



RIGHTS *of*
WOMEN
helping women through the law

A Guide to Family Law Legal Aid

This guide is designed to give you information about when you may be able to access legal aid for family law matters.

This legal guide provides an overview on when you will be able to access legal aid for family law issues and, if you are a victim of domestic violence, what evidence you will need to get legal aid for issues involving children and relationship breakdown.

This guide will focus on legal aid in family cases. Legal aid is also available for other types of law. To find out if you can get legal aid for your case, go to <https://www.gov.uk/legal-aid/eligibility>

What is legal aid?

Legal Aid is available for people who need legal advice or assistance but are unable to pay for a lawyer themselves. The money comes from the Government and is administered by the Legal Aid Agency. The Legal Aid Agency applies rules about who can get legal aid. This guide provides an explanation of the rules the Legal Aid Agency will apply so you can work out whether you would be able to get legal aid.

The rules around legal aid for family law are complicated. Legal aid is available for some family cases but the rules for legal aid are different for different types of cases. So the first thing you need to know is what type of case you need help with.

Legal aid is always available for the following types of cases:

- Orders in relation to children who have been abducted or unlawfully removed to a place outside the UK which is a signatory to the Hague Convention (for more information see **Children and the law: child abduction**) or to an EU country covered by European law. If your child has been abducted, you should contact a solicitor immediately.
- Cases where the local authority is involved with your children and are considering going to court or have made an application to the court for a care order, supervision order, emergency protection order or child assessment order.

For these types of cases you can get legal aid whatever your financial circumstances are.

'...Legal Aid is available for people who need legal advice or assistance but are unable to pay for a lawyer themselves...'

There are some types of cases where it is possible to get legal aid as long as you pass 2 tests set out by the Legal Aid Agency called the means test and merits test. These are explained below. The types of cases are:

- Applications for non-molestation and occupation orders
- Applications for restraining orders under the Protection From Harassment Act 1997
- Applications for forced marriage protection orders
- Applications for female genital mutilation protection orders
- Applications for orders in relation to children who have been abducted or unlawfully removed or where you fear they may be abducted or unlawfully removed but the application is not made under an international convention
- Mediation

If you want legal aid for one of these types of cases, you will need to pass both the means and merits tests before you can get legal aid. See the sections below on the means test and merits test.

In cases of domestic violence or forced marriage, you may be asked to pay a contribution if the Legal Aid Agency assesses your income or capital to be over their threshold. You should speak to a legal aid solicitor and they will be able to tell you how much the contribution is likely to be so you can decide whether you can afford it.

For further information regarding non-molestation orders, occupation orders, restraining orders and forced marriage protection orders see our **Guide to Domestic Violence Injunctions**. For further information on orders relating to children see our other legal guides available on our website or contact our advice line on **020 7251 6577**.



When does the domestic violence evidence or child abuse requirement apply?

For some types of cases, you will have to not only pass the means and merits test but also provide evidence that you have been the victim of domestic violence. You will only be able to get legal aid if you can provide certain types of evidence.

These types of cases are:

- Divorce and judicial separation proceedings;
- Financial proceedings on divorce or dissolution of civil partnership;
- Child Arrangement Orders (orders relating to who a child will live with, spend time with or have contact with);
- Applications in relation to children for prohibited steps orders or specific issue orders (unless the prohibited steps order or specific issue order is required in relation a child who has been or may be abducted or unlawfully removed);
- Child maintenance and applications under Schedule 1, Children Act 1989.

For cases about children, you may be able to provide evidence that the child is at risk of abuse by the other party instead of evidence in relation to domestic violence. Only certain types of evidence will be accepted by the Legal Aid Agency which are set out below.

'...you may be able to provide evidence that the child is at risk of abuse by the other party instead of evidence in relation to domestic violence...'



What is considered evidence of domestic violence?

Although you may be the victim of domestic violence, the Legal Aid Agency will only accept evidence of this if it is in a form approved by the Government. There is a list of the types of evidence that you could provide and you have to be able to get at least one type of evidence to be able to get legal aid.

Some of the evidence has to be specifically about you but there are certain types of evidence that can relate to you or to a partner or family member of the other party to the family proceedings. For example, if the other party to the proceedings has been convicted of a violent offence against their ex-partner, you could use this as evidence that you are at risk of domestic violence. The evidence that can relate to you or another person are marked with asterisks like this.**

- the other party has been arrested for a domestic violence offence and the investigation is ongoing**
- the other party has a police caution for a domestic violence offence**
- the other party is subject to criminal proceedings for a domestic violence offence which have not concluded**
- the other party has a conviction for a domestic violence offence**
- a court order binding over the other party in connection with a domestic violence offence**
- a domestic violence protection notice or a domestic violence protection order against the other party**
- a protective injunction against the other party (such as a non-molestation order, an occupation order, an injunction under the Protection from Harassment Act 1997, a restraining order, a forced marriage protection order, a domestic violence protection order)**
- an undertaking relating to domestic violence given by the other party provided that a cross-undertaking was not given by you**
- a finding of fact that there has been domestic violence by the other party. The finding of fact must have been made by a court in the UK**
- an expert report produced as evidence in proceedings in the UK for the benefit of a court or tribunal confirming that someone who was in a relationship with or a family member of the other party was assessed as being, or at risk of being, a victim of domestic violence from the other party**
- a letter or report from a health professional who has access to your medical records for legal aid, confirming that that professional, or another health professional -
 - (a) has examined you in person; and
 - (b) was satisfied following that examination that you had injuries or a condition consistent with those of a victim of domestic violence.

- a letter or report from -
 - (a) the health professional who made the referral described below; or
 - (b) a health professional who has access to your medical records, confirming that you were referred by a health professional to a person who provides specialist support or assistance for victims of, or those at risk of, domestic violence
- a letter from an independent domestic violence advisor confirming that they are providing support to you
- a letter from an independent sexual violence advisor confirming that they are providing support to you relating to sexual violence from the other side
- a letter from an organisation providing domestic violence support services. The letter must set out that:
 - (a) the organisation is situated in England and Wales;
 - (b) the organisation has been operating for an uninterrupted period of 6 months or more; and
 - (c) the organisation has provided you with support in relation to your needs as a victim or person at risk of domestic violence and contain:
 - (i) a statement that in the professional judgment of the author of the letter, you are, or are at risk of being, a victim of domestic violence;
 - (ii) a description of the matters relied upon to support that judgment;
 - (iii) a description of the support provided to you;
 - (iv) a statement of the reasons why you needed that support.
- a letter from an organisation providing domestic violence support services in the UK confirming that:
 - (a) you or someone who was in a relationship with or a family member of the other party was refused admission to a refuge;
 - (b) the date on which you or the other person was refused admission to the refuge;and
 - (c) you or the other person sought admission to the refuge because of allegations of domestic violence by the abuser.**
- a letter or report from the person to whom the referral was made, confirming that you were referred by a health professional to a person who provides specialist support or assistance for victims of, or those at risk of, domestic violence

- a letter from any person who is a member of a multi-agency risk assessment conference (MARAC) or other local safeguarding forum confirming that you or a person who is in a family relationship with you is, or has been, at risk of harm from domestic violence from the other party
- a letter from a public authority (including social services) confirming that you or a person with whom the other party is or was in a relationship or is a family member was assessed as being, or at risk of being, a victim of domestic violence by the other party (or a copy of that assessment)**
- a letter from an officer employed by a local authority or housing association (or their equivalent in Scotland or Northern Ireland) for the purpose of supporting tenants containing:
 - (a) a statement that in their professional judgment, you or a person with whom the other party is or was in a relationship with or is a family member is, or is at risk of being, a victim of domestic violence by the other party;
 - (b) a description of the specific matters relied upon to support that judgment; and
 - (c) a description of the support they provided to the victim of domestic violence or the person at risk of domestic violence.**
- a letter from the Secretary of State for the Home Department confirming that you have been granted leave to remain in the UK under paragraph 289B of the Immigration Rules
- evidence which the Director of the Legal Aid Agency is satisfied demonstrates that you have been, or are at risk of being, a victim of domestic violence by the other party in the form of abuse which relates to financial matters

For more guidance on how to obtain this evidence contact our advice line on **020 7251 6577** or see our information sheet online [here](#).

'...Although you may be the victim of domestic violence, the Legal Aid Agency will only accept evidence of this if it is in a form approved by the Government...'

Evidence of Child at Risk

If your case involves a child and that child is at risk of abuse from the other party then you may be eligible for legal aid whether or not you are the victim of domestic violence if you can provide evidence of the risk of harm to your child. The Legal Aid Agency will only accept certain types of evidence to show that your child is at risk of harm. The risk of harm must come from the other party in the case.

The evidence may relate to harm that has been caused to a different child where this shows that your child is also at risk of harm. For example, the father of your children may have been convicted of child neglect against his other children. Where evidence in relation to a different child will be accepted by the Legal Aid Agency, asterisks have been put at the end of the piece of evidence like this.**

- the other party have been arrested for a child abuse offence and the investigation is ongoing**
- the other party has received a police caution for a child abuse offence**
- there are criminal proceedings for a child abuse offence against the other party which have not concluded**
- the other party has a conviction for a child abuse offence**
- there is a protective injunction against the other party (such as a non-molestation order, an occupation order, an injunction under the Protection from Harassment Act 1997, a restraining order, a forced marriage protection order, a domestic violence protection order)

- a finding of fact of abuse of a child by the other party made in proceedings in the UK**
- a letter from a social services department confirming that the child was assessed as being, or at risk of being, a victim of child abuse by the other party (or a copy of the assessment)
- a letter from a social services department confirming that a child protection plan was put in place to protect the child from abuse or a risk of abuse by the other party (or a copy of the plan)
- an application for a protective injunction made with an application for a prohibited steps order against the other party which has not, at the date of the application for legal aid, been decided by the court.

For more guidance on how to obtain this evidence see the Ministry of Justice's guidance at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/672143/evidence-requirements-private-family-law-matters-guidance-version-8.pdf or contact our advice line on **020 7251 6577**.

The means test

For most types of family law cases the Legal Aid Agency will assess whether or not you are financially eligible for legal aid. This is known as the means test. You will need to provide evidence of all of your income (such as wages and benefits) and any capital (such as savings, properties and shares).

The Legal Aid Agency will then deduct certain allowances for rent, if you work, have children or other dependents. The remaining figure is considered to be your disposable income. They will also deduct set amounts from any capital you own.

If your income or capital is higher than the amount specified by the Legal Aid Agency then you will not be eligible for legal aid. If your income and capital is below the specified amount then you will pass the means test but may have to pay a financial contribution towards your legal aid.

When assessing your means the Legal Aid Agency will take into account both your finances and those of your partner if they live with you unless your case is against them.

If you are paying a financial contribution towards your legal aid either from your income or your capital then the payments should be made to the Legal Aid Agency. Your solicitor should provide you with regular updates (at least once every six months) on the costs of your case.

To work out if you meet the criteria you can use the eligibility calculator on the Ministry of Justice's website <http://civil-eligibility-calculator.justice.gov.uk>



The merits test

The Legal Aid Agency will look at the strengths and weaknesses of your case and consider things such as:

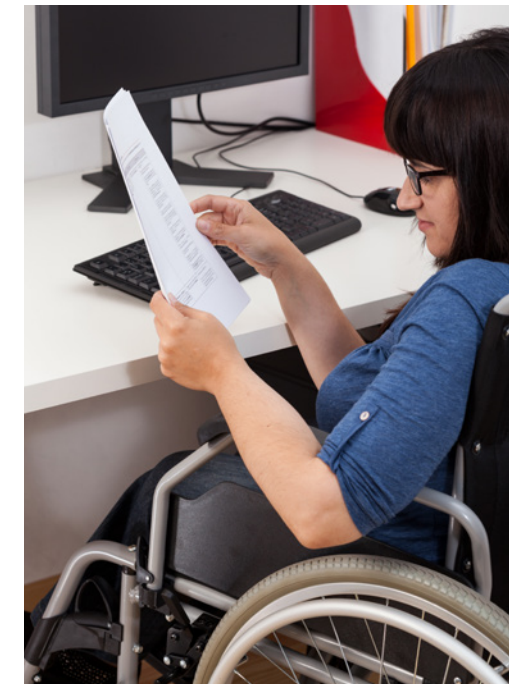
- The chances of you succeeding in your case. If your chances of success are low then it is unlikely that you will be granted legal aid.
- Whether the likely legal costs for your case are proportionate or reasonable compared to the benefit you may gain from succeeding in your case.
- If the case involves money or property, whether you are likely to win more than the money spent on your case (for example, if you are claiming £2,000 from the other party and your legal costs are likely to be £3,000 then the merits of your case are low).
- Whether a reasonable person who could afford to pay their own legal fees would use their own money to pay for the case. For example, the Legal Aid Agency generally considers it unlikely that a reasonable person would pay for solicitors and court fees in order to take their child for a short holiday abroad.

It is possible that you may get legal aid at the start of a case where it appears reasonable to continue to argue your case and your chances of success are reasonably good but as the case goes on, the merits of legal aid continuing could decrease. For example, you may not get legal aid to continue to a final hearing if there are expert reports that make recommendations contrary to what you hope to achieve.

Where you are suffering or at risk of suffering domestic violence, it is likely that you will pass the merits test.

See our guide **Family Court proceedings: where can I get advice and support?**

'...Where you are suffering or at risk of suffering domestic violence, it is likely you will pass the merits test...'



Types of legal aid

The Legal Aid Agency will limit the amount and type of legal work that your solicitor can do on your case depending on what type of case you have and what stage it is at. For example, the Legal Aid Agency may pay your solicitor to write to the other side on your case and try to negotiate an agreement but not pay them to go to court with you. Your solicitor should explain the different types of legal aid available and what limits the Legal Aid Agency has put on the support they can give. If you are not sure, you should ask your solicitor.

The statutory charge

The statutory charge describes the way in which the Legal Aid Agency can reclaim money they have spent on your representation. The costs the Legal Aid Agency paid towards your legal fees will be treated as a loan until it is repaid. The statutory charge will arise in cases where you have recovered or preserved a financial interest. Some of the common circumstances when it will arise are:

- If you gain any money, property, or assets from the other party. For example, if your spouse is ordered to provide you with a sum of money, or if a property which was in your joint names is transferred to your sole name.
- If you keep any money, property, or assets from the other party as a result of the proceedings. For example, if your spouse makes a claim for a property in your sole name to be transferred to them and the judge decides that you should continue to own the property then you will have kept the property and the statutory charge applies.

If it is property that you have gained or kept then you may be able to delay repayment through the Legal Aid Agency "registering a charge" on the property. This means that the Legal Aid Agency will secure its loan against the value of your home (like a mortgage). The charge will be "registered" (or recorded) at the Land Registry. You will be required to repay the loan and any interest to the Legal Aid Agency when you sell the home. You should make sure you check the interest rate charged on the loan as it is normally higher than a bank charges.

If it is money that you have gained or kept then you will be asked to repay your legal costs as soon as possible after the case ends. The Legal Aid Agency will only accept a delay in repayment if you wish to buy a home with the money you are rewarded. In such cases the Legal Aid Agency will "register a charge" on your home (see above).

At the end of the case your solicitor should send a copy of the bill to you before sending it to the Legal Aid Agency. You have the right to comment on the costs and potentially challenge the bill if you think it is too high. The bill will then be sent to the Legal Aid Agency to be assessed before the solicitor is paid.

For further information on the statutory charge contact the Legal Aid Agency (see Useful Contacts) or contact our advice line on **020 7251 6577**.

Exceptional case funding

If you are not eligible for legal aid for a reason other than failing the means test but your case is exceptional then you can apply for exceptional funding. This type of funding is assessed on a case by case basis by the Legal Aid Agency. It will only be granted where failure to do so would be a breach of human rights or international duties. For example, if you do not meet the criteria explained above but are not able to represent yourself because you struggle to understand English or have a particular vulnerability that means you would find it very difficult. Alternatively, your case may raise complicated issues that you do not know how to deal with.

It is possible to make an application for exceptional case funding to the Legal Aid Agency yourself. You can find the forms online and fill them in and send them to the Legal Aid Agency. If you are granted legal aid, then you will need to find a solicitor to take on your case.

Alternately, you can ask a legal aid solicitor to make an application for exceptional case funding for you.

Failure to provide information to the Legal Aid Agency

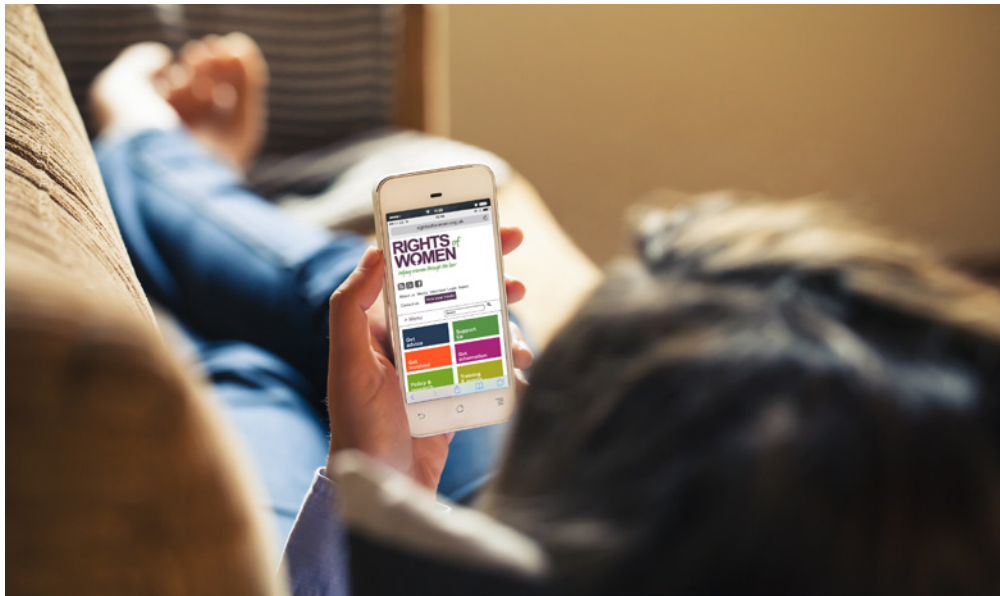
It is important that you provide information or documents requested by the Legal Aid Agency within any set timescales. It is also important that you inform the Legal Aid Agency if there are any changes to your financial situation.

If you fail to do these things then the Legal Aid Agency may revoke (which means cancel) your legal aid funding. If your legal aid is cancelled then you may be required to pay back some or all of your legal aid costs.

What if I cannot get legal aid?

If legal aid is not available to you then you can pay for legal advice yourself, seek alternative sources of advice or information or represent yourself.

'...It is possible to make an application for exceptional case funding to the Legal Aid Agency yourself. You can find the forms online and fill them in and send them to the Legal Aid Agency...'



The law is complex and may have changed since this guide was produced. This guide is designed to provide general information only for the law in England and Wales. You should seek up-to-date, independent legal advice.

Rights of Women does not accept responsibility for any reliance placed on the legal information contained in this guide.

© Rights of Women January 2018

For free, confidential, legal advice on family law including domestic violence, divorce and relationship breakdown and issues relating to children call the following:

Women living and working in London: call **020 7608 1137**. The advice line is open **Mon 11am-1pm, Tues to Thurs 2-4pm**.

For all women: call **020 7251 6577**. The advice line is open **Mon to Thurs 7 – 9pm and Friday 12-2pm**.

Rights of Women publishes a number of other guides that may be useful. For further information about these contact us or visit our website **www.rightsofwomen.org.uk**

Useful contacts

Find a Lawyer

Ministry of Justice

<https://find-legal-advice.justice.gov.uk>

The Law Society

www.lawsociety.org.uk

Resolution (to find a family law solicitor)

01689 820 272

www.resolution.org.uk

Bar Council

020 7242 0082

www.barcouncil.org.uk

Support and Information

Citizens Advice Bureau

www.citizensadvice.org.uk/index/getadvice.htm

Bar Pro Bono Unit

www.barprobono.org.uk/

Law Centres Network

www.lawcentres.org.uk

Personal Support Unit (PSU)

020 7947 7701 or 020 7947 7703

www.thepsu.org

National Domestic Violence Helpline

0808 2000 247

www.nationaldomesticviolencehelpline.org.uk

Rights of Women,

52 – 54 Featherstone Street, London EC1Y 8RT

Office: 020 7251 6575

Email: info@row.org.uk

Website: www.rightsofwomen.org.uk

Charity number: 1147913

Funded by:

RIGHTS of
WOMEN
helping women through the law

LONDON
COUNCILS

The logo for London Councils features the words "LONDON" and "COUNCILS" stacked vertically in a bold, sans-serif font. A thick, dark purple curved line sweeps from the bottom right of "COUNCILS" back up towards the right side of "LONDON".