

Legal Aid handbook ~ 1984



Legal Aid Handbook 1984

PREPARED BY
The Law Society

LONDON: HER MAJESTY'S STATIONERY OFFICE

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All financial limits are those in force on 1st March 1984

The law is stated as at 1st March 1984

Contents

	<i>Page</i>
Table of Eligibility Limits	1
Introduction	5
List of Forms	13
Legal Aid Act 1974	15
The Legal Aid Act 1982	65
The Legal Aid Scheme 1980	79
The Legal Aid (Complaints Tribunal) Rules 1981	97
The Legal Advice and Assistance Regulations (No. 2) 1980	107
The Legal Aid (General) Regulations 1980	125
The Legal Aid (Matrimonial Proceedings) Regulations 1977	183
The Legal Aid (Assessment of Resources) Regulations 1980	185
Notes for Guidance issued by the Council of The Law Society	197
The Legal Aid in Magistrates' Courts (Criminal Proceedings) Scheme 1980	251
The Legal Aid in Criminal Cases (Complaints Tribunal) Rules 1968	261
The Legal Aid in Criminal Proceedings (General) Regulations 1968	271
The Legal Aid in Criminal Proceedings (General) (Amendment No. 2) Regulations 1980	313
The Legal Aid in Criminal Proceedings (Fees and Expenses) Regulations 1968	315
The Legal Aid in Criminal Proceedings (Costs) Regulations 1982	325
The Legal Aid (Duty Solicitor) Scheme 1983	341
The Legal Advice and Representation (Duty Solicitor) (Remuneration) Regulations 1983	355
Practice Directions	359
Gazette Articles on Criminal Legal Aid	367
List of Addresses of Area Legal Aid Offices	373
Index	375

Eligibility Tables for Advice and Assistance and Civil Legal Aid

(1) Advice and Assistance

(a) Disposable Income

If the client is receiving supplementary benefit or family income supplement, or has a weekly disposable income of less than £49 he will be eligible for free legal advice and assistance.

His maximum contribution, if his weekly disposable income is between £49 and £103 will be on the following scale:

Disposable income	Maximum contribution
Between £49 and £55 a week	£5
£55 and £59 a week	£9
£59 and £63 a week	£13
£63 and £67 a week	£17
£67 and £71 a week	£22
£71 and £75 a week	£26
£75 and £79 a week	£30
£79 and £83 a week	£35
£83 and £87 a week	£39
£87 and £91 a week	£43
£91 and £95 a week	£48
£95 and £99 a week	£52
£99 and £103 a week	£57

He will not be eligible for advice and assistance if his weekly disposable income exceeds £103.

(b) Disposable Capital

An allowance is made for dependants at the rate of £200 for the first, £120 for the second and £60 for every other dependant. If the disposable capital, after taking into account allowances, is more than £730 the client will not be eligible.

(2) Civil Legal Aid

(a) Disposable Income

No contribution is payable out of income if the disposable income (*i.e.* estimated gross income over the 12 months following the application less rent, rates, income tax and other necessary allowances) is £2,050 a year or less. Between £2,050 and £4,925 a year a contribution is payable up to a maximum of one quarter of the amount by which the disposable income exceeds £2,050 a year. Over £4,925 a year, legal aid cannot be granted.

Table Illustrating the Gross Income of Persons Entitled to Legal Aid, either Free or on Payment of Contributions, taking into account the Increases in the Dependants Allowances effective from 29 November 1983

Type of Applicant	Income from all Sources before Deduction of Income Tax, National Insurance Contributions and Rent	
	Maximum Permitting Free Legal Aid (DI £2,050)	Minimum which makes Applicant Ineligible for Legal Aid (DI £4,926)
	Gross Income (Including child benefit)	Gross Income
1. Single Person	£4,188 (£80.54 pw)	£8,902 (£171.19 pw)
2. Married Couple	£6,306 (£121.27 pw)	£11,021 (£211.94 pw)
3. Married Couple with 1 child aged 6	£7,259 (£139.60 pw)	£11,974 (£230.27 pw)
4. Married Couple 2 children aged 4 and 8	£8,215 (£157.98 pw)	£12,922 (£248.50 pw)
5. Married Couple 3 children aged 4, 8 and 13	£9,750 (£187.50 pw)	£14,305 (£275.10 pw)
6. Married Couple 4 children aged 4, 8, 13 & 15	£11,287 (£217.06 pw)	£15,687 (£301.67 pw)
7. Married man apart from wife, paying court order of £1,200 per annum	£5,565 (£107.02 pw)	£10,281 (£197.71 pw)
8. Single parent with 2 children aged 4 and 8	£5,465 (£105.10 pw)	£10,179 (£195.75 pw)
9. Single parent 3 children aged 4, 8 and 13	£7,001 (£134.63 pw)	£11,716 (£225.31 pw)

Notes: The examples in the above table are intended to be illustrative only and are based on the following assumptions:

1. the appropriate allowances for income tax and National Insurance contributions will be given;
2. an allowance for rent or its equivalent of £1,040 (£20 a week); NB if housing costs exceed £1,040 per annum then the gross income amounts shown above would be increased by approximately £145 for each £100 of housing cost; and
3. that in examples 2—6 only the husband has earnings.

(b) Disposable Capital

If disposable capital is less than £3,000 no contribution is payable. If more than £3,000 but less than £4,500 a contribution of the excess over £3,000 will be payable. If disposable capital is £4,500 or more legal aid will only be granted in exceptional circumstances where the costs of the case are likely to be very high.

Introduction

Legal Aid Administration

There are effectively four kinds of legal aid—

- (i) Legal advice and assistance (usually known as the green form scheme) and “assistance by way of representation”;
- (ii) Legal aid for civil court proceedings;
- (iii) Criminal legal aid; and
- (iv) Advice and representation provided by a duty solicitor at a magistrates’ court under the statutory duty solicitor scheme.

The Law Society administers advice and assistance, civil legal aid and advice and representation and also deals with the assessment of criminal legal aid bills for magistrates’ court proceedings. A legal aid order for criminal proceedings may be granted either by the appropriate court or, in cases of a refusal of legal aid by a magistrates’ court, in some circumstances by a criminal legal aid committee. A straightforward explanation of these schemes, although written from the clients point of view can be found in the “Legal Aid Guide” (obtainable from The Law Society or a legal aid office see page 371). The Law Society is responsible to the Lord Chancellor for the proper administration of the civil legal aid scheme and the assessment and payment of magistrates’ court criminal bills. The Lord Chancellor is the Minister responsible for both civil and criminal legal aid.

The Law Society’s legal aid administration, which covers England and Wales, is based on 15 legal aid areas. Each area has a legal aid office run by an area secretary. The secretary has substantial powers to grant legal aid but not to refuse; legal aid can only be refused by a committee consisting of practising solicitors and barristers; substantial numbers of solicitors and barristers are in this way involved in the administration of legal aid.

There are three committees in each area. The general committee deals with applications for legal aid and the control of certificates and green forms; the area committee deals with appeals against refusal of legal aid and financial matters, including assessment of bills; and the criminal legal aid committee deals with reviews of the refusal of magistrates’ courts to grant legal aid and some aspects of the conduct of criminal proceedings.

Solicitors should deal with the legal aid office covering the area in which their office is situated or in which their client lives, and all enquiries about legal aid should initially be directed to that office. Addresses and telephone numbers of legal aid offices appear on page 371. Supplies of civil legal aid forms listed on page 11 may be obtained from your legal aid office and criminal forms from the court.

Any solicitor may undertake legal aid work provided he or she has a current practising certificate. It is the view of the Council of The Law Society that all solicitors, whether or not they undertake legal aid work, should consider

whether a client would be likely to benefit from the legal aid facilities, and should advise their client accordingly, (see Note for Guidance No. 1).

Green form scheme (legal advice and assistance)

This scheme is intended to cover preliminary advice and assistance from a solicitor including advice, writing letters, entering into negotiations, obtaining an opinion and the preparation of a tribunal case. It does not cover representation of a client before any court or tribunal (but see assistance by way of representation on page 6).

To qualify for the scheme it is necessary that a question of English law is involved and that the client qualifies under the financial eligibility test which is based on capital as well as income.

The responsibility for deciding whether a client qualifies for the green form scheme rests with the solicitor and, to this end, the financial eligibility test is relatively straightforward so that the solicitor can usually make an immediate decision as to financial eligibility and whether a contribution is payable. Financial eligibility is established by completing the “green form” (LA/REP/6A) with the aid of the key card—the latter is sent annually to all offices undertaking legal aid cases. The key card sets out the current eligibility limits and the contribution scale. The solicitor should complete the green form at the beginning of the first interview so that the client can be advised whether there will be a contribution to pay—a matter of some interest to clients as the contribution can be as much as £57.

The solicitor is responsible for the collection of the contribution, if any. It is not possible to recover the contribution from The Law Society where a client fails to pay it. The solicitor can incur up to £50 costs and disbursements exclusive of V.A.T. (£75 in cases leading to the preparation of an undefended divorce or judicial separation petition) without further authorisation. However, authority is required from the legal aid office to exceed these limits.

An extension can be requested on form LA/REP/6A(Ext.). In cases involving an initial limit of £50 costs, the solicitor should not ask for more than £50 by way of contribution from a client in a case where the total contribution exceeds this amount. Only where the solicitor has obtained an extension of the £50 limit should the balance of the contribution be collected. It is the opinion of The Law Society’s Legal Aid Committee that a solicitor cannot obtain payment from his client for work done in excess of the prescribed limit unless the solicitor has first applied to the legal aid office for an extension which has been refused, and has then given notice of this fact to the client and obtained instructions from him on a private basis for the cost of any further work carried out.

The reverse side of the green form is used for claiming the solicitor’s disbursements and costs. The normal practice is to collect together green forms over a period of time and then submit them in a batch to the legal aid office under the cover of form LA/ACC/8B. The legal aid office will either approve a green form for payment or return it as provisionally assessed. The final decision as to the assessment lies with the area committee.

Further information

The green form scheme is covered by Part 1 of the Legal Aid Act 1974 (see pages 19–44) and Regulations 1–15 and 22–28 of the Legal Advice and Assistance Regulations (No. 2) 1980 (see pages 107–123) and also the Notes

for Guidance on pages 199 – 201. The green form scheme can be found in the index under “Advice and Assistance”.

Assistance by way of representation

Assistance by way of representation was introduced in 1980 to cover domestic proceedings in magistrates’ courts but has been extended to cover proceedings before a Mental Health Review Tribunal and to allow representation of a parent or guardian in certain child care proceedings.

Previously, domestic proceedings were covered by summary jurisdiction (“yellow”) legal aid certificates. Financial eligibility and the contribution are identical to the green form scheme and the solicitor is responsible for making the financial assessment and collecting the contribution, if any. However, an application for a summary jurisdiction certificate should still be made where a client’s means take him outside the green form financial eligibility limit *e.g.*, capital exceeding £730.

The solicitor must obtain approval from the legal aid office before undertaking any work under assistance by way of representation although, of course, preliminary advice can be given under the green form scheme described above. To obtain approval the solicitor completes the green form LA/REP/6A to establish financial eligibility. Provided the client is eligible, the solicitor then completes an application for assistance by way of representation form (LA/REP/6A/1) and sends the latter form only to the legal aid office. If the client is outside the green form eligibility limits the solicitor should consider applying for a summary jurisdiction certificate on the A4 application form in domestic proceedings.

Where the application for assistance by way of representation is approved then the solicitor will receive an approval form.

The decision to refuse an application can only be made by the general committee from which there is no appeal. However a fresh application can be made if the circumstances change.

The claim for payment of costs is made on form LA/REP/8 which is submitted with the green form and any other supporting documents.

Further information: “Assistance by way of Representation” is covered by section 2(A) of the Legal Aid Act 1974 (see page 21) and Regulations 16 – 21 and 23 – 28 of the Legal Advice and Assistance Regulations (No. 2) 1980 (see pages 112 – 116) and the Notes for Guidance (see pages 201 – 204). Also see the index under “Assistance by way of Representation.”

Legal aid for civil court proceedings

Application is made on one of three forms (A1, A2 or A4). The solicitor should always complete the form and not ask the client to do so. An inadequately completed form could lead to a refusal of legal aid. The client should be handed a copy of the “Legal Aid—Applicants Leaflet” on completion of the application form. However, the solicitor should provide an oral explanation as well and not rely solely on the explanation provided in the leaflet.

It will take approximately six weeks before a certificate is issued or a refusal notified; less if the client is on supplementary benefit. The time taken is mainly attributable to the financial assessment, usually based on an interview, which is undertaken by the legal aid assessment offices of the Department of Health

and Social Security. The decision to grant on the merits of the case is made by the legal aid office; however only the general committee can refuse an application. If a case is urgent, form A3 must be completed for an emergency certificate. Clients should be advised to co-operate with the DHSS financial assessment office in emergency cases; failure to do so may lead to the revocation of the emergency certificate and the total cost of all work done falling on the client.

Clients must be carefully advised about the effects of the legal aid statutory charge (see Note for Guidance on page 241). Further information: sections 6–27, Legal Aid Act 1974 (pages 25–44), the Legal Aid (General) Regulations 1980 (see pages 125–181) and Notes for Guidance (see pages 203–218). See also the index under “Legal Aid.”

Criminal legal aid

Advice about criminal matters is available under the green form scheme. A legal aid order can only be granted where a person has been charged; orders are not available for clients wishing to bring a criminal prosecution.

Applications for criminal legal aid are made to the relevant criminal court upon forms supplied by the court (see page 13 for the various forms available).

If legal aid is refused for a case triable either on indictment or either way an applicant has a right to apply to the criminal legal aid committee to review the decision. If that committee considers that the interests of justice demand that the applicant should be legally aided they can themselves make an order. An application for a review of the refusal only lies to a committee once in each case. If the committee refuse to make an order subsequent applications will be dealt with by the court.

Both court and committee when considering an application for a criminal legal aid order are bound to grant legal aid if the interests of justice demand that the applicant should be represented provided he falls within the financial eligibility criteria. The interests of justice are usually defined by reference to the Widgey Criteria as follows:

- (a) the charge is a grave one, in the sense that the accused is in real jeopardy of losing his liberty or livelihood, or suffering serious damage to his reputation; or
- (b) the charges raise a substantial question of law; or
- (c) the accused is unable to follow the proceedings and state his own case, because of his inadequate knowledge of English, mental illness or other mental or physical disability; or
- (d) the nature of the defence involves the tracing and interviewing of witnesses, or expert cross/examination of a witness for the prosecution; or
- (e) legal representation is desirable in the interests of someone other than the accused, as for example, in the case of sexual offences against young children, when it is not desirable that the accused should cross-examine the witness in person.

However, where there is any doubt as to whether or not legal aid should be granted such doubt should be resolved in favour of the applicant.

Defendants who are financially eligible are entitled to a criminal legal aid order to enable them to be represented before magistrates on an application

for bail where bail has already been refused once and may again be refused and the defendant was not represented on his first appearance before the court. A legal aid order for magistrates' court proceedings also covers an application for bail to the Crown Court where bail has been refused after a fully argued application. It is also possible to apply for civil legal aid to make an application for bail to a judge in chambers in the High Court.

As well as the power to review the refusal of legal aid, a criminal legal aid committee may also give solicitors prior authority for expenditure in both Crown Court and magistrates' court proceedings, has the power to amend or revoke a legal aid order where the court is not minded to grant the application and may grant an application for the assignment of counsel to appear in magistrates' court proceedings.

Further information: Part II, Legal Aid Act 1974, Legal Aid Act 1982 various Regulations (see "Contents", page v), the index under "Criminal legal aid" and the reprint of "Gazette" articles at pages 367.

Duty Solicitors

The Legal Aid (Duty Solicitor) Scheme 1983 (see page 341) will be implemented during the current year. Twenty four regional duty solicitor committees have been established. Their first task will be to identify at which courts duty solicitors should be in attendance. This is likely to involve about 230 of the "busier" magistrates' courts. Local duty solicitor committees will then be set up to select duty solicitors and to run schemes at each of these courts. Most existing voluntary duty solicitor schemes should be brought within the statutory scheme by the end of 1984. Duty solicitors will be remunerated for providing "advice and representation" at an hourly rate in connection with such schemes.

Further information can be obtained from The Law Society quoting reference KG.

Informing the public

Solicitors may wish to have a selection of the following leaflets available for clients and also to inform the public about the sort of work they undertake through the Regional Directory and notices.

Leaflets

A series of leaflets is produced about legal aid. The simplest is "Want legal help? Get legal aid," which gives very general information about legal aid; "Legal Aid—Financial Limits" describes the current financial limits for green form and civil legal aid. The "Legal Aid Guide" (which may be too detailed for many clients) contains a fairly comprehensive explanation of legal aid. There is also a "Legal Aid—Applicants Leaflet" which should be handed to all clients who complete an application for civil legal aid.

A leaflet has also been issued for the assistance of solicitors in advising clients about the operation of the statutory charge. This is reproduced in the Notes for Guidance (see page 241).

The Law Society's "Solicitors Regional Directory"

The 'Solicitors Regional Directory' will be published in the spring of 1984 and will replace the Legal Aid Solicitors List which ceases publication. The

Directory will be an annual publication consisting of 28 booklets covering the whole of England and Wales.

It will be distributed, free of charge, to libraries, town halls, social and probation services, Citizens Advice Bureaux and other advice agencies, the police, courts and many other organisations.

The Directory will include detailed information about firms and the categories of work of which individual solicitors have experience. Firms may choose whether or not to appear in the "Solicitors Regional Directory". Any enquiries about inclusion in the Directory should be directed to the publishers, Waterlow Publishers Ltd, Maxwell House, Worship Street, London EC2A 2EN (01 – 377 4600).

£5 Fixed Fee Interview

The "Solicitors Regional Directory" also indicates those firms willing to give the £5 fixed fee interview. The fixed fee interview exists because there is clear evidence that many prospective clients are deterred from going to solicitors' offices through fear of cost. Their knowledge of the availability of legal aid is often very limited and, in any event, the green form scheme provides no certainty that the prospective client will qualify financially or, if they do, that they will not have to pay a substantial contribution (the maximum contribution is currently £57). Not least of all, the prospective client would normally have to visit the solicitor's office before being able to ascertain whether he or she does actually qualify under the green form scheme. The existence of the fixed fee interview overcomes these problems and enables prospective clients to approach solicitors in confidence that the initial interview will not cost more than £5.

The official description of the fixed fee interview given in the Directory is as follows:

"The solicitor will charge not more than £5 inclusive of VAT for an initial interview of up to half an hour. Where the contribution under 'Legal Advice and Assistance' (green form) is nil or less than £5 then the lesser amount will apply. You should make sure that the solicitor (who is acting voluntarily) knows that you are asking for a 'fixed fee interview' either when you make the appointment to see the solicitor or at the beginning of the interview. Although generally prepared to give a 'fixed fee interview' the solicitor may in appropriate circumstances decline to do so. The 'fixed fee interview' is useful for those who are not eligible for legal aid or those who are but have a sizeable contribution to pay and want to know what a preliminary interview will cost."

Notices on offices

The Law Society's publications shop can provide the following items which can be displayed on offices besides the usual name plate:—

Legal aid aluminium plate (this includes the legal aid sign and the words "Legal Aid Scheme" and is available at £4.25).

Legal aid window sticker—which incorporates the logo and the words "legal aid". It measures 190mm × 210mm. It is self-adhesive and is supplied free of charge.

Window notice—this notice can be made up to refer to up to 14 different types of problems undertaken in the office upon which it is displayed. It is available at £5.

“See a Solicitor” leaflets—a wide range of leaflets dealing with different types of problems is available at £3.50 per pack of 100.

Advertising

There are likely to be substantial changes to the existing rules on advertising by solicitors. These changes will be announced in the “Gazette”.

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