

## CIVIL LEGAL AID CONSULTATION

**Closes 30 April 2020**

Opened 17 February 2020

### Overview

This consultation is part of a wider 'Legal Aid Review' project, which is being led by HM Attorney General on behalf of the Securing Added Value and Efficiencies ('SAVE') Sub-Committee of the Council of Ministers.

The project is being carried out in two parts to reflect both types of Legal Aid available in the Island, which are Civil and Criminal. This consultation focusses on **Civil Legal Aid** only. A consultation on Criminal Legal Aid was carried out last year, from 23 September to 21 November 2019.

The aim of the Legal Aid Review is to develop policy options for the sustainable provision of Legal Aid in the Isle of Man, which:

- Maintain or improve access to justice
- Support the delivery of quality services
- Provide value for money for the taxpayer

These policy options will be submitted to the [Legal Aid Committee](#), which is an independent body responsible for Legal Aid policy in the Isle of Man.

### Why We Are Consulting

The purpose of this consultation is to seek people's views on the Island's current Civil Legal Aid provision, and explore the feasibility of alternative approaches in the future.

In particular:

- which aspects of Civil Legal Aid are considered to work well and should continue
- which aspects are considered not to work well and could benefit from improvement
- if any potential changes or alternative schemes could better deliver Civil Legal Aid in future

Your responses to this consultation will help us to further develop Civil Legal Aid in the Isle of Man. By considering the scope of Civil Legal Aid, eligibility criteria, and matters raised with the Legal Aid Office and HM Attorney General, we can seek to ensure that Civil Legal Aid funds are spent fairly and with better controlled costs.

Ultimately, the provision of Civil Legal Aid must be financially sustainable, provide access to justice, support the delivery of quality services, and ensure value for money for the taxpayer.

## Who We Would Like to Hear From

We would like to hear from anyone who has a professional or personal interest in Civil Law matters, and in particular:

- Civil Legal Aid service users (past and present)
- Members of the public
- Members of the Judiciary & Courts
- Advocates who undertake Civil Legal Aid work
- IoM Law Society & membership
- Mediation providers
- Department of Infrastructure
- Department of Health & Social Care
- Department of Home Affairs, IoM Constabulary, IoM Prison & Probation Service
- Office of Fair Trading
- Local Authorities
- Charities

## Paper copies & submission of completed consultations

This is the downloadable and printable .pdf version of the Civil Legal Aid consultation. Completed copies should be submitted on or before the closing date of **30 April 2020** to:

Ms Joanne Hetherington  
Attorney General's Chambers  
Belgravia House  
34-44 Circular Road  
Douglas  
Isle of Man  
IM1 1AE

Paper copies are also available for collection from Ground Floor Reception, Attorney General's Chambers at the above address (Tel: 01624 685452).

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## Introduction

Legal Aid describes funds paid by the Isle of Man Government to Advocates (or legal practices) for the legal services they provide to individuals who cannot afford to pay. These services may include legal advice, assistance and representation in Court.

Legal Aid plays a crucial role in the Isle of Man as it promotes the accessibility and smooth running of the Manx justice system. The availability of Legal Aid to uphold the rule of law and individual rights benefits everyone, not just those who receive it, as Legal Aid contributes to a fairer and more just society.

Civil Legal Aid falls into two main categories:

- **Family** matters
- **Non-Family** matters

Further information and examples of Family and Non-Family matters are included in this consultation for consideration. Full details of the proceedings for which Civil Legal Aid may be given are set out in Schedule 1 to the [Legal Aid Act 1986](#).

## About you

### 1. What is your name?

*Giving us your name is optional. This consultation will ask if you have ever been party to proceedings in a Civil matter or if you have had Legal Aid funding, so you may wish to consider this when deciding whether to give your name.*

Name .....

### 2. What is your email address?

*If you enter your email address it will not be published*

Email .....

### 3. Are you responding on behalf of an organisation?

Yes  No

If Yes, what is the name of the organisation?

Name of organisation .....

### 4. Are you resident in the Isle of Man?

Yes  No

If Yes, please tell us the first three characters of your postcode

**5. Which option best describes your interest or role in responding to this consultation?**

*Tick one option only*

- You have been through a Civil court, or supported someone who has (legally-aided or not)
- You are a member of the public
- You are a member of the Judiciary or an Advocate
- You are a public sector employee working in Civil legal matters
- You are a voluntary sector, charity or support worker
- You are a Tynwald Member
- Other (please state)

If 'Other' please state your interest or role .....

**6. May we publish your response?**

*Please read our [Privacy Policy](#) for more details and your rights*

- Publish in full – your first name and surname, organisation name, along with full answers **will** be published on the hub (your email will **not** be published)
- Publish anonymously – only your responses **will** be published on the hub (your name, organisation and email will **not** be published)
- Do not publish – **nothing will** be published publically on the hub (your response will only be part of a larger summary response document)

*Response required*

- Yes, you can publish my response in full
  - Yes, you may publish my response anonymously
  - No, please do not publish my response
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## Tips for completing this consultation

You can **answer as many or as few questions as you wish**. The consultation contains 20 sections, each containing between 2 and 9 questions as follows:

- Civil Legal Aid (*3 questions*)
  - Financial means test (*2 questions*)
  - Legal merits test (*2 questions*)
  - Personal responsibilities & financial contributions (*3 questions*)
  - Statutory Charge (*4 questions*)
  - Restraint proceedings under the Proceeds of Crime Act 2008 (*3 questions*)
  - Scope of Family Matters (*3 questions*)
  - Family proceedings & the role of HM Attorney General (*3 questions*)
  - Divorce & dissolution of civil partnerships (*4 questions*)
  - Scope of Non-Family matters (*3 questions*)
  - Tribunals (*7 questions*)
  - Inquests (*6 questions*)
  - Conditional Fee Arrangements - 'No Win No Fee' (*2 questions*)
  - Legal Aid Panel of Advocates (*3 questions*)
  - Quality of Legal Aid services (*9 questions*)
  - Self-representation (*5 questions*)
  - Expenditure (*4 questions*)
  - Fixed fees (*3 questions*)
  - Access & Legal Advice Centres (*4 questions*)
  - Alternative Dispute Resolution (*5 questions*)
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## CIVIL LEGAL AID

Civil Legal Aid is available to individuals (not companies or organisations) for Civil matters processed in the Isle of Man and subject to Manx Law. Full details of the types of matters for which Civil Legal Aid may be given are set out in Schedule 1 to the [Legal Aid Act 1986](#). The scope of Civil Legal Aid is very broad and covers proceedings:

- in the Privy Council (in relation to appeals from Courts in the Island)
- in the High Court and Summary Courts of the Island
- in an inquest
- before four specified tribunals

## Matters

Civil Legal Aid falls into two main categories: Family matters and Non-Family matters. Here are some examples of proceedings for which Civil Legal Aid may be granted in the Isle of Man:

- **Family matters** include mediation, divorce, child contact and residence, maintenance, child care proceedings, adoption, Prohibited Steps Orders and Non-Molestation Orders (these are types of Court Order which may be sought by a victim of domestic abuse to protect them from their abuser).
- **Non-Family matters** include breach of contract, personal injury, medical negligence, inquests, wills, receivership, boundary disputes, Mental Health Review Tribunals, Advocates Disciplinary Tribunals, Isle of Man Data Protection Tribunals and Financial Services Tribunals.

## Schemes

There are two types of Civil Legal Aid in the Island - Green Form and full Civil Legal Aid.

- **Green Form**

Green Form is the common name for Legal Advice and Assistance. It enables an Advocate to give oral and written advice to eligible individuals on almost every aspect of Manx Law. An Advocate can provide up to 3 hours' advice for most matters and 4 hours' advice for divorce. Extensions of up to 6 hours may also be granted, subject to approval. Green Form is available free of charge (or with a contribution) to individuals of limited financial means. All applications are subject to a financial means test and a legal merits test which is conducted by the Advocate.

- **Full Civil Legal Aid**

More complex matters may require full Civil Legal Aid, which is granted under a Civil Legal Aid Certificate. Full Civil Legal Aid can provide for individuals to receive legal advice, assistance and representation in Court. Full Civil Legal Aid is available free of charge (or with a contribution) to individuals of limited financial means. As a general rule, applications are subject to a financial means test and a legal merits test.

**7. Of the two Civil Legal Aid schemes in the Isle of Man, were you aware of either of them before today?**

*If you indicate that you have received Legal Aid, it does not affect how your responses are analysed for the purposes of this consultation. It is only relevant to help us to understand your experience. We will not ask why you sought legal advice.*

*Tick all boxes that apply*

	<b>Green Form</b>	<b>Full Civil Legal Aid</b>
Yes, I have received it personally		
Yes, I have helped others to access it		
Yes, someone has been funded by Legal Aid in a case against me		
Yes, I am involved in a professional capacity		
Yes, I am aware of the scheme but I do not have any experience of it		
No, I was not aware of it		

**8. Please tell us how much you agree with the following statements**

*Tick one box per line*

	<b>Strongly agree</b>	<b>Agree</b>	<b>Neither agree nor disagree</b>	<b>Disagree</b>	<b>Strongly disagree</b>	<b>Don't know</b>
Legal Aid is important to ensure that people can access legal advice even if they can't afford it						
Legal Aid is funded using taxpayer's money so Government should strictly enforce how it is spent						

	<b>Strongly agree</b>	<b>Agree</b>	<b>Neither agree nor disagree</b>	<b>Disagree</b>	<b>Strongly disagree</b>	<b>Don't know</b>
Someone with Legal Aid funding can pursue a case that they wouldn't if they had to pay for it themselves						
Legal Aid means a person is more likely to be successful in their case (against their opponent)						
Government should do more to raise awareness of Legal Aid						
People are aware of Legal Aid and how to apply for it						
The eligibility criteria for Legal Aid are fair and clear						
Legal Aid is taxpayers' money and people who receive it have a responsibility to use it fairly						
It is easy for people to get Legal Aid						
People should seek alternative sources of advice or remedy before applying for Legal Aid						

**9. In terms of Civil matters, have you been party to proceedings (private or legally-aided) in any of the following?**

*If you indicate that you have been party to any Civil proceedings, it does not affect how your responses are analysed for the purposes of this consultation. It is only relevant to help us to understand your experience. We will not ask why you were party to them.*

*Tick all that apply*

- Privy Council
- Court of Appeal
- Family Court
- Small Claims, Summary or Ordinary Procedure (for claims)
- Chancery Procedure
- Inquest
- Tribunal
- None
- Rather not say
- Other (please state)

Please tell us more if you wish

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**FINANCIAL MEANS TEST**

There is a **financial means test** applied to both Green Form and Full Civil Legal Aid. People who are in receipt of an income-related benefit (e.g. Income Support; Income-based Job Seekers Allowance; Employed Person's Allowance) automatically pass the means test and qualify financially.

Individuals who do not receive one of these benefits but are on a low income may still qualify, either partially or in full. Those who partially qualify will be required to pay a **contribution** towards their legal expenses.

Individuals can also use the online [Civil Legal Aid Eligibility Calculator](#) to provide an indication of their financial eligibility for Legal Aid.

## Prescribed amount & qualifying benefits

If a person is not in receipt of a qualifying benefit, their financial eligibility is determined by calculating a person's **income** and then deducting a **prescribed amount**, which is the amount the law says a person needs to live on. Prescribed amounts are reviewed every year and are published on the [Legal Aid Office website](#).

A person's **income** includes net salary; benefits; pension income; maintenance and all other income. This includes income from capital assets (e.g. savings; shares; land) above £13,000 but does not include the value of the property in which the person lives.

The **prescribed amount** for a person depends on a number of factors, including:

- whether a person is single or married/ living with partner
- number of dependents / non-dependents living at home
- cost of rent / mortgage
- cost of rates
- cost of childcare
- cost of work-based pension

**EXAMPLE A** – A single person who pays £475 per month rent and works 37 hours per week at £7.85 per hour.

<b>Income</b>	<b>per week</b>
Salary (after NI and Income Tax)	£270.12
Other income	0
Total income	£270.12
<b>Prescribed amount</b>	<b>per week</b>
Basic allowance for a single person	£190.82
Housing allowance	£109.62
Extra allowance for > 24hr work	£34.95
Total prescribed amount	£335.39
<b>Income minus prescribed amount</b>	<b>-£65.27</b>

This person **would qualify** for free Civil Legal Aid as their total income is £65.27 less than the prescribed amount and they would not need to pay any contribution.

**EXAMPLE B** – A single person who pays £800 per month rent and works full time. Earns £425.75 pw after National Insurance and Income Tax

<b>Income</b>	<b>per week</b>
Salary (after NI and Income Tax)	£425.75
Other income	0
Total income	£425.75
<b>Prescribed amount</b>	<b>per week</b>
Basic allowance for a single person	£190.82
Housing allowance (maximum)	£119.00
Extra allowance for > 24hr work	£34.95
Total prescribed amount	£344.77
<b>Income minus prescribed amount</b>	<b>£80.98</b>

This person **would not qualify** for free full Civil Legal Aid as their net resources equate to £4,210.96 per year (i.e. £80.98 x 52) which is above the maximum limit of £4000 per year.

If their net resources were between £0.01 and £4000, they would qualify for Civil Legal Aid but they would have to pay a contribution towards their legal fees.

### Qualifying benefits

If a person receives any one of the following three income-related benefits, they will automatically qualify for Legal Aid from a financial perspective:

<a href="#">Employed Person's Allowance</a>	This is available to some people who work and have a low to moderate income – generally people working at least 16 hours a week (30 for a couple) and responsible for children; couples without children where one or both partners are severely disabled or care for a severely disabled person and one or both works at least 16 hours a week; or people classed as "disabled workers" working at least 16 hours per week.
<a href="#">Income Based Jobseeker's Allowance</a>	This is a means-tested benefit available to people who are unemployed, able to take up full-time work immediately & are actively looking for work. A person must also be capable of work & be under state pension age.
<a href="#">Income Support</a>	This is available to some people who are either not working, or who work for less than 16 hours a week, and who don't have enough money to live on. It ensures they have enough money to meet their basic needs. People who may qualify include those who have reached state pension age; a person who is incapable of work due to illness / disability or someone who cares for a disabled person full-time.

**10. Do you think income-based benefits are the correct benefits to automatically qualify a person for Green Form & Civil Legal Aid from a financial perspective?**

- Yes
  No
  Don't know
  Other (please state)

Please tell us more if you wish

**11. If you have any further comments on the FINANCIAL MEANS TEST, PRESCRIBED AMOUNTS or QUALIFYING BENEFITS please tell us**

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**LEGAL MERITS TEST**

There is also a **legal merits test** applied to Civil Legal Aid applications. The test ensures that there are reasonable legal grounds for a case to be taken forward, and that it is reasonable for legal costs to be paid by the Isle of Man Government. Applications must generally have a **50% or above chance of success** in order to satisfy this part of the merits criteria.

The table below summarises eligibility for Civil Legal Aid schemes.

<b>Civil Legal Aid Scheme</b>	<b>Is there a financial means test?</b>	<b>Is there a legal merits test?</b>	<b>Who is eligible for the scheme?</b>	<b>Are financial contributions required?</b>
<b>Green Form</b>	Yes – carried out by the Advocate	Yes – carried out by the Advocate	Any individual who passes the <b>financial means test &amp; legal merits test</b>	If an individual passes the legal merits test but only passes the <b>financial means test in part</b> they will be required to make a financial contribution to their legal expenses
<b>Full Civil Legal Aid</b>	Yes – carried out by staff in the Legal Aid Office	Yes - carried out by the Legal Aid Certifying Officer	Any individual who passes the <b>financial means test &amp; legal merits test</b>	If an individual passes the legal merits test but only passes the <b>financial means test in part</b> they will be required to make a financial contribution to their legal expenses

**12. Should there be any exceptions where Legal Aid is provided for Civil cases with less than 50% chance of success? (e.g. matters of public interest where prospects of success are difficult to quantify)**

- Yes    No    Don't know    Other (please state)

Please tell us more if you wish

**13. If you have any further comments on the LEGAL MERITS TEST please tell us**

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**PERSONAL RESPONSIBILITIES & FINANCIAL CONTRIBUTIONS**

A person who receives Civil Legal Aid is advised of their responsibilities by their Advocate. They are told they must conduct their case reasonably, act in the same way as a person of moderate means not in receipt of Legal Aid, pay back their Legal Aid costs if they are awarded or retain assets (e.g. money or property) and notify their Advocate of any change in circumstances (e.g. starting work).

A person may be required to pay a financial contribution towards the cost of their Civil Legal Aid if:

- they partially qualify for Legal Aid
- they don't conduct their case in a reasonable manner
- they don't tell the Legal Aid Office when their circumstances change
- they don't respond to requests by the Legal Aid Office for financial information

If a person partially qualifies for Civil Legal Aid, the Legal Aid Office will tell them how much they have to contribute to their legal costs and the monthly payment terms. They will also be asked to accept their Legal Aid offer in writing.

**14. Do you think people are aware of their personal responsibilities when they are granted Civil Legal Aid?**

- Yes    No    Don't know    Other (please state)

Please tell us more if you wish

**15. The more people who are eligible for Civil Legal Aid, the greater the cost to the taxpayer. This cost must be balanced against the need for access to justice. Should we consider making Civil Legal Aid available to more people if they were required to pay financial contributions?**

*Tick one option only*

- Yes, Civil Legal Aid should be available to more people if they make financial contributions
- No, Civil Legal Aid should not be available to more people
- Don't know
- Other (please state)

Please tell us more if you wish

**16. If you have any further comments on PERSONAL RESPONSIBILITIES or FINANCIAL CONTRIBUTIONS please tell us.**

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## STATUTORY CHARGE

If a person receives full Civil Legal Aid for their case and they are successful in recovering money or property, the **Statutory Charge** may apply. This means they may be directed to repay the cost of their Legal Aid, in full or in part. The Statutory Charge will be explained by the Advocate as part of the process of applying for Legal Aid.

The principle of the Statutory Charge is to place the assisted (i.e. legally-aided) person in the same position as the unassisted person, as far as possible. It gives the Treasury the legal right to recover costs from the assisted person and will take account of any financial contributions already made.

If we take the example of a Statutory Charge placed on a property which has been recovered following a divorce, it currently stays in place until the property is sold (which could be after 1 year or 50+ years). It is proposed that the Government should be able to recover the Statutory Charge within a reasonable time frame.

**17. Could we improve the way in which people are made aware of the Statutory Charge and its implications when they apply for Civil Legal Aid in cases which could lead to money or property being recovered?**

- Yes    No    Don't know    Other (please state)

Please tell us more if you wish

**18. Could we improve the way in which the Statutory Charge is enforced, to ensure that Government is able to recover Civil Legal Aid costs when a person is awarded money or property as a result of their legally-aided case?**

- Yes    No    Don't know    Other (please state)

Please tell us more if you wish

**19. Should there be a requirement for a person to pay the Statutory Charge on the sale of a property or within a defined period (e.g. 5 years) whichever is sooner?**

- Yes    No    Don't know    Other (please state)

Please tell us more if you wish

**20. If you have any further comments on the STATUTORY CHARGE please tell us**



## RESTRAINT PROCEEDINGS UNDER THE PROCEEDS OF CRIME ACT 2008

The [Proceeds of Crime Act 2008](#) (POCA) enables the Isle of Man Government to make an application in the Civil Courts to restrain money that it is believed has been acquired by a person as a result of a criminal act.

By law, if a person's assets are restrained they cannot use these assets to pay for legal advice relating to the criminal offence under investigation or the civil restraint order. The person is also ineligible for Legal Aid. As a consequence, a person whose assets are restrained under POCA is currently **unable** to secure legal advice or representation.

### **21. Should we seek to amend legislation to enable any individual whose assets are restrained to qualify for Legal Aid?**

- Yes    No    Don't know    Other (please state)

Please tell us more if you wish

### **22. If Legal Aid is granted, should individuals be required to repay Government (similar to the Statutory Charge) if their assets are partly confiscated or not confiscated?**

- Yes    No    Don't know    Other (please state)

Please tell us more if you wish

### **23. If you have any further comments on RESTRAINT PROCEEDINGS please tell us**



## SCOPE OF FAMILY MATTERS

In the Isle of Man, there is a wide range of **Family matters** for which eligible individuals can receive Legal Aid. A list of these Family matters is set out below, and a brief description is given for each one. (Non-Family matters will be covered later in this consultation).

Family matters currently covered by Civil Legal Aid	Description
<a href="#">Mediation</a>	An alternative way to resolve a dispute without going to Court (which is adversarial). Qualified mediators can help individuals to reach cheaper, quicker and less stressful resolutions on a range of issues (e.g. arrangements for children, finances, property) compared to going to Court. It is recognised that mediation may not be appropriate for all individuals (e.g. in cases involving domestic abuse).
<a href="#">Divorce</a> (defended)	When a divorce petition is issued to the Court and the other person challenges the proceedings or does not agree that the grounds for divorce are correct.
<a href="#">Divorce</a> (ancillary matters)	Applications for financial support following the presentation of a petition for a divorce / dissolution of civil partnership
<a href="#">Children</a> (residence)	Proceedings about the main home of a child (e.g. following divorce)
<a href="#">Children</a> (contact)	Proceedings about contact with a child (e.g. following divorce)
Financial provision ( <a href="#">maintenance</a> )	Financial provision to support a child or former spouse / civil partner (e.g. following divorce / dissolution of partnership)
Variation and enforcement	Variation and enforcement of financial orders (e.g. following divorce / dissolution of civil partnership).
Children ( <a href="#">care proceedings</a> )	Proceedings when people with parental responsibility for a child come to Court to challenge the granting of a Court Order to the Department of Health & Social Care to keep a child safe (e.g. when it has been determined that a child cannot remain safely at home)
Children ( <a href="#">adoption</a> )	Application to the Court for an Adoption Order and representation in adoption proceedings.
Children ( <a href="#">Specific Issue Order</a> )	Orders from the Courts which provide instructions about a specific issue that has arisen. For example if separated /divorced parents cannot agree on whether their child should have a major operation, then one parent may apply for a Specific Issue Order. The Court can also make orders such as "Care Orders" or "Emergency Protection Orders" if a child is considered to be at risk of harm.

Family matters currently covered by Civil Legal Aid	Description
Children ( <a href="#">Prohibited Steps Order</a> )	Orders from the Courts which prevent a person from taking certain actions without the required permissions. For example, if one parent wished to take a child off-island they must apply to the Court.
Children ( <a href="#">child abduction</a> )	Proceedings to support a parent whose child has been abducted. The Hague Convention on International Child Abduction seeks to protect children from <i>abduction</i> across <i>international</i> boundaries by providing a procedure to bring about their return. HM Attorney General is the central authority under the Hague Convention in relation to abducted children.
Children ( <a href="#">appointment of Guardian</a> )	Proceedings for a person applying for parental responsibility of a child.
Domestic abuse (Non-Molestation Order)	A Non-Molestation Order is used aimed at preventing a person from using or threatening violence or to prevent a person from harassing, pestering or intimidating someone.
Domestic abuse (Occupation Order)	An Occupation Order regulates who can live in the family home. One person could effectively be required to leave the home because of his/her violence towards the other person or the effect that his/her presence is having on the children.
Interpleader	Proceedings instigated when one party holds property which he/she does not own but to which two parties are making a claim. The party holding the property is able to bring Court proceedings against the party who is claiming ownership and Legal Aid is available to any eligible party. The Court decides who the rightful owner is.
Privy Council	Appeals to the highest Court to which a person can appeal a case from the Isle of Man Courts. The Privy Council sits in the UK.
Name changes	Change of name for adult or child (e.g. following divorce proceedings).
Other (e.g. property)	Proceedings in relation to jointly owned property or property which needs to be taken into account for family arrangements

**24. Should any FAMILY matter currently in scope be removed?**

- Yes
  No
  Don't know
  Other (please state)

If Yes, please tell us which Family matter(s) should be removed from scope and why.

**25. Should any FAMILY matter be exempt from the financial means test? (i.e. so only the legal merits test applies?)**

- Yes    No    Don't know    Other (please state)

If Yes, please tell us which Family matter(s) should be exempt from the financial means test and why.

**26. If you have any further comments on the SCOPE of FAMILY MATTERS please tell us**

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**FAMILY PROCEEDINGS & THE ROLE OF HM ATTORNEY GENERAL**

Legal Aid is often sought for matters involving children, young people, parents and guardians, and it is in their best interests for these matters to be resolved quickly and fairly.

HM Attorney General has legal responsibilities under Section 96 of the [Children and Young Persons Act 2001](#) (the Act) in relation to the representation of a child in family proceedings where it appears that the child is not, but should be, represented. As a result, the Attorney General's Chambers appoints an Advocate from private practice to act on behalf of the child.

At the moment, a child or young person is not automatically entitled to receive Civil Legal Aid for representation by an Advocate in proceedings under the Act which may involve them, such as Care Proceedings.

It is proposed that in future, for the purposes of Civil Legal Aid, a child or young person should be treated as having no financial resources. This would have the effect of removing the financial means test and HM Attorney General would continue to fulfil his duties under the Act.

It is also proposed that in future, parents and guardians who are party to proceedings under the Act should be treated as having no financial resources. As a result, parents and guardians would automatically qualify for Civil Legal Aid from a financial perspective.

**27. Do you agree with the proposal that a child or young person who is party to Family Proceedings (e.g. Care Proceedings) should be automatically eligible to receive Civil Legal Aid by disregarding their financial resources?**

- Yes    No    Don't know    Other (please state)

Tell us more if you wish

**28. Do you agree with the proposal that a parent or guardian who is party to Family proceedings should be automatically eligible to receive Civil Legal Aid from a financial perspective, by disregarding their financial resources?**

- Yes    No    Don't know    Other (please state)

Tell us more if you wish

**29. If you have any further comments on Civil Legal Aid for matters involving CHILDREN please tell us.**

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## DIVORCE & DISSOLUTION OF CIVIL PARTNERSHIPS

Advice for divorce or dissolution of civil partnerships is most commonly carried out under a Green Form, which provides for up to four hours of advice. Up to six hours' additional advice can also be provided, subject to the necessary approvals.

In other jurisdictions people can file divorce proceedings online in cases where there are no financial issues or matters relating to the care of dependent children to resolve.

### Divorce in other jurisdictions

- **England and Wales** - there is a fee of £550 for a divorce. People on benefits or a low income may be able to get help with the fees. It is possible to apply for a divorce online. <https://www.gov.uk/divorce>
- **Scotland** - there are two routes. The simple 'do it yourself' procedure and the 'ordinary' non-simplified procedure. If the divorce has no issues such as dependent children or financial matters, people follow the simple procedure. Fees vary. <https://www.scotcourts.gov.uk/taking-action/divorce-and-dissolution-of-civil-partnership>
- **Northern Ireland** - If you don't use a solicitor and there is consent to divorce or dissolution, you can get information from the Northern Ireland Courts and Tribunals Service. You can ask the Matrimonial Office for guidance on bringing a petition for divorce/civil partnership/separation as a "personal petitioner". Fees to petition are £261 and court fees over £300. If the spouse doesn't agree to divorce or dissolution, the NI Government Services website advises getting a solicitor <https://www.nidirect.gov.uk/articles/getting-divorce-or-dissolving-civil-partnership>
- **Isle of Man** - If you wish to give feedback on the divorce process here, the Courts are currently conducting a survey at <https://www.surveymonkey.com/r/6MKH28Y>

### 30. Should means-tested Civil Legal Aid continue to be available to couples who are seeking a divorce or dissolution of a civil partnership?

*Tick all that apply*

- Yes, if there is a dispute regarding finances
- Yes, if there is a dispute regarding arrangements for the care of dependent children
- Yes, if a person does not agree the grounds for divorce / dissolution
- Yes, subject to attending an assessment for mediation (exemptions would apply, such as cases involving domestic abuse)
- No, Civil Legal Aid should not be available for divorce / dissolution
- Other (please state)

Tell us more if you wish

**31. Should financial means-testing still apply if one party wishes to seek legal advice on divorce or dissolution of a civil partnership due to domestic abuse?**

*Tick one option only*

- Yes, means-testing should still apply
- No, means-testing should not apply
- Don't know
- Other (please state)

Tell us more if you wish

**32. Providing arrangements are agreed in respect of finances and (if applicable) dependent children, should the divorce process be administrative and not need Court time?**

- Yes
- No
- Don't know
- Other (please state)

Tell us more if you wish

**33. If you have any further comments on Civil Legal Aid for DIVORCE or DISSOLUTION OF CIVIL PARTNERSHIPS please tell us.**



## SCOPE OF NON-FAMILY MATTERS

There is a wide range of **Non-Family matters** for which eligible individuals can receive Civil Legal Aid. A list of these Non-Family matters is set out below, and a brief description is given for each one.

Non-Family matters covered by Civil Legal Aid	Description
<a href="#">Tribunals</a>	<p>A Tribunal is a body established to settle a specific type of dispute. It is not a legal proceeding. In the Isle of Man, Civil Legal Aid is available for four Tribunals:</p> <ul style="list-style-type: none"> <li>• Mental Health Review Tribunal</li> <li>• Advocates Disciplinary Tribunal</li> <li>• Data Protection Tribunal</li> <li>• Financial Services Tribunal</li> </ul>
Medical negligence	<p>Medical negligence is substandard care that has been provided by a medical professional to a patient, which has directly caused injury or caused an existing condition to get worse (e.g. misdiagnosis, incorrect treatment or surgical mistakes).</p>
Negligence	<p>Negligence means any act or omission which falls short of a standard to be expected of a 'reasonable' person.</p>
<a href="#">Personal injury</a> and damages	<p>Claim for compensation (damages) by a person following an accident or injury leading to any loss, due to the unlawful act, negligence or omission of another.</p>
<a href="#">Inquests</a>	<p>An inquest is a judicial inquiry by the Coroner of Inquest. A full inquest will determine who has died, where the death occurred, when the death occurred and how the person died. An inquest is not a trial and the Coroner does not apportion blame.</p>
Inquiry	<p>The Coroner will conduct an Inquiry under the Treasure Act 2017 to determine whether an object found is treasure (e.g. historic coins).</p>
Mediation & arbitration	<p>Mediation and arbitration are ways in which a dispute may be resolved as an alternative to going to court (which is adversarial).</p>
Property	<p>Possession proceedings in which the occupant may lose their home because of rent or mortgage arrears or a different breach of their agreement with a landlord or lender. Also covers boundary line disputes with neighbour(s); wills, trusts and estates</p>
Boundary & Property Dispute (incl. partition of land)	<p>Boundary and property disputes (e.g. with neighbour). Also includes proceedings to divide / partition land under the Partition Act 1931.</p>
Trusts (Wills and testamentary)	<p>Wills, trusts and testamentary trusts (these are trusts created under a Will)</p>

<b>Non-Family matters covered by Civil Legal Aid</b>	<b>Description</b>
Breach of contract	A claim made by one party when the other person fails to fulfil its promises according to the provision of the contract.
Receivership	When a person applies to look after the assets of a company that has gone into liquidation or bankruptcy. It is also when a person looks after the assets of a family member incapable of managing their own affairs.
Petition of dolence	This is the Manx form of a judicial review into Government administrative decisions and actions that affect an individual.
Privy Council	Appeals to the highest Court to which a person can appeal a case from the Isle of Man. The Privy Council sits in the UK.

**34. Should any NON-FAMILY matter currently in scope be removed?**

- Yes
  No
  Don't know
  Other (please state)

If Yes, please tell us which Non-Family matter(s) should be removed from scope and why

**35. Should any NON-FAMILY matter be exempt from the financial means test? (i.e. so only the legal merits test applies)**

- Yes
  No
  Don't know
  Other (please state)

If Yes, please tell us which Non-Family matter(s) should be exempt from the financial means test and why

**36. If you have any further comments on the SCOPE of NON-FAMILY MATTERS please tell us**

## TRIBUNALS

In simple terms, a tribunal is a body established to settle a specific type of dispute, or provide integrity to an appeal process. **Tribunals are not Court proceedings** but they are an important part of the justice system. They provide access to justice at an appropriate level through an open, fair, impartial and accessible [Tribunals Service](#).

One of the advantages of a tribunal is that a person bringing an action can self-represent or be assisted by others who are not Advocates. Whilst it is reasonably common for individuals to represent themselves at a tribunal or be assisted by other lay-persons, they also have a choice of appointing an Advocate, to represent them at their own expense (unless Legal Aid is available).

It is recognised that there are some tribunals where it may be more appropriate for an Advocate to represent one of the parties. The most obvious example would be the Mental Health Review Tribunal (i.e. where the applicant may lack mental capacity). An argument has also previously [successfully] been made in respect of the Advocates Disciplinary Tribunal (i.e. where the applicant has made a formal complaint about an Advocate) on an 'equality of arms' basis.

**Green Form** is available for any tribunal. It provides for an Advocate to help an individual in their **preparation for a tribunal**, by providing legal advice and assistance. It does not provide for the Advocate to attend or represent the individual at the Tribunal.

**Full Civil Legal Aid** is available for four specific tribunals which are set out in Schedule 1 to the [Legal Aid Act 1986](#). It provides for an Advocate to help an individual in their preparation for a tribunal in addition to **legal representation during tribunal hearings**.

The four tribunals covered by full Civil Legal Aid are the Mental Health Review Tribunal, Advocates Disciplinary Tribunal, Data Protection Tribunal, and Financial Services Tribunal.

These tribunals are set out below with a brief summary of their purpose:

Name of Tribunal	Summary of Tribunal's purpose
<a href="#">Mental Health Review Tribunal</a>	To protect the rights of individuals receiving involuntary treatment for mental illness (e.g. persons detained under the Mental Health Act 1988). The Tribunal provides an independent review of the person's case, and makes decisions about whether the involuntary treatment will continue or not. In making these decisions, the Tribunal must balance the rights of the patient with the rights of others and the protection of the community.
<a href="#">Advocates Disciplinary Tribunal</a>	To consider formal complaints made by individuals regarding the professional conduct of Advocates.
<a href="#">Data Protection Tribunal</a>	To consider referrals from the <a href="#">Information Commissioner</a> , where it appears that the processing of personal data could contravene data protection principles; to hear appeals against certificates issued by the Chief Minister certifying the exemption of certain personal data for national security purposes; to hear appeals where certain Notices have been served by the Information Commissioner; and hear appeals concerning the processing of personal data for "special purposes".

Name of Tribunal	Summary of Tribunal's purpose
<a href="#">Financial Services Tribunal</a>	To hear and determine appeals from persons who are aggrieved with decisions made by the <a href="#">IoM Financial Services Authority</a> under parts of the Financial Services Act 2008 and Designated Businesses (Registration and Oversight) Act 2015. Functions of three other abolished Tribunals (Collective Investment Scheme; Retirement Benefits Schemes; Insurance) have also been transferred to this Tribunal.

**37. Should people on low incomes continue to be eligible for free legal advice and assistance (under Green Form) to prepare for all tribunals?**

- Yes
  No
  Don't know
  Other (please state)

Please tell us more if you wish

**38. Should ANY tribunals be covered by full Civil Legal Aid? (four are currently covered)**

- Yes
  No
  Don't know
  Other (please state)

If Yes or No, please tell us why

**39. If Yes, which of these four tribunals, if any, should we continue to fund with full Civil Legal Aid?**

*Tick all that apply*

- Mental Health Review Tribunal
- Advocates Disciplinary Tribunal
- Data Protection Tribunal
- Financial Services Tribunal
- None
- Don't know
- Other (please state)

Please explain your responses (to Q39) if possible

**40. Have you ever brought an action before a tribunal WITHOUT any legal advice or representation?**

- Yes    No    Don't know    Other (please state)

Please tell us more if you wish

**41. Was there any particular aspect of the tribunal process where you felt that legal advice would have been essential?**

- Yes    No    Don't know    Other (please state)

If Yes, what was the particular issue and how do you think legal advice would have assisted you?

**42. In addition to the four tribunals already mentioned, there are numerous other tribunals in the Isle of Man. Legal Aid under Green Form (for legal advice and assistance) is currently in place for all tribunals. Should consideration be given to extending full Civil Legal Aid to any other tribunal listed in the table on the next page?**

- Yes    No    Don't know    Other (please state)

If Yes, please tell us which tribunal from the list on the next page you think should be included in scope and why

Name of Tribunal	
Care Services Tribunal	Currently covered by Green Form (legal advice & assistance) <b>Not</b> covered by Civil Legal Aid (legal representation )
Charities Tribunal	
Copyright Tribunal	
Employment & Equality Tribunal	
Estate Agents Tribunal	
Flood Risk Management Tribunal	
Gambling Appeals Tribunal	
Harbour Works Tribunal	
Health and Safety Tribunal	
Heath Burning Tribunal	
Income Tax Commissioners	
Independent Schools Tribunal	
Interception of Communications Tribunal	
Isle of Man Rent & Rating Appeal Commissioners	
Legal Aid Appeals Tribunal	
Riding Establishments Appeal Tribunal	
Social Security Appeal Tribunal	
Tourist Premises Appeal Tribunal	
VAT & Duties Tribunal	
Work Permit Appeal Tribunal	

**43. If you have any further comments on Civil Legal Aid for TRIBUNALS please tell us.**

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## INQUESTS

In the Isle of Man, an inquest is a public Court hearing, carried out by the [Coroner of Inquests](#). The Coroner of Inquests is the High Bailiff.

An inquest is a fact-finding process and not a trial. **The Coroner of Inquests does not apportion blame.** They investigate deaths which appear violent, unnatural, sudden or unexplained and a full inquest will determine:

- who has died
- where the death occurred
- when the death occurred
- how the person died

Civil Legal Aid is available for inquests, by virtue of Schedule 1 to the [Legal Aid Act 1986](#) and applicants are subject to a financial means test.

There are some inquests where it is known, or suspected, that a person has died whilst in the care or custody of the state. In inquests such as these, the state (i.e. IoM Government) will also be represented.

The UK Government published a [Review of Legal Aid for Inquests](#) in February 2019, which identified ways to better support bereaved families before and during an inquest. Further information is available below.

### [UK Government Review of Legal Aid for Inquests 2019](#)

The UK Government's Ministry of Justice (MoJ) published a [Review of Legal Aid for Inquests](#) in February 2019. The report identified ways to better support grieving families before and during an Inquest.

The Review found that inquests can be an extremely difficult time for bereaved family members, who may be unable to navigate the unfamiliar inquest process and the Legal Aid application and eligibility processes without additional support. They need to know what will happen and when, in terms of such matters as a post-mortem; access to and release of their loved one's body and the inquest itself. What also became clear is that the whole inquest process can be stressful, upsetting and confusing for those who are bereaved.

Evidence pointed to a number of concerns regarding the provision of Legal Aid and the role of the families in the application and Inquest process. In particular, it suggested the current Legal Aid application process might not be fully understood and that there are difficulties in understanding the eligibility criteria.

It was accepted that bereaved families need better awareness of when Legal Aid is available, but whilst in some cases it is right that they should have legal representation, the MoJ was mindful that a significant expansion of Legal Aid could have the unintended consequence of undermining the inquisitorial nature of the Inquest system. It could also reinforce the commonly held misconception that an inquest's role is to apportion blame, as opposed to finding facts and learning lessons. The MoJ indicated that all the work affirmed the need to maintain an inquisitorial system and the crucial role of the Coroner in achieving this.

Following the Review, the Ministry of Justice announced a range of changes to the current system of Legal Aid for Inquests in the UK which are summarised below:

#### UK MoJ actions

- As well as improving its [Guide to Coroner Services](#), the MoJ is considering with Coroner's offices other ways to distribute and publicise the new Guide;
- The MoJ will provide a separate piece of guidance literature for families, which will set out the Legal Aid system including existing definitions and criteria for funding in a way that is easy to understand;
- The MoJ will develop better signposting of support services at Coroners' courts and make sure families know who is in the Courtroom and what their role is.
- In order to make sure that lawyers are aware of how the current system works, the MoJ will explore options to raise awareness and clarify the eligibility process in the legal provider funding pack;
- In order to improve understanding of the Legal Aid eligibility criteria, the MoJ will set this out in separate guidance for families; and
- The evidence gathered will be considered by the MoJ as part of a review into the thresholds for Legal Aid entitlement

#### 44. Have you ever been party to an inquest in the Isle of Man for a family member?

- Yes  No  Rather not say

Please tell us more if you wish

#### 45. What guidance should be available to families facing an inquest?

*Tick all that apply*

- Early signposting to the IoM Law Society or Legal Aid Panel of Advocates for help finding an Advocate
- Guidance on Civil Legal Aid for inquests
- Guidance on the inquest process
- Guidance for those affected by the death of a person who was in the care or custody of the state
- Don't know
- Other (please state)

Please tell us more if you wish

**46. Should Civil Legal Aid for an inquest continue to be means-tested if a person has died whilst in the care or custody of the state, or in instances where the state may be held partly or wholly responsible for the person's death?**

*Tick one option only*

- Yes, if a person can afford to pay they should do so
- No, there should not be any financial means-testing in these circumstances
- Don't know
- Other (please state)

Please tell us more if you wish

**47. Should Legal Aid for other inquests (i.e. in which a person has died but they have NOT been in the care or custody of the state) continue to be means tested?**

- Yes, if a person can afford to pay they should do so
- No, if a person has died under certain circumstances (e.g. as a result of violence) there should not be means-testing
- No, there should not be any financial means-testing in these circumstances
- Don't know
- Other (please state)

Please tell us more if you wish

**48. When a person dies, sometimes there can be more than one person who applies for Legal Aid for the inquest (e.g. spouse and former spouse of the deceased). Do you think there are any circumstances in which Legal Aid for an inquest should be granted to more than one person?**

- Yes
- No
- Don't know
- Other (please state)

If Yes, please tell us the circumstances

**49. If you have any further comments on Civil Legal Aid for INQUESTS please tell us**



## CONDITIONAL FEE ARRANGEMENTS - 'NO WIN NO FEE'

Civil Legal Aid in the Isle of Man is currently available to eligible individuals for Medical Negligence, Negligence and Personal Injury matters. In the UK, these matters are no longer legally aided, and instead are dealt with by lawyers through Conditional Fee Arrangements, often termed 'No Win No Fee' cases. Such arrangements are unlawful in the Isle of Man, and could only be introduced if there was a change in legislation.

In the UK, if a person wins their 'No Win No Fee' case, their legal costs will mostly be paid by their opponent. A person may be asked to take out an insurance policy to cover the risk of losing their case, as they would be ordered to pay their opponent's legal costs in such an event. However, the person would not have to pay their own legal fees. UK Solicitors therefore take on the risk of losing the legal costs accrued during a case if that case is lost, and not all legal practices in the UK are prepared to undertake 'No Win No Fee' work.

Some Advocates in the Island have expressed significant concerns about 'No Win No Fee' arrangements, as they feel they would not be appropriate here. They are concerned that the 'No Win No Fee' model is based on legal practices winning some cases and losing others, and some Manx practices could go out of business. Advocates have also expressed concern that 'No Win No Fee' cases are 'clogging up' Courts in England and Wales.

### **50. Should Civil Legal Aid continue to be available for Personal Injury, Negligence and Medical Negligence or should 'No Win No Fee' arrangements be considered?**

- Civil Legal Aid should continue to be available for Personal Injury, Negligence & Medical Negligence
- 'No Win No Fee' arrangements should be considered
- Don't know
- Other (please state)

Please tell us more if you wish

### **51. If you have any further comments on 'NO WIN NO FEE' arrangements, please tell us**

## LEGAL AID PANEL OF ADVOCATES

An Advocate **must** be on the Legal Aid [Panel of Advocates](#) (the Panel) before they can carry out any Civil Legal Aid work in the Isle of Man. The Panel is a list of Advocates who are prepared to act for a person under one or more Legal Aid schemes. There are currently 61 Advocates on the Panel, all of whom are registered as willing to undertake Civil Legal Aid work.

To join the Panel, an Advocate must complete an application form, detailing the categories of Legal Aid work they would like to carry out. This application is submitted to the Legal Aid Certifying Officer who is a lawyer employed by Government to authorise and monitor Civil Legal Aid work (and some Criminal Legal Aid work). A meeting is then held between the Certifying Officer and the Advocate, following which they can be added to the Panel.

More information about an Advocate's particular areas of expertise can also be found via the [Isle of Man Law Society](#), or directly from the Advocate.

### [Number of Advocates undertaking Civil Legal Aid work](#)

There are:

- 243 Advocates practicing in the Isle of Man\*
- 61 Advocates on the Legal Aid Panel
- 61 (25%) registered as willing to undertake Civil Legal Aid work
- 43 for Family matters
- 47 for Non-Family matters

\*Source: IoM Law Society October 2018 (email)

### **52. Are you an Advocate who has carried out Civil Legal Aid work in the Isle of Man or would like to do so in future?**

- Yes    No    Rather not say

### **53. Would you like to see any changes to how Advocates join and remain on the Civil Legal Aid Panel?**

- Yes    No    Don't know    Other (please state)

Please tell us more if you wish

**54. If you have any further comments on the LEGAL AID PANEL OF ADVOCATES please tell us**

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**QUALITY OF LEGAL AID SERVICES**

The [Legal Aid Office](#) is part of the Treasury and its staff undertakes a range of functions, including responsibility for Legal Aid budgets, administration of Legal Aid schemes and secretariat support for the Legal Aid Committee. The Legal Aid Certifying Officer is also based in the Office.

The Office also provides a range of dedicated resources for members of the public and Advocates in regard to Legal Aid, a selection of which are summarised below:

Legal Aid Office resource	Description
<a href="#">Civil Legal Aid leaflet</a>	Published in 2019 following a request from a charity. Overview of Civil Legal Aid; schemes & eligibility; contact information.
<a href="#">Legal Aid website</a>	Details of the Legal Aid Committee; statutory functions; management of Civil Legal Aid
Online <a href="#">Civil Legal Aid Eligibility Calculator</a>	Interactive self-assessment tool which provides an indication as to whether a person is likely to pass the financial eligibility test for Legal Aid
<a href="#">Financial eligibility for Civil Legal Aid – prescribed amounts 2019</a>	Details of qualifying benefits & worked examples of eligibility
<a href="#">Mediation funding policy</a>	Sets out fees payable for mediation services.
<a href="#">Legal Aid Panel of Advocates</a>	Details of Advocates who are prepared to act for someone under a Legal Aid scheme (Civil & Criminal).
<a href="#">Resources for Advocates</a>	Dedicated webpage with guidance on joining the Legal Aid Panel; download links to frequently used documents (e.g. claim forms).
<a href="#">Legal Aid Handbook for Advocates (6<sup>th</sup> Edition)</a>	Legal Aid Handbook updated November 2019. Contains comprehensive details of each Legal Aid scheme; processes; assessment & payments
<a href="#">Legal Aid Committee Report 2018-2019</a>	First annual report by the Legal Aid Committee; details function of Committee & Civil and Criminal expenditure.

**55. Is the information provided by the Legal Aid Office comprehensive and clear enough?**

- Yes    No    Don't know    Other (please state)

Please tell us if you find anything particularly helpful or if you have any suggestions for improvement

**56. In the future, do you think the voice and interest of the legally-aided person should be placed at the centre of Legal Aid services?**

- Yes    No    Don't know    Other (please state)

Please tell us more if you wish

**57. If yes, how could we ensure that the legally-aided person is at the centre of Legal Aid services?**

*Tick all that apply*

- Seek feedback from legally-aided persons on the services they have received
- Seek feedback from charities on access to services for the people they support
- Seek feedback from Advocates on processes which affect their clients & the legal profession
- Don't know
- Other (please state)

Please tell us more if you wish

**58. How important to you are the following qualities or factors in an Advocate who is providing legal advice on Civil matters?**

*Tick one box per line*

	<b>Very important</b>	<b>Quite important</b>	<b>Neither important nor unimportant</b>	<b>Quite unimportant</b>	<b>Very unimportant</b>	<b>Don't know</b>
Level of experience						
Independence						
Professional reputation						
Quality of service						
Qualifications						
Ease of access (location, office hours etc.)						
Personal recommendation						
Continuing Professional Development						
Used the Advocate before						

If there are any other qualities or factors we have not listed above, please tell us what they are and how important they are to you.

The [IoM Legal Aid Handbook \(6<sup>th</sup> Edition Nov 2019\)](#) sets out **quality standards for Advocates** working on Legal Aid cases as follows:

- Advocates must provide a high standard of professionalism coupled with the most effective use of limited resources, presenting value for taxpayer's money;
- Work provided should be equal to that which 'a prudent fee paying client of modest means' would expect;
- Advocates must make full and prompt use of recognised methods of alternative dispute resolution avoiding Court action wherever possible. Mediation should always be considered when appropriate; and
- Advocates must aim to ensure a swift and successful outcome for the Assisted Person, avoiding delays wherever possible.

**59. The IoM Legal Aid Handbook sets out quality standards for Advocates undertaking Legal Aid work. These standards are set out above. Do you think an agreement, such as a Memorandum of Understanding, should be put in place between the Legal Aid Office and Advocates to support the delivery of these quality standards?**

- Yes, there should be an agreement in place
- No, an agreement is unnecessary
- Don't know
- Other (please state)

Please tell us more if you wish

**60. If you think an agreement should be put in place, what should it contain?**

**61. Any agreement would need to be balanced against the requirement to maintain the availability and willingness of Advocates to undertake Civil Legal Aid work. Do you have any comments on how this could this be achieved?**

**62. Are there any Family or Non-Family matters that Civil Legal Aid is serving LESS well than others?**

- Yes
- No
- Don't know
- Other (please state)

If Yes, please specify which matter(s) and how they could be served better

**63. If you have any further comments about QUALITY OF LEGAL AID SERVICES, please tell us**

## SELF-REPRESENTATION

People sometimes appear in Court in the Isle of Man without an Advocate to represent them. This is called **self-representation**.

People who self-represent:

- may choose not to have an Advocate for personal reasons, even though they are eligible for Civil Legal Aid
- may not be financially eligible to receive Civil Legal Aid, nor able to afford to pay an Advocate on a private basis
- may not be able to find an Advocate who is willing or able to represent them (e.g. due to a conflict of interest)

Individuals who self-represent may need to conduct their own research, complete legal procedures, and present their case. For an individual facing Court without an Advocate, it can also be a daunting and stressful time. Whilst there are no official figures for self-representation in the Isle of Man, the Courts are not set up to deal with individuals who self-represent and this can:

- place additional pressures on the Courts
- contribute to delays
- add to costs
- reduce access to justice

### **64. Have you ever represented yourself (i.e. without an Advocate) in a Civil Court in the Isle of Man?**

- Yes (go to Q65)     No (go to Q66)     Rather not say

### **65. Why did you represent yourself in Court?**

*Choose one option*

- It was my choice – I wanted to represent myself
- It was not my choice – I wanted an Advocate but I did not qualify for Legal Aid & I could not afford to pay privately
- Don't know
- Rather not say
- Other (please state)

Please tell us more if you wish

**66. Do you think we should try to minimise the number of people who self-represent in future?**

Yes    No    Don't know

If Yes, how could we do this?

**67. How could we best support people who do self-represent in Civil Courts?**

**68. If you have any further comments on SELF-REPRESENTATION please tell us**

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## EXPENDITURE

Legal Aid expenditure in the Isle of Man is **demand-led**. So, whilst there is an annual Legal Aid budget set by the Treasury, the final annual expenditure figure will depend upon the demands on the service. The cost of individual legally-aided matters can range from under one hundred pounds to tens of thousands of pounds, depending on the type of case and its complexity.

In order for the Isle of Man Government to continue to fund Civil Legal Aid, it must be a financially sustainable service. We must consider ways in which Civil Legal Aid can help to maintain or improve access to justice, make savings where possible and ensure that money is spent wisely and fairly.

### Checks & balances

Applications for Green Form are initially dealt with by the Advocate working on the matter or the Advocate's legal practice. Checks are carried out, including the financial means test and the legal merits test. The completed Green Form is submitted to the Legal Aid Office for checking and payment at the end of the matter.

Applications for full Civil Legal Aid are submitted to the Legal Aid Office. The financial means test is carried out by staff and the legal merits of a case are assessed by the Legal Aid Certifying Officer. The Certifying Officer is also responsible for issuing Civil Legal Aid Certificates, approving payments for extensions and refusing or revoking Civil Legal Aid. Final bills are submitted for assessment to the Costs Officer, who will only authorise payment for work covered by the conditions and limitations of the Legal Aid Certificate.

### Legal Aid rates of pay

Advocates who undertake Legal Aid work are paid by Government at Legal Aid rates of pay. These rates are set out in legislation and have been in place since 1 April 2009:

- £115 per hour for Junior Advocates (in practice in IoM for less than 5 years)
- £135 per hour for Senior Advocates (in practice in IoM for over 5 years)

The Isle of Man Law Society advised in 2016 that these rates are lower than the rates Advocates could charge to private, fee-paying clients, which could range between £250 and £450 per hour. In addition, a small legal practice on the Isle of Man (e.g. with 1 Advocate and 1 administrator) may have annual operational costs of around £80,000 per year. These costs are typically associated with staff wages, property rental and personal indemnity insurance.

### Civil Legal Aid costs

The [Legal Aid Committee Report 2018/19](#) details Civil Legal Aid costs for the last 5 years (2014/15 to 2018/19). Annual costs have ranged from £1.2 million to £1.7 million (an average of approx. £1.5 million a year). Every year, the majority of costs relate to Family matters and the remainder to Non-Family matters

In 2018/19, Civil Legal Aid costs were £1,233,429. Family matters cost £993,568 (81% of overall expenditure) and Non-Family matters cost £239,861 (19%). Further details of the expenditure are at [www.gov.im/legalaidcommittee](http://www.gov.im/legalaidcommittee).

**69. Would you like to see any changes to the way in which applications for Green Form and full Civil Legal Aid (under a Certificate) are assessed / granted?**

- Yes   
  No   
  Don't know   
  Other (please state)

If yes, what changes would you like to see?

**70. There are a number of checks and balances in place to control Civil Legal Aid costs. Do you have any suggestions on how they could be done differently or more effectively?**

If so, please tell us

**71. Please tell us how much you agree with the following statements regarding hourly Legal Aid rates of pay**

*Tick one option per line*

	<b>Strongly agree</b>	<b>Agree</b>	<b>Neither agree nor disagree</b>	<b>Disagree</b>	<b>Strongly disagree</b>	<b>Don't know</b>
Rates of pay for Civil & Criminal Legal Aid work should remain aligned						
Rates of pay for Civil work should be higher than Criminal work						
Rates of pay for Civil work should be lower than Criminal work						

	Strongly agree	Agree	Neither agree nor disagree	Disagree	Strongly disagree	Don't know
Rates of pay should continue to reflect the length of time an Advocate has been in practice in the Island (i.e. under or over 5 years)						
Rates of pay should change to reflect the <b>complexity</b> of the case undertaken by the Advocate, rather than their length of time in practice						
Rates of pay should change to reflect an Advocate's <b>experience</b> rather than their length of time in practice						
Rates of pay should be reviewed						

**72. If you have any further comments on CHECKS & BALANCES or COSTS please tell us**

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## FIXED FEES

'Fixed fees' are fixed amounts of money paid to lawyers for undertaking a specific piece of work. The amount at which a fixed fee is set depends on the length of time that is allocated to the piece of work and the agreed hourly rate. If a particular matter takes significantly longer to complete it can be considered as an exception for payment purposes. In the Isle of Man, there are currently no fixed fees and Advocates are paid at an hourly rate.

Fixed fees can help Governments to manage their budgets more effectively. They can also make the administration of Legal Aid claims more straightforward for both Advocates and Governments as detailed breakdowns of work are no longer required for matters dealt with under a fixed fee.

Some Advocates have expressed concern that only hourly rates of pay can properly reflect the work that has been undertaken (i.e. paid for the time it takes to complete a matter). It has also been suggested that if fixed fees were set at the right level, and for specific matters then there could be benefits for both the Advocates undertaking Civil Legal Aid work and the IoM Government.

### **73. In principle, would you support the option of some fixed fees being introduced for some aspects of Civil Legal Aid in the Isle of Man?**

- Yes (go to Q74)     No (go to Q75)     Don't know     Other (please state)

Tell us more if you wish

### **74. Do you have a view on which Civil Legal Aid matters, if any, may be suitable for fixed fees in the Isle of Man?**

Tell us more if you wish

### **75. If you have any further comments on FIXED FEES please tell us.**

## ACCESS & LEGAL ADVICE CENTRES

In the Isle of Man, some Advocates' practices provide an initial consultation which is free of charge ('pro bono'). This can be particularly beneficial to people on low or modest incomes as it provides accessibility at the earliest opportunity. Some Advocates will also visit people in their homes to assist those who may have mobility issues.

In order to access free legal services, individuals contact an Advocate and explain that they are seeking Legal Aid funding. The Advocate will apply for Legal Aid on their client's behalf, and subject to eligibility, Legal Aid will be granted.

In other jurisdictions (e.g. Scotland, England, Wales, Republic of Ireland) Civil Legal Aid is available (although scope and eligibility varies) and legal practices may offer free initial consultations. Some legal services are also available at a low cost or no cost through organisations collectively known as 'Legal Advice Centres'. These centres come in a number of different forms. Some offer free legal services to everyone, regardless of their financial situation, and others may only offer free legal services to people who would otherwise qualify for Legal Aid. These centres are funded in a range of different ways (e.g. Lottery; Legal Aid; Law Society; city council; charitable donations etc.) and they may be located in areas where there is little access to lawyers and legal services.

A number of Advocates have expressed the view that members of the public do not have any problems accessing legal services here, as there are legal practices in the North, South, East and West of the Island. They have also suggested that a Legal Advice Centre is not necessary in a jurisdiction of the Isle of Man's size.

### Legal Advice Centres

- Scotland has four [Civil Legal Assistance Offices](#) (CLAO) in different parts of the country. They provide legal assistance to people who are eligible for Civil legal Aid and each CLAO covers specific legal problems in each area (e.g. issues with housing, homelessness, benefits).
- In Ireland, a charity called [FLAC](#) (Free Legal Advice Centres) helps people to understand and access their legal rights. Whilst FLAC promotes access to justice, it states that it cannot and does not attempt to be a substitute for Government-funded Legal Aid services.
  - FLAC provides a network of 66 [Legal Advice Clinics](#) across the country. Volunteer lawyers provide confidential, basic legal advice for free and in person across all areas of Civil law. Legal Advice Clinics are usually located in the local Citizens Information Centres and some clinics also provide specialised assistance (e.g. family law).
  - FLAC also runs a [Telephone Information & Referral Line](#) for basic legal information (not advice) and signposting over the phone. FLAC also provides [Online Legal Information](#) which provides free information guides.
- Across England and Northern Ireland there are 41 [Law Centres](#) which offer face-to-face legal advice to local residents and some run a telephone advice line. All Law Centres specialise in social welfare law (e.g. disability rights) and some also cover other areas of work (e.g. education rights). As an example, the [Merseyside Law Centre](#) provides free legal advice, assistance and representation on housing, benefits and debt to residents across Merseyside (subject to eligibility).

- [Citizens Advice UK](#) – There are 280 independent local Citizens Advice providers across the UK. Every year, millions of people get in contact with a wide range of problems such as managing debt, employment issues and housing problems. They also provide specialist support through their consumer helpline, Pension-Wise service and Witness Service (supporting people giving evidence in Court). Citizens Advice also works to fix the underlying causes of people’s problems and advocates evidence- based changes to policy, regulation and business practices. Citizens Advice reports that its service saves society money, and in [2017/18](#) the advice it delivered directly saved Government and public services at least £435 million which is almost £2 for every £1 spent on the service.

**76. If you have sought or received LEGALLY-AIDED or PRIVATE legal advice on a Civil matter in the Isle of Man, please tell us how much you agree with the following statements**

*Tick one option per line*

	Strongly agree	Agree	Neither agree nor disagree	Disagree	Strongly disagree	Not applicable
It was easy for me to access LEGALLY-AIDED legal advice on a Civil matter						
It was easy for me to access PRIVATE legal advice on a Civil matter						

Tell us more if you wish

**77. If you have ever found it difficult to access legal advice on a Civil matter in the Isle of Man (either privately or legally-aided) please tell us why it was difficult.**

**78. In addition to funding Legal Aid, should the Government consider supporting any other methods of delivering legal services to the public?**

- Yes     No     Don't know     Other (please state)

Please tell us more if you wish

**79. If you have any further comments on ACCESS or LEGAL ADVICE CENTRES please tell us.**

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## **ALTERNATIVE DISPUTE RESOLUTION**

If a person has a dispute with their ex-partner, landlord or organisation there may be ways to deal with the issue without seeking legal advice or going to Court. This is called Alternative Dispute Resolution (**ADR**) and it includes mediation services and ombudsmen. ADR is not meant to replace the Courts and it is not a substitute for legal advice, but it can bring advantages such as:

- solving problems faster
- costing less
- avoiding the stress of going to Court
- helping to maintain a positive relationship with the other party
- helping both parties to reach a mutually agreed outcome

Mediation is one of the ways to resolve a dispute without going to Court and **Civil Legal Aid is available for mediation**. Qualified mediators can help individuals to reach cheaper, quicker and less stressful resolutions on a range of issues (e.g. arrangements for children, finances, property) compared to going to Court. However, it is recognised that mediation may not be appropriate for all individuals, such as in cases involving domestic abuse.

The [Legal Aid Committee Mediation Policy](#) sets out fees payable for mediation services in the Isle of Man. The maximum total payment in usual circumstances is £805 which covers one assessment session, two mediation sessions, the drafting of necessary documents and associated administration. Some Advocates who are also trained mediators have advised that it is not cost effective for them to undertake legally-aided mediation work as the level of payment is significantly less than Legal Aid hourly rates (current Junior & Senior Advocate rates are £115 & £135 per hour respectively). As a result, some Advocates continue to do mediation work with private clients, but they do not offer mediation services to legally-aided clients.

If a person cannot afford legal representation and they do not qualify for Legal Aid, there may also be other ways to access advice but people may be unaware of the options. The Legal Aid Office has produced a helpful [Access to Advice](#) leaflet. It provides options for individuals who may be seeking advice, such as trade unions, private insurance policies, Citizens Advice, IoM Office of Fair Trading (for **free debt counselling & consumer advice**), in addition to **free Financial Services Ombudsman** and **free Pensions Ombudsman** services.

## **Family Mediation**

Family mediation can help people who are divorcing or ending a civil partnership, and applying for a Court order about a range of matters, including money, property, possessions and arrangements concerning children. In many cases, mediation can be a better way of resolving family disputes than going to Court.

### **The Family Mediators Association**

Family mediation gives separating couples an opportunity to decide for themselves what to do about their children and finances, with help and guidance from trained and impartial mediators. In family mediation, clients are encouraged to co-operate with one another to negotiate and find their own ways to move forward with their lives. Research (in the UK) shows that family mediation can cost less than a quarter of the price and take a quarter of the time of going to Court and, more importantly, it can ensure better results for families. Many people repeatedly go to Court to argue about things they would be able to sort out themselves with a little help. This is expensive and emotionally draining, impacting on everyone in the family. Many couples want to sort out what to do about their finances themselves but would like professional help in doing so. Mediation can help them to achieve this.

Unlike the Court process, where the judge makes the decisions for the family, in mediation it is the individuals, such as the divorcing couple, who are completely involved in and responsible for the decision making process. In mediation a whole range of options are open to individuals that are not available in the Court process.

Family mediators come from a wide range of backgrounds. Many are family lawyers, or have at some stage worked as family lawyers. Many come from a therapy or counselling background. Sometimes two mediators from different backgrounds work together, to combine their different specialist skills in co-mediation. All qualified family mediators are trained to work with families in conflict, and have considerable experience in helping families to work together to find practical solutions to their problems.

All FMA members have been trained to mediate the full range of issues associated with divorce and separation, including children, communication, division of capital and other financial concerns

### **Manx Family Mediation Network**

The Manx Family Mediation Network is a small group of Family Mediators Association qualified and experienced family mediators working in the Isle of Man. Some also have qualifications in law, others have backgrounds in psychology. They work together to help families find better ways of resolving disputes. Where children are involved they help couples find the best possible solutions for children.

### **80. How could we increase the availability of mediation services to individuals who qualify for Civil Legal Aid?**

*Tick all that apply*

- Work with qualified mediators to understand the barriers to providing services
- Review rates of pay for mediators
- Employ one or more mediators within Government to guarantee service provision
- Don't know
- Other (please state)

Please tell us more if you wish

### **81. Government currently meets the mediation costs of BOTH mediating parties, if at least one of the parties is in receipt of Legal Aid. What is your view on these funding arrangements?**

*Choose one option*

- Keep the arrangements
- Expand the arrangements to provide free mediation to everyone
- Reduce the arrangements so that only individuals eligible for Legal Aid can receive free mediation
- Don't know
- Other (please state)

Please tell us more if you wish

**82. Should an assessment for mediation be compulsory BEFORE an application for full Civil Legal Aid is considered?**

*Choose one option*

- Yes, unless safeguarding exemptions apply (e.g. cases involving domestic abuse)
- No, mediation should be encouraged but only entered into voluntarily
- Don't know
- Other (please state)

If it is not compulsory, how can we encourage people to enter into the mediation process?

**83. How could we encourage more individuals to seek early resolutions to legal problems without going to Court?**

**84. If you have any further comments on MEDIATION or any other method of ALTERNATIVE DISPUTE RESOLUTION please tell us**

*Thank you for completing this consultation*