GUERNSEY LEGAL AID SERVICE
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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 Probable Cause, Evidential Requirements and Reasonableness in Civil (Family and Non Family) Legal Aid Proceedings

1. Introduction

The guidelines in this document outline the sort of information we expect to see accompanying applications for civil legal aid.

They give a basic background to the factors we will look at in considering probable cause and reasonableness, and the evidential requirements for applications. While we will consider each case on its individual circumstances, you should follow these guidelines, as appropriate. In general, we would encourage you to send us applications that are fully complete to avoid delays in the consideration of an application.

The Administrator must assess whether the applicant has probable cause and whether it is reasonable to make legal aid available. We consider each case on its own merits taking into account all the relevant factors. We will not prejudge issues that are matters for the court to decide.

All applications must meet the tests for probable cause and reasonableness set out in these guidelines save for matters that are defined as “No means , no merits “ cases or Mental Health Review Tribunal cases, where a “Modified no means, no merits Test is applied - See Legal Aid Circular 2: The Civil Legal Aid Scheme: Scope and Legal Merits.

This Guide should be read in conjunction with **Legal Aid Circular 2: The Civil Legal Aid Scheme- Scope and Legal Merits.**

2. Legal Merits Test: Probable Cause and Reasonableness

General Guidelines

Every application for Civil Legal Aid, other than ***"no means, no merit"*** *or* ***"MHRT-no means, no merits"*** cases, will be subject to an assessment by the Administrator on the ***standard means and legal merits*** test basis.

The financial means test is as specified in Legal Aid Circular 1.-Assessment of Financial Means of Applicants.

The legal merits test is as specified in Legal Aid Circular 2-The Civil Legal Aid Scheme: Scope and legal merits

The legal merits test comprises two parts:-

- Probable cause, **and**
- Reasonableness

Both parts must be satisfied in order to meet the legal merits test

3. Probable Cause

To establish **probable cause:**

(a) The applicant must show that there is a sound legal basis for the proposed legal action he wishes to take, and

(b) The Administrator will expect to be given information to establish jurisdiction and right, title and interest to raise proceedings, and

(c) The Administrator will need specific information for certain types of cases.

4. Minimum Evidential Requirements

Details of the minimum evidential requirements and information for the different types of case are set out below:-

- **Matrimonial ancillary matters**: a brief summary of the financial issues involved, including evidence of any assets in dispute, evidence of any negotiations.
- **Where there are children involved**: confirmation of relationship to the applicant, dates of birth and reasons for taking / opposing the proceedings, copies of applications together with any previous relevant court orders, evidence of any negotiations, Family Proceedings Advisor' or expert reports and parties' statements; disclosure of the child's views, if known and likely to carry weight.
- **Separate representation of the child**: a copy of the court order confirming this together with an explanation as to why separate representation is necessary.

- **DVI's**: *If Applicant*: full details of the alleged incident(s), copy of warning letter to the respondent. *If Respondent*: full details as to why the proceedings must be defended.
- **Applications for variation of court orders**: a copy of the order for which the variation is sought together with grounds for the variation.
- **Personal injury cases**: details including whether the claim will be based on a statutory basis or common law, the date of the accident, copy of police report, medical reports, Health and Safety Report, correspondence as appropriate.
- **Contractual claims**: a copy of the relevant documentation should be supplied.
- **Appeals**-Copy Judgment/ Order to be appealed, grounds of appeal together with supportive case law.

We would encourage Advocates to send us applications that are fully complete to avoid delays or refusals. It is also helpful if the applicant provides a statement of their case.

5. Reasonableness

The reasonableness test provides the Administrator with a very wide discretion in relation to legal merits.

In order to offer Civil Legal Aid, the Administrator **must** be satisfied that it is reasonable in the particular circumstances of the case that the applicant should receive legal aid.

It is impossible to give an exhaustive list of circumstances in which questions of reasonableness may apply. The Administrator has identified certain situations where it may not be reasonable to grant legal aid and in addition, she has provided information on certain factors that may be taken into account in deciding whether or not it is reasonable to grant legal aid. There are, however, many factors that need to be taken into account in assessing whether an application is reasonable so the Administrator cannot provide a definitive list of those factors.

5.1 The nature of the proceedings appears not to be reasonable

Something about the case itself may be objectively unreasonable, even if none of the circumstances shown in the remainder of this section apply. The Administrator will decide this based on the information provided in the application.

5.2 The application is premature

It may be not be reasonable to grant legal aid where no or insufficient attempt has been made to resolve the dispute without litigation. The Administrator must see evidence that negotiations have been attempted and failed and that the position the applicant is adopting in the negotiations is a reasonable one. The Advocate must provide detailed evidence about the negotiations undertaken for all applications for civil legal aid, whether family or non-family applications. If this evidence is not provided or the evidence is not sufficient to show that realistic attempts have been made to settle the case without recourse to litigation, the

application may be refused.

If the applicant is the respondent in the court action, the Administrator will need less evidence about whether sufficient attempts have been made to settle the case without litigation although she will need to be given full details of attempts made to resolve matters without further court proceedings being necessary, including information about any responses received from the opponent and their Advocate, given that the respondent has less opportunity to negotiate a settlement once the action has been raised.

5.3 Judicial Review

In relation to applications for judicial review, the Administrator still expects an applicant to demonstrate that they have made an attempt to resolve the issue without litigation. Where no such attempt has been made, an explanation for this must be provided. An inadequate or unsatisfactory explanation may have a significant bearing on the issue of whether it is reasonable to make legal aid available

5.4 The proceedings are frivolous or vexatious

Applications for civil legal aid for frivolous or vexatious proceedings will not be funded at public expense. There is no reason to make public funding available to prosecute such actions where it would not be reasonable to advise privately paying clients to do so. The Administrator will consider what applicants of moderate means would be prepared to undertake were they paying for the case themselves in deciding whether to grant civil legal aid. An example of this may be where someone wants the court to look into a very minor matter that has little or no direct impact on the applicant.

5.5 Public sensitivity

Occasionally, some element of the background to the case or the applicant may make an application sensitive to public opinion (for example, where the applicant has been convicted of a serious crime). This does not render a case vexatious or frivolous. There may be important issues to be dealt with in the case and the application will be carefully considered by the Administrator as to whether it would be reasonable to grant legal aid.

5.6 Where the issues involved do not appear to be in dispute and the proposed action is unnecessary

It is not reasonable to use public funds to litigate a matter where there is no active dispute between the parties. An example may be where it is intended to raise proceedings seeking a residence order and yet the residence of a child is not actually being challenged or likely to be challenged by any other party. Such applications for legal aid will be refused.

5.7 The order sought is not necessary

An order might be unnecessary if, for example, the existing situation between the parties is unlikely to change and a court order is not needed to prevent it changing. This again may

apply where there are issues relating to the residence of a child or where contact is being exercised without any interference.

5.8 A reasonable offer has been made in settlement

In assessing reasonableness, the Administrator needs to consider the reasonableness of any offer that has been made. Advocates must tell us about any offers made. The Administrator also needs to be given full information about why the Advocate or the applicant does not consider the offer reasonable with reference to awards made in similar cases. In reaching her decision on whether the offer appears reasonable the Administrator may take into account factors such as:

- the likelihood of a finding of contributory negligence - where this is likely, the Advocate should estimate the percentage of claim that the court is likely to find was due to contributory negligence by the applicant, referring, if possible, to previous cases;
- the likely cost of the proceedings;
- the prospects of recovery of both principle sum and legal expenses;
- the likelihood of additional sums being clawed back e.g. by way of contribution or where recovery/preservation may occur; and
- whether the offer appears reasonable having regard to the sum the court is likely to award.

5.9 The order sought will not cause significant disadvantage or prejudice

This is most likely to arise in a defendant's application, particularly for a domestic violence injunction.

Where the terms of the orders sought do not prevent any lawful act, for example if the domestic violence injunction order seeks to prevent physical harm to another person, then a defence to such an order at public expense is not warranted.

It could also arise where the applicant is a plaintiff wishing to oppose a counterclaim.

If an order will not disadvantage the applicant, it would be not normally be reasonable to use public funds to resist the order.

5.10 The matter could be resolved in other existing proceedings

It would not be reasonable to grant legal aid for separate proceedings where a claim or dispute could be resolved within an existing action, either as it stands or by way of an amendment of the existing pleadings. It may be more appropriate for an applicant to seek an amendment to an existing grant of legal aid.

5.11 Undue delay in seeking a remedy

Where an applicant has failed to avail themselves of a remedy at the appropriate time, it may be not reasonable to make legal aid available at, perhaps, some considerably later date. This could arise, for example, where:

- an injunction is sought many months or years after the incident complained of;
- the applicant seeks to petition for judicial review in respect of a decision taken considerably earlier;
- the original decision has been supplanted by a later decision;
- legal aid has already been made available to obtain the same remedy at some earlier stage.

5.12 The applicant is not in a position to utilise the remedy sought

If the applicant cannot utilise the remedy sought, proceedings at public expense seem somewhat pointless. For example, a spouse may demand an order transferring title in the matrimonial home, but not be in a position to meet mortgage payments, or the lender may refuse consent to the transfer from joint names on the mortgage. Whilst the remedy sought might be valid, the applicant could not utilise it.

5.13 Where the state of the evidence may make it not reasonable to make legal aid available

While someone may be able to rely in court on uncorroborated evidence and hearsay evidence, the courts would normally expect an Advocate to lead corroborative evidence and non-hearsay evidence if it is available.

The Administrator expects supporting evidence, if available, to be produced with the application for legal aid.

Where an applicant is asking the court to rely on hearsay evidence, the Administrator will have to be satisfied the court would be likely to accept it as evidence.

5.14 Applications by corporate or unincorporated bodies

Legal aid can only be granted to “a person”; it is not available to corporate bodies, such as a limited company, a plc or a company established by a charter or Act of Parliament or a Law.[1]

Legal aid is only available to “an individual”[2]it is not available to an unincorporated body such as a firm or partnership, a club, society or association.

Legal aid is not available to partnerships or to the individual partners of a firm to pursue or defend actions brought by or against the partnership and where the effect of giving legal aid to a partner would be to give legal aid to the partnership itself.

[1] The Legal Aid(Bailiwick of Guernsey)Law, 2003 S29
[2] The Legal Aid (Guernsey and Alderney) (Schemes and Miscellaneous Provisions) Ordinance, 2018. S 3,4,5 and 6

Legal aid may be available to an individual, who may be a partner, but who has a separate or free-standing cause of action or basis of alleged liability (but not simply, or in respect of, liability as a partner for the partnership liabilities). In these circumstances, the application for legal aid should provide full details and any relevant explanation as appropriate as to how the individual's interests are, in the circumstances of the case, separate and distinct from that of the partnership.

Sole traders are not corporate or unincorporated bodies, and may therefore apply for legal aid. There is no prohibition on sole traders seeking legal aid to pursue or defend proceedings relating to 'business matters' (for example, sums not paid under a contract, etc. - providing the sum in issue falls within scope of the scheme).

5.15 Applications by persons with joint interest

Legal aid can only be granted to someone who is jointly concerned with, or has the same interest in, the matter as other people if the Administrator is satisfied that:

- the applicant would be seriously prejudiced in their own right if legal aid were not granted or
- it would not be reasonable and proper for the other people concerned to pay the legal costs and disbursements that would be paid under legal aid if it were granted.

Where there are a number of individuals who all appear to share a broadly similar objective in an action, legal aid will not generally be made available to fund the case unless strong evidence is provided to show that an individual will suffer serious prejudice. An example of "serious prejudice" would be an owner of a flat in a tenement faced with litigation over a bill for common repairs.

Examples of cases where an applicant will not suffer serious prejudice include closure of a school, community centre, swimming pool, or other cultural or leisure institution.

Where several people each have a claim for damages, say, arising out of a common calamity and each individual has their own distinct claim, this would not be joint interest. While the parties have similar interests, they are not the same.

Similarly, where a claim arises from a fatal accident, the claim for a child of the deceased is treated as separate and distinct from the claim of a spouse or other relative.

5.16 Wider public interest

When considering the reasonableness test, a relevant factor may be that a case demonstrates a wider public interest. A wider interest may be presented in an application for matters such as judicial review, appeals or damages claims where several cases arise out of the same incident, or where the outcome of the case may have a direct tangible benefit to the applicant and to others.

It may be unreasonable to make legal aid available to a person to litigate, as a private citizen, at public expense, about something that is obviously not exclusive to him or her. Examples could be fluoridation of public water supplies, noise generated by a large social or cultural event, closure of public leisure facilities.

If the Administrator is satisfied the case does demonstrate a wider public interest, she can, in the particular circumstances, treat this as a determining factor, even if the value of the claim is relatively modest. However, she must also consider questions such as prospects of success and cost-benefit.

5.17 Shadow applications

Applications may be received in the name of a child or impecunious relative in cases where other family members, who would not qualify for legal aid, have a direct and identical interest in the matter. Indeed, the other family members may be the true client in the case, providing the Advocate with instructions. It may not be reasonable to grant legal aid to them, in effect, through the device of granting it to an impecunious relative, thus allowing them to avoid paying towards the litigation.

5.18 Other rights and facilities

Legal aid will not be granted to someone who has other rights and facilities that make it unnecessary for them to obtain legal aid, or a reasonable expectation of obtaining financial or other help from a body of which they are a member. However, legal aid may be granted if the applicant has failed to enforce or get those rights, facilities or help after taking, in the Administrator's opinion, all reasonable steps to enforce or obtain them.

Other rights or facilities may include rights to indemnity under an insurance policy (legal expenses insurance, home insurance, motor insurance) or membership of a professional association or trade union.

- If an applicant is a member of a trade union or professional body that provides legal assistance to its members, the applicant must explain why they are not using its services.
- If the union is refusing to assist, the Administrator needs to know why. It may have a bearing on probable cause and reasonableness.
- If the applicant has not applied to their union or has decided to stop taking their advice, the Administrator needs to know why. The applicant might be able to satisfy her that they have good reasons to be dissatisfied with the past or present performance of the union-nominated Advocates.
- It would not be reasonable to make legal aid available because the applicant prefers to instruct their own Advocate, rather than a union-nominated Advocate.
- Advocates must ensure that they ask about all of these potential sources of funding before applying for legal aid. Where the Administrator finds that such sources of

funding exist and she was not told about them she will consider revoking any grant of legal aid that may have been made.

5.19 Matters de minimis

It would not be reasonable to grant legal aid where the amount at stake does not justify the cost of proceedings. This is obviously a variable factor, which depends on the circumstances of the individual case, including the strength of the merits of the case. Advocates should consider, in assessing the value of a claim, any likely deduction for contributory negligence.

Examples of such matters will include very modest personal injuries claims which cannot be said to justify the use of public funds to pursue the claim.

5.20 Applicant convicted of a criminal offence arising from subject matter of application

If civil litigation arises because of a criminal offence of which an applicant has been convicted, it would not be reasonable to grant legal aid to oppose the merits of the action. Where for example a claim for damages is made arising from an incident which led to the conviction of the applicant a defence on the merits would not be likely to be reasonable even if the applicant wanted to deny certain aspects of the case.

However, it would not necessarily be unreasonable to oppose the claim on quantum, depending on the whole circumstances of the case. Advocates may also need to consider the prospects of success, where substantial questions may arise bearing upon the reliability and credibility of evidence.

5.21 Insufficient interest

All applicants must show they have a right, title and interest to be a party to the proceedings. Even where such an interest is demonstrated, the amount of interest the applicant has may not justify the use of public funds. As a general proposition, litigation, that would have little or no material benefit to the applicant or is brought simply to satisfy vague demands for justice or principle, would not be reasonable.

5.22 Prospects of success

An important factor in deciding whether it is reasonable to grant civil legal aid is the issue of prospects of success. Advocates must address the prospects in all applications and give the Administrator enough detail about the case and its background to allow her to examine this issue carefully.

In addition Advocates are required to assess the prospects of success and provide reasons for reaching this conclusion.

Experience shows that forms almost invariably suggest there are “excellent” or “good” prospects of success. While the Administrator will take into account the Advocate’s comments on the prospects, she will consider all the circumstances and decide whether it is reasonable to grant legal aid.

Advocates must send us information to satisfy the Administrator that, if the case is determined at proof or other final hearing, the client is likely to get an outcome that has some practical benefit for them.

Advocates must provide information on the prospects of success in the Form 1LM Civil, Form 1LM Family or Form 1LM Children as appropriate.

The forms ask whether prospects are “excellent”, “good”, “fair”, or “poor”.

Advocates must also to give their view on prospects on a scale of 1-10 with 1 being minimal or no prospects of success and 10 being an almost guarantee of success. Comparing this numerical assessment against the four categories for prospects would mean that the Administrator will view cases ranked;

- between 1 and 3 as having poor prospects, which means it is probable they will be unsuccessful
- between 4 and 6 as having fair prospects, which means there is a strong possibility they will be unsuccessful
- as 7 and 8 as having good prospects, which means there is a strong probability they will be successful, and
- as 9 and 10 as having excellent prospects, which is almost a guarantee of success.

Advocates will need to support this assessment with reference to the information provided to the Administrator who will use this to help her consider the application.

In applications for **Civil Legal Aid in non-family cases** where the assessment of prospects of success are given on the Form 1LM Civil (Non- Family)as “fair” or “poor” (between 1 and 6), Advocates must provide detailed information on any other significant factors that would warrant granting civil legal aid despite this. Failure to do this may lead to the application being refused.

In applications for **Civil Legal Aid in family cases** where the assessment of prospects of success on the Form 1LM Fam or Form 1LM Children are given as “fair” or “poor” (between 1 and 6), Advocates must also show there is some purpose in the applicant continuing with the proceedings despite this.

Prospects of success must be completed on every Form 1LM involving civil proceedings even if it is a case which does not relate to pecuniary matters e.g. relating to children or injunctive relief. This includes Public Law Children matters in the court of first instance, even though these may be on a "***No means No merit***" test basis.

There may be some classes of case where less emphasis would be placed on the prospects of success, but a greater emphasis placed on other factors. In looking at prospects of success, the Administrator is not looking at a guaranteed successful outcome, but rather–all things being equal – a reasonable prospect of success.

In assessing the prospects of success, the Administrator will also consider the following;

- volenti and contributory negligence
- evidential difficulties arising from the fading memories of witnesses
- unsuccessful litigation of a similar nature in The Bailiwick or elsewhere in the UK
- evidential discrepancies
- unsupportive opinions of the applicant's own legal advisers

5.23 Prospect of recovery do not justify the use of public funds

The Administrator will give careful consideration to the prospects of recovery in any case.

If the client is unlikely to recover the principal sum and expenses, it would not be reasonable to use public money obtaining an unenforceable decree.

The Advocate's opinion on the Form 1LM must indicate prospects of recovery having regard to all the circumstances. Experience indicates that Advocates tend to suggest there are "excellent" or "good" prospects of recovery. The Advocate should consider, inter alia, whether the opponent/defendant;

- is insured
- has substantial capital assets or income to satisfy a judgment or order and costs
- is en désastre, insolvent or subject to Saisie proceedings
- is not indemnified by the insurer for the particular risk or claim
- is no longer resident in the Bailiwick with no employer or capital in the Bailiwick
- has unreachable assets (for example, individual placing property behind the corporate veil) or is in receipt of legal aid.

The Administrator will note the Advocate's comments about the prospects of recovery but will consider all of the circumstances and reach her own view on whether it is reasonable to grant legal aid.

Advocates must provide information on the prospects of recovery in the Forms 1LM Civil or 1LM Family (this is not required on a Form 1LM Children). The forms ask whether prospects are "excellent", "good", "fair", or "poor.

Advocates must also give their view on prospects of recovery on a scale of 1-10 with 1 being minimal or no prospects of recovery and 10 being an almost guarantee of a full recovery of the principal sum and expenses being made. Comparing this numerical assessment against the four categories for prospects would mean that cases ranked;

- between 1 and 3 will be viewed as having poor prospects, which means it is probable that a full recovery will not be made

- between 4 and 6 will have fair prospects, which means there is a strong possibility a full recovery will not be made
- as 7 and 8 have good prospects, which means there is a strong probability that a full recovery will be made, and
- as 9 and 10 have excellent prospects, which means there is almost a guarantee that a full recovery will be made.

Advocates must support this assessment with reference to the circumstances of the opponent and their ability to meet any awards that may be made.

Where an Advocate assesses the prospect of recovery as being either "fair" or "poor" (between 1 and 6), they must provide detailed information about why it is considered reasonable to grant civil legal aid. Failure to do this may lead to the application being refused. If an order is not likely to help an applicant it would not be reasonable to spend public funds on a court action.

Information on the prospects of recovery should include the prospects of recovering expenses in addition to any damages or capital sum that may be awarded.

Expenses should be sought in all non-family cases where the legally aided party is successful.

The Advocate should also consider applying for Advocates' costs and/or Court/Greffe costs in all family cases, where appropriate.

5.24 Cost benefit analysis

The Administrator will always examine the Advocate's assessment of the likely costs of any case and balance these against the benefit an applicant will get from proceedings. Advocates must provide details of the potential costs of cases including those where proceedings are likely to be defended. This includes the cost of any fees, including fees for counsel together with any likely disbursements to be incurred.

Where the potential benefit to the applicant equals or is less than the likely cost of pursuing the action, the application will fail the cost benefit test e.g. if the benefit to the applicant is £10,000 and the cost of an action is likely to be £12,000, there is no costs benefit. Whilst cost alone cannot justify a refusal on reasonableness, balancing the cost of litigation against the potential benefit to the client and prospects of success where heavy expenditure of public funds was likely to be needed does not prevent the Administrator from effectively viewing the cost of the litigation as the deciding factor.

The cost benefit analysis applies to any financial claim, for example, by way of damages in personal injury cases, professional negligence (including medical negligence), financial relief in matrimonial disputes and determination of the ownership of assets. If the applicant fails to fully recover judicial expenses, property recovered or preserved by the applicant may be subject to reimbursement to GLAS, potentially leading to little or no material benefit to the

applicant. The Administrator needs to be able to assess any such risk at the outset and so Advocates must provide full details on the total potential costs and disbursements

Advocates must also satisfy the Administrator about the prospects of success in any individual case as well as the likelihood of recovering costs.

If the Administrator exceptionally grants legal aid in financial cases within the Magistrates Court, particular caution must be exercised by the Advocate to ensure that the costs benefit analysis is made out and continues to be so as the case progresses.

5.25 Claim likely to be within the small claims limit

Assertions of a particular value of a claim must not be taken at face value. Legal aid is not available for liquidated petty debt actions (i.e. of a value of less than £10,000) unless in the opinion of the Administrator it is an exceptional case.

Civil legal aid is also not available in unliquidated cases with a value of less than £5,000. However, the Administrator needs to consider carefully whether the value of any unliquidated claim, such as a personal injury case, is enough to make it reasonable to grant legal aid. This will include careful consideration of the cost benefit analysis test set out above. Advocates will be required to provide a realistic estimate of quantum at the outset and as the case progresses.

5.26 Private client reality

Legal aid does not exist to place those receiving it in any better position than privately paying clients. The Administrator will look to see whether a privately paying client of modest means would reasonably be advised to litigate in the same circumstances.

The Administrator is entitled to take into account what a private client would do on being told that part of their case was likely to involve unusually large expenditure.

Taking this into account expensive litigation in the Royal Court or Court of Appeal on issues that, while having a legal basis, are in connection with issues that have only a modest impact on the applicant, may well not be a reasonable use of public funds.

It is important to remember that the availability of legal aid does not give entitlement to resources beyond that of the privately fee-paying client of modest means.

5.27 Practical benefit to the applicant

In assessing whether it is reasonable to make legal aid available, the Administrator needs to consider the practical benefit an applicant will get from any proceedings. Advocates should address what significant personal interest an applicant has in a case and its outcome. If no information is provided to show a significant practical benefit to an applicant from being involved in proceedings, the application for legal aid may be refused.

5.28 Legal Aid for Appellate Proceedings

The onus is on the applicant to satisfy the Administrator that there is both probable cause for the appeal and that it reasonable to grant legal aid for the appeal. Accordingly, Advocates must provide a lucid explanation of the basis upon which the court decision is susceptible to appeal. The applicant must also be financially eligible on the standard means test.

Probable cause in relation to appellate proceedings

For all appeals, including appeals against interim and final appeals, the Administrator requires:

- a copy of the judgment/order appealed against, and/or
- a summary of the decision and the reasons given by the court, if the appeal is against an interim order or another decision in relation to which the reasons for the decision are not contained in an order; and
- a statement of the grounds of appeal (either in the form of a draft/principal copy of the document required in the proceedings or as a separate statement otherwise providing the detail that would be required by the appellate court)

Reasonableness in relation to appellate proceedings

Appellate proceedings are more expensive than those at first instance and the Administrator requires detailed information about the potential cost of such proceedings.

The Administrator also needs the Advocate's detailed views on the prospects for success as set out in paragraph 5.22. The potential cost implications arising from unsuccessful appellate proceedings are a factor that the Administrator needs to take into account in assessing whether it is reasonable to make legal aid available.

5.29 Where more than one party is legally aided

Where more than one party in an action has legal aid, the Administrator needs to give careful consideration to the nature of the issues in dispute and whether it is appropriate for public funds to be made available for the proceedings. Such cases have the potential to be expensive and need to be carefully monitored to ensure that litigation is the only way of resolving matters expeditiously.

In family actions it is not unusual to find more than one party seeking public funding. Even if it is reasonable to grant legal aid, the Administrator needs to consider the nature of the issues in dispute and whether they can only be resolved through court proceedings. Advocates must provide detailed information on attempts made to resolve matters without resorting to court. This should show that proposals to try to settle the case without litigation have been pragmatic and were designed to achieve settlement where possible.

The Administrator will also examine the outcomes achieved in such cases to allow her to keep under constant review the benefits achieved from proceedings where more than one party has legal aid.

5.30 Proceedings in a court outside the Bailiwick of Guernsey are more appropriate

This factor interacts with an examination of jurisdiction when assessing probable cause. There may be cases where both the Bailiwick and foreign courts have jurisdiction. Factors which might be relevant in assessing which country is more appropriate include, for example:

- place of accident,
- place of business/residence of opponent,
- location of witnesses,
- whether there are existing related proceedings in the other jurisdiction,
- in Divorce/Ancillary Relief matters, where
- existence of a statutory remedy in the Bailiwick although incident occurred abroad.

Legal aid is not available in relation to any legal matters occurring outside the Bailiwick of Guernsey.

5.31 Judicial Committee of the Privy Council ("JCPC")

In what will invariably be expensive proceedings, the standard that is applied to the application for legal aid is relatively high.

- The sum involved, after making appropriate allowances for any element of contributory negligence, or the importance of the point at issue, must justify the cost of proceedings.
- An applicant who has been successful in the court at first instance but not before the Royal Court or Court of Appeal is on relatively stronger ground than one who has failed both at first instance and on appeal.
- In any application for proceedings before the JCPC, the Administrator will also need to consider if the proposed appeal is devoid of merit and has no prospect of success and/or if the appeal is an abuse of process.

Any grant of legal aid is likely to be limited, in the first instance, to obtaining specialist JCPC counsel's opinion on the merits of the applicant's case and the points of law at issue.