



# LEGAL AID SCHEME OPERATING GUIDELINES



## LEGAL AID IN JERSEY

### Background

Legal Aid has been made available in Jersey on a voluntary and pro bono basis by the legal profession since 1904. It is based on the obligation of Advocates to give legal assistance to certain classes of litigants, in accordance with the Advocates oath which includes the following clause:

**“Vous vous contenterez de gages et salaires raisonnables, et assisterez aux Veuves, Pauvres, Orphelins, et Personnes indefendues”.**

**“You will content yourself with reasonable wages and salaries and will assist widows, the poor, orphans, and undefended persons.”**

The general, and accepted, obligation “to assist the poor” effectively became formalised into the Legal Aid system when the profession determined, by unanimous resolution, on 20 August 1904, that the obligation would be discharged by Advocates of less than 15 years’ standing on a “Tour de Rôle” (‘according to one’s turn’) basis. The obligation remains in force and has been acted upon for over a century. Advocates (and now Solicitors of the Royal Court) of less than 15 years’ standing are therefore, in general, obliged to represent a person under the Legal Aid scheme.

In practice, the obligation is discharged by advocates and solicitors in private practice and does not extend to advocates and solicitors employed by the Law Officers’ Department or Judicial Greffe or to advocates or solicitors employed outside private practice who hold non-practising status.

In recent years, while criminal, civil and family law certificates continued to be discharged through the Tour de Rôle, the representation of parties in public law children and mental health/capacity law matters has been undertaken by accredited members of specialist panels, funded by the Judicial Greffe on a fixed fee/tariff basis.

## Reform of Legal Aid

Following discussions between the Law Society of Jersey and the Government of Jersey, the **Access to Justice (Jersey) Law 2019** was enacted, the principal purpose of which was to “make provision for improving access to justice by establishing a legal aid scheme”.

The key elements of the Law are as follows:

### **2 Duty to provide legal aid**

- (1) Without prejudice to the generality of –
  - (a) the oath of advocates of the Royal Court administered under Article 8(6)(a) of the [Advocates and Solicitors \(Jersey\) Law 1997](#) and set out in the [Code of 1771](#); or
  - (b) the oath of office of solicitors of the Royal Court administered under Article 8(6)(b) of the [Advocates and Solicitors \(Jersey\) Law 1997](#) and set out in Schedule 1 to that Law,

an advocate or a solicitor is under a duty to provide legal aid to a person in accordance with this Law.
- (2) A failure by an advocate or a solicitor to provide legal aid in accordance with paragraph (1) shall be professional misconduct and a complaint against an advocate or a solicitor alleging professional misconduct on grounds of failure to discharge that duty shall be made and determined under Part 3 of [The Law Society of Jersey Law 2005](#).

### **3 Establishment of the Legal Aid Scheme**

There shall be established in accordance with this Law, a scheme to be known as the Legal Aid Scheme, for the provision of assistance in Jersey in a case where an individual is in need of legal services.

### **4 Administration of the Legal Aid Scheme**

- (1) The Judicial Greffier shall be responsible for the administration of the Legal Aid Scheme.
- (2) Subject to paragraph (1) and to such directions as the Judicial Greffier may from time to time determine, the Judicial Greffier may entrust any part of the administration of the Legal Aid Scheme to the Law Society or to such other person as the Judicial Greffier deems appropriate, except for –
  - (a) the responsibility for meeting payments under the Legal Aid Scheme; and
  - (b) the requirements imposed on the Judicial Greffier under Article 16.

- (3) For the purposes of Article 3(b) of the [Freedom of Information \(Jersey\) Law 2011](#), information in respect of the administration of the Legal Aid Scheme held by a person to whom an entrustment is made under paragraph (2), shall be information that is held on behalf of the Judicial Greffier.
- (4) The administration of the Legal Aid Scheme shall be carried out in accordance with the Legal Aid Guidelines except that, notwithstanding any provision to the contrary in this Law or Regulations or an Order made under this Law or the Legal Aid Guidelines, the Judicial Greffier may, in exceptional circumstances, provide legal aid to any person where the interests of justice requires it.

## 5 Resources

- (1) The States shall ensure that the Judicial Greffier is provided with sufficient resources for the purpose of meeting payments under the Legal Aid Scheme.
- (2) Without prejudice to the application of the Public Finances (Jersey) Law 2005 to the Judicial Greffier's Department, where a function is entrusted to the Law Society under Article 4(2), the Law Society shall, to the extent of those functions, be a States aided independent body for the purposes of Article 14 of the [Comptroller and Auditor General \(Jersey\) Law 2014](#).

## 6 Establishment of Legal Aid Guidelines Advisory Committee

- (1) There is established a committee to be known as the Legal Aid Guidelines Advisory Committee for the purpose of advising and assisting the Minister in making the Legal Aid Guidelines.
- (2) The Legal Aid Guidelines Advisory Committee shall be chaired by the Judicial Greffier who shall be a member of the Legal Aid Guidelines Advisory Committee.
- (3) The Legal Aid Guidelines Advisory Committee shall also consist of the following members –
  - (a) the Attorney General or a person nominated by the Attorney General;
  - (b) the most senior officer of the Magistrate's Court, or a person nominated by that senior officer;
  - (c) the Bâtonnier or a person nominated by the Bâtonnier;
  - (d) the President of the Law Society or a person nominated by the President;
  - (e) the Chief Executive Officer of the Law Society or a person nominated by the Chief Executive Officer;
  - (f) two persons nominated by the Bailiff;
  - (g) two other persons nominated by the Minister who are residents of Jersey and who are not members of the States; and
  - (h) two members of the States, nominated by the States.
- (4) Before nominating a person under paragraph (3), the Judicial Greffier, must first be consulted.

- (5) A person shall be nominated under paragraph (3) for such period as may be specified by the person who has nominated him or her.
- (6) The Legal Aid Guidelines Advisory Committee may, subject to a quorum of not less than 7 members, meet for the conduct of business, adjourn and otherwise regulate its procedures as it thinks fit.
- (7) The Legal Aid Guidelines Advisory Committee shall, before advising and assisting the Minister –
  - (a) consult the Bailiff and Magistrate;
  - (b) consult such other persons as it considers appropriate; and
  - (c) meet (unless it is inexpedient to do so).
- (8) The reports of the Legal Aid Guidelines Advisory Committee must be signed by not less than 7 members of the Legal Aid Guidelines Advisory Committee.
- (9) The Legal Aid Guidelines Advisory Committee must make a report to the Minister for the purpose of advising and assisting him or her under paragraph (1) no later than 6 months after its establishment under that paragraph.
- (10) The States may, by Regulations, amend the members of the Legal Aid Guidelines Advisory Committee listed in paragraph (3).

## 7 Legal Aid Guidelines

- (1) The Minister shall, with the advice and assistance of the Legal Aid Guidelines Advisory Committee, make and publish guidelines for the purpose of providing for the administration of the Legal Aid Scheme, including providing –
  - (a) for the conditions under which legal aid shall be provided in Jersey;
  - (b) for the responsibility for meeting the reasonable costs of legal services under the Legal Aid Scheme;
  - (c) for the financial cost to individuals provided with legal aid; and
  - (d) information regarding the Legal Aid Scheme to applicants and to advocates and solicitors who provide legal services under the Legal Aid Scheme.
- (2) Without prejudice to the generality of paragraph (1), the Legal Aid Guidelines may do any of the following –
  - (a) subject to Article 9, specify the types of cases that may be eligible or not eligible for legal aid;
  - (b) provide for different types of cases to be dealt with in accordance with different systems of legal aid under which –
    - (i) legal services are provided by an advocate or a solicitor who is paid out of public funds for those legal services, or
    - (ii) legal services are provided by an advocate or a solicitor who is not paid out of public funds but may receive contributions from an applicant in accordance with the provisions made under sub-paragraphs (f), (g), (h) and (i);

- (c) specify the factors that may be relevant to providing legal aid, take into account the circumstances in which it is appropriate to provide legal aid, and may, in particular, set out the extent to which the factors ought to reflect the following –
  - (i) the likely cost of providing the legal services and the benefit which may be obtained by the legal services being provided,
  - (ii) the appropriateness of applying available resources to provide the legal services, having regard to present and likely future demands for the provision of legal services,
  - (iii) the importance to an individual of the matters in relation to which the legal services would be provided,
  - (iv) the nature and seriousness of the act, circumstances or other matter in relation to which the legal services are sought,
  - (v) the availability to an individual of legal services provided and the likelihood of the individual being able to make use of such legal services,
  - (vi) if the legal services are sought by an individual in relation to a dispute, the individual's prospects of success in the dispute,
  - (vii) the conduct of an individual in connection with legal services made available or in connection with an application for such legal services,
  - (viii) the conduct of an individual in connection with any legal proceedings or other proceedings for resolving disputes about legal rights or duties,
  - (ix) the public interest, and
  - (x) an individual's residential status, length of residency, or other connection with Jersey;
- (d) set out the system for determining whether legal aid is provided, including provisions in respect of –
  - (i) obtaining legal opinions, and such other advice as is required to make a determination,
  - (ii) making provision for the involvement of the Bâtonnier, the Law Society, its employees, or any of its officers in the exercise of functions under this Law, and
  - (iii) obtaining of an advocate or a solicitor, whether by a system of compulsory assignment of an advocate or a solicitor, or otherwise providing legal representation where an applicant is unable to obtain legal representation;
- (e) establish financial eligibility criteria by reference to income and capital, including that of the applicant's household;

- (f) make provision for determining whether a case falls within a class for which the advocate or solicitor must be paid by the Judicial Greffier for the provision of legal services;
- (g) make provision for determining the rates and amounts of payments for the provision of legal aid;
- (h) make provision for the criteria for the payment of financial contributions by persons eligible for legal aid to –
  - (i) their advocate or solicitor, or
  - (ii) the Judicial Greffier;
- (i) make provision for limiting financial contributions under sub-paragraph (h) to –
  - (a) a maximum specific payment; or
  - (b) a maximum periodic payment and for limiting the length of time for which periodic payments are to be made;
- (j) make provision in respect of procedures for billing persons provided with legal aid, and the recovery of amounts unpaid;
- (k) make provision for legal aid to be conditional on an arbitration agreement (within the meaning given by Article 1 of the [Arbitration \(Jersey\) Law 1998](#)) that disputes as to fees payable for work done shall be subject to arbitration and for the form of that arbitration;
- (l) set out the duties of advocates and solicitors in respect of work undertaken in respect of legal aid and for the provision of legal services and other assistance in the administration of the legal aid scheme;
- (m) provide for the establishment and maintenance of panels of advocates or solicitors, or both, to undertake particular categories of work;
- (n) provide for the waiver of contributions to legal aid, whether payable to the advocate or solicitor or in respect of public funds provided by the States, on the grounds of hardship arising from a change in financial circumstances since the legal services were provided;
- (o) provide for the review, revocation and revision of grants of legal aid;
- (p) impose requirements for an applicant to provide information to the Judicial Greffier;
- (q) impose requirements for an applicant to co-operate with the advocates or solicitors providing legal services under this Law, and impose requirements as to the conduct of the applicant in respect of claims supported by legal aid;
- (r) impose conditions for the renewal of applications;
- (s) impose conditions for the making of payments whether directly or by way of the advocate or solicitor assigned to the client for the purposes of meeting disbursements, such as the obtaining of records or payment of expert witnesses;

- (t) set out conditions whereby amounts paid under the Legal Aid Scheme for the benefit of an applicant will be recoverable under Article 10(3);
- (u) provide for any matters of procedure to be specified by a practice direction published by the Judicial Greffier.

(3) The Legal Aid Guidelines may do any of the following –

- (a) make different provisions, both in terms of the tests for eligibility and the procedures to be followed, depending on when in the course of litigation an application is made;
- (b) make particular provision (which may include the complete exclusion from eligibility) in respect of companies, partnerships and claims brought in respect of businesses;
- (c) provide for such other matters as are necessary or expedient.

(4) In preparing the Legal Aid Guidelines, the Minister shall publish the Minister's proposals and seek representations from the public.

(5) The manner in which –

- (a) the Minister's proposal for the Legal Aid Guidelines shall be published; and
- (b) representations may be provided by members of the public, shall be prescribed.

(6) The Minister shall consider the representations that he or she has received in preparing the Legal Aid Guidelines.

(7) If the Minister makes Legal Aid Guidelines, before publishing the Legal Aid Guidelines –

- (a) the Minister shall lay the Legal Aid Guidelines before the States;
- (b) the Minister shall, in the Legal Aid Guidelines, specify the date that they are to take effect, being at least 4 weeks after they are laid before the States.

(8) A member of the States may, within 4 weeks after the Legal Aid Guidelines are laid before the States under paragraph (7), lodge a proposition requesting that the States annul them.

(9) The Legal Aid Guidelines shall not come into effect during any period within which a proposition requesting their annulment under paragraph (8) is outstanding.

(10) If the proposition requesting that the States annul the Legal Aid Guidelines under paragraph (8) –

- (a) is approved by the States, the Legal Aid Guidelines shall be annulled and shall not come into effect; or
- (b) is withdrawn, the Legal Aid Guidelines shall come into effect on the date specified in the Legal Aid Guidelines and shall be published in a way that makes them available to the public.

(11) The Minister may at any time revoke any Legal Aid Guidelines published under this Article.

(12) The Minister may, from time to time, revise the Legal Aid Guidelines made under this Article and a reference to the Legal Aid Guidelines includes a reference to the revised Legal Aid Guidelines.

## 8 Transfer of cases

- (1) The Legal Aid Guidelines may provide for the transfer of different types of cases between the different systems of legal aid referred to in Article 7(2)(b).
- (2) Without prejudice to the generality of paragraph (1), the Legal Aid Guidelines may, in particular, provide for the transfer of cases in respect of legal services referred to in Article 7(2)(b)(ii) if there are insufficient advocates or solicitors to support the system of legal aid under which those legal services are provided.

## 9 Exceptional circumstances

The Legal Aid Guidelines must make provision for legal aid to be provided in exceptional circumstances which shall include cases in respect of which compliance with –

- (a) the [Human Rights \(Jersey\) Law 2000](#) or any other enactment;
- (b) obligations arising under Article 2 of the [European Communities \(Jersey\) Law 1973](#); or
- (c) obligations arising under international obligations,

makes it necessary that such legal aid be provided.

### Consistency with Article 6 Rights under the European Convention on Human Rights

The provision, under the Legal Aid Scheme, of legal representation and advice in respect of civil rights and in criminal matters is consistent with an individual's Right to a Fair Trial under Article 6 of the European Convention on Human Rights. Article 6 reads as follows:

1. *In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interest of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.*
2. *Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.*
3. *Everyone charged with a criminal offence has the following minimum rights –*
  - (a) *to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;*
  - (b) *to have adequate time and facilities for the preparation of his defence;*

- (c) *to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;*
- (d) *to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;*
- (e) *to have the free assistance of an interpreter if he cannot understand or speak the language used in court.*

It should be noted that Article 6:

- Does not prevent the application by a legal aid authority of financial or other relevant criteria in determining eligibility for legal representation.
- Does not provide for an automatic right to an appeal (an application to a higher court for the reversal of the decision of a lower court).
- Allows the right of access to the courts to be restricted where a case is without sufficient merit (including in respect of potential appeals) or where prescribed time limits for bringing proceedings (including appeals) are not met.

#### Legal Aid Guidelines

The Legal Aid Guidelines developed by the Legal Aid Guidelines Advisory Committee were approved pursuant to the provisions of the Access to Justice (Legal Aid Guidelines) (Jersey) Order 2021.

The Guidelines provide for annual review of the financial eligibility limits, based on the Medium Average Earnings for Full Time Employees, as detailed in the Average Earnings Report published June annually by the Government of Jersey Statistics Unit.

The current version of the Legal Aid Guidelines can be found [here](#) and as an appendix to this document.

The version control of the Legal Aid Guidelines is detailed below.

<u>Document</u>	<u>Nature of Change</u>	<u>Effective Date</u>
<b>Legal Aid Guidelines v1</b>	-	1 April 2022
<b>Legal Aid Guidelines v2</b>	Increase to Financial Eligibility Limits (as per Average Earnings Report, June 2022)	1 January 2023
<b>Legal Aid Guidelines v3</b>	Increase to Financial Eligibility Limits (as per Average Earnings Report, June 2023)	1 January 2024
<b>Legal Aid Guidelines v4</b>	Increase to Financial Eligibility Limits (as per Average Earnings Report, June 2024)	1 January 2025

#### Implementation of the Legal Aid Scheme

Pursuant to the Access to Justice (Jersey) Law 2019, and following approval of the Legal Aid Guidelines, the new statutory Legal Aid Scheme came into effect on 1 April 2022.

#### Accessibility

Full details of the Legal Aid Scheme and access to the online application portal can be found at [www.legalaid.je](http://www.legalaid.je).

#### User Guides

User Guides are available covering:

- Criminal Legal Aid
  - Financial/Area of Law Eligibility
  - Criminal Proceedings
  - Criminal Appeals
- Public Law Legal Aid
  - Financial/Area of Law Eligibility
- Family Legal Aid
  - Financial/Residential/Area of Law Eligibility
  - Personal Contributions
- Civil Legal Aid
  - Financial/Residential/Area of Law Eligibility
  - Personal Contributions