

Guidelines for the Application for Children's Advice and Assistance



Form: AA/APP/CHL

Issued: December 2006

When to use this form

Use this form for all children's advice and assistance applications - that is, applications by adults and children in relation to matters arising from Part II, Chapters 2 and 3 of the Children (Scotland) Act 1995. For advice on any other sections of the Act, please use the existing AA/APP form, as this advice falls under civil advice and assistance.

- Use form AA/INC/CHL for requests for increases in expenditure.
- Use form AA/APP for all civil and criminal A&A and ABWOR matters.

Completing the form

You should read these notes with the explanatory notes on the form. More information about advice and assistance procedures is in the *Scottish legal assistance handbook for children's hearings and associated court proceedings*.

Unless shown otherwise, you must answer all questions.

- If you cannot provide an answer to a question, please leave the boxes blank. Please do not mark the box "not applicable" or "not known", or score it out.
- If your client (and partner, where appropriate) has no income or capital, please enter a "0" in the total disposable income and capital boxes (sections E3 and G3).

As we scan information into our computers, it is important that you

- complete the form clearly in black ink, using capital letters
- enter crosses clearly in the relevant boxes, and write clearly within the white box areas.

Please try to avoid attaching covering letters or additional sheets - there ought to be room on the form for you to give explanations where necessary.

~~Children's advice and assistance information form (CA/APP/CH) - Guidance notes~~
Please note that you do not give us the applicant's name, date of birth, or your own details, or if that information (including signatures and dates) has been altered or is incomplete, we cannot register the grant and will return the form."

Section A - Solicitor acting for the applicant

Please complete all the questions in this section. We need the solicitor's and firm's name at question 5 to validate the code numbers.

If you wish, you can use a name and address stamp to complete question 5, but you must complete the codes at questions 1 to 3 in the white box areas.

Section B - The applicant

If you enter the applicant's personal identifier, you must still answer questions 4, 6, and 9 (applicant's name and date of birth) and add any information that has changed since the last application. We need the client's name and date of birth on every form to help us check that new forms are registered against the correct client.

If you do not know the applicant's personal identifier, or the applicant has not had advice and assistance before, you must answer all questions in this section.

Question 10

We will normally use the address entered here if we need to contact the client. If the client does not wish us to write to them at this address, please enter a correspondence address at Question 11. If the client wishes us to send letters to a solicitor's office, enter that office address at Question 11.

Question 11

If your client does not wish us to write to them at their home address, give us a correspondence address here. In addition, if a representative is acting for the applicant, (see question 12 below) the representative's address should be entered here.

Question 12

If a representative is applying, please enter the details here, and their address at question 11.

For example, if the mother of a young child instructs you on behalf of a child, the mother is acting as a representative. Or, if you are the curator ad litem appointed by the court and wish to enter the child to an action, you are acting as a representative.

Where the applicant is a child, you must have regard to the Law Society of Scotland's guidance on representing children. If the child is under 12 years old, you should confirm in a covering letter that the child is capable of understanding and providing you with instructions, where this is appropriate. If you are acting for a very young child or baby, then this would not apply.

Where someone is acting on behalf of an applicant, you must

- tell us what kind of representative they are
- complete the representative's details at question 12, and their address at question 11.

Section C - Subject matter of advice and assistance

Question 1 - Category codes

The form allows for a primary and three secondary category codes

The primary code is the main subject matter of the advice and assistance. In children's advice and assistance matters this category will currently always be CHC.

Please remember that children's advice and assistance can only be given in relation to matters arising from Part II, Chapters 2 and 3 of the Children (Scotland) Act 1995. Advice on any other section of the Act is civil advice and assistance, and you should use the existing AA/APP form.

Under the secondary codes, you can include the category codes of up to three related matters on which you are advising your client under this grant of advice and assistance.

Question 2 - Nature of Work

Please enter a brief description of the work you are doing for your client.

Question 3 - Other rights or facilities.

~~If the client has any other rights or facilities which might help fund the case, such as assistance from a trade union or insurance company, you cannot grant advice and assistance. However, in certain circumstances, we may authorise a grant. Question 3 allows you to tell us why you feel we should grant advice and assistance despite the existence of those other rights and facilities. We will use this information to decide whether to approve advice and assistance. If you mark "Yes" to this question, you must also mark the lower box in section J, question 2.~~

Question 4 - Previous grant of advice and assistance.

If you are aware that the client has already received advice and assistance on this matter from any other solicitor or from you, you need our approval before giving further advice. In Question 4, say why you feel a further application for advice and assistance is appropriate.

If you mark "Yes" to this question, you must also mark the lower box in section J, question 2.

Section D - Applicant's circumstances

Question 2

A contrary interest could well exist in, for example, cases where the spouse or partner has an opposing interest in the outcome of children's referral proceedings.

Section E - Capital details

Question 1 - Total capital

In this context capital means savings and anything else of value owned by the client and their partner, if appropriate. This excludes the client's main residence, and the value of any disputed assets which are part of the subject matter of the advice. Examples of capital include:

- the amount that could be borrowed against all land and buildings the client or their partner own;
- money in the bank, building society, post office, premium bonds, national savings certificates etc;
- investments, stocks and shares;
- the value of other non essential possessions, such as a boat, a caravan, second car, jewellery (but not wedding or engagement rings), antiques or items bought for investment purposes;
- money that is owed to the client or their partner;
- money due from the will of someone who has died;
- money due from a trust fund;
- money that can be borrowed against business assets;

- redundancy payments;

You should, however, exclude from capital:

- the home in which the client and their partner live;
- the client's household furniture and clothing;
- the client's tools and equipment they need for work;
- the value of any property or item that is the subject of the dispute.

Additionally, if the client is of a pensionable age, certain amounts of capital are disregarded, and full details of the latest levels can be found in the current advice and assistance Keycard. The Keycard also gives details of the latest standard allowances which can be subtracted from any capital the client has.

Question 2 - Allowances

Show here the standard allowances for dependants to be subtracted from any capital shown. Details of the allowances are in the Keycard.

Question 3 - Total Disposable Capital

Please enter here the figure for the total disposable capital rounded down to the nearest pound. **If your client (and partner, where appropriate) has no capital, please enter a "0" in this box.** Please do not leave the box blank or score it out.

Section F - Income details

Question 1

If the client and/or their partner receives income support or income-based jobseeker's allowance, they qualify automatically on income for advice and assistance and will not have to pay a contribution. However, the solicitor must still assess their client's disposable capital.

Please show whether it is the applicant or their partner who is claiming this passport benefit. If the applicant's benefits are being claimed by a spouse or partner this must be shown here.

Question 3- Income

Please tell us whether the applicant and/or their partner receive earnings from employment (or self employment), other non-passport benefits or other income. Please specify here what other income they receive (for example, any rent payments being received).

Income means the total income, from all sources, that the client and their partner received or became entitled to during or in respect of the seven days up to and including the date of the application. This excludes disputed income which is the subject matter of the advice (i.e. the subject matter of dispute). Income tax and national insurance contributions are not included in this if the client is employed.

In this context income means:

- earnings (including any tips), drawings or profits from business;
- maintenance payments (unless paid through the Child Support Agency);
- private or employee pensions;
- occupational sick pay;
- occupational maternity pay;
- student grants or bursaries (but not student loans);
- national asylum support service (NASS) payments;
- money received from friends and relatives (other than loans);
- income from savings and investments;
- dividends from shares.

In the assessment, the resources of a partner must also be taken into account. A "partner" is considered to be someone the client normally lives with as a couple, whether or not they are married and of the same or different sex.

The partner's resources do not need to be taken into account in the following circumstances:

- The partner has a contrary interest in the case;
- the client and partner are living separate and apart;
- it would be inequitable or impractical to aggregate their resources.

Question 4 - Non-passport benefits

Although most state benefits are disregarded in the financial assessment, we still need to know if the applicant or their partner is receiving these benefits. Please show here which benefit is being claimed and who is claiming it.

Various benefits which the client may receive do not need to be included as income. The benefits that can be disregarded for the purposes of assessing disposable income are:

- attendance allowance
- back to work bonus
- bereavement allowance
- bereavement payment
- child benefit
- child maintenance bonus
- child support maintenance (paid through the Child Support Agency)
- child tax credit
- Christmas bonus
- contribution-based job seeker's allowance
- council tax benefit
- disability living allowance
- disabled person's tax credit
- guardian's allowance
- housing benefit
- incapacity benefit
- industrial injuries disablement pension
- invalid care allowance
- pension credit
- severe disablement allowance
- state retirement pension
- statutory maternity pay (non-occupational)
- statutory sick pay (non-occupational)
- sums payable to holders of the Victoria Cross or George Cross
- war and disablement pension
- war widow's/widower's pension
- widowed parent's allowance
- working tax credit.

The Keycard also shows the latest standard allowances which can be deducted from the total income. These allowances are deductible for a partner living with the client, and for any dependent person who is wholly or substantially maintained by the client, and is a member of the client's household.

Question 5 -Applicant's main employer

The client does not have to answer the equality questions. If they choose not to do so, put a cross in this box.

Question 2 - Ethnic origin

If they choose to answer the questions, please follow the instructions on the equality card to help them complete question 2, parts A, B and C. They should enter a number at both Part A and Part B and any other appropriate descriptions for "other".

Question 3 - Disability

The disability discrimination act defines disability as "a physical or mental impairment with long term, substantial effects on a person's ability to perform day to day activities". If a client feels they have such an impairment enter "1". If not, enter "2". If the client does not wish to answer the question enter "3".

Section I - Declaration by applicant

You should make sure that your client understands that, by signing this declaration:

- they authorise us to ask other people or bodies for information about the application
- they may have to pay for their advice and assistance from any property recovered or preserved as a result of the grant and
- they consent to the disclosure of the application for quality assurance purposes.

Section J - Advice and assistance intimation and declaration by solicitor

Question 1 - Initial limit of expenditure

This is £80 for all children's cases.

Question 2 - Board authority to give advice and assistance

Mark the upper box if you are intimating a grant of advice and assistance that you have already made, and do not need our authority.

You need our authority before giving advice and assistance if the applicant

- has already received advice on the matter from another solicitor, or you, or
- has other rights or facilities which may fund the case

In these circumstances you should, therefore, mark the lower box.

Question 3 - Documentary evidence of financial circumstances

We would expect the solicitor to see documentary evidence of the client's financial position in the vast majority of cases. The majority of clients will make an appointment to see the solicitor. When doing so, they should be asked to bring along with them documentary evidence of their capital and income along with the proof of identity required when signing up new clients whether legally aided or not.

We would recommend therefore that solicitors should see, wherever practicable, the following:

- For income
 - where the client is employed, a recent wage slip or bank statement;
 - where the client is receiving benefits, a letter of award, benefit book (in the limited cases where payment is made in this way) or a bank statement (which might simply be an ATM receipt showing the credit);

- For capital
 - a bank statement and statement/pass book and certificate for savings and/or investments.

Please mark the boxes to show whether you have seen documentary evidence of the applicant's income and capital, and give details of that evidence.

If you have not seen any evidence, explain how you were satisfied without any verification that the client was financially eligible. This does not mean we will return the form. However, we may want to make our own checks about this directly with the client. We also carry out checks with individuals and bodies to confirm the information about the financial circumstances of clients receiving advice and assistance.

We appreciate that in some circumstances, clients may not have documentary evidence available when consulting a solicitor. Where they do not - for example, in an emergency, where they are part of some acrimonious dispute which prevents access to documentation or where they are in custody, you may be satisfied from the limited information available but you should then seek verification from the client preferably before seeking any increase in authorised expenditure, but always at the earliest opportunity and exhibiting this on the file so that it can be seen at peer review or at a Board compliance inspection.

Declaration

The solicitor admitting the client to advice and assistance must sign this declaration. We cannot accept unsigned applications, and have to return them for signature.

Date of signing

This is the date of completing the form, and is the effective date of the grant of advice and assistance - that is, the date from which work becomes chargeable under advice and assistance.

Date of granting advice and assistance, if different

This is the date when you were satisfied that the client was eligible to receive advice and assistance, if that is different from the signing date. (For example, you might admit a client to advice and assistance on a particular day after being satisfied that they are eligible, but not be able to fill in the form until the next day.)