



Guernsey Legal Aid Service – 2022 Annual Report



Edward T Wheadon House, Le Truchot
St Peter Port GY1 3WH

Website: Legalaid.gg

This Report covers the period 1st January 2022 to 31st December 2022

<u>Index</u>	<u>Page</u>
• Introduction	2
• Background and Governance	2
• The Legal Aid Office and Staffing	3
• The Legal Aid Schemes	4
• How the Legal Aid Process works	6
• Brief Summary of Legal Aid Expenditure	7
• The Administrator's Comments	8
• Detailed Summary of applications	13
• Detailed Summary of Legal Aid Expenditure	16
• Summary of Debtor Information	21

GUERNSEY LEGAL AID SERVICE ANNUAL REPORT 2022

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

At the end of March 2022, in line with the States Property Target Operating Model (PTOM) the Legal Aid Office was relocated from the New Jetty to Edward T Wheadon House, Le Truchot, St Peter Port, Guernsey. Owing to our requirement to be independent of the States of Guernsey, we have our own secure separate office on Level 4 and secure storage facilities.

Just prior to our move, the Finance and Administration Manager left GLAS. Part of this role included office management but this element of the role was reduced owing to us moving into a shared office building. This gave us the opportunity to restructure various existing roles but to remain an essential team of 5. The existing Senior Executive Officer became the Administration Officer, including line manager to the new Executive Assistant role. The Executive Assistant became the Finance Officer, and a new lower graded administration role of Executive Assistant was created. The Team therefore comprised of:

Legal Aid Administrator

Deputy Legal Aid Administrator

Administration Officer

Finance Officer

Executive Assistant

The role of Executive Assistant was advertised internally and externally but this was not filled permanently until April 2023. To assist with the workload, we had help from a temporary Executive Assistant until early 2023.

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.

Legal Aid Hourly Rates and Numbers of Advocates

Legal representatives are paid by GLAS for legal aid work at the following rates:

Advocates - £167 per hour.

Non -Admitted Lawyers (NAL's) (e.g., a Solicitor/Lawyer who is not admitted to the Guernsey Bar) - £83.50 per hour.

Paralegals - £55.70 per hour.

Any Advocate called to the Guernsey Bar can undertake legal aid work. However, NAL's and Paralegals firstly need to be accredited by GLAS depending on their qualifications and practical experience.

The majority of legal aid work is undertaken by Advocates. In comparison to the number of Advocates practising in Guernsey (as at July 2023, 252 with 33 listed as non-practising), the number of Advocates who undertake legal aid work is limited. At the end of 2022, approximately 25 Advocates were taking on legal aid work. 3 to 5 of these do not take on regular work i.e., some only Criminal Duty Advocate work and some only act as the Advocate for a child/children when an Advocate for the child is appointed by the court in either private law of children public law proceedings. Some are not on our list of Advocates sent to applicants i.e., readily able to accept legal aid work from applicants. These numbers remain approximately the same into 2023.

One NAL and 1 Paralegal were accredited but these were in limited areas of work.

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.

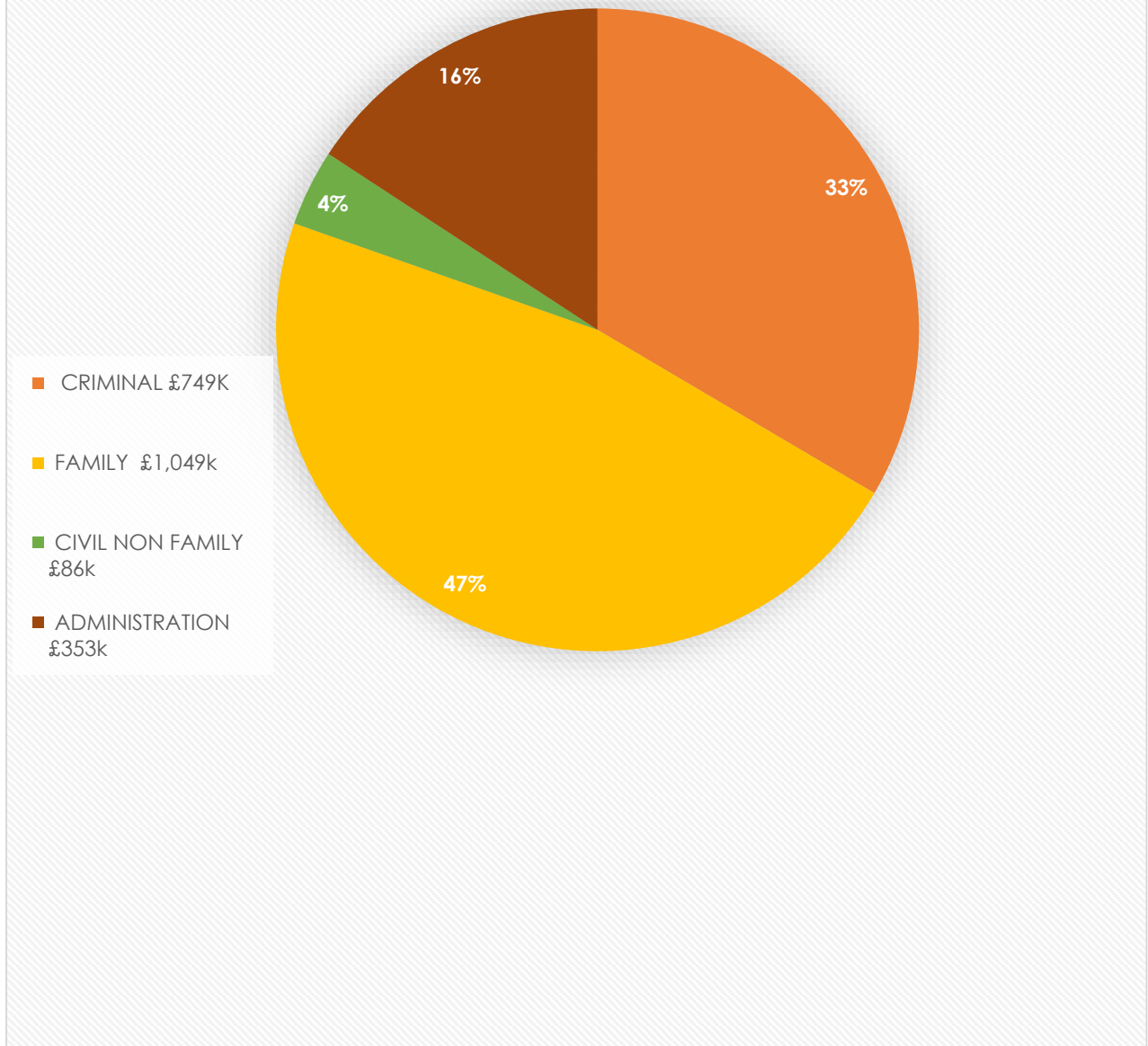
An agreement/compromise is usually reached with the Advocate as to the level of reductions but in the event the matter cannot be agreed, it is referred to the Costs Judge for Taxation on the Papers. If matters are still not agreed, an Oral Taxation Hearing is requested.

Brief Summary of Legal Aid Expenditure in 2022

The cost of the Legal Aid Service in 2022 was £2,237,000. This was a £643,000 underspend compared to the budget of £2,880,000.

2022 Original Budget £'000s	2022 Total Authorised £'000s		2022 Actual £'000s	2021 Actual £'000s
		Formula-Led Expenditure:		
		Legal Aid		
		<i>Civil</i>		
1,641	1,641	<i>Legal</i>	1,135	976
		<i>Aid</i>		
		<i>Criminal</i>		
859	859	<i>Legal</i>	749	627
		<i>Aid</i>		
<hr/>	<hr/>		<hr/>	<hr/>
2,500	2,500	Non Formula-Led	1,884	1,603
		Expenditure:		
		Administration	353	386
392	380			
<hr/>	<hr/>	Total Net Expenditure	<hr/>	<hr/>
2,892	2,880		2,237	1,989

2022 LEGAL AID EXPENDITURE - £2,237,000



The Administrator's Comments

This is the fourth annual report of the Guernsey Legal Aid Service which covers the period 1st January 2022 to 31st December 2022.

GLAS expenditure is split into two discrete parts i.e. a fixed administration budget and a formula led/demand based budget. The administration budget covers the costs of running the Legal Aid office. Formula led expenditure covers the funding of legal fees for Advocates (including disbursements such as court and experts' fees). Whilst this budget is 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.

The total budget for 2022 was £2.88 million broken down as follows:

1. Administration budget of £380,000. Expenditure of £353,000.
2. Formula Led budget of £2,500,000 divided into:
 - a) Civil budget of £1,641,000. Expenditure of £1,135,000.
 - b) Criminal budget of £859,000. Expenditure of £749,000.

Administration Expenditure



There was an overall underspend of approximately £27,000 which factored in the following:

1. Since GLAS moved into Edward T Wheadon House at the end of March 2022, all property related costs have been managed centrally reducing our Administration Budget which previously covered office expenditure i.e., rent, utility bills etc., by £26,800.
2. The budget was uplifted to reflect the 2022 pay rises awarded by the States and which was agreed in the latter part of 2022. Backdated pay which had accrued was then paid retrospectively.

3. The restructuring of the roles referred to earlier in this report left the Executive Assistant role vacant for some months, but which was filled temporarily towards the end of 2022.

Formula Led Expenditure

As with 2021 there continued to be an overall underspend in 2022, amounting to £616,000 for formula led expenditure compared to the budget. This is broken down into:

1. An underspend of £506,000 for civil expenditure (as opposed to a £654,000 underspend in 2021) and;
2. An underspend of £110,000 for criminal expenditure (£193,000 underspend in 2021).

It always difficult to pinpoint exact reasons for the underspend, but the impact of the covid pandemic over a 2-year period involving periods of lockdown is a continuing contributing factor to the reduction in expenditure. During the lockdown periods the progression of court proceedings were affected which resulted in a reduction in the level of Advocate's fees and expert's costs. Each funded case is unique but sometimes it can take a few years for court proceedings to conclude and for the Advocates costs to be taxed. Some of the cases that commenced during the pandemic may not yet have concluded or been taxed by GLAS yet.

Criminal matters –Our total criminal expenditure was £749K against a budget of £859. Areas to note are:

1. Whilst the overall expenditure was under budget, our expenditure for general Guernsey criminal matters was slightly overspent at £617,000 against a budget of £602,000.
2. Compared with 2021, there was an £83,377 increase in general criminal expenditure but a £27,185 reduction in drugs related expenditure (and a £57,432 reduction compared with 2020).
3. For drugs related matters there was a reduction in the number of applications processed in 2022 i.e. 32 compared with 53 in 2021 and 56 in 2020.
4. There was also a reduction in the number of applications for general criminal matters i.e. 121 compared with 153 for 2021 and 142 for 2020. Despite the reduction in applications, the expenditure has increased compared with 2021. Two possible explanations are that the Crown Prosecution are still catching up and pushing through cases that were delayed owing to the pandemic. We are also seeing more complex and therefore more expensive criminal cases which increases expenditure. We also funded more Green Form advice in 2022, 614 compared with 512 in 2021. Whilst these figures incorporate Green Form's for both civil and criminal matters, there was an increase in criminal Green Form advice and consequently contributed to an increase in expenditure.

Civil matters – The areas with the highest demand on civil expenditure continue to be private family law proceedings in the Domestic Proceedings Magistrates Court (DPMC) and Royal Court and Public Law Children proceedings in the Juvenile Court. Areas to note are:

1. Whilst in previous years, these areas have been consistently over budget, for both 2021 and 2022 we have been under budget/on budget as follows:
 - a) DPMC/Magistrates matters – 2022 expenditure of £595,000 (i.e., legal costs and disbursements) against a budget of £746,000 resulting in an underspend of £151,000 compared with 2021 expenditure of £580,000 against a budget of £776,000 resulting in an underspend of £196,000.
 - b) Royal Court matters – 2022 expenditure of £325,00 which was on budget compared with 2021 expenditure of £237,000 against a budget of £325,000 resulting in an underspend of £88,000.
 - c) Children Public Law matters – 2022 expenditure of £208,000 against a budget of £300,000 resulting in an underspend of £92,000 compared with 2021 expenditure of £128,000 against a budget of £300,000 resulting in an underspend of £172,000.
2. The expenditure for all 3 above areas is therefore gradually increasing, as anticipated – the main reason being an end to the pandemic when court proceedings slowed down plus an increase in the numbers of applications processed. There is a marked increase in the number of Public Children Law applications which tend to be fully contested, including the funding of experts and consequently these tend to be expensive proceedings for each party. The numbers of applications processed were as follows:
 - a) 175 for DPMC/Magistrates Court matters in 2022 compared with 132 in 2021.
 - b) 79 Royal Court matters in 2022 compared with 59 in 2021
 - c) 36 Public Children’s Law matters in 2022 compared with 20 in 2021 and 17 in 2020.

Generally:

Commissioner’s Review of Legal Aid Administrator’s decision - One matter was referred to the Legal Aid Commissioner for a review in 2022 who upheld our initial decision to refuse legal aid funding in those particular circumstances.

Taxation of Advocate’s costs - this continues to be personnel intensive but 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 and some Green Forms are taxed. This process is usually undertaken by the Deputy Legal Aid Administrator, but larger matters are sent to our Costs Draftsman in the UK to tax. The net reduction in costs claimed by Advocates overall in 2022 i.e., total reductions less the Costs Draftsman’s fees and courier fees for sending the files to the UK, amounted to approximately £60,231.

Costs Judge/Taxation on the Papers - No taxation disputes were referred to the Costs Judge in 2022.

Website – GLAS’s first website went live in October 2022 at legalaid.gg

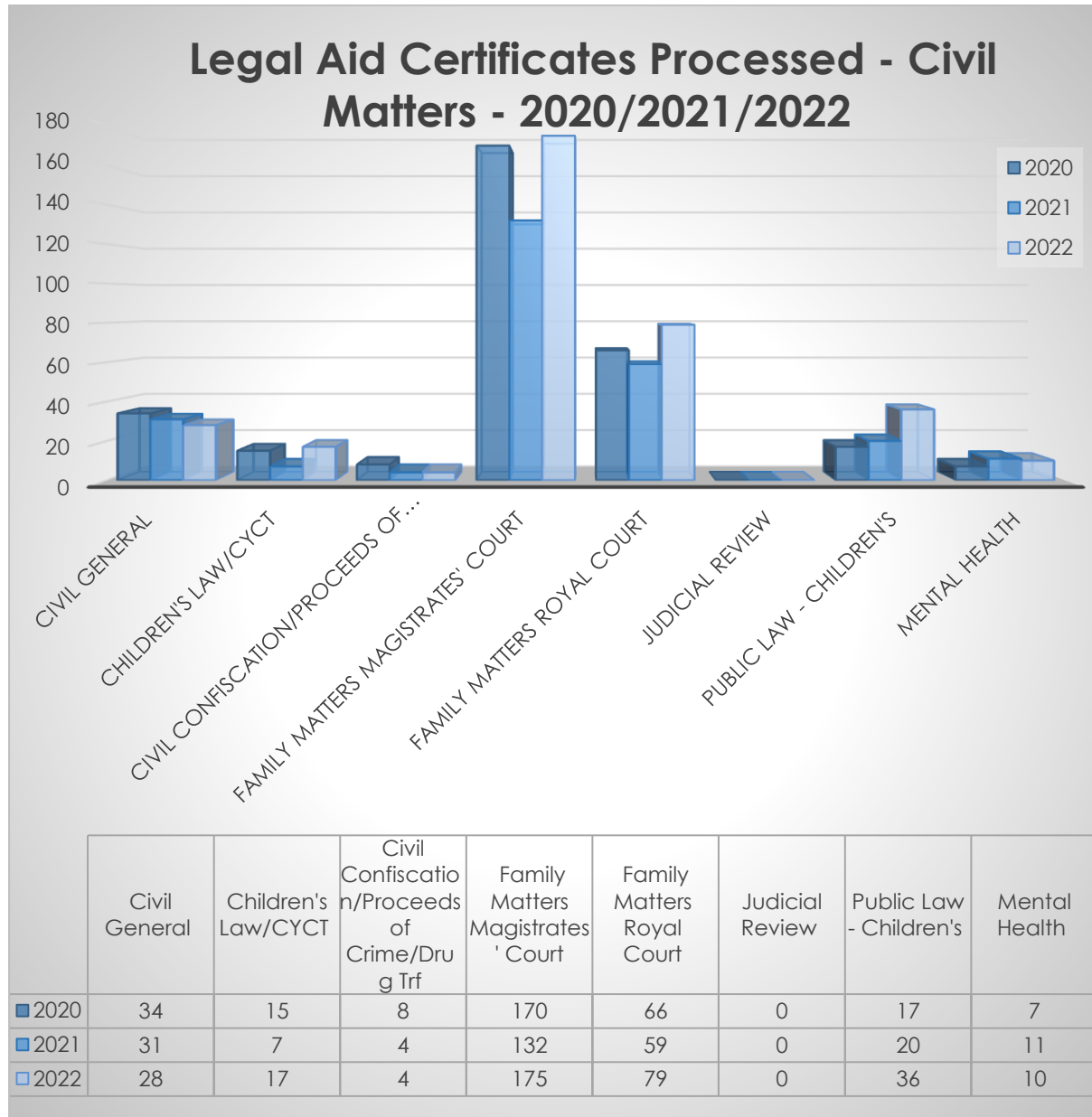
Joint Consultative Committee Meeting – this is an annual gathering of representatives from the various legal aid agencies/services for England & Wales, Northern Ireland, Republic of Ireland, Scotland, Isle of Man, Jersey and Guernsey. It is an important opportunity for all jurisdictions to exchange news, views and information concerning their various legal aid schemes and any challenges facing them. The pandemic put a hold on these meetings, but Guernsey was very pleased to host the 2022 event, with the Deputy Bailiff kindly giving a talk to the various representatives.

Legal Aid Review – I am pleased to report that The Committee *for* Employment & Social Security have now commissioned an independent review of Legal Aid. A final report is expected to be submitted to the Committee at the end of 2023.

Summary of applications processed in 2022

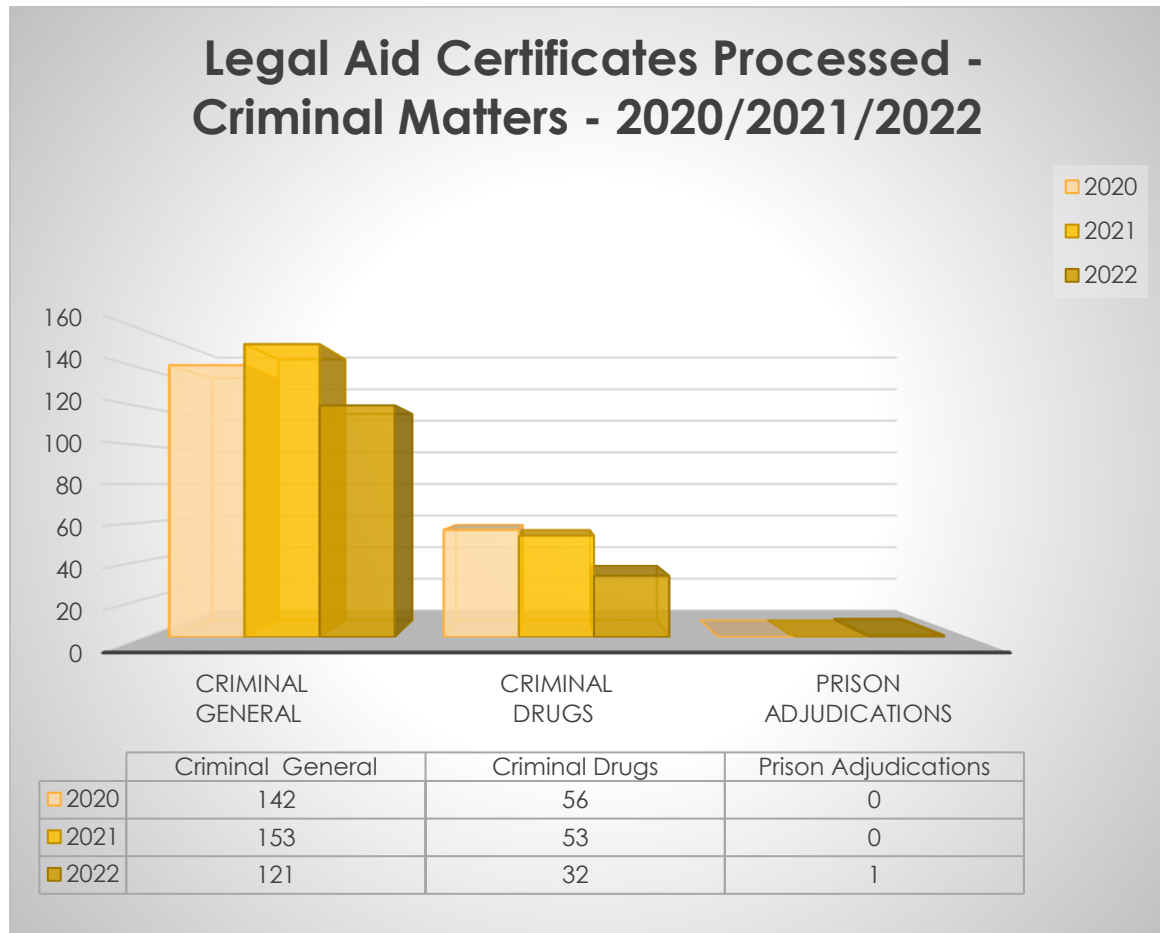
The Number of Legal Aid Certificates Processed for Civil Matters

During 2022 the Guernsey Legal Aid Service processed 349 Civil applications, compared with 264 in 2021 and 317 in 2020. The graph below breaks down the various types of applications that were processed.



The Number of Legal Aid Certificates Processed for Criminal Matters

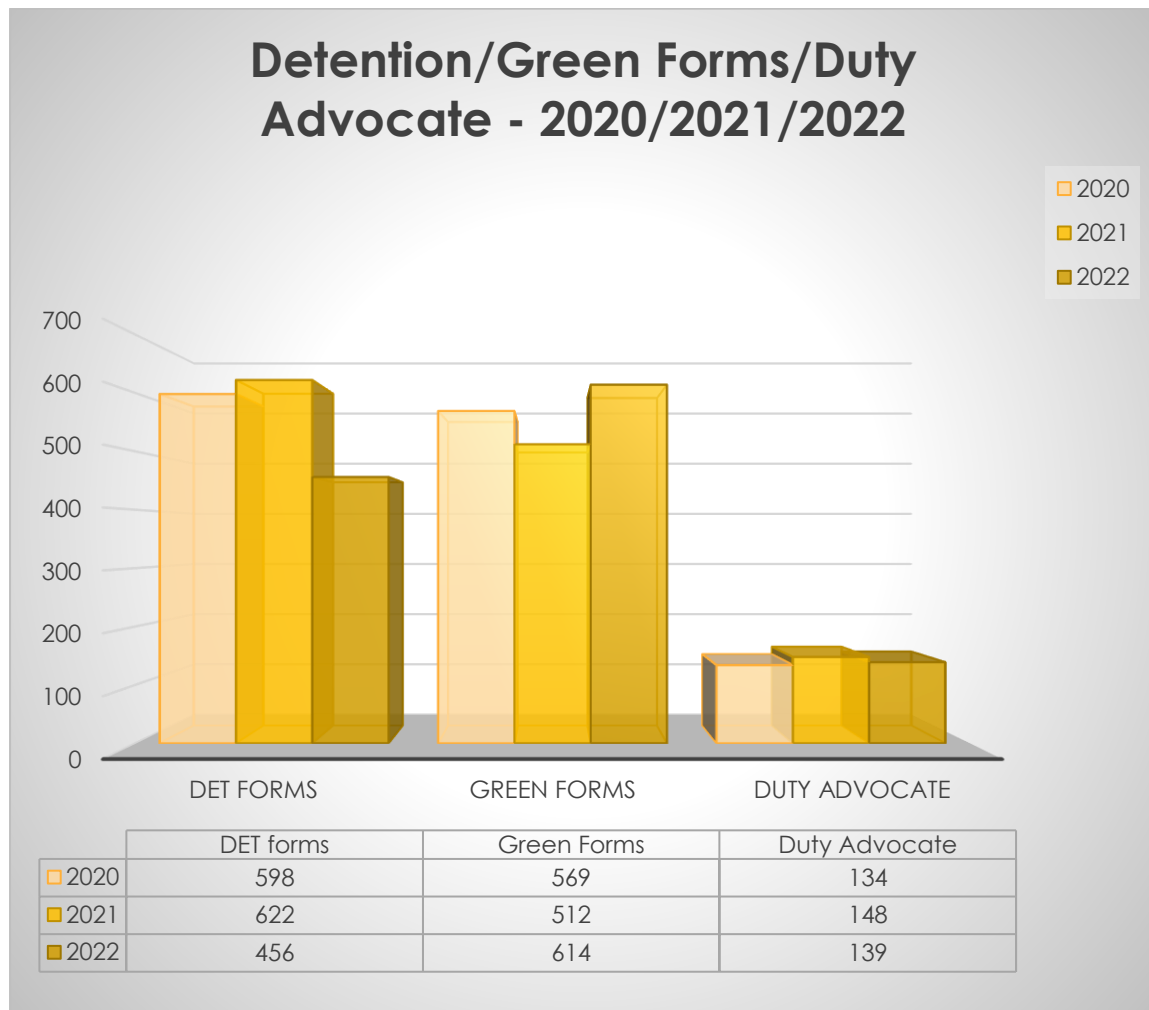
During 2022, 154 Criminal applications were processed, compared with 206 in 2021 and 198 in 2020. The graph below breaks down the various types of applications that were processed.



The Number of Green Forms/Detention Forms and Duty Advocate Invoices

In 2022, funding was also provided for 456 Detention forms (where an individual has been detained by the Police or Border Agency and receives free legal advice from the Duty Advocate) compared with 598 in 2020 and 622 in 2021.

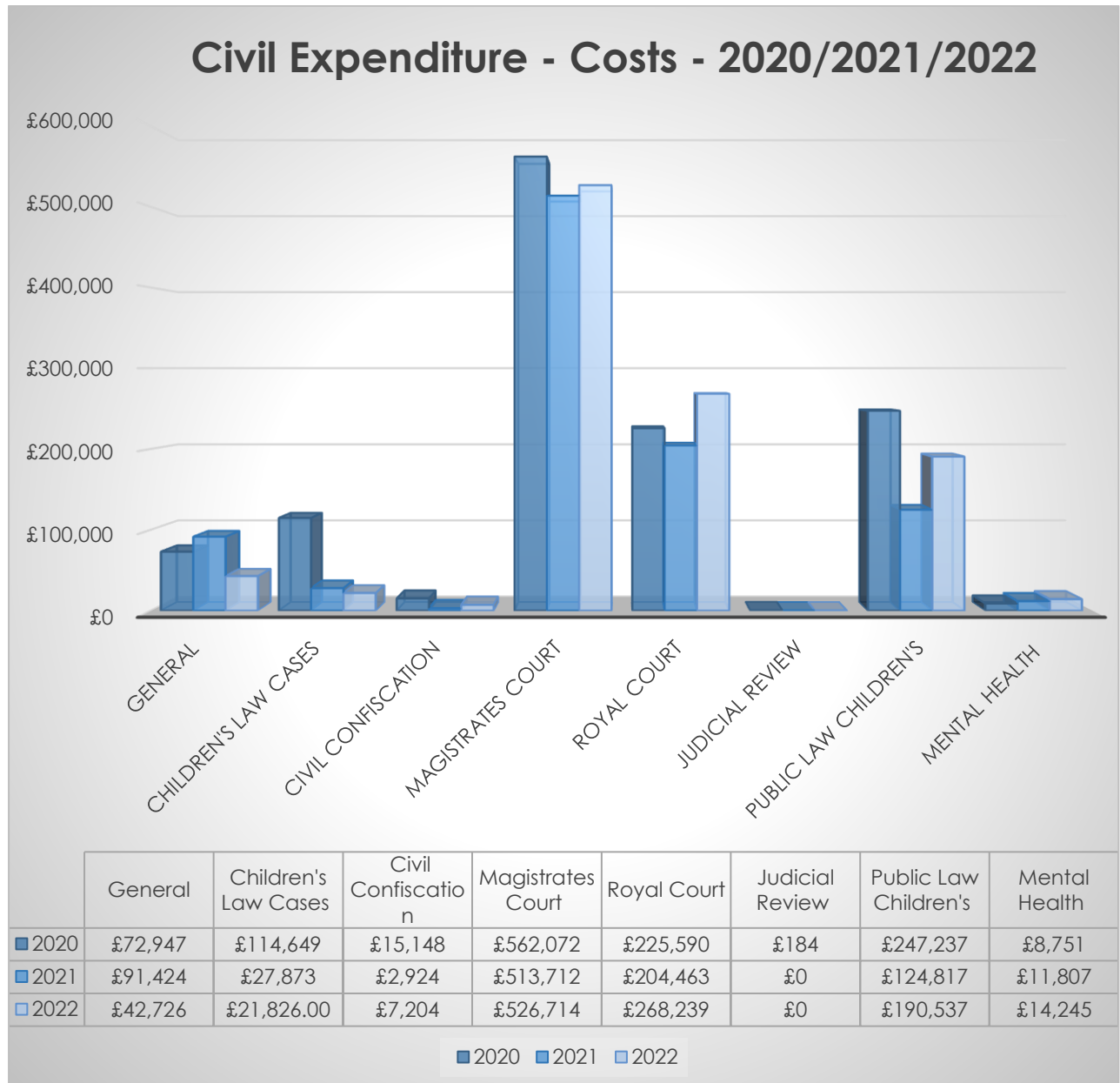
Funding was also provided for 614 Green Form matters (civil and criminal matters) and 139 Duty Advocate invoices for representation at Court (an individual appearing in court unrepresented in most cases can use the Duty Advocate to assist them). These are compared with 569 in 2020 and 512 in 2021 in relation to Green Forms and 134 in 2020 and 148 in 2021 Duty Advocate invoices.



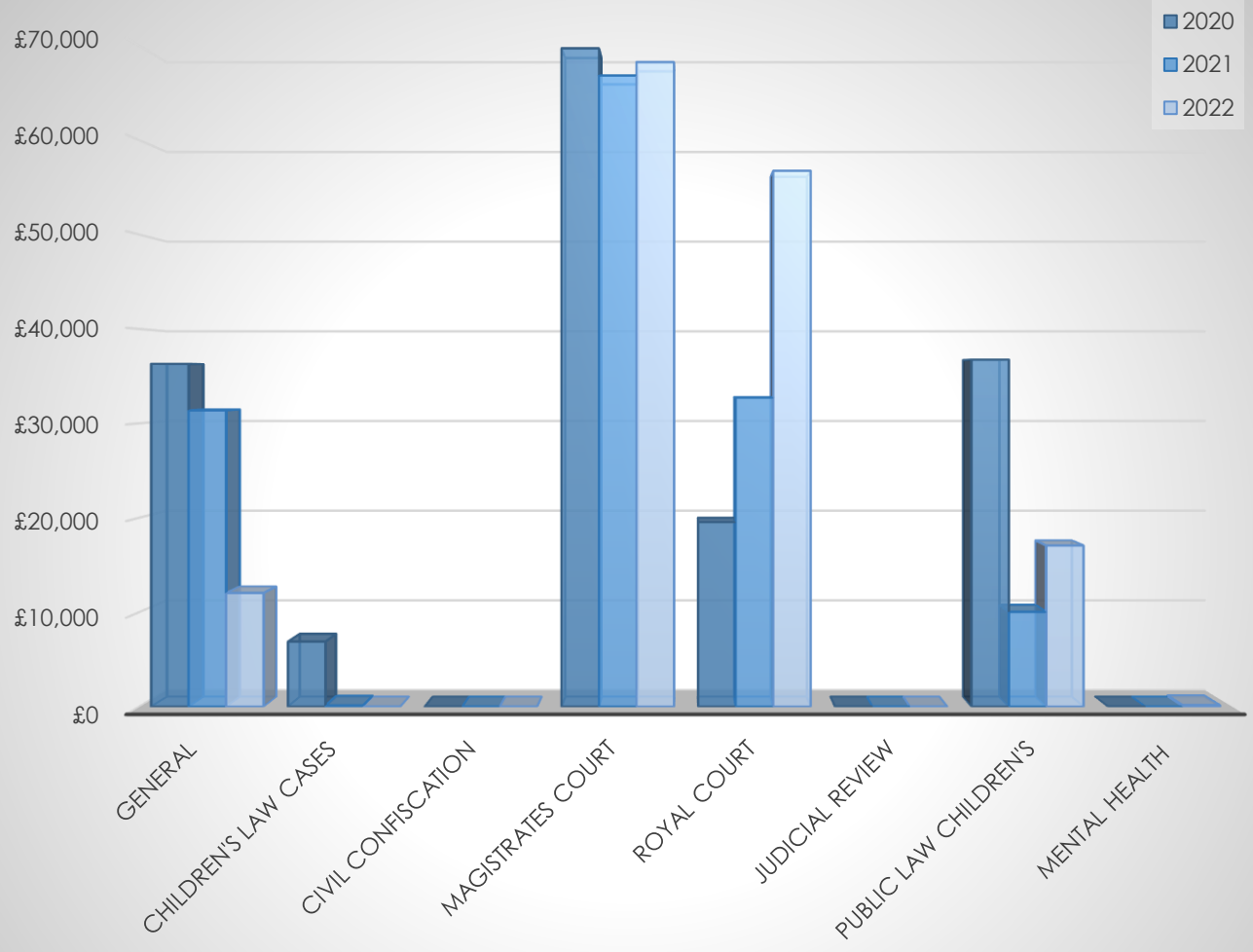
Detailed Summary of Legal Aid Expenditure

Civil Expenditure Break Down

Costs refer to Advocates and those accredited to undertake legal aid work professional fees at the rates referred to earlier in this report.

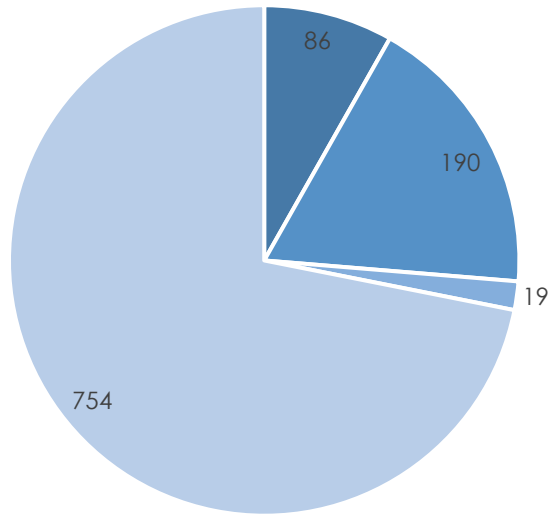


Civil Disbursements - 2020/2021/2022



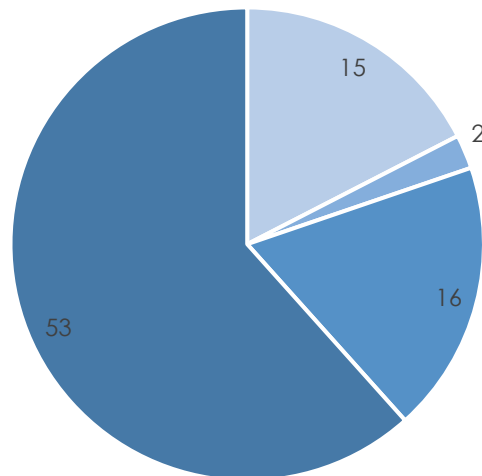
Due to the length of time it can take for court proceedings to conclude there is no particular correlation between the costs paid in 2022 and the number of Certificates granted in 2022. Some court proceedings last a few months, others a few years.

CIVIL FAMILY EXPENDITURE 2022 £1,049,000



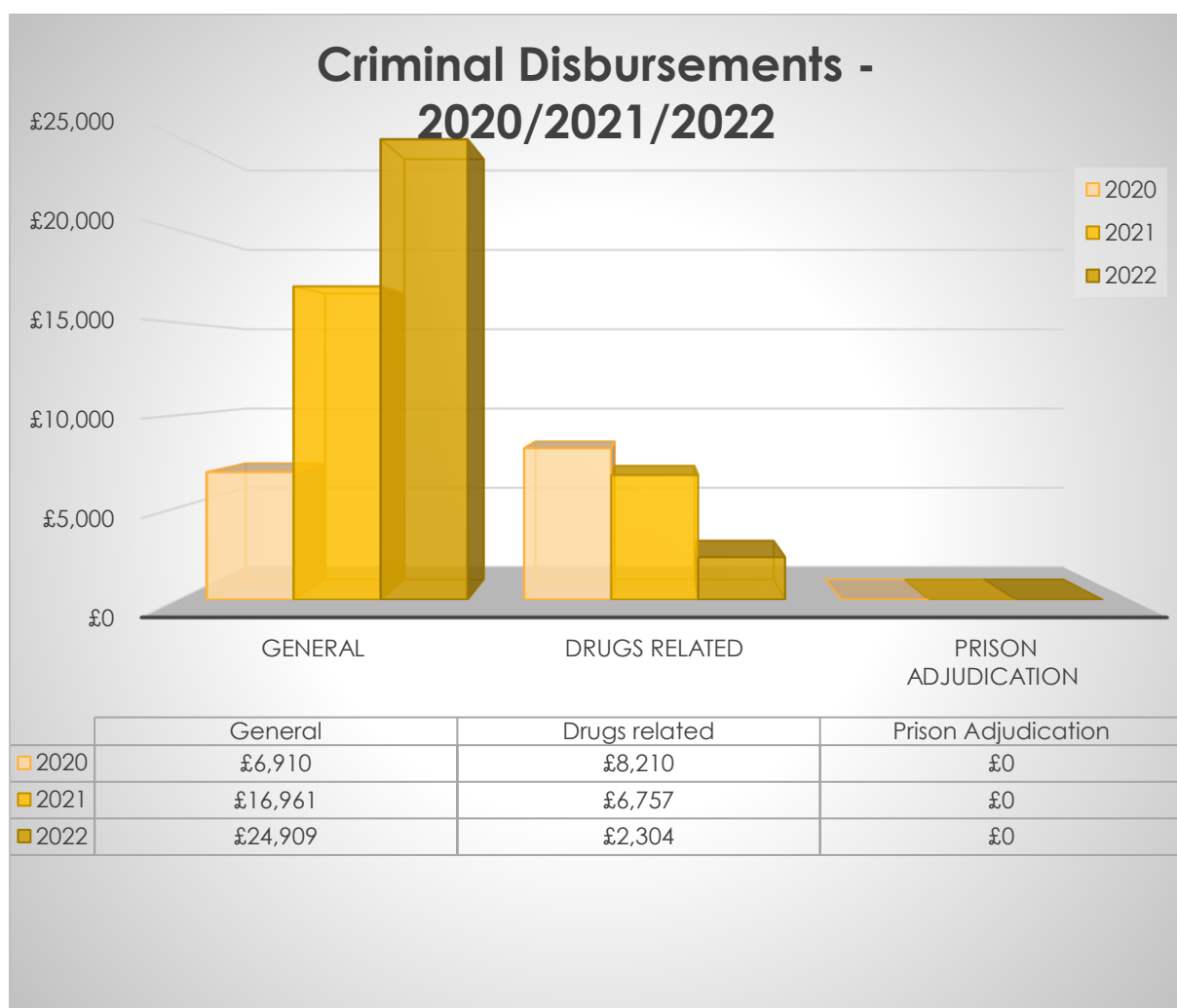
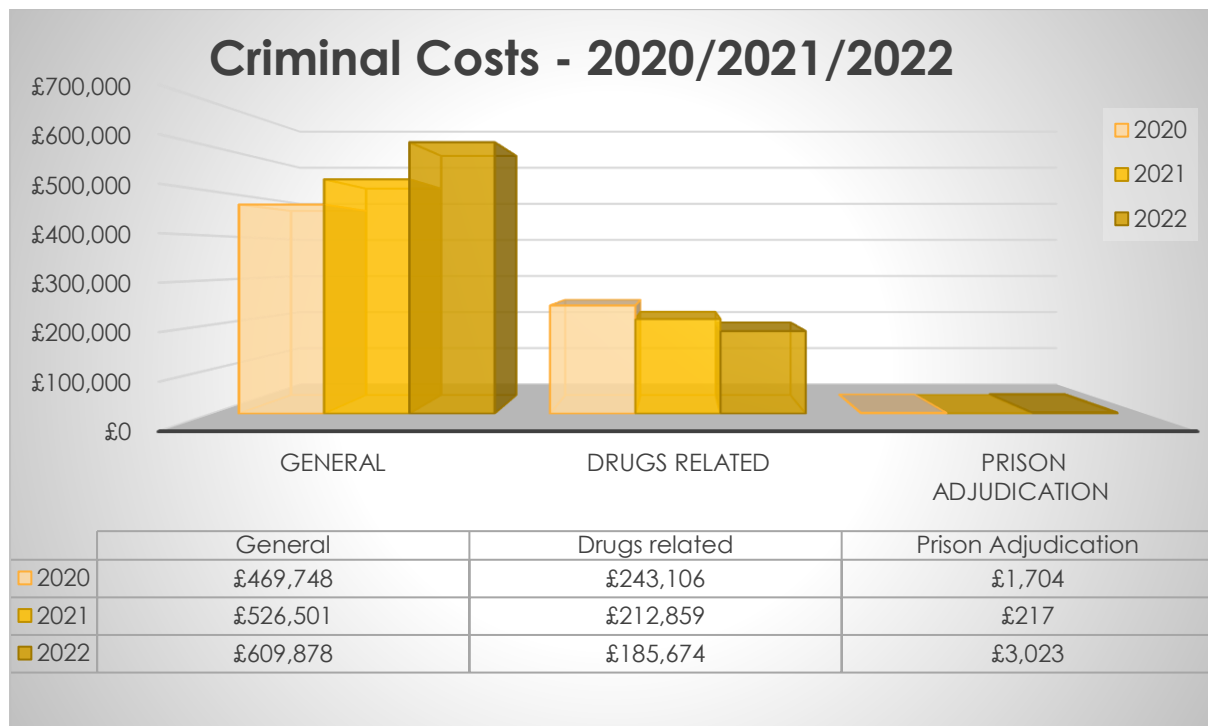
- GREEN FORMS £86K
- CHILDREN PUBLIC LAW CERTIFICATE COSTS £190K
- CHILDRENS LAW CERTIFICATE COSTS £19K
- FAMILY MATTERS CERTIFICATE COSTS £754K (£863K LESS £109K OF FEES & CHARGES INVOICED)

CIVIL NON FAMILY EXPENDITURE 2022 £86K

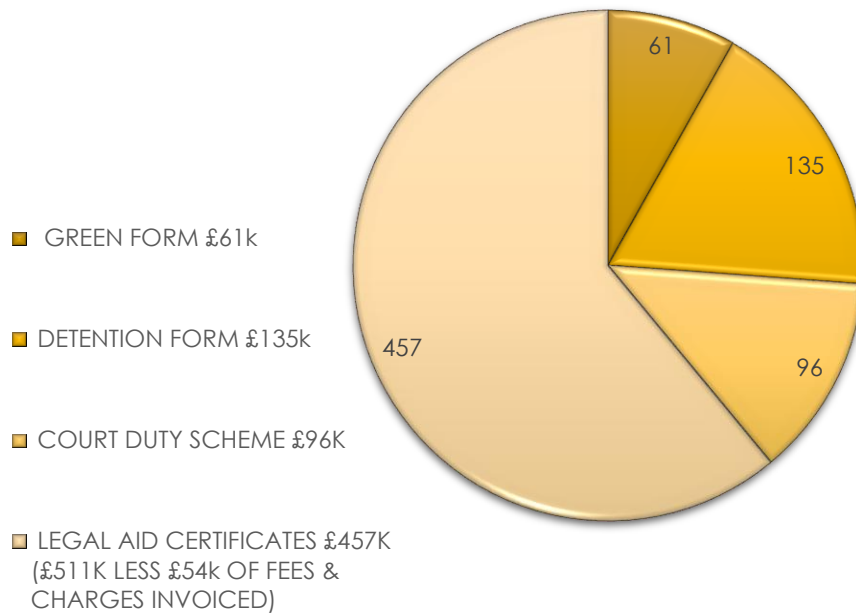


- GREEN FORMS £15K
- CIVIL CONFISCATION £2K
- MENTAL HEALTH £16K
- CIVIL OTHER NON FAMILY MATTER CERTIFICATES £53K (£58K LESS £5K OF FEES & CHARGES INVOICED)

Criminal Expenditure Break Down



CRIMINAL EXPENDITURE 2022 £749K



Alderney and Sark

The Guernsey Legal Aid Service covers all of the Bailiwick. The numbers of certificates approved in Alderney and Sark in 2020/2021 and 2022 were as follows:

	2020		2021		2022	
	Civil	Criminal	Civil	Criminal	Civil	Criminal
Alderney	6	9	4	3	3	1
Sark	3	0	2	1	3	0

Debtors' balances across the Bailiwick

The net values of civil and criminal debtors as of 31 December 2022 are shown in the table below:

Legal Aid Debtors as at 31 Dec-22	31-Dec-22 O/s Debt £'000s	no of Debtors
Civil		
Guernsey	200	65
Alderney	4	2
Sark	0	0
Criminal		
Guernsey	294	152
Alderney	4	3
Sark	1	1
Total	503	223

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.

Our oldest criminal debts date from 2011 and our oldest civil debts date from 2007 (although only 4 from 2007 remain outstanding).

The net values of civil and criminal debtors as of 31 December 2021 and 2020 are shown in the tables below:

Legal Aid Debtors as at 31 Dec -21		
	O/s Debt	no of
Civil	£'000s	Debtors
Guernsey	196	70
Alderney	4	2
Sark	7	1
Criminal		
Guernsey	287	148
Alderney	1	2
Sark	0	0
Total	495	223

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		

Lucy Haywood

Legal Aid Administrator

August 2023