

PUBLIC FUNDING FOR YOUR FAMILY CASE

At our first meeting with you we will ask you about your financial circumstances. We do this to discover if you may be entitled to some form of financial assistance with your case from the Community Legal Service, or CLS. This funding is what used to be known as Legal Aid.

In family cases there are four categories of CLS funding, known as "levels of service". Each is explained in detail below. Depending on your financial circumstances and the nature of your problem, you may receive one or more level of service as your case progresses.

Some features are common to all four levels of service. These are explained in detail in the section headed "CLS Funding Generally". Please read the explanation carefully and ask us about anything that is not clear. It is important that you understand the commitment you make by accepting CLS Funding for your case.

LEVELS OF SERVICE

1. The most basic level of service is LEGAL HELP.

Financial eligibility: determined by us based on your capital and income. Eligible if in receipt of Income Support, Guaranteed State Pension Credit and Income based Job Seekers' Allowance. May also be eligible if in receipt of Working or Child Tax Credit, or on low income. We will ask for evidence of capital, income and/or benefit at our first meeting.

Type of Case: applies to all aspects of Family Law.

Type of Service: allows us to advise by personal attendance, or on the telephone; conduct correspondence and draft documents on your behalf. It does not allow us to issue proceedings or attend Court on your behalf.

NB. Because of the way divorce proceedings are usually conducted, uncontested divorces are covered by Legal Help.

2. HELP WITH MEDIATION

Financial Eligibility: assessed by or on behalf of the Legal Services Commission. A Means Assessment form is forwarded to the Commission for their consideration.

Applicants on Income Support, Guaranteed State Pension Credit or Income Based Job Seekers' Allowance are automatically eligible.

Type of Case: only applies where parties are participating in Family Mediation or have successfully reached agreement in Family Mediation.

Type of Service: limited to legal assistance in implementing agreement reached.

3. GENERAL FAMILY HELP

Financial Eligibility: as for Help with Mediation

Type of Case: financial aspects of family cases and cases concerning children.

Type of Service: As for Legal Help: also instruction of barristers and other experts. May include Court attendance at preliminary stages of a case up to and including Dispute Resolution Hearings.

4. LEGAL REPRESENTATION

Financial Eligibility: as for General Family Help and Help with Mediation

Type of Case: as for General Family Help

Type of Service: representation at Court for contested hearings. It will be necessary to show that the case cannot be settled in any other way.

CLS FUNDING GENERALLY

OFFER

For Legal Help, no contribution is payable.

For Help with Mediation, General Family Help and Legal Representation, you may be assessed as being liable to pay a contribution to the Legal Services Commission, and if so, an offer of CLS Funding will be made to you showing the amount required from you by way of a lump sum out of your capital and/or monthly contributions out of income required from you.

The contribution is based upon the amount by which your disposable capital or income (calculated in accordance with the CLS Financial Regulations) exceeds set figures. Any monthly contribution is payable each month for however long the certificate remains in operation. Please remember in some types of case this can be several years!

If you wish to accept the offer of CLS Funding you must send back to the Legal Services Commission one copy of your accepted offer together with your first payment. All such contributions are set off against any Statutory Charge (see later section).

If your disposable income does not exceed the set figure you will not have to pay a contribution and you will not be required to return an accepted offer.

LIMITATIONS

When you have been assessed as eligible without contribution, or have accepted an offer of CLS Funding and paid your first instalment, a Certificate of Funding will be issued. Limitations can be attached to the Certificate. For example, the Certificate may be limited to seeking further evidence and obtaining Counsels' opinion or may be

limited to a certain figure. In such a situation, application will have to be made in due course to the Legal Services Commission Area Office, following compliance with the limitation, for the limitation either to be extended or removed, before the case can be pursued further.

CHANGE OF ADDRESS OR CIRCUMSTANCES

Please note that in signing the application for CLS Funding you have agreed to inform the Legal Services Commission Area Office if:

1. your address changes; or
2. your living arrangements change eg you commence or cease living with a partner; your dependants change etc;
3. your disposable income increases or decreases so that they can assess your ongoing eligibility for public funding; or
4. your capital increases.

You can comply with this obligation by supplying the necessary information in writing either directly to the Legal Services Commission Area Office or via our office.

DISCHARGE

Usually the certificate will be discharged when your case has been completed and all necessary procedures finalised. However, the certificate can be discharged in other circumstances, e.g.

- **You may cease to be financially eligible through a change in your circumstances**
- Developments in your case may mean that it no longer merits continued CLS Funding.

You should also be aware of additional circumstances which may lead to the discharge of your certificate, namely if you:

1. make an untrue statement as to your financial resources or fail to disclose any material fact concerning them;
2. do not pay your contributions within 21 days of the due date;
3. require the proceedings to be conducted unreasonably so as to incur an unjustifiable expense to the CLS Fund;
4. intentionally fail to furnish any material information concerning any matter other than your financial resources;
5. knowingly make an untrue statement in furnishing such material information;
6. fail to attend an interview or to provide information or documents when required to do so.

The effect of discharge is that no further legal work can be done for you with CLS Funding. However, subject to any application of the statutory charge (see later), your solicitors cost up to the date of discharge will be paid out of the CLS Fund.

REVOCATION

A certificate can be revoked instead of discharged in the circumstances mentioned in 3, 4, 5 and 6 above, if you cannot show that you used due care or diligence to avoid any misstatement or failure. Revocation is at the discretion of the Area Director.

The result of revocation is that you are treated as never having had CLS Funding. THIS WILL HAVE VERY SERIOUS CONSEQUENCES FOR YOU. We will still be entitled to claim our costs from the Legal Aid Fund but YOU WILL BE LIABLE TO REPAY THESE COSTS PERSONALLY IRRESPECTIVE OF WHETHER THE STATUTORY CHARGE APPLIES.

ESSENTIAL ACTION

The lesson to draw from this is to ensure that you co-operate fully with the Legal Services Commission in supplying true information and documentation

when requested. If you receive forms or papers from the Legal Services Commission, do not ignore them. Either complete and return them promptly, or, if there are any difficulties or queries, contact ourselves without delay.

STATUTORY CHARGE

This is the 'clawback' provision in the CLS Funding legislation. The statutory charge applies to any money or property which you 'recover' or 'preserve' (ie gain or retain) with the help of Legal Help, Help with Mediation, General Family Help or Legal Representation (unless exempt).

- **Money**

If you 'recover' or 'preserve' money, then we are required to use the whole or part of the money instead of CLS Funding to pay your legal costs.

- Property

If you 'recover' or 'preserve' property, then the Legal Services Commission will impose a charge on that property to cover the amount of your legal costs. The charge will attract interest. You will only have to pay off the charge and interest when you sell the property but can pay sooner by monthly instalments or lump sum if you so choose.

- Exemptions from the Statutory Charge

Certain money and property is exempt from the effects of the Statutory Charge eg:

- Periodical payments of maintenance
- Money received under section 5 of the Inheritance (Provision for Family and Dependents) Act

We will advise you as to whether any money or property likely to be 'recovered' or 'preserved' by you will fall wholly or partly within one of the exemptions to the statutory charge.

Do please bear in mind the Statutory Charge throughout your case as it may be an important consideration when deciding how your case should be conducted.

ORDER FOR COSTS

It is never possible to predict precisely the outcome of a case in relation to costs. This is because the award of costs is in the discretion of the Court. Having said this, the general rule is that the winner is entitled to an order for his or her costs to be paid by the other party. If you win your case, therefore, it is possible that you may get an order for payment of your costs by your opponent. All being well, this will mean that no claim will need to be made from the CLS Fund in respect of your costs and the statutory charge will accordingly not apply to any property or money preserved. However, this statement is subject to 5 qualifications:

1. if your opponent is also legally aided, it is unlikely an order for costs will be made against him or her;
2. any order made may not cover the full amount of the costs which you have incurred. As a rough estimate no more than 70% would generally be recovered;
3. the opponent may not be in a financial position to pay the costs ordered;
4. the opponent may only be liable to pay the costs by instalments over a lengthy period;
5. it is very common in Family matters for the Court to make no award of costs to a successful party.

These qualifications mean that some costs will need to be met by the CLS Fund (at least for a period of time in the case of 4.) and may have to be 'clawed back' from you by virtue of the statutory charge out of the money or property.

If you lose your case, your own costs will be met by the CLS Fund. However,

you could be ordered to pay some or all of the opponent's costs. On occasions, no order for costs is made against a CLS funded party who loses, but this is not a hard and fast rule and it is important to remember an order for costs can be made against a CLS funded party like any one else. The only difference is that your ability to pay the costs has to be considered which may mean that you may only be ordered to pay part of the opponent's total costs.

We will need to consider with you your position in relation to costs and advise specifically as the matter progresses.

**WE HOPE YOU HAVE FOUND THIS LEAFLET INFORMATIVE
AND SUGGEST YOU RETAIN IT FOR FUTURE REFERENCE
DURING THE CONDUCT OF YOUR CASE**

POOLE ALCOCK

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