is unable to carry out the work through illness or conflict.

4.9.6 Amendments to the Certificate

If the Certificate does not cover all the steps needed or circumstances have changed, you can apply 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](#).

Amendments are made primarily if:

1. there has been a mistake
2. it has become desirable to extend the Certificate to other steps or proceedings, except in the case of an inquest
3. if it is no longer appropriate for proceedings to continue, if the scope of the Certificate is not amended

Or:

4. a change of Advocate should be authorised
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 financial eligibility may already be noted on the file.

Applications for amendments to Certificates should be submitted to the Certifying Officer. 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. You must:

- set out clearly what amendment(s) to the Certificate you are seeking.
- provide a brief summary of the work you have completed to date, details of how many hearings have been attended and 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.
- provide an estimate of time and cost of future hearings and preparation work.

If you start work or incur expenses without clear written authority amending the Certificate, you may not be paid. You should 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 about why the final hearing cannot be avoided and what matters within those proceedings specifically remain outstanding.

4.9.7 Disbursements

You must seek specific authorisation before incurring disbursements over £250.00.

You may incur disbursements (including Court filing fees) under £250.00 without authorisation from the Certifying Officer and may seek payment upon assessment of the bill. If the value of minor disbursements exceeds £250.00, you may contact the Certifying Officer to seek an interim payment.

Mediation costs require authorisation by the Certifying Officer before they are incurred.

If an expert witness attends Court to give evidence, the Certifying Officer authorises the travel and accommodation costs but it is the Court which authorises the attendance of the expert witness.

4.9.8 Discharge and revocation of a Certificate

A Legal Aid Certificate may be terminated either by discharge or revocation. You will be paid for your work in both situations, and the main difference is in the effect on the Assisted Person.

1) **If the Certificate is revoked** – the Assisted Person will be treated as though they were never legally aided, and they will therefore be liable for all the assessed costs of the work carried out by you from the outset.

2) **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 backdated. You may claim up to the date the Discharge Certificate is issued. Legal Aid will attempt to recover costs from the Assisted Person between the date of issue of discharge and the date from which the Legal Aid Certificate is discharged.

4.9.9 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 you (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 can only be discharged or revoked)

In these circumstances:

1. You may need to advise the Court and the other parties to the proceedings
2. Your 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 Assisted Person views a matter as being concluded. This can result in a financial redetermination being carried out whilst you complete final tasks.

To reduce unnecessary financial redetermination and improve customer service to Assisted Persons, **you are requested to submit an application to discharge the Legal Aid Certificate as soon as all work under the Certificate has been concluded.**

There is no need 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, you can still claim the cost of preparing the bill for assessment.

4.10 Guidance on Appeals to the Mental Health Review Tribunal

An application for Legal Aid is made by virtue of the [Legal Aid Act 1986](#) Paragraph 5, Part 1, Schedule 1. Assessment of the Assisted Person's finances is not made (see [Legal Aid Act 1986 \(Modification\) Regulations 2015](#) – SD2015/0168), nor is a legal merits tests applied.

There may be little time between you interviewing the client and an appearance before the Tribunal. If you are prepared to act:

- 1) call the Certifying Officer to advise of the application prior to seeing the client

- 2) provide the client's name and date of birth together with the time and date of the Tribunal hearing
- 3) submit the substantial application to Treasury and the Certifying Officer

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 you.

The Certificate will be issued in draft if required to your secure email address.

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

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', such as:

- Undefended divorce or judicial separation
- Employment & Equality Tribunal
- Social Security Appeal Tribunal
- Immigration matters
- Criminal Compensation Board
- Work Permits
- Planning Law
- Rent and Rates Tribunal
- Small Claims Procedure

4.11.1 Small Claims Procedure

The financial limit for the Small Claims Court is £10,000 except for a personal injury matter where the limit is £5,000. If the quantum in respect of a personal injury matter is £5,000 or less, a Legal Aid Certificate is not available. In personal injury matters that are, or may prove to be appropriate for Small Claims Procedures it is usual for any Legal Aid Certificate to carry a limitation.

The authority for this limitation is a decision of the Committee reported at 4MLB 13 which was:

CASE: LA/84/85/205
COURT: Legal Aid Committee
DATE: 5 February 1985
LEGISLATION: Rules of the High Court of Justice (Small Claims Arbitration) 1984

"The Legal Aid Committee indicated that where in any claim after 1 January 1985 the small claims arbitration procedure was applicable, any Legal Aid certificate issued should specifically provide that its scope should exclude such part of the proceedings as were referred to arbitration."

PART 5 LEGAL AID IN CRIMINAL MATTERS

5.1 Overview

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

- a) the Duty Advocate Schemes
- b) Legal Advice and Assistance ('Green Form') and
- c) Criminal Legal Aid

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

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

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

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

5.2 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 established by clause 2 of the Duty Advocate (Police Custody) Scheme 1998.

There are two separate schemes which provide:

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

5.2.1 The Police Custody Scheme

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

Initial advice may be provided by telephone, although Advocates on the rota are required to attend at the police station when requested to do so if:

- the suspect has been arrested in connection with an arrestable offence and the Police intend to interview them
- 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.

Where a person is bailed to return to the police station but has not been charged, the scheme covers the next police station attendance but does not provide for advice at the Advocate's office in advance of the attendance. It is not possible to apply for a Criminal Legal Aid Certificate until the client is charged. You should consider using the Green Form scheme if the client is financially eligible.

The Police Custody Scheme does not apply to Interviews Under Caution by Social Security Inspectors. Again, under such circumstances you should consider the Green Form scheme if the client is financially eligible.

5.2.2 The Duty Advocate Scheme

The proceedings to which this Scheme applies are listed in the Schedule to the [Duty Advocate Scheme 1997](#). These are:

1. Committal proceedings where all the evidence is cited 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

5.2.3 The Duty Advocate Committee

One of the functions of the Duty Advocate Committee is to maintain a Panel of Duty Advocates. Advocates wishing to be included on the Panel should apply in writing to the Duty Advocate Committee.

Resources for Duty Advocates are available on the [Law Society website](#).

5.2.4 Cover

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

- from 7pm to 7am every day
- from 7am to 7pm every Saturday, Sunday and Bank holidays.

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

- to be consulted by the Duty Advocate in any case of difficulty

- 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

5.2.5 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 applies:

- (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 they 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.....

5.2.6 Claiming for payment

The forms for claiming payment should be signed and emailed to the Legal Aid office with the email subject heading 'Duty Advocate claims'.

5.3 Use of the Legal Advice and Assistance 'Green Form' in criminal matters

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

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

Green Form can be used, subject to financial eligibility, for Interviews Under Caution (Police Powers and Procedures Act, Code C) subject to the following:

- If the interview has been arranged at short notice and the person has not had the opportunity to attend your office to see if they are financially eligible under the Green Form Scheme then you should obtain a signed undertaking using the wording at paragraph 5.2.6

- The initial time limit for a Green Form is three hours although it can be extended to a maximum of nine hours
- If the interview takes place during the day and it appears that it may exceed the three hour limit, you can contact the Legal Aid office and request that the Certifying Officer considers granting an extension to the time limit
- If the Legal Aid office is closed when you wish to seek an extension, continue with the interview and contact the Legal Aid office the next working day.

5.4 Criminal Legal Aid

5.4.1 Criminal Legal Aid - scope

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

Under Schedule 3 of the Legal Aid Act 1986, Criminal Legal Aid **may** be granted for:

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 Paragraph 4 of Schedule 2A to the Summary Jurisdiction Act 1989, where the Court does not make a hospital order*
8. Appeal to Staff of Government against conviction or sentence or both by a Summary Court 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 7(3) of the Criminal Jurisdiction Act 1993 or Paragraph 2(3) of Schedule 2A to the Summary Jurisdiction Act 1989
10. Appeal to Staff of Government against a Hospital Order or Guardianship Order made by a Juvenile Court under Section 83 of the Children and Young Persons Act 2001
11. Appeal to Staff of Government against conviction or sentence or both by a Court of General Gaol
12. Appeal to the High Court under Section 82(5) of the Children and Young Persons Act 2001
13. Application to the High Court 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

16. 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
17. Appeals to the High Court under Section 9 of the Sex Offenders Act 2006.

Ensure that work carried out is within the scope of the Certificate or covered by a relevant disbursement authority.

*In this handbook, points 7, 9 and 10 update Schedule 3 from the Mental Health Act 1974 provisions. Point 12 updated to the Children and Young Persons Act 2001.

5.4.2 Applying for Criminal Legal Aid

An application in the form set out in Schedule 1 to the [Criminal Legal Aid Regulations 1993](#) 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 the High Court; the Clerk to the Court in Summary Courts; and to the Certifying Officer in the case of an Appeal to the Staff of Government Division.

The applicant is required to give details of income and savings in a statement of means. You must include the applicant's wage slips for the previous three months and/ or proof of benefits.

Advocates engaged in Criminal Legal Aid work must ensure that the application forms are fully completed and accompanied by all necessary supporting paperwork.

5.4.3 Criteria for the grant of Criminal Legal Aid

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

5.4.4 Payment of contributions

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

5.4.5 Change of financial circumstances

The defendant must tell the Court if their income or capital changes.

5.4.6 Choice of Advocate

A defendant may choose any Advocate who is willing to act.

If the defendant wants to change Advocates they will need to give the Court a good reason.

5.4.7 Off-island Counsel

Only in very rare cases should the use of off-island Counsel be considered.

Legal Aid cannot be granted to such Counsel unless that Counsel has first obtained the issue of a Temporary Advocate's Licence under section 17 of the [Advocates Act 1995](#). In complex or serious cases, disbursements can be requested from the Certifying Officer to cover the work of Counsel in assisting the Advocate.

5.4.8 Criminal Legal Aid Disbursements

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

The Certifying Officer may give authority to:

1. Obtain a report or opinion of one or more experts or to tender expert evidence
2. Employ a person to provide a report or opinion
3. Bespeak transcripts or shorthand notes or recordings of any proceedings

Supply information about why the disbursement is required and (in most instances) estimates for comparison. This is particularly important for high cost disbursements.

Financial limits for disbursements:

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

Disbursements may be refused if:

1. The application is for expert evidence or reports which could have been or could be ordered by the Court and might, as a result, be payable out of Court funds.
2. The application is for a medical assessment for which it would be reasonable to expect to be NHS funded
3. The cost of the disbursement is excessive and alternative estimates from at least two other service providers have not been provided.

Ensure 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 if engaging:

- Off-island Counsel
- Translators
- Transcribers
- Enquiry Agents
- Psychological assessors
- Litigation friends

If the work overtakes the scope of the authority given, payment may be refused. Do not claim for disbursements without authority from the Certifying Officer, and always include a copy of the relevant written authority.

5.4.9 Attendance of expert witnesses at Court

Members of the Judiciary authorise the expert witness attendance, they do not become involved in the assessment of costs and their actual payment. They may approve attendance if requested but this is not necessarily needed in all instances.

When seeking authority for an expert to attend Court:

- 1) Seek authority from the Certifying Officer for the travel and accommodation expenses of the expert witness
- 2) Seek written authority of the Court for the expert witness to attend the hearing
- 3) After the hearing submit the invoice for the travel and accommodation expenses together with the written Court authority where available, details of the time spent at Court and the costs being claimed by the expert.
- 4) Submit invoices to the Legal Aid office for payment.

5.4.10 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 'yes', the application should be made on behalf of the Assisted Person.
- If the answer appears to be 'no', 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 a Panel Deemster or part-time Deemster from another jurisdiction, you are 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 you.

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.

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

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 discussed with the defendant and for advice to be given as to the right to appeal. Evaluate the merit of an appeal before the matter is concluded, as there may be disbursements associated with the evaluation of the appeal which may need to be considered within the scope of the existing Certificate. A bill may then be submitted to the Legal Aid Costs Officer for assessment.

If there is to be an appeal, an application for Legal Aid to cover the appeal should be submitted to the Certifying Officer as soon as possible.

PART 6 PAYMENTS

6.1 Preparing the Bill of Costs

Certificates must be discharged before a Bill of Costs can be submitted for assessment. The only usual exception to this is when a matter is being transferred from one Advocate to another or in the case of Criminal Legal Aid where discharge is not applicable.

Prepare the Bill of Costs using the electronic format supplied – a template is available on request from the Costs Officer.

The electronic format contains pre-set figures – do not adjust these as this will produce a distorted bill. Ensure that the bill is signed.

The format of a Bill of Costs is formalised in the [Criminal Legal Aid \(Amendment\) Regulations 2014](#) (Schedule 4) and the [Legal Aid \(General\) \(Amendment\) Regulations 2014 \(Regulation 11\)](#).

6.2 The current hourly rates

The hourly rates are set out in the [Legal Aid \(Remuneration\) Order 2014](#):

Senior Advocate	£135.00
Junior Advocate	£115.00
Paralegal	£85.00

6.3 Your files

Your files are required for the purposes of assessing the Bill of Costs.

- Please ensure that all files are clearly marked with the name of the client, the Legal Aid reference, 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.
- Please ensure that the contents of each file are 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 involved, please submit the Bill of Costs without the files. The Costs Assessment Office will contact you and request your files when ready to start assessment.

6.4 Interim billing

- 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.
- Advocates may submit an interim bill every six months if it exceeds £1,000. Only 75% of the bill will be paid.

- Requests for an interim payment should be submitted to the Legal Aid office in the same format as a Bill of Costs, and clearly marked as a request for an interim payment.

6.5 Final billing

- Final bills are submitted for assessment to the Costs Assessment Office when the work has been completed and the Legal Aid Certificate has been discharged/revoked, or when 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 three months of the Certificate of discharge, revocation or transfer. Supply a covering letter stating whether the matter is a transfer, and add any other relevant information.

6.6 Submission of bills

- Early submission of bills is preferred. You should factor in the timescale of assessments when estimating likely payment and cash flow.
- The Costs Assessment Office aim to complete the majority of assessments within one month from the date of complete submission of the Bill of Costs, but this can sometimes take longer. Large cases are likely to affect the timescale. Please ensure quick delivery once your files have been requested, to the Public Payments Counter in the Isle of Man Courts of Justice, Deemsters Walk, Douglas.
- Files may also be requested by the Legal Aid Certifying Officer. In these circumstances the files should be delivered to the Legal Aid Office, Markwell House, Market Street, Douglas. There is no facility to deliver oversize mail out of office hours at Markwell House.

6.7 Avoiding problems with your Bill of Costs

- The Costs Officer will only allow work directly and specifically covered by the terms, conditions and limitations (including time limits) of the Legal Aid Certificate.
- Make sure that the Legal Aid Certificate covers the work you intend to undertake.
- 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.
- You are responsible for accounting for the VAT on the 'self-invoice' arrangements.
- If the Court has ordered the costs to be paid by the opponent or from Central Funds please ensure that this is clear when submitting the Bill of Costs and attach a copy of the relevant costs order.
- Make the Costs Officer aware of any issues that need to be considered at assessment as it may not be possible to have them considered afterwards.
- Make sure that any handwritten information is legible.

6.8 How to get paid when the Certificate is transferred

The first stage is to lodge the Bill of Costs made up to the date of the transfer certificate. If it is not possible to submit your file when you submit your Bill of Costs for assessment, please make the Costs Assessment Officer aware.

The Costs Assessment Office will contact you to arrange for the delivery of your file(s) when the matter is ready to be assessed.

It is the responsibility of the Advocate submitting the Bill of Costs to submit and collect their files from the Costs Assessment Office, regardless of whether the files have been loaned to another Advocate.

6.9 Payment of disbursements

Submit all invoices for payment of pre-authorised disbursements over £250.00.

Disbursements under £250.00 do not require prior authorisation, if they progress the matter and fall into one of the categories set out below.

If the disbursement progresses the case, disbursements under £250.00 will be paid before the assessment of the bill of costs if they are included in one of the following categories:

- a) Court fees
- b) Coroners fees
- c) Fees for medical reports or medical records
- d) Courier fees
- e) Valuation fees
- f) Copying fees

Mediation fees are not included. If you have a disbursement which does not fall within the above categories, contact the Certifying Officer to discuss.

6.10 Review of assessment

If you are dissatisfied with any decision on an assessment, you may make written representations to the Certifying Officer specifying which elements you do not agree with. The Certifying Officer may allow such costs and fees as appear to represent fair remuneration for the work actually and reasonably done.

The result of a review can be:

- the assessment being upheld
- the assessment being reduced, or
- items that were disallowed being paid.

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](#)
16. [Legal Aid Act 1986 \(Modification\) Regulations 2015](#)

APPENDIX 2: LIST OF FORMS

- 1. Application for Green Form**
- 2. Application to extend Green Form***
- 3. Application for Civil Legal Aid**
- 4. Application to extend Civil Legal Aid**
- 5. Application for an Emergency Certificate**
- 6. Application for Discharge**
- 7. Paternity Declaration**
- 8. Application to the panel ***
- 9. Standing Order Mandate for Legal Aid Contributions/Payments ***
- 10. Court Duty Advocate Claim for Payment (Junior Advocate) ***
- 11. Court Duty Advocate Claim for Payment (Senior Advocate) ***
- 12. Police Station Duty Advocate Claim for Payment (Junior Advocate) ***
- 13. Police Station Duty Advocate Claim for Payment (Senior Advocate) ***

We will send out electronic / paper copies of forms as requested and when updated. If you're not sure you have the most up to date version of these forms please contact the Legal Aid office and we will email you a copy.

*available online

APPENDIX 3

CIVIL LEGAL AID – CHECKLIST FOR NEW APPLICATIONS

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. three months bank statements for each account, wage slips, rent details, evidence of childcare costs?
6. Has the applicant provided evidence of any benefits they are receiving?
7. Has a statement of case been properly prepared and have supporting documents been included?
8. Have all the correct details about the applicant's employment been correctly supplied?
9. Have you included 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)

Common reasons for rejection or 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 – e.g. means assessment forms.
4. Applicant isn't in receipt of the benefit indicated on the form.
5. Insufficient information/evidence to consider merits.