

Legal Aid (Amendment) Bill 2012
First Reading approved

3. Mr Lowey to move:

That the Legal Aid (Amendment) Bill 2012 be now read a first time.

The President: Item 3. I call on Mr Lowey to move the Legal Aid (Amendment) Bill 2012 for a first time.

Mr Lowey: Thank you, Madam President.

Again, I would just like to say I have in the Public Gallery, Mr John Kennish, who is the section manager of the Civil Legal Aid and Legal Costs section of the Rolls Office, who may be able to help me if I get into trouble.

With that, Madam President, I am pleased to put before Council today the Legal Aid (Amendment) Bill, which is promoted by the Treasury. The Bill seeks to amend the Legal Aid Act 1986. The Bill consists of 20 clauses and is directed towards all primary objectives.

The primary objectives of the Bill are: (1) to allow Legal Aid to be made available for mediation at the earliest possible stage of dispute... not meditation, *mediation*. (**Several Members:** Mediation.) (*Laughter*) I knew I would get that wrong. (*Interjections and laughter*) Perhaps I should go and meditate. I am sure my Lord Bishop will have a quiet place for me somewhere!

Number two, to provide the greater recovery of Legal Aid costs by way of contributions from the assisted person and the introduction of a statutory charge. And thirdly, to create a Legal Aid Appeals Tribunal. And fourthly, to reconstitute the existing Legal Aid Committee so that its membership is predominantly made up of non lawyers and to extend its functions to include oversight of the Legal Aid certifying officer and Legal Aid administration.

The background of this particular Bill, Madam President, if I may, I would like to provide a summary of the background which has led to the Bill being presented to Council. In 2002, the Council of Ministers announced the appointment of the Legal Aid Commission with the following terms of reference: to consider the provision of administration of Legal Aid and advice and assistance in the Isle of Man.

In 2003, the Commission produced its report and submitted it to the Chief Minister for consideration.

In 2006, the Council of Ministers agreed to a phased approach to the implementation of the recommendations contained within the report of the Legal Services Commission.

Between 2006 and 2008, work was undertaken in relation to implementing changes to secondary legislation, and this most notably led to a new financial means test for civil Legal Aid being introduced in August 2008.

Included in the report of the Legal Services Commission were also a number of issues which it was recognised would require amendment to primary legislation and subsequent rafts of new secondary legislation. These issues included the provision of a Legal Aid Appeals Tribunal, the introduction of Legal Aid for, again, mediation proceedings and the introduction of a statutory charge.

In 2009, a Select Committee of Tynwald was appointed to consider a Petition for Redress of Grievance from Mr Stephen Broad. The remit of the Select Committee was extended in 2010 to also consider a Petition for Redress of Grievance from Mr Paul Smith. After taking written and oral evidence, the Select Committee made a number of recommendations within their First and Second Reports, which included: (1) the introduction of a new board, which has a general remit to oversee Legal Aid administration and to review the actions of the Legal Aid Certifying Officer; (2) that another person or body be able to review the actions taken by the Legal Aid Certifying Officer in response to representations made by the opponent of the assisted person; and (3) that steps should be introduced to a statutory charge as soon as possible.

Madam President, the Legal Aid (Amendment) Bill addresses all of these recommendations and issues. In addition, the Bill includes a minor amendment to the Advocates Act 1976 to extend the powers of the Advocates Disciplinary Tribunal.

Madam President, Hon. Members have received advance copies of the Bill, as well as the explanatory notes that provide a paragraph-by-paragraph account of the effect of all the clauses and schedules in this Bill, so I am not going to recite all of them this morning, although I may do, if requested, but I do not see any point in going through the 20 clauses that I have before me when we will be dealing with that on the clauses stage.

Madam President, having outlined the broad purpose and contents of the Bill and explained its background, I hope that Hon. Members will give it their support.

I beg to move that the Legal Aid (Amendment) Bill be read for the first time. I beg to move.

Mr Braidwood: I beg to second, Madam President, and reserve my remarks.

The President: The Hon. Member, Mr Downie.

Mr Downie: Thank you, Madam President.

I speak in support of the Bill and the reasons why I tend to support the introduction of this Bill is that there is no doubt in my mind that the Legal Aid system on the Isle of Man has become one of the greatest mysteries since the pyramids, and the number of times, as a politician, that we get lobbied from various parties about how unfair it is, or how ineffectual it is, or how overgenerous it appears to be, it is probably one of the reasons why this Bill is before us today.

Civil Legal Aid, I think, has led to quite a number of issues that have come before Tynwald. The one that was cited by Mr Lowey, the Broad case, where under a matrimonial issues Legal Aid was granted to one party, so immediately one of the party is on the back foot the whole time. There was a property there that was the argument of contention, and to me, it just seems to me if your face fits, you get it; if your face does not fit, you do not get it. I hope that this Bill will actually go some way to resolving some of those issues.

I am very, very pleased to see that mediation is mentioned in the Bill. I cannot for the life of me understand why for years we have had various people going to court on matrimonial and other related issues, and issues involving children – a very stressful time for everyone – where one side is being legally represented and paid for by Legal Aid and the other people have been left to fend for themselves. I think that has been a great unfairness.

I notice in clauses 6, 7, 8, 9 and 18, the historical automatic provision for a person to qualify for Legal Aid if they are on benefits is to be subject to some other form, and I cannot also, for the life of me, understand that a person who is, on a regular basis, appearing before the courts for a whole host of offences, on benefit, automatically gets his legal bills picked up. (**Mr Turner:** Absolutely.) There is no... I will not say incentive, because that is not the right word, but there is no deterrent to a person appearing in front of the courts if they think that every time they pitch up, after having committed some silly or fairly minor misdemeanour, they are going to be provided with Legal Aid and patted on the head and walk through it all the time.

I think the system that is in the Bill would be a significant improvement. There have been lots of allegations made over the years that certain advocates' practices have benefited greatly under the current Legal Aid system and they have actually built their practice up around the fact that they do Legal Aid work and other practices may have not bothered with it. So I am glad that we are going to go some way to resolving this great mystery.

Finally, Madam President, I cannot, for the life of me, understand why practising advocates, who are considered to be wealthy, millionnaires, consultant surgeons and all these other people can qualify for Legal Aid and are supposed to have millions of pounds in assets. I would look to have an answer to that, but I am hoping that if this Bill passes, it will go some way to resolve all these issues which, to the man in the street... They just cannot get their head round it at all and how the system works.

So I think this is to be supported. It has got to be better than the system that we have in operation at the moment, which I do not think is fair or understandable.

The President: The Hon. Member, Mr Turner.

Mr Turner: Thank you, Madam President.

I am not as optimistic as Mr Downie that this will solve the mystery of the system. I understand why it was set up, and that was to provide a mechanism for people who genuinely need the funds. But from what I see seems to happen quite regularly, and maybe the mover could explain – and this probably comes back to Mr Downie's pyramid mystery; it is a mystery to me – is that surely Legal Aid is set up to aid people who are going to court to resolve an issue, when what we really see is that when two people fall out over an issue, one of them then goes for the Legal Aid...

Just briefly, before I expand on that, Mr Downie mentioned the clauses where if you are on Family Income Supplement you would automatically get Legal Aid. I do note those clauses and I am pleased to see that they are in there. The devil will come in the detail when the regulations come out, of course. So I will be looking very closely at those.

But what happens is that the two people who have fallen out, the one who is on Legal Aid, if they get it, ends up in a campaign of lawyers' ping-pong letters going backwards and forwards, and it appears that the Legal Aid funds all this arguing, which really is just arguing between two people before it has even got to the court stage. I would like to know if Legal Aid is funding that, because if so, it shouldn't be. If two lawyers are arguing between themselves, running up huge bills, which is what happens all the time and we see it every day, then the public purse should not be funding that. The Legal Aid should be the next stage, in my view, of when they have not managed to resolve the issue and then if there is a court case, where they need proper representation in court, that is what the Legal Aid should be funding – the presence of that advocate or whoever is representing them.

I appreciate they may come back and say, 'Oh, but it is all about the preparation in the run-up to the case,' but most of the time it is not about preparation; it is just about two people trying to bargain, because what happens is they will send an offer out, they will send an offer back, they will reject it. It goes round and round and round, and before you know it somebody has run up thousands and thousands of pounds, which is what the basis of many of the petitions to Tynwald have been over the years, that the unaided person has had to fund all

of this whilst the aided person has had what has been described as a bottomless pit of cash. I know the mover may say, 'Oh, but it isn't, because there are assessments done,' and all the rest of it, but there is wholesale abuse of this system going on because people are proving that they have got no assets. They can move assets around, they can show that they have not got any income, and really, the system has been incredibly unfair, whilst its origins were to be fair to the people who genuinely need it.

So I will be looking very closely at the progress of this legislation and making sure I see some of the safeguards which many people in Tynwald have been fighting for over the years, and I hope this is a step towards what Mr Downie said, and that is getting rid of some of the myths. I give it cautious support, but as I have said, the real interest will come in some of these regulations further down the line.

The President: Mr Braidwood.

Mr Braidwood: Madam President, just following on from what my hon. friend in Council, Mr Turner, said – with the advocates and the ping-pong – I think this is why mediation is being brought in, to try to take that layer of negotiations out, so it can be, you could say, peer-to-peer mediation.

On the comments of Mr Downie, and mainly on criminal, with people coming up, there does seem to be a sense that some advocates, in instructing their clients, say, 'Plead not guilty' all the way along, which is running up large expensive bills, but when it comes to court they change the plea and plead guilty, and it causes quite an expense on the Legal Aid with the advocates, and I feel that, hopefully, this Bill will be looking at that practice.

The President: Mr Wild.

Mr Wild: Just, Madam President, to give my support to this Bill, which in my view upgrades and refreshes this legislation, and to make the comment I particularly welcome the focus on mediation, for all the reasons being discussed in this Chamber.

Thank you.

The President: The mover to reply, please.

Mr Lowey: Yes, I first of all thank Hon. Members for their contribution. It is a mystery. It is as much of a mystery to me as it is to the Hon. Members. First of all, how long has it taken? It started in 2002, but it is a complicated matter, and I think you have got to bear in mind there are civil cases – which are mainly family matters, which this mainly deals with – and criminal, which has a different set of rules regarding abilities, and when you are taking the liberty away from a citizen it is a serious matter, and that has to be accepted.

What I have discovered this morning is a lot of frustration by Hon. Members, and I share that frustration. Having said that, this particular piece of legislation goes some of the way. After listening to the... and I have got the reports of all the commissions, the Legal Aid... the family matters Petition for Redress of Grievance, the Second Report, the First Report and the recommendations. This is an effort to... and again, I am not itemising every individual here this morning, but the concerns that have been expressed should be listened to. The idea that somebody who is on benefit should automatically get it, and somebody who is on a minimum wage, which may be just on a par with, does not get it, is not right. (**Mr Turner:** It's outrageous.) That is why the charging is coming in now for everybody. So, as far as I am concerned, that is right, fair and proper.

We also, again, are taking the lawyers out of the overriding position and having lay members, as opposed to the legal profession. These steps may seem small, but they will have long-term effects. I am quite sure of that. They are overseeing what I would call a discredited system that has had many failures in the past, and this is an attempt to unravel that mystery. But, like the Gordian Knot, you do not take one piece of the Knot and just unravel it in one go. It takes a little bit of time. Ten years is a long time, but this legislation, I think, is the first instalment.

Mr Turner is right: this is a lot of enabling legislation, where the regulations will be the key to unravelling the mystery. Those regulations, of course, will be subject to Tynwald approval, so you will have another sight at them. This enables that to take place. It is the first step along the path, and unless you have the Bill which enables that to happen, you will not have the end result, which is the unravelling part, which is the regulations – (*Interjection by Mr Turner*) and scrutiny. This Bill actually gives more scrutiny to the activities of the Certifying Officer and the right to appeal, which is not there at the moment. So, as far as I am concerned, these are positive steps. They may not be the total answer, but I do believe it is the start of a journey which will end, hopefully, in more satisfaction. I do not think you are going to get total satisfaction.

I used the word 'meditation' instead of 'mediation'. Sometimes it is good to meditate, but mediation should be a first step. While it is not compulsory, it should be recommended strongly, and for all the right reasons. When the heat is on, it is time to take the ire out of the fire. Mediation does that, and as far as I am concerned, I welcome that as a really positive step. It will take some doing, because you are quite right, people do tend to

think that it is a game of bluff until the very... How many times have we heard – and it has already been mentioned here this morning – that people plead not guilty right until the court, and then they plead guilty at the last minute? That does not happen just in criminal cases. That happens in civil cases too, because the lawyers advise, advise, advise, and then they have a fallback position. So again, this Bill is addressing some of those points – not all of them perhaps, but most of the points that have been raised here this morning are covered in the Bill and will be dealt with by regulation.

I am glad that the general tenor of the debate this morning has been supportive, with reservations, and to that end I would ask Members to support the First Reading of the Bill.

The President: The motion is that the Bill be read a first time. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

That concludes the business on our Order Paper, Hon. Members.