



## Guidance for opponents in civil legal aid cases

Someone involved in a civil court case may apply for legal aid. If you are also involved in the case, this could affect you. If your opponent has applied for legal aid, you can tell us of any concerns you have or give us relevant information. This is called “making representations”.

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## Introduction

Someone involved in a civil court case - for example, a divorce case or personal injury case - may apply for civil legal aid (since this leaflet deals only with civil legal aid, where we refer to “legal aid” we mean “civil legal aid”). Legal aid is financial help from public funds. It helps people who qualify to get legal advice and the help of a solicitor to put their case in court.

This could affect you if you are also involved in the case. If your opponent has applied for legal aid, you can tell us of any concerns you have about their application or give us relevant information. This is called “making representations”. You can do this even after legal aid has been granted. This guidance explains how.

We cannot decide who should win a case - that is the job of the courts. However, you should let us know if you believe that any or all of the following apply:

- The applicant is not eligible financially for legal aid.
- There is no legal basis for the case.
- It is unreasonable to use public funds for the case.

We will use the information you give us to help decide whether we should grant, refuse or withdraw the applicant’s legal aid. Even if we refuse or withdraw legal aid, the applicant may still wish to take the case to court privately.

## 1. Why should you read this guidance?

You should read this guidance if:

- We have sent you a form saying that your opponent has applied for legal aid
- You believe that your opponent may have, or be applying for, legal aid.

If we have sent you this leaflet, you may want to seek advice from a solicitor or an advice centre. Sections 14 and 15 explain how to contact them. However, you do not need a solicitor to make representations - you can do it yourself.

## 2. How will it affect you if the applicant gets legal aid?

We may grant legal aid to raise a court action against you, or to defend an action you have raised. If the person with legal aid wins the case, you may have to pay the costs of their case as well as your own. We may seek to get the costs of their case back from you. You would also have to deal with the consequences of losing the case.

You may want to discuss these matters with your solicitor or other adviser.

## 3. You think someone has applied for legal aid in a case that affects you, but you haven't received a form about it from us. What should you do?

You should contact us. Normally we tell you about the application if you are the opponent in the case. Occasionally we don't do this - for example, if we don't know your address, or if the solicitor or applicant has given us reasons why telling you would be inappropriate, such as in cases of domestic violence. However, we may not be able to tell you much when you contact us - *see section 8*.

If someone has applied for legal aid and told us you are their opponent, we will normally send you or your solicitor (if you have one):

- A letter telling you that your opponent has applied and that you have the right to make representations.
- A copy of the applicant's statement in which they tell us about the nature of their case.

## 4. How do we decide if someone qualifies for legal aid?

We have to make sure that, among other things:

- The applicant comes within the financial limits for legal aid.
- They have a legal basis for bringing the case.
- It is reasonable for public money to be spent on the case.
- No one else is ready to give them financial help - like a trade union, insurance company (some types of case might be covered by a household or car insurance policy) or professional body.

## 5. You don't think the applicant should get legal aid. What should you do?

You should write to us, giving us full reasons why you think they do not qualify, within 14 days of our telling you about the application (or within 28 days if you live out with the UK). You can also submit representations online through the *Contact Us* page of our website - <https://www.slab.org.uk/corporate-information/contact-us/send-information-representations/>

Even if we grant legal aid, you can tell us later if you think legal aid is being continued when it should not. But we will need new information - there is no point telling us about something we have already investigated.

Unless you make representations, we will decide whether to grant legal aid based on:

- What the applicant and their solicitor tell us.
- Checks with people such as employers or the Department for Work and Pensions, where appropriate.

If we have told you about someone's application for legal aid, we will have sent you a copy of their statement about the case. This should help you decide whether you have good reasons to make representations. These reasons may be to do with the applicant's financial circumstances or the merits of the case.

## 5.1. How do you make representations based on the applicant's financial circumstances?

Please give us full details of any reasons why you think the applicant is not eligible financially. These could include if you suspect that they:

- Own property that they have not declared - tell us the full postal address or where the land or property is.
- Have a job they have not declared - tell us the employer's name and address, the type of work, whether you know of any connection through family or friends, and whether the wage is paid cash in hand.
- Have a substantial amount of savings - tell us the amount, which financial body holds the money, and the type of investment.
- Are living with someone as a couple - tell us any relevant details about the person they are living with, to show us they are living together as a couple.

We will still consider what you tell us even if you cannot provide all these details.

However, giving us as many details as you can allows us to investigate your representations and any new information thoroughly.

We cannot take into account some things, such as:

- The applicant's property or capital if they are getting income support or income-based jobseeker's allowance.
- The financial resources of the partner of an applicant, if they are not married to each other
- There is simply a relationship between them that involves them staying together from time to time
- They are living together but one is paying the other for the accommodation.

If you think the applicant has misled us about their circumstances, you need to tell us exactly how. We investigate allegations based on evidence you and the applicant give us.

## 5.2 How do you make representations based on the merits of the case?

We cannot decide who is likely to win the case or who should win it - that is the job of the courts. But if you think it would be unreasonable for public money to be used for the case, or there is no legal basis for it, you should tell us - for

example, if a reasonable offer to settle the case has already been made, or the parties to the case have been reconciled, or there has been no attempt to settle the case out of court.

## **6. Will we tell the applicant about your representations?**

Out of fairness to the applicant, we need to discuss your representations with them. Please tell us if there is an important reason why you do not wish us to do so. However, this may mean we will not be able to investigate your representations fully. Please state clearly whether you are content for us to show your representations to the applicant when you submit them.

We may wish to investigate further, and ask you for more information.

## **7. Will we respond to your representations?**

We will tell you we have received your representations. We may contact you again if you have not told us we can pass on the information to the applicant, or if we need more information from you. However, we will not routinely update you on our consideration of your representations. Please remember that it can take a long time for consideration of representations to be completed.

We will usually tell you within 32 days of receiving an application for legal aid whether we have granted it to the applicant. This excludes any periods where we have asked the applicant or their solicitor for further information and we are waiting for a response.

## **8. Will we tell you why your representations were unsuccessful if we grant legal aid?**

No. We have to tell you if we have granted, refused or ended a grant of legal aid, but we cannot tell you more than this. Doing so would breach the applicant's confidentiality.

We decide whether to grant legal aid based on information the applicant gives us, as well as representations we receive. When people apply for legal aid, we have to keep the information they give us confidential. By law, we can only talk about an application with the applicant or their solicitor, unless the applicant has given us permission to do otherwise. This means we cannot tell you anything that the

applicant or their solicitor has said to us that led us to grant legal aid despite your representations. The Freedom of Information Act does not entitle you to get information about individual cases from us.

## **9. What are the most common reasons why we grant legal aid despite representations?**

### **9.1 Reasons for granting legal aid despite representations about the applicant's financial circumstances**

- The information was about property that we can't take into account in our financial assessment - for example, a house that is the applicant's main home, the family car, the tools of their trade, or something that the dispute was about.
- Money that the applicant earned, or their capital or property, was not enough to take them beyond the financial limits for legal aid.
- We made allowances in the financial test for the applicant's dependants.
- Information about income related to a time before or after the period that counts for assessing eligibility (that is, the 12 months after the application).
- The information is about some part of the applicant's lifestyle that they may still be able to afford even if they qualify for legal aid - for instance, going on holiday.

### **9.2 Reasons for granting legal aid despite representations about the merits of the case**

- The information did not add anything to what the applicant or their solicitor had already told us.
- The information is about a question of fact that the court needs to decide - it is up to the court, not us, to decide who is telling the truth.



## **10. What if you think the applicant has misled us about their finances, but we have already granted legal aid? Or what if you know that their financial circumstances have changed, but they are still getting legal aid?**

We can stop someone's legal aid at any time if we find they have misled us. They may then have to repay money we have paid for the case. Sometimes there could also be a criminal prosecution.

The applicant's income may change during the 12-month period that counts for assessing their means. If so, they may have to contribute more (or less) towards legal aid. We may also change what they have to pay us if their capital changes at any time during the case (even after that 12-month period).

You should send us details if you think that:

- Someone has misled us or not told us about a change in their financial circumstances.
- There is no longer a legal basis for the case.
- It has become unreasonable for legal aid to continue.

See section 5.1 for the type of information to give us when you make representations.

Remember, even if we have granted legal aid, you can tell us later if you think legal aid is being continued when it should not be.

## **11. What if you don't want to go to court?**

You will need to get legal advice from your solicitor, or consult a Citizens Advice Bureau - *see section 15*.

## 12. When may you need to pay costs?

### 12.1 What might you have to pay if you lose the case,?

If the person with legal aid wins the case, you may have to pay the costs of their case as well as your own. Or you may agree to pay the costs as part of a negotiated settlement of the case. We can also seek to get the costs of their case back from you. You would also have to deal with the other legal consequences of losing the case.

### 12.2 Who will pay your costs if you win the case,?

The court may order the applicant to pay your costs if you win the case. However, the applicant can ask the court to reduce the amount they have to pay. The court will look at their ability to pay and how they conducted the case. The court may or may not reduce the costs. In these circumstances, it will usually be up to you to get any costs back from the applicant.

In some circumstances, you can ask the court to order us to pay your costs instead of getting the costs back from the applicant. For this to happen, the court needs to know that:

- The applicant raised court proceedings against you.
- You won.
- You would suffer financial hardship unless we pay your costs, and
- It would be unfair if we did not pay.

In an appeal case the court only needs to know:

- You won.
- It would be unfair if we did not pay.

### 13. Can you choose to talk to us about your concerns?

Yes. You can phone and explain that you wish to make representations about an application. We will put you through to someone who can discuss this with you.

If you want to come into our office to discuss the matter face to face, please phone first and make an appointment. Then the right person will be available. We can only talk to you about your representations, not about details of the case.

If you do phone or call in to the office, please say that you want to speak to the Civil Applications Department, and:

- If your representations are about the applicant's financial circumstances (see section 5.1), ask to speak to someone in the financial assessment unit.
- If your representations are about the merits of the case (see section 5.2), ask to speak to our paralegal staff.

Again, please remember that we can only talk to you about your representations, not about the details of the case.

### 14. Could you get legal aid yourself for this court case?

You may qualify for legal aid. You would have to meet the tests set out in section 4 of this leaflet. You may also qualify for initial advice from a solicitor (known as "advice and assistance"). To get more information or to find a solicitor who is registered to give civil legal assistance please:

- Read our leaflet *Civil Legal Aid - Info for Applicants* - this can be found in the Leaflets section of our website <https://www.slab.org.uk/new-to-legal-aid/leaflets/>
- Use the Solicitor Finder on our website <https://www.slab.org.uk/new-to-legal-aid/find-a-solicitor/>
- Call us on 0131 226 7061 (Mon-Fri 9.00am-5pm) and ask to speak to someone about whether you qualify for legal assistance.

### 15. Who can give you more advice?

You can also get information about local solicitors from the Law Society of Scotland and from your local Citizens Advice Bureau. The Citizens Advice Bureau should also be able to say whether you are likely to qualify for legal aid (see the inside contact details at the end of this leaflet). You may also find that you can get help through your union or insurers.

## 16. How will we use the information you give us?

By communicating with us about an application for legal aid, you permit us to discuss the information within SLAB and, where necessary, with other people.

If you have been named as an opponent in a legal aid application, solicitors representing the Law Society of Scotland may also see your personal information as part of the random quality assurance checks that the Society makes.

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.

If you ask someone like your MSP or another representative to contact us about your case, you must provide them with written consent, a copy of which should be provided to us, which will permit us to discuss your case with them.

We also have duties to keep certain information confidential, and to supply other information, under data protection legislation 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.

If you would like to know more about how we use information we are given, please refer to our Privacy Notice on our website <https://www.slab.org.uk/site-pages/privacy-policies/>

Additional information is also available in our leaflet *Access to information* at <https://www.slab.org.uk/new-to-legal-aid/leaflets/>

This explains how:

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

## Contact us

Do you want to:

- find your nearest legal aid solicitor
- find out more about legal aid

Call us on 0131 226 7061 (open Monday to Friday 8.30-5.00pm) or visit our website <https://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 0131 240 2082 (weekdays 8.30am to 5pm).

Our general telephone number is 0131 226 7061. Calls from ContactSCOTLAND are welcome.

Our address is Thistle House, 91 Haymarket Terrace, Edinburgh, EH12 5HE. Our email address is [general@slab.org.uk](mailto: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, Atria One, 144 Morrison St, Edinburgh EH3 8EX.

Telephone: 0131 226 7411, Website: <http://www.lawscot.org.uk>

To find your local Citizens Advice Bureau, please look in Yellow Pages or go to the Citizens Advice Scotland web site, at <http://www.cas.org.uk>