

	June 2005 Scotland
--	-------------------------------

Key Points:

- | |
|--|
| <ul style="list-style-type: none">• Replaces previous version dated: February 2004 |
|--|

Obtaining and paying for legal advice

This factsheet provides information about obtaining and paying for legal advice in Scotland although Age Concern Scotland does not provide specialist information on this subject.

This factsheet is for people living in Scotland. For anyone living in

England, Wales and Northern Ireland, a similar Factsheet 43, *Getting legal advice* is available by telephoning: 0800 00 99 66 (free call) or writing to Age Concern, FREEPOST (SWB 30375), Ashburton, Devon TQ13 7ZZ.

CONTENTS

1. Deciding which agency to approach	3
2. Agencies which give advice on legal problems.....	5
3. Consulting a solicitor.....	7
4. The cost of legal advice	8
5. Solicitors' charges.....	9
6. Help with paying for legal advice and representation	13
7. Complaints about your solicitor or adviser/advice agency	23
8. Useful addresses.....	25
9. Further information from Age Concern	26

Introduction

People rarely go through life without having to face problems which arise from differences with others, whether they are individuals or public or corporate bodies. Some will raise legal issues.

Knowing how to deal with legal problems is an important part of managing your life, yet many people find this difficult because they do not know what the law is or how to access the legal system.

You may be able to resolve some problems yourself. However, if you do not feel confident enough to do this or the situation is complicated, an important step towards resolving a problem is to get advice about your legal position and what you can do about it.

Age Concern Scotland believes that it is very important to get independent advice from an adviser or agency with experience in dealing with the kind of problem about which you are seeking advice.

I. Deciding which agency to approach

How to choose

This will depend on:

- what you want advice about;
- what is available locally; and
- the cost.

Some sources of advice are more suited for particular issues than others. While general firms deal with some types of legal works, you may need to consult someone who specialises in a particular area of law for other types. Advisers and solicitors vary in the extent to which they specialise. Another factor to bear in mind is that an adviser who dealt with something for you previously may not necessarily be best placed to deal with a problem of a different kind.

For certain types of problem it may be best to go to an advice agency. For example, most Citizens Advice Bureaux are experienced in giving advice about welfare benefits whereas not all solicitors have experience of dealing with social security problems. In fact there appear to be very few who have this expertise.

Professional regulation of advice services

All solicitors in Scotland are regulated by the Solicitors (Scotland) Act 1980 through the Law Society of Scotland and must comply with the Society's rules on professional practice, which regulate the way in which they practice and contain safeguards.

All solicitors in Scotland must be members of the Law Society of Scotland. Solicitors are required to observe certain standards of professional conduct which are set down in Codes of Conduct. These standards reflect obligations to clients, the courts, the public and the profession.

Transgression of rules may give rise to disciplinary proceedings and may amount to professional misconduct or other finding.

One rule is the requirement for all practising solicitors to carry current professional indemnity insurance. This covers every firm in private practice for claims in case they give wrong or negligent advice. This means that any claim which is established for losses arising out of negligence will be paid even if the solicitor can't pay or the practice no longer exists.

Non-solicitor advice agencies such as Citizens Advice Bureaux and certain local advice agencies who are members of Advice UK also carry this type of insurance.

The Scottish Solicitors Guarantee Fund also exists to reimburse any clients of solicitors who have lost money as a result of dishonesty of their solicitors or their staff.

Preparing to see your adviser

Before you go to see an adviser it is worth thinking about the questions you would like to ask. If possible put these in writing and make a copy so you can give this to the adviser. Collecting together any papers you have about your problem and organising them in date order will also be helpful.

Give a clear picture of your problem and what you hope to achieve. Ask questions - ask about your solicitor's experience with your type of problem, estimate of time, cost, whether legal aid is available, what steps are involved in solving your problem, chances of success. Anything you can do yourself may also help cut legal fees and expenses.

Getting the best from your solicitor, a publication of the Law Society of Scotland may assist you as it provides a step-by-step guide of your rights and responsibilities as a client. It is available on-line at www.lawscot.org.uk.

2. Agencies which give advice on legal problems

There are a variety of different organisations which give advice on legal problems and many of these will also help in identifying other sources of advice.

Citizens Advice Bureaux (CABx)

Citizens Advice Bureaux are locally-run charities operating in most areas of the country. Their umbrella organisation is Citizens Advice Scotland (CAS). CABx usually advise about a range of legal problems and are particularly geared to advising about entitlement to benefits and consumer problems. You can find the address of your local CAB in a telephone directory or from your local library or council.

Law Centres

Law Centres are independent local charities whose purpose is to provide legal advice to local people. Law Centres usually advise in specific areas of social welfare law such as housing, employment, education and community care. They may also be able to help in identifying other advice agencies in the area. For details of your local Law Centre contact the Scottish Association of Law Centres at its website: www.salc.info, email mail@salc.info or call 0141 440 2503.

Local voluntary advice agencies

There may be other advice agencies in your area. Many are members of Advice UK which is an umbrella organisation for local advice agencies. Advice UK members must give free and independent advice.

National charities

Some national organisations such as Alzheimer Scotland (dementia), Princess Royal Carers Trust, and Scottish Association for Mental Health (mental health) also provide information about their area of expertise.

Local authority based services

A number of local authorities run or provide funding for advice services. Welfare Rights Units advise and assist people with problems relating to welfare benefits, and other legal rights. Contact your local authority to find out what is available in your area.

Trading Standards Officers may be able to advise on problems relating to buying and selling goods. Contact your local authority for details. Local Health Councils may give advice about problems with getting medical treatment.

Public bodies

The Equal Opportunities Commission (EOC) advises on complaints of sex discrimination. The Scottish office is at St Stephens House, 279 Bath Street, Glasgow G2 4JL, tel: 0845 601 5901 (local call rate), fax: 0141 248 5834, email: scotland@eoc.org.uk, website: www.eoc.org.uk.

The Commission for Racial Equality (CRE) deals with complaints of race discrimination. The Scottish office is at The Tun, 12 Jackson's Entry, off Holyrood Road, Edinburgh, EH8 8PJ, tel: 0131 524 2000, fax 0131 524 2001, website: www.cre.org.uk.

Trade unions or professional associations

Trade unions and other professional associations may give advice to members (and sometimes their family) on matters related to pensions, employment or professional issues. Organisations such as the AA and RAC Motoring Services give advice to members about motoring matters.

Dial-a-Law

This is a 24-hour information and referral service which has been developed by the Law Society of Scotland. Its aim is to provide information about situations where the services of a solicitor may be helpful. It has a library of over 40 pre-recorded messages on specific aspects of law as they apply in Scotland, including family law, criminal law, consumer law, wills and executries, and mental disabilities. If you need to speak to a solicitor, then the referral service is available which can give the names of local solicitors.

Dial-a-Law can be accessed on the Internet at www.lawscot.org.uk or by telephoning 0870 545 5554 (national call rate).

Private non-solicitor organisations

A growing number of private non-solicitor organisations offer legal services such as drafting a will or advice on management of assets. These organisations are not governed by any regulatory body and, therefore, are not subject to the same degree of regulation or public scrutiny as firms of solicitors, charities and publicly-funded organisations.

3. Consulting a solicitor

The profession

At present there are over 9,300 solicitors currently practising in Scotland, with most working in the private practice sector. There are approximately 1,795 private firms of solicitors working in Scotland varying in size from sole practitioners to large firms with a number of partners. The range of work they carry out also varies from the large commercial firms often with international branches, to sole practitioners whose practice is based locally and offer a broad range of services.

The type of solicitor's practice with which most people have contact are those situated in the local high street. These firms are usually run by a sole practitioner or are small to medium sized and deal with a range of legal matters such as those connected with buying and selling property, general business and company law, drafting Wills, administration of estates, criminal law, family law and accident claims. You should be aware that although most firms deal with these broad areas of work they may not always deal with more specialised areas of law, such as community care, mental health and employment. A personal recommendation from someone you know may be the best way to make a choice.

The Scottish Law Directory

You can find the names of local solicitors from your telephone directory or by consulting the Scottish Law Directory. The directory is published annually with the authority of the Law Society of Scotland and lists all certificated practitioners who are qualified to practise as a solicitor in Scotland. It provides alphabetical and geographical lists of law firms operating in Scotland and will indicate the areas of work in which firms offer particular expertise. However, it does not give any indication as to how much of that type of work is done or the level of the firm's experience in that particular area of law. It is always worth asking any firm you contact whether they are experienced in handling the type of problem you want

advice about. Agencies such as the Citizens Advice Bureaux may be able to give you names of solicitors in your area but will not recommend any particular firm.

Your local library may stock the Directory or you can ring the Law Society of Scotland in Edinburgh on 0131 226 7411 for names of solicitors in your area. Alternatively, you can visit their website: <http://www.lawscot.org.uk>. Here you can find a list of all solicitors, accredited specialists and information on firms and branches.

Specialist panels

There are a number of accredited specialisations currently operating in Scotland and the topics include child law and family law. The Law Society of Scotland has set up these panels. Membership of the panels requires prior experience of the type of work involved.

The Blue Book

This is the official directory of the Law Society of Scotland. It is published annually by Butterworths. It provides similar information to The Scottish Law Directory. Your local library may stock the directory.

4. The cost of legal advice

Voluntary or statutory advice agencies

Advice from these agencies is usually free. Advice UK members and CABx must give free independent advice. It is always worth checking whether there will be any charge and whether or to what extent the agency will provide representation. Some agencies will be able to do certain work on your behalf but may not provide lay representation in any tribunal or court action while others may be authorised to appear on your behalf as lay representatives. You should bear in mind that for some court actions only a qualified solicitor can appear on your behalf.

Duty schemes

At every district and sheriff court in Scotland a duty solicitor is available to advise accused people on criminal matters while in custody. Representation by the duty solicitor is available for your first appearance in court and you do not need legal aid at this stage but you may need it later. Legal aid is looked at more closely in Section 7.

Solicitors

Apart from certain agencies such as Law Centres or other advice agencies which employ solicitors, there are no other firms which are publicly funded. Solicitors therefore charge for their services, except when they offer 'pro bono' (free) work, which is not common. There are different kinds of public assistance available to help you pay for legal advice if you are eligible: advice and assistance and legal aid. Solicitors have a duty to advise that you might be eligible but not all solicitors do legal aid work.

If you are not able to get free advice or representation and you do not qualify for advice and assistance or legal aid, you will have to pay a solicitor from private funds, unless you have legal expenses insurance. Some home insurance policies include limited legal expenses cover, for example protection against the costs of being sued or having to make a claim against someone.

For some types of legal work you may be able to find a solicitor willing to take your case on a 'no win no fee' basis, where you only pay if you win the case. The Law Society of Scotland operates an insurance scheme known as 'Compensure' for 'no win no fee' personal injury accident cases (but not medical negligence or claims relating to medicines, drugs or tobacco). You can buy the insurance to make sure that if you lose, you will not have to pay costs such as the legal fees of the other side. The Law Society of Scotland's leaflet 'Compensure - Justice you can afford' can provide information on this scheme. The insurance should be purchased before the case is in court.

Some insurance companies also offer similar services but premiums can be very expensive. It may be useful to consider purchasing this type of insurance if you are involved in a court case but you should consult your solicitor about this. Applying for this insurance is not simple and the success of your application will depend on the nature and merits of the case, its complexity and the chances of succeeding in court. It is usually possible to obtain this insurance prior to the start of legal action and even after an action has begun.

5. Solicitors' charges

It is an overriding principle that fees should be fair and reasonable to the solicitors and their clients, but the Law Society of Scotland does not

enforce any scale of charges to which solicitors must adhere. Fees are generally subject to the usual market forces like any other service. From 2005 the Law Society no longer publishes a table of recommended hourly fees for solicitors, because of European competition law. However, their 2004 annual report recommended a fee of £11.85 for one unit (6 minutes). Alternatively you could check the Scottish Law Directory's Fees Supplement published annually by Butterworths.

It is therefore well worth making enquiries from a range of solicitors about the fees that they charge. You should also keep in mind that each firm has an internal fee structure - you will pay more for a partner than a trainee solicitor. You and your solicitor should agree on an acceptable method of pricing the work done. The following are some examples of how charges can be applied.

Fixed fee basis

Certain types of standard work such as conveyancing and preparation of simple Wills are often charged as a fixed fee. Other types of work can also be charged as a fixed fee if this is agreed between you and your solicitor. Ask for this agreement in writing.

Usually any fixed fee excludes any additional expenses which have to be paid in connection with the transaction. In a conveyancing transaction such expenses may include stamp duty (which can be very high), property search fees or registration fees to the Registers of Scotland. These are added on to the bill for the solicitor's fees.

Charges based on hourly rate

A more common arrangement is for solicitors to charge an hourly rate for the time they spend on the work. This will include every letter and document drafted, every meeting, every court appearance, every phone call and anything else. Again, all expenses will be in addition to the fees.

The amount of the hourly rate is likely to vary depending on the locality, the type of work being done and the level of experience of the solicitor handling the case. Solicitors' charges in central city areas may be higher than those in rural locations because of higher overheads. Having a partner of a firm handling your case means you will be charged at a higher rate than if someone less senior were to handle your case; but you should get the benefit of their experience. Depending on what your case is about

you will have to decide what is the more cost effective option in the long run.

Solicitors may not be able to give you a definite figure for legal costs because the length of time required is not known. However, they should state their hourly rate and give an estimate of the fees based on the anticipated amount of work and level of service. The arrangements about costs, including fee estimate, timing of payment of fees, outlays and holding of your money should be confirmed in writing together with details of what work is to be carried out and the general timescale. This information is usually found in a 'letter of engagement' or in a letter detailing their 'terms of business'.

This document should tell you who is responsible for the day to day conduct of your case and who will supervise your file, the level of service you can expect, the complaints procedure and so on. These letters are not compulsory, but many firms now use this method to communicate their service to their clients. You should have no trouble understanding these letters as they should be written in clear and unambiguous language.

You should ask your solicitor to inform you about the costs on a regular basis, although the frequency with which this should be done will depend on each case.

Limiting the amount of costs

You can place a limit on the amount of fees to be spent on your case. If you wish to do this, discuss it with your solicitor and confirm any arrangement in writing. When this option is chosen, your solicitor will have to contact you once the limit is reached and get your agreement before doing any further work on your file. Another option is to arrange to be billed on a regular basis rather than at the end of the case. These methods will give you greater control over the financial aspects of your legal work since you can spread the cost of the work over a period of time, thereby avoiding a huge bill which you cannot afford to pay at the end of the matter. They also assist you in monitoring the progress of the work against the actual cost and you should have a clearer picture as to how your money is being spent.

Payment in advance

If you are paying privately for the work, the solicitor is likely to ask you for some money in advance. This is known as 'money on account'. This is not unusual for new clients and even long-standing clients. Sometimes this is to pay for expenses upfront or it may be requested as an advance payment for the firm's costs. The money should be placed in what is known as a client account operated by the firm. This is a separate account from the general firm account. Any amounts received will be entered specifically into the client account and recorded in your ledger as it is your money. This will be set against your legal bills. Depending on the amount involved and time for which the money is held in the account, you may be entitled to be paid interest on this sum when the solicitor gives you a final account.

Your solicitor's bill

When you receive your bill (also known as a fee note) from your solicitor, the charges may be shown either as an hourly rate or a fixed fee and will detail all the work done. The description may be very general or may detail every action on the file giving dates and accounting for every minute worked on the file. You are entitled to know the basic breakdown of the account into fees, VAT and outlays without incurring any further cost. However, if you request a fully itemised account a charge may be applied. If the description does not provide enough detail, ask your solicitor for a full breakdown. The bill should also detail any outlays, their cost and VAT, if applicable. VAT is payable on fees.

Outlays

Where a solicitor states that the fees will be 'plus outlays' this means that any expenditure to third parties will be charged on top of the legal fees. Some common examples are payments to the Inland Revenue for stamp duty, Companies House for registration fees, local authorities for Property Enquiry Certificates, the Registers of Scotland for land registration, advocates for court work, Scottish Court Service for court fees, medical practitioners and other consultants for reports and expert opinion.

Unless fees are agreed in writing, if you are unhappy with the amount of fees you can insist on the fee being sent for reassessment by the Auditor of Court. However, this will cost money. The Law Society of Scotland outlines the process in its information sheet, 'Querying the fees'. If you have any queries, first take these up with the solicitor.

'No win No fee' agreements

These are arrangements, referred to in Scotland as speculative actions, where solicitors act on the basis that you will only have to pay if you win. This type of agreement is allowed for many areas of work, including personal injury cases (accident claims for compensation for an injury suffered as a result of someone's negligence). There are different approaches to how the fee is calculated upon success so make sure you understand the fee-charging basis. It is important to bear in mind that if your action fails you may have to pay the outlays and the expenses of the successful opponent as well as the outlays of your own solicitor; but your solicitor would not get a fee.

Using a solicitor

When you first approach a solicitor for advice, you may hear rather formal phrases such as 'being retained' or 'taking instructions'. Whichever phrase is used, all that it means is that anything they do is subject to your agreement and according to your wishes, not the other way round! They are representing you and acting on your behalf. Just as if you were using any other service, for example, landscape gardening or interior decorating and design, don't be afraid to ask for full details:

- what work is going to be done?
- approximately how long will the work take?
- what is the cost of the work or hourly rate?
- are there other associated expenses?

You should find this information in the firm's 'terms of business' or 'letter of engagement'.

6. Help with paying for legal advice and representation

Legal aid

Legal aid services in Scotland cover most matters on which you might wish the assistance of a solicitor. Legal aid in Scotland is governed by the Legal Aid (Scotland) Act 1986 and is the responsibility of the Scottish Legal Aid Board (SLAB). They can be contacted at 44 Drumsheugh Gardens, Edinburgh, EH3 7SW, tel: 0131 226 7061. Their website address is www.slab.org.uk.

The Board publishes a series of helpful leaflets:

- ‘Civil legal assistance – a simple guide’;
- ‘Criminal legal assistance if you are in custody’;
- ‘Criminal legal assistance if you are not in custody’
- ‘Civil legal aid – what you may have to pay at the end of your case if you win or keep money or property’
- ‘Do I qualify financially for advice and assistance or civil legal aid?’
- ‘Our service standards’.

Your solicitor may have copies or contact a local advice agency or the Scottish Legal Aid Board at the above address.

There are three kinds of legal aid:

Advice and assistance helps to pay for a solicitor to give you advice on any civil or criminal matter of Scots Law, but it will not normally cover representation on your behalf by your solicitor in court.

Civil legal aid will help pay for a solicitor to represent you in court if you are a party in a civil dispute.

Criminal legal aid pays for legal representation if you are charged with a criminal offence.

Not all solicitors do legal aid work. Look for a solicitor whose office shows the legal aid logo, ask your local CAB or look in the Yellow Pages.

Many solicitors will see you for up to half an hour without charging you, providing basic advice about your case and letting you know whether they can help you. Ask your solicitor if s/he provides this service.

Alternatively, ask your solicitor if s/he can advise you about your problem under advice and assistance.

Are you eligible?

Any individual is entitled to apply for any of the three types of legal aid. A legal representative or some other person with authority to act may apply on behalf of someone who is incapable of doing so.

There are financial eligibility limits for legal aid for civil proceedings and for advice and assistance. Broad details of the qualifying conditions for each kind of legal aid are given below as a guide to find out if you are eligible but there are more detailed rules for calculating disposable capital and income which must be followed. Amounts stated are as at 7 April 2005.

When you visit your solicitor you should bring with you evidence of how much money you have such as:

- pension or benefit order books;
- details of any savings, bank statements, etc;
- wage slips if you are an employee, or accounts if you are self-employed.

If you are married or living with a partner, your solicitor will also normally need to know the same information about his or her income and savings.

Advice and assistance

Advice and assistance enables people of limited means to obtain advice from a solicitor on matters of Scots Law. You can raise questions relating to marriage, debts, employment, injury, landlords, tenants, neighbours, hire purchase, Wills, crime and so on. It does not usually cover a solicitor representing you in a court or tribunal, although your solicitor can help you prepare your case or negotiate a settlement of a claim in such proceedings.

Where civil or criminal court proceedings might be in prospect, civil or criminal legal aid may be available. A request for advice and assistance should be dealt with within ten days. Even if you qualify financially, you may have to pay a contribution towards your solicitor's costs.

When a solicitor grants advice and assistance, this enables the solicitor to carry out work to the value of £80. If work requires to be done which will take the account beyond this limit, authority for a higher limit must be obtained from the Board and in most cases before the work is carried out. The level of expenditure depends on the facts of each individual case. The limit can be increased on a number of occasions provided the Board is satisfied that the expenditure is reasonable. Applications for an extension to advice and assistance can be dealt with in seven days.

Are you eligible?

To qualify, your income and capital must be less than the set limits. If you are in receipt of Income Support, income-based Job Seekers Allowance or Working Families' Tax Credit or Disabled Person's Tax Credit, you are automatically eligible on income.

Otherwise income is based on disposable income. This means your weekly income after deductions for income tax, National Insurance and fixed weekly allowances for your dependents:

For your partner	£31.95
Other dependents:	
For each child	£43.88
For each adult (other than your partner)	£43.88

The income and capital of your spouse or partner will also be taken into account (unless you are not living together) unless that is the subject of a dispute. Check with your adviser if you are unsure.

You should also deduct any maintenance payments made in the last seven days. No deductions are allowed for rent, Council Tax, Hire Purchase and other commitments. After these deductions, if your disposable income is not more than £192 then you will be eligible, as long as you do not have more than the capital limit in savings and property - see below.

Income limits	Qualify for advice and assistance
Weekly disposable income £86 or under	Yes
Weekly disposable income over £203	No
Weekly disposable income between £86 and £203 – you will have to pay a contribution to the cost on a sliding scale up to a maximum of £117.	

Capital includes savings and property other than the house you live in. Besides the value of the house, leave out the value of furniture and fittings, tools of trade and the value of any property that is the subject of the dispute for which you want advice and assistance. You are allowed to have more capital if you have dependents (husband, wife, partner, children or other dependents). If you have less than the capital limit, you qualify for advice and assistance.

Capital limits	
No dependents	£1,412
With one dependent	Add £335, so £1,747
With two dependents	Add £200, so £1,947
For each additional dependent	Add £100 each

Pensioners' capital limits (advice and assistance)

Since April 1998, if you are aged 60 or over and on a low income you can get part or all of your capital, up to £25,000, disregarded. The exact amount which will be disregarded will depend on your weekly disposable income. Your solicitor or adviser can check these amounts for you.

Assistance by Way of Representation (ABWOR)

ABWOR enables people involved in certain types of legal proceedings to have representation in court or tribunal under advice and assistance. ABWOR is available for proceedings under Part V of the Mental Health (Scotland) Act 1984. In Scotland, ABWOR is most commonly used in criminal proceedings, and since 15 January 2001 it has become available for proceedings before an employment tribunal. It is also available for detained persons under section 17 of the Matrimonial Homes (Family Protection) (Scotland) Act 1981 and under section 5 of the Protection from Abuses (Scotland) Act 2001, as well as other pieces of legislation.

Are you eligible?

To be eligible for ABWOR, you must be eligible for advice and assistance. A grant of advice and assistance may be made solely for ABWOR, or may start as advice and assistance and later include ABWOR.

Civil legal aid

Civil legal aid helps people who are involved in a civil dispute to pay for legal representation in court or in certain tribunals. Examples of civil cases are family proceedings involving children and divorce; disputes about contracts; accident claims; recovery of debt; arguments about a property or a lease.

You cannot get civil legal aid for defamation (or libel), simplified divorces or for actions in the small claims court. The current limit for small claims action is £1,500.

Civil legal aid is also available to a person claiming to have an interest in the property, financial affairs or personal welfare of an incapable adult, based on the resources of that adult, for certain proceedings under the Adults with Incapacity (Scotland) Act 2000.

How do you get legal aid?

To apply for legal aid you will need to consult a solicitor who deals with legal aid work. They will properly advise you and send off the application on your behalf. When you visit your solicitor you should bring with you evidence of how much money you have such as:

- pension or benefit order books;
- details of any savings, bank statements, etc;
- wage slips if you are an employee, or accounts if you are self-employed.

It is very important that the information you give is complete and accurate. It is a criminal offence to give false information. You must tell the Board of any changes in your financial situation. Civil legal aid applications should normally be dealt with within six weeks but in an emergency your solicitor may be able to do some work immediately.

Do not delay in getting advice about your case, especially if proceedings have been issued against you and you have been informed of a date for a court hearing.

When can you get civil legal aid?

You must be financially eligible and satisfy certain tests for civil legal aid to be granted. In general, the Scottish Legal Aid Board has to be satisfied that you have a plausible case and that it would be reasonable in the particular circumstances of the case to grant legal aid.

For certain proceedings under Adults with Incapacity (Scotland) Act 2000, it is available to a person claiming an interest in the property, financial affairs or personal welfare of an incapable adult, based on the resources of that adult.

If you are refused legal aid your solicitor will be notified and will receive an explanation of the reasons for the refusal. Your solicitor can then ask for the application to be reconsidered.

Will you have anything to pay?

Both your income and capital are taken into account in deciding whether you can get legal aid, and what your contribution will be, if any. You may have to pay something from your income or your capital, or both.

The income and capital of your spouse or partner (with whom you are living) will also be taken into account unless you are living apart or they are the opponents in the case for which legal aid is sought or ownership of an asset is in dispute.

Your income is assessed over a year. Your disposable income is your net income after tax and National Insurance, less certain other expenditure such as housing cost, maintenance payments and the cost of travel and childcare for work, and less allowances for dependents. The annual allowances for dependents are:

For your partner	£1,666
Other dependents:	
For each child	£2,288
For each adult (other than your partner)	£2,288

If your disposable income is more than the upper limit you do not qualify for civil legal aid. If it is less than the lower limit, you are eligible on income and will not have to pay from your income. Between the two, you are eligible on income but will have to pay a contribution of one third of the excess over the lower limit.

Annual disposable income limits	
Lower disposable income limit	Upper disposable income limit
£2,931	£9,570

However, if your disposable income is below the upper limit, in order to qualify for civil legal aid, your capital must also be below a limit.

The value of your home, the value of your furniture and fittings and tools of your trade, and the value of the subject matter in the case you want legal

aid for is ignored when calculating capital. But any other capital assets such as savings, other property and anything else of value would be taken into account. There are no allowances for dependents in the capital limits.

Annual disposable capital limits

Lower capital limit
£6,465

Upper capital limit
£10,779

If your disposable capital is more than the upper limit you do not normally qualify for civil legal aid, as long as the Scottish Legal Aid Board thinks you can afford to pay for your case. If it is less than the lower limit, you are eligible on capital and will not have to pay from your capital. Between the two, you are eligible on capital but will have to pay a contribution of the whole of the excess of your disposable capital over the lower capital limit. However, pensioners with more than the upper capital limit may still qualify

If your circumstances change, your eligibility for legal aid may change. Ask your legal adviser about these matters.

Pensioners' capital limits (civil legal aid)

Since April 1998, if you are a man or woman aged 60 or over and on a low income, part or all of your capital, up to £35,000 may be disregarded. Your solicitor or adviser can check this for you.

Paying back legal aid

If you win your case, then the other party may be ordered to pay your legal expenses. However, even when this happens you are only likely to recover a proportion of your full legal costs and the Scottish Legal Aid Board is then likely to ask you to pay the rest of your legal costs back to the Board because public funds have been used for your case and these must be repaid.

Firstly, this would be taken from any contributions that you have paid. However, if that is not enough to cover the full legal costs, then the Board might use any money or property you win or manage to hold on to at the end of a case. This is called clawback. If what you win is the house you are living in, the Board will not ask you to sell it but if you decide to sell it in the future the Board will ask for the money then.

The way this works is explained in the Scottish Legal Aid Board leaflet, 'Civil legal aid – what you may have to pay at the end of your case if you win or keep money or property' (April 2005).

Criminal legal aid

Criminal legal aid pays for legal representation if you are charged with a criminal offence. Advice and assistance helps to pay for a solicitor to give you advice on any matter of Scots law but will not normally cover your solicitor representing you in court. If you are charged with a criminal offence, you should see a solicitor as soon as possible.

What sort of criminal charges can you get legal aid for?

There are two types of offences you might be charged with:

- a) Criminal offences dealt with under the 'summary' procedure, which include road traffic offences, breach of the peace and minor theft - these are heard in the district or sheriff court before a JP or sheriff.
- b) Criminal offences dealt with under the 'solemn' procedure, for example, murder, rape and robbery - these are dealt with in the sheriff court or the High Court and may involve a jury trial.

Are you eligible?

If you have been charged under the 'summary' procedure what happens depends on whether or not you are in custody, or have given the police an undertaking to appear in court at a later date. It also depends on whether or not you plead guilty. Applications usually take one week to process but can take longer.

In order to qualify for criminal legal aid, the Board must be satisfied

- that you or your family would suffer undue hardship if you had to pay for your own defence; and
- that it is in the interests of justice that you should receive legal aid; they will take in to account, for instance, whether your job or your liberty is at risk, whether you have a realistic defence or whether there are difficult legal points to be decided.

If you are awarded criminal legal aid you will not be asked to make a contribution towards the cost of your solicitor's work. To work for you under legal aid, a solicitor must be registered with us (the Scottish Legal Aid Board) to provide criminal legal assistance.

Check with your adviser about how capital and disposable income is calculated, to find out whether you will have to make a contribution. If you receive Income Support or income-related Job Seekers Allowance you will not have to pay anything towards your legal costs.

If you have been charged under the 'solemn' procedure you are automatically entitled to criminal legal aid until you are given bail or placed in custody. You can choose your own solicitor or ask to see the duty solicitor.

Automatic legal aid only covers the first stage of your case, so you should apply straight away for full criminal legal aid. This application has to be made to the court, and your solicitor will help you complete the application form. Criminal legal aid will cover the cost of your solicitor preparing your case, and if you plead not guilty, representing you at your trial. It also covers cost of any counsel or other professional fees.

You can apply for criminal legal aid to cover the cost of appealing against either sentence or verdict, or opposing an appeal by the prosecutor.

See the Scottish Legal Aid Board leaflets, 'Criminal legal assistance if you are in custody' and 'Criminal legal assistance if you are not in custody'.

Public Defence Solicitors' Office

The Public Defence Solicitors' Office (PDSO), has a team of solicitors who provide free advice and representation in criminal cases for anyone entitled to legal aid. It has offices in Edinburgh, Glasgow and Inverness and can cover cases in courts anywhere in Scotland.

If you go to the PDSO, you will see a solicitor, who will listen to your case, advise you, and take instructions. He or she will then investigate and prepare your case, keeping you informed, and will represent you at court hearings. The public defence solicitors have to follow the same rules as private solicitors. They are bound by the Law Society of Scotland's practice rules and Code of Conduct to act in the best interests of the client. They also have to comply with The Scottish Legal Aid Board's code

of practice for solicitors carrying out criminal legal assistance. It is important to note that the PDSO operates independently from the Scottish Legal Aid Board.

What to do if you don't agree with your solicitor's bill

The amount you have to pay will depend on what has been agreed under the contract between you and your solicitor. You will only be liable to pay once a bill has been delivered.

Note: If you have agreed a fixed fee in writing it will be difficult to challenge the amount payable unless you are disputing that the work was done or you feel that it was not to the required standard.

If you believe that the fee is excessive, speak to the solicitor or the firm's Client Relations Partner and use the firm's own complaints procedure to try to resolve the matter. (See Section 7 below). You can ask for a breakdown of the bill (but they can charge you to prepare this).

If this does not resolve the problem, you can ask your solicitor to get the bill audited by the Auditor of Court, an official based in each Sheriff Court. He or she will examine all your solicitor's records and set a fair amount. If you wish, you can attend a hearing and put forward your views. This process is called taxation and it costs money – usually 3-4% of the final bill, which you will have to pay unless the Auditor finds that the original bill was too high. There are also provisions contained in the Solicitors (Scotland) Act whereby complaints can be made in respect of excessive charging.

7. Complaints about your solicitor or adviser/advice agency

Solicitors

Solicitors are required by the Law Society of Scotland to operate a complaints procedure to deal with any complaints about their service. If you are not happy with the way in which your case has been handled first list your concerns and questions, preferably in writing. The next step is to discuss this with the person dealing with your case. If matters are not resolved ask to speak to the senior partner or write to that person, asking for a copy of the firm's client care and complaints procedure. Most firms have a Client Relations Partner whose job it is to sort out your concerns.

Conciliation applies to service complaints only but may help settle differences by agreement.

Law Society of Scotland - Client Relations Office

If the matter remains unresolved you can complain to the Law Society of Scotland's Client Relations Office. The office has a statutory responsibility to deal with complaints against solicitors with impartiality and fairness. It deals with issues of professional misconduct and the provision of an inadequate professional service. You must complain within 2 years of when the service was completed or the matter you are complaining about was brought to your attention. The Scottish Solicitors Discipline Tribunal can deal with solicitors.

The Law Society of Scotland's leaflet, 'Complaints against Scottish Solicitors', outlines what it can do. There is a helpline which you can call - 0845 113 0018 (local call rate).

Advocates

If you have a complaint about an advocate, write to the Dean of the Faculty of Advocates.

Scottish Legal Services Ombudsman

If you are still not satisfied with the outcome, or you feel the Law Society of Scotland or other professional body has not handled the complaint fairly, thoroughly or reasonably, you can ask the Scottish Legal Services Ombudsman to take up the matter. You must do so within 6 months of the final decision. The Ombudsman is an independent person appointed by Scottish Ministers who oversees the complaints handling processes of the Faculty of Advocates, the Law Society of Scotland and the Scottish Conveyancing and Executory Services Board. The Ombudsman can't change the decision but makes recommendations and the Law Society of Scotland must consider any recommendations and reply.

Advice agencies

If your complaint is about an advice agency ask for a copy of their complaints procedure for dealing with client care issues.

Scottish Legal Aid Board

If you have a complaint about the way they handled your case, such as if there has been a delay in the handling of your case, then you can write,

email, telephone or visit the Board (but it is best to make an appointment if you decide to visit). There is a complaints form you can fill in on their website. Include your name and address, your legal aid personal identifier, if you have applied for legal aid and the reference number of any application you are referring to, if you know it. The Board does not deal with complaints about your solicitor, advocate or the courts.

If possible, first, contact the person you have been dealing with, who will try to resolve your complaint. If you do not want to do this or you are not satisfied with the outcome or the way in which the complaint was handled, you may contact the Director of the relevant Department, or send your complaint to the Chief Executive, who will pass it to the appropriate Director. If after this you are still unhappy, you can ask the Chief Executive to review your complaint.

If you are unhappy with the way the Board dealt with your complaint, the Scottish Public Services Ombudsman (formerly the Scottish Parliamentary Commissioner for Administration) may be able to help. You must contact them within 12 months first receiving notice about the matter you are complaining about.

8. Useful addresses

Scottish Legal Services Ombudsman, Mrs Linda Costelloe Baker, 17 Waterloo Place, Edinburgh EH1 3DL, tel: 0131 556 9123, fax: 0131 556 9292, email: ombudsman@slso.org.uk, website: www.slso.org.uk.

Scottish Legal Aid Board, 44 Drumsheugh Gardens, Edinburgh EH3 7SW, tel: 0131 226 7061, fax: 0131 220 4878, email: general@slab.org.uk, website: www.slab.org.uk.

The Law Society of Scotland, 26 Drumsheugh Gardens, Edinburgh EH3 7YR, tel: 0131 226 7411. Client Relations Office Helpline: 0845 113 0018 (local call rate), fax: 0131 225 2934, email: cro@lawscot.org.uk, website: www.lawscot.org.uk.

Faculty of Advocates, Parliament House, Parliament Square, Edinburgh, EH1 1RF, tel: 0131 226 5071, fax: 0131 225 3642, website: www.advocates.org.uk.

Citizens Advice Scotland, Spectrum House, 2 Powderhall Road, Edinburgh EH7 4GB, tel: 0131 550 1000, fax: 0131 550 1001, email: info@cas.org.uk, website: www.cas.org.uk. To find a CAB near you.

Scottish Association for Mental Health, Cumberae House, 15 Carlton Court, Glasgow G5 9JP, tel: 0141 568 7000, fax: 0141 568 7001, email: enquire@samh.org.uk, website: www.samh.org.uk.

Scottish Public Services Ombudsman (formerly Scottish Parliamentary Commissioner for Administration), 4 Melville Street, Edinburgh EH3 7NS, tel: 0870 011 5378 (national call rate), fax: 0870 011 5379 (national call rate), email: enquiries@scottishombudsman.org.uk, website: www.scottishombudsman.org.uk.

Alzheimer Scotland, 24 hour Dementia Helpline, 0808 808 3000 (freephone), 22 Drumsheugh Gardens, Edinburgh, EH3 7RN, tel: 0131 243 1453 (office), fax: 0131 243 1450, email: alzheimer@alzscot.org, website: www.alzscot.org.

Advice UK, 12th Floor, New London Bridge House, 25 London Bridge Street London, SE1 9ST, tel: 020 7407 4070, fax: 020 7407 4071, email: general@adviceuk.org.uk, website: www.adviceuk.org.uk. To find an independent advice centre near you.

Legal Services Commission (formerly Legal Aid Board for England and Wales), 85 Gray's Inn Road, London WC1X 8TX, tel: 020 7959 0000, website: www.legalservices.gov.uk. For England and Wales information only.

Public Defence Solicitors' Office, 37 York Place, Edinburgh EH1 3HP, tel: 0131 557 1222, fax: 0131 557 2212, 24A Bernard Street, Leith, Edinburgh EH6 6PP, tel: 0131 555 1030, fax: 0131 555 2875, Inverness: 17 Queensgate, Inverness IV1 1DF, tel: 01463 709680, Glasgow: 120-124 Saltmarket, Glasgow G1 5LB, tel: 0141 553 0794, email (all offices): postbox@pdso.org.uk, website: www.pdso.org.uk.

9. Further information from Age Concern

Scottish Helpline for Older People: 0845 125 9732, textphone 0845 226 5851, open 10am-4pm Monday to Friday, calls charged at local rates.

The Scottish Helpline for Older People helps older people and those who care for or work with older people. It provides confidential information about community care, tax, pensions, benefits and other issues or puts callers in touch with other services which can help.

For any additional factsheets mentioned, for a full list of factsheets and/or a book catalogue, phone 0800 00 99 66 (free call) or write to Age Concern FREEPOST (SWB 30375), Ashburton, Devon TQ13 7ZZ.

Age Concern provides factsheets free to older people, their families and people who work with them. If you would like to make a donation towards the work of Age Concern Scotland, you can send a cheque or postal order (made payable to Age Concern Scotland) to Age Concern Scotland, Causewayside House, 160 Causewayside, Edinburgh EH9 1PR. Find out more about Age Concern Scotland online at www.ageconcernscotland.org.uk, or Age Concern England at www.ageconcern.org.uk.

Age Concern's series of over 40 factsheets is available as a subscription service to those whose work involves older people; for details of this service please call us on 0990 00 99 66 (national call rate) and ask for our factsheet subscription leaflet.

This factsheet is based on one of the same title produced by the Information Unit, Communications & Marketing Division at Age Concern England and is adapted for Scottish use.

All rights reserved. This publication may be reproduced in whole or in part in unaltered form by Age Concern groups with due acknowledgement to Age Concern Scotland. No other reproduction in any form is permitted without written permission from Age Concern Scotland.

Age Concern Scotland, Causewayside House, 160 Causewayside,
Edinburgh EH9 1PR Registered Charity no. SC010100

FS43s/05/06/01
CS