



Guernsey Legal Aid Service – 2021 Annual Report



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This Report covers the period 1st January 2021 to 31st December 2021

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GUERNSEY LEGAL AID SERVICE ANNUAL REPORT 2021

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

In 2021, the Legal Aid Office was located at New Jetty, White Rock, St Peter Port, Guernsey.

There were 5 full time members of Staff:

Legal Aid Administrator

Deputy Legal Aid Administrator

Administration & Finance Manager

Senior Executive Officer

Executive Assistant

The Deputy Legal Aid Administrator took maternity leave from March to November 2021, but a replacement Deputy covered for this period limited to working 20 hours a week as opposed to full time.

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 third annual report of the Guernsey Legal Aid Service which covers the period 1st January 2021 to 31st December 2021.

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.

As with 2020 there continued to be an overall underspend in 2021, amounting to £847,000 for formula led expenditure compared to the budget. This is broken down to an underspend of £654,000 for civil expenditure (as opposed to a £322,000 underspend in 2020) and £193,000 for criminal expenditure (as opposed to a £127,000 underspend in 2020).

Whilst it is difficult to pinpoint all reasons for the underspend, the main cause is the covid pandemic over a 2 year period involving periods of lockdown. This impacted on the progression of court proceedings which had an effect on reducing the level of Advocate's and expert's costs. The main areas to note are:

Criminal matters – as previously reported in 2020, we received an increase in applications to fund drug related proceedings. Compared with 2019, when we processed 37 applications, these increased in 2020 to 56 and in 2021 this level was maintained at 53. Whilst our overall expenditure was under budget, our expenditure for drugs related matters was overspent at £214K for Guernsey matters against a budget of £178,000 whereas our expenditure for non- drug related matters remained static.

Civil matters – historically the areas that have resulted in the highest demand on civil expenditure have been family law proceedings in the Domestic Proceedings Magistrates Court (DPMC) and Royal Court and Public Law Children proceedings in the Juvenile Court.

Whilst in previous years, these areas have been consistently over budget, for both 2020 and 2021 they were under budget:

- a) DPMC matters - 2021 expenditure (i.e. legal costs plus disbursements) of £580,000 against a budget of £776,000 resulting in an underspend of £196,000. This is compared with 2020 expenditure of £632,000 against a budget of £646,000 resulting in an underspend of £14,000.
- b) Royal Court matters – 2021 expenditure of £237,000 against a budget of £325,000 resulting in an underspend of £88,000 compared with 2020 expenditure of £245,000 against a budget of £315,000 resulting in an underspend of £70,000.
- c) Children Public Law matters – 2021 expenditure of £128,000 against a budget of £300,000 resulting in an underspend of £172,000 compared with 2020

expenditure of £319,000 against a budget of £330,000 resulting in an underspend of £11,000.

The numbers of applications processed in 2021 for DPMC and Royal Court matters dropped from 2020 which would explain the reduced expenditure for 2021 but in addition, because these court proceedings usually continue into the following year or longer, the reduction in applications received in 2020 and the fact that court proceedings could not progress during the 2 year pandemic as quickly as before has had a knock on effect on 2021 expenditure, hence the large underspend in 2021.

Experts – a large majority of expenditure on disbursements is made up of UK experts fees i.e. their professional fees plus travel and accommodation costs. As with 2020, very few experts could or were willing to travel to Guernsey to undertake assessments during the pandemic and consequently, we were not funding their travel and accommodation costs, only professional fees if assessments could be undertaken remotely. It was only towards the end of 2021 that we began to see them visiting the Island again.

Commissioner's Review of Legal Aid Administrator's decision - One matter was referred to the Legal Aid Commissioner for a review in 2021 who upheld our initial decision to refuse legal aid funding in those particular circumstances.

Taxation of Advocate's costs - whilst this continues to be personnel intensive, it remains an important process and helps to ensure the taxpayer receives value for money. All costs and disbursements incurred by Advocates under Legal Aid Certificates are taxed by us. This process is usually undertaken by the Deputy Legal Aid Administrator. In 2021, the net reductions in costs claimed by Advocates overall amounted to approximately £59,087.00. This figure is less than in previous years owing to the Deputy Legal Aid Administrator taking maternity leave and her replacement working reduced hours which resulted in less matters taxed overall in 2021. This does not mean that any matters missed the taxation process but resulted instead in a larger than usual backlog of matters for taxation at the beginning of 2022.

Costs Judge/Taxation on the Papers - No taxation disputes were referred to the Costs Judge in 2021.

Generally in 2021:

Covid -As with the 2020 lockdown period the 2021 lockdown continued to bring its various challenges, but the Legal Aid office at the New Jetty remained open throughout with staff on a rota so as to ensure social distancing requirements were met.

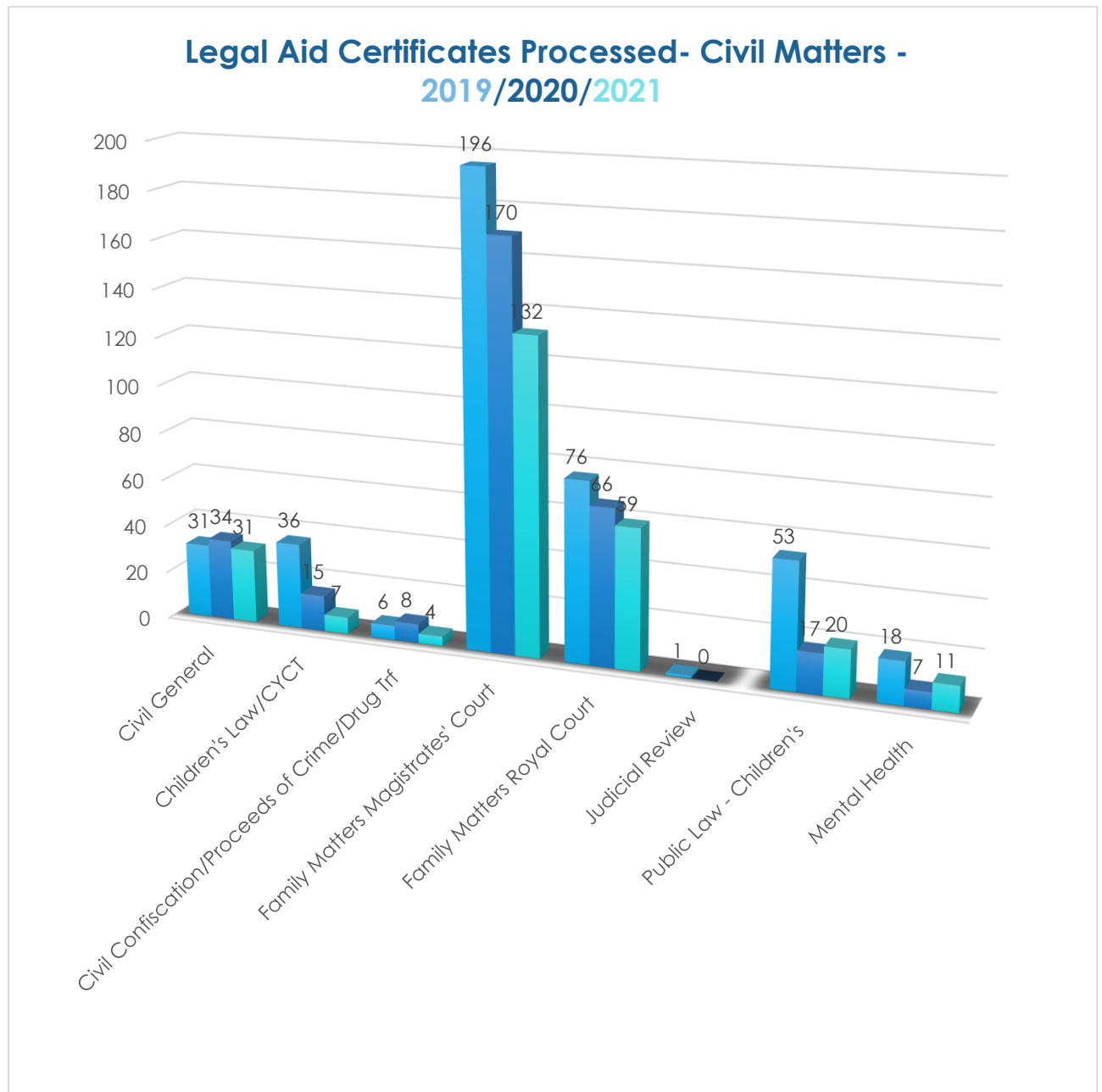
Website – the covid pandemic and other matters taking priority has continued to a delay our website going live but we expect this now to be up and running in the Autumn of 2022.

Legal Aid Review – The Committee for Employment & Social Security intends to commission a review of Legal Aid. The review is expected to get underway in Q4 2022.

Summary of applications in 2021

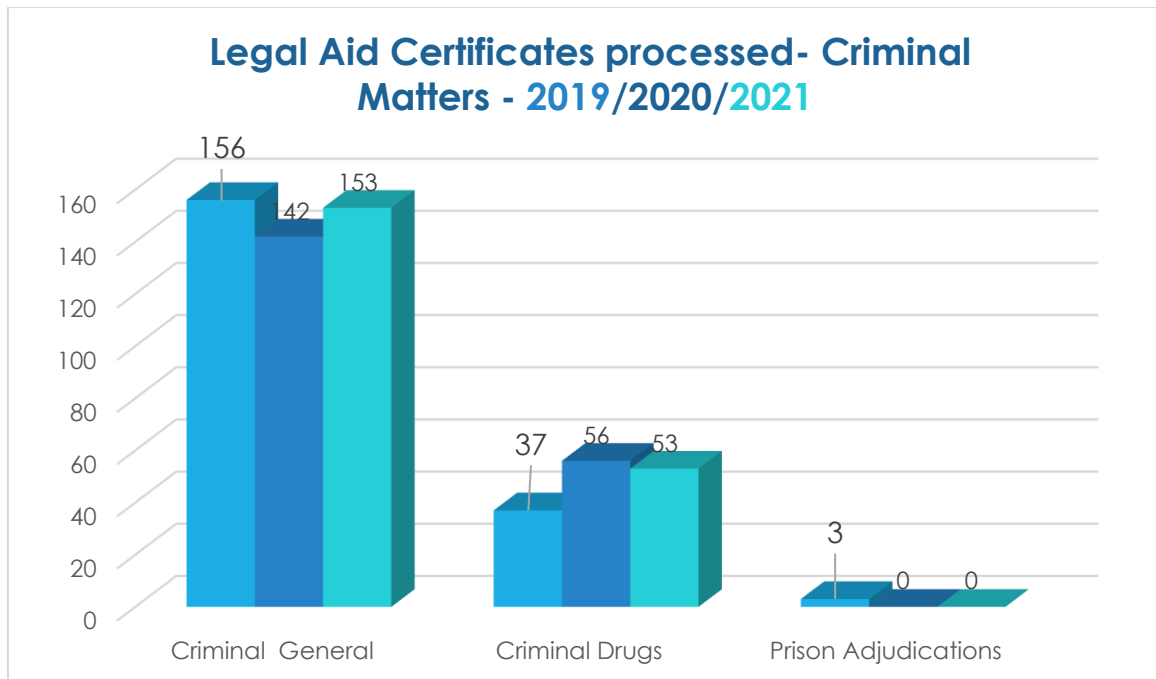
Civil Matters

During 2021 the Guernsey Legal Aid Service processed 264 Civil applications, compared with 417 in 2019 and 317 in 2020. The graph below breaks down the various types of applications that were processed.



Criminal Matters

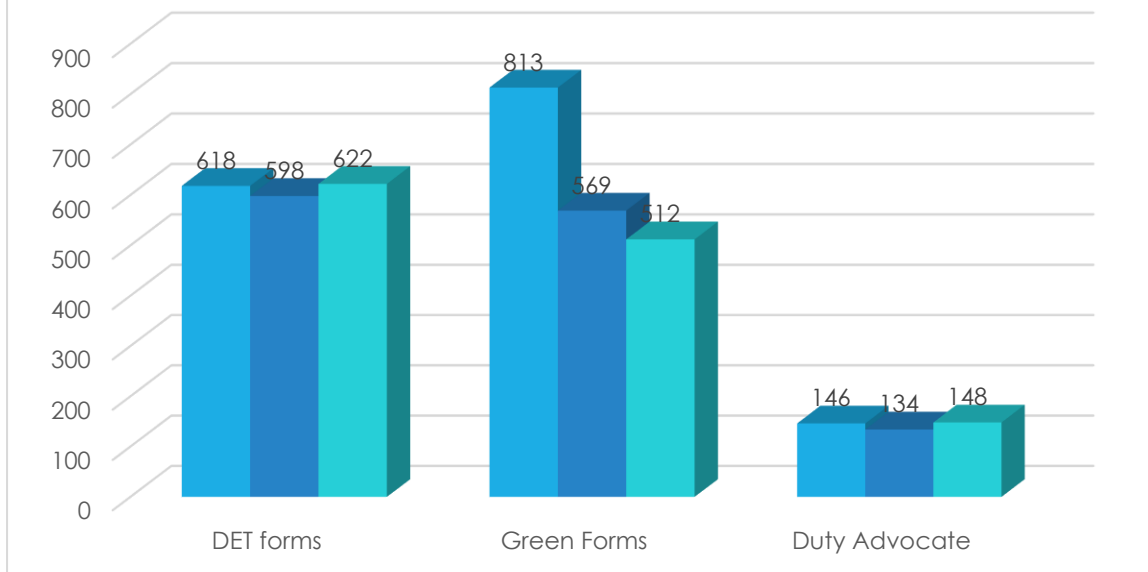
During 2021, 206 Criminal applications were processed, compared with 196 in 2019 and 198 in 2020.



Green Forms/Detention Forms and Duty Advocate Invoices

Funding was also provided for 622 Detention forms (where an individual has been detained by the Police or Border Agency and receives free legal advice from the Duty Advocate) in 2021 compared to 618 in 2019 and 598 in 2020. In addition, 512 Green Form cases (in respect of both civil and criminal matters) and 148 Duty Advocate invoices for representation at Court (an individual appearing in court unrepresented in most cases can use the Duty Advocate to assist them) were funded in 2021 compared with 813 in 2019 and 569 in 2020 Green Forms and 146 in 2019 and 134 in 2020 Duty Advocate invoices.

Detention/Green Forms/Duty Advocate - 2019/2020/2021



Alderney and Sark

The Guernsey Legal Aid Service covers all the Bailiwick. The numbers of certificates approved in Alderney and Sark in 2019/2020 and 2021 were as follows:

| | 2019 | | 2020 | | 2021 | |
|----------|-------|----------|-------|----------|-------|----------|
| | Civil | Criminal | Civil | Criminal | Civil | Criminal |
| Alderney | 0 | 6 | 6 | 9 | 4 | 3 |
| Sark | 0 | 0 | 3 | 0 | 2 | 1 |

Summary of Legal Aid Expenditure in 2021

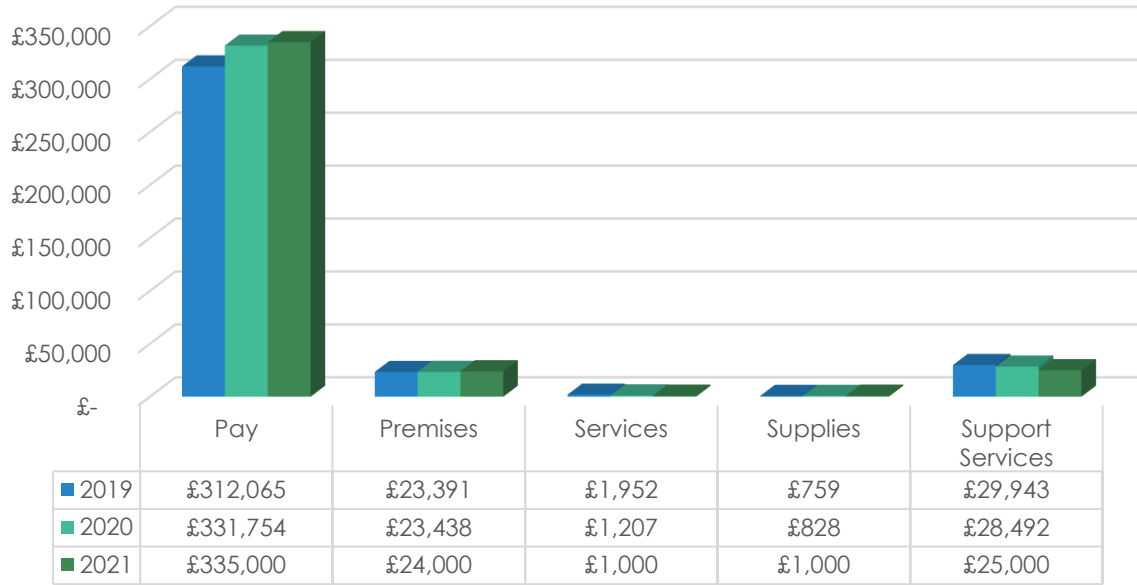
The cost of the Legal Aid Service in 2021 was £1,989,000 which was an **£853,000 underspend** against the budget of £2,842,000.

| 2021 Original Budget £'000s | 2021 Total Authorised £'000s | | 2021 Actual £'000s | 2020 Actual £'000s |
|--------------------------------------|---------------------------------------|---------------------------------|--------------------------|--------------------------|
| | | Formula-Led Expenditure: | | |
| | | Legal Aid | | |
| | | <i>Civil</i> | | |
| 1,630 | 1,630 | <i>Legal</i> | 976 | 1,299 |
| | | <i>Aid</i> | | |
| | | <i>Criminal</i> | | |
| 820 | 820 | <i>Legal</i> | 627 | 693 |
| | | <i>Aid</i> | | |
| <hr/> | <hr/> | | <hr/> | <hr/> |
| 2,450 | 2,450 | Non-Formula-Led | 1,603 | 1,992 |
| | | Expenditure: | | |
| | | Administration | 386 | 386 |
| <hr/> | <hr/> | | <hr/> | <hr/> |
| 2,836 | 2,842 | Total Net Expenditure | 1,989 | 2,378 |

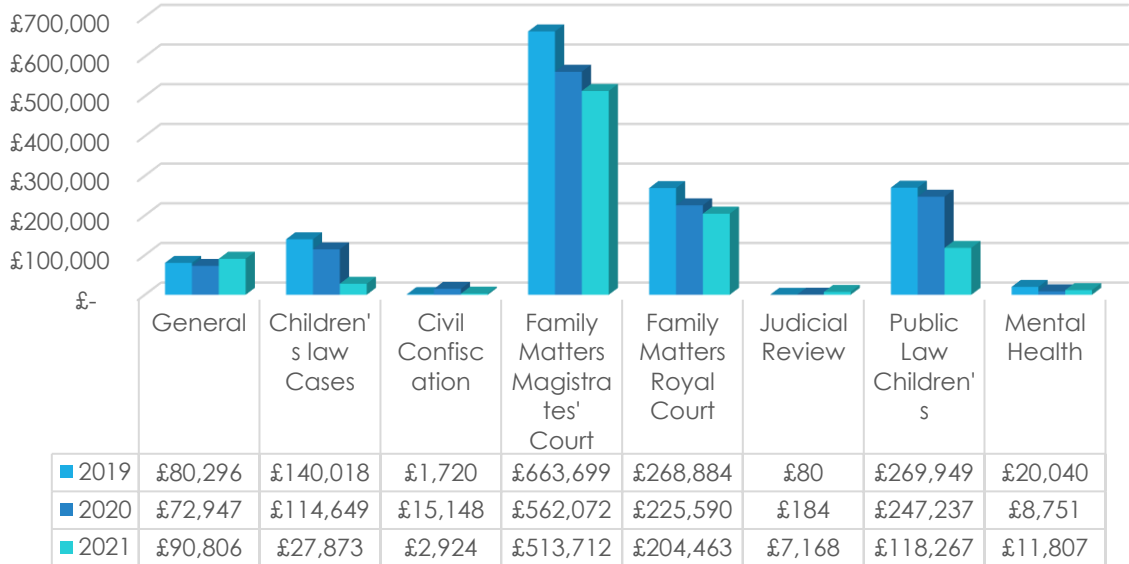
The budget is split into two discrete parts:

1. £392,000 covers the costs of running the Legal Aid office. Expenditure for 2021 was £386,000.
2. £2,450,000 relates to demand led expenditure i.e. the funding of legal fees for advocates (including disbursements such as court and experts fees) divided into:
 - a) 2021 Civil expenditure - £976,000 against a budget of £1,630,000.
 - b) 2021 Criminal expenditure - £627,000 against a budget of £820,000.

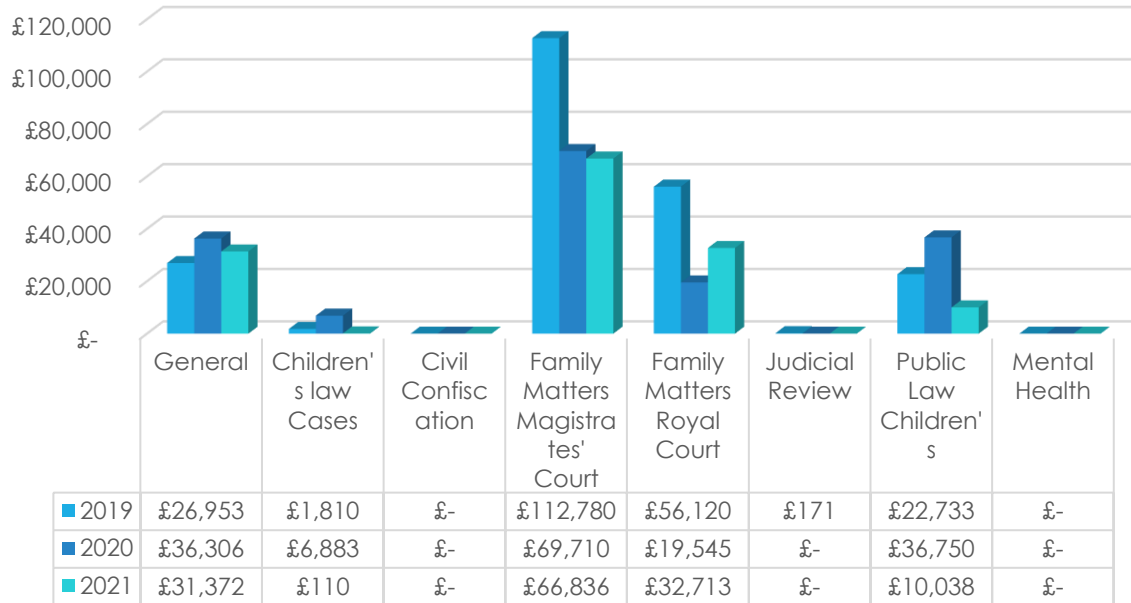
Administration Costs 2019/2020/2021



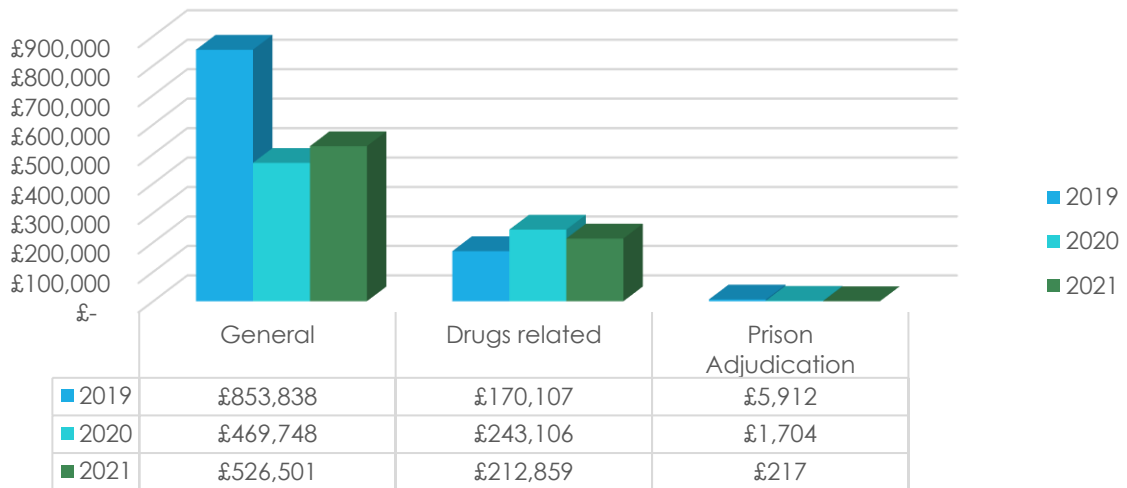
Civil Matters - Legal costs paid in 2019/2020/2021



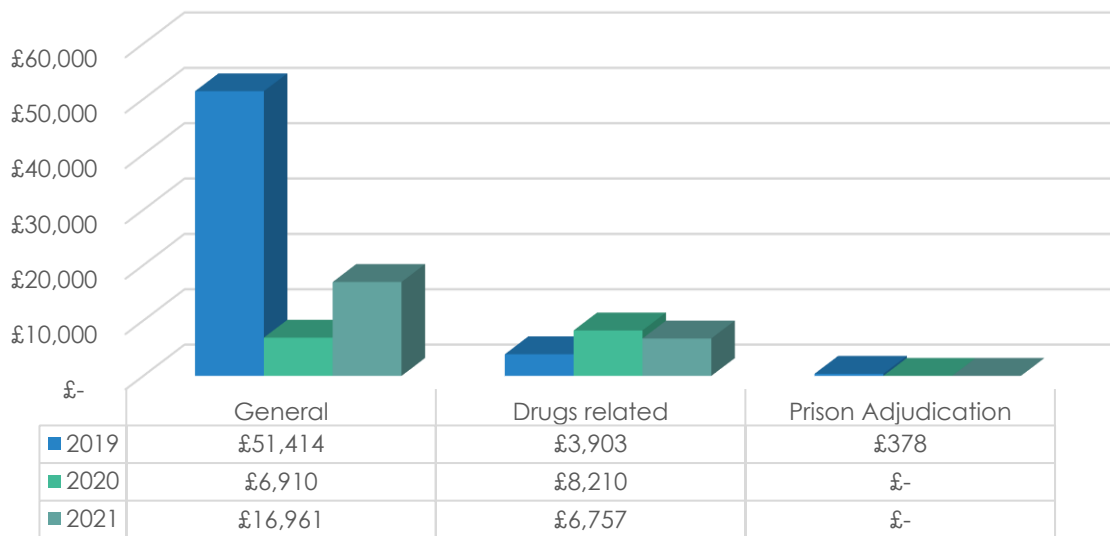
Civil Matters - Disbursements paid in 2019/2020/2021



Criminal Matters - Legal Costs paid in 2019/2020/2021



Criminal Matters - Disbursements paid in 2019/2020/2021



Due to the length of time it can take for court proceedings to conclude there is no particular correlation between the costs paid in 2021 and the number of Certificates granted in 2021. Some court proceedings last a few months, others a few years.

Debtors' balances across the Bailiwick

The net values of civil and criminal debtors as at 31 December 2021 are shown in the table below:

| Legal Aid Debtors as at 31 December 2021 | | |
|---|-----------------|----------------|
| | O/s Debt | no of |
| Civil | £'000s | Debtors |
| Guernsey | 181 | 71 |
| Alderney | 4 | 2 |
| Sark | 6 | 1 |
| Criminal | | |
| Guernsey | 286 | 145 |
| Alderney* | 1 | 1 |
| Sark | 0 | 0 |
| Total | 478 | 220 |
| * less than £1k | | |

Criminal – The majority of debtors make regular weekly or monthly payments towards their debt.

Civil - The majority of the civil debtors relate to civil Recover and Preserve matters i.e. where the assisted person has recovered or preserved assets at the conclusion of the court proceedings that have been funded by GLAS e.g. damages in personal injury cases or more commonly assets such as a share in the matrimonial home/a lump sum payment in Divorce cases. The assisted person is invoiced for the amount GLAS has paid under the Certificate and GLAS is either repaid soon afterwards from any share of the net proceeds of sale of the matrimonial home or a lump sum payment. However, if the only asset recovered is the matrimonial home and this is made subject to a Court Order requiring it to be sold once any children of the marriage reach 18 years or finish full time education, GLAS has to wait for the house to be sold, which may be some years ahead. In these circumstances, we expect the Debtor to commence reasonable monthly payments in order to reduce the debt leaving the balance to be repaid in full when the home is sold.

In terms of the reimbursement of legal aid costs from assets recovered/preserved in court proceedings – we received approximately £116,000 in 2021. These payments negated the requirement of invoicing the assisted person (hence they did not become debtors) and are reflected in the overall annual civil expenditure figure.

Our oldest criminal debts date from 2011 and our oldest civil debts date from 2007.

The net values of civil and criminal debtors as at 31 December 2020 and 2019 are shown in the tables below:

| Legal Aid Debtors as at 31 December 2020 | | |
|---|-----------------|----------------|
| | O/s Debt | no of |
| Civil | £'000s | Debtors |
| Guernsey | 187 | 74 |
| Alderney | 5 | 2 |
| Sark | 7 | 1 |
| Criminal | | |
| Guernsey | 181 | 159 |
| Alderney* | 1 | 1 |
| Sark | 2 | 1 |
| Total | 383 | 238 |

* less than £1k

Legal Aid Debtors as at 31 December 2019

| | O/s Debt £'000s | no of Debtors |
|-----------------|----------------------------|--------------------------|
| Civil | | |
| Guernsey | 235 | 79 |
| Alderney | 6 | 2 |
| Sark | 7 | 2 |
| Criminal | | |
| Guernsey | 174 | 165 |
| Alderney* | 0 | 1 |
| Sark | 6 | 2 |
| Total | 428 | 251 |

* less than £1k

Lucy Haywood

Legal Aid Administrator

August 2022