

## 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.*

## LEGAL AID GUIDE-CHALLENGING A GRANT OF LEGAL AID.

A party to litigation who wishes to challenge a grant of legal aid to an opponent may find the following Guidelines to be of assistance:

- 1) The challenger is a third party to any agreement between the States and the legally aided person. A challenger should have some interest in the matter in respect of which the challenge is made and will usually be the opponent in the proceedings but see paragraph 12.
- 2) All grants of legal aid (save for specified Public Law Children cases and cases before the Mental Health Review Tribunal) must satisfy **both** the financial eligibility test **and** the legal merits test before a legal aid certificate is granted.
- 3) It is possible for a person to receive legal aid funding even if they have some assets/property; depending on who is in their family unit. A person can have between £15,000 and £27,000 and still be eligible for legal aid. Any of the applicant's assets which are the subject of the dispute for which legal aid is sought and the house that the applicant lives in are also disregarded for legal aid assessment purposes.
- 4) The Administrator is guided on the legal merits of the case by the Advocate's Opinion and Declaration set out in the application form.
- 5) All legally aided persons and their Advocates are under an obligation throughout the case for which legal aid has been granted, to notify GLAS should the person's financial circumstances or the legal merits position change.
- 6) A legally aided person who fails to provide correct and complete information to GLAS may have their legal aid certificate revoked ( i.e. cancelled) at which point the legally aided person may become liable to pay all the legal costs that have been incurred.
- 7) **Challenging the grant of legal aid on financial eligibility**  
All Advocates' Firms have been provided with a copy of Circular 1 - Assessment of Financial

Means of Applicants regarding financial eligibility and this can be supplied by GLAS upon request to a challenger who is acting in person. This should be consulted before mounting a challenge based on financial merits.

A person wishing to challenge the grant of legal aid on the grounds of financial merits must do so:-

- (a) in writing sent to the address at the top of this Guide,
- (b) signed either by the Advocate representing the challenger or the challenger, if acting in person,
- (c) setting out in detail the reasons for challenging the grant, together with any evidence, where possible, and
- (d) containing an authority for the Administrator to present the letter to the person whose grant is under challenge.

Any challenge that does not conform to these requirements will not be proceeded with.

8) **Challenging the grant of legal aid on the basis of legal merits**

All Advocates' firms have been provided with Legal Aid Circular 2- The Civil Legal Aid Scheme and Legal Aid Circular 4- The Criminal Legal Aid Scheme regarding legal merits. These documents can be obtained from GLAS upon request by a challenger who is acting in person. This should be consulted before mounting a challenge based on legal merits.

A person wishing to challenge the grant of legal aid on the basis of legal merits must do so:-

- (a) in writing sent to the address at the top of this Guide,
- (b) signed either by the Advocate representing the challenger or the challenger, if acting in person,
- (c) setting out in detail the reasons for challenging the grant, together with any evidence, where possible, and
- (d) containing an authority for the Administrator to present the letter to the person whose grant is under challenge.

Any challenge that does not conform to these requirements will not be proceeded with.

- 9) Upon receipt of the challenge, the Administrator will forward it to the legally aided person or their Advocate and invite comment. In the light of their reply and, if necessary as a result of further investigation, the Administrator will either affirm or withdraw the grant of legal aid. The Administrator will advise the challenger or their Advocate of the outcome. Unless the legally aided person or their Advocate has consented in writing, their reply to the challenge addressed to the Administrator will **not** be disclosed to the challenger. See paragraph 14.
- 10) The Administrator regards all correspondence between her and an Applicant, or challenger, as being subject to an obligation of confidentiality. For that reason, no challenge will be accepted unless that right to confidentiality is waived by the challenger (see paragraphs 7 and 8 above).

- 11) The Administrator does, however, take the view that a party to proceedings and the Court has the right to know whether or not another party is in receipt of legal aid and also, where a party requests an adjournment to seek legal aid, to know whether an application has been made by that party. A person that seeks legal aid is deemed to waive any right to confidentiality to that extent. See Condition 4 (j) of the Legal Aid Certificate.
- 12) The Administrator will resist any attempt by Advocates or any other person, to use such challenges as a tactic in adversarial proceedings. They should only be made when there is prima facie evidence that a person in receipt of legal aid has either concealed assets from the Administrator or has failed to give full instructions to the Advocate that has signed the Opinion and Declaration supporting the application. In other words, that public monies are being used to fund a person that should not be in receipt of these if the full facts were known. The motive of the challenge must be to protect public funds rather than further the interests of a party to litigation, even if this is a secondary effect.
- 13) From time to time, GLAS receives anonymous communications regarding a legally aided person's grant of legal aid. We are unable to pursue such challenges.
- 14) Please note that GLAS will be unable to disclose to a challenger, or any other person for example, the challenger's Advocate, any information supplied to us by the legally aided person or their Advocate, without their specific consent in writing. Likewise, GLAS will be unable to discuss any aspect of the legally aided persons case with a challenger or any other person save for confirming whether they are or are not in receipt of a grant of legal aid.
- 15) Examples:
  - 1 A is in receipt of legal aid but the other party knows that A is beneficial owner of a golf course on the Algarve. Would the Administrator have granted legal aid if this had been known?
  - 2 B is in receipt of legal aid in a personal injury claim alleging total incapacity. Is the Administrator aware that B is working full time on a building site in Jersey? (Did the Advocate signing the Opinion/Declaration know of this?).
  - 3 C is in receipt of legal aid, but the other party knows that C has a partner who earns a good wage. Has this been declared to the Administrator?
  - 4 D is in receipt of legal aid but the other party believes that D is acting unreasonably in the Court proceedings e.g. is wishing to oppose the Family Proceedings Adviser's recommendations concerning the future arrangements for the children of the parties or has not replied to an offer to settle financial proceedings within a reasonable time. Is the Administrator aware of the FPA report and the offer made (under the Legal Aid Certificate conditions, the legally aided applicants Advocate is required to provide a copy of the FPA report and any offers made to the Administrator)?