

STEVENS DEFENCE LLP
LEGAL AID IN THE CROWN COURT – YOUR QUESTIONS ANSWERED

How does the system work?

Everyone appearing before the Crown Court for trial can apply for a legal aid order, which means that their defence costs are paid initially by the state. The state can, however, recover those costs from those who are considered to have sufficient income or capital to contribute to those costs. Initial assessment is carried out at the local court on behalf of the Legal Aid Agency (LAA) but more complex issues may be referred to the LAA.

In order for an order to be granted, you must satisfy two tests:

1. An “Interests of Justice” test;
2. A financial means test.

The fact that the case is to be tried in the Crown Court automatically satisfies the “Interests of Justice” test. The means test is explained below.

How do I apply?

We will assist you to complete and submit an application form to the court – known as a CRM14. This form sets out details about you, what you are accused of and, briefly, your financial situation. If you are in receipt of qualifying state benefits or have a very low income, the court may be able to decide that you are not liable to contribute to the cost and legal aid will normally be granted without further form filling. Otherwise your means will need to be assessed.

How are my means assessed?

If your income is above a certain level, you will also be required to complete a much more detailed means form, known as a CRM15, and you will be asked to provide evidence to support the information you supply, for example wage slips, bank statements, savings books, mortgage/rent statements. The court will then assess your means and decide whether legal aid can be granted and whether you are liable to contribute from income.

If your “disposable income” is assessed as between £3,399 and £37,499 you will be granted legal aid subject to a contribution from income.

If your “disposable income” is assessed as above £37,500 you will be not be granted legal aid.

What happens if I am assessed as being liable for a contribution from income?

The court will inform you of the amount which you have been assessed as liable to contribute on a monthly basis. You will be informed that this amount must be paid for five consecutive months or, if you default or are late with any of your monthly payments, this will increase to a maximum of six monthly payments.

You will also be given the option of paying a lump sum (equal to the five monthly instalments) at the outset but, as you will see later, this is rarely likely to be advisable.

When do the payments from income start?

Your legal aid starts and the first instalment is due the day following your case being sent to the Crown court. You are, however, allowed 28 days within which to make the payment without penalty. Your second and subsequent contributions are due monthly thereafter until you have paid a total of five monthly instalments. If you have missed, or were late with, any payments, you will have to make pay six instalments.

When do the payments from income end?

The payments end when you have made five (or six) payments. However they may end sooner if the case ends sooner. Thus, if the case is concluded, as many are, within one or two months of being

sent to the Crown court by the magistrates' court, you will only be liable for those payments which have fallen due by the time the case ends. This is why it is seldom advisable to make a lump sum payment at the outset. If you have not made all the payments due, you will remain liable for them even after the case ends.

If I am legally aided, might I end up paying more for my defence than it actually cost?

No – the contribution system guarantees that you will never pay more than the actual cost of your defence. The actual cost of your defence is made up of several elements which are:

1. Your litigator's costs – this is the amount paid to your solicitor for preparing your case, including preparing your and possibly your witnesses' statements, advising you, dealing with the prosecution, instructing experts and obtaining their reports, preparing instructions for the advocate who will represent you in court and so on;
2. Your advocate's costs – this is the amount paid to the person who represents you in court;
3. Any expenses incurred – for instance fees for defence experts and travel costs.

All these costs are calculated at "legal aid rates" which are considerably less than normal private client rates.

What happens if the cost of my defence is less than the amount I have paid?

If you have paid more than the actual cost of your defence, then you will be entitled to have the excess cost, plus a small amount of interest, returned to you by the LAA. You will never pay more than the actual costs of your defence at legal aid rates.

What happens if the cost of my defence is more than the amount I have paid?

If you have paid less than the actual costs of your defence (a shortfall), or have not been assessed as liable for a contribution from income, you may be liable for a contribution from capital.

What is a Contribution from Capital?

The LAA may recover the shortfall, or part of it, or the full costs if you were not liable to contribute from income, from your capital if you were told you are liable for a contribution from capital at the outset. Contributions from capital exclude the first £30,000 of savings or value of property owned. If you are not liable for a contribution from capital, then you will not be required to pay anything further.

You should be aware that contributions from capital may be demanded a considerable time after the conclusion of the case – in exceptional circumstances sometimes years.

What happens if I am found not guilty or the charge against me is dropped?

You will be entitled to a full refund of any contributions paid with a small amount of interest added.

What happens if I plead guilty or am found guilty of a less serious offence?

In certain circumstances we can ask a Crown court judge to state that the level of contributions should be reduced or removed completely. This would usually happen if you offered to plead to the less serious offence at an early stage in the proceedings but that offer was at that time rejected by the prosecution but later accepted.

What if I genuinely cannot afford to make the contributions?

Assessments of income will often exclude amounts for which you are liable to make regular payments but which are not considered to be essential items. If this applies to you, you can make a hardship application to the LAA and you will have to complete a further form and provide further financial evidence to the LAA. If a hardship application is rejected there is no further appeal available.

Who actually collects the contributions from income and what happens if I fail to make the contributions or the payment from capital?

The LAA has appointed a number of private debt collection agencies to collect payments from income and capital and these agencies will also be responsible for enforcing late payments. The enforcement agency will commence recovery of any amount owed which will add significantly to the amount owing as their charges are added to it. These agencies are also certificated bailiffs and, if authorised by a court, may visit your home to recover outstanding monies. Our advice to clients faced with a visit from bailiffs is not to allow them into your home in the first instance since, once inside, they may “seize” your belongings and thereafter have a right to enter by force if necessary.

Can I pay privately for the cost of my defence?

You can but the private costs of funding a case will almost certainly exceed the final legal aid costs. Furthermore, you will still need to make payments in advance of the proceedings and these will seldom amount to less than the amount you are required to pay as contributions from income. We will of course provide you with a quote if requested.

What if I choose not to accept the offer of legal aid during the currency of the proceedings?

If you choose not to accept the offer of legal aid, then you will need to put us in funds on a private client basis. We will then provide an undertaking to the LAA that there will be no claim made to them against the legal aid order. This undertaking will not be given until we are in funds. Without this undertaking being provided, the LAA will still enforce any arrears.

Can you summarise for me the advantages/disadvantages of the contribution system?

Certainly. To summarise:

The **advantages** to the client in accepting a legal aid offer with a contribution is as follows:

1. They will never pay more than the actual costs at legal aid rates paid to the litigator (solicitor) and advocate (solicitor or barrister). Given that legal aid rates are typically 25%-35% of private client costs, this is usually a tremendous advantage;
2. The payments can be spread over the life of the case – or longer if the client chooses to default in payment – there are penalties but these are not so punitive as to be uneconomic;
3. For cases which spend very little time in the Crown Court, e.g. where an early guilty plea is entered, and where there is no liability to a contribution from capital, the actual amount paid may be much less than the actual costs even at legal aid rates;

The **disadvantages** are principally that the collection system is a little like an oil tanker at sea – very slow to change direction or stop.

The **disadvantage** to the client of paying privately are:

1. The costs will usually be calculated on an hourly rate which is 3 or 4 times the notional hourly rate used in the legal aid calculation (although legal aid payments are based on fixed fees rather than hourly rates).
2. Whilst the payments may be staged, they will have to be paid in advance of the work being done. Thus a privately instructed solicitor will need to ensure that he has funds from the client in his client account sufficient to cover all the work he has done or expects to start doing in the near future; any fees which an expert has quoted for; a sum to cover the advocate's fee for representing the client at court; VAT on all those amounts.
3. In a legally aided case where there is a co-accused represented by the same firm, under legal aid rules any litigator's cost would be based on the costs of one client plus a percentage uplift (20%) for the second client. In a privately funded case, the litigator would charge the full amount in respect of each client.

In a Crown Court case it would not be unusual for a solicitor to ask a client to provide £5000 plus VAT before the commencement of the case. Often it will be more, seldom less.

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Legal Aid in the Crown Court – Q & A – March 2014