

LEGAL AID IN JERSEY

Key Features of the Legal Aid Scheme

Public or Private Law?

Legal Aid will, in future, be categorised as either Public Law or Private Law.

- **Public Law** covers **Criminal, Public Children Law and Mental Health matters** e.g. a criminal matter before the Magistrate's Court or the representation of parents in public law children proceedings.
- **Private Law** covers **Family and Civil matters** e.g. a divorce or housing dispute

Under the proposals, the States of Jersey would assume responsibility for meeting the reasonable costs of legal representation of a lawyer appointed under Legal Aid in Public Law matters. All lawyers in Public Law matters will be accredited specialists in the specific area of law for which the need arises e.g. criminal law. No personal contributions are required in Public Law matters.

The legal profession would continue to represent individuals where a lawyer is appointed under Legal Aid in Private Law matters, on a free or reduced cost basis, depending on the applicant's financial circumstances. Lawyers will continue to be allocated on a rota system.

Eligibility for Legal Aid

Applicants for Legal Aid in a Public Law matter must be able to satisfy two eligibility tests:

1. Nature of Public Law Matter/Criminal Offence – see 'Area of Law'
2. Financial (Criminal applications only) – see 'Financial Eligibility'

Applicants for Legal Aid in a Private Law matter must be able to satisfy three eligibility tests:

1. Area of Law – see 'Area of Law'
2. Residency – see 'Residential Eligibility'
3. Financial – see 'Financial Eligibility'

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

Applications, in Public and Private Law matters can only be accepted in relation to personal law, from individuals acting in their private capacity. Legal aid is not available in respect of corporate or business activity, including matters of a criminal nature.

What has changed?

Residential eligibility requirements have been removed in relation to Public Law Legal Aid in respect of criminal matters. Previously, Legal Aid was only available to non-Jersey residents where a defendant was at risk of a custodial sentence on conviction.

The residential eligibility requirement in Private Law matters has been clarified, with applicants now having to evidence that they have been ordinarily resident for a period of not less than 12 months, rather than the previous description of being ordinarily resident, with no associated minimum period of residence.

Areas of Law

The areas of law which are eligible for Legal Aid have been revised:

Public Law

The following areas of law and types of proceedings will be eligible under Public Law Legal Aid:

Children Law

- All Children Law proceedings brought by the Minister under the Children Law 2005
- Child abductions including applications under the Hague Convention

Mental Health

- Representation in appeals to the Mental Health Review Tribunal under the Mental Health and Capacity Laws

Criminal

- All criminal matters in Royal Court.
- All criminal matters* in the Youth / Magistrate's Courts (other than minor offences and minor motor-related offences).

* Limited to offences for which the sentencing guidelines indicate a fine in excess of £2,000 or the risk of a custodial sentence on conviction.

Minor motor-related offences and minor criminal offences, where a defendant may receive a fine of £2,000 or less (in accordance with the sentencing guidelines) and where there is no risk of a custodial sentence on conviction are not eligible for Legal Aid.

What has changed?

The previous 'fine threshold', below which representation would not be available under Legal Aid, in criminal matters, was £500. There are no other changes.

Private Law

The following areas of law and types of proceedings will be eligible under Private Law Legal Aid:

Family claims and proceedings

- Ancillary relief claims where there are dependent children**
- Child maintenance (including Schedule 1 claims) under Matrimonial Causes (Jersey) Law 1949 or the Children (Jersey) Law 2002
- Divorce / Judicial Separation / Civil partnership / nullity proceedings where there are dependent children**
- Residence and contact disputes, prohibited steps orders, specific issue orders and removal from the jurisdiction under the Children Law 2002 or the Matrimonial Causes (Jersey) Law 1949 (but the parties must have attended mediation except where there are reasonable grounds to suspect that mediation would not be appropriate due to domestic abuse)
- Injunctions, ex parte orders and ex-parte injunctions within the family law context where no criminal sanctions are being pursued by the police.
- Appeals in family proceedings (where a Legal Aid certificate has been granted), subject to a favourable second opinion.

** Claims in relevant matters where there are no dependent children will be eligible (subject to financial and residency criteria being met) in circumstances where a civil injunction has been granted and/or criminal prosecution has been instigated on the grounds of domestic abuse or violence.

‘Dependent child’ is defined as a child up to the age of 16 or in full-time education (until the end of a first degree only).

Civil Claims and proceedings

- Contractual disputes
- Actions in tort
- Personal injury claims^^
- Medical negligence claims^^
- Appeals in civil proceedings (where a Legal Aid certificate has been granted), subject to a favourable second opinion.

^^ Potential personal injury and medical negligence claimants must have had their claim assessed by a member of the Law Society Personal Injury and Medical Negligence Review Panel (referred on by the Legal Aid Office). Where a negative opinion on the prospects of success of the claim is given, an individual may apply for a second opinion under Private Legal Aid, subject to financial and residency criteria being met. Claims will not be considered under Private Legal Aid until and unless the above assessment by a member of the Panel has been undertaken.

What has changed?

In family matters – e.g. divorce proceedings, ancillary relief claims – will only be eligible under Legal Aid where there are dependent children (i.e. a child up to the age of 16 or in full-time education), unless domestic abuse or violence has been evidenced through a criminal prosecution or the issue of a civil injunction.

Personal injury and medical negligence claims must first be subject to assessment of their prospects of success by a separate panel of lawyers. A second opinion may be obtained through Legal Aid where a negative opinion is received from the panel.

Financial Eligibility

Applicants for Legal Aid will continue to be subject to a Financial Eligibility test to evidence that they are financially eligible to receive legal assistance in all Public and Private Law matters (other than in relation to Public Children Law and Mental Health matters, where no means testing applies).

Under the new scheme, to pass the Financial Eligibility Test, applicants must (1) have capital* with a value no greater than £20,000 and (2) gross household income[^] of less than £35,000. The income test will only be applied where the capital test is passed. Legal aid will not be granted where the capital and income thresholds are exceeded.

(*property, savings, investments or a financial interest in any asset, including the equity in any property, whether in Jersey or elsewhere, but excluding the capital value of any pensions)

([^] including pensions, benefits, maintenance and income from any source, including interest, dividends and trust fund income, from any individual within the household, including cohabitants).

What has changed?

The capital threshold has increased from £15,000 to £20,000 but there is no longer an exclusion for the first £100,000 of equity in an applicant’s residential property.

The household income threshold has been reduced to £35,000, to reflect average household income in Jersey, which was considered to be the most appropriate measure of affordability in relation to paying the costs of legal services.

Personal Contributions

Applicants who are granted Private Law Legal Aid with gross household income of no more than £15,000 are not required to contribute towards the cost of their legal representation. Applicants with gross income above £15,000 will be required to make a contribution based on the following scale:

<u>Gross household income</u>	<u>Contribution</u>
Up to £15,000	NIL
£15,001 - £25,000	25%
£25,001 - £30,000	50%
£30,001 - £35,000	75%
£35,001 +	100%

The percentage levels relate to the applicable Legal Aid rate. For example, if the applicable Legal Aid rate is £190 per hour, and the applicant has gross income of £23,000, the applicable contribution will be £47.50 per hour.

Personal contributions will be assessed by the Legal Aid Office at the point of issue of a Legal Aid Certificate, based on assessment of documentary evidence in respect of an applicant's income.

Firms will be required, at the start of a matter, to provide an estimate of the anticipated cost to the applicant (at the appropriate percentage rate) and determine the level of monthly contributions payable by the applicant. Firms are required to accept monthly payments. Payment periods must not exceed five years. Outstanding fees are, however, subject to full immediate payment upon receipt of capital or other funds in excess of £20,000.

Where costs reach 75% of the initial estimate and are expected to exceed the initial estimate, a new estimate must be provided with revised monthly contribution requirements advised.

Legal Aid Rates

The applicable rates for work undertaken under Legal Aid are currently as follows:

<u>Fee earner</u>	<u>Hourly rate</u>
Partner	£235
Qualified staff (Advocates, Barristers, Jersey and English Solicitors)	£190
Other staff (Legal Executives, Paralegals and Trainee Lawyers)	£156

What has changed?

Personal contributions will no longer be payable in relation to Public Law issues, such as representation in criminal matters.

The level of personal contributions for which applicants may be liable (in Private Law matters) is unchanged. However, in all cases, the applicant will be advised of the total costs for which they will be liable, which can be paid in monthly instalments over a five year period, providing additional transparency and certainty to applicants.

Legal Aid Office

The Legal Aid Scheme will be administered by a Legal Aid Administrator (unconnected to a law firm) under the supervision of the Law Society and the Judicial Greffe, providing an independent and transparent service to applicants in a streamlined administrative function. The Legal Aid Office will determine all applications for Legal Aid and will administer funding payments on behalf of the States of Jersey in eligible Public Law cases.

In addition to administering the scheme, the Administrator will guide unsuccessful applicants towards the range of alternative solutions that are available to enable individuals to resolve their issues or to obtain legal representation, supported by providing access to procedural guides in relation to key Court processes and proceedings.

What has changed?

The Legal Aid Office will no longer be located within a law firm, providing a more independent process for the assessment of applications for Legal Aid, and improved signposting for unsuccessful applicants to alternative means of resolving legal issues, as well as providing access to procedural guides in relation to court processes and proceedings.