



Royal Court of Jersey
Judicial Greffe

Your Ref:
Our Ref: AJC/dmd

23rd September 2019

Deputy R Ward
Chairman Education and Home Affairs Scrutiny Panel
Scrutiny Office
Morier House
St Helier
JE1 1DD

Dear Deputy Ward

Government Plan

I refer to your letter dated 4th September 2019 in which the Panel seek “*further details*” on the proposals set out in the Government Plan for the funding of the Legal Aid Office.

By way of background, the Draft Access to Justice (Jersey) Law 201- (“the Law”), approved by the States earlier in 2019 and awaiting Royal Assent, provided for both the creation of a statutory Legal Aid Scheme and for the responsibility to administer the same to be transferred to the Judicial Greffier. This constituted the end for the present administration of the scheme which had been run for some considerable time by the Law Society.

Article 5(1) of the Law states:

“The States shall ensure that the Judicial Greffier is provided with sufficient resources for the purpose of meeting payments under the Legal Aid Scheme”

Whilst it is fair to say that the primary purpose of this provision is to ensure that payments can be made under the Legal Aid Scheme to lawyers acting under appropriately issued Legal Aid Certificates, the administration of the Legal Aid Scheme requires the provision of a Legal Aid Office. This in turn needs to be funded. It is from that office that all applications for Legal Aid will be received, reviewed and processed and all payments, including those for Duty Advocate (at the Magistrate’s Court) and Duty Lawyer (at the Police Headquarters and Customs), will be processed.

The Office commenced operation in October 2018 and by February 2019 was fully functioning in its new location. The Law Society presently employ 2 full time members of staff (a Manager and an Administrator) to undertake its duties. It is anticipated that a third member of administrative staff will be required. The appointment of that third member has been postponed until the funding of the office has been approved by the States within the Government Plan, although it has been necessary to engage temporary staff to cover standard absences.

Indicative costs for the years 2020-2023 start at £400k rising by estimated 3% cost of living year on year to £437k in 2023.



INVESTOR IN PEOPLE

Royal Court House, Royal Square, St Helier, Jersey JE1 1JG
Telephone: +44 (0) 1534 441300 Facsimile: +44 (0) 1534 441399
Email: jgreffe@gov.je Websites: www.gov.je and www.jerseylegalinfo.je

A Department of the Jersey Court Service

Calculation of expenses:-

The following is a calculation of the estimated annual costs for the running of the Legal Aid Office. It should be noted that certain of the costs (denoted with an *) are limited at 2/3 of the actual cost which recognises the than the Law Society are utilising a proportion of the asset for their benefit separately from the administration of the Legal Aid Scheme.

Expense Item	Annual cost
<u>Staff costs:</u>	
to include LA Manager and 2 x LA Administrators (total 3 F.T.E.)	£127,700
Social Security contributions for LA staff	£ 8,000
<u>Rental (*)</u>	
The Law Society entered into an assignment of lease in September 2018 for 9 years at an initial rental of £27,000 per annum. On 1 st September, 2019, a new 9 year lease was executed at £29,092 per annum. In addition, there is an annual maintenance charge of £1,000.00	£20,000 (*)
<u>IT costs</u>	
Operating licenses through Microsoft at £2,500	
Ongoing IT support through Prosperity 24/7 Limited at £15,000	
Hardware additions and replacement £1,000	£18,500
<u>Website costs for www.legalaid.je</u>	
Development and maintenance through The Potting Shed Limited	£5,000
<u>Operating costs (to include):</u>	
Telephone	
Printing	
Stationery	
Cleaning and	
Building repairs (including cost for periodic replacement of carpet)	£13,000
Sub total	£192,200
Built in contingencies for unexpected expenditure at 5% of estimated budgeted expense.	£9,600
Sub total A	£201,800

Note: The Duty Schemes are presently unfunded and participating lawyers are rewarded with credits in the Legal Aid Scheme. Under the proposals put forward by the Law Society as an annex to the Draft Access to Justice (Jersey) Law 201-, it was proposed that these schemes be funded by the payment of a fixed payment to the lawyer for each activity within the scheme. The figures below are the best estimate of the number of likely payments in a given year based on previous data. The Judicial Greffe has worked alongside the Law Society to provide this information.

For the purpose of budgeting, it must therefore be noted that until the Legal Aid Guidelines Advisory Committee conclude its report to the Chief Minister (including the fixed fee to be paid to participating lawyers in either of the Schemes) and the States approve a final Legal Aid Scheme, the costs incurred in Duty Schemes could be subject to change.

Duty Advocate Scheme at Magistrates Court:

This scheme provides for the provision of legal representation for those without retained lawyers who appear before the Magistrates Court. Costs are calculated as follows:

6 x slots per week in Magistrate's Court (2 on Monday and 1 for each of Tuesday to Friday)

Each slot is proposed to be paid £400

6 x 52 x £400 = £124,800

£124,800

1 x weekly slot in the Youth Court:

52 x £400 = £20,800

£20,800

1 x reserve slot in the Magistrate's Court (called upon when the number of defendants reached a critical number on any given day)

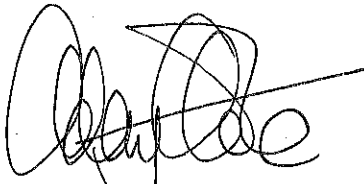
52 x £400 = £20,800 The implementation of the new Bail Law will increase the incidences of Saturday and Bank Holiday Court. These are paid at double rate. Allowing for 10 per annum:	£20,800
10 x £800 = £8,000	£8,000
Total	£174,400
<u>Duty Lawyers at the Police or Customs</u>	
The Scheme to provide for legal advice and representation for those held at Police or Customs.	
Lawyers on this scheme are on duty for a week at a time. Presently, such participating lawyers receive credits in the Legal Aid Scheme. Under the new proposals it is intended that they would be paid for the services rendered and would also receive a small retainer which would be set off against any call-out charge:	
Retainer: 365 days x £100 (broken down into £50 for office hours and £50 for out of office hours) = £36,500	£36,500
Call outs: Office Hours - £150 (being £200 less the retainer fee) x 2 per week x 52 weeks = £15,600	£15,600
Our of hours - £350 (being £400 less the retainer fee) x 2 per week x 52 weeks - £36,400	£36,400
Total	£88,500
Sub Total B (Schemes)	£262,900
Sub Total A (Legal Aid Office)	£201,800
Total	£464,700

The total costing for the administration of the Legal Aid Office and payment of the Duty Lawyer and Advocate Schemes is therefore circa £464,700. The Judicial Greffe already budgets to contribute the sum of £71,700 to the annual expenses of the Legal Aid Office which it satisfies from its existing funds. It therefore follows that there is a shortfall of circa £400,000 per annum in funding to the Judicial Greffe to satisfy the costs of the Legal Aid office in due course.

In recent times, it has been informally raised that it may be appropriate to make a small percentage contribution to the Law Society for the time incurred by their CEO (Mr Neville Benbow). Since the role of Acting Batonnier (a locally qualified Jersey Lawyer who administers the Legal Aid under delegation from the Batonnier) has been made redundant, Mr Benbow has assumed oversight for the Legal Aid Office and has become a key decision-maker in the Legal Aid process (e.g. where criteria is not met but there is a need to consider the interests of justice) and the primary port of call for all high-level and technical enquiries. It has been calculated that equates to 10-15% of his time. It therefore follows that there may be a formal request in due course for an appropriate contribution towards his salary. Such a contribution has not yet been accounted for in the figures set out above.

I hope that the above provides the Panel with sufficient information for your purposes. If you require any further information I would be pleased to provide it and/or attend before the Panel to discuss matters further.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Adam Clarke', with a long horizontal stroke extending to the right.

Advocate Adam Clarke
Judicial Greffier



States Greffe: Scrutiny

A. Clarke Esq
Judicial Greffier
By email: A.Clarke@gov.je

4th September 2019

Dear Mr Clarke

The Government Plan

The Education and Home Affairs Scrutiny Panel has begun a Scrutiny review of a number of areas of the Government Plan. We have agreed Term of Reference for this review, which are as follows:-

- Whether funded projects meet the Ongoing Initiatives, Common Themes and, ultimately, Common Strategic Priorities?
- Ensuring that the projects and amendments to be lodged are consistent with the requirements of the Public Finances (Jersey) Law 2019.
- The level of resourcing, of all forms, allocated to projects and whether this is sufficient or excessive in enabling the project to meet its stated aims.
- If project resource allocation is appropriate in relation to overall departmental budgets?
- Whether funded projects align with Departmental objectives? [NB: if and where they exist]
- Whether or not there are clear lines of accountability for each project?
- The ongoing sustainability of projects.

The Panel is scrutinising certain actions contained within the Government Plan itself as well as a number of projects requiring additional expenditure as set out within R.91/2019. The Panel has identified your organisation as one that may be able to assist its review of these actions which are as follows (reference has been made to the page numbers within the respective documents they are contained in):

“Legal Aid Office” p.124 of R.91/2019

Legal Aid Office

- The Legal Aid Scheme will be administered by a Legal Aid Administrator (unconnected to a law firm) under the supervision of the Law Society. In addition to administering the scheme, the Administrator will guide unsuccessful applicants towards the range of alternative solutions that are available to enable individuals to resolve their issues or to obtain legal representation, supported by providing access to procedural guides in relation to key Court processes and proceedings. The Legal Aid Office will, additionally, administer funding payments in eligible matters.
- Appeals against decisions made by the Legal Aid Office (to refuse, limit the scope of, or withdraw legal aid certificates) will be considered by a panel chaired by the Bâtonnier, in accordance with published guidelines.
- Complaints relating to any aspect of legal aid, other than appeals against decisions made by the Legal Aid Office and professional misconduct complaints will be considered by the Law Society of Jersey in conjunction with the Bâtonnier, in accordance with published procedures. All complaints of professional misconduct will be considered by the Law Society of Jersey in accordance with the provisions of The Law Society of Jersey Law 2005.

Responsibilities

- Administration of applications for Public Law and Private Law Legal Aid
- Review of applications (with client meeting where appropriate)
- Decision on application
 - Approval: Issue of certificate (including lawyer details*, terms and conditions and contribution level)
 - Notification to lawyer of appointment (nature of appointment/issue covered, terms and contribution level)
 - Decline:
 - Notification to applicant of refusal to grant certificate (and reason for refusal)
 - Details of process for appealing against decision
 - Details of alternative solutions for client (depending on nature of issue):
 - ✓ Free legal clinics run by firms (covering family, personal injury, etc.)
 - ✓ Personal Injury Clinic (through Jersey Citizens Advice)
 - ✓ Citizens Advice Jersey Legal Clinic
 - ✓ Details of law firms specialising in key law areas: Personal Injury, Family, Criminal (who are prepared to provide initial assessment of claim/issue). A panel of lawyers in relation to personal injury/medical negligence claims (potentially on a 'no win no fee' basis will be available).
 - ✓ Community Mediation (via Citizens Advice Jersey) / Family Mediation Jersey / JACS (Employment issues) / Citizens Advice Jersey
 - ✓ Use of Legal Expenses Cover provided through Union Membership, Motor Insurance, Household Insurance (insurers will direct applicant to law firm for assessment of claim)
 - Provision of Litigant in Person Guides and other procedural guides in relation to all types of proceedings in Jersey.

(* in relation to Criminal certificates, details of accredited lawyers will be provided to enable the applicant to make a choice of representation, unless the applicant wishes to be represented by the next lawyer on the rota of accredited specialists).

The Legal Aid Office will be supported by an interactive website which will assist applicants, particularly in providing an initial assessment of eligibility for Legal Aid and, for ineligible applicants, provide effective signposting to the alternative solutions available.

Application Process

- A clear and transparent applications process will be implemented in relation to Private Law Legal Aid, supported by the operation of a Legal Aid Clinic, at which, in conjunction with applicants, consideration will be given to:
 - Alternative sources of funding of legal services e.g. insurance policies, union membership, obviating the need for legal aid.
 - Alternative sources of dispute or issue resolution e.g. Petty Debts Court, Community or Family Mediation
 - Procedural guidance (e.g. re Divorce process) where legal representation is not needed or appropriate
 - Criteria Based Assessment of Eligibility
 - Financial
 - Residency
 - Area of Law
- Confirmation of eligibility and issue of certificate or signposting of alternative sources of legal representation or assistance and/or provision of procedural guidance as appropriate.
- A separate applications process will be implemented in relation to Public Law Legal Aid, providing for prompt allocation of representation in Public Law Children and Mental Health matters (where no qualifying criteria applies). Attendance of applicants at a Legal Aid Clinic is not required.
- Eligibility for Criminal Legal Aid will generally be considered based on assessment of a bespoke application form, detailing financial circumstances (except for Youth Court matters) and the nature of criminal offence. Attendance at a Legal Aid Clinic will not generally be required, other than in specific cases where evidence of eligibility needs to be explored.
- Confirmation of eligibility and issue of certificate or signposting of alternative sources of legal representation or assistance and/or provision of procedural guidance as appropriate.
- Details of accredited practitioners provided to successful applicants to enable them to choose their lawyer (subject to availability and absence of conflicts). Where an applicant does not wish to choose their lawyer, allocation of made on a rota basis (subject to availability and absence of conflicts).

Funding administration

The Legal Aid Office will be responsible (on behalf of the Judicial Greffe) for the approval and administration of funding payments for the following activities:

- Children Law proceedings
- Mental Health Review Tribunal appeals
- Criminal proceedings (in Youth Court, Magistrate's Court (in eligible cases) and Royal Court).

All the above payments will be on a fixed fee or tariff basis.

Administration of Duty Lawyer and Duty Advocate Schemes

The Legal Aid Office would administer the rota for the Duty Advocate and Duty Lawyer schemes and the funding payments associated with this activity.

The Duty Advocate (Citizens Advice) is a separate scheme. Credits will be allocated on an agreed basis for the provision of assistance at the Citizens Advice Clinic. Credits can be utilised against the allocation of Private Law Legal Aid Certificates.

Benefits of Centralisation

The benefits of centralisation include:

- Independent interpretation of Legal Aid Guidelines
- Improved accountability, ensuring fairness to applicants
- Consistency of approach
- Reduction in conflicts of interest
- Effective signposting of alternative solutions where applicant or area of law ineligible for Legal Aid
- Gateway for provision of procedural advice (e.g. Litigant in Person Guide, Family Law Procedures)
- Effective administration of funding arrangements for Children Law Proceedings, Mental Health representation and Criminal Proceedings
- Administration of Duty Lawyer and Duty Advocate schedules
- Single point of contact for legal assistance and information
- Improvement in public confidence

Structure

The formal operating structure of the Legal Aid Office is to be determined.

However, it is anticipated that the office will be headed by the Legal Aid Administrator, supported by two Legal Aid Officers, all of whom would work full time.

Estimated Costs

Staff costs (3 FTE) - £120k

Premises - £30k

Running costs - £20-30k

IT/website - £30k

General costs - £20k

Total estimated costs £220-230k

Existing costs £70k

New money £150-160k

By comparison, the Legal Aid Office in Guernsey cost £390,000 in 2016 and in Isle of Man costs £297,176.

Duty Advocate Scheme

Costs:

6 duty slots in Magistrate's Court (2 Monday, 1 daily Tuesday to Friday) x 52 x £400 = £124,800

1 weekly slot in Youth Court x 52 x £400 = £20,800

1 reserve slot in Magistrate's Court x 52 x £400 = £20,800

Total £166,400

New Bail Law will increase incidence of Saturday and Bank Holiday Courts which would qualify as 2 duty slots each. Allow 10 per year @ 800 = £8,000

Total costs £174,400

Duty Lawyer Scheme

Costs:

365 days @ £100 per day (daytime/out of hours) = £36,500

Call outs – daytime @ net £150 x 2 per week = £300 x 52 weeks = £15,600

Call outs – out of hours/weekend @ net ~~£400~~ x ave ~~1.5~~ per week = ~~£600~~ x 52 = ~~£31,200~~

Total costs = £83,300

350 2 700 27300
36400

Total 88500

4