

GUERNSEY LEGAL AID SERVICE

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

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

REVIEW PROCESSES IN RESPECT OF DECISIONS MADE BY THE LEGAL AID ADMINISTRATOR

1. Procedure on grant of legal aid

a) **Where full legal aid is granted to an applicant** and where no contribution is required to the legal aid costs, a legal aid certificate and a Form 3 (offer of legal aid) will be sent to the applicant’s Advocate. The Legal Aid Certificate and Form 3 will detail the terms and conditions upon which legal aid is being offered to the applicant. The Form 3 must be signed by the applicant to confirm acceptance of the terms and conditions and to validate the grant of legal aid.

b) **Where an offer of legal aid is made subject to a contribution** being made by the assisted person to the legal aid costs, the details of the contribution payable and how the financial assessment was undertaken will be sent to the applicant (**“the original decision”**).

The Legal Aid Certificate and Form 3 will be sent to the applicant’s Advocate and they will detail the terms and conditions upon which legal aid is being offered to the applicant. The Form 3 must be signed by the applicant to confirm acceptance of the terms and conditions, including their agreement to pay the assessed contribution, and to validate the grant of legal aid.

An applicant does not have to accept any offer of legal aid but will then have to pay privately for any Advocate’s assistance that they require.

If the applicant accepts the offer of legal aid, the certificate and legal aid cover comes into effect from the date of issue recorded on the Legal Aid certificate. Legal aid will not be back dated.

2. Administrator's obligation to give reasons.

If the Administrator:

- refuses legal aid, or
- exercises their discretion to grant it on a contribution, or
- exercises their discretion to waive a contribution,

then they shall notify the applicant of their decision by letter ("**the original decision**") and provide reasons.

The Legal Aid Administrator may use their discretion to grant legal aid when the applicant is not financially eligible or to waive or reduce a contribution:

- a) in limited and exceptional civil matters:
- b) in criminal matters where, in the Administrator's opinion, the interests of justice require it, in accordance with Article 6 of the European Convention on Human Rights.

3. Decisions relating to the financial eligibility of the applicant/assisted person

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

An applicant for legal aid under the Criminal Legal Aid Scheme or the Civil Legal Aid Scheme or a person who is already in receipt of legal aid funding (an "assisted person") may request the Administrator to reconsider their determination that the applicant does not qualify financially or no longer qualifies financially for legal aid under any of the Legal Aid Schemes.

If the applicant/ assisted person wishes to ask the Administrator to reconsider their original decision, the person should make the request in writing to the Administrator and provide copies of any further financial or other information that the person wishes the Administrator to take into account in their reconsideration. The written request should be submitted to the Administrator within 14 days of the date of the original decision letter.

The Administrator will reconsider all of the new financial information and their original decision and will then advise the applicant/assisted person in writing of their final decision concerning financial eligibility for legal aid.

Legal Aid funding for a reconsideration of financial eligibility

No legal aid, whether by way of Green Form or under a legal aid certificate, is available to the applicant/assisted person in connection with decisions relating to their financial eligibility.

4. Review of decisions other than relating to the financial eligibility of the applicant/assisted person

The review process encompasses 2 stages: (a) the Legal Aid Administrator's review and (b) a further and final review by the Legal Aid Commissioner.

(a) The Legal Aid Administrator's Review

General Provisions

In accordance with S17 of the Legal Aid (Bailiwick of Guernsey) Law, 2003 and S19 and S20 of the Legal Aid (Bailiwick of Guernsey) (Schemes and Miscellaneous Provisions) Ordinance, 2018; ("the Ordinance");

Where the Administrator has made a decision based on the application of the legal merits test, referred to as "the original decision";

- to refuse to grant legal assistance under any of the Legal Aid Schemes,
- to grant legal assistance, subject to any conditions or limitations
- to vary the conditions or limitations of a grant of assistance, or
- to discharge or revoke legal aid, or
- any such other type of decision as may be specified,

and where an applicant/ assisted person is aggrieved by the Administrator's decision which directly affects them, that person may require the Administrator to review her original decision.

An aggrieved person could be someone who is applying for legal aid or who has already been granted legal aid.

As noted at 3 above, this process excludes any requests to review decisions relating to financial matters, including in relation to the application of the GLAS financial test or to the payment or conditions relating to a financial contribution. These are covered by the separate review process as at 3 above.

Procedure

In accordance with S19 of the Ordinance, any request for review should be made in writing within 14 days following the date of the Administrator's original decision **or** within a longer period where the Administrator is satisfied that it was not reasonably practicable to apply for a review within the 14 day period and it is fair in all the circumstances to do so.

A request for a review must be made by way of written notice by the aggrieved person to the Administrator setting out full reasons, including the grounds and material facts on which the person requesting the review relies.

No particular form of written notice is required by the Administrator; a letter setting out full reasons will be sufficient.

Possible Outcomes of the Administrator's Review

Under S19 (3) of the Ordinance, the Administrator's review decision shall either-

- a) set aside their original decision and substitute an alternative decision, or

- b) confirm their original decision in whole or in part.

Following the review, the Administrator will send to the aggrieved person or their advocate written confirmation of her decision (the “Administrator’s review decision notice”)

(b) Legal Aid Commissioner’s review of decisions of the Administrator (the “Commissioner’s review”)

General Provisions

If the applicant/assisted person is not satisfied with the outcome of the Administrator’s review as set out in the review decision notice, the applicant/assisted person may apply to the Legal Aid Commissioner for a further review of the Administrator’s decision. This is referred to as “the Commissioners Review” under S20 of the Ordinance.

The Commissioner is independent of the States of Guernsey, the States of Alderney and any of their Committees and is subject to a statutory requirement of confidentiality.

The grounds for review by the Commissioner are that the review decision by the Administrator was:

- ultra vires or involved an error of law,
- unreasonable,
- made in bad faith,
- involved a lack of proportionality,
- or
- involved a material error as to the facts or procedure.

The Commissioner will only review whether or not the legal merits test as specified under the Legal Aid Scheme has been correctly applied and will not review any other issues in dispute.

Procedure

If an applicant/ assisted person is dissatisfied with the Administrator’s review decision relating to the legal merits of their application, they can request a Commissioner’s Review on the papers within 28 days of the date of the Administrator’s review decision notice.

The Commissioner may order a longer period for review than the 28 day period, if the Commissioner considers that it was not reasonably practicable to institute the review process within this period and that this is fair in all the circumstances of the case.

A request for review by the Commissioner is instituted by way of service of written notice by the applicant /assisted person upon the Administrator setting out the grounds and material facts relied upon.

No particular form of written notice is required by the Administrator; a letter setting out full reasons will be sufficient.

Pending the determination of the Commissioner's Review and upon application of the assisted person, the Commissioner may suspend or modify the operation of the condition, limitation or variation of the legal aid certificate that is the subject of the review being requested.

All relevant papers will be sent to the Commissioner by the Administrator so that the Commissioner may fully consider the background of the case and all documentation provided by the applicant / assisted person. The Commissioner will consider and apply the relevant rules and guidance of the legal aid schemes and in particular in respect of the applicable legal merits test.

The costs for any review by the Commissioner will be borne by the Administrator.

Possible Outcomes of the Commissioner's Review

Having reviewed the case on the papers, the Commissioner may decide:

- a) to confirm the Administrator's decision in whole or part, or
- b) set the decision aside and, if considered appropriate to do so, remit the matter to the Administrator with such directions as the Commissioner sees fit.

If the Commissioner agrees with the Administrator's decision that legal aid funding should not be granted, no legal aid certificate will be granted by the Administrator.

If the Commissioner agrees with the Administrator's decision that legal aid funding should not continue, the legal aid certificate will be discharged and no further legal aid funding will be provided to the applicant in order to pursue the case.

If the Commissioner's decision is that the legal merits test is met the Administrator will advise the applicant/ assisted person accordingly.

Legal Aid Funding for a Commissioner's Review

Legal aid funding to provide the grounds and material facts to the Administrator for a Commissioner's review, where the applicant/assisted person has an advocate, will be limited to a Green Form for up to a maximum of 2 hours of an Advocate's time. If the assisted person is already in receipt of a relevant legal aid certificate the advocate currently acting for the assisted person may claim a maximum of 2 hours under the existing certificate to advance any grounds/ material facts to be considered by the Commissioner.

Other procedures

Appeal from a decision of the Commissioner

Any appeal from a decision made by the Commissioner under the Ordinance is to the Royal Court on a question of law.

Judicial Review

An applicant or assisted person may also wish to discuss with their Advocate the possibility of Judicial Review.

Any application by an aggrieved person for legal aid to commence proceedings to Judicially Review a decision of the Administrator will be subject to the standard legal aid means test and the civil legal merits test.

In such circumstances, the assessment of the legal merits of the application for a legal aid certificate to judicially review a decision of the Administrator, will be considered by a party independent of the Administrator, The Commissioner or GLAS.

CONFIDENTIALITY and DATA PROTECTION

All information provided is treated in confidence and in accordance with the Data Protection (Bailiwick of Guernsey) Law 2017. It will only be used for the purposes of Legal Aid administration and in accordance with the the Legal Aid (Bailiwick of Guernsey) Law, 2003 and Schemes and the Legal Aid (Guernsey and Alderney) (Schemes and Miscellaneous Provisions) Ordinance, 2018.

Further information

1. For the procedure to review financial decisions see 3 above and Legal Aid Circular 1- Assessment of Financial Means of Applicants.
- 2, For details of the legal merits test in relation to civil matters, please see Legal Aid Circular 2-The Civil Legal Aid Scheme; Scope and Legal Merits.
3. For details of the legal merits test in relation to criminal matters, please see Legal Aid Circular 3-The Criminal Legal Aid Scheme; Scope and Legal merits.
- 4 For the procedures in relation to the Administrator reviewing legal costs claimed by advocates under the legal aid schemes, please see Legal Aid Circular 7-Costs Assessment Criteria under the Legal Aid Schemes and Legal Aid Circular 8- Appeals Regarding Taxation of Costs under the Legal Aid Schemes.

If you have any queries or would like to request copies of the above documentation please contact the Administrator at the address at the top of this Guide.

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