



Making an Application

In order to obtain criminal Legal Aid (a Representation Order), you must –

- complete the legal aid forms CDS 14 (and often CDS 15 as well)
- have them signed by yourself and your partner (if appropriate)
- enclose the supporting financial documentation required by the forms
- return the forms and documents **as soon as possible**, to Dunn and Baker at 21 – 22 Southernhay East, Exeter, Devon, EX1 1QQ

Required documentary evidence of means

In order for your Legal Aid application to be approved on financial grounds by the court office, it will require certain documentary evidence from you in advance:

- a) If you are in receipt of **Income Support or Income Based Jobseekers' Allowance**, please provide a letter from the DWP to confirm this.
- b) If you are in receipt of **Contribution Based Jobseekers' Allowance or any other benefit**, please provide a letter from the DWP to confirm this, stating the amount paid to you, frequency of payment, start date and the most recent payment date AND complete, sign and date the enclosed form CDS15, returning it to us with
 - i) your last three statements from all bank / building society accounts
 - ii) documentary proof of your rent or mortgage or board payment
 - iii) documentary proof of your council tax
 - iv) documentary proof of any child minder / nursery fees paid by you
- c) If you are **employed**, please provide your last three wage slips or a letter from your employer stating what your gross and net earnings were for that period
 - i) your last three statements from all bank / building society accounts
 - ii) documentary proof of your rent or mortgage or board payment
 - iii) documentary proof of your council tax
 - iv) documentary proof of any child minder / nursery fees paid by you
- d) If you are **self-employed**, please provide business records to show your current income from the business
 - i) your last three statements from all bank / building society accounts
 - ii) documentary proof of your rent or mortgage or board payment
 - iii) documentary proof of your council tax
 - iv) documentary proof of any child minder / nursery fees paid by you

This evidence will have to reach us at least two days before your court appearance. This is to allow time for your Legal Aid application to be processed by the court office.

If your application is not processed in time or is refused, we shall assume that you will look after yourself at court unrepresented for the time being, to avoid accumulating private legal costs.

Work done on your behalf before Legal Aid is granted

Once legal aid has been granted, we can attend court for you and we can look after your case as a free service. Your legal aid application should be considered within two days of the court receiving the fully and accurately completed forms, duly signed, and with all necessary financial documents.

However, until legal aid has been granted, we cannot offer you this free service. This is for two reasons:

- Legal aid may be **refused** because your means are too high, or if the court believes that you do not need help from a lawyer if the case is straightforward
- Legal aid may be **delayed** if you have made an error on your application forms

This gives you two choices:

- a) If we attend the first hearing at Court before legal aid is granted, you may have to pay us privately if your application is unsuccessful. There will be a standard fee of £150 plus VAT that you will need to pay us in advance, before we can attend this first hearing on your behalf.
- b) If we do not attend the first hearing at Court before legal aid is granted, you must still attend court, and you ask for your case to be adjourned until your legal aid application has been processed. However the likelihood is that the court will insist upon progress being made and will at the very least ask you to enter your plea to the charge or charges you face.

We shall both receive notification in due course whether or not your legal aid application has been granted.

Grant of Legal Aid in the Magistrates' Court

If you are granted a Representation Order (Legal Aid) in respect of your criminal case, this means that I will be paid by the CDS (Criminal Defence Service) for all work undertaken on your behalf in connection with your case up to and including the final hearing date in the Magistrates' Court. If necessary, I may also advise you regarding the possibility of an appeal.

Improvement in your financial circumstances

Please be aware that if you have Legal Aid in the Magistrates' Court, as it is means tested, if your financial circumstances improve, you must notify us immediately as we are under an obligation to inform the court of this.

Grant of Legal Aid in cases that could be sent to the Crown Court

If you have already been granted Legal Aid in the Magistrates' Court, where you are facing a charge that can be dealt with either in the Magistrates' Court or in the Crown Court

- a) if your case is sent to the Crown Court for sentence, the Representation Order granted in the Magistrates' Court automatically extends to cover the proceedings in the Crown Court.
- b) if your case is sent to Crown Court for Trial, then your Representation Order will continue to cover you, but you may have to pay a contribution if your means improve during the Crown Court case.

Refusal of Legal Aid in the Magistrates' Court

If your income is greater than the threshold for a Representation Order

- Gross income over **£22,325** p.a.
- Net income after permitted deductions over **£3,398** p.a.

- you will NOT be eligible for free representation in the Magistrates' Court unless

- Your income reduces to below those threshold levels and you can re-apply
- Your case passes a very limited hardship test
 - the case costs are unusually high
 - you have unusually high outgoings e.g. high care costs for a disabled relative

Where no public funding is available to you in the Magistrates' Court, you can:-

- represent yourself in the Magistrates' Court
- pay us privately to represent you in the Magistrates' Court
- (in certain limited circumstances) use the duty solicitor to mitigate on your behalf if you are pleading guilty and you are facing a risk of custody

There is a very limited **Hardship Route** that could result in the grant of Legal Aid to you, which is referred to later in this fact sheet.

Reduction in your financial circumstances

You can always put in another application for Legal Aid if you have a reduction in your financial circumstances or those of your partner. This could happen when:

- The level of income used in the original assessment is no longer available to you.
- Your disposable income has decreased.
- You being in receipt of certain unemployment benefits.
- There has been a change in your partner's circumstances.

Private Representation in the Magistrates' Court

If you pay us privately, our likely Magistrates' Court costs would be

- | | |
|-------------------------------------|----------------------|
| • simple guilty plea and mitigation | £500 - £750 plus VAT |
| • simple not guilty plea and trial | £1,500 plus VAT |
| • complex not guilty plea and trial | £3,000 plus VAT |

If we have to pay fees to third parties (such as experts), these are paid on top.

Please let us know what you wish to do. If you wish to instruct us privately, we would need you to make a payment of £500 on account of our costs.

Contributory Legal Aid in Crown Court cases

All cases start in the Magistrates' Court – even cases that can only be heard in the Crown Court.

You may find Legal Aid is refused to you during the time your case is in the Magistrates' Court due to your means, but Legal Aid will be granted if the case goes to the Crown Court. This is because Legal Aid in the Crown Court is available to everybody who fully completes a Legal Aid application and provides full documentary proof of evidence. However as it is means tested, and there may be a contribution payable both from your income and your capital.

Steps for you to take on being granted contributory legal aid

- If you are content to pay the assessed contribution – please ensure that you start to pay this within 28 days of your case being committed to Crown Court.
- If you feel that a mistake has been made in the calculation, you can ask the Legal Aid department to look at it again.

- c) If you do not want to pay the assessed contribution – you must “cancel” your application for Legal Aid before the first instalment falls due. If this is the case, then you must either represent yourself at Crown Court or you must pay us privately.

There is a very limited **Hardship Route** that could result in the grant of Legal Aid to you, which is referred to later in this fact sheet.

Consequences of failing to pay your assessed contribution

- 1) You do not “lose” your Crown Court legal aid funding because of any default in your contribution payments.
- 2) BUT enforcement proceedings will be taken against you unless you are acquitted and the total payable by you could be greatly increased by this.

Improvement in your financial circumstances

Please be aware that if you have Legal Aid in the Crown Court, as it is means tested, if your financial circumstances improve, you must notify us immediately as we are under an obligation to inform the court of this.

Reduction in your financial circumstances

You can always seek a variation in your contribution if you have a reduction in your financial circumstances or those of your partner. This could happen when:

- a) The level of income used in the original assessment is no longer available to you.
- b) Your disposable income has decreased.
- c) You being in receipt of certain unemployment benefits.
- d) There has been a change in your partner’s circumstances.

Payment of contribution

The income contribution can be paid either by monthly instalments or in one lump sum payment equivalent to 5 months’ instalments.

As far as the capital contribution is concerned, if your capital is over £30,000 or deemed to be over £30,000 due to non-disclosure, if at the end of the case it turns out that your actual legal costs are more than your income contribution, then you will have to make up the difference from your capital.

Further evidence

The Court may provisionally grant you Legal Aid, but state that they need further information from you to further assess your capital and income.

Failure to provide the documents may result in a financial penalty being applied. The penalty contribution is 100% of your disposable income or £900 per month – whichever is higher.

Withdrawal Notice

You do not have to accept an offer of Legal Aid in the Crown Court. If you wish to withdraw your application for a representation order, the request must be made in writing to the Magistrates Court that processed your initial Legal Aid application (Exeter Magistrates Court) and you must also tell us in writing. The Court staff will record the date the representation order was withdrawn. Payments cease to be collected from the point of withdrawal.

Private representation in the Crown Court

If you want us to represent you privately, our charges will be at private client rates. However I must caution you that our private costs are normally likely to far exceed your Crown Court Legal Aid contributions.

In cases where this does not apply, then a fixed fee can be negotiated at the outset of the case, to cover both our own costs and those of your barrister. The amount will depend on the charge, the plea, and the amount of evidence we have to process.

Hardship review

Applicants for Legal Aid who are

- a) refused legal aid in the Magistrates' Court because they have failed the means test
- b) subject to an income contribution in the Crown Court because they have disposable income above the threshold

- can apply to the Legal Services Commission to have their financial eligibility reviewed on the grounds of financial hardship. If you wish, we can send you form CDS16 in order to do this.

Hardship Review – potentially allowable expenditure

Some examples of expenditure that can be considered in a Hardship Application are:

- a. Unsecured loan.
- b. Secured loan.
- c. Car loan.
- d. IVA.
- e. Credit / store card payment.
- f. Debts.
- g. Fines.
- h. Rent arrears.
- i. Bailiff costs.
- j. DWP overpayment.
- k. Student loan.
- l. Mortgage on second property.
- m. University housing costs.
- n. Monthly prescription charges.
- o. Pension payments.
- p. Medical costs.

The costs of private education and / or private healthcare are excluded.

Hardship Review - Evidence

If there is any request for financial information outstanding from the Legal Aid Department, you will have to submit this as well as your hardship evidence.

The hardship review will want proof of expenditure relating to essential living costs:

- a. Arrears of rent/mortgage, utilities and Council Tax that is actually being paid.
- b. Debt or hire purchase repayments where you are able to provide evidence to show that the payments cannot be deferred, reduced or rescheduled. Evidence to support this must be provided for example a copy of a letter from the lender refusing any request to reduce or stop payments. Evidence must also be supplied of the repayment terms of the debt including evidence of what payments have been made in the form of copy bank statements
- c. Any loans secured on your home that pre dates the case in question.
- d. Payments made under the terms of a Court Order or judgment supported by a copy of the order.
- e. Special expenses incurred due to sickness or disability such as special diet, medical items or travel expenses to hospital for treatment. Evidence to support this must be provided such as proof of payment or a copy letter from a GP.
- f. Loan repayments for essential household items such as refrigerators, cookers, washing machines where the loan is secured on the item. Evidence to support this must be provided such as a copy of the loan agreement.

If hardship is based on denied access to income, details need to be provided of any income declared on your original Legal Aid application that had been denied to you, for example where your wages have not been paid. If

you state that you have been denied access to a source of income, you must provide evidence to support this such as a copy of a letter from your employer regarding suspension of pay.

LEGAL AID IN THE MAGISTRATES' COURT - a summary

In the Magistrates' Court, to be eligible for Legal Aid (a "Representation Order"), you need to pass 2 tests

Merits Test This means that there has to be a good reason why you cannot represent yourself and why public funding is justified. This includes:

- Are you at risk of imprisonment?
- Will you lose your livelihood, or your good name, if you are convicted?
- Is there a complex legal issue to be argued?
- Is there a reason why you cannot or should not conduct your own case?
- Do defence witnesses need to be traced on your behalf?
- Do you need expert assistance cross-examining prosecution witnesses?

Means Test This test ensures that your income is sufficiently modest to qualify you for public funding.

- If you are under 18
- If you are on certain state benefits (income support, income based JSA, guarantee state pension credit, income related ESA)
- If you and your partner earn in total less than £12,475 per year after allowance for the number of your dependants
- If you and your partner are left with £3,398 or less per year after certain "allowable deductions" are made from the household income (tax and N.I., housing costs, childcare costs, maintenance payments and an annual living allowance)
- Your partner's income will NOT be added to yours if s/he is a prosecution witness, or the alleged victim, or a co-defendant whose account or position conflicts with yours.
- If your financial circumstances change – you must notify us immediately so that the court can reassess you

LEGAL AID IN THE CROWN COURT - a summary

In the Crown Court there is no Merits Test – everyone in the Crown Court is eligible for Legal Aid

Means Test In the Crown Court, the Means Test determines whether you have to pay a financial contribution towards your own Crown Court costs. The Crown Court assesses both your income AND your capital

- If your financial circumstances change – you must notify us immediately so that the court can reassess you

Nil Contribution You will get "free legal aid" if -

- If you got free legal aid in the Magistrates' Court and your circumstances have not changed.
- If you are under 18
- If you are on certain state benefits (income support, income based JSA, guarantee state pension credit, income related ESA)
- If you and your partner are left with £3,398 or less per year after certain deductions are made from the household income (the "allowable deductions" as stated above) AND you have less than £30,000 in capital / equity
- Your partner's income will NOT be added to yours if s/he is a prosecution witness, or the alleged victim, or a co-defendant whose account or position conflicts with yours.

Income Contribution You will have to pay a contribution from your income if your monthly income after permitted deductions is MORE than £283.17 pcm

- The minimum amount you pay is £254.85 pcm, for 5 monthly instalments
- The maximum amount you pay is 90% of the amount over £283.17 you earn monthly, for 5 monthly instalments

- There is an “offence type cap”, to stop very high earners overpaying their likely defence costs (**Fact Sheet 4.35**)
- Payments start within 28 days of your case being sent to Crown Court
- If you are late making a payment, you will be asked to pay a 6th instalment
- If you delay providing proof of your income, your instalment will be fixed at £900 per month (or 100% of your monthly disposable income – whichever is the higher)
- If you are found Not Guilty, you get your money back with interest
- If you cannot afford to pay due to debt, pension, medical or secondary housing costs, you can ask for a **Hardship Review**

Capital Contribution You will have to pay a contribution from your capital if you have more than £30,000 of capital assets, AND

- You plead guilty or are found guilty
- You have not already covered your defence costs by payment of your income contribution

Enforcement You do not “lose” your legal aid because you default in payment, but enforcement proceedings will be taken against you unless you are acquitted. Penalty interest will be charged at 6% together with enforcement costs. The Collection and Enforcement Agency can

- Apply to Court either to seize any motor vehicle you own or take part of your weekly or monthly earnings
- Take other steps to enforce payments of the debt

Dunn & Baker – Here to help you

Disclaimer: The material contained in this fact sheet is for general guidance only. It is specific to the law of England and Wales, and represents a brief outline of the law current as at the date of the fact sheet. It is not intended to constitute, or to be a substitute for, legal advice specific to your case. Dunn and Baker will be responsible only for advice specifically given to you.