

Legal Aid Eligibility Factsheet

Eligibility for Legal Aid

Legal Aid eligibility is determined by the Legal Aid Agency, after application forms have been completed and processed. Legal Aid is based on a person's financial means and also whether it is deemed to be in the interests of justice to grant Legal Aid.

Legal Aid Means Test

The means test assesses if a defendant qualifies for Legal Aid to cover their defence costs. This is set out in the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO). It takes into account their income, family circumstances, for example, number of children and essential living costs, for example, mortgage or rent.

If the defendant receives income-based Job Seekers' Allowance, income support or a guaranteed state pension, they will automatically be entitled "on means" to Legal Aid. They will still need to complete the application form.

If a defendant receives other benefits, they will not automatically be entitled to Legal Aid and will need documentary evidence. If a defendant and / or their partner receive an income other than benefits, the application will be subject to a full means test.

If a defendant receives an income, it will be necessary to provide documentary evidence in support of the application. If they are employed, this will be wage slip(s) for the last three months. If they are self-employed, they are required to provide a copy of the Tax Return and/or Annual Accounts. Bank Statements for each account held will also be required.

If a person is married or co-habiting the means test will include both the defendant and their partner. Documentary evidence will also be required from a partner.

If a defendant fails the means test but believes paying for their legal costs would cause financial hardship, an application can be made for a review on the basis of their additional expenses that have not yet been considered.



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Interests of justice test

Whether a defendant is eligible for Legal Aid is a two-step test. Eligibility also depends on the type of case and which Court will deal with the hearing. In addition to a means test, a defendant has to pass the “interests of justice test”. Legal Aid will only be granted if the Legal Aid Agency considers the case serious enough for a person to require legal representation.

If a defendant is charged with a non-imprisonable offence, the case will not pass the “interest of justice test”. If a defendant is charged with an ‘indictable only’ offence (that can only be heard in the Crown Court) the case will pass this test. There are offences which fall between these two categories and these are decided based on the information provided on the application forms.

Appealing a rejected Legal Aid application

If an application for Legal Aid is refused, a defendant can appeal the decision.

Legal Aid in the Magistrates’ Court

There is no contribution system for Magistrates’ Court Legal Aid – a defendant is either eligible and will receive a full Representation Order or they will not.

Legal Aid in the Crown Court

If a matter proceeds to the Crown Court, Legal Aid is still means tested, with the information detailed above still required. The “interests of justice test” will be automatically passed. If a defendant passes the means test, all of their Legal Aid will be paid or some of it will be; meaning they will still need to make a contribution. How much will be dependent on income and outgoings.

Contributions to Legal Aid

There are two types of contribution a defendant may have to make - either from income and/or capital. This depends on what the means test decides they can afford from their income and capital assets. If assessed to pay a contribution, the defendant will receive a Contribution Order and he/she will have to pay in accordance with this. If the defendant does not think they can afford to pay, they can ask for a review of the amount – additional documentary evidence will be required.

Defendants must advise of any changes to their financial circumstances during the case. If a person is convicted they may be required to pay a contribution to the Prosecution costs of the case.