

GUERNSEY LEGAL AID SERVICE (GLAS)

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Guernsey Legal Aid Service is established under The Legal Aid (Bailiwick of Guernsey) Law, 2003 and Schemes are administered under The Legal Aid (Guernsey and Alderney) (Schemes and Miscellaneous Provisions) Ordinance, 2018.

Guernsey Legal Aid Service ("GLAS") is the name of the service that administers the Legal Aid Schemes for Guernsey and Alderney and the extra- statutory scheme for Sark. GLAS is run by the Legal Aid Administrator who is an independent statutory official appointed by the States of Guernsey.

GUIDE TO PAYING FOR YOUR LEGAL AID

This Guide explains by way of question and answer format when you may be required to reimburse the Guernsey Legal Aid Service for some or all of the legal costs incurred in connection with your legal aid.

If you have further questions or wish to discuss your legal aid position, please contact the Legal Aid office at the above address.

GENERAL

Legal aid is not always free and, depending on your financial circumstances and/or the circumstances surrounding your case, you may be required to repay your legal aid in part or fully.

Your Advocate will explain to you before you apply for legal aid that, depending on your finances and on the nature of the case, you could have to pay:-

- (a) a contribution from your income towards the cost of the case, and
- (b) if you get or keep any assets from your legally aided case, all of your own costs from those assets, and
- (c) if you lose the case, some or all of your opponent's costs.

The reasons why GLAS requires reimbursement of costs by the assisted person in certain circumstances are:-

- To put assisted persons as far as possible in the same position as successful non-legally aided individuals (who are responsible at the end of their cases to pay their own legal costs if their opponent in litigation does not, or is unable to pay them)
- To ensure that assisted persons contribute towards the funding of their cases so far as they are able; and

- To deter assisted persons from running up costs unreasonably by giving them a financial interest in how much money is being spent on their legal case.

GLOSSARY OF TERMS

“Administrator” means the Administrator of the Guernsey Legal Aid Service;

“GLAS” or “We” means the Guernsey Legal Aid Service (“GLAS”);

“Applicant” or “assisted person” or “You” refers to the individual who has applied for or been granted a legal aid certificate;

“States” means the States of Guernsey;

“Certificate” means a legal aid certificate granted by the Administrator;

“Green Form” refers to limited legal aid funding which may be available to enable a person to take preliminary legal advice/legal assistance;

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

“Costs” includes:-

- Legal fees that GLAS pay to your Advocate for the work they do on your behalf, and
- disbursements, which are out of pocket expenses that your Advocate will pay on your behalf if these are necessary for your case, such as court fees, doctor’s or other expert’s expenses;

“Contribution” refers to the percentage of legal costs and disbursements that an assisted person has been assessed to pay towards their legal proceedings;

“Debt” means the amount of money owing by the assisted person to the Administrator as a result of recovery/preservation of assets, confirmation of entitlement to any assets arising from any proceedings or outstanding contributions;

“Assets” means any property which is capable of being owned and has material value, including but not limited to: a property or interest in a property, land, endowment policies, investments, premium bonds, pensions, cash, money in bank accounts, valuable items e.g. paintings, furniture, cars, car number plates, boats, jewellery, shares, the value of a debt owed to you and so on;

“Recovery” is where a party to the proceedings succeeds in claiming ownership of someone else’s property or obtaining possession of property to which the title was not in issue or where a property is sold and the proceeds of sale distributed or where

the assisted person recovers more than he or she was legally entitled to. At the end of the dispute there is a gain for the assisted person;

“Preservation” is where the assisted person succeeds in fending off a claim by someone else to his or her property or to possession of his or her property i.e. at the end of the dispute the assisted person keeps all or part of what he or she regards as his or her own;

“Confirming entitlement to all or part of any assets” means that the assisted person either agrees to accept what is legally theirs or where the court confirms that the assisted person will keep what is legally theirs. For example, where a house is jointly owned by the parties and the parties eventually agree, or the court confirms, that each party will retain their respective 50% share of the house or where the property is in a party’s sole name and the court confirms that party will retain it. This sometimes occurs under a settlement or agreement arrived at to avoid proceedings or bring them to an end e.g. a deed of Judicial Separation by consent or a consent order regarding financial arrangements after a divorce;

“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.

“Revoked”

Revocation is when a legal aid certificate is not only cancelled from a specific date but is also deemed never to have existed.

For example, had the full facts been known by the Administrator when the grant of a certificate was being considered, the certificate would not have been granted and therefore no public funds should have been spent on the case. This can happen where it becomes evident after the legal aid certificate has been granted that the assisted person has made a false or incomplete disclosure about his income, savings and assets and had full disclosure been made, the assisted person would not have been financially eligible for legal aid.

Revocation can also happen when an assisted person has not provided full instructions regarding the case to their Advocate and if they had done so legal aid would not have been granted.

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.

Failure to provide correct and complete information can also amount to a fraud on the States of Guernsey and GLAS may refer such cases for criminal prosecution.

1. When will I have to contribute to the costs of my case?

a) At the beginning of your case, GLAS will assess your financial circumstances and tell you if you have to pay a contribution to the costs of your case, and

b) at the end of your case, GLAS will tell you if you need to repay some or all of your legal aid costs.

If you break the terms of your certificate or have not told us everything about your financial circumstances, we may ask you to repay some or all of the costs of your case.

2. When are my contributions to legal aid payable?

When your contribution is payable will depend on whether you are involved in a civil case or a criminal case.

Civil Cases

These include; divorce, or dealing with arrangements for children or finances following divorce, dealing with arrangements for children or finances if unmarried, personal injury claims etc.

If you have been assessed to pay a contribution towards your Advocate's costs and disbursements in a civil case, you will be required to pay your contribution to your Advocate and your Advocate will invoice GLAS for the balance. How and when you pay this contribution will be as agreed between you and your Advocate but it will usually be as the case progresses.

For example, you have been assessed to pay a 40% contribution to all costs and disbursements. The Advocate undertakes 20 hours work which will currently cost £3,340. Your Advocate will ask you to pay 40% of £3,340 i.e. £1,336 towards the total costs and will invoice GLAS for the balance of 60% i.e. £2,004. If you recover or preserve or have your entitlement to any assets confirmed (see below at number 5) we will also invoice you, for the 60% ie £2,004 that we have paid to your Advocate, at the conclusion of the proceedings

If, with the use of your legal aid certificate, no assets are ultimately recovered/preserved etc. and/or you do not have an order for costs made in your favour; your liability to GLAS is limited to the contribution payable under the certificate.

Criminal Cases

That is, if you are prosecuted for a criminal offence.

If you have been assessed to pay a contribution towards your Advocate's costs in a criminal case, GLAS will pay the Advocate all of his costs as the case proceeds. GLAS will invoice you for your contribution at the conclusion of the court proceedings.

If you cannot pay all of the contribution in one go when the case concludes, we will make arrangements with you to pay this contribution usually by way of instalments and using a standing order through your bank.

Assisted persons who do not have a bank account can pay for their legal aid in cash at Edward T Wheadon House; the address and contact details will be on the invoice you receive.

If you would like to pay towards your contributions to GLAS before your case is concluded, we are happy to come to an arrangement for you to pay us by instalments on account of the money you will owe GLAS at the end of the case. If you pay us in advance more than the total amount your Advocate is eventually paid by GLAS (subject to taxation) we will refund you any overpayment that you have made to us.

Whether you are acquitted, found guilty or the prosecution decide not to pursue the case against you, you are still required to pay your contribution to GLAS; if you were paying an Advocate privately you would be liable to pay your Advocate's costs whatever the outcome of your case.

Legal aid does not exist to place assisted persons in any better position than privately paying clients.

3. What if my financial circumstances change during the case?

If your financial circumstances change, you must **immediately** tell GLAS and your Advocate. This may include, for example, starting or stopping a job, getting married or living with some one, having a baby or moving house. This is because changes may affect whether you remain entitled to legal aid at all or whether the level of your contribution has increased or decreased.

If you don't tell GLAS about a change to your financial situation, or fail to co-operate with enquiries, your legal aid may be revoked (taken away). This means that you would no longer have the benefit of an Advocate representing you under legal aid and you may have to represent yourself in court or pay your Advocate privately.

You may have to repay all of your legal aid costs and you may also be prosecuted.

4. What happens if I break any of the conditions upon which legal aid is granted?

If any assisted person breaks any condition upon which a certificate is granted, the Administrator is entitled to revoke the certificate and recover from the applicant, through civil court proceedings if necessary, any costs paid or due to be paid to the assisted person's Advocate.

For example, if an assisted person does not provide full and frank disclosure of financial information when a legal aid certificate is applied for and the Administrator subsequently discovers this, or an assisted person fails to keep in contact with their Advocate, it is likely the legal aid certificate will be revoked and all the costs incurred under the legal aid certificate may be claimed from the assisted person. Please see your certificate for the conditions upon which the certificate has been granted.

5. What happens if I am awarded money or property (“recovery or preservation of assets”) or my entitlement to all or part of any asset is confirmed?

If an assisted person recovers or preserves any assets or has confirmed entitlement to all or any part of any assets with the use of a legal aid certificate (and/or green form) then GLAS may require the reimbursement of all or some of the costs and disbursements incurred on that assisted person’s behalf, whether or not an account has been rendered by the Advocate. In addition, the assisted person will not dispose of any part of such assets whether by sale or otherwise without first giving a minimum of 14 days’ notice to the Administrator.

See Condition 5 of the GLAS Conditions (2016) on the back of your certificate.

Your Advocate will advise you at the earliest possible opportunity whether recovery or preservation is likely to occur in your particular case and will explain the implications for you.

Property has been recovered or preserved, if it has been at issue in the proceedings.

Property is recovered by the claimant if it has been the subject of a successful claim and preserved to the respondent if the claim fails. It does not cover items of property, the ownership or possession of which has never been questioned.

“Property” covers property of any type i.e. anything which is capable of being owned and has material value.

GLAS must consider whether a party has obtained or kept something which they would not have succeeded in getting or keeping were it not for the proceedings for which they had legal aid. Each case will depend upon the individual facts and may have to be ascertained from the pleadings, evidence, judgment or order. This will also include where a lump sum settlement has been made to or for the benefit of a child, whose parent/ guardian had been in receipt of a legal aid certificate for such proceedings.

You will be invoiced by GLAS for all legal costs and disbursements incurred or to be incurred by your Advocate in connection with the case for which you had legal aid. You will be invoiced at the conclusion of the proceedings (see below).

If an assisted person agrees to give up their interest in the matrimonial home in return for some other property or money, they will have preserved property to the value of that other property or money.

An assisted person who both makes and resists a claim for transfer of property may not only recover but also preserve property within the same proceedings.

The most common types of cases where recovery and preservation arises are in matrimonial cases e.g. ancillary relief applications, or personal injury and medical negligence case or contractual matters where damages are recovered. This will also include where a lump sum settlement has been made to or for the benefit of a child, whose parent/guardian had been in receipt of a legal aid certificate for such proceedings.

Examples:

- Mrs A had legal aid for her divorce and ancillary relief application. Mr and Mrs A each owned half of the house. Mrs A wanted the entire house transferred into her name but Mr A did not agree. A court order was obtained in which Mrs A was granted ownership of the whole house. Mrs A has therefore recovered (or gained) half a house and she will have to reimburse to GLAS the cost of her legal representation.
- Mr B had legal aid for his divorce and ancillary relief application. Mr B and his wife each owned half of the house. They both wanted to own the entire house. The court ordered that they should each continue to own half of the house. Therefore, Mr B has preserved (or kept) his half of the property and also has had confirmation of his entitlement to his assets and will have to reimburse to GLAS the cost of his legal representation.
- Miss C had legal aid to make a medical negligence claim against the local hospital (the defendant). As a result of the case she was awarded damages of £10,000. Because she recovered (or gained) this money, she will have to reimburse the cost of her legal representation. If, additionally, she was awarded a contribution towards her legal costs from the hospital, then she would only have to pay the shortfall between the costs awarded and the actual legal costs and disbursements of the case. In some cases all of the costs are met by the defendant.
- Mr D had Saisie proceedings issued against him by the building society that had a bond (mortgage) on his house. The building society alleged arrears of mortgage payments and sought possession of the property. Mr D was granted legal aid to oppose the application. The parties settled the proceedings on the basis that the building society would withdraw its claim for possession if Mr D pays the alleged arrears. Mr D has accordingly preserved (kept) the property within proceedings, whether or not he has to subsequently sell the property to comply with the terms of the order. As a result of successfully preventing the house being re-possessed, Mr D is able

to conduct the sale himself. Mr D has preserved the property and will be required to reimburse to GLAS the costs of his legal representation.

- Miss E was granted a certificate for representation in confiscation proceedings following a drug trafficking offence. All of her assets were frozen by the court. At the conclusion of the proceedings some of the frozen assets are returned to her. These returned assets are deemed to have been preserved (kept) and Miss E will be required to reimburse the costs incurred by her Advocate to GLAS from the returned assets.
- Mrs F had a maintenance order in her favour. Her ex-husband failed to pay the maintenance. Mrs F was granted legal aid to recover the arrears. She obtained a court order in her favour for all of the arrears. She has therefore recovered assets (gained) and GLAS will require reimbursement. She also had a costs order made in her favour, which was less than the legal costs paid by GLAS. Mrs F will be liable to repay GLAS all of the costs they have paid regardless of whether she recovers any costs from her ex-husband. If Mrs F wishes to pursue the costs order against her ex-husband that is a matter for her. If she is successful in recovering costs from her ex-husband and provided she has already fully reimbursed GLAS, she will be able to retain those recovered costs. If she has not already fully reimbursed GLAS from the recovered arrears, she will be obliged to repay any balance of the debt to GLAS from the recovered costs.

NB Periodical payments of maintenance i.e. payments that are made on a regular basis, such as weekly or monthly do not give rise to recovery or preservation. However, arrears of maintenance, that have been secured with the use of a certificate and that are being repaid to the assisted person either as a lump sum or on an instalment basis will give rise to recovery and preservation; GLAS will require reimbursement to the extent of costs not otherwise met by a costs order payable by the opponent.

A payment of what is in reality a lump sum, despite being described as maintenance or as payment in lieu of maintenance, is subject to reimbursement to GLAS.

If the assisted person keeps only part of the assets following court proceedings, he/she may be worse off at the end of the dispute than at the start but he/she will still have preserved/recovered and will be required to reimburse GLAS.

- Mr and Mrs G entered into a Judicial Separation by consent. Mr G was legally aided and the couple owned very few assets. Mrs G wanted all of the assets including Mr H's car which was held in his sole name and which was valued at £5,000. In court proceedings, Mr G retained his car. His Advocate's costs at the conclusion of matters amounted to £3,500. As Mr G had both his entitlement to his car confirmed and had also preserved assets, he is required to reimburse GLAS all of his costs. This means he has spent 70% of the value of the asset in legal fees.

If, at the end of proceedings, the assisted party recovers/preserves less than the total costs that have been incurred under the certificate, the Administrator will require full reimbursement of costs incurred even if this uses up all of the assets recovered or preserved.

In all matters an Advocate should consider with clients whether the likely outcome will justify the expense or risk incurred.

Consequently, it is incumbent on the assisted person together with his Advocate to litigate reasonably and proportionately taking into account the value of the assets in question.

Throughout the duration of the proceedings, it is vital for the assisted party to be aware of the running costs of their case to date and, with the Advocate's advice, weigh this information against the overall assets that they are likely to retain or receive at the end of the case.

The Advocate must update assisted persons on the level of costs incurred under each certificate on a regular basis, so that the assisted person can make a fully informed decision on the reasonableness of continuing to litigate.

Publicly funded clients cannot be treated any differently from privately paying clients.

6. When will I reimburse GLAS if I recover or preserve assets with the use of my certificate?

This will depend upon what the court settlement or agreement between the parties actually is. The most usual arrangements include:-

a) Lump sum received by assisted person

When the assisted person is awarded a lump sum by the court or where a lump sum payment is agreed between the parties, the Advocate will arrange for all of the monies to be paid direct to the Advocate's firm to allow for the full reimbursement (including any previous Advocates' legal aid costs) to GLAS of the assisted person's costs.

This includes any interim lump sum payments received by the assisted person e.g. in a personal injury case. However, depending on the personal circumstances of the assisted person and the use that the interim payment will be put to, the Administrator may agree to defer claiming back the costs incurred to date from the interim payment until the case fully concludes. If the Administrator agrees to defer the immediate reimbursement, the costs will remain payable to GLAS whether or not any further sums of money are paid to the assisted person and once the interim payment becomes a final payment.

- For example, in a personal injury case, an interim lump sum payment of £10,000 is made to Ms H whose personal circumstances are such that the Administrator agrees to defer the immediate reimbursement of her costs to GLAS. The legal costs at this stage amount to £5,000. Ms H then wins some money on a scratch card, is no longer eligible for legal aid and her certificate is discharged. Ms H has recovered assets as she has already received £10,000 by way of an interim payment; as a result, all of the legal costs met by GLAS must be reimbursed. GLAS will invoice Ms H for £5,000.

The assisted person's Advocate **must** arrange for **all** settlement monies or recovered costs to be paid to the Advocate and not direct to the assisted person. This is a condition of the grant of legal aid. The Advocate will then pay GLAS on behalf of the assisted person.

GLAS appreciates that the assisted person will want to receive their settlement monies as quickly as possible. Consequently, following written confirmation from the Administrator of the total amount claimed under the certificate/s and green form (subject to taxation and including any previous Advocates' costs or connected certificates), the Administrator may authorise the Advocate to release the balance to the client.

If an Advocate fails to retain sufficient to fully reimburse GLAS then it is likely that any deficit owing to GLAS will be sought from the Advocate or the Advocate's final invoice may not be paid to reduce the deficit.

Where a single action is brought against two defendants for the same proceedings and damages are recovered from one defendant but not from the other defendant, all costs arising under the certificate are recoverable from these damages.

b) Real property recovered / preserved by the assisted person

If the assisted person is awarded or agrees to accept a share in real property, e.g. house, land etc., wherever it is situated, GLAS requires to be reimbursed all costs and disbursements. Once the Advocate's files have been taxed and the total amount paid, or to be paid, under the certificate is ascertained, the assisted person will be sent an invoice and invited to discuss their proposals for reimbursement.

Where an assisted person has been awarded or agrees to receive a share in a property, even where the property is yet to be sold or, as in some cases, the court order provides for the property to be sold when the youngest child is 18 years old or finishes full time education, GLAS expects, in every case, to receive regular payments from the assisted person to reduce their debt to GLAS with the balance to be paid on the sale of the property. In addition, the assisted person may be required to enter into a written agreement or a bond (at the assisted person's expense) to secure the full repayment of the debt.

If the property has low or negative equity at the time of the recovery/preservation, GLAS is still entitled to claim full reimbursement of all legal aid costs incurred under the schemes when the property is eventually sold – should all of the debt to GLAS not have already been discharged.

The Administrator can also request a court to make a realty charging order against any real property recovered/preserved by the assisted person to secure reimbursement of costs to GLAS.

If it is the assisted person's personal choice not to sell an asset then GLAS will require immediate and full reimbursement.

GLAS will not agree to the assisted person using the monies realised by the sale towards the purchase of a new property without the assisted person fully reimbursing GLAS first.

c) Other assets received by the assisted person

If the assisted person is awarded or agrees to receive other types of assets e.g. shares, jewellery, paintings, the value of life insurance policies or a pension etc. GLAS will expect the assisted person to reimburse the States of Guernsey immediately following the conclusion of the case.

If the asset received is in some form other than money, GLAS will still require immediate reimbursement. This could be achieved by the assisted person selling the asset or borrowing money on the value of the assets.

Under each certificate, the assisted person also agrees not to dispose of any asset unless they have first given the Administrator 14 days' notice to allow GLAS to arrange reimbursement of costs.

The Administrator can also request a court to make a personalty assignment order against any relevant personal property recovered/preserved by the assisted person to secure reimbursement of costs to GLAS

NB. Interest may be charged by the Administrator on any outstanding invoice issued by GLAS, please see below at 7. It is therefore in the assisted person's interests to clear any debt with GLAS as quickly as possible.

Priority of repayment

GLAS is to be reimbursed in full from the recovered/preserved assets before the Advocate is permitted to pay himself any outstanding contributions/private costs, for example;

You recovered assets at the end of your case as it was agreed during court proceedings that you are to receive a lump sum. As a consequence GLAS will require reimbursement of all costs incurred under the certificate.

In addition, at the beginning of the case you were assessed to make a contribution under your civil legal aid, and you had also been paying your Advocate privately for work incurred before you became eligible for legal aid.

If your outstanding contributions/private costs were not cleared during the case, GLAS must be fully reimbursed from the recovered assets before any outstanding payments due to the Advocate are met.

Likewise if an assisted person agrees to continue to pay his Advocate privately after a certificate has been discharged/revoked, GLAS must be repaid first from any recovered assets.

Deferral of repayment to the Administrator

If the Administrator exceptionally agrees that in the assisted person's particular personal and financial circumstances, he/she is not in a position to reimburse GLAS in full immediately from the assets recovered /preserved even by small instalments, the Administrator **may** agree to the deferral of the repayment until some specified time. If this occurs, the assisted person will be required to enter into a bond with GLAS at the assisted person's expense. (The Administrator will register the Bond).

Each such case will be considered in light of its particular circumstances and there is no obligation on the Administrator to agree to defer any repayment of debts arising under the schemes

7. Will interest be charged on money I owe to GLAS?

It may be depending on the type of case for which you have been granted legal aid, but the decision to charge interest is entirely at the Administrator's discretion.

Every legal aid certificate issued after 11th October, 2016 is granted on condition that interest may be charged at the Administrator's discretion as follows:-

"6. Interest

Interest may be charged, at the Administrator's discretion at any time, at a rate not exceeding 3% above the base rate of RBS International Limited published from time to time and calculated on a daily basis, on the amount of any sum owed to the States for legal services provided through the Legal Aid Scheme to the Applicant"

As a general guide, it is unlikely that interest will regularly be applied to contributions to legal aid that are outstanding in a criminal case but it may be depending on individual circumstances. For example, if an applicant is assessed to be on a large contribution in a long criminal trial or where the applicant has ignored requests for payment after receiving GLAS' invoice.

Interest will be applied to recover and preserve type debts as described at 5 above, for example, cases where the assisted person has been awarded, or has retained an interest in the former matrimonial home following divorce or judicial separation by

consent but who needs to keep the former matrimonial home in order to accommodate minor children (Mesher type order). As a consequence, it may be some years before the asset is realised and GLAS can be fully reimbursed. In such circumstances, interest is very likely to be applied to the debt.

The Administrator has no power to postpone reimbursement of costs to GLAS and if the asset cannot be realised immediately, we will discuss your financial situation with you to come to an arrangement to make regular repayments that you can sensibly manage to reduce your debt. Interest is likely to be applied in such cases.

Interest is also likely to be claimed in respect of cases where we have revoked a certificate and are seeking reimbursement of costs.

Calculation of Interest.

All interest claimed will be simple, rather than compound, and will be applied 30 days after the date of GLAS' invoice to the assisted person.

GLAS encourages debtors to repay by instalments and, where the debtor pays any amount/s off the debt, any such sums repaid will be applied to the accrued interest first and then to the outstanding capital sum.

The assisted person will receive an annual statement confirming the interest calculation and the total balance outstanding.

In many cases, legal aid must be regarded as a loan and not a gift and this must be explained by the Advocate to the assisted person at the very outset. Both the assisted person and the Administrator must be regularly updated by the Advocate about the amount of costs incurred.

8. When will I be invoiced for my debts to GLAS?

Once the case has concluded, GLAS will "tax" (that is, review) the Advocate's file to check that the costs claimed by the Advocate are reasonable in amount and reasonably incurred.

The Advocate will already have sent a "28 day letter" to an assisted person who has recovered, preserved or had entitlement to all or any part of any assets confirmed. The letter will advise the assisted person that, as they have a financial interest in the costs claimed by their Advocate, they are entitled to comment on the level of costs and the letter will include copies of all invoices that GLAS have been asked to pay in connection with the case. The letter should also include all billing guides or a breakdown of the work that the Advocate has undertaken.

The final amount to be paid to the Advocate will be determined by GLAS and GLAS will then send an invoice to the assisted person detailing all the costs and disbursements to be reimbursed.

GLAS expects to be repaid all costs and disbursements within 30 days of the date of our invoice, although please see question 6.

Interest may be applied at the Administrator's discretion 30 days after the date of the invoice.

GLAS may agree to be repaid by regular payments from the assisted person, preferably by standing order.

GLAS will review annually with the assisted person whether he or she could reasonably increase the amount of regular payments.

If your financial circumstances change such that you cannot continue to pay the agreed instalment, please contact GLAS immediately so we may review the situation with you.

If the repayments cease, GLAS may institute court proceedings for recovery of the balance of the debt. Costs and interest will be added to any judgment of the court.

9. What are "connected certificates"?

Some applicants are granted "connected certificates". This is most likely to occur when a divorce certificate and an ancillary relief certificate are issued by GLAS at the same time.

The certificates will confirm that both of the certificates (and any relevant green forms) are connected. Consequently, if the assisted person subsequently recovers or preserves assets or has entitlement to any assets confirmed using any one of the certificates, then GLAS may require the reimbursement of all the legal costs and disbursements incurred under both certificates and any related green forms.

If an assisted person has been issued with more than one legal aid certificate in the same proceedings either simultaneously or subsequently, all costs arising under all certificates will be required to be reimbursed.

This also applies in cases where the parties are married and have separated but have not yet issued divorce proceedings in the Royal Court. An urgent application may need to be made in the Magistrate's Court for a domestic violence injunction or a court order concerning children. If it is anticipated that divorce and ancillary relief proceedings will be issued imminently, a condition may be added to the Magistrate's Court certificate linking this certificate to any future divorce and ancillary relief certificates. This means that if the assisted person recovers/preserves or has their entitlement to assets confirmed in the ancillary relief proceedings, they may be required to reimburse GLAS all costs incurred under all legal aid certificates.

The issue is that the whole dispute, which is funded under one or more certificates, arises out of the relationship breakdown and consequently all of the costs associated

with the dispute and breakdown are recoverable from any assets recovered/preserved.

If the parties reconcile after incurring legal aid costs under a divorce petition/petition for judicial separation and/or ancillary relief certificate/s and the reconciliation subsequently breaks down and the divorce proceedings etc. are continued or reissued, GLAS reserves the right to connect any future certificates with the previous certificates to allow for reimbursement of the cost of all proceedings.

Likewise, if the divorce, petition for judicial separation and/or ancillary relief is not pursued to a conclusion under the first certificate/certificates and then subsequently revived or reissued, GLAS again reserves the right to link the earlier certificate/s with later certificates.

Where certificates have not been connected, GLAS will only require reimbursement of the costs arising from any certificate (and/or green form/s) that the recovery/preservation/confirmation of entitlement to any assets came under.

10. Appeals

In civil appeals, each level of the appeal, for example, from Royal Court to Court of Appeal, will have a separate certificate issued and the consideration of recovery and preservation will be looked at in relation to each certificate. Thus it is possible that an assisted person could have recovered and/or preserved and/or had entitlement to assets confirmed under a certificate for proceedings in the Royal Court. An appeal could then be made to the Court of Appeal and the assisted person could also recover and/or preserve and/or have entitlement to any assets confirmed in these proceedings. In such circumstances GLAS would expect reimbursement in respect of both sets of proceedings.

An assisted person may also be awarded costs in their favour following a successful appeal or defence of an appeal.

In criminal appeals, it is unlikely that any recovery/preservation of assets will occur and in any event in all criminal appeals any legal aid is granted by the relevant appeal court.

11. When does the liability to reimburse GLAS arise?

GLAS invoices the assisted person based on the terms of the financial court order at the time the Order is made. For example, an Order confirms that both parties retain their property (the only asset) which is abroad and held in joint names. The wife is legally aided and as she has preserved an asset, she would be invoiced by GLAS for the costs incurred in the proceedings. If the husband then fraudulently sells or transfers the property to a third party and keeps the full proceeds of sale, despite the wife not receiving any of the proceeds of sale, the invoice is still payable because she had preserved an asset at the time the order was made.

12. What happens if I become financially ineligible for legal aid before my case is concluded?

Where an assisted person's certificate has been revoked or discharged and they subsequently recover and/or preserve or have entitlement to any assets agreed or confirmed in continuing proceedings, then GLAS will expect reimbursement of all costs and disbursements met by the States of Guernsey, through GLAS in support of the previously legally aided person's litigation.

The Advocate will be asked to confirm that they will retain sufficient monies to reimburse GLAS should the assisted person recover and preserve in the proceedings that were originally publicly funded at any time in the future. The assisted person will be asked by GLAS to confirm their agreement to reimburse GLAS, even if they subsequently change Advocate.

In such circumstances and when the case is concluded, the Advocate must always check with GLAS the total owing to the States before releasing any funds to the client.

This situation may occur in personal injury cases where the assisted person becomes financially ineligible but is in a position to continue the litigation at their own expense. If they are subsequently successful, having received legal aid support, then GLAS will require reimbursement (usually from a costs order or a settlement/award) to the extent of the legal aid funding paid when the assisted person was in receipt of legal aid. This could also happen in a matrimonial case where a certificate had been issued for ancillary relief.

There is no reason why a person who is ultimately successful should not reimburse GLAS for the financial support they received from the public purse before they became financially ineligible for public funding.

For example, Mr I was granted a legal aid certificate to pursue a claim for personal injuries arising from a road traffic accident. He then inherited a sum in excess of the maximum to be eligible for legal aid. As a result, Mr I became financially ineligible for continued public funding and his legal aid certificate was discharged. GLAS wrote to Mr I and his Advocate advising them both that we require full reimbursement of all costs incurred under the certificate (and any green form) when the case concludes. In addition, the Advocate must arrange to receive any damages and retain sufficient from the damages to fully reimburse GLAS. Mr I decides to pay his Advocate privately to conclude his case and subsequently receives a sum of money in damages. GLAS will require full reimbursement either from any costs that may have been awarded in his favour or from the damages.

Where a certificate has been revoked, GLAS will, in any event, invoice the previously assisted person, whether they are ultimately successful in their litigation or not.

13. What happens if I have an order for costs made in my favour?

GLAS expects an application for costs to be made on behalf of the assisted person in all appropriate situations, in order to reduce the cost to the public purse.

Each legal aid certificate issued after 11th October 2016 confirms at Condition 4 that the assisted person agrees:

“that if an offer of settlement is accepted that includes an offer to pay some or all of the Applicant’s costs, or if a Court awards costs in the Applicant’s favour,

(i) to pay all costs received to the States; and

(ii) if the Applicant fails to pursue any order for costs in their favour, to reimburse the States in the full amount of the costs order.

(g) that any settlement moneys or recovered costs are to be paid to the Advocate who will promptly reimburse the States any payment made by or owing to the States (and whether or not the Advocate has yet rendered a fee note).

(h) that repayment of any sums due to the States shall rank above any other unsecured creditor if the Applicant is, or becomes, insolvent.”

This means that GLAS requires to be paid any costs that you may receive. GLAS will also expect you to pursue any order for costs made in your favour and if you fail to pursue any costs order made in your favour, we will require you to reimburse us to the amount of the costs order.

If you do not reimburse GLAS monies that you have been invoiced for, we will, if necessary, take civil proceedings to recover debts that are owed.

If costs ordered/agreed to be paid in your favour are less than the amount that GLAS ultimately pay your Advocate for the proceedings, GLAS will require you to pay us the balance from any settlement or assets that you receive.

14. What happens if a costs order is made against me in the court proceedings?

Every legal aid certificate at Condition 7 confirms that:-

“Costs awarded by the Court against the Applicant are not payable by the States, nor will legal aid funding be available to the Applicant to contest or dispute the costs order or the level of costs awarded”

This means that if you are unsuccessful in court proceedings and you lose the case, the court may order you to pay the other side’s costs – which could be considerable and GLAS will not pay these costs on your behalf. Consequently, it is very important to fully consider the financial implications of pursuing or defending litigation at an early stage of the proceedings and throughout.

Part of the GLAS reasonableness test in granting civil legal aid is that there must be reasonable prospects of success that you will not only win but also get a costs order

in your favour to reimburse the public purse their financial outlay in supporting your case. Therefore, it is very important that you and your Advocate are confident that the case does have reasonable prospects of success, otherwise, if you lose, a costs order may be made against you and it will be your liability to pay these costs.

15. What happens if I live outside of the Bailiwick of Guernsey and I recover assets using my legal aid certificate issued by the GLAS?

If you reside outside the Bailiwick of Guernsey and you have recovered or preserved assets or had your entitlement to assets confirmed through court proceedings issued in the Bailiwick of Guernsey, you are still required to reimburse GLAS all costs incurred under your certificate/s, wherever the assets are situated. GLAS will, if necessary, institute court proceedings to recover the debt.

16. Disputes with clients or Advocates as to whether recovery/ preservation or confirmation of entitlement to any assets arises.

At the end of a case and following a full review of the Advocate's files, the Administrator will determine whether in her view the assisted person has recovered/preserved/had confirmation of entitlement to any assets with the use of the legal aid certificate(s)/g s and how and when the costs incurred are to be reimbursed to GLAS.

GLAS takes a number of steps to ensure that legally aided individuals realise that depending on the outcome of their case, eventually they may have to pay the costs. The legal aid application Form 1F and GLAS' FAQ Leaflet contain warnings about the possibility of the assisted person having to repay their legal costs. It is the Advocate's responsibility, as part of their basic duty to advise their client on the conduct of the case and to keep the client informed about the implications, including financial, of every step they take in the proceedings.

An Advocate's duty to their client requires them to avoid running up excessive or unnecessary costs, to keep property out of the dispute, and to make sure that their client appreciates the cost of the steps they instruct the Advocate to take, so that the costs to be reimbursed to GLAS are not disproportionate.

The obligation on Advocates is to get the best possible settlement for their client, primarily without regard to whether or not the client will be required to reimburse GLAS or the extent to which they will be required to reimburse GLAS.

If upon consideration of the Advocate's file, the Administrator is of the view that the court order or agreement has been drafted in such way as to deliberately avoid or evade reimbursing GLAS in full or partially, this may be considered a conduct matter and addressed accordingly.

The Administrator will endeavour to come to an agreement with the Advocate/assisted person regarding any disputes on the applicability and extent of recovery and preservation. Under the Statutory Scheme there will be provision to

refer any such disputes to an independent Legal Aid Commissioner for a review of the Administrator's decision.

In addition, there will be provision for the Commissioner's decisions to be appealed to the Royal Court but limited to a question of law.

17. What happens if I fail to repay GLAS?

The Administrator may issue civil court proceedings to recover any sum due to the Administrator.

If court proceedings are issued against an assisted person for the recovery of costs incurred under any green form and/or certificates and judgment is awarded to the Administrator, costs and interest may be added to the debt.

If you have any questions concerning paying for your legal aid, please contact either your Advocate who will be able to advise you, or GLAS at the address at the beginning of this document.