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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 6 – REMUNERATION OF FEE EARNERS UNDER THE LEGAL AID SCHEMES

This Circular specifies the arrangements for remuneration of fee earners under the Legal Aid Schemes.

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.

"the Alderney firms" are those specific firms currently contracted to undertake civil work before the Alderney Court and the Alderney Police Court Duty Advocate.

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

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

"contribution" means the percentage of legal costs and disbursements that an applicant has been assessed to pay towards their legal proceedings under the Legal Aid, Advice and Assistance ("Green Form") Scheme, the Civil or the Criminal Legal Aid Schemes.

"costs" means the total claim submitted by a fee earner and calculated on an hourly rate basis, unless it is a matter to which fixed fees apply.

"disbursements" means counsels', experts' or court fees, travel and witness expenses and other out of pocket expenses properly incurred by a fee earner which would be properly chargeable to a client.

“approved disbursements” are disbursements that have been approved in advance by the Administrator or such disbursements that do not require the specific approval of the Administrator.

“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 his Advocate or the Administrator.

“fee earner” means an Advocate of the Royal Court or other person who has been accredited by the Administrator to undertake Legal Aid work under the Schemes.

“fixed fees” means those fees specified for advice, assistance and representation in respect of: Divorce and Judicial Separation by consent proceedings and Mental Health Review Tribunal proceedings (MHRT).

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

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

“Green Form Scheme” or “Green Form” means advice and assistance provided to the applicant under the Legal Aid, Advice and Assistance Scheme. (also known as the “Green Form” Scheme).

“legal aid” means legal advice and assistance provided under the Legal Aid, Advice and Assistance Scheme and/or legal advice, assistance and representation under the Civil Legal Aid Scheme or Criminal Legal Aid Scheme by way of a legal aid certificate.

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

“out of hours duty advocate” means an Advocate from the Firm which is listed either on the Out of hours Duty Advocate Rota as first or second Duty Advocate on call for out of hours work.

“revoked” or “revocation” means when a certificate is not only cancelled from a specific date but is also deemed never to have existed.

“Schemes” means the Transitional Legal Aid Scheme, the Legal Aid, Advice and Assistance (Green Form”) Scheme, the Civil Legal Aid Scheme and the Criminal Legal Aid Scheme as established under the Ordinance.

“taxation” means the assessment of the reasonableness of the costs claimed by the fee earner in respect of any work undertaken under any of the Schemes. The taxation may

be undertaken by the Administrator, any member of GLAS law costs draftsmen, or the Costs Judge, as appointed by the Administrator.

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

“suspended” means that the Administrator may temporarily suspend 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.

2. **General Principles**

- 2.1 Legal aid will only be 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. A 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.
- 2.2 All legal services provided by any fee earner under the Schemes must be reasonably and necessarily rendered. All expenses must be reasonably and necessarily incurred, and all disbursements must be reasonably and necessarily made.¹
- 2.3 Unless specified otherwise in this circular, remuneration of all fees earners who opt in to advise, assist or represent persons under any of the Schemes is by way of payment calculated on an hourly rate, subject to taxation by the Administrator.
- 2.4 The Administrator will not remunerate any Advocate under the Schemes if an applicant has not fully utilised all alternative methods of obtaining advice and assistance such as any complaints procedure, mediation, ombudsman and so on; turning to the public purse through the Schemes for advice and assistance should be seen as a last resort.
- 2.5 Advice and assistance and representation under the Schemes will not be remunerated under the Schemes where an applicant has available to them:
 - (a) other rights and facilities making it unnecessary for them to obtain advice and assistance, or
 - (b) a reasonable expectation of receiving financial or other help from a body of which they are a member.
- 2.6 Advice and assistance will not be remunerated under the Schemes where an applicant is seeking a second opinion from an Advocate regarding a matter upon which the applicant has already received advice and assistance from a different Advocate within a period of three months or on a matter that is already covered under a certificate with a

¹ The Legal Aid (Guernsey and Alderney) (Schemes and Miscellaneous Provisions) Ordinance, 2018 S8

different Advocate.

- 2.7 No remuneration can be made to a fee earner in relation to any legal advice, assistance or representation in connection with any legal matter arising outside of Guernsey, and Alderney under the Schemes. (Other than appeal proceedings relating to any matter dealt with at first instance before a court in Guernsey or Alderney).²
- 2.8 No uplift or increase in remuneration other than as specified at paragraph 7.1 is applicable to any work undertaken by any fee earner under the Schemes, whether by an increase to the hourly rate or by any other manner.
- 2.9 In addition to costs, a fee earner may claim approved disbursements under the certificate.
- 2.10 A fee earner who provides legal assistance under the Schemes shall not take any payment in respect of that assistance except such payment as is made by the Administrator or is authorised by or under the Legal Aid (Bailiwick of Guernsey) Law, 2003.
- 2.11 Legal aid under the Criminal Legal Aid Schemes and the Civil Legal Aid Scheme is not available to any applicant until the Administrator is satisfied that the applicant meets both the specified financial eligibility test and the applicable specified legal merits test.
- 2.12 The date upon which the Administrator is satisfied on 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.
- 2.13 Where any fee earner has been overpaid by the Administrator for legal work undertaken under any of the Schemes, that fee earner shall reimburse to the Administrator any overpayment upon demand.
- 2.14 A fee earner who provides legal assistance under the Schemes shall not take any payment in respect of that assistance, except such payment as is made by the Administrator or authorised by or under the Legal Aid (Bailiwick of Guernsey) Law, 2003 or the Ordinance.

3. Legal Aid, Advice and Assistance (Green Form) Scheme

- 3.1 No enhanced rates are applicable to work undertaken under the Legal Aid, Advice and Assistance (Green Form) Scheme.
- 3.2 Remuneration for legal advice and assistance provided under the Green Form Scheme will only be claimable once the Advocate has assessed an applicant to be both financially eligible and provided the matter for which advice and assistance is sought

²The Legal Aid (Guernsey and Alderney) (Schemes and Miscellaneous Provisions) Ordinance, 2018 S7

falls within scope of the Green Form Scheme.

- 3.3 The total costs that can be claimed by an Advocate in connection with the provision of legal advice and assistance under any individual Green Form is limited to a maximum value of two hours of an Advocate's hourly rate, as specified, including any disbursements that are properly incurred by the Advocate on behalf of that assisted person.
- 3.4 In certain circumstances the maximum costs claimable under any individual Green Form may be extended by the Administrator.

4. **Standard Arrangements for Costs**

4.1 Save for cases that attract fixed fees as specified at paragraph 6, cases in the Court of Alderney as specified at paragraph 13, or costs claimable under a Green Form, the following standard charging method is specified:

4.2 Basic rates:

- (a) An advocate may claim £16.70 per 6 minute unit (£167.00 per hour) for properly chargeable work, subject to taxation.
- (b) A non-admitted lawyer (NAL), who has been accredited by the Administrator, may claim £8.35 per 6 minute unit (£83.50 per hour) for properly chargeable work, subject to taxation.
- (c) A paralegal (PL), who has been accredited by the Administrator, may claim £5.57 per 6 minute unit (£55.70 per hour) for properly chargeable work (subject to taxation).

5. **Recording fractions of a unit-rounding up/down.**

Chargeable time under the Schemes is measured in 6 minute units.

Fee earners must carefully record the time that they wish to claim under the Schemes.

However when time taken is not an exact multiple of 6 minutes the following rounding up or down should be applied by the fee earner.

Time in Minutes	Number of Units
0 - 8	1
9 - 14	2
15 - 20	3
21 - 26	4
27 - 32	5
33 - 38	6
39 - 44	7
45 - 50	8

51 - 56	9
57 - 62	10

6. Fixed fees

- 6.1 Fixed fees are specified for Divorce and Judicial Separation proceedings.
- 6.2 Fixed fees are specified for Mental Health Review Tribunals (MHRT). Remuneration may be claimed only by those specifically accredited by the Administrator for MHRT work.

7. Criminal Legal Aid Scheme

- 7.1 Enhanced rates of remuneration in respect work undertaken by the out of hours duty advocate.

(a) *Enhanced rates for telephone calls:*

Calls providing advice to a person by the out of hours duty advocate on a Monday to Friday from 18.00 until 7.00 the following day and calls at any time on Saturdays, Sundays and Guernsey Public Holidays (other than Christmas Day) attract an enhanced rate of double the basic rate for the first unit claimed.

(b) *Enhanced rates for attendances:*

- (i) An attendance on a person at the police station/ border agency by the out of hours duty advocate between 18.00 until 23.00, Monday to Friday, and between 07:00 until 23:00 on Saturdays, Sundays, and Guernsey Public Holidays (other than Christmas Day) attracts an enhanced rate of five times the basic rate for the first unit only, or
- (ii) An attendance on a person at the police station/ border agency by the out of hours duty advocate between 23:00 and 07:00 the following day attracts an enhanced rate of ten times the basic rate for the first unit only.

(c) Christmas Day from 00h01 until 23h59 special enhanced rates apply as follows:

- (i) An enhanced rate of five times the basic rate for the first unit only of a telephone call providing advice may be claimed.
- (ii) An enhanced rate of ten times the basic rate for the first unit only of an attendance on the client at the police station/ border agency may be claimed

- 7.2 No other enhanced rates are applicable to work undertaken under the Criminal Legal Aid Scheme.

8. Civil Legal Aid Scheme

No enhanced rates are applicable to work undertaken under the Civil Legal Aid Scheme.

9. Contributions

The circumstances in which a contribution is payable, the method of assessment and the amount of any contribution payable under the Schemes is as specified.

(a) *Contributions in criminal cases*

Where any applicant in criminal proceedings is assessed to be on a contribution to their legal costs and disbursements under either a Green Form or a certificate, all contributions are collected by GLAS once the criminal proceedings have concluded.

(b) *Contributions in quasi-civil/criminal proceedings*

Any contribution assessed to be payable by the applicant in quasi-civil/criminal proceedings will be treated as a contribution payable in criminal proceedings and will be collected by GLAS at the conclusion of the case as specified above.

(c) *Contributions in civil cases*

Where any applicant in civil proceedings is assessed to be on a contribution to their legal costs and disbursements under a Green Form or a certificate, all contributions are collected and retained by the instructed Advocate. The balance due to the Advocate will be paid by the Administrator once taxation of the Advocate's costs has concluded.

10. Discharge of a Certificate

A certificate remains in force until discharged. An Advocate will continue to be remunerated at legal aid rates for work properly undertaken on behalf of the applicant, subject to taxation, until the date/time of discharge.

11. Revocation of a Certificate

Where a certificate has been revoked, an Advocate will be remunerated at legal aid rates, for work properly undertaken on behalf of the applicant, subject to taxation, until the date/time of revocation. 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.

12. Suspension of a Certificate

When a certificate has been suspended by the Administrator, no fees or disbursements may be incurred by the Advocate under the Schemes during the period of suspension.

13. Alderney Arrangements

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

13.2 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. See paragraph 13.3, and
- (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 Alderney Police Court that fall within the scope of the Criminal Legal Aid Scheme.

13.3 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.

13.4 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.

Dated this 4th day of April, 2022



P. J. ROFFEY

President of the Committee *for* Employment & Social Security
For and on behalf of the Committee



L. H. HAYWOOD
Legal Aid Administrator