

A Step-by-Step Guide to Legal Aid

Help with paying for civil cases



*Community
Legal Service*



A free and confidential advice service
paid for by Legal Aid
0845 345 4 345 www.clsdirect.org.uk

A Guide to Legal Aid

Help with paying for civil cases

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Some of the advice and services mentioned in this leaflet are funded by the Legal Services Commission (LSC). This is the organisation that provides legal aid in England and Wales. It also runs the Community Legal Service (CLS), which has quality standards that advisers have to meet. Advice organisations that meet these standards display the Quality Mark, shown here:



Community Legal Advice Direct is a free and confidential advice service paid for by legal aid. If you live on a low income or benefits call 0845 345 4 345 for independent advice about debt, education, benefits and tax credits, employment and housing problems. Calls cost no more than 4p per minute from a BT landline but calls from mobiles are usually more. Worried about the cost? Ask an advisor to call you back. Visit www.clsdirect.org.uk

This leaflet explains how the legal aid system works, including:

- what legal aid is, and broadly how it works;
- who can get legal aid; and
- how to decide if you might qualify for legal aid.

This leaflet covers only civil matters (where you have a dispute with a person or an organisation). Legal aid is also available to pay for legal advice or representation in criminal matters (where you have been charged with committing a crime). However, the rules covering this type of legal aid are different from those for civil matters – for more information about this, see the LSC leaflet 'A Practical Guide to Criminal Defence Services' (available from the LSC leaflet line – see back cover for details).

For advice about how and where to find a legal adviser, see the CLS Direct leaflet 'A Step-by-Step Guide to Choosing a Legal Adviser'.

What is legal aid and who can get it?

Legal aid helps with the costs of legal advice for people who cannot afford it.

If you need help with the costs of legal advice, you can apply for legal aid. Whether you will receive it will depend on:

- the type of legal problem you have;
- your income (how much you earn) and how much capital (money, property and belongings) you have – called 'financial eligibility'; and
- whether there is a reasonable chance of winning your case and whether it is worth the time and money needed to win.

What types of case can I get legal aid for?

Legal aid is available for many types of civil legal problem. A civil legal case is one in which you have a dispute with a person, company or other organisation.

Civil disputes can be with an individual person, a company, or a government department or agency. They can be, for example to do with your home, your relationships (you may be separating or divorcing), or your money (you may be having difficulty receiving benefits).

You cannot get legal aid for some some types of help and some types of case. See 'What can't I receive legal aid for?' on page 12 for examples.

Am I eligible for legal aid?

For most cases, you must be 'financially eligible' to receive legal aid.

This means that to decide whether you can receive legal aid, we will look at:

- your disposable income (money you have left after paying all your living expenses); and
- your disposable capital (money, investments or property that you could use or sell to pay for legal help).

In most cases, we will also take into account your husband, wife or partner's disposable income and capital.

You will not be financially eligible if:

- your gross income (income before tax) was more than £2,435 in the last month; or
- you have more than £8,000 disposable capital.

If neither of these apply to you, we will still have to look at your finances, and the type of case you have, before deciding whether you are financially eligible.

You can receive legal aid for some types of help regardless of how much money you have. These include, for example, getting a barrister or solicitor to represent you at a Mental Health Review Tribunal. More information can be found at www.legalservices.gov.uk.

What if I can't get legal aid?

If you're not eligible for legal aid, but you're still worried about how to pay for legal advice or representation, there are other options:

- a legal advice or law centre, which may give you free advice;
- a conditional-fee ('no-win, no-fee') agreement;
- legal-expenses insurance to pay for your legal costs; or
- help from your (or your partner's) trade union.

For more about these options, see the CLS Direct leaflet 'No-win, No-fee Actions', available at www.clsdirect.org.uk, or by calling **0845 345 4 345**.

If you need more information about what counts as income, capital and allowances and how we assess financial eligibility:

- phone us on **0800 085 6643**; or
- visit **www.clsdirect.org.uk**, which has an online legal aid calculator. This calculator asks questions that enable you to find out whether you are likely to be financially eligible.

Your adviser will also look at the facts of your case to get an idea of its strengths and weaknesses. This is called the 'merits test'. They will consider:

- the chances of your claim succeeding; and
- whether your case is likely to win more than is spent on it.

Will I have to pay anything?

If you are granted legal aid, we will pay your solicitor or adviser direct – you do not receive money yourself to pay the legal bills. If you do receive legal aid, you may still have to pay some of the costs, depending on your financial situation and your case.

There are three ways you may have to pay:

- a lump sum ('capital contribution');
- monthly instalments from your income until your case finishes ('income contribution'); and
- repaying costs if you receive (or keep hold of) money or property by winning your case. This is called the 'statutory charge' – see 'What happens at the end of my case?' on page 8.

For more information, see the LSC leaflet 'Paying for your Legal Aid', or call our enquiry line on 0800 085 6643.

What does legal aid pay for?

There are different levels of legal aid, and you will receive the level you need based on an assessment of your application. The levels are:

- Legal Help – initial advice and help with your problem;
- Help at Court – a solicitor or adviser to speak on your behalf (without formally representing you) at a court hearing;
- Family Mediation – mediation in family disputes, for example if you and your partner are separating or divorcing;
- Help with Mediation and General Family Help – help with negotiation and issuing legal orders in family disputes (See the CLS Direct leaflet 'Family Mediation' for more about this.); and
- Legal Representation – a barrister or solicitor to represent you in court if you are taking or defending court proceedings.

Can the amount I get change after I start receiving legal aid?

Yes, we may do another assessment if your financial situation changes, for example your earnings increase or decrease or you come into money because you sell your house. We may then change the amount you must pay towards your legal costs. You must tell your adviser straight away if your financial situation changes.

Also, we may stop your legal aid if:

- you do not give information to your adviser that they need or ask for;
- your financial circumstances change so that you are no longer financially eligible for funding;

- you don't keep up any monthly contribution you've agreed to pay as part of your legal aid;
- you haven't given us all the information you should have about your financial circumstances; or
- we discover that you're not eligible for legal aid.

Your legal aid can be stopped in two ways:

- It can be 'discharged', which means your funding will stop from the point when we send you a notice to tell you this is going to happen. You may have to repay some or all of the money already spent on your case.
- It can be 'revoked' (cancelled), if we find that you were wrongly granted legal aid, for example because you gave false information about your finances. In this case, you may have to repay all the money spent on your case.

What happens at the end of my case?

When your case ends, your adviser will tell us the result. They will also give you a breakdown of their costs. We will calculate whether we should refund any money to you or whether you must pay the statutory charge. See the LSC leaflet 'Paying for your Legal Aid' for more about this.

How can I arrange to see an adviser?

If you think you could be eligible for legal aid, you must be assessed to:

- see if you meet all the rules about financial eligibility;
- see if your case meets the 'merits test' mentioned on page 6; and
- find out the level of service you need.

To do this, you must first find a legal adviser who can deal with legal aid cases. You can find a legal adviser in your area by:

- phoning CLS Direct on 0845 345 4 345; or
- checking the CLS Direct website, www.clsdirect.org.uk.

When you first visit a legal adviser, they will tell you which level of service you need and whether they can assess your legal aid application for you. In most cases, your adviser will apply to an LSC Regional Office, which will assess your application form. The adviser will explain what we need to take into account as part of the assessment, and how we will decide whether you will receive legal aid.

We normally deal with applications within two weeks. We may need to ask you for extra information to assess your application. We won't be able to finish your assessment until we have all the information we need, so it is important to send us any information we ask for straight away.

Advice you can trust

To make sure legal aid advisers are giving good-quality advice, we ask other experienced solicitors to rate their work. Advisers can get a rating of 1 to 5, where 1 is excellent, and 5 means the advice they have given fails to meet our standards. When you visit an adviser, you can ask them if they have any ratings.

Other issues

What if my case is urgent?

If your case is urgent, for example if you need to make yourself and your children safe from abuse, your solicitor can ask for Emergency Legal Representation. This can be granted straight away, but covers only limited urgent action, and you must still apply for legal aid in the normal way.

When you apply for Emergency Legal Representation, you must agree to provide the information we need to assess you for legal aid, and to pay any contribution that we have assessed you must pay. You must also agree to pay back the full costs of your help if we later find that you are not financially eligible, or if you refuse the amount of funding we offer you.

Can people under 18 receive legal aid?

Yes, people under 18 can receive legal aid, but someone 18 or over must apply on their behalf. For a child under 16, a parent or guardian should apply on their behalf.

If someone under 18 needs legal representation in court, we normally assess their application by considering only their own income and capital. For all other levels of legal aid, we take into account their parents' or guardian's income and capital, except in certain circumstances, for example if there is a conflict of interest between the young person and their parents.

What if my problem is in Scotland or Northern Ireland?

There are separate schemes for legal aid in Scotland and Northern Ireland. In Scotland, contact:

The Scottish Legal Aid Board

phone: 0131 226 7061

fax: 0131 220 4878

www.slab.org.uk

In Northern Ireland, contact:

The Northern Ireland Legal Services Commission

phone: 028 9040 8888

fax: 028 9040 8990

www.nilsc.org.uk

Can I get legal aid for a problem abroad?

If you have a legal problem in another country, for example if you want to claim compensation for an injury that you received abroad, or for divorce or access to your children, the CLS may be able to help you apply for legal aid in that country. However, as with legal aid in this country, we can help with legal aid abroad only for civil cases, not for criminal cases.

Depending on your circumstances, we may be able to apply for legal aid on your behalf in most European countries. For other countries, you should contact the embassy or consulate of that country.

Each country has its own rules on how and when it provides legal aid, and whether you will receive it is up to the country you are dealing with, not the CLS.

If you have a legal problem in another country and you think you may be able to get legal aid for it, call the Central Customer Services Unit on 020 7718 8054 to see if we can help you.

What can't I receive legal aid for?

You can't receive legal aid for cases heard in certain tribunals or courts, including:

- the Employment Tribunal;
- the Immigration Tribunal; and
- the Lands Tribunal.

Also, you cannot normally receive legal aid for the following types of case:

- personal injury;
- negligently caused damage to property;
- conveyancing (the legal transfer of property ownership, necessary when you buy or sell a house or flat);
- boundary disputes;
- making a will;
- trust law;
- defamation (libel and slander) or malicious falsehood (knowingly spreading lies about people);
- company or partnership law;

- matters arising out of carrying on a business; or
- attending an interview or an asylum claim.

In special circumstances, legal aid may be available for cases that normally don't qualify. Your solicitor can tell you whether your case qualifies.

Legal and legal aid terms explained

Capital contribution The amount, in a lump sum, that you must pay towards your legal costs in order to receive legal aid.

Certificate The document we give you if you receive legal aid, setting out what we will pay for, and how much, if anything, you will need to pay towards your costs.

Civil partnership An officially registered partnership of two same-sex (gay or lesbian) people that gives them the same rights and responsibilities as a married couple.

Conditional fee agreement An arrangement with a solicitor, commonly known as 'no-win, no-fee', for certain types of case where they agree to take on your case, and you have to pay your legal fees only if you win.

Discharge (of certificate) If your legal aid is stopped, for example, because we decide that you are no longer eligible for funding or your case ends.

Disposable capital The amount of *assets*, such as savings and property, we use in calculating whether you are financially eligible for legal aid.

Disposable income The amount of *income*, such as earnings and benefits, we use in calculating whether you are financially eligible for legal aid.

Family mediation A way of resolving disputes within families without using court action, for example, how a couple who have separated will arrange their finances and access to their children.

Financially eligible Whether you can receive legal aid, taking into account your income (earnings), expenditure and capital (money, property and belongings).

General Family Help A type of legal aid that pays for negotiation and applications to get court orders in family disputes, for example disputes a separated couple have about how they will arrange their finances and access to their children.

Help at Court A type of legal aid that pays for a solicitor or adviser to speak on your behalf at certain court hearings, without formally acting for you in the whole proceedings.

Help with Mediation A type of legal aid that pays for legal advice and help if you are attending family mediation (see above).

Income contribution Monthly instalments that you must pay towards your legal costs in order to receive legal aid.

Legal Help A type of legal aid that pays for initial advice and help with your problem.

Legal Representation A type of legal aid that pays for a solicitor or barrister to speak on your behalf in court, if you are taking or defending court proceedings.

Merits test The test used to decide whether you should receive legal aid. This test takes into account how likely your case is to succeed, and whether it is likely to win back more than is spent on it.

Pro bono When a lawyer agrees to take on someone's case free of charge, sometimes because it is in the public interest.

Revoke (a legal aid certificate) This means that your legal aid is cancelled, because we find that you were not entitled to funding, for example because you gave false information about your finances. You will then be liable to repay your legal costs.

Statutory charge When you must repay legal aid costs if you receive (or keep hold of) money or property in your case.

Tribunal A body that is similar to a court that hears cases and makes judgments. Tribunals are specialist bodies that deal only with certain types of case; for example, the Employment Tribunal deals only with employment disputes.

What happens when I see an adviser?

You will normally need to phone for an appointment to see a legal adviser. When you go, take with you:

- information about your income and expenses (for example, wage slips, bank statements and benefits statements);
- copies of marriage and birth certificates;
- your National Insurance number;
- copies of any letters relating to your problem (for example, letters from the person or organisation your problem is about);
- copies of any court documents relating to your problem;

- any other documents that may help the adviser (for example, tenancy agreements, if your problem is about housing).

Checklist: what your adviser should explain

There are several things your adviser should explain to you about your case and how they will deal with it. Make sure they cover the following points and ask them if they don't:

- your options for resolving your problem – especially if the adviser cannot help you themselves;
- your chances of winning your case;
- whether you will, or might, have to attend court;
- whether your problem can be resolved without going to court;
- what the total costs might be;
- the different ways of paying for legal services;
- how the legal aid system works, and whether you are eligible for legal aid;
- if you can get legal aid, whether you will have to pay some of the costs;
- what you might also have to pay if you lose your case;
- who in the legal firm will be handling your case; and
- what to do if you are unhappy with the service you are receiving.

Before you leave the meeting, you should make sure you know:

- what you need to do next;
- what your adviser will do next;
- whether you need to give your adviser any more information or documents;
- whether there are any key dates or deadlines you need to know about; and
- when your adviser will contact you again, or when your next meeting will be.

Your legal adviser must follow professional rules, including keeping your information private and confidential. You must tell them everything about your case, so they can help you in the best way possible.

NOTES

Our leaflets are also available online at www.clsdirect.org.uk

Your Legal Rights

- 1 Dealing with Debt
- 2 Employment
- 3 Divorce and Separation
- 4 Renting and Letting
- 5 Buying and Selling Property
- 6 Losing your Home
- 7 The Human Rights Act
- 8 Claiming Asylum
- 9 Welfare Benefits
- 10 Wills and Probate
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- 29 Care Proceedings
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- 31 Changing your Name

Advice Guides

G1 A Step-by-Step Guide to Choosing a Legal Adviser

G2 A Step-by-Step Guide to Legal Aid

Our leaflets are also available in Welsh, Braille and Audio.

To order any of these leaflets contact the LSC leaflet line on **0845 3000 343** or email LSCLeaflets@ecgroup.co.uk or Fax 020 8867 3225.



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