

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 6th April 2023, they are of the opinion:

1. To appoint Advocate Lisa Claire Evans as the Legal Aid Commissioner, with effect from 1st June 2023, pursuant to section 16(1) of the Legal Aid (Guernsey and Alderney) (Schemes and Miscellaneous Provisions) Ordinance, 2018 (“the Ordinance”),
2. To note that the Committee *for* Employment & Social Security has agreed with Advocate Evans that she will hold office for a period of five years, with effect from that date, pursuant to section 17(1) of the Ordinance,
3. To agree that the Ordinance be amended to enable the Committee *for* Employment & Social Security to appoint one or more Deputy Legal Aid Commissioners to carry out the functions of the Commissioner when the Commissioner is not available or is unable to act for any other reason, and
4. To direct the preparation of such legislation as may be necessary to give effect to the above decisions.

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

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

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

6th April 2023

Dear Sir

1. Executive summary

- 1.1. The Legal Aid Commissioner is an independent holder of public office, appointed by the States pursuant to the Legal Aid (Guernsey and Alderney) (Schemes and Miscellaneous Provisions) Ordinance, 2018¹ (“the Ordinance”), on the nomination of the Committee *for* Employment & Social Security (“the Committee”).
- 1.2. Following an open recruitment process, the Committee is pleased to recommend to the States the appointment of Advocate Lisa Claire Evans with effect from 1st June 2023. The Committee has agreed with Advocate Evans that she will hold office for a period of five years, with effect from that date, pursuant to section 17(1) of the Ordinance,
- 1.3. The Committee is also proposing that the Ordinance be amended to enable the Committee to appoint one or more Deputy Legal Aid Commissioners to carry out the function of the Commissioner when the holder of that Office is not available or is unable to act for any other reason. This is intended to provide more resilience to the function of the Legal Aid Commissioner to review decisions taken by the Legal Aid Administrator.

¹ [The Legal Aid \(Guernsey and Alderney\) \(Schemes and Miscellaneous Provisions\) Ordinance, 2018 \(consolidated text\).](#)

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 Ordinance came into force on 1 January 2019, and put the administration of the GLAS onto a statutory footing in accordance with the Legal Aid (Bailiwick of Guernsey) Law, 2003² (“the Law”).

3. The role of the Legal Aid Commissioner

- 3.1. Part IV of the Ordinance provides for the independent review of the Legal Aid Administrator's decisions in relation to legal assistance. Section 14(1) establishes the Office of the Legal Aid Commissioner, which is independent of the States of Guernsey, the States of Alderney and any of their committees.
- 3.2. A person who is aggrieved by a specified decision of the Legal Aid Administrator may request the Legal Aid Commissioner to review that decision. The specified decisions relate to applications for, and grants of entitlement to, legal assistance under the GLAS Schemes, which are specified in section 19(3) of the Ordinance³.
- 3.3. The grounds for an application to 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.

4. Term of office and remuneration

- 4.1. Section 17 of the Ordinance provides that the term of office of the Legal Aid Commissioner is for such term, not exceeding five years, as may be agreed between the Committee and the Commissioner at the time of appointment.

² [The Legal Aid \(Bailiwick of Guernsey\) Law, 2003 \(consolidated text\)](#).

³ 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.

Furthermore, a Commissioner whose term of office has expired is eligible for reappointment.

- 4.2. The term of office of the first Legal Aid Commissioner, Ms Kathryn Macken, expired on 30 September 2022. Ms Macken has confirmed that she does not wish to seek reappointment to the Office.
- 4.3. The Legal Aid Commissioner is not an employee of the States and receives payment, at an hourly rate, only when required to undertake a review. The Commissioner is called upon infrequently. During the last three years, annual expenditure on the Commissioner's fees has been less than £1,500.

5. Appointment of a Legal Aid Commissioner

- 5.1 Following an open recruitment process, the Committee is pleased to recommend Advocate Lisa Claire Evans for appointment to the Office of Legal Aid Commissioner with effect from 1st June 2023. Advocate Evans has been a practising lawyer for over 30 years. She is qualified in three jurisdictions, including Guernsey. She has significant court and advisory experience which includes legally aided matters in each jurisdiction. In particular, she has extensive experience of conducting cases involving family and childcare, criminal, employment and housing. Since her arrival in Guernsey in 2009, she has worked for the Law Officers and has also been in private practice. A summary of Advocate Evans' professional experience is appended to this Policy Letter.
- 5.2 The States is asked to note that the Committee has agreed with Advocate Evans that she will hold office for a period of five years, with effect from the aforementioned date, pursuant to Section 17(1) of the Ordinance.

6. Proposed amendment to the Ordinance

- 6.1 Section 16(1) of the Ordinance provides for the appointment of "the Commissioner". Having taken appropriate advice, the Committee considers that this can only mean one person and is therefore concerned that there is no resilience in respect of the function to carry out reviews of decisions of the Legal Aid Administrator. If the Commissioner were to be unavailable due to sickness or an extended holiday, or were to be professionally conflicted in respect of a particular matter, there is currently no alternative person who can undertake the review.
- 6.2 To address this issue, the Committee proposes that the Ordinance is amended to enable the Committee to appoint one or more Deputy Legal Aid Commissioners to carry out the function of the Commissioner when the holder of that Office is not available or is unable to act for any other reason.

7. Compliance with Rule 4 of the Rules of Procedure

- 7.1 Rule 4 of the Rules of Procedure of the States of Deliberation and their Committees sets out the information which must be included in, or appended to, propositions laid before the States.
- 7.2 In accordance with Rule 4(1)(a), the Committee confirms that this represents business as usual. Therefore, this is not referenced in the Government Work Plan.
- 7.3 In accordance with Rule 4(1)(b), it is confirmed that the Committee has not consulted with other Committees or stakeholders in respect of the propositions set out in this Policy Letter as this is considered unnecessary.
- 7.4 In accordance with Rule 4(1)(c), it is confirmed that the propositions have been submitted to His Majesty's Procureur for advice on any legal or constitutional implications.
- 7.5 In accordance with Rule 4(1)(d), it is confirmed that the cost of the Office is factored into the approved budget for GLAS.
- 7.6 In this Policy Letter, the Committee has set out its proposals for Advocate Lisa Claire Evans to be appointed to the Office of Legal Aid Commissioner and to amend the Ordinance to enable the Committee to appoint Deputy Legal Aid Commissioners to carry out the function of the Commissioner when the holder of that Office is not available or is unable to act for any other reason. The Committee seeks the States support for the propositions, which are based on the Committee's purpose:

"To foster a compassionate, cohesive and aspirational society in which responsibility is encouraged and individuals and families are supported through schemes of social protection relating to pensions, other contributory and non-contributory benefits, social housing, employment, re-employment and labour market legislation."

- 7.7 In accordance with Rule 4(2)(b), it is confirmed that the propositions have the unanimous support of the Committee.

Yours faithfully

P J Roffey
President

H L de Sausmarez
Vice-President

T L Bury
S J Falla
J A B Gollop

M R Thompson
Non-States Member

R J Le Brun
Non-States Member

Lisa Evans*Advocate and Barrister-at-law***Qualifications**

- LL. B (Hons) (1990)
- Barrister – Inner Temple (England & Wales) (1991)
- Barrister – Supreme Court of Queensland (2002)
- Practitioner – High Court of Australia (2003)
- Certificat d'Études Juridiques Françaises et Normandes (2009)
- Advocate – Guernsey Bar (2011)

Positions/ experience**August 2021 – March 2023****Guernsey Financial Services Commission, Guernsey** - Senior Legal Counsel

Specialist legal advice to the Commission on laws and regulations relating to regulated entities within the Bailiwick on:

- investments;
- fiduciaries;
- trusts; and
- enforcement matters.

Appearing in Court on behalf of the Commission relation to various applications and appeals including:

- winding up applications;
- administration management applications;
- injunctions; and
- appeals against decisions of Senior Decision Makers.

April 2017 – July 2020**Specsavers Optical Group, Guernsey** - Head of Legal – Dispute Resolution

I led a multi-disciplinary team that provided advice and support to the Specsavers Group of Joint Venture Companies in the UK and ROI. I advised on:

- Regulatory proceedings relating to optometrists & audiologists;
- Breach of contract and contract disputes;
- Disputes relating to Company Law matters in the High Court.
- Employment law.
- Disputes relating to shareholders and director's duties.
- Company Secretary matters relating to company structure.

February 2015 – March 2017**Trinity Chambers, Guernsey** - Advocate and Partner

I specialised in all aspects of general civil law, inquests, family and childcare, housing and criminal law before the Royal Court, Magistrates Court and the Child and Youth Community Tribunal. I undertook both legal aid and privately funded matters.

March 2009 – February 2015

Law Officers of the Crown, Guernsey - Lawyer and Advocate

I represented States Departments, the States of Alderney and Sark on civil litigation matters including:

- Health and Social Services Department in relation to childcare matters.
- The Office of Convenor in relation to processes and procedure affecting matters before the Child and Youth Community Tribunal.
- The GFSC in relation to Director Disqualification applications, regulatory investigations and breaches of regulatory laws.
- Her Majesty's Greffier in relation to their role and responsibilities as Registrar General.
- The Registrar of Companies on registered company strike offs and winding ups.
- Her Majesty's Procureur in relation to Guardianship applications under the Mental Health (Guernsey) Law, 2010, civil forfeiture matters involving asset recovery, in cross jurisdictional matters involving judgment debts and reciprocal enforcement orders; and in relation to cross jurisdictional requests for assistance from foreign Courts.
- Planning applications and appeals.
- Housing applications and appeals.

February 2003 – March 2009

Department of Justice & Attorney-General, Brisbane - Senior Principal Lawyer

Member of the management team of the Public Law Group comprising of 26 lawyers and 8 support staff. I provided legal advice and representation on:

- child protection hearings;
- applications relating to dangerous prisoners and sexual offenders;
- large complex commissions of inquiry involving Government Departments.

March 2002 – February 2003

Gilshenan & Luton Lawyers, Brisbane - In-House Counsel

I advised on a wide variety of matters for both privately funded and legally aided clients, including personal injury litigation, contract disputes and negligence and tortious matters.

1992 – January 2002

Chambers of Rex Tedd QC, St. Philips Chambers, Birmingham - Barrister

I provided legal advice in relation to personal injury, negligence actions, breach of contract, criminal law, and family and child law.

1991 – 1992

Chambers of Sir James Hunt QC, 1 Kings Bench Walk, Temple -

Pupil Barrister - training