



Guernsey Legal Aid Service – 2020 Annual Report



New Jetty,
White Rock, St Peter Port GY1 2LL

This Report covers the period 1st January 2020 to 31st December 2020

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GUERNSEY LEGAL AID SERVICE ANNUAL REPORT 2020

Introduction

The principal purpose of the Legal Aid (Bailiwick of Guernsey) Law 2003 is:-

“For the efficient provision (at reasonable cost to the States, the States of Alderney, the Chief Pleas of Sark, and any other provider of financial assistance under this law) of legal assistance throughout the Bailiwick with a view, when the interests of justice so require, to helping persons who might otherwise be unable to obtain that assistance on account of their means.”

Legal Aid provides access to free or reduced cost legal advice in criminal and civil cases arising in the Bailiwick of Guernsey (i.e. the Islands of Guernsey, Alderney, Herm and Sark) for those who cannot otherwise afford an Advocate.

The Guernsey Legal Aid Service is the office that administers the Legal Aid schemes under the direction of the Legal Aid Administrator.

The Legal Aid Administrator is an independent statutory official appointed by the States of Guernsey on a five year term basis. She has full discretion to grant or refuse Legal Aid within the terms of the scheme which the States prescribes.

Background and Governance

The Guernsey Legal Aid Service (“GLAS”) came into existence on 1st September 2001, at first offering assistance in criminal matters only, broadly modelled on the voluntary scheme already in operation.

The Legal Aid Administrator (“the Administrator”) was appointed by the then Advisory and Finance Committee to bring the schemes into effect on an extra-statutory basis.

The scheme for assistance with civil matters commenced on 1st January 2002. There had been no previous voluntary scheme in place.

It was recognised from the outset that it would take some time to develop this new and potentially complex service, to establish and refine procedures, set up an office, negotiate arrangements with the Guernsey Bar and, in particular, to take account of constantly evolving legislation which would have an impact on the service and its scope. Accordingly, it was decided to initially operate the schemes for civil and criminal legal aid on an extra-statutory basis, pending development and review of the schemes and the subsequent drafting and States’ approval of the Ordinance.

The Legal Aid (Bailiwick of Guernsey) Law 2003 (“The Legal Aid Law”) was brought into effect in 2005 and the Legal Aid (Guernsey and Alderney) (Schemes and Miscellaneous Provisions) Ordinance 2018 (“the Ordinance”) on 1st January 2019 which set up the various Statutory Schemes. As Sark was undertaking a general

review, it was decided that the Ordinance should not extend to Sark at that time which, as a consequence remains extra –statutory.

Since May 2016, the responsibility for political oversight of legal aid has fallen within the mandate of the Committee for Employment and Social Security, having transferred from the Policy Council.

The Ordinance also created the Office of the Legal Aid Commissioner who, when requested, reviews the decisions of the Administrator.

There is a legislative requirement to produce an annual report since the Legal Aid Law came into effect but in practice it was accepted that these would not be prepared as the Administrator had no schemes to administer until the Ordinance was implemented on 1st January 2019.

The Legal Aid Office and Staffing

The Legal Aid Office is located at New Jetty, White Rock, St Peter Port, Guernsey.
GLAS

There are 5 full time members of Staff:

Legal Aid Administrator

Deputy Legal Aid Administrator

Administration & Finance Manager

Senior Executive Officer

Executive Assistant

Legal Aid Schemes

Under the Ordinance, three main Legal Aid Schemes were established, each specified by Rules of the Committee which came into effect on 1st November 2019:

- **The Legal Aid, Advice and Assistance Scheme – “the Green Form Scheme”**
- **The Criminal Legal Aid Scheme**
- **The Civil Legal Aid Scheme**

The legal matters that are funded by GLAS are categorised into two areas: Civil and Criminal.

Civil matters: The civil scheme covers such areas as:

- private law family matters such as the future arrangements for the children where parents have separated – primarily applications made under Section 17 of The Children (Guernsey and Alderney) Law 2008 - divorce and ancillary relief proceedings
- public law proceedings (children being removed from the care of their parents)
- affiliation & maintenance proceedings when supported by Employment and Social Security
- personal injury and medical negligence claims
- confiscation proceedings relating to proceeds of crime and drug trafficking
- appeals to the Mental Health Review Tribunal
- evidential hearings arising from the Child Youth and Community Tribunal (“CYCT”) and in exceptional circumstances legal representation at the CYCT.

Criminal matters: The criminal scheme provides free legal advice from a Duty Advocate for anyone who has been detained by the Guernsey Police or Guernsey Border Agency or any person attending the police/border agency as a volunteer in respect of a matter for which they could otherwise be arrested. Apart from in the Royal Court and the Traffic Court, the Duty Advocate is also available at Court to provide assistance and representation for defendants who have been charged and who have not yet instructed their own Advocate.

The scheme also provides funding under a full legal aid certificate for certain criminal proceedings that meet the legal merits criteria. Some matters (e.g. minor motoring offences) are excluded from receiving legal aid for representation in court unless the applicant is unable to conduct their own defence due to language difficulties, mental/physical disability or other.

The Green Form Scheme: This provides applicants up to 2 hours advice and assistance for both criminal and civil matters. The Legal Aid Rules set out those legal matters that are generally included and excluded from the Scheme.

Eligibility for Green Form and other legal aid services is subject to the financial eligibility criteria. Financial eligibility is assessed by the Advocate at their office. There are no such criteria for the Duty Advocate advice, public law proceedings and appeals to the Mental Health Tribunal, which are provided at no charge to the individual.

For the services where the financial eligibility criteria applies, some applicants may be required to pay a contribution towards their costs and should any applicant recover or preserve assets in proceedings, they are required to reimburse GLAS all their costs in full.

In terms of Alderney, there are special arrangements with specific Guernsey Law Firms for the provision of legally aided services in Alderney including a Duty Advocate.

How the Legal Aid Process Works

An applicant who requires legal advice and assistance will initially see their Advocate under a 2 hour Green Form. The Advocate's office assesses whether the applicant is financially eligible for Green Form advice. If the Advocate is of the opinion that an application for a full legal aid certificate (which most commonly funds court proceedings) they will submit an application to GLAS.

When an application for a legal aid certificate is submitted to GLAS via the applicant's Advocate, the financial eligibility of the applicant is firstly assessed by the Senior Executive Officer or Executive Assistant. Financial assessment is undertaken over a period of 13 weeks prior to the date of the application. The applicant is required to produce evidence of all sources of income, capital, bank statements and evidence of rent/mortgage payments. If an applicant is in receipt of Income Support they are automatically financially eligible for legal aid. The file is then passed onto the Administrator or Deputy Administrator to check the financial eligibility assessment and to determine whether the application meets the legal merits criteria. If both criteria are met a Legal Aid Certificate is granted. Some applications involve very complex issues. Others do not meet the legal merits criteria (or the applicant is financially ineligible) and are refused.

If an application is refused because it does not meet the legal merits criteria, an Applicant can request the matter be referred to the Legal Aid Commissioner for a review of that decision.

Once a Legal Aid Certificate is granted, it continues to be monitored by GLAS. Should an applicant's financial circumstances change, they are reassessed to determine continued eligibility. In addition, for civil legal aid certificates, an Advocate can only undertake work within the limit authorised by GLAS. Any request for additional time needs to be justified by the Advocate and approved by GLAS. Any intended disbursements over £100 also require prior approval by GLAS.

At the conclusion of the case that is being funded under a legal aid certificate, the Advocate submits their files to GLAS to undertake the process of taxation. This is an assessment of the reasonableness of the costs claimed by the Advocate throughout the court proceedings (or matter that is being funded) to ensure they are correctly claimed and in accordance with the costs criteria laid down. Most cases are taxed by GLAS but large cases are sent to the UK to be assessed by a Costs Draftsman.

An agreement/compromise is usually reached with the Advocate as to the level of reductions but in the event the matter cannot be agreed, it is referred to the Costs Judge for Taxation on the Papers. If matters are still not agreed, an Oral Taxation Hearing is requested.

Administrator's Comments

This is the second annual report of the Guernsey Legal Aid Service which covers the period 1st January 2020 to 31st December 2020.

GLAS expenditure comprises a fixed Administration budget and a formula led budget. Formula led means that, whilst there is a budget based on reasonable predictions and other criteria, legal aid continues to be granted even if that budget has been exceeded, as is consistent with the interests of justice.

In 2020 there was an overall underspend of £449,000 for formula led expenditure compared to the budget. This is broken down to an underspend of £322,000 for civil expenditure and £127,000 for criminal expenditure.

It is difficult to pinpoint the exact reasons for our unusually large underspend but inevitably the period of lockdown from March to June 2020 was an influencing factor.

For criminal matters at the beginning of lockdown we saw a drop in the number of applications received but activity gradually increased from the middle of lockdown onwards. However, there was also a noticeable increase in the funding of drug related matters and this trend continued throughout 2020.

For civil matters the most active area over the past years (and this continues to be the case) is the provision of funding for family proceedings in the Domestic Proceedings Magistrates Court. This area of expenditure consists mostly of applications made under Section 17 of the Children (Guernsey and Alderney) Law, 2008 i.e. for Residence and Contact Orders in addition to Specific Issue Orders and Prohibited Steps Orders concerning children whose parents have separated and are unable to reach an agreement as to the future arrangements of their child/children. In addition, we fund a number of Affiliation and Maintenance Proceedings against the non-resident parent but only when supported by Employment & Social Security, plus Domestic Violence Injunctions. Whilst it is clear the Courts seek to avoid delay where possible, some Section 17 proceedings can be lengthy sometimes spanning 1 or 2 years and often involve the funding of experts reports such as psychological assessments of the parties which have been ordered by the Court.

There was a marked decrease in the number of applications to fund family matters received during lockdown. We were expecting to be inundated with applications once lockdown was lifted but this did not occur and this trend continued during 2020. Over all we processed less applications in 2020 compared with 2019.

We were also expecting to receive a large volume of applications for Domestic Violence Injunctions during the lockdown period as a result of family units spending more time together under the same roof but, again, this was not the case.

In terms of the funding of experts approved by us in both civil and criminal court proceedings, owing to the restrictions on entering the island through the majority of 2020, there was a reduction in expenses claimed by the experts in that we were only funding their professional fees. Some experts were undertaking assessments of parties and giving evidence at court hearings via videolink/skype/zoom but other assessments were deemed inappropriate to be undertaken remotely and were

postponed until the expert could meet a party in person. This resulted in us not having to fund the usual travel and accommodation expenses required for the expert to visit Guernsey from the UK.

The majority of applications for a full legal aid certificate are granted but some are refused. For those matters that are refused, we receive minimal annual requests for a review of the Administrator's decision. Only one matter was referred to the Legal Aid Commissioner for a review in 2020 who upheld our initial decision to refuse legal aid funding in those particular circumstances.

In terms of taxation of Advocate's costs, whilst personnel intensive, this is nevertheless an important process and helps to ensure the taxpayer receives value for money. Every year a number of reductions are made. In 2020, the net reductions in costs claimed by Advocates overall amounted to approximately £113,389.00.

Should an Advocate dispute the proposed reductions to their costs on taxation, they can request the matter be referred to the Costs Judge for Taxation on the Papers. No taxations disputes were referred to the Costs Judge in 2020.

In addition to processing applications for full legal aid, in 2020 we received 569 Green Forms for civil and criminal matters. This was a considerable reduction compared with 813 processed in 2019. We also processed 598 Detention Forms and 134 Duty Advocate invoices . All these require checking and processing for payment by the GLAS team.

Generally in 2020:

As with everyone, the lockdown period brought its various challenges but the Legal Aid office remained open throughout with staff on a rota so as to ensure social distancing requirements were met.

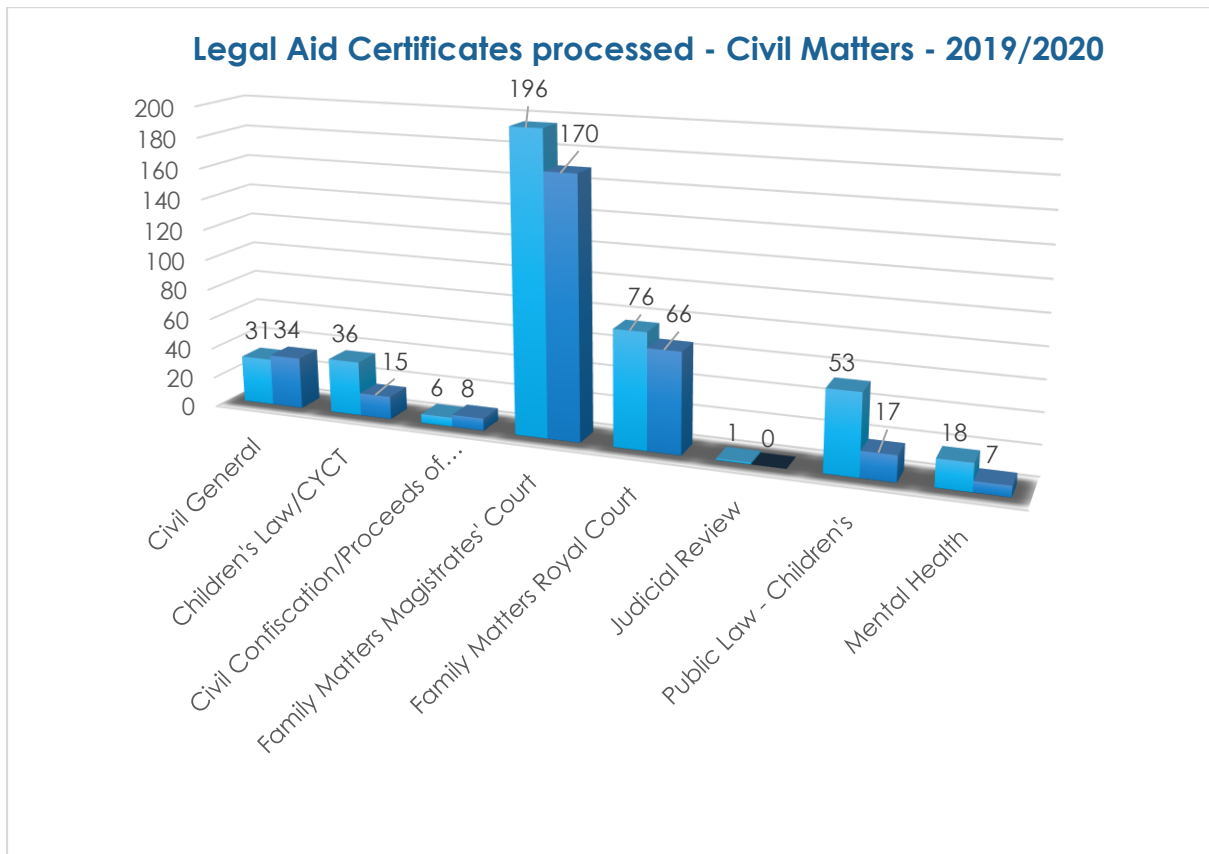
Various heads of Legal Aid in the home jurisdictions of the UK, Scotland, Northern Ireland, Southern Ireland, the Isle of Man, and Guernsey annually attend a Joint Consultative Committee meeting to exchange information. Guernsey was due to host this meeting in 2020 but owing to covid travel restrictions this has been postponed to 2021, providing the travel restrictions have lifted. Jersey who are reviewing their legal aid provision, will also attend.

Lockdown and other matters taking priority has led to a delay in our website going live but we hope to have this up and running by the end of 2021.

Summary of applications in 2020

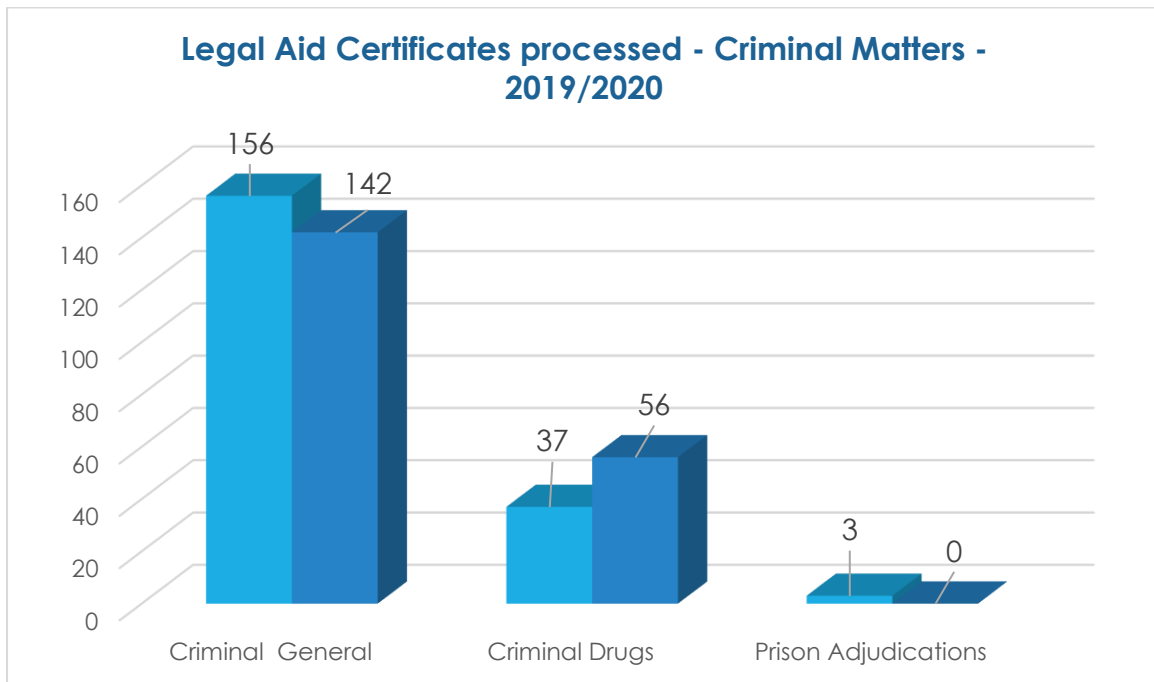
Civil Matters

During 2020 the Guernsey Legal Aid Service approved 317 Civil certificates, compared with 417 in 2019. The graph below breakdowns the various types of court proceedings that were funded.



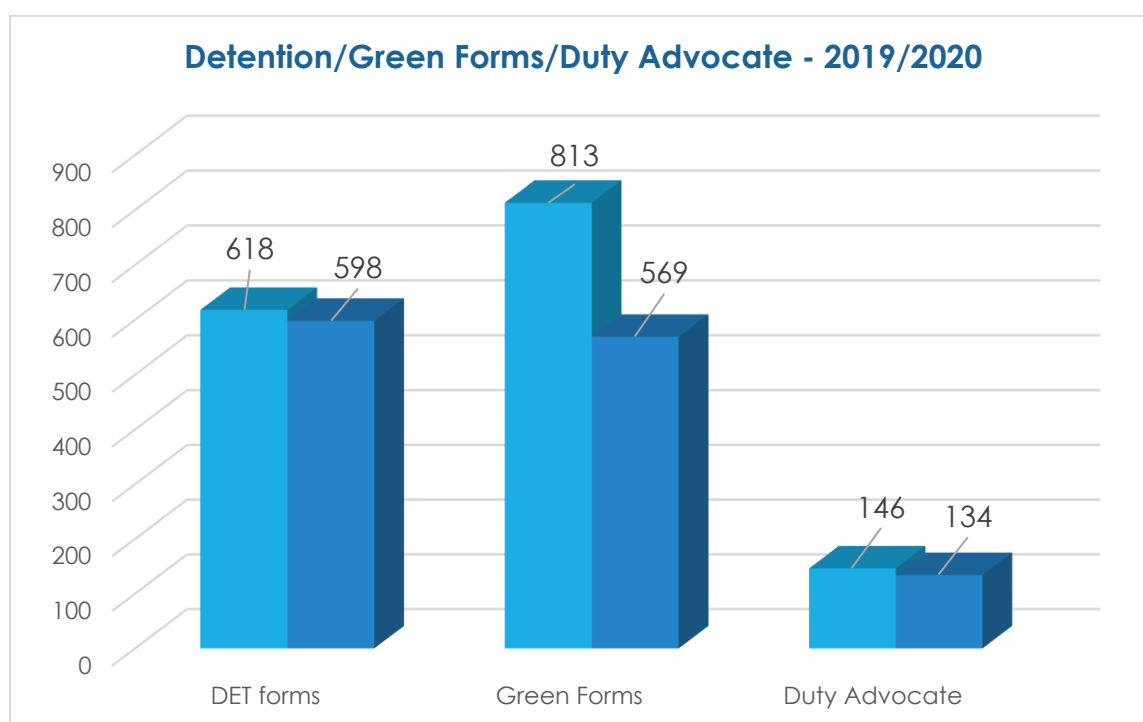
Criminal Matters

During 2020, 198 Criminal certificates were granted in Guernsey, compared with 196 in 2019.



Green Forms/Detention Forms and Duty Advocate Invoices

Funding was also provided for 598 Detention forms (where an individual has been detained by the Police or Border Agency and receives free legal advice from the Duty Advocate) in 2020 compared to 615 in 2019, 569 Green Form cases (in respect of both civil and criminal matters) and 134 Duty Advocate invoices for representation at Court (an individual appearing in court unrepresented in most cases is able to use the Duty Advocate to assist them) in 2020 compared to 813 Green Forms & 146 Duty Advocate invoices in 2019.



Alderney and Sark

The Guernsey Legal Aid Service covers all of the Bailiwick. The numbers of certificates approved in Alderney and Sark in 2019/20 were as follows:

	2019		2020	
	Civil	Criminal	Civil	Criminal
Alderney	0	6	6	9
Sark	0	0	3	0

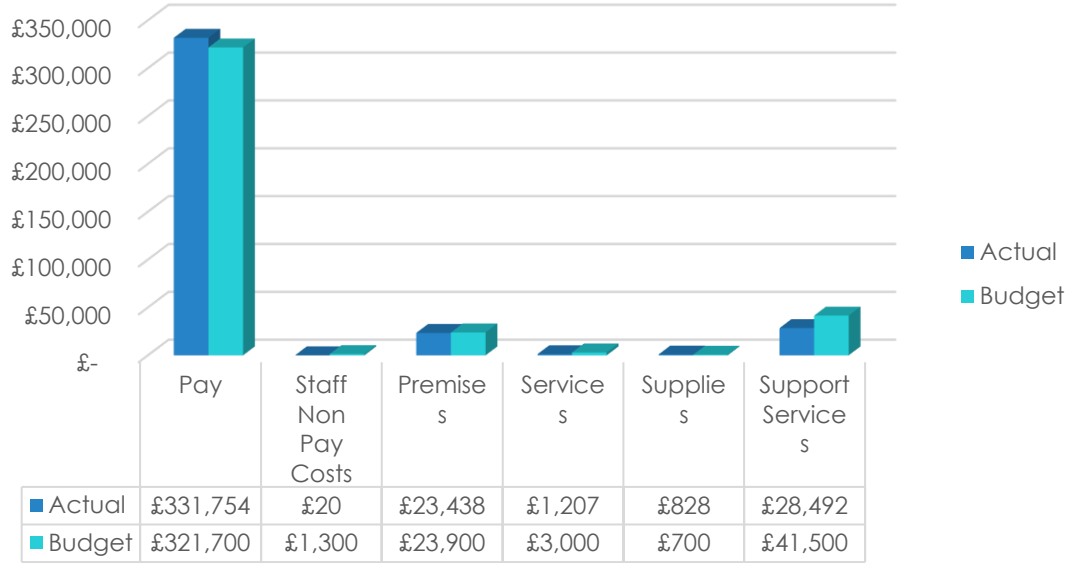
Summary of Legal Aid Expenditure in 2020

The cost of the Legal Aid Service in 2020 was £2,378,000 which was a £454,000 underspend compared to the budget of £2,832,000.

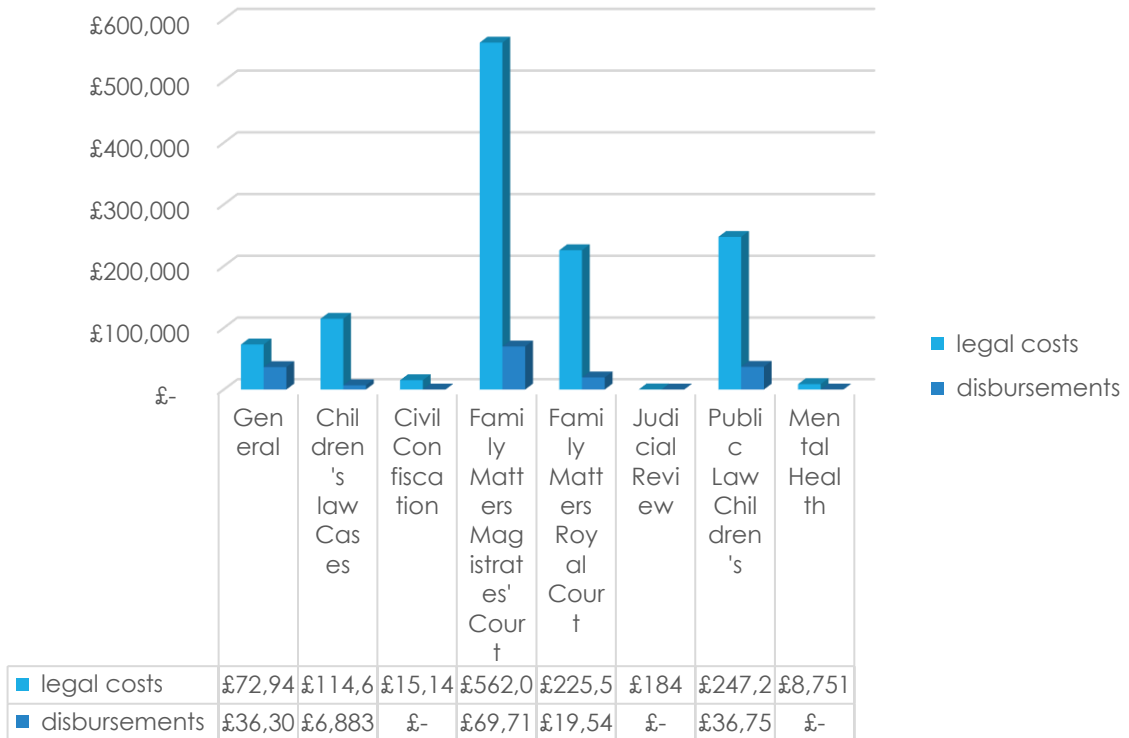
2020 Original Budget £'000s	2020 Total Authorised £'000s				2020 Actual £'000s	2019 Actual £'000s
		Formula-Led Expenditure:				
			Legal Aid			
1,620	1,620		<i>Civil Legal Aid</i>		1,299	1,531
820	820		<i>Criminal Legal Aid</i>		693	1000
2,440	2,440				1,992	2,531
			Non Formula-Led			
386	392		Administration		386	368
2,826	2,832		Total Net Expenditure		2,378	2,899

The budget is split into two discrete parts, £392,000 covers the costs of running the Legal Aid office and £2,440,000 relates to demand led expenditure i.e. the funding of legal fees for advocates (including disbursements such as court and experts fees).

Administration Costs 2020



Civil Matters - costs paid in 2020





Due to the length of time it can take for court proceedings to conclude there is no particular correlation between the costs paid in 2020 and the number of Certificates granted in 2020. Some court proceedings last a few months, others a few years.

Lucy Haywood

Legal Aid Administrator

July 2021