



## Guernsey Legal Aid Service – 2019 Annual Report



New Jetty,  
White Rock, St Peter Port GY1 2LL

This Report covers the period 1st January 2019 to 31st December 2019

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## GUERNSEY LEGAL AID SERVICE ANNUAL REPORT 2019

### Introduction

The principal purpose of the Legal Aid (Bailiwick of Guernsey) Law 2003 is:-

***“For the efficient provision (at reasonable cost to the States, the States of Alderney, the Chief Pleas of Sark, and any other provider of financial assistance under this law) of legal assistance throughout the Bailiwick with a view, when the interests of justice so require, to helping persons who might otherwise be unable to obtain that assistance on account of their means.”***

Legal Aid provides access to free or reduced cost legal advice in criminal and civil cases arising in the Bailiwick of Guernsey (i.e. the Islands of Guernsey, Alderney, Herm and Sark) for those who cannot otherwise afford an Advocate.

The Guernsey Legal Aid Service is the office that administers the Legal Aid schemes under the direction of the Legal Aid Administrator.

The Legal Aid Administrator is an independent statutory official appointed by the States of Guernsey on a five year term basis. She has full discretion to grant or refuse Legal Aid within the terms of the scheme which the States prescribes.

### Background and Governance

The Guernsey Legal Aid Service (“GLAS”) came into existence on 1st September 2001, at first offering assistance in criminal matters only, broadly modelled on the voluntary scheme already in operation.

The Legal Aid Administrator (“the Administrator”) was appointed by the then Advisory and Finance Committee to bring the schemes into effect on an extra-statutory basis.

The scheme for assistance with civil matters commenced on 1st January 2002. There had been no previous voluntary scheme in place.

It was recognised from the outset that it would take some time to develop this new and potentially complex service, to establish and refine procedures, set up an office, negotiate arrangements with the Guernsey Bar and, in particular, to take account of constantly evolving legislation which would have an impact on the service and its scope. Accordingly, it was decided to initially operate the schemes for civil and criminal legal aid on an extra-statutory basis, pending development and review of the schemes and the subsequent drafting and States’ approval of the Ordinance.

The Legal Aid (Bailiwick of Guernsey) Law 2003 (“The Legal Aid Law”) was brought into effect in 2005 and the Legal Aid (Guernsey and Alderney) (Schemes and Miscellaneous Provisions) Ordinance 2018 (“the Ordinance”) on 1st January 2019 which set up the various Statutory Schemes. As Sark was undertaking a general

review, it was decided that the Ordinance should not extend to Sark at that time which, as a consequence remains extra –statutory.

Since May 2016, the responsibility for political oversight of legal aid has fallen within the mandate of the Committee for Employment and Social Security, having transferred from the Policy Council.

The Ordinance also created the Office of the Legal Aid Commissioner who, when requested, reviews the decisions of the Administrator.

There is a legislative requirement to produce an annual report since the Legal Aid Law came into effect but in practice it was accepted that these would not be prepared as the Administrator had no schemes to administer until the Ordinance was implemented on 1st January 2019.

### **The Legal Aid Office and Staffing**

The Legal Aid Office is located at New Jetty, White Rock, St Peter Port, Guernsey. GLAS moved into this office from previous premises in Gategny Esplanade, St Peter Port, in November 2017.

There are 5 full time members of Staff:

Legal Aid Administrator

Deputy Legal Aid Administrator

Administration & Finance Manager

Senior Executive Officer

Executive Assistant

### **Legal Aid Schemes**

Under the Ordinance, three main Legal Aid Schemes were established, each specified by Rules of the Committee which came into effect on 1st November 2019:

- **The Legal Aid, Advice and Assistance Scheme – “the Green Form Scheme”**
- **The Criminal Legal Aid Scheme**
- **The Civil Legal Aid Scheme**

The legal matters that are funded by GLAS are categorised into two areas: Civil and Criminal.

**Civil matters:** This covers such areas as:

- private law family matters such as the future arrangements for the children where parents have separated – primarily applications made under Section 17 of The Children (Guernsey and Alderney) Law 2008 - divorce and ancillary relief proceedings
- public law proceedings (children being removed from the care of their parents)
- affiliation & maintenance proceedings when supported by Employment and Social Security
- personal injury and medical negligence claims
- confiscation proceedings relating to proceeds of crime and drug trafficking
- appeals to the Mental Health Review Tribunal
- evidential hearings arising from the Child Youth and Community Tribunal (“CYCT”) and in exceptional circumstances legal representation at the CYCT.

**Criminal matters:** The criminal scheme provides free legal advice from a Duty Advocate for anyone who has been detained by the Guernsey Police or Guernsey Border Agency or any person attending the police/border agency as a volunteer in respect of a matter for which they could otherwise be arrested. Apart from in the Royal Court and the Traffic Court, the Duty Advocate is also available at Court to provide assistance and representation for defendants who have been charged and who have not yet instructed their own Advocate.

The scheme also provides funding under a full legal aid certificate for certain criminal proceedings that meet the legal merits criteria. Some matters (e.g. minor motoring offences) are excluded from receiving legal aid for representation in court unless the applicant is unable to conduct their own defence due to language difficulties, mental/physical disability or other.

**The Green Form Scheme:** This provides applicants up to 2 hours advice and assistance for both criminal and civil matters. The Legal Aid Rules set out those legal matters that are generally included and excluded from the Scheme.

Eligibility for Green Form and other legal aid services is subject to the financial eligibility criteria. Financial eligibility is assessed by the Advocate at their office. There are no such criteria for the Duty Advocate advice, public law proceedings and appeals to the Mental Health Tribunal, which are provided at no charge to the individual.

For the services where the financial eligibility criteria applies, some applicants may be required to pay a contribution towards their costs and should any applicant recover or preserve assets in proceedings, they are required to reimburse GLAS all their costs in full.

In terms of Alderney, there are special arrangements with specific Guernsey Law Firms for the provision of legally aided services in Alderney including a Duty Advocate.

### **How the Legal Aid Process Works**

An applicant who requires legal advice and assistance will initially see their Advocate under a 2 hour Green Form. The Advocate's office assesses whether the applicant is financially eligible for Green Form advice. If the Advocate is of the opinion that an application for a full legal aid certificate (which most commonly funds court proceedings) they will submit an application to GLAS.

When an application for a legal aid certificate is submitted to GLAS via the applicants Advocate, the financial eligibility of the applicant is firstly assessed by the Senior Executive Officer or Executive Assistant. Financial assessment is undertaken over a period of 13 weeks prior to the date of the application. The applicant is required to produce evidence of all sources of income, capital, bank statements and evidence of rent/mortgage payments. If an applicant is in receipt of Income Support they are automatically financially eligible for legal aid. The file is then passed onto the Administrator or Deputy Administrator to check the financial eligibility assessment and to determine whether the application meets the legal merits criteria. If both criteria are met a Legal Aid Certificate is granted. Some applications involve very complex issues. Others do not meet the legal merits criteria (or the applicant is financially ineligible) and are refused.

In the event the Applicant wishes to appeal the Administrator's refusal of legal aid funding, they can request the matter be referred to the Legal Aid Commissioner for a review of that decision. The Legal Aid Commissioner was appointed in the latter part of 2019 once the service became fully statutory. Before this appointment, GLAS referred matters to a Queens Counsel.

Once a Legal Aid Certificate is granted, it continues to be monitored by GLAS. Should an applicant's financial circumstances change, they are reassessed to determine continued eligibility. In addition, for civil legal aid certificates, an Advocate can only undertake work within the limit authorised by GLAS. Any request for additional time needs to be justified by the Advocate and approved by GLAS. In addition any intended disbursements over £100 require prior approval by GLAS.

At the conclusion of the case that is being funded under a legal aid certificate, the Advocate submits their files to GLAS to undertake the process of taxation. This is an assessment of the reasonableness of the costs claimed by the Advocate throughout the court proceedings (or matter that is being funded) to ensure they are correctly claimed and in accordance with the costs criteria laid down. Most cases are taxed by GLAS but large cases are sent to the UK to be assessed by a Costs Draftsman.

An agreement/compromise is usually reached with the Advocate as to the level of reductions but in the event the matter cannot be agreed, it is referred to the Costs Judge for Taxation on the Papers. If matters are still not agreed, an Oral Taxation Hearing is requested.

## **Administrator's Comments**

I am very pleased to introduce the Guernsey Legal Aid Service first annual report.

I was appointed Legal Aid Administrator in February 2018. Prior to that I was the Deputy Legal Aid Administrator for a number of years.

My team and I are very proud to be part of a system that provides access to justice for those individuals who are unable to afford an Advocate privately. Not only does legal aid enable individuals to seek legal representation, the legal aid rate of £167 per hour, whilst high compared to other home jurisdictions, is considerably less than the Bailiwick of Guernsey Advocate's average private rates. Consequently, if an individual is required to pay a contribution towards their costs or is to reimburse GLAS their costs in full, the amount would be significantly less than the amount they would be paying privately.

This report covers the period 1<sup>st</sup> January 2019 to 31<sup>st</sup> December 2019 and amongst other matters covers the number of Civil and Criminal Legal Aid Certificates issued during that period in addition to the number of Green Forms, Detention Forms and Duty Advocate invoices paid. It also presents the expenditure during 2019 for civil and criminal matters and the costs of running the Legal Aid Service.

GLAS expenditure is formula led which means that whilst there is a budget based on reasonable predictions and other criteria, as is consistent with the interests of justice, legal aid would continue to be granted even if that budget had been exceeded. In 2019 there was an underspend compared to the budget for civil expenditure but an overspend for criminal expenditure. This was mainly due to the funding of a couple of complex cases which involved the use of experts.

Our data for 2019 confirms a continually busy year for the service providing assistance for a number of applicants for representation in court proceedings in addition to legal advice and assistance for matters outside the court arena i.e. under the Green Form Scheme.

For civil matters, the most active area over the past years (and this continues to be the case) is the provision of funding for proceedings in the Domestic Proceedings Magistrates Court. This area of expenditure consists mostly of applications made under Section 17 of the Children (Guernsey and Alderney) Law, 2008 i.e. for Residence and Contact Orders in addition to Specific Issue Orders and Prohibited Steps Orders concerning children whose parents have separated and are unable to reach an agreement as to the future arrangements of their child/children. In addition, we fund a number of Affiliation and Maintenance Proceedings against the non-resident parent but only when supported by Employment & Social Security, plus Domestic Violence Injunctions. Whilst it is clear the Courts seek to avoid delay where possible, some Section 17 proceedings can be lengthy sometimes spanning 1 or 2 years and often involve the funding of experts reports such as psychological assessments of the parties which have been ordered by the Court.

For criminal matters the most common areas that are funded consist of charges for importation and possession of drugs, assault (including assaulting Police Officers),

public disorder, criminal damage, theft, drink driving and taking/possession of indecent images. We record separate statistics/expenditure for drug related charges. Criminal expenditure over the years tends to remain approximately level but, as mentioned, expenditure in 2019 was over budget.

The majority of applications for a full legal aid certificate are granted but some are refused. For those matters that are refused, we receive minimal requests each year for a review of this decision. Over the years, most reviews have tended to involve refusals to fund appeals against Community Parenting Orders (children taken into or to remain in care on a permanent basis). Only one matter was referred to the Queens Counsel for a review in 2019 who upheld our initial decision.

In terms of taxation of Advocate's costs, whilst personnel intensive, this is nevertheless an important process and helps to ensure the taxpayer receives value for money. Every year a number of reductions are made. In 2019, the net reductions in costs claimed by Advocates overall amounted to approximately £81,500. One matter was referred to the Costs Judge in 2019 who upheld our initial taxation assessment.

In addition to processing applications for full legal aid, in 2019 we received a large volume of Green Forms (813), Detention Forms (618) and Duty Advocate invoices (146). All these require checking and processing for payment by the GLAS team.

Generally in 2019:

Initial steps were taken in 2019 by Employment & Social Security towards a general review of Legal Aid. As there has not been a full review of legal aid since it was brought into force, this is with my full support and I look forward to assisting with this.

The introduction of the Data Protection (Bailiwick of Guernsey) Law, 2017, has required changes in working practices and office layout. Policies and practices have been updated and data protection training undertaken by all staff.

Various heads of Legal Aid in the home jurisdictions of the UK, Scotland, Northern Ireland, Republic of Ireland, the Isle of Man and Guernsey annually attend a Joint Consultative Committee meeting to exchange information. Northern Ireland hosted the 2019 JCC, which I attended. Guernsey will be hosting it in 2020 and Jersey who are reviewing their legal aid provision, will be included.

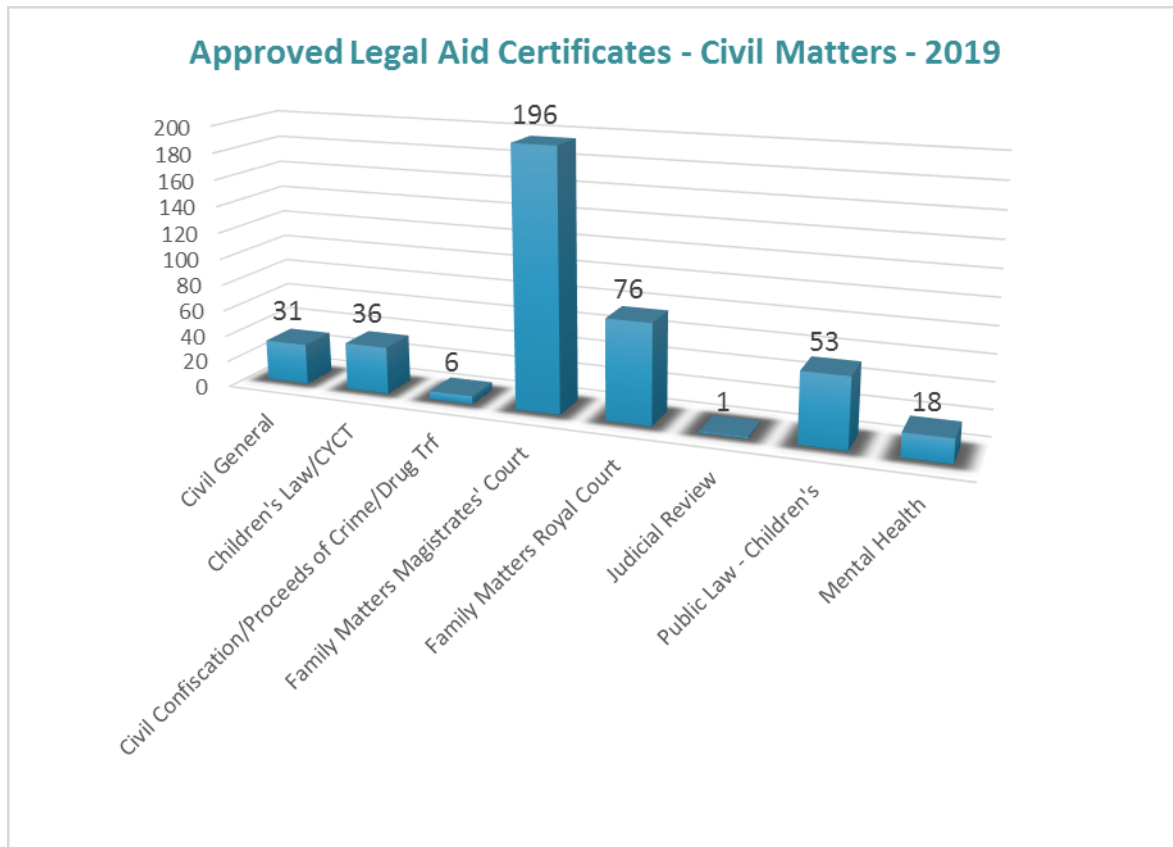
Steps are being taken to design a user friendly website. We hope to have this up and running by the end of 2020.



## **Summary of applications in 2019**

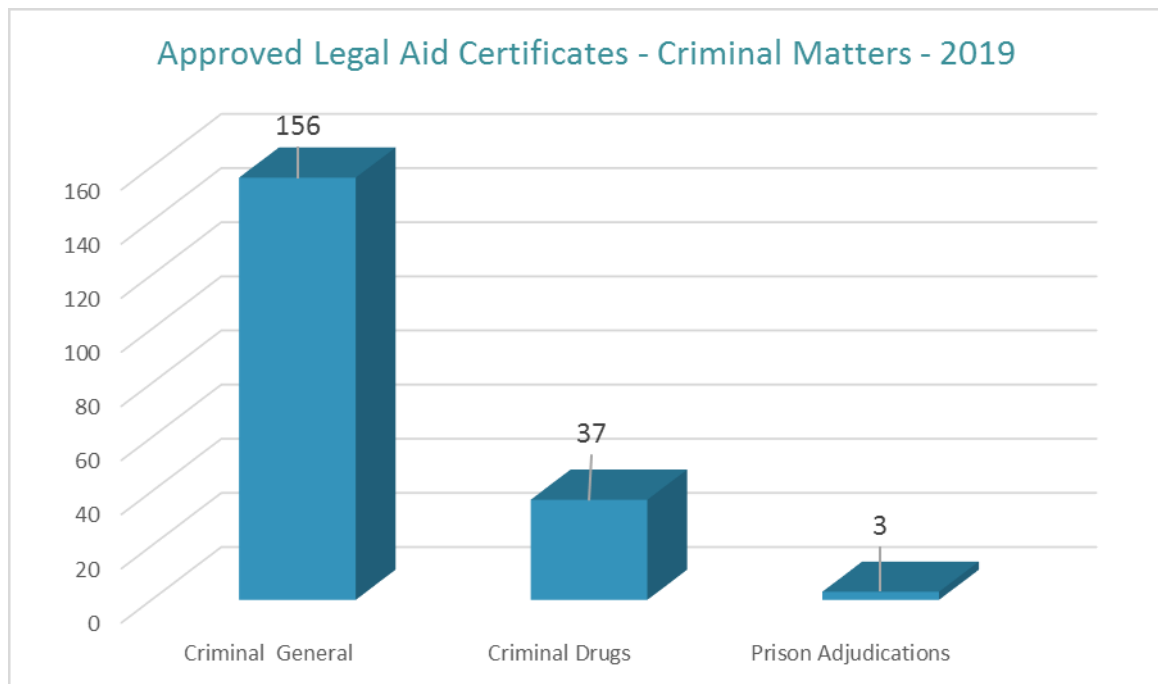
### **Civil Matters**

During 2019 the Guernsey Legal Aid Service approved 417 Civil certificates. The graph below breakdowns the various areas proceedings these Certificates covered.



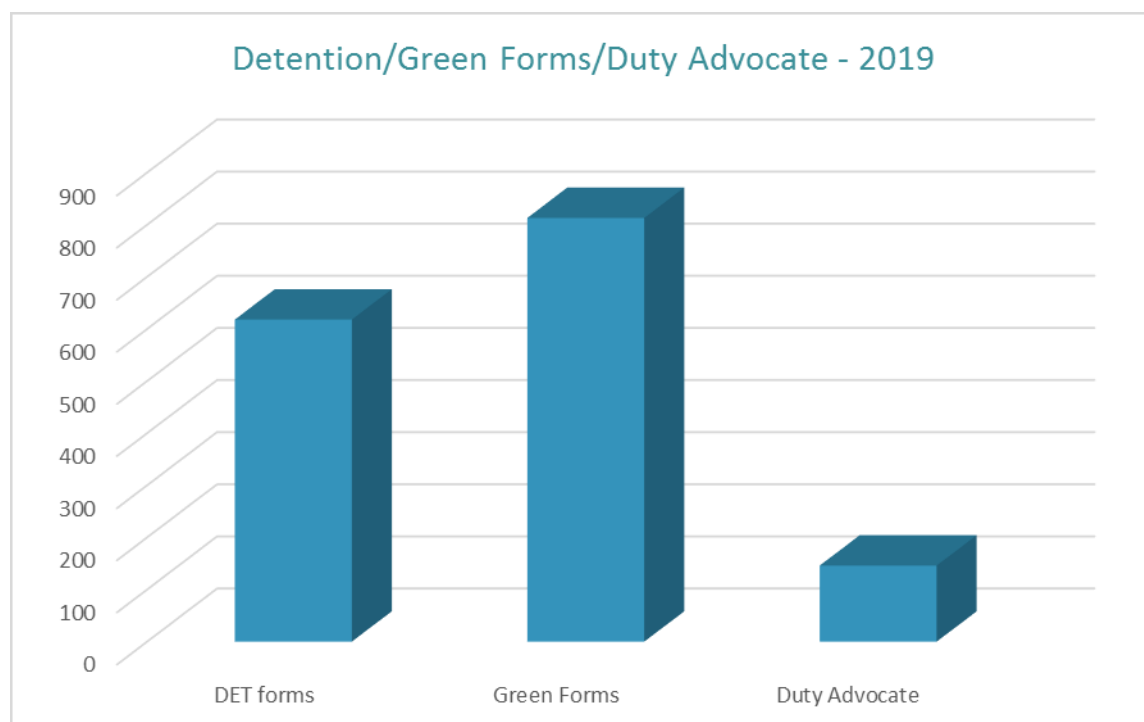
## **Criminal Matters**

During 2019, 196 Criminal certificates were granted in Guernsey.



### **Green Forms/Detention Forms and Duty Advocate Invoices**

Funding was also provided for 618 Detention forms (where an individual has been detained by the Police or Border Agency and receives free legal advice from the Duty Advocate), 813 Green Form cases (in respect of both civil and criminal matters) and 146 Duty Advocate invoices for representation at Court (an individual appearing in court unrepresented in most cases is able to use the Duty Advocate to assist them).



### **Alderney and Sark**

The Guernsey Legal Aid Service covers all of the Bailiwick. The numbers of certificates approved in Alderney and Sark in 2019 were as follows:

	Civil	Criminal
Alderney	0	6
Sark	0	0

In future reports, comparisons will be made to prior years.

## **Summary of Legal Aid Expenditure in 2019**

The cost of the Legal Aid Service in 2019 was £2,899,000 which was a £71,000 overspend compared to the budget of £2,828,000.

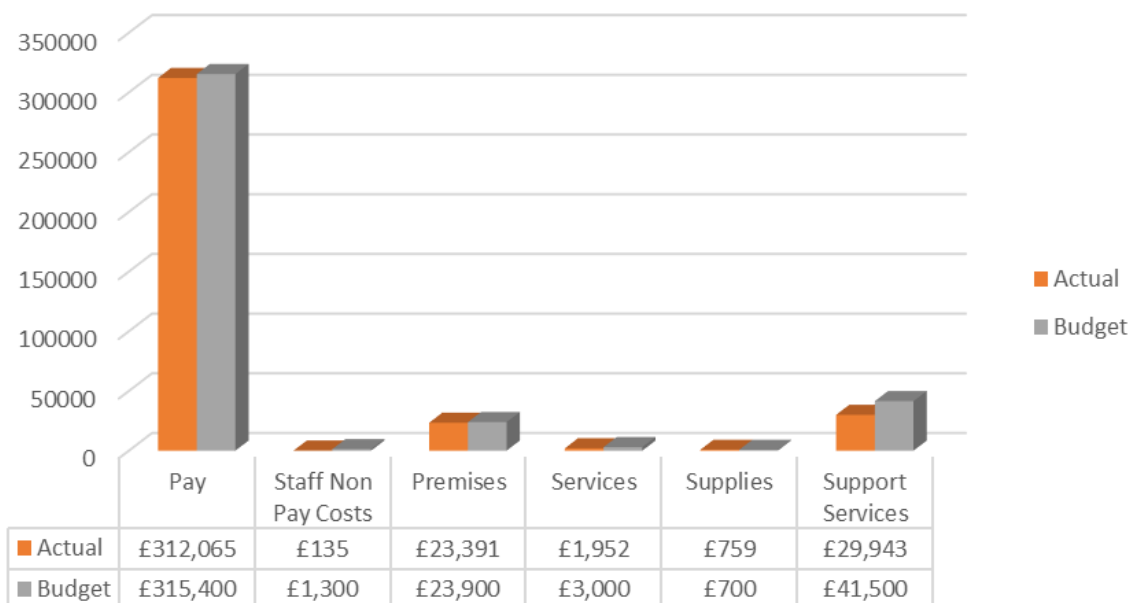
<b>2019</b>	<b>2019</b>		<b>2019</b>	<b>2018</b>
<b>Original Budget</b>	<b>Total Authorised</b>		<b>Actual</b>	<b>Actual</b>
<b>£'000s</b>	<b>£'000s</b>		<b>£'000s</b>	<b>£'000s</b>
		<b>Formula-Led Expenditure:</b>		
		Legal Aid		
1,622	1,622	<i>Civil Legal Aid</i>	1,531	1,697
820	820	<i>Criminal Legal Aid</i>	1,000	789
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2,442	2,442		2,531	2,486
		<b>Non Formula-Led Expenditure:</b>		
386	386	Administration	368	394
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<b>2,828</b>	<b>2,828</b>	<b>Total Net Expenditure</b>	<b>2,899</b>	<b>2,880</b>
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The budget is split into two discrete parts, £386,000 covers the costs of running the Legal Aid office and £2,442,000 relates to demand led expenditure i.e. the funding of legal fees for advocates (including disbursements such as court and experts fees).

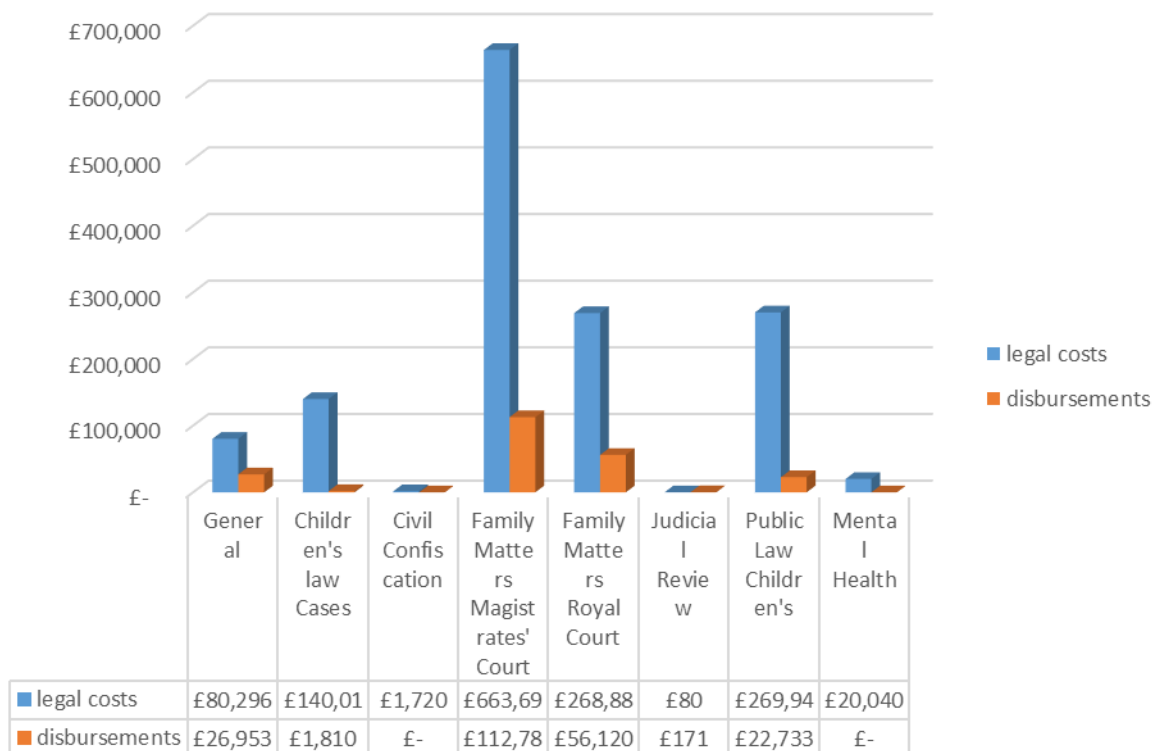
The increased expenditure on civil cases is primarily driven by an increase in demand relating to Family Matters cases and Children's Law.

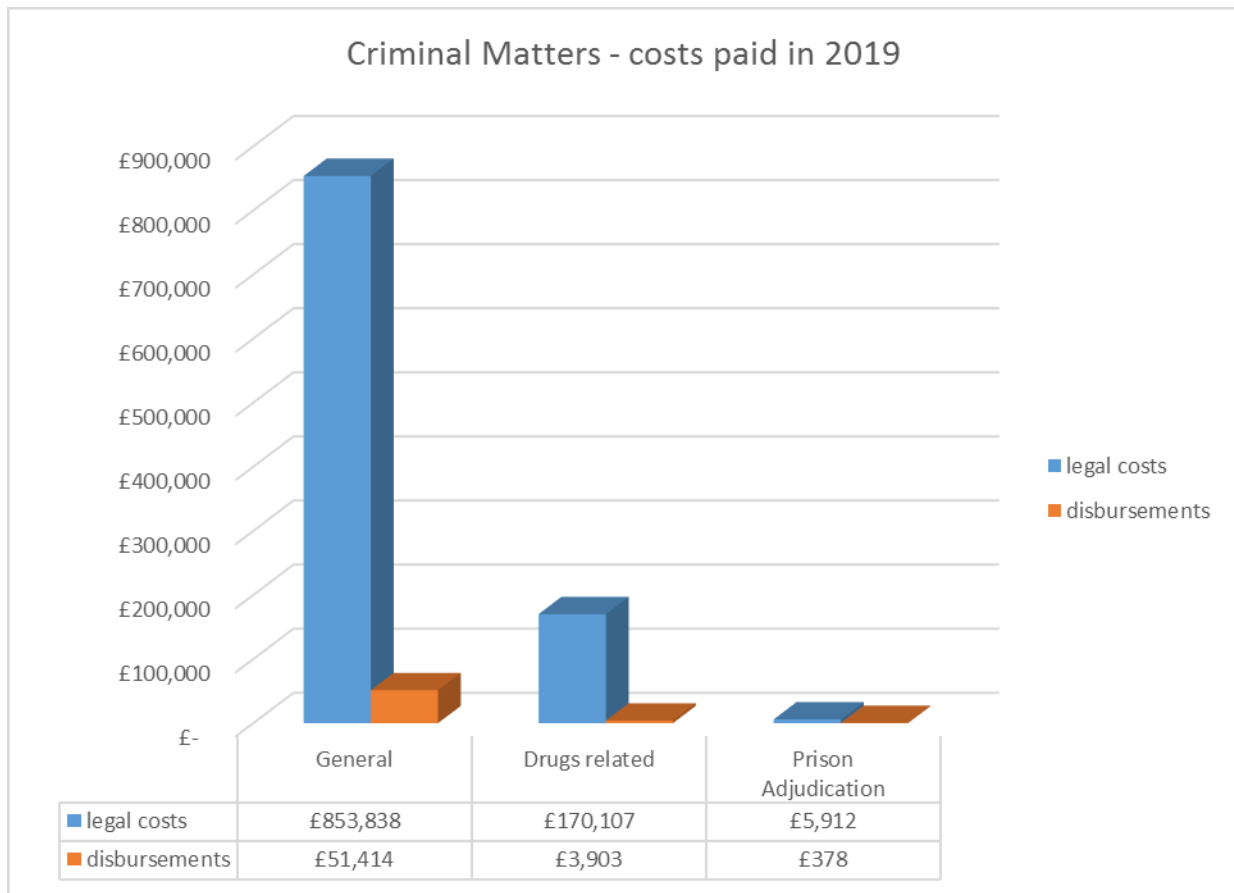
The overspend on criminal cases is due to a couple of large complex cases.

## Administration Costs 2019



## Civil Matters - costs paid in 2019





Due to the length of time it can take for court proceedings to conclude there is no particular correlation between the costs paid in 2019 and the number of Certificates granted in 2019. Some court proceedings last a few months, others a few years.

**Lucy Haywood**

**Legal Aid Administrator**

**August 2020**