

2 Public funding of legal services

Until recent years, public funding of legal services in both civil and criminal matters was the responsibility of the Legal Aid Board, which administered the legal aid system. The Access to Justice Act 1999 and its associated regulations and orders brought about major changes to the legal aid system. Indeed, these changes have been described as the most far-reaching since the system of public funding was set up just over 50 years ago.

The 1999 Act established the Legal Services Commission (LSC). The Legal Services Commission is responsible for the Community Legal Service (CLS) which will fund access to legal services in civil matters, and for the Criminal Defence Service (CDS), the counterpart of the CLS in criminal matters.



Now please read *Slapper and Kelly*, paras 14.1 and 14.2, for an introduction to this area.

2.1 Funding in civil matters

Through the CLS, which has a fund allocated by the Lord Chancellor, the LSC funds seven levels of service in civil matters. The levels of service are prescribed by the CLS Funding Code. Some of these are aimed specifically at advice in family proceedings and special provision is made for proceedings involving mental health and for immigration and asylum cases. We will concentrate primarily on three levels of service available more generally in civil matters:

- Legal Help
- Help at Court, and
- Legal Representation.

You should be aware that some areas of legal services are generally excluded altogether from CLS funding (e.g. defamation actions, company law and partnership matters, most conveyancing services and the vast majority of personal injury cases, though not clinical negligence cases).

Citizens Advice has a very helpful online Adviceguide covering help with legal costs. The next activity asks you to access the Adviceguide and obtain some basic information.

ACTIVITY 70

Legal help (allow 30 minutes)



Please open the Adviceguide; its URL is currently— www.adviceguide.org.uk/index/your_rights/legal_system/help_with_legal_costs

Please read it with the following questions in mind.

1 What do

- (a) Legal Help
- (b) Help at Court, and
- (c) Legal Representation

cover?

2 In outline, are there eligibility criteria which Freda (or anyone else seeking assistance with legal costs) would have to meet?

3 What costs may the client have to pay?

COMMENT**Legal Help****1) What does it cover?**

Legal Help essentially provides initial advice and assistance with a legal problem from a solicitor. It may include the solicitor giving general advice about the problem, writing letters, negotiating, obtaining a barrister's opinion and assisting with the preparation of a written case if the client (Freda) is due to appear before a tribunal. Legal Help can only be provided by solicitors' firms which have a contract with the LSC.

If Freda needs to go to court in civil proceedings, the solicitor may be able to provide her with Help at Court if appropriate, or may advise Freda to apply for Legal Representation.

2) Eligibility?

Briefly, to be eligible, Freda's income and capital must be within certain financial limits. The detail of the financial limits is outside the scope of this Manual, but you can find some guidance from the Adviceguide. The solicitor must also agree there is 'sufficient benefit' in continuing with the case; i.e. that the case has a chance of success and that there is a clear cost benefit to the clients.

3) What costs may the client have to pay?

Normally, the LSC is responsible for the solicitor's bill. However, what if, as a result of the solicitor's advice, Freda recovers or preserves money or property (e.g. she is able to get a debt paid)? In some circumstances, the solicitor must use this to pay her bill. This is known as the 'statutory charge'. With Legal Help, the statutory charge only arises if the help provided relates to certain types of matter (i.e. family, clinical negligence and, insofar as they fall within CLS funding at all, personal injury matters).

Help at Court**1) What does it cover?**

Help at Court enables a solicitor to speak on a client's behalf (i.e. act as advocate) at a particular court hearing, without formally acting for the client in the whole proceedings. An example of where Help at Court might be appropriate is where a client is in a dispute with their mortgage lender about mortgage arrears and is contesting a claim for repossession. As with Legal Help, only solicitors' firms which have a contract with the LSC can provide Help at Court.

2) Eligibility?

The financial eligibility criteria are the same as for Legal Help, as well as similar benefit criteria.

3) What costs may the client have to pay?

The same rules apply as for Legal Help.

Legal Representation**1) What does it cover?**

Assume that Freda has already had Legal Help in relation to a legal problem, but that the solicitor has not been able to resolve the problem. The solicitor may advise Freda that the case should be taken to court. The main form of Legal Representation is Full Representation and this will cover all work needed to take legal proceedings to trial and beyond, including representation by the solicitor or (if necessary) by a barrister at the trial. Only solicitors' firms which have a contract with the LSC may apply for Legal Representation on behalf of clients.

2) Eligibility?

The client must first qualify financially. The criteria are the same as for Legal Help. However, Freda may have to pay a contribution from income and/or from capital towards the cost of Legal Representation. The maximum contribution will be assessed in advance.

Freda must also study the merits criteria for funding; they also take account of the prospects of success of the case, but the detail is outside the scope of this Manual.

3) What costs does the client pay if he or she wins?**i) If he or she wins:**

The client's solicitor (and, if the client has one, barrister) is entitled to his or her reasonable costs for dealing with the case. If Freda wins, the amount she has to pay will depend on whether:

- the losing opponent is ordered to pay Freda's costs and actually pays them, or
- Freda is awarded any money by the court or under an agreement with the opponent to settle the case, or recovers or preserves any property as a result of the proceedings.

If the opponent does not pay Freda's costs in full, the LSC regional office must deduct from any money ordered by the court or agreed by the opponent to be paid to Freda (and actually paid) as much as is needed to cover the costs. This deduction is known as the 'statutory charge'.

ii) If he or she loses?

If Freda loses the case, the most she will normally have to pay will be the contributions assessed in advance towards the solicitor's or barrister's costs. Normally, the court will not order the client to pay the successful opponent's costs, although it can do so in limited circumstances. Where this happens, the amount the client has to pay will be decided by the court and will depend upon the client's means and their conduct in connection with the dispute. The court will also consider the opponent's means and conduct.



For more detail, please read *Slapper and Kelly*, paras 14.3.1 to 14.3.3 and paras 14.5.3 to 14.5.6.

2.2 Funding in criminal matters

Assume now that the client, Freda, is seeking public funding in a criminal matter. The Criminal Defence Service (CDS) (part of the LSC) administers three levels of service in criminal matters:

- Advice and Assistance.
- Advocacy Assistance.
- Representation.

2.2.1 Advice and assistance**a) What does it cover?**

Advice and Assistance is similar to Legal Help in civil matters. It provides initial advice and assistance to Freda by the solicitor, but does not cover representation in court. It can only be provided by a 'contracted solicitors' office' (i.e. one which has a contract with the CDS to undertake criminal work). Freda will make an appointment to see the solicitor and the solicitor will complete the relevant CDS form on her behalf. The scheme only covers work before charge. For example, if Freda had been arrested for an offence and then released by the police on bail without being charged and is due to return to the police station at a later date, she could obtain Advice and Assistance. The scheme does not cover any work done for