



Legal Aid 1 - General

18th October 2007

People who need legal advice or representation, but cannot afford to pay for this, may be granted legal aid. Legal aid is the means by which legal costs, including the fees of a legal adviser or representative, may be paid for out of public funds.

There are different arrangements in Scotland and Northern Ireland which are not covered here.

The Legal Services Commission

The Legal Services Commission (LSC) is the agency that is responsible for legal aid. Its work is divided between the Criminal Defence Service (CDS) and the Community Legal Service (CLS). The CDS funds legal aid for defendants in criminal proceedings. The CLS funds legal aid for various non-criminal matters (civil work). Legal aid is essentially the means by which legal costs, including the fees of a legal adviser or representative, may be paid for out of public funds.

Immigration and asylum cases may be funded from the CLS. This is mainly provided through Legal Help and Controlled Legal Representation (CLR). Legal Help is provided for advice and assistance other than litigation. Litigation is when a case is taken to court or through the tribunal appeal process. CLR is provided for the immigration and asylum appeals before the Asylum and Immigration Tribunal (AIT). Judicial review cases and appeals to the Court of Appeal may be funded by a Public Funded Certificate (this is often called certificated work).

ILPA information service

funded by JRCT

www.ilpa.org.uk/infoservice.html

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Means and merits tests

Some people may be refused legal aid because they do not qualify for it.

Legal aid is generally subject to a means and a merits test. The means test (for which there are standard forms) is so that only people, who cannot afford to pay for a legal representative, qualify for legal aid. For Legal Help and CLR the means test form is fairly straightforward; and the individual will qualify in full or not at all. For certificated work the form is more detailed, and depending on the assessment, someone may qualify for legal aid in full, not at all or only in part. Qualifying in part means having to pay a contribution towards legal costs.

In most cases, a merits test is applied. The test is different for Legal Help, CLR and certificated work:

- Legal Help will not be provided unless the legal advice or assistance will be of 'sufficient benefit' to the individual. The 'sufficient benefit' test largely depends on the importance of the matter on which advice and assistance is sought. Legal Help will usually be available (subject to the means test) for advice on asylum and many immigration matters.
- CLR will not be provided unless the appeal for which legal representation is sought is likely to be successful. This simply means better than a 50-50 chance of success. However, if the prospects of success are borderline or unclear, and the matter is of particular importance (such as an asylum appeal), CLR may be provided. Someone who is refused CLR because of this merits test may apply to the LSC for a review of that refusal. The legal adviser who has decided there is insufficient merit in the case is required to advise the individual on this review procedure, including how to complete the relevant form (called the CW4 form).

Information sheets provide general information only.

ILPA members listed in the directory at www.ilpa.org.uk provide legal advice on individual cases. ILPA does not.

- The test for certificated work is similar to that for CLR in that a 50% or better chance of success would ordinarily be enough. If chances of success are borderline, depending on the importance of the case to the individual or wider public, legal aid may be provided.

Generally speaking, someone who wants their case to be paid for by legal aid will need to complete the relevant forms. This will be done with the legal adviser who they wish to assist them. If the legal adviser decides that they do not satisfy the means or merits test, legal aid will be refused.

Who does legal aid work?

The LSC has contracts with legal advisers to provide legal aid. The legal adviser does the work, and the LSC pays the legal adviser for that work. Not all legal advisers do legal aid work. Many ILPA members do legal aid work. However, in recent years some of our members have stopped doing this work, and others have reduced the amount of legal aid work they do.

There continue to be significant problems in finding a legal adviser who does legal aid work. For immigration and asylum cases, this difficulty is more acute in certain parts of the country where there may be no or very few legal advisers doing this work. The level of experience and expertise among legal representatives doing this work varies. Some cases require specialist expertise, and in some parts of the country there may be no or too little of this expertise available even though there are legal advisers doing legal aid work. Asylum claims by separated children are one example of where specialist expertise is often required.

Some people may, therefore, be without advice or representation because they cannot pay a legal adviser and cannot find one who does legal aid work.

The future of legal aid

The Government are currently making substantial changes to legal aid. More detailed information about the changes is available from the “Legal Aid 2 – Fixed Fees” and “Legal Aid 3 – Exemption from Fixed Fees & Exclusive Contracts” information sheets.

The changes being made are to be introduced in stages. The aim is to move to a situation where legal advisers bid against each other for legal aid contracts. The LSC refer to this as best value tendering. It was recommended by Lord Carter in his report *Legal Aid: A market-based approach to reform*. The report was published in July 2006 and is available at: <http://www.legalaidprocurementreview.gov.uk/publications.htm>

For the moment, the key change for immigration and asylum cases is that the LSC has introduced fixed fees. This means that generally speaking a legal adviser doing a particular type of case will receive the same payment for that case regardless of how much work the legal adviser needed to do on the case. Some cases are more complicated than others and require more time than others. Nevertheless, cases of the same type will receive the same fee. This change has been introduced this month – though some cases are exempted. Fixed fees are meant to be a steppingstone towards best value tendering, which is planned to be introduced in 2009.

The Constitutional Affairs Committee is the select committee of the House of Commons, which reviews matters such as legal aid. Its third report of session 2006-07 *Implementation of the Carter Review of Legal Aid* made several criticisms of these changes to legal aid. The Committee’s report is available at: <http://www.publications.parliament.uk/pa/cm200607/cmselect/cmconst/223/223i.pdf>

More information about concerns at the future of legal aid held by ILPA, the Constitutional Affairs Committee and others is given by the “Legal Aid 4 – Future of Legal Aid” information sheet.