

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

COMMITTEE *FOR* EMPLOYMENT & SOCIAL SECURITY

THE GUERNSEY LEGAL AID SERVICE – APPOINTMENT OF THE LEGAL AID
COMMISSIONER

The States are asked to decide:

Whether, after consideration of the Policy Letter entitled “The Guernsey Legal Aid Service - Appointment of the Legal Aid Commissioner”, dated 16th August 2019, they are of the opinion:

1. To appoint Ms Kathryn Macken to the office of Legal Aid Commissioner, with effect from 1 October 2019, pursuant to Section 16(1) of The Legal Aid (Guernsey and Alderney) (Schemes and Miscellaneous Provisions) Ordinance, 2018, and
2. To note that the Committee has agreed that Ms Macken shall hold office for a period of three years, with effect from that date, pursuant to Section 17(1) of the Ordinance.

The above Propositions have been submitted to Her Majesty’s Procureur for advice on any legal or constitutional implications in accordance with Rule 4(1) of the Rules of Procedure of the States of Deliberation and their Committees.

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

COMMITTEE *FOR* EMPLOYMENT & SOCIAL SECURITY

THE GUERNSEY LEGAL AID SERVICE – APPOINTMENT OF THE LEGAL AID
COMMISSIONER

The Presiding Officer
States of Guernsey
Royal Court House
St Peter Port

16th August 2019

Dear Sir

1. Executive Summary

- 1.1. The Legal Aid Commissioner (“the Commissioner”) is an independent holder of public office, appointed by the States in pursuance of The Legal Aid (Guernsey and Alderney) (Schemes and Miscellaneous Provisions) Ordinance, 2018 (“the Ordinance”), on the nomination of the Committee *for* Employment & Social Security (“the Committee”).
- 1.2. Following a recruitment process, the Committee is pleased to recommend to the States the appointment of Ms Kathryn Macken. As this is the first appointment to the office, the Committee propose that the initial term of office should be three years.

2. The Guernsey Legal Aid Service

- 2.1. The Guernsey Legal Aid Service (GLAS) was established in September 2001. The GLAS provides funding for legal advice and representation in criminal and civil cases for members of the public who could not otherwise afford those services.
- 2.2. The Legal Aid (Guernsey and Alderney) (Schemes and Miscellaneous Provisions) Ordinance, 2018, came into force on 1st January 2019, and put the administration of the GLAS onto a stronger statutory footing in accordance with the Legal Aid (Bailiwick of Guernsey) Law, 2003 (“the Law”).

3. The role of the Legal Aid Commissioner

- 3.1. Part IV of the Ordinance provides for the establishment of the independent Office of the Legal Aid Commissioner ("the Office"), which will be a new statutory office. The establishment of the Office is to meet the requirement within the Law for an appeals process.
- 3.2. The Office will give a person who is aggrieved by a decision of the Legal Aid Administrator recourse to an independent review of the decision.
- 3.3. The function of the Commissioner shall be to review decisions of the Legal Aid Administrator. The grounds for an application for review under section 19(3) of the Ordinance are that:
- the decision was ultra vires or there was some other error of law,
 - the decision was unreasonable,
 - the decision was made in bad faith,
 - there was a lack of proportionality, or
 - there was a material error as to the facts, or as to the procedure.
- 3.4. It should be noted that the right for review does not include a refusal of legal aid assistance on the grounds of not meeting the financial criteria. This includes the financial ineligibility of an applicant or the level of contributions that an assisted person is assessed to have to make towards that person's legal costs.

4. Term of office and remuneration

- 4.1. The Ordinance provides for the term of office of the Commissioner being for such term, not exceeding five years, as may be agreed between the Committee and the Commissioner at the time of appointment. A Commissioner whose term of office has expired shall be eligible for reappointment.
- 4.2. As this is the first appointment of a Commissioner, the Committee is intending that the initial appointment shall be for three years.
- 4.3. The Legal Aid Commissioner is not an employee of the States and will receive payment, at an hourly rate, only when required to undertake a responsibility under the Ordinance. It is anticipated that the Legal Aid Commissioner will be called on infrequently. An annual budget estimate of £5,000 has been applied for 2020 for the services of the Commissioner.

5. Appointment of a Legal Aid Commissioner

- 5.1. Following a recruitment process, the Committee is recommending Ms Kathryn Macken for appointment to the office of Legal Aid Commissioner. The Committee considers that Ms Macken's experience as a solicitor in the UK, including practising as a solicitor for the Court of Protection, makes her a most suitable candidate. A brief summary of Ms Macken's professional experience is appended to this Policy Letter. The Committee is recommending the States to approve the appointment of Ms Kathryn Macken for an initial term of office of three years, to run from 1 October 2019.

5. Committee Support for Propositions

- 5.1 In accordance with Rule 4(4) of the Rules of the Procedure of the Assembly and their Committees, it is confirmed that the propositions have the unanimous support of the Committee.

Yours faithfully

M K Le Clerc
President

S L Langlois
Vice - President

J A B Gollop
P J Roffey
E A Yerby

M J Brown
Non-States Member

A R Le Lièvre
Non-States Member

APPENDIX

Profile – Ms Kathryn Macken

Ms Macken is a lawyer with over 11 years' post-qualification experience in high value/ complex medical negligence, personal injury litigation and related estate administration. Ms Macken most recently worked as a Consultant Solicitor managing the financial affairs of people without legal capacity, as a representative of the Court of Protection. She also works with a Trust company conducting high-level file reviews and implementing policy and system changes to ensure compliance with regulatory requirements.

Ms Macken has extensive voluntary experience having been on the board of a number of charities and ran free legal advice evenings at her local Citizens Advice Bureau, in London, for a number of years.