

Civil advice and assistance and ABWOR



How to complete the civil advice and assistance/ ABWOR application form

This document contains guidance on how to correctly complete the application for civil advice and assistance / ABWOR form - AA/APP/CIV. It includes key points, question by question guidance notes for completing the form and 4 model applications.

Effective 1 May 2007

Key points about application for civil advice and assistance /ABWOR – using form AA/APP/CIV



Summary of changes

- The new red AA/APP/CIV form must be used for all civil advice and assistance intimations from 1st May 2007.
- There are now two types of civil advice and assistance: standard and diagnostic. The new Category Codes Card shows whether a matter is diagnostic or standard.
 - **Standard:** Most cases are likely to be standard advice and assistance. This covers most of the work being done by solicitors prior to 1st May. There are particular categories of case – called approved categories - where standard advice and assistance can be given. The new Category Code Card tells you what is covered as standard advice and assistance.
 - **Diagnostic:** Where the work to be done is not an approved standard category, advice and assistance can still be made available by way of a diagnostic interview. There is only limited funding of £35 available for a diagnostic interview.

Usually a client can only get a diagnostic interview once during any period of 3 months from the date of an earlier grant and where advice could have been from any solicitor. You can seek the Board's approval to move from diagnostic to standard advice and assistance.

For diagnostic advice and assistance, there are particular contribution levels that apply.

- There are new levels of initial authorised expenditure:
 - diagnostic advice and assistance is limited to £35
 - standard advice and assistance has initial authorised expenditure limits of £95 or £180.
- The minimum fee has been removed from all civil cases granted on or after 1st May 2007.
- **Financial verification:** It is still your responsibility to be satisfied on financial eligibility. You should see documentary evidence of your client's financial circumstances such as a wage slip or a bank statement. You need to include details of this verification on the AA/APP/CIV form and keep a copy of evidence seen on file.

Key points to remember

- Legal Aid Online offers you a quicker and easier way of doing advice and assistance work rather than paper. If you are interested in using Legal Aid Online please visit our website www.slab.org.uk or contact us on 0131 240 2013.
- You cannot use pdf forms, photocopies or your own versions of our forms from 1 May 2007. You must use the new AA/APP/CIV - Application for civil advice and assistance/ ABWOR form only, or use Legal Aid Online.
- Do not send covering letters with the application form unless you require to tell us something that cannot be written on the form.
- When filling out the new form, please use black ink only and when completing the single white boxes, write in capitals. Use the check boxes and write within the white boxes/space only.
- Income support, income based job seeker's allowance, or disregarded benefit payments should not be included as income in Section G of the form.
- If you are requesting our approval to provide standard advice and assistance rather than diagnostic, a higher contribution may be payable by your client.
- All our guidance on civil advice and assistance reform is available online at www.slab.org.uk

GUIDANCE NOTES

CIVIL ADVICE AND ASSISTANCE APPLICATION FORM (AA/APP/CIV)

When to use this form

Use this form for all **civil** advice and assistance and ABWOR applications, both for diagnostic advice and assistance and standard advice and assistance. Use it:

- to tell us that you have given a diagnostic interview or granted standard advice and assistance, or
- to ask for our authority to grant advice and assistance where necessary – that is:
 - where, after giving a diagnostic interview, you want to give standard advice and assistance, but the case is not included in the listed categories
 - where the client has already received a diagnostic interview from you or another solicitor within the last three months, and you wish to grant a further diagnostic interview
 - if the client has already received advice and assistance (a diagnostic interview and/or standard advice and assistance) about the same matter from another solicitor
 - if the client has other rights and facilities that could make it unnecessary for them to receive advice and assistance or ABWOR.

Use form AA/INC/CIV for requests for increases in expenditure.

Use form AA/APP/CHILD for children's matters and form AA/APP/CRIM for all criminal advice and assistance and ABWOR matters.

Completing the form

Please read these notes with the explanatory notes on the form. More information about advice and assistance procedures is in the Civil Legal Assistance Handbook.

Unless shown otherwise, you must answer all the questions.

- If you cannot provide an answer to a question, please leave the boxes blank. Do not mark the box as "not applicable" or "not known", or score it out.
- If your client (and partner, where appropriate) has no income or capital, please do not write Nil or put a line through the boxes –use the check boxes (sections E1 and G1).
- If you, or your client, make any alterations to the form, they must be initialled by you, or by your client if the changes are to Sections D, E, F, G, H or I.

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 enough room on the form for you to provide any necessary explanations.

Section A – Solicitor acting for the applicant

Please complete all the questions in this section. We need the solicitor's and firm's name and address as well as the code numbers to ensure that we address correspondence correctly.

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 quote 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 12. If the client wishes us to send letters to a solicitor's office, enter that office address at question 12.

Question 12

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 13 below), the representative's address should be entered here.

Question 13

If a representative is applying, please enter the details here, and their address at question 12.

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 13, and their address at question 12.

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. 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. You should use the Category Codes Card to select the correct codes.

For example: Primary Code = DIV (Divorce), Secondary Codes = RES (Residence), INT (Interdict), & MHAC (Matrimonial Homes Act)

Question 2 – Subject matter

Please enter a brief description of the advice given and subject of the work you are doing for your client.

Question 4 – 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. (For example, there may be a conflict of interest with the solicitor appointed by your client's insurance company.) Question 4 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 5 – Diagnostic advice and assistance

The legislation only allows a client to receive one grant of diagnostic advice and assistance in a three-month period. However, we may agree that you can give a second or subsequent grant within this period if we feel there is reason to do this. If you wish to apply to do so, justify in this section why you feel a further grant of diagnostic advice and assistance is appropriate.

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

Question 6 - Diagnostic advice and assistance/standard advice and assistance.

If the advice and assistance is not covered by one of the approved case categories, you may feel the initial £35 limit for diagnostic advice and assistance is inappropriate. If you wish to give standard advice and assistance for the case, you need our prior approval.

You can send in the form or you can telephone us for approval. If we grant this by telephone you will need to send in the form within 14 days.

If you do obtain prior approval from us by telephone, you must complete the remainder of Question 6 on the form – *Has authority for this been granted by Telephone/Fax and also If yes, when was this granted?*

If you want to seek approval using the form you should explain why you feel that you should give standard advice and assistance to the client. If you mark “Yes” to this question, you must also mark the lower box in section J, question 2.

Question 7 – Previous advice and assistance

If you are aware that the client has already received advice and assistance on this matter from any other solicitor, you need our approval before giving further advice. At this question, 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 apply in, for example, matrimonial cases such as divorce, aliment, and contact.

Questions 3, 4 & 5

If the partner’s income is being taken into account, we need their details here, as we check these.

Question 6

The number of dependants excluding the partner should be entered.

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.

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 can be disregarded, and full details of the latest levels can be found in the current advice and assistance keycard. The key card also gives details of the latest standard allowances which can be subtracted from any capital the client has.

If your client (and partner, where appropriate) has no capital, please do not write Nil or put a line through the boxes –use the check boxes.

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. **If no allowances are being given, please do not write Nil or put a line through the boxes – use the check boxes.**

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 do not write Nil or put a line through the boxes –use the check boxes.**

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, you must still assess your client's disposable capital. If the client does receive a passported benefit

(income support or income based job seeker's allowance) they should complete the "Nil" check boxes at Section G.

Question 2

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 (see the next section on Question 4 for details of non passported benefits) or other income. Please specify here what other income they receive (for example, any rent payments).

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. 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
- 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

This is needed to allow us to check the applicant's earnings.

Question 6 –Partner's main employer

Similarly, we need this as we may also check the partner's earnings.

Section G – Eligibility on disposable income

Question 1 – Total weekly income

Enter the total income (less any disregarded benefits) from all sources which the applicant received or became entitled to during or for the seven days up to and including the date of the application. Exclude income tax and National Insurance contributions.

If your client (and partner, where appropriate) has no income or is in receipt of income support or income based job seekers allowance, please do not write Nil or put a line through the boxes – use the check boxes.

Question 2 – Allowances

Show here the standard allowances to be subtracted from the income shown. Details of the allowances are in the Keycard. Please pay attention to the decimal points between boxes. We need you to use these because the current allowances are not rounded to the nearest pound – for example, they allow £33.65 for a partner, and £47.45 for a dependant.

If no allowances are being given, please do not write Nil or put a line through the boxes – use the check boxes provided.

Question 3 – Total disposable income

If your client (and partner, where appropriate) has no income, please do not write Nil or put a line through the boxes – use the check boxes.

Questions 4 & 5 – Diagnostic and standard advice and assistance contributions

If you are applying for diagnostic advice and assistance only, please enter at question 4 the contribution due from the diagnostic scale.

If you are also applying for authority to provide standard advice and assistance, please also enter at question 5 the full contribution that would be due if we grant standard advice and assistance.

Your client will not end up having to pay both contributions:

- If you do not grant, or we do not approve, the standard advice and assistance, the client will only have to pay the diagnostic contribution shown at question 4.
- If your client pays for a diagnostic interview, and you then give standard advice and assistance, they should only pay, in total, the contribution assessed for standard advice and assistance minus any contribution already paid for the diagnostic interview.

Completing this section will also allow you to tell your client how much they may have to pay should standard advice and assistance be granted.

If no contribution is payable, please do not write Nil or put a line through the boxes –use the check boxes.

Section H - Equality

It is important you ask your client for this information, to allow us to gather information to monitor equality of access to legal aid. You should give your client the Equality Card, which provides a fuller explanation and the questions to be answered on the form.

We have to collect information to monitor equality of access of people applying for and/or receiving services paid for from the public funds we administer. For example, we have a duty under the Race Relations (Amendment) Act 2000 to have due regard, in carrying out our functions, to the need to eliminate unlawful discrimination and promote equality of opportunity at good Race Relations. As part of our responsibilities here, we need to monitor the ethnic origin and possible disabilities of those individuals who receive advice and assistance.

Question 1

The client does not have to answer these 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
- they consent to the disclosure of the application for quality assurance purposes
- they acknowledge that they will have to pay the full contribution, instead of the diagnostic contribution, if we agree to the move from diagnostic advice and assistance to standard advice and assistance.

We cannot accept unsigned applications, and have to return them for signature.

Section J – Advice and assistance intimation and declaration by solicitor

Question 1 – Initial limit of authorised expenditure

Enter here the relevant initial limit to which you are working – £35 for diagnostic advice and assistance, £95 for standard advice and assistance, and £180 for standard advice and assistance with a self-certified increase.

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.

Mark the lower box if you need to ask for our authority to grant advice and assistance – that is:

- if the client has already received advice and assistance (a diagnostic interview and/or standard advice and assistance) about the same matter from another solicitor
- where the client has already received a diagnostic interview from you or another solicitor within the last three months, and you wish to grant a further diagnostic interview
- where, after giving a diagnostic interview, you want to give standard advice and assistance, but the case is not included in the listed categories
- if the client has other rights and facilities that could make it unnecessary for them to receive advice and assistance or ABWOR.

Question 3 - Documentary evidence of financial circumstances

We would expect you to see documentary evidence of the client's financial position in the vast majority of cases. Most 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 you 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. Please keep a copy of these documents.

If you have not seen any evidence, explain how you were satisfied that the client was financially eligible without any verification. 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 at the earliest opportunity and before seeking any increase in authorised expenditure (unless there is real urgency).

Where, however, the client does not produce verification when you have specifically asked them to do so, and there is no urgency, or apparent difficulties in obtaining the documents, you should tell them again that they need to give you verification of their financial circumstances. Again remember to keep a copy of this for your file.

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. This is usually the effective date of the grant of advice and assistance – that is, the date from which work becomes chargeable under advice and assistance. However, in some circumstances, such as where you seek the Board's authority to grant advice and assistance, the date of signing the form would not be the date of the grant.

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.)

Civil advice and assistance and ABWOR

Model civil advice and assistance/ABWOR application forms

We have prepared four model applications to help you correctly complete the new application for civil advice and assistance / ABWOR form – AA/APP/CIV.

Two examples cover standard advice and assistance – which will be the type of advice and assistance that is used in most cases. Two further examples show diagnostic applications.

Each of the model applications also help show you how to best complete the form. For example this includes by writing in black ink, in capitals, and by writing within the white boxed areas and using the Nil boxes where appropriate at financial questions.

Example 1

Standard advice and assistance – client on passport benefit

In this application the client is Sarah Withers. The advice given is about a reparation matter. Having consulted the Category Codes Card, the solicitor sees that this is a standard civil advice and assistance matter.

The client receives income support so this information is given at Section F, and then the nil boxes are used at section G. The solicitor also gives details at section J of the evidence seen that the client receives this benefit.

Example 2

Standard advice and assistance – client in employment

The client is Joanna Mackie and her case involves family matters. At section B question 12, a correspondence address is given for the client. The solicitor uses the Category Codes Card to select the appropriate codes to write in at Section C question 1 and to check that the case is standard advice and assistance.

The client does not live with a partner so most questions at Section D do not require completion. At Section F, details are given of the client's employment income.

At Section G eligibility on disposable income, income details are provided together with the contribution due from the client. The solicitor uses the Keycard to determine this amount. The solicitor also details the evidence seen of income and capital at Section J.

Example 3

Diagnostic advice and assistance

The client is Harry Simpson and the case concerns a complaint against his local council.

At section C, having consulted the Category Codes Card, the solicitor sees that this is a diagnostic matter. At section C questions 5 and 6 the solicitor checks that the client has not received diagnostic advice and assistance from any solicitor in the last 3 months, and shows that they do not seek approval to move to standard advice and assistance.

The client has a partner and their details are given at Section D. At section E on capital details, the nil box is used to show clearly where the client does not have any capital. At Section F, details are given of the client's employment income and the partner's non-passport benefits.

At Section G eligibility on disposable income, income details are provided together with the contribution due from the client, for both diagnostic and standard advice and assistance. The solicitor uses the Keycard to determine this amount.

At section J, question 1 the solicitor select that the initial limit is £35 because it is diagnostic advice. The solicitor also details the evidence seen of income and capital at Section J.

Example 4

Diagnostic advice and assistance and request to move to standard advice and assistance

The client is Steven McDonald and the case concerns a complaint against a council.

At section C, having consulted the Category Codes Card, the solicitor sees that this is a diagnostic matter. At section C questions 5 the solicitor checks that the client has not received diagnostic advice and assistance from any solicitor in the last 3 months.

At section C question 6, the solicitor requests Board approval to move to standard advice and assistance. They explain why this sought and show that Board authority has not been already been granted by telephone.

The client has a partner and their details are given at Section D. At section E on capital details, the nil box is used to show clearly where the client does not have any capital. At Section F, details are given of the client and partner's employment income.

At Section G eligibility on disposable income, income details are provided together with the contribution due from the client, for both diagnostic and standard advice and assistance. The solicitor uses the Keycard to determine this amount.

At section J, question 1 the solicitor selects that the initial limit is £35 because it is diagnostic advice but also selects that a request to move to standard with a limit of £180 is sought.

The solicitor also details the evidence seen of income and capital at Section J.