

A Practical Guide to Community Legal Service Funding

by the Legal Services Commission



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Summary of the Legal Aid Scheme

- The Legal Services Commission (LSC) runs two schemes – the Community Legal Service which provides advice and legal representation for people involved in civil cases, and the Criminal Defence Service which provides advice and legal representation for people facing criminal charges. This leaflet covers civil matters only. Please see the separate leaflets “A Practical Guide to Criminal Defence Services” and “Criminal Defence Services at the police station and in court” for information on the Criminal Defence Service.
- Under the Community Legal Service the LSC has an important role in co-ordinating and working in partnership with other funders of legal services, such as local authorities. The LSC also directly funds legal services for eligible clients. This leaflet describes the services funded by the LSC as part of the Community Legal Service.

To make it easier to find quality legal help and information the LSC has launched Community Legal Service Direct. Call 0845 345 4 345 to speak to a qualified legal adviser about benefits and tax credits, debt or education or to find local advice services for other types of problem. Click www.clsdirect.org.uk to search for your nearest legal adviser or find links to other sources of online information and help.

You can also see if you are eligible for legal aid using the online calculator and print or view legal information leaflets.

- Since 2 April 2001 only organisations with a contract with the LSC have been able to provide advice or representation funded by the LSC. For family cases and specialist areas like immigration and clinical negligence only specialist firms are funded to do the work. Community Legal Service Direct can tell you which organisations have a contract with the LSC.
- Note that claims for personal injury other than clinical negligence are not usually funded by the LSC. Such cases can instead be pursued under “conditional fee agreements” (CFAs) between solicitors and clients. For more information on CFAs see the Community Legal Service Direct leaflet “No-win, No-fee Actions”. The leaflet is one of a series available on our website www.clsdirect.org.uk or which can be ordered by calling Community Legal Service Direct on 0845 345 4 345.

Section 1

Introduction

1.1 About this booklet

This guide explains how the Legal Services Commission (LSC) funds civil legal services. It is for people seeking help on legal matters as well as those who can put others seeking legal help in touch with a solicitor or legal adviser.

1.2 The different types of Legal Aid

The LSC funds a range of legal services. The different levels of service in civil matters are:

- **Legal Help**

Legal Help provides initial advice and assistance with any legal problem. This level of service covers work previously carried out under the advice and assistance or “green form” scheme.

- **Help at Court**

Help at Court allows for somebody (a solicitor or adviser) to speak on your behalf at certain court hearings, without formally acting for you in the whole proceedings.

- **Family Mediation**

This level of service covers mediation for a family dispute, which means trying to reach an agreed settlement with the help of an independent mediator.

Help with Mediation provides legal advice and assistance if you are attending family mediation.

- **General Family Help**

General Family Help provides help in relation to a family dispute, including assistance in resolving that dispute through negotiation or otherwise. This includes the services covered by Legal Help, but also includes issuing proceedings and representation where necessary to secure the early resolution of a family dispute, or to obtain a consent order following an agreement of matters in dispute. It does not cover representation at a contested final hearing.

- **Legal Representation**

This level of service provides legal representation – so that you can be represented in court if you are taking or defending court proceedings. This is the level of service previously called civil legal aid.

It is available in two forms:

Investigative Help: funding is limited to investigation of the strength of a claim.

Full Representation: funding is provided to represent you in legal proceedings.

It is also possible for both Investigative Help and Full Representation to be granted on an emergency basis where the matter is urgent and meets the criteria.

Some cases which were previously paid for by legal aid will now be carried out under a “conditional fee agreement” (CFA). A CFA is a private arrangement between you and your solicitor. Usually you will not

pay any costs to your solicitor if you lose, it all depends on what agreement you draw up with your solicitor.

1.3 A low-cost interview

In addition to the above levels of service, some solicitors are prepared to give a free or low-cost initial interview whether or not you qualify for funding. Solicitors offering these interviews are part of local referral schemes and details are available from local CABx, law centres or other advice agencies. You can also use the directory search on www.clsdirect.org.uk. Search for local solicitors and then check under 'charging' to see whether they offer this service. Please note these schemes are not available in some areas.

1.4 How do I find a solicitor or legal adviser?

If you need to find a solicitor or legal adviser, Community Legal Service Direct can help. Click www.clsdirect.org.uk to search our online directory and find links to other sources of online information and help or call **0845 345 4 345** and our operators will help you find a suitable service. Or you can:

- Ask wherever you see the Community Legal Service (CLS) logo shown here:

**Community
Legal Service**



- Go to a Citizen's Advice Bureau, a law centre or advice centre
- Find details of solicitors from the Law Society at www.lawsociety.org.uk or call 020 7242 1222
- Ask a friend, relative or trade union official.

When you find a solicitor or legal adviser, make sure that what you tell him/her about your finances and your case is accurate.

There are penalties for deliberate false statements about capital and income and you may have your funding taken away if you give a solicitor wrong information about your case.

Keep in touch with your solicitor about your case and be guided by his/her advice. You must immediately tell him/her if your finances change. Tell him/her if you change your address.

If you are not sure about any aspect of the funding of your case, the LSC regional office dealing with your case may be able to help you. The offices are listed at the back of this guide.

1.5 How do I find LSC funded solicitors or advice agencies?

LSC funded services for civil cases are only available from solicitors or advice agencies which hold a contract with the Legal Services Commission. This means that they have been checked to see that they meet certain standards and provide a quality service. The CLS logo is a special mark of quality and will be displayed in the windows of organisations, see 1.4.

For some types of cases, in particular family, immigration, mental health and clinical negligence, the organisation must not only have a contract with the LSC but the contract must actually cover the specific type of case.

If you want to find an LSC funded solicitor or legal adviser, Community Legal Service Direct can help. Click www.clsdirect.org.uk to search our online directory and find links to other sources of online information and help or call **0845 345 4 345** and our operators will help you find a suitable service.

1.6 How the LSC administers the funding schemes

The LSC administers the funding schemes for civil and criminal cases under the general guidance of the Lord Chancellor. For this purpose, England and Wales are divided into a number of regions. Each region has a regional office and regional committees which perform a number of roles. The Regional Legal Services Committees work with local authorities and others to develop new ways of planning and delivering advice services to the public. The Funding Review and Costs Committees hear applications for review of decisions in individual cases made by the regional office.

If your solicitor/legal adviser holds a contract with the LSC they may, if fully approved by the LSC, also be authorised to decide whether you should have funding for the following types of service:

- Legal Help and Help at Court
- Help with Mediation (family)
- Representation before the Mental Health Review Tribunal or before the Asylum and Immigration Tribunal; and before the High Court in respect of an application under s.103A of the Nationality, Immigration and Asylum Act 2002
- Representation in emergency cases
- Representation in a limited range of family cases in the magistrates' court, for example, certain proceedings under the Child Support Act 1991.

For other levels of service, your solicitor will normally apply on your behalf to one of our regional offices, where our staff will decide whether your application meets the criteria for LSC funding.

The regional office (or your solicitor where he/she is authorised) can either grant or refuse your application.

If an application is refused because you do not qualify financially, or because you have applied for an emergency certificate but do not meet the criteria for an emergency grant, you can ask for the decision to be reviewed by the Regional Director.

If your application is refused because it does not meet any other criteria applied to that type of case then there will also be a right to review. This will be initially by the Regional Director and if the refusal is confirmed by him or her, then by the Funding Review Committee.

1.7 Public legal funding in Scotland and Northern Ireland

There are separate schemes in Scotland and Northern Ireland. If you want to know about legal aid in Scotland, write to:

The Scottish Legal Aid Board, 44
Drumsheugh Gardens, Edinburgh EH3 7SW.
Tel: 0131 226 7061. Fax: 0131 220 4878.
Website address: www.slab.org.uk

For Northern Ireland, write to the Northern Ireland Legal Services Commission,
2nd Floor, Waterfront Plaza, 8 Laganbank
Road, Mays Meadow, Belfast, BT1 3BN.
Tel: (0)28 9024 6441 Fax: (0)28 9040 8990
Website Address: www.nilsc.org.uk

1.8 Legal funding abroad

Many foreign countries have legal aid schemes, but most do not cover as much as ours. England and Wales have an agreement with some European countries that they can pass on, through the LSC, applications from people seeking legal aid for civil proceedings in those countries. Although the foreign country decides the application on its own rules, you can make your application through us.

The LSC will transmit the application on your behalf to the relevant authority in the foreign country. You can, if you qualify financially, get Legal Help from your solicitor to help you with the application, including obtaining any necessary translations.

The countries covered by this agreement are: Austria, Azerbaijan, Belgium, Bulgaria,

Cyprus, Czech Republic, Denmark, Eire, Estonia, Finland, France, Germany, Greece, Hungary, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Slovakia, Slovenia, Spain, Sweden, Switzerland and Turkey.

There is also a specific European Directive on Legal Aid that applies to cross-border disputes, that is, disputes where one party lives in one member state and applies for legal aid in a different member state where a court is sitting or where a decision is to be enforced. Under the Directive, an applicant can choose either to apply to the foreign jurisdiction directly, or in the case of applicants that are ordinarily resident in England, Wales or Northern Ireland, they may apply to the LSC who will transmit their application to the appropriate authority in the other jurisdiction. You can, if you qualify financially, get Legal Help from your solicitor to help you with the application, including obtaining any necessary translations.

If you need legal aid outside the European Union, or the other countries listed, you should approach the United Kingdom representative (embassy/consulate) of the country concerned for information.

1.9 Statutory provisions

The provisions of the civil scheme are contained in the Access to Justice Act 1999, and the Funding Code, guidance, regulations, directions and orders made under that Act. This guide is a brief summary only.

Section 2

Legal Help and Help at Court

2.1 What do Legal Help and Help at Court cover?

Legal Help and Help at Court can only be provided by a solicitor or legal adviser who has a contract with the LSC. S/he can give you advice, write letters, negotiate, get a barrister's opinion and prepare a written case if you have to go before a court or tribunal. Assistance with divorce proceedings is, for example, available under Legal Help. However, the solicitor or legal adviser will be unable to represent you in court under Legal Help.

The solicitor or adviser can also provide Help at Court, which means that s/he can appear in court on your behalf at a particular hearing, without formally acting for you in the whole proceedings. One example where this level of service might be available would be for an application to suspend a warrant for possession in a housing case. You must satisfy a financial eligibility test for these levels of service.

These two levels of service enable people of moderate means to get help from a solicitor or adviser for as long as the solicitor or adviser agrees that there is sufficient benefit in continuing with the case, or until the case is funded in another way.

Legal Help cannot be applied for retrospectively.

If you need to go to court in civil proceedings your solicitor or adviser may advise you to apply for a higher level of funding such as General Family Help or Full Representation which are fully explained later in this leaflet. Your solicitor may be authorised to grant your application in some cases (see Section 1.6). If not, s/he can complete the necessary application forms under the Legal Help level of service.

Legal Help and Help at Court are available in England and Wales and apply only to questions of English Law. They do not cover the law of Scotland or Northern Ireland, nor that of any other country unless such law is relevant for determining any issue relating to the law of England and Wales.

2.2 How do I apply for Legal Help or Help at Court?

You should contact a solicitor or legal adviser who holds a contract with the LSC to provide these levels of service.

It is best to telephone for an appointment first. If you are ill or cannot travel, you should ask someone to call at the solicitor's or adviser's office for you – or the solicitor or adviser may be able to visit you. The solicitor or adviser will ask about all your finances. S/he will then fill in a form.

Your solicitor or adviser will tell you at once whether you qualify. If you do qualify financially you will not have to pay a contribution. A solicitor or adviser can refuse to give you Legal Help or Help at Court.

S/he need not give a reason. However, s/he may be asked to explain the reasons for his/her refusal by the LSC regional office.

2.3 Children

Children are eligible for Legal Help and Help at Court. In most cases where a child under school-leaving age (16) requires the help of a solicitor, a parent or guardian should apply on his/her behalf. A solicitor can advise a child directly in certain cases. The parents' or guardian's means will be taken into account in assessing the financial eligibility of the child except in certain circumstances, for example, a conflict of interest between the child and parent.

2.4 Do I qualify financially?

You can use our online Legal Aid calculator to work out if you may be financially eligible, click www.clsdirect.org.uk for more information.

If you are receiving income support, income based jobseeker's allowance or guarantee state pension credit you will be eligible on income and capital. If you are not receiving one of these benefits you must be able to show that your capital AND your income are within the current financial limits. Clients in receipt of NASS support will automatically qualify for immigration and asylum matters. If you are married or living with someone as a couple, your partner's capital and income will be included unless:

- You live apart because your relationship is over
- There is a conflict of interest between you in the matter for which you are seeking help (for instance if you want advice about a divorce).

2.5 Capital: do I qualify?

Work out your disposable capital (see Section 6 of this guide). If this exceeds £8,000 you will not be eligible.

If you are a pensioner on a low income, you may benefit from a capital disregard (see Section 5.11).

2.6 Income: do I qualify?

Your solicitor will take the actual gross income in the past month of yourself and your partner (see Section 6). If this exceeds £2,350 you will not be eligible. A higher limit applies if you have more than 4 dependant children in your family for whom you receive child benefit (see table in Section 6). If your gross income is £2,350 or less your solicitor will then calculate your disposable income (see Section 6). If your monthly disposable income exceeds £649 per month you will not be eligible.

2.7 Do I pay a contribution?

No. You will not be asked to pay any contribution out of your capital. Neither will you pay anything from your income if you qualify.

2.8 What happens if money or property is recovered or preserved?

Where money or property is recovered or preserved under Legal Help or Help at Court in a family or clinical negligence matter then your solicitor must use this to pay his/her bill. This is called the statutory charge.

For example, if your solicitor recovers £750 for you and his/her bill is £100, you will receive £650. There are some exceptions to this rule.

The statutory charge does NOT apply, for example, if the money or property recovered consists of maintenance payments.

2.9 How does my solicitor or legal adviser get paid?

The LSC regional office will pay your solicitor's bill. But remember, if anything is recovered or preserved in your case using Legal Help or Help at Court it will usually be put towards paying your solicitor's bill in family or clinical negligence matters.

2.10 Repeated applications

You must tell your solicitor or adviser if you have had Legal Help or Help at Court about the same matter paid for by the LSC or its predecessor the Legal Aid Board. The new solicitor may be able to give you further Legal Help or Help at Court even though you have already had previous funding for your case.

Section 3

Family Mediation

3.1 What does family mediation cover?

The LSC provides funding for mediation of a family dispute for couples and family members who qualify financially.

Mediation can help with disputes relating to children, money and property and is provided by family mediators contracted to the LSC. A mediator does not make decisions for you or provide legal advice on your own legal position, but helps you and the other party, usually your partner, to reach your own decisions in a neutral environment. It is an alternative to reaching agreements or obtaining court orders entirely through solicitors and does not replace legal or other advice. For more information on mediation see the Community Legal Service Direct leaflet "Family Mediation" produced in association with the UK College of Family Mediators. This leaflet is one of a series available on our website at www.clsdirect.org.uk or which can be ordered by calling Community Legal Service Direct on 0845 345 4 345.

Those eligible for mediation can obtain legal advice and assistance from a solicitor to support them during mediation. This can either be through Legal Help (see Section 2) or Help with Mediation (see Section 4).

Currently, mediation is covered by family mediators contracted to the LSC.

3.2 How do I apply for family mediation?

Community Legal Service Direct can give you details of local family mediators. Call 0845 345 4 345 or click www.clsdirect.org.uk. You can also contact the UK College of Family Mediators on www.ukcfm.co.uk or 0117 904 7223.

3.3 Do I qualify financially?

You can use our online Legal Aid calculator to work out if you may be financially eligible, click www.clsdirect.org.uk for more information.

If you are receiving income support, income based jobseeker's allowance or guarantee state pension credit you will be eligible on income and capital. In all other cases you must be able to show that your capital AND your income are within the current financial limits.

If you are married or living with someone as a couple, your partner's capital and income will be included unless:

- You live apart because your relationship is over
- There is a conflict of interest between you in the matter for which you are seeking mediation. If you are now living with a new partner as a couple then your new partner's resources will be included.

3.4 Capital: do I qualify?

Your mediator will work out your disposable capital (see Section 6). If this exceeds £8,000 you will not be eligible.

If you are a pensioner on a low income, you may benefit from a capital disregard (see Section 5.11)

3.5 Income: do I qualify?

The mediator assessing eligibility will take the actual gross income in the past month of yourself and your partner. If your gross income exceeds £2,350 per month you will not be eligible. A higher limit applies if you have more than 4 dependant children in your family for whom you receive child benefit (see table in Section 6). If your gross monthly income is £2,350 or less your mediator will assess your disposable income (see Section 6). You qualify if your disposable income is £649 per month or less and your disposable capital is £8,000 or less.

3.6 Do I pay a contribution?

No. You will not be asked to pay any contribution out of your capital or income.

3.7 What happens if money or property is recovered or preserved?

Where money or property is recovered or preserved under Family Mediation the statutory charge will not apply (see Sections 2.8 and 5.13), and you will not be liable to pay any of your mediator's costs.

3.8 How does the mediator get paid?

The LSC will pay the mediator's costs.

Section 4

Help with Mediation and General Family Help

4.1 What do these levels of service cover?

Help with Mediation and General Family Help provide help in family cases short of Full Representation. Help with Mediation is limited to giving advice to you to support Family Mediation which is explained in Section 3 above. General Family Help covers negotiations where no mediation is in progress as well as issuing proceedings and representation in certain cases. Both levels of service can cover obtaining a court order to confirm any agreement where appropriate. General Family Help may be appropriate if you have already received assistance under Legal Help but your solicitor advises you that further negotiations or possibly court proceedings are needed to resolve matters.

Help with Mediation is only available if you are actually participating in Family Mediation, or have successfully reached an agreement or settlement as a result of Family Mediation, and need legal advice or assistance from your solicitor about the mediation or any agreement reached. It is only available from solicitors with a contract with the LSC in family law. It enables people who qualify to get help from a solicitor or adviser until his/her costs reach £200 where mediation relates to

children issues only, £250 for financial issues only and £350 where mediation covers issues relating to both children and finances. This limit can be extended where necessary on application to the LSC regional office. All work properly carried out under this level of service is exempt from the statutory charge.

General Family Help covers negotiations in a family dispute where no mediation is in progress, although it will not usually be granted unless a mediator has considered the case and decided that it is not suitable for mediation. It also includes representation in proceedings where this is necessary to obtain disclosure of information (for example, about finances) from another party as well as issuing proceedings and representation in proceedings where this is necessary to secure the early resolution of a family dispute. It will not cover representation at a contested final hearing. It is only available from solicitors with a family law contract with the LSC. It enables people who qualify to get help from a solicitor or adviser until his/her charges reach an initial limit of £1,500. This limit can be extended where necessary on application to the LSC regional office.

The statutory charge will apply to any money or property recovered or preserved under this level of service. (See Section 5.13 for a further explanation of the charge.)

4.2 How do I apply for Help with Mediation and General Family Help?

You apply through your solicitor who will fill in the appropriate form. If you are attending Family Mediation, or have completed mediation and wish to apply for Help with Mediation, it will help your solicitor if you can show him/her any documents you have relating to the mediation. Your solicitor can grant Help with Mediation directly. If you are applying for General Family Help your solicitor will send the application form to the LSC regional office, which will decide whether it meets the criteria for funding. Your solicitor will explain how these criteria apply to your case. The regional office can either grant or refuse the application. If your application is refused on merits, you will have a right of review by the LSC's Regional Director and ultimately by the LSC's Funding Review Committee.

4.3 Do I qualify financially?

You can use our online Legal Aid calculator to work out if you may be financially eligible, click www.clsdirect.org.uk for more information.

Help with Mediation: if you received funding for your Family Mediation you will automatically qualify for funding for Help with Mediation in respect of the same mediation. Otherwise, your solicitor will assess your eligibility in accordance with the financial eligibility rules for Family Mediation (see Section 3).

General Family Help: The LSC regional office will assess your eligibility in accordance with the financial eligibility rules for Legal Representation (see Section 5).

4.4 Do I pay a contribution?

No contributions are payable if you receive Help with Mediation. Contributions may be payable if you receive General Family Help – the conditions are the same as those which apply to Legal Representation (see Section 5).

4.5 What happens if money or property is recovered or preserved?

If Help with Mediation is the only level of service given then the statutory charge will not apply, and you will not be liable to pay any of your solicitor's costs. If General Family Help is given, then the statutory charge may apply – see Section 5.13 for an explanation of the way the charge operates.

4.6 How does my solicitor get paid?

The LSC regional office will pay your solicitor's bill, less any contribution you have to pay. *But remember, if anything is recovered or preserved using General Family Help it will usually be put towards paying your solicitor's bill.*

4.7 Where can I get information about family issues?

Leaflets giving detailed information about family issues are available at www.clsdirect.org.uk or by calling Community Legal Service Direct on 0845 345 4 345. These include leaflets on Divorce and Separation, Living Together and Your Rights if you Separate as well as Domestic Violence.

If you are trying to sort out residence and contact arrangements for your children you can look at parenting plans which may help you reach an agreement at www.dfes.gov.uk/childrenandfamilies/downloads/ppeng.pdf

Section 5

Legal Representation

5.1 What does Legal Representation cover?

You may have had advice under Legal Help or General Family Help but your solicitor has not been able to resolve your legal problem. S/he may then advise that your case requires further investigation or should be taken to court. There are different types of Legal Representation which can cover this work:

Investigative Help: this is a form of Legal Representation which is limited to the investigation of the strength of a proposed claim. It is only available where the prospects of success are not clear and the investigation is likely to be expensive. It covers the issue and conduct of proceedings only so far as these are necessary to obtain disclosure of relevant information or to protect your position in relation to any urgent hearing or time limit for the issue of proceedings. Investigative Help is not available in family cases as General Family Help will be more appropriate (see Section 4).

Only organisations with a relevant LSC contract may apply for Investigative Help on your behalf (see Section 1.5).

Your application will be assessed by the LSC regional office, which will decide whether it meets the criteria for funding. The regional office can either grant or refuse the application. If your application is refused, you will have a right of review by the LSC's Regional Director and ultimately by the LSC's Funding Review Committee. In order for your application to succeed, you will need to show that you are eligible financially (please see Section 7 for guidance on eligibility) and meet the relevant merits criteria for funding. Your solicitor will explain how these merits criteria apply to your case. The statutory charge will apply to any money or property recovered or preserved under this level of service. (See Section 5.13 for further explanation of the charge.)

Full Representation: this is the main form of Legal Representation. Although the LSC may impose limitations and conditions on the extent of funding, in principle Full Representation can cover all work needed to take legal proceedings to trial and beyond.

Full Representation is available in both family and civil cases, but there are different merits criteria and financial criteria for different types of case. Your solicitor will be able to explain the different merits criteria to you. Two examples where different criteria apply are:

- Representation at a Mental Health Review Tribunal is available regardless of your financial resources but you must have a reasonable case to be funded

- Representation before the Asylum and Immigration Tribunal; and before the High Court in respect of an application under s. 103A of the Nationality, Immigration and Asylum Act 2002 is subject to an assessment of your financial resources and special merits criteria.

Only organisations with a relevant LSC contract can apply for Full Representation on your behalf (see Section 1.5). Your application for Full Representation will in most cases be assessed by the LSC regional office, which will decide whether it meets the criteria for funding. The regional office can either grant or refuse the application. If your application is refused on merits, you will have a right of review by the LSC's Regional Director and ultimately by the LSC's Funding Review Committee.

Any funding certificate issued may be limited in terms of the work which your solicitor can undertake and the amount of costs which can be incurred. Your solicitor will explain the limitations which apply to your certificate.

The statutory charge may apply to any money or property recovered or preserved using this level of service, depending on the type of proceedings involved. (See Section 5.13 for further explanation of the charge.)

5.2 What kinds of courts and cases are covered?

Legal Representation is available for civil cases in:

- The House of Lords
- The High Court and Court of Appeal
- County Courts
- Cases in Family Proceedings Courts (which are part of the magistrates' court) about marriage and the family, including separation, maintenance (except where the Child Support Agency has jurisdiction), residence, contact and defended adoption proceedings
- The Employment Appeal Tribunal
- The Mental Health Review Tribunal
- Asylum and Immigration Tribunal
- Special Immigration Appeals Commission
- The Protection of Children Act Tribunal.

Some cases before:

- The VAT and Duties Tribunal
- The General and Special Commissioners of Income Tax
- The Coroner's Court (death in custody cases).

And some cases before:

- The Crown Court
- A magistrates' court.

Legal Representation is not usually available for cases in:

- Most tribunals (except those listed above).

Legal Representation is not usually available for the following types of case:

- Most personal injury cases arising from negligence (other than clinical negligence). These cases should instead normally be pursued under “conditional fee agreements”
- Most cases arising out of the carrying on of a business
- Most cases involving disputes about a partnership, company or trust
- Boundary disputes
- Libel and slander.

Your solicitor will be able to advise you whether your case comes within any of the exclusions. When a case is out of scope, funding can be considered in very exceptional circumstances (contact the LSC Funding Policy Team on 020 7759 0000 for details).

Legal Representation is not available for cases outside England and Wales, except where a case is referred by the court to the European Court of Justice.

5.3 How do I apply for Legal Representation?

You apply through your solicitor. For some types of representation your solicitor may be able to decide whether you qualify financially, and your application meets the merits criteria without referring to the LSC regional office first.

The majority of applications will need to be submitted to the regional office for a decision. In every case your solicitor will need to complete an application form on your behalf. It is important that you help your solicitor to complete any forms accurately and promptly. Your solicitor can be paid for filling in the forms under Legal Help if you qualify for it (see Section 2). Most applications to the LSC regional office are processed within two weeks. You may be sent a further form to fill in asking for more information about your finances. If you are, you should complete and send it back immediately as otherwise your application may be delayed or refused.

The regional office assessment officer (see Section 5.6) will work out whether you qualify financially. The regional office will also decide whether your application satisfies the relevant merits criteria for funding for your type of case. Your solicitor will usually not be prepared to deal with your case until a funding certificate is issued by the LSC which confirms that you have got funding.

This is because a certificate does not cover your solicitor for any work done before it is issued.

A certificate will not be backdated but in some cases involving children the solicitor can act immediately.

5.4 What happens if my case is urgent?

If your case is urgent, your solicitor can ask for emergency Legal Representation. This can be granted at once. If your solicitor is authorised to do so by the LSC then they may also be able to make the decision to grant emergency Legal Representation without applying to the LSC's regional office beforehand. Emergency Legal Representation covers limited urgent steps and lasts only until the regional office has taken a decision on your full application for Legal Representation. When you apply for emergency Legal Representation you must agree to co-operate with the assessment officer in his/her enquiries into your financial position and to pay any contribution that is assessed.

You also have to agree to pay the full costs of your case if it is found that you do not qualify for Legal Representation or if you refuse it when it is offered to you (for example because you are asked to pay a contribution).

5.5 How do I qualify for Legal Representation?

You must:

- Qualify financially. Please see Sections 5.7 to 5.10 and Section 6.
- Meet the merits criteria relevant to your type of case. These criteria are set out in the LSC "Funding Code" and your solicitor will be able to explain to you how they apply.

Example

You might have reasonable grounds for claiming damages but the amount involved is small enough to be dealt with by the county court as a small claim, which does not require you to have legal representation. An application for Legal Representation would be refused, but if you qualified financially you might be able to obtain Legal Help.

Note: in some cases between local authorities and individuals involving the protection and care of children there are no means or merits criteria. These are called Special Children Act proceedings.

5.6 Who decides whether I qualify financially?

Your solicitor will assess whether you qualify financially for Legal Representation before the Asylum and Immigration Tribunal; and before the High Court in respect of an application under s. 103A of the Nationality, Immigration and Asylum Act 2002 or in a limited range of family cases in the magistrates' court. In these cases, your solicitor will need to see evidence of your finances and will provide you with details of their assessment directly.

Assessment officers at the LSC regional office assess means in most other cases. A Special Investigations Unit determines means in complex cases.

The assessment officer will work out if you qualify financially for Legal Representation and if you have any contribution to pay.

To do this s/he may need to see evidence of your finances, including bank statements, savings books and details of your earnings. The financial application form will tell you what is required.

Remember the finances of both you and your partner must be added together if you live as a couple unless:

- Your relationship is at an end and you live apart
- There is a conflict of interest between you (say, in a divorce case).

You will be issued with a breakdown of how you have been assessed.

If you do not agree with the assessment officer's assessment, you may ask for it to be reviewed.

5.7 Do I qualify financially?

You can use our online Legal Aid calculator to work out if you may be financially eligible, click www.clsdirect.org.uk for more information.

Legal Representation before the Mental Health Review Tribunal is not subject to a means test.

For all other types of Legal Representation, if you are on income support, income based jobseeker's allowance or guarantee state pension credit you will qualify for funding automatically without having

to pay a contribution. Otherwise, you must be able to show that your capital, including savings, and your income are within the current financial limits. Children are assessed in their own right when they apply for Legal Representation and their parents' financial position is not taken into account. The limits apply to children and adults.

If you are granted funding and your finances, liabilities or dependants change you must tell the LSC's regional office immediately. Section 6 will help you work out whether you might qualify for funding.

5.8 Income: do I qualify?

The assessment officer assesses your gross income for you and your partner for the previous month. If your gross monthly income exceeds £2,350 you will not be eligible for funding. A higher limit applies if there are more than 4 children in your family for whom you receive child benefit (see table in section 6). If your gross monthly income is £2,350 or less your solicitor will then assess your disposable income (see Section 6).

If disposable income is £649 or less you will qualify on income for all types of Representation including Legal Representation before the Asylum and Immigration Tribunal; and before the High Court in respect of an application under s.103A of the Nationality, Immigration and Asylum Act 2002.

5.9 Income: do I have to pay a contribution?

If you are eligible for Legal Representation before the Asylum and Immigration Tribunal; and before the High Court in respect of an application under s. 103A of the Nationality, Immigration and Asylum Act 2002, no contributions are payable from either income or capital.

For all other types of Legal Representation, if your *disposable income* is £279 per month or less you will pay no contribution. If it is between £280 and £649 per month inclusive*, you will have to pay towards the cost of your case from your income. Contributions from income are paid on an ongoing basis. The monthly contribution will be assessed in accordance with the following table:

So if disposable income is £315 per month, the contribution will be in band A, the excess income is £40 and therefore the monthly contribution will be £10 per month.

If the disposable income was £426 per month, the contribution would be in band B, the excess income would be £15 (£426-£411), the monthly contribution would therefore be £39 i.e. £34 + £5.

If the disposable income was £565 per month, the contribution would be in band C, the excess income would be £20 (£565-£545), the monthly contribution would therefore be £88.70 i.e. £78.70 + £10.

The first contribution must be paid when you accept your offer of funding, with further contributions every month after that for *as long as your case is being funded by the LSC*. Contributions may be waived where the contributions already paid are more than the likely total costs of the proceedings.

Band	Monthly disposable income	Monthly contribution
A	£280 to £411	1/4 of income in excess of £275
B	£412 to £545	£34 + 1/3 of income in excess of £411
C	£546 to £649*	£78.70 + 1/2 of income in excess of £545

* limit may be waived in domestic violence cases (Legal Representation)

5.10 Capital: do I qualify?

You will need to add up your disposable capital (see Section 6).

To qualify for Legal Representation before the Asylum and Immigration Tribunal; and before the High Court in respect of an application under s. 103A of the Nationality, Immigration and Asylum Act 2002, you must have not more than £3,000 in capital (immigration matters).

If your *disposable capital* is £8,000 or less you will qualify for all other types of Legal Representation.

With the exception of Legal Representation before the Asylum and Immigration Tribunal; and before the High Court in respect of an application under s. 103A of the Nationality, Immigration and Asylum Act 2002, if your disposable capital is more than these limits you may still be offered funding if your case is likely to be expensive.

5.11 Capital: do I have to pay a contribution?

No contributions are payable from capital for Legal Representation before the Asylum and Immigration Tribunal; and before the High Court in respect of an application under s. 103A of the Nationality, Immigration and Asylum Act 2002.

For all other types of Legal Representation, if your *disposable capital* as assessed is £3,000 or less, or if you are receiving income support or income based jobseeker’s allowance, you will not have to pay a contribution. If your

capital is assessed at more than £3,000 you will have to pay a contribution; this will be required at once. You will be asked to pay *all your disposable capital* over £3,000.

The calculation of disposable capital is different for pensioners. Men and women of 60 or over may benefit from an extra allowance. If their disposable income is less than £279 per month (excluding net income earned from capital), then certain amounts of savings are disregarded so that they can still qualify for funding despite their total savings being more than the usual capital limit.

The amounts that are disregarded are set out below:

Capital disregards for pensioners

<i>Monthly disposable income (excluding net income derived from capital)</i>	<i>Amount of capital disregarded</i>
£	£
Up to 25	100,000
26-50	90,000
51-75	80,000
76-100	70,000
101-125	60,000
126-150	50,000
151-175	40,000
176-200	30,000
201-225	20,000
226-279	10,000

5.12 How do I pay towards the cost of my case?

If the LSC regional office decides your case satisfies the merits criteria and also decides that you qualify financially, it will either issue a certificate if you do not have to pay a contribution or, if you do, send you an offer of a certificate.

You do not have to pay anything until you accept the offer.

Once you do accept, you must pay a contribution from your savings straight away and any contribution from income by monthly instalments, of which the first is paid when you accept the offer.

A certificate will then be issued and only then can your solicitor start to deal with your case using LSC funding. For Legal Representation before the Asylum and Immigration Tribunal; and before the High Court in respect of an application under s.103A of the Nationality, Immigration and Asylum Act 2002 there are no contributions to pay.

Except in a limited range of cases in the magistrates' court, if your income or capital increase while your certificate is in force you must immediately notify the LSC regional office and your means may be re-assessed. If your income decreases you may apply for your means to be re-assessed and your contribution may be reduced. If you come into money, for example if you sell your house or win the lottery, while your case is being funded by the LSC, you may be asked

to pay some, or all of your legal costs out of the money.

If you have a contribution to pay in instalments, it is very important that you keep them up. If you do not, the funding for your case may be withdrawn.

Funding may be withdrawn prior to the end of your case if your financial circumstances change so that you are no longer financially eligible for funding; for other reasons such as a failure to keep up payment of the monthly income contribution, failure to provide information to the Commission when requested to do so, or failure to fully disclose relevant information about your financial circumstances.

If your certificate is discharged, funding stops from the date of the discharge notice. However, if your certificate is discharged as a result of a further assessment of capital, you may be required to pay a contribution towards the costs previously incurred in your case.

If your certificate is revoked, i.e. cancelled, you are deemed never to have been entitled to funding and the Commission may seek to recover all costs previously incurred.

5.13 What costs do I pay if I win?

Your solicitor, as well as your barrister – if you have one – is entitled to be paid his/her reasonable costs. If you win your case, the amount you will have to pay will depend on whether:

- The other side is ordered to pay your costs and in fact does so
- You are awarded or successfully hold on to any money or property which was in issue in the case. If the other side does pay your costs in full, you may expect to be paid back the whole of any contribution you paid.

If the other side does not pay your costs in full, the LSC regional office must deduct from any money ordered by the court or agreed by the other side to be paid to you (and actually paid), as much as may be needed to cover the costs. This deduction is known as the statutory charge and it will apply to any property you receive or preserve in the case, whether by a court order or under a compromise or settlement of the case.

Maintenance is exempt from the statutory charge – and so are most state benefits. In some specific circumstances the statutory charge can be postponed, that is to say, not collected immediately. In these cases the money you owe will be registered as a charge on your home like a mortgage, and it will be subject to payment of simple (rather than compound) interest. More information can be found in a separate leaflet called “Paying Back Your Legal Aid”.

This leaflet is available on our website at www.legalservices.gov.uk or from the LSC Leaflet Line (see back cover for details).

5.14 What costs do I pay if I lose?

If you have received Legal Representation and lose your case then the most you will normally have to pay towards your solicitor's or barrister's costs will be any contribution under your certificate.

If you are publicly funded the court will not normally order you to pay your opponent's costs, but it may do so in certain limited circumstances. Where this is so, the court decides how much you must pay towards them. The amount you may be ordered to pay will depend on your means and your conduct in connection with the dispute. It will also take into account your opponent's means and conduct.

The court will normally take your partner's resources into account when assessing ability to pay, but will not include the value of your clothes, household furniture, and tools of trade unless exceptional circumstances apply, nor the first £100,000 of the value of your home.

If you cannot afford to pay your costs, then the debt may be secured against your home, but the court cannot order the sale of your home to pay the debt.

If you have received Investigative Support or Litigation Support (note that these levels of service are no longer available from 25 July 2005), then your opponent's costs will

usually be met from an insurance policy if the case goes ahead and is unsuccessful. In some family proceedings a costs order may be made against you in the usual way, i.e. at the discretion of the court and not on the basis described above.

5.15 Legal Representation and appeals to a higher court

If you lose a case where you were not funded by the LSC you may still apply to us for funding to appeal to a higher court. The rules in Section 5.5 still apply. If your case was funded by the LSC your funding certificate can be amended to cover an appeal.

Section 6

Guide to assessing financial eligibility for all levels of service

Level of Service	Income Limit	Capital Limit
Legal Representation before the Asylum and Immigration Tribunal; and before the High Court in respect of an application under s. 103A of the Nationality, Immigration and Asylum Act 2002.	Gross income not to exceed £2,350** per month. Disposable income not to exceed £649 per month. Passported if in receipt of income support, income based jobseeker's allowance, guarantee state pension credit or NASS support.	£3,000 (immigration matters) £8,000 (asylum matters) Passported if in receipt of income support, income based jobseeker's allowance, guarantee state pension credit or NASS support.
Legal Help, Help at Court, Family Mediation, Help with Mediation, *General Family Help and *other Legal Representation.	Gross income not to exceed £2,350** per month. Disposable income not to exceed £649 per month. Passported if in receipt of income support, income based jobseeker's allowance or guarantee state pension credit. Clients in receipt of NASS support also passported for immigration and asylum work under Legal Help and Help at Court.	£8,000 Passported if in receipt of income support, income based jobseeker's allowance or guarantee state pension credit. Clients in receipt of NASS support also passported for immigration and asylum work under Legal Help and Help at Court.

* may be subject to contribution from income and/or capital (see Section 5 and Step 10 below).
** a higher gross income limit applies if you have more than 4 dependant children (see table below).

Number of children in family	Gross monthly income not to exceed
0-4	£2,350
5	£2,495
6	£2,640
7	£2,785
8 or more	Add £145 to above figure for each additional child

Summary of Eligibility Limits

The following guide shows how your solicitor or adviser will work out whether you are likely to qualify financially for funding. This guide does not apply to Legal Representation before the Mental Health Review Tribunal (see Section 5.7).

Remember that for some Legal Representation this is only a rough guide and it is for the LSC to assess eligibility (see Section 5.3). Note that also the assessment officer may take into account the assets of others where they have transferred resources to the client, maintained the client in the proceedings or have made resources available to the client.

Step 1: Identify whether the client has a partner whose means should be included in the assessment

Step 2: Identify clients in receipt of income support, income based jobseeker's allowance or guarantee state pension credit

Clients in receipt (either directly or indirectly) of income support, income based jobseeker's allowance or guarantee state pension credit are eligible on income and capital for all levels of service. If the client is not in receipt of income support, income based jobseeker's allowance or guarantee state pension credit move on to Step 3. Other types of benefit, such as Working Tax Credit and Child Tax Credit, do not give automatic entitlement.

Step 3: Work out monthly gross income

Add together the client's monthly gross income (i.e. before tax) and that of his/her partner if appropriate.

Income includes:

- earnings or profits from business;
- maintenance payments;
- pensions;
- welfare benefits (please see below);
- income from savings and investments;
- dividends from shares;
- monies received from friends and relatives;
- student grants and loans.

Income excludes:

the full amount of any of the following welfare benefits: attendance allowance, council tax benefit, housing benefit, social fund payments, disability living allowance, constant attendance allowance, carers allowance, severe disablement allowance, exceptionally severe disablement allowance, any war pensions, independent living fund payments, fostering allowance (to the extent it exceeds the relevant dependant's allowance), back to work bonus under section 26 of the Job Seeker's Act 1995, payments made under the Earnings Top-up Scheme and Payments under the Community Care Direct Payment Scheme.

Gross monthly income £

If over £2,350** the client will not get funding.

Step 4: Work out deductible allowances and expenses

Deduct the following from monthly income:

- Income tax, National Insurance contributions;
- maintenance payments made;
- £45 for client and/or partner in receipt of salary or wage;
- child care expenses incurred because of employment;
- housing costs:
 - rent or mortgage repayments (less any housing benefit), although the amount allowed if the client has no dependants is limited to £545;
 - endowment policy premiums (if paid in connection with a mortgage);
 - actual costs of accommodation if the client is neither a tenant nor owner-occupier.
- fixed amounts for each dependent relative (adult and child) living with the client.

The monthly amounts of allowances for dependants are:

Partner		£141.87
Dependants	Aged 15 or under	£198.06
	Aged 16 or over	£198.06

Note that no other deductions may be made by the Assessment Officer.

Step 5: Work out monthly disposable income

Monthly gross income (see Step 3)

£	minus	
<hr/>		
deductions (see Step 4)	£	
<hr/>		
to give		
<hr/>		
Monthly disposable income	£	
<hr/>		

Step 6: Does the monthly disposable income qualify the client for funding?

For all levels of service you will not get funding if your disposable income exceeds £649 per month. (This limit may be waived in domestic violence cases (Legal Representation).)

If your disposable income is below this limit then you qualify for funding but you may have to pay a contribution from income (see Step 10 below).

Step 7: Work out capital

Add together all the capital of the client (and partner if appropriate).

Capital includes:

- the market value of the client's home in excess of £100,000, after allowing for any outstanding mortgage but only up to £100,000;
- all land and buildings other than the client's home, including interests in timeshares;
- a maximum of £100,000 is allowed in respect of all mortgages on all the client's properties;
- money in the bank, building society, Post Office, premium bonds, National Savings certificates etc.;
- investments, stocks and shares;
- money that can be borrowed against the surrender value of insurance policies;
- money value of valuable items, for example, boat, caravan, antiques, jewellery (but not wedding or engagement rings or usually the client's car);

- money owing to the client;
- money due from an estate or Trust Fund;
- money that can be borrowed against business assets.

Do not include:

- loans or grants from the Social Fund;
- back to work bonus under section 26 of the Job Seeker's Act 1995;
- home contents, for example (unless exceptionally valuable) furniture and household effects;
- personal clothing;
- personal tools and equipment of trade;
- payments under the Community Care Direct Payment scheme;
- payments from the Independent Living Funds;
- savings, valuable items or property the ownership of which is the specific subject of the court case; this exception is limited to £100,000 for certain levels of service: Legal Representation (non-immigration), General Family Help and Support Funding.

Total disposable Capital

£

Step 8: Does the disposable capital qualify the client for funding?

For Legal Representation before the Asylum and Immigration Tribunal; and before the High Court in respect of an application under s. 103A of the Nationality, Immigration and Asylum Act 2002 you will not get funding if your disposable capital exceeds £3,000 (immigration matters only).

For all other levels of service you will not get funding if your disposable capital exceeds

£8,000 unless the Commission considers the probable costs would exceed the contribution payable (see Step 9).

If your disposable capital is below these limits then you may qualify for funding but you must have your income assessed (see Steps 3-5 above). You may also have to pay a contribution from capital (see Step 9 below).

Step 9: Work out the size of the client's likely capital contribution

If your disposable capital is £3,000 or below you will pay no capital contribution for any level of service.

There are no contributions from capital for Legal Help, Help at Court, Legal Representation before the Asylum and Immigration Tribunal; and before the High Court in respect of an application under s. 103A of the Nationality, Immigration and Asylum Act 2002, Family Mediation and Help with Mediation.

For other levels of service if your disposable capital exceeds £3,000 you will have to pay a capital contribution as follows:

Total disposable Capital (see Step 7)

£

Deduct £3,000 to give

Capital contribution £

Pensioners on low incomes are allowed capital disregards (see Section 5.11). This applies to all levels of service.

Step 10: Work out amount of contribution from income

If your disposable income is £279 per month or less you will pay no income contribution for any level of service.

There are no contributions from income for Legal Help, Help at Court, Legal Representation before the Asylum and Immigration Tribunal; and before the High Court in respect of an application under s. 103A of the Nationality, Immigration and Asylum Act 2002, Family Mediation and Help with Mediation.

For other levels of service if your disposable income exceeds £279 per month you will have to pay a monthly contribution from income. Such contributions will be assessed in

accordance with the following bands depending on the level of the assessed income:

So if disposable income is £315 per month, the contribution will be in band A, the excess income is £40 and therefore the monthly contribution will be £10 per month.

If the disposable income was £426 per month, the contribution would be in band B, the excess income would be £15 (£426-£411), and the monthly contribution would therefore be £39 i.e. £34 + £5.

If the disposable income was £565 per month, the contribution would be in band C, the excess income would be £20 (£565-£545), and the monthly contribution would therefore be £88.70 i.e. £78.70 + £10.

<i>Band</i>	<i>Monthly disposable income</i>	<i>Monthly contribution</i>
A	£280 to £411	1/4 of income in excess of £275
B	£412 to £545	£34 + 1/3 of income in excess of £411
C	£546 to £649*	£78.70 + 1/2 of income in excess of £545

* limit may be waived in domestic violence cases (Legal Representation)

Step 11: Work out total initial contribution

<i>Add together</i>	
<i>Monthly Contribution (see Step 10)</i>	<i>£</i>
<i>and Capital Contribution (see Step 9)</i>	<i>£</i>
<i>to give</i>	
<i>Total Initial Contribution</i>	<i>£</i>

Section 7

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To order copies of LSC leaflets
contact the LSC Leafletline:
LSCLeaflets@ecgroup.uk.com
tel: 0845 3000 343
fax: 020 8867 3225

The Legal Services Commission
produces the following leaflets:

***A Practical Guide to Community Legal Service
Funding by the Legal Services Commission***

A Practical Guide to Criminal Defence Services

*Criminal Defence Services at the Police Station
and in Court*

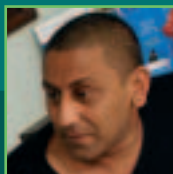
Paying For Your Legal Aid

Complaints

Representations

Special Investigations Unit

Access to Information



legal services

COMMISSION