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### [EXISTING/LSJ SCHEME/ADVISORY COMMITTEE SCHEME]

General	Existing	LSJ Scheme	Adv Cttee	Comment
Public funding of Public Law Legal Aid				Funding to be made available, on a fixed fee/tariff basis for eligible Public Law representation (Criminal, Human Rights, Public Children Law, Mental Health).
Public funding of Private Law Legal Aid				No funding to be available, other than in very exceptional circumstances, in private law matters.
Funding of Legal Aid Administration				Limited funding currently available – contribution (£70k) towards administration and IT costs. Additional funding (£150k) to facilitate centralisation of function and to enhance signposting towards available legal resources and identification of alternative sources of dispute resolution.
Funding of Duty Advocate Scheme				Funding to be made available on fixed fee basis. Cost estimated at £176,000 per annum.
Funding of Duty Lawyer Scheme				Funding to be made available on fixed fee/tariff basis. Cost estimated at £120,000 per annum.
Voluntary Participation of lawyers in Public Law Legal Aid				Lawyers will have the ability to opt in to specialist areas of Public Law (Criminal, Mental Health, Public Children Law). All participants will be accredited as specialists in the particular field.
Voluntary Participation of lawyers in Private Law Legal Aid				Jersey qualified lawyers continue to support the provision of Private Law Legal Aid for the first 15 years post qualification. States lawyers are exempt from this provision or contributing towards costs.
Client Choice of Representation – Public Law				Choice of representation to be facilitated in Public Law Criminal matters (and for the representation of parents and principal carers in Public Children Law matters). A rota scheme will continue to operate to facilitate the allocation of lawyers from the panel where an applicant does not wish to exercise a choice.
Client Choice of Representation – Private Law				The allocation of lawyers on a ‘tour de role’ rota basis will continue in relation to Private Law.

Eligibility Criteria	Existing	LSJ Scheme	Adv Cttee	Comment
Application of Financial Eligibility Criteria				All applicants for Legal Aid* are required to meet the financial eligibility test, other than in relation to Youth Court, Public Children Law matters and Mental Health Review Tribunal matters (*other than where the applicant is <u>only</u> on Income Support; all such applicants will be deemed to have passed the financial eligibility test).
Household Disposable Capital Limit (assets and savings)  Capital (assets and savings) at Individual level	£15,000 (excluding equity of less than £100,000).	£15,000 (excluding equity of £100,000 in principal residence in Jersey).	£48,000 capital limit at individual rather than household level	Material change – capital considered at individual rather than household level. Considered to be significant improvement to scheme.
Gross Household Income Cap  Income at individual level	£45,000	£35,000	£48,000 (Public Law) £32,000 (Private Law) Individual not Household	Material change – income considered at individual rather than household level. Considered to be significant improvement to scheme.
Application of Residency Test	 	   	   	Residency test not to be applied in relation to Public Law Legal Aid. This represents a change from the current process where a residency test applies in criminal matters, except where there is risk of a custodial sentence. Discretion to be applied in exceptional circumstances, where it is in the interests of justice.  Applicants for Private Law Legal Aid are required to have been ordinarily resident in Jersey for a period of not less than 12 months. Current process is based on being ordinarily resident in Jersey without reference to a minimum duration.
Application of Merits Test				Applies to civil cases (including appeals), appeals in ancillary relief claims, criminal appeals and human rights claims. Unchanged.

Eligibility Criteria	Existing	LSJ Scheme	Adv Cttee	Comment
Ability to withdraw legal aid if do not co-operate, refusal to accept reasonable advice, inappropriate conduct, provision of incorrect or misleading information at time of application				Unchanged
Discretion to award Legal Aid certificate				<p>No discretion to be held by Legal Aid Office to approve a Legal Aid certificate where applicant is not eligible under Financial Eligibility Criteria or Area of Law/Criminal Offence.</p> <p>Overriding discretion to be held by Judicial Greffier to approve legal aid in exceptional circumstances,</p>
Personal Contributions	Existing	LSJ Scheme	Adv Cttee	Comment
Payment of Personal Contributions		 <div>PUBLIC LAW</div>  <div>PRIVATE LAW</div>	 <div>PUBLIC LAW</div>  <div>PRIVATE LAW</div>	<p>Personal contributions to be payable only in Private Law matters where income in excess of £20,000. Maximum level of contributions at 30% of Legal Aid rate, payable at a maximum of £100 per month, for no longer than 4 years.</p> <p>No contributions are payable in Public Law matters (including representation in criminal matters) where the financial eligibility criteria is met.</p> <p>This represents a significant improvement in the current position.</p>

Scope of Legal Aid	Existing	LSJ Scheme	Advisory Committee	Comment
Criminal	<ul style="list-style-type: none"> <li>All criminal matters in Royal Court</li> <li>All criminal matters in Youth/Magistrates Courts (where sentencing guidelines indicate substantial risk of custodial sentence, risk of loss of livelihood or fine in excess of £500)</li> </ul>	<ul style="list-style-type: none"> <li>All criminal matters in Royal Court</li> <li>All criminal matters in Magistrates Court (limited to offences for which the sentencing guidelines indicate a fine with a starting point above Level 2 on the Standard Scale of Fines or there is a risk of custodial sentence)</li> <li>All criminal matters in the Youth Court</li> </ul>	<ul style="list-style-type: none"> <li>All criminal matters in the Royal Court</li> <li>All criminal matters* in the Magistrate's Court</li> <li>All criminal matters in the Youth Court **</li> </ul> <p>* Except offences for which the <u>maximum</u> available sentence is a fine of <u>Level 2 on the Standard Scale of Fines</u> (in accordance with the Criminal Justice (Standard Scale of Fines) (Jersey) Law 1993).</p> <p>** Where it is in the best interests of the defendant, and where a matter can, in all circumstances, fairly be concluded at first appearance in the Youth Court, legal assistance will be provided by the Duty Advocate. Legal Aid Certificates will be issued, on application, in all cases where a matter cannot be concluded during a first appearance or where an application for Legal Aid has been made and approved prior to such first appearance.</p>	Scope of representation in criminal matters widened. Coupled with improvements in financial eligibility, it is evident that access to justice will be enhanced

Scope of Legal Aid	Existing	LSJ Scheme	Advisory Committee	Comment
Civil – Family claims and proceedings	<ul style="list-style-type: none"> <li>Ancillary relief claims</li> <li>Child maintenance under Matrimonial Causes (Jersey) Law 1949 or the Children (Jersey) Law 2002</li> <li>Divorce/Judicial Separation/Civil Partnership proceedings</li> <li>Separation and ancillaries</li> <li>Residence and contact disputes (covered by Article 10 of the Childrens (Jersey) Law 2002) and removal from the jurisdiction</li> <li>Injunctions and ex parte orders within the family law context.</li> <li>Child maintenance claims where the applicant is on income support and has no other capital assets and no other income</li> <li>Enforcement of maintenance orders</li> <li>Nullity proceedings</li> <li>Matters concerning illegitimate children including parental responsibility, maintenance, arrears and illegitimacy proceedings.</li> </ul>	<ul style="list-style-type: none"> <li>Ancillary relief claims where there are dependent children</li> <li>Child maintenance under Matrimonial Causes (Jersey) Law 1949 or the Children (Jersey) Law 2002</li> <li>Divorce/Judicial Separation/Civil Partnership proceedings where there are dependent children</li> <li>Residence and contact disputes and removal from the jurisdiction (subject to mediation having been undertaken)</li> <li>Injunctions and ex parte orders within the family law context where no criminal proceedings are being pursued by the police.</li> <li>Nullity proceedings where there are dependent children</li> </ul>	<ul style="list-style-type: none"> <li>Ancillary (financial) relief claims where there are dependent children**.</li> <li>Child maintenance (including Schedule 1 claims) under the Matrimonial Causes (Jersey) Law 1949 or the Children (Jersey) Law 2002 (other than Child maintenance claims where the applicant is on income support and has no other capital assets and no other income, which are not eligible).</li> <li>Divorce / Judicial Separation / Civil partnership / nullity proceedings where there are dependent children**.</li> <li>Residence and contact disputes, prohibited steps orders, specific issue orders and removal from the jurisdiction under the Children Law 2002 or the Matrimonial Causes (Jersey) Law 1949 (subject to family mediation having been formally considered by the parties in appropriate cases).</li> <li>Injunctions, ex parte orders and ex-parte injunctions within the family law context.</li> <li>Claims by a child under the Legitimacy (Jersey) Law 1973.</li> <li>Appeals in family proceedings (where Legal Aid has previously been granted), subject to a favourable opinion.</li> </ul>	<p>Scope of representation in family matters narrowed marginally to focus on matters involving children.</p> <p>** Claims in relevant matters where there are <u>no</u> 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.</p> <p>‘Dependent child’ is defined as a child up to and including the age of 16 or in a recognised apprenticeship (until the end of that training) or tertiary education (until the end of a first degree only) or the child has medically-diagnosed special needs that necessitates financial dependence in either parent.</p>

Scope of Legal Aid	Existing	LSJ Scheme	Advisory Committee	Comment
Civil – Other	<ul style="list-style-type: none"> <li>Contractual disputes</li> <li>Actions in tort</li> <li>Personal injury</li> <li>Medical negligence</li> <li>Property issues (contentious)</li> <li>Succession issues (contentious)</li> </ul>	<ul style="list-style-type: none"> <li>Contractual disputes</li> <li>Actions in tort</li> <li>Professional negligence claims (other than in relation to medical negligence which is dealt with separately)</li> <li>Bankruptcy/en Désastre applications (in relation to personal assets and where supported by the Viscount)</li> <li>Remise de bien proceedings</li> <li>Eviction proceedings</li> <li>Personal injury claims^^</li> <li>Medical negligence claims^^</li> <li>Appeals in civil proceedings (where a Legal Aid certificate has been granted), subject to a favourable second opinion.</li> </ul> <p>^^ Personal injury and medical negligence claims are outside the scope of the Legal Aid Scheme and will be considered, on request, by an accredited member of a specialist PIMED legal panel. Claimants who are financially eligible for legal aid and who have received a negative first opinion on the prospects of success of their claim may apply for a second opinion through the Legal Aid scheme.</p>	<ul style="list-style-type: none"> <li>Contractual disputes/Actions in tort (subject to positive prospects of success) #</li> <li>Judicial Review applications ##</li> <li>Professional negligence claims (other than in relation to medical negligence) including claims of negligence for breach of duty in respect of Powers of Attorney, Probate or Tutelles.</li> <li>Eviction proceedings.</li> <li>Licitation proceedings where a minor child resides in the property.</li> <li>Appeals in civil proceedings (where a Legal Aid certificate was granted in the original proceedings), subject to a favourable opinion.</li> <li>Opinion on the merit of an appeal to the Royal Court against the decision of the Employment and Discrimination Tribunal, the Social Security Tribunal or determinations/orders of the Data Protection Authority against an individual.</li> <li>Appeal to the Royal Court against the decision of the Employment and Discrimination Tribunal, the Social Security Tribunal or determinations/orders of the Data Protection Authority against an individual, subject to a favourable opinion.</li> <li>Second opinion on personal injury and medical/clinical negligence claims (only where a negative opinion has been given as to the prospects of success of a claim by the specialist 'PIMED' (Personal Injury Medical Negligence) panel).</li> </ul>	<p>Scope of representation in civil matters widened to cover most areas of civil dispute.</p> <p># except personal injury claims (which are subject to separate arrangements), Petty Debt Court matters (other than eviction proceedings which are eligible), minor disputes/actions or where explicitly excluded/ineligible</p> <p>## Judicial review applications will initially be limited to an opinion on the merits of the prospects of success of an application for leave to apply for judicial review. Where a positive opinion is given, the 'application for leave' and 'application for judicial review' will fall outside the scope of Legal Aid and will be subject to funding from the Judicial Greffe on an individual case-by-case basis.</p>