

GUERNSEY LEGAL AID SERVICE

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The Legal Aid Schemes are established under The Legal Aid (Bailiwick of Guernsey) Law, 2003, The Legal Aid (Guernsey and Alderney) (Schemes and Miscellaneous Provisions) Ordinance, 2018, and the Legal Aid (Guernsey and Alderney) Rules, 2019.

Guernsey Legal Aid Service ("GLAS") is the name of the service that administers the Legal Aid Schemes. GLAS is run by the Legal Aid Administrator who is an independent statutory official appointed by the States of Guernsey.

CIRCULAR 1 – THE LEGAL AID SCHEMES: ASSESSMENT OF FINANCIAL MEANS OF APPLICANTS

This Circular specifies the financial eligibility criteria and the ways in which a person's financial means are assessed in connection with applications for legal aid through the Legal Aid Advice and Assistance ("Green Form") Scheme or by way of a legal aid certificate issued by the Administrator under the Civil Legal Aid or the Criminal Legal Aid Schemes. All Schemes are established by the Legal Aid (Guernsey and Alderney) (Schemes and Miscellaneous Provisions) Ordinance, 2018.

1. Definitions

In this Circular, the following definitions apply:

"the Administrator" means the person who has been appointed by the States of Guernsey to the Office of the Legal Aid Administrator in accordance with the Legal Aid (Bailiwick of Guernsey) Law, 2003.

"Advocate" means an Advocate of the Royal Court of Guernsey.

"the Alderney Firms" means those specific firms currently contracted under separate arrangements with the Legal Aid Administrator for the provision of legally aided services in Alderney.

"Applicant" or "assisted person" means a person that is applying, has applied for, or who has been granted legal advice and assistance under the Legal Aid Advice and Assistance ("Green Form") Scheme and/or legal advice, assistance and representation under the Civil Legal Aid Scheme and/or the Criminal Legal Aid Scheme.

"application" means receipt by the Administrator of the relevant legal aid application forms and all supporting documentation.

"certificate" means a legal aid certificate that has been issued by the Legal Aid Administrator to an applicant under the Civil Legal Aid Scheme or the Criminal Legal Aid Scheme.

“contribution” refers to the percentage of legal costs and disbursements that an applicant has been assessed to pay towards their legal proceedings under the Civil or the Criminal Legal Aid Schemes.

“discharged” means when a legal aid certificate has been cancelled from a specific date. This happens automatically when the work under a legal aid certificate has concluded. A certificate can also be discharged when an assisted person becomes financially ineligible or fails to cooperate with their Advocate or the Administrator.

“financial means test” or “financial assessment” means the application of the financial eligibility criteria as specified.

“GLAS” (Guernsey Legal Aid Service) means the Office of the Legal Aid Administrator and/or any member of staff.

“Green Form” or “Green Form Scheme” means legal advice and assistance provided under the Legal Aid, Advice and Assistance Scheme.

“Guernsey firms” are all Guernsey Advocates’ firms that opt in to provide legal services under the Schemes.

“legal aid” means advice, assistance and representation provided under the Civil Legal Aid Scheme or the Criminal Legal Aid Scheme by way of a Legal Aid Certificate issued by the Administrator.

“legal merits test” means the legal merits test as appropriate and as specified under the Civil Legal Aid Scheme or the Criminal Legal Aid Scheme.

“litigant in person” means an individual who is a party to legal proceedings and who exercises their right to conduct legal proceedings on their own behalf, without the assistance of or representation by an Advocate.

“MHRT” means the Mental Health Review Tribunal as established under the Mental Health (Bailiwick of Guernsey) Law, 2010.

“the Ordinance” means The Legal Aid (Guernsey and Alderney) (Schemes and Miscellaneous Provisions) Ordinance, 2018.

“partner” means a person with whom the applicant ordinarily lives as a couple in the same household and whose resources and requirements must be aggregated with those of the applicant for the purposes of a legal aid application.

“private law proceedings” are those in which the parties to the proceedings are private individuals.

“property” is as defined in the Legal Aid (Bailiwick of Guernsey) Law, 2003.

“public law proceedings” are those in which one party to the proceedings is a public body such as the States of Guernsey.

“required documentation” is all the documentation required by the Administrator to undertake an assessment of each applicant to ascertain their eligibility for legal aid.

“resources” means all income, capital and property of any kind from any source that is owned beneficially, wholly or partially, by the applicant and any other person whose resources must be taken into account.

“revoked” or “revocation” means when a legal aid certificate is not only cancelled from a specific date but is also deemed never to have existed. If a certificate is revoked, the assisted person becomes liable for the costs of all the work undertaken by the advocate under the Schemes and the Administrator will seek from the assisted person full reimbursement of all costs incurred under the certificate and any associated green forms.

“Schemes” means The Legal Aid, Advice and Assistance (Green Form) Scheme, the Criminal Legal Aid Scheme and the Civil Legal Aid Scheme.

“specified” means rules specified by the Committee for Employment and Social Security.

“suspended” is where the Administrator temporarily suspends a certificate pending receipt of financial or other information from either the applicant or the Advocate. During a period of suspension, no fees or disbursements may be incurred by the Advocate under the Schemes.

PART I GENERAL PRINCIPLES

2. Purpose of the Schemes

2.1. The purpose of the Legal Aid, Advice and Assistance Scheme (also known as the "Green Form Scheme") is to enable an individual, who satisfies specified eligibility criteria, to obtain:

- (a) advice about the application of the laws of Guernsey and Alderney to specified circumstances which have arisen in relation to:
 - (i) that individual, or
 - (ii) such other individual as may be specified, and
- (b) in specified circumstances, assistance in order to:
 - (i) settle a claim,
 - (ii) defend criminal proceedings,

- (iii) bring or defend civil proceedings, or
- (iv) make any specified agreement or other document that has or is intended to have legal effect, subject to specified conditions.¹

2.2. The purpose of the Civil Legal Aid Scheme is to enable an individual, who satisfies specified eligibility criteria, to obtain advice, assistance and representation in relation to specified civil and family proceedings, subject to specified conditions.²

2.3. The purpose of the Criminal Legal Aid Scheme is to enable an individual, who satisfies specified eligibility criteria, to obtain advice, assistance and representation in relation to specified criminal proceedings, subject to specified conditions.³

3. Alderney Arrangements

There are special arrangements under the Schemes in respect of applicants who are Alderney residents.

3.1 Only the Alderney firms will be remunerated under the Schemes for:

- (a) Any Green Form that falls within the scope of the Legal Aid, Advice and Assistance (Green Form) Scheme, other than in relation to matters before the Matrimonial Causes Division (“MCD”) of the Royal Court,
- (b) Civil cases before the Court of Alderney that fall within the scope of the Civil Legal Aid Scheme, and
- (c) Duty Advocate and criminal cases before the Court of Alderney Police Court that fall within the scope of the Criminal Legal Aid Scheme.

3.2 Any Guernsey firm may be remunerated under the Criminal Legal Aid Scheme to provide telephone advice and assistance under the Duty Advocate arrangements to an applicant who usually resides Alderney or to advise, assist and represent such an applicant in criminal proceedings before the Guernsey Royal Court, in relation to a serious criminal case.

3.3 Any Guernsey firm may be remunerated under the Civil Legal Aid Scheme to advise, assist and represent an applicant who usually resides in Alderney in proceedings before the Guernsey Royal Court, MCD.

¹ The Legal Aid (Guernsey and Alderney) (Schemes and Miscellaneous Provisions) Ordinance, 2018, s4

² The Legal Aid (Guernsey and Alderney) (Schemes and Miscellaneous Provisions) Ordinance, 2018, s5

³ The Legal Aid (Guernsey and Alderney) (Schemes and Miscellaneous Provisions) Ordinance, 2018, s6

PART II
GENERAL PROVISIONS RELATING TO ELIGIBILITY FOR LEGAL AID UNDER THE SCHEMES

4. Extent and Limitations

- 4.1 Advice, Assistance or representation under the Scheme is not available to legal proceedings before a court outside Guernsey or Alderney, or any matter where the relevant governing or applicable law, is a law other than the law of Guernsey or Alderney, and the matter is a matter that is not justiciable before a court in Guernsey or Alderney.
- 4.2 Legal Aid is only available to individuals: not companies, charities or groups of people.
- 4.3 Legal Aid is only available in respect of individuals who have instructed an Advocate and funding, including any disbursements, will not be provided direct to individuals or paid out on their behalf where they are acting as a litigant in person.
- 4.4 Legal Aid may be refused if an applicant has not fully utilised all alternative methods of resolving the dispute such as any complaints procedure, mediation, ombudsman and so on; turning to the public purse for assistance should be seen as a last resort and only if all other methods of resolving a legal dispute have been exhausted.
- 4.5 Legal aid will not be available where an applicant has available to them:
 - (a) other rights and facilities making it unnecessary for them to obtain legal aid, or
 - (b) a reasonable expectation of receiving financial or other help from a body of which they are a member.

5. Issue date of certificate

- 5.1 The Schemes are means tested and the Administrator requires the production of such documents, accounts or information ("required information") from all applicants for legal aid under the provisions of a Scheme as may be required for the purposes of properly assessing or reassessing any application for legal aid and to defer determination until any such requirement is satisfied.
- 5.2 Legal aid is not available to any applicant until the Administrator is satisfied that: the applicant meets the specified financial means test and that the proposed case satisfies the specified legal merits test.
- 5.3 The date upon which the Administrator is satisfied on all of these elements is recorded as the "issue date" on the certificate. Work undertaken before the issue date of legal aid will not be remunerated under the Schemes.

6. Conditions of a certificate

The Administrator may require an applicant to comply with such conditions as are considered expedient to enable the Administrator to be satisfied from time to time that:

- (a) the applicant continues to be financially eligible for legal aid, and
- (b) the appropriate legal merits test continues to be met.

7. Reassessments

Where a reassessment results in any amendment to the terms of a certificate, any amendments, whether in respect of financial eligibility, level of contribution or meeting the legal merits test, shall be applied to the certificate from the date upon which the Administrator determines the reassessment.

8. Reporting requirements

8.1 It shall be the duty of an applicant and an Advocate acting on behalf of an applicant where the facts are within the Advocate's knowledge, immediately to inform the Administrator of:

- (a) any change in that applicant's circumstances, financial or otherwise,
- (b) any change in the circumstances, financial or otherwise, so far as known to that applicant of any other person with whom that applicant is jointly concerned, or who has the same interest in, the matter, or
- (c) any circumstance, financial or otherwise, which may affect the Administrator's determination that the applicant has probable cause or that it is reasonable in the particular circumstances of the case that that person should receive, or continue to receive, legal aid.

8.2 Where an Advocate acting for an applicant has reason to believe that that applicant has not complied with the duty under paragraph 8.1 above, the Advocate shall forthwith draw this matter to the attention of the Administrator.

8.3 No Advocate shall be precluded, by reason of any privilege arising out of the relationship between the Advocate and the applicant from informing the Administrator of, or drawing her attention to, any matter specified in paragraphs 8.1 and 8.2 above.

8.4 The Administrator from time to time may directly request from the applicant or an Advocate acting for the applicant information relating to any change in circumstances, financial or otherwise.

- 8.5 No Advocate shall be precluded, by reason of any privilege arising out of the relationship between the Advocate and the applicant from informing the Administrator of or drawing her attention to, any matter specified in paragraph 8.4 above.
- 8.6 If an applicant fails to provide information requested by the Administrator, within any time period specified, the Administrator may suspend, revoke or discharge the certificate. Where a certificate is revoked, the Administrator may recover from the applicant all costs and disbursements paid or to be paid to their advocate.

9. Contributions

Contribution refers to the percentage of legal costs and disbursements that an applicant has been assessed to pay towards their legal proceedings under any of the Schemes. The contribution rates are applied to assessed residual weekly income as specified in Table 2 of the Schedule to this Circular and as referred to at paragraph 18.

- (a) *Civil matters*
In civil matters, the payment of any contribution is a matter between the applicant and the Advocate that provides legal advice and assistance under the Green Form Scheme or where the applicant is in receipt of a Legal Aid Certificate issued by the Administrator. See paragraph 18(e) below for the Administrator's discretion in exceptional civil cases.
- (b) *Criminal matters*
In criminal matters the Administrator will collect any contribution at the conclusion of the proceedings. In the case of advice and assistance under the Green Form Scheme the Advocate that completes the Green Form should note the percentage contribution on the front page of the Form. If the Administrator issues a certificate, then the amount of contribution will be noted on the certificate. Repayment of contributions to the Administrator in criminal cases is required even if the defendant is acquitted or the case against the defendant is not proceeded with for any reason.
- (c) *Quasi civil /criminal matters*
Any contribution to be paid by the assisted person under a quasi- civil/criminal certificate will be treated as a contribution payable in criminal proceedings and will be collected by the Administrator at the conclusion of the case.

10. Costs

If a Court awards costs against an applicant, the Administrator will not accept liability to pay those costs.

PART III
FINANCIAL MEANS AND LEGAL MERITS TESTS

11. Requirement for Financial Means and Legal Merits Tests

11.1 This Circular specifies the standard means test applied to all assessments undertaken in connection with all legal advice and assistance provided under the Green Form Scheme and all legal advice, assistance and representation provided under the Civil Legal Aid Scheme and the Criminal Legal Aid Schemes, save as provided for at paragraph 11.2(b) and 11.2(c).

11.2 There are three means and merits tests specified under the Schemes:

- (a) The “standard means” test as specified is the method used to assess whether an applicant is financially eligible to be given legal advice and assistance under the Green Form Scheme or to be granted a legal aid certificate provided that the appropriate legal merits test as specified under The Civil Legal Aid Scheme or The Criminal Legal Aid Scheme is also met. The standard means test applies to all applications for legal aid save as specified at paragraphs 11.2(b) and 11.2(c).
- (b) The “no means, no merits” test. This test is applied only in applications in relation to specified Public Law Children cases. A “no means, no merits” application, is one in which there is no requirement for an applicant to meet the standard means test as specified nor the reasonableness test as specified under the Civil Legal Aid Scheme. Probable cause must still be met.
- (c) The “MHRT –no means, no merits” test. This test is applied only in applications for legal aid for advice, assistance and representation at a Mental Health Review Tribunal (“MHRT”).

Publicly funded legal representation at a MHRT will be provided under the Scheme generally on a “no means, no merits” test basis whilst reserving the right for the Administrator to exceptionally apply a “means” test to an application where reasonable and in conformity with Human Rights obligations. In applications relating to the MHRT, there is no requirement for an applicant to meet the reasonableness test as specified. Probable cause must still be met.

Exceptional circumstances in relation to a means test under this sub-paragraph will be determined at the discretion of the Administrator.

12. Means and Legal Merits Tests under the Schemes

- (a) *Green Form*
The standard means test is applied to all advice and assistance provided under the Green Form Scheme save as specified in paragraphs 11.2(b) and 11.2(c). All financial means assessments for advice and assistance provided under the Green Form Scheme are undertaken by the Advocate prior to the

commencement of any work, unless the Administrator has agreed otherwise in advance of any work being undertaken.

(b) *Legal Aid under the Civil and Criminal Legal Aid Schemes*

Before legal aid can be granted, every legal aid application, save as specified at paragraphs 11.2(b) and 11.2(c) must satisfy the following two tests:

- (i) The standard means, and
- (ii) The legal merits test specified by the Civil Legal Aid Scheme or the Criminal Legal Aid Scheme.

All financial means assessments for advice and assistance and representation provided under the Civil Legal Aid Scheme or Criminal Legal Aid Scheme are undertaken by the Administrator or members of the Administrator's office. The only exception is in respect of an application for legal aid to apply for a judicial review of any decision of the Administrator, when separate eligibility assessment arrangements apply.

13. Exemptions and special cases

- (a) No financial assessment is required by a Duty Advocate when giving advice to persons: detained by the Island Police, the border agency, or when a person attends the police station, border agency as a volunteer or in the Magistrate's Court or in the Court of Alderney sitting as a Police Court.
- (b) Where an application is submitted, in respect of a specified public law children case in the court of first instance, the Administrator will assess the application on a "no means, no merits" test basis.
- (c) Where an application is submitted in respect of legal representation at a MHRT, the Administrator will assess the application on the "MHRT-no means, no merits" test basis.
- (d) Where a person seeks advice and assistance under the Green Form Scheme or applies for advice and assistance and representation under the Civil or Criminal Legal Aid Scheme on behalf of a dependent child or an adult incapable of managing their own affairs, the Administrator disregards the applicant's financial resources but has regard to the personal resources of the dependent child or incapable adult.
- (e) Where a person seeks advice and assistance under the Green Form Scheme or applies for advice and assistance and representation under the Civil or Criminal Legal Aid Scheme in a representative, fiduciary or official capacity, the Administrator will disregard the applicant's personal resources but take into account:

- (i) the value of any property or any fund out of which the applicant is entitled to be indemnified, and
 - (ii) the income and capital of anyone who might benefit from the outcome of the proceedings.
- (f) *Applicants under a Restraint Order*

Where an application has been made subject to a restraint order issued by a court, in assessing the applicant's financial eligibility under the Schemes the Administrator will disregard the applicant's (and any partner's) restrained property whilst such property remain subject to the restraint order.

Any allowances ordered by the court to enable the applicant to support themselves will not form part of the income assessment, regardless of whether the order relates to the case in question.

Any income in excess of any allowance ordered by a court shall be taken into account by the Administrator.

Any income or property not subject to the order, including a partner's property shall be included in the assessment.

PART IV

PROVISIONS RELATING TO CALCULATING ELIGIBILITY FOR LEGAL AID UNDER THE SCHEMES

14. Definitions applicable to this Part

"assessed residual weekly income" means the difference between total net weekly income and permitted weekly requirements.

"total weekly income" means a person's income, together with the income of any other person whose income must be taken into account, calculated on a weekly basis, and derived from: any occupation, earnings welfare benefit (save for Income Support and Severe Disability Benefit) pension, investment, bank interest, or from any other source.

In so far as the income consists of salary or wages, there shall be deducted any sum in respect of income tax and social insurance contributions the deduction of which is authorised by any enactment for the time being in force. ("total net weekly income")

"Permitted weekly requirements" means:

- (a) The weekly requirements of the individual, couple or family unit set out in Table 3,
- (b) Housing allowance as calculated at paragraph 20, and any discretionary allowance as set out at Paragraph 25(g) that may be applied by the Administrator.

“Gross weekly income” means total weekly income (excluding any Family Allowance or Severe Disability Benefit received) before the deduction of any income tax or social insurance contributions, the deduction of which is authorised by any enactment for the time being in force. Gross weekly income is used in the Housing allowance Requirement calculation.

15. Financial Eligibility under the Schemes

a) *Capital Resources*

Where the applicant’s capital resources exceed the amount of capital resources which may be wholly disregarded as set out in Table 1 of the Schedule the applicant will be financially ineligible for legal aid under the Schemes.

b) *Income*

Where the applicant’s permitted weekly requirements, are equal to or in excess of the applicant’s total net weekly income, the applicant will be eligible for legal aid without the requirement to make any contribution. Where the applicant’s total net weekly income is in excess of the permitted weekly requirements, the applicant may either be financially ineligible for legal aid or may be required to make a contribution to their legal aid costs and disbursements. Contribution levels are set out in Table 2 of the Schedule.

16. The standard means test-calculation of requirements and resources

The eligibility for legal aid depends upon whether an applicant’s total net weekly income falls short of the applicant’s permitted weekly requirements resulting in the assessed residual weekly income and for the purpose of ascertaining that amount:

- (a) The weekly requirement rates of an applicant shall, except as provided for elsewhere in this Circular, be taken as the aggregate of such of the weekly requirements set out in Table 3 of the Schedule as are applicable to the applicant’s case, provided that the permitted weekly requirements of any applicant shall be nil where the applicant’s capital resources exceed the amount of capital resources which may be wholly disregarded as set out in Table 1 of the Schedule,
- (b) The weekly requirement rates set out in Table 3 of this Circular shall be amended in line with such of the Income Support Long Term weekly Requirements specified in Part II of the First Schedule of the Income Support (Implementation) Ordinance 1971, as amended (ISIO), as are applicable,
- (c) The capital resources of an applicant shall be calculated as specified in Part V of this Circular.

17. Aggregation of requirements and resources

- (a) Where a husband and wife ordinarily live with each other as a couple in the same household their requirements and resources shall be aggregated

regardless of whether or not the partner would be willing to pay the applicant's legal costs. Similarly, as to two persons living together as husband and wife or two persons cohabiting in a same-sex relationship.

- (b) Persons may be members of the same household even when both parties are not ordinarily living as a couple in the same household but this physical separation is due to financial or other practical reasons rather than the relationship being at an end, or that the separation is likely to be permanent. In such cases and where the Administrator considers that in the circumstances of the particular case, it is just and equitable, the parties' requirements and resources will be aggregated.
- (c) Where it appears to the Administrator that an applicant is providing for the requirements of some other person (not falling within the preceding paragraph) who is a member of the same household, the Administrator shall take into account the aggregate requirements and aggregate resources of the applicant and the said other person.
- (d) The resources of an applicant and another person shall not be aggregated if an applicant is seeking legal aid in connection with a dispute with such a person as identified in the previous sub-paragraphs of this section or where there is a contrary interest present.
- (e) Where another person, whose resources are to be aggregated, fails to provide their financial information as required by the Administrator in respect of any applicant's application for legal aid, the Administrator shall treat the financial means test as not having been satisfied.

18. Requirement for a contribution

- (a) Where an applicant's assessed residual weekly income is zero or less there is a presumption in favour of the grant of legal aid unless, in the Administrator's opinion, the case does not have legal merit or it is one to be litigated in a court that is intended for litigants in person.
- (b) Where an applicant's assessed residual weekly income is £200.01 or more there is a presumption against the grant of legal aid. This presumption may be displaced in respect of an application made under the Criminal Legal Aid Scheme where in the Administrator's opinion the interests of justice require it, in accordance with Article 6 of the European Convention on Human Rights.
- (c) Between the limits set out in the two previous sub-paragraphs legal aid is granted at the discretion of the Administrator and, unless the Administrator determines otherwise, subject to a contribution as specified and as set out in Table 2 of the Schedule.
- (d) The Administrator may exercise discretion to grant a certificate outside the limits set out in sub-paragraphs 18(a), (b) and (c) or to waive a contribution

where:

- (i) an applicant is a party in a private law case involving domestic abuse and children in which a Finding of Fact hearing has been ordered by the relevant Court, or
 - (ii) an applicant has been advised by the Advocate to seek the protection of a Domestic Violence Injunction and has minor children residing with them.
- (e) The Administrator may exercise discretion, in exceptional civil cases and where the payment of a contribution under the Civil Legal Aid Scheme would cause severe hardship to the applicant to permit the deferral of payment of the assessed contribution until the conclusion of that particular case, or parts of that case. Severe hardship and exceptional circumstances shall be determined by the Administrator.

19. Waiver of need for assessment

19.1 An applicant that seeks advice and assistance under the Green Form Scheme shall not be assessed in accordance with paragraphs 15 and 16 provided that they can provide the Administrator with one of the following as appropriate to their circumstances:

- (a) A certificate or other evidence from The States of Guernsey Committee for Employment & Social Security that the applicant is currently in receipt of Income Support,
- (b) Evidence of a request made by a court of its own motion that the applicant receives legal advice and no duty Advocate or other Advocate was present in Court to render such advice and assistance,
- (c) In relation to an applicant resident outside the Bailiwick, the provision by the Administrator of a Green Form endorsed to the effect that the requirement for assessment is waived.

19.2 An applicant that seeks advice and assistance and representation under the Civil or Criminal Legal Aid Scheme shall not be assessed in accordance with paragraphs 15 and 16 provided that they can provide the Administrator with a certificate or other evidence from the States of Guernsey Committee for Employment & Social Security that the applicant is currently in receipt of Income Support.

20. Housing Allowance Requirement

- (a) Where the applicant resides in rented accommodation, housing allowance is calculated as the amount of the weekly rent payable, or 20% of the gross weekly income (excluding Family Allowance and Severe Disability Benefit) of the applicant and partner, if appropriate, whichever the lesser amount respectively is.

- (b) Where the applicant resides in their property as owner-occupier, housing allowance is calculated as, 90% of the weekly mortgage repayment in respect of a charge on the dwelling in which the householder resides, or 25% of the gross weekly income of the applicant and partner, if appropriate, (excluding Family Allowance and Severe Disability Benefit) whichever is the lesser amount respectively.
- (c) Where the applicant is residing in a hospital or nursing home as a patient or is resident in a residential home by such amount, if any, as may be appropriate having regard to all the circumstances.
- (d) Where the applicant is paying an inclusive charge for board and lodging, by one half of the actual amount being paid or the amount being paid for accommodation only.
- (e) The requirements of an applicant who is in prison or otherwise detained in legal custody shall be the same as for a non-householder.
- (f) The housing allowance requirement will be applied in relation to the property that an applicant resides in as their main residence.
- (g) Only one Housing Allowance Requirement in respect of either rented accommodation or owner-occupied accommodation will be given for each application for advice and assistance under the Green Form Scheme.
- (h) Only one Housing Allowance Requirement in respect of either rented accommodation or owner-occupied accommodation will be given for each application for advice, assistance and representation under the Civil or Criminal Legal Aid Schemes.

21. Lifestyle and indebtedness

Neither the finance needed to support a person's lifestyle nor the extent of a person's indebtedness are requirements for the purposes of determining an applicant's eligibility for legal aid.

PART V
CALCULATION OF RESOURCES.

22. Disregard of capital value of dwelling.

In taking into account the value to any person of any interest in the dwelling in which that person resides, any sum that might be obtained by that person by selling that interest or borrowing money upon the security thereof shall, be disregarded.

23. Resources totally disregarded

There shall be totally disregarded in any financial assessment under the Schemes:

- (a) The value of any resource that is the subject matter of the dispute in respect of which legal aid is being sought,
- (b) The value of any resource that is the subject matter of any proceedings currently before a court,
- (c) Any sums payable to any person as holder of the Victoria Cross or of the George Cross,
- (d) Any grant by The States of Guernsey Committee for Education, Sport & Culture in respect of a person who would be treated as a child for the purpose of the Family Allowances (Guernsey) Law, 1950,
- (e) The cash value of any free board or free lodging or both which a person may enjoy, not being board or lodging or both which that person is enjoying under and in pursuance of a contract of service,
- (f) Any Severe Disability Benefit granted under the Severe Disability Benefit and Carer's Allowance (Guernsey) Law, 1984,
- (g) Any payment made by a third party to a residential home, a care home, a nursing home or the Guernsey Cheshire Home on behalf of a person residing in the home in respect of the home's fees as may be considered reasonable by the Administrator in all the circumstances,
- (h) Any fostering allowance, other than the contractual element paid by The States of Guernsey Committee for Health & Social Care.

24. Capital Resources

- (a) Capital resources which consist of:
 - (i) business premises or stock in trade or both which are wholly or partly used as the means of livelihood, other than by way of unearned income, or

- (ii) an interest in an asset, which cannot reasonably be converted into a sum of money by selling that interest or borrowing money upon the security thereof, may be disregarded for such period as the Administrator may so direct.
- (b) If the value of the capital resources taken into account would not exceed the amount set out in the second column of Table 1 of the Schedule to this Circular for the description of persons set out in the first column of Table 1, they shall be wholly disregarded.

25. Income

- (a) For the purposes of an application for advice and assistance under the Green Form Scheme the weekly earnings of any person shall be taken as their total net weekly income for the week immediately preceding the date of the application together with the income of any other person whose income must be taken into account.
- (b) Subject to the provisions of sub-paragraph (f) of this paragraph, for the purposes of an application for legal aid in a criminal matter the weekly income of any person shall be taken as the average total net weekly income for the 13-week period immediately preceding the date of the application together with the income of any other person whose income must be taken into account.
- (c) Subject to the provisions of sub-paragraph (f) of this paragraph, for the purposes of an application for legal aid in civil matters the weekly income of any person shall be taken as the average total net weekly income for the 13-week period immediately preceding the date of the application together with the income of any other person whose income must be taken into account.
- (d) For the purposes of this Circular, there shall be included in a person's total net weekly income:
 - (i) The cash value of any board or lodging or both which the person is enjoying under and in pursuance of a contract of service,
 - (ii) Any Carer's Allowance payable in accordance with the Severe Disability Benefit and Carer's Allowance (Guernsey) Law, 1984,
 - (iii) The contractual element of any fostering allowance paid by The States of Guernsey Committee for Health & Social Care.
- (iv) Payments received from another person whether under a court order or otherwise for the benefit of that person or another member of the Applicant's household.

- (e) Subject to the provisions of sub-paragraph (f) of this paragraph, the total net weekly income of a person who is in business on a self-employed basis shall be determined from their total income and net profit for the three years immediately preceding the date of the application together with the income of any other person whose income must be taken into account.
- (f) Where a person's total net income for any week or period is not immediately ascertainable, sub-paragraphs (b), (c), and (e) shall not apply and the person's weekly income for that week or period shall be calculated in such manner and on such basis as the Administrator considers appropriate, having regard to the circumstances of the case, and an applicant shall provide the Administrator with such information as the Administrator requires.
- (g) The Administrator may use discretion and allow to be offset against the total net weekly income of a:
 - (i) The costs of using the services of a registered child minder or other appropriate person to enable a person to obtain an income from employment, including self-employment,
 - (ii) Any payment by way of maintenance paid to another person in accordance with a court order,
 - (iii) Any deduction from a person's wages made by a court order arresting the wages of that person.

26. Administrator's obligation to give reasons

If the Administrator refuses legal aid, or exercises discretion to grant it outside the limits as at paragraph 18 above, or to waive or defer payment of a contribution, then the Administrator shall provide reasons.

27. Administrator's reconsideration of decisions relating to the financial eligibility of an applicant

27.1 There is no statutory right of appeal against a financial determination by the Administrator.

27.2 An applicant may request the Administrator to reconsider the Administrator's financial determination that the applicant does not qualify financially or no longer qualifies financially for legal aid under the Scheme.

28. Judicial Review of a decision of the Administrator

Any application by a person for legal aid to commence proceedings to judicially review a decision of the Administrator will be subject to the standard means test and the civil merits test. In such circumstances, the assessment of the legal merits of the application for a legal

aid certificate to judicially review a decision of the Administrator, will be considered by a party independent of the Administrator.

29. Resources abandoned

If an applicant or any other person whose income must be taken into account has:

- (a) directly or indirectly deprived them self of any resources, or
- (b) neglected to claim, waived or abandoned any right or benefit to which the person is, or may be, entitled and the effect of the deprivation, neglect, waiver or abandonment, as the case may be, is to obtain legal aid for themselves or another person or increase the amount thereof or decrease any contribution that might otherwise be payable, those resources and that right or benefit may be taken into account as if they were still the person's or the person was in receipt of any sum of money due under or pursuant to or representing that right or benefit.

30. Attribution of property

- (a) Subject to the following provisions of this paragraph, a person shall be deemed for the purposes of this circular to own property if that person is absolutely entitled in possession to the whole beneficial interest therein and not otherwise.
- (b) Where two or more persons are beneficially entitled in possession to any property they shall be entitled for the purposes of this circular as if each of them were entitled to possession to the whole beneficial interest in equal shares unless it appears that their respective beneficial interests are not equal; and in that case they shall be treated as respectively entitled in possession to the whole beneficial interest in such shares as appear to be just.

31. Transitional provisions

If an applicant has been granted legal aid under any of the Schemes and there are subsequent changes in the capital resource allowances or weekly requirement rates as set out in Table 1 and Table 3 respectively, or as a result of subsequent changes to the applicant's financial circumstances, then the applicant may apply for re-assessment, and, whether in receipt of such an application or not, the Administrator may re-assess the applicant. In such events and following completion of the re-assessment, the Administrator may offer legal aid in an amended form. If the amendment is not accepted then the Administrator shall revoke the certificate. The Administrator will also revoke the certificate if, as a result of such changes, an applicant is no longer financially eligible for legal aid.

SCHEDULE

Table 1: Paragraphs 15, 16(a) and 24(b)

Capital resources to be wholly disregarded

Household	Maximum amount of capital resources
Single householder or single non-householder ("Single householder" or "Single non-householder")	£15,000
Couple or other persons falling within paragraph 17 of this Circular who are either members of the same household and who are responsible for household expenses and rent/mortgage ("Couple Householder") or who are not responsible for household necessities and rent/mortgage ("Couple Non- Householder")	£18,000
Couple or single householder or non-householder with one child dependant	£20,000
Couple or single householder or non - householder with two child dependants	£25,000
Couple or single householder or non - householder with three or more child dependants	£27,000

Table 2: Paragraphs 9 and 18

Contribution rates applied to assessed residual weekly income

Assessed Residual Weekly Income (£)	Contribution Required
zero or less	0%
Between £0.01 and £50.00	20%
between £50.01 and £100.00	40%
between £100.01 and £150.00	60%
between £150.01 and £200.00	80%
more than £200.01	No award of legal aid will be given

Table 3: Paragraph 16

Weekly requirements as from 5th January 2024

Description	Amount
Couple or other persons falling within paragraph 17 of this circular where they (individually or jointly) are directly responsible for household necessities and rent/mortgage (if any) ("Couple Householder")	£368.99
Couple or other persons falling within paragraph 17 of this circular where they (individually or jointly) are not responsible for household necessities and rent/mortgage) ("Couple Non-Householder")	£337.96
Person not falling within paragraph 17 who is directly responsible for household necessities and rent/mortgage (if any) ("Single householder")	£221.93
Person who is not a householder ("Single Non-householder")	£168.98
Member of a household:	
Aged 11 years or older	£129.63
Aged 5 years or over but less than 11	£98.62
Aged less than 5 years	£86.09

Notes

For the purposes of financial assessment under any of the Schemes:

1. A householder is someone who is directly responsible for household expenses and rent/mortgage (if any),
2. A non-householder is someone who is not responsible for household necessities and rent/mortgage (if any),
3. A person who is in prison or otherwise detained in legal custody and who has no partner is treated as a non-householder. If that person has a partner, the partner may be given a householder allowance, if appropriate,
4. A person who is of no fixed abode is treated as a non-householder,
5. A child dependant is a child who is in full time education and is living in the applicant's house,
6. A non-dependant is someone that has reached school leaving age, is not in full time education and is living in the applicant's house. This could include a person living at home with their parents, a person living with adult children, or someone living with friends,
7. No member of household allowance is given for any child who is not a dependant.

Dated this 18th day of December, 2023



P.J. ROFFEY

President of the Committee for Employment & Social Security

For and on behalf of the Committee



LUCY HAYWOOD
Legal Aid Administrator