Legal Aid Guide for Pro Bono Clinics:

A guide to what is in scope of the Legal Aid Scheme for solicitors
CONTENTS

INTRODUCTION 3

WHY REFER TO A LEGAL AID SOLICITOR? 4

OVERVIEW OF LEGAL AID 4

ELIGIBILITY FOR LEGAL AID 5
  Financial eligibility 5
  Important variations 5

WHAT’S IN SCOPE? 6
  Family Law 6
  Housing Law 6
  Immigration & Asylum Law 7
  Debt & Welfare Benefits 7
  Mental Health 7
  Community Care 7
  Discrimination 7
  Education (Special Educational Needs) 7
  Other 8

CASES WHICH ARE OUTSIDE THE SCOPE OF LEGAL AID 8

EXCEPTIONAL CASE FUNDING 9
  In summary 9

HOW TO FIND A LEGAL AID SOLICITOR 9
  Civil Legal Advice helpline 10
  The problems 10

IF YOU CANNOT FIND A LEGAL AID SOLICITOR 11
  End Legal Aid Deserts Campaign 11
  Problems with the means test? 11

QUICK CHECKLIST 12
  Financial eligibility 12
  Cases in scope 13
  Cases NOT in scope 14
INTRODUCTION

This is a guide to legal aid and its application for solicitors, barristers and other advisers offering pro bono legal advice services. The guide highlights those areas where funding is still available and outlines how to refer clients on to legal aid solicitors.

The guide is intended to be used by:

a. Citizens Advice
b. Law Centres
c. University Law Clinics
d. The Personal Support Unit (PSU), and
e. Pro bono clinics staffed by law firms and Chambers

Together with any other organisation that delivers pro bono legal advice, whether for charitable, educational or other purposes.

The guide focuses on civil legal aid due to the relatively low numbers of such clinics that offer advice on criminal matters.

The guide is aimed at advisers and the solicitors and barristers supervising in such clinics and/or management of the organisations, where the advisers have some level of legal knowledge but are not specialists in legal aid or social welfare law.

The intention is to increase awareness of the areas where legal aid is still available and the categories of case for which exceptional case funding (ECF) may be applied.
WHY REFER TO A LEGAL AID SOLICITOR?

If you are an adviser or pro bono solicitor working in a pro bono clinic, it is important that you can recognise, and refer on, clients who are eligible for legal aid funding, and that you do not simply continue to offer them pro bono advice. This is for a number of reasons, including:

- **Expertise**: legal aid solicitors will be experts in the area of law affecting your client, and therefore be able to advise them on the best legal course of action.

- **Experience**: legal aid solicitors ‘coal face’ experience with the legal aid schemes and practical experience may help your client navigate a faster route to a legal or practical remedy.

- **Rights**: clients who are eligible for legal aid funding have the right to access the legal aid scheme and the associated legal protections, as laid out in statute.

- **Cost protection**: clients who instruct a solicitor pro bono in a costs jurisdiction (such as the County Court) are at risk of adverse costs. If they are using a legal aid solicitor, they have protection from adverse costs.

- **Scope of funding**: legal aid will often cover the cost of any disbursements including interpreters, court fees and expert fees, and of representation at court where necessary.

- **Resources**: referring your client to a service where the solicitor will be paid to do the work will free up your resources as a pro bono solicitor to help someone who cannot be helped any other way.

OVERVIEW OF LEGAL AID

Legal aid is only available if your client is eligible to receive it and if they can find a legal aid solicitor who covers the right area of law and has capacity to take on the case.

Legal aid is normally available as:

- early advice and assistance (called Legal Help) – this is not just one-off advice but ongoing legal casework to resolve the problem up to the stage of court proceedings

- representation in Court Proceedings (called Legal Representation).

Generally, legal aid is not available for tribunals (although there are some exceptions).

A client can only access legal aid through a law firm or advice agency that has a contract with the Legal Aid Agency (LAA).
ELIGIBILITY FOR LEGAL AID

The scope of the current Legal Aid Scheme is set out in the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO) and its associated Regulatory Framework.

In order for a client to be eligible for legal aid, you need to consider whether:

- the type of case is within the scope of the Legal Aid Scheme (as set out in LASPO)
- the client is financially eligible to receive legal aid – there is a strict means test
- the case itself has sufficient benefit or meets the appropriate merits criteria.

Financial eligibility

Capital test
The capital test is the amount of savings, property, shares or other monies that your client or their partner own. This limit is set at £8,000 for all civil legal services except any relating to an immigration matter, which is capped at £3,000.

If your client owns their own house, then it will be classified as capital but they are allowed to have up to £100,000 of equity disregarded and are also allowed to have another £100,000 of their mortgage disregarded.

Example
If you have a home with a value of £200,000 with a £95,000 mortgage, then you could have £100,000 of equity disregarded and another £95,000 disregarded using the mortgage disregard. This would leave a capital figure of £5,000 for assessment.

Income test
Provided that your client has savings/assets of less than £8,000 but receives one of the following benefits, they are likely to pass the income test:

- Income Support (IS)
- Income-based Jobseeker’s Allowance (JSA)
- Universal Credit (UC)
- Pension Credit Guarantee Credit (GC)
- Income-related Employment Support Allowance (ESA).

If your client has savings or assets (other than the home in which they live) worth less than £8,000 and earns £2,657 or less a month then they may be eligible for legal aid (if they have more than four child dependents, add £222 to this figure for the fifth child and each additional child).

- To be eligible the net income must be less than the limit which is currently set at £733 per month. Net income is defined as income after tax and allowable deductions (housing costs, allowances for dependent children, etc.)

Important variations

- Very important: The LAA waives all upper eligibility limits if your client is applying for legal aid for a Court Order (injunction) for protection from domestic abuse or forced marriage. However, clients might be asked to pay a contribution to their legal aid in these cases.

You can find an online legal aid financial eligibility calculator at:
http://civil-eligibility-calculator.justice.gov.uk
WHAT’S IN SCOPE?

Family Law

- **Forced marriages** – where a client needs protection against forced marriage.

- **Domestic abuse cases** –
  - A victim of domestic abuse is likely to be eligible for legal aid to get a non-molestation order/injunction to protect themselves from further abuse.
  - They may also be eligible, if they can provide acceptable evidence of abuse, to get legal aid to help them with a divorce and court proceedings in respect of children or finances as they could not realistically represent themselves against their abuser.

- **Child abuse** – a client may be eligible for legal aid to get court protection for a child who is at risk of, or the victim of, child abuse.

- **Care cases** – typically cases involving social services relating to children at risk/being taken into care/in care (parents and grandparents can be represented).

- **Family mediation** – to resolve disputes about children and finance on a relationship breakdown.

- Some High Court proceedings about the welfare of a child.

- If you have been served with proceedings under the ‘Hague Convention’.

Housing Law

- **Possession and eviction** – your client is likely to be eligible if they are being evicted from their home by their landlord (whether that’s a private landlord, Housing Association or Local Authority).

- **Homelessness** – a person who is homeless or under threat of imminent homelessness is likely to be eligible.

- **Disrepair** – where your client’s rented home is in a state of disrepair and that disrepair presents a serious risk to their health and safety they are likely to be eligible – this could include cases of damp/mould which exacerbate conditions like asthma or cases where there are broken windows, no running water, leaking gas, or a lack of heating etc.

- **Harassment** – your client may be eligible where they need protection from harassment by a neighbour/landlord.

- **Anti-social behaviour** – your client may be eligible for legal aid if their local authority is applying for a civil injunction, Community Protection Notice (CPN) or Criminal Behaviour Order (CBO) against them as punishment for anti-social behaviour.
Immigration & Asylum Law

- Individuals making applications for asylum are likely to be eligible.
- If a client has been detained because of their immigration status, they are likely to be eligible.
- Victims of domestic abuse whose immigration status is dependent on being the partner of the perpetrator.
- Where the client is a victim of trafficking applying for leave to remain.
- Cases where someone is at risk of removal or having citizenship revoked for reasons of ‘national security’ can be eligible.

Debt & Welfare Benefits

Your client may be eligible if:

- their mortgage company is seeking to repossess their property
- a creditor is seeking to force them to sell their house in order to settle the debt
- a creditor is trying to make them bankrupt
- their first-tier benefits appeal has failed, and they are now appealing to the Upper Tribunal, the Court of Appeal or the Supreme Court.

Mental Health

A client may be eligible for advice if they have been detained or ‘sectioned’, are making an application to the Mental Health Tribunals, are involved in Court of Protection work or are making an appeal against DOLS (Deprivation of Liberty Safeguards).

Community Care

Legal aid is available for community care cases. This might involve cases where your client needs help or services from the local authority and/or the NHS because of illness, disability or mental capacity (including Court of Protection cases), or disputes about the quality of care in residential, nursing homes and hospitals, and abuse/neglect issues.

Discrimination

A client may be eligible for legal aid where they have been unlawfully discriminated against by employers, education, housing and service providers, public bodies and associations.

Education (Special Educational Needs)

Appeals against Education, Health and Care (EHC) Plans by the council are in scope.
Other

- A court order to protect your client from harassment.
- An appeal against a decision stopping your client from working with children and vulnerable adults.
- Advice and help on Disabled Facilities Grants.
- Civil claims relating to allegations of abuse and sexual assault.
- Confiscation proceedings.
- An injunction for gang-related violence.
- An injunction to stop a nuisance caused by environmental pollution.
- Cross-border disputes.
- Assistance at inquests (strict criteria apply).
- Cases for children with brain (neurological) injuries resulting in severe disability, which arise during pregnancy, childbirth or up to eight weeks postnatal (not all injuries are covered).

CASES WHICH ARE OUTSIDE THE SCOPE OF LEGAL AID

- Consumer and other contractual disputes.
- Most immigration cases other than those referred to previously.
- Criminal Injuries Compensation Authority cases.
- Private family law, for example, divorce, dissolution of civil partnership, property, finance and children matters, other than cases where there is evidence of domestic violence or abuse, or child abuse.
- Personal injury or death.
- Tort and other general claims.
- Conveyancing.
- Advice on will-making.
- Matters of trust law.
- Company or partnership law.
- Business law.
- Legal advice in relation to a change of name.
- Defamation or malicious falsehood.
EXCEPTIONAL CASE FUNDING

If your client has a case for which legal aid is not normally available, they may still be able to apply for exceptional case funding (ECF).

ECF will only be available to people whose human rights or European Union rights would be breached if they did not have legal aid. In general, this means that it would be in some way unfair or even impossible for a person to deal with a case themselves. That might be because the case is complicated, or because the person is less able to deal with it alone (for instance, they might suffer from a learning disability). It could also be because the case is so important to that person that it is not fair for that person to do the case themselves. A combination of these factors could also mean that funding is required to avoid a breach of that person’s rights.

In summary

In order to be eligible for ECF, your client will have to show four things:

- legal aid is not ordinarily available for the case
- the case is strong
- they are financially eligible for legal aid
- their human rights or EU law rights are involved in the case and they would not have effective access to these rights without legal assistance. Pro Bono solicitors can help clients apply for ECF in advance of them instructing a legal aid solicitor.

If your clinic is interested in helping clients apply for ECF and would like to discuss whether ECF is suitable, or have questions about the process, likely outcomes or possible approaches, you can contact the Public Law Project (PLP) for advice.

PLP has unique experience of the ECF Scheme and are keen for this experience to be of use to others.

PLP also provides regular training for advice organisations and others on using the ECF Scheme. Please check its Training & Events page for details of forthcoming seminars.

If your client has been refused ECF and you would like to challenge this through the courts, the PLP may also be able to help you. Please e-mail: exceptionalfunding@publiclawproject.org.uk, or call 0207 843 1260.

HOW TO FIND A LEGAL AID SOLICITOR

Legal aid services can generally be provided only by organisations which have a contract with the Legal Aid Agency (LAA). These include solicitors in private practice, law centres and some other advice agencies, such as some Citizens Advice. You may want to create and keep a list of your local legal aid providers and refer clients to them.

There is an online legal aid checker at: www.gov.uk/check-legal-aid – this will allow your client to see if they are eligible and where their nearest solicitor is.

You can search for firms who provide legal aid on the Law Society’s Find a Solicitor website (use ‘quick search’ to choose your legal issue and enter your location. Then click on ‘more options’ and select the option ‘Accepts legal aid’).

You can also search for a legal adviser or family mediator with a legal aid contract in England and Wales on the government website.
Civil Legal Advice helpline

Clients must apply through the Civil Legal Advice (CLA) helpline for debt, discrimination or special educational needs cases. The CLA helpline gives free, independent and confidential advice on the following matters:

- debt, if your home is at risk
- housing, if you’re homeless or at risk of being evicted
- domestic abuse
- separating from an abusive partner, when you’re making arrangements for children or sorting out money and property
- a child being taken into care
- special educational needs
- discrimination
- some child abduction cases.

The helpline number is: 0345 345 4345. It is open from 9am to 8pm, Monday to Friday and from 9am to 12:30pm on a Saturday. Calls cost no more than 4p a minute from a BT landline. Calls from mobiles are usually more.

When calling the CLA, your client will need to have proof that they are eligible for legal aid. Your client is advised to have the following documents with them when they call the CLA:

- recent payslips (if they are working)
- bank statements
- details of any savings and investments they have
- details of any benefits they get
- mortgage statements and a current valuation for any property they own.

The problems

There are certain problems you might run into when trying to find your client a legal aid provider. These include the fact that:

- there are a limited number of legal aid solicitors and they have limited capacity at any particular time, so you might not be able to find a legal aid solicitor even if your client is eligible for their help
- legal aid areas are often large, such as Cornwall or Somerset, and clients may not be able to afford to see the one provider which may be located many miles from where they live
- the detailed eligibility and scope rules are complex and there are grey areas, additionally whether someone falls within the means threshold may vary from month-to-month, which means it may be necessary to regularly recalculate depending on changing circumstances
- your client may be financially eligible, and the matter may be in scope, but it may lack sufficient benefit or the merits to justify the expenditure of public money under the Legal Aid Scheme
- your client may not be financially eligible whilst still being unable to afford an alternative form of paid legal advice
- in family cases for victims of domestic abuse some legal aid solicitors may require that evidence of abuse is provided before they can see the client.

If you cannot find a local legal aid provider, you should phone the Civil Legal Advice helpline for guidance on whether an adviser out of the area is available. To do this your client can visit the gov.uk website www.gov.uk/civil-legal-advice, fill in their
personal details and book a call-back from the CLA at a time that suits them. Alternatively, they can call CLA directly on 0345 345 4345.

Where face-to-face advice is considered necessary, or if representation in a court or upper tribunal is needed, the CLA should arrange this for the client.

IF YOU CANNOT FIND A LEGAL AID SOLICITOR

If you have identified that your client is eligible for legal aid but you cannot find a practitioner willing to take on the work, please do inform the Law Society at campaigns@lawsociety.org.uk

We are keen to gather data about where there are legal aid deserts and the areas of law which are affected in order to help us to support our campaign to restore legal aid funding.

Additionally, if you are trying, but unable, to refer your client to a legal aid solicitor, you might want to write to your local MP.

End Legal Aid Deserts Campaign

As part of our access to justice work, the Law Society is campaigning to tackle housing ‘legal aid deserts’ – areas with insufficient provision of housing legal aid advice.

Evidence shows that almost one third of legal aid areas in England and Wales have one, or no, housing provider. One provider per area is not enough – legal aid areas are often large, such as Cornwall or Somerset, and people often cannot afford to see the one provider which may be located many miles from where they live.

We are calling for the government to urgently address this situation. Accordingly, we want them to commission an independent review into the sustainability of the civil legal aid system which particularly focuses on economic viability for service providers as well as a focus on local need and demand.

Your data is invaluable to this campaign. Please do let us know if you are working for a client pro bono who should be able to access legal aid support.

Problems with the means test?

In some cases your client may have a strong case but has failed the means test, either because they have capital over the limit or their income is just over the limit. However, your client may be on a low income and unable to pay privately for legal representation.

The Law Society is gathering data regarding problems with the means test, please let us know if your client is having problems at campaigns@lawsociety.org.uk
**QUICK CHECKLIST**

<table>
<thead>
<tr>
<th>FINANCIAL ELIGIBILITY</th>
</tr>
</thead>
<tbody>
<tr>
<td>Do you have more than £8,000 in <strong>savings</strong>?</td>
</tr>
<tr>
<td>If No...</td>
</tr>
<tr>
<td>Do you own your own house? If Yes – do you own more than £8,000 of the value of the house (disregarding £100,000 of equity and another £100,000 for a mortgage)?</td>
</tr>
<tr>
<td>If No...</td>
</tr>
<tr>
<td>Are you on <strong>benefits</strong>?</td>
</tr>
<tr>
<td>If No...</td>
</tr>
<tr>
<td>Is your <strong>gross monthly income</strong> (including partner – unless in dispute with them) over £2,657? (if more than four child dependents, add £222 to this figure for the fifth child and each additional child).</td>
</tr>
<tr>
<td>If No, possibly eligible depending on disposable income.</td>
</tr>
<tr>
<td>Is your <strong>disposable monthly income</strong> more than £733?</td>
</tr>
<tr>
<td>CASES IN SCOPE</td>
</tr>
<tr>
<td>----------------</td>
</tr>
<tr>
<td><strong>Welfare benefit:</strong> appeals to Upper Tribunal &amp; above.</td>
</tr>
<tr>
<td><strong>Council tax reduction scheme:</strong> appeals to the High Court &amp; above.</td>
</tr>
<tr>
<td><strong>Debt</strong> including: mortgage arrears, forced home sale, a creditor causing bankruptcy.</td>
</tr>
<tr>
<td><strong>Housing</strong> including: eviction, homelessness and re-housing, serious disrepair, harassment, anti-social behaviour.</td>
</tr>
<tr>
<td><strong>Discrimination:</strong> by employers, education, housing and service providers, public bodies.</td>
</tr>
<tr>
<td><strong>Appeals:</strong> against Education, Health and Care (EHC) Plans by the council.</td>
</tr>
<tr>
<td><strong>Family and children</strong> including: the removal of children and forced marriages. A client who is a victim of <strong>domestic abuse</strong> can get legal aid for a protection order and for other private law matters.</td>
</tr>
<tr>
<td>Certain <strong>Immigration and asylum</strong> cases.</td>
</tr>
<tr>
<td>Certain <strong>Mental Health</strong> cases including advice if someone has been detained or ‘sectioned’, and Court of Protection work.</td>
</tr>
<tr>
<td><strong>Community Care</strong> cases.</td>
</tr>
<tr>
<td><strong>You can also get legal aid for certain cases involving:</strong></td>
</tr>
<tr>
<td>• protection from harassment</td>
</tr>
<tr>
<td>• an appeal against a decision stopping you from working with children and vulnerable adults</td>
</tr>
<tr>
<td>• Disabled Facilities Grants</td>
</tr>
<tr>
<td>• civil claims relating to allegations of abuse and sexual assault</td>
</tr>
<tr>
<td>• confiscation proceedings</td>
</tr>
<tr>
<td>• gang-related violence</td>
</tr>
<tr>
<td>• nuisance caused by environmental pollution</td>
</tr>
<tr>
<td>• cross-border disputes</td>
</tr>
<tr>
<td>• assistance at inquests (strict criteria apply)</td>
</tr>
<tr>
<td>• cases for children with brain (neurological) injuries resulting in severe disability, which arise during pregnancy, childbirth or up to eight weeks postnatal (not all injuries are covered).</td>
</tr>
</tbody>
</table>
The following cases are not in scope for legal aid, other than through the ECF scheme:

- consumer and other contractual disputes
- most immigration cases
- Criminal Injuries Compensation Authority cases
- private family law, for example, divorce, dissolution of civil partnership, property, finance and children matters, other than cases where there is evidence of domestic violence or abuse, or child abuse. Domestic violence or abuse covers psychological, physical, sexual, financial or emotional abuse
- personal injury or death
- tort and other general claims
- conveyancing
- advice on will-making
- matters of trust law
- company or partnership law
- business law
- legal advice in relation to a change of name
- defamation or malicious falsehood.