



GOVERNMENT CONSULTATION PAPER

LEGAL AID AND LEGAL ASSISTANCE

“A SUSTAINABLE FUTURE”

MINISTRY FOR JUSTICE
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LEGAL AID & LEGAL ASSISTANCE REFORM

"A Sustainable Future"

1. MINISTERIAL FOREWORD

- 1.1 The Government is currently undertaking a root and branch review of the Criminal Justice System and parts of the Civil Justice System. As part of that review the Government is considering various ways of organising publicly funded legal services.
- 1.2 This paper explains how the Government proposes to deliver a new system of legal aid and legal assistance that will be sustainable in the long run. We hope that it will be followed by and form the basis of an intensive consultation exercise with the legal profession and relevant stakeholders which will be launched immediately.
- 1.3 The Government recognises that public funding of legal representation in certain areas of the law is crucial to ensure proper access to justice and compliance with the state's own obligations under the Gibraltar Constitution (which reflect obligations in the European Convention of Human Rights). However, that funding needs to live within a sustainable (and finite) budget. Recent year on year increases in spending (in particular) on legal assistance is simply not sustainable.

- 1.4 The Government also believes that there has been a lack of proper control and proper management of the legal assistance budget which has contributed to very noticeable abuses outlined in the Executive Summary. Many practitioners are extremely hard working and dedicated. The Bar Council itself in papers submitted to the Government recognises substantial control and management deficiencies in the current system which has clearly not kept up with the times.¹ This is not a criticism of any one individual but of the system. The Government wants to create a system that is fair to users, fair to the taxpayer and fair to practitioners.

D A Feetham
Minister for Justice
10 April 2008

¹ Bar Council Papers on Legal Assistance and Legal Aid (reference *AL/AMP/Bar Council/notes/Legal Assistance* and *AL/AMP/Bar Council/Notes/Legal Aid*)

2. **Executive Summary**

2.1 The Government has already engaged the Bar Council in discussions on this issue and we are both agreed that the current legal aid and legal assistance systems of public funding is in need of substantial reform. Of particular concern to Government are the following:

- The total legal aid and assistance bill has increased by 280.74% from 1999/2000 to 2006/2007 (£314,239.83 to £882,190.01). It had more than doubled in the space of just one year from 2002/2003 (£447,740.77) to 2003/2004 (£1,101,290.71) [Appendix 1](#). This kind of exponential growth is not sustainable in a small jurisdiction like Gibraltar with limited resources.
- Of these annual figures, criminal legal aid represents a relatively small proportion (e.g. in 1999/2000 of the total legal aid and legal assistance cost of £314,239.83 only £7,582.61 was spent on criminal legal aid and in 2006/2007 of the total cost of £882,190.01, £79,641.20 was spent on criminal legal aid).
- The distribution of payment amongst firms is also noteworthy. From 2000/2001 to 2005/2006 one firm benefited the most from legal assistance. They were also the second highest beneficiaries in 1999/2000 and 2006/2007. By 2003/2004 that firm had received more than double what the second placed firm had received and in any one year two (at most three) firms were by far the main beneficiaries of the legal assistance system [Appendix 2](#). A higher level of disbursements is also associated with the cases involving some of these firms in these years.

- The Government is also concerned by the high level of disbursements. Of the total legal assistance bill for 2005/2006, 27.75% (i.e. £209,888.71) went on disbursements. In 2006/2007 it was 23.21% (i.e. £190,078.29). The recent decision by the Acting Chief Justice in Regina v Anthony Sedgwick CC No 28 of 2006 which effectively entitles Counsel from outside the jurisdiction to charge higher rates than those set out in the rules for local Counsel, can only increase the trend. The Government believes this is unjustified and will legislate to reverse the situation. Indeed, this year (2007/2008), the amount of disbursement fees for legal assistance is £273,147.57 out of £771,934.30 which represents 35.38%. The Government believes that the use of outside Counsel is not only a drain on public funds but can lead to our own lawyers not gaining the necessary advocacy experience needed in a vibrant legal profession.
- Despite the significant amounts of public funds that have been spent on legal assistance, the recovery of costs from non-legally assisted parties is negligible. From 1999/2000 to 2005/2006 only £2,209.13 in the year 2003/2004 was recovered to the consolidated fund from non-legally assisted parties. During 2006/2007 the recovery was £16,487.55 and in 2007/2008 the recovery has been £155,656.84 **Appendix 1**. Most of the recovery for 2007/2008 has been recent. This raises a number of issues. If the position is that all legally assisted cases prior to 2006/2007 were lost and that most were lost thereafter, then it stands to reason that legal assistance should not have been granted on many of those cases since they clearly did not stand a reasonable prospect of success. If the position is that in many of those cases a costs order in favour of a legally assisted party was made but not enforced by their lawyers or that those lawyers did not insist on the payment of costs

as part of an overall settlement, then there has been an abuse of public funding on a scale which would not be tolerated in any jurisdiction. It is surprising to say the least that those firms who have been the main beneficiaries of legal assistance (particularly in personal injury cases) have ploughed nothing back into the consolidated fund by way of recovery of costs.

- There are also specific examples of abuse of the legal assistance system, some of which are in the public domain (e.g. Cano v. Cano Civil Appeal 15 of 2006). Other examples are not. For instance on the 4 December 2007 the Registrar reported a number of cases of concern. In one instance there were two cases of personal injury involving the same claimant where the bill for legal assistance came to £51,117.45 for one claim and £30,944.50 for the other. Both claims were eventually settled collectively for £6,000 by way of damages. The Defendants are now claiming payment from the Consolidated Fund for £37,525.52. The Government believes this an example of unacceptable abuse of the system of legal assistance.
- A related point is that in England and Wales, a costs order against a legally aided party would very rarely be enforced either against that party or the Legal Aid Fund. Prior to 1994, where in a civil case a legally aided party was unsuccessful, the usual order would have been for an order for costs to be made against him not to be enforced without leave of the court. After 1994 the usual order became final determination of legally aided party's liability to pay those costs be postponed in accordance with the relevant legal aid regulations. Effectively neither the state nor the legally aided party had much of an exposure to costs in real terms. In Gibraltar costs orders against the Consolidated Fund can and are often made.

Therefore, there is always a double exposure for the taxpayer which does not exist in the Anglo-Welsh system. Effective control of legal assistance is therefore all the more necessary in Gibraltar. In any event the Government does not see why the position in this respect should be different to the UK.

- It is clear from the analysis above that there has also been a lack of proper management and control of legal assistance. This is not a criticism of any one individual but of a system which has clearly been overtaken by the times. At the moment the administration and management of both legal assistance and legal aid in Gibraltar falls on one person - the Registrar. In legal assistance cases, the Registrar also decides whether to grant legal assistance but in criminal cases, the decision is made by the court seized of the matter. The Registrar has a number of other duties including judicial and administrative/management duties. The Government believes that it cannot have an efficient public funding system run entirely by one person. It also takes the view that the administration and management of public funding should not be decided by a judge. These are not judicial functions.

3. GOVERNMENTAL RESPONSIBILITIES UNDER THE EUROPEAN CONVENTION ON HUMAN RIGHTS

- 3.1 Civil and criminal cases raise rather different issues of policy as far as human rights are concerned. All European jurisdictions which have accepted the European Convention of Human Rights acknowledge, that pursuant to Article 6(3) and particularly 6(3)(c) (section 8(2)(d) of

the Gibraltar Constitution) everyone charged with a criminal offence has the following minimum rights:

“to defend himself in person or through legal assistance of his own choosing or if he has not sufficient means to pay for legal assistance to be given it free when the interests of justice so require”.

3.2 There is no express equivalent in the Convention for civil cases though it has also been referred to by the European Court of Human Rights.²

3.3 The Government believes that a summary of its Constitutional obligations as far as public funding of the judicial system is as follows:

- (a) Criminal legal aid should be available for the defence of all criminal offences³;
- (b) There may be a means test for criminal legal aid so that it can be refused if a defendant has sufficient means;
- (c) A defendant who has insufficient means must receive criminal legal aid free and without payment or contributions⁴;
- (d) There should be legal assistance in civil cases where it is indispensable for the effective access to the Courts allowing a test of both means and of merits. Moreover, it is not incumbent on the

² Where the assistance of a lawyer is “indispensable for effective access to court” either because legal representation is compulsory or because of the “complexity of the procedure or of the case”. (*Airey v Ireland (1979) Series A No 32*; *X & Y v Netherlands (1995) 1DR66 – an obligation may arise in certain circumstances*; *Airey v Ireland (1979 – 80) EHRR 305 – may be required to guarantee certain rights to court are practical and effective*).

³ Note that the Bar Council recommended that certain Road Traffic matters be excluded but the Government takes the view that this would not be consonant with its Constitutional obligations.

⁴ The English practice was until recently in breach of this provision.

State to seek through the use of public funds to ensure total equality of arms between the assisted person and the opposing party, as long as the assisted person is afforded a reasonable opportunity to present his or her case under conditions that do not place him or her at a substantial disadvantage *vis-à-vis* the adversary⁵.

- (e) The question whether the provision of legal aid is necessary for a fair hearing must be determined on the basis of the particular facts and circumstances of each case and will depend, *inter alia*, upon the importance of what is at stake for the applicant in the proceedings, the complexity of the relevant law and procedure and the applicant's capacity to represent him or herself effectively⁶.

- 3.4 The Government is committed to ensuring genuine access to justice in the context of its Constitutional obligations and the proposals contained in this paper should be seen in that context.

4. **MANAGING LEGAL AID**

- 4.1 The Government proposes to establish a body closely linked to but operationally independent of Government in its decision making to administer all aspects of legal aid and legal assistance. That body would be supported administratively by civil servants who would be attached to the Ministry of Justice. That would include the grant of legal aid and legal assistance and the control of expenditure in any one case. It would not include the assessment of costs at the conclusion of the case or,

⁵ *Steel and Morris v The United Kingdom Judgment 15/5/2005 para 62.*

⁶ *Steel and Morris v The United Kingdom Judgment 15/5/2005 para 61.*

indeed, inter parties' liability for costs which are essentially judicial functions.⁷

4.2 Different jurisdictions have taken a different view about the creation or appointment of such bodies and their members. Some create reserve places for stakeholder groups as was the case with the old English Legal Aid Board. Others give the appointing minister greater discretion in appointments. The provisions in the English Access to Justice Act 1999, are a good example of powers given to the appointing minister:-

- (a) the Commission shall consist of –
 - (i) not fewer than seven members, and
 - (ii) not more than twelve members;

but the Lord Chancellor [Minister for Justice]⁸ may by order change [either number].

- (b) The members of the Commission shall be appointed by the Lord Chancellor [Minister for Justice]; and the Lord Chancellor [Minister for Justice] shall appoint one of the members to Chair the Commission.
- (c) In appointing persons to be members of the Commission the Lord Chancellor [Minister for Justice] shall have regard to the desirability of securing that the Commission includes members who (between them) have experience in or knowledge of –

⁷ Note that in the UK the Legal Services Commission can assess the costs of lawyers they are funding but that assessment would not affect the liability of the other side to those costs or its quantum.

⁸ It was until recently the Minister for Justice and is now the Lord Chancellor who is himself a Minister.

- (i) the provision of services which the Commission can fund as part of the Community Legal Service (ie Civil Legal Aid) or Criminal Defence Service (ie Criminal Legal Aid);
- (ii) the work of the courts;
- (iii) consumer affairs;
- (iv) social conditions;
- (v) management.

4.3 A tighter approach is evident in Israel's Board of the Public Defender which has five members, the Minister for Justice, a retired Supreme Court Judge, criminal lawyer selected by the National Bar Association, a criminal lawyer appointed by the Minister for Justice with the consent of the Chair of the Bar Association and a criminal law scholar.

4.4 A further compromise between executive power of appointment and some degree of professional input can also be seen in the provisions for the appointment to Legal Aid Ontario (The Law Society of Upper Canada is the Bar Association for the province). The Board of Directors of the corporation are composed of persons appointed by the Lieutenant Governor in Council as follows:

- (a) one person, who shall be the Chair of the Board selected by the Attorney General, *roughly the equivalent to the Minister for Justice*, from a list of persons recommended by a committee comprised of the Attorney General or a person designated by him or her, the Treasurer of the Law Society or a person designated by him or her

and a third party agreed upon by the Attorney General and the Treasurer of the Law Society or persons designated by them;

- (b) five persons selected by the Attorney General from a list of persons recommended by the Law Society;
- (c) five persons recommended by the Attorney General;
- (d) the President of the corporation is a non-voting member of the Board.

4.5 The above are only possible models. The Government is prepared to engage the Bar Council and other relevant stakeholders in discussions as to the exact model for the proposed Legal Aid Board and the appointment of its members. The Government is content for instance, for some of the appointments to be on the advice of the Bar Council. These could also include representatives of the judiciary, eg the Registrar, or Justices of the Peace. One possible model could be as follows:

- (1) 8 members
- (2) 4 (including the Chairman) appointed by the Minister in own discretion
- (3) 2 appointed by the Minister on the advice of the Bar Council President
- (4) the Registrar
- (5) a Justice of the Peace
- (6) 4 candidates constitutes a quorum. The Chair has casting vote.

5. THE FUNCTIONS OF THE BOARD

- 5.1 The functions of the Board will include the overall administration and management of legal aid and legal assistance. In criminal cases it would include an assessment of the means of an applicant in order to decide whether any means test is satisfied. It is envisaged that initially criminal legal aid would be granted on a temporary basis by the court seized of the matter as is the case at the present moment (e.g. Magistrates Court) on condition that a detailed application is made to the Board within a period of time. This is designed to ensure that there is no hardship caused to defendants by any urgent proceedings brought against them.
- 5.2 In legal assistance cases the Board would decide whether legal assistance should be granted in any particular case both on means and the merits. The lawyers acting for the applicant would provide all the necessary information (which will in any event be standardized) necessary for the Board to make a determination. That would include an Opinion from lawyers acting for the applicant and not third party lawyers as is the case today. It would then be for the Board to assess the merits in the light of the material. There may be a right of appeal to a Legal Aid and Assistance Appeals Panel on both the merits and means.
- 5.3 There will also be strict duties of full and frank disclosure placed on lawyers submitting an application for legal assistance. The Government envisages that the Board will readily impose conditions on the funding of any case. This may be reference to certificates limited to particular stages in the proceedings, so that there is proper management of legal assistance funding. The Board will also monitor recovery of legal assistance from unsuccessful non-legally assisted parties and any settlement of cases involving public funding would need to be approved by

the Board. This is not unusual and has always been the position in England and Wales.

- 5.4 The Government cannot continue to tolerate settlement of cases that ignore the public interest in the recovery of public funds. Any offer to settle proceedings (at any stage) will need to be reported to the Board with an assessment by the lawyer with care and conduct of the matter as to why the offer should be accepted or rejected as the case may be. These are not intended to be an exhaustive list of the powers/functions of the Board.

6. FINANCIAL QUALIFICATION

The Position in Gibraltar – Legal Assistance

- 6.1 Legal assistance is available for anyone whose income does not exceed £5,000 a year or such other figure as the Government may specify in the Gazette. A person will, however, be refused legal assistance if he has a capital of more than £350 (or such other figure as the Government may specify by Notice in the Gazette) unless it appears that he cannot afford to proceed without legal assistance (section 13 (1) of the Legal Aid and Assistance Act). It is the Registrar of the Supreme Court that determines whether someone qualifies for legal assistance or not.

The Position in Gibraltar – Legal Aid

- 6.2 As far as legal aid is concerned, the relevant court decides whether a person is of “insufficient means” to enable him to obtain legal representation (see section 3 et seq of the Act). The term “insufficient means” is not defined clearly and that is not satisfactory.

The Position in the United Kingdom – Civil Cases

- 6.3 Funding in civil cases is available to anyone who qualifies, provided that the case is within the scope of the scheme (personal injury claims, for instance, are excluded). People receiving Income Support or income based Jobseeker's allowance, automatically qualify financially for funding. Otherwise, people can get 'free', or non-contributory, help, if they have a gross monthly income of less than £2,435, a monthly disposable income below £290 and disposable capital of £3,000 or less [*these are not disjunctive i.e. simply because you have a gross monthly income of less than £2,435 does not mean you qualify if your disposable income is more than £290*]. If their monthly disposable income is between £290 and £672, or disposable capital between £3,000 and £8,000, they will be offered funding on the basis that they agree to pay contributions towards their legal costs.

The Government's proposals

- 6.4 The Government proposes to review the legal aid and assistance qualifying threshold in consultation with the Bar and relevant stakeholders. A single means test for both criminal legal aid and civil legal assistance is envisaged. The Government notes the Bar's suggestion of increasing the threshold from £5,000 to £15,000 per annum gross income. The Government believes that disposable income and capital should be added to the qualifying criteria. It is also prepared to explore the possibility of a two tier system where a person may qualify for legal assistance with a contribution to his legal fees.

7. FURTHER THRESHOLD FOR QUALIFICATION IN CIVIL CASES

7.1 For civil legal assistance the Board (on advice of the lawyer acting for the legally assisted party) must consider:

- (1) whether the case has a reasonable chance of success (that means over 50% chance);
- (2) whether the benefits of litigation would outweigh the cost to public funds;
- (3) whether the applicant would gain any significant personal benefit from proceeding, bearing in mind any liability to repay the costs to the Legal Aid Board if successful.

7.2 These factors are similar to those that would influence a privately paying client of moderate means when considering whether to become involved in proceedings.

8. CRIMINAL LEGAL AID RATES

8.1 The Government accepts that the overall public funding budget should be rebalanced away from personal injury and contractual/commercial cases and in favour of criminal cases. That is in essence what the Bar Council itself has been proposing when it invites the Government to exclude these areas from legal assistance funding in favour of an increase in the rates available in criminal legal aid.⁹

⁹ See footnote 1.

- 8.2 The Government has been reviewing those rates in consultation with the Bar Council and proposes to increase the rates in the manner shown in [Appendix 3](#). This is intended as a short term measure whilst permanent and wholesale reforms are discussed and agreed. The model the Government prefers for criminal legal aid is discussed below.

9. AREAS OF WORK TO BE COVERED BY CIVIL LEGAL ASSISTANCE

- 9.1 Civil Assistance in Gibraltar has tended to cover three particular areas of work;

- (a) Family Law - including divorce and domestic violence;
- (b) Private Law claims (eg personal injury or medical negligence cases);
- (c) Public Law claims.

- 9.2 In recent years Housing Law has become an area attracting greater public funding.

- 9.3 Traditionally the English legal aid system has also focused on private law and family claims. However, it has gradually re-orientated itself towards public and social welfare law cases. Personal injury and contract cases are not provided with legal aid resources but detailed rules have been introduced to allow for contingency fees or a variance of them. Conditional fees (allowing not a percentage of damages but an uplift of said percentage on costs otherwise allowable) are now allowed. As a result, a combination of conditional fee and insurance arrangements which allow a litigant to cover their potential liability to the other side have now

thrived and are a major source of income for lawyers in, for example, personal injury cases.

- 9.4 The Supreme Court in 1999 held that conditional fee agreements are lawful in Gibraltar.¹⁰ The Government is aware that doubt has been expressed by some practitioners about the soundness of the decision. That same decision noted that insurance arrangements could only be underpinned by legislation. The Government intends to remove any doubt on both counts by legislating to allow conditional fee agreements and to allow for the necessary insurance arrangements associated with those agreements to be put in place.
- 9.5 The Government believes that legal assistance should be focused on family law (administrative law and cases where social or welfare issues are involved (see below)). Other areas will not be funded, save in exceptional circumstances when it is necessary for effective access to the Courts taking into account the complexity of the case and the importance of the issues at stake for the parties (*Steel and Morris v The United Kingdom* 15/5/2005 para 62).
- 9.6 The Government however recognises that the payment of disbursements upfront in areas which are not funded by legal assistance may create hardship in certain cases and the Government proposes that provided the individual would have satisfied the legal assistance means test:
- (a) To allow for the deferment of court fees until the conclusion of the proceedings provided that the solicitor who has been instructed on the case remains liable to the Legal Aid Board for those disbursements in the same way as he remains liable to counsel or

¹⁰ In the matter of an application to the Chief Justice pursuant to the Supreme Court Rules, Rule 2 (2001/02 Gib LR 329).

to anyone else who is instructed on behalf of his client in any proceedings. This part of the system would be based on self-certification by the lawyer with care and conduct that his client satisfies the relevant means test. The Government emphasises, however, that that lawyer will remain liable to the Legal Aid Board for those fees.

- (b) Medical reports will be funded in medical negligence cases (not ordinary personal injury cases) but any such funding would have to have prior approval by the Legal Aid Board and such expenses would be closely monitored by the Legal Aid Board thereafter. The Government wishes to avoid the situation where litigants may shop around for experts or may engage more than one expert where they are not happy with the opinion of the first expert instructed. Thus, solicitors would have to be extremely careful in who they instruct and the terms of those instructions. There will be a duty on the solicitor to provide a copy of the medical report to the Legal Aid Board. There will be a first charge on any damages recovered in favour of the Legal Aid Board to recover any disbursements. The Government will not fund outside Counsel as a disbursement in these cases.

- 9.7 The Government will continue to fund Public Law claims (ie Judicial Review Claims) through the provision of legal assistance on a case by case basis. Any expert evidence would, however, have to be approved by the Legal Aid Board before any expenses are incurred. Further, the instruction of Counsel outside the jurisdiction would not only have to be approved by the Legal Aid Board before hand, but would need to be justified on the basis of exceptional circumstances.

9.8 The Government would also make legal assistance available to those lawyers advising or appearing in front of:

- Housing tribunal
- ADR (in any area of law where public funding is available)
- Mental health tribunals

9.9 The Government does not see a case for extending legal assistance to Industrial Tribunals. Indeed the feedback that the Government obtains, particularly from the private sector, is that very often the current system works against the employer in favour of the employee because, for instance, it is easier and more cost effective to settle such claims rather than to have those claims decided by the tribunal. This is the case bearing in mind that no cost orders can be made against an applicant in the Industrial Tribunal. An employer will often pay rather than instruct a lawyer and incur fees it cannot recover.

10. CRIMINAL LEGAL AID

10.1 Subject to the exact model for the provision of such funding, the Government proposes to fund all criminal cases provided that a person satisfies the relevant financial means test.

11. THE FUNDING MODEL

11.1 There are various funding models for the delivery of legal aid and legal assistance services. The main alternatives are:

- (a) Private practitioners funded on a case by case basis.
- (b) Salaried practitioners employed by the Legal Aid Authorities often referred to as “in-house duty counsel”.
- (c) Practitioners employed by an independent legal services organisation often called a Public Defender Office.
- (d) Services provided by practitioners or by organisations employing practitioners under a Contract with the legal services authority.

11.2 There are of course a number of variations on these four models. Each mode of delivery has its advantages and disadvantages. There are also advantages in having a mixed model.

11.3 The advantage of the current system is that it involves the right for a defendant to choose his own lawyer and the involvement of the independent legal profession in the system hopefully maintains high levels of quality representation. It is however usually the most expensive form of provision and can be difficult to control costs.

11.4 The Salaried Practitioners and the Public Defenders Office may have cost advantages but may not attract the very best legal practitioners who may prefer to work outside a bureaucracy. The Government does not, in criminal cases, rule out creating a Public Defenders Office in future but it is unlikely that it would do so to the exclusion of other systems of funding in criminal legal aid.

- 11.5 The Government would wish to use a combination of these different models.¹¹
- 11.6 The Government will retain the current system for public law cases but with greater control by the Legal Aid Board.
- 11.7 For other cases (including criminal cases) the Government prefers contracted services with members of the Bar/Firms. These offer cost certainty combined with the use of high levels of quality provided by independent practitioners. Lawyers and firms who are to provide these services need to show a clear proven track record in the areas of practice for which funding will be available. It is hoped that in time the Bar Council will in time develop a system where it can measure the quality of service provided by legal aid/assistance practitioners and issue guidelines in this respect.¹²
- 11.8 The Government wishes to explore with the Bar Council a system where the Government will contract with firms to provide either (or both) criminal and qualifying civil work. The Government and the Bar will agree a system of fixed fees over the whole range of legal services (except in public law cases) and each case will have an overall cap which cannot be exceeded save in exceptional circumstances and with the consent of the Legal Aid Board. The system is focused on the service to be provided rather than the hours worked by the practitioner – a system based on

¹¹ A mixed model exists in the UK where Public Defenders are available side by side with criminal legal aid. In civil cases the UK Access to Justice Act 1999 introduced the concept of the General Civil Contract this covers only civil work and may comprise either Controlled Work or Licensed Work or both. Controlled Work comprises legal help, help at court and controlled legal representation before the Mental Health Review Tribunal and before Immigration Appeal Tribunal and Immigration Adjudicators. The level of service is defined in the Funding Code and in the contract specification other types of work are governed by licensed work. The objective was to secure provision of competent quality assured best value contract work for specified categories of work at public expense. The contract specification provides for an upper financial limit to the amount of legal help that can be received in any one case and for an upper financial limit on the amount that a solicitor can incur on legal aid.

¹² In England and Wales the Legal Services Commission has its Quality Assurance standards and the monitoring function is to be passed on to the legal profession.

outputs rather than inputs. For example an attendance to the Police station or trial in the Magistrates Court will have a fixed tariff. This is similar to the system which the UK Government has decided to plough ahead with in the UK.¹³

11.9 There will be a duty on lawyers to seek costs where it is appropriate and any recovery will be paid to the Legal Aid Board. The Government recognises that in family cases any recovery might be limited by the nature of the proceedings and in criminal cases there will be no recovery at all. However, even in family cases costs orders are sometimes made (e.g. contested appeals to the Court of Appeal).

11.10 Fixed fees under contracts would ensure firms (particularly smaller firms) will be able to undertake more predictable financial management and to exercise a greater degree of budget control.

11.11 Moreover the banking sector in Gibraltar is fairly well disposed to the legal sector and proposals for fixed budgets would put firms (particularly smaller firms) in a stronger position when negotiating with financial institutions. It is hoped efficient suppliers and smaller firms with entrepreneurial spirit will be able to expand and thrive.

12. CONCLUSION

12.1 These proposals are intended to ensure that the legal public funding system is financially sustainable and fair to both legal practitioners and the taxpayer over the next few years. The Government views these proposals as part of a wider program of reform across the justice system. No one

¹³ Implementing Legal Aid Reform: Government response to the Constitutional Affairs Committee Report (June 2007).

should assume that the Government has made a firm decision on a number of the issues raised in this paper (e.g. the Funding Model) but they do, in the Government's view, represent a worth while basis upon which intensive discussions and consultations can now take place.

APPENDIX 1**LEGAL AID & LEGAL ASSISTANCE COSTS FOR YEARS 1999 – 2008**

Financial Year	Legal Assistance	Legal Aid	Total	Costs Recovered	Total Net
	£	£	£	£	£
1999/2000	306,657.22	7,582.61	314,239.83	NIL	314,239.83
2000/2001	251,917.61	24,304.65	276,222.26	NIL	276,222.26
2001/2002	373,853.21	27,129.20	400,982.41	NIL	400,982.41
2002/2003	365,147.92	82,592.85	447,740.77	NIL	447,740.77
2003/2004	917,957.03	95,542.81	1,013,499.84	2,209.13	1,011,290.71
2004/2005	1,075,107.75	108,861.87	1,183,969.62	NIL	1,183,969.62
2005/2006	756,423.36	71,498.23	827,921.59	NIL	827,921.59
2006/2007	819,036.36	79,641.20	898,677.56	16,487.55	882,190.01
2007/2008	771,934.30	119,615.65	891,549.95	155,656.84	735,893.11

APPENDIX 2

LEGAL AID & LEGAL ASSISTANCE COSTS

PERIOD 1999—2003

The breakdown of amounts paid to each law firm (or barrister) in respect of civil legal assistance and criminal legal aid is as follows:

Firm	1999-2000		2000-2001		2001-2002		2002-2003	
	Legal Assistance	Legal Aid	Legal Assistance	Legal Aid	Legal Assistance	Legal Aid	Legal Assistance	Legal Aid
A Haynes	0.00		0.00	147.00	0.00	1960.00	0.00	4,037.50
Altias & Levy	23,982.88	163.80	42,483.63	1,622.65	25,314.08	2,997.50	25,069.22	
B Vaughan	13,235.20	374.00	2,518.60	1,077.00	5,762.00	2,372.50	0.00	4,611.00
Budhani & Co	0.00		0.00		0.00	465.00	1,601.80	5,820.80
C A Gomez & Co	17,705.64	557.20	14,367.07	512.00	6,074.61		11,801.35	
Cruz & Co		1,058.10		1,019.80		182.50		
D Hughes	7,940.44		0.00	101.00	0.00	280.00	0.00	
E C Ellul & Co	45,150.24	160.00	0.00		1,385.98		3,545.70	
Gold Law Firm	0.00		0.00	67.50	6,592.73	2,772.00	6,291.12	3,946.00
Hassans	21,716.66	102.00	8,022.00	703.00	31,349.56	4,553.00	4,304.00	18,745.95
Hayward Associates	0.00		0.00		0.00		0.00	1,815.45
H L B Perez Rodriguez				321.00		75.00		
Janis Evans	90,587.85		81,920.75		83,180.03		37,361.05	
Isola & Isola	0.00	75.00	0.00	2,968.00	0.00		0.00	3,537.50
Marrache & Co	0.00	257.00	0.00		1,375.28	618.00	4,407.74	6,447.00
M Isola	1,897.97		0.00		0.00		0.00	
N Caetano	0.00		0.00		0.00		0.00	320.00
N J Bushnell	0.00		0.00		0.00		3,321.50	
Nunez & Co	0.00		0.00		0.00		80.00	
P Nunez	676.50		0.00		0.00		0.00	
P M Triay	0.00		0.00	275.00	0.00		0.00	
Phillips & Co	47,423.56	627.18	85,195.58	5,433.30	128,161.51	326.40	131,193.75	2,288.00
R Pilley	8,117.57	2,224.20	4,306.00	2,331.20	53,417.82		100,002.26	5,781.00
S R Bossino	2,474.15	426.00	0.00	2,432.00	11,761.66	1,917.00	10,020.46	14,458.45
S J Bullock	11,948.11	767.50	1,222.55	544.00	0.00	3,070.80	0.00	
S French Davies	0.00		2,633.33	382.50	0.00	269.50	0.00	
Stagnetto & Co	4,838.47		5,063.71	910.00	2,880.74	540.00	0.00	
Triay & Triay	8,961.98	186.00	4,184.39		10,654.39		17,791.86	865.00
Triay Stagnetto Neis	0.00	604.63	0.00	3,457.70	5,942.82	4,730.00	8,356.11	9,918.20
TOTAL	308,657.22	7,582.61	251,917.61	24,304.65	373,863.21	27,129.20	365,147.92	82,592.85

LEGAL AID & LEGAL ASSISTANCE COSTS					
PERIOD 1 APRIL 2003 TO 31 MARCH 2004					
Payee		Legal Assistance (Civil Cases)	Legal Assistance Disbursements	Legal Aid (Criminal)	Legal Aid Disbursement
Attias & Lewy		£ 14,557.00		£ 110.00	
B Vaughan				£ 840.00	
Budhrani & Co				£ 17,316.00	£ 341.76
N Caetano				£ 1,807.00	
C A Gomez & Co		£ 21,299.22			
David Pannick QC			£ 63,000.00		
Dr J Vora			£ 946.40		
Gold Law		£ 1,784.50		£ 756.00	
Hamptons Fielding			£ 140.00		
Hassans		£ 31,166.11		£ 2,237.00	£ 15.00
A Haynes				£ 280.00	
HLB Perez/Rodriguez		£ 94,202.67		£ 2,551.00	
M Hook				£ 1,757.00	£ 50.00
Hodgson Bilton		£ 70,225.51			
Isola & Isola		£ 672.84		£ 4,178.20	£ 7.00
J Brennan			£ 240.50		
J Leighton Williams			£ 5,000.00		
Janis Evans		£ 123,583.95			
Katie Renwick			£ 200.00		
Marrache & Co		£ 10,586.40		£ 13,642.90	£ 1,074.00
Matthias Kelly QC			£ 14,085.00		
MM Consultancy			£ 1,340.00		
Paula Sparks			£ 375.00		
Phillips & Co		£ 255,791.38		£ 7,156.00	£ 5,275.00
Radcliffes Le Brasseur			£ 13,685.60		
Ray Pilley		£ 159,196.38		£ 13,830.00	
S Bullock & co		£ 5,648.80		£ 525.00	
S R Bossino		£ 9,737.70		£ 16,893.15	£ 62.30
Tre Critelli			£ 600.00		
Triay & Triay		£ 19,192.07			
Triay Stagnetto Neish				£ 4,838.50	
Tribune Psychology			£ 700.00		
		£ 817,644.53	£ 100,312.50	£ 88,717.75	£ 6,825.06
				£ 1,013,499.84	
		Less recovery Legal Assistance Civil Case		-£ 2,209.13	
				£ 1,011,290.71	

LEGAL AID & LEGAL ASSISTANCE COSTS					
PERIOD 1 APRIL 2004 TO 31 MARCH 2005					
Payee		Legal Assistance (Civil Cases)	Legal Assistance Disbursements	Legal Aid (Criminal)	Legal Aid Disbursements
A MacDonald		£ 23,969.80			
A Nicol QC			£ 1,500.00		
Attias & Levy		£ 3,864.93	£ 300.00	£ 8,610.00	£ 500.00
B Vaughan				£ 1,073.00	
Blands Ltd					£ 667.92
Budhrani & Co				£ 1,332.00	
N Caetano				£ 1,247.00	
C A Gomez & Co		£ 45,309.73		£ 1,575.00	
Dr R Benians			£ 27,252.39		
Dr S Mikhail					£ 4,884.65
Dr M O'Sullivan					£ 360.00
E C Ellul & Co		£ 38,845.71			
Elliott Hotel					£ 367.75
Gib Translation Services					£ 805.00
Gold Law		£ 17,774.10	£ 703.94	£ 255.00	
A Haynes				£ 700.00	
Hassans		£ 136,236.71			
HLB Perez/Rodriguez		£ 29,623.60		£ 280.00	
Isola & Isola		£ 69,584.58		£ 7,084.00	
Janis Evans		£ 120,757.72			
OAC Plc			£ 5,275.00		
Marina Health Clinic					£ 250.00
Marrache & Co		£ 91,914.43	£ 50.00	£ 5,911.00	£ 10.10
Phillips & Co		£ 316,246.28	£ 2,070.00	£ 13,216.00	
Picardo & Co		£ 1,323.00		£ 19,519.00	£ 63.50
Mr John Causer					£ 19,411.20
R Pilley		£ 12,623.29		£ 1,600.00	
S Bullock & Co		£ 9,199.00	£ 330.00	£ 4,258.00	£ 150.00
S Bossino		£ 9,982.16	£ 10.00	£ 14,469.75	
Triay & Triay		£ 109,301.38	£ 1,060.00		
Verrals				£ 262.00	
		£ 1,036,556.42	£ 38,551.33	£ 81,391.75	£ 27,470.12
					£ 1,183,969.62

LEGAL AID & LEGAL ASSISTANCE COSTS

PERIOD 1 APRIL 2005 TO 31 MARCH 2006

	Legal Assistance		Legal Aid	
	Disbursements	Fees	Disbursements	Fees
A Haynes				£ 150.00
A MacDonald	£ 717.00	£ 6,254.40		£ 7,459.50
Attias & Levy	£ 1,449.00	£ 1,213.60	£ 37.50	£ 5,399.00
C A Gomez & Co	£ 82,603.25	£ 14,401.19		£ 2,670.00
C Salter	£ 1,567.00	£ 5,866.67		
Central Clinic			£ 210.00	
G Wilson	£ 300.00			
Gold Law Firm	£ 3,222.80	£ 9,775.80	£ 5.00	£ 815.00
Hassans	£ 12,611.60	£ 61,837.80	£ 4.00	£ 10,311.20
Howard Cohen	£ 200.00			
Ian Watts				£ 4,472.00
Isola & Isola	£ 3,981.00	£ 32,505.88		£ 6,767.63
J Leighton Williams	£ 43,000.00			
J Lucas	£ 650.00			
Janis Evans	£ 8,356.75	£ 78,643.81		
M Bishop	£ 4,441.60			
M Henderson	£ 3,300.00			
Marrache & Co	£ 1,781.34	£ 5,285.20	£ 10.10	£ 4,709.00
Mary Callaghan (Phillips)	£ 1,600.00			
MM Consultancy	£ 360.00			
Mr C W Lees	£ 250.00			
Phillips & Co	£ 23,534.70	£ 230,600.67	£ 20.00	£ 1,132.00
Quest Services	£ 250.00			
Radcliffes LeBrasseur	£ 2,766.65			
Ray Pilley	£ 1,879.50	£ 17,704.00		£ 400.00
S J Bullock & Co	£ 2,624.00	£ 21,122.67		£ 3,080.00
S R Bossino	£ 2,412.00	£ 17,373.60		£ 18,488.00
Safety Services	£ 210.00			
Simon Levene	£ 500.00			
Triay & Triay	£ 3,290.15	£ 43,949.36	£ 3.30	£ 1,148.00
Triay Stagnetto Neish	£ 2,030.37			£ 1,735.00
Verrall Solicitors				£ 2,472.00
	£ 209,888.71	£ 546,534.65	£ 289.90	£ 71,208.33

<u>LEGAL AID & LEGAL ASSISTANCE COSTS</u>				
<u>PERIOD 1 APRIL 2006 TO 31 MARCH 2007</u>				
<u>Name of Firm</u>	<u>Legal Aissistance</u>		<u>Legal Aid</u>	
	<u>Disbursements</u>	<u>Fees</u>	<u>Disbursements</u>	<u>Fees</u>
A Haynes				£476.00
A MacDonald	£9.00	£91.20		
Attias & Levy	£2,761.80	£25,764.69	£95.00	£8,893.00
B Vaughan				£1,200.00
C A Gomez & Co		£6,306.08		
C Salter				£1,500.00
College Clinic	£586.00			
Dr A Bauer	£400.00			
Dr R Benians	£7,941.64			
Gold Law	£2,392.10	£15,467.49		£1,930.00
Hassans	£25,019.50	£111,811.60		£6,185.00
Heart of England-NHS Foundation	£270.00			
Ian Watts		£520.00	£31.20	£10,001.80
Isola & Isola	£9,288.00	£44,151.76	£15.00	£8,641.00
J A Evans	£10,822.72	£84,233.32		
J D Rosado		£6,400.00		
Janet A Stowe	£800.00			
Marrache & Co	£13,346.50	£25,356.00		£3,242.00
MM Consultancy	£700.00			
N Vaughan				£630.00
Northern Medical Services	£3,687.63			
OAC Plc	£15,358.00			
O'Callaghan Elliot Hotel	£238.36			
Phillips & Co	£24,132.00	£124,463.39		£2,485.50
Professor H M Hodgkinson	£4,307.54			
R Pilley	£127.50	£720.00		
S Bossino	£1,326.60	£10,855.36	£1,165.50	£19,476.50
S J Bullock	£7,947.20	£48,453.97	£18.20	£4,728.00
Terence Jenks & Assoc	£1,493.00			
Triay & Triay	£55,923.20	£124,363.21		£580.00
Triay Stagnetto Neish	£1,200.00			
Verralls Solicitors				£8,347.50
	£190,078.29	£628,958.07	£1,324.90	£78,316.30
	Sub Total Paid 1st April 2006 to 31st March 2007			£ 898,677.56
		Less Legal Assistance recovered	-£	16,487.55
				£ 882,190.01

<u>LEGAL AID & LEGAL ASSISTANCE COSTS</u>					
<u>PERIOD 1 APRIL 2007 TO 31 MARCH 2008</u>					
<u>Name of Firm</u>	<u>Legal Assistance</u>		<u>Legal Aid</u>		
		Disbursements	Fees	Disbursements	Fees
Attias & Levy	£	97,553.89	£ 78,255.66	£ 147.60	£ 16,621.50
C A Gomez & Co			£ 4,084.12		
Caetano & Co				£ 883.00	£ 1,213.00
Charles Utley	£	962.50			
College Clinic	£	100.00			
Cruz & Co	£	500.00			
Dr E Levine	£	2,000.00			
Fiona Marsh				£ 500.00	
Gold Law	£	2,954.90	£ 16,336.72		£ 2,040.00
Hassans	£	19,554.95	£ 76,694.85		£ 895.00
Ian Watts	£	10.00			£ 1,995.00
Isolas	£	6,006.00	£ 15,736.80		£ 8,332.00
J Leighton Williams QC	£	29,609.05			
J Oton				£ 431.60	
J A Evans	£	18,079.60	£ 73,035.36	£ 11.15	£ 1,189.00
Maggie Sargent	£	2,400.00			
Marrache & Co	£	70.00	£ 5,327.20	£ 8,298.00	£ 11,243.00
Northern Medical Services	£	22,657.98			
Phillips & Co	£	3,202.00	£ 90,017.54		£ 305.00
Quadrant Chambers	£	563.02			
S J Bullock	£	15,571.80	£ 45,047.44	£ 621.30	£ 14,217.00
S R Bossino	£	1,859.00	£ 35,213.44		£ 9,198.50
Triay & Triay	£	48,542.88	£ 52,041.60	£ 37,079.00	£ 390.00
Triay Stagnetto Neish	£	950.00	£ 6,996.00		
Verralls					£ 4,005.00
		£ 273,147.57	£ 498,786.73	£ 47,971.65	£ 71,644.00
			Total Financial Year 07/08		£ 891,549.95
			Less Legal Assistance recov		-£ 3,465.04
					-£ 56,067.79
					-£ 88,471.92
					-£ 7,077.09
					-£ 575.00
					<u>£ 735,893.11</u>

“SCHEDULE

Rule 3

1.	On assignment, (to include the taking of instructions)					
			£	Proposed Bar Council fees	Government Proposal	
	(a) in the Supreme Court and the Court of Appeal	from to	30 100	60 200	60 175	
	(b) in the Magistrates' Court	from to	20 60	40 120	40 120	
2.	For a necessary attendance at the prison					
	(a) for the first hour or part thereof		22	100	100	
	(b) for each subsequent hour or part thereof		11	25	25	
3.	For attending a practice direction in the Supreme Court		50	100	100	
4.	For attending in chambers on an application to the Supreme Court or the Court of Appeal		30	100	100	
5.	For appearing in the Magistrates' Court					
	(a) on any application other than for an adjournment		50	100	100	
	(b) where the proceedings are adjourned otherwise than at the request of the defence		15	50	50	

(c) on the hearing of committal proceedings or on summary trial

(i)	for the first three hours or part thereof	from to	50 150	100 300	100 250
(ii)	for each subsequent three hours or part thereof	from to	40 120	50 150	50 150

6. For appearing in the Supreme Court

(a) on an application 50 100 100

(b) on a trial on indictment–

(i)	for the first period of five hours or part thereof	from to	100 450	100 500	100 450
(ii)	for each subsequent five hours or part thereof	from to	75 300	75 300	75 300

(c) on an appeal from the Magistrates' Court

(i)	against conviction or against conviction and sentence	from to	100 400	100 500	100 450
(ii)	against sentence or against any order from which an appeal lies under section 278 of the Criminal Procedure Act	from to	100 400	100 500	100 450

7. For appearing in the Court of Appeal

(a)	on an application		30	100 200	100 200
(b)	on an appeal from the Supreme Court–				
(i)	for the first period of five hours or part thereof	from to	100 500	100 500	100 500
(ii)	for each subsequent period of five hours of part thereof	from to	100 400	100 400	100 400

8. For appearing in the Privy Council

(a)	on an application		75	200	200
(b)	on an appeal from the Court of Appeal–				
(i)	for the first period of five hours or part thereof	from to	200 750	200 1000	200 900
(ii)	for each subsequent period of five hours or part thereof	from to	150 500	150 750	150 600

9. For preparation throughout the conduct of the case

(a)	in the Magistrates' Court	from to	50 200	100 350	100 300
(b)	in the Supreme Court	from to	50 750	150 1000	150 900
(c)	in the Court of Appeal	from to	250 1000	250 1500	150 1250
(d)	in the Privy Council	from to	500 2000	500 3000	500 2500