



## Availability of Legal Aid

Legal aid may be available to help an adult, or a parent acting on behalf of a child, who wants to challenge a decision. It covers cases in the Court of Protection (CoP) or civil court, and applications for judicial review.

Before legal aid is granted, most people need to pass a financial means assessment. The case must also satisfy a merits test of whether it has a reasonable chance of success.

The rules relating to eligibility for legal aid are complex and you should always contact a specialist legal aid solicitor or the Legal Aid Agency to check the position.

We provide a summary of the key eligibility requirements to help you understand the availability of legal aid in public law, community care and education matters.

### Availability of legal aid

Legal aid is available for the following types of work:

- Legal advice and assistance for the provision of community care services (including those provided by clinical commissioning groups (CCGs)). This is called “Legal Help”
- Legal Representation (including Investigative Representation) for judicial review applications and some other public law matters, e.g. some applications to the CoP in relation to the health and welfare of adults who lack capacity to make certain decisions, and Deprivation of Liberty (DoLS) appeals
- Legal advice and assistance to prepare an appeal to the Tribunal (but not representation at the Tribunal itself). This is also called “Legal Help”

- Legal aid on a non-means tested basis for CoP cases concerning deprivation of liberty in care homes and hospitals.

A parent or young person seeking access to legal aid for a Special Educational Needs (SEN) case or disability discrimination case should go to the legal aid checker on the [gov.uk](https://www.gov.uk) website to find out if they're eligible, or contact the Civil Legal Advice service (CLA) on 0345 345 4345.

For eligible people, the CLA usually provides legal advice by phone, online, or by post, unless there's a reason why these methods of communication aren't suitable.

The following groups can seek advice directly from a face-to-face provider without applying to the CLA:

- Young people under 18
- Those who the CLA has assessed in the last 12 months to need face-to-face advice, who have an additional linked problem, and they're seeking further help from the same face-to-face provider.

For advice and assistance on a possible judicial review, individuals or advocates can contact a legal adviser directly without contacting the CLA first. Please ask a member of our team for further details.

### Financial eligibility limits

To be eligible for civil legal aid, you must meet a financial means test in most cases. As of 4 May 2021, the limits were:

#### Income limit:

- If you receive any of the following, whether directly or indirectly: Income Support, Income-Based Job Seeker's Allowance, Income-Related Employment and Support Allowance, Guarantee Credit or Universal Credit, you automatically pass the income test. However, capital must be assessed in all cases
- Gross income limit not to exceed £2,657 per month. If you have more than four dependent children, add £222 to this figure for the fifth child and each further child
- Disposable income limit not to exceed £733 per month.

#### Capital limit:

- £8,000, but you have to make a contribution from your capital for any amount over £3,000.

Legal aid isn't means tested if you're challenging a Deprivation of Liberty Safeguards (DoLS) authorisation in the CoP. In welfare and medical treatment matters that involve the CoP, eligibility for legal aid is means tested.

The rules about what is assessed and whether any disregards apply to you are complex. Your circumstances should be considered by a specialist provider.

### Resources

[The Civil Legal Aid \(Financial Resources and Payment for Services\) Regulations 2013 \("Civil Financial Regulations"\) and subsequent amendments](#) set the rules for all forms of civil legal services.

You can use this online tool to [check if legal aid is available for your case](#).

Further [guidance from the Legal Aid Agency](#) can be found on their website.

**Note:** the eligibility requirements set out above are correct as at 4 May 2021. If you think you might be eligible for legal aid, you should always confirm this with a specialist legal aid adviser.

### Whose means should be assessed?

This depends on the type of legal aid provided and the nature of your case.

You should always check your particular circumstances with a legal aid adviser.

- For advice and assistance ("Legal Help") on SEN and discrimination matters, the Legal Aid Agency will assess the means of whoever has the right of appeal. This'll usually be the parents but some rights transfer to young people when they reach the end of compulsory school age
- For advice and assistance ("Legal Help") on community care matters for children, the child is the client and their means are assessed, but the parent's means are also taken into account. Where the advice or assistance is for a person over 18, the assessment is of their means only
- For Legal Representation for judicial review e.g. a challenge to a care plan or health and social care element of an EHC Plan, eligibility is based on the means of the child or person who is the subject of the proceedings.

In most cases, the rules also state that, the means of an individual's partner (if they have one) must be assessed.