

## **Submission by Mr P and Mrs K McDade**

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I have researched this matter and am lead to believe that in most countries Legal Aid is funded by Governments, including the UK and Guernsey. For some reason Jersey does not follow suit. I question as to why this is not the case?

It is no wonder why Legal aid lawyers, in our experience, are not acting in our best interests, because they are not getting funded by the Government/States of Jersey. They must resent being called upon to represent someone for no fee/lower fee to what they usually receive, especially as they have to partake in legal aid until they have qualified as a lawyer for 15 year.

If they were funded by the States of Jersey then hopefully they would represent their clients better and Justice would be done. At the present time, they just do not seem to be interested at all, and treat legal aid clients as third class citizens.

It states under Article 6.3 of the European Convention on Human Rights regarding criminal law cases

Article 6 reads as follows.

1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.
2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.
3. Everyone charged with a criminal offence has the following minimum rights:

(b) to have adequate time and the facilities for the preparation of his defence;

(c) 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;

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My question is:

If "a person" is accused of a crime, and requires legal aid, why is the partner's income taken into account?

This is very unfair in that for example:

a) If a woman commits a crime and is on state benefit/a low income, and her husband earns a salary in excess of approx £500 per week, or he has savings of over £10,000 for his retirement, legal aid will either not be granted or the husband will have to pay for his wife's legal representation when she has committed the crime; but

b) If a single woman commits a crime and is on state benefit/a low income, she will receive legal aid for free?

This is totally unfair.

Legal aid should be granted on an individual basis and on the individual's financial status alone.

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### Legal Aid Fees

Why do the fees charged by the lawyers vary so much between firms. There should be a standard set fee across the board for legal aid lawyers.

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### Case 1 - Mrs Kim McDade

I was recently granted legal aid on 5 March 2014 and subsequently received an engagement letter dated 7 March from the lawyers who were to represent me in which it confirmed the names of 2 persons who would be dealing with the day-to-day conduct of the matter and I was also advised of the name of the partner who had ultimate responsibility for my file.

There were a couple of telephone conversations exchanged and I also sent relevant information via e mail.

I received a phone call saying that a meeting had been arranged for me with the Lawyers on the morning of 18 March - the day before I was due to appear in Court!. I requested an afternoon meeting as this was more convenient. Therefore a meeting was arranged for 2.30 on the same day.

This meeting lasted for just under 2 hours, at which time I tried to put my case over. They were not interested in anything that I had to say or any of the relevant information I handed to them. I even handed them a letter which was addressed to the Magistrate written by a senior Politician, to which they just sniggered at as if it wasn't worth the paper it was written on, and told me that this letter was totally irrelevant!! bearing in mind it was addressed to "The Magistrate".

I was told by one of them "Mrs McDade, do you not think that "you may well be cutting your nose off to spite your face"

I was advised that if I didn't take their advice, which from my point of view was against my human rights, they could not represent me in Court the next day.

The meeting came to an abrupt end and I was left to attend Court without legal representation.

I am certain that if I had been paying for my own Lawyer, I would not have been treated in this way.

The next day, after appearing in Court without representation, which was very distressing as I have never been in a court room in my 52 years, I went to the Batonnier's office and advised them of my dissatisfaction with the lawyers. I was told that I was not permitted to dismiss my appointed lawyer as I was on legal aid. I was told to put my complaint in writing. However, before I had a chance to do this, I received a call from the Batonnier's office advising me that a new legal aid certificate had been issued for another law firm to represent me, and that there was now no need to put my complaint in writing??

I telephoned the dismissed lawyers and requested all the relevant information I had e mailed through to them be left at the reception in order for me to collect. I was advised by one of them that he was not aware of any correspondence I had sent through to them via e mail.

This is absolutely shocking!

Needless to say, this matter is being looked into.

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Fees

My new appointed lawyers are NOT charging me anything at all to represent me.

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Case 2 - Mr Peter McDade

Due to an incident that occurred on 27 September 2013 I appeared in Court on Monday 30 September with the duty advocate and pleaded not guilty to the charges (as I was not guilty).

I was granted legal aid and received 2 letters dated 4 October 2013, one from the law firm stating the terms and another from the appointed Advocate enclosing the disclosure from the Criminal Justice Unit upon which the prosecution would rely. The court date was set for 14 October.

The Advocate had 10 days to read through the disclosure and to pick up on all the major discrepancies contained within the disclosure and also to obtain vital missing disclosure.

This she did not do. Instead, without all the evidence, she strongly advised me to change my plea to guilty as she told me that in her professional opinion that I would without doubt be found guilty.

At my court appearances, she would come up in the lift and go straight into the court without even discussing the case with me, which I noticed other lawyers were doing with their clients. I had to tap her on the shoulder in the court room for anything I wished to discuss with her and the response I got was "what is it" ! It was totally embarrassing.

My case went on from 14 October until 18 December due to circumstances, more than enough time

for me to receive an estimate of the fees I would need to pay. This did not happen.

Fees

I received no estimate of fees whatsoever from my Advocate.

Her legal aid rate was £188 per hour.

I received a letter dated 6 January 2014 stating:

In accordance with legal aid guidelines and given your joint household income we would be entitled to charge you something of the order of £3,300 being half of our time spent on your case at legal aid rates. However, as a concession, I have reduced this charge to £1,000 plus GST. etc etc (therefore £1,050).

I queried this bill and received a letter dated 7 January confirming the the same amount.

I queried this again and was advised that in fact I should have been charged £6,600.

I have been advised that my appointed Advocate spent 35 hours on my case.

I have requested a total breakdown of the time spent on my case (35 hours) and to date the firm are refusing to give this to me.

I sincerely believe my advocate did not spend 35 hours on my case therefore I have written an in depth letter of complaint to the Batonnier.

The Batonnier's office are not prepared to look into this complaint, instead they have issued me with another legal aid certificate and I have been appointed another firm for an "Opinion on the Merits of an Appeal against Conviction".

I did not request this, I requested that my advocate's unprofessionalism be looked into and also the fees she has charged me.

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9 June 2014 letter received from law firm stating that the estimate for their legal fees will be between £1170 and £2340 for legal aid regarding the case for an "Opinion on the Merits of an Appeal against Conviction".

They anticipate that the time likely to be spent in dealing with the matter will be between 15 to 30 hours although the figure may go up etc.

How can they give an estimate without seeing any disclosure?

I have contacted the Batonnier advising that I am not prepared to pay any more legal fees in order for this matter regarding my advocate and her fees to be looked into.

I have received the following e mail from the Batonnier's office stating:

Dear Mr McDade

Further to my e-mail to you of earlier today, I can confirm that we have been in contact with V\*\*\*\*\* and pointed out the error in their calculations as to the appropriate contribution you are eligible to make towards their fees, under the Legal Aid Guidelines.

V\*\*\*\*\* will now send you an amended Terms & Conditions of Engagement letter.

I have today received the amended letter which states:

We anticipate .....15 to 30 hours ..... the contribution towards our legal fees will be between £877.50 and £1,755.00.

I am not paying any fees for a lawyer to look into another lawyer's unprofessionalism.

This whole legal aid system is an absolute farce to say the least. The quicker it hopefully gets funding, the better it will hopefully be.

I do hope that these valuable comments will be passed on and hope that the non-existent legal aid system in Jersey will be addressed in order for Justice to be done.

Thank you for your time in reading this submission

Mr P and Mrs K McDade