

## **Criminal Legal Aid Consultation**

**Closes 21 Nov 2019**

Opened 23 Sep 2019

### **Overview**

This consultation is part of a wider 'Legal Aid Review' project, which is being led by HM Attorney General on behalf 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 Criminal and Civil. This consultation deals with **Criminal Legal Aid** only.

The aim of the project is to develop policy options for the sustainable provision of Legal Aid in the Island 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 **Criminal Legal Aid** provision, and explore the feasibility of alternative approaches in the future.

In particular:

- which aspects of Criminal 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 Criminal Legal Aid in future

### **We would like to hear from:**

- Criminal Legal Aid service users
- Members of the public
- Members of the Judiciary & the Courts
- Criminal Defence Advocates
- Prosecutors
- IoM Law Society & members
- Department of Home Affairs, IOM Constabulary, IOM Prison & Probation Service
- Charities
- Appropriate Adult Scheme volunteers
- Interpreters at the Police Station or in Court
- Tynwald Members

Audience- All areas / all residents

Interests – Police, Prison, Criminal Justice

## **Related Links**

- [Background to the Legal Aid Review & SAVE initiative](#) 200.2 KB (PDF document)
- [IoM Law Society Duty Advocate Schemes Guidance \(2015\)](#) 584.5 KB (PDF document)
- [Attorney General's Chambers - Legal Aid Review](#)
- [Legal Aid Office](#)
- [Criminal Legal Aid costs 2013 - 2019](#)
- [Legal Aid Act 1986](#)
- [Legal Aid Committee - Review of Government supported access to legal advice and representation 2016](#)

## **Survey**

### **Introduction**

#### **What is Legal Aid?**

'Legal Aid' is the term for Government schemes which pay for a person's legal expenses if they cannot afford to pay themselves. Legal Aid seeks to ensure that people of limited means can receive the legal services they require and at the right time.

In the Isle of Man, Legal Aid is only available to eligible individuals for cases heard in Manx Courts. It is not available to companies or other organisations. If a person is eligible for Legal Aid, the cost of the legal services they receive will be paid by Government.

We have some Legal Aid schemes which are 'universal', which means that they are available to everyone, regardless of their financial status. There are other Legal Aid schemes which are only available to people of limited financial means.

#### **What is Criminal Legal Aid?**

Criminal Legal Aid covers criminal matters (e.g. theft; assault; serious driving offences) which are defined in law. When a person is charged with a criminal offence in the Isle of Man, the prosecuting authority is the Attorney General's Chambers. If the case goes to Court, there is a prosecutor and a defendant. The defendant will be represented by a criminal defence Advocate (unless they choose to represent themselves). If the defendant is eligible, their legal costs will be paid for by Criminal Legal Aid (in full or in part).

## Why is Legal Aid important?

The [United Nations](#) describes Legal Aid as an essential element of a fair, humane and efficient justice system. Criminal Legal Aid can help to reduce the length of time suspects are held in Police Stations in addition to reducing prison populations, wrongful convictions, court congestion and levels of reoffending.

Legal Aid performs a vital role in the Isle of Man. It contributes to the smooth running of the Manx justice system, and it provides support for some of the most vulnerable members of our society.

**1. What is your name?** *Giving us your name is optional. The consultation will ask if you have ever been arrested, so you may wish to consider this when deciding whether or not to provide your name.*

Name

### 2. What is your email address?

If you enter your email address, you will automatically receive an acknowledgement email when you submit your response.

Email

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

Yes

No

Organisation

Your name (unless supplied above) & your role in the 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?

You have been through the criminal justice system or supported someone who has	
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 the criminal justice system	
You are a voluntary sector, charity or support worker	

You are a Tynwald Member	
Other (please state)	

**6. May we publish your response?** (Required)

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

Yes, you can publish my response in full	
Yes, you may publish my response anonymously	
No, please do not publish my response	

[More information](#)

- 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)

<https://consult.gov.im/privacy-policy>

**There are four Criminal Legal Aid schemes in the Isle of Man**

In summary, the four Criminal Legal Aid schemes are:

**1) Legal Advice & Assistance** (also known as '**Green Form**'). An Advocate can provide up to 3 hours' initial legal advice at the start of a matter (e.g. a matter which may continue later in Court) or on a matter which can be quickly resolved. This scheme is available free of charge (or with a small contribution) to people of limited financial means only.

**2) Police Station Duty Advocate Scheme** – An Advocate can provide legal advice and assistance to a person detained at the Police Station, 24 hours a day, every day of the year. This scheme is *universal* and is automatically available to everyone, free of charge, regardless of their financial means.

**3) Court Duty Advocate Scheme** – An Advocate can advise and represent a person who has been charged with a criminal offence on the day of their first appearance in a [Summary Court](#) (on that matter). This scheme is *universal* and is automatically available to everyone, free of charge, regardless of their financial means.

**4) Full Criminal Legal Aid** – An Advocate can advise and represent a person in Court following their first appearance in a Summary Court (e.g. during a trial in a Summary Court or the [Court of General Gaol Delivery](#)). A Criminal Legal Aid Certificate is issued by the Court which gives authority for an Advocate to act on their client's behalf. This scheme is free of

charge (or with a contribution) to people of limited financial means if their case is considered to be serious enough.

**7. Of the four Criminal Legal Aid schemes in the Isle of Man, were you aware of any of them before today?**

	Yes I have received it personally	Yes I am involved in a professional capacity	Yes I have helped others to access it	Yes I was aware but have not received it or helped others access it	No I was not aware
Criminal Green Form (Legal Advice & Assistance)					
Police Station Duty Advocate					
Court Duty Advocate					
Full Criminal Legal Aid (under a certificate)					

**Advocates who do Criminal Legal Aid work**

An Advocate **must** be on the Legal Aid [Panel of Advocates](#) (the Panel) before they can carry out any Criminal 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 (this may be Criminal and/or Civil schemes).

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 (LACO) 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 LACO and the applicant, following which the Advocate can be added to the Panel.

An Advocate on the Panel is only permitted to undertake Police Station and/or Court Duty Advocate work, subject to gaining the required levels of experience and training, as set out in legislation or by the IoM Law Society. 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.

## **IoM Law Society Guidance**

The IoM Law Society issues a best practice guide called the [Duty Advocate Schemes Guidance](#) which sets out the role and responsibilities of Duty Advocates (i.e. in the Police Station and Court) and includes details of training requirements and procedures.

### **Police Station Duty Advocate training requirements**

There is a legal requirement for an Advocate who is on the Panel to have comprehensive experience of criminal defence work and complete further training before they can undertake work as a Police Station Duty Advocate. They must also attend an approved training course at least once every two years (although they are encouraged to attend annually by the IoM Law Society) to continue carrying out this type of work.

### **Court Duty Advocate training requirements**

Unlike the Police Station Duty Advocate Scheme, there is no legal obligation for a qualified Advocate who is on the Panel to undertake additional training to become a Court Duty Advocate.

The IoM Law Society has determined that Advocates on the Panel should only be able to undertake Court Duty Advocate work if they have attended an approved training course and observed, under appropriate supervision, at least 6 Courts within the previous 6 months. In order to continue carrying out work as a Court Duty Advocate, the training requirement is the same as that for the Police Station Duty Advocate: training once every two years, encouraged annually.

### **How many Advocates are there and how many do Criminal Legal Aid work?**

There are:

- 243 Advocates practising in the Isle of Man (source: IoM Law Society Oct 2018)
- 62 Advocates on the Legal Aid Panel
- 35 Advocates registered as willing to undertake Criminal Legal Aid work
- 23 Advocates registered for Police Station Duty Advocate work
- 20 Advocates registered for Court Duty Advocate work

14% of Advocates are willing to provide legally-aided criminal defence work in the Isle of Man and 9% of Advocates carry out Police Station and/or Court Duty Advocate work.

**8. What do you think are the most important qualities or factors in an Advocate who is providing legal advice to a person accused of a crime?**

	Very important	Quite important	Neither important nor unimportant	Quite unimportant	Very unimportant	Don't know
Level of experience in criminal matters						
Independence						
Professional reputation						
Quality of service						
Qualifications						
Ease of access (location, office hours etc)						
Personal recommendation						
Continuing Professional Development (CPD)						
Used the Advocate before						
Are there any other qualities we have not listed above						

**9. Would you like to see any changes to how Advocates join the Legal Aid Panel to undertake Criminal Legal Aid work?**

Yes	
No	
Don't know	
Not applicable	
Please tell us more	

**10. Would you like to see any changes to Advocates' training requirements, over & above those already in place, to become (or remain) qualified as a Police Station Duty Advocate?**

- Yes - training requirements to become a Police Station Duty Advocate
- Yes - training requirements to remain a Police Station Duty Advocate
- No - training is already adequate for becoming & remaining a Police Station Duty Advocate
- Don't know
- Not applicable

If yes please tell us more



**11. Would you like to see any changes to Advocates' training requirements, over & above those already in place, to become (or remain) qualified as a Court Duty Advocate?**

- Yes - training requirements to become a Court Duty Advocate
- Yes - training requirements to remain a Court Duty Advocate
- No - training is already adequate for becoming & remaining a Court Duty Advocate
- Don't know
- Not applicable

If yes, please tell us more

**12. An Advocate can undertake other types\* of legally-aided criminal defence work by virtue of their inclusion on the Legal Aid Panel. Would you like to see any changes to the requirements to undertake other types of Criminal Legal Aid work (i.e. under Green Form or Criminal Legal Aid Certificate)?**

\*Only Senior Advocates with at least 5 years' experience can act as defence Advocates in serious crimes (eg attempted murder)

- Yes  No  Don't know  Not applicable

If yes, please tell us more

**Persons applying and qualifying for Criminal Legal Aid**

**Police Station Duty Advocate & Court Duty Advocate**

There are no application procedures to access the Police Station Duty Advocate or Court Duty Advocate Schemes. These two schemes are universal which means they are free and available to everyone.

## Green Form & Full Criminal Legal Aid

The application forms for Green Form and Full Criminal Legal Aid are completed by an Advocate with the applicant. Completed applications are then submitted by an Advocate.

There is a '**financial means test**' component to both the Green Form and Full Criminal Legal Aid schemes. People who get an income-related benefit (eg Income Support; Income-based Job Seekers Allowance; Employed Person's Allowance) automatically qualify financially. However, someone on a low income, who is not in receipt of one of these benefits, may partially qualify and be required to pay contributions towards their legal expenses.

There is no '**legal merits test**' for Green form but it is applied to a full Criminal Legal Aid application. The application will be considered in Court by a member of the judiciary (e.g. the High Bailiff, Magistrate). The Judge may consider factors such as whether a person may be facing a prison sentence.

The table below summarises eligibility for Criminal Legal Aid schemes.

<b>Criminal 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>
Green Form	Yes	No	Any individual who passes the financial <b>means test</b>	If an individual passes a means test <b>in part</b> they will be required to make a financial contribution to their legal expenses
Police Station Duty Advocate	No	No	Any individual detained in an IoM Police station	No
Court Duty Advocate	No	No	Any individual appearing in Court for the first time on that particular charge	No
Full Criminal Legal Aid	Yes	Yes - this test is undertaken by a member of the Judiciary (e.g. High Bailiff)	Any individual who passes the <b>legal merits test and</b> passes the financial <b>means test</b>	If an individual passes the legal merits test but only passes the means test <b>in part</b> will they be required to make a financial contribution to

				their legal expenses
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**13. If you have any comments on the eligibility criteria applied to one or more of the Island's Criminal Legal Aid schemes, please tell us.**

**Green Form**

Under a Green Form, a person can get legal advice on a number of criminal matters (eg driving offences; criminal damage). Last year, the Legal Aid office received approximately 100 Green Forms for criminal matters from Advocates. Green Form applications are means tested but not legal merits tested,

Green Form allows an Advocate to give up to 3 hours of advice and assistance to a person. This is paid at the same hourly Legal Aid rates as the other schemes.

More information on Green Form for criminal matters - [www.gov.im/greenform](http://www.gov.im/greenform)

**14. If you have any comments or suggestions on Green Form (for criminal matters) please tell us.**

**Police Station Duty Advocate Scheme**

In the Isle of Man, a Police Station Duty Advocate will help you if you are arrested and taken to a Police Station. They will make sure that you are treated fairly and ensure that your legal rights are protected. A member of the Police Station Duty Advocate Scheme is available 24 hours per day, every day of the year.

A Police Officer will advise you of your right to speak to a Police Station Duty Advocate, day or night, when you are 'booked in' to the Custody Suite. The Police Station Duty Advocate Scheme is *universal* and is available to everyone, free of charge.

A Police Station Duty Advocate will:

- speak to you by telephone and/or visit you at the Police Station
- consult with you in private at the Police Station
- explain what could happen with your case
- make sure your rights are protected when you are at the Police Station
- provide you with advice and accompany you when you are interviewed by the Police
- answer any legal questions you have
- act in your best interests at all times

**15. Are you, or have you ever been, a Police Station Duty Advocate in the Isle of Man?**

Yes

No (go to Q17)

**16. Please tell us your views on the Police Station Duty Advocate scheme (eg Are there any processes which work well at the Police Station and have assisted you in your duties as an Advocate? Have you identified any aspects of Police Station Duty Advocate work which would benefit from improvement or change?)**

**17. Should a person who is detained in a place which is not a Police Station (eg ferry port, hospital, customs) who is suspected of committing a crime & is to be cautioned, be entitled to the same free legal advice as a person detained at a Police Station?**

Yes  No  Don't know

If yes or no, please tell us more if you can

**18. Have you ever been arrested and detained at a Police Station in the Isle of Man?**

*If you answer yes to this question, it does not affect how the rest of your responses are analysed for the purposes of this consultation. It is only relevant to help us to understand your experience at the Police Station and we will not ask you why you were arrested.*

- Yes  No (go to Q 26)  Rather not say (go to Q26)

**19. How long ago were you arrested & detained at a Police Station in the Isle of Man?**

Please tick all that apply

- In the last 18 months  
 Between 18 months & 5 years ago  
 Over 5 years ago

**20. When you were detained at the Police Station, was it made clear to you by a Police Officer that you had a right to speak to a Police Station Duty Advocate, and that it would be free of charge?**

- Yes  No  Don't know  Rather not say

If no, please tell us more if you can

**21. When you were detained at the Police Station did an Advocate provide you with any legal advice?**

- Yes – it was the Police Station Duty Advocate (go to Q22)  
 Yes – it was an Advocate paid for privately (go to Q26)  
 No – I did not receive any legal advice (please complete the box below then go to Q26)  
 Don't know  
 Rather not say

If no, can you tell us why you did not receive any legal advice?

**22. When you spoke to the Police Station Duty Advocate, was it:**

- In person
- By telephone
- In person & by telephone

**23. There can be a delay between the time a detainee asks to speak to a Police Station Duty Advocate and when the detainee is able to speak to them. Such delays may be unavoidable because it takes time before the Police are in a position to interview a detainee or provide disclosure information. Bearing these matters in mind, how easy or difficult was it for you to access the Police Station Duty Advocate?**

	Very easy	Easy	Neither easy nor difficult	Difficult	Very difficult	Rather not say
Access to the Police Station Duty Advocate						

**24. Were you content with the level of access you had to the Police Station Duty Advocate when you were in custody?**

- Yes  No  Rather not say

If no, please tell us more if you can

**25. How helpful was the Police Station Duty Advocate to you at the Police Station?**

	Very helpful	Helpful	Neither helpful or unhelpful	Unhelpful	Very unhelpful	Rather not say
How helpful was the Police Station Duty Advocate?						

**26. Do you have any other comments or suggestions regarding the Police Station Duty Advocate Scheme? (e.g. What works well? What doesn't work well? What could benefit from change or improvement?)**

**Support for young people and vulnerable adults - Appropriate Adult Scheme**

An Appropriate Adult is a volunteer whose role is to safeguard the interests, rights, and welfare of young people and vulnerable adults who have been arrested and detained at a Police Station. An Appropriate Adult can:

**An Appropriate Adult does not give legal advice.** The Police Station Duty Advocate is still available to a young person or vulnerable adult at the Police Station.

In the Isle of Man, the Appropriate Adult Scheme is run by Adult Services (Department of Health & Social Care). Volunteers are sought via the Centre for Information Resource Care and Assistance (CIRCA) IoM.

Volunteers are paid a **flat fee of £10** to attend the Police Station, irrespective of the time of day, or the length of time that they spend there. In 2018/19, 254 people under the age of 18 were arrested and there are currently 10 registered Appropriate Adults in the scheme.

Members of the Appropriate Adult Scheme cannot be a Police Officer or member of Police staff. A Social Worker can act as an Appropriate Adult for a young person to whom they are assigned, but they may not be available to attend a Police Station. Any delay in securing an Appropriate Adult can lead to delays in custody proceedings.

[CIRCA - Register as an Appropriate Adult](#)

[Apply to volunteer as an Appropriate Adult](http://www.circa.org.im/volunteering) [www.circa.org.im/volunteering](http://www.circa.org.im/volunteering)

**27. Have you ever volunteered as an Appropriate Adult in a Police Station?**

Yes  No (go to Q 29)  Rather not say (go to Q29)

**28. Please tell us about your experiences as an Appropriate Adult and any views you may have (eg How could the scheme be improved? How could more volunteers be recruited and/or retained? Are training needs being identified / met?)**

**29. Have you ever been supported by an Appropriate Adult at the Police Station?**

Yes  No (go to Q31)  Rather not say (go to Q31)

*If you answer this question, it does not affect how the rest of your responses are analysed for the purposes of this consultation. It is only relevant to help us to understand your experience at the Police Station when you were supported by an Appropriate Adult. We will not ask you why you were at the Police Station.*

**30. Please tell us about your experience when you were supported by an Appropriate Adult at the Police Station (eg Did you feel you were given enough access to the Appropriate Adult? How helpful was the support you were given? Could anything have been done differently that may have helped you?)**

**31. Do you have any other comments or suggestions regarding the Appropriate Adult scheme? Please tell us your views (eg How could more volunteers be recruited and retained? How could the scheme be improved?)**



## Interpreters

The right to a fair trial is enshrined in Article 6 to the European Convention on Human Rights and set out in Schedule 1 of the Isle of Man's [Human Rights Act 2001](#). It follows that people have the right to an **interpreter** when they are arrested and detained at a Police Station or when they appear in Court, if they are not proficient in English.

The Police and the Courts have arrangements in place for contacting interpreters, but the demand for their services can increase at certain times of year (e.g. during the TT festival). As the Island's population becomes more diverse, demand for interpreters' services may increase further.

### [Registering as an interpreter](#)

If you would like to register as an interpreter please email [change@gov.im](mailto:change@gov.im).

### **32. Have you ever acted as an interpreter at a Police Station or in Court?**

- Yes - Police Station
- Yes – Court
- Yes - Police Station & Court
- No (go to Q34)
- Rather not say (go to Q34)

### **33. Please tell us about your experience as an interpreter, and any suggestions or views you may have (eg What aspects of the recruitment worked well? How could we secure the services of more interpreters in future? How could we ensure quality services?)**

### **34. The Department of Home Affairs pays interpreters an hourly rate to attend the Police Station. These rates have been in place since 2007. Do you think they should be reviewed?**

Hourly rate

- Monday - Friday £8.05 per hour (minimum fee £32.20)
- Sunday and Bank Holiday £16.25 per hour (minimum fee £65)

Yes  No  Don't know  
If yes, please tell us more

**35. Do you have any other comments or suggestions on the provision of interpreter services at the Police Station or in Court? (eg How can we access the services of more interpreters? How can we ensure the quality of these services?)**

### **Court Duty Advocate Scheme**

In the Isle of Man, every person who is charged with a criminal offence must appear in a Summary Court before their case can proceed further. Court Duty Advocates are fully aligned with this process and they play a vital role in the smooth running of the justice system.

On the day of a Summary Court sitting, the Court Duty Advocate is given details of individuals who are due to attend Court for their first appearance. The Duty Advocate uses a private room to meet defendants, to discuss details of the case (or matter) with the defendant, explain Court processes, provide legal advice and answer relevant questions.

The Court Duty Advocate is present throughout an individual's first appearance in Court and makes representations on their behalf. They can also assist an individual in applying for full Criminal Legal Aid (subject to being assessed by the Court).

#### [Court Duty Advocate rota](#)

The Court Duty Advocate rota is prepared by the [IoM Law Society](#) to ensure that a Court Duty Advocate is available for all Summary Courts, which are held Monday to Saturday throughout the year. Court Duty Advocates are paid at the hourly Legal Aid rates, and they do not receive payment for being on the Duty rota.

**36. Have you ever acted as a Court Duty Advocate in the Isle of Man?**

Yes  No (go to Q38)  Don't know (go to Q38)

**37. From your experiences as a Court Duty Advocate, do you have any views or suggestions on the scheme? (e.g. Are there any processes which work well in the Courts and have assisted you in your duties? Have you identified any aspects of Court Duty Advocate work which could be improved or changed?)**

**38. Have you ever appeared in Court in the Isle of Man charged with a criminal offence?**

*If you answer yes to this question, it does not affect how the rest of your responses are analysed for the purposes of this consultation. It is only relevant to help us to understand your experience with the Court Duty Advocate and we will not ask you why you were in Court.*

- Yes  No (go to Q44)  Rather not say (go to Q44)

**39. How long ago did you appear in Court in the Isle of Man charged with a criminal offence?**

Please select all that apply

- In the last 18 months  18 months - 5 years ago  Over 5 years ago

**40. When you attended Court for your first appearance, did you get advice from the Court Duty Advocate?**

If you have appeared in Court on a criminal matter more than once, please answer in terms of your most recent case

- Yes – I spoke to the Court Duty Advocate  
 No – I chose to pay privately for an Advocate of my choice (go to Q44)  
 No – I chose to represent myself in Court (please fill in the box below then go to Q44)  
 No – I did not know I could speak to the Court Duty Advocate (please fill in box below then go to Q44)

If you had no-one to represent you, what happened when you went into Court?

**41. How easy or difficult was it for you to access the Court Duty Advocate on your first appearance in Court?**

Very easy   Easy   Neither easy or difficult   Difficult   Very difficult   Rather not say

Access to the Court Duty Advocate

**42. Were you content with the level of access you had to the Court Duty Advocate?**

Yes    No    Rather not say

**43. How helpful was the Court Duty Advocate to you on your first appearance in Court?**

Very helpful   Helpful   Neither helpful nor unhelpful   Unhelpful   Very unhelpful   Rather not say

Helpfulness of Court Duty Advocate

**44. Do you have any other comments or suggestions on the Court Duty Advocate Scheme? (eg What works well? What doesn't work well? What could benefit from change or improvement?)**

## Full Criminal Legal Aid, vulnerable people & Criminal Appeals

An application for a defendant to receive full Criminal Legal Aid is completed by an Advocate (often the Court Duty Advocate), signed by the defendant, and submitted to the Court. The decision to grant Criminal Legal Aid is made by the Court and is based on the defendant's **financial status** and the **legal merits** of their case.

If a defendant receives certain income-related benefits (e.g. Income Support; Income-based Job Seekers Allowance) they will automatically qualify in terms of their financial status. If the defendant is not in receipt of these benefits, their financial means will be determined by the Court based on their income, disposable capital, savings, dependents and expenses. The financial limits are set out in the [Criminal Legal Aid Regulations 1993](#) (as amended).

For an application to be considered sufficiently serious, the Judge may take into account factors such as the possibility of a custodial sentence or loss of the applicant's job.

Subject to the necessary approvals, a Criminal Legal Aid certificate will be issued by the Court. This certificate authorises an Advocate to provide legal services to the defendant throughout their case. Subject to the defendant's financial means, they may be granted full Criminal Legal Aid (ie 100% of their legal costs will be paid for by the IoM Govt.) or they may be required to pay a contribution.

The Advocate will then carry out work on the defendant's behalf. This may include gathering witness statements, preparing for Court and representing their client in a criminal trial.

Advocates submit their 'Bills of Costs' (invoices) to the Costs Officer, who is based in the Courts. The Costs Officer reviews each invoice in detail and may approve the invoice for payment or make deductions before approval.

### 45. Are you an Advocate who has carried out work under a Criminal Legal Aid certificate in the Isle of Man or would like to do so in future?

Yes  No

### 46. Have you ever received legal advice and representation from an Advocate under a Criminal Legal Aid certificate?

*If you answer yes to this question, it does not affect how the rest of your responses are analysed for the purposes of this consultation. It is only relevant to help us to understand your experience of receiving legal advice / representation under a Criminal Legal Aid Certificate. We will not ask why you were receiving it.*

Yes  No  Don't know  Rather not say

### 47. Would you like to see any changes to the way in which Criminal Legal Aid certificates are assessed and/or issued?

Yes  No  Don't know

If 'yes', what changes would you like to see?

**48. If a person's average weekly disposable income exceeds £191, or their disposable capital exceeds £10,000 they are legally required to pay a contribution towards their legal costs. These limits are set out in legislation - do you think they are set at the right level?**

Yes  No  Don't know

If no, what income / capital amounts would you consider to be appropriate or should the financial means test be based on other criteria?

**49. A vulnerable person can be defined as a child or adult who is unable to take care of themselves or protect themselves from harm or exploitation due to age, illness, disability or trauma. Should a person who has been assessed as being vulnerable should be automatically entitled to Criminal Legal Aid, regardless of their financial means?**

Yes  No  Don't know

If 'yes', which Criminal Legal Aid Scheme(s) would this apply to? (Police Station Duty Advocate & Court Duty Advocate are already universal)

Criminal Green Form  Full Criminal Legal Aid

Please tell us more if you can

**50. Assessment of vulnerability could cause delays in determining whether a person is eligible for Criminal Legal Aid. If you think vulnerability should be included as part of an individual's assessment to receive Criminal Legal Aid, how this could work in practice?**

**51. There is no 'legal merits' test applied to criminal cases being brought before the Court of Appeal in the Isle of Man. This includes appeals which are funded by Criminal Legal Aid. Should someone's access to justice be interfered with if an Advocate assesses that they have a 50% chance or less of successfully appealing a conviction and/or sentence on behalf of their client?**

- Yes - the likelihood of an appeal's success should be taken into account (ie chances of success should be over 50%)
- No - the likelihood of an appeal's success should not be taken into account (ie chances of success can be under 50%)
- Don't know
- Other

Please tell us more

**52. Do you have any further comments on full Criminal Legal Aid, Certificates, vulnerability criteria or Criminal Appeals?**

## **Self Representation**

People sometimes appear in Criminal Courts 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 Criminal Legal Aid
- may not be financially eligible to receive Criminal Legal Aid, nor able to afford to pay an Advocate on a private basis.

Those people who do self-represent in Court may need to conduct their own research, complete legal procedures, and present their case in front of a jury.

Whilst there are no official figures for self-representation in the Isle of Man, the Criminal Courts are not set up to deal with those who self-represent, and Court time can be wasted. For an individual facing the Court without an Advocate, it can also be a daunting and stressful time.

### Impact of increased self-representation

If, for example, the Government stopped funding the Court Duty Advocate Scheme, it would save approximately £110,000 per year in Criminal Legal Aid.

However, it could also result in hundreds of people every year going to a Summary Court (e.g. the High Bailiff's Court) for their first hearing, with no Advocate there to advise or represent them. This would affect everyone who could not afford to pay privately for a criminal defence Advocate.

Those who could not pay would be left to represent themselves in the Summary Court. While this could reduce costs to Legal Aid, it could significantly increase costs to the Courts.

Members of the Judiciary and Officers of the Court would be left to provide extra support to people who were representing themselves. This could:

- place additional pressures on Court time and resources
- contribute to delays
- cost much more than the current Court Duty Advocate Scheme
- reduce access to justice

### 53. Have you ever represented yourself (i.e. without an Advocate to defend you) in a criminal Court in the Isle of Man?

Yes  No (go to Q55)

### 54. Why did you represent yourself in Court?

- It was my choice - I wanted to represent myself
- It was not my choice - I wanted a defence Advocate, but I did not qualify for Criminal Legal Aid and I could not afford to pay an Advocate myself
- Don't know
- Other

Please tell us more if you can



**55. 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?

**56. How could we best support people who self-represent in Criminal Courts?**

**Cost of legally-aided criminal cases**

The cost of legally-aided criminal cases can vary from hundreds of pounds to tens of thousands.

In order for the Isle of Man Government to continue to fund Criminal Legal Aid, we must consider how we can spend less, spend well, spend wisely and spend fairly in all aspects of Legal Aid.

[Criminal Legal Aid expenditure](#) for the last 6 financial years (2013/14 to 2018/19) has been published by the [Legal Aid Office](#). Expenditure is split between the Island's four Criminal Legal Aid schemes.

Over the past 6 years, Criminal Legal Aid costs have ranged from £1.7 million to £2.4 million per year (an average of about £2.1 million per year).

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.

**Examples of factors which impact on Criminal Legal Aid expenditure**

Legal Aid expenditure depends on a range of factors, some of which are included in the table below.

<b>Category / agency</b>	<b>Impacting factor</b>
Legislation - Criminal law	<ul style="list-style-type: none"> <li>▪ Defines criminal offences</li> <li>▪ Sets out severity of punishment and rehabilitation</li> </ul>
Members of the public	<ul style="list-style-type: none"> <li>▪ Number of crimes committed</li> <li>▪ Seriousness of crimes committed</li> <li>▪ Complexity of crimes committed</li> <li>▪ Number of crimes reported</li> </ul>
Isle of Man Constabulary	<ul style="list-style-type: none"> <li>▪ Number of arrests</li> <li>▪ Number of crimes recorded</li> <li>▪ Number of charges</li> <li>▪ Seriousness of charges</li> <li>▪ Complexity of charges</li> <li>▪ Detection rates</li> </ul>
Prosecutions Division, Attorney General's Chambers	<ul style="list-style-type: none"> <li>▪ Number of prosecutions</li> <li>▪ Seriousness of prosecutions</li> <li>▪ Complexity of prosecutions</li> </ul>
Criminal Defence Advocates (undertaking Criminal Legal Aid Work)	<ul style="list-style-type: none"> <li>▪ Number of Criminal Green Forms</li> <li>▪ Number of Police Station Duty Advocate clients</li> <li>▪ Number of Court Duty Advocate clients</li> <li>▪ Number of clients under Criminal Legal Aid certificates</li> <li>▪ Severity of cases</li> <li>▪ Complexity of cases</li> <li>▪ Number of expert reports required</li> <li>▪ Number and length of trials</li> </ul>
Courts	<ul style="list-style-type: none"> <li>▪ Number of Criminal Legal Aid applications</li> <li>▪ Number of adjournments</li> <li>▪ Waiting times in Courts</li> </ul>
Courts / IoM Prison	<ul style="list-style-type: none"> <li>▪ Use of video link technology between Courts &amp; IoM Prison</li> </ul>
IoM Prison & Probation Service	<ul style="list-style-type: none"> <li>▪ Availability of Probation Officers in Summary Courts (to prepare Stand-Down reports for defendants &amp; reduce the no. of adjournments)</li> <li>▪ Number</li> </ul>

## Very High Cost Cases and non-Legal Aid costs

When a single case costs the IoM Government over £20,000, it is categorised as a 'very high-cost case' (VHCC).

In 2018/19, there were 11 criminal VHCCs, ranging from approx. £21,000 to approx. £170,000. VHCCs appear to reflect the complexity and/or severity of cases, and they are becoming more frequent.

### **Additional non-Legal Aid costs**

The overall cost to the Isle of Man Government in any criminal case will be significantly higher than just the costs incurred by Criminal Legal Aid. This is because there are additional costs incurred by the Police, the Attorney General's Chambers (Prosecutions Division), the Courts, the Probation Service, and in some cases the Prison. Changes in policies in one agency can affect other agencies.

## **Legal Aid Rates - Hourly / On-call / Call-out**

### **Hourly rates**

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)

These rates are lower than the rates Advocates could charge to private, fee-paying clients, which could range between £250 and £450 per hour - [P36 Isle of Man Law Society Legal Aid consultation submission 2016](#).

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.

### **On-call payments**

'On-call' payments are made to Advocates who are on the Police Station Duty Advocate rota, which covers 24 hours a day, every day of the year. Duty Advocates receive this payment as they have to be available to attend the Police Station if called at any time of day or night.

The rota is split into two 12-hour shifts per weekday (day and night) and two 24-hour shifts per weekend (Saturday and Sunday). A Senior Advocate, who can be consulted if a serious crime is committed, is also available.

### **Call-out rates**

Police Station Duty Advocates are also paid 'Call-out' rates if they are contacted by a Custody Officer to assist a person who has been detained at a Police Station. Call-out rates are the same as hourly rates. A Police Station Duty Advocate will receive a call-out payment based on the time that they spend at the Police Station.

### **Police Station Duty Advocate rates**

The rates of pay for Police Station Duty Advocate work are:

- £1215 per week On-Call payment for a Police Station Duty Advocate
- £310 per week On-Call payment for the Senior Advocate
- £115 per hour Call-Out payment for Junior Duty Advocate
- £135 per hour Call-Out payment for Senior Duty Advocate

### [Legal Aid rates of pay have remained the same since 2009](#)

The IoM Law Society has expressed concern that the Legal Aid rates have not risen since 1 April 2009, despite a previous commitment by Government to increase the rates.

The hourly rates were due to increase on 1 April 2010 (to £125/£150 per hour for Junior/Senior Advocates) but this increase was not introduced. It is understood that this was due to the impact of the revised VAT agreement with the UK, which (in Oct 2009) the then Chief Minister announced would cause the Isle of Man to lose c£90 million in income in 2010-2011.

The IoM Law Society has in the past suggested that it could withdraw its support for Legal Aid Schemes due to the disparity between Legal Aid rates and private rates. It follows that if Advocates do not consider that they are fairly remunerated for the Legal Aid work that they do, they may choose to stop providing their services.

Whilst many Advocates remain committed to continuing to undertake legally-aided work (some have described it as *'the right thing to do'*) it is coupled with an expectation that they should be fairly paid.

### **57. Do you think that Legal Aid rates of pay should be reviewed?**

Please select all that apply

- Yes, hourly rates  Yes, on-call rates  No  Don't know

If yes, please tell us more

**58. The hourly Legal Aid rates of pay are £115 per hour for Junior Advocates and £135 per hour for Senior Advocates. Should this two-tier model for Legal Aid rates remain in place?**

- Yes - the two-tier model should remain in place
- No - there should be one single rate for all Advocates
- Don't know
- Other (please state)

If other, please tell us more

**59. Do you have any further comments or suggestions about Legal Aid rates of pay?**

If yes, please tell us more

**60. Do you have any comments or suggestions as to how Criminal Legal Aid could be organised, managed or overseen differently to better control expenditure in the future?**

If yes, please tell us more

## Fixed fees

A 'fixed fee' is a fixed amount that is paid to an Advocate for undertaking a specific piece of work. For example, a fixed fee could be paid to an Advocate:

- to attend a Summary Court trial based on 7.5 hours per day
- to attend a sentencing hearing at Summary Court, based on 1 hours' attendance

The amount at which a fixed fee is set depends on the length of time that is allocated to a matter and the agreed hourly rate.

In the above examples, if the hourly rate was £150, the fixed fees would work out as:

- Summary Court trial per day = £1125 (i.e. 7.5 x £150)
- sentencing hearing at Summary Court = £150 (i.e. 1 x £150)

If a particular matter takes significantly longer to complete it can be considered as an exception for payment purposes.

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.

In the Isle of Man, there are currently no fixed fees and Advocates are paid at an hourly rate. Some Advocates have expressed concern that only hourly rates of pay can properly reflect the work that has been undertaken (ie paid at an hourly rate for the time it takes to complete a matter). Other Advocates have suggested that if fixed fees were set at the right level, and for selected matters (eg in Summary Court) then there could be benefits for both the Advocates undertaking Criminal Legal Aid work and the IoM Government.

### Fixed fees in other jurisdictions

There are fixed fees in place in Scotland, England and Wales, and they are due to be introduced in Jersey (for criminal matters only) following the introduction of new legislation.

Fixed fees can be set at very different rates. For example, fixed fees in England are based on £45 per hour, and Jersey's (draft) new fixed fees are based on £165 per hour.

Guernsey's Legal Aid model is based on the Isle of Man's, but they have a single Legal Aid rate of £167 per hour. Guernsey does not have fixed fees.

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

Yes  No  Don't know

If yes or no, please tell us more if you can

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

If yes, please tell us more

**63. Do you have any other comments on fixed fees?**

### **Public Defender Scheme**

A Public Defender Scheme (PDS) is a system in which lawyers are directly employed by the Government to represent the interests of defendants in criminal matters.

At present, people who are eligible for Criminal Legal Aid in the Isle of Man receive advice from an Advocate in private practice, who is paid by IoM Government. With a PDS, those people who are eligible for Criminal Legal Aid would be advised by an Advocate who is employed and paid by IoM Government.

The [SAVE Progress Report](#) submitted to Tynwald in June 2018 included a 'Proof of Concept' for a PDS, which included an **estimate** for setting up a PDS office in the Isle of Man, employing 6 Advocates and 4 administration staff. The report estimated that a PDS would cost around £1.2m per year and could deliver an **estimated** saving of £1.1m per year based on Criminal Legal Aid expenditure of £2.3m per year. The report also made reference to the importance of safeguarding the independence of a PDS from Government, and acknowledged that this would require a 'robust solution'.

The estimated savings figures have been challenged by the IoM Law Society as there is concern that a PDS with 6 Advocates and 4 administrators would not be adequately resourced to carry out the volume of work required, and cover the Police Station Duty

Advocate work 24hrs a day, 365 days of the year. The IoM Law Society also expressed concern that financial savings should not be the primary aim of a PDS, and that PDS Advocates may not be sufficiently independent of Government.

### **Full & partial Public Defender Schemes**

If a PDS was established in the Island, it would be staffed by Manx Advocates and administrative staff who would be employed by IoM Government.

In a **full PDS**, Advocates would be responsible for providing **all** legally-aided criminal defence services to people in the Island up to and including the Court of General Gaol Delivery (which was not factored into the report). No further criminal legal aid work would be available to Advocates in private practice, so there would be no criminal legal aid payments made by Government. People who are eligible to receive Criminal Legal Aid would still receive the legal services they require, but they would be provided by Advocates working in the PDS. Services which are currently free to all (Police Station Duty Advocate and Court Duty Advocate schemes) would remain free. People who do not qualify for Legal Aid would continue to pay a private criminal defence Advocate, subject to their availability, as they do now.

In a **partial PDS** there would be fewer Advocates and administrative staff than in a full PDS. PDS Advocates would be responsible for providing **some** legally-aided criminal defence services to people in the IoM, either as a proportion of the overall work available (i.e. shared with private practice) or on specific matters only. Subject to the responsibilities of the PDS, Advocates in private practice could continue to provide legally-aided criminal defence services, which would be paid for by the IoM Government. People who are not eligible for Legal Aid would continue to pay a private criminal defence Advocate, as they do now.

### [Public Defender Schemes in the UK](#)

#### **England & Wales**

In England and Wales, the PDS was established in 2001 and was the first salaried criminal defence service in England and Wales. Between 2001 and 2003, eight Public Defender Offices (PDOs) were opened in Liverpool, Middlesbrough, Birmingham, Cheltenham, Chester, Darlington, Swansea and Pontypridd. Following a series of pilots, by October 2018 there were four PDOs remaining. Each of the PDOs offers services 24 hours a day, 365 days of the year, and provides for <0.2% of the Criminal Legal Aid market. The PDS in England and Wales were not established to save money but instead to provide a guaranteed 'safety net' in areas where there was a potential market failure.

#### **Scotland**

Scotland has Public Defence Solicitors' Offices (PDSO) across 7 cities and covers approximately 3% of the criminal legal aid 'market sector'. The remaining 97% of Criminal Legal Aid work is provided by solicitors in private practice. The original proof of concept was for the PDSO to provide a 'safety net' for individuals and a tripartite agreement was made in 2010 between the Scottish Legal Aid Board, Law Society of Scotland and the Scottish



Government. A study which compared outcomes for cases defended by the PDSO and those in private practice showed a higher level of acquittal by PDSO Solicitors following jury trials and lighter sentences as a result of early pleas. The PDSO has also acted as a route into the profession for aspiring criminal defence solicitors and prides itself on the high quality and credibility of its staff, who are described as fearless in the defence of their clients. The work of PDSO solicitors is also fully independent and human rights compliant.

**64. To help find out more about your views on the Isle of Man's current Legal Aid system in comparison to a Public Defender Scheme, please tell us which terms you think best describe the two options. (select all that apply)**

	Current system (Advocates in private practice paid by IoM Govt)	Public Defender Scheme (Advocates employed by IoM Govt)	Both the same	Don't know
More independent				
More professional				
More experienced advocates				
More bureaucratic				
More expensive				
More efficient				
Better career progression for Advocates				
Better job security for Advocates				
Better access to Advocates for				

the public				
Better quality of service				
Better value for money				

**65. In principle, would you support the establishment of a Public Defender Scheme (either full or partial) in the Isle of Man?**

Yes  No (go to Q67)  Don't know

If no, please tell us why then go to Q67.

**66. Which option(s) best describe your support in principle for the establishment of a Public Defender Scheme in the Isle of Man?**

Please select all that apply

- A full or partial PDS if it can be an arms-length body, independent from both the Attorney General's Chambers & Government
- A full or partial PDS if it can deliver significant financial savings to Government
- I would only support a partial PDS
- I would only support a full PDS
- Don't know
- Other (please state)

Please tell us more if you can

## Options

### 67. Which option(s) for the future provision of Criminal Legal Aid in the Isle of Man would you support?

Please tick all that apply

- A - Do nothing. Keep the current Criminal Legal Aid system unchanged
- B - Review Legal Aid rates of pay
- C - Review Legal Aid rates & introduce Fixed Fees for specific criminal matters
- D - Introduce a partial Public Defender Scheme
- E - Introduce a full Public Defender Scheme
- F - Don't know
- G - Other (please state)

If 'Other' please tell us more

### 68. If you had to choose one option from the above list as your preferred option for Criminal Legal Aid in the future, which would it be?

A            B            C            D            E            F            G

Preferred option

**69. Do you have any final comments or suggestions about Criminal Legal Aid in the Isle of Man?**

Thank you for completing the consultation.

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