

TRANSFORMING LEGAL AID – NEXT STEPS
Changes for implementation in January 2014

Set out below is a summary of the further legal aid changes coming into effect in January 2014.

The following changes are planned for implementation on 27 January 2014.

Civil

Borderline Merits - Removing legal aid for civil cases with borderline prospects of success

From 27 January 2014, it will no longer be possible to obtain funding for full representation for cases that have borderline prospects of success. This includes applications for Exceptional Case Funding.

Cases will generally need to have prospects that are:

- very good
- good; or
- moderate

However, cases where prospects are unclear may be eligible in certain circumstances.

Transitional arrangements

The change will apply to all cases where the application date is on or after 27 January 2014. It will also apply where the case subsequently moves between varieties of work (i.e. from Controlled Work to Licensed Work).

The change will not apply to:

- controlled Work applications signed and dated before 27 January 2014;
- paper applications for Licensed Work or an exceptional funding determination signed and dated before 27 January 2014 and received by the LAA by 5:00pm on 3 February 2014;
- electronic applications for Licensed Work or an exceptional case determination successfully submitted on CCMS by 12 midnight on 26 January 2014;
- Emergency Representation applications where:
 - the provider has made a determination to grant funding under their delegated functions before 27 January 2014 and the LAA has been notified within 5 working days;

- the application is emailed or faxed to, and received by, the LAA before 27 January 2014; or
- The application is submitted electronically on CCMS by 12 midnight on 26 January 2014)
- where an ongoing case is commenced prior to 27 January 2014, and it moves between different forms of service within the same variety of work (e.g. application for Controlled Legal Representation following Legal Help); and
- where the client has already received legal services that are Licensed Work as a result of an application made before 27 January 2014 and, following a further application made on or after 27 January 2014, the Director has amended the original certificate to include the further set of proceedings.

LAA Forms

A number of forms will be amended to reflect the removal of funding for cases with borderline prospects of success. However, because these forms may need further amendments to reflect other proposed changes (notably the residence test) the LAA will be deferring the required amendments until a later date.

Until then:

- the **CIV APP1**, **CIV APP3**, and **CIV APP 6** will continue to refer to borderline cases. Where an application is submitted stating a case is deemed to be borderline, the form asks for a statement to be provided explaining why legal aid should be granted. It will not be possible to rely on the previous reasons for obtaining legal aid (e.g. “overwhelming importance to the client”) where prospects are borderline;
- the **CIV APP 3** will continue to have one box for “uncertain” and “borderline” prospects of success. It should be indicated whether the prospects are borderline or uncertain in the “statement of case” section on page 10 of the form. If the prospects are uncertain and no satisfactory explanation is provided, the application will be refused.

Crime

Crown Court Eligibility Changes

From 27 January 2014, the Crown Court Means Test will be amended to introduce a financial eligibility threshold which will apply to all new applications for legal aid in the Crown Court. Those defendants who are assessed to be over the threshold will be ineligible for legal aid.

Financial Eligibility Threshold:

- any defendant with an annual disposable household income of £37,500 or more would be ineligible for legal aid in the Crown Court, subject to review on hardship grounds.

Review

There are two options for review:

- **Mistake in calculation or administrative error**
 - Applicants may seek a review if it is believed that a mistake has been made in the calculation of annual household disposable income or there has been another error in processing the application;
 - The applicant should inform the court immediately, within 21 days of the date of refusal notice sent by the court (unless otherwise agreed with the LAA).
- **Eligibility Review**
 - If the applicant is above the threshold but can demonstrate that they cannot afford to pay privately for their particular case;
 - Applicant will need to provide documentary evidence that they cannot afford to pay privately;
 - Any additional allowable expenditure and the estimated defence costs will be subtracted from the amount assessed under the means test to produce the applicant's revised annual disposable income. If this is below the threshold they will be eligible but may be required to make contributions from their income, capital or both;
 - The applicant must apply to the LAA via HMCTS on a **CRM16** (Application for review on the grounds of hardship) within 21 days of the date of refusal notice sent by the court (unless otherwise agreed with the LAA);
 - The CRM16 asks for details of types of expenditure that are not taken into account in the means test and also for an estimate of the likely private costs of the case. The estimate must be provided by the applicant's solicitor;

Contributions

- The assessment of the applicant's income, which will be used to determine the level of income contribution, will take account of their annual disposable household income assessed under the means test and any allowable additional expenditure assessed under the Eligibility Review;
- The assessed estimated private legal costs will not be included when determining the applicant's income for the purpose of working out their level of contribution;
- Once an applicant has been granted legal aid in the Crown Court the Contribution Orders process will not change and defendants who pay contributions towards the costs of their defence will continue to have the value of those contributions refunded with interest if they are acquitted;

Change in financial circumstances

After legal aid granted:

If an applicant, who has been granted legal aid, has a change in financial circumstances which means that their annual disposable household income is above the financial eligibility threshold:

- They are required to inform the LAA of any change in their financial circumstances;
- the LAA will not withdraw legal aid but will amend the applicant's Contribution Order.

Legal aid not granted:

If the applicant was initially assessed as ineligible and the eligibility review mechanism has been exhausted (because the time limit for a review has expired or the result of the review is that the applicant is definitely ineligible), the applicant can reapply for Crown Court legal aid at any time during the case if their financial circumstances change and bring them below the financial eligibility threshold.

- To reapply the applicant must submit a new **CRM14** and, where appropriate, **CRM15** to the relevant magistrates' court.
- If legal aid is granted following submission of a new application, the applicant will be eligible for legal aid from the point the application is made onwards (it won't be backdated).

Defence Costs

If found not guilty, the defendant can apply to reclaim their defence costs from central funds.

Payment will be on legal aid rates and will require submission of a refusal notice, to demonstrate that legal aid was applied for and refused.

LAA Forms

Applicants must continue to apply on a **CRM14** (Application for legal aid in criminal proceedings) – and, where applicable, a **CRM15 form** (Financial statement).

Application

The financial eligibility threshold for Crown Court legal aid will come into force for applications signed and dated by the applicant on or after 27 January 2014.

Other Crime Changes

The following changes are planned for implementation on 16 January 2014.

Appeal to Crown Court Contribution Orders

On 16th January 2014, Contribution Orders will come into force for ‘Appeal to Crown Court’ cases.

This applies to appellants who fail the means assessment and who subsequently abandon or are unsuccessful in their appeal to the Crown Court.

For appeals to the Crown Court, unless the client is not required to make any contributions to their defence costs, the appeal costs contributions are fixed as follows:

- **£500** if the appeal against conviction is abandoned or dismissed;
- **£250** if the appeal against conviction is dismissed but sentence is reduced; or
- **£250** if the appeal against sentence or order (e.g. an ASBO) is abandoned or dismissed.

A collection and enforcement agency called Rossendales (instructed by the Legal Aid Agency) is responsible for collecting and, where necessary, for enforcing non-payment.