

Legal Aid (Amendment) Bill 2012
Second Reading approved

4. Mr Lowey to move:

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

The President: We move on now to Item 4 and I call on Mr Lowey to take the Second Reading of the Legal Aid (Amendment) Bill 2012.

Mr Lowey: Thank you, Madam President.

I would like to thank Hon. Members for their comments during the First Reading of the Bill last week, some of which contained – I am almost certain, because I shared it – an element of frustration in relation to perceived inconsistencies in relation to the award of Legal Aid; also in relation to the way in which cases funded by Legal Aid are mitigated.

It was noted that the comments made included references to criminal Legal Aid, and I want to point out straight away that this Bill does *not* deal with criminal Legal Aid. There is currently a review going on in relation to current practices, processes and procedures involved within the criminal justice system. I think it is under the chairmanship of the Minister for Home Affairs. This will, no doubt, encompass the provision of criminal Legal Aid, but I am sure my hon. colleague will have had a wealth of opportunity to contribute, I hope, to that review.

May I respectfully suggest, Madam President, that concerns in respect of criminal Legal Aid or the criminal justice system are not relevant to the debate of this particular Bill. I would like to reiterate the main objectives of the Bill, which, again I must stress, relate solely to the provision of civil Legal Aid and not criminal Legal Aid. They are as follows: to allow Legal Aid to be made available for mediation at the earliest possible stage of a dispute; to provide for greater recovery of Legal Aid costs by way of contributions from the assisted persons and the introduction of a statutory charge to create a Legal Aid Appeals Tribunal; and 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 Administrator.

Madam President, the provisions contained within the Bill enable regulations to be drafted for consideration, which of course will subsequently be subject to debate and, ultimately, Tynwald approval. All we are doing here is making ‘enabling’.

Whilst I have noted, and as I have said, shared the concerns and frustrations raised by my hon. colleagues at the First Reading, it was with due respect that I suggested such concerns can only be addressed by approving this Bill because, if we approve the Bill, at least we have set up the machinery that will enable criminal Legal Aid to be looked at by independent external forces.

Following the introduction of this Bill, I anticipate that the newly constituted Legal Aid Committee will be charged with a complete review of Legal Aid provision in the Isle of Man. This will provide an opportunity for concerns as exemplified by the comments of hon. colleagues last week and, as I say, at least it will be considered and, if appropriate, addressed.

Clearly, the introduction of this Bill will lead to a requirement for new secondary legislation to be drafted and introduced very soon thereafter. However, in addition, once the newly constituted Legal Aid Committee have had an opportunity to undertake a complete review of Legal Aid – which could include a review of criminal Legal Aid – this will almost certainly lead to a further Legal Aid (Amendment) Bill being drafted for progression during this session.

Madam President, before moving on to the clauses of the Bill, I would like to address the concern raised at the First Reading in relation to the availability of Legal Aid in relation to what can be described as pre-court negotiations. I can confirm that Legal Aid funding is available in principle in relation to pre-court negotiations and furthermore, is actually encouraged. It is now normal practice for Legal Aid certificates, when granted, to be limited specifically to allow the assisted person to focus on and try and negotiate a settlement. Of course, this limitation may be lifted if the assisted person can then evidence that they tried to settle the matter without success. So it does not deny them continuous Legal Aid if they have to go to court.

Madam President, as mentioned, one of the main objectives of this Bill is to enable Legal Aid to be provided for mediation at the earliest possible stage in a dispute, and of course in the majority of cases it is anticipated that mediation would take place well in advance of the parties seeking to try and resolve the dispute through the courts.

Mediation is, of course, a mechanism which encourages and allows the parties to attempt to settle a dispute without the need to go to court. A number of benefits have been identified where parties have agreed to settle a dispute in manner and it is outwith the court process, which includes – and this is actually proven now in the United Kingdom, where this is actually in being – a less costly process for all involved; a reduction of conflict,

which in child-related family matters is a significant benefit which cannot be understated; an increased likelihood that the parties will accept and adhere to the agreed solution; and a reduced likelihood that the parties will return to court in relation to the same issues, which in turn will lead to a reduction in cases being progressed before the courts.

Madam President, I hope I have allayed the concerns raised by Hon. Members last week at the First Reading, and I will move the Second Reading of the Legal Aid (Amendment) Bill, to be read a second time.

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

The President: The Hon. Member, Mr Crowe.

Mr Crowe: Thank you, Madam President.

I will just touch on mediation, which I think is a very positive move forward and I think, as the hon. mover has said, is actually practised on the Island. I went onto the Isle of Man Law Society website and it is mentioned and is a feature of seven of the advocates' law practices. There were fairly brief references to mediation on some of the websites, so I went on to the English Law Society and there is a lot greater depth and this was followed by me going onto the website of the Family Mediation Council. It is very interesting that this has become quite a Council in its own right, where members get qualifications to mediate and it takes the angst out of family disputes and divorces, and I think it is a positive move forward to help marital breakdowns to reach a satisfactory conclusion with a mediator. Although people are encouraged to use mediation, it says that if one party refuses to be involved, then it has to go through the normal process: you can lead a horse to water but you cannot make them drink, so to speak.

I will be supporting this Bill, but the mediation part is the one that interests me particularly.

The President: The Hon. Member, Mr Butt.

Mr Butt: Thank you, Madam President.

I would like to thank the mover for clarifying that this Bill does not concern criminal Legal Aid, because I think myself and other Members last week perhaps were talking about criminal Legal Aid and in the amending Bill, there does not seem to be much reference to say that it is purely civil Legal Aid, although I suppose a reading of the 1986 Act would have shown that quite clearly.

The fact that it is no longer criminal Legal Aid and it is purely civil has taken away a lot of my concerns, because my concern was, last week, that some of the changes would actually give people charged with criminal offences less ability to actually defend themselves, and when liberty is at stake it is very important that that ability should not be reduced.

So I would like to thank the mover for actually spelling out that this is not criminal Legal Aid; this is civil Legal Aid and will make my task on this much simpler.

The President: The Hon. Member, Mr Downie.

Mr Downie: Thank you, Madam President.

I just wish to speak in support of the Bill, but following on from our last sitting, I was drawn to a lot of work that has been done by the UK Lord Justice, Ken Clarke. As Hon. Members may not be aware, the UK are totally overhauling their Legal Aid system, both criminal and civil, and an awful lot of work has been done in that particular area to try and deal with the problems that we are facing here on a much smaller scale, but in the UK, there is now a massive problem, because they physically have not got the money and they are forced to make some quite stringent changes to the way they go about things.

I think the Bill that is before us today does provide a really good framework. We have got an appeals panel and so on and perhaps unfairly, those making the decisions in the past have been in the position where they have not had the privilege of relaying this on to other people, or to get advice from other people and perhaps that is why there has been some criticism of the system in the past. I think the Bill that is before us will bring about a significant improvement in the system. All I would ask is that there are regular updates from the courts to actually show how much money is being spent in these areas.

I think one of the issues that Ken Clarke has been dealing with is providing a system where people could see which part of the country the Legal Aid has been going to. There was a comment on today's Radio 4 programme about Mr Hamza, who they have already paid £900,000 in Legal Aid to, so you can understand why there is concern. A different set of circumstances, of course, on the Isle of Man, but there again we have got to be seen to be fair here as well and have a system that deals with the issue, but at the same time is open to some scrutiny. I think if we can bring that together, bring that to bear, a lot of people will be much happier about the Legal Aid system.

The President: The Hon. Member, Mr Turner.

Mr Turner: Thank you, Madam President.

I am still rather concerned. The mover mentioned that the Legal Aid is available for negotiations, and I described it as a ping-pong of letters going backwards and forwards. I think this is the reason why we have so many complaints to Tynwald and petitions being lodged, because there are a vast number of people who are on an income which is sufficient for their day-to-day life, and then, when they are suddenly hit with a challenge by somebody who is legally aided, what this legislation does is provide for a huge disadvantage for the person who is not legally aided.

In the petitions that have come – some of them over property and the likes – we have seen people literally running up thousands and thousands of pounds' worth of bills and, in some cases, ending up losing their home because of the costs that have been run up through other parties having the means to fight those cases. One of the concerns I have is that if a legally aided person is pursuing a property, they may well come into a property which could be worth a substantial amount of money, whereas the state has funded their case and the other person has had to fund it themselves. I think that was certainly one of the cases... Myself and Mr Butt were talking to somebody who was chatting to us about a property situation. So there are problems. Whilst this is aimed at helping people who genuinely need assistance, I think we have to bear in mind that the whole set-up can cause huge disadvantage to a lot of people. I think there should be a mechanism – and I would like to hear from the mover – where an unaided person is able to make representations and object to the granting of Legal Aid, I would like to know about that mechanism.

Thank you, Madam President.

The President: The Hon. Member, Mr Wild.

Mr Wild: Just to give, Madam President, the Second Reading my support on the basis, like my hon. colleague, Mr Crowe, I do believe that mediation is an extremely important way forward, having experienced it from a personal perspective in my former commercial background, where it was found to be very effective, and hopefully in a civil basis it will be equally so.

Likewise, I think the Bill itself will hopefully act as a catalyst to begin to evolve and improve the existing system to recognise the concerns expressed by my hon. colleague, Mr Turner.

Thank you.

The President: The mover to reply please.

Mr Lowey: Yes, I thank Hon. Members for their comments on the Bill, especially Mr Crowe and his emphasis that it is about mediation; it is. Of equal importance though, it does create a framework that has been strongly recommended by select committees.

Can I just deal with the point that was made by my hon. friend, Mr Turner, when he says, will the person agree to have the right to complain? Yes, they will, and in this instance they will have a tribunal that is independent and not of the legal profession, but mainly of lay people. So it is already...

Can I just give you one of the recommendations of the last Select Committee, which reported in... the Select Committee of Tynwald on Legal Aid in Family Matters (Petition of Redress of Grievance). One of them, recommendation 3:

‘That a new Board should be put in place with a general remit to oversee the administration of the legal aid system, and a specific responsibility to review the actions of the Certifying Officer in response to representations from the opponent of an assisted person. The Board should be unable to sit unless a majority of members present are non-lawyers.’

Well, that has already been included, they will be virtually all non-lawyers.

The summary of the conclusions also says:

‘We do not accept that the risk of vexatious abuse need be an insurmountable barrier to putting in place some improvement to the current procedures. In fact, we think an improved procedure may well reduce the number of complaints being submitted to the Advocates Disciplinary Tribunal.’

For example, I agree with the Hon. Member, vexatious problems and genuine problems are to somebody who is aggrieved, it is a genuine problem, but maybe to another party it may be vexatious; but the system, I think, that we are going to put in place will ease the problem, not increase the problem.

While I cannot give a guarantee that every case will be satisfactorily covered, I can give an assurance that what we are putting in place is a marked improvement on what we have got at the moment and meets all the

requirements that have been set out over the years, and this has been going on – as I said at the First Reading – since 2002. So it is a long time in the coming, but I think we have learnt from other jurisdictions and we have put in place what I think is a reasonable framework to deal with civil Legal Aid.

My hon. friend, Mr Butt, is absolutely right. Where you are dealing with the criminal Legal Aid, where the rights, the liberty of the individual can be taken away – he can be incarcerated – then there is a different ball game again for the granting of Legal Aid. Again, I have tried to spell out that already. As we speak there is an internal Government review of all Legal Aid matters, especially with criminal Legal Aid matters.

Underpinning all of this equally – and I do not think we can get away from it – there has been a spiralling cost to Legal Aid of all types over the years. I have to say that in civil Legal Aid, for example, we have increased the bandwidths, if you like, on three occasions in the last three years, so in fact there is an increase in allowances that people do, but whenever you have a cut-off point, you will always have people just the other side of the line, no matter where you draw the line.

I do think that we have not been denying the access to justice, but there has to be an eye on the cost. Hopefully, when we get less litigation in the civil courts, it will actually be money well spent. I think it will be a stitch in time. That is the evidence that we have picked up from the UK and I hope it will be reflected here in the Isle of Man.

With that, I would move that the Bill be read a second time – the Legal Aid (Amendment) Bill.

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

Legal Aid (Amendment) Bill 2012 **Clauses considered**

The President: Moving on to clauses, can we take clauses 1 and 2 together, please?

Mr Lowey: Thank you, Madam President.

Clauses 1 and 2 provide for the Bill's short title and commencement. Except clauses 1 and 2, which would come into force when passed, commencement would require an Appointed Day Order to be made by the Treasury.

Madam President, I beg to move that part 1 – that is clauses 1 and 2 – stand part of the Bill.

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

The President: The motion is that clauses 1 and 2 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 3.

Mr Lowey: Part 2 of the Bill – that is to say clauses 3 to 18 – amends the Legal Aid Act 1986. Clause 3 introduces the amendments.

I beg to move that clause 3 stand part of the Bill.

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

The President: The motion is that clause 3 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 4.

Mr Lowey: Clause 4 amends section 1 of the 1986 Act so as to provide for Legal Aid in relation to mediation, and that where it is so given, the Legal Aid be unavailable for proceedings during the currency of the mediation. At present, there is a perceived lack of clarity as to the point at which Legal Aid is available for mediation. The amendment makes existing legislation clear and will allow Legal Aid to be issued for mediation at the earliest possible stage in a dispute.

Madam President, it is anticipated that making Legal Aid available for mediation early in a dispute will provide a number of benefits, which include providing a less costly process for all involved; a reduction of conflict between the parties, which will mean the parties are more likely to focus on the best interests of any children involved, where the mediation relates to family law matter; and an increased likelihood that the parties will accept and adhere to the solution, therefore reducing the likelihood of the parties returning to court in the

future.

It is anticipated that this will lead to a reduction in cases being progressed to court, which in turn will lead to other cases that need to be heard in court being dealt with more quickly. It is a win-win situation, Madam President.

I beg to move that clause 4 stand part of the Bill.

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

The President: The motion is that clause 4 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 5.

Mr Lowey: Clause 5, Madam President, makes changes to section 2 of the 1986 Act for the purposes of clarification. An application for civil Legal Aid has to satisfy two main tests: a legal merits test and a financial means test. Madam President, this is a relatively minor amendment arising from the report of the Legal Services Commission. The Commission felt that it was necessary to provide greater clarity in relation to the legal merits test within family Legal Aid legislation.

Clause 5 also clarifies that an application must pass both tests. It is no use passing one, if you cannot get them both.

Madam President, I beg to move that clause 5 stand part of the Bill.

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

The President: The Hon. Member, Mr Turner.

Mr Turner: Thank you, Madam President.

In this, the mover mentions passing the legal merits test. Of course, the whole idea of any case is that the parties are in dispute and think it has merit to pursue forward, and the mechanism for settling the merits is decided ultimately by the court. So who, in this case, would prejudice, I suppose, whether it has merit? I am interested in (b), where it says:

‘if it appears unreasonable that the person should receive it in the particular circumstances;’

This may well be going some way towards a safeguard towards what I was looking for, but who decides whether it is unreasonable? Obviously, the two parties would have opposing views, and then would the mechanism for objecting to that be the new panel that is set up?

Mr Lowey: The person who would be adjudicating initially would be the Legal Aid Adjudicating Officer, or his deputy, as that refers to at the moment, and there is an appeal procedure if there is... People have the right to appeal. So I can give those assurances.

The President: The motion is, then, that clause 5 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 6.

Mr Lowey: Could I, with your and the Council’s permission, move clauses 6, 8, 9 and 18 together? That does seem an odd choice I think, but these are all clauses relating to the same issues. But, if not, if you would prefer me to take them one at a time, I am very happy to take them one at a time.

The President: We are quite content to take them in the order you seek to do so. They are related –

Mr Lowey: That is the manner in which they have been presented to me. They all fit the same criteria and should be dealt with at the same time.

Clauses 6, 8, 9 and 18 introduce what are, in effect, housekeeping amendments to the identified provisions of the 1986 Act which removes specific reference to specific Social Security benefits – when I get round to them you will understand why – which presently provide automatic financial qualifications for Legal Aid from primary legislation, and instead enables qualifying benefits to be prescribed by regulations – so they can alter by making regulations – made by the Legal Aid Committee and approved by Tynwald. Once again, these cannot be done in isolation. They will have to be approved by Tynwald.

As these clauses all deal with the same issue it is convenient to take them all together. Primary legislation

should be enabling legislation with the prescription appearing in regulations. These amendments will render it easier and quicker to amend or update the list of qualifying benefits. For example, if either more state benefits become automatic qualifying benefits, as happened in 2008, or if the name of the benefit changes, as happened in January 2012 for example, clause 6 also contains a consequential amendment which arises from clause 7.

Really, what I am saying there is it is really to deal with the type of name that is given to a benefit that will entitle somebody automatically to get it. That can change. We need the ability to be able to change quickly. Those clauses actually enable that to happen.

I beg to move clauses 6, 8, 9 and 18 together, please.

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

The President: The Hon. Member, Mr Turner.

Mr Turner: Madam President, I support the provisions in this clause; however, I feel it should go further, really, because I do not think there should be any automatic entitlement to Legal Aid whatsoever. I think it should be subject to the scrutiny, and I think when you start giving automatic benefits it opens up whole other problems that can occur. I would much rather have seen this clause go further, in that it removed all entitlement to *automatic* benefits to Legal Aid and that each case, as it comes forward, should be given scrutiny on its individual merits, *not* automatically because of some link to benefits issued by another Department.

The President: The mover to reply, please.

Mr Lowey: I can have a bit of sympathy with that point of view. The reality is though that many of these benefits are what I would call basic. The history must be that they automatically qualify because they are on what I would call the basics of living. You and I may differ on what is basic, but I understand the point that the Hon. Member is... If everybody starts off with the same, that they have to prove what they are getting... I think it is more from an administrative point of view that these benefits have been chosen as the basics. If you are on that, and only that, you should automatically get it. It is a point of view, but it is in the Bill and I would ask us to keep the Bill intact.

Mr Turner: I support the clause, yes.

The President: The motion is, then, that clauses 6, 8, 9 and 18 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.
Clause 7.

Mr Lowey: Thank you, Madam President and I thank Council for, what I would call, doing the (**The President:** Leapfrog!) leapfrog – it was a leapfrog and a half!

Clause 7 replaces section 4 of the Act and deals with the payment of contributions from assisted persons and the way in which such contributions may be paid or recovered.

Madam President, clause 7 is an enabling provision, which will allow regulations to provide for Legal Aid to be funded, either wholly or partly, by contributions made by assisted persons.

Clause 7 also enables regulations to provide for the recovery of any unpaid contributions plus any interest that may or may not accrue, which may include placing a charge upon property recovered or preserved following conclusions of the proceedings.

Madam President, both the Legal Services Commission and the Select Committee of Tynwald made recommendations that a statutory charge be introduced in relation to civil Legal Aid. Clause 7 addresses those recommendations.

It will have been noted by my fellow Members, following consideration of the Bill, that clause 7 will *potentially* allow regulations to be introduced which would make civil Legal Aid available by way of a loan. At present, approximately 90% of persons awarded civil Legal Aid passed the financial means test, by virtue of their receipt of an income-based state benefit and are therefore not required to contribute towards the cost incurred under their Legal Aid certificate.

Madam President, in 2011, the Council of Ministers agreed that a subcommittee of Council, consisting of the Treasury Minister, the Minister for Home Affairs, with the support of officers from Treasury, the Department of Home Affairs and the General Registry, should consider the options in relation to extending the criteria for paying contributions and report back to Council for consideration. There are two main issues which are being considered by the subcommittee and they are: (1) the amount of funding required to operate and maintain a Legal Aid scheme on the Island; (2) to focus persons in receipt of Legal Aid on the part they play in the proceedings and to provide a clear incentive for them to reach an early and amicable settlement and resolution.

It is acknowledged that my fellow Members will have concerns in relation to the level of current Legal Aid expenditure and the level of income currently received by way of contributions. However, whilst Members may wish to address this situation, they will also quite properly be concerned as to the impact new regulations made under clause 7 will have on persons seeking Legal Aid and as a consequence, access to justice. I acknowledge those concerns and as a consequence of this, I can confirm, that any recommendations or proposals in relation to the making of regulations under clause 7 of the Bill will first be subject to the approval of the Council of Ministers, following on from which they will be referred to the newly constituted Legal Aid Committee for consideration, before then being subject to a period of public consultation. The regulations will then, of course, be subject to final consideration and approval of Tynwald in the usual manner.

So the question of costs is one that is actually keeping the Government's mind very finely attuned and the balance between justice, and also the costs involved. I think everybody who avails of them, no matter whether you are on a minimum wage and somebody on a minimum Income Benefit, if one can afford to pay a contribution, then everybody should be able to pay a contribution. That may seem strange, coming from Eddie Lowey, but I believe it to be correct and proper.

Knowing that they will have the further opportunity to comment and determine the extent of the relevant regulations made in relation to Legal Aid funding, I am hopeful, Madam President, that this will provide comfort to my fellow Members which will allow them to agree to this clause.

Madam President, I beg to move that clause 7 stand part of the Bill.

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

The President: The Hon. Member, Mr Downie.

Mr Downie: I have got a couple of queries here, and forgive me for bringing them up at this point, but it is just something I noticed in the Bill and if the Hon. Member does not have the answer now, perhaps he could give it to me at the Third Reading.

Firstly, when earnings are taken into consideration in this particular clause, are we using the benchmark of, I think it is, £14,500 a year, the same as we use for a benchmark for benefits? There is so much a person is allowed to have in their own savings before they qualify for benefits.

The other question that I want to ask is in this clause, in (1)(b), we mention expenditure being by way of loans to be repaid to assisted persons and I would just like to say that if the mediation process or the court process, there are provisions within the civil side of Legal Aid for the courts or the mediator to impose an order where they can remove from a person's income, the same as they can do with other issues that come before the court, because I think in the past what has happened is a lot of promises have been made about repayment and so on, and I think we are still waiting for the money, in some cases.

Wouldn't it be much better, when these matters come before the courts, if somebody says, 'Right, we are giving you a loan which has to be repaid, but in order to make sure that it will be repaid we are going to attach an order to your earnings,' so that at least there is some money coming back into the system?

I notice later on in the legislation we have got regulations for the recovery of unpaid contributions or outstanding loans, together with interest at a prescribed rate. Wouldn't it be better off nailing it down on the day and having an order on the earnings, so at least you know that there is money being taken from the person's earnings, and at least you are going to get something, instead of spending a fortune trying to get the Coroner to run round getting money out of people that they are never going to have?

Mr Braidwood: Attachment.

The President: The Hon. Member, Mr Crowe.

Mr Crowe: Thank you, Madam President.

Just picking up on Mr Downie's point, looking at the clause, it is not clear if a decision will be made at the outset: if an applicant is for Legal Aid and there are two parties involved, will the adjudicating officer say, 'Yes, we will fund you for x pounds as a gift or grant, and the balance will be by way of loan'? So that is one way of doing it at the outset.

Or is it at the conclusion of the legal proceedings, is it retrospectively determined as to which is granted and which is loan? It is just a technical point and presumably the regulations will determine it when they come to Tynwald anyway, as to whether it is at the outset or retrospective. So it may not be part of the Bill, but it will probably come in the regulations. (**Mr Lowey:** It is.) So I have answered my own question.

Mr Lowey: You have. (*Laughter*)

The President: If no other Member wishes to speak, the mover to reply, please.

Mr Lowey: I think, on the principle, Mr Downie is right that most of the Select Committees that have reported since 2002, and the committee set up by the Council of Ministers, have come to the conclusion that charging somebody for the service makes them more responsible. They are more likely to do it if they are having to pay for it, or pay a part of it.

I am told the attachment of earnings and the financial means test is linked to the test used by the Department of Social Care in relation to employed persons' allowances, so there is a fee. That will be judged by the adjudicating officer and that is the formula that they will use when you start to pay. The attachment of earnings and other mechanisms to recover contributions will be considered by the newly formed Committee looking into Legal Aid – this is the job of the Legal Aid Committee – and will be, again, part of regulations that will be set up by them.

Of course, I come back to the point those regulations will all have to be approved by Tynwald. So again, any concerns that Members may have that it is either too harsh, it is too punitive or it is not harsh enough, or it needs to be extended a bit, you will have the opportunity, when those regulations are placed before you, to comment on it. But there is a formula and that is the formula that is to be applied and again, the saving grace all of this time is that we have brought the whole thing up to date.

It is now... the Legal Aid Committee, of course, used to consist of all judiciary. It was the Chairman of the Magistrates, it was the First Deemster. I do not know how they had time to sit in court, really, but those were the people who were dealing with the matter. Now it has changed completely. It is nearly all lay people who will be sitting in adjudication, and the adjudicating officers are overseen and are being monitored as to what their job is. So again, there is an audit trail that is in place, or will be in place when this Bill is actually passed.

So, with that, I would ask Members to support clause 7 of the Bill as printed.

The President: The motion is that clause 7 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 10.

Mr Lowey: Thank you, Madam President.

Clause 10 amends section 14 of the Act, which deals with the disclosure of information supplied to the Legal Aid Office as part of a Legal Aid application.

Clause 10 amends section 14 of the Act so that the consent of the assisted person and/or author is required to be provided in writing to the Legal Aid Office before disclosure can be given. The receipt of written consent will evidence that section 14(2) has been complied with and will also evidence that consent was given at the time that any information was disclosed.

Clause 10 also introduces specific provision for records to be made available for internal audit purposes. So, again, it is a clear audit thing of where permission has been granted. Clause 10 deals with that.

I beg to move clause 10 stand part of the Bill.

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

The President: The motion is that clause 10 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 11.

Mr Lowey: Clause 11 amends section 16 of the 1986 Act so as to make provision that regulations may specifically provide for the appointment of a Legal Aid Certifying Officer and Deputy Legal Aid Certifying Officers.

It should be noted that regulations made by the Legal Aid Committee under section 16 of the Act already contain a provision in relation to the appointment of the Legal Aid Certifying Officer and Deputy by the Lieutenant-Governor. However, in July 2011, Tynwald received the Council of Ministers' Report on the Functions of the Lieutenant-Governor under the Acts of Tynwald and approved all of the recommendations. The Report referred to the appointment of the Legal Aid Certifying Officer and Deputy Legal Aid Certifying Officer and included the following proposal: consideration should be given to who appoints the Legal Aid Certifying Officers in the regulations made by the Legal Aid Committee under the Legal Aid Act, as part of the process of taking forward the Legal Aid (Amendment) Bill.

Madam President, further consideration will be given as to who should appoint the Legal Aid Certifying Officer and Deputy Legal Aid Certifying Officer, following the introduction of this Bill, by the newly constituted Legal Aid Committee. As part of that process, it is necessary to introduce specific reference to the appointment of those officers within primary legislation.

Madam President, I beg to move that clause 11 stand part of the Bill.

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

The President: The Hon. Member, Mr Turner.

Mr Turner: Can I just ask the hon. mover then, does this potentially mean that the appointment of these posts change from a Crown to a political appointment, in effect, depending on where and who is going to make the appointment?

Mr Downie: I would just like to comment on that.

The President: Mr Downie.

Mr Downie: I would like to comment on that. I would assume, as the Isle of Man Government is paying for the justice system at the present time, it is right and proper that we have some control over this particular area and we have the ability, as we do now, to make our own legislation. I think it is another example where we are moving on as a jurisdiction and although justice is carried out in the name of Her Majesty the Queen, at the end of the day, the buck stops with us and we have to foot the bill.

The President: The mover to reply please.

Mr Lowey: Yes, it is one of the things we do and have done for a while. What have we done with the powers of the Lieutenant-Governor? And this is not a reflection on the present incumbent or previous ones, but the fact of the matter is, we have consistently removed powers from the Governor's power to appoint. To that extent, we set up an independent Appointments Commission, who then would deal with the appointments at arm's length from Government. It is appointed by the Council of Ministers, but it then has the role to appoint.

So this particular clause allows the system to go on, but it will then be considered by the Legal Aid Committee, once that independent body is set up in operation and they will then decide who will appoint the Legal Aid qualifying officers.

I beg to move.

The President: The motion is that clause 11 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 12.

Mr Lowey: Clause 12, Madam President, makes consequential amendments to the definitions contained within section 17 of the Act in line with the amendments contained throughout the Bill. You will note that, most notably, the definition of 'mediation' is introduced as a consequence of the use of that term in clause 4 of the Bill.

I beg to move that clause 12 stand part of the Bill.

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

The President: The motion is that clause 12 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 13.

Mr Lowey: Clause 13 replaces section 23 of the 1986 Act so as to provide for the reconstitution of the Legal Aid Committee.

Section 23 currently requires the Committee to consist of the First Deemster and Clerk of the Rolls, the Attorney General, the President of the Isle of Man Law Society and the Chairman of the Isle of Man Magistrates' Association. The introduction of this reconstituted Legal Aid Committee is in line with the recommendations put forward by the Select Committee, specifically that the Committee should be made up of a majority of members who are not lawyers and whose functions should include the determination of general policy with respect to Legal Aid; to oversee the Legal Aid Certifying Officer, Deputy Legal Aid Certifying Officer and Legal Aid administration; and to adjudicate upon any complaints which are outside the authority of the Legal Aid Tribunal, which in the next clause we will be referring to.

Clause 13 provides for the appointment of the members of the Legal Aid Committee by the Appointments Commission. It is to consist of between five and seven members, of which not more than three are to be lawyers.

Non-lawyers are to be in the majority at each sitting of the Committee and the Committee's functions are expanded to include oversight of the administration of Legal Aid and to adjudicate on any complaints, other than matters within the jurisdiction of the Legal Aid Appeals Tribunal as to the exercise by the Certifying Officer and other officers which are appointed under section 16(2)(c)(ii), of any of the officers' functions.

Madam President, during the reading of the clauses of the Bill in the House of Keys, an issue arose as to the appointment of members to the Legal Aid Committee and the Legal Aid Tribunal. I would like to take the opportunity to provide clarity in relation to the issue, in case my fellow Members shared the same concerns.

Members of both the Legal Aid Committee and the Legal Aid Tribunal will be appointed by the Appointments Commission. The Appointments Commission is an independent body which was established by the Council of Ministers under the auspices of the Tribunals Act 2006. The principal function of the Appointments Commission is to make appointments in accordance with relevant legislation to various tribunals and other bodies. The Appointments Commission currently consists of five members who are individually appointed by the Council of Ministers, following consideration of an application and interview process.

Following the introduction of this Bill, the General Registry, following discussions with such bodies as they consider relevant, will provide the Appointments Commission with a person specification, which will detail the appropriate skills and experience required of members to be appointed to the Legal Aid Committee and the Legal Aid Tribunal. Therefore, they will set a job description, but it will be the Appointments Commission that will actually pick the individuals.

Madam President, I beg to move that clause 13 stand part of the Bill.

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

The President: The Hon. Member, Mr Turner.

Mr Turner: Thank you, Madam President.

I support the provisions here to move away from the judiciary dealing with this to a more lay-person-based committee. I would like to ask the mover – and I apologise, as I cannot remember the answer to this – but when the Appointments Commission appoint a body, does that come for Tynwald approval or not? We have a variety of bodies that do come for Tynwald approval, and I am not too sure whether it applies in the case of the Legal Aid Committee and the Legal Aid Appeals Tribunal.

The President: The mover to reply please.

Mr Lowey: I wish I could give a definitive answer. I would assume the... I would rather reserve judgment on that and give him the answer after clear consideration at the Third Reading. You are right. Some do and some do not. I do not know whether this falls into which category.

The President: The motion is then that clause 13 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 14.

Mr Lowey: Clause 14 introduces a new section 23A which establishes a Legal Aid Appeals Tribunal.

Madam President, during their deliberations the Legal Services Commission who, as I previously mentioned, sat in 2002 and reported in 2003, performed a recommendation that Legal Aid legislation should contain provision for the existence of two separate Legal Aid Authorities: firstly, a Legal Aid Committee, who should consider regulations, Legal Aid policy and oversee the administration of Legal Aid; and secondly, a Legal Aid Appeal Tribunal which should determine appeals from the assisted persons where there has been a refusal to grant Legal Aid or a refusal to amend or extend the scope or limitation of their Legal Aid Certificate.

Clause 14 establishes the Legal Aid Tribunal as a part 2 Tribunal, within the meaning of the Tribunals Act 2006. It is intended to replace the Committee as the body responsible for the determination of Legal Aid appeals and it is to have such jurisdiction as may be prescribed by regulations made by the Legal Aid Committee. Such regulations also require, by the way, the approval of Tynwald Court.

Madam President, as I mentioned a few moments ago, members will be appointed to the Legal Aid Tribunal by the Appointments Commission.

Hon. Members will recall that during the First Reading of this Bill I mentioned that the issue of Legal Aid appeals was also considered by the Select Committee, focusing principally on the unassisted person. The Select Committee endorsed the creation of a Legal Aid Tribunal and further recommended that the remit of the Tribunal be extended to include appeals from the opponent of the assisted person, in relation to the decision to award or continue to award Legal Aid to an assisted person. I think that answers the point that my friend, Mr Turner asked earlier.

Clause 14 does not, of course, itself set out the detail of remit of the Tribunal, but I remind my colleague that the functions of the Legal Aid Committee will include the making of regulations to prescribe the jurisdiction of the Tribunal and I have no doubt that the recommendations of the Select Committee would be one of the matters to receive detailed consideration by the newly constituted Legal Aid Committee.

Madam President, I beg to move that clause 14 stand part of the Bill.

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

The President: The Hon. Member, Mr Turner.

Mr Turner: Thank you, Madam President.

The Legal Aid Appeal Tribunal, am I right in assuming that members cannot be a member of both, or can they be a member of both the Legal Aid Committee and the Appeals tribunal, or are they remaining completely separate?

Mr Lowey: I think to be complying with Human Rights legislation, they would have to be completely separate.

The President: The motion is that clause 14 do stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Perhaps we could take 15 and 16 together?

Mr Lowey: Clauses 15 and 16. Clause 15 is a transitional provision which includes power for regulations to contain supplemental, incidental, consequential or transitional arrangements. That's a mouthful!

Clause 15 also confirms that regulations made under the Legal Aid Act shall not come into effect unless they are approved by Tynwald.

Clause 16 makes a consequential amendment, which is the inclusion of the definition of the Appointments Commission in section 27 of the Act. Madam President, the effect of amendments contained in this Bill is that the Appointments Commission will be responsible, under the Act, for the appointment of members of the Legal Aid Committee and the Legal Aid Appeals Tribunal.

Madam President, I beg to move that clauses 15 and 16 stand part of the Bill.

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

The President: The motion is that clauses 15 and 16 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 17.

Mr Lowey: Clause 17 is a transitional provision, which is a consequential amendment to section 29 and is pursuant to clause 14 of the Bill, relevant to the creation of the Legal Aid Appeals Tribunal. Clause 17 will allow the Tribunal to make procedural rules in relation to appeals submitted to them for determination.

Madam President, I beg to move that clause 17 stand part of the Bill.

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

The President: The motion is that clause 17 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it. We have already dealt with clause 18. Perhaps we can take part 3, clauses 19 and 20 together.

Mr Lowey: Thank you, Madam President.

Clause 19 adds the Legal Aid Appeal Tribunal to the list of tribunals set out in part 2, schedule 2 of the Tribunals Act 2006. This is a consequential amendment, referable to clause 14 of the Bill, and that is clause 19.

Clause 20 contains an amendment to section 18 of the Advocates Act 1976 to enable the Advocates Disciplinary Tribunal, where a complaint is proved, to discharge the advocate against whom it is made, either conditionally or unconditionally, in addition to existing penalties. The power to award costs against the advocate is extended to cover an advocate made subject to the new penalty but the requirement to report the findings and penalty matter to the Law Society and publish them is not.

This amendment to the existing powers of the Advocates Disciplinary Tribunal has been put forward by the Tribunal itself as a useful and desirable addition to its powers, particularly in cases where the Tribunal is considering an unintentional or technical breach of the rules of professional conduct. In other words, it is for

minor offences that really can be dealt with in house.

Madam President, it does not deal with the more serious where the public is concerned.

Madam President, I beg to move that clauses 19 and 20 stand part of the Bill.

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

The President: The motion is that clauses 19 and 20 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

That concludes our Order Paper, Hon. Members. The Council will now adjourn until 8th May. Thank you.