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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 8 – APPEALS PROCEDURES REGARDING ASSESSMENT OF COSTS UNDER THE LEGAL AID SCHEMES

This Circular specifies the procedures to enable Advocates or other accredited fee earners to appeal an assessment of costs in respect of legal services provided 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.

“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.

“Advocate’s account” means a request for payment submitted to the Administrator under the Schemes and includes any invoice, 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.

“the 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. Assessor includes the Administrator and any other person the Administrator delegates to undertake the task.

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

“costs” or “payment/s” 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 draftsmen” mean the legal costs draftsman who have been appointed by the Administrator to tax or assess the reasonableness of costs claimed by advocates under the Legal Aid Schemes.

“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.

“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.

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

“GLAS” (Guernsey Legal Aid Service) refers to 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.

“oral hearing” means a hearing before the Costs Judge following a taxation on the papers.

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

“the 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 legal 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, costs draftsmen or the Costs Judge as appointed by the Administrator.

“taxation on the papers” means a review of the Advocate’s file and all other relevant documentation by the Costs Judge. No hearing or attendance by the Advocate, the Administrator, or the Administrator’s representative will take place.

“total costs” means the total amount of the Advocate’s profit costs under the relevant legal aid certificate or certificates and any related Green Form, Counsel’s fees and any other disbursements.

2. General Procedure

- 2.1 Following the conclusion of a case, Advocates are required to submit the files for each particular case to the Administrator. The files are reviewed to determine the reasonableness of the work done and whether the time spent was reasonable having regard to the requirements of the specified regulations and guidance and applying the correct remuneration rate for each area of work. This assessment of case files and costs being claimed is also known as ‘taxation’.
- 2.2 The Administrator or costs draftsman will provisionally assess/tax the costs of each file and the Advocate will be notified as to any suggested revisions. (The “provisional assessment”).
- 2.3. If there are no suggested revisions, and provided that the assisted person with a financial interest (see paragraphs 4-8 below) in the costs of their Advocate has raised no objections, the provisional assessment will be approved for final payment by the Administrator.

3. Procedure following the Provisional Assessment of Advocate’s Accounts

There are two stages available to an Advocate to challenge a provisional assessment of their costs: taxation on the papers and an oral hearing.

Taxation on the Papers

- 3.1 The Advocate has 28 days to make any response to the provisional assessment. If no response is received by the Administrator within the time limit, the provisional assessment of the costs will be applied; the taxation will be finalised and confirmed by the Administrator and the Advocate will be paid in that amount only. No further referral by the Advocate will then be possible.
- 3.2 Any dispute in relation to payment for work undertaken by an Advocate under the Schemes will be referred in the first instance to a Costs Judge of the Senior Court Costs Office in London for a review (taxation on the papers). The final account will remain unpaid pending resolution of the dispute between the Administrator and Advocate.
- 3.3 The Advocate has 28 days from the date of the provisional assessment to advise the Administrator in writing that they require the costs of a particular case to be reviewed by way of taxation on the papers.

- 3.4 Within a period of a further 28 days, the Advocate must provide the Administrator, with the entire file(s), a full billing guide, all of the Advocate's accounts, any document that the Costs Judge may require and any response to the provisional assessment that the Advocate wishes to make ("the required documents").
- 3.5 Failure to provide all of the required documents within the time limit at paragraph 3.4 will lead to the provisional assessment of the costs being applied and the Advocate will be paid in that amount only. No further taxation on the papers or other appeal at the request of the Advocate will then be possible.
- 3.6 The Administrator will send all of the required documents to the Costs Judge, by courier.
- 3.7 The Administrator and the Advocate may agree that the Costs Judge's review on the papers is limited to part or parts only of the costs in dispute.
- 3.8 Unless agreed otherwise by the Administrator and the Advocate, the Costs Judge will review the costs *de novo* and the review will not be limited to a consideration of the costs that are in issue.
- 3.9 The Costs Judge will review the file and costs claimed on the basis of the costs assessment criteria as specified and will issue a "notice of taxation on the papers" (which may, but is not required to, be by way of annotating the Advocate's accounts). The Administrator will forward the notice of taxation on the papers to the Advocate.

Oral Hearing

- 3.10 If the Advocate does not agree with the Costs Judge's determination following a review on the papers, the Advocate will have 28 days from receipt of the notice of taxation on the papers in which to notify the Administrator and to request an oral hearing before the Costs Judge.
- 3.11 The Advocate must make any written submissions regarding the grounds for an oral hearing within a further period of 14 days.
- 3.12 Failure by the Advocate to apply to GLAS for an oral hearing within the time limits in paragraphs 3.10 and 3.11 will lead to the taxation on the papers becoming final and confirmed as such by the Administrator; the Advocate will be remunerated in the amount of the taxation on the papers only. For the avoidance of doubt, if the amount of the taxation on the papers is less than the amount of the provisional assessment only the lower amount will be paid.
- 3.13. The Administrator will notify the Advocate of the date of the oral hearing. Oral hearings will be similar in form to the existing Royal Court Costs Taxation hearings for civil and criminal matters. Both the Advocate and the Administrator (or a representative) may attend the oral hearing. The assisted person with a financial interest may also be present - See paragraph 5.6.

4. Assisted Persons with a Financial Interest

- 4.1 An assisted person has a financial interest in the costs situation if they have recovered and /or preserved property wholly or partly by virtue of their legal aid certificate/s and /or Green Forms. As a consequence of the recovery/preservation, the assisted person is obliged to reimburse to the Administrator any legal costs and disbursements paid or owing by the Administrator to their Advocate.
- 4.2 A financial interest also arises when an assisted person has been assessed to make a contribution to their costs and disbursements under the certificate and they have paid or are paying the contribution.

5. Limitations for Assisted Persons with a Financial Interest

5.1 *Costs or contributions less than £500*

- (a) Where the costs to be reimbursed or contributions made under a certificate are less than £500, the assisted person may make written representations **but** only where they can demonstrate to the Administrator's satisfaction that the costs and disbursements are objectively unreasonable taking into account the amount and issue at stake and also the benefit received, rather than the assisted person merely considering that the costs are too high. This will be a variable factor which will depend on the circumstances of the individual case, including the strength or otherwise of the merits of the case, its complexity and whether the benefit received is proportionate to the costs incurred.

The £500 limit may be waived or reduced at the discretion of the Administrator.

- (b) An assisted person whose financial interest occurs as a result of a Green Form only will not be invited to comment on the costs or contribution arising thereon unless the Administrator considers there are exceptional circumstances.

5.2 *Costs or contributions in excess of £500*

Where an assisted person has a financial interest in the outcome of any assessment of the Advocate's costs and the total costs to be reimbursed or contributions made are more than £500 or paragraph 5.1 is satisfied (a "qualifying assisted person") the qualifying assisted person may make written representations to GLAS regarding their Advocate's accounts.

- 5.3 If there has been a change of Advocate under one certificate, each Advocate's costs will be treated separately but they will be combined in determining whether the total costs fall below £500 or not.
- 5.4 Where an assisted person has more than one certificate and the certificates are connected by virtue of the certificate conditions, the total costs will be combined in determining whether costs fall below £500 or not.

- 5.5 Where a qualifying assisted person makes written representations, which cannot be resolved to the assisted person's satisfaction, the matter will proceed to a taxation on the papers even where the Advocate accepts the provisional assessment.
- 5.6 If the qualifying assisted person remains dissatisfied with the outcome of the taxation on the papers, the matter may proceed to an oral hearing, at such person's request. The Advocate and Administrator, or the Administrator's representative, will be entitled to attend any oral hearing in addition to the assisted person.

6. Advocates' Obligations

Advocates are required to:

- (a) Notify the assisted person that they have a financial interest and explain why,
- (b) explain that they have a right to make representations and set out how they can make those representations,
- (c) provide the assisted person with a copy of all the accounts, the billing guide for each account, any related Green Forms and confirmation of the total amount of costs and disbursements incurred, and
- (d) endorse the final account (or the last interim account if there is a change of Advocate) indicating that steps 6 (a) to (c) have been complied with.

7. Procedure for qualifying assisted persons with a financial interest

- (a) The Advocate's final account, endorsed as at paragraph 6(d) together with all other costs claimed under the Schemes, will be provisionally assessed by the assessor.
- (b) If the assisted person wishes to make written representations these must be made to GLAS within 28 days of receipt of a copy of the endorsed final account. A copy of any representations received by GLAS will be sent to both the Advocate and the Costs Judge for the taxation on the papers.
- (c) If no representations are received from the assisted person with a financial interest within the time limit of 28 days and the Advocate does not wish the matter to proceed to taxation on the papers, the final costs will be as determined between the Administrator and the Advocate.
- (d) If an assisted person with a financial interest is dissatisfied with the outcome of a taxation on the papers, the assisted person may request an oral hearing. The assisted person will be asked to provide written reasons, a copy of which must be provided at least 28 days before the oral hearing date and which will be sent to both the Advocate and the Costs Judge before the hearing.
- (e) No particular format of written representations is required from the assisted person; a letter outlining the assisted person's views on the costs will be sufficient.

8. Fast-tracking

- 8.1 Any Advocate may fast track the costs process and above appeals procedure by obtaining written confirmation from the assisted person with a financial interest that they:
- (a) have been notified by the Advocate that they have a financial interest and the reason why,
 - (b) have received a copy of all the Advocate's accounts and any related Green Form and have been advised as to the total amount of costs and disbursements incurred,
 - (c) accept the amount of the Advocate's costs and disbursements that they will be reimbursing to GLAS or paying by way of a contribution, and
 - (d) do not wish to make any representations regarding the Advocate's costs and disbursements.
- 8.2 If signed confirmation, as at paragraph 8.1 is submitted to the Administrator together with the Advocate's final account, the Administrator will proceed to deal with the costs without seeking any further involvement of the assisted person.
- 8.3 Where no signed confirmation is received by the Administrator or the assisted person confirms in writing that they do wish to comment on the level of the Advocate's costs and the issues are not capable of resolution between the Advocate and assisted person, the Administrator must receive the assisted person's comments within 28 days of receipt of the Advocate's endorsed final account. The matter will then proceed to taxation on the papers as at paragraph 3(a).
- 8.4 If the assisted person fails to provide written representations to the Administrator within 28 days, the assisted person will be deemed to have waived any rights to be heard and the matter will be as determined between the Administrator and the Advocate or Costs Judge as appropriate.
- 8.5. All time limits as noted above and applicable to both Advocate and assisted person with a financial limit are final unless there are exceptional circumstances why the time limits have not been adhered to, in which case the Administrator may consider extending the time limits.

9. Costs and Fees

- 9.1 GLAS will meet the cost of sending the files to the Costs Judge for taxation on the papers.
- 9.2 GLAS will also meet the Costs Judge's costs and expenses of a taxation on the papers or oral hearing **unless**:

- (a) the amount of any costs and disbursements taxed off from the Advocate's account(s) exceeds 20 per cent of the total costs claimed under the account(s), in which case the Advocate and their firm will be bound to meet all such fees and expenses, or
- (b) the Costs Judge makes an award of costs against either the Advocate or the assisted person.

9.3 An application fee of £50 may be applied by the Administrator in respect of each referral to the Costs Judge for a taxation on the papers or for an oral hearing.

This fee will be payable by the party who requests the taxation on the papers or oral hearing. If both the Advocate and the qualifying assisted person with a financial interest request a taxation on the papers or an oral hearing, each party will contribute £25 in respect of each referral to the Costs Judge.

9.4 Any costs payable by the Advocate will be deducted from the final unpaid account. If the final account is insufficient in amount to cover any fees and expenses, then GLAS will require a refund from the Advocate/firm.

9.5 A qualifying assisted person with a financial interest is required to pay the application fee before the papers are sent to the Costs Judge.

10. Legal Aid

No legal aid will be available under the Schemes to an assisted person with a financial interest to participate either in taxation on the papers or at an oral hearing.

11. Points of Principle

The Administrator may, from time to time, issue points of principle arising out of any taxation on the papers or oral taxation hearing

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