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Legal aid - how it works

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This briefing looks at the different types of legal aid and the role of the Scottish Legal Aid Board.



Scottish
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Aid

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Summary

Legal aid provides financial assistance to enable people on low and moderate incomes to access legal services.

Legal aid is funded by the Scottish Government and administered by the Scottish Legal Aid Board (SLAB). SLAB also directly employs solicitors to give advice to people who qualify for legal aid and grant funds various advice services (including services not provided by solicitors).

The following figure summarises the main types of legal aid and what they are used for.

Figure 1: Overview of the different types of legal aid

Type of legal aid	What it covers	Examples	Financial eligibility test	Other tests
Advice & Assistance	For advice but not representation in court on an issue of Scots Law	<p>Criminal Advice and Assistance could cover advice on whether to accept a fiscal fine</p> <p>Civil Advice and Assistance could cover advice on options for dealing with a problem neighbour</p> <p>Children's Advice and Assistance could cover advice on participation in a Children's Hearing</p>		
Assistance By Way of Representation (ABWOR)	For representation in certain, specified legal forums	<p>Criminal ABWOR covers those who plead guilty in summary criminal proceedings. It also covers other specific situations</p> <p>Civil ABWOR covers representation in certain specified legal forums, eg. immigration and employment tribunals</p> <p>Children's ABWOR covers representation at Children's Hearings and some related sheriff court proceedings</p>	 In most circumstances	 Various depending on forum
Criminal Legal Aid	For representation in court on criminal issues.	Criminal Legal Aid covers those facing solemn criminal proceedings or those who plead not guilty in summary proceedings	 (except for automatic Criminal Legal Aid)	 In summary proceedings only
Civil Legal Aid	For representation in court on civil issues.	Civil Legal Aid covers most forms of court action in Scotland's civil courts		<p>There is a plausible legal basis for the case</p> <p>It is reasonable in the particular circumstances of the case to provide legal aid</p>
Children's Legal Aid	For representation in court in proceedings which relate to Children's Hearings	Children's Legal Aid covers most Children's Hearing-related actions in the civil courts	 (except for automatic Children's Legal Aid)	Different tests depending on whether a child or adult is applying

The figure below summarises the availability of legal aid in criminal proceedings. Note that to benefit from criminal legal assistance, an applicant must meet any relevant financial and other eligibility tests.

Figure 2: Availability of criminal legal assistance in court proceedings

Type of proceedings	Summary criminal proceedings (for less serious cases)	Solemn criminal proceedings
Initial representation	An accused person appearing from police custody (or on an undertaking) can receive automatic Criminal Legal Aid from the duty solicitor (no means or merits tests) if they plead guilty. Entitlement to automatic Criminal Legal Aid ends after the first hearing where they plead not guilty	Automatic Criminal Legal Aid is available until either a decision is made on an application for full Criminal Legal Aid or the accused is remanded or bailed
Pleads guilty	If the accused received automatic Criminal Legal Aid from the duty solicitor, this continues until the case concludes	Criminal Legal Aid
	If the accused did not originally appear from custody, they can receive Assistance By Way of Representation (ABWOR) . ABWOR is also available where an accused appears from custody and is represented by a solicitor they have an existing relationship with rather than the duty solicitor	
Pleads not guilty	Criminal Legal Aid (after a not guilty plea is tendered)	Criminal Legal Aid

Terminology

Legal aid

The phrase legal aid is used throughout this briefing to refer to all the forms of legal assistance available under the Legal Aid (Scotland) Act 1986. The phrases **Civil Legal Aid**, **Criminal Legal Aid** and **Children's Legal Aid** are used to refer to those forms of legal aid specifically.

The phrases **criminal legal assistance** and **civil legal assistance** are used to refer to all forms of legal aid available for criminal matters or civil matters respectively. The phrase **children's legal assistance** is used to refer to the forms of legal aid available for Children's Hearings and related court proceedings.

The **Scottish Legal Aid Board (SLAB)** administers legal aid, including making decisions on Criminal, Civil and Children's Legal Aid applications and checking information for other types of legal aid.

Advice and Assistance is one type of legal aid. It supports access to advice from a solicitor - but not representation in court. Solicitors can, however, give a client advice on representing themselves in court. Advice and Assistance is available for criminal and civil issues and issues relating to Children's Hearings. Thus, we'll usually refer to criminal Advice and Assistance, civil Advice and Assistance or Advice and Assistance for Children's Hearings.

Assistance By Way of Representation (ABWOR) is a type of Advice and Assistance, although solicitors can provide representation. ABWOR is available where an accused pleads guilty to summary criminal charges, as well as for some other, specific criminal hearings. It is also available in specified civil justice situations, such as immigration and employment tribunals. It covers representation at Children's Hearings and some related sheriff court proceedings.

Appearing on an undertaking is a phrase used to describe the situation where an accused who is facing summary criminal proceedings is released from police custody on the basis that they will abide by any bail conditions and turn up in court on a specified date. Those appearing on an undertaking are treated the same as those who appear directly from police custody in terms of entitlement to automatic Criminal Legal Aid.

Automatic Criminal Legal Aid refers to a type of legal aid which is available automatically - without any means or merits tests. For example, it is available where a person is charged with murder, where someone has to appear in an identity parade, or where they appear in court directly from police custody and are represented by the duty solicitor.

Block fees describe a situation where solicitors get paid a fixed fee for completing the work required for a stage in a case, rather than the fee earned depending on the time spent working. Block fees are commonly used in summary criminal cases but are available in other situations too. It is argued that block fees make billing and payment simpler for solicitors and SLAB. However, there is explicit recognition that in one case the work done may be less than the fee charged, while it is more in another.

Children's legal assistance . . . isn't just for children. Children's legal assistance provides support for legal representation in relation to Children's Hearings. It can be applied for by children or adults. Separately, children can apply for criminal or civil legal assistance in their own right (although the financial position of their parents may be taken into consideration).

Clawback refers to powers to recover costs to the legal aid budget from any compensation or property awarded to an applicant as a result of civil legal action. Clawback operates where financial contributions from the applicant and any legal expenses awarded as part of the case are insufficient to cover the costs to the legal aid budget of providing legal services.

Disposable capital refers to the value of all assets (such as savings or shares) reasonably available to the legal aid applicant. An applicant's home is excluded from this calculation, and standard deductions may be made for dependants. There are special allowances for pensioners. Thresholds used to calculate financial eligibility for legal aid are based on disposable capital.

Disposable income refers to income after certain sums are deducted (this can cover things like rent or mortgage payments). Various benefit payments are disregarded. Standard deductions are made for dependants. The thresholds used to calculate financial eligibility for legal aid are based on disposable income.

Legal expenses are the costs of taking civil court action, such as fees paid to lawyers, court fees and witness costs. It is usual for the winning party in civil court action to be able to recover a proportion of their legal expenses from the losing party. The rates at which expenses can be recovered are set in legislation.

Means test refers to a financial eligibility test. There are financial eligibility tests for most forms of legal aid. Automatic legal aid is the exception, although there are other specific exemptions too. The nature of the test differs depending on the type of legal aid.

Merits test refers to a test which considers whether granting legal aid is justified for a particular case. Again, there are various different merits tests, depending on the type of legal aid.

Rights and facilities - entitlement to legal aid is affected where applicants have access to other "rights and facilities" which would remove the need for financial assistance for legal advice. This refers to alternative means to exercise their legal rights or fund their legal bills. Common examples would be insurance policies which cover the costs of legal advice or trade union-funded support to bring personal injuries claims.

Solemn will usually refer to solemn procedure in the criminal courts. Solemn procedure is used for more serious crimes, tried in the sheriff courts and High Court of Justiciary. Juries deliver verdicts in solemn cases. In the sheriff courts, the maximum sentence is five years in prison (and there is no limit to any fine which can be issued). There are no limits to the sentencing powers of the High Court.

Summary will usually refer to summary procedure in the criminal courts. Summary procedure is used for less serious crimes, in the Justice of the Peace and sheriff courts. There is no jury in summary cases. Where found guilty under summary procedure in the sheriff courts, an accused person can be sentenced to a maximum of 12 months in prison and/or a fine of up to £10,000.

Time and line refers to solicitors being paid on the basis of the time spent working on a case. There are detailed fees, for example, for long and short phone calls, time spent travelling or producing documents. Solicitors can give a detailed account of their work on a case to charge on this basis. However, it is administratively burdensome for both solicitors and SLAB. Block fees are the alternative to time and line charging.

The Scottish Legal Aid Board

The Scottish Legal Aid Board (SLAB) is responsible for administering legal aid. It also directly employs solicitors who provide advice to people who qualify for legal aid and administers Scottish Government grants to various advice agencies.

It has a strategic role too. It provides advice to Scottish Ministers on how legal aid is working and ways to develop it. It is responsible for monitoring the availability and accessibility of legal services.

This part of the briefing looks in more detail at SLAB's main functions:

- [SLAB's role as an administrator](#)
- [solicitors directly employed by SLAB](#)
- [grant funding by SLAB](#).

The Scottish Legal Aid Board's role as an administrator

SLAB assesses applications for Criminal, Civil and Children's Legal Aid. It collects any financial contributions due from recipients.

Solicitors assess eligibility for Advice and Assistance and Assistance by Way of Representation but various stages (e.g. expenditure beyond the initial limit) require permission in advance from SLAB. SLAB can also check solicitors' decisions and recover funds if they do not agree that the decision was made correctly.

SLAB pays solicitors and advocates for work carried out under the legal aid schemes. The rates of pay are set in regulations agreed by the Scottish Parliament.

SLAB monitors the legal aid budget. However, the budget itself is demand-led rather than fixed. The Scottish Government is required to meet all expenditure provided for in legal aid legislation. The budget for legal aid in 2021/22 is £138 million, with £126 million directed at funding the costs of the legal aid schemes ¹ and £12 million for administration ¹.

Solicitors directly employed by the Scottish Legal Aid Board

SLAB is empowered to directly employ solicitors. It currently does so as part of three separate projects: the [Public Defence Solicitors' Office](#); the [Civil Legal Assistance Office](#); and the [Solicitor Contact Line](#).

- **The Public Defence Solicitors' Office** (PDSO) offers advice and representation in criminal matters. PDSO solicitors can work with clients anywhere in Scotland, as long as they qualify for legal aid. It has offices in Glasgow, Edinburgh, Dundee, Inverness, Ayr, Falkirk and Kirkwall.

- **The Civil Legal Assistance Office (CLAO)** offers advice and representation in civil matters. Clients must qualify for legal aid. Support is targeted at locations and subjects where there is a lack of availability of private sector legal services. CLAO works in four geographical areas: the Lothians; Aberdeen and Aberdeenshire; Highlands and Islands; and Argyll and Bute. It refers clients to local solicitors in private practice where appropriate.
- **The Solicitor Contact Line** provides [advice to people being held in police custody](#). The Solicitor Contact Line also contacts solicitors in private practice on the Police Station Duty Rota where appropriate.

Directly employed solicitors can be used by SLAB to fill gaps in the provision of legal services. This is most obvious in the way the Civil Legal Assistance Office is set up. However, the Public Defence Solicitors' Office has been used to fill gaps in the duty solicitor rotas maintained by SLAB. There are situations where this has been controversial among solicitors in private practice.

Applications for legal aid to the PDSO or CLAO are dealt with in the same way as they would be by any other solicitor.

Grant funding by the Scottish Legal Aid Board

The Scottish Legal Aid Board funds a range of advice projects on behalf of the Scottish Government. The advice does not need to come from solicitors, and beneficiaries do not need to qualify for legal aid. This means funding can be provided to a wide range of advice services.

Projects funded include in-court advice projects in various sheriff courts, where unrepresented litigants can get advice about their case. They also include national projects such as the Scottish Women's Rights Centre Legal Project, which supports women experiencing violence and abuse. [SLAB's website provides more information about the projects currently receiving funding](#) ² .

The different types of legal aid

There are four main types of legal aid - Advice and Assistance, Criminal Legal Aid, Civil Legal Aid and Children's Legal Aid. However, there are many different permutations of these.

Advice or representation?

Very broadly, Advice and Assistance is available for advice - but not representation in court - from a solicitor. However, a branch of Advice and Assistance called Assistance By Way of Representation (ABWOR) can be used for representation. This includes representation for some criminal court matters, as well as representation in some tribunals and at Children's Hearings.

Criminal or Civil Legal Aid are the appropriate type of assistance where a solicitor expects to be involved in court work outside these situations. Children's Legal Aid is specifically for Children's Hearings and proceedings related to them in the courts.

Criminal or civil?

The criminal courts deal with the trial and sentencing of those accused of a crime by the state. The civil courts deal with the enforcement of rights and obligations between individuals and/or bodies. Examples of civil law issues include divorce, debt and housing rights.

Children's Hearings deal with concerns about the welfare of a child.

Can the applicant access other forms of support?

Legal aid is only available where an applicant cannot access other sources of legal support or funding for legal advice. This is referred to as having other "[rights and facilities](#)" in legal aid legislation. For example, many household insurance policies provide access to legal advice and trade unions may support members with legal issues. An applicant may still be able to receive legal aid if they agree to pay over any funding they receive from a third party to SLAB.

The following sections look in more detail at the different types of legal aid available:

- [for criminal matters](#)
- [for civil matters](#)
- [children's legal assistance](#) (for Children's Hearings).

The different types of criminal legal assistance

The following sections look at the various types of legal aid for criminal matters:

- [automatic Criminal Legal Aid](#)- available automatically (without any [means or merits tests](#)) in certain circumstances
- [advice at the police station](#)

- **criminal Advice and Assistance** - available for advice, but not representation in court, on criminal issues
- **criminal Assistance By Way of Representation (ABWOR)** - allows for representation by a solicitor in certain circumstances, in particular where the accused pleads guilty in summary proceedings
- **Criminal Legal Aid** - for representation by a solicitor where the accused is charged under solemn procedure, or pleads not guilty in summary criminal proceedings.

Automatic Criminal Legal Aid

Criminal Legal aid is available automatically, without any requirement to fulfil means or merits tests, in certain circumstances. These are generally considered to be situations where it is in the interests of justice for the accused to be represented.

Some examples of situations where automatic Criminal Legal Aid is available are:

- hearings where the accused appears directly from custody or **on an undertaking** (and is represented by the duty solicitor in **summary cases**). In summary cases, where the accused pleads guilty and is represented by the duty solicitor, they can continue to receive automatic Criminal Legal Aid until their case is disposed of
- trials involving certain vulnerable witnesses, e.g. children
- hearings where an accused is prohibited from conducting their own defence (e.g. when accused of certain sexual offences)
- hearings where the sanity of the accused is in question
- in **summary cases**, where the court has adjourned proceedings to allow the accused to apply for legal aid - until a decision on the application is made
- in **solemn cases**, until a decision on a full Criminal Legal Aid application is made or the accused is granted bail/remanded in custody.

A duty solicitor may be available to act for the accused

SLAB maintains a rota of solicitors who are available to represent people in circumstances where they qualify for automatic Criminal Legal Aid.

The **duty solicitor** can act for accused people appearing in court in circumstances where they qualify for automatic Criminal Legal Aid. They can also deal with specific situations in police custody, e.g. where someone has been charged with murder, attempted murder or culpable homicide.

Those appearing from custody in summary cases **must** use the court duty solicitor to access automatic Criminal Legal Aid. This is also the case for those released from police custody **on an undertaking** in summary cases.

There are some exceptions to this rule for certain specialist courts. And an "appointed solicitor" (one with an existing relationship with the accused) may also act instead of the duty solicitor.

In other circumstances, an accused can use any solicitor they choose and still qualify for

automatic Criminal Legal Aid.

There is a separate [police station duty solicitor](#) rota to cover advice to those in police custody in other circumstances.

Advice at the police station

Anyone being held in police custody or being interviewed by the police is entitled to advice from a solicitor. This is usually provided by telephone but can also be face to face.

In the case of *Cadder v HMA* ([2010] UKSC 43), it was held that the lack of access to advice from a solicitor in these circumstances was a breach of the right to a fair trial under the European Convention on Human Rights.

The way the legal aid system has been adjusted to support this right has been a source of tension between defence solicitors, and the Scottish Government and SLAB. Initially, solicitors complained that they had to attend police stations at all times of day or night and may have received no payment at all for this part of their work if they went on to represent their client in court.

The current system allows solicitors to receive [Advice and Assistance](#) legal aid payments without the need to apply any [means or merits tests](#) for the specific purpose of providing police station advice. Rates of pay and levels of authorised expenditure (below which no prior permission is required by SLAB) have been increased. [Block fees](#) have been introduced to cover most situations.

However, solicitors who wish to respond to requests for advice at the police station will still need to be available, or have cover arrangements in place, to deal with requests outside normal working hours.

Contacting solicitors to provide advice at a police station

SLAB runs the [Solicitor Contact Line](#). Where someone at a police station requests advice without naming a specific solicitor, the Solicitor Contact Line will provide telephone advice.

Where a person requests face to face consultation, or for a solicitor to be present at a police interview, the Solicitor Contact Line will contact a solicitor from the Police Station Duty Rota compiled by SLAB. Where it isn't possible to contact a duty solicitor, the Solicitor Contact Line will arrange for a SLAB solicitor to attend.

Where someone at a police station requests advice or attendance from a specific solicitor, the police will attempt to contact that solicitor. The matter will be referred to the Solicitor Contact Line if contact cannot be made within 30 minutes.

Criminal Advice and Assistance

Advice and Assistance is available for advice on both criminal and civil issues. It covers advice, but not representation in court, from a solicitor on a matter of Scots law. Applicants must meet the financial eligibility criteria.

In a criminal context, Advice and Assistance covers advice on criminal law issues where there is no need for representation in court. Examples include advice on attending a police interview where the person is not subsequently charged with any offences or advice about whether to accept a fine.

Solicitors assess eligibility for criminal Advice and Assistance and collect financial contributions from clients. SLAB can check decisions and reclaim sums it thinks have been wrongly granted. SLAB may have to give prior permission for a particular stage of work, e.g. expenditure beyond agreed limits.

Financial eligibility

An applicant for criminal Advice and Assistance must be within the thresholds for both [disposable capital](#) and [disposable income](#). These are updated periodically using secondary legislation.

The figure below shows financial eligibility for Advice and Assistance, current in August 2021.

Figure 3: financial thresholds used to assess entitlement to Advice and Assistance

	Threshold	Does the applicant qualify for Advice & Assistance?
Capital	More than £1,716	No
	Up to £1,716	Yes, if also within income limits
Weekly income	More than £245	No
	Between £106 - £245	Yes, if also within capital limits Applicants must pay a financial contribution towards the legal services they receive
	Up to £105	Yes, if also within capital limits There is no requirement to pay a financial contribution

Other eligibility criteria

There are no other eligibility criteria for criminal Advice and Assistance.

Criminal Assistance By Way of Representation (ABWOR)

Criminal ABWOR is a branch of Advice and Assistance which allows representation in certain criminal legal forums, including where the accused pleads guilty in summary proceedings. It may have additional qualifying criteria.

Criminal ABWOR is primarily used in [summary proceedings](#) where the accused has either not made a plea, or made a guilty plea. It can be used where the accused is not appearing from police custody (or [on an undertaking](#)), as those appearing from custody can qualify

for [automatic Criminal Legal Aid](#) from the duty solicitor.

Criminal ABWOR is still available in limited circumstances where the accused is appearing from police custody or [on an undertaking](#). An "appointed solicitor" (one with an existing relationship with the accused) can act instead of the duty solicitor. The appointed solicitor works under criminal ABWOR rather than [automatic Criminal Legal Aid](#).

Examples of other types of proceedings covered by criminal ABWOR include:

- specified statutory hearings, such as a hearing under road traffic legislation for the removal of a driving disqualification
- some Parole Board hearings
- various post-conviction hearings, e.g. failure to comply with the requirements of a community service order.

Solicitors assess eligibility for criminal ABWOR and collect any contributions. SLAB can check decisions and reclaim sums it thinks have been wrongly granted. SLAB may also have to give prior permission before particular work can be undertaken.

Financial eligibility

The financial eligibility criteria are the same as for [criminal Advice and Assistance](#).

Other eligibility criteria

It must be "**in the interests of justice**" to grant ABWOR for hearings under summary procedure where the accused is not appearing from police custody.

SLAB assumes this test is met where proceedings take place in the sheriff courts. Where proceedings take place in the Justice of the Peace courts, one or more of the following factors must be shown:

- if found guilty, the accused is likely to receive a prison sentence, lose their livelihood or face other difficulties (such as problems with travel or issues maintaining contact with a child)
- the case involves consideration of a substantial legal question, or of complex or difficult evidence
- the accused may be unable to understand proceedings or represent themselves (e.g. because of mental or physical disability).

Someone who does not appear from police custody, pleads guilty and cannot meet one of these criteria will not qualify for legal aid for representation from a solicitor. They would have to fund their own representation or conduct their case without legal representation. They may be able to access [Advice and Assistance](#) for advice on presenting their case.

Criminal Legal Aid

Criminal Legal Aid is available in summary criminal proceedings where the accused pleads not guilty and in solemn criminal proceedings, regardless of the plea. There

is a financial eligibility test and there may be other qualifying criteria.

In [summary cases](#), Criminal Legal Aid can be applied for after the first hearing where the accused pleads not guilty. In solemn cases, Criminal Legal Aid can be applied for at any time - however, [automatic Criminal Legal Aid](#) will cease to be available at the point the accused is either bailed or remanded in custody in relation to the charge(s).

SLAB assesses and grants applications for Criminal Legal Aid. There are no contributions to be collected.

Financial eligibility

Criminal Legal Aid is subject to a financial eligibility test. It is available where **"the expenses of the case cannot be met without undue hardship"** to the applicant or their dependants.

The test is an all-or-nothing one, so that an applicant either receives full Criminal Legal Aid without the need to pay a contribution, or they receive no legal aid. The Scottish Civil Justice Council and Criminal Legal Assistance Act 2013 contained proposals to collect financial contributions for Criminal Legal Aid. However, these have never been brought into force.

SLAB considers that someone with [disposable income](#) of less than £222 per week and [disposable capital](#) of £1,716 or less qualifies for Criminal Legal Aid.

Where someone has income or capital about these thresholds, SLAB will consider the likely costs of the case as part of its undue hardship calculation. Where a case is likely to be more expensive, e.g. because evidence from expert witnesses is needed, it may still be possible to qualify for Criminal Legal Aid.

Other eligibility criteria

In [summary cases](#), it must also be "in the interests of justice" that Criminal Legal Aid is granted. There are six factors which SLAB considers when assessing the interests of justice test:

- whether the accused is likely to receive a prison sentence or lose their livelihood if found guilty
- whether the case involves consideration of a substantial legal question, or of complex or difficult evidence
- whether the accused may be unable to understand proceedings or represent themselves (e.g. because of mental or physical disability)
- whether it is in the interests of someone other than the accused that the accused is legally represented
- that any defence put forward by the accused is not frivolous
- whether the accused has been remanded in custody before their trial.

A separate application for Criminal Legal Aid is needed where an accused wishes to appeal or otherwise challenge the verdict of a criminal court. There may be additional tests, although, in most cases, there is not.

Where someone pleads not guilty in a [summary case](#) and cannot meet any of the requirements of the interests of justice test, they will not qualify for legal aid for representation by a solicitor. They must either pay for their own representation or conduct the case without legal representation. They may be able to access [Advice and Assistance](#) for advice on how to present their case.

The different types of civil legal assistance

The following sections look at legal aid for civil matters:

- [civil Advice and Assistance](#) - available for advice from a solicitor, but not representation in court, on any matter of Scots law
- [civil Assistance by Way of Representation](#) - allows for representation from a solicitor in specified civil legal forums, such as certain tribunals
- [Civil Legal Aid](#) - covers representation in court for most civil court actions.

There are some principles which influence the operation of all forms of civil legal assistance:

Clawback

Any outstanding costs for legally aided cases can be recovered - or clawed back - from property "recovered or preserved" as a result of the legal action. Clawback operates where financial contributions from the applicant, combined with any [legal expenses](#) awarded by the court, are insufficient to cover the costs to the legal aid budget of the legal services provided.

In Civil Legal Aid, SLAB can recover the outstanding costs from any property awarded as a result of the legal action, for example money awarded as compensation, or the value of a house preserved during a divorce action. Solicitors have the same powers in relation to Advice and Assistance and ABWOR.

Some tribunal awards are exempt from clawback. In Advice and Assistance and ABWOR cases, it is possible for clawback provisions to be waived where recovery would cause "grave hardship or distress" to the applicant.

Modification of expenses

In civil court action, it is usual for the losing party to have to pay towards the winning party's [legal expenses](#) (such as the costs of using a solicitor). Legal aid legislation gives the court the power to reduce - or modify - any expenses awarded against a legally-aided party.

It is usual for the court to reduce any legal expenses award to zero. However, this is not guaranteed, and the legally-aided party remains liable for any expenses the court considers it reasonable for them to pay.

Modification of expenses is a significant advantage for legally-aided litigants. It reduces the risks and costs of taking civil court action for them. It may also impact on an opponent's actions, as they may be unable to recover their legal expenses even if they are successful.

This means court action is likely to be more risky and expensive for them.

It is possible for the court to order that a non-legally-aided party has their legal expenses paid from the legal aid budget, where they would suffer if no payment was made.

Civil Advice and Assistance

Civil Advice and Assistance is available for advice from a solicitor, but not representation in court, on a matter of Scots law. There is a financial eligibility test.

Scots law covers UK law as applied in Scotland. SLAB will look at whether the issue can be adjudicated in a court or tribunal based in Scotland as an indication that something is a matter of Scots law.

There are some civil court procedures which are designed to be easy for non-lawyers to use, for example, [Simple Procedure in the sheriff court](#)³ for claims up to £3,000. In these situations, legal aid will not pay for representation from a solicitor. However, it is possible to get advice on how to present your case via [Advice and Assistance](#).

A solicitor cannot take any steps to represent their client when working under civil Advice and Assistance. For example, they cannot lodge evidential documents with the court. However, they can take steps short of court representation, for example, negotiating a settlement with the other party.

Solicitors assess eligibility for civil Advice and Assistance and collect financial contributions from clients. SLAB can check decisions and reclaim sums it thinks have been wrongly granted. Solicitors may also need SLAB's prior permission to undertake certain work, e.g. where expenditure would be beyond agreed limits.

Financial eligibility

The financial eligibility criteria are the same as for [criminal Advice and Assistance](#).

Other eligibility criteria

There are no other eligibility criteria.

Civil Assistance By Way of Representation (ABWOR)

Civil ABWOR is a branch of Advice and Assistance which enables representation by a solicitor in a range of specified civil legal forums such as certain tribunals. There may be additional qualifying criteria.

Civil ABWOR is available for some court proceedings, for example, to be appointed the executor of a deceased person's estate. It is also available for a range of tribunal proceedings.

The table below highlights some of the tribunal forums for which ABWOR is available. It highlights the main types of tribunal rather than being comprehensive.

There are many tribunals for which ABWOR is not available. In these circumstances, people are expected to present their case without legal representation. It is possible to

qualify for [Advice and Assistance](#) for advice on how to present your case.

Table 1: Availability of ABWOR for tribunal representation

Tribunal	ABWOR for First-tier tribunal?	ABWOR for Upper/ Appeal Tribunal?	Means test?	Merits test?
Employment Tribunal	Yes	Civil Legal Aid available	Yes	Yes - effective participation
Mental Health Tribunal for Scotland	Yes	Not applicable	No	No
Health and Education Chamber (Scotland) - for Additional Support Needs claims	Yes	Yes	Yes	Yes - effective participation
Immigration and Asylum	Yes	Yes	Yes	No (but the interests of justice test is applied to Upper Tribunal cases where permission to appeal has been refused)
Tax	Some types of claim	Some types of claim	Yes	Yes - interests of justice
Social security	No	Some types of claim	Yes	Yes - effective participation

Solicitors assess eligibility for civil ABWOR and collect financial contributions from clients. SLAB can check decisions and reclaim sums it thinks have been wrongly granted. Prior permission from SLAB may be needed to undertake certain work.

Financial eligibility criteria

The financial eligibility criteria are the same as for [criminal Advice and Assistance](#).

Some specific proceedings, including representation before the Mental Health Tribunal for Scotland, are exempt from the financial eligibility test.

Other eligibility criteria

There are different merits tests for civil ABWOR, depending on the forum in which a solicitor is providing representation. Some forums have no tests. Otherwise, applicants must meet one of two tests - the **effective participation test** or the **interests of justice test**.

These tests are technically different, but they look at a range of similar factors. Issues for consideration include the applicant's ability to present the case themselves and whether it is reasonable to grant legal aid (for example, consideration of the likely effect of raising proceedings).

Where a [merits test](#) applies and the applicant cannot demonstrate that they meet the qualifying criteria, they cannot receive legal aid for representation from a solicitor. Instead they must represent themselves or pay privately for legal representation. They may be able to access [Advice and Assistance](#) for advice on how to present their case.

Civil Legal Aid

Civil Legal Aid is available for representation in most civil court actions. There are additional qualifying criteria.

Civil Legal Aid is available for a range of court proceedings, including in the sheriff courts, the Sheriff Appeal Court, the Court of Session and the UK Supreme Court.

There are some specific proceedings for which Civil Legal Aid is not available, usually because they are designed to be accessible and a litigant is expected to be able to represent themselves. Examples include [simplified divorce proceedings](#)⁴ and [Simple Procedure court claims](#)³ with a value of up to £3,000.

Applications for Civil Legal Aid are made to SLAB. SLAB collects any financial contributions from those who qualify.

Financial eligibility criteria

An applicant for Civil Legal Aid must be within the thresholds for [disposable capital](#) and [disposable income](#) to qualify. These thresholds are updated periodically using secondary legislation.

The figure below shows the financial eligibility criteria for Civil Legal Aid, current at August 2021.

Figure 4: financial thresholds used to assess entitlement to Civil Legal Aid

	Threshold	Does the applicant qualify for Civil Legal Aid?
Capital	More than £13,017	No - unless SLAB considers that the case is likely to be particularly expensive
	£7,853 - £13,017	Yes, if also within income limits Applicants must pay a financial contribution towards the legal services they receive. This will be 100% of any capital above £7,853
	Up to £7,853	Yes, if also within income limits There is no requirement to pay a financial contribution from capital
Annual income	More than £26,239	No
	Between £3,521 - £26,239	Yes, if also within capital limits Applicants must pay a financial contribution towards the legal services they receive: 33% of income between £3,522 and £11,540 50% of income between £11,541 and £15,743 100% of income between £15,744 and £26,239
	Up to £3,521	Yes, if also within capital limits There is no requirement to pay a financial contribution from income

Other eligibility criteria

In order to grant Civil Legal Aid, SLAB must be satisfied that:

- there is a plausible legal basis for the case
- it is "reasonable in the particular circumstances of the case" to grant legal aid. This covers, for example, consideration of whether further negotiation could resolve the issue, whether the chances of success are good enough to justify taking court action and the likely benefits of the proceedings.

Where an applicant does not meet these criteria, they won't qualify for Civil Legal Aid. Generally, this will indicate that they have a weak case, there are better ways to resolve the issue, or there isn't likely to be any practical impact from taking court action. If the applicant wishes to continue to pursue the issue, they must either represent themselves or pay privately for a solicitor. They may be able to access [Advice and Assistance](#) for advice on how to present their case.

A new application for Civil Legal Aid is necessary if an applicant wishes to appeal against the final decision of a court. It will not usually be necessary to make a further financial contribution towards the cost of the case. However, SLAB will reconsider its merits tests.

Children's legal assistance (for Children's Hearings)

The Children's Hearing system deals with situations where there are concerns about a child's welfare

This could be because of abuse, neglect, problematic behaviour or because the child is alleged to have committed a criminal offence.

A panel of three members will make a decision on whether any intervention is needed to support the welfare of the child. The panel can make a range of decisions, from making a voluntary referral to a support service, through mandatory supervision from the local authority, to detention in secure accommodation. Secure accommodation is residential accommodation where the freedoms of the child are subject to some level of restriction.

Some Children's Hearing-related issues require hearings in the sheriff courts. These proceedings are also dealt with under Children's legal assistance.

The term "relevant person" is used to describe adults who have a recognised interest in a Children's Hearing

This covers biological or adopted parents, and anyone else with legally recognised responsibilities and rights in relation to the child. In addition, anyone with significant involvement in the upbringing of a child can request to be recognised as a "deemed" relevant person.

This part of the briefing looks at the following types of legal aid:

- [Automatic Legal Aid for Children's Hearings](#)- available without any eligibility tests to children who are the subject of certain proceedings
- [Advice and Assistance for Children's Hearings](#) - for advice, but not representation, from a solicitor via the general Advice and Assistance scheme
- [Assistance By Way of Representation \(ABWOR\) for Children's Hearings](#) - for representation at Children's Hearings and certain specified sheriff court proceedings
- [Children's Legal Aid](#) - for related hearings in the sheriff courts and appeals to higher courts.

Automatic legal aid for Children's Hearings

Automatic Children's Legal Aid is available without the need to fulfil any [means or merits tests](#) for certain proceedings with serious implications for the rights of the child concerned. It is only available to the child who is the subject of the proceedings.

Automatic Children's Legal Aid is available for the following proceedings:

- hearings in the sheriff courts for the variation or termination of a child protection order (making emergency provision for children at immediate risk)
- Children's Hearings to review a decision to keep a child in a certain place for their

safety following the granting of a child protection order

- Children's Hearings or pre-hearings where it may be necessary to make an order authorising a child to be placed in secure accommodation
- Children's Hearings where the child appears from police custody.

The child must use a duty solicitor appointed by SLAB from their Children's Duty Scheme rota to qualify for automatic Children's Legal Aid.

If the child would prefer to use a different solicitor, that solicitor must work under [Assistance By Way of Representation \(ABWOR\) for Children's Hearings](#). However, ABWOR can also be granted without any eligibility tests for these types of hearings.

Advice and Assistance for Children's Hearings

Advice and Assistance is available for advice from a solicitor about issues to be considered by a Children's Hearing, as it is for any other aspect of Scots law. The [standard financial eligibility test applies](#).

Children's Hearings are designed to be informal and child-friendly. Unlike the courts, they are non-adversarial, meaning that it is not up to one side or the other to prove their case. Instead, decisions are reached, as much as possible, by discussion and agreement. The key consideration is the welfare of the child.

This means that, in many cases, children and relevant persons can participate effectively without legal representation. In these situations, [Advice and Assistance](#) will be the appropriate form of legal aid.

Assistance By Way of Representation (ABWOR) for Children's Hearings

ABWOR for Children's Hearings covers representation in relation to Children's Hearings and certain related hearings in the sheriff courts. Applicants must usually meet [means and merits tests](#). However, children who are the subject of the proceedings can access ABWOR for Children's Hearings without meeting any eligibility requirements for certain types of hearings with serious implications for their rights.

Solicitors assess eligibility for ABWOR for Children's Hearings and collect financial contributions from clients. SLAB can check decisions and reclaim sums it thinks have been wrongly granted. Prior permission from SLAB may be needed to undertake certain work.

Children's access to ABWOR for Children's Hearings

Children can access ABWOR without meeting any eligibility criteria for certain types of hearings. These are:

- applications for child assessment orders (to enable access to a child to allow an assessment of their situation) or child protection orders (emergency provision for

children at immediate risk) in the sheriff courts

- hearings in the sheriff courts for the variation or termination of a child protection order
- Children's Hearings to review a decision to keep a child in a certain place for their safety following the granting of a child protection order
- Children's Hearings or pre-hearings where it may be necessary to make an order requiring a child to be placed in secure accommodation
- Children's Hearings where the child appears from police custody.

Note that [Automatic Legal Aid for Children's Hearings](#) is also available to cover most of the hearings in this list.

Children can access ABWOR for all other types of Children's Hearings. ABWOR is also available for pre-hearings where a decision about whether someone is to be a [deemed relevant person](#) is to be made.

For these proceedings, applicants must meet the [standard financial eligibility test for Advice and Assistance](#). Where a child is capable of instructing a solicitor, it is their resources, rather than the resources of any adult responsible for them, which are considered for the financial eligibility test. They must also demonstrate that legal aid is required to allow their **effective participation** in proceedings.

Adults' access to ABWOR for Children's Hearings

An adult who is - or is deemed to be - a [relevant person](#) can access ABWOR for any Children's Hearing, as well as some specified hearings in the sheriff courts. The [standard financial eligibility test for Advice and Assistance](#) applies. However, entitlement will stop if an adult ceases to be a deemed relevant person.

In addition, ABWOR is available where an adult is requesting to be deemed a relevant person at a Children's Hearing or pre-hearing, or challenging steps to remove their deemed relevant person status.

Adult applicants must also demonstrate that legal aid is required to allow their **effective participation** in proceedings.

Effective participation test

SLAB has a list of factors which it considers in relation to judging whether someone can participate effectively in proceedings. These are:

- the complexity of the case
- the nature of the legal issues involved
- the ability of the applicant to challenge information presented at the hearing without assistance
- the ability of the applicant to present their views in an effective manner without assistance.

It is possible for solicitors to argue that other factors should be taken into consideration.

Children's Legal Aid

Children's Legal Aid is available for Children's Hearing-related proceedings which take place in the courts rather than at a Children's Hearing. There are various qualifying criteria.

Children's Legal Aid is available to children who are the subject of the proceedings and adults who are - or are deemed to be - **relevant persons**. It can also cover appeals in relation to the refusal or removal of relevant person status, for example, where a Children's Hearing has decided an adult is no longer a relevant person.

Applications for Children's Legal Aid are made to SLAB. SLAB collects any financial contributions from those who qualify.

Financial eligibility criteria

An applicant for Children's Legal Aid must be within the thresholds for **disposable capital** and **disposable income** to qualify. These thresholds are updated periodically using secondary legislation.

The figure below shows the financial eligibility criteria for Children's Legal Aid, current at August 2021.

Figure 5: financial thresholds used to assess entitlement to Children's Legal Aid

	Threshold	Does the applicant qualify for Children's Legal Aid?
Capital	More than £7,405	Only if they can show that the costs of the case cannot be met without causing "undue hardship"
	Up to £7,405	The applicant must make a financial contribution of 100% of their capital above £7,405 Yes, if also within income limits
Weekly income	More than £222	Only if they can show that the costs of the case cannot be met without causing "undue hardship"
	Between £69 - £222	Yes, if also within capital limits Applicants must pay a weekly financial contribution towards the costs of legal services they receive. This is calculated based on the level of their income and the average length of the case.
	Up to £68	Yes, if also within capital limits There is no requirement to pay a financial contribution

Other eligibility tests

Where a child is applying for Children's Legal Aid, SLAB must be satisfied that:

- it is in the child's best interests that legal aid is granted
- it is "reasonable in the particular circumstances of the case" that legal aid is granted.

Where an adult who is - or is deemed to be - a [relevant person](#) is applying for Children's Legal Aid, SLAB must be satisfied that it is "reasonable in the particular circumstances of the case" that legal aid is granted. This is also the case where an adult is challenging a decision to refuse or remove relevant person status.

A separate application for Children's Legal Aid is necessary where an applicant wishes to appeal a decision to the Sheriff Appeal Court or Court of Session. SLAB will apply a means test if the applicant is not already receiving legal aid and will also reconsider its merits tests in relation to the case.

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