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Civil legal assistance – a simple guide



Civil legal assistance helps people to get legal advice and “representation” (where a solicitor puts their case in court), in civil cases.

October 2003

[1] What is civil legal assistance?

The Scottish Legal Aid Board can provide funding to help people who qualify to get legal advice and “representation” (where a solicitor puts their case in court), in civil cases. It may be free or you may have to pay a contribution towards the cost of your case.

There are two kinds of help you may be able to get.

- First there is **advice and assistance**. This helps pay for advice from a solicitor on any matter of Scots law. (For example, to try to settle a dispute for you without going to court.) However, apart from a few exceptions it will not cover “representation” – that is, putting your case in court.
- Second, there is **civil legal aid**. This will provide funding for your solicitor to put your case in court. It covers the preparation work, as well as the hearing itself, and can provide funding for advocates, experts etc. (Most cases begin with advice and assistance, and civil legal aid may be the next step if necessary.)

We explain more about both of these below. Together, they are called **civil legal assistance**.

This leaflet only deals with help about civil matters. If you need help with a criminal matter, you should read our leaflet *Criminal legal aid if you are in custody* or *Criminal legal aid if you are not in custody*.

[2] Civil advice and assistance

What will advice and assistance cover?

Advice and assistance covers a wide range of matters, so long as they are matters of Scots law and you qualify financially. This might include advice on divorce, contact with children, possible personal injury claims, welfare rights, immigration or asylum issues.

As well as advising you about the matter you have raised, your solicitor can:

- give you advice on whether you have a legal case to take forward
- try to negotiate with the other party to settle the matter
- advise you whether you should apply for civil legal aid to take the matter to court
- write letters for you or get reports.

How do I qualify financially for advice and assistance?

Your solicitor will decide whether you meet the financial eligibility limits for advice and assistance set by Parliament. The current limits and details of how to work out whether you qualify financially are shown in our leaflet *Do I qualify financially for civil legal assistance?*

It is important that you give your solicitor correct information on your financial position. As well as your income and savings, he or she will need to know about your dependants (children or other people you are supporting). You should try to take along evidence of this when you first visit your solicitor about a matter, including, for example:

- recent wage slips, or accounts if you are self-employed
- pension or benefit order books
- details of any savings – for example, a bank statement or pass book.

If you are married or living with a partner, your solicitor will also normally need to know the same information about his/her income and savings, unless:

- you are separated, or
- your spouse or partner has a contrary interest to you (for example, if your partner is the opponent in your case), or
- it would be unfair or too difficult to do so.

[3] Civil legal aid

What will civil legal aid cover?

Here are some examples of issues that you might be able to get help with:

- divorce and other matters affecting family and children
- actions for compensation for injuries resulting from an accident, or medical negligence
- housing matters such as rent or mortgage arrears, repairs, eviction
- debt
- immigration, nationality, or asylum.

Your solicitor will not be able to represent you in court about some legal matters, but he or she may sometimes be able to give you advice on them. These matters include:

- small claims – that is, actions where you are claiming compensation of less than £750 (at the time this leaflet was issued) from someone
- some actions relating to bankruptcy
- defamation.

If you decide to go ahead with your application for civil legal aid, your solicitor will give you a copy of our booklet *Civil legal aid – information for applicants*, which will give you more information about the legal aid process.

How do I qualify for civil legal aid?

If you and your solicitor agree that using advice and assistance will not succeed in solving your problem, and you need to take your case to court, you may need to apply for *civil legal aid*. You and your solicitor will fill in application forms about the nature of the case and your financial situation, and these are sent to the Board. We assess all applications in the same way and we must follow rules set down in law by Parliament. You must qualify on all the tests before we can grant civil legal aid.

To receive legal aid, we have to decide that:

- you qualify financially (see our leaflet *Do I qualify financially for civil legal assistance?* for more information on this)
- you have a legal basis for your case, sometimes called probable cause
- it is reasonable in the particular circumstances of the case that you should receive legal aid – in other words, that you should receive public funds to raise or defend court proceedings – for example, it may not be reasonable to grant legal aid if the person you are trying to sue has no resources; or the costs of your case will be much more than it is worth and it looks unlikely that you will succeed
- financial help is not available to you from someone else – like a trade union, insurance company or professional body.

[4] Who can give me civil advice and assistance or civil legal aid?

Both kinds of help can only be provided through a solicitor. This may be a solicitor in private practice or associated with a law centre or other advice agency.

[5] Can I get free advice without applying for civil legal assistance?

Free advice is available from various organisations such as Citizens Advice Bureaux or Money Advice Centres, who may be able to help with your case and help you decide whether you need legal advice. You may also find that you can get help through your union or insurers.

[6] How do I find a solicitor who can give me civil legal assistance?

If you think that you do need to see a solicitor and do not already have one, your local Citizens Advice Bureau may be able to help you find one.

To work for you under civil advice and assistance or civil legal aid, a firm of solicitors must be registered with us (the Scottish Legal Aid Board) to provide civil legal assistance. To find out which firms of solicitors in your area are on the Civil Legal Assistance Register, please contact us or look on our web site (the address is on the back page of this leaflet).

The Law Society of Scotland conducts a system of quality checks of the service given by solicitors registered to provide civil legal assistance.

[7] How can I find out what I might have to pay?

Legal aid is not always free. If you are granted advice and assistance or civil legal aid, you may have to pay something towards the cost, as we explain below.

Advice and assistance

When your solicitor finishes giving you advice and assistance, his or her bill will be paid as follows:

- (a) first, from any contribution you paid – our leaflet *Do I qualify financially for civil legal assistance?* shows what you may have to pay – this depends on your income
- (b) second, from any costs paid by your opponent
- (c) third, if the first two are not enough, from any property you win or keep (this is known as “clawback”)
- (d) fourth, if the first three are not enough, by us.

Civil legal aid

a) Contributions

You may have to pay a contribution towards legal aid as well as any contribution you have paid for advice and assistance. If you do have to pay, the amount will depend on your income and savings or property you own, and you can normally pay it in monthly instalments.

Your solicitor will estimate how much your case is likely to cost. If this estimate is less than the amount that we decide you are able to pay in contributions, we may reduce the amount of the contributions we ask you to pay. However, if the case ends up costing more than your solicitor's estimate, you may still have to pay the full amount we calculated originally.

b) If you win the case

At the end of the case, we will pay your solicitor's bill. However, we have a responsibility to try to get back the amount of money we have paid out in legal aid. To cover the costs of the case, we will use:

- first, any costs paid by your opponent(s);
- second, any contribution you have to pay to us; and
- third, if these first two are not enough, all or part of any money or property you have won or managed to keep. This is sometimes called **"clawback"** – see our leaflet *Civil legal aid - what you may have to pay at the end of your case if you win or keep money or property* for more information on this.

c) If you lose the case

Legal aid does not mean that your opponent's costs are covered. So if you lose your case, the court may order you to pay some or all of your opponent's costs. Your solicitor will give you more information about this when you are deciding whether to take the case to court.

[8] **What else should I think about before I apply for help?**

Before you apply for advice and assistance or civil legal aid, please consider what you may have to pay in the end. When you apply for legal aid, your solicitor will give you a leaflet, *Civil legal aid – information for applicants*, explaining more about legal aid. Please read the leaflet carefully. Your solicitor will be able to estimate how much, if any, contribution you may have to pay, and explain how it is calculated.

Your solicitor will also be able to give you advice about how “clawback” could affect you. If this may affect you, he or she should give you a copy of the leaflet *Civil legal aid – what you may have to pay at the end of your case if you win or keep money or property*.

The information you give about your financial circumstances must be complete and accurate. If you deliberately give us false information, your legal aid could be stopped, you may have to repay the cost of legal aid you have received for your case, and criminal proceedings may be taken against you.

[9] **How will the information I give you be used?**

By applying for legal aid, you give us permission to discuss some of the information within the Board and, where necessary, with other people outwith the Board – for example, to check your earnings with your employer or the benefits you are claiming with the Department for Work and Pensions.

Solicitors representing the Law Society of Scotland may also see information in your application as part of the random quality assurance checks that the Society carries out.

We may also receive information about you from certain third parties, including some government departments and agencies.

By law, we have to be careful how we use the information. We will only pass on information you give us in connection with your application if the law allows us to do so or we have your permission.

We also comply with the Data Protection Act and the Scottish Executive's Code of Practice on Open Government.

Under the Data Protection Act 1998 you have the right to make a formal request in writing for access to personal information held about you, to inspect it and to have it corrected if it is wrong.

If you want more information about any of these matters, please write or telephone us.

If you contact us at any stage about an application for legal aid, we may have to ask you questions to check your identity. This protects you and anyone else involved in your case.

[10] **What if I am unhappy with how the Board or my solicitor has acted?**

Our leaflet, *Complaints about the Scottish Legal Aid Board*, explains the Board's complaints procedure. You can get this from the Board, at the address on the back of this leaflet, or you can find it on our web site at www.slab.org.uk.

To complain about your solicitor, you should first speak to him or her. If you are still not satisfied, you should speak to the person in the firm who deals with complaints, who will try to resolve the problem. If you remain unhappy about the situation, you can contact the Law Society of Scotland at 26 Drumsheugh Gardens, Edinburgh EH3 7YR, telephone 0131 226 7411.

To complain about your advocate, contact the Faculty of Advocates, Advocates Library, Parliament House, Edinburgh EH1 1RF, telephone 0131 226 5071.

To complain about the court that dealt with your case, contact the Scottish Court Service, Hayweight House, 23 Lauriston Street, Edinburgh ED3 9DQ, telephone 0131 229 9200.



يمكنك الحصول على هذا الكراسة " المساعدة القانونية المدنية - دليل بسيط" بالغة العربية بالاتصال "مجلس المساعدة القانونية الاسكتلندي" على العنوان أدناه .

आपनि नीचेर ठिकानावर क्वटिश लिगाल अडि बोर्डेर सचे वोगावोग करे "नेअरानि मामला सहायता आइनि साहाय -- एकटि सरल निदेशिका" नामेर एई प्रचारपत्रटि पेठे पारबेन ।

आप नीचे दिए गए पते पर स्काटिश कानूनी सहायता बोर्ड से सम्पर्क करके हिन्दी में यह पुस्तिका प्राप्त कर सकते हैं – " दीवानी कानूनी सहायता – एक सरल मार्गनिर्देशिका " ।

你若想取得這份『民事法律協助之簡單指南』的廣東版傳單，請聯繫蘇格蘭法律顧問協助委員會，地址如下：

Tha a' bhileag seo "Cuideachadh laghail catharra – fiosrachadh simplidh" ri faighinn ann an Gàidhlig tro Bhòrd Taic Laghail na h-Alba aig an t-seòladh gu h-ìosal.

डुगठूँ छिग लीडलैट " नागरिक वाहुँनी सगछिडा - छिग सरल सुधार" पंजाबी चिच पुपुड वरन लछी सवर्गतर वाहुँनी सगछिडा घेरड (Scottish Legal Aid Board) नाल गेठ लिखे पत्रे 'उे संपवक वरना चागीरा वै ।

"Medeni hukuk yardımı – sadeleştirilmiş rehber" adlı bu broşürün Türkçe versiyonunu edinmek için İskoç Hukuki Yardım Kurulu'nun (Scottish Legal Aid Board) aşağıdaki adresine başvurunuz.

"سول قانونی مدد..... ایک سادہ گائیڈ" کے بارے میں اردو میں یہ لیف لٹ (کتابچہ) گلپ "سکاٹش لیگل ایڈ بورڈ" سے درج ذیل پتے پر رابطہ کر کے حاصل کر سکتے ہیں۔

You can get this leaflet in some other languages, or in Braille, large print, or audio tape by contacting the Scottish Legal Aid Board at the address below.

The Board's address is:
44 Drumsheugh Gardens
Edinburgh
EH3 7SW

Our telephone number is **0131 226 7061**.
Calls by BT Text Direct are welcome.
Our web site address is www.slab.org.uk
Our email address is general@slab.org.uk

We are open from 9am to 5pm on weekdays and you can phone us from 8.30am.

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