



Civil legal aid

Info for applicants

Explaining civil legal aid and advice and assistance

To be given by a solicitor to any person applying for legal aid for a civil case

Last updated June 2018

Contact us

Website - www.slab.org.uk

Our website also contains details of our service standards.

Telephone - **0131 226 7061**

This is our general number. Calls by Contact Scotland are welcome.

Email - general@slab.org.uk

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

Civil Legal Assistance Offices

You may be able to get help on some types of problem from a solicitor employed in one of the Civil Legal Assistance Offices.

These offices can only help people in their area who are eligible for legal aid but are having difficulties finding legal help or the services of a solicitor.

Website www.clao.org.uk

Aberdeen: 01224 402330, aberdeen@clao.org.uk, 353 Union Street, Aberdeen, AB11 6BT

Edinburgh: 0131 240 1960, edinburgh@clao.org.uk, 4th Floor, Thistle House, 91 Haymarket Terrace, Edinburgh, EH12 5HE

Highland and Islands: 01463 641 770, inverness@clao.org.uk, 2nd Floor, 16 Union Street, Inverness, IV1 1PL

Argyll and Bute: 01463 641 770, oban@clao.org.uk, Argyll and Bute Council Offices, Municipal Buildings, Oban, PA34 4AW

Other useful contacts

Free advice is available from organisations such as Citizens Advice Scotland (www.cas.org.uk), Money Advice Centres (www.moneyadvicescotland.org.uk) and Shelter (which deals with housing issues, www.scotland.shelter.org.uk).

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1 What is civil legal assistance?

Civil legal assistance helps people to get legal advice and the help of a solicitor to put their civil case in court. **It may be free or you may have to pay something towards it.**

Examples of civil matters:

- Divorce and other matters affecting families and children.
- Trying to get compensation for injuries after an accident or for medical negligence.
- Housing matters such as rent or mortgage arrears, repairs and eviction.
- Debt and welfare rights.
- Matters relating to immigration, nationality and asylum.

There are two kinds of help:

Advice and assistance

This helps pay for advice from a solicitor on any matter of Scots law, whether civil, criminal or children's - for example, to try to settle a dispute for you without going to court. As well as advising you about the matter you have raised, your solicitor can:

- Advise you on whether you have a legal case to take forward.
- Try to negotiate with the other party to settle it.
- Advise you whether to apply for legal aid to take the matter to court.
- Write letters for you or get reports.

Civil legal aid

This leaflet deals only with civil matters. Civil legal aid helps pay for your solicitor to act for you in court. It covers the preparation work, as well as the hearing itself, and can provide funding for advocates and experts if needed.

Which type of civil legal assistance do I need?

Some people need only advice and assistance, others need only legal aid, and some need both. Many people start the legal process with advice and assistance, and then move on to legal aid.

For information on criminal legal aid or children's legal assistance please go to www.slab.org.uk.

If you do not qualify for advice and assistance, you may still qualify for legal aid, and vice versa, because the things that make you eligible for these two things are different. Ask your solicitor about this.

2 How do I find a solicitor who is registered to give me civil legal assistance?

You must apply for legal aid through a solicitor who is registered with us. This may be a solicitor working in private practice, a law centre or other advice agency, or in one of our Civil Legal Assistance Offices.

To find a solicitor:

- Visit www.slab.org.uk and use the solicitor finder.
- Look in a phone book or contact your local Citizens Advice Bureau.

For contact details of SLAB's Civil Legal Assistance Offices, please see the inside front cover.

3 Civil advice and assistance

How do I qualify financially for advice and assistance?

Your solicitor will tell you if you qualify. Generally, you will qualify if:

- Your savings and anything of value that you own (not including the home you live in) are worth less than a set amount.
- You receive certain benefits.
- Your weekly disposable income (after you pay certain bills and allowances) is less than a set amount.

These set amounts and benefits change yearly. For the latest figures and online calculator please see www.slab.org.uk

For advice and assistance, you will not have to pay a contribution from capital (savings and items of value that you own), but you may still have to pay one from income, depending on how much you get.

You will need to show that help is not available to you from someone else, such as a trade union, insurance company or professional body.

What to take when you see a solicitor for advice and assistance

It is important that you give your solicitor correct information on your financial position: your income, savings and dependants (children or other people you are supporting). You should take:

- Your most recent bank statement(s) showing receipt of your income and any capital or savings.
- Recent wage slips, or accounts if you are self-employed.
- Pension payment advice from an ex-employer or your pension or benefit book.
- Current benefit award letters or notifications.
- Details of all savings or accounts - bank/building society/post office statement or passbook, etc.

If you do not provide this evidence at the start, your application may be delayed. Your solicitor can only start working for you if they are satisfied that the information you have given about your financial circumstances is right.

Your solicitor or SLAB may write to other people such as your employer, bank or government benefits offices to check the information you provide. If you do not help with our enquiries your solicitor will have to stop working for you and you will have to pay us back anything we have paid for your case.

You must tell us if any account or property is in your name, even if you think it really belongs to someone else like your family or business. We might not have to take it into account, but if you don't tell us about it and we find out later you could lose your legal aid, have to pay for your case and face criminal proceedings.

If you are married or living with a partner, your solicitor will also need to know the same information about their income and savings, unless:

- You are separated.
- They are the person you have a legal problem with.
- It would be unfair or too difficult to do so (only applies to applications for civil advice and assistance)

What happens if I am refused advice and assistance?

If you do not qualify for advice and assistance, you may still qualify for legal aid, and vice versa, because the things that make you eligible for these two things are different. Ask your solicitor about this.

4 Civil legal aid

What will legal aid cover?

If advice and assistance will not solve your problem, and you need to take your case to court, you may need to apply for legal aid.

Your solicitor cannot represent you in court under legal aid for some kinds of case, such as:

- Small claims of less than £3,000, unless the claim involves personal injury.
- Some actions relating to bankruptcy.

However, they may be able to advise you on these under advice and assistance.

How do I qualify for legal aid?

You and your solicitor will fill in application forms about your case and financial situation, and send these to us. We will then assess your application. To grant legal aid, we have to decide that:

- You qualify financially.
- You have a legal basis for your case (called “probable cause”).
- It is reasonable to use public funds to support your case - for example, it may not be reasonable to grant legal aid if the person you are trying to sue has no money, your case will cost much more than it is worth, it looks unlikely that you will succeed, you are using the wrong court, or if you have not fully considered other ways of sorting out the problem, before you take court action.
- Help is not available to you from someone else - like a trade union, insurance company (some types of case might be covered by say, your household or car insurance policy) or professional body.

If you are married or living with a partner, to apply for civil legal aid your solicitor will need also to know the same information about their income and savings, unless:

- You are separated.
- They are the person you have a legal problem with.

Some people pay nothing towards legal aid, others might have to pay something towards it, and some might not be financially eligible at all.

This depends on your and your partner's yearly disposable income and the disposable capital (savings and items of value you own) that you have during your case. These limits change yearly. Check www.slub.org.uk for the latest figures and financial calculator.

What forms do I have to fill in about financial eligibility?

Your solicitor will give you a form to complete depending on the type of income (such as wages and benefits) that you (and if applicable your partner) receive.

The form contains guidance to help you complete it. It is important that you read the guidance carefully and follow it. If you do not, it could delay getting legal aid or mean we refuse your application.

What if I need work to be done urgently?

Before we decide whether we can grant you legal aid, your solicitor may be able to do urgent work on your behalf in court - for example, to apply for an order to prevent someone assaulting you. However, you may still have to pay us for this work.

Will the opponent in my case know I have applied for legal aid?

When we receive your application, we will normally tell your opponent that you have applied for legal aid, unless:

- Your solicitor asks us not to do so.
- We agree that this is appropriate (for example, if you are the victim of domestic violence or your opponent is likely to get rid of their assets if they know you have applied for legal aid).
- The opponent's whereabouts are unknown.

Your solicitor will complete a “statutory statement”. This describes what your legal aid application is for. We will send a copy of that statement to your opponent, unless this is inappropriate, but we will not give any other details about you.

The opponent has the right to give us information about the case or other reasons why you should not receive legal aid. This is called *making representations*. We will consider your opponent's representations and, if necessary, investigate further. This may mean that it takes longer for us to decide about your application.

We will normally tell your opponent whether we granted or refused legal aid.

Your opponent can tell us at any time in your case if there has been any change that might affect the grant of legal aid. But we ask you to comment on what your opponent has told us, if we are considering withdrawing your legal aid.

What happens if I am refused legal aid?

We will tell you and your solicitor why. Through your solicitor, you can ask us to review our decision. Your solicitor will tell you what options are open to you. Your solicitor may be willing to take your case on by charging you their private rate (see section 10).

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

Yes. If your circumstances have changed or you can provide new information about your case, we may reach a different decision.

5 If I do not qualify for advice and assistance or civil legal aid, how can I get free advice?

Free advice is available from organisations such as Citizens Advice Scotland, Money Advice Centres or Shelter (which deals with housing issues). See the inside front cover of this leaflet for contact details. You may also find that you can get help through your union or insurers.

6 What might I have to pay?

Is civil legal assistance free?

Legal assistance is not always free. It may be free or you may have to pay something towards costs if:

- Your income, savings and other capital (items of value that you own) are above a certain level. We call this a contribution. You may get some or all of it back at the end of the case, if we do not need it all to cover the cost of the case.
- You keep or gain anything (money or property) as a result of your legal aid or advice and assistance.
- You lose the case - you may have to pay your opponent's costs.

We will pay your solicitor's bill. However, we have a responsibility to try to get back the money we have paid.

For advice and assistance to cover the costs, we will use:

- First, any contributions you pay (see the *Contributions* section below) - which depend on your income.
- Second, any costs your opponent pays.
- Third, if the first two are not enough, part or all of any money or property you win or keep (this is known as clawback - see the *Property won or kept and "clawback"* section) unless you can show that to do so would cause you grave hardship or distress.
- Fourth, if the first three are not enough, we will use public funds.

If you do have to pay something, you pay your solicitor direct for advice and assistance. They can do work only up to a set financial

limit under advice and assistance, or can ask our permission to go above these limits.

For legal aid to cover the costs, we will use:

- First, any costs your opponent pays.
- 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 keep (see the *Property won or kept and “clawback”* section).
- Fourth, if these are not enough, we will use public funds.

Sometimes, your opponent may take a long time to pay or not pay the expenses at all. And if your opponent is also getting legal aid, the court may reduce what they have to pay. If the opponent does not pay, or what they pay does not cover the cost of the legal aid we have given you, we will have to use contributions and property you win or keep.

If you lose the case

Legal aid does not cover your opponent’s costs. So if you lose your case, you could be asked to pay some or all of your opponent’s costs. You must pay any such costs yourself - we cannot pay them. As you are getting legal aid, you can ask the court to reduce the amount you have to pay.

Contributions

If you do have to pay a contribution, the amount will depend on your disposable income, savings and property. We measure income from the date of application and capital (savings and items of value that you own) for as long as your case lasts.

For more information on how often you will have to pay, and the size of instalments, please see our website www.slab.org.uk or contact our financial assessment unit.

For advice and assistance, your solicitor should tell you at the start of your case:

- Whether you might have to pay out of any money you keep or win.
- What you have to pay, if anything (you will pay any advice and assistance contributions to your solicitor).

For legal aid, your solicitor should be able to tell you if you are likely to have to pay anything, but we decide whether to grant legal aid. We will tell you:

- Exactly how much your contribution, if any, will be (you pay this to us).
- How long you can take to pay.

You will normally be able to pay your contribution in regular instalments and you will have to pay this by Standing Order. You can also make payments over the phone or online using our SLABPAY service. Generally, we will give you more time if you have more to pay.

If your contribution is based on your capital (savings and items of value that you own), we will normally ask you to pay this in one lump sum.

When you apply, it is important that you ask your solicitor to calculate and tell us the likely cost of your case. This may save you money, as we can initially limit any contribution you must pay to the amount that your solicitor estimates. Your solicitor should keep you and us informed about any changes to the cost of the case as the case progresses.

If you think that we have calculated your contribution wrongly you can ask us to reconsider it.

But if the case ends up costing more than the estimate, we will work out the difference that you need to pay. You may get some of your contribution back if the case costs less than you have paid us, or if we get back some of the costs from your opponent.

You must continue to pay any outstanding instalments even when your case has finished.

What if I have difficulty paying?

Tell us immediately if you have difficulty paying, so 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 we ask you to pay.

What if I don't pay my contribution, miss payments or change my mind?

Your legal aid will stop. This means your solicitor will have to stop working for you under legal aid. To cover the cost of your case, you will still have to pay the rest of your contribution, or the amount we have paid your solicitor, whichever is less.

Property won or kept and “clawback”

“Property” means anything that can be owned, like a house, something else of value, or money.

If, as a result of receiving advice and assistance, or legal aid, you get some property that you didn’t own before, you will have “won” or “recovered” it.

If you keep some property that someone had tried to take from you, you will have “kept” or “preserved” it.

Some examples are:

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

You may have to pay some or all of it to us to cover what we have paid to your solicitor. This is sometimes called “clawback”.

You should ask your solicitor to:

- Tell you at the start of your case whether clawback could apply.
- Keep you informed of any changes in your case that could affect this.
- Tell you how much you may have to pay and keep you informed about any changes to this as the case progresses.

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

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

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

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

We will only take enough to cover any shortfall between what we

have paid out in your case and:

- Any expenses your opponent has paid.
- Any contribution you have paid.

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

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

No. We will ask you to pay us by instalments.

Or you could delay paying until you sell the house - which could be years later. If you do this, when you sell you will also have to pay interest on the amount due. We would take a standard security on your home to make sure we receive the money eventually. Your solicitor can tell you what is involved in this.

7 What are my responsibilities?

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

- Give us accurate information.
- Tell us about any changes in your circumstances.
- Act in a way that does not waste money.

How should I run my civil legal aid case?

You and your solicitor decide how to run the case. Remember that every time you contact your solicitor with a question, and each time they do something for you (including writing letters, having meetings or making telephone calls), the cost of your case can go up. And you may have to pay some or all of these costs.

You should ask your solicitor to estimate how much your case is likely to cost and to tell you if this estimate changes as your case proceeds. This is what a privately paying client would probably do, and you should do the same.

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

Please keep in touch with your solicitor, and deal promptly with any requests for information from them or us.

What will happen if I don't tell you about changes?

The information you give about your financial circumstances must be complete and accurate. If you give us false information:

- We may stop your legal aid.
- You may have to repay the cost of legal aid you have received for your case.
- Criminal proceedings may be taken against you.

What if my circumstances change after I complete the civil legal aid financial form or after you grant legal aid?

You must tell us straight away about any changes that could affect your case. You must do this if you have applied for legal aid and are still waiting for a decision, or if we have already granted you legal aid.

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

You must tell us of any changes in your partner or spouse's circumstances.

When you contact us, please have your reference number to hand or quote it on any correspondence.

You and your solicitor must tell us about any changes that could affect your entitlement to legal aid. Your solicitor has to report to us regularly, and should give you a copy of these reports. If we consider withdrawing legal aid because of something in these reports, we will give you the opportunity to comment on them.

For how long do I have to tell you about these changes?

We need to know about any significant change to your income during the 12 months after we receive your application, even if your solicitor is no longer working on the case, or the case has ended.

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

Changes to your income after the 12-month period will not affect the total you pay, although we might ask you to pay it in fewer (or more) instalments.

You must tell us if your capital increases by £500 or more during the lifetime of your case. Changes to capital during the lifetime of the case could affect any contribution you may have to pay towards the cost of your case.

Some examples of the sorts of things we need to know about are:

- Changes to your address, employment or any other personal details.
- If you start to receive, or stop receiving, benefits.
- Changes to your income, or to expenses or benefits to do with your work.
- Someone starting or stopping living with you.
- You, or someone over 18 who is living with you, getting or losing a job.
- Changes to payments for rent, board, mortgage, council tax, maintenance, childcare, travel or private pension schemes.
- The value of all land and buildings you or your partner own, except the home you live in, including interest in a timeshare.
- Redundancy payments.
- Money that can be borrowed against insurance policies.
- The value of non-essential possessions such as a boat, caravan, second car, jewellery (but not wedding or engagement rings), antiques or items bought for investment.
- Money that is owed to you or your partner.
- Anything you win, or are given.

- Savings and investments of any kind.
- Payments from maturing life assurance or other similar policies that are worth more than £500.
- Money or property due from the will of someone who has died
- Money due from a trust fund.
- Money that can be borrowed against business assets.
- Money you receive from any other source that increases the amount of capital you had when you applied by £500 or more.
- Anything else happens that affects your financial situation.

What will happen when I tell you about changes?

Legal aid will not stop while we reassess your eligibility; your solicitor can continue with your case. We just need to make sure you are paying the correct amount towards the cost of your case.

8 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 include:

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

We would be unlikely to agree to your changing your solicitor if you just changed your mind about who you wanted to act for you.

9 Can SLAB withdraw legal aid?

We may decide we should withdraw your legal aid - for example, if:

- Your financial circumstances change and you no longer qualify.
- You are conducting the case unreasonably.
- You have made a false declaration.
- You do not pay a contribution we have decided you should pay.

If this happens, we will give you the opportunity to tell us why you think we should not withdraw legal aid.

10 What if my solicitor suggests working privately for me or charging me while I have legal aid?

Your solicitor cannot ask you to pay privately for work done on a case that you are getting legal assistance for. They can only ask you to pay towards the case for any times that neither advice and assistance nor civil legal aid were in place.

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

If we refuse you legal aid, or your legal aid or advice and assistance stops, your solicitor may suggest working privately for you. If this happens:

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

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

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

11 What can I expect from the Scottish Legal Aid Board?

We aim to provide a high level of service to all our customers. Our commitment to you is that we will deal with all matters relating to legal aid applications and accounts timeously, accurately and fairly.

We will always treat you with courtesy and respect your right to confidentiality.

If we ask you or your solicitor to send us additional information or documents it is important that you do so as soon as possible. Our service standards include target timescales for making decisions on applications. These timescales do not include time we have to wait to receive documents or information from you or your solicitor.

For service standards please see our - <https://www.slab.org.uk/about-us/what-we-do/corporate-plans/index.html>.

How will you use the information I give you?

Please refer to our Privacy Notice which can be found on our website - https://www.slab.org.uk/about-us/access-to-information/SLAB_privacy_policy.html

Additional information regarding your rights to information under data protection legislation and the Freedom of Information Act (Scotland) 2002 is available in our information leaflet “Access to information” which is also available on our website - https://www.slab.org.uk/export/sites/default/common/documents/publications/leaflets/Access_to_Information_booklet.pdf

12 What can I expect from my solicitor?

Your solicitor should:

- Explain to you what having legal assistance 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.
- Explain to you the reasons behind you not getting legal aid if your application is unsuccessful.

Your legal aid covers all your expenses in the case, for the time legal aid is in place, including the cost of experts or advocates where we have agreed to these. Your solicitor should not ask you to pay them anything towards the case, except for any contribution assessed for advice and assistance. Of course, you may have to pay us the sums mentioned in section 6.

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

Our information sheet *Customer Guide to Complaints* explains our own complaints procedure and who to complain to about other individuals or organisations. Please see the Complaints section on our website - <https://www.slabb.org.uk/about-us/complaints/>

What should I do with this leaflet?

Keep this leaflet in a safe place to refer to later.

- Read this leaflet carefully before you complete applications forms.
- Discuss with your solicitor anything you do not understand about your financial eligibility or the financial forms you need to fill in.
- Discuss with your solicitor anything you do not understand about your case, as soon as possible. It is best to do this before you ask them to do any work for you under legal aid. Before you pay the first instalment of any contribution, it is important that you understand what you may have to pay.
- Have your reference number to hand when you contact us, and quote it in any correspondence.

