

# A GUIDE TO FAMILY LAW LEGAL AID



Important new rules in relation to legal aid were introduced on 1 April 2013 by the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO). This legal guide provides an overview on when you will be able to access legal aid for family law issues and, if you are a victim of domestic violence, what evidence you will need to get legal aid for issues involving children and relationship breakdown. This guide will focus on family law. Legal aid is also available for other types of issues such as housing, education, debt, mental health, immigration and criminal law. If you require advice on a criminal matter please contact our criminal advice line on 020 7608 1137. For other matters contact the Legal Aid Agency.

## What is Legal Aid?

Legal aid is the payment of public funds or money towards legal advice, mediation and representation for people on a low income or benefits. The **Legal Aid Agency** (LAA) is a Government body in charge of providing legal aid in England and Wales. There are 3 things you need to consider when applying for legal aid:

### 1. What is my case about?

Legal aid is only available for certain types of cases, for example if social services are seeking to remove your child from your care, or if you have been a victim of domestic violence. See page 1 for further details.

### 2. Am I financially eligible for legal aid?

Legal aid is generally only available for those who are on a low income or benefits and can satisfy the financial limits set by the Legal Aid Agency. If you or your partner have savings, properties, income

from employment or other sources of income then you may need to consider whether you are financially eligible for legal aid. This is known as the **Means Test**. See page 4 for further details.

### 3. Will I pass the “Merits Test”?

**Merits** relates to what your case is about and whether it would be reasonable to provide legal aid for your case. See page 5 for further details.

## When is Family law legal aid available?

Legal aid for legal advice and representation is available for the following types of family law cases:

- Applications for non-molestation and occupation orders;
- Applications for restraining orders under the Protection From Harassment Act 1997;
- Applications for forced marriage protection orders;

- Applications for orders in relation to children who have been unlawfully removed to a place within the UK;
- Applications for orders in relation to children who have been abducted or unlawfully removed to a place outside the UK;
- Proceedings brought by the local authority for care or supervision orders.

For further information regarding non-molestation orders, occupation orders, restraining orders and forced marriage protection orders see our **Guide to Domestic Violence Injunctions**. For further information on orders relating to children see our other legal guides available on our website or contact our advice line on 020 7251 6577.

### When is Family law legal aid not always available?

Legal aid for legal advice and representation is no longer *routinely* available in the following cases (unless you have experienced domestic violence and have certain types of evidence, see below):

- Divorce and judicial separation proceedings;
- Financial proceedings on divorce or dissolution of civil partnership;
- Child Arrangement Orders (orders relating to who a child will live with, spend time with, or have contact with);
- Applications in relation to children for prohibited steps orders or specific issue orders (unless the prohibited steps order or specific issue order is required in relation to a child who has been or may be abducted or unlawfully removed);
- Child maintenance and applications under Schedule 1, Children Act 1989.

You may, however, be eligible for legal aid in relation to these types of cases if you have evidence that you were a victim of domestic abuse or (for cases regarding children) evidence that the child is at risk of abuse by the other party.

If you are not a victim of domestic violence you may still be eligible for **Help with Mediation** (see page 6).

### Legal aid if you have experienced domestic violence

LASPO defines domestic violence as “any incident, or pattern of incidents, of controlling, coercive or threatening behaviour, violence or abuse (whether psychological, physical, sexual, financial or emotional) between individuals who are associated with each other”. Individuals who are associated with each other include individuals who are or were married to each other or in a civil partnership; had agreed to marry each other or enter into a civil partnership; have lived together in the same household (but not if one of them was an employee, tenant, lodger or boarder); have or have had an intimate personal relationship with each other which is or was of significant duration; are relatives (such as parents, children, siblings, uncles, aunts, cousins, nieces, nephews); are the parents of or have parental responsibility for the same child.

Legal aid is available in cases where the person applying for legal aid has been, or is at risk of being, a victim of domestic violence from the other party to the family proceedings (e.g. the father of your child has been violent to you and is applying for a child arrangements order) *and* where you can provide one of the following pieces of evidence:

- that your abuser has been convicted of a domestic violence offence against them and that conviction is unspent;
- that your abuser has accepted a caution for a domestic violence offence against them within the past 2 years;
- a bind over order made against your abuser in relation to a domestic violence offence within the last 2 years. A **bind over** is an order that the court can make when it considers that the abuser may offend again in the future. The abuser must agree to behave properly for a period of time;
- that there are ongoing criminal proceedings in respect of a domestic violence offence against your abuser;
- that your abuser is on police bail for a domestic violence offence. This may be the case if your abuser has been arrested for abusing you and

allowed to leave the police station whilst the police carry out further investigations;

- that you have a protective injunction (such as a non-molestation, occupation order, an injunction under the Protection from Harassment Act 1997, a restraining order, a forced marriage protection order, a domestic violence protection order, a domestic violence protection notice) in force or one had been made within the past 2 years;
- that your abuser had given an undertaking in respect of domestic violence and the undertaking is still in force or had been made within the past 2 years and where no cross undertaking has been given;
- that a court or tribunal has made a finding of fact that you have experienced domestic violence in the past 2 years;
- a letter to confirm that you have been referred to a Multi Agency Risk Assessment Conference (MARAC) as a victim of domestic violence and a plan is in place within the past 2 years;
- that you have a report from a doctor, nurse, midwife or licenced psychologist confirming you were examined, in person, in respect of an injury or condition consistent with domestic violence within the past 2 years. The report does not have to be from the health professional that actually examined you, it can be from another health professional that has access to your medical records;
- that you have been assessed by social services as experiencing or at risk of experiencing domestic violence within the past 2 years;
- a letter from a refuge confirming that you stayed there within the past 2 years because you were or are a victim of domestic violence. The 2 years starts from the date you left the refuge;
- a letter from a domestic violence support organisation confirming that, within the last 2 years, you have been refused accommodation at a refuge as there was insufficient accommodation. The letter must confirm that the refuge provides accommodation for victims

of domestic violence and the date when you were refused accommodation.

- a letter to confirm that, within the last two years, a health professional (a doctor, nurse, midwife or licenced psychologist) referred you to a specialist support service for victims of domestic violence. The letter must be from either a health professional or the specialist service you were referred to.

For more guidance on how to obtain this evidence see the Ministry of Justice's guidance at <http://www.justice.gov.uk/downloads/legal-aid/funding-code/evidence-requirements-for-private-family-law-matters-guidance-april-2013.pdf> or contact our advice line on 020 7251 6577.

### Evidence of child at risk

If your case involves a child and that child is at risk of abuse from the other party then you may be eligible for legal aid if you can provide one of the following types of evidence:

- that the other party has an unspent conviction or police caution for a child abuse offence;
- that the other party has received a police caution for a child abuse offence within the 2 year period immediately preceding the date of the application for civil legal services;
- that the other party has been charged with a child abuse offence and criminal proceedings are ongoing;
- that the other party is on police bail for a child abuse offence;
- that there is a protective injunction (such as a non-molestation, occupation order, an injunction under the Protection from Harassment Act 1997, a restraining order, a forced marriage protection order, a domestic violence protection order, a domestic violence protection notice) in force or one had been made within the past 2 years to protect the child from the other party;
- an application for a protective injunction made with an application for a prohibited steps order

against the other party which has not, at the date of the application for civil legal services, been decided by the court.

- that a court or tribunal has, within the past 2 years, made a finding of fact in relation to abuse of a child by the other party;
- a letter from a social services department confirming that, within the past 2 years, the child was assessed as being, or at risk of being, a victim of child abuse by the other party;
- a letter from a social services department confirming that, within the past 2 years, a child protection plan was put in place to protect the child from abuse or a risk of abuse by the other party.

For more guidance on how to obtain this evidence see the Ministry of Justice's guidance at <http://www.justice.gov.uk/downloads/legal-aid/funding-code/evidence-requirements-for-private-family-law-matters-guidance-april-2013.pdf> or contact our advice line on 020 7251 6577.

## Means and financial eligibility

For most types of family law cases the Legal Aid Agency will assess whether or not you are financially eligible for legal aid. This is known as the **means test**. You will need to provide evidence of your **income** (such as wages and benefits) and **capital** (such as savings, properties and shares). If your income or capital is higher than the amount specified by the Legal Aid Agency then you will not be eligible for legal aid. If your income and capital is below the specified amount then you may have to pay a financial contribution towards your legal aid.

When assessing your means the Legal Aid Agency will take into account both your finances and the finances of your husband, wife, civil partner or partner if they live with you (unless your case is against your husband, wife, civil partner or partner).

If you are paying a financial contribution towards your legal aid either from your income or your capital then the payments should be made to the Legal Aid Agency. Your solicitor should provide

you with regular updates (at least once every six months) on the costs of your case.

To work out if you meet the criteria you can use the eligibility calculator on the Ministry of Justice's website <http://civil-eligibility-calculator.justice.gov.uk/>

## Exceptions to the means test

- **Care and Supervision proceedings** If social services have made an application to remove your child from your care, or provided you with notice that they may remove your child from your care, you will automatically be eligible for legal aid regardless of your income and capital.
- **Child Abduction** If your child has been abducted into England and Wales then you will automatically be eligible for legal aid to cover the return of or contact with the child regardless of your income and capital.
- **Special provisions for domestic violence injunctions** If your finances are above the limits set by the Legal Aid Agency then you may still be able to access legal aid if you are applying for an injunction to protect yourself from harm (for example, if you are applying for a non-molestation order against your abusive ex-partner). You will, however, have to pay a financial contribution to your legal aid. In some cases the contribution can be quite high. In these circumstances, your legal aid will cover your application for the injunction only, and not other issues such as divorce or child arrangements.

## Merits

The Legal Aid Agency will look at the strengths and weaknesses of your case and consider:

- The chances of you succeeding in your case. If your chances of success are low then it is unlikely that you will be granted legal aid.
- Whether the likely legal costs for your case are proportionate or reasonable compared to the benefit you may gain from succeeding in your case.
- If the case involves money or property, whether

you are likely to win more than the money spent on your case (for example, if you are claiming £2,000 from the other party and your legal costs are likely to be £3,000 then the merits of your case are low).

- Whether a reasonable person who could afford to pay their own legal fees would use their own money to pay for the case. For example, the Legal Aid Agency generally considers it unlikely that a reasonable person would pay for solicitors and court fees in order to take their child for a short holiday abroad.

## Types of legal aid

The Legal Aid Agency will pay your solicitor for the work on your case based on specific rates or fixed fees depending on the type of case. The amount of money a solicitor will receive from the legal aid agency is therefore limited as set out below. This means the amount and type of legal work that a solicitor can do on your case will depend on what type of legal aid you qualify for. There are different types of legal aid funding such as:

- **Legal Help** this enables the solicitor to advise you and provide you with assistance (such as negotiating with the other party). It does not include representation at court.
- **Family Mediation** this level of legal aid is available for people who believe they may be able to resolve their issues with their former partner without going to court. Family mediation is not appropriate if you have experienced domestic violence and the dispute is between you and the abuser. For more information see **Guide to Alternatives to the Family Court**
- **Legal Representation** this will enable your solicitor to prepare your case and represent you at court (or arrange for a barrister to represent you at court).

Your solicitor will need to apply to the Legal Aid Agency for funding. If funding is granted your solicitor will receive a funding certificate. The **legal aid certificate** will set out the amount of money that can be spent on your case and what type of

work will be covered by legal aid for your case. Your solicitor should explain what type of legal aid you are receiving by letter or you should ask them to explain this to you.

## The Statutory Charge

The statutory charge applies to cases involving finances or assets such as financial applications further to divorce (see **A Guide to Divorce** and **A Guide to Financial Relief after Marriage Breakdown**). The statutory charge will apply in the following circumstances:

- If you gain any money, property, or assets from the other party. For example, if your husband is ordered to provide you with a sum of money, or if a property which was in your joint names is transferred to your sole name.
- If you keep any money, property, or assets from the other party as a result of the proceedings. For example, if your husband makes a claim for a property in your sole name to be transferred to him and the judge decides that you should continue to own the property then you will have kept the property and the statutory charge applies.

When your case comes to an end if you have gained or kept any money or property then you will need to pay back some or all of your legal costs to the Legal Aid Agency. The costs the Legal Aid Agency paid towards your legal fees will be treated as a loan until it is repaid.

If it is property that you have gained or kept then you can delay repayment if you “register a charge” on the property. This means that the Legal Aid Agency will secure its loan against the value of your home (similar to a mortgage). The charge will be “registered” (or recorded) at the Land Registry. You will be required to repay the loan to the Legal Aid Agency when you sell the home.

If it is money that you have gained or kept then you will be asked to repay your legal costs as soon as possible after the case ends. The Legal Aid Agency will only accept a delay in repayment

if you wish to buy a home with the money you are rewarded. In such cases the Legal Aid Agency will “register a charge” on your home (see above).

At the end of the case your solicitor should send a copy of the bill to you before sending it to the Legal Aid Agency. You have the right to comment on the costs and potentially challenge the bill if you think it is too high. The bill will then be sent to the Legal Aid Agency to be assessed before the solicitor is paid.

For further information on the statutory charge contact the Legal Aid Agency (see Useful Contacts) or contact our advice line on 020 7251 6577.

### Help with Mediation

If you are financially eligible for legal aid, and if mediation is suitable for your case, then you may be entitled to legal aid from a solicitor to assist you with mediation and to cover the costs of mediation. Mediation is a voluntary process where you and your former partner have discussions (which are usually face-to-face but you can ask to be in a separate room from your husband/ex-partner) with the help of a trained mediator and try to reach your own agreements. For more information see our **Guide to Alternatives to the Family court**.

### Exceptional Funding

If you are not eligible for legal aid but your case is exceptional then you can apply for exceptional funding. Exceptional funding will only be granted where failure to do so would be a breach of

human rights or international duties. It will only be available in extremely rare circumstances, for example if the case is particularly complex.

### Failure to provide information to the Legal Aid Agency

It is important that you provide information or documents requested by the Legal Aid Agency within any set timescales. It is also important that you inform the Legal Aid Agency if there are any changes to your financial situation.

If you fail to do these things then the Legal Aid Agency may revoke (which means cancel) your legal aid funding. If your legal aid is cancelled then you may be required to pay back some or all of your legal aid costs.

### What if I cannot get legal aid?

If legal aid is not available to you then you can either pay for legal advice yourself or seek alternative sources of advice or information. Contact our advice line on 020 7251 6577 or see Useful Contacts below for further information.

**The legal aid regulations are complex and subject to change. We have provided a very basic overview of the eligibility criteria. Please note that the regulations set out in this briefing are as they stood at the date of publication. We strongly advise you to seek legal advice by either telephoning our legal advice line or a solicitor.**

**Rights of Women cannot accept responsibility for any reliance placed on the legal information contained in this briefing. This briefing is designed to give general information only.**

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For free, confidential, legal advice on family law including domestic violence, divorce and relationship breakdown and issues relating to children:

Women living and working in London call **020 7608 1137** or **020 7490 2562 (textphone)**. The advice line is open **Mondays 11am–1pm, Tuesdays and Wednesdays 2–4pm**

All women call **020 7251 6577**. The advice line is open **Tuesdays – Thursdays 7–9pm, and Fridays between 12 and 2pm**.

For free, confidential, legal advice on immigration and asylum law or criminal and sexual violence visit **[www.rightsofwomen.org.uk](http://www.rightsofwomen.org.uk)** for our advice line details.

## Useful contacts

### Legal Aid

Civil Legal Advice Line	<a href="http://www.gov.uk/civil-legal-advice">www.gov.uk/civil-legal-advice</a>	0845 345 4345
Legal Aid Agency Customer Services (information on legal aid)	<a href="http://www.gov.uk/legal-aid">www.gov.uk/legal-aid</a>	0300 200 2020

### Finding a solicitor

The Law Society	<a href="http://www.lawsociety.org.uk/find-a-solicitor/">www.lawsociety.org.uk/find-a-solicitor/</a>	
Ministry of Justice	<a href="http://find-legal-advice.justice.gov.uk/">http://find-legal-advice.justice.gov.uk/</a>	
Resolution	<a href="http://www.resolution.org.uk">www.resolution.org.uk</a>	01689 820 272

### Barrister Public Access

Bar Council	<a href="http://www.barcouncil.org.uk/instructing-a-barrister/public-access/">www.barcouncil.org.uk/instructing-a-barrister/public-access/</a>	020 7611 1472
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### Free legal advice

Citizens Advice Bureau	<a href="http://www.citizensadvice.org.uk/index/getadvice.htm">www.citizensadvice.org.uk/index/getadvice.htm</a>	
Rights of Women (see above for details)	<a href="http://www.rightsofwomen.org.uk">www.rightsofwomen.org.uk</a>	
Bar Pro Bono Unit	<a href="http://www.barprobono.org.uk">www.barprobono.org.uk</a>	
Law Centres Network	<a href="http://www.lawcentres.org.uk">www.lawcentres.org.uk</a>	020 7749 9120

### Assistance for Litigants in Person

Personal Support Unit (PSU)	<a href="http://www.thepsu.org">www.thepsu.org</a>	020 7947 7701
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### Domestic violence help

National Domestic Violence Helpline (domestic violence support)	<a href="http://www.nationaldomesticviolencehelpline.org.uk">www.nationaldomesticviolencehelpline.org.uk</a>	0808 2000 247
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### Court forms and locations

[www.justice.gov.uk/about/hmcts](http://www.justice.gov.uk/about/hmcts)

**Rights of Women, 52 – 54 Featherstone Street, London EC1Y 8RT**

**Office: 020 7251 6575 Email: [info@row.org.uk](mailto:info@row.org.uk)**

**Website: [www.rightsofwomen.org.uk](http://www.rightsofwomen.org.uk)**

**Charity number: 1147913**



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