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Civil legal aid – what you may have to pay

A decorative horizontal border at the top of the page, consisting of a repeating pattern of the stylized white icon of two people sitting at a table. The background of the border is orange, and the icons are white. One icon in the center-right is highlighted with a blue background.

It's important that you understand, before your solicitor starts working for you, what you might have to pay. This leaflet explains about this and, in particular, what we mean by winning or keeping property, and “clawback”. This could be to do with civil legal aid or advice and assistance. You should ask your solicitor to explain how any of the points in this leaflet may affect your case.

Contact us

Do you want to:

- find your nearest legal aid solicitor
- find out more about legal aid
- order our leaflets?

Call our **Legal Aid Helpline** on **0845 122 8686** (open 7 days a week from 7am to 11pm), or visit our website **www.slab.org.uk**. Our website also contains details of our service standards.

If you have questions about the forms you need to fill in or your **financial eligibility**, call our financial assessment unit on **0845 123 2330** (weekdays 8.30am to 5pm).

Our general telephone number is **0131 226 7061**. Calls by BT Text Direct are welcome.

Our address is 44 Drumsheugh Gardens, Edinburgh EH3 7SW.

Our email address is **general@slab.org.uk**.

We do **not** provide legal aid directly – this is done by solicitors. We manage the legal aid system.

Other useful contacts

Law Society of Scotland, 26 Drumsheugh Gardens, Edinburgh EH3 7YR.
Telephone: 0845 113 0018, Website: www.lawscot.org.uk

To find your local Citizens Advice Bureau, please look in Yellow Pages or go to the Citizens Advice Scotland website, at www.cas.org.uk.

Our leaflets

- A guide to civil legal aid
- Civil legal aid – information for applicants
- Civil legal aid – what you may have to pay
- Guidance for opponents in civil legal aid cases
- Legal aid for children
- Do I qualify for advice and assistance – in criminal or children’s cases?
- Criminal legal assistance if you are in custody
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- Complaints and comments about the Scottish Legal Aid Board
- Access to information.

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There are two types of legal help that you may be able to get: "advice and assistance" and "civil legal aid". Together they are called "**civil legal assistance**".

- First, there is **advice and assistance**. This helps pay for advice from a solicitor on any matter of Scots law, civil or criminal – 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**. (Because this leaflet deals only with civil legal aid, when we refer to "legal aid", we mean civil legal aid.) This helps pay for your solicitor to act for you in court. It covers the preparation work, as well as the hearing itself, and can provide funding for advocates and experts if needed.

Some people need just advice and assistance, and others just legal aid. Many people start with advice and assistance and then move on to legal aid.

1 Is civil legal assistance free?

Not always: you may have to pay something towards the costs of your case. There are three main situations in which you may have to pay:

- If your income – and, for legal aid, savings – is above a certain level. Section 3 of this leaflet gives more details, and your solicitor can also explain when you first contact them about your case. Our leaflet *A guide to civil legal aid* also gives you more information.
- If you win or keep (“recover or preserve”) money or property as a result of your solicitor’s work – using this to pay towards the costs of your case is called “clawback”. It is important that you ask your solicitor to explain to you whether clawback is likely to apply in your case and what it might mean for you.
- If you lose your case, and the court orders you to pay some or all of your opponent’s costs. Legal aid will cover only your own legal costs. But you can ask the court to limit the amount because you are on legal aid.

1.1 How is my solicitor’s bill paid?

We will pay your solicitor’s bill. However, we use public funds to pay for your case and it is important that, where possible, these are repaid. This places the person getting legal aid in the same position as someone paying privately for their legal help.

Advice and assistance

The costs of your advice and assistance are paid as follows:

- First, from any contribution you have to pay your solicitor.
- Second, from any costs your opponent pays because they have agreed to as part of a negotiated settlement, or because a court has ordered them to.
- Third, if the first two are not enough, from part or all of any property you win or keep as a result of your advice and assistance (clawback). You may not have to make this payment if it would cause you grave hardship or distress.
- Finally, if the first three are not enough, from our own funds.

For advice and assistance, if you have to pay anything, you pay your solicitor direct.

Legal aid

To cover the costs of your legal aid, we will use:

- first, any costs your opponent pays
- second, any contribution you must pay us
- third, if these first two are not enough, part or all of any money or property you win or keep as a result of your case (clawback)
- fourth, if these first three are not enough, our own funds.

If your opponent does not pay the costs they should pay, then we have to use any contribution we have asked you to pay, and property you win or keep, to pay your solicitor's bill. We cannot refund any contributions you have made until we receive money from your opponent, unless you have paid us more than we paid your solicitor.

For legal aid, if you have to pay anything, you pay it to us.

We deal with each of these situations in this leaflet. We also explain a little more about what could happen if you lose your case and the court orders you to pay your opponent's costs.

2 Costs paid by the opponent

2.1 Advice and assistance

If your opponent agrees to pay all or part of your costs, or a court orders them to do so, we will use this money to pay your solicitor's bill. However, this does not mean your solicitor will refund any contribution you have paid them for the advice and assistance.

2.2 Legal aid

If you win your case, your opponent may agree to pay all or part of your costs, or the court may order them to do so. If these costs are actually paid to us, we may be able to refund some or all of any contribution you paid towards legal aid. It can sometimes take a long time to get payment of expenses from an opponent, and in some cases we or your solicitor may need to take court action to recover the expenses. In some cases it is not possible to get the opponent to pay the expenses.

If your opponent is also getting legal aid, the court may reduce what they have to pay. If so, we may have to use your contribution, or property you received or kept as a result of your legal aid, to meet your solicitor's bill.

3 Contributions

3.1 When you may have to pay a contribution

Whether you apply for advice and assistance, or full legal aid, you may be asked to pay a contribution – this depends on your financial circumstances. If you receive both advice and assistance, and legal aid, you may have to pay contributions towards them both.

Advice and assistance

For advice and assistance, your solicitor can tell you if you will have to pay a contribution to them.

Legal aid

We will tell you when we grant you legal aid if you have to pay a contribution, how much this is, and how we calculated it.

We use the information on your application form to see how much you have left from your income and capital after paying essential living costs, and how much you can afford to pay. This is based on limits set by the Scottish Parliament.

If you have to pay a contribution based on income, we will normally allow you to pay in instalments. We'll tell you how many instalments, and over how long. This will depend on the total amount you have to pay. If you think you will have difficulty paying over that period, sometimes we may allow you to pay over a longer time. You will have to show us why we should allow you to do so. Staff in our treasury department will be happy to discuss this with you.

If you miss or do not pay instalments, we will stop your legal aid. This means that your solicitor will have to stop working on your behalf under legal aid. To cover the cost of your case, you will still have to pay the rest of your contribution, or the amount we have paid your solicitor, whichever is less.

Contributions based on capital (savings and items of value you own) usually have to be made in one payment.

It is important that you ask your solicitor to calculate and tell us the likely cost of your case. This may save you money, as we can then initially limit any contribution to the amount that your solicitor estimates your case will cost. But if the case ends up costing more than the estimate, we will work out the difference between:

- the estimate and the contribution we originally calculated you were able to pay
- the estimate and the actual cost of the case.

You must then pay the smaller of these two amounts.

You may get some of your contribution back if the case costs less than you have paid us, or if we get back some of the costs from your opponent.

3.2 Using your contribution

Advice and assistance

For advice and assistance, you will not get your contribution back, even if your opponent pays the costs of the case.

Legal aid

For legal aid, if your opponent pays the costs of the case, we will use that money to pay your solicitor's bill. However, if we do not receive enough money from the costs your opponent pays, we will have to use some or all of any contribution you have paid.

You will only get your whole contribution refunded if:

- the court decides that your opponent has to pay your costs
- your opponent actually pays, and
- that amount covers your solicitor's bill.

You may get part of your contribution back if:

- the amount we pay your solicitor is less than the amount you have paid us, or
- we get some of the costs back from your opponent.

4 Property won or kept

4.1 What does “win” or “keep” property mean?

If, as a result of receiving advice and assistance, or legal aid, you get some property that you didn't own before, you will have “won” it. If you keep some property that someone had tried to take from you, you will have “kept” it. Sometimes you may hear the terms “recovering” or “preserving” property – this just means winning or keeping it.

If you win or keep any money or property as a result of your case, you may have to pay some or all of it to us to cover what we have paid to your solicitor. This is sometimes called “clawback”. Your solicitor will be able to give you information about the circumstances when this could apply to you, and tell you what money or property it may not apply to.

“Property” means many things; it includes anything that can be owned whether it is a house, something else of value, or money. Some examples are:

- a house
- shares
- life policies
- money your spouse or partner pays you when you divorce or dissolve a civil partnership
- a payment made by the Criminal Injuries Compensation Authority
- a payment of compensation from any other source.

These are only examples, and property can include anything else that is valuable. There are some differences in this between advice and assistance and civil legal aid. Your solicitor can tell you more about this.

4.2 What sort of case does clawback affect?

Clawback applies only in cases about money or property. For example, in divorce cases the court often has to decide how to divide money or property that you and your spouse own jointly, such as the house, endowment policies or pension. Or you may be seeking a lump sum from your spouse. In other cases, you may be trying to get compensation or damages for injury.

You should ask your solicitor to:

- tell you at the start of your case whether clawback could apply
- keep you informed of any changes in your case that could affect this
- tell you how much you may have to pay.

4.3 Are there any exemptions from the clawback rules?

Yes. In most matrimonial or civil partnership cases, you are allowed to keep the first £5,009. This figure is reviewed annually.

4.4 Do you have any discretion about applying the clawback rules?

Advice and assistance

For advice and assistance, we can take into account whether payment from the property won or kept would cause you grave hardship or distress.

If we have to pay your solicitor because you have not paid them from property you have kept or won as a result of your advice and assistance, we have the right to take legal action to get those payments from you.

Legal aid

For legal aid, we cannot take grave hardship or distress into account.

4.5 Will you take all the money or property I win or keep?

We will take only enough of the money or property you have won or kept to cover any shortfall between what we have paid out in your case and:

- any expenses your opponent has paid, and
- (in legal aid) any contribution you have paid.

If your opponent delays paying the expenses, we will hold back enough money to cover that amount. We will put it in an interest-earning account and pay you the interest.

4.6 If someone keeps or wins their home as part of their case, would they have to sell it to pay the amount due?

No. We will ask you to pay us by instalments or we may allow you to delay payment until you later sell the house. However, if you delay paying until you sell the house, you will have to pay interest on the amount due, and we would take a standard security on your home to make sure we receive the money eventually. Your solicitor can tell you what is involved in this.

There may be other ways of paying us what you owe that would suit you better – for example, you may want to take out a bank loan. We can give you information about the total amount you owe at any time so you can decide what is best for you.

For examples of what you may have to pay as clawback, see section 10.

5 What if my solicitor suggests working privately for me?

If we grant you legal assistance, your solicitor may have to get our agreement to carry out extra work (such as hiring experts or advocates). If we don't agree that your solicitor can do the extra work, or spend more money, they cannot ask you to pay separately for this while continuing with advice and assistance, or legal aid, for your case.

If we refuse you legal aid, or if for some reason your legal aid stops, your solicitor may suggest working privately for you. If this happens, we recommend that you:

- ask them to explain fully their reasons for this
- make sure you understand and agree to their terms of business before they start working for you.

Remember that you can contact our financial assessment unit (see the inside front cover) if you have any queries about your financial eligibility.

6 Do I have any say about how much you pay my solicitor?

What we pay solicitors is generally set by law, and we check their bills to ensure that the work done and its cost are reasonable.

Advice and assistance

For advice and assistance, solicitors have to get our permission to do more work, if they think the work will cost more than the funding limit we have already set. We decide if any extra work under "advice and assistance" is reasonable. You can ask your solicitor at any time how much we've agreed they can spend on advice and assistance. And if they spend more than we agreed, they cannot ask you to pay the extra.

Legal aid

For legal aid, there are no set limits. But in deciding whether to grant legal aid, we take into account the likely costs of the case. Also, your solicitor has to tell us about any significant changes so we can decide if it is still reasonable for your legal aid to continue.

However, when your solicitor sends us their bill, they will have to show us that the work they are charging for was necessary and reasonable.

Advice and assistance, and legal aid

It is up to you and your solicitor to decide how to run the case. Remember that every time you contact your solicitor with a question, and each time they do something for you (including writing letters, having meetings or making telephone calls), the cost of your case can go up.

As you may have to pay these costs, you should ask your solicitor to estimate how much your case is likely to cost and to tell you if this estimate changes as your case proceeds. This is what a privately paying client would probably do, and we recommend you do the same.

Asking your solicitor to calculate and tell us the likely cost of your case may save you money: if you have to pay a contribution towards your legal aid, we can limit it initially to the amount that your solicitor estimates your case will cost. But if the case ends up costing more than the estimate, we will work out the difference between:

- the estimate and the contribution we originally calculated you could afford
- the estimate and the actual cost of the case.

You must then pay the smaller of these two amounts.

You may get some of your contribution back if the case costs less than you have paid us, or if we get back some of the costs from your opponent.

7 Paying an opponent's expenses

Sometimes, a court may order you to pay your opponent's costs, or you may agree to pay them. In either situation, you must pay any such costs yourself – we cannot pay them for you. You can ask the court to reduce the sum you have to pay. The court decides what is reasonable for you to pay, taking into account:

- all the circumstances of the case
- the financial circumstances of you and your opponent
- the way you have both conducted your cases.

You must pay what the court decides; this may be nothing. You may want to ask your solicitor for more information about this.

The law gives you the right to query your opponent's bill. If you are not happy with how much they are charging, you can ask the auditor of a sheriff court to decide how much you should pay. The Auditor of Court is an independent official who looks at solicitors' bills.

8 How will you use the information I give you?

By applying for legal aid, you permit us to discuss the information within the Board and, where necessary, with other people outwith the Board. For example, we may 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.

By law, we have to be very careful about how we use information that people give us. We will normally pass on information to do with an application for legal aid only if the person who gave us it has given us their permission, or if the law says we must. However, if you ask someone like your MSP to contact us about your case, we will assume that, by doing so, you permit us to discuss it with them. We also have duties to keep certain information confidential, and to

supply other information, under the Data Protection and Freedom of Information Acts. For example, we can't give you personal information about another person. But you have the right to ask us about information we hold on you, and some other information that we record about legal aid and how we work.

We sometimes also use the information to check your identity, if you phone us. We also collect certain details to make sure that our ways of working do not discriminate, and allow equal opportunities and access for all.

If you would like to know more about how we use information we are given, please read our leaflet *Access to information*, which explains:

- how you can find out what information we hold about you
- how we will treat any information we hold about you
- how you can get access to other records and official information we keep.

9 What if I am unhappy with how you or my solicitor has acted?

Our leaflet *Complaints and comments about the Scottish Legal Aid Board* explains our complaints procedure. You can get this from us (see our contact details on the inside cover of this leaflet), or you can find it on our website at www.slab.org.uk.

To complain about your solicitor, you should first speak to them. If you are still not satisfied, you should speak to the person in the firm who deals with complaints; they will try to resolve the problem. If you remain unhappy about the situation, you can contact the Law Society of Scotland (see contact details on the inside front cover).

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.

10 Examples

Here are some examples covering advice and assistance (section 10.1) and legal aid (10.2). They include recovering property in an action for damages and in a divorce.

10.1 Advice and assistance examples

Example 1 – compensation following an accident

Your solicitor gave you advice and assistance to help you make a claim against a local council following an accident. As a result, the council agreed to pay you £5,000 in compensation for your injuries. That £5,000 counts as property you have won.

In this example:

- you had already paid your solicitor a contribution of £50
- the council agreed to pay £750 towards the expenses of the case, and paid that amount
- your solicitor's bill was £900.

That leaves £100 of your solicitor's bill that is not covered by your contribution and the expenses the council paid. You would have to pay that £100 out of the property you won, unless you could show that to do so would cause you grave hardship and distress. You would therefore get £4,900 of the money the council paid you in compensation.

Example 2 – marriage break-up

You and your spouse have agreed to a marriage break-up. Your arrangements have been made without going to court. Your solicitor has given you legal help through advice and assistance.

Your spouse has agreed to pay you a capital sum of £10,000.

The first £5,009 of the money you get is exempt – that is, we ignore it when deciding what you must pay. But as you got £10,000, you could be asked to pay up to £4,991.

Your solicitor's bill is £1,000. You have not paid any contribution to the cost and your spouse is not paying the costs for your legal advice. You therefore have to pay £1,000, unless you can show that doing so would cause you grave hardship and distress.

10.2 Legal aid examples

Example 1 – winning property in a case for damages

If you have been involved in an accident and injured, you may seek compensation from the person you think is responsible. This may for example be your employer, the local council or the other driver in a road traffic incident. We will treat any amount that you receive from your opponent to settle the case, whether by court order or out-of-court settlement, as property won.

For example, if you seek payment of compensation or damages of £15,000 but settle out of court for £10,000, you have won property worth £10,000.

Example 2 – winning property in a divorce case

If you are involved in a divorce and the house is in the joint names of you and your spouse, you may ask the court to transfer the house into your sole name. If the court agrees with you and transfers your spouse's share in the house to you, you will have won property.

We would calculate the value of your property won as follows:

- house value = £60,000
- mortgage outstanding = £40,000
- net value of house = £20,000
(value minus mortgage debt)
- value of property won = £10,000
(net value divided by 2)

This means you obtained your spouse's half-share and won property of £10,000. However, as you are entitled to the first £5,009 this reduces your property won to £4,991.

Example 3 – keeping property in a divorce case

If you are involved in a divorce, your spouse may ask the court to transfer your share of the house to them. If you successfully oppose that and get the house transferred to you, then the clawback figure, for the house in example 2, would be £20,000. As before, you are entitled to the first £5,009, which reduces the kept amount to £14,991.

So would I have to pay you the total amount I have won or kept in each example?

Not necessarily, because the figures in the examples show the most you would have to pay. The examples all assume you have not paid a contribution, and that your opponent does not pay your expenses. The actual amount you would have to pay is the lower of:

- the amount we have paid your solicitor
- the value of the property you have won or kept.

For example, if the value of the property you win or keep is £10,000 and we have paid your solicitor £3,000, you will be left with £7,000. But if the value of the property you win or keep is £5,000 and we pay your solicitor £6,000, then you would have to pay £5,000, and you would receive nothing except the exempted amount (£5,009), if applicable.

If the property you have won is not money (for example it may be the house you live in), you may not have to pay us all this amount immediately.

The following examples illustrate exemptions from clawback. They again assume that your opponent does not pay your expenses and that there is no contribution from you.

Example 4

Value of the share of the house you won or kept in divorce proceedings = £10,000

- amount exempt from clawback = £5,009
- total property won or kept = £4,991

If we pay your solicitor's bill of £5,000, we would deduct this from your property won or kept. This would only leave you with the exempt amount of £5,009.

Example 5

Value of the share of the house you won or kept in divorce proceedings = £5,000

- amount exempt from clawback = £5,009
- total property won or kept = £0.00

If we paid your solicitor's bill of £5,000, we would not deduct anything from your property won or kept. You would receive the full £5,000.

If the property you have won is not money (for example it may be the house you live in), you may not have to pay us all this amount immediately. We can arrange for you to repay the amount due in instalments, or alternatively we can place a standard security over your property (see section 4.6).



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आप इस पुस्तिका "दीवानी सहायता - आपको क्या अदा करना पड़ सकता है [Civil legal aid - what you may have to pay]" को जल्दी करके के पीछे दिखे पत्र पर स्टांपलेट के कानूनी सहायता बोर्ड से संपर्क करके हिंदी में प्राप्त कर सकते हैं।

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