

19-21 Broad Street | St Helier
Jersey | JE2 3RR

Deputy Catherine Curtis
Chair – Children, Education and Home Affairs Panel

Via email

29 October 2024

Dear Chair,

Follow-up matters from the Public Hearings on 9 October 2024

I write further to your letter of 16 October in relation to matters raised at the public hearings held on 9 October. Please see below and appended the information requested. I have asked my officers to liaise with the Panel's officers in relation to the briefings referenced.

In addition to the information requested, I also enclose a letter received by me from the Judicial Greffier, which clarifies some of the information provided to you previously in relation to the Courts. I would note her point in particular about the effect of historic offences on Court data, as well as that when considering figures such as the time from offence to charge, clearly this is outside the control of the courts.

If the Panel would like to develop a greater understanding in relation to the Courts and their processes, I am sure the Judicial Greffier would be happy to attend upon the Panel to discuss.

Further detail for the capital projects, with a timeline if possible.

- **New Army and Sea Cadets Head Quarters**

Officers are working with colleagues from Jersey Property Holdings to continue to review locations and designs against Army and Sea Cadets requirements that will enable a new shared Headquarters to fulfil the States Assembly decision from 2021 to ensure the provision of a new permanent headquarters for the Sea Cadets. This project is a pre-requisite to the development \ re-use of the Rouge Bouillon former Police Headquarters site as the Sea Cadets are currently accommodated at that location.

The project team are hoping to have costings back from quantity surveyors by end of October on a range of options that would develop the former Sea Cadets site at Fort Regent with additional storage facilities (containers) in an adjacent currently unused area within the Fort Regent site. Only

once the costings have been cross referenced with the current project financial envelope will JHA have an indication of build viability and timelines.

Budget for the project delivery has been split over 4 years, from 2024 to 2027, with an aim to release funds for different stages i.e. planning application, demolition, ground works etc.

- **New Ambulance and Fire & Rescue Headquarter(s)**

Work continues with JHA working in collaboration with Jersey Property Holdings and Children, Young People, Education and Skills colleagues and Ministers to understand and agree the way forward with future use of the Rouge Bouillon site due to competing demands and the sequencing of these developments. A shift in strategy however indicated that it would be more reasonable and realistic, considering several factors including maintaining a Rouge Bouillon location for all facilities (Ambulance, Fire & Rescue, and a school), to deliver separate Headquarters for each of Ambulance and Fire & Rescue.

Budgets for this project have been re-profiled to reflect the anticipated revised timescales and sequencing, with substantive commencement in 2028.

Work has recently commenced between the States of Jersey Fire and Rescue Service, States of Jersey Ambulance Service and Jersey Property Holdings to review their individual schedules of accommodation and decant requirements, and complete further appropriate feasibility work this year. We have pledged to provide a private briefing to the Panel on this in the new year.

- **Firearms Range**

Site ground works commenced in July 2024 by the supplier and were completed mid-August 2024. Late summer saw the phase of "Storage" area ground works construction, this is expected to be completed by the end of November, whereupon construction of the main storage and shelter structures will commence end of November through to April 2025.

Internal and external work will be last to be carried out between April and July and estimated completion of project is anticipated to be August 2025.

- **La Moye Prison**

Current works being undertaken as part of the Prison Masterplan include:

- **Phase 6B** Demolition of A, B and C wings. This phase is now complete, and the 12-week defect period has commenced.
- **Phase 8 Enabling** – Demolition of former Gate house, fence realignment and temporary carpark. Tender process has been completed and project has appointed contractor. The start date has still to be agreed but aim is to commence shortly and to be completed by end of Q2 2025.

A review of the Prison masterplan in early 2024 led to the omission of the proposed Hospitality Training Facility with an aim to provide this by alternative means. The review also sought to update the Prison's accommodation priorities and to rationalise the anticipated spend profile. Accordingly, four (smaller) phases are now proposed to complete the redevelopment of La Moye Prison in due course:

- **Phase 7** Care and separation and step-up unit and demolition of E Wing.
- **Phase 8** New Education and Workshops Activities Building. Demolition G wing, RSMU, vacated workshops and isolated portacabin education units.
- **Phase 9** New Healthcare and demolition of old Healthcare building.
- **Phase 10** Perimeter Security Outer Wall and inner fences.

These phases have no agreed timelines associated with them as there is not currently funds allocated. Business cases will have to be submitted at the appropriate funding bid windows.

- **Further details about the total cost and previously reported shortfall of costs in respect of Dewberry House.**

The original business case for new premises was submitted in summer 2019 and £2.55m allocated in Government Plan 2020-2023. Feasibility and design work was then undertaken, and a preferred site was selected. That work determined increased cost for the project, reflective of further, more detailed work done on scope and design, and considering the cost of developing at the preferred location. The total project budget has been increased and £4.291m is currently allocated.

There was an estimated shortfall of £785k identified at the milestone of pre-planning submission in Q1 2023. The cost of building materials and labour has increased significantly in recent years, therefore, the current estimate to complete this project is likely to be more than this. The actual funding gap will only be known once the project has been tendered, at which point the business case will be refreshed again (as per best practice), and any additional funding requested through the Government Plan process.

- **The full task tracker in relation to the Violence Against Women and Girls Taskforce (in confidence);**

Please see tracker attached.


- **Information on how Legal Aid is determined.**

I attach several documents that outline how applications for Legal Aid are determined.

- **The new Gas Response Plan (in confidence).**

This has been provided separately to the Panel, in confidence.

Yours sincerely

A handwritten signature in black ink, appearing to read "M. R. Hegarat". The signature is written in a cursive style with a long horizontal stroke at the end.

Deputy Mary Le Hegarat
Minister for Justice and Home Affairs



Royal Court of Jersey
Judicial Greffe

Your Ref:
Our Ref: RMK/dmd

21st October 2024

The Minister of Justice and Home Affairs
19 -21 Broad Street
PO Box 600
St Helier
JE2 3RR

Dear Minister

I write concerning the Scrutiny hearing which you attended on 9th October 2024. During that hearing you answered questions concerning court procedures and in preparation for this hearing you were provided with statistics by the Judicial Greffe.

It has come to my attention that some of the figures provided to you were incorrect and for that I apologise, unreservedly. You are aware from previous discussions that at present, statistical information is collected and interpreted manually and on occasion human error in both the collection and interpretation of that information can occur.

I would also like to make it clear that these statistics are collected and interpreted internally and without any involvement from outside agencies. They are not cross checked with other agencies.

As you know we are working within the courts to introduce a case management system which has as one of its aims the collection of reliable statistical information.

I will correct the information provided to you by setting out the figures provided to you in black (which were then inserted by you into your letter to Scrutiny dated 3 September 2024), and by inserting the correct figures in red in the relevant place:

Overview of first 6 months 2024 and comparison with 2023 – Adult remand court

- More cases are being heard - averaged 118 **115** cases per month 2024 c.f. 102 **106** in 2023; Number of charges considered 299 **289** per month in 2024 c.f. 247 260
- Increase in average time from offending to charge – 327 **449** in 2024 c.f. 168 **164** in 2023.
- It should be noted that this reflects an increase in historic matters which have skewed the data.
- Increase in average time between charge to first appearance 147 **45** in 2024 c.f. 22 **26** in 2023
- Decrease in average time between first appearance to disposal 28 **30** c.f. 32 **33** in 2023.

Overview of first 6 months 2024 and comparison with 2023 – Youth court

- Averaged same number of cases per month in 2023 and 2024 – being 11; and approximately the same number of charges considered.
- Average time offending to charge: 125 **116** days 2024 c.f. 71 days. (Data skewed by February results including an offence in Feb 2023, charged in Jan 2024, court Feb 2024).

- Average time charge to first appearance 17 in 2024 c.f. 14 in 2023
- Average time first appearance to disposal 25 38 in 2023 vs 41 28 in 2024

At the Scrutiny hearing, you were asked specifically about two statistics relating to adult court:

1. The increase in average time from offending to charge being stated to be 327 days in 2024 as against 168 in 2023.

You will have seen that in fact that average time was longer than stated. It was 449 days in 2024 as against 164 days in 2023.

I should be grateful if you would impress upon the Scrutiny panel that those providing the figures considered that the figures had been affected by historic offences being investigated and charged. A hypothetical example of what that means is as follows. If an offence was alleged to have taken place in 2020, but not reported to the police until 2024, it might look, without further examination that there had been a long delay, of well over 1000 days, between the offence taking place and being charged. In fact, there might have been no delay in the length of time between the offence being reported and being charged.

No further in-depth analysis was asked for or provided and therefore the extent to which “outliers” affected the timing was not explored.

I should also be grateful if you would impress upon the Scrutiny panel that the length of time from offending to charge is outside of the control of the court service. It is entirely a matter for the police/prosecution.

2. The average time from charge to first appearance, which was originally stated to be 147 days in 2024 as against 22 days in 2023.

You will have seen that in fact the average time was much shorter, being 45 days on average in the first 6 months of 2024 compared with 26 days on average in the first 6 months of 2023.

I should be grateful if you would impress upon the Scrutiny panel that a number of agencies are involved in the setting of court dates: the States and Honorary police, Customs, the Law Officers’ Department and the Courts’ Service. The Probation Service and the Viscount’s Department can also bring matters to court.

There are a set number of available slots for new cases each week and these are divided into dates for the parishes, for the police and the Law Officers’ Department. Customs, the Probation Service and Viscount’s Department do not have fixed dates on which they bring new matters.

Once again, I do apologise for the errors in the figures provided to you.

Yours sincerely



Advocate R Morley-Kirk

Judicial Greffier

LEGAL AID GUIDELINES

PUBLIC LAW

ELIGIBILITY CRITERIA

Applicants for **Public Law Legal Aid** must be able to satisfy two eligibility tests:

1. Financial (Criminal and Human Rights applications only)
2. Nature of Public Law Matter/Criminal Offence

Applicants for representation in respect of an eligible criminal offence or human rights matter must first be able to demonstrate that they meet the financial test to qualify. If an applicant exceeds either the capital or income limit they will not be eligible for legal aid.

Financial eligibility does not apply in relation to criminal matters in the Youth Court or in relation to Public Law Children, Mental Health and Capacity representation.

Applicants who are only in receipt of Income Support are deemed to have met the financial eligibility test.

Applicants in criminal matters will have a choice of representation from an accredited panel of criminal practitioners.

Legal aid is not available in respect of corporate or business activity, including matters of a criminal nature.

FINANCIAL

	Capital Limit (Individual)	Income Limit (Individual)
Public Law (Criminal / Human Rights)	£63,000*	£63,000**

[* Calculated as 1.5 x the current Median Average Earnings++ for Full Time Employees, rounded up to the nearest £1000.]

[** Calculated as 1.5 x the current Median Average Earnings++ for Full Time Employees, rounded up to the nearest £1000.]

++Median Average Earnings for Full Time Employees in Jersey = £41,600. (Source: Average Earnings Report, June 2023, Government of Jersey Statistics Unit). Legal Aid Limits will be adjusted in line with the annual Average Earnings Report as at June each year. The revised calculations will be effective from 1 January the following year.

NATURE OF PUBLIC LAW MATTER/CRIMINAL OFFENCE

ELIGIBLE

Children Law

- All Children Law proceedings brought by the Minister for Children & Education under the Children (Jersey) Law 2002
- Pre proceedings representation in respect of potential proceedings under the Children (Jersey) Law 2002
- Child abductions including applications under the Hague Convention

Mental Health/Capacity

- Representation in appeals to the Mental Health Review Tribunal or the Royal Court of Jersey under the Mental Health (Jersey) Law 2016 and reviews of authorisations under the Capacity and Self Determination (Jersey) Law 2016
- Exceptional cases where there are complex mental health or capacity issues that require referral to, and consideration by, the Royal Court of Jersey

Human Rights

- Asylum and Immigration applications (subject to merit)
- Exceptional cases where there are legitimate human rights entitlements

Criminal

- All criminal matters in the Royal Court
- All criminal matters* in the Magistrate's Court
- All criminal matters in the Youth Court **

* Except offences for which the maximum available sentence is a fine of Level 2 on the Standard Scale of Fines (in accordance with the Criminal Justice (Standard Scale of Fines) (Jersey) Law 1993).

** Where it is in the best interests of the defendant, and where a matter can, in all circumstances, fairly be concluded at first appearance in the Youth Court, legal assistance will be provided by the Duty Advocate. Legal Aid Certificates will be issued, on application, in all cases where a matter cannot be concluded during a first appearance or where an application for Legal Aid has been made and approved prior to such first appearance.

NOT ELIGIBLE

Criminal

- Minor motor-related and criminal offences (where the maximum available sentence is a fine at Level 2 on the Standard Scale of Fines).

PRIVATE LAW

ELIGIBILITY CRITERIA

Applicants for **Private Law Legal Aid** must be able to satisfy three eligibility tests:

1. Residency
2. Financial
3. Area of Law

Applicants for legal aid in an area of law that is eligible for support must be able to demonstrate that they meet the residency and financial tests to qualify.

Applicants who are only in receipt of Income Support are deemed to have met the financial eligibility test.

Applications can only be accepted in relation to personal law, from individuals acting in their private capacity.

Legal aid is not available in respect of corporate or business activity.

RESIDENCY

- Private Law Applicants must be ordinarily resident in Jersey. Residency must be for a period of not less than 12 months immediately prior to the application for Legal Aid. All applicants must be registered with Social Security. Applicants will be required to evidence that they meet the residency test.
- Discretion will be held by the Judicial Greffier to waive or reduce the residency requirement in exceptional circumstances, where it is in the interests of justice to do so.

FINANCIAL

	Capital Limit (Individual)	Income Limit (Individual)
Private Law (Family / Civil Matters)	£63,000*	£42,000**

[* Calculated as 1.5 x the current Median Average Earnings for Full Time Employees, rounded up to the nearest £1000.]

[** Calculated as 1.0 x the current Median Average Earnings for Full Time Employees, rounded up to the nearest £1000.]

+++ Median Average Earnings for Full Time Employees in Jersey = £41,600. (Source: Average Earnings Report, June 2022, Government of Jersey Statistics Unit).

Legal Aid Limits will be adjusted in line with the Average Earnings Report issued annually in June. The revised calculations will be effective from 1 January the following year.

Financial eligibility for joint applicants in private law matters (e.g. eviction) will be assessed based on the average capital and income of the parties, against the above limits.

AREA OF LAW

ELIGIBLE

Family claims and proceedings

- Ancillary (financial) relief claims where there are dependent children**.
- Child maintenance (including Schedule 1 claims) under the Matrimonial Causes (Jersey) Law 1949 or the Children (Jersey) Law 2002 (other than Child maintenance claims where the applicant is on income support and has no other capital assets and no other income, which are not eligible).
- Divorce / Judicial Separation / Civil partnership / nullity proceedings where there are dependent children**.
- Residence and contact disputes, prohibited steps orders, specific issue orders and removal from the jurisdiction under the Children Law 2002 or the Matrimonial Causes (Jersey) Law 1949 (subject to family mediation having been formally considered by the parties in appropriate cases).
- Injunctions, ex parte orders and ex-parte injunctions within the family law context.
- Claims by a child under the Legitimacy (Jersey) Law 1973.
- Appeals in family proceedings (where Legal Aid has previously been granted), subject to a favourable opinion.

** Claims in relevant matters where there are no dependent children will be eligible (subject to financial and residency criteria being met) 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 and including the age of 16 or in a recognised apprenticeship (until the end of that training) or tertiary education (until the end of a first degree only) or the child has medically-diagnosed special needs that necessitates financial dependence in either parent.

Civil Claims and proceedings

- Contractual disputes/Actions in tort (subject to positive prospects of success) #
- Judicial Review applications ##
- Professional negligence claims (other than in relation to medical negligence) including claims of negligence for breach of duty in respect of Powers of Attorney, Probate or Tutelles.
- Eviction proceedings.
- Licitation proceedings where a minor child resides in the property.
- Appeals in civil proceedings (where a Legal Aid certificate was granted in the original proceedings), subject to a favourable opinion.
- Opinion on the merit of an appeal to the Royal Court against the decision of the Employment and Discrimination Tribunal, the Social Security Tribunal or determinations/orders of the Data Protection Authority against an individual.
- Appeal to the Royal Court against the decision of the Employment and Discrimination Tribunal, the Social Security Tribunal or determinations/orders of the Data Protection Authority against an individual, subject to a favourable opinion.
- Second opinion on personal injury and medical/clinical negligence claims (only where a negative opinion has been given as to the prospects of success of a claim by the specialist 'PIMED' (Personal Injury Medical Negligence) panel).

except personal injury claims (which are subject to separate arrangements), Petty Debt Court matters (other than eviction proceedings which are eligible), minor disputes/actions or where explicitly excluded/ineligible

Judicial review applications will initially be limited to an opinion on the merits of the prospects of success of an application for leave to apply for judicial review. Where a positive opinion is given, the 'application for leave' and 'application for judicial review' will fall outside the scope of Legal Aid and will be subject to funding from the Judicial Greffe on an individual case-by-case basis.

<u>NOT ELIGIBLE</u>

Family

- Adoptions
- Ancillary (financial) relief claims where there are no dependent children**.
- Divorce / judicial separation/ Civil partnership dissolution / nullity proceedings where there are no dependent children**.
- Child maintenance claims where the applicant is on income support and has no other capital assets and no other income ++.
- Enforcement of maintenance orders.
- Claims under the Legitimacy (Jersey) Law 1973 (except where the claim is by a child).
- Pre or post nuptial agreements.
- Separation Agreements (unless part of a settlement under an ancillary relief claim where there are dependent children).
- Maintenance claims under the Separation and Maintenance Orders (Jersey) Law 1953.

** Claims in relevant matters where there are no dependent children will be eligible (subject to financial and residency criteria being met) 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 and including the age of 16 or in a recognised apprenticeship (until the end of that training) or tertiary education (until the end of a first degree only) or the child has medically-diagnosed special needs that necessitates financial dependence in either parent.

++ Such claims are outside the scope of Legal Aid. Claims where there is a realistic prospect of success may be pursued by Social Security under separate arrangements outside the Legal Aid scheme.

Civil

- Bankruptcy/en Désastre
- Remise de bien / dégrèvement proceedings
- Licitation proceedings (other than where a minor child resides in the property)
- Personal injury claims^^
- Medical negligence claims^^

- Corporate and Business matters (including any business-related issue, contractual matters and disputes between shareholders, partners or directors)
- Delegate matters (other than claims in negligence for breach of duty)
- Conveyancing / Property / Boundary Disputes / Voisinage
- Deed polls
- Data protection matters (other than in respect of appeals to the Royal Court by an individual against determinations/orders of the Data Protection Authority)
- Defamation / Libel / Slander
- Debt related issues or proceedings
- Discrimination law (other than in respect of appeals to the Royal Court against the decision of the Employment and Discrimination Tribunal)
- Employment law (other than in respect of appeals to the Royal Court against the decision of the Employment and Discrimination Tribunal)
- Planning disputes
- Powers of attorney (other than claims in negligence for breach of duty) including Lasting Powers of Attorney
- Probate (other than claims in negligence for breach of duty)
- Succession planning (wills)
- Taxation issues (including disputes with Comptroller of Taxes)
- Tribunal issues whatever the nature of such tribunal (Employment & Discrimination, Social Security, Housing, Motor Insurance Bureau, Criminal Injuries Compensation Board or any other type of tribunal) including any appeals^{^^}
- Tutelles (other than claims in negligence for breach of duty)
- Wills (the making of wills or associated activity)
- Notwithstanding the above all or any other non-contentious matters

^{^^} Personal injury and medical negligence claims are outside the scope of the Legal Aid Scheme and will be considered, on request, by an accredited member of a specialist PIMED legal panel. Claimants who are financially eligible for legal aid and who have received a negative first opinion on the prospects of success of their claim may apply for a second opinion through the Legal Aid scheme.

^{^^^} Excludes appeals to the Mental Health Review Tribunal which, under the Public Law Legal Aid Scheme, are eligible for legal representation and appeals to the Royal Court in respect of Employment & Discrimination and Social Security Tribunals.

PERSONAL INJURY AND MEDICAL/CLINICAL NEGLIGENCE CLAIMS

- All potential personal injury and medical/clinical negligence claims will be considered, in the first instance, by a member of a specialist legal panel (the PIMED panel).
- Where the applicant holds insurance cover (e.g. legal cover through motor or household insurance) or is a member of a union that provides legal cover for certain claims, any claims will be subject to the conditions applied by the relevant insurance provider.
- The panel member will assess each claim and consider the prospects of success.
- Where the prospect of success is 51% or more, the panel member will proceed with the claim on a 'no win, no fee' basis. Fees will ordinarily be recovered from insurers in the event of a successful claim but may, in appropriate cases, be recovered from any award or settlement.
- Where the applicant is 'eligible for legal aid' (based on assessment of residency and financial eligibility against the legal aid criteria) and a positive (51%+) opinion has been received, the PIMED panel member may apply for funding of any disbursements from the Judicial Greffe (funded by the Legal Aid Vote).
- Where a claim is determined as having poor prospects of success (50% or less), the claim will not be progressed. Claimants in receipt of a negative opinion who are 'eligible for legal aid' (based on assessment of residency and financial eligibility against the legal aid criteria), may request a second opinion in respect of their claim. In the event of a positive second opinion, the claim will be progressed through the legal aid scheme, in respect of which contributions may be payable. In the event of a further negative opinion, the claim will not be pursued. No further opinions on the merit of the claim will be available.

FINANCIAL ELIGIBILITY CRITERIA – NOTES AND DEFINITIONS

- The income test will only be applied where the applicant's capital is below the maximum limit.
- Legal aid will not be granted where the relevant capital or income limits thresholds are exceeded.
- Joint applicants will be assessed based on an average of the parties' capital and income levels.
- Applicants who are only in receipt of Income Support are deemed to have met the financial eligibility test. However, where the total income (including benefits) of an applicant who is in receipt of Income Support exceeds the threshold at which personal contributions are made in respect of private law matters, the applicant remains liable for the payment of personal contributions.
- Capital (for the purposes of eligibility) includes property, savings, investments or a financial interest in any asset, including the equity in any property, whether in Jersey or elsewhere, but excluding the capital value of any pensions. All assets owned by the applicant should be included in full. Where assets are jointly owned (e.g. property, savings accounts), 50% of the total value (net of mortgage for properties) should be included in the capital calculation. [See full details below].
- Income includes pensions, benefits (including Income Support), the value of benefits in kind, maintenance and income from any source, including interest, dividends and trust fund income, as received by the applicant. Gross income is total income before any deductions for tax, social security etc.

Capital

Capital includes the following:

- Cash savings held in the sole name of the applicant or jointly with another party in Jersey or elsewhere in any currency;
- The market value of all property (whether in Jersey or elsewhere) after the deduction of outstanding borrowings, held in the sole name of the applicant or jointly with another party;
- National Savings certificates, National Savings capital bonds and premium bonds;
- Stocks/shares including share save schemes and share incentive plans;
- Unit Trusts and Personal Equity Plan (PEP) Investments;
- Fixed term investments;
- Timeshares;
- Trust assets or funds;
- Other financial assets including cryptocurrencies;
- Valuables including Boats, Paintings and Antiques;
- Jewellery other than engagement rings, wedding rings and eternity rings;
- Money owing to an applicant;
- Money due from an estate or trust fund;
- Money that can be borrowed against business assets.

The following are disregarded in the calculation of capital:

- Household furniture and effects (unless the contents include any single or collection of items with a market value of more than £10,000);
- Personal clothing/tools and equipment of trade;
- Engagement rings, wedding rings and eternity rings;
- One motor vehicle per household that is regularly used and valued less than £15,000 (any loan or HP is deducted from the value);
- Capital value of any pension.

Capital and Income

The assessment of Capital and Income is at an individual level.

Calculation examples (Capital):

If the applicant has a property, in joint names, in respect of which the equity is, say £110,000, the attributable capital (relating to the property) for the applicant is £55,000. If other capital (e.g. savings) is below £4,000, the capital test will be met.

If the applicant has savings and investments, in joint names, of £70,000 and savings in their sole name of £20,000, the attributable capital for the applicant is £35,000 plus £20,000 = £55,000. The capital test will be met.

If the applicant has a property, in their sole name, in respect of which the equity is, say £70,000, the attributable capital (relating to the property) for the applicant is £70,000, even if there are other occupants of the property. The capital test will not be met.

If the applicant has savings and investments, in their sole name, of £60,000, and savings in joint names of £10,000, the attributable capital for the applicant is £60,000 plus £5,000 = £65,000. The capital test will not be met. Legal aid will not be granted in these circumstances.

Where there are joint applicants in any matter, capital will be assessed based on the average attributable capital for the applicants. If the applicants collectively have joint property (with equity of £90,000) and joint savings totalling £20,000, the attributable capital for each party is £55,000. In this case, the capital test would be met.

Where there are joint applicants in any matter, capital will be assessed based on the average attributable capital for the applicants. If the applicants collectively have joint property (with equity of £130,000) and joint savings totalling £10,000, the attributable capital for each party is £70,000. In this case, the capital test would not be met.

Legal aid will not be granted whenever the capital test is not met.

Calculation examples (Income):

- If an applicant facing Criminal charges earns £55,000 and his/her partner earns £25,000, the income test will be met.
- If an applicant facing Criminal charges earns £65,000 but his/her partner earns nothing or does not work, the income test will not be met. Legal aid will not be granted in these circumstances.
- If an applicant in a Family or civil matter earns £40,000, the income test will be met.
- If an applicant in a Family or civil matter earns £45,000, the income test will not be met.

Joint applicants (civil matters)

- Where there are joint applicants in a civil matter, income will be assessed based on the average income for the applicants.
- If one applicant has income of £50,000 and the second applicant has an income of £30,000, the average income of the applicants is £40,000. In this case, the income test would be met.
- If one applicant has income of £60,000 and the second applicant has an income of £30,000, the average income of the applicants is £45,000. In this case, the income test would not be met.

Where the capital and income tests have been met, Legal Aid will be granted subject to the matter for which legal representation has been requested being eligible for Legal Aid. Where the capital test has not been met, Legal Aid will not be granted. Where the capital test has been met but the income test has not been met, Legal Aid will not be granted.

PERSONAL CONTRIBUTIONS

Public Law – No personal contributions are payable in respect of public law matters which are eligible for legal aid

Private Law – Personal contributions are payable, where legal aid has been granted, on the following basis:

<u>Gross income (as defined above)</u>	<u>Contribution Level</u>	<u>Monthly Payment</u>
Up to £20,000	NIL	NIL
£20,001 - £24,000	10%	£25
£24,001 - £28,000	20%	£50
£28,001 - £42,000	30%	£100

Legal Aid (in respect of Private Law matters) will not be granted where an applicant’s gross income exceeds £42,000 (other than in respect of individuals who are only in receipt of Income Support and who are deemed to have met the financial eligibility criteria).

Applicants (in private law matters) with gross annual income above £20,000 will be required to make a contribution towards the cost of their legal representation.

An individual’s contribution level (and applicable monthly payment) will be assessed by the Legal Aid Office at the point of issue of a Legal Aid Certificate, based on assessment of documentary evidence in respect of an applicant’s total income (including benefits). Changes in a client’s income and circumstances may result in a re-assessment of contributions (which will be undertaken by the appointed law firm).

While individuals who are only in receipt of Income Support are deemed to have satisfied the financial eligibility requirements, personal contributions are payable in private law matters where total income including benefits exceeds £20,000 per annum. Where total benefit income is above the maximum threshold for private law matters (1 x median average annual income), legal aid will still be granted, but liability to fees will be limited to the maximum 30%/£100 per month contribution.

Firms will, at the outset of a matter, provide an estimate of the anticipated cost to the applicant (at the appropriate percentage rate). Monthly payments should be implemented at the commencement of a matter, at the level determined by the Legal Aid Office. Firms are required to accept monthly payments. Applicants may choose to pay more than the stated monthly payments. **Payments will continue until the cost of legal representation, at the appropriate contribution rate, has been met in full or a period of four years has elapsed since the commencement of the matter, whichever comes first, subject to the proviso that, in the event that the matter has not been completed at the end of the four year period, monthly payments will continue until representation ceases.** As such, contributions are capped at the value of 48 monthly contributions, except where representation continues beyond 48 months, in which case further payments must be made until representation is concluded. The four year period will only apply where no payments have been missed or any missed payments have been subsequently met.

Legal Aid Certificates in family matters will, in all cases, specify the specific nature of the activity or proceedings covered by the certificate (e.g. divorce, financial arrangements including maintenance, and residence and contact). Where additional actions or proceedings arise, which are outside the scope of the original certificate, a new certificate will need to be applied for. If granted, the work required under the new certificate will be undertaken by the same firm as for the original certificate. Where personal contributions are payable, the four year period commences at the start of the first certificate issued; where a second or subsequent certificate is issued for additional matters, the four year payment period will recommence with the new matter, with payments continuing for a new four year period from the start of the new matter, at the same monthly payment as previously implemented i.e. if matter 1 starts in January 2020, with payments at the appropriate contribution rate (e.g. £25, £50 or £100 per month) and then matter 2 starts in January 2021, payments will continue at the same rate from the commencement of the new matter, for a period of four years or until total costs, at the appropriate contribution rate have been met, whichever occurs first.

Where costs (at 100% of the Legal Aid rate) reach 75% of the initial estimate and are expected to exceed the initial estimate, a new estimate must be provided. Monthly contributions (which are based on an applicant's income) will remain unchanged, even if an estimate increases.

Examples of payments:

- Estimate of fees in a matter (at 100% of the Legal Aid rate) is £10,000.
- Applicant has gross income of £25,000 and so is assessed as being a 20% contributor.
- The total liability of applicant (which will be detailed within the estimate) is therefore £2,000 (excluding any court fees or disbursements, which must be met by the applicant in addition to the monthly contributions, unless an exemption certificate from the Viscount's Department has been obtained in respect of court fees).
- Monthly payments of £50 per month are required from the commencement of representation until the applicant's total fees, at the contribution rate, have been paid in full or four years has elapsed following commencement of the case, whichever comes first. Provided all monthly payments have been met, payments need only be made for a maximum period of 48 months, unless representation continues beyond the four year period. In these circumstances, payments must continue, beyond the four year period, until the completion of representation. Applicants may pay the outstanding amount (up to the 48 month cap) at the end of a matter or make higher monthly payments to reduce the payment period. Where a second or subsequent matter is required and a new Legal Aid certificate relating to that matter is issued, the four year period will recommence. However, even in the event that two or more matters are being undertaken at the same time, the amount of the monthly payment (at the appropriate contribution rate) will be unchanged, unless an individual voluntarily increases the payment to reduce the payment period.

In family matters, where funds and/or property is obtained through the division of assets or other financial settlement, including those arising from the sale or transfer of ownership of the former matrimonial home, a legally-aided client will be liable to meet the full costs of legal representation (at 100% of the Legal Aid rate).

To ensure that legal aid clients in such matters are aware of their liability in this regard, clear reference shall be made in letters of engagement issued by law firms to the circumstances under which full recovery of costs, at 100% of the Legal Aid rate can be claimed by a firm. Invoices issued to the client should detail the full costs (at 100% of the Legal Aid rate) as well as the charges that apply, based on the personal contribution level determined by the Legal Aid Office.

Outstanding fees (at the appropriate contribution rate) are, however, subject to full immediate payment upon receipt by the legally-aided individual of capital or other funds in excess of £15,000.

The law firm reserves the right to cease all work where monthly payments are not made, although work may continue at their discretion.

Legal Aid Certificates will confirm the level of monthly contribution payable in each case.

Court fees and other disbursements incurred during the course of representation must be met by the applicant in addition to the monthly contributions, unless an exemption certificate from the Viscount's Department has been obtained in respect of court fees.

However, other than in respect of cases where funds and/or property is obtained through the division of assets or other financial settlement, as detailed above, a legally-aided client's liability to fees is limited to the personal contributions payable during the course of the representation and which will be detailed at the commencement of that representation.

Fee Adjudications

Legally-aided clients may, in the event of a dispute over the level of fees charged, seek fee adjudication through the Legal Aid Office. It is anticipated, however, that the implementation of a cap on personal contributions and a limit to the period of recovery will reduce the number of fee adjudication requests made.

Fee adjudications will ordinarily proceed where requested, subject to provision by the applicant of reasons for the dispute and any supporting evidence. In all instances, fee adjudications will be undertaken by a lawyer appointed by the Legal Aid Office. The appointed lawyer must have at least 5 years' post qualification experience, and be a subject matter expert/specialist practitioner in the legal area to which the certificate relates. The adjudication must be undertaken by the appointed practitioner and not an unqualified assistant/any other individual.

Financial Hardship

Where the amount outstanding (based on the relevant contribution rate) at the end of a matter is such that it could cause financial hardship to a legally aided client, then if it is appropriate in all the circumstances of the case, the outstanding amount shall be reviewed by the firm and, where appropriate, reduced to an affordable level. Any dispute relating to an application under financial hardship provisions will be referred to the Judicial Greffier for a final decision. Financial hardship provisions do not apply where capital in excess of £15,000 has been recovered by the applicant.

Legal Aid Rates

The applicable rates for work undertaken under Legal Aid (which mirror the Factor 'A' Rates set down by the Royal Court from time to time and which reflect the 'breakeven point' for lawyers) are (effective from 1 February 2024):

<u>Fee earner</u>	<u>Hourly rate</u>
Partners (Jersey Advocates and Solicitors)	£330
Qualified staff (Advocates, Barristers, Jersey and English Solicitors) > 5yrs+ PQE	£285
Qualified staff (Advocates, Barristers, Jersey and English Solicitors) < 5yrs+ PQE	£240
Paralegal Trainee Solicitors and Barristers without pupillage	£210
Paralegal without law degree or studying for a law degree	£120

Fee estimates, which are required in all private law matters, will be based on the amount of time likely to be spent on the matter, by each fee earner, at the above rates, which represent 100% of the 'Legal Aid rate'.

CONDITIONS AND LIMITATIONS

- Initial or limited certificates may be issued to enable a lawyer to consider whether a claim has sufficient merit.
- All certificates are capable of withdrawal in the event of:
 - ✓ Material change in financial circumstances.
 - ✓ Provision of incorrect or misleading information at time of application (or at any time thereafter).
 - ✓ Failure to meet conditions of approval of certificate.
 - ✓ Failure to meet monthly contributions, where payable.
 - ✓ Failure to co-operate with, or respond to, lawyer.
 - ✓ Failure or refusal to complete due diligence or client take-on procedures.
 - ✓ Refusal to accept advice provided by lawyer.
 - ✓ Inappropriate behaviour or conduct on the part of the applicant/client
 - ✓ A negative opinion is provided in relation to the prospects of success of any claim or action.
 - ✓ The advice to a privately funded litigant of moderate means would be to not pursue or defend the claim.
 - ✓ The pursuit by a legally aided client of frivolous or vexatious claims within the context of family proceedings.

OUTSOURCING OF LEGAL AID OBLIGATIONS

- Law Society members and/or firms may outsource all or part of their Legal Aid obligations to another member and/or firm.
- Notwithstanding these outsourcing arrangements, the originally allocated member/firm retains responsibility for the discharge of legal aid certificates issued in their name. Upon receipt of notification of a legal aid certificate, the receiving member/firm must complete conflict checks. If conflicted, the legal aid certificate is returned to the Legal Aid Office for reallocation; if unconflicted, the certificate is advised by the receiving member/firm to the contracted servicing firm. Where the servicing firm is themselves conflicted at the outset, or a conflict arises during the course of the matter, the certificate must be referred back to the originally allocated member/firm, who remain unconflicted, to reallocate to another member/firm to deal with. In the event that the contractual arrangements provide for the firm that is, or becomes, conflicted to re-allocate the certificate themselves, this must be undertaken without delay, under advice to the Legal Aid Office. While conflicts that arise during the course of a matter must be advised to and agreed by the Legal Aid Office, where the original certificate is outsourced to another member/firm, the obligation for discharge of that certificate remains with the original member/firm on the basis that they are not conflicted. Responsibility for reallocation of a certificate in such circumstances rests with the original member/firm (or the servicing firm if this is their contractual responsibility) and not the Legal Aid Office.
- Any appeals in relation to the allocation of Legal Aid certificates or any decisions made by the Legal Aid Office may only be made by the member/firm to whom the certificate is originally allocated. Servicing firms do not acquire any rights of appeal against certificate allocations or decisions made by the Legal Aid Office.

LEGAL AID OFFICE

- The Judicial Greffier is responsible for the administration of the Legal Aid Scheme. The operation and day-to-day administration of the scheme is, in practice, undertaken by the Legal Aid Office, which is a division of the Law Society to whom the scheme administration is entrusted by the Judicial Greffier. In addition to administering the scheme, the Legal Aid Office 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. Subject to agreement by the Judicial Greffier, 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 the Bâtonnier (or a Bâtonnier Substitute) 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 applicant meetings 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)
 - ✓ Referral to Personal Injury and Medical Negligence Panel
 - ✓ 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).
 - ✓ 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
 - Residency (private law matters only)
 - Financial
 - Area of Law / Nature of Criminal Offence
- 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 will be 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 Greffier) for the approval and administration of funding payment of fixed/tariff fees to practitioners for the following activities:

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

LEGAL AID – CIVIL LAW MATTERS

ELIGIBILITY FOR LEGAL AID

Applicants for **Civil Law Legal Aid** must be able to satisfy three eligibility tests:

1. Residency
2. Financial Eligibility
3. Area of Law

Applicants for legal aid in an area of law that is eligible for support must be able to demonstrate that they meet the residency and financial tests to qualify. If an applicant exceeds either the capital or income limit they will not be eligible for legal aid.

Applicants who are only in receipt of Income Support are deemed to have met the financial eligibility test.

Applications can only be accepted in relation to civil law, from individuals acting in their private capacity.

Legal aid is not available in respect of corporate or business activity.

RESIDENCY

- Civil Law Applicants must be ordinarily resident in Jersey. Residency must be for a period of not less than 12 months immediately prior to the application for Legal Aid. All applicants must be registered with Social Security. Applicants will be required to evidence that they meet the residency test.
- Discretion will be held by the Judicial Greffier to waive or reduce the residency requirement in exceptional circumstances, where it is in the interests of justice to do so.

FINANCIAL

	Capital Limit (Individual)	Income Limit (Individual)
Civil Law Matters	£63,000	£42,000

Capital	The value of property, savings, investments or a financial interest in any asset, including the equity in any property, whether in Jersey or elsewhere, but excluding the capital value of any pensions. All assets owned by the applicant should be included in full. Where assets are jointly owned (e.g. property, savings accounts), 50% of the total value (net of mortgage for properties) should be included in the capital calculation.
Income	Total amount of salary, pensions, benefits (including Income Support), the value of benefits in kind, maintenance and income from any source, including interest, dividends and trust fund income, received by the applicant. Gross income is total income <u>before</u> any deductions for tax, social security etc.

AREA OF LAW – CIVIL MATTERS**ELIGIBLE****Civil Claims and proceedings**

- Contractual disputes/Actions in tort (subject to positive prospects of success) #
- Judicial Review applications ##
- Professional negligence claims (other than in relation to medical negligence) including claims of negligence for breach of duty in respect of Powers of Attorney, Probate or Tutelles.
- Eviction proceedings.
- Licitation proceedings where a minor child resides in the property.
- Appeals in civil proceedings (where a Legal Aid certificate was granted in the original proceedings), subject to a favourable opinion.
- Opinion on the merit of an appeal to the Royal Court against the decision of the Employment and Discrimination Tribunal, the Social Security Tribunal or determinations/orders of the Data Protection Authority against an individual.
- Appeal to the Royal Court against the decision of the Employment and Discrimination Tribunal, the Social Security Tribunal or determinations/orders of the Data Protection Authority against an individual, subject to a favourable opinion.
- Second opinion on personal injury and medical/clinical negligence claims (only where a negative opinion has been given as to the prospects of success of a claim by the specialist 'PIMED' (Personal Injury Medical Negligence) panel).

except personal injury claims (which are subject to separate arrangements), Petty Debt Court matters (other than eviction proceedings which are eligible), minor disputes/actions or where explicitly excluded/ineligible.

Judicial review applications will initially be limited to an opinion on the merits of the prospects of success of an application for leave to apply for judicial review. Where a positive opinion is given, the 'application for leave' and 'application for judicial review' will fall outside the scope of Legal Aid and will be subject to funding from the Judicial Greffe on an individual case-by-case basis.

NOT ELIGIBLE**Civil**

- Bankruptcy/en Désastre
- Remise de bien / dégrèvement proceedings
- Licitation proceedings (other than where a minor child resides in the property)
- Personal injury claims^^
- Medical negligence claims^^
- Corporate and Business matters (including any business-related issue, contractual matters and disputes between shareholders, partners or directors)
- Delegate matters (other than claims in negligence for breach of duty)
- Conveyancing / Property / Boundary Disputes / Voisinage
- Deed polls
- Data protection matters (other than in respect of appeals to the Royal Court by an individual against determinations/orders of the Data Protection Authority)
- Defamation / Libel / Slander
- Debt related issues or proceedings
- Discrimination law (other than in respect of appeals to the Royal Court against the decision of the Employment and Discrimination Tribunal)
- Employment law (other than in respect of appeals to the Royal Court against the decision of the Employment and Discrimination Tribunal)
- Planning disputes
- Powers of attorney (other than claims in negligence for breach of duty) including Lasting Powers of Attorney
- Probate (other than claims in negligence for breach of duty)
- Succession planning (wills)
- Taxation issues (including disputes with Comptroller of Taxes)
- Tribunal issues whatever the nature of such tribunal (Employment & Discrimination, Social Security, Housing, Motor Insurance Bureau, Criminal Injuries Compensation Board or any other type of tribunal) including any appeals^^^
- Tutelles (other than claims in negligence for breach of duty)
- Wills (the making of wills or associated activity)
- Notwithstanding the above all or any other non-contentious matters

^^ Personal injury and medical negligence claims are outside the scope of the Legal Aid Scheme and will be considered, on request, by an accredited member of a specialist PIMED legal panel. Claimants who are financially eligible for legal aid and who have received a negative first opinion on the prospects of success of their claim may apply for a second opinion through the Legal Aid scheme.

^^^ Excludes appeals to the Mental Health Review Tribunal which, under the Public Law Legal Aid Scheme, are eligible for legal representation and appeals to the Royal Court in respect of Employment & Discrimination and Social Security Tribunals.

PERSONAL INJURY AND MEDICAL/CLINICAL NEGLIGENCE CLAIMS

- All potential personal injury and medical/clinical negligence claims will be considered, in the first instance, by a member of a specialist legal panel (the PIMED panel).
- Where the applicant holds insurance cover (e.g. legal cover through motor or household insurance) or is a member of a union that provides legal cover for certain claims, any claims will be subject to the conditions applied by the relevant insurance provider.
- The panel member will assess each claim and consider the prospects of success.
- Where the prospect of success is 51% or more, the panel member will proceed with the claim on a 'no win, no fee' basis. Fees will ordinarily be recovered from insurers in the event of a successful claim but may, in appropriate cases, be recovered from any award or settlement.
- Where the applicant is 'eligible for legal aid' (based on assessment of residency and financial eligibility against the legal aid criteria) and a positive (51%+) opinion has been received, the PIMED panel member may apply for funding of any disbursements from the Judicial Greffe (funded by the Legal Aid Vote).
- Where a claim is determined as having poor prospects of success (50% or less), the claim will not be progressed. Claimants in receipt of a negative opinion who are 'eligible for legal aid' (based on assessment of residency and financial eligibility against the legal aid criteria), may request a second opinion in respect of their claim. In the event of a positive second opinion, the claim will be progressed through the legal aid scheme, in respect of which personal contributions may be payable. In the event of a further negative opinion, the claim will not be pursued. No further opinions on the merit of the claim will be available.

KEY PRINCIPLES

- The Judicial Greffier is responsible for the administration of the Legal Aid Scheme.
- The operation and day-to-day administration of the scheme is, in practice, undertaken by the Legal Aid Office, under the direction of the Acting Bâtonnier.
- The Legal Aid Office is a division of the Law Society to whom the scheme administration is entrusted by the Judicial Greffier.
- Applications are assessed by the Legal Aid Office against the scheme eligibility criteria, as follows:
 - ✓ Does the application fall within the financial eligibility limits for the relevant category?
 - ✓ Does the application relate to a qualifying offence/matter (criminal)?
 - ✓ Does the application relate to an eligible area of law (civil / family)?
 - ✓ Does the applicant meet the residency requirements (civil / family)?
 - ✓ Where a negative opinion on the merits of success of appeal has been received, are there any reasonable grounds upon which a certificate for a second opinion on the merits should be granted?
- In addition to administering the scheme, the Legal Aid Office 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.
- Applicants who do not pass the Financial Eligibility test will not qualify for Legal Aid, irrespective of the area of law to which the matter relates.
- Applicants who are only on Income Support (which must be evidenced to the Legal Aid Office) are deemed to have met the financial eligibility test.
- Legal aid will only be granted for eligible matters, even if an applicant meets the financial test.
- Personal contributions towards the cost of legal representation are payable where an applicant's total income (including benefits) exceeds £20,000.

- All certificates are capable of withdrawal in the event of:
 - ✓ Material change in financial circumstances
 - ✓ Provision of incorrect or misleading information at time of application (or at any time thereafter).
 - ✓ Failure to meet conditions of approval of certificate.
 - ✓ Failure to co-operate with, or respond to, the appointed lawyer.
 - ✓ Failure or refusal to complete due diligence or client take-on procedures.
 - ✓ Refusal to accept advice provided by a lawyer.
 - ✓ Inappropriate behaviour or conduct on the part of the applicant/client
 - ✓ A negative opinion is provided in relation to the prospects of success of any claim or action (including appeals)

Appeals

- Appeals against decisions made by the Acting Bâtonnier / Legal Aid Office (to refuse, limit the scope of, or withdraw legal aid certificates) will be considered by the Bâtonnier (or a Bâtonnier Substitute).
- The scope of any appeal to the Bâtonnier is limited to consideration as to whether the Legal Aid Office has correctly applied the scheme eligibility criteria in making its decision.
- The Bâtonnier does not have the discretion to grant Legal Aid, or uphold any appeals made against decisions of the Acting Bâtonnier / Legal Aid Office other than where he considers that the Legal Aid Office has incorrectly applied the scheme criteria.
- In accordance with the provisions of Article 4 (4) of The Access to Justice (Jersey) Law 2019, the Judicial Greffier may, in exceptional circumstances, provide legal aid to any person where the interests of justice requires it.

Complaints

- 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.

Financial Eligibility Criteria

- The assessment of Capital and Income is at an individual, personal level.
- The income test will only be applied where the capital test is passed.
- Legal aid will not be granted where the relevant capital and/or income limits thresholds are exceeded.
- Joint applicants will be assessed based on an average of the parties' capital and income levels.
- Applicants who are only in receipt of Income Support are deemed to have met the financial eligibility test. However, where the total income (including benefits) of an applicant who is in receipt of Income Support exceeds the threshold at which personal contributions are payable, the applicant remains liable for the payment of personal contributions.

Capital

- Capital (for the purposes of eligibility) includes property, savings, investments or a financial interest in any asset, including the equity in any property, whether in Jersey or elsewhere, but excluding the capital value of any pensions. All assets owned by the applicant should be included in full. Where assets are jointly owned (e.g. property, savings accounts), 50% of the total value (net of mortgage for properties) should be included in the capital calculation.

Capital includes the following:

- Cash savings held in the sole name of the applicant or jointly with another party in Jersey or elsewhere in any currency;
- The market value of all property (whether in Jersey or elsewhere) after the deduction of outstanding borrowings, held in the sole name of the applicant or jointly with another party;
- National Savings certificates, National Savings capital bonds and premium bonds;
- Stocks/shares including share save schemes and share incentive plans;
- Unit Trusts and Personal Equity Plan (PEP) Investments;
- Fixed term investments;
- Timeshares;
- Trust assets or funds;
- Other financial assets including cryptocurrencies;
- Valuables including Boats, Paintings and Antiques;
- Jewellery other than engagement rings, wedding rings and eternity rings;
- Money owing to an applicant;
- Money due from an estate or trust fund;
- Money that can be borrowed against business assets.

The following are disregarded in the calculation of capital:

- Household furniture and effects (unless the contents include any single or collection of items with a market value of more than £10,000);
- Personal clothing/tools and equipment of trade;
- Engagement rings, wedding rings and eternity rings;
- One motor vehicle per household that is regularly used and valued less than £15,000 (any loan or HP is deducted from the value);
- Capital value of any pension.

Income

- Income includes pensions, benefits (including Income Support), the value of benefits in kind, maintenance and income from any source, including interest, dividends and trust fund income, as received by the applicant. Gross income is total income before any deductions for tax, social security etc.

Capital – Calculation Examples

- If the applicant has a property, in joint names, in respect of which the equity is, say £90,000, the attributable capital (relating the property) for the applicant is £45,000. If other capital (e.g. savings) is below £5,000, the capital test will be met.
- If the applicant has savings and investments, in joint names, of £50,000 and savings in their sole name of £20,000, the attributable capital for the applicant is £25,000 plus £20,000 = £45,000. The capital test will be met.
- If the applicant has a property, in their sole name, in respect of which the equity is, say £90,000, the attributable capital (relating to the property) for the applicant is £90,000, even if there are other occupants of the property. The capital test will not be met.
- If the applicant has savings and investments, in their sole name, of £50,000, and savings in joint names of £10,000, the attributable capital for the applicant is £50,000 plus £5,000 = £55,000. The capital test will not be met. Legal aid will not be granted in these circumstances.
- Where there are joint applicants in any matter, capital will be assessed based on the average attributable capital for the applicants.
 - ✓ If the applicants collectively have joint property (with equity of £70,000) and joint savings totalling £20,000, the attributable capital for each party is £45,000. In this case, the capital test would be met.
 - ✓ If the applicants collectively have joint property (with equity of £100,000) and joint savings totalling £5,000, the attributable capital for each party is £52,500. In this case, the capital test would not be met.

Income – Calculation Examples

- If an applicant in a Family or Civil matter earns £32,000, the income test will be met.
- If an applicant in a Family or Civil matter earns £40,000, the income test will not be met.

Joint applicants (civil matters)

- Where there are joint applicants in a civil matter, income will be assessed based on the average income for the applicants.
- If one applicant has income of £46,000 and the second applicant has an income of £12,000, the average income of the applicants is £29,000. In this case, the income test would be met.
- If one applicant has income of £37,000 and the second applicant has an income of £32,000, the average income of the applicants is £34,500. In this case, the income test would not be met.

Where the capital and income tests have been met, Legal Aid will be granted subject to the matter for which legal representation has been requested being eligible for Legal Aid. Where the capital test has not been met, Legal Aid will not be granted. Where the capital test has been met but the income test has not been met, Legal Aid will not be granted.

Personal Contributions

Personal contributions are payable, in private law matters (family and civil) where legal aid has been granted, where an applicant has gross income, including benefits, above £20,000 per annum.

Contributions are payable on the following basis:

<u>Gross income (as defined above)</u>	<u>Contribution Level</u>	<u>Monthly Payment</u>
Up to £20,000	NIL	NIL
£20,001 - £24,000	10%	£25
£24,001 - £28,000	20%	£50
£28,001 - £42,000	30%	£100

Legal Aid in respect of Private Law matters will not be granted where an applicant's gross income exceeds £42,000 (other than in respect of individuals who are only in receipt of Income Support and who are deemed to have met the financial eligibility criteria).

Applicants with gross annual income above £20,000 will be required to make a contribution towards the cost of their legal representation.

An individual's contribution level (and applicable monthly payment) will be assessed by the Legal Aid Office at the point of issue of a Legal Aid Certificate, based on assessment of documentary evidence in respect of an applicant's total income (including benefits). Changes in a client's income and circumstances may result in a re-assessment of contributions (which will be undertaken by the appointed law firm).

While individuals who are only in receipt of Income Support are deemed to have satisfied the financial eligibility requirements, personal contributions are payable in private law matters where total income including benefits exceeds £20,000 per annum. Where total benefit income is above the maximum threshold for private law matters (1 x median average annual income), legal aid will still be granted, but liability to fees will be limited to the maximum 30%/£100 per month contribution.

Firms will, at the outset of a matter, provide an estimate of the anticipated cost to the applicant (at the appropriate percentage rate). Monthly payments should be implemented at the commencement of a matter, at the level determined by the Legal Aid Office. Firms are required to accept monthly payments. Applicants may choose to pay more than the stated monthly payments. **Payments will continue until the cost of legal representation, at the appropriate contribution rate, has been met in full or a period of four years has elapsed since the commencement of the matter, whichever comes first, subject to the proviso that, in the event that the matter has not been completed at the end of the four year period, monthly payments will continue until representation ceases.** As such, contributions are capped at the value of 48 monthly contributions, except where representation continues beyond 48 months, in which case further payments must be made until representation is concluded. The four year period will only apply where no payments have been missed or any missed payments have been subsequently met.

Legal Aid Certificates in family matters will, in all cases, specify the specific nature of the activity or proceedings covered by the certificate (e.g. divorce, financial arrangements including maintenance, and residence and contact). Where additional actions or proceedings arise, which are outside the scope of the original certificate, a new certificate will need to be applied for. If granted, the work required under the new certificate will be undertaken by the same firm as for the original certificate. Where personal contributions are payable, the four year period commences at the start of the first certificate issued; where a second or subsequent certificate is issued for additional matters, the four year payment period will recommence with the new matter, with payments continuing for a new four year period from the start of the new matter, at the same monthly payment as previously implemented i.e. if matter 1 starts in January 2020, with payments at the appropriate contribution rate (e.g. £25, £50 or £100 per month) and then matter 2 starts in January 2021, payments will continue at the same rate from the commencement of the new matter, for a period of four years or until total costs, at the appropriate contribution rate have been met, whichever occurs first.

Where costs (at 100% of the Legal Aid rate) reach 75% of the initial estimate and are expected to exceed the initial estimate, a new estimate must be provided. Monthly contributions (which are based on an applicant's income) will remain unchanged, even if an estimate increases.

Examples of payments:

- Estimate of fees in a matter (at 100% of the Legal Aid rate) is £10,000.
- Applicant has gross income of £25,000 and so is assessed as being a 20% contributor.
- The total liability of applicant (which will be detailed within the estimate) is therefore £2,000 (excluding any court fees or disbursements, which must be met by the applicant in addition to the monthly contributions, unless an exemption certificate from the Viscount's Department has been obtained in respect of court fees).
- Monthly payments of £50 per month are required from the commencement of representation until the applicant's total fees, at the contribution rate, have been paid in full or four years has elapsed following commencement of the case, whichever comes first. Provided all monthly payments have been met, payments need only be made for a maximum period of 48 months, unless representation continues beyond the four year period. In these circumstances, payments must continue, beyond the four year period, until the completion of representation. Applicants may pay the outstanding amount (up to the 48 month cap) at the end of a matter or make higher monthly payments to reduce the payment period. Where a second or subsequent matter is required and a new Legal Aid certificate relating to that matter is issued, the four year period will recommence. However, even in the event that two or more matters are being undertaken at the same time, the amount of the monthly payment (at the appropriate contribution rate) will be unchanged, unless an individual voluntarily increases the payment to reduce the payment period.

In family matters, where funds and/or property is obtained through the division of assets or other financial settlement, including those arising from the sale or transfer of ownership of the former matrimonial home, a legally-aided client will be liable to meet the full costs of legal representation (at 100% of the Legal Aid rate).

To ensure that legal aid clients in such matters are aware of their liability in this regard, clear reference shall be made in letters of engagement issued by law firms to the circumstances under which full recovery of costs, at 100% of the Legal Aid rate can be claimed by a firm. Invoices issued to the client should detail the full costs (at 100% of the Legal Aid rate) as well as the charges that apply, based on the personal contribution level determined by the Legal Aid Office.

Outstanding fees (at the appropriate contribution rate) are, however, subject to full immediate payment upon receipt by the legally-aided individual of capital or other funds in excess of £15,000.

The law firm reserves the right to cease all work where monthly payments are not made, although work may continue at their discretion.

Legal Aid Certificates will confirm the level of monthly contribution payable in each case.

Court fees and other disbursements incurred during the course of representation must be met by the applicant in addition to the monthly contributions, unless an exemption certificate from the Viscount's Department has been obtained in respect of court fees.

However, other than in respect of cases where funds and/or property is obtained through the division of assets or other financial settlement, as detailed above, a legally-aided client's liability to fees is limited to the personal contributions payable during the course of the representation and which will be detailed at the commencement of that representation.

Fee Adjudications

Legally-aided clients may, in the event of a dispute over the level of fees charged, seek fee adjudication through the Legal Aid Office. Applicants seeking fee adjudications must detail the reasons for the dispute and any supporting evidence.

Financial Hardship

Where the amount outstanding (based on the relevant contribution rate) at the end of a matter is such that it could cause financial hardship to a legally aided client, then if it is appropriate in all the circumstances of the case, the outstanding amount shall be reviewed by the firm and, where appropriate, reduced to an affordable level. Any dispute relating to an application under financial hardship provisions will be referred to the Judicial Greffier for a final decision. Financial hardship provisions do not apply where capital in excess of £15,000 has been recovered by the applicant.

Legal Aid Rates

The applicable rates for work undertaken under Legal Aid (which mirror the Factor 'A' Rates set down by the Royal Court from time to time and which reflect the 'breakeven point' for lawyers) are (effective from 1 February 2024):

<u>Fee earner</u>	<u>Hourly rate</u>
Partners (Jersey Advocates and Solicitors)	£330
Qualified lawyers (of more than 5 years' PQE)	£285
Qualified lawyers (of less than 5 years' PQE)	£240
Paralegal Trainee Solicitors and Barristers without pupillage	£210
Paralegal without law degree or studying for a law degree	£120

Fee estimates, where required, will be based on the amount of time likely to be spent on the matter, by each fee earner, at the above rates, which represent 100% of the 'Legal Aid rate'.

LEGAL AID – CRIMINAL

ELIGIBILITY FOR LEGAL AID

Applicants for **Criminal Legal Aid** must be able to satisfy two eligibility tests:

1. Financial Eligibility
2. Nature/Seriousness of Criminal Offence

Applicants for representation in respect of an eligible criminal offence must first be able to demonstrate that they meet the financial test to qualify. If an applicant exceeds either the capital or income limit they will not be eligible for legal aid.

Financial eligibility does not apply in relation to criminal matters in the Youth Court.

Applicants who are only in receipt of Income Support are deemed to have met the financial eligibility test.

Applicants in criminal matters will have a choice of representation from an accredited panel of criminal practitioners.

Legal aid is not available in respect of corporate or business activity, including matters of a criminal nature.

FINANCIAL

	Capital Limit (Individual)	Income Limit (Individual)
Criminal Matters	£63,000	£63,000

Capital	The value of property, savings, investments or a financial interest in any asset, including the equity in any property, whether in Jersey or elsewhere, but excluding the capital value of any pensions. All assets owned by the applicant should be included in full. Where assets are jointly owned (e.g. property, savings accounts), 50% of the total value (net of mortgage for properties) should be included in the capital calculation.
Income	Total amount of salary, pensions, benefits (including Income Support), the value of benefits in kind, maintenance and income from any source, including interest, dividends and trust fund income, received by the applicant. Gross income is total income <u>before</u> any deductions for tax, social security etc.

<u>NATURE / SERIOUSNESS OF CRIMINAL OFFENCE</u>
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ELIGIBLE

- All criminal matters in the Royal Court
- All criminal matters* in the Magistrate's Court
- All criminal matters in the Youth Court **

* Except offences for which the maximum available sentence is a fine of Level 2 on the Standard Scale of Fines (in accordance with the Criminal Justice (Standard Scale of Fines) (Jersey) Law 1993).

** Representation will be provided, at first appearance in the Youth Court, by the Duty Advocate. Where a matter is not concluded at the first appearance, on receipt of an application, a Legal Aid Certificate will be issued.

NOT ELIGIBLE

- Minor motor-related and criminal offences (where the maximum available sentence is a fine at Level 2 on the Standard Scale of Fines).
- Proceedings outside Jersey in any Court including applications to the Judicial Committee of the Privy Council or European Court of Human Rights

KEY PRINCIPLES

- The Judicial Greffier is responsible for the administration of the Legal Aid Scheme.
- The operation and day-to-day administration of the scheme is, in practice, undertaken by the Legal Aid Office, under the direction of the Acting Bâtonnier.
- The Legal Aid Office is a division of the Law Society to whom the scheme administration is entrusted by the Judicial Greffier.
- Applications are assessed by the Legal Aid Office against the scheme eligibility criteria, as follows:
 - ✓ Does the application fall within the financial eligibility limits for the relevant category?
 - ✓ Does the application relate to a qualifying offence/matter (criminal)?
 - ✓ Does the application relate to an eligible area of law (civil / family)?
 - ✓ Does the applicant meet the residency requirements (civil / family)?
 - ✓ Where a negative opinion on the merits of success of appeal has been received, are there any reasonable grounds upon which a certificate for a second opinion on the merits should be granted?
- In addition to administering the scheme, the Legal Aid Office 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.
- Applicants who do not pass the Financial Eligibility test will not qualify for Legal Aid, irrespective of the nature of the criminal offence for which they have been charged.
- Applicants who are only on Income Support (which must be evidenced to the Legal Aid Office) are deemed to have met the financial eligibility test.
- The financial eligibility test does not apply in relation to criminal matters in the Youth Court.
- Legal aid will only be granted for eligible offences in the Magistrate's Court and Royal Court, even if an applicant meets the financial test.
- Minor motoring and criminal offences for which the maximum available sentence is a fine of Level 2 on the Standard Scale of Fines will not qualify for Legal Aid.
- Applicants who are granted Criminal Legal Aid will have the opportunity to choose their lawyer/firm from a list of accredited criminal practitioners. Where an applicant does not wish to choose their lawyer or their choice of lawyer is unavailable, the Legal Aid Office will allocate a lawyer from the list of accredited criminal lawyers on a rota basis.
- No personal contributions are payable in relation to criminal matters, where a legal aid certificate is granted.

- All certificates are capable of withdrawal in the event of:
 - ✓ Material change in financial circumstances
 - ✓ Provision of incorrect or misleading information at time of application (or at any time thereafter).
 - ✓ Failure to meet conditions of approval of certificate.
 - ✓ Failure to co-operate with, or respond to, the appointed lawyer.
 - ✓ Failure or refusal to complete due diligence or client take-on procedures.
 - ✓ Refusal to accept advice provided by a lawyer.
 - ✓ Inappropriate behaviour or conduct on the part of the applicant/client
 - ✓ A negative opinion is provided in relation to the prospects of success of any claim or action (including appeals)

Appeals

- Appeals against decisions made by the Acting Bâtonnier / Legal Aid Office (to refuse, limit the scope of, or withdraw legal aid certificates) will be considered by the Bâtonnier (or a Bâtonnier Substitute).
- The scope of any appeal to the Bâtonnier is limited to consideration as to whether the Legal Aid Office has correctly applied the scheme eligibility criteria in making its decision.
- The Bâtonnier does not have the discretion to grant Legal Aid, or uphold any appeals made against decisions of the Acting Bâtonnier / Legal Aid Office other than where he considers that the Legal Aid Office has incorrectly applied the scheme criteria.
- In accordance with the provisions of Article 4 (4) of The Access to Justice (Jersey) Law 2019, the Judicial Greffier may, in exceptional circumstances, provide legal aid to any person where the interests of justice requires it.

Complaints

- 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.
- All complaints of professional misconduct (against a lawyer) will be considered by the Law Society of Jersey in accordance with the provisions of The Law Society of Jersey Law 2005.

Criminal Investigations Prior to Charge

Legal Aid will not be granted to an applicant prior to charge where that person is under investigation by the Police or Customs and Immigration but has yet to be charged with an offence.

Access to Telephone Legal Advice

An individual who has been detained by the Police or Customs and Immigration, and is to be interviewed in connection with an offence, will be provided access to confidential telephone advice from the Duty Advocate (or other legal representative who is authorised to provide such advice).

Telephone legal advice is available between 6.00am and 11.00pm (including weekends and bank holidays).

Between the hours of 11.00pm and 6.00am, the duty lawyer will only be contacted in relation to very serious matters, such as offences involving the death of an individual or serious sexual offences.

The Police and/or Customs and Immigration will do everything necessary to facilitate this advice being given both prior to and during the interview, whenever requested.

The provision of legal advice, by telephone or on attendance, to detained persons is not means-tested.

Attendance at Police Headquarters or Customs and Immigration

In respect of certain serious offences or specific circumstances, the Duty Lawyer may attend Police Headquarters or Customs and Immigration to provide legal advice, including at an interview under caution.

Attendance by the Duty Lawyer at PHQ is mandatory in the following circumstances:

- Murder/Attempted Murder (or other offences where the death of an individual is the subject matter of a potential charge)
- Rape or other serious sexual offences including sexual offences against children

Attendance at PHQ is discretionary in the following circumstances where, in the view of the advocate, attendance is justified:

- Drug importation/Supply (Class A - any/Class B - significant quantities)
- Youths in relation to serious offences (at least Grave and Criminal Assault)

- Vulnerable adults (with known diagnoses of autism, Asperger's etc.) in relation to serious offences.

The Duty Lawyer may, at their discretion, attend in other circumstances where they consider it appropriate to do so.

The hours of availability for attendance by the Duty Advocate are the same as those for access to Telephone Legal Advice.

The provision of legal advice, by telephone or on attendance, to detained persons is not means-tested.

Criminal Proceedings following charge

Where an individual has been charged with a criminal offence, Legal Aid will be available unless the charge relates to any one of the following motoring-related offences:

- ✓ Fail to provide roadside specimen - Road Traffic (Jersey) Law 1956, Art 29(4)
- ✓ Telephone, holding whilst driving when vehicle in motion Road Traffic (Jersey) Law 1956, Art 50
- ✓ Provisional licence, Drive other than in accordance with conditions Road Traffic (Jersey) Law 1956, Art 11(2)
- ✓ Registration document, Failure to notify change Motor Vehicle Registration (Jersey) Law 1993, Art 11(2)
- ✓ Seat belt, fail to wear Road Traffic (Jersey) Law 1956, Art 41(3) (adult) Art 42(2) (child under 14)
- ✓ Speeding - Road Traffic (Jersey) Law 1956 Art 21 Road Traffic (Speed Limits) (Jersey) Order 2003, Art 2 (30 mph), Art 3 (20 mph), Art 4 (15 mph)
- ✓ Tampering with a motor vehicle Road Traffic (Jersey) Law 1956, Art 54(2)
- ✓ Traffic light/other road sign Road Traffic (Jersey) Law 1956, Art 74(1)(a)

In all instances, an individual must make an application for Legal Aid. Legal Aid will not be available where no application is received. No assessment of merit is required in relation to eligible criminal offences.

The provision of Legal Aid is subject to an applicant meeting the financial eligibility criteria.

Where an applicant's capital or income exceeds the financial thresholds, Legal Aid will not be granted.

Individuals detained in custody post charge

Individuals who are detained in custody post charge, pending first appearance before the Magistrate's Court, will be provided with access to the Duty Advocate at their first appearance.

The Duty Advocate will not continue to provide representation to the individual after the first appearance. If a matter is not disposed of or otherwise concluded at first appearance, the individual must apply for Legal Aid.

Individuals who are charged with a criminal offence but who are not detained in custody are not eligible for assistance from the Duty Advocate at their first or subsequent appearances before the Magistrate's Court.

Applying for Legal Aid

Individuals who are charged with an eligible criminal offence but who are not detained in custody must apply for Legal Aid at the earliest opportunity to ensure that representation is available at the first appearance before the Magistrate's Court.

Individuals who do not apply for Legal Aid (at all or in a timely manner) or who do not qualify financially for Legal Aid are not eligible for assistance from the Duty Advocate at their first or subsequent appearances before the Magistrate's Court.

Identity Parades

A Legal Aid certificate will not be issued to an applicant purely for an advocate to provide assistance during an identity parade.

Prison Adjudications

Legal Aid will not be granted to assist an applicant facing an adjudication while subject to imprisonment.

Criminal Appeals

Legal Aid will be available (subject to meeting the relevant financial eligibility criteria) in criminal cases to pursue an appeal against conviction and/or sentence (which for the avoidance of doubt includes the outcome of any confiscation proceedings or a recommendation for deportation, where relevant) where, in the opinion of the Acting Bâtonnier, the appeal has sufficient merit.

Sufficient merit will be present where the Acting Bâtonnier considers there to be reasonably arguable grounds of appeal. In reaching his conclusion the Acting Bâtonnier will take into account the opinion

of those who act or have acted for the applicant as to whether there is sufficient merit and the Acting Bâtonnier may take a view based upon the information available in connection with the appeal.

Where an applicant has been represented at first instance in the Magistrate's Court by an advocate under the Legal Aid scheme, they will ordinarily be provided with an opinion on the merits of appealing a conviction and/or sentence as part of the original Legal Aid certificate. Where a favourable opinion on the merits of appeal is provided, and an applicant wishes to pursue an appeal, the advocate will proceed to prosecute any appeal without the need for a further Legal Aid certificate to be issued.

If the appointed advocate concludes that there are no reasonably arguable grounds of appeal, the applicant may apply for a Legal Aid certificate for a second opinion to be granted. The issue of a certificate for the provision of a second opinion is only undertaken in exceptional circumstances and is at the discretion of the Acting Bâtonnier.

The administration of Legal Aid in connection with criminal appeals from the Royal Court shall be carried out in accordance with the Practice Direction CA 05/1 issued by the Jersey Court of Appeal as set out below and/or any other Practice Directions that may be issued by the courts from time to time (the "Practice Direction").

Within a period of 28 days after conviction/sentence an appellant is required to give notice of an appeal/application for leave to appeal. This notice is given by prescribed form 1 and will have annexed to it (save with exceptions provided for under the Practice Direction) the written opinion of the advocate who represented the appellant at first instance.

The procedure to be followed in relation to an application for further Legal Aid in connection with an appeal will vary dependent upon whether, (a) a lawyer was retained by the applicant at first instance or not; (b) whether that lawyer has produced an opinion favourable to the applicant or not; and (c) whether the lawyer who appeared at first instance is able to produce an opinion or prosecute an appeal on behalf of an applicant bearing in mind the nature of the grounds of appeal.

Cases where an advocate has not been retained at first instance under the Legal Aid Scheme

In such situations a potential appellant may apply for Legal Aid in connection with the provision of an opinion as to the merits of appeal and, if appropriate, an appeal itself, subject to the potential appellant meeting the relevant financial eligibility criteria.

In such situations the appellant is responsible for (i) submitting an application for Legal Aid in the usual manner and (ii) ensuring that this is done forthwith following conviction and/or sentence (which for the avoidance of doubt includes the outcome of any confiscation proceedings or a recommendation for deportation, where relevant) to enable the Legal Aid Office and the advocates concerned to observe the Practice Direction.

Upon receipt of any such application for Legal Aid, the Acting Bâtonnier shall appoint an advocate to produce a written opinion as to the merits of an appeal within the time limits set out in the Practice Direction.

Should the said advocate decide that there is sufficient merit to such an appeal then the Legal Aid certificate already issued to that lawyer in respect of providing an opinion shall include the pursuance of the appeal on behalf of the applicant.

Where the appointed advocate has issued an opinion to the effect that an appeal is without sufficient merit, then the applicant may apply for a second opinion. The issue of a certificate for the provision of a second opinion is only undertaken in exceptional circumstances and is at the discretion of the Acting Bâtonnier.

Cases where an applicant has been represented at first instance under the Legal Aid Scheme and the Advocate has provided a favourable opinion on the merits of an appeal

In such cases it is the responsibility of the advocate to ensure that:

- (a) The appropriate appeal notice has been lodged.
- (b) A copy of their opinion has been annexed to the said appeal notice (unless they have instructions to the contrary in accordance with the Practice Direction).
- (c) The Legal Aid Office is informed that an appeal is to be pursued (although it is not necessary for a new Legal Aid application to be made for this purpose).
- (d) The Legal Aid office is provided with a copy of the advocate's opinion in connection with the merits of appeal (the applicant is deemed in applying for Legal Aid to consent to the sending of that opinion).

- (e) The Judicial Greffe is aware that an application has been made for Legal Aid and the name of the individual appointed to represent the applicant.
- (f) Generally, all time limits under the Practice Direction are met or appropriate extensions applied for.

Where an Advocate has represented the applicant at first instance but has provided an opinion as to the merits of an appeal which is unfavourable to the applicant

In such circumstances, it is the obligation of the advocate to advise the applicant that they may apply to the Legal Aid Office for a second opinion.

Should the applicant wish further representation, it is the obligation of the applicant to do the following:

- (a) Apply for a further certificate for a second opinion in relation to the merits of appeal.
- (b) Disclose to the Legal Aid office a copy of the opinion that has thus far been provided by the advocate retained at first instance.
- (c) Inform the Legal Aid Office whether the applicant wishes to bring an appeal based on the conduct or performance of the advocate at first instance.

Upon receipt of such an application the Acting Bâtonnier may form the view that the appeal proposed by the applicant is without sufficient merit. In this situation, the application for a second opinion will be refused.

If it appears to the Acting Bâtonnier that there may be *prima facie* grounds for appeal then the Legal Aid office shall appoint a second advocate to produce a further opinion as to whether the appeal has sufficient merit. It shall be incumbent on the advocate concerned to apply for any extensions of time that may be necessary pursuant to the Practice Direction.

The issue of a certificate for the provision of a second opinion is only undertaken in exceptional circumstances and is at the discretion of the Acting Bâtonnier.

Should the second advocate conclude that there are no reasonable merits to the appeal then further Legal Aid will be refused.

Should the second advocate conclude that there are arguable grounds for appeal then they shall undertake that appeal under the terms of the Legal Aid certificate that has been issued.

Cases where the Advocate who appeared at first instance feels unable to provide an opinion as to the merits of an appeal

This may occur in one of the following situations:

- (a) The subject matter of the appeal arises out of the conduct or performance of the advocate at first instance; or
- (b) some other matter has arisen which makes it impossible or impracticable for the same advocate to continue to represent the applicant.

Where this situation arises it shall be the responsibility of the advocate (having informed the client) to inform the Legal Aid Office of the position. It shall be the responsibility of the Legal Aid Office to contact the applicant to ascertain whether they wish further consideration to be given to the merits of an appeal. If this is the case the Acting Bâtonnier shall appoint a second advocate to advise in relation to the merits of an appeal and a new Legal Aid certificate will be issued.

Should the second advocate conclude that there are arguable grounds of appeal then they shall pursue the said appeal in the usual manner,

Should the second advocate advise there are no arguable grounds for appeal then the applicant may apply for a second opinion.

The issue of a certificate for the provision of a second opinion is only undertaken in exceptional circumstances and is at the discretion of the Acting Bâtonnier.

LEGAL AID – FAMILY LAW MATTERS

ELIGIBILITY FOR LEGAL AID

Applicants for **Family Law Legal Aid** must be able to satisfy three eligibility tests:

1. Residency
2. Financial Eligibility
3. Area of Law

Applicants for legal aid in an area of law that is eligible for support must be able to demonstrate that they meet the residency and financial tests to qualify. If an applicant exceeds either the capital or income limit they will not be eligible for legal aid.

Applicants who are only in receipt of Income Support are deemed to have met the financial eligibility test.

Applications can only be accepted in relation to civil law, from individuals acting in their private capacity.

Legal aid is not available in respect of corporate or business activity.

RESIDENCY

- Family Law Applicants must be ordinarily resident in Jersey. Residency must be for a period of not less than 12 months immediately prior to the application for Legal Aid. All applicants must be registered with Social Security. Applicants will be required to evidence that they meet the residency test.
- Discretion will be held by the Judicial Greffier to waive or reduce the residency requirement in exceptional circumstances, where it is in the interests of justice to do so.

FINANCIAL

	Capital Limit (Individual)	Income Limit (Individual)
Family Law Matters	£63,000	£42,000

Capital	The value of property, savings, investments or a financial interest in any asset, including the equity in any property, whether in Jersey or elsewhere, but excluding the capital value of any pensions. All assets owned by the applicant should be included in full. Where assets are jointly owned (e.g. property, savings accounts), 50% of the total value (net of mortgage for properties) should be included in the capital calculation.
Income	Total amount of salary, pensions, benefits (including Income Support), the value of benefits in kind, maintenance and income from any source, including interest, dividends and trust fund income, received by the applicant. Gross income is total income <u>before</u> any deductions for tax, social security etc.

AREA OF LAW – FAMILY LAW MATTERS**ELIGIBLE****Family claims and proceedings**

- Ancillary (financial) relief claims where there are dependent children**.
- Child maintenance (including Schedule 1 claims) under the Matrimonial Causes (Jersey) Law 1949 or the Children (Jersey) Law 2002 (other than Child maintenance claims where the applicant is on income support and has no other capital assets and no other income, which are not eligible).
- Divorce / Judicial Separation / Civil partnership / nullity proceedings where there are dependent children**.
- Residence and contact disputes, prohibited steps orders, specific issue orders and removal from the jurisdiction under the Children Law 2002 or the Matrimonial Causes (Jersey) Law 1949 (subject to family mediation having been formally considered by the parties in appropriate cases).
- Injunctions, ex parte orders and ex-parte injunctions within the family law context.
- Claims by a child under the Legitimacy (Jersey) Law 1973.
- Appeals in family proceedings (where Legal Aid has previously been granted), subject to a favourable opinion.

** Claims in relevant matters where there are no dependent children will be eligible (subject to financial and residency criteria being met) 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 and including the age of 16 or in a recognised apprenticeship (until the end of that training) or tertiary education (until the end of a first degree only) or the child has medically-diagnosed special needs that necessitates financial dependence in either parent.

Note: Straightforward divorce proceedings where there are no assets to divide, no financial disputes and no issues relating to children will not ordinarily qualify for legal aid.

<u>NOT ELIGIBLE</u>

Family

- Adoptions

- Ancillary (financial) relief claims where there are no dependent children**.

- Divorce / judicial separation/ Civil partnership dissolution / nullity proceedings where there are no dependent children**.

- Child maintenance claims where the applicant is on income support and has no other capital assets and no other income ++.

- Enforcement of maintenance orders.

- Claims under the Legitimacy (Jersey) Law 1973 (except where the claim is by a child).

- Pre or post nuptial agreements.

- Separation Agreements (unless part of a settlement under an ancillary relief claim where there are dependent children).

- Maintenance claims under the Separation and Maintenance Orders (Jersey) Law 1953.

** Claims in relevant matters where there are no dependent children will be eligible (subject to financial and residency criteria being met) 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 and including the age of 16 or in a recognised apprenticeship (until the end of that training) or tertiary education (until the end of a first degree only) or the child has medically-diagnosed special needs that necessitates financial dependence in either parent.

++ Such claims are outside the scope of Legal Aid. Claims where there is a realistic prospect of success may be pursued by Social Security under separate arrangements outside the Legal Aid scheme.

<u>KEY PRINCIPLES</u>

- The Judicial Greffier is responsible for the administration of the Legal Aid Scheme.
- The operation and day-to-day administration of the scheme is, in practice, undertaken by the Legal Aid Office, under the direction of the Acting Bâtonnier.
- The Legal Aid Office is a division of the Law Society to whom the scheme administration is entrusted by the Judicial Greffier.
- Applications are assessed by the Legal Aid Office against the scheme eligibility criteria, as follows:
 - ✓ Does the application fall within the financial eligibility limits for the relevant category?
 - ✓ Does the application relate to a qualifying offence/matter (criminal)?
 - ✓ Does the application relate to an eligible area of law (civil / family)?
 - ✓ Does the applicant meet the residency requirements (civil / family)?
 - ✓ Where a negative opinion on the merits of success of appeal has been received, are there any reasonable grounds upon which a certificate for a second opinion on the merits should be granted?
- In addition to administering the scheme, the Legal Aid Office 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.
- Applicants who do not pass the Financial Eligibility test will not qualify for Legal Aid, irrespective of the area of law to which the matter relates.
- Applicants who are only on Income Support (which must be evidenced to the Legal Aid Office) are deemed to have met the financial eligibility test.
- Legal aid will only be granted for eligible matters, even if an applicant meets the financial test.
- Personal contributions towards the cost of legal representation are payable where an applicant's total income (including benefits) exceeds £20,000.

- All certificates are capable of withdrawal in the event of:
 - ✓ Material change in financial circumstances
 - ✓ Provision of incorrect or misleading information at time of application (or at any time thereafter).
 - ✓ Failure to meet conditions of approval of certificate.
 - ✓ Failure to co-operate with, or respond to, the appointed lawyer.
 - ✓ Failure or refusal to complete due diligence or client take-on procedures.
 - ✓ Refusal to accept advice provided by a lawyer.
 - ✓ Inappropriate behaviour or conduct on the part of the applicant/client
 - ✓ A negative opinion is provided in relation to the prospects of success of any claim or action (including appeals)

Appeals

- Appeals against decisions made by the Acting Bâtonnier / Legal Aid Office (to refuse, limit the scope of, or withdraw legal aid certificates) will be considered by the Bâtonnier (or a Bâtonnier Substitute).
- The scope of any appeal to the Bâtonnier is limited to consideration as to whether the Legal Aid Office has correctly applied the scheme eligibility criteria in making its decision.
- The Bâtonnier does not have the discretion to grant Legal Aid, or uphold any appeals made against decisions of the Acting Bâtonnier / Legal Aid Office other than where he considers that the Legal Aid Office has incorrectly applied the scheme criteria.
- In accordance with the provisions of Article 4 (4) of The Access to Justice (Jersey) Law 2019, the Judicial Greffier may, in exceptional circumstances, provide legal aid to any person where the interests of justice requires it.

Complaints

- 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.

Financial Eligibility Criteria

- The assessment of Capital and Income is at an individual, personal level.
- The income test will only be applied where the capital test is passed.
- Legal aid will not be granted where the relevant capital and/or income limits thresholds are exceeded.
- Joint applicants will be assessed based on an average of the parties' capital and income levels.
- Applicants who are only in receipt of Income Support are deemed to have met the financial eligibility test. However, where the total income (including benefits) of an applicant who is in receipt of Income Support exceeds the threshold at which personal contributions are payable, the applicant remains liable for the payment of personal contributions.

Capital

- Capital (for the purposes of eligibility) includes property, savings, investments or a financial interest in any asset, including the equity in any property, whether in Jersey or elsewhere, but excluding the capital value of any pensions. All assets owned by the applicant should be included in full. Where assets are jointly owned (e.g. property, savings accounts), 50% of the total value (net of mortgage for properties) should be included in the capital calculation.

Capital includes the following:

- Cash savings held in the sole name of the applicant or jointly with another party in Jersey or elsewhere in any currency;
- The market value of all property (whether in Jersey or elsewhere) after the deduction of outstanding borrowings, held in the sole name of the applicant or jointly with another party;
- National Savings certificates, National Savings capital bonds and premium bonds;
- Stocks/shares including share save schemes and share incentive plans;
- Unit Trusts and Personal Equity Plan (PEP) Investments;
- Fixed term investments;
- Timeshares;
- Trust assets or funds;
- Other financial assets including cryptocurrencies;
- Valuables including Boats, Paintings and Antiques;
- Jewellery other than engagement rings, wedding rings and eternity rings;
- Money owing to an applicant;
- Money due from an estate or trust fund;
- Money that can be borrowed against business assets.

The following are disregarded in the calculation of capital:

- Household furniture and effects (unless the contents include any single or collection of items with a market value of more than £10,000);
- Personal clothing/tools and equipment of trade;
- Engagement rings, wedding rings and eternity rings;
- One motor vehicle per household that is regularly used and valued less than £15,000 (any loan or HP is deducted from the value);
- Capital value of any pension.

Income

- Income includes pensions, benefits (including Income Support), the value of benefits in kind, maintenance and income from any source, including interest, dividends and trust fund income, as received by the applicant. Gross income is total income before any deductions for tax, social security etc.

Capital – Calculation Examples

If the applicant has a property, in joint names, in respect of which the equity is, say £90,000, the attributable capital (relating to the property) for the applicant is £45,000. If other capital (e.g. savings) is below £5,000, the capital test will be met.

If the applicant has savings and investments, in joint names, of £50,000 and savings in their sole name of £20,000, the attributable capital for the applicant is £25,000 plus £20,000 = £45,000. The capital test will be met.

If the applicant has a property, in their sole name, in respect of which the equity is, say £90,000, the attributable capital (relating to the property) for the applicant is £90,000, even if there are other occupants of the property. The capital test will not be met.

If the applicant has savings and investments, in their sole name, of £50,000, and savings in joint names of £10,000, the attributable capital for the applicant is £50,000 plus £5,000 = £55,000. The capital test will not be met. Legal aid will not be granted in these circumstances.

Where there are joint applicants in any matter, capital will be assessed based on the average attributable capital for the applicants.

- If the applicants collectively have joint property (with equity of £70,000) and joint savings totalling £20,000, the attributable capital for each party is £45,000. In this case, the capital test would be met.
- If the applicants collectively have joint property (with equity of £100,000) and joint savings totalling £5,000, the attributable capital for each party is £52,500. In this case, the capital test would not be met.

Income – Calculation Examples

- If an applicant in a Family or Civil matter earns £32,000, the income test will be met.
- If an applicant in a Family or Civil matter earns £40,000, the income test will not be met.

Where the capital and income tests have been met, Legal Aid will be granted subject to the matter for which legal representation has been requested being eligible for Legal Aid. Where the capital test has not been met, Legal Aid will not be granted. Where the capital test has been met but the income test has not been met, Legal Aid will not be granted.

Personal Contributions

Personal contributions are payable, in private law matters (family and civil) where legal aid has been granted, where an applicant has gross income, including benefits, above £20,000 per annum.

Contributions are payable on the following basis:

<u>Gross income (as defined above)</u>	<u>Contribution Level</u>	<u>Monthly Payment</u>
Up to £20,000	NIL	NIL
£20,001 - £24,000	10%	£25
£24,001 - £28,000	20%	£50
£28,001 - £42,000	30%	£100

Legal Aid in respect of Private Law matters will not be granted where an applicant's gross income exceeds £42,000 (other than in respect of individuals who are only in receipt of Income Support and who are deemed to have met the financial eligibility criteria).

Applicants with gross annual income above £20,000 will be required to make a contribution towards the cost of their legal representation.

An individual's contribution level (and applicable monthly payment) will be assessed by the Legal Aid Office at the point of issue of a Legal Aid Certificate, based on assessment of documentary evidence in respect of an applicant's total income (including benefits). Changes in a client's income and circumstances may result in a re-assessment of contributions (which will be undertaken by the appointed law firm).

While individuals who are only in receipt of Income Support are deemed to have satisfied the financial eligibility requirements, personal contributions are payable in private law matters where total income including benefits exceeds £20,000 per annum. Where total benefit income is above the maximum threshold for private law matters (1 x median average annual income), legal aid will still be granted, but liability to fees will be limited to the maximum 30%/£100 per month contribution.

Firms will, at the outset of a matter, provide an estimate of the anticipated cost to the applicant (at the appropriate percentage rate). Monthly payments should be implemented at the commencement of a matter, at the level determined by the Legal Aid Office. Firms are required to accept monthly payments. Applicants may choose to pay more than the stated monthly payments. **Payments will continue until the cost of legal representation, at the appropriate contribution rate, has been met in full or a period of four years has elapsed since the commencement of the matter, whichever comes first, subject to the proviso that, in the event that the matter has not been completed at the end of the four year period, monthly payments will continue until representation ceases.** As such, contributions are capped at the value of 48 monthly contributions, except where representation continues beyond 48 months, in which case further payments must be made until representation is concluded. The four year period will only apply where no payments have been missed or any missed payments have been subsequently met.

Legal Aid Certificates in family matters will, in all cases, specify the specific nature of the activity or proceedings covered by the certificate (e.g. divorce, financial arrangements including maintenance, and residence and contact). Where additional actions or proceedings arise, which are outside the scope of the original certificate, a new certificate will need to be applied for. If granted, the work required under the new certificate will be undertaken by the same firm as for the original certificate. Where personal contributions are payable, the four year period commences at the start of the first certificate issued; where a second or subsequent certificate is issued for additional matters, the four year payment period will recommence with the new matter, with payments continuing for a new four year period from the start of the new matter, at the same monthly payment as previously implemented i.e. if matter 1 starts in January 2020, with payments at the appropriate contribution rate (e.g. £25, £50 or £100 per month) and then matter 2 starts in January 2021, payments will continue at the same rate from the commencement of the new matter, for a period of four years or until total costs, at the appropriate contribution rate have been met, whichever occurs first.

Where costs (at 100% of the Legal Aid rate) reach 75% of the initial estimate and are expected to exceed the initial estimate, a new estimate must be provided. Monthly contributions (which are based on an applicant's income) will remain unchanged, even if an estimate increases.

Examples of payments:

- Estimate of fees in a matter (at 100% of the Legal Aid rate) is £10,000.
- Applicant has gross income of £25,000 and so is assessed as being a 20% contributor.
- The total liability of applicant (which will be detailed within the estimate) is therefore £2,000 (excluding any court fees or disbursements, which must be met by the applicant in addition to the monthly contributions, unless an exemption certificate from the Viscount's Department has been obtained in respect of court fees).
- Monthly payments of £50 per month are required from the commencement of representation until the applicant's total fees, at the contribution rate, have been paid in full or four years has elapsed following commencement of the case, whichever comes first. Provided all monthly payments have been met, payments need only be made for a maximum period of 48 months, unless representation continues beyond the four year period. In these circumstances, payments must continue, beyond the four year period, until the completion of representation. Applicants may pay the outstanding amount (up to the 48 month cap) at the end of a matter or make higher monthly payments to reduce the payment period. Where a second or subsequent matter is required and a new Legal Aid certificate relating to that matter is issued, the four year period will recommence. However, even in the event that two or more matters are being undertaken at the same time, the amount of the monthly payment (at the appropriate contribution rate) will be unchanged, unless an individual voluntarily increases the payment to reduce the payment period.

In family matters, where funds and/or property is obtained through the division of assets or other financial settlement, including those arising from the sale or transfer of ownership of the former matrimonial home, a legally-aided client will be liable to meet the full costs of legal representation (at 100% of the Legal Aid rate).

To ensure that legal aid clients in such matters are aware of their liability in this regard, clear reference shall be made in letters of engagement issued by law firms to the circumstances under which full recovery of costs, at 100% of the Legal Aid rate can be claimed by a firm. Invoices issued to the client should detail the full costs (at 100% of the Legal Aid rate) as well as the charges that apply, based on the personal contribution level determined by the Legal Aid Office.

Outstanding fees (at the appropriate contribution rate) are, however, subject to full immediate payment upon receipt by the legally-aided individual of capital or other funds in excess of £15,000.

The law firm reserves the right to cease all work where monthly payments are not made, although work may continue at their discretion.

Legal Aid Certificates will confirm the level of monthly contribution payable in each case.

Court fees and other disbursements incurred during the course of representation must be met by the applicant in addition to the monthly contributions, unless an exemption certificate from the Viscount's Department has been obtained in respect of court fees.

However, other than in respect of cases where funds and/or property is obtained through the division of assets or other financial settlement, as detailed above, a legally-aided client's liability to fees is limited to the personal contributions payable during the course of the representation and which will be detailed at the commencement of that representation.

Fee Adjudications

Legally-aided clients may, in the event of a dispute over the level of fees charged, seek fee adjudication through the Legal Aid Office. Applicants seeking fee adjudications must detail the reasons for the dispute and any supporting evidence.

Financial Hardship

Where the amount outstanding (based on the relevant contribution rate) at the end of a matter is such that it could cause financial hardship to a legally aided client, then if it is appropriate in all the circumstances of the case, the outstanding amount shall be reviewed by the firm and, where appropriate, reduced to an affordable level. Any dispute relating to an application under financial hardship provisions will be referred to the Judicial Greffier for a final decision. Financial hardship provisions do not apply where capital in excess of £15,000 has been recovered by the applicant.

Legal Aid Rates

The applicable rates for work undertaken under Legal Aid (which mirror the Factor 'A' Rates set down by the Royal Court from time to time and which reflect the 'breakeven point' for lawyers) are (effective from 1 February 2024):

<u>Fee earner</u>	<u>Hourly rate</u>
Partners (Jersey Advocates and Solicitors)	£330
Qualified lawyers (of more than 5 years' PQE)	£285
Qualified lawyers (of less than 5 years' PQE)	£240
Paralegal Trainee Solicitors and Barristers without pupillage	£210
Paralegal without law degree or studying for a law degree	£120

Fee estimates, where required, will be based on the amount of time likely to be spent on the matter, by each fee earner, at the above rates, which represent 100% of the 'Legal Aid rate'.



LEGAL AID SCHEME OPERATING GUIDELINES



LEGAL AID IN JERSEY

Background

Legal Aid has been made available in Jersey on a voluntary and pro bono basis by the legal profession since 1904. It is based on the obligation of Advocates to give legal assistance to certain classes of litigants, in accordance with the Advocates oath which includes the following clause:

“Vous vous contenterez de gages et salaires raisonnables, et assisterez aux Veuves, Pauvres, Orphelins, et Personnes indefendues”.

“You will content yourself with reasonable wages and salaries and will assist widows, the poor, orphans, and undefended persons.”

The general, and accepted, obligation “to assist the poor” effectively became formalised into the Legal Aid system when the profession determined, by unanimous resolution, on 20 August 1904, that the obligation would be discharged by Advocates of less than 15 years’ standing on a “Tour de Rôle” (‘according to one’s turn’) basis. The obligation remains in force and has been acted upon for over a century. Advocates (and now Solicitors of the Royal Court) of less than 15 years’ standing are therefore, in general, obliged to represent a person under the Legal Aid scheme.

In practice, the obligation is discharged by advocates and solicitors in private practice and does not extend to advocates and solicitors employed by the Law Officers’ Department or Judicial Greffe or to advocates or solicitors employed outside private practice who hold non-practising status.

In recent years, while criminal, civil and family law certificates continued to be discharged through the Tour de Rôle, the representation of parties in public law children and mental health/capacity law matters has been undertaken by accredited members of specialist panels, funded by the Judicial Greffe on a fixed fee/tariff basis.

Reform of Legal Aid

Following discussions between the Law Society of Jersey and the Government of Jersey, the [Access to Justice \(Jersey\) Law 2019](#) was enacted, the principal purpose of which was to “make provision for improving access to justice by establishing a legal aid scheme”.

The key elements of the Law are as follows:

2 Duty to provide legal aid

- (1) Without prejudice to the generality of –
 - (a) the oath of advocates of the Royal Court administered under Article 8(6)(a) of the [Advocates and Solicitors \(Jersey\) Law 1997](#) and set out in the [Code of 1771](#); or
 - (b) the oath of office of solicitors of the Royal Court administered under Article 8(6)(b) of the [Advocates and Solicitors \(Jersey\) Law 1997](#) and set out in Schedule 1 to that Law,an advocate or a solicitor is under a duty to provide legal aid to a person in accordance with this Law.
- (2) A failure by an advocate or a solicitor to provide legal aid in accordance with paragraph (1) shall be professional misconduct and a complaint against an advocate or a solicitor alleging professional misconduct on grounds of failure to discharge that duty shall be made and determined under Part 3 of [The Law Society of Jersey Law 2005](#).

3 Establishment of the Legal Aid Scheme

There shall be established in accordance with this Law, a scheme to be known as the Legal Aid Scheme, for the provision of assistance in Jersey in a case where an individual is in need of legal services.

4 Administration of the Legal Aid Scheme

- (1) The Judicial Greffier shall be responsible for the administration of the Legal Aid Scheme.
- (2) Subject to paragraph (1) and to such directions as the Judicial Greffier may from time to time determine, the Judicial Greffier may entrust any part of the administration of the Legal Aid Scheme to the Law Society or to such other person as the Judicial Greffier deems appropriate, except for –
 - (a) the responsibility for meeting payments under the Legal Aid Scheme; and
 - (b) the requirements imposed on the Judicial Greffier under Article 16.

- (3) For the purposes of Article 3(b) of the [Freedom of Information \(Jersey\) Law 2011](#), information in respect of the administration of the Legal Aid Scheme held by a person to whom an entrustment is made under paragraph (2), shall be information that is held on behalf of the Judicial Greffier.
- (4) The administration of the Legal Aid Scheme shall be carried out in accordance with the Legal Aid Guidelines except that, notwithstanding any provision to the contrary in this Law or Regulations or an Order made under this Law or the Legal Aid Guidelines, the Judicial Greffier may, in exceptional circumstances, provide legal aid to any person where the interests of justice requires it.

5 Resources

- (1) The States shall ensure that the Judicial Greffier is provided with sufficient resources for the purpose of meeting payments under the Legal Aid Scheme.
- (2) Without prejudice to the application of the Public Finances (Jersey) Law 2005 to the Judicial Greffier's Department, where a function is entrusted to the Law Society under Article 4(2), the Law Society shall, to the extent of those functions, be a States aided independent body for the purposes of Article 14 of the [Comptroller and Auditor General \(Jersey\) Law 2014](#).

6 Establishment of Legal Aid Guidelines Advisory Committee

- (1) There is established a committee to be known as the Legal Aid Guidelines Advisory Committee for the purpose of advising and assisting the Minister in making the Legal Aid Guidelines.
- (2) The Legal Aid Guidelines Advisory Committee shall be chaired by the Judicial Greffier who shall be a member of the Legal Aid Guidelines Advisory Committee.
- (3) The Legal Aid Guidelines Advisory Committee shall also consist of the following members –
 - (a) the Attorney General or a person nominated by the Attorney General;
 - (b) the most senior officer of the Magistrate's Court, or a person nominated by that senior officer;
 - (c) the Bâtonnier or a person nominated by the Bâtonnier;
 - (d) the President of the Law Society or a person nominated by the President;
 - (e) the Chief Executive Officer of the Law Society or a person nominated by the Chief Executive Officer;
 - (f) two persons nominated by the Bailiff;
 - (g) two other persons nominated by the Minister who are residents of Jersey and who are not members of the States; and
 - (h) two members of the States, nominated by the States.
- (4) Before nominating a person under paragraph (3), the Judicial Greffier, must first be consulted.

- (5) A person shall be nominated under paragraph (3) for such period as may be specified by the person who has nominated him or her.
- (6) The Legal Aid Guidelines Advisory Committee may, subject to a quorum of not less than 7 members, meet for the conduct of business, adjourn and otherwise regulate its procedures as it thinks fit.
- (7) The Legal Aid Guidelines Advisory Committee shall, before advising and assisting the Minister –
 - (a) consult the Bailiff and Magistrate;
 - (b) consult such other persons as it considers appropriate; and
 - (c) meet (unless it is inexpedient to do so).
- (8) The reports of the Legal Aid Guidelines Advisory Committee must be signed by not less than 7 members of the Legal Aid Guidelines Advisory Committee.
- (9) The Legal Aid Guidelines Advisory Committee must make a report to the Minister for the purpose of advising and assisting him or her under paragraph (1) no later than 6 months after its establishment under that paragraph.
- (10) The States may, by Regulations, amend the members of the Legal Aid Guidelines Advisory Committee listed in paragraph (3).

7 Legal Aid Guidelines

- (1) The Minister shall, with the advice and assistance of the Legal Aid Guidelines Advisory Committee, make and publish guidelines for the purpose of providing for the administration of the Legal Aid Scheme, including providing –
 - (a) for the conditions under which legal aid shall be provided in Jersey;
 - (b) for the responsibility for meeting the reasonable costs of legal services under the Legal Aid Scheme;
 - (c) for the financial cost to individuals provided with legal aid; and
 - (d) information regarding the Legal Aid Scheme to applicants and to advocates and solicitors who provide legal services under the Legal Aid Scheme.
- (2) Without prejudice to the generality of paragraph (1), the Legal Aid Guidelines may do any of the following –
 - (a) subject to Article 9, specify the types of cases that may be eligible or not eligible for legal aid;
 - (b) provide for different types of cases to be dealt with in accordance with different systems of legal aid under which –
 - (i) legal services are provided by an advocate or a solicitor who is paid out of public funds for those legal services, or
 - (ii) legal services are provided by an advocate or a solicitor who is not paid out of public funds but may receive contributions from an applicant in accordance with the provisions made under subparagraphs (f), (g), (h) and (i);

- (c) specify the factors that may be relevant to providing legal aid, take into account the circumstances in which it is appropriate to provide legal aid, and may, in particular, set out the extent to which the factors ought to reflect the following –
 - (i) the likely cost of providing the legal services and the benefit which may be obtained by the legal services being provided,
 - (ii) the appropriateness of applying available resources to provide the legal services, having regard to present and likely future demands for the provision of legal services,
 - (iii) the importance to an individual of the matters in relation to which the legal services would be provided,
 - (iv) the nature and seriousness of the act, circumstances or other matter in relation to which the legal services are sought,
 - (v) the availability to an individual of legal services provided and the likelihood of the individual being able to make use of such legal services,
 - (vi) if the legal services are sought by an individual in relation to a dispute, the individual's prospects of success in the dispute,
 - (vii) the conduct of an individual in connection with legal services made available or in connection with an application for such legal services,
 - (viii) the conduct of an individual in connection with any legal proceedings or other proceedings for resolving disputes about legal rights or duties,
 - (ix) the public interest, and
 - (x) an individual's residential status, length of residency, or other connection with Jersey;
- (d) set out the system for determining whether legal aid is provided, including provisions in respect of –
 - (i) obtaining legal opinions, and such other advice as is required to make a determination,
 - (ii) making provision for the involvement of the Bâtonnier, the Law Society, its employees, or any of its officers in the exercise of functions under this Law, and
 - (iii) obtaining of an advocate or a solicitor, whether by a system of compulsory assignment of an advocate or a solicitor, or otherwise providing legal representation where an applicant is unable to obtain legal representation;
- (e) establish financial eligibility criteria by reference to income and capital, including that of the applicant's household;

- (f) make provision for determining whether a case falls within a class for which the advocate or solicitor must be paid by the Judicial Greffier for the provision of legal services;
- (g) make provision for determining the rates and amounts of payments for the provision of legal aid,
- (h) make provision for the criteria for the payment of financial contributions by persons eligible for legal aid to –
 - (i) their advocate or solicitor, or
 - (ii) the Judicial Greffier;
- (i) make provision for limiting financial contributions under sub-paragraph (h) to –
 - (a) a maximum specific payment; or
 - (b) a maximum periodic payment and for limiting the length of time for which periodic payments are to be made;
- (j) make provision in respect of procedures for billing persons provided with legal aid, and the recovery of amounts unpaid;
- (k) make provision for legal aid to be conditional on an arbitration agreement (within the meaning given by Article 1 of the [Arbitration \(Jersey\) Law 1998](#)) that disputes as to fees payable for work done shall be subject to arbitration and for the form of that arbitration;
- (l) set out the duties of advocates and solicitors in respect of work undertaken in respect of legal aid and for the provision of legal services and other assistance in the administration of the legal aid scheme;
- (m) provide for the establishment and maintenance of panels of advocates or solicitors, or both, to undertake particular categories of work;
- (n) provide for the waiver of contributions to legal aid, whether payable to the advocate or solicitor or in respect of public funds provided by the States, on the grounds of hardship arising from a change in financial circumstances since the legal services were provided;
- (o) provide for the review, revocation and revision of grants of legal aid;
- (p) impose requirements for an applicant to provide information to the Judicial Greffier;
- (q) impose requirements for an applicant to co-operate with the advocates or solicitors providing legal services under this Law, and impose requirements as to the conduct of the applicant in respect of claims supported by legal aid;
- (r) impose conditions for the renewal of applications;
- (s) impose conditions for the making of payments whether directly or by way of the advocate or solicitor assigned to the client for the purposes of meeting disbursements, such as the obtaining of records or payment of expert witnesses;

- (t) set out conditions whereby amounts paid under the Legal Aid Scheme for the benefit of an applicant will be recoverable under Article 10(3);
 - (u) provide for any matters of procedure to be specified by a practice direction published by the Judicial Greffier.
- (3) The Legal Aid Guidelines may do any of the following –
- (a) make different provisions, both in terms of the tests for eligibility and the procedures to be followed, depending on when in the course of litigation an application is made;
 - (b) make particular provision (which may include the complete exclusion from eligibility) in respect of companies, partnerships and claims brought in respect of businesses;
 - (c) provide for such other matters as are necessary or expedient.
- (4) In preparing the Legal Aid Guidelines, the Minister shall publish the Minister’s proposals and seek representations from the public.
- (5) The manner in which –
- (a) the Minister’s proposal for the Legal Aid Guidelines shall be published; and
 - (b) representations may be provided by members of the public,
- shall be prescribed.
- (6) The Minister shall consider the representations that he or she has received in preparing the Legal Aid Guidelines.
- (7) If the Minister makes Legal Aid Guidelines, before publishing the Legal Aid Guidelines –
- (a) the Minister shall lay the Legal Aid Guidelines before the States;
 - (b) the Minister shall, in the Legal Aid Guidelines, specify the date that they are to take effect, being at least 4 weeks after they are laid before the States.
- (8) A member of the States may, within 4 weeks after the Legal Aid Guidelines are laid before the States under paragraph (7), lodge a proposition requesting that the States annul them.
- (9) The Legal Aid Guidelines shall not come into effect during any period within which a proposition requesting their annulment under paragraph (8) is outstanding.
- (10) If the proposition requesting that the States annul the Legal Aid Guidelines under paragraph (8) –
- (a) is approved by the States, the Legal Aid Guidelines shall be annulled and shall not come into effect; or
 - (b) is withdrawn, the Legal Aid Guidelines shall come into effect on the date specified in the Legal Aid Guidelines and shall be published in a way that makes them available to the public.
- (11) The Minister may at any time revoke any Legal Aid Guidelines published under this Article.

- (12) The Minister may, from time to time, revise the Legal Aid Guidelines made under this Article and a reference to the Legal Aid Guidelines includes a reference to the revised Legal Aid Guidelines.

8 Transfer of cases

- (1) The Legal Aid Guidelines may provide for the transfer of different types of cases between the different systems of legal aid referred to in Article 7(2)(b).
- (2) Without prejudice to the generality of paragraph (1), the Legal Aid Guidelines may, in particular, provide for the transfer of cases in respect of legal services referred to in Article 7(2)(b)(ii) if there are insufficient advocates or solicitors to support the system of legal aid under which those legal services are provided.

9 Exceptional circumstances

The Legal Aid Guidelines must make provision for legal aid to be provided in exceptional circumstances which shall include cases in respect of which compliance with –

- (a) the [Human Rights \(Jersey\) Law 2000](#) or any other enactment;
- (b) obligations arising under Article 2 of the [European Communities \(Jersey\) Law 1973](#); or
- (c) obligations arising under international obligations,
- makes it necessary that such legal aid be provided.

Consistency with Article 6 Rights under the European Convention on Human Rights

The provision, under the Legal Aid Scheme, of legal representation and advice in respect of civil rights and in criminal matters is consistent with an individual's Right to a Fair Trial under Article 6 of the European Convention on Human Rights. Article 6 reads as follows:

1. *In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interest of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.*
2. *Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.*
3. *Everyone charged with a criminal offence has the following minimum rights –*
 - (a) *to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;*
 - (b) *to have adequate time and facilities for the preparation of his defence;*

- (c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;*
- (d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;*
- (e) to have the free assistance of an interpreter if he cannot understand or speak the language used in court.*

It should be noted that Article 6:

- Does not prevent the application by a legal aid authority of financial or other relevant criteria in determining eligibility for legal representation.
- Does not provide for an automatic right to an appeal (an application to a higher court for the reversal of the decision of a lower court).
- Allows the right of access to the courts to be restricted where a case is without sufficient merit (including in respect of potential appeals) or where prescribed time limits for bringing proceedings (including appeals) are not met.

Legal Aid Guidelines

The Legal Aid Guidelines developed by the Legal Aid Guidelines Advisory Committee were approved pursuant to the provisions of the Access to Justice (Legal Aid Guidelines) (Jersey) Order 2021.

The Guidelines provide for annual review of the financial eligibility limits, based on the Medium Average Earnings for Full Time Employees, as detailed in the Average Earnings Report published June annually by the Government of Jersey Statistics Unit.

The current version of the Legal Aid Guidelines can be found [here](#) and as an appendix to this document.

The version control of the Legal Aid Guidelines is detailed below.

<u>Document</u>	<u>Nature of Change</u>	<u>Effective Date</u>
Legal Aid Guidelines v1	-	1 April 2022
Legal Aid Guidelines v2	Increase to Financial Eligibility Limits (as per Average Earnings Report, June 2022)	1 January 2023
Legal Aid Guidelines v3	Increase to Financial Eligibility Limits (as per Average Earnings Report, June 2023)	1 January 2024

Implementation of the Legal Aid Scheme

Pursuant to the Access to Justice (Jersey) Law 2019, and following approval of the Legal Aid Guidelines, the new statutory Legal Aid Scheme came into effect on 1 April 2022.

Accessibility

Full details of the Legal Aid Scheme and access to the online application portal can be found at www.legalaid.je.

User Guides

User Guides are available covering:

- Criminal Legal Aid
 - Financial/Area of Law Eligibility
 - Criminal Proceedings
 - Criminal Appeals
- Public Law Legal Aid
 - Financial/Area of Law Eligibility
- Family Legal Aid
 - Financial/Residential/Area of Law Eligibility
 - Personal Contributions
- Civil Legal Aid
 - Financial/Residential/Area of Law Eligibility
 - Personal Contributions

LEGAL AID – PUBLIC LAW MATTERS

CHILDREN LAW, MENTAL HEALTH, HUMAN RIGHTS

ELIGIBILITY FOR LEGAL AID

Applications for representation in respect of Children (Jersey) Law 2002 ('the Children Law') and Mental Health Review Tribunal matters will generally be approved, with all applicants qualifying for representation in respect of eligible matters, irrespective of their financial means.

In respect of Human Rights applications, applicants must first satisfy the financial eligibility test. If an applicant exceeds either the capital or income limit they will not be eligible for legal aid. Applicants who are only in receipt of Income Support are deemed to have met the financial eligibility test.

All applications that meet the financial test will be subject to an assessment of merit. A limited Legal Aid certificate may be granted for the purpose of assessing the merit and legitimacy of a human rights claim, with Legal Aid only granted for ongoing representation where the claim has a positive prospect of success.

FINANCIAL (HUMAN RIGHTS ONLY)

	Capital Limit (Individual)	Income Limit (Individual)
Human Rights Matters	£63,000	£63,000

Capital	The value of property, savings, investments or a financial interest in any asset, including the equity in any property, whether in Jersey or elsewhere, but excluding the capital value of any pensions. All assets owned by the applicant should be included in full. Where assets are jointly owned (e.g. property, savings accounts), 50% of the total value (net of mortgage for properties) should be included in the capital calculation.
Income	Total amount of salary, pensions, benefits (including Income Support), the value of benefits in kind, maintenance and income from any source, including interest, dividends and trust fund income, received by the applicant. Gross income is total income <u>before</u> any deductions for tax, social security etc.

AREA OF LAW – PUBLIC LAW MATTERS**ELIGIBLE****Children Law**

- All Children Law proceedings brought by the Minister for Children & Education under the Children (Jersey) Law 2002
- Pre proceedings representation in respect of potential proceedings under the Children (Jersey) Law 2002
- Child abductions including applications under the Hague Convention

Mental Health/Capacity

- Representation in appeals to the Mental Health Review Tribunal or the Royal Court of Jersey under the Mental Health (Jersey) Law 2016 and reviews of authorisations under the Capacity and Self Determination (Jersey) Law 2016
- Exceptional cases where there are complex mental health or capacity issues that require referral to, and consideration by, the Royal Court of Jersey

Human Rights

- Asylum and Immigration applications (subject to merit)
- Exceptional cases where there are legitimate human rights entitlements

KEY PRINCIPLES

- The Judicial Greffier is responsible for the administration of the Legal Aid Scheme.
- The operation and day-to-day administration of the scheme is, in practice, undertaken by the Legal Aid Office, under the direction of the Acting Bâtonnier.
- The Legal Aid Office is a division of the Law Society to whom the scheme administration is entrusted by the Judicial Greffier.
- Applications for Human Rights Legal Aid are assessed by the Legal Aid Office against the scheme eligibility criteria, as follows:
 - ✓ Does the application fall within the financial eligibility limits for Human Rights Legal Aid?
 - ✓ Does the application relate to an eligible area of law/qualifying matter?
 - ✓ Where a negative opinion on the merits of success of appeal has been received, are there any reasonable grounds upon which a certificate for a second opinion on the merits should be granted?
- In addition to administering the scheme, the Legal Aid Office 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.
- Applicants for Human Rights Legal Aid who do not pass the Financial Eligibility test will not qualify for Legal Aid.
- Applicants who are only on Income Support (which must be evidenced to the Legal Aid Office) are deemed to have met the financial eligibility test.
- Legal aid will only be granted for eligible matters, even if an applicant meets the financial test.
- No personal contributions are payable in relation to qualifying Public Law Legal Aid applications.
- All certificates are capable of withdrawal in the event of:
 - ✓ Material change in financial circumstances
 - ✓ Provision of incorrect or misleading information at time of application (or at any time thereafter).
 - ✓ Failure to meet conditions of approval of certificate.
 - ✓ Failure to co-operate with, or respond to, the appointed lawyer.
 - ✓ Failure or refusal to complete due diligence or client take-on procedures.
 - ✓ Refusal to accept advice provided by a lawyer.
 - ✓ Inappropriate behaviour or conduct on the part of the applicant/client
 - ✓ A negative opinion is provided in relation to the prospects of success of any claim or action (including appeals)

Appeals

- Appeals against decisions made by the Acting Bâtonnier / Legal Aid Office (to refuse, limit the scope of, or withdraw legal aid certificates) will be considered by the Bâtonnier (or a Bâtonnier Substitute).
- The scope of any appeal to the Bâtonnier is limited to consideration as to whether the Legal Aid Office has correctly applied the scheme eligibility criteria in making its decision.
- The Bâtonnier does not have the discretion to grant Legal Aid, or uphold any appeals made against decisions of the Acting Bâtonnier / Legal Aid Office other than where he considers that the Legal Aid Office has incorrectly applied the scheme criteria.
- In accordance with the provisions of Article 4 (4) of The Access to Justice (Jersey) Law 2019, the Judicial Greffier may, in exceptional circumstances, provide legal aid to any person where the interests of justice requires it.

Complaints

- 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.

Financial Eligibility Criteria (Human Rights only)

- The assessment of Capital and Income is at an individual, personal level.
- The income test will only be applied where the capital test is passed.
- Legal aid will not be granted where the relevant capital and/or income limits thresholds are exceeded.
- Applicants who are only in receipt of Income Support are deemed to have met the financial eligibility test. However, where the total income (including benefits) of an applicant who is in receipt of Income Support exceeds the threshold at which personal contributions are payable, the applicant remains liable for the payment of personal contributions.

Capital

- Capital (for the purposes of eligibility) includes property, savings, investments or a financial interest in any asset, including the equity in any property, whether in Jersey or elsewhere, but excluding the capital value of any pensions. All assets owned by the applicant should be included in full. Where assets are jointly owned (e.g. property, savings accounts), 50% of the total value (net of mortgage for properties) should be included in the capital calculation.

Capital includes the following:

- Cash savings held in the sole name of the applicant or jointly with another party in Jersey or elsewhere in any currency;
- The market value of all property (whether in Jersey or elsewhere) after the deduction of outstanding borrowings, held in the sole name of the applicant or jointly with another party;
- National Savings certificates, National Savings capital bonds and premium bonds;
- Stocks/shares including share save schemes and share incentive plans;
- Unit Trusts and Personal Equity Plan (PEP) Investments;
- Fixed term investments;
- Timeshares;
- Trust assets or funds;
- Other financial assets including cryptocurrencies;
- Valuables including Boats, Paintings and Antiques;
- Jewellery other than engagement rings, wedding rings and eternity rings;
- Money owing to an applicant;
- Money due from an estate or trust fund;
- Money that can be borrowed against business assets.

The following are disregarded in the calculation of capital:

- Household furniture and effects (unless the contents include any single or collection of items with a market value of more than £10,000);
- Personal clothing/tools and equipment of trade;
- Engagement rings, wedding rings and eternity rings;
- One motor vehicle per household that is regularly used and valued less than £15,000 (any loan or HP is deducted from the value);
- Capital value of any pension.

Income

- Income includes pensions, benefits (including Income Support), the value of benefits in kind, maintenance and income from any source, including interest, dividends and trust fund income, as received by the applicant. Gross income is total income before any deductions for tax, social security etc.

Capital – Calculation Examples

- If the applicant has a property, in joint names, in respect of which the equity is, say £90,000, the attributable capital (relating to the property) for the applicant is £45,000. If other capital (e.g. savings) is below £5,000, the capital test will be met.
- If the applicant has savings and investments, in joint names, of £50,000 and savings in their sole name of £20,000, the attributable capital for the applicant is £25,000 plus £20,000 = £45,000. The capital test will be met.
- If the applicant has a property, in their sole name, in respect of which the equity is, say £90,000, the attributable capital (relating to the property) for the applicant is £90,000, even if there are other occupants of the property. The capital test will not be met.
- If the applicant has savings and investments, in their sole name, of £50,000, and savings in joint names of £10,000, the attributable capital for the applicant is £50,000 plus £5,000 = £55,000. The capital test will not be met. Legal aid will not be granted in these circumstances.
- Where there are joint applicants in any matter, capital will be assessed based on the average attributable capital for the applicants.
 - ✓ If the applicants collectively have joint property (with equity of £70,000) and joint savings totalling £20,000, the attributable capital for each party is £45,000. In this case, the capital test would be met.
 - ✓ If the applicants collectively have joint property (with equity of £100,000) and joint savings totalling £5,000, the attributable capital for each party is £52,500. In this case, the capital test would not be met.

Income – Calculation Examples

- If an applicant in a Family or Civil matter earns £32,000, the income test will be met.
- If an applicant in a Family or Civil matter earns £40,000, the income test will not be met.

Where the capital and income tests have been met, Legal Aid will be granted subject to the matter for which legal representation has been requested being eligible for Legal Aid. Where the capital test has not been met, Legal Aid will not be granted. Where the capital test has been met but the income test has not been met, Legal Aid will not be granted.



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Legal Aid in Jersey is administered by The Law Society of Jersey