

# Legal Aid Review

## Legal Aid Scrutiny Review Panel

29th April 2019

S.R.8/2019



States of Jersey  
States Assembly



États de Jersey  
Assemblée des États



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## Executive Summary

The Draft Access to Justice (Jersey) Law 201- (hereafter “the draft law”) aims to address and improve access to justice in Jersey by establishing a legislative basis for legal aid. The draft law would make the Judicial Greffier responsible for the administration of the Legal Aid Scheme, with a new Legal Aid Guidelines Committee to be established to assist and advise the Chief Minister in constructing new Legal Aid Guidelines. The draft law itself is an enabling law, which sets out what the Guidelines must and may provide for, if the draft law is passed.

The current legal aid system in Jersey is run by the legal profession. Lawyers are allocated through a system known as the Tour de Rôle. The cost is mostly paid for by the legal profession, although some cases are funded by the Government.

Our report covers all parts of the draft law, with a particular focus on the Legal Aid Guidelines Committee, the Criminal Law Panel, proposed Eligibility Criteria, Fee Criteria, Funding, and the split between Civil and Criminal Law, alongside the proposed establishment of a Legal Aid Office to administer legal aid.

In relation to the draft law, we have noted the distinction between the enabling law and the Legal Aid Guidelines which will be published by the Chief Minister at a later date. The Guidelines will not be debated by the Assembly, but, at our suggestion, will have to be laid before the Assembly before coming into effect.

We have also recommended that when the guidelines are drawn up, further consideration be given to how the eligibility level for legal aid is set and also to allowing an element of discretion for cases that fall outside the usual eligibility criteria.

## Findings and Recommendations

**FINDING 1** – The Draft Access to Justice Law places the legal aid system on a statutory basis.

**FINDING 2** – Under the draft legal aid guidelines, Public Law legal aid (i.e. for criminal cases) will move from being funded by the legal profession to being funded by the States.

**FINDING 3** – Under the draft legal aid guidelines, Criminal Law legal aid would be handled by a Criminal Law Panel.

**FINDING 4** – The guidelines that would set out the eligibility criteria and similar matters for the receipt of legal aid do not form part of the draft law and would be published at a later stage. A set of draft guidelines are appended to the draft law.

**FINDING 5** – The draft law was changed prior to lodging to incorporate feedback provided by the Panel, to ensure that States members will be involved in drawing up the Legal Aid Guidelines and that the Guidelines must be laid before the Assembly before coming into force.

**FINDING 6** – Responsibility for administering the legal aid system would move from the legal profession to the Judicial Greffier.

**FINDING 7** – A Legal Aid Guidelines Committee will be set up to prepare the detailed legal aid scheme, which will include which areas of law are covered by legal aid and set the eligibility criteria.

**FINDING 8** – The Legal Aid Guidelines Committee will have to report back to the Chief Minister within 6 months of the Law coming into force.

**FINDING 9** – The creation of a Criminal Law Panel will provide a “Criminal Bar” for Jersey of specialist practitioners. Members of the Criminal Law Panel will receive training. However, there are concerns about the sustainability of this model and the adequacy of the training.

**FINDING 10** – Legal aid will be categorised as either Public Law (Criminal), Public Law (Human Rights) or Private Law.

**FINDING 11** – The draft law has been changed from previous versions, to ensure that young people will automatically qualify for legal aid in relation to matters dealt with by the Youth Court or in respect of public law children and mental health matters.

**FINDING 12** – The draft law removes the Magistrate’s power to provide litigants in certain cases with legal aid through the provision of a legal aid certificate. The draft guidelines also remove any discretion to grant legal aid outside the eligibility criteria.

**FINDING 13** – The Magistrate raised concerns about the absence of a “safety net” to grant legal aid outside of the criteria set out in the draft guidelines.

**RECOMMENDATION 1** - The draft law and the proposed guidelines do not provide adequate discretion for the Judicial Greffier or the Magistrate to grant legal aid where the circumstances require it. The Chief Minister should ensure that such discretion is provided for in the legal aid scheme when it is published.

**FINDING 14** – The draft guidelines reduce the upper limit on eligibility from its current £45,000 household income to £35,000 household income. The draft guidelines also remove any allowances for living expenses.

**FINDING 15** – The Law Society considers that very few people in the £35,000 to £45,000 bracket currently choose legal aid for private law cases and that law firms make arrangements for payment by instalment.

**RECOMMENDATION 2** – In drawing up the new legal aid scheme, the Guidelines Committee should look at all options for determining eligibility for legal aid, in order to determine the fairest system possible. This might include changes to the proposed income thresholds to qualify for legal aid, or moving to a “residual income” system as is the case in Guernsey.<sup>1</sup> The Chief Minister should also take account of this recommendation when considering the final version of the guidelines.

**FINDING 16** – It is proposed that, in future, criminal legal aid will be funded through the re-use of existing funds from the court and case costs budgets.

**FINDING 17** – Acquitted defendants are currently eligible to have their defence costs fully reimbursed.

**FINDING 18** - It is proposed that Regulations will be brought forward so that future acquitted defendants will only be able to claim reimbursement up to the level that would have been paid under legal aid. The Bailiff has raised concerns about this. As this matter will return to the Assembly in the future, the Panel makes no recommendations at this stage.

**FINDING 19** – A number of areas of Private Law/ Civil Law will not qualify for legal aid under the draft scheme guidelines, including certain divorce claims where there are no dependent children involved in the case.

**RECOMMENDATION 3** – The Legal Aid Guidelines Committee should carefully consider the construction of the Legal Aid Scheme and should not use the guidelines appended to the draft law as a blueprint.

**FINDING 20** – A new legal aid office would be established, which would be ultimately overseen by the Judicial Greffe. A publicly funded fixed fee Duty Solicitor and Duty Advocate service would operate within the office to support those taken into custody or appearing before the Courts.

**FINDING 21** – The legal aid office and Duty Solicitor/Duty Advocate Scheme will require additional funding of around £400,000 per year.

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<sup>1</sup> For further information on the Guernsey “residual income” system, see: <http://guernseyroyalcourt.gg/CHttpHandler.ashx?id=78075&p=0>



## Introduction

1. The Legal Aid Review Panel has undertaken legislative scrutiny of the draft law and its accompanying guidelines, which would redefine how the legal aid system in Jersey operates. This will replace the current legal aid system operated by the legal profession.
2. The draft law is designed to enshrine in law a legal aid system for the Island, whilst updating the current system.
3. The current legal aid system in Jersey is unlike that in other jurisdictions, as it is operated and funded by the legal profession on a voluntary basis.
4. The draft law is an enabling law, which places legal aid in Jersey on a statutory basis. Much of the detail of how the legal aid system will operate will be set out in guidelines to be published by the Chief Minister once the draft law comes into effect. A set of draft guidelines is appended to the draft law.
5. This report follows on from a lengthy review of Jersey's legal aid system by a Government-led group of stakeholders, which began in 2013 and culminated with the lodging of the draft law in February 2019.
6. The draft law was originally lodged by then-Chief Minister Ian Gorst on 27th February 2018, and subsequently withdrawn under Standing Order 34 (2). It was then re-lodged by his successor, Chief Minister John Le Fondré, on 25th February 2019.
7. The Panel received eight submissions from relevant stakeholders and members of the public, and held four public hearings with the Bailiff of Jersey, the Law Society of Jersey, the Magistrate, and the Chief Minister.
8. The Panel also received a briefing from the Bâtonnier and Chief Executive of the Law Society of Jersey on the proposed changes to legal aid on 20th August 2018.

## Statistics

9. Based on figures published in the [Jersey Court Service Annual Report 2017](#), 1,119 completed cases were heard by the Magistrates Court in 2017 (excluding parking cases) and a further 96 cases were committed to the Royal Court.
10. The report accompanying the draft law notes that in 2017, 950 legal aid certificates were issued, of which 537 were related to criminal matters, 293 to family law matters, and 120 to other civil matters<sup>2</sup>.
11. Legal Aid Disbursements resulted in an expenditure by the Judicial Greffe of £1,661,351 in 2016, and £2,537,575 in 2017<sup>3</sup>.

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<sup>2</sup> [P.23/2019, p.5](#)

<sup>3</sup> [2017 Jersey Court Service Annual Report, p. 12](#)

12. The total Court and Case costs expenditure in 2017 was £3,640,500, with underspend of £473,100<sup>4</sup>.

## The Current System

13. In Jersey, legal aid is a service provided and predominantly funded by the legal profession, whereby people deemed unable to afford a lawyer can nevertheless obtain legal representation. Legal services are provided on a rota by lawyers who have been qualified for less than fifteen years.
14. This system is in contrast to the rest of the British Isles, where legal aid is publicly funded.
15. Although Jersey's system is mostly funded by the legal profession, some aspects of public law are already fully publicly funded, such as public law children's cases.
16. Aside from the Oath, which all legal practitioners in Jersey must swear by to practise Jersey Law, there is no public law that currently governs the scheme. The full oath for Advocates of the Royal Court is below:

***YOU** swear and promise by the faith and oath that you owe to God, that well and faithfully you will exercise the office of Advocate of the Royal Court of our Sovereign ..., by the Grace of God, King of Great Britain, &c. in this his Island of Jersey, the Majesty of whom you acknowledge under God, supreme Governor in all His Kingdoms, Provinces and Dominions, foreswearing and renouncing all other foreign and alien allegiances; You will safeguard the rights of His Majesty and of his subjects, and uphold the honour and glory of God and of his Church. You will defend and maintain the privileges, franchises, customs and liberties of the Island, opposing whomsoever might wish to infringe the same. You will neither undertake nor support, whether as plaintiff or defendant, any action which appears to you bereft of any legal right, or which is instituted or carried on in bad faith. You will not invent any facts, if your clients have not affirmed the same as true. You will not submit or allege any fact, custom or usage, which you know to be contrary to right and justice; and if any matter touches upon the right of His Majesty, you shall inform the Court, and uphold the same. You will not bargain or contract with your clients in relation to any cause being litigated or in contention, or any part thereof.*

*You will content yourself with charges and fees that are reasonable, and will assist widows, the poverty-stricken, orphans and undefended persons.*

*And finally in your conclusions, you will take heed of the good advice of the Bailiff, of his Lieutenant, and of the Jurats; attending the Courts, as the duty of your Office requires.<sup>5</sup>*

17. The legal aid system currently operates in accordance with guidelines approved by the Law Society of Jersey on [30th September 2005, as amended on 7th June 2010](#).

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<sup>4</sup> [2017 Jersey Court Service Annual Report, p. 9](#)

<sup>5</sup> [Code of 1771, revised 1 January 2017](#)



18. Under the current system, legal aid is a professional obligation on locally qualified lawyers, with an oath to carry out this task on behalf of “*widows, the poverty stricken, orphans and undefended persons*”<sup>6</sup>.
19. The guidelines by which legal aid currently operates are determined by the Law Society of Jersey. However, the Courts consider they have the jurisdiction to require the Bâtonnier to ensure litigants or defendants are legally represented if the justice of the case requires, regardless of the guidelines<sup>7</sup>.
20. The Law Society of Jersey is a statutory body and the guidelines form a Code of Conduct Obligation, which are enforceable by way of the Law Society’s statutory Disciplinary Committee.
21. All Jersey lawyers of fewer than 15 years’ call who are in private practice are required to participate in the legal aid scheme (although advocates and solicitors within the Law Officers’ Department or Judicial Greffe are exempted from participation).
22. The existing scheme is administered in accordance with the “*Tour de Rôle*”, a list of participating lawyers to whom legal aid work is allocated in rotation. The scheme is currently the responsibility of the Bâtonnier, on behalf of the legal profession.
23. The Bâtonnier nominates an Acting Bâtonnier, whose responsibility is to administer the legal aid scheme. In addition, the Acting Bâtonnier’s office is responsible for maintaining the rota system for providing legal advice to individuals who are detained at Police Headquarters or Customs & Immigration and to individuals at the Magistrate’s Court, Youth Court and Citizens’ Advice Jersey.
24. Each rota allows the participating lawyer to obtain ‘credits’, which allows them to ‘miss’ a certificate in return for the work undertaken on one of the rotas.
25. The draft law would therefore place the legal aid scheme on a statutory basis.

**FINDING 1** – The Draft Access to Justice Law places the legal aid system on a statutory basis.

**FINDING 2** – Under the draft legal aid guidelines, Public Law legal aid (i.e. for criminal cases) will move from being funded by the legal profession to being funded by the States.

**FINDING 3** – Under the draft legal aid guidelines, Criminal Law legal aid would be handled by a Criminal Law Panel.

## Guidelines

26. The draft law itself does not create any direct public resource or manpower implications. However, it does enable Guidelines to be decided upon in due course, which would have resource implications.
27. The Panel understands that the Guidelines appended to the draft law will form the likely starting point for the new scheme. However, the Panel notes the Bailiff’s

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<sup>6</sup> [Code of 1771, revised 1 January 2017](#)

<sup>7</sup> [Public Hearing with the Bailiff, pp. 3 - 4](#)

comments that they should not be seen as a blueprint<sup>8</sup>. It is likely that further detailed work will need to be undertaken by the Guidelines Committee before a final set of Guidelines is agreed upon.

28. Furthermore, the States Assembly may annul the Legal Aid Guidelines if it chooses to through Article 7 of the draft law<sup>9</sup>. The Minister may also revise and revoke any Legal Aid Guidelines<sup>10</sup>.

**FINDING 4** – The guidelines that would set out the eligibility criteria and similar matters for the receipt of legal aid do not form part of the draft law and would be published at a later stage. A set of draft guidelines is appended to the draft law.

## Background to Reform

29. The Chief Minister lodged a proposal in 2013 ([P.158/2013](#)) to undertake a review of access to justice in Jersey, which was unanimously approved by the States Assembly in January 2014.
30. An Advisory Panel was subsequently established, chaired by then-Senator P.F. Routier and comprising of Senator L.J. Farnham, former Connétable J. Gallichan of St. Mary, and Deputies M. Tadier and J.H. Young of St Brelade.
31. Through a Ministerial Decision ([MD-C-2015-0009](#)), the Advisory Panel subsequently comprised Connétable D.W. Mezbourian of St. Lawrence, then-Deputy J.A. Hilton of St. Helier and Deputy M. Tadier of St. Brelade.
32. The Panel was supported by an expert group, chaired by the Chief Officer for Community and Constitutional Affairs and consisting of representatives from the Law Officers' Department, Judicial Greffe, Law Society of Jersey, Bâtonnier, Jersey Chamber of Commerce, Citizen's Advice Jersey, and the Jersey Consumer Council.
33. The evidence provided was summarised in the first *Access to Justice Review: Interim Report* ([R.107/2014](#)), which argued that whilst legal aid is only one component of access to justice, the existing system featured in many of the comments received for the review.
34. The evidence submitted highlighted various disadvantages of using a "Tour de Rôle" system to assign lawyers to legal aid cases, and the barriers to entry faced by new law firms as a result of the legal aid obligation.
35. A number of respondents suggested that it was a responsibility of the government to ensure access to justice and that the obligation to provide legal aid should rest more properly with the States.
36. It was further suggested that the administration of the legal aid system should be undertaken by the government, in order to ensure that the decisions being made would be in the public interest. The majority opinion was that the scheme needed to be modernised in partnership with the Law Society.

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<sup>8</sup> [Public Hearing with The Bailiff, p. 18](#)

<sup>9</sup> [P.23/2019, p. 47](#)

<sup>10</sup> [P.23/2019, p. 47](#)

37. The Law Society undertook a public consultation regarding a revised legal aid scheme between May and June 2017, with the assistance of the Jersey Consumer Council and Citizen's Advice Jersey. The public consultation was supplemented by targeted consultation with the Courts, the Advisory Panel and others. Public Hearings were held by the Advisory Panel to take evidence from both the Law Society and from consumer bodies. These consultations informed the development of a revised scheme.
38. A total of 25 written public submissions were received by the Access to Justice Review, and were published on the [gov.je website](http://gov.je) between 2013 and 2016<sup>11</sup>. The Panel noted that that this was relatively few for a review of this scope.
39. An Extraordinary General Meeting of the Law Society was held on 12th September 2017, at which it is understood that members agreed with the revised scheme. They also authorised the Law Society Committee to agree further minor changes to the scheme, to support the development of legislation to underpin it, and to agree the format and content of the subsequent guidelines<sup>12</sup>.
40. Subsequent discussions conducted through the expert group and advisory panel resulted in a further revised scheme, considered to provide a broadly satisfactory basis on which to proceed (details of the draft further revised scheme were included as Appendix 2 to the Report in [P.50/2018](#)), as well as being comparable with schemes in Guernsey and the Isle of Man<sup>13</sup>.
41. The Council of Ministers considered this further revised scheme in October 2017 and it was agreed that it should continue to be progressed, with the scheme put on a statutory basis and other required legislative changes advanced.
42. The then Chief Minister lodged the original Draft Access to Justice (Jersey) Law ([P.50/2018](#)) in February 2018.
43. The draft law's report notes that, due to the number of propositions which were listed for debate at the March and April States Sittings, it was not possible for the draft law to be debated prior to the General Election in May.
44. Following the election of a new Chief Minister in June 2018, the draft law was again deferred to allow time for the Chief Minister to be briefed on the proposals. P.50/2018 was subsequently withdrawn under Standing Order 34(2).
45. Prior to re-lodging, the Chief Minister requested that the draft law be considered by the Council of Ministers. The Legal Aid Review Panel also commenced a review of the draft law and the proposed revised scheme on 30th August 2018. This review was commenced in anticipation of the draft law being re-lodged in due course.
46. The latest version of the draft law, [P.23/2019](#), was lodged by the Chief Minister on 25th February 2019.

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<sup>11</sup> [R.85/2016, p. 6](#)

<sup>12</sup> [P.23/2019, p. 6](#)

<sup>13</sup> [P.23/2019, p. 7](#)

## The Panel's Work

47. The Legal Aid Review Panel was subsequently established in August 2018 and, in early discussions with the Chief Minister, suggested areas of the draft law which might need to be amended. These were:
  - a. The addition of 2 States Members, nominated by the States, to the membership of the Legal Aid Guidelines Advisory Committee.
  - b. Increasing the quorum for meetings of the Committee from 5 to 7 members and a requirement for reports of the Committee to be signed by no fewer than 7 members; and
  - c. Introducing a procedure for the Minister to lay the Legal Aid Guidelines, or any revisions to the Guidelines, before the States for at least a 4-week period before they can be made and published. As a part of this process, a States member will be able to lodge a Proposition during this 4-week period requesting that the initial Guidelines, or any amendments, are annulled.
48. Following discussions and correspondence between the Chief Minister and the Law Society, it was agreed to include a requirement under Article 6(9) for the Advisory Committee to provide a report to the Chief Minister no later than 6 months after its establishment; and
49. Following discussions between Officers and the Chief Minister, it was agreed that interim reports submitted under Article 15(3) will be presented to the States.
50. Revisions have also been made to Article 17 to widen the power of the Assembly to amend the Law by Regulations, although this was not a panel suggestion. This provides the States with the ability by regulations to make any provision as it sees fit to carry the Draft Law into effect. This includes providing for recovery of the amount paid or awarded for legal aid<sup>14</sup>.
51. An amended version of P.50/2018 was considered by the Council of Ministers on 17th October 2018. The Council agreed, by a majority vote, that the draft law as amended, could be re-lodged by the Chief Minister. The report accompanying the proposition notes that the current Council of Ministers has not discussed in detail the draft revised Scheme that was attached as Appendix 2 to the report within P.50/2018; and is again attached as Appendix 2 to the report accompanying the draft law<sup>15</sup>. The draft revised Scheme will be presented to the Legal Aid Guidelines Committee to consider as part of its work in drawing up a new legal aid scheme.

**FINDING 5** – The draft law was changed prior to lodging to incorporate feedback provided by the Panel, to ensure that States members will be involved in drawing up the Legal Aid Guidelines and that the Guidelines must be laid before the Assembly before coming into force.

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<sup>14</sup> [P.23/2019, p. 51](#)

<sup>15</sup> [P.23/2019, p. 8](#)

## Oversight

52. Under the draft law, the oversight of the legal aid system would become the democratic responsibility of the Chief Minister, in his capacity as the Island's Justice Minister.
53. The administration of the legal aid scheme would be the responsibility of the Judicial Greffier.
54. The Judicial Greffier would be able to entrust any part of the administration of the scheme to the Law Society and others as deemed appropriate.
55. The legal aid system would be subject to review by the Comptroller & Auditor General, and would be subject to Freedom of Information legislation.
56. The Judicial Greffier would be required to prepare an annual report in respect of the Scheme, which the Chief Minister must then present to the States Assembly.

**FINDING 6** – Responsibility for administering the legal aid system would move from the legal profession to the Judicial Greffier.

## Legal Aid Guidelines Committee

57. The draft law is an enabling law, which establishes the legal aid scheme and makes changes to the way it is funded and reviewed. It does not introduce a new legal aid system in itself.
58. The way that legal aid is provided and the means of qualification would be established by a Legal Aid Guidelines Committee.
59. If the draft law is adopted by the States Assembly, it will require an Appointed Day Act to be brought into force<sup>16</sup>.
60. The Committee would consider the revised draft scheme (Appendix 2) and, having consulted appropriately, would then advise the Chief Minister regarding the Guidelines for the new scheme. However, the Committee would first be required to consult the Bailiff and Magistrate, and any other such persons it considers appropriate.
61. If approved, Article 6 (9) of the draft law requires the Committee to report, for the purpose of assisting the Minister to make the Guidelines, no later than 6 months after being established. This is an effort to provide some timeframe within which the Committee reports to the Minister. Ideally, it will report with a final recommendation. However, the Committee is not obliged to have completed the recommended Guidelines within 6 months. The Report may, therefore, be published to provide an update on the deliberations of the Committee and its progress after 6 months.
62. The Chief Minister would then be accountable to the Assembly and to the Public for the Island's Legal Aid Guidelines. The Judicial Greffier would be accountable to the Assembly for the use of public resources and the administration of the Scheme. The Chief Minister must accept some accountability for the allocation of public resources in this respect. Accountability would likely reside both with Scrutiny and the wider Assembly.

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<sup>16</sup> [P.23/2019, p. 4](#)

63. Under Article 5 of the draft law, where a function is entrusted to the Law Society under Article 4 (2) of the draft law (including the entrustment of any part of the administration of the Legal Aid Scheme, excluding the responsibility for meeting payments<sup>17</sup>), the Law Society shall, to the extent of those functions, be classified as a States aided independent body for the purposes of Article 14 of the [Comptroller and Auditor General \(Jersey\) Law 2014](#)<sup>18</sup>. This grants the Comptroller and Auditor General the power to audit accounts and make a report on relevant matters<sup>19</sup>.
64. The Committee would be chaired by the Judicial Greffier, who would also serve as a member of the Legal Aid Guidelines Committee.
65. The Committee would consist of 12 members, with a quorum of no fewer than 5. All reports would have to be signed by not fewer than 7 members of the Committee<sup>20</sup>. It could for the conduct of business, adjourn and otherwise regulate procedures as it saw fit. Under the draft law, its membership would consist of:
- a. The Judicial Greffier;
  - b. The Attorney General, or a person nominated by the Attorney General;
  - c. The most senior officer of the Magistrate's Court, or a person nominated by that senior officer;
    - i. During the Panel's public hearing with the Chief Minister, the Policy Principal clarified that this "*most senior officer*" would be the Magistrate's Court Greffier and not the Magistrate<sup>21</sup>.
  - d. The Bâtonnier, or a person nominated by the Bâtonnier;
  - e. The President of the Law Society or a person nominated by the President;
  - f. The Chief Executive Officer of the Law Society, or a person nominated by the Chief Executive Officer;
  - g. Two persons nominated by the Bailiff;
    - i. During a public hearing with the Panel, the Bailiff revealed that the two people he intended to nominate were the Master of the Royal Court and the Assistant Magistrate<sup>22</sup>.
  - h. Two other persons nominated by the Chief Minister; and
    - i. During a public hearing with the Panel, the Chief Minister clarified that his choices were "*not necessarily going to be the legal equivalent of the representative from the I.o.D. (Institute of Directors), for the sake of argument. I think it is trying to find people who will give a balance, ideally*

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<sup>17</sup> [P.23/2019, p. 42](#)

<sup>18</sup> [P.23/2019, p. 43](#)

<sup>19</sup> [L.25/2014](#)

<sup>20</sup> [P.23/2019, p. 43](#)

<sup>21</sup> [Public Hearing with the Magistrate. p. 11](#)

<sup>22</sup> [Public Hearing with the Bailiff, p. 5](#)



*will have had some experience of this but are also renowned as well for having a reasonably independent mind, if that makes sense*<sup>23</sup>.

- ii. He further noted that there were already *“two individuals we had in mind. I think one we may have to change our view on that, so I do not want to name anybody today”*<sup>24</sup>.

- i. Two elected members of the States Assembly.

66. The Panel understands that the Judicial Greffier must be consulted before a person is nominated to the Committee<sup>25</sup>.

67. There are no set limits of duration in office, and a person nominated to the Committee has their length of service specified by the person who has nominated them.

68. The States, by regulation, may amend the members of the Committee.

**FINDING 7** – A Legal Aid Guidelines Committee will be set up to prepare the detailed legal aid scheme, to include which areas of law are covered by legal aid and establish the eligibility criteria.

**FINDING 8** – The Legal Aid Guidelines Committee will have to report back to the Chief Minister within 6 months of the Law coming into force.

## Criminal Law Panel

69. As agreed through discussions within the Expert Group on the revised scheme, a new Criminal Law Panel would be formed of specialist legal practitioners, if the draft law is adopted. This will form the basis for a criminal bar, which will only apply for instances of Criminal Law. It has no impact on Civil Law, where a choice of lawyer is unavailable.

70. Payments to lawyers who are accredited members of this panel would be administered through a new legal aid office, under the supervision of the Law Society but ultimately accountable to the Judicial Greffier.

71. It is expected that this would address concerns expressed in earlier consultations regarding the use of the current *“Tour de Rôle”* system for criminal matters.

72. Representation in Public law cases (i.e. criminal, human rights) will be provided by accredited specialists.

73. As part of the package of proposed reforms, a Criminal Bar has been proposed to facilitate the opportunity for litigants to select a lawyer.

74. In his hearing with the Panel, the Bailiff noted that there had increasingly been a private criminal bar *“because of things like money laundering and the like”*<sup>26</sup>.

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<sup>23</sup> [Public Hearing with the Chief Minister, p. 12](#)

<sup>24</sup> [Public Hearing with the Chief Minister, p. 12](#)

<sup>25</sup> [P.23/2019, p. 35](#)

<sup>26</sup> [Public Hearing with the Bailiff, p. 23](#)

75. He further noted that *“these days the bar is more specialist because there are 300-and-something advocates and another 100-and-something solicitors and so there is much more specialism and the legal world has changed”*<sup>27</sup>.
76. This Bar is not listed explicitly within either the draft law or in the proposed Guidelines from the Law Society. It was clarified by the Secretary of the Law Society of Jersey during a public hearing that the criminal bar would allow those seeking legal aid to *“be able to choose their lawyer under what is proposed”*<sup>28</sup>.
77. During the public hearing, the President of the Law Society noted that the bar would allow for a greater level of expertise to become available for those seeking legal aid. He also noted that the bar would offer training *“to try and make a fairer playing field or level playing field”*<sup>29</sup>.
78. The Chief Executive Officer of the Law Society advised that 48 nominations had been received from 17 firms for membership of the specialist criminal panel. While it had been intended to undertake the training last autumn, the delay to the law being progressed resulted in the training being deferred. The Chief Executive Officer further clarified that training and accreditation would take place if the law was approved<sup>30</sup>.
79. During the public hearing with the Magistrate, it was noted that the proposed training would consist of a 2-day course.<sup>31</sup> The Magistrate commented *“I do not think a 2-day course makes you a criminal specialist if you are not already dealing in criminal law”*<sup>32</sup>. However, it is important to note that any lawyer who forms part of the criminal bar will have a level of experience in handling criminal matters, whereas through the current Tour de Role arrangement, someone can be allocated a lawyer who has no experience in criminal law at all.
80. Each signup is for a 3-year period, allowing this to become a window to *“adjust it, to fine-tune the scheme and see how it works”*<sup>33</sup>.
81. The Magistrate further noted that, if there is a *“very limited bar I do think you need some sort of safety net first of making sure you have enough lawyers and that you have enough lawyers of good experience and skills and that new lawyers are coming up and being trained”*<sup>34</sup>.
82. During his hearing with the Panel, the Chief Minister stated that he *“could not speak for that”*<sup>35</sup> when asked about the 2-day training.

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<sup>27</sup> [Public Hearing with the Bailiff, p. 23](#)

<sup>28</sup> [Public Hearing with the Law Society of Jersey, p. 11](#)

<sup>29</sup> [Public Hearing with the Law Society of Jersey, p. 12](#)

<sup>30</sup> [Public Hearing with the Law Society of Jersey, p. 20](#)

<sup>31</sup> [Public Hearing with the Law Society of Jersey, p. 24](#)

<sup>32</sup> [Public Hearing with the Law Society of Jersey, p. 24](#)

<sup>33</sup> [Public Hearing with the Law Society of Jersey, p. 25](#)

<sup>34</sup> [Public Hearing with the Magistrate, p.7](#)

<sup>35</sup> [Public Hearing with the Chief Minister, p. 31](#)

83. However, it was clarified that any accreditation gained as part of a lawyer's legal aid work (which would then allow them the option to decline future legal aid requests) would be provided by "somebody from the Minister [Ministry] of Justice"<sup>36</sup>.
84. During the Panel's hearing with the Chief Minister, the Panel made clear its concerns about the sustainability of the proposed Criminal Bar. It noted that there appeared to be a "3-year commitment but whether it would be financially viable to do it in the way that it is set up in terms of succession planning for those who are involved, whether they would remain involved"<sup>37</sup>.
85. A Government Official subsequently outlined the contingency if the proposed scheme started to fail and a reverse course was necessary:

*"If it was happening it would then be a matter for those big firms or those which lacked any criminal capacity themselves to be able to meet the obligations that would be placed on them by the Tour de Rôle being revived. There will be many ways in which they could do that, including bringing in people, a legal aid department at short notice, including paying smaller firms in order to cover their obligations, which is what they often do at the moment, or fronting up and doing it themselves. The obligation would be on them to do it. Obviously, if there was to be a reversal it would be easier to do with a month or 2 of notice but if there was no criminal bar, for example, then that option would have to be used because there would be nothing else."<sup>38</sup>*

*They set up the Public Law Children's Panel and the Public Law Children's Scheme some years ago and the way in which they did that originally did not work terribly well because essentially it was done by bidding and it incentivised under-bidding and it often pushed some of the better lawyers out of the process. When that dynamic was spotted this scheme was revised. Although the ultimate weapon for putting things back on an even keel is to revert to the Tour de Rôle, what should happen is that if there are problems with the working of the current scheme, such that the good lawyers are drifting off and are ceasing to have a sufficient critical mass of criminal lawyers to run legal aid then that should be seen and the scheme revised as it goes along, just as has happened with the Public Law Children's. There are many things a well-run legal aid scheme would hopefully do before you get to the ultimate crisis point"<sup>39</sup>.*

**FINDING 9** – The creation of a Criminal Law Panel will provide a "Criminal Bar" for Jersey of specialist practitioners. Members of the Criminal Law Panel will receive training. However, there are concerns about the sustainability of this model and the adequacy of the training.

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<sup>36</sup> [Public Hearing with the Chief Minister, p. 32](#)

<sup>37</sup> [Public Hearing with the Chief Minister, p. 4 - 5](#)

<sup>38</sup> [Public Hearing with the Chief Minister, p. 4](#)

<sup>39</sup> [Public Hearing with the Chief Minister, p. 5](#)

## Eligibility Criteria

86. A proposed scheme for a new legal aid system is included alongside the draft law to give an indication of what might be brought forward if the draft law is adopted. This has been developed by an expert committee including representatives of the Law Society of Jersey and the States of Jersey. The proposed scheme will **NOT** be brought into effect if the draft Law is adopted, but will be subject to further consultation by the Legal Aid Guidelines Advisory Committee upon its establishment. The Committee will then recommend a scheme to the Chief Minister who will lay it before the States Assembly for 4 weeks before it comes into effect. There is also a requirement to seek representations from the public.
87. Legal aid will be categorised as either Public Law or Private Law. Public Law covers Criminal, Human Rights, Public Law Children, and Mental Health matters. Private Law covers Family and Civil matters.
88. The proposed scheme would allow those in receipt of legal aid for criminal cases to have access to representation from a specialist panel of lawyers. The system for civil cases will not change.
89. All legal aid applications (with the exception of Youth Court, Public Children Law Proceedings, and Mental Health Review Tribunal Representation) will be subject to the application of eligibility criteria:
  - a. Public Law (Criminal) – Financial means test\* and nature of criminal offence;
  - b. Public Law (Human Rights) – Financial means test\* and nature/merits of claim;
  - c. Private Law – Financial means test\* and residency & area of Law

\*other than where the applicant is in receipt of Income Support
90. Applications for legal aid in respect of human rights claims and matters will be assessed to determine whether the claim represents a legitimate human rights claim or entitlement and the merits of such a claim, such as to warrant the issue of a legal aid certificate. A limited number of certificates may be used to enable the merits of a claim to be assessed before a claim proceeds. No residency test will be applied.

**FINDING 10** – Legal aid will be categorised as either Public Law (Criminal), Public Law (Human Rights) or Private Law.

## Youth Court

91. In a letter to the Law Society that was subsequently sent to the Panel, Magistrate Bridget Shaw expressed concerns over the original draft law's exemption of Youths (under 18s) from the offence criteria, and the lack of guidelines surrounding youths. In turn, she noted that it was *"almost inconceivable that any child or young person would face a fine of £2,000 or more"*<sup>40</sup>.

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<sup>40</sup> [Public Hearing with the Magistrate, p. 3](#)

92. The 2019 version of the draft law includes changes that rectifies the exemption, and includes the Youth Court within the proposed guidelines. This includes no personal contributions to be levied in relation to representation within the Youth Court, or in respect of public law children or mental health matters<sup>41</sup>.
93. The Magistrate noted these changes and confirmed that she was “*very pleased to see a change from an earlier draft I saw*”<sup>42</sup>.

**FINDING 11** – The draft law has been changed from previous versions, to ensure that young people will automatically qualify for legal aid in relation to matters dealt with by the Youth Court or in respect of public law children and mental health matters.

## Powers of the Magistrate

94. In the Panel’s hearing with the Magistrate, it was noted that she was currently able to provide a litigant with legal aid if she deemed it appropriate.
95. She noted that a recent example of this came from a litigant who was proving difficult<sup>43</sup>, noting that “*it was a struggle just to get him to understand what was being said to him and why we were here*”<sup>44</sup>, and that, after he had been provided with a lawyer, they “*managed to deal with him but he would have been a very difficult person for the court to deal with him and pleaded not guilty and create more trials if the people do not have legal representation and then the trials that are created are longer and more difficult to manage because a lawyer is not involved*”<sup>45</sup>.
96. However, the draft scheme guidelines remove any discretion to grant legal aid outside of the eligibility criteria. The draft law also repeals Article 23 of the Magistrate’s Court (Miscellaneous Provisions) (Jersey) Law 1949, where a person may make an application to the Magistrate for free legal aid if they do not possess the sufficient means to obtain legal aid for the purpose they seek<sup>46</sup>.
97. However, it should be noted that the Criminal Procedure Law 2018, which was approved by the States Assembly in March 2018 but has not yet come into force, will repeal the 1949 Law in its entirety under Article 118 (listed in Schedule 5).
98. Under the existing Legal Aid Scheme, the Bâtonnier can exercise a discretion to grant legal aid outwith the guidelines of the scheme where necessary. Such a request can be made by the Magistrate to the Bâtonnier if a case requiring legal aid arose in court but it would be an exercise of the Bâtonnier’s discretion to grant legal aid. The Magistrate has no such power to provide for legal aid.
99. Furthermore, Article 4 (4) of the draft law provides the Judicial Greffier with the ability to, “*in exceptional circumstances, provide legal aid to any person where the interests*

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<sup>41</sup> [p.23/2019, p. 16](#)

<sup>42</sup> [Public Hearing with the Magistrate, p. 3](#)

<sup>43</sup> [Public Hearing with the Magistrate, p. 6](#)

<sup>44</sup> [Public Hearing with the Magistrate, p. 6](#)

<sup>45</sup> [Public Hearing with the Magistrate, p. 6](#)

<sup>46</sup> [Magistrate’s Court \(Miscellaneous Provisions\) \(Jersey\) Law 1949](#)

*of justice requires it*<sup>47</sup>. However, the Magistrate suggested to the Panel that the inclusion “*exceptional circumstances*” made this a high bar that would not cover the cases she envisaged.

**FINDING 12** – The draft law removes the Magistrate’s power to provide litigants in certain cases with legal aid through the provision of a legal aid certificate. The draft guidelines also remove any discretion to grant legal aid outside the eligibility criteria.

**FINDING 13** – The Magistrate raised concerns about the absence of a “safety net” to grant legal aid outside of the criteria set out in the draft guidelines.

**RECOMMENDATION 1** - The draft law and the proposed guidelines do not provide adequate discretion for the Judicial Greffier or the Magistrate to grant legal aid where the circumstances require it. The Chief Minister should ensure that such discretion is provided for in the Legal Aid Scheme when it is published.

## Fee Criteria

### Current System

100. As discussed, under the current scheme, both criminal and civil cases are funded entirely by the legal profession and administered by the Bâtonnier, the head of the Island’s legal profession.

101. Currently, the Bâtonnier assesses each case on its own, in line with the eligibility criteria established by the 2010 Guidelines as laid out by the Law Society of Jersey.

102. Households applying for legal aid are thus subject to the following financial criteria:

- a. If a household possesses disposable capital over £15,000, then they will not qualify for legal aid;
- b. If disposable capital is under £15,000, but gross household income is over £45,000 per annum, then they will not qualify for legal aid;
- c. An income of more than £45,000 means that litigants are liable to pay up to 100% of fees;
  - i. £35,000 - £45,000 – liable to pay up to 75% of fees;
  - ii. £25,000 - £35,000 – liable to pay up to 50% of fees;
  - iii. £15,000 - £25,000 – liable to pay up to 25% of fees;
  - iv. Less than £15,000 – no liability;

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<sup>47</sup> [P.23/2019, p. 42](#)



- v. £2,100 will be deducted from the total if the person lives with another adult; and
  - vi. £2,900 will be deducted per child where the child lives with the person more than 50% of the time.
- d. A person in receipt of legal aid is assigned a lawyer from the Tour de Rôle system (lawyers that have practiced for less than 15 years are automatically assigned onto the system).
- e. If a privately paying defendant is acquitted of a criminal offence, they are eligible to have their defence costs fully reimbursed.
- f. Where the amount outstanding by way of personal contribution is such that it could cause financial hardship to a legally aided client, then the outstanding amount or level of monthly payments may be reviewed and, if appropriate, reduced to an affordable level<sup>48</sup>.

## Proposed New System

103. Under the proposed guidelines, the following financial criteria would be established:

- a. Disposable capital of £15,000 and gross household income of £35,000 or above would mean that a household would not qualify for legal aid. There are no financial exemptions;
- b. £25,001 - £35,000 – liable to pay a 50% contribution to costs;
- c. £20,001 - £25,000 - liable to pay a 25% contribution to costs;
- d. £15,001 - £20,000 – liable to pay a 10% contribution to costs; and
- e. Under £15,000 – no contribution<sup>49</sup>.

104. The proposed scheme would allow those in receipt of legal aid for criminal cases to have access to representation from a specialist panel of lawyers. The system for civil cases will not change.

105. The duty lawyer and duty advocate schemes will be publically funded and taken from an accredited panel.

106. If a defendant is acquitted, they may only be able to receive back the costs that would have been paid under legal aid.

107. The Guidelines in Appendix 2 also carry an equity allowance of £100,000. If a household has an income as proposed under £35,000, that has capital of £15,000 but

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<sup>48</sup> [P.23/2019, p. 23](#)

<sup>49</sup> [P.23/2019, p. 24](#)

excluding £100,000 of equity in a property in Jersey, then they will still be eligible for legal aid<sup>50 51</sup>.

108. During the Panel's hearing with the Law Society of Jersey, the Law Society noted that they had difficulty defining a living allowance, because "*people see their household costs as all sorts of things, not just their basic needs.*"<sup>52</sup>

109. The Law Society also commented that "*they had seen very few people, in my experience, on an income of between £35,000 to £45,000 for a family case who actually do choose to have legal aid. Lots of people already opt to choose their lawyer because they want to go to an expert, not just be allocated anybody. Many law firms, as we do, make arrangements whereby they pay by instalments over a long period, they pay at the end*"<sup>53</sup>.

**FINDING 14** – The draft guidelines reduce the upper limit on eligibility from £45,000 household income currently to £35,000 household income. The draft guidelines also remove any allowances for living expenses.

**FINDING 15** – The Law Society considers that very few people in the £35,000 to £45,000 bracket currently choose legal aid for private law cases and that law firms make arrangements for payment by instalment.

**RECOMMENDATION 2** – In drawing up the new legal aid scheme, the Guidelines Committee should look at all options for determining eligibility for legal aid, in order to determine the fairest system possible. This might include changes to the proposed income thresholds to qualify for legal aid, or moving to a "Residual income" system as is the case in Guernsey.<sup>54</sup> The Chief Minister should also take account of this recommendation when considering the final version of the guidelines.

## Funding

110. The draft scheme features a public law legal aid scheme, primarily for criminal law, which would be funded by the public purse on a fixed fee basis, largely by re-deploying existing funds from the court and case costs budgets. This is to remove current budget volatility and provide improved budget forecasts<sup>55</sup>.

111. The draft law's report notes that, although this would be largely cost-neutral, there may be a need to underspend within existing heads of expenditure in the Judicial Greffe court and case costs budgets. This would usually be between £300 - 400,000<sup>56</sup>.

112. During the panel's public hearing with the Law Society of Jersey, the Chief Executive Officer noted that "*there is a considerable amount of the funding in the criminal*

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<sup>50</sup> [P.23/2019, p. 22](#)

<sup>51</sup> [Public Hearing with the Law Society of Jersey, p. 7](#)

<sup>52</sup> [Public Hearing with the Law Society of Jersey, p. 30](#)

<sup>53</sup> [Public Hearing with the Law Society of Jersey, p. 10](#)

<sup>54</sup> For further information on the Guernsey "Residual income" system, see:

<http://guernseyroyalcourt.gg/CHttpHandler.ashx?id=78075&p=0>

<sup>55</sup> [P.23/2019, p.9](#)

<sup>56</sup> [P.23/2019, p. 9](#)

[system] which is from the Court of Criminal Costs budget”, which will be recycled, with a total of around £400,000<sup>57</sup>.

113. Payment is already made from public funds for public law children and child abduction cases. These payments are made to accredited lawyers on a fixed price basis, leading to no additional budgetary implications.
114. The draft scheme proposes a fixed price approach in relation to criminal cases, extending the existing fixed price scope. Lawyers will therefore receive payment for all criminal work on a fixed fee basis.
115. As noted, where funding for legal aid is by way of public funds, the Judicial Greffier may, in accordance with the Legal Aid Guidelines, determine that such funding be subject to contributions by the individual provided with such legal aid.
116. Contributions recoverable from such an individual provided with legal aid shall be recovered as a civil debt by the Treasurer of the States.
117. The draft law determines that a determination by the Judicial Greffier of contributions and a certificate by the Judicial Greffier of amounts payable shall be sufficient evidence of the civil debt required.
118. Regulations will be proposed that would include a provision for the Court to award additional costs in cases of hardship.

**FINDING 16** – It is proposed that criminal legal aid in future will be funded through the re-use of existing funds from the court and case costs budgets.

## Acquittal Costs

119. In the event that a defendant is acquitted under the current law they are eligible to have their defence costs fully reimbursed provided the amount claimed is reasonable. The proposition’s report indicates that this will be changed in the future through separate Regulations under the Costs in Criminal Cases (Jersey) Law 1961, to be lodged in due course<sup>58</sup>, so that acquitted defendants can only reclaim costs up to the maximum they would have been entitled to under legal aid (also referred to on p19 of the draft scheme). The probability is that these costs will be set at a lower level than the amount which would be assessed as reasonable under the current arrangements<sup>59</sup>.
120. The Bailiff raised concerns about this in his public hearing with the Panel, arguing that *“I am not sure why it is fair for the state then to say to the acquitted defendant: “You are not going to get all your costs back because we only pay this to our public sector legal aid lawyers.” That seems to me to be unfair and I say that for all my Royal Court colleagues as well, as they have this view. That funding point is quite an important funding point”*<sup>60</sup>.
121. The Secretary of the Law Society of Jersey, during the Law Society’s public hearing, noted that the fixed fee system would still mean *“in virtually all criminal cases there will be a small cost that the law firm will still bear because it is swings and roundabouts*

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<sup>57</sup> [Public Hearing with the Law Society of Jersey, p.10](#)

<sup>58</sup> [P.23/2019, p. 9](#)

<sup>59</sup> [Public Hearing with the Bailiff, pp. 25 - 27](#)

<sup>60</sup> [Public Hearing with the Bailiff, p. 7](#)

*really. There are going to be a number of cases which far exceed the fixed fee. Some may be slightly less than the fixed fee*<sup>61</sup>.

122. At the public hearing with the Chief Minister, officers suggested that the savings that could be made from the proposed scheme would arrive through the introduction of fixed costs as opposed to open-ended costs for acquitted defendants<sup>62</sup>.

**FINDING 17** – Acquitted defendants are currently eligible to have their defence costs fully reimbursed.

**FINDING 18** - It is proposed that Regulations will be brought forward so that in the future acquitted defendants will only be able to claim reimbursement up to the level that would have been paid under legal aid. The Bailiff has raised concerns about this. As this matter will return to the Assembly in the future, the Panel makes no recommendations at this stage.

## Civil & Criminal Law Splits

123. Under the proposed scheme, the following areas of Criminal Law that are granted eligibility under the new guidelines are:

- Ancillary relief claims where there are dependent children;
- Child maintenance (including Schedule 1 claims) under [Matrimonial Causes \(Jersey\) Law 1949](#) or the [Children \(Jersey\) Law 2002](#);
- Child Maintenance claims where the applicant is on income support and has no other capital assets and no other income;
  - Such claims are outside the scope of Legal Aid and will be subject to separate arrangements being implemented with Social Security to process claims where there is a realistic prospect of success.
- Divorce/Judicial Separation/Civil Partnership/Nullity proceedings where there are dependent children;
  - Claims in relevant matters where there are no dependent children will be eligible in circumstances where a civil injunction has been granted and/or criminal prosecution has been instigated on the grounds of domestic abuse or violence;
  - 'Dependent child' is defined as a child up to the age of 16 or in full-time education (until the end of a first degree only).
- Residence and contact disputes, prohibited step orders, specific issue orders and removal from the jurisdiction under the [Children Law \(Jersey\) 2002](#) or the [Matrimonial Causes \(Jersey\) Law 1949](#) (the parties must have attended mediation except where there are reasonable grounds to suspect that mediation

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<sup>61</sup> [Public Hearing with the Law Society of Jersey, p.10](#)

<sup>62</sup> [Public Hearing with the Chief Minister, p. 19](#)

would not be appropriate due to domestic abuse);

- Injunctions, ex parte orders and ex-parte injunctions within the family law context where no criminal sanctions are being pursued by the police; and
- Appeals in family proceedings (where a Legal Aid certificate has been granted), subject to a favourable second opinion<sup>63</sup>.

124. Eligible Civil claims and proceedings consist of:

- Contractual disputes;
- Actions in tort;
- Professional negligence claims (other than in relation to medical negligence, which is dealt with separately);
- Bankruptcy/en Désastre (in relation to personal assets and where supported by the Viscount);
- Remise de bien proceedings;
- Eviction proceedings;
- Personal injury and Medical negligence claims;
  - Both must have had their claim assessed by a member of the Law Society Personal Injury and Medical Negligence Review Panel (referred on by the Legal Aid Office). Where a negative opinion on the prospects of success of the claim is given, an individual may apply for a second opinion under Private Legal Aid, subject to financial and residency criteria being met. Claims will not be considered under Private Legal Aid until and unless this assessment by a member of the Panel has been undertaken.
- Appeals in civil proceedings (where a Legal Aid certificate has been granted), subject to a favourable second opinion<sup>64</sup>.

125. Under the proposed Guidelines, certain Family Law claims would be ineligible. These include:

- a. Adoptions (other than freeing for adoption proceedings as part of Public Law Children proceedings);
- b. Ancillary relief claims (including divorce) and Separation Agreements where there are no dependent children or where a civil injunction has been granted and/or criminal prosecution has been instigated on the grounds of domestic abuse or violence.

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<sup>63</sup> [P.23/2019, pp. 18 - 19](#)

<sup>64</sup> [P.23/2019, p. 20](#)

- c. Enforcement of maintenance orders;
- d. Legitimacy (except where the claim is by a child); and
- e. Pre- or post-nuptial agreements<sup>65</sup>.

126. Certain Civil cases and proceedings would also be ineligible, including any non-contentious matters. These include:

- a. All appeals, save for where the case involves a substantive question of law and a Jersey qualified lawyer has provided a positive opinion on the merits;
- b. Corporate and Business matters;
- c. Curatorships;
- d. Corporate/Business matters, taxation, and debt-related issues;
- e. Property disputes;
- f. Discrimination & Employment Law and Tribunal Issues (excluding those related to the Mental Health Review Tribunal)
- g. Deed polls;
- h. Defamation/Libel/Slander;
- i. Powers of Attorney;
- j. Matters relating to wills (including succession planning and Probate); and
- k. Tutelles<sup>66</sup>.

127. In a hearing with the Panel, the Bailiff commented on the proposed financial criteria for Civil Legal Aid, arguing that:

*“It is really important that there is protection for those on lower incomes to have access to some legal advice before they launch civil proceedings, and that is usually where the problem comes because they feel a sense of grievance at what has happened to them and think that there must be a claim which they can bring in court, and sometimes there is and sometimes there is not. They need to have advice. So for my part I would make the financial eligibility as generous as possible. The other side of that argument of course is that lawyers need to be willing to do the work and there is a tension in reaching the right balance, and I think that is where the Guidelines Advisory Committee need to its work”<sup>67</sup>.*

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<sup>65</sup> [P.23/2019, p. 20](#)

<sup>66</sup> [P.23/2019, p. 21](#)

<sup>67</sup> [Public Hearing with the Chief Minister, p. 13](#)



128. The Bailiff also raised concerns surrounding the restriction of legal aid to cases where there are dependent children, stating that he thought it was *“very important that they do not do that and that is the point really I am making there. It emphasises why I hope that these guidelines are not going to be taken as a blueprint for what needs to be established by the Minister, following the new Guidelines Advisory Committee”*<sup>68</sup>.

129. In his letter to the Panel, the Bailiff voiced further concerns that *“litigants will be inclined to bring a claim of domestic violence in order to qualify for legal aid”*<sup>69</sup>.

130. He clarified his concerns during a public hearing with the Panel, specifying that;

*“Suppose it is not a divorce case, you have got 2 partners living together and one alleges the other one is violent to him or her, then you would want them to have legal aid in order to bring what we call ouster proceedings to get an order from the court to get the partner out of the home because they want to stop the violence taking place. But there needs to be a different eligibility criteria for legal aid will be if you are going through divorce, in which case you should not need to establish either that there are children or that there has been domestic violence”*<sup>70</sup>.

**FINDING 19** – A number of areas of Private Law/ Civil Law will not qualify for legal aid under the draft scheme guidelines, including certain divorce claims where there are no dependent children involved in the case.

**RECOMMENDATION 3** – The Legal Aid Guidelines Committee should carefully consider the construction of the Legal Aid Scheme and should not use the guidelines appended to the draft law as a blueprint.

## The Legal Aid Office

131. As agreed through discussions within the Expert Group on the revised scheme, a new legal aid office would be established, which would be ultimately overseen by the Judicial Greffe. A publicly funded fixed fee Duty Solicitor and Duty Advocate service would operate within the office to support those taken into custody or appearing before the Courts.

132. The draft law’s accompanying report suggests that the legal aid office and a publicly funded Duty Advocate and Duty Solicitor Scheme would require a net growth in revenue funding for the Judicial Greffe of around £400,000 per annum, based on a review of legal aid cases in recent years. It is expected that this net growth in public funding would be requested from contingencies for 2018 and 2019; and would become a revenue growth funding consideration as part of the next Medium Term Financial Plan, covering 2020 onwards<sup>71</sup>.

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<sup>68</sup> [Public Hearing with the Bailiff, p. 18](#)

<sup>69</sup> [Public Hearing with the Bailiff, p. 20](#)

<sup>70</sup> [Public Hearing with the Bailiff, p. 20](#)

<sup>71</sup> [p.23/2019, p. 10](#)

133. Funding of £150,000 to £160,000 (from contingencies) for the legal aid office only (not the fixed fee Duty Solicitor and Duty Advocate services) has been agreed for 2019<sup>72</sup>.
134. It was clarified in a hearing with the Law Society of Jersey that the cost of the legal aid office itself would be between £220,000 and £230,000 per annum. This is made up of the existing annual contribution of £71,000 made by the Judicial Greffe towards the administration of the legal aid system, and £150,000 - £160,000 additional funding.
135. In the hearing with the Chief Minister, it was confirmed that the remaining balance out of the total £400,000 of funding would be used to publicly fund the duty lawyer and duty advocate schemes at the Magistrates' Court<sup>73</sup>.
136. During the Panel's hearing with Law Society of Jersey, the Chief Executive Officer told the Panel that legal aid currently costs the profession "*in excess of £7 million a year*"<sup>74</sup>. This cost was calculated through a survey of firms, which established that over 45,000 of free hours and reduced costs of legal aid was provided by lawyers in the space of one year.

**FINDING 20** – A new legal aid office would be established, which would be ultimately overseen by the Judicial Greffe. A publicly funded fixed fee Duty Solicitor and Duty Advocate service would operate within the office to support those taken into custody or taken before the Courts.

**FINDING 21** – The legal aid office and Duty Solicitor/Duty Advocate Scheme will require additional funding of around £400,000 per year.

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<sup>72</sup> [P.23/2019, p. 10](#)

<sup>73</sup> [Public Hearing with the Chief Minister, p. 18](#)

<sup>74</sup> [Public Hearing with the Law Society of Jersey, p. 9](#)

## Appendix

### Legal Aid Review Scrutiny Panel

Deputy Steve Ahier, St. Helier No. 3 –  
Chairman



Deputy David Johnson, St. Mary



Connétable Richard Vibert, St. Peter



Deputy Robert Ward, St. Helier No. 2



## Terms of Reference

1. What changes are being proposed to Jersey's legal aid system through the draft Access to Justice Law?
2. What is the rationale for the proposed changes?
3. Will the changes improve the legal aid system for:
  - a. Service users
  - b. The States
  - c. The legal profession
4. Does the draft Access to Justice Law implement the desired policy objectives effectively?
5. Are there any other areas of concern or issues that need to be considered in relation to the draft Access to Justice Law?

## Public Hearings

The Panel held four public hearings as part of the review:

- Public Hearing with the Bailiff of Jersey on [3rd April 2019](#);
- Public Hearing with the Law Society of Jersey on [4th April 2019](#);
- Public Hearing with Magistrate Bridget Shaw on [5th April 2019](#);
- Public Hearing with the Chief Minister on [5th April 2019](#).

Transcripts for the public hearings can be accessed via the States Assembly [website](#).

Webcasts for the public hearings can be accessed via the [States Assembly webcast site](#).

## Evidence Considered

The Panel received evidence from a number of public stakeholders. A full list can be found below, with links to their submissions. All submissions were published on our [website](#):

- [Bâtonnier D Cadin](#) – September 2018
- [Law Society of Jersey](#) – September 2018
- [Jersey Consumer Council](#) – September 2018
- [The Bailiff of Jersey](#) – September 2018
- [Citizens Advice Jersey](#) – September 2018
- [Guy de Faye](#) – September 2018
- [Ron Treby](#) – March 2019
- [Tony Steel](#) – April 2019

## Glossary

**Acting Bâtonnier** – The individual, nominated by the Bâtonnier, whose responsibility it is to administer the legal aid scheme.

**Bailiff** – The Chief Judge and President of the Royal Court.

**Bâtonnier** – The name given to the lawyer who runs the Legal Aid scheme.

**Credits** – A lawyer practicing legal aid may obtain credits through this work that will allow them to ‘miss’ a certificate in return for the work undertaken on one of the rotas.

**Criminal Law** – The part of the law that relates to crime.

**Criminal Law Panel** – The proposed replacement to the current Tour de *Rôle* system for criminal law. This would be formed of specialist legal practitioners.

**Désastre** – The most common form of insolvency procedure, initiated by the debtor or a creditor having a liquidated claim. The debtor’s assets automatically vest in the Viscount.

**Duty Advocate** – A lawyer voluntarily present at Court to advise first-time offenders on where your liberty, or employment, is at serious risk.

**Duty Lawyer/Solicitor** – A lawyer available to give advice during out-of-office hours, such as at the Police Station. They are free of charge to use and independent of the police.

**Guidelines** – An enforceable obligation that governs the way the Legal Aid Scheme is administered.

**Judicial Greffe** – The body that supports the effective operation of the courts and tribunals in Jersey.

**Judicial Greffier** – The chief clerk of the Island’s Courts, who is responsible for court infrastructure and its administration.

**Jurats** - Justices of the Royal Court who sit with the Bailiff, Deputy Bailiff or Commissioners and who determine questions of fact, and, in criminal cases, sentence.

**The Law Society of Jersey** – The governing body of lawyers practicing as Advocates and Solicitors of the Royal Court of Jersey.

**Legal Aid** – A service provided by the legal profession under which people who cannot afford a lawyer or are unable to obtain one can do so. It is granted to individuals who cannot afford to pay the full cost of legal representation, and who need that representation.

**Legal Aid Guidelines Committee** – The body outlined in the draft law that would advise the Chief Minister in making the Legal Aid Guidelines.

**The Magistrate** – The person of legal qualification who presides over the Magistrate’s Court and imposes sentences.

**Magistrate’s Court** – Deals with cases involving traffic offences, assaults and petty (small) thefts. It also hears committal evidence in more serious cases (i.e. the court hears evidence to decide if the case is serious enough to go the Royal Court to be heard).

**The ‘Petty’ Debts Court** – Hears cases involving claims for sums of money of £30,000 or less.

**Plaintiff** – The name given to the party making a claim in the Jersey Courts.

**Private Law** – The part of the law that governs relationships between individuals. This includes the law of contracts, laws of obligation, and family law.

**Public Law** – The part of the law that governs relationships between individuals and the government, and those relationship between individuals who are of direct to concern to society. This includes constitutional law, administrative law, tax law, and criminal law, as well as all procedural law.

**Remise de bien (Handing over property)** – A privilege given to a debtor who is in financial difficulties in exchange for which they give up all of their property and rights and agree to act only in accordance with the advice of two Jurats.

**Royal Court** – Administers both the civil and the criminal law in Jersey.

**Tour de Rôle (According to one's turn)** - The system whereby Jersey Advocates and Solicitors are obliged to take on clients appointed on a rota basis for 15 years following their qualification.

**Viscount** – The Chief Executive Officer of the Island's courts and the States of Jersey. This includes the execution of orders, serving summonses, and other legal documents on members of the public and making wage arrests, alongside other court enforcement duties.

**Youth Court** – A Magistrate's Court specially constituted for the purpose of hearing charges against children and young persons under 18 years of age. It also deals with certain specific matters, such as applications concerning secure accommodation.





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