

LEGAL AID GUIDELINES

(Approved 30 September 2005)

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LEGAL AID

These guidelines were approved by the Jersey Law Society at a meeting of its members held on 30 September 2005, were amended by the Committee of the Law Society (the “Committee”) on 7 June 2010 and are intended to provide information both to legal aid applicants and to advocates and solicitors who provide services under the Legal Aid Scheme. The aim is to achieve consistency in the way in which legal aid is granted, the manner in which the scheme is administered and the financial cost to legally aided individuals.

The guidelines are divided into three main sections:

- PART I Deals with the general availability of legal aid and the “merits” test applicable to different types of cases.
- PART II Deals with financial criteria for both the granting of legal aid and the rendering of accounts to legally aided individuals.
- PART III Deals with the general administration of the Legal Aid Scheme (otherwise known as the Tour de Rôle.)

The Committee shall have the power to make amendments to these guidelines from time to time when the Committee reasonably believes that such amendments shall not materially affect the nature of the Legal Aid Scheme or the burden placed upon advocates or solicitors providing services under the Legal Aid Scheme. Any other amendments to the guidelines may only be made with the approval of the members of the Jersey Law Society at a meeting called for that purpose.

PART I

The Availability of Legal Aid

1.1 Introduction

1.1.1 In general terms and subject as hereinafter provided, legal aid will be granted in Jersey where an individual (i.e. not a company) is in need of representation to pursue or defend a claim or proceedings before a court in Jersey.

Throughout these guidelines an individual who has applied for legal aid or intends to make an application is referred to as the “applicant”. An applicant whose application has been granted is referred to as the “client”. The advocate or solicitor appointed is referred to as the “advocate” or “solicitor” but these terms shall be taken to include any person to whom the advocate or solicitor has delegated work pursuant to Paragraph 3.11.2 of these guidelines.

1.1.2 An applicant will be considered to be in need of representation where their financial circumstances, taking into account the complexity of the litigation, would lead to hardship were they required to fully fund that legal representation and where their case has sufficient merit in the opinion of the Bâtonnier. What will constitute sufficient merit depends upon the type of case involved and the relevant tests are set out in these guidelines.

1.1.3 Generally, legal aid will only be granted to an applicant who is ordinarily resident in Jersey at the time the application is made. An applicant is ordinarily resident for the purposes of these guidelines if the applicant lives in Jersey habitually and lawfully, from choice and for a settled purpose, even if that is a specific and limited purpose, e.g. education.

Legal aid will be granted, subject to the appropriate financial or merits test, regardless of the applicant's place of residence if they have been charged with an imprisonable offence due to come before the Jersey courts or in cases which concern the welfare of a minor who is resident in Jersey.

1.1.4 Where an applicant is a minor or is financially dependent on their parent(s) or guardian their application for legal aid will generally be assessed on the basis of the financial position of their parent(s) or guardian (see 2.7 below).

1.2 The Bâtonnier's Discretion

(a) The Discretion to Grant Legal Aid

The Bâtonnier retains in all cases an overriding discretion to grant legal aid where the Bâtonnier believes that it is in the interests of justice to do so, regardless of the nature of the case or the personal or financial position of the applicant. Failing the exercise of that discretion, every applicant's application for legal aid shall be dealt with in accordance with the criteria set out in these guidelines.

The Bâtonnier may, irrespective of the financial circumstances of the applicant, issue a legal aid certificate to an applicant who has, for any reason, been unable to secure the services of a lawyer despite being able to pay full fees for representation. In such circumstances, the Bâtonnier will indicate on the legal aid certificate that the applicant is to be billed on a private client basis.

(b) The Discretion to Revoke or Withdraw Legal Aid Certificates

The Bâtonnier may, at his discretion, revoke a legal aid certificate in appropriate circumstances. These circumstances are not limited to, but may include:

- (i) cases where an applicant has failed or neglected without good cause to provide sufficient financial information pursuant to section 2.2, or has provided inaccurate or misleading financial information;
- (ii) cases which, in accordance with the criteria set out in these guidelines, lack the requisite merit;
- (iii) cases where the applicant has persistently failed to give instructions to the advocate or solicitor and/or unreasonably refuses to accept the advice given to him by the advocate or solicitor. This may include an unreasonable refusal to submit to alternative dispute resolution;
- (iv) cases where the applicant's past or present conduct makes him undeserving of assistance through the Legal Aid Scheme. Applicants would be likely to fall within this category if they are violent, abusive or otherwise act towards their advocate, solicitor or other adviser or staff member in a manner likely to undermine the relationship of trust and confidence between client and adviser.

1.3 The Legal Aid Scheme in Jersey

1.3.1 The Legal Aid Scheme in Jersey is administered by the Bâtonnier on behalf of the Jersey legal profession

In practice most of the Bâtonnier's day to day duties in connection with administering the Legal Aid Scheme are delegated to an Acting Bâtonnier or occasionally to another senior advocate or solicitor at the Bâtonnier's discretion. Reference is made throughout these guidelines to the Bâtonnier, but his day-to-day functions will normally be undertaken by the Acting Bâtonnier, from whose decisions an appeal lies to the Bâtonnier. The Acting Bâtonnier operates from an office referred to in these guidelines as the "legal aid office".

1.3.2

The Legal Aid Scheme has grown out of the obligations placed upon the profession through the oath administered to advocates and solicitors when they are formally admitted to practice in Jersey. The relevant part of that oath reads:

“Vous....assisterez aux Veuves, Pauvres, Orphelins et Personnes indéfendues.”

The Legal Aid Scheme now extends well beyond the provision of legal assistance to widows, poor people, orphans and the undefended.

All Jersey advocates and solicitors of less than 15 years' call participate in the island's Legal Aid Scheme and are required to carry out legal aid work as directed by the Bâtonnier. The Legal Aid Scheme is administered in accordance with the “Tour de Rôle” which is effectively a list of participating lawyers to whom legal aid work is allocated in rotation.

Unless a costs order is made by a court in favour of the lawyer concerned or the legally aided individual, the solicitor or advocate (or the firm that they are employed by, hereinafter referred to as their “Firm”) receives no payment for their services other than the fees, if any, which they are permitted to charge to the client. The advocate or solicitor or their Firm may be able to recover out of pocket disbursements from the Legal Aid Vote administered by the Judicial Greffier (see Paragraph 1.4.2.3 below).

This part of these guidelines is divided into (a) claims and proceedings in respect of which legal aid will generally be granted (Section 1.4), and (b) claims and proceedings where legal aid will not generally be granted (Section 1.5).

These guidelines also deal with the merits test that any particular legal aid applicant must satisfy in order to obtain legal aid in any particular case.

1.4 Claims and Proceedings in respect of which Legal Aid will generally be granted

The claims and proceedings in respect of which legal aid will generally be granted subject to the merits tests and financial tests set out in these guidelines, can generally be broken down into criminal investigations and proceedings, civil claims and proceedings, and family claims and proceedings. Each category is dealt with separately below.

1.4.1 Criminal Investigations and Proceedings

1.4.1.1 Criminal Investigations Prior to Charge

Generally speaking, legal aid will not be granted to an applicant prior to charge where that person is under investigation by the Police or Customs authorities but has yet to be charged with an offence.

A legal aid certificate will be granted to an applicant to provide for the attendance of an advocate during an interview at a police station in Jersey where the alleged crime under investigation is one of murder, manslaughter (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. Where issued, such a certificate extends to the attendance of the appointed advocate at any identity parade.

The Bâtonnier may, at his discretion, grant certificates for interview in other circumstances where, for example, the applicant subject to interview is regarded as particularly vulnerable.

1.4.1.2 Identity Parades

A legal aid certificate will not be issued to an applicant purely for an advocate to provide assistance during an identity parade. Where the applicant is under investigation in connection with an alleged offence of

murder, manslaughter (or other offences where the death of an individual is the subject matter of a potential charge), rape or other serious sexual offence including sexual offences against children the applicant may apply for representation under 1.4.1.1 above.

1.4.1.3 **Access to Telephone Advice**

In cases where an applicant has yet to be charged, but is to be interviewed in connection with an offence, they will have access to confidential telephone advice from an advocate or solicitor or other person approved by their employer lawyer or firm as competent to provide such advice. During normal business hours (9.00 a.m. to 5.00 p.m.) an applicant who is detained for interview in connection with an offence may contact the legal aid office in order to obtain legal advice. The Police and/or Customs authorities will do everything necessary to facilitate this advice being given both prior to and during the interview, whenever requested. Should it appear to the Bâtonnier at any time that the applicant requires representation at the police station in accordance with the principles set out above a legal aid certificate will be granted.

Between the hours of 5.00 p.m. and 9.00 a.m. (and during week-ends and bank holidays or at any other times when the legal aid office is closed) a detained applicant may have access to legal advice through the “Police Headquarters and Customs Duty Advocate Scheme”, which involves the implementation of a rota on which certain lawyers participate voluntarily. Generally, the detained applicant will only be entitled to receive advice over the telephone but should circumstances arise where the detained applicant is being questioned in connection with an alleged offence of murder, manslaughter (or another offence concerning the death of an individual), rape or other serious sexual offence including sexual offences against children, then the Duty Advocate would generally be expected to attend at the police station to assist the applicant during interview. The

Duty Advocate in these circumstances will not be required to assist with an identity parade. Advice given in accordance with this paragraph must be given by an advocate or solicitor.

1.4.1.4 **Prison Board Hearings**

As the liberty of the applicant is at stake, legal aid will be granted to assist an applicant facing a hearing before the Prison Board.

1.4.1.5 **Criminal Proceedings following charge**

Where an accused applicant has been charged with an offence, legal aid will be available unless the charge falls within one of the circumstances listed under Paragraph 1.5 of these guidelines. In deciding whether it is appropriate to grant legal aid the Bâtonnier may have regard to the general sentencing policy of both the Magistrate's Court and the Royal Court of Jersey. Provided the charge is one for which legal aid would normally be granted, the Bâtonnier will issue a certificate for representation at first instance without consideration of the merits of the case.

The method and timing of an application for legal aid will depend upon the circumstances of the individual applicant as set out below.

1.4.1.6 **Individuals detained in custody after charge**

- (a) Where an applicant has been charged and has remained in the custody of the police pending an appearance before the Magistrate's Court, that applicant may ask to be represented at court by the Duty Advocate. A Duty Advocate is available to attend at the Magistrate's Court every week day (two attend on Mondays) and no fees are charged to the applicant irrespective of their financial circumstances for representation on this occasion.
- (b) Where an accused applicant has appeared in court following charge, and has been remanded in custody pending a further

appearance the prison is responsible for notifying the legal aid office of the applicant's application for legal aid and faxing through the relevant forms to the legal aid office. At that time, provided this is a case where legal aid should be granted, the Bâtonnier will issue a certificate.

1.4.1.7 **Individuals not detained in custody following charge**

Where an applicant has been charged by a centenier but has not been detained in custody or has been released on bail at the first Court appearance then the applicant must obtain a legal aid application form, complete it and deliver it to the legal aid office.

The applicant must deliver his application for legal aid within two working days of being charged, failing which the Bâtonnier may decline to grant legal aid.

1.4.1.8 **Where the Applicant already has an Advocate appointed to them**

If the applicant is already being represented by an advocate in connection with other charges, then the applicant will be appointed to the same advocate that is already acting for him in connection with that other matter whether those charges are related in any way or not. Generally a further legal aid certificate will not be granted in respect of any such charges unless, at the discretion of the Bâtonnier, the new charge amounts to a matter which is, (a) substantially different and, (b) will result in appreciable further work to the individual lawyer concerned. In other words, should the new charges lead to or be likely to lead to separate court appearances or, for example, an assize trial that would not have otherwise taken place then a further legal aid certificate would generally be granted.

1.4.1.9 **Breach (and similar) Proceedings and the extent of Legal Aid Certificates issued in connection with criminal investigations and proceedings (other than appeals against conviction and/or sentence)**

Where an applicant does not currently have a lawyer acting for him but the charge relates to a previous offence (for example a breach of probation or community service) then that matter shall be referred to the same advocate (or an advocate of the same firm) under a new legal aid certificate provided that no intervening conflict of interest has arisen.

1.4.1.10 A legal aid certificate issued in respect of an interview and/or other assistance prior to charge shall cover that particular item of work but shall also include any subsequent police interviews or identity parades and dealing with any subsequent charge brought against the applicant from the time of charge until the final resolution of the case.

1.4.1.11 Where a legal aid certificate has been issued it shall continue in effect until such time as the applicant has been tried before the Magistrate's Court or Royal Court and has either been acquitted or found guilty and, where found guilty, until such time as sentencing has been concluded in full. In the case of offences involving the possession or supply of controlled substances (or similar offences) the legal aid certificate issued shall cover any confiscation proceedings brought by the Attorney General.

1.4.1.12 Where a legal aid certificate has been issued in relation to a case which comes before the Royal Court of Jersey, and where an applicant is convicted, or pleads guilty, and is sentenced by the court then the certificate issued to the relevant lawyer shall include the preparation and submission of an opinion as to the merits of an appeal against conviction (if relevant) and sentence in accordance with the procedure set out below in relation to criminal appeals.

1.4.1.13 **Criminal Appeals**

Legal aid will be available in criminal cases to pursue an appeal against conviction and/or sentence where in the opinion of the Bâtonnier the appeal has sufficient merit. Sufficient merit will be present where the Bâtonnier considers there to be reasonably arguable grounds of appeal. In reaching his conclusion the 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 Bâtonnier may take a view based upon the information available in connection with the appeal.

1.4.1.14 An applicant may apply for a certificate for an appeal against a conviction and/or sentence from the Magistrate's Court. Where such a certificate is issued, the certificate will cover the giving of an initial opinion as to the merits of an appeal and the prosecution of the appeal itself. If the advocate concludes that there are no reasonably arguable grounds of appeal, the applicant may apply for a certificate for a second opinion to be granted at the Bâtonnier's discretion.

1.4.1.15 The administration of legal aid in connection with criminal appeals from the Royal Court shall be carried out in accordance with the Practice Direction issued by the Jersey Court of Appeal on 19 September 2003 as set out below and/or any other Practice Directions that may be issued by the courts from time to time (the "Practice Direction").

1.4.1.16 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.

1.4.1.17 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 (see 1.4.1.18 below); (b) whether that lawyer has produced an opinion favourable to the applicant or not (see 1.4.1.19 and 1.4.1.20 below); 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 (see 1.4.1.21).

1.4.1.18 **Cases where a lawyer has not been retained at first instance**

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.

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 to enable the legal aid office and the lawyers concerned to observe the Practice Direction.

Upon receipt of any such application for legal aid the 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. No further legal aid certificate shall be granted unless it is apparent that considerable further work has been undertaken by the advocate appointed in forming an opinion as to the merits of the appeal.

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.

1.4.1.19

Cases where an applicant has been represented at first instance 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) An application for legal aid has been made in connection with the prosecution of the appeal.
- (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 department of the Judicial Greffier 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.
- (g) Upon receipt of an application for legal aid in such circumstances the legal aid office shall issue a further legal aid certificate for the prosecution of the appeal. The legal aid certificate shall be granted in the name of the same advocate (or an advocate of the same firm) who appeared at first instance, saving always that the legal aid office shall first ensure that:

- (i) the applicant has no objection to the same lawyer appearing in relation to the appeal who appeared at first instance. If the applicant does so object, and in the view of the Bâtonnier there are reasonable grounds for such an objection, then new legal representation shall be granted; and
- (ii) where the applicant is of the view that his grounds for appeal should include reference to the manner in which the advocate appearing at first instance prosecuted the case, but reference to this is not made within the opinion given by the said advocate, and it appears to the Bâtonnier that there are reasonable grounds to suspect that this may generate a ground or further ground of appeal then new legal representation shall be granted.

1.4.1.20 **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 Bâtonnier may form the view that the appeal proposed by the applicant is without sufficient merit. In this situation, the application for further legal aid will be refused. If it appears to the 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.

Should the second advocate conclude that there are no reasonable merits to the appeal then further legal aid will be refused subject to the discretion of the Bâtonnier.

Should the second advocate conclude that there are arguable grounds for appeal then they shall undertake that appeal and no new legal aid certificate shall be granted unless it is apparent that considerable further work has been undertaken by the second advocate so appointed in forming an opinion as to the merits of the appeal or applying for any necessary extension of time. In such a situation a further legal aid credit may be granted at the discretion of the Bâtonnier.

1.4.1.21 **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 Bâtonnier of the position. It shall also be the responsibility of the Bâtonnier 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 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 save that no further legal aid certificate shall be granted unless it is apparent that considerable further work has been undertaken by the second advocate so appointed in forming an opinion as to the merits of the appeal. In such a situation a further legal aid credit may be granted at the discretion of the Bâtonnier.

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

1.4.2 **Civil Claims and/or Proceedings (excluding Family Matters) and the Merits Test in Civil Cases (excluding Family Matters)**

1.4.2.1 This category of legal aid case includes personal injury claims, contractual disputes including debt related issues, and tortious claims including claims in nuisance. It may include an application to issue or defend injunctive proceedings.

1.4.2.2 A legal aid certificate will be granted by the Bâtonnier in connection with a civil claim and/or proceedings when the Bâtonnier is satisfied that the claim or proceedings, based upon the information available at the time that

the application is made, warrant, at least, the obtaining of a reasoned opinion.

1.4.2.2.1 In all non-urgent civil cases the advocate or solicitor must then within two months, or such alternative period as may be specified by the Bâtonnier, write to the legal aid office providing a reasoned opinion on the merits of the case and identifying which of six categories the case falls into. That opinion must be signed personally by the advocate or solicitor appointed or an advocate or solicitor dealing with the matter on their behalf. The Bâtonnier will then reconsider the applicant’s legal aid status depending upon the opinion received and will write to the applicant and the advocate or solicitor accordingly. The categories are as follows:

Category	Merit	Legal Aid Status
1.	Prospects of success are 80% or higher and the likely damages exceed the likely cost or the costs are otherwise expected to be fully recoverable.	Legal aid will remain in place.
2.	Prospects of success are between 60% and 80% and the likely damages exceed the likely costs by a ratio of at least 2:1.	Legal aid will remain in place.
3.	Prospects of success are between 50% and 60% and the likely damages exceed the likely costs by a ratio of at least 4:1.	Legal aid will remain in place.
4.	Prospects of success and/or the ratio of damages to costs remains unclear because further	Legal aid will remain in place and the Bâtonnier will set a date for review.

Category	Merit	Legal Aid Status
	investigations are required.	
5.	The prospects of success are borderline.	<p>Legal aid is likely to be withdrawn unless there is an issue of public importance involved or the outcome is sufficiently important to the client for the Bâtonnier to decide, in his discretion, that legal aid should continue.</p> <p>If legal aid is withdrawn, the client may apply for a certificate for a second opinion.</p>
6.	Prospects are poor.	Legal aid will be withdrawn. The client may apply for a certificate for a second opinion.

1.4.2.2.2 Where a certificate for a second opinion has been granted pursuant to 1.4.2.2.1 above and it is the opinion of the advocate or solicitor that the case does have sufficient merit (in accordance with 1.4.2.2.1 above), then that advocate or solicitor shall assume conduct of the case and pursue it to its conclusion. No new legal aid certificate will be issued.

1.4.2.2.3 Should the opinion of the advocate or solicitor alter during the course of continuing to act for the applicant from that given pursuant to 1.4.2.2.1 or 1.4.2.2.2 above, then they shall write to the Bâtonnier giving sufficient details and requesting the withdrawal of legal aid if appropriate.

1.4.2.2.4 In urgent cases, i.e. those where time will not permit the procedure detailed above, it is the responsibility of the advocate or solicitor to take such steps as may be necessary to protect the applicant's position. Where

the case is ongoing, the advocate or solicitor must then follow the procedure set out in 1.4.2.2.1 above. Where the advocate or solicitor is concerned that the case has insufficient merit to justify whatever urgent action may be required, then it is their responsibility to apply immediately for the legal certificate to be withdrawn.

1.4.2.3 In relation to personal injury claims (or other civil or criminal matters where legitimate expenses arise), the advocate or solicitor appointed may apply for funding for any out-of-pocket disbursements from the Legal Aid Vote administered by the Judicial Greffier. This provides purely for the advocate's/solicitor's out-of-pocket expenses to be met with prior approval, and does not provide a source of remuneration for advocates/solicitors.

1.4.2.4 In relation to any civil claim for which legal aid is granted, a certificate shall be issued in respect of each claim which could legitimately result in legal proceedings being brought, or defended, before a court in Jersey.

1.4.2.5 Where two applicants apply simultaneously for legal aid in relation to the same claim or set of proceedings, and their interests are identical and no conflict exists or is likely to arise between them, the Bâtonnier will issue one certificate to one advocate or solicitor to act for both applicants.

1.4.2.6 Generally, the legal aid certificate granted will cover all work undertaken by the advocate or solicitor up to the conclusion of litigation at first instance, unless the contrary is clearly stated on the certificate itself.

1.4.2.7 The Bâtonnier may, in certain circumstances, issue a certificate purely for an opinion in relation to the merits of a particular matter or action.

1.4.2.8 **Civil Appeals**

(a) An applicant may, as soon as is practicable following the issuing of the judgment which is to be the subject of the appeal, apply for a

further legal aid certificate to advise upon the merits of a civil appeal.

- (b) The Bâtonnier will issue a legal aid certificate for an advocate or solicitor to advise upon the merits of an appeal if, in the opinion of the Bâtonnier based upon the information available to him, the appeal appears at least to justify a reasoned opinion. If the Bâtonnier is of the view that the appeal is wholly without merit, a legal aid certificate will not be issued.
- (c) Where a legal aid certificate has been issued it shall be the responsibility of the advocate or solicitor to ensure that the applicant's position is protected in that all time limits for the filing of documentation and/or notices are met.
- (d) Where a certificate has been issued for an advocate or solicitor to provide an opinion as to the merits of the appeal, the advocate or solicitor will provide a copy of his opinion to the legal aid office. In making an application for legal aid in connection with an appeal, the applicant is taken to have given their consent to the disclosure of the opinion.
- (e) Where the advocate or solicitor is of the view that an appeal would have reasonable prospects of success, that advocate or solicitor shall proceed with the appeal to its conclusion. No further legal aid certificate shall be granted unless the Bâtonnier, at his discretion, decides that it would be appropriate to grant a further legal aid certificate due to the amount of work that has been undertaken by the advocate or solicitor appointed.
- (f) Should the advocate or solicitor be of the view that there are no reasonable prospects of success then the legal aid applicant may contact the legal aid office and apply for a second opinion. If it

appears to the Bâtonnier that there is merit in obtaining a second opinion then a certificate will be issued for this purpose.

- (g) If the second advocate or solicitor appointed is of the view that there are sufficient grounds of appeal then that advocate or solicitor shall proceed with the appeal to its conclusion. No further legal aid certificate shall be granted unless the Bâtonnier, in his discretion, decides that it would be appropriate to grant a further legal aid certificate due to the amount of work that has been undertaken by the lawyer appointed.
- (h) If the second advocate or solicitor appointed is of the view that there are no sustainable grounds of appeal, subject to the overriding discretion of the Bâtonnier, further legal aid shall not be granted.

1.4.2.9 **The Employment (Jersey) Law 2003**

Legal aid certificates shall not be issued in connection with any claim or proceeding arising out of the Employment (Jersey) Law 2003, (including claims for unfair dismissal), save where legal aid would have in any event been granted in accordance with the general principles set out above i.e. in relation to claims or proceedings that can be brought before the Petty Debts Court or Royal Court.

1.4.3 **Family Claims and Proceedings (including issues relating to children)**

Cases where legal aid will generally be granted can be separated into four main areas:

- (a) Injunctions and ex parte orders;
- (b) Proceedings involving illegitimate children;
- (c) Matrimonial claims and proceedings; and

(d) Public proceedings in relation to children.

A certificate may be issued either to bring or to defend such proceedings.

An applicant may also apply for a legal aid certificate to pursue or defend an appeal in relation to any of the above.

1.4.3.1 **Merits Test in Family Claims and Proceedings**

The Bâtonnier will not normally consider the merits of a case when granting a legal aid certificate in relation to a matter falling within (a) to (d) above save that the Bâtonnier shall satisfy himself that:

- (i) Whatever the nature of the case, the applicant could not reasonably deal with the matter personally or with the assistance of another agency. This will generally apply to circumstances where the applicant could bring or defend a claim personally in the Petty Debts Court, or could use the mediation service. When in doubt, the Bâtonnier will issue a legal aid certificate.
- (ii) in relation to injunctions, there appear to be some prima facie grounds for the obtaining of an injunction and some threat of harm to person or property, however slight, if legal aid is not issued. In this regard, the Bâtonnier shall be entitled to consider the steps that the applicant has taken to promote their own safety and the role that may be played or has been played by other agencies such as the police.

- (iii) In relation to appeal cases, particularly involving purely financial matters, that there is a reasonable prospect of the appeal succeeding. The Bâtonnier may decide to issue a preliminary certificate for an opinion as to the merits of an appeal. Where such a certificate is issued it will generally be issued to the advocate or solicitor previously appointed, or to an advocate or solicitor of the same firm.

1.4.3.2 **Injunctions and Ex Parte Orders**

Legal aid certificates for injunctive relief or an ex parte Prohibited Steps Order may be applied for in the usual manner by an applicant obtaining, completing and delivering an application form in the usual way. However, in respect of urgent matters the legal aid office will make arrangements to see applicants as soon as possible. Where an applicant is already legally aided in relation to another matter, then the advocate or solicitor already acting for that individual may contact the legal aid office to inform them that in their opinion injunctive or other emergency relief is required, at which point a legal aid certificate shall be issued.

The categories of injunctive and emergency relief where legal aid will be granted are as follows:

- (i) Non-molestation injunctions.
- (ii) Ouster injunctions.
- (iii) Injunctions seeking the return of a child.
- (iv) Mareva injunctions.
- (v) an ex-parte application for a Prohibited Steps Order.

Where an applicant requires on any one occasion more than one of the above types of injunction or order, and these may be brought through one

set of proceedings, then only one legal aid certificate shall be issued to cover all work. The legal aid certificate shall specify what type or types of injunction the certificate has been issued to cover.

Ordinarily, proceedings brought in connection with breaches of an injunction will be covered under the original certificate and no further legal aid credit will be issued unless the Bâtonnier, in his discretion, feels that this would be appropriate.

1.4.3.3 **Proceedings concerning illegitimate children**

- (a) Only the parent (or reputed parent) of an illegitimate child may apply for legal aid in connection with that child.
- (b) The parent (or reputed parent) may apply for a legal aid certificate or certificates in respect of the following issues:
 - (i) an application for parental responsibility;
 - (ii) maintenance;
 - (iii) arrears of maintenance where it is apparent to the Bâtonnier that the applicant cannot reasonably be expected to pursue an action personally through the Petty Debts Court;
 - (iv) any matter in respect of which an order could be made pursuant to article 10 of the Children (Jersey) Law 2002 namely residence, contact, a Prohibited Steps Order or a Specific Issue Order;
 - (v) illegitimacy proceedings (or illegitimacy and legitimacy proceedings).

One certificate may be issued to deal with two or more of the above matters at the discretion of the Bâtonnier.

1.4.3.4 **Matrimonial Claims and Proceedings**

An applicant who is or has been a party to a marriage may apply for a legal aid certificate or certificates in respect of the following:

(a) **Separation and Ancillaries**

A certificate issued under this heading will cover all ancillary matters including those relating to children of the marriage or the family and financial matters including the division of property and assets.

(b) **Divorce and Ancillaries**

A certificate issued under this heading will include the issuing of or responding to divorce proceedings and the resolution of all outstanding ancillary matters.

(c) Any matter in respect of which an order could be made pursuant to article 10 of the Children (Jersey) Law 2002 relating to a child of the marriage or the family, if not covered by a certificate issued under (a) or (b) above.

(d) Arrears of maintenance where it is apparent to the Bâtonnier that the applicant cannot reasonably be expected to pursue an action personally through the Petty Debts Court.

(e) Review of arrangements already in place following an agreement or court order arising out of separation or divorce.

One certificate may be issued to deal with two or more of the above matters at the discretion of the Bâtonnier.

1.4.3.5 **Public Proceedings**

Any applicant who faces proceedings brought by a Minister of the States of Jersey in connection with a child who has been in that applicant's care, will be granted legal aid subject only to the financial tests set out in these guidelines. In issuing a certificate, the Bâtonnier will give no consideration to the potential merits of the case.

1.4.3.6 **Multiple Legal Aid Certificates**

Where an applicant has been granted a legal aid certificate or certificates in connection with family claims and proceedings and a further application is made and granted at a later date in connection with a matter not covered under the original legal aid certificate(s), a new legal aid certificate shall be issued to the same advocate or solicitor previously appointed or to an advocate or solicitor of the same firm.

1.4.3.7 **Legal fees in Family Matters**

When granting a certificate to an applicant in relation to family matters, the Bâtonnier shall specifically draw to the attention of the applicant the parts of these guidelines which relate to the liability of the applicant to pay legal fees in accordance with their financial circumstances at the time that they come to be billed.

In particular, the Bâtonnier shall warn the applicant that funds and/or property obtained through the division of assets in a family matter shall be taken into account when legal fees are charged, including those assets arising from the sale or transfer of the former matrimonial home.

1.4.3.8 **The Children (Jersey) Law 2002**

Legal aid will not be granted in connection with any claim or application arising out of the provisions of the Children (Jersey) Law 2002, save in the circumstances set out above.

Subject always to the discretion of the Bâtonnier, a legal aid certificate will not be issued to any person in connection with parental responsibility for a child or any matter under article 10 of the Children (Jersey) Law 2002, unless the applicant is the parent (adoptive or natural) of the child in question or is believed to be a parent at the time that the application is made.

1.5 Claims and Proceedings where Legal Aid will not generally be granted

1.5.1 Legal aid will not be granted to pursue or defend an allegation of defamation (this includes claims for both slander and libel).

1.5.2 Applicants who apply for legal aid for assistance with purely debt related issues are likely to be referred in the first instance to the Citizens' Advice Bureau who will provide practical guidance. Where proceedings have been commenced against the applicant and it appears to the Bâtonnier in his discretion that these proceedings are complex or that for some other reason it would be in the interests of justice for legal representation to be granted, then legal aid may be granted. Legal aid will be granted in connection with a désastre application only if the applicant is intending to seek a declaration of désastre in connection with the applicant's personal assets and only if the applicant has already discussed the matter with the Viscount's Department and/or the Citizens' Advice Bureau.

1.5.3 Legal aid will not generally be granted to assist an applicant whose assets have been declared en désastre in an application to raise that declaration.

1.5.4 Legal aid will not be granted in connection with matters concerning curatorships.

1.5.5 Legal aid will not be granted in connection with the creation or administration of a tutelle.

1.5.6 Legal aid will not be granted in respect of criminal offences which in the view of the Bâtonnier, having had regard to the applicant's circumstances, do not carry with them a substantial risk of either a custodial sentence or a risk of loss of livelihood, or which are unlikely to carry a fine exceeding £500.

1.5.7 Notwithstanding the above statement of principle, in relation to offences under the Road Traffic (Jersey) Law 1956 as amended (the "Road Traffic Law"):

- (a) Legal aid will not be granted in cases where the applicant has been charged with speeding offences.
- (b) Legal aid will not be granted in cases where the applicant has been charged in connection with the non-payment of parking fines.
- (c) Legal aid will not be granted in cases where the applicant has been charged solely with an offence or offences of drink driving pursuant to articles 27(1), 28(1) and 30(7) of the Road Traffic Law unless one or more of the following applies:
 - (i) the applicant is a minor;
 - (ii) the applicant has a history of prior convictions for similar offences which place him at peril of a custodial sentence;
 - (iii) the applicant had such a level of alcohol in his blood or breath that the Magistrate is likely to consider a custodial sentence;
 - (iv) the applicant intends to defend the charge on grounds which in the opinion of the Bâtonnier are reasonably arguable; or
 - (v) where "special reasons" may exist.

- 1.5.8 The Bâtonnier may decline to grant legal aid in a civil action where it is apparent that the legal issues are simple and the applicant could reasonably be expected to pursue the matter personally through the Petty Debts Court (i.e. in respect of sums below £10,000).
- 1.5.9 Legal aid will not be granted in respect of claims concerning immovable property where the matter in issue is small in comparison to the value of the property.
- 1.5.10 In the case of an appeal or proposed appeal, legal aid will not be granted if in the opinion of the Bâtonnier there is insufficient merit in the appeal.
- 1.5.11 Companies are not eligible for legal aid in any circumstances. For the avoidance of doubt, individuals may apply for legal aid in connection with defending or bringing claims against a company. Partnerships will only be eligible for legal aid where none of the partners has sufficient assets to meet legal fees in accordance with the normal criteria. Disputes between partners will qualify for legal aid in the usual manner. Sole owners of businesses which are not limited liability companies will qualify for legal aid in the usual manner.
- 1.5.12 Legal aid will not be granted for tribunal hearings or other disputes or matters which do not constitute matters which could be litigated before the Royal Court, Magistrate's Court or Petty Debts Court in Jersey. For the avoidance of doubt this includes, but is not limited to, proceedings before: (a) employment tribunals, (b) social security tribunals, (c) mediation carried out within the Petty Debts Court or, (d) disputes with the Minister for Housing concerning housing qualifications.
- 1.5.13 Legal aid is not available to assist with claims before the Motor Insurers Bureau, Criminal Injuries Compensation Board or appeals from adjudications of the Criminal Injuries Compensation Board.

1.5.14 Legal aid is not available to assist individuals in connection with non-contentious matters such as adoptions, deed poll applications, wills or probate (except in connection with litigious claims that would otherwise qualify for legal aid).

PART II

Financial Criteria

2.1 The General Position

The Legal Aid Scheme in Jersey is, in general terms, funded directly by the legal profession. Unless the advocate or solicitor appointed is awarded costs by a court in connection with litigation, or as the result of a settlement, the only fees that they recover will be the fees that they can reasonably charge to the client.

In assessing their liability for legal fees there is a two stage test for any legal aid applicant. First, the Bâtonnier shall apply certain criteria in deciding whether to issue a legal aid certificate (see Paragraph 2.3). Second, when a certificate has been issued, the applicant may be charged a reasonable fee by the advocate or solicitor or their Firm. That fee is to be calculated by reference to further criteria (see Paragraphs 2.9 to 2.12).

2.2 Requests for Information

Applicants must disclose promptly when asked such information as may reasonably be required by (a) the Bâtonnier (or the lawyer to whom he has delegated the matter) in considering their application in accordance with these criteria or, (b) the advocate or solicitor or their Firm in considering what fees should be charged to the client in accordance with these criteria. Where applicants fail or neglect without good cause to provide such information, or are found not to have made full and frank disclosure of their financial position, then the Bâtonnier shall be at liberty to decline to grant legal aid or to revoke any legal aid certificate that has been issued.

Where an applicant has provided financial information to the advocate or solicitor or their Firm, it is the responsibility of the applicant to inform their advocate or solicitor (or the person dealing with their case) of any material change whatsoever to their financial position. If it is found that an applicant has failed to keep their advocate or solicitor fully and promptly informed then:

- (a) they will be charged for work done in accordance with these guidelines but the guidelines will be applied to the applicant on the basis of what the advocate or solicitor believes their true financial position to be. The applicant may of course refer the fee for adjudication pursuant to Paragraph 2.13;
- (b) the advocate or solicitor may in any event apply for the legal aid certificate to be revoked, which application shall be considered at the discretion of the Bâtonnier.
- (c) if it is established to the satisfaction of the Bâtonnier that an applicant misled the Bâtonnier to the extent that legal aid was granted when it should not have been, the Bâtonnier may direct that the applicant should pay the full legal fees of the advocate or solicitor or their Firm on a private client basis and at the hourly rates normally applied by that Firm to private clients.

2.3 Eligibility for Legal Aid

2.3.1 The following guidelines set out the financial criteria that shall be applied by the Bâtonnier when considering whether to grant applications for legal aid. The Bâtonnier shall have regard to:

- (a) the applicant's household disposable capital (as defined below). If this exceeds £15,000 then the application for legal aid will generally be refused. The applicant may make a further application when their Household Disposable capital falls below

that level. If the applicant's household disposable capital is less than £15,000 then the Bâtonnier shall go on to consider;

- (b) the applicant's gross household income (as defined below). If the applicant's gross household income exceeds £45,000 per annum then the application for legal aid will ordinarily be refused.

If the applicant's gross household income is below £45,000 per annum then legal aid will be granted (provided that, in the opinion of the Bâtonnier and as set out in these guidelines, the case has sufficient merit) unless the proceedings or matter which are the subject of the application are of a nature where the gross household income of the applicant, even though this is lower than £45,000 per annum, is in the opinion of the Bâtonnier of a level where the applicant should be expected to fund legal representation privately.

2.3.2 Where an applicant would not normally qualify for legal aid after the application of the financial criteria set out above, but the Bâtonnier in his discretion is of the view that the applicant's financial circumstances as a whole merit the granting of legal aid, or where their case is of such complexity or is likely to prove so expensive in terms of legal fees that it would be in the public interest to grant legal aid, then legal aid shall be granted. Unless the Bâtonnier directs otherwise the applicant will be liable to be charged 100% of the reasonable fees of the advocate or solicitor appointed or their Firm but in accordance with the hourly rates set out in Paragraph 2.11.2 and subject to an appropriate deduction being made, if any, pursuant to Paragraph 2.12.4.

2.3.3 The Bâtonnier may also issue a certificate to an applicant who is able to afford private representation but has not been able to appoint an advocate or solicitor for whatever reason (see Paragraph 1.2 (a) above). In such cases, the Bâtonnier will indicate on the legal aid certificate that the applicant is to be charged full fees at the Firm's usual private client rates

and without deduction. Such fees will not be subject to the adjudication of the Bâtonnier.

2.3.4 Legal aid will not be granted where the applicant has an alternative source of funding available to them; for example, where they are entitled to assistance from a union, employer or through an insurance policy that covers legal fees.

2.3.5 When deciding whether to grant legal aid the Bâtonnier shall not have direct regard to the expenditure or liabilities of the applicant save that in exceptional cases the level of necessary household expenditure or debts may be a reason for the Bâtonnier to exercise his discretion and to grant legal aid in a case where it would not normally be granted.

2.3.6 Where an applicant is a minor or is financially dependent on their parent(s) or guardian their application may be assessed on the basis of the financial circumstances of their parent(s) or guardian in accordance with 2.7 below.

2.4 **Calculating Gross Household Income and Household Disposable Capital**

If the applicant is married or living with someone (their “partner”) as a couple, their partner’s income and capital assets will be included within the applicant’s household income and capital unless:

- (a) they live apart because the relationship is over; or
- (b) there is a conflict of interest between them in the matter which is the subject of the application for legal aid (e.g. separation or divorce)

2.5 **Household Disposable Capital**

2.5.1 For the purposes of these guidelines “Disposable Capital” includes:

- (a) the combined capital of the applicant and their partner;
- (b) all land and buildings other than the client's home, including timeshares;
- (c) the market value of the client's home in excess of £100,000, after allowing for any outstanding mortgage and irrespective of whether the home is in sole or joint names;

(In considering their potential liability for legal fees where legal aid has been granted, however, the applicant must have regard to Paragraph 2.12.2.2 below);

Where there is a dispute as to the value of land or buildings, including the Former Matrimonial Home, the applicants may obtain a valuation at their own expense.

The market value of the home will not be adjusted simply due to the existence of family claims or proceedings (see Clause 2.5.2 (f)).

- (d) money in the bank, building society, Post Office, Premium Bonds, National Savings Certificates etc;
- (e) investments, stocks and shares;
- (f) the money value of valuable items including boats, antiques (but not usually wedding or engagement rings or cars);
- (g) money owing to the applicant;
- (h) money due from an estate or trust fund;
- (i) money that can be borrowed against business assets; and

- (j) assets held within discretionary trusts where there is a reasonable expectation that in practice those assets will be made available to or be at the disposal of the applicant.

2.5.2 “Disposable Capital” does not include:

- (a) loans from the parish or any body of the States of Jersey to assist the applicant in times of need;
- (b) lump sums paid in respect of invalidity benefit;
- (c) home contents (unless the contents include any single or collection of items valued at more than £10,000);
- (d) clothing;
- (e) tools and equipment of trade;
- (f) savings, items or property the ownership of which is the specific subject of the legal aid matter. This would apply for example where a specific asset is in dispute as part of matrimonial proceedings, but not where the parties’ separation or divorce is generally being resolved;
- (g) savings which have been put aside to meet a specific liability which has been incurred prior to the application for legal aid being made. To fall within this category the liability must have been reasonably incurred and must be legally enforceable against the applicant. This would include, for example, sums of money set aside to meet income tax liabilities, social security liabilities etc; and
- (h) lump sums which have been paid to a client by way of an interim or final payment in connection with a personal injury claim insofar as the said lump sums have been paid to compensate the applicant

for their special damages, i.e. loss of earnings, out of pocket expenses etc. Where these circumstances arise, and if the applicant is otherwise eligible for legal aid, the applicant shall be charged in accordance with their income and the level of that income shall reflect sums recovered in respect of lost earnings.

2.6 Gross Household Income

For the purposes of these guidelines, Gross Household income means the annual gross income received from any source by the applicant and/or their partner, less the following deductions:

- (a) where the applicant lives with another adult, the sum of £2,100 may be deducted from their combined annual gross income;
- (b) where the applicant's household contains a child or children, the sum of £2,900 per child may be deducted from their combined annual gross income. This allowance will not be applied to the income of a parent where their child or children do not reside with them for at least 50% of the time.

2.7 Applicants who are Minors

Where an applicant is a minor (i.e. under the age of 18), the following shall apply:

- (a) if the minor applicant is financially independent and does not live with a parent or guardian, they shall be assessed on the basis of their own financial position. The legal aid certificate and the engagement letter issued pursuant to Clause 2.9 (the "Engagement Letter") shall be issued to the minor applicant who will be personally responsible for any fees charged;
- (b) if minor applicants are married then they shall be assessed on the basis of their own financial position. The legal aid certificate and

the Engagement Letter shall be issued to the minor applicant who will be personally responsible for any fees charged;

- (c) if the minor applicant is a child under the care of the Minister for Education, Sport and Culture then neither the child nor the Minister may be charged in connection with their representation. The legal aid certificate and the Engagement Letter will be issued to the minor applicant;
- (d) if minor applicants are in custody at the time of their legal aid application, then they may make an application for legal aid on their own behalf and shall be assessed on the basis of their own financial position. The legal aid certificate and the Engagement Letter shall be issued to the minor applicant. If minor applicants are subsequently released from custody and returned to the care of their parent(s), and their advocate is of the view that it would be equitable for the parent(s) to contribute to the legal fees being incurred, the advocate or solicitor may write to the Bâtonnier. The Bâtonnier may then, at the Bâtonnier's discretion, decide to revoke the legal aid certificate and, if appropriate, issue a new legal aid certificate in the name of the parent(s).
- (e) otherwise, where the minor applicant is financially dependent on their parent or parents, then the following shall apply:
 - (i) the minor's application and any consequent liability to pay legal fees shall be assessed on the basis of the parent's (being the parent with whom they live) or parents' or guardian's Gross Household income and Disposable Capital;
 - (ii) the legal aid certificate and the Engagement Letter shall be issued to the parent or parents or guardian who shall be

responsible for any fees charged. Those fees shall be charged on the basis of the parent's or parents' or guardian's Gross Household Income and Disposable Capital in accordance with these guidelines.

PROVIDED ALWAYS that if it is for any reason in the opinion of the Bâtonnier inappropriate or impractical for the parent or parents or guardian to be asked to co-operate with the minor's application, or to accept responsibility for legal fees then the Bâtonnier may issue a legal aid certificate accordingly in the name of the minor applicant and may direct that the minor is either not charged or is charged on the basis of the minor's own financial position.

2.8 What Fee Contribution will the Client be asked to make?

When the Bâtonnier has granted legal aid this does not mean that the client will not be charged for the legal representation that they receive.

The following criteria (Paragraphs 2.9 to 2.12) set out the obligations of the advocate or solicitor or their Firm in terms of (a) their responsibility when engaging a client to provide them with certain information; (b) their responsibility to keep proper records and maintain fixed hourly rates and (c) the rendering of fee notes in accordance with certain criteria.

2.9 The Engagement Letter

When an advocate or solicitor has been appointed to act for any legally aided client, that client shall forthwith be provided with a letter of engagement, in accordance with Rule 4 of the Jersey Law Society Code of Conduct which letter of engagement shall set out the following information:

- (a) Who will be carrying out the work in relation to that matter and what their legal qualifications are.

- (b) Where the work is not predominantly to be carried out by an advocate or solicitor, who will be responsible for supervising the work of the fee earner and what their legal qualifications are.
- (c) To whom the client should address any complaints.
- (d) Confirmation of the charge out rates to be utilised by any fee earner (or other staff) who may carry out work in relation to that matter (in accordance with the criteria set out in 2.11.2 and 2.11.3 of these guidelines).
- (e) An estimate of the fees likely to be charged to the client by reference to the criteria set out in these guidelines. Where that estimate is stated to be subject to review, then the onus is upon the advocate, solicitor or their Firm to review the estimate on a regular basis so as to ensure that the client is at all times in a position to understand their likely exposure to legal fees.
- (f) A clear statement advising the client that in the event of a dispute between them and the advocate or solicitor or their Firm concerning fees charged or to be charged, that client has the right to refer the matter to the Bâtonnier for adjudication. The letter must set out the relevant time limits and procedure for submitting the matter to adjudication.
- (g) A clear statement explaining what will happen should the clients receive a settlement at the conclusion of their case to the extent that they fall outside the normal thresholds for granting legal aid.
- (h) A clear statement reminding the client of their responsibilities under Clause 2.2 of these guidelines.

The advocate or solicitor or their Firm must issue an amendment to the Engagement Letter should any of the relevant circumstances change. For

example, where it has become apparent that the client's gross household capital or income have changed or are likely to change and thus that they will be billed differently.

2.10 Payments on Account

2.10.1 The advocate or solicitor appointed shall be permitted to ask the client to provide monthly payments on account of fees, or to provide limited funds at the outset of the matter provided that in doing so (a) they do not fall foul of the criteria set out in these guidelines and (b) the effect of that request is not to make it impossible or impracticable for the client to pursue the matter.

2.10.2 In the event of a dispute as to whether a payment on account is reasonable the advocate or solicitor is not entitled to suspend work on the client's case. Either the client or the advocate or solicitor shall have the right to refer the matter to the Bâtonnier who shall decide whether the request for funds on account was reasonable. Any such referral must generally be made within 14 days of the request for funds on account, failing which the client will be expected to provide the funds requested.

2.10.3 The advocate or solicitor shall not be entitled to require a payment to be made prior to any work being undertaken or where the making of such a payment is a condition of the arranging of a first appointment between the client and the advocate or solicitor appointed or an appropriately qualified person in their place.

2.11 Time Records and Charge-Out Rates

2.11.1 All advocates or solicitors shall keep proper records of the time that they have spent in dealing with a particular applicant's legal aid matter. The client may request a breakdown of that time spent at any point during the course of their case, or when they have received a bill. Only time that has

been reasonably and properly incurred to an client's case should be charged to the client.

2.11.2 The hourly charge out rates of all staff when engaged on legal aid matters shall not exceed the hourly rates allowed for the purpose of the taxation of legal costs in Royal Court cases from time to time. Those hourly rates shall not be increased in accordance with any factor uplift as would be permitted under taxation in certain circumstances.

2.11.3 Where clients are successful in pursuing their case so that an order for costs or an agreed settlement for the payment of their legal fees is obtained from the opposing or other third party, the advocate or solicitor appointed or their Firm may charge their full reasonable fees applying their usual private client rate provided always that should these fees for any reason prove to be irrecoverable and become the responsibility of the client, the provisions set out in these guidelines (including 2.11.2 above) shall apply and any account issued shall be reduced accordingly.

2.12 Charging Fees

2.12.1 The following criteria shall apply when calculating the maximum amounts that may be billed by the advocate or solicitor or their Firm. Where more than one legal aid certificate has been issued concurrently to a law firm in connection with a particular client the following limits shall apply to that client rather than to each individual legal aid certificate.

The advocate or solicitor will first have regard to the Household Disposable Capital of the client. The client's relevant Household Disposable Capital for these purposes will be their disposable capital (calculated in accordance with Paragraphs 2.5 and 2.12.2) at the time that the account comes to be issued, taking into account any capital sums or property that may have been recovered as the result of the legal representation received under the legal aid certificate.

The advocate or solicitor must then have regard to the client's Gross Household Income (in accordance with Paragraph 2.12.3) The client's relevant Gross Household Income for these purposes will be their Gross Household Income at the time that the account comes to be issued.

2.12.2 **Household Disposable Capital**

2.12.2.1 Where the client at the conclusion of their case obtains a settlement which leads to them having, at the time of billing, Household Disposable Capital in excess of £10,000, the advocate or solicitor appointed or their Firm shall be entitled to charge 100% of their reasonable fees but at the rate set out in Paragraph 2.11.2 of these guidelines and subject to Paragraph 2.12.4 (if appropriate) until the £10,000 threshold has been reached.

2.12.2.1 Where it becomes apparent during the course of acting for clients, or should become so apparent, that the assets likely to be recovered for clients are such that, at the conclusion of the case, they are likely to be charged differently to the manner proposed in the Engagement Letter then the advocate or solicitor appointed shall forthwith inform the clients of that fact and, if appropriate, advise them that they may wish to instruct the lawyer of their choice privately as an alternative to continuing with representation under the Legal Aid Scheme.

2.12.2.2 Notwithstanding the definition of Disposable Capital set out in Paragraph 2.5, where sums recovered are or represent the client's share of or interest in the former matrimonial home, such sums shall not be taken to fall within the client's Disposable Capital unless they exceed a net figure of £25,000. Any amount recovered in excess of that figure will be Disposable Capital.

2.12.2.3 Where the client has not recovered funds in connection with the former matrimonial home but has instead accumulated further equity in the home (or preserved the level of equity through a Mesher type order) then that

equity shall be included when calculating their Disposable Capital in accordance with Paragraph 2.5.1 (c) and the client shall be charged accordingly save that where this would result in financial hardship to the client the fee shall be reduced to a level that the client can reasonably afford taking into account their Gross Household Income and any unusual but necessary and reasonably incurred expenses and liabilities.

2.12.2.4 Where clients, at the time of billing, have Household Disposable Capital below £10,000, they shall be assessed for legal fees on the basis of their Gross Household Income alone and their Household Disposable Capital shall be disregarded.

2.12.3 **Gross Household Income**

2.12.3.1 Where the Bâtonnier has exercised his discretion to grant legal aid in a case where the client's Gross Household Income exceeds £45,000 per annum, then the advocate or solicitor appointed or their Firm may charge the client as provided for in Paragraph 2.3.2 or 2.3.3 as the case may be.

2.12.3.2 If, at any time, the advocate or solicitor appointed becomes aware that the financial circumstances of clients have changed in a material way, which is likely to affect their responsibility to pay legal fees then it shall be the responsibility of the advocate or solicitor appointed to advise the client accordingly and to alter the terms of their Engagement Letter.

Percentage of Fees to be Charged

Subject to Paragraph 2.12.4:

2.12.3.3 Where the Gross Household income of a client falls between £35,000 and £45,000 per annum, the client shall be liable to be charged a maximum of 75% of the advocate, solicitor or Firm's reasonable fees and applying the hourly rates set out in Paragraph 2.11.2.

- 2.12.3.4 Where the Gross Household income of an client is between £25,000 and £35,000 per annum the client shall be liable to be charged a maximum of 50% of the advocate, solicitor or Firm's reasonable fees and applying the hourly rates set out in Paragraph 2.11.2.
- 2.12.3.5 Where the Gross Household income of a client falls between £15,000 and £25,000 per annum the client shall be liable to be charged a maximum of 25% of the advocate, solicitor or Firm's reasonable fees and applying the hourly rates set out in Paragraph 2.11.2.
- 2.12.3.6 Where the Gross Household income of a client is below £15,000 per annum, the client must not be charged.

For ease of reference these provisions are also set out below in tabular form. The percentages stated are subject to any deduction that may be merited in accordance with Paragraph 2.12.4

Gross Household Income Table

Income	Liability for Reasonable Fees
£45,000 +	100% unless otherwise indicated by the Bâtonnier
£35,000 - £45,000	75%
£25,000 - £35,000	50%
£15,000 - £25,000	25%

The bands set out in Paragraph 2.12.3 indicate the maximum amount that can be charged to a client falling within the income limits set out. In assessing what amount should then actually be charged to an individual legal aid client the advocate or solicitor or their Firm shall ALSO have regard not only to the level of income but also to any unusually high but reasonable and necessary expenses and liabilities of the client and shall reduce the level of any bills issued accordingly. They shall also have regard to whether a bill calculated in accordance with these guidelines could still cause financial hardship to the client (see 2.12.4 below).

2.12.4 **The Relevance of Household Expenses, Liabilities and Financial Hardship**

2.12.4.1 **Household Expenses**

Where the household expenses of the client are unusually high due to their individual circumstances but the advocate, solicitor or their Firm is satisfied that they are being reasonably and necessarily incurred where, for example, the client has a number of children and is meeting high child

care and/or accommodation costs, the advocate or solicitor or their Firm shall take this into account when rendering their bill and shall not issue an account which they know, or should know, would cause financial hardship to the client or their family. Expenses likely to fall into this category would include unusually high but reasonable expenses incurred in relation to:

- (a) food;
- (b) housing (where the standard of housing is necessary to accommodate the family);
- (c) basic clothing costs;
- (d) very high child maintenance payments paid pursuant to a court order;
- (e) necessary utilities;
- (f) tax; and
- (g) childcare costs.

Reasonable expenses for these purposes would not include expenditure on items such as:

- (h) school fees;
- (i) telephone bills (landline or mobile);
- (j) “Sky” or similar television subscriptions;
- (k) savings plans;
- (l) entertainment costs;
- (m) holiday expenses; and

(n) non-essential clothing or catalogue expenses.

Where potential financial hardship can be avoided by the advocate, solicitor or their Firm putting forward appropriate suggestions for the payment of accounts by instalment they shall be permitted to do so provided always that no interest shall be charged to the client in respect of such instalment payments if they are paid promptly, and ordinarily no client shall be asked to pay instalments over a period longer than three years.

2.12.4.2 **Liabilities**

In rendering accounts the advocate, solicitor or their Firm shall have regard to the level of indebtedness of the client where those debts have been incurred prior to the granting of legal aid or where those debts have been reasonably incurred following the issuing of a legal aid certificate. The advocate, solicitor or their Firm shall not issue an account which they know, or should know, would cause financial hardship to the client or their family taking into account such liabilities. Again, any such hardship may be avoided by an offer on the part of the lawyer or the Firm to accept payment by instalment.

2.12.4.3 **Financial Hardship**

If, notwithstanding the application of these guidelines, the quantum of an account is such that it could cause financial hardship to a client then if it is appropriate in all circumstances of the case, the account or the method of payment shall be reduced to an affordable level. Again, hardship may be avoided in some circumstances by an offer on the part of the lawyer or the Firm to accept payment by instalment.

2.13 Fee Disputes

2.13.1 In the event of a dispute between a client and the advocate or solicitor or their Firm in relation to the fees charged in connection with a legally aided matter then the advocate, solicitor or their Firm must remind the client of their right to refer the issue of the fees charged to the Bâtonnier for adjudication. The Bâtonnier will not normally entertain a fee adjudication in respect of any account which has not been queried by the client within six months of being issued.

2.13.2 At the request of either the advocate, solicitor or their Firm, or the client, the Bâtonnier shall carry out an adjudication as to whether the fees charged were properly charged by reference to the criteria set out in these guidelines. The relevant procedure and a time scale for the adjudication is set out in Clause 3.17 of these guidelines.

2.13.3 Where an adjudication carried out by the Acting Bâtonnier has not been appealed to the Bâtonnier within 28 days of being issued, it shall be considered final.

2.13.4 In carrying out his adjudication the Bâtonnier shall have the right to request and the client and/or advocate or solicitor shall provide such information and/or documentation as the Bâtonnier may reasonably need in order to carry out the adjudication.

2.13.5 An adjudication of the Bâtonnier will be binding on the advocate or solicitor or their Firm as well as on the client.

2.14 Where Interim or Final Fees remain unpaid

- (a) The advocate, solicitor or their Firm shall remind the client of their right to submit the bill to adjudication and of the relevant time limits.

- (b) The advocate, solicitor or their Firm may apply for the revocation of the client's legal aid certificate, which application will be considered at the Bâtonnier's discretion.
- (c) Until such time as the matter reaches a conclusion or the legal aid certificate is discharged or revoked, the advocate or solicitor appointed shall continue to act for the client.
- (d) If the advocate, solicitor or their Firm wishes to commence proceedings against the client for unpaid fees, they must first apply for the discharge of the client's legal aid certificate and no proceedings may be issued until that application has been granted.

PART III

The Administration of the Legal Aid Scheme

3.1 The Role of the Bâtonnier

3.1.1 The origins of the Legal Aid Scheme and the role of the Bâtonnier are described in paragraph 1.3 above.

3.1.2 The Bâtonnier may, and in recent times does, delegate his powers and responsibilities in relation to the administration of the Legal Aid Scheme to an Acting Bâtonnier and where such powers and responsibilities have been delegated, any decision of the Acting Bâtonnier can be appealed to the Bâtonnier. Appeals to the Bâtonnier must be delivered in writing to his office within 28 days after the person appealing has received notice of the decision or other action which he wishes to challenge, failing which that decision or other action shall become final and unappealable. References to the Bâtonnier throughout these guidelines should be taken to include the Acting Bâtonnier unless otherwise stated or the context requires otherwise.

3.1.3 The Bâtonnier is responsible for supervising the Acting Bâtonnier and for ultimately ensuring the proper running of the legal aid system.

3.1.4 The Bâtonnier is elected by the profession every three years. Changes to the holder of the office are duly notified to the general public by publication in the Gazette.

3.2 The Role of the Acting Bâtonnier

3.2.1 The role of the Acting Bâtonnier is to undertake such duties as may be delegated to the Acting Bâtonnier from time to time by the Bâtonnier.

3.2.2 In recognition of the burden of carrying out these duties, it is the current practice for the firm of the Acting Bâtonnier to have four members (including the Acting Bâtonnier) removed from the Legal Aid Rota for the period during which the office of Acting Bâtonnier is held.

3.2.3 The Acting Bâtonnier is changed approximately every two years. Due to the complexities and practicalities of administering the legal aid system, the office tends to circulate among appropriate lawyers within the larger firms in Jersey.

3.2.4 The present duties of the Acting Bâtonnier are as follows:

- (a) To operate the legal aid office and to receive and respond to correspondence and telephone calls from those requiring assistance.
- (b) To deal with the day to day administration of the Legal Aid Scheme and to respond to queries raised in relation to the operation of the Legal Aid Scheme.
- (c) To operate the Legal Aid Scheme in accordance with these guidelines and to maintain proper records in relation to applicants, clients and lawyers.
- (d) To consider applications for legal aid and, applying the principles set out in these guidelines, to grant or refuse those applications.
- (e) To advise all applicants, clients or lawyers where appropriate, of their right to appeal to the Bâtonnier should they not accept any decision of the Acting Bâtonnier.
- (f) To consider and accept or reject as appropriate requests for the revocation of legal aid certificates.

- (g) To generally ensure the smooth operation of the legal aid system and to liaise where necessary between applicants, clients and lawyers, the prison authorities, the police and/or customs authorities and the courts of Jersey.
- (h) To provide telephone advice whenever requested to detainees at Police Headquarters or Customs during ordinary office hours.
- (i) To maintain such rotas in connection with the administration of legal aid as may from time to time be necessary, and to circulate those rotas to all individuals and bodies concerned.
- (j) To deal with fee disputes in the manner set out in these guidelines and, where necessary, to adjudicate on those fee disputes.

3.2.5

Delegation of Matters by the Acting Bâtonnier

- (a) The Acting Bâtonnier may delegate the adjudication of fee disputes pursuant to these guidelines to an appropriate advocate or solicitor who has been qualified for not less than five years. To this end, the Acting Bâtonnier will maintain a list of those advocates or solicitors who are prepared to assist with this task and adjudications shall be referred to them by rotation allowing for any conflicts of interest that may exist. Any member of the profession who has been qualified for an appropriate length of time may ask to be included on this list. Where an adjudication is referred to an advocate or solicitor, they shall receive a legal aid credit for carrying out the work which shall be done by them personally.
- (b) The Acting Bâtonnier may, where strictly necessary, delegate the receipt of telephone calls pursuant to Clause 1.4.1.3 of these guidelines to an appropriate advocate or solicitor to a firm other than the Acting Bâtonnier's firm. To this end, the Acting Bâtonnier will maintain a list of those advocates or solicitors who

are prepared to assist with this task and telephone calls shall be referred to them by rotation allowing for any conflicts of interest that may exist. Any member of the profession may ask to be included in the list. The advocate or solicitor will receive one legal aid credit for six clients referred to them for telephone advice which advice shall be provided by them personally.

3.3 Public Notices

Where a matter needs to be brought to the attention of the general public, for example where the legal aid office is due to be closed for any particular reason or where it is moving to the care of a new Acting Bâtonnier, due notification will be given to the public through the Jersey Gazette. It is also customary for the Acting Bâtonnier to notify the courts and all others who may be involved in any way in the administration of legal aid.

3.4 Legal Aid Applications

Save as provided elsewhere in these guidelines, applicants for legal aid must obtain, complete and deliver to the legal aid office a legal aid application form which the Acting Bâtonnier will consider as soon as possible after receipt. The Acting Bâtonnier will then write immediately to the applicant telling the applicant whether the Acting Bâtonnier has granted or rejected the application and informing the applicant of matters arising from that grant or rejection. Legal aid application forms may be obtained from the legal aid office, the Magistrate's Court, Petty Debts Court, States of Jersey Police Headquarters, Customs and Excise, the Citizens' Advice Bureau and HM Prison at La Moye. ,

3.5 The Operation of the Tour de Rôle

3.5.1 When issuing a legal aid certificate to an applicant, the Bâtonnier will make that certificate out to the advocate or solicitor next in line to receive a certificate unless:

- (a) another advocate or solicitor is already acting for the applicant in relation to another matter and it would be appropriate to ask them to deal with both. Where that advocate or solicitor works within a law firm the Bâtonnier may, where it is expedient to do so, make the certificate out in the name of an alternative advocate or solicitor working for the same firm;
- (b) where, in the opinion of the Bâtonnier, it is necessary in the interests of justice to appoint an advocate or solicitor to the case where they are not the next in line (for example, this could arise where an advocate rather than a solicitor needs to be appointed to deal with the criminal case);
- (c) where a genuine conflict of interest or a significant risk of such a conflict arises (such as would cause the advocate or solicitor appointed a difficulty pursuant to the Jersey Law Society Code of Conduct) the Bâtonnier shall appoint an alternative lawyer to handle the case;
- (d) where an advocate or solicitor has been acting privately for a client and it becomes clear that the client's financial position means that an application for legal aid should be made, the advocate or solicitor should advise the client accordingly. Where a certificate is granted to an applicant in these circumstances, it shall be issued, in the absence of any intervening conflict, to the advocate or solicitor who has been dealing with the applicant previously or to another advocate or solicitor within their firm.

3.5.2 The Bâtonnier shall ensure that the Legal Aid Scheme, and the records relating thereto, are properly maintained to ensure:

- (a) fairness both to applicants and lawyers in the allocation of legal certificates;
- (b) that an accurate record is kept of those advocates and solicitors who are at any time suspended from the Legal Aid Scheme;
- (c) to keep accurate records of those advocates and solicitors who are absent from the office for a particular period of time, but have not been suspended from the Legal Aid Scheme; and
- (d) that consistency is maintained in the operation of the Legal Aid Scheme and in its general administration.

3.6 Suspension from the Legal Aid Scheme

3.6.1 An advocate or solicitor will be suspended from the Legal Aid Scheme in any of the following circumstances:

- (a) where they are absent from Jersey for over four weeks;
- (b) where they are not holding themselves out as a Jersey advocate or solicitor or as practising as a Jersey advocate or solicitor in the island;
- (c) where they are absent from the office due to parental or sick leave for a period in excess of three calendar months; or
- (d) where they are absent from the office, but within the island, for over four weeks, whether on holiday, business or otherwise.

3.6.2 Where a lawyer is suspended from the Legal Aid Scheme they shall not receive legal aid certificates during the period for which they are suspended, but the period during which they are suspended will not count

towards the fifteen years that the particular advocate or solicitor spends within the Legal Aid Scheme. Following the expiry of that period of suspension, the advocate or solicitor will return to the Legal Aid Scheme and their time on the scheme will then run again.

3.6.3 It is the responsibility of the advocate or solicitor to whom 3.6.1 applies to inform the Acting Bâtonnier that they should be suspended from the Legal Aid Scheme, and of the date of their return to practice.

3.7 Short absences of Advocates and Solicitors from the Legal Aid Scheme

3.7.1 Where an advocate or solicitor is:

- (a) on holiday from the office for over three days but not more than four weeks; or
- (b) sick and away from the office for over three months; or
- (c) on parental leave for over three months;

that lawyer shall not receive legal aid certificates during the relevant period but shall not be suspended from the Legal Aid Scheme.

Where a sole practitioner is absent from the office for a period of less than 3 days only non-urgent certificates shall be issued to him during that period provided the legal aid office is advised in advance of their absence.

3.7.2 It is the responsibility of the advocate or solicitor concerned to inform the Acting Bâtonnier of their absences in advance, and to notify him of the date of their return to work.

Upon returning to work the advocate or solicitor concerned will be returned to the top of the list of lawyers to be appointed if they would have received a certificate but for their absence.

3.8 Crown Officers and other Advocates in States Employment

3.8.1 If an advocate or solicitor is employed by the Law Officers' Department, the Viscount's Department or the Judicial Greffe, they shall not be included in the Legal Aid Scheme and shall not receive any legal aid certificates. The period of time for which they have been employed will continue to count towards their fifteen year obligation under the Legal Aid Scheme.

3.8.2 It shall be the responsibility of the advocate or solicitor concerned to inform the Bâtonnier of the nature of their employment and to inform the Bâtonnier should they cease employment of this type.

3.8.3 Those advocates who are appointed as Crown Advocates to carry out prosecutions or other work on behalf of the Attorney General or States of Jersey, but who remain in private practice shall not be treated any differently from any other advocate or solicitor who is included within the Legal Aid Scheme.

3.9 Advocates/Solicitors employed on a part-time basis

3.9.1 Where an advocate or solicitor is employed on a part-time basis only, their obligations under the Tour de Rôle shall be reduced proportionately to the amount of time that they spend at work. The Acting Bâtonnier, in order to institute this concession, will require written confirmation from the employer of the advocate or solicitor's working hours, those working

hours to include all work undertaken for the employer regardless of whether they are performed at home or in the office.

3.9.2 It shall be the obligation of the advocate or solicitor to whom this clause applies to notify the Bâtonnier should the circumstances of their employment change in any way.

3.10 Changes in employment amongst Lawyers on the Tour de Rôle

3.10.1 Where an advocate or solicitor is employed by a law firm and leaves that law firm either to enter into sole practice or to join a different law firm it shall be the obligation of that advocate or solicitor to inform the Bâtonnier.

3.10.2 Where an advocate or solicitor leaves a law firm and has legal aid credits to their name, whether by virtue of having participated in the various rotas administered by the Bâtonnier or otherwise, these credits shall remain with the individual advocate or solicitor unless it has been agreed with that advocate or solicitor's employer otherwise.

3.10.3 Where an advocate or solicitor is leaving employment with a law firm but there are certificates issued to them in respect of applicants where their cases are still current, then the advocate or solicitor originally appointed to deal with the case remains responsible for those applicants and their cases.

In most situations, this will mean that the advocate or solicitor takes those applicants and their cases with them to their new employment or practice. The advocate or solicitor concerned may reach an agreement with their former employer whereby they (the former employer) retains those applicants and their cases and proceeds with them to a conclusion.

3.10.4 Where an advocate or solicitor ceases to practise law for whatever reason, or leaves Jersey then they must apply to be discharged from all legal aid certificates that they have an obligation to fulfil at that time. Such situations will be dealt with at the Bâtonnier's discretion. In general, the

presumption will be that the legal firm of the advocate or solicitor will retain the certificate which will be amended accordingly. No further legal aid credit shall be given to the firm for retaining the applicant. Where it would be inappropriate for the advocate or solicitor's previous employer to retain the applicant's case, the Bâtonnier will issue a new certificate for the benefit of a new advocate or solicitor in an alternative firm.

- 3.10.5 If an advocate or solicitor leaves employment with a firm and cannot remain responsible for particular applicants or their cases by virtue of a conflict which would arise within their new firm, and which would place them in breach of their professional duties and/or in breach of the Code of Conduct, then they may apply for the discharge of the relevant legal aid certificate. The Bâtonnier will, subject to his discretion, appoint the applicant to a different lawyer to deal with each case in accordance with its circumstances within the same firm as previously employed the advocate or solicitor originally appointed.

3.11 The Responsibilities of Advocates or Solicitors appointed under a Legal Aid Certificate

- 3.11.1 The advocate or solicitor appointed to represent an applicant under a legal aid certificate has personal responsibility to ensure that the applicant's case is conducted properly and competently and that the applicant is appropriately and professionally dealt with, save that these obligations may be delegated in accordance with the provisions set out below.
- 3.11.2 The advocate or solicitor whose name appears on the legal aid certificate may delegate their obligations under legal aid certificates to an appropriately qualified and supervised member of staff within their Firm or another legal firm. In such cases, responsibility for the work undertaken shall lie as follows:

- (i) It is the personal responsibility of the advocate or solicitor named on the certificate to satisfy themselves that the procedures in place for the delegation of work internally or externally by the law Firm are appropriate;
- (ii) it is the responsibility of the partners of their firm to ensure that the arrangements for the execution of legal aid work within the firm are adequate, properly supervised and well managed where work is delegated internally and to ensure that any Firm or lawyer to whom work is delegated externally is competent and able to do the work in question.
- (iii) it is the responsibility of the advocate or solicitor carrying out the work (or directly supervising it where the work is undertaken by someone who is not an advocate or solicitor) to satisfy the usual high standards for client work that are required under the Code of Conduct.

3.11.3 Where an advocate or solicitor has been appointed under a legal aid certificate but subsequently completes fifteen years' service under this scheme, they will remain responsible for any legal aid cases which are at that point assigned to them.

3.11.4 Where an advocate or solicitor ceases employment with a particular firm, and remains within the profession with an alternative employer, the advocate or solicitor appointed on the certificate will remain responsible for the proper conduct of all certificates that have been made out to them unless proper arrangements are made for the certificates to remain with their original firm under that firm's supervision and management.

3.12 The Revocation of Legal Aid Certificates

Where the Bâtonnier has decided to revoke a legal aid certificate, he may remove the credit given to the advocate or solicitor who would have handled that case and will appoint an alternative applicant to them unless it is apparent that a significant amount of work has been done by the advocate or solicitor concerned and that it would be inequitable not to give them the benefit of the original legal aid certificate.

3.13 Conflicts of Interest

It is the responsibility of the advocate or solicitor appointed on a legal aid certificate to immediately identify any conflicts of interest or any significant risk of such a conflict which may arise. If conflicts are not identified at the outset, but the advocate or solicitor subsequently identifies the issue then unless there shall be very good reasons for the delay, the Bâtonnier will appoint a new advocate or solicitor (who will receive an appropriate credit) to deal with the case from that time onwards and shall appoint an alternative applicant to the advocate or solicitor originally appointed without further credit being given to them.

3.14 The Duty Advocate Scheme

3.14.1 The Bâtonnier shall administer a rota in connection with the Duty Advocate Scheme. This Scheme ensures the attendance of at least one advocate at the Magistrate's Court each week day to assist defendants. The Scheme is voluntary and shall be subject to the following rules:

- (a) all advocates shall be invited to participate in the Scheme;
- (b) the rota shall be administered so as to ensure that advocates are duly appointed to attend court each day and so as to ensure fairness amongst participating advocates. The rota shall be circulated well in advance;

- (c) on their appointed day, the advocate concerned shall ensure that they attend the Magistrate’s Court to assist all those in custody unless they are informed by the court staff that their attendance is not required. They may be required to attend in the morning, afternoon or at both court sittings;
- (d) When attending the Magistrate’s Court the advocate shall also assist any “walk in” defendants who request legal advice provided that it is practical for them to do so.
- (e) upon attending court, it shall be the obligation of the advocate to inform the Bâtonnier that their attendance was required; and
- (f) upon each occasion when a Duty Advocate is required, they shall be granted one legal aid credit. This will be awarded to the advocate who attended court, unless the Bâtonnier is notified of a contractual agreement to the contrary. Where the advocate appointed no longer takes part in the Legal Aid Scheme, the credit shall be awarded to an alternative advocate or solicitor from the same firm.

3.15 The Administration of the Police Headquarters and Customs Duty Advocate Scheme

3.15.1 The Bâtonnier shall administer a rota in connection with the Police Headquarters and Customs Duty Advocate Scheme. This Scheme ensures that advice (generally by telephone) will be made available to detainees prior to charge. The Scheme is voluntary and shall be subject to the following rules:

- (a) all advocates and solicitors shall be invited to participate in the Scheme. Those lawyers who do take part must be confident that they have the requisite knowledge and experience to assist a detainee in connection with criminal offences, and must be

available at all times when on call to provide telephone advice and attend for interviews when necessary;

- (b) the rota shall be administered so as to ensure that appropriate cover is in place and to ensure fairness amongst participating lawyers. The rota shall be circulated well in advance;
- (c) it is the responsibility of participating lawyers to notify the Bâtonnier in advance of planned absences from the office or the island. Where a lawyer is unavailable to provide cover when requested, it is their responsibility to find alternative cover;
- (d) each lawyer's period on call shall commence from 5.00 p.m. Thursday and finish at 9.00 a.m. the following Thursday. The lawyer shall receive two credits for each period on call. Where the week includes a bank or customary holiday, the lawyer shall receive one further credit for each bank or customary holiday. These credits shall be awarded personally to the lawyer concerned, unless that lawyer requests to the contrary; and
- (e) each lawyer is expected to be easily contactable whilst on call. The Police and/or Customs authorities will only attempt to contact the lawyer between the hours of 11 p.m. and 7 a.m. where a detainee faces serious charges.

3.16 The Administration of the Citizens' Advice Bureau Scheme

3.16.1 Each Wednesday an advocate or solicitor attends at the offices of the Citizens' Advice Bureau to offer advice at a clinic. The public make appointments to see the lawyer through the CAB. The clinic takes place at lunch time.

3.16.2 The Bâtonnier shall administer a rota in connection with the CAB Scheme. The Scheme is voluntary and shall be subject to the following rules:

- (a) all advocates and solicitors shall be invited to participate in the Scheme;
- (b) each advocate or solicitor taking part shall perform two clinics on consecutive Wednesdays;
- (c) the rota shall be administered so as to ensure that appropriate cover is in place and to ensure fairness amongst participating lawyers. The rota shall be circulated well in advance; and
- (d) the lawyer attending the clinic receives one credit for each set of two sessions.

3.17 Fee Adjudications

- 3.17.1 When requested to do so by either the client or the advocate or solicitor appointed, the Bâtonnier shall carry out an adjudication to decide upon the fee that the client can reasonably be charged.
- 3.17.2 Where the Bâtonnier has been asked to carry out an adjudication neither the lawyer concerned nor the client shall commence any form of legal proceedings for the recovery of sums allegedly due in respect of fees.
- 3.17.3 Where the Bâtonnier carries out an adjudication, that adjudication shall be binding on both the lawyer and the client. Where an adjudication has been carried out by the Acting Bâtonnier either party may appeal to the Bâtonnier.
- 3.17.4 Upon receiving a request to carry out an adjudication the Bâtonnier shall within 14 days:
 - (a) write to the person who did not request the adjudication informing him of the request;

- (b) Write to the lawyer requiring him to deliver his full files in original form to the office of the Bâtonnier within ten days after receipt of that notice:
- (c) Write to the client requiring him to deliver to the office of the Bâtonnier, within ten days after receipt of that notice, a financial statement containing such information as to the client's circumstances as the Bâtonnier shall require.

3.17.5 Within two months of the request being made, and on the basis of the information and documents disclosed by the client and the lawyer, the Bâtonnier will make an adjudication.

3.17.6 In producing his adjudication the Bâtonnier will have regard to the financial criteria set out in Part II of these guidelines and shall use these as the basis for their adjudication. The Bâtonnier may set out a payment plan to be met by the client.

3.17.7 Upon receiving an adjudication made by the Acting Bâtonnier the client and/or lawyer must within 28 days, if either party wishes to appeal, deliver to the office of the Bâtonnier written notice that he is appealing, failing which the adjudication shall be considered final.

3.18 Transitional Provisions

3.18.1 These guidelines shall come into force with effect from such date as the Bâtonnier shall designate.

3.18.2 These guidelines shall only apply to applicants who make an application for legal aid after these guidelines come into force. Existing legal aid clients will not have their eligibility for legal aid reviewed simply in light of any new provisions introduced by these guidelines, and they must be billed in accordance with the Legal Aid Guidelines in force at the date that their legal aid certificate was issued.