

GUIDE TO PUBLIC FUNDING (LEGAL AID) FOR CLINICAL NEGLIGENCE CLAIMS

The purpose of this Guide is to help you to understand the different kinds of funding provided by the Legal Aid Agency (LAA). You can only get public funding if your income and savings are within certain limits. A more detailed guide (A Practical Guide to Community Legal Service Funding) including a guide to assessing your financial eligibility may be found at www.legalservices.gov.uk/public/help/leaflets.asp.

Public funding is not available for personal injury claims, except where the personal injury arose through clinical negligence. Legal Representation is not usually available in cases concerning your business, boundary disputes or libel/slander cases.

Legal Help and Help at Court

Legal Help is a limited form of funding designed to cover the initial steps in making or defending a claim. It will allow your lawyer to give you preliminary advice and to prepare any necessary correspondence and documents to enable you to apply for Legal Representation.

Help at Court covers the cost of having a solicitor represent you at a particular hearing, where Full Representation would not be justified (see below).

Where money is recovered in a clinical negligence case, your solicitor's charges will be deducted from this money.

Legal Representation

To obtain a Legal Representation certificate, you have to apply to the LAA, which decides whether the application satisfies the criteria for funding. You may have to pay a contribution towards your legal costs, either a one-off payment from capital, or monthly payments from your income which continue until your certificate is discharged or your financial circumstances change.

Where money or property is recovered or preserved following Legal Representation, the LAA has the right to deduct from that money or property all sums paid to your solicitor or barrister under the certificate, including any expenses incurred. This right is called the **Statutory Charge**. Any sums recovered from your opponent in respect of legal costs will reduce the amount of the statutory charge. More information can be found in a guide published by the LAA (Paying back the LAA – the Statutory Charge) by following the link above.

If your case is unsuccessful, your contribution (if any) is normally the most you will be asked to pay for your own solicitor's or barrister's charges. However, you may be ordered to pay your opponent's legal costs, depending on your financial circumstances, and whether you have acted reasonably in bringing or defending the case.

Types of Legal Representation:-

Investigative Help: this covers the cost of investigating the prospects of success in your claim, for example obtaining expert advice. It also covers negotiations with your opponent. If a settlement of your claim cannot be achieved, and it appears that there are reasonable grounds for bringing court proceedings, you will have to apply for Full Representation.

Full Representation: your solicitor will apply for this type of certificate if your case has not settled at an earlier stage, or where it is clear from the outset that legal representation is required at court. It covers the cost of instructing the experts needed to prove your claim, and advice or representation at court by a

barrister. Full Representation certificates are limited to a maximum costs figure, and may also be limited to a particular stage. These limitations can be extended in appropriate circumstances.

Emergency Legal Representation: where there is an urgent need to attend court, for example to obtain an injunction, you can apply for emergency funding while the LAA is determining your eligibility for Full Representation. This will only cover urgent work necessary to secure your position.

Discharge and Revocation of Legal Representation Certificates

When your case has come to an end, the work done under your certificate will be set out in a Bill of Costs. The Bill is assessed by the court or by the LAA, which certifies the sums which should be paid to your solicitor or barrister. If the Statutory Charge applies, you will receive a copy of the Bill, and if you wish you can attend the assessment hearing to object to particular costs being allowed. The certificate will be discharged when this process is complete and all costs have been paid.

Where work is done under public funding, your lawyer must tell the LAA if you act unreasonably, for example in refusing to accept a reasonable settlement offer, or to agree to mediation. The LAA will give you an opportunity to show that you have not been unreasonable, but where it is satisfied that public funding should not continue, it may discharge or even **revoke** your certificate. If your certificate is revoked, you would become liable to pay all legal costs incurred under the certificate.

Your certificate can also be revoked if you fail to co operate with any assessment of means or you fail to inform the LAA of any improvement in your financial circumstances after funding is granted.

WARNING

The information contained in this guide is for generic use only and cannot be relied upon for any specific purpose. We recommend that specialist professional advice is taken before entering into (or refraining from entering into) a particular transaction.

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