

Civil legal aid – information for applicants



Note for solicitor

Please give this leaflet to your client before he or she completes the applicant's form.

Some important things to remember

- give us true and complete answers to all the questions on the legal aid application forms, and to any other questions that we or your solicitor ask you
- tell us or your solicitor immediately about changes that affect your case or your finances – see section 6
- pay us, on time, any contributions you are due to pay
- tell us about any change to your address or name
- keep in touch with your solicitor, and deal promptly with any requests for information from him/her or us
- legal aid is not always free – you may have to pay towards it through a contribution, or if you get or keep anything as a result of your case
- you may have to continue paying towards it even after your case has come to an end or we have withdrawn the grant of legal aid.

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This leaflet explains:

- what you would be entitled to if we granted you legal aid, and
- what your responsibilities would be.

Your civil legal aid application is made using two forms:

- *an application* form to explain the nature of your case. Your solicitor should already have completed this. You will have signed a declaration on this form
- *Financial Eligibility Form 1 or 2* – the information you give on this form will help us decide if you qualify financially for legal aid. When you have completed the form, give it to your solicitor who will send it to us with the application form about the nature of the case.

Please:

- read this leaflet carefully before you complete the *Financial Eligibility Form*
- discuss with your solicitor anything you do not understand about your case, as soon as *possible*
- discuss with us anything you do not understand about the financial assessment
- keep the leaflet in a safe place, so that you can refer to it later if you need to.

1 What is civil legal aid?

Civil legal aid allows your solicitor to start or defend court proceedings for you.

If we grant you civil legal aid, it will cover all reasonable work your solicitor does for you and any other costs we approve, such as experts or advocates who have to be employed on your behalf. It can also cover the cost of mediation. Legal aid will cover work from the time it is granted until the case finishes (or until we stop your legal aid if, for example, you do not pay your contribution towards its cost).

Legal aid is not always free:

- you may have to pay a contribution (but you may get back some or all of it at the end of the case)
- in some circumstances, you may have to pay back money if you keep or gain anything as a result of your legal aid

- if you lose the case, you could end up having to pay your opponent's costs

(Sections 11-14 tells you more about what you might have to pay).

2 How do I get civil legal aid?

The Board decides whether you qualify for civil legal aid. We assess all applications in the same way and we must follow rules set down by Parliament in our legislation. You must qualify on all the tests before we can grant civil legal aid.

We have to decide that:

- you qualify financially
- it is reasonable to grant you legal aid
- you have a legal basis for your case
- financial help is not available to you from someone else – like a trade union, insurance company or professional body.

3 Urgent work

Before we make a decision on your legal aid application, your solicitor may be able to do urgent work on your behalf in court – for example, to apply to the court for an order to prevent someone assaulting you. However, you may have to pay us a contribution for this work, even if we later refuse your application for legal aid. You can usually pay this contribution in instalments. Your solicitor can give you more details.

4 How will you decide if I qualify financially?

4.1 If you are receiving Income Support, Income-based Jobseeker's Allowance, payments from the National Asylum Support Service or you are applying on behalf of a child, complete Form 1

Make sure your solicitor has given you Form 1 to complete if:

- you are receiving Income Support or Income-based Jobseeker's Allowance (or someone else is receiving these for you) – we will check with the Department for Work and Pensions that these allowances are being paid, and if they confirm this, we will be satisfied that you are within the financial limits for civil legal aid
- you are receiving payments from the National Asylum Support Service
- you are applying on behalf of a child.

You must tell us immediately if you stop receiving these benefits (for example, if your benefit changes to working tax credit, incapacity benefit etc). You must do so even if your new benefit or wage comes to about the same amount, or is less. We will then have to ask you to complete a financial statement so that we can assess your financial circumstances.

4.2 If you are NOT receiving Income Support, Income-based Jobseeker's Allowance, payments from the National Asylum Support Service or you are applying on behalf of a child, complete Form 2

We assess your income and outgoings over a period of one year, starting from the date we receive your application. We call this one-year period the “computation period”.

On Form 2, you will have to give us details of your income, savings, and any other items of value you own, such as a second home or valuable jewellery. We do not need to take into account the house you live in or anything that

is the subject of the dispute. We will need information about any dependents (for example, any children or other people who you support). If you are married or living with a partner, we 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).

4.3 Whichever form you complete...

Before you fill in the form, please read the guidance on the form about completing it.

We carry out checks with people like the Department for Work and Pensions, councils, employers and banks to make sure the information applicants give us is accurate and complete.

We have an established procedure for regularly checking the information applicants give us. We may contact you at any point after you apply for legal aid, and while you are still receiving legal aid, to check that the information you gave us has not changed. However, this does not remove your responsibility for telling us about any changes that we should know about.

5 What else do you take into account in deciding if I should receive legal aid?

We have to be satisfied that:

- it is reasonable to use public funds to support your case, and
- you have a legal basis for the case.

In considering whether it is reasonable, we will consider, for example:

- whether your prospects of winning or defending the action are only poor or fair – in these circumstances we may not consider it reasonable to grant legal aid
- whether you are using the right court
- whether you have fully considered other ways of sorting out the problem, short of court action.

6 What if my circumstances change after I complete the form or after I am granted legal aid?

You must tell us immediately if:

- your address changes
- anything happens that might significantly affect your financial situation.

You must do this if:

- you have applied for legal aid and are still waiting for a decision, or
- we have granted you legal aid – either with or without a contribution – even if your case has come to an end or we have withdrawn your grant of legal aid in the one-year computation period.

These changes could affect whether you qualify financially and any contribution you have to pay towards the cost of the case, which might rise or fall, depending on the circumstances.

If we find that you have deliberately reduced your income or disposed of any capital in order to qualify for legal aid, we may still include its value in our assessment.

It is not just your own financial circumstances we have to take into account. Usually we also take into account the financial circumstances of your partner or spouse. So you must tell us of the same changes in their circumstances.

You should also tell us, or your solicitor, if anything happens that could affect your case. You must do this if:

- you have applied for legal aid and are still waiting for a decision, or
- we have granted you legal aid.

6.1 Income

You must tell us immediately if your income increases by £500 or more, or decreases by £200 or more during the one-year computation period.

Even if your case finishes before the end of the computation period, you must still tell us about changes to your income so that we can make sure that we properly calculate your contribution. It may lead to an increase or a reduction in the amount you have to pay us.

You must also tell us if you start to receive, or stop receiving, Income Support or Income-based Jobseeker's Allowance – even if this makes little or no difference to your financial circumstances.

Examples of changes we need to know about are if:

- your income changes or expenses or benefits to do with your work change
- anyone else starts or stops living with you
- you or someone over 18 who is living with you gets or loses a job
- payments you make for rent, board, mortgage, council tax, maintenance or private pension schemes change.

6.2 Capital

You must tell us if your capital increases by £500 or more during the period of assessment or the lifetime of your court case – whichever is the longer. The period of assessment is the 12 month period (one-year computation period) from the date the Board receives your legal aid application. This change can affect the contribution you have to pay towards the cost of your case.

By “capital”, we mean not only money, but also anything else of value. Examples of the sorts of things we need to know about are:

- redundancy payments
- anything you inherit, win, or are given
- savings and investments of any kind
- land and heritable property.

7 Will the opponent in my case be told I have applied for legal aid?

When we receive your application, we will normally tell the opponent(s) in your case that you have applied for legal aid unless:

- your solicitor asks us not to do so, and
- we decide, based on the information you and your solicitor have given us, that it is not appropriate to do so (for example, if you are the victim of domestic violence).

When we tell the opponent that you have applied for legal aid, we will not give them any personal information about you except the information your solicitor has to include on the statutory statement that is sent to the opponent when you apply for legal aid.

The opponent has the right to tell us if they think you should not receive legal aid. They normally have 14 days to do this.

We will consider your opponent's objections and, if necessary, investigate further.

When we make a decision on your application, we will normally tell your opponent whether you have been granted or refused legal aid.

At any time in the life of your case, your opponent can tell us if they think you should not continue to receive legal aid. But we would not make a decision about your legal aid based on your opponent's objections without first seeking your comments on them.

8 What happens if I am refused legal aid?

If we refuse your application, we will tell you and your solicitor why. Through your solicitor, you can ask us to review our decision – normally you have 15 days from the date you receive our letter of refusal. If we still refuse your application, your solicitor may be able to get a judicial review of our decision. Ask your solicitor about this.

9 If I am refused civil legal aid, can I apply again?

Yes, you can apply again and we will put your application through the same tests. If your circumstances have changed or you can provide new information about your case, we might reach a different decision.

10 What will happen if I am granted legal aid?

If we grant legal aid, we will write to you and explain any conditions that we have set (for example, if you have to pay a contribution).

If you wish to go ahead with legal aid for your case, you must then instruct your solicitor to proceed.

Important: before you instruct your solicitor, please remember that even if we have not asked you to pay a contribution, you might later have to pay one if your circumstances change (section 14 tells you more about what you might have to pay).

11 Will I have to pay anything for my solicitor's work?

Legal aid is not always free. You might have to pay something towards the cost.

- **you may have to pay contributions towards legal aid based on your income and any savings or other capital you have**
- **in many cases, you will have to pay some or all of your own costs from any money or property that you get or keep as a result of your case**
- **legal aid does not mean that your opponent's costs are covered. So if you lose your case, you could be asked to pay some or all of your opponent's costs. However, as a legally aided person you can ask the court to reduce these costs.**

It is important that you understand what you may have to pay. Please read the information in this leaflet carefully. Ask your solicitor to explain anything you do not understand before you ask him/her to do any work for you under legal aid, and before you pay the first instalments of any contribution.

Please contact us if you have any questions about the contribution we calculate you should pay.

12 How much will I have to pay as a contribution to my legal aid?

Depending on your financial circumstances, you may have to pay a contribution towards the work done for you. We will tell you how much this contribution is and how we calculated it.

What we mean by "a contribution" is the amount we calculate you are able to pay towards the total cost of your case. This amount may go up or down if your financial situation changes. Your contribution will not be more than the cost of the case.

After discussing the contribution with your solicitor, you have a number of options:

- you can pay the contribution stated, and ask your solicitor to start working on your behalf
- you may think that the contribution you have been asked to pay has been wrongly calculated. If so, you or your solicitor can ask us

to reconsider it – contact our Financial Assessment Unit at the address on the back of this leaflet as soon as possible and in any event before the date on which the first instalments is to be paid. Your solicitor can still do work on your behalf during the time we are reconsidering the contribution. However, if you choose not to pay the first instalments, we may have to get back from you the cost of your solicitor's work up to the amount of the contribution we have assessed.

We will tell you by letter what instalments we expect you to pay and send you bank giroslips to enable you to start paying as soon as possible. You must pay the first instalments within 28 days of this letter. If you do not pay within 28 days, and you have not asked us to reconsider the calculation of your contribution, then:

- we will suspend the grant of legal aid, and

- you will then have a further 30 days in which to pay before we stop your legal aid.

While your legal aid is suspended, and if it is stopped, we will not pay your solicitor for any work, so he or she is unlikely to take your case forward. If you have already asked your solicitor to do work before the legal aid was suspended or stopped, you may have to pay for this, up to a maximum of the contribution we assessed.

Please remember that if you pay the first instalments and ask your solicitor to start working on your behalf:

- we may ask you to pay a higher or lower contribution if your financial situation changes (see section 6), in which case we will tell you what the new contribution is and the instalments you will have to pay, and

- you must continue to pay the remaining instalments even if your case comes to an end, or we have withdrawn your grant of legal aid before your contribution is fully paid.

If you do not continue to pay instalments, we may withdraw the grant of legal aid, and have the right to get back from you the total cost of your case or the remaining instalments due, whichever is less.

12.1 How do you decide what contribution I have to pay?

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 based on limits set by Parliament.

You may be asked to pay a contribution from your income or your capital, or both.

Your solicitor will estimate how much your case is likely to cost. If this is less than the amount that we assess you are able to pay, we may reduce the amount we ask you to pay. However, at a later date, if the case costs more than your solicitor's estimate, you may still have to pay the full amount we assessed.

12.2 Do I have to pay the whole contribution at once?

We will normally allow you to pay your contribution in instalments. If so, we will tell you. Most contributions based on income can be paid over a period of up to 20 months. If your contribution is based on your capital, we will normally ask you to pay this in a lump sum.

12.3 What if I am having difficulty making the payments?

If you are having difficulty paying, you must tell us immediately so that we can try to help you. If you can show that your financial position

has changed for the worse, we may be able to reduce the amount you are being asked to pay.

12.4 What if I don't pay my contribution or miss payments?

Your legal aid may be stopped. This means that your solicitor would have to stop working on your behalf under legal aid. You may still have to pay the rest of your contribution, to help meet the costs of your case.

13 What you may have to pay at the end of the case

At the end of the case, we will pay your solicitor's bill. However, 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
- third, if these first two are not enough, part or all of any money or property you win or manage to keep as a result of your case, and
- fourth, if these first three are not enough, we will pay the rest.

13.1 Costs paid by opponent

If you win your case, your opponent may agree to pay all or part of your costs or the court may order him or her to do so. If these costs are actually paid to us, we will be able to refund some or all of your contribution. It can sometimes take a long time to get payment of expenses from an opponent,

and in some cases the Board or your solicitor may need to take court action to recover the expenses.

However, we will not be able to refund any of your contribution simply because your opponent has agreed to pay the expenses or he or she has been ordered by the court to pay them. We will only be able to pay a refund when and if we actually receive payment of the expenses.

If your opponent is also legally aided, the court may reduce the amount he or she has to pay. If so, we might have to use your contribution or property you received or kept as a result of your legal aid to meet your solicitor's bill.

13.2 Using your contribution

If we do not receive enough money from the costs paid by your opponent, 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 if we recover some of the costs from your opponent.

13.3 Property you win or keep

If you win or manage to keep any money or property as a result of your case, some or all of it may have to be paid to us to meet the costs 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. He or she will also be able to advise you about the sort of money or property it may not apply to.

Examples of money or property you might get include:

- compensation after an accident
- a capital sum in a divorce.

You will keep property if you hold on to something your opponent was claiming from you – for example, if your opponent wanted your half-share of a jointly owned house.

Unless the law specifically excludes your money or property from being used in this way (for example, the first £4,275 in most matrimonial cases), we have to use it. We are **not** allowed to take into account whether payment from the property would cause you hardship.

If your solicitor thinks you may be affected by this, he or she should give you a copy of 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*.

14 Paying your opponent's costs

Sometimes, the court may order you to pay your opponent's costs, or you may agree to pay them. In either case, **you** must pay any such costs yourself – we cannot pay the costs for you. You can ask the court to reduce the sum you have to pay.

15 Can I change solicitor?

Yes, but we have to be satisfied that you have a good reason for this, and that it is still reasonable for you to continue to receive legal aid. Good reasons might include:

- the ill health or death of the solicitor who has been acting for you
- if you move from the area where your solicitor works, making it more convenient for you to visit another solicitor.

On the other hand, we would be unlikely to agree to you changing your solicitor if, for example, you just changed your mind about who you wanted to act for you.

16 What can I expect from the Board?

16.1 Our service standards

We have service standards that tell you the level of service you can expect from us.

We work hard to meet our service standards, but there may be circumstances when we are unable to do so. If this happens with your case, we will tell you why we are unable to meet our standards and when you can expect us to carry out the work.

If you feel that we have failed to meet our standard and we have not written to you or telephoned to explain why, please contact our Applications Department.

We can send you a copy of our standards if you would like us to, or you can find them on our web site at www.slabb.org.uk

16.2 Withdrawing legal aid

If we consider that it is appropriate to withdraw your legal aid – for example, if your financial circumstances change and you no longer qualify, you are conducting the case unreasonably, or you have made a false declaration – we will give you the opportunity to tell us why you think we should not do so.

17 What are my responsibilities?

Legal aid is publicly funded, so if you apply for, or are granted, you must:

- give us accurate information
- tell us about any changes in your circumstances
- act in a way that does not waste money.

17.1 Giving the Board or the court accurate information

It is very important that the information you provide about your circumstances is complete and accurate. It is a criminal offence to give false information. If we find that you have made an untrue statement or have held back information about either your case or your circumstances, we may stop any legal aid given to you and you may have to repay the full costs of the case. You could also face criminal charges. We have a duty to make sure public money is properly spent and we check with the Department for Work and Pensions, councils and employers

that the information applicants give us is accurate.

17.2 Changes in circumstances

You must tell us straight away about any changes that could affect your case – see section 6.

Your solicitor has a responsibility to tell us about any changes that could affect your entitlement to legal aid. He or she has to report to us at regular intervals, and should give you a copy of these reports. If, based on his or her reports, we consider it may be appropriate to withdraw legal aid, we will give you the opportunity to comment on the reports.

17.3 Unnecessary expense

You must not ask your solicitor to handle your case in a way that might cause unnecessary expense. This could include, for example, rejecting a reasonable offer to settle, or constantly changing the basis of your case.

17.4 Paying your debts

You should pay us any money you owe us promptly.

18 What can I expect from my solicitor?

Your solicitor should:

- explain to you what having legal aid will mean for you – including what you may have to pay for your case
- deal with your case in the most efficient and effective manner
- keep you informed about what is happening with your application for legal aid and with your case.

The Law Society of Scotland conducts a system of routine quality checks of the standard of service given by solicitors providing civil legal aid.

19 What if I am unhappy with the way the Board or my solicitor has acted?

19.1 Complaints about the Board

Our separate leaflet, *Complaints about the Scottish Legal Aid Board*, explains our complaints procedure. You can get this from the Board at the address on the back of this leaflet, or from our website.

19.2 Complaints about your solicitor, advocate or the courts

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 should try to resolve the problem. If you are still 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.

20 How will the information I give you be used?

By applying for legal aid, you give us permission to discuss some aspects 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 very 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 to us or telephone. If you telephone 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.

للحصول على نشرة

المساعدات القانونية في القضايا المدنية - معلومات لمقدمي الطلبات

باللغة العربية يرجى الاتصال بمجلس المساعدات القانونية الأسكتلندي على العنوان المبين أدناه

‘সিভিল লিগেল এইড (আইনী কাজের জন্য আর্থিক সাহায্য)-এর জন্য দরখাস্ত করার তথ্য’ - বাংলা ভাষায় এই পুস্তিকাটি নিচের ঠিকানায় ‘স্কটিশ লিগেল এইড বোর্ড’ -এর সাথে যোগাযোগ করলে আপনি পেতে পারেন।

您想要索取這份“民事法律顧問協助之-給申請者的信息”的中文版本手冊，請聯系蘇格蘭法律顧問協助委員會，地址如下。

Tha 'n duilleachan seo, "Taic Laghail Catharra - Fiosrachadh do Luchd - iartais" ann an Gaidhlig, ri fhaotainn bhò Bhorð Taic Laghail na h - Alba aig an t - seoladh gu h - isèal.

नीचे लिखे पते पर स्कोटिश लीगल एड बोर्ड से सम्पर्क करें तो आपको यह पर्चा “दीवानी कानूनी सहायता - आवेदकों के लिये जानकारी” हिन्दी में लिखित मिल सकता है/

ਤੁਸੀਂ ਇਹ ਲੀਫਲੈਟ “ ਸਿਵਲ ਲੀਗਲ ਏਡ – ਇਨਫਰਮੇਸ਼ਨ ਫਾਰ ਐਪਲੀਕੈਂਟਸ ”
(ਸਿਵਲ ਲੀਗਲ ਏਡ ਲਈ ਅਰਜੀ ਦੇਣ ਵਾਲਿਆਂ ਲਈ ਜਾਣਕਾਰੀ) ਪੰਜਾਬੀ ਵਿਚ
ਸਕੋਟਿਸ਼ ਲੀਗਲ ਏਡ ਬੋਰਡ ਤੋਂ ਹੇਠ ਦਿਤੇ ਪਤੇ ਉਤੇ ਸੰਪਰਕ ਕਰਕੇ ਲੈ ਸਕਦੇ ਹੋ।

'Sivil hukuk yardimi- basvuranlar icin bilgiler'i iceren Turkce brosuru asagidaki adreste olan Scottish Legal Aid Board'a basvurarak elde edebilirsiniz.

آپ یہ لیف لٹ (تاپاچے) ”سول لیگل ایڈ۔ درخواست گزاروں کے لیے معلومات“ اردو میں درج ذیل پتے پر
”سکاتس لیگل ایڈ بورد“ سے 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 website 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.

CIV/INFO Issued 09/03

