

## Legal aid - England and Wales

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#### 1 What costs are involved in legal proceedings and who normally has to bear them?

The costs will depend upon the exact nature of the case. Solicitors incur costs on the express authority of their clients; these costs can include the solicitors' fees themselves and also disbursements for costs such as court fees and expert opinions. If successful, clients may be able to recover some or all of these costs from the losing party, but if they lose or the losing party cannot pay, they are ultimately liable for their own solicitor's costs. At the end of a case, the court will decide, taking into account all the circumstances of the case, who should pay the costs. Although, in general, the loser is ordered to pay the winner's costs, there are many exceptions to this principle.

#### 2 What exactly is legal aid?

The different levels of help in civil matters are:

- Legal Help which covers initial advice and assistance with any legal problem.
- Help at Court which includes assistance at court where full representation is not required.
- family mediation where an independent, professionally trained mediator helps you to work out an agreement about issues such as:
  - o Arrangements for children after you break up (sometimes called custody, residence or contact)
  - o Child maintenance payments
  - o Finances (for example, what to do with your house, savings, pension, debts); and,
- representation in a court or tribunal.

Legal Representation covers legal representation for a party to proceedings or a person thinking of taking proceedings. It is the level at which urgent family cases and other cases which can be publicly funded are most likely to be dealt with. It is available in two forms: Investigative Help and Full Representation.

### **3 Do I have a right to legal aid?**

Funding from the Legal Aid Agency (LAA) is only available to individuals with a legal problem that is in scope for legal aid. There are no nationality or residence tests.

Applicants generally also need to:

- Have a low income, or be on certain benefits, and have little savings or property (the 'Means test), and
- Show that it is reasonable, in the circumstances of the case, for them to be provided with legal aid (the 'Merits' test).

#### **Means test**

When considering eligibility for legal aid the LAA will consider an individual's financial circumstances. For both legal help and legal representation, the means test includes an assessment of their gross monthly income, monthly disposable income, and disposable capital.

If they receive certain income related social security benefits known as passporting benefits they will automatically pass the income test but capital will still need to be assessed.

Passporting benefits include:

- Income Support (IS)
- income-based Jobseeker's Allowance (JSA)
- Universal Credit (UC)
- Guarantee Credit element of Pension Credit (GC)
- income-related Employment and Support Allowance (ESA)

If individuals receive financial support under sections 4 or 95 of the Immigration and Asylum Act 1999 from the National Asylum Support Service (NASS), you will be passported through both income and capital tests for controlled work immigration and asylum matters and upper tribunal appeals only.

The means test does not apply in some types of case, including:

- mental health tribunal appeals
- where children are being taken into care
- international child abduction cases

#### **Merits test**

Applications for legal aid are also subject to a merits test, to assess whether it is reasonable, in the circumstances of the case, for someone to be awarded legal aid.

The Director of Legal Aid Casework (DLAC) will consider things such as:

- Whether the likely outcome is proportionate to the cost of bringing the case
- Whether the case has wider public interest,
- If a privately paying client of moderate means would be prepared to spend his or her own money on taking the case, and
- if there would be a breach of an individual's rights if they were not awarded legal aid.

### **4 Is legal aid granted for all types of proceedings?**

The areas of law for which Legal Aid is available are set out in Part 1 of Schedule 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012.

They include

- Public family law regarding the protection of children.
- Private family law where there is evidence of domestic violence or child abuse, child abduction cases, forced marriage protection cases and cases where a child is a party to the proceedings.
- Debt where the person's home is at risk. This includes mortgage possession of the home, orders for sale of the home and involuntary bankruptcy where the person's estate includes their home.
- Housing where the person's home is at risk or the person is homeless. This includes possession of the home, eviction, disrepair in rented accommodation where the disrepair poses a serious risk to health or safety, homelessness assistance and anti-social behaviour cases.
- Community care
- Actions against public authorities
- Mental health and mental capacity
- Judicial review
- Special educational needs
- Asylum claims and appeals
- Immigration detention
- Discrimination
- Clinical negligence where a child suffers a neurological injury resulting in them being severely disabled during pregnancy, child birth or the postnatal period.
- Immigration where there are issues of domestic violence, proceedings in the Special Immigration Appeals Commission or issues of human trafficking or slavery, servitude or forced labour.
- Welfare benefits, but only for an appeal on a point of law to the Upper Tribunal, Court of Appeal or Supreme Court.

For other areas, legal aid may be available if the "Exceptional Case Funding" test is met, as set out in section 10 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012.

### **5 Are there special procedures in cases of need?**

Emergency help is available for urgent representation in court, for example to keep individuals and/ or their children safe from domestic abuse.

For private family law cases involving domestic abuse you will generally need to provide evidence to show that you or your children were at risk of harm from an ex-partner.

You can ask for evidence from:

- the courts
- the police
- a multi-agency risk assessment conference (MARAC)
- social services
- a health professional, for example a doctor, nurse, midwife, psychologist or health visitor
- a refuge manager
- a domestic violence support service
- your bank, for example credit card accounts, loan documents and statements
- your employer, or education or training provider
- the provider of any benefits you've received

Legal advisers with a legal aid contract can apply for emergency legal representation to cover any immediate action. It is still necessary to apply for legal aid in the normal way for any ongoing work.

## **6 Where can I obtain a legal aid application form?**

All legal advisers, with or without a legal aid contract, have a duty to tell their clients about the possible availability of legal aid and must give them the option of going to a legal aid provider.

Civil legal aid services can be provided by the Civil Legal Advice (CLA) telephone advice service, solicitors and barristers, or not-for-profit organisations with a Legal Aid Agency contract in the relevant area of law. Legal aid advisers can be found by searching online through Find a Solicitor - The Law Society

Clients can also be referred to the CLA telephone advice service for initial determination of scope and financial eligibility.

## **7 Which documents need to be submitted with the legal aid application form?**

You'll need to give information about the following for both yourself and your partner (if appropriate):

- benefits - including benefits statements
- income, savings and spending - including pay slips and bank statements
- National Insurance numbers

You'll also need copies of evidence relating to your case, eg:

- court documents
- marriage and birth certificates (for family cases)
- relevant letters

## **8 Where do I submit my application for legal aid?**

Applications are made on an individual's behalf by solicitors with a Legal Aid contract to the Legal Aid Agency. See above for how to find a solicitor.

## **9 How do I find out whether I am entitled to legal aid?**

Your solicitor will tell you if your application for legal aid has been accepted and if you need to pay a contribution.

## **10 What should I do, if I am entitled to legal aid?**

Your solicitor will advise you.

## **11 Who chooses my lawyer, if I am entitled to legal aid?**

You will (see above) although you must choose a solicitor who has a contract with the Legal Aid Agency.

## **12 Does legal aid cover all the costs of the proceedings?**

If funding is granted, it will cover all your solicitor's costs including disbursements such as court fees, although you may be asked to pay a fixed monthly contribution, depending on your means.

## **13 Who bears the other costs, if I am entitled only to limited legal aid?**

See above.

## **14 Does legal aid also cover appeals?**

If you lose a case in an in scope case which was not funded by the LAA you may still apply for funding to appeal to a higher court. You will need to meet the means and merits tests.

If your case was funded by the LAA you can apply for an amendment to your funding certificate to cover an appeal. At this stage, the LAA will ensure that your case still meets the means and merits criteria.

## **15 Can legal aid be withdrawn before the proceedings are concluded (or even revoked after the proceedings have terminated)?**

If your income and/or capital increase while your legal representation funding is in force you must immediately notify the LAA and your means may be reassessed. If your income decreases you may apply for your means to be re-assessed and your contribution may be reduced. If you come into money, for example, if you inherit money, sell your house or win the lottery, while your case is being funded by the LAA, you may be asked to pay some, or all of your legal costs out of the money.

If you are granted funding, it may be limited to certain work, such as obtaining a barrister's opinion on your case, and a maximum grant may be specified. You will need to apply through your solicitor if you need to extend the amount of work covered or the maximum cost of the work your solicitor can do.

The LAA can withdraw funding if it is no longer reasonable for you to receive it, for example if you refuse a reasonable settlement offer or if it becomes clear that your case has lower prospects of success than expected. This is to ensure that public money is not wasted in a situation where a privately paying client would be unlikely to proceed. If the LAA is considering withdrawing your funding, it will first give you a chance to show why it should not do so, and if it does decide to withdraw funding you have a right of appeal to an independent committee of lawyers. If funding is withdrawn, it will cover costs already incurred by your solicitors.

### **Statutory Charge**

You may also be asked to pay back some or all of your costs if your financial situation improves as a result of proceedings. At the end of a case, the LAA is obliged to recover its costs as far as possible. It will take account first of any contributions paid by you and any costs recovered from your opponent. After that, it will recover any remaining deficit from any property or money recovered or preserved in the course of the proceedings. A privately paying client would have to repay any outstanding costs in this way, and it is only fair that a funded client should do the same, if he or she can afford to. However, if the property in question is your home (or money set aside to buy a home) then you can defer payment until the next time you sell it, provided you agree to pay interest over the intervening period.

### **16 Can I contest a refusal to give legal aid?**

A solicitor/advisor with a legal aid contract can refuse to act for you. Their contract sets out the circumstances when they can refuse e.g. there is a conflict of interest or they don't have capacity. They should tell you why they are not taking on the case but there is no appeal against the decision

If your application is refused on merits grounds, the LAA will inform you of its decision and provide an explanation. You will then have fourteen days in which to appeal. The appeal will first be reviewed internally. If, after considering the appeal, the LAA considers the criteria for legal aid are met and overturns the decision the application / amendment will be granted and a legal aid certificate / amended certificate issued.

If, the LAA considers the criteria for legal aid are not met and upholds the decision, you and your solicitor will be informed of the reason why and at the same time you will be informed whether there is a right of further appeal to an Independent Funding Adjudicator (IFA).

If the appeal is referred to an IFA they will make a decision / recommendation based on the information provided in support of the appeal and the existing legal aid regulations. The IFA may contact you, if appropriate.

### **Further information**

Further information about Legal Aid is available at [Gov.UK](http://Gov.UK).

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