

HIGGINS MILLER SOLICITORS

FAMILY LEGAL AID

POST 1ST APRIL 2013

With effect from the 1st April 2013 Legal Aid for family cases will change significantly.

Whereas previously most areas of Family Law were eligible for Legal Aid funding the presumption has now changed. The presumption is that nothing is eligible for Legal Aid unless it comes within the list of exceptions.

Set out below are the various areas of Family Law work that are eligible for Legal Aid Funding.

Public Law Children

This is the one area where nothing has changed.

1. Application by the Local Authority for Care or Supervision Order

As pre 1st April any parent or person with Parental Responsibility is automatically eligible for Legal Aid funding to be represented in these proceedings regardless of their financial circumstances.

Any person who is made a party to such proceedings who is not a parent or person with Parental Responsibility can apply to the Legal Aid Agency for Legal Aid funding to be represented in these proceedings. As previously the application will be considered on its merits and their financial circumstances.

2. Application for Orders in respect of a child in care, for example discharge of Care Order or contact to child in care.

As previously Legal Aid for any of these applications is available. The application will be considered on its merits and on financial eligibility.

3. Pre-Proceedings Advice

Any parent or person with Parental Responsibility who has received correspondence from the Local Authority inviting them to a meeting to discuss concerns that they have which give rise to an intention to issue Care Proceedings (the PLO Process) pursuant to Section 31 of the Children Act is eligible for Legal Aid under the Legal Help Scheme regardless of their financial circumstances.

4. Advice in relation to Social Services involvement with a child

Any person who seeks legal advice in relation to Social Services involvement in respect of their children is potentially eligible for Legal Aid under the Legal Help Scheme provided the merits of their case justify it and they are financially eligible.

Private Law Family Proceedings – Divorce, Injunction, Children and Finances

1. Injunction Proceedings

Provided that the merits of their case are such that Legal Aid is justified and provided they meet the financial eligibility criteria Legal Aid is available in respect of Injunction Applications both under the Legal Help Scheme for initial advice and under a Legal Aid Certificate in order to deal with applications to the Court.

2. Divorce Proceedings, Private Law Children (Residence, Contact, Specific Issue, Prohibited Steps, Parental Responsibility) or financial issues arising out of separation or divorce.

These areas of work are not eligible for any level of Legal Aid unless they fall within any of the categories below. If the case falls within any of the categories below the circumstances of the case must merit the granting of Legal Aid and the client must be financially eligible for Legal Aid.

A) The Applicant seeks Legal Aid in relation to a matter arising out of a family relationship between the Applicant and another where:

- i) There has been, or is a risk of domestic violence between the Applicant and the other and**
- ii) The Applicant was or is at risk of being the victim of that domestic violence.**

This has to be proven by one of the following:

- 1. Relevant unspent conviction for a domestic violence offence.
- 2. Relevant Police Caution for a domestic violence offence given within a 24 month period immediately preceding the date of the application for Legal Aid.
- 3. Evidence of relevant criminal proceedings for a domestic violence offence which have not concluded.
- 4. Relevant protective injunction which is in force or which was granted within the 24 month period immediate preceding the date of the application.

5. Undertaking given in England, Wales, Scotland or Northern Ireland provided there was no Cross Undertaking.
6. Evidence that the opponent is on relevant police bail for a domestic violence offence.
7. Letter from the Chair of a Multi-Agency Risk Assessment Conference (MARAC) confirming that the Applicant was referred as a victim of domestic violence and that the conference has, within the 24 month period immediately preceding the date of the application for legal aid put in place a plan to protect the applicant from a risk of harm from the opponent.
8. Copy of a Finding of Fact made in proceedings in the United Kingdom within the 24 month period immediately preceding the date of the application for legal aid that there has been domestic violence by the opponent giving rise to risk of harm to the applicant.
9. Letter or report from a Health Professional (defined as a Doctor, Nurse, Midwife or psychologist) that they have examined the client within the 24 month period immediately preceding the date of the application for legal aid and they had injuries or a condition consistent with those of a victim of domestic violence.
10. Letter from a Social Services Department confirming that within the 24 month period immediately preceding the date the Applicant was assessed as being, or at risk of being, a victim of domestic violence by the Opponent or a copy of the Assessment.
11. Admission to a Domestic Violence Support Organisation for a period of at least 24 hours within the 24 month period immediately preceding the date of the application.
12. Refusal of entry to a refuge within the 24 month period immediately preceding the date of the application for legal aid on account of there being insufficient space
13. Within the 24 month period prior to the application for legal aid the applicant was referred by a health professional to a domestic violence support service.
14. A relevant Domestic Violence Protection Notice or a relevant Domestic Violence Protection Order has been granted against the opponent within the 24 months prior to the application for legal aid.

15. A relevant court order binding over the opponent in respect of a domestic violence offence granted in the 24 months prior to the application for legal aid.

Please note that in respect of the above:

- a) Legal Aid is only available to the victim not the perpetrator.
- b) The evidence has to be produced before signing Legal Aid.
- c) Where a client moves from one level of Legal Aid to another, for example from Legal Help (which covers initial advice) to a Legal Aid Certificate (which covers proceedings) evidence will again be required and must therefore be "in date".
- d) Legal Aid is not available to obtain this evidence or meet the costs of obtaining it (this includes any fee that is charged by an organisation to provide the evidence).

B) The Applicant seeks Legal Aid in relation to the following Orders and procedures where the child who is or would be the subject of the Order is at risk of abuse from another individual (not the Applicant).

- i) **Orders under s.4(2A) of the Children Act 1989 (removal of fathers Parental Responsibility)**
- ii) **Orders under s.6(7) of the Children Act 1989 (termination of appointment of a guardian)**
- iii) **Orders under s.8(1) of the Children Act 1989 (Residence, Contact, Prohibited Steps, Specific Issue)**
- iv) **Special Guardianship Orders under part 2 of the Children Act 1989**
- v) **Orders under s.33 of the Family Law Act 1986 (disclosure of a child's whereabouts)**
- vi) **Orders under s.34 of the Family Law Act 1986 (return of child)**

Abuse of a child includes: violence, neglect, maltreatment and exploitation of a person who is under the age of 18. Again there are specific requirements to satisfy this criteria and documentation must be produced that proves one of the following:

1. A relevant unspent conviction for a child abuse offence.

2. A relevant Police Caution for a child abuse offence within the 24 month period immediately preceding the date of the application.
3. Evidence of relevant criminal proceedings for a child abuse offence which have not concluded.
4. A relevant protective injunction which is in force or which was granted within the 24 month period immediately preceding the date of the application.
5. A copy of a finding of fact made in proceedings in the United Kingdom within the 24 month period immediately preceding the date of the application of abuse of a child by an individual other than the Applicant for Legal Aid.
6. Evidence that the opponent is police bail for a child abuse offence
7. A letter from a Social Services Department confirming within the 24 month period immediately preceding the date of the application the child was assessed as being, or at risk of being, a victim of abuse by the opponent (not the Applicant for Legal Aid).
8. A letter from a Social Services Department confirming that within the 24 month period immediately preceding the date of the application a Child Protection Plan was put in place to protect the child from abuse or risk of abuse by the opponent or a copy of the plan.
9. An Application for an Order for a Protective Injunction made with an Application for a Prohibited Steps Order under Section 8 of the Children Act 1989 which has not at the date of the Application for Legal Aid been decided by the Court.

Please note that in respect of the above:

- a) Legal Aid is only available to the victim not the perpetrator.
- b) The evidence has to be produced before signing Legal Aid.
- c) Where a client moves from one level of Legal Aid to another, for example from Legal Help (which covers initial advice) to a Legal Aid Certificate (which covers proceedings) evidence will again be required and must therefore be "in date".
- d) Legal Aid is not available to obtain this evidence or meet the costs of obtaining it (this includes any fee that is charged by an organisation to provide the evidence).

- e) The child referred to in paragraphs i, ii, iii, or v can be another child and not the subject of the proposed application.

3. Unlawful removal of a child

- i) Securing an Order to prevent the unlawful removal of a child from the UK or
- ii) To secure the return of a child unlawfully removed from or within the UK.

You will note the use of the word “unlawful” in the definition. This does not necessarily mean that Legal Aid will be automatically available where a child is not returned to the resident parent after contact. Under this criteria Legal Aid is only available for preventing the removal or securing the return of the child and does not grant funding for other aspects of the case, for example if there is then a dispute about residence or contact.

4. International Child Abduction

Funding for this through Legal Aid remains available.

5. Help with Mediation

Where a client is participating in mediation and seek legal advice in support of that mediation Legal Aid is available provided the client is financially eligible for it. Legal Aid is also available (subject to financial eligibility) in respect of the financial issues arising out of a divorce where the parties have reached an agreement in mediation in order to embody that agreement into a Consent Order. Legal Aid is only available to the solicitor who prepares the Consent Order not the solicitor who reviews it.

6. Exceptional Cases

Legal Aid may be applied for funding in those cases which would otherwise be excluded from Legal Aid if the case falls within “exceptional case provisions”. It is up to the Legal Aid Agency to determine what is or is not an exceptional case. The test is:

- A) That it is necessary to make the services available to the individual because failure to do so would be a breach of:
 - i) The individuals convention rights (within the meaning of the Human Rights Act 1998) or
 - ii) Any rights of the individual to the provision of legal services that are enforceable EU Rights or

- B) That it is appropriate to do so, in the particular circumstances of the case, having regard to any risk that failure to do so would be a breach. At this stage there is no definition of what is or is not an exceptional case. The guidance that has been issued suggests that the Legal Aid Agency intend to interpret an exceptional case in a very narrow way.

If an application for an exceptional case funding is successful Legal Aid will be available to cover the costs of that application. If the application is unsuccessful Legal Aid will not reimburse the costs associated with the application.

Financial Eligibility

There have been some changes to financial eligibility for Legal Aid although large aspects of the eligibility rules remain unchanged. The three areas of significant change are:

1. Clients who are in receipt of Income Based Job Seekers Allowance, Income Based Employment and Support Allowance, Income Support or Pension Credit Guarantee were previously automatically eligible for Legal Aid regardless of any capital that they had. Now any person who is in receipt of one of these Benefits will have to have their capital assessed to see if they come within the eligibility criteria. Capital includes equity in a home, subject to exceptions and disregards.
2. Some Applicants for Legal Aid have been granted Legal Aid and had to pay a monthly contribution towards the cost of it. The levels of those contributions will increase.
3. Any capital is the subject matter of the dispute limits have been put on the total amount of capital that will be disregarded before determining whether or not somebody is eligible for Legal Aid.

If you would like further information then please contact us:

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