



Cumbria Information, Advice & Support Service

SEN & Disabilities

Offering impartial information, advice and support to children and young people with special educational needs and or disabilities and their parents & carers.

Factsheet #27: Availability of Legal Aid

If parent or young person wants to challenge a decision, for example through a Tribunal appeal or judicial review application, legal aid may be available to assist them to do so.

Before someone can be granted legal aid they must pass a financial means assessment. The case must also satisfy a merits test of whether it has a reasonable chance of succeeding. The rules relating to eligibility for legal aid are complex and parents or young people should always contact the Legal Aid Agency or a specialist legal aid solicitors' firm to check the position.

This factsheet is intended to provide a summary of the key eligibility requirements to assist parents and young people in understanding the availability of legal aid in this area.

Availability of Legal Aid

Legal aid is available for the following types of work:

- Legal advice and assistance in preparing an appeal to the Tribunal (but not representation at the Tribunal itself). This form of legal aid is known as "Legal Help".
- Legal advice and assistance in relation to the provision of community care services (including those provided by CCGs) – this is known as "Legal Help".
- Legal Representation (including Investigative Representation) for judicial review applications and some other 'public law' matters – for example, some applications to the Court of Protection in relation to the health and welfare of adults who lack capacity to make certain decisions.

A parent or young person seeking access to legal aid for an **SEN case or disability discrimination case** should go to the legal aid checker on the GOV.UK website to find out if they are eligible or contact the Civil Legal Advice (CLA) service on 0845 345 4 345. If a person is eligible, the CLA will provide legal advice, normally by phone, online or by post unless the specialist advice provider assesses them as unsuitable to receive advice in this way.

The following groups do not have to apply via CLA – they can seek advice directly from a face-to-face provider:

- young people under 18, and
- those assessed by the CLA in the previous 12 months as requiring face-to-face advice, who have a further linked problem, and are seeking further help from the same face-to-face

provider.

For advice and assistance in relation to a potential judicial review, parents or young people do not have to phone CLA first and can contact a legal advisor directly for specialist advice. Further details are set out in a separate factsheet.

Financial Eligibility Limits

In order to be eligible for legal aid, the individual must meet a financial means test. As at 7 April 2014, the limits were

- **Income Limit:**
 - o Clients properly in receipt, directly or indirectly, of: Income Support, Income-Based Job Seeker's Allowance, Income-Related Employment and Support Allowance, Guarantee Credit or Universal Credit are passported through the income test but capital must be assessed in all cases
 - o **Gross income** limit not to exceed: **£2,657 per month.**
 - o **Disposable income** limit not to exceed: **£733 per month.**
- **Capital Limit: £8000.00** – although note that the individual will have to make a contribution from their capital of any amount over £3000.00.

Whose means should be assessed?

This depends on the type of legal aid provided and the type of case. You should always check the specific circumstances with a legal aid advisor, but broadly:

- For advice and assistance (“Legal Help”) in relation to SEN and discrimination matters the Legal Aid Agency will assess the means of whoever has the right of appeal. This will usually be the parents but note that some rights transfer to young people upon them reaching the end of compulsory school age.
- For advice and assistance (“Legal Help”) in relation to community care matters for children, the child will be the client and their means will be assessed but the parent's means will also be taken into account. Where the advice or assistance is for a young person over 18, the assessment will be on their means only.
- For Legal Representation for judicial reviews – for example, a challenge to the health and social care element of an EHC Plan – eligibility will be based on the means of the child or young person.

In addition, the rules require that in most cases, the individual's partner's means (if they have one) must also be assessed.

Note: the eligibility requirements set out above are correct as at 30.7.2014. Individuals who consider that they might be eligible for legal aid should always contact a specialist legal aid adviser to confirm eligibility.