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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 7: COSTS ASSESSMENT CRITERIA UNDER THE LEGAL AID SCHEMES

This Circular specifies the ways in which the Legal Aid Administrator assesses whether payments made to Advocates or other accredited fee earner in respect of legal services, expenses and disbursements are reasonably and necessarily rendered, incurred or made under the Schemes and whether such payments should be made by the Administrator in full or partially.

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 who is providing or who has provided, legal assistance to the assisted person under any of the Legal Aid Schemes. In this Circular “Advocate” also refers to any fee earner who has been accredited by the Administrator to provide legal services under the Legal Aid Schemes

“account” means a request for payment submitted by an Advocate or an Advocate’s firm, to the Administrator under the Schemes and includes all invoices and any Green Form or Detention Form.

“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 Scheme and/or legal advice, assistance and representation under the Civil Legal Aid Scheme and/or the Criminal Legal Aid Scheme.

“assessor” means the person determining the reasonableness of the work undertaken and whether the time spent was reasonable having regard to the requirements of the relevant rules or guidance (as applicable) and applying the correct remuneration rate for each item of work.

“certificate” means a legal aid certificate that has been issued by the Legal Aid Administrator to the assisted person under either the Civil Legal Aid Scheme or the Criminal Legal Aid Scheme.

“costs” or “payments” mean:

- (a) legal fees that the Administrator pays to an Advocate for the work they do on behalf of the assisted person, and
- (b) disbursements, which are 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.

“Costs Judge” means the person appointed by the Administrator to undertake an independent review of a taxation of Advocates’ costs claimed under the Legal Aid Schemes.

“file” means all documents and/or information comprising the entirety of an Advocate’s file in relation to any work undertaken by the Advocate, or other accredited fee earner, under the Schemes.

“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 the legal advice and assistance provided under the Legal Aid, Advice and Assistance Scheme.

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

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

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

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

“taxation” or “costs assessment” means the assessment of the reasonableness of the costs claimed by the Advocate 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.

**PART I
GENERAL PROVISIONS**

2. Under the provisions of The Legal Aid (Bailiwick of Guernsey) Law, 2003, Section 3 (a) (iii) the Administrator shall assess applications for payments to be made in accordance with the provisions of a Scheme.
3. The Legal Aid (Guernsey and Alderney) (Schemes and Miscellaneous Provisions) Ordinance, 2018 enables rules to be made that specify rates of remuneration which shall be paid, and the persons to whom and the circumstances and conditions in, and subject to, which payments may be made (or made on account of) in respect of:
 - (a) legal or other services reasonably and necessarily rendered,
 - (b) expenses reasonably and necessarily incurred, and
 - (c) disbursements reasonably and necessarily made,for the purposes of providing legal services under or in connection with the Schemes.¹
4. The specified matters referred to in paragraph 3 above are set out in the Circulars described in the provisions of the Legal Aid (Guernsey and Alderney) Rules, 2019.
5. The rules specified in this Circular will be applied by the assessor to determine whether payments made to Advocates in respect of legal services, expenses and disbursements are reasonably and necessarily rendered, incurred or made under the Schemes and whether such payments should be made by the Administrator in full or partially.
6. Only legal services provided by an Advocate or other fee earner who has been accredited by the Administrator will be remunerated under the Schemes.
7. Payments under the Schemes are not available in respect of 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.
8. Payments under the Schemes are only available in respect of individuals: not companies, charities or groups of people.
9. Payments under the Schemes may not be made 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.

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

10. Remuneration under any of the Schemes 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.

11. *Issue Date of Certificate*

Legal aid is not available to any applicant until the Administrator is satisfied that the applicant meets the financial eligibility test as specified **and** the applicable legal merits test as specified. 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.

PART II

PROCEDURE

12. When requested to do so by the Administrator, the Advocate shall promptly:
 - (a) submit to taxation any bill of recoverable costs or indemnity for costs, between the parties to the action, and /or
 - (b) send the entirety of their files to the Administrator, and /or
 - (c) submit to the taxation of the Advocate's account or accounts.
13. The Administrator is under no obligation to require the taxation of the Advocate's account and all assisted persons release the Administrator from any such obligation.
14. The Administrator may request sight of documentation /information relating to any work undertaken for the assisted person by the Advocate under any aspect of the Schemes.² This includes any work undertaken by a previous Advocate in respect of the same matter for which a certificate has been issued or advice and assistance has been provided under a Green Form.
15. The Administrator may delegate the assessment of Advocates' costs to other appropriate members of GLAS or to expert legal costs draftsmen retained by the Administrator specifically for this task ("the assessor")
16. The rules specified herein will be applied by all assessors.
17. The Administrator may, from time to time, issue points of principle relating to costs assessment criteria arising out of any taxation or appeal to the Costs Judge.

² The Legal Aid (Guernsey and Alderney) (Schemes and Miscellaneous Provisions) Ordinance, 2018 S22

**PART III
ASSESSMENT OF COSTS UNDER THE SCHEMES**

18. General approach

18.1 Assessment takes place on the basis of determining the reasonableness of the work done and whether the time spent was reasonable having regard to the requirements of the relevant rules or guidance and applying the correct remuneration rate for each item of work.

18.2 Work can only be remunerated under the Schemes if it progresses the case.

18.3 Allowance is only made for work claimed where it is supported by appropriate evidence on the file. The onus is on the Advocate to provide evidence on the file that the work was done.

Evidence of the work done should ideally be in the form of timed and dated attendance notes but where relevant may be evidenced by relevant documentation drafted or read. Any handwritten notes must be adequately legible for the assessor to be able to assess the reasonableness, of the time claimed. Notes recorded by way of shorthand are not acceptable for taxation purposes.

18.4 The assessor must then assess whether the time spent was reasonable.

In other words would a reasonably competent Advocate have undertaken the work, has the work actually been performed with reasonable competence and was the time taken to perform the work reasonable.

18.5 The art (and it is more of an art than a science) of quantifying costs is to make a reasonable judgment as to the reasonableness of:

- (a) The work done; and
- (b) The time taken.

In order to make this judgment it may be necessary to carefully review the file, the records of time taken, correspondence and any other information.

18.6 The assessor is not to take into account hindsight but is to try to view the question of what is reasonable and the perspective of the average competent Advocate doing their best for their client at the particular time when the work is done.

19. Fee earners

19.1 Only fee earners will be remunerated under the Schemes. The only fee earners permitted to be remunerated under the Schemes are Advocates and non- admitted

lawyers/paralegals) who have been accredited by the Administrator for the purpose of providing legal services under the Legal Aid Schemes.

19.2 If the task is not that of a fee earner it is not remunerated under the Schemes because it is correctly part of the Advocate's overheads. If the task is for a fee earner but not undertaken competently this is dealt with when the work is assessed. An element of reasonableness is the time taken in performing a task. The fee earner does not have to spend all their time doing fee-earning work; the test is the actual work done and whether it would be appropriate to charge the client.

20. Overheads and administrative work

20.1 Payment will not be made for time spent purely on administrative matters. Payment will only be made for work directly involved in the provision of the legal services to the client. Overheads are not recoverable costs under the Schemes.

20.2 An Advocate's secretary/administrative assistant is not classed as a fee earner as the expense of their time forms part of the Advocate's overheads of running the firm.

20.3 Photocopying in-house is generally an overhead expense as are the costs of postage, stationery, typing and the actual cost of telephone calls.

20.4 Where documents are necessarily copied for the Court e.g. applications, affidavits, bundles etc. then copying may be charged at 10 pence per sheet. Copying documents for the client, an expert or any body other than the Court cannot be claimed. The time taken to photocopy documents may not be claimed. *Administration*

20.5 The costs of opening and setting up files, copying files where the original file is sent to another Advocate to whom the Certificate has been transferred, maintaining time costing records, preparing accounts and the like are all administrative costs.

20.6 A reasonable amount of time can be claimed for completion of Form's 6, 8, 9 and 12 providing the information provided by the Advocate on these forms justifies the time claimed. It is anticipated that in most cases a claim of 1 unit will be sufficient and reasonable. Alternatively, if the Advocate writes a letter incorporating this information and attaching the signed form, subject to the information justifying it, as above, a reasonable amount of time can be claimed. I

20.7 Where the Advocate is required by the Administrator to provide a review of a particular case a reasonable amount of time can be claimed for this.

20.8 Completion of the various legal opinion forms must be claimed under the Green Form and not under the certificate.

21. Recorded and unrecorded time

21.1 All time spent that the Advocate intends to claim under the Schemes must be recorded on the assisted person's file confirming:

- (a) who undertook the work,
- (b) the date the work was undertaken,
- (c) details of the work undertaken, and
- (d) the time taken for each item of work.

21.2 There are exceptions where unrecorded time may be allowed if the assessor is satisfied that it was impracticable to record the time taken. However, this will only be considered in relation to short periods of time and any substantial period of time must be recorded.

21.3 There are two forms of time recording. One centralised, the other on file. The first, centralised form of time recording seldom provides adequate information to assess costs. Often a computer printout can be produced for each client showing who did work, when the work was done, the time taken and usually the broad category of such work. Such a record may be useful but it is not determinative of reasonableness.

21.4 The main information used to assess costs is the account, records of time taken and information from the file.

Primarily such information from the file will be of three types:

- (a) letters or emails that are in place of a letter,
- (b) notes of work done, attendances on the client and others and telephone attendances,
- (c) documents.

21.5 These items need to be viewed in two ways:

- (a) The basic information upon which the claim can be arithmetically assessed: Letters and emails received are, in general, not remunerated, unless they contain complicated information. Time spent on drafting complex letters, emails and telephone attendances as well as on personal attendances, drafting documents and preparation must be recorded on attendance notes. The total time so recorded is calculated by reference to the hourly rate.
- (b) The assessor will then exercise discretion as to the reasonableness of the work done and the amount claimed.

21.6 The contents of the letters and attendance notes are the vital information in exercising this discretion. It is only by reading the file through that the assessor can make a judgment as to the weight and complexity of the case and the particular problems with which the Advocate had to deal. Time claimed for several emails written often as a dialogue (some of which may involve only one sentence written) between parties in one day/a short space of time must be reasonable and not necessarily claimed as 1 unit for

each email.

21.7 In order to be remunerated under the Schemes an Advocate must record and prepare attendance notes for all the time spent in attendance and preparation; the position may be summarised by “if you do not record you are unlikely to be paid” . .

Contemporaneous notes, are preferred and the Administrator requires the entire unedited file.

21.8 On invoices submitted where preparation time especially is claimed as “general” “estimated” or “various”, these claims will generally be disallowed if they are not recorded or backed up by an attendance note. The absence of recorded time for any substantial amount would be only allowed in the most unusual case.

21.9 If the assessor is in any doubt about time, the doubt will operate against the Advocate whose account is being assessed.

21.10 In addition to the proper recording of time, which is only the first step, the Advocate must provide adequate evidence that the work was properly and reasonably done. Where such evidence is not provided, the work in question is likely to be disallowed and remuneration for that work will not be made under the Schemes.

21.11 An Advocate’s file should be in reasonable order such that another Advocate could pick up and continue with the case.

22. Drafting and consideration of documents

Drafting and consideration of documents forms part of the general preparation of a case and includes:

- (a) drafting of court documents,
- (b) consideration of statements or documents served by the other party,
- (c) instructions to the Advocate or advice in writing and/or at a conference,
- (d) consideration of documentary evidence,
- (e) general consideration from time to time of the strategy or tactics required to bring the action to Court or to defend it,
- (f) consideration of or making offers to settle/payments into Court,
- (g) reconsideration of the Court documents, evidence and other factors in order to prepare for trial,
- (h) instructing expert witnesses and holding conferences,

- (i) identifying documents for and drafting the index to court bundles, checking, making up bundles to ensure accuracy.

23. Allowable / non-allowable work

Table 1 in the Appendix sets out examples of work or claims that will normally qualify for remuneration under the Schemes in the specific circumstances, and subject to any specific conditions indicated (first column) and work that will not be remunerated under the Schemes (second column). Even where work falls, or is claimed to fall, into a description indicated in the first column of the table, the assessor will always apply the criteria described in paragraph 18 to the work actually undertaken.

24. Assessment of costs in Criminal Matters

24.1 The assessor will apply the above criteria when assessing costs incurred under the Criminal Legal Aid scheme and criminal matters under the Legal Aid, Advice and Assistance Scheme but will also refer to the Guernsey Bar Costs Guidelines.

24.2 The Bar Costs Guidelines are set out in Table 2 of the Appendix.

APPENDIX

TABLE 1 ALLOWABLE/NON-ALLOWABLE WORK

Allowable work	Non- Allowable work
<p><i>Attendances</i> Attendances upon the client, and/or witnesses including collating information for witness statements or for a statement of means, professional or other meetings.</p> <p>The file must include a file note with the duration of the attendance noted.</p>	
<p><i>Perusal/consideration of documents received,</i> for example expert’s reports, witness statements, affidavits, and financial information. Counsel’s opinion, etc.</p> <p>Perusal of the file prior to final submission to GLAS for assessment/taxation to enable the Advocate to prepare the final invoice and ensure the file is in chronological order, legible and tidy– up to a maximum of 30 minutes per file but the time claimed should be reasonable.</p> <p>All other perusal for and preparation of accounts is considered administrative and thus not chargeable.</p>	
<p><i>Drafting documents</i> Generally claimable @ 6 minutes per A4 page. This is subject to the Administrator’s discretion.</p> <p>The file must be noted to explain any exceptional circumstances of an additional claim.</p>	<p><i>File reviews</i> The file holder is expected to be familiar with the case. File reviews by a supervisor and internal memoranda unless there is evidence to demonstrate that they progress the case.</p> <p>Claims for two fee earners in attendance at the same time cannot be claimed. This includes inter-office conferences and duplicated inter-office work. The Administrator will not fund two fee earners working on the same case other than in exceptional and pre-approved cases.</p>

	<p>The “Team” approach is discouraged and duplication arising from this approach taken to drafting documents and preparing cases for court will not be approved.</p> <p>Administrative and office overheads.</p>
<p><i>Advocacy</i> The file should be noted to confirm the length of time taken and the result of the hearing. No time will be allowed for dictating/writing a court attendance note in addition to a handwritten note. Waiting time, time taken in attendance on the client or others should be noted separately from advocacy time</p>	<p><i>Research</i> Unless the case involves a novel and developing or unusually complex point of law; Checking recent case law The file must show evidence of any research claimed, e.g. a copy of the case, notes made, conclusions drawn; the evidence must justify the claim.</p>
<p><i>Routine letters written</i> Where they progress a case routine letters written are generally claimable at 6 minutes per A4 page For example, a letter confirming or requesting a meeting would not be claimable but one setting out an offer received and advising the client upon its reasonableness would be claimable.</p>	<p><i>Routine letters received</i> Unless letters contain complicated information or enclosures, for example, letters containing complex financial information where they may be claimed on a time basis as a perusal.</p>
<p><i>Routine Telephone calls:</i> Under six minutes may be claimed as a routine call i.e. 1 unit. Over six minutes must be claimed as a timed attendance. The file must, in both cases, include a file note of the contents of the call and its duration.</p>	<p><i>Administrative telephone calls</i> Such telephone calls cannot be claimed. e.g. discussions with the client without progressing the case, unanswered calls, where a message is left asking the client to contact the Advocate or telephone calls made/received by a secretary</p>
<p><i>Emails out</i> These can be claimed if they are in place of a letter. A copy of the email must be held on file.</p>	<p><i>Emails in</i> E-mails in cannot be claimed if they merely act as acknowledgement or as a Receipt of a document. Generally they will be disallowed if they do not progress the case.</p>

	<p>Time claimed for several emails written often as a dialogue (some of which may involve only one sentence written) between parties in one day/a short space of time must be reasonable and not necessarily claimed as 1 unit for each email.</p> <p>A copy must be held on the file</p> <p><i>Internal emails</i> cannot be claimed.</p>
<p><i>Travel and waiting</i> <i>Travel and waiting</i> at court, the prison, the police station or border agency is claimable.</p> <p>Travel and waiting outside Guernsey (except Alderney) is only allowed with prior approval of the Administrator.</p>	<p><i>Travel and waiting</i> Waiting time cannot be claimed where the client is late or fails to attend an appointment at the advocate’s office.</p> <p>In Mental Health Review Tribunal cases travel time is included in the specified fixed fees and cannot be claimed in addition.</p>
	<p><i>Change of Advocate</i></p> <p>Where an assisted person changes Advocate to one in a different firm, only the receiving Advocate can claim for work in connection with the change. The outgoing Advocates should keep the file in such a condition to allow another Advocate to pick up and continue working on the file.</p> <p>Where there is a change of Advocate within the same firm (whether on a permanent or temporary basis e.g. a holiday) this is viewed, as duplication and the time taken by the new Advocate to familiarise him/herself with the file will not be remunerated.</p>
	<p><i>Overheads</i> include: staffing expenses, the cost of maintaining premises, professional requirements, costs of postage, stationary, telephone call, time taken to photocopy documents, taxes and administrative expenses (such as opening and setting up files, copying files for transmission onto a new advocate, maintaining time costing records, preparing accounts)</p>

TABLE 2 GUERNSEY BAR COSTS GUIDELINES

Transaction	Time
Magistrate’s Court – Guilty plea – client out of custody	2 Hours
Magistrate’s Court – guilty plea- client in custody	4 hours
Magistrate’s Court – not guilty plea – client out of custody	7 hours
Magistrate’s Court – not guilty plea – client in custody	10 hours
Additional time when a not guilty plea extends beyond a half day	4 hours per additional half day
Royal Court on appeal from Magistrate’s Court against sentence	4 hours
Royal Court on appeal from Magistrate’s Court against conviction	8 hours
Additional time when appeal against conviction extends beyond a half day	5 hours per additional half day
Royal Court – guilty plea – including committal.	10 hours
Royal Court – not guilty – one day trial – including committal.	20 hours
Additional time when not-guilty plea extends beyond a half-day	5 hours per each additional half-day.

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

