




LEGAL AID

**Frequently Asked
Questions about
Legal Aid in the
Bailiwick of
Guernsey**



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YOUR QUESTIONS ANSWERED

Frequently Asked Questions about Legal Aid in the Bailiwick of Guernsey

This leaflet provides a general guide to the provision of legal aid. If you have any specific questions, please contact us as detailed on the back page.

1. What is legal aid and what can it cover?

Legal aid can provide free or reduced cost legal advice and assistance to people with limited means who could not otherwise afford the cost of an advocate.

Legal aid covers advice and assistance in preparing your case and representation at court, including the Magistrate's Court, Juvenile Court and Royal Court. It can also cover the making of a legal document, agreement or Will and limited assistance prior to and at a Children's Convenor's meeting. Legal aid will not be granted for debt claims and some personal injury cases in the Magistrate's Court or some cases before the Domestic Proceedings Court where people may represent themselves. However, in exceptional circumstances the Administrator may grant legal aid.

Legal aid may also be available for civil and criminal proceedings in the Court of Alderney and the Court of the S n schal in Sark.

Some types of case will not be covered by legal aid. The legal aid office will be able to advise you about this.

The Guernsey Legal Aid Service cannot pay for any legal advice and assistance or court proceedings that occur outside the Bailiwick of Guernsey. You may be able to apply for legal aid in other jurisdictions. Please see the back page for contact details of legal aid authorities in other jurisdictions.

If you live outside the Bailiwick but your case is before a Bailiwick Court, you must contact the Administrator in the first instance.

2. Does legal aid cover tribunals, such as an unfair dismissal tribunal or the Child Youth and Community Tribunal (CYCT)?

Generally the answer is "no". However, in exceptional circumstances, the Administrator may grant legal aid.

Patients who wish to apply to a Mental Health Review Tribunal will be entitled, in most cases, to free legal aid for representation at that particular Tribunal.

3. Who can get legal aid?

Legal aid is only available to private individuals. It is not available to companies or groups of people.

We expect all applicants to firstly investigate whether you have any other means of funding your legal expenses that make it unnecessary for you to obtain legal aid, for example, under an insurance policy (legal expenses, home or motor insurance) or membership of a professional association or trade union.

Legal aid is available to an applicant who qualifies. To qualify for legal aid you must satisfy a two-part test. The first part looks at your financial means, that is, how much money you have to spend after you have paid your income tax and social insurance. An allowance is also made for each dependent member of your family who lives with you, rent/mortgage/board and lodging and maintenance payments made.

The second part looks at the legal merits of your case. See below at question 16.

Legal aid will only be granted once the Legal Aid Administrator is satisfied with both your financial assessment and the legal merits. A legal aid certificate only provides cover from the day it is issued and will not cover legal costs retrospectively, that is, before the date of the certificate. It is very important for you to immediately provide all financial information requested by the legal aid office or there may be a delay in granting legal aid. This means you will be responsible for all of your legal costs until a legal aid certificate is granted unless some or all of these costs are covered under the green form scheme. Your advocate will explain this to you.

4. Who grants legal aid?

The Legal Aid Administrator is responsible for granting legal aid. The Administrator is an independent statutory official appointed by the States of Guernsey and answerable to the Policy Council. She has full discretion to grant or refuse legal aid within the terms of the scheme which the States prescribes.

5. How do I get legal aid?

In the first instance you should contact an advocate of your choice and ask if they accept legal aid clients (not all advocates undertake legal aid work). A list of the advocates' firms who do work on a legal aid basis is available from the Administrator. You will usually find that if the advocate you first contact does not undertake legal aid work he or she will tell you who else in his practice may see you. You should then ask for an appointment under the "green form" scheme.

When you attend your first appointment you should take your payslip for the previous week or confirmation of any benefits you receive. If you do not have your wage slip, please take a copy of your contract of employment or bank

statements. If you are married or have a partner you must also take copies of their wage slips. You should also take a copy of your rent account if you are a tenant or your mortgage statement if you own your own house. You must also provide evidence of any maintenance you or your partner is paying. The advocate will need these to make an initial assessment of your financial means.

6. What is a “green form”?

This is the process which generally covers your first appointment with your advocate. If the matter is fairly straightforward and can be dealt with by your advocate doing work on your behalf for two hours or less the “green form” will cover the whole matter.

If the matter is more complicated the “green form” will cover initial advice and assistance but you will need to make a formal application for legal aid to cover the next stages.

The financial assessment for the “green form” is based on slightly different criteria than the assessment for full legal aid. This is because it is recognised that many disputes can be settled quite quickly, for example by giving you some advice or writing a letter on your behalf, etc.

7. What are the financial limits for getting legal aid?

There are no set financial limits regarding income, as each applicant for legal aid will have different financial circumstances. However, essentially, if the “residual income” of your family unit is more than £200.01 per week then you will not be eligible for legal aid assistance.

“Residual income” is the income you have left after income tax and social security payments, a housing allowance, (See question 10) any maintenance payments actually made, childminding costs (if they are to enable you to work) and the weekly requirements for you and any other dependant members of your family who live with you have been taken into account.

If you are on Supplementary Benefit (including a top-up Supplementary Benefit payment if you are in a low paid job or on a low pension) you will be automatically financially eligible for legal aid. All other benefits, except Severe Disability benefit (previously called Attendance Allowance), are means tested. The Administrator will ask you to sign an authority (a copy is included in the assessment form) so that a check can be made with the Social Security Department to confirm your benefit status. If you live in Sark, The Administrator may check with the Procureur of the Poor or the Treasurer for Sark.

8. How is the financial assessment for full legal aid made?

You will be required to complete a detailed application form giving details of your income from all sources (for example, any benefits, wages, child benefit, maintenance, interest, pensions, dividends, trust income, etc), savings and any assets you own or part own (for example, property, land, cars, savings, shares etc.). You must also include details of your spouse or partner's income, savings and assets.

When you send the completed form to the Administrator you must include all the supporting evidence requested including; your wage slips and those of your spouse or partner, as appropriate, for the previous 13 weeks, evidence of rent /mortgage/board and lodging and any maintenance in payment. A bank statement showing these payments, or rental /mortgage agreement or Court Order will usually be sufficient. If you do not provide all this information the Administrator will not be able to process your application.

Even if you are in custody, details of both your and your partner's income for the previous 13 weeks will still be required.

We do not take account of any debts that you have or the finance required to support your lifestyle.

The assessment will be made against the criteria which the States have approved. A copy of the criteria is available from the Administrator.

You must send the fully completed application form with all supporting evidence to the Administrator as quickly as possible as any delays may mean that your case will not be covered by legal aid.

9. Whose income and savings will be taken into account when making the financial assessment?

If you have a partner, (that is, somebody you are in a relationship with, whether you are married to them or not,) their income, savings and assets will be taken into consideration regardless of whether or not they would be willing to pay your legal costs. If you and your partner are living apart due to e.g. illness, imprisonment or working away (and not because your relationship has broken down), the Administrator will still require their financial information. A partner includes a partner of the same sex.

10. My mortgage repayments/rent is very high; will this be allowed for when my residual income is calculated?

When your residual income is calculated the Administrator will take into account housing costs to a maximum of 25% (one quarter) of your gross income per week (other than family allowance and severe disability benefit) or 90% of the mortgage payment per week, whichever is the lesser amount. If you are renting the Administrator will take into account the amount of the weekly rent payable or 20% (one fifth) of your gross income per week,(other than

family allowance and severe disability benefit) whichever is the less. We do not give you an allowance for the full amount of the rent or mortgage that you pay.

If you are paying board and lodging, we will allow you one half of the total amount being paid or the amount being paid for accommodation only whichever is appropriate.

11. I have some savings/assets/investments will this affect my eligibility for legal aid?

The value of any savings/assets/investments will be taken into account; the Administrator will consider whether it is reasonable to expect you to use these to fund your legal advice and assistance.

If the value of you and your partner's capital resources exceeds £20,000 you will not be considered for legal aid. If you own more than one property, you will not be eligible for legal aid.

Capital resources include cash, savings, investments, premium bonds, shares, property, land, time shares, valuable furniture, paintings, jewellery, cars, rare registration numbers, etc. We ignore capital resources of less than £5,000.

Notional interest of 60 pence on every £100 of capital over £5,000 and below £20,000 is included as an applicant's income.

We do not take into account the house you live in or any assets which are in dispute within the proceedings for which you are applying for legal aid.

12. What happens if my income or capital situations change after legal aid has been granted?

When you sign the agreement with the Administrator and your advocate you are agreeing to notify the Administrator immediately of any changes to your financial situation. This includes if you have a baby, one of your children leaves home or leaves school and starts work, you or your partner start or finish work, you become entitled to a benefit such as Supplementary Benefit or you are given or win a sum of money.

A change to your income or capital may increase or reduce the level of contribution to the costs that you have been assessed to make or may make you ineligible for legal aid.

Whatever the cause, you must notify the Administrator immediately of any changes in your financial situation.

Your advocate also has a responsibility for telling the Administrator if he or she believes that your circumstances have changed.

13. What would happen if I didn't notify the Administrator of any changes?

If you make a false statement about your case or circumstances or fail to tell the Administrator of any changes you risk not only your legal aid being withdrawn and you being required to repay some or all of the legal aid costs you have incurred but you could also face prosecution.

14. What happens if my income and savings is only just over the threshold?

There is a sliding scale whereby if you are only just over the threshold (see question 7 above) you will have to contribute a percentage of the legal aid costs and disbursements (e.g. Court, Greffe and Sheriff's fees, doctors' reports, the cost of DNA testing, etc.)

If you are assessed to be on a contribution in a criminal matter the Administrator will collect the contribution at the conclusion of the proceedings. In civil matters you will be billed for your contribution by your advocate as the case proceeds. If you are assessed to be liable for a contribution, you should ask your advocate to keep you informed as to the amount of costs incurred as the case progresses.

15. What else will be considered?

In addition to the financial assessment the Administrator will assess the legal merits of the matter for which you are seeking legal aid.

16. What is meant by "legal merits"?

This is the second stage of the test. In short, the Administrator looks at the strengths and weaknesses of the matter for which you are requesting legal aid to decide whether it would be reasonable in all of the circumstances for you to receive public funding for your case. The advocate you have consulted will write an opinion for the Administrator based on the legal position and what you have told them about the matter. The Administrator will assess your application against a set of criteria which have been approved by the States.

At its simplest, the Administrator will be asking the following question "*Would a person of average means be advised to pursue or defend this matter if they were paying the full legal costs himself?*"

Full details for the assessment criteria are available on request from the Administrator.

17. If I am refused legal aid can I appeal against the decision?

Yes. You will always be told the reason why legal aid has been refused.

In the first instance you should write to the Administrator setting out the reasons why you think the decision is unfair and include any supporting evidence you may have.

If you have been refused legal aid because you are financially ineligible, there is no independent review process. However, the Administrator will review your financial assessment if you request it.

If legal aid has been refused because the legal merits test is not met, you can challenge this decision through an independent review process. You would be sent details of this when you receive the decision of refusal of legal aid.

18. Can I change my advocate part way through?

The Administrator will only allow you to change advocate if you can show there are exceptional reasons for changing. You would need to be able to satisfy the Administrator that your advocate was unable to advise and assist you fairly and impartially and that it would prejudice your case if you were not allowed to consult another advocate.

19. If I am arrested or attend the police station / customs voluntarily, can I get an advocate?

Free legal advice is available from the Duty Advocate to any person detained by the police or customs or attending the police / customs as a volunteer in respect of a matter for which they could otherwise be arrested.

There is a Duty Advocate on call. The Custody Sergeant will ask you when you first arrive at the police station /customs if you wish to speak with the Duty Advocate. He or she will be called if you want to see him or her and can either give advice over the telephone or attend the police station/customs, if necessary. You do not have any choice in the advocate you can consult under this scheme.

20. Will I have to pay?

No. Regardless of your means you may consult the Duty Advocate for free.

21. Can I have my own advocate rather than use the Duty Advocate?

If you want to see an advocate of your choice you will have to pay for that consultation in the normal way.

22. Can I have an advocate to represent me in a criminal case in Court?

There is a Duty Advocate present at most sittings of the Magistrate's and Juvenile Courts. A Duty Advocate also attends the Police Court in Alderney.

23. Will I have to pay?

As with the Duty Advocate at the police station you may consult this advocate for free.

24. Can I have my own advocate rather than use the Duty Advocate?

As with the Duty Advocate at the police station you may consult an advocate of your choice but you will have to pay for this unless the "green form" scheme is available to you or you have made a full application for legal aid and a legal aid certificate has been granted in advance of the court hearing.

25. Will I have to repay the cost of any legal aid I receive?

In some cases you will be required to repay all or part of the costs of your legal aid. These are referred to as recoveries. Recoveries can be made against any assets you receive or secure through the assistance provided by the advocate under the legal aid certificate and any "green form". Your advocate will be able to advise you about this.

For example, if you are awarded any sum of money in matrimonial proceedings or compensation for a personal injury you have suffered, you will have to repay the full costs of your legal aid at the end of the case.

Similarly, if in divorce proceedings you are awarded ownership of the house that you and your ex-spouse owned, then you will have to repay your legal aid costs from the value of that house. Repayment may be required immediately or may be deferred and a bond taken out by the Legal Aid Administrator on the house at your expense. The purpose of the bond is to ensure that when the house is sold the Administrator will be automatically repaid from the proceeds of the sale. This works in the same way as when any mortgage is repaid when a house is sold.

You may also have to contribute to some of the costs of your legal aid if you are financially assessed to be on a contribution – see question 14 above.

26. How will I know that I have to repay any legal aid costs?

When legal aid is granted you will have to sign an agreement with the Legal Aid Administrator and your advocate. The agreement sets out the situations when legal aid costs must be repaid and will also confirm if any contribution is required. When your case is concluded, if relevant, the Administrator will tell you how much you owe to reimburse the States and will arrange with you how

you will repay the debt. Depending on your circumstances, the Administrator may allow you to pay by way of reasonable instalments.

27. Are there any other situations when I will have to repay any legal aid costs?

Yes, if you are shown to have made a false or incomplete disclosure about your income, savings and assets or fail to co-operate with your advocate. For example, if you keep missing appointments with your advocate without good reason, or do not give him or her instructions about how to proceed, or fail to follow the advice or instructions your advocate gives you, the Administrator can withdraw your legal aid certificate and demand that you repay all or part of the costs of legal aid.

28. What will happen if I don't pay?

The Administrator will take you to Court to recover the debt. Depending on how much is owed this will either involve you receiving a Magistrate's Court or Royal Court summons.

If the Administrator has to take you to Court, the cost of the proceedings will be added to your debt.

As with any other debts recovered in this way the Administrator can ask for:

- (a) A wage arrest, that is a proportion of the debt will be paid directly from your wages each week or month;
- (b) Goods you own to be seized and sold at auction to repay the debt; or
- (c) If you own property and the debt is substantial, for a bond to be attached to the property or for the property to be sold to repay the money owed.

29. Will the information I provide remain confidential?

All information you provide to The Legal Aid Service will remain confidential in accordance with the Legal Aid (Bailiwick of Guernsey) Law, 2003. However, there are a few specific situations where the law does allow us to pass on that information.

The Data Protection (Bailiwick of Guernsey) Law Act, 2001 also means that we have to keep "personal data" we hold about you confidential and only use it for the purpose for which you gave it to us.

30. Where is the legal aid office and how can I get in touch?

The legal aid office is at 28, Gategny Esplanade St. Peter Port, GY1 1WR. It is open Monday to Friday between 8.30am and 4.30pm.

If you have any queries regarding legal aid you can contact the office by –

Telephone 01481 747530

Fax 01481 727988

E-mail legalaid@gov.gg

IMPORTANT NOTICE

The Administrator and the staff of the Guernsey Legal Aid Service are unable to provide legal advice

USEFUL CONTACTS AND INFORMATION IN THE BAILIWICK

Citizens Advice Bureau 01481 242266

The Greffe Guernsey 01481 725277

Alderney Court Office 01481 822817

The Greffe Sark 01481 832012

HM Sheriff 01481 711281

Royal Court website www.guernseyroyalcourt.gg

LEGAL AID AUTHORITIES IN OTHER JURISDICTIONS**England and Wales**

Legal Aid Agency
Web: www.gov.uk/legal-aid
Tel: 0345 345 4345

Scotland

Scottish Legal Aid Board
Web: www.slabb.org.uk
Email: general@slabb.org.uk
Tel: 0131 226 7061

Northern Ireland	Northern Ireland Legal Services Commission Web: www.nilsc.org.uk Email: accesstojustice@nilsc.org.uk Tel: 028 9040 8888
Republic of Ireland	Republic of Ireland Legal Aid Board Web: www.legalaidboard.ie Email: info@legalaidboard.ie Tel: 066 947 1000
Isle of Man	Civil Legal Aid and Legal Costs Section Web: www.gov.im/registries Email: legalaid@registry.gov.im Tel: 01624 685977
Jersey	Jersey Legal Aid Service Web: www.legalaid.je Email: email@legalaid.je Tel: 0845 800 1066