

Civil Legal Aid in Ireland

FLAC (Free Legal Advice Centres) is a voluntary, campaigning organisation which promotes equal access to justice for everybody in Ireland.

As an independent rights organisation, FLAC is not part of the state-funded Legal Aid Board, which is responsible for administering government-funded legal aid and advice. This sheet explains how to access the state civil legal aid scheme.

The purpose of a civil legal aid scheme is to help to achieve real access to justice for everyone, especially the increasing number of people without the resources to pay for it themselves. FLAC believes that this is a fundamental part of accessing justice, which should be non-discriminatory.

What does legal aid mean?

If you have a low income or are reliant on social welfare and you need help with a legal matter, such as advice or representation in court, you can apply for assistance from the State - this is called legal aid. There are separate arrangements for legal aid depending on whether your legal issue is a criminal or a civil matter.

Criminal law covers conduct which is prohibited by law and where the state brings a case against an individual defendant for breaking such a law. Civil law refers to all other law that is not criminal law, and involves one party taking a case against another party.

What does the State offer under civil legal aid?

The **Legal Aid Board** provides legal aid and advice in civil law matters to assist with access to the courts for those who are eligible. Neither legal aid nor legal advice from the state on civil matters is free – you must pay what is called a ‘contribution’ to the costs. To qualify, a person must satisfy the Legal Aid Board’s **financial eligibility** requirements and must also satisfy the Legal Aid Board that their case has **merit** (see below). The process involves several steps. This factsheet is designed to provide the information necessary to those who may wish to obtain legal aid in civil matters.

Is FLAC part of the state-run scheme?

No, it is not a state body. FLAC is a voluntary organisation, while the Legal Aid Board, which is responsible for administering the state-run legal aid scheme, is a state-funded body established under an Act of the Oireachtas.

FLAC seeks to highlight the fact that people need legal assistance in order to access justice. We do this through our information line, our advice centres around the country as well as through our research and advocacy work. We aim to supplement, not replace the state's obligation to fulfil the right to civil legal aid.

What services does the state Legal Aid Board provide?

The Legal Aid Board provides both legal advice and legal aid in civil law matters.

- **Legal advice** refers to any oral or written advice given by a solicitor or a barrister in civil matters. It can include writing letters on a person's behalf and acting for them in negotiations with other persons.
- **Legal aid** refers to representation by a solicitor or barrister in civil proceedings in the District, Circuit, High and Supreme Courts, occasionally in the European Court of Justice, but not the European Court of Human Rights.

What about legal aid in criminal matters?

The Legal Aid Board does not generally offer Criminal Legal Aid, which is administered separately. However, the Government does intend to transfer the administration of the criminal legal aid system to the Legal Aid Board. By the time of issue (October 2013), that transfer has not yet taken place.

While the Legal Aid Board does not provide legal aid for criminal matters in general, there are some very limited exceptions, outlined below. In addition, there are various criminal legal aid schemes available in Ireland to someone accused of a crime. The main criminal legal aid scheme is provided under the Criminal Justice (Legal Aid) Act 1962. Others include the Attorney General's legal aid scheme, the ad-hoc Criminal Assets Bureau legal aid scheme and the legal advice available in Gardaí stations through the Garda Station Legal Advice Scheme.

What does Civil Legal Aid and Advice cover?

Civil legal aid and advice are state-funded services, administered by the Legal Aid Board, to give people below a certain level of 'disposable income' the legal advice and/or representation in court that they need to deal with a civil law difficulty. Legal aid and advice are provided by salaried solicitors in Law Centres run by the Legal Aid Board or by solicitors in private practice who are nominated by a Law Centre to provide the service.

Civil legal aid and advice covers most civil law matters, including issues relating to family, debt, probate, consumer, contract and negligence. It does not cover criminal law, except for the limited exceptions outlined below.

The Legal Aid Board **does not provide representation in some areas of civil law**. These are:

- Criminal matters – except for **three areas** that do come under the Civil Legal Aid scheme:
 - Complainants in prosecutions for certain sexual offences (who can receive legal advice);
 - Complainants in prosecutions relating to prior sexual history (who can receive legal representation);
 - Victims/alleged victims of human trafficking;
- Defamation (except in the very limited circumstances where a person is defending a case as part of a counterclaim);
- Certain disputes concerning rights and interests in or over land;
- Any case which should ordinarily be taken to the Small Claims Court;
- Licensing;

- Conveyancing (subject to limited exceptions);
- Election Petitions;
- Class actions for the purpose of establishing a precedent or determining a point of law or any other question, in which the members of the group have an interest;
- A matter where the Legal Aid Board is of the opinion that legal aid should not be granted, having regard to other sources of funds which are or may be available to the applicant;
- A matter as respects which the application for legal aid is made by or on behalf of a person who is a member, and acting on behalf, of a group of persons having the same interest in the proceedings concerned (class actions);
- Any tribunal other than the Refugee Appeals Tribunal, such as the Employment Appeals Tribunal or Social Welfare Appeals Tribunal.

Who is eligible for Civil Legal Aid and Advice?

In order to qualify for civil legal aid or advice, the case must be one that someone would *normally* take to a solicitor. There are then two further tests that must be satisfied before civil legal aid or advice will be granted: the *means* test and the *merits* test.

a) Means test

The means test requires an assessment of a person's financial eligibility. This includes an assessment of his/her 'disposable income' and 'disposable capital'. In order to qualify for legal aid or advice, a person's annual 'disposable income' must be less than €18,000. If a person's 'disposable income' exceeds this amount, he/she will not qualify for legal aid or advice.

In addition, a person's 'disposable capital' must be less than €100,000 (S.I No. 346 of 2013) in order to qualify (as of September 2013). Note that the family home is excluded from any assessment of disposable capital. If a person's other capital is valued above €100,000, he/she will not qualify for civil legal aid or advice. This is the case even if his/her disposable income is assessed below €18,000.

'**Disposable income**' is calculated by an assessment of a person's projected total income for the year (including salary, social welfare, pensions and any rental allowances etc) less deductible expenses including:

Income tax	Deducted in full
Social Insurance Contributions	Deducted in full
Child-Care facility Expenses	€6,000 maximum per child for actual expenses incurred on child care facilities to enable an applicant to pursue employment
Dependants	€1,600 in respect of each dependant (see definition below)
Spouse	€3,500 and shall apply also where a spouse is living apart from the applicant provided that the applicant is providing maintenance for the spouse
Accommodation	Up to a maximum of €8,000

A 'dependant' includes the applicant's children or step-children under eighteen years of age, children above that age in full-time education, and dependent relatives or other persons permanently residing with and supported by the applicant who do not have available to them independent means of support.

‘Disposable capital’ consists of all assets owned by the person (excluding the family home), for example all farm land, machinery, cash and land, less any debt outstanding on the assets, such as mortgages, charges or loans.

The assessment is carried out by estimating a person’s income for the year following the application for civil legal aid or advice.

The Legal Aid Board has an ‘Online Financial Eligibility Indicator’ to help make an initial assessment of your income, available at:

<http://bit.ly/LABmeanstest>

In the case of a married couple or a couple living together ‘as man and wife’, the Legal Aid Board will take both incomes into account in assessing the income or capital thresholds, except in circumstances where:

- They are on opposite sides in a proposed action;
- They are separated and living apart;
- The Board considers it would be unreasonable in all the circumstances of the case to take such resources into account.

In family law matters, the individuals are likely to be on opposite sides of an action and will therefore usually be assessed separately.

At a practical level, the Legal Aid Board is now fast-tracking applications from people whose only income is a social welfare payment, as most such applicants will likely qualify on the means test.

b) Merits Test

In order to qualify for legal aid or advice, the Legal Aid Board must be satisfied that your case has ‘reasonable grounds’ to be taken as a matter of law. The general test applied by the Legal Aid Board is that a reasonably prudent person will be eligible if their means are such that

- i. the cost of seeking such services at his/her own expense, while representing a financial obstacle, would not be such as to impose undue hardship on him/her, and
- ii. a solicitor or barrister acting reasonably would be likely to advise him or her to obtain such services at his or her own expense.

How do I apply for Civil Legal Aid and Advice?

An application for civil legal aid is made by filling in an application form. Forms for civil legal aid and advice are available to download online at <http://bit.ly/civillegalaidapp>

Alternatively an individual can phone the Board and ask them to post out a form to be filled in, signed and returned to the Legal Aid Board. It is also possible to call into your local Law Centre and fill out the forms in person. Each county in Ireland, apart from Carlow, has at least one Legal Aid Board Law Centre (contact details for the Legal Aid Board are available at the end of this FLACsheet).

The application is assessed at a central office of the Legal Aid Board in Cahirciveen, Co. Kerry. The local Law Centre will notify the individual in writing of the outcome of the application. If the application is successful,

the individual will be told when they may expect to see a solicitor. If the application does not succeed, it is possible to appeal the refusal (see below for details of what do if your application is refused).

- ⊙ **It is important to note that only the Head Office of the Legal Aid Board can refuse to grant legal aid.**

How long does it take to get Civil Legal Aid and Advice?

If a person qualifies for legal aid or advice, he/she will be placed on the waiting list at the Law Centre where the application was originally made. Waiting lists vary greatly around the country and can vary in duration even within one Centre, depending on workload and resources. While the Legal Aid Board itself designates a period of between two and four months as an acceptable waiting time, the actual waiting time in a several Law Centres is considerably longer as of October 2013.

However, if the matter is one the Legal Aid Board views as urgent, the case may be treated as a priority. This may be because the case involves court proceedings which are due to be heard on a specific date. In some instances, this will give the individual priority within the Legal Aid Board system. The Board has also classed a number of types of case as priority, meaning any cases relating to these matters will be brought to the top of the waiting list so that an applicant can see a solicitor quickly.

If the applicant believes that his/her matter is urgent, the general test concerns whether the Legal Aid Board is satisfied that

- it is essential to issue the legal aid certificate in the interests of preserving the applicant's rights, and
- it would cause undue hardship to him or her if the ordinary procedure for the granting of a certificate were followed.

Priority cases can include:

- Child abduction, both into and out of Ireland (the other country must be a signatory to the Hague Convention on *Civil Aspects of International Child Abduction*);
- Childcare proceedings;
- Domestic violence;
- Statutory time limits where the time for issuing proceedings may expire unless immediate action is taken;
- Rape/sexual assault cases where the issue of prior sexual history is being raised in a criminal case;
- Legal aid for persons for whom a sex offenders order is being sought;
- Where the other party's nationality, domicile or habitual residence enable him/her to seek a similar remedy in another jurisdiction and the applicant is likely to be prejudiced if he/she does not initiate proceedings first;
- Where there is a danger that assets might be dissipated so that they would be unavailable to meet the claims of the applicant;
- Where a Managing Solicitor in a Legal Aid Board Law Centre uses his/her discretion to treat a case as a priority.

If the Legal Aid Board does not view the case as a priority, the individual will have to go on the waiting list. If his/her case is due to be heard before he or she can get an appointment with a Legal Aid Board solicitor, the individual should seek a letter from the Law Centre where he/she is registered which can be presented to

the judge hearing the case, confirming that the individual has been accepted for legal aid and is awaiting an appointment. In that case, the judge may adjourn the case until the person has had the chance to get appropriate advice and representation.

An individual can contact the Legal Aid Board or FLAC for more information in relation to specific waiting periods (contact details are at the end of this FLACsheet).

Given the potentially long waiting times, it is very important to apply for legal advice and aid at the earliest possible stage.

How much does Civil Legal Aid and Advice cost?

- ⊙ **Civil legal aid or advice is not free.**

The person applying **must** make a contribution to the Legal Aid Board before he/she will obtain legal advice and/or aid.

However an exemption is available for applicants defending childcare proceedings against the HSE.

Legal Advice:

- If a person's disposable income is less than €11,500, the maximum contribution for legal advice is €30.
- If a person's disposable income exceeds €11,500, the amount he/she will be asked to pay is calculated on the basis of one-tenth of the difference between their disposable income and €11,500, subject to a maximum of €150.

Legal Aid:

Contributions for legal aid are calculated by reference to the disposable income and disposable capital of the individual. This is up to the maximum amount that it would cost the Legal Aid Board to provide the legal services to the individual.

Disposable income:

- If a person's disposable income is less than €11,500, the contribution for legal representation is €130.
- If a person's disposable income is more than €11,500, the actual contribution is calculated on the basis of €130 plus one quarter of the difference between his/her disposable income and €11,500.

Asylum Seekers:

- A contribution of €10 to be paid for legal aid/advice by asylum seeker applications to Refugee Applications Commissioners, Refugee Appeals Tribunal, Section 3 of Immigration Act 1999 and subsidiary protection and legal advice on deportation orders.

Disposable Capital:

If the applicant has disposable capital, he/she will also be liable for a further contribution called a 'capital contribution':

Disposable Capital	Contribution
€4,000 or less	no contribution
€4,001 to €54,000	2.5% of amount over €4000, (up to a maximum of €1250)
€54,001 to €100,000	€1250 plus 5% of the amount over €54,000
€100,000 or more	Ineligible for legal aid

It is important to note that, subject to limited exceptions, the Legal Aid Board is entitled to charge the full fee it has incurred if the individual is awarded money or property as a result of the legal services provided. It is also important to note that legal aid will only cover the cost of a person's own legal costs and expenses. If the person is unsuccessful in a case for which they have obtained legal aid, and an order for costs is made against them, they are responsible for those costs.

The Board may either waive the contribution or accept a lower contribution if it considers that it would cause that person undue hardship to pay the full contribution. This provision shall apply also where an applicant is required to pay both an income and a capital contribution. This is at the discretion of the Legal Aid Board.

How do I pay these contributions?

Contributions must be made in advance of receiving legal services.

However, in exceptional circumstances, the Legal Aid Board's Head Office may accept contribution payments by instalment if the individual can show that

- a) he/she cannot obtain credit or cannot afford to pay contributions in full, or
- b) it would cause hardship, or
- c) it would be unreasonable upon consideration of all the circumstances to require payment in advance.

If the individual is allowed to pay in instalments, the full payment must be made over a maximum period of twelve months. The solicitor assigned to represent the individual will not be able to file court proceedings on his/her behalf until the contribution has been paid in full.

Removal or termination of legal aid:

The Legal Aid Board can revoke or terminate a legal aid certificate in the following circumstances:

- Where it has been requested by the legally aided person;
- Where the legally aided person has failed to comply with any condition imposed in connection with the grant of a certificate;

- If the legally aided person has been required to make a contribution and any payment is more than 21 days in arrears;
- Where the Board considers that the person is no longer eligible for legal aid on financial grounds;
- Where the Board considers that the legally aided person is behaving unreasonably in connection with the conduct of the proceedings; or
- Where the Board considers that the person has made an untrue statement as to his/her resources in his/her application.

A person whose legal aid certificate is revoked will be liable for all costs incurred by the Board in connection with the proceedings to which the certificate relates and a person whose certificate is terminated shall, from the date of termination, cease to be a legally aided person in proceedings.

Can I get Civil Legal Aid abroad?

If an individual lives in Ireland but has a dispute in another EU jurisdiction where he/she needs legal representation, it may be possible to obtain legal advice and legal aid for it. Similarly, a person living in another EU Member State may be able to obtain legal aid for a dispute being litigated in the Irish courts on similar terms to an individual living here. This entitlement arises in EU law, under the Council Directive 2002/8/EC.

Where a person living in Ireland seeks legal aid or legal advice for a dispute in another EU State, he/she must apply to the Irish Legal Aid Board. If he/she qualifies under Irish rules, the Legal Aid Board will certify this and will contact the equivalent organisation in the other EU State confirming it. The other state will then arrange for legal aid subject to that country's rules and regulations.

A person living abroad who has a case in Ireland for which he/she is seeking legal aid and advice must meet the financial means test of the Irish Legal Aid Board or of his/her own country. The appropriate body will then identify if he/she meets the Irish merits test and if so, will allocate representation. Information and forms on cross-border legal aid are available at:

<http://bit.ly/crossborderlegalaid>

In cases of international Child Abduction an applicant claiming that an abduction has taken place will always be entitled to civil legal aid, regardless of their means. The person who is defending the case must, however, prove that they are entitled to legal aid both on the means and merits tests as laid out in this factsheet.

What do I do if my application is refused or I don't agree with a decision of the Legal Aid Board?

Where an application for legal aid is refused, the applicant is entitled to be given reasons for the refusal in writing. If he/she is dissatisfied with the refusal, and wants to challenge it, it can be appealed. **Only the Legal Aid Board Head Office can refuse an application for Legal Aid.**

An individual can ask for the decision to be reviewed. This should be discussed with the solicitor in the Law Centre who notified the individual of the refusal. Firstly the decision will be reviewed by whoever made the

original decision, and any new information should be submitted at this stage in writing. The solicitor involved can also submit an opinion as to whether or not the decision should stand.

If at this stage the individual is still unhappy with the decision, an appeal can be submitted to the Appeal Committee of the Legal Aid Board's Head Office. This appeal will be heard by members of the Legal Aid Board who were not involved in the making of the original decision.

This appeal **must** be taken within one month of the notification of the original decision and it **must** be made in writing.

The Appeal Committee may affirm, reverse or otherwise alter any decision which is the subject of an appeal and, if the Appeal Committee considers it desirable, it can review not only the particular decision which is the subject of the appeal but the application generally. Following that review, it may make a decision either affirming, reversing or otherwise altering any decision taken in connection with the application.

The decision of the Appeal Committee is final. There is no further appeal from it.

There is no set form to be completed for an appeal. A letter detailing the reasons for the appeal or any new information that may have come to light (for example, a change in financial circumstances or any new information not originally submitted) should be submitted in support of the appeal.

How do I make a complaint about the legal aid service I received?

The Legal Aid Board has a complaints procedure in place if a person wants to make a complaint about the service received.

If an individual wishes to make a complaint about a person in a Law Centre, initially the complaint should be made verbally to the Managing Solicitor in the law centre. If it is not resolved satisfactorily at this stage, a complaint can be made in writing to the Managing Solicitor. If it is still not resolved satisfactorily at that stage, the complainant can have the matter referred to the Legal Aid Board's Head Office. If an individual wishes to make a complaint about a Managing Solicitor of a Law Centre; the complaint should be put in writing and sent to the Legal Aid Board's Head Office, contact details for which are available at the end of this factsheet.

What is the Refugee Legal Service?

The Refugee Legal Service (RLS) is a specialised office within the Legal Aid Board to provide confidential and independent legal services to those who are applying for asylum in Ireland.

An individual may register with the RLS at any stage of the asylum process. Legal aid and advice is also provided in some cases on immigration and deportation matters by that office.

How do I apply to the Refugee Legal Service?

The same means test applies when making an application for services from the Refugee Legal Service as for general civil legal aid.

If the individual is in receipt of social welfare only, he/she will generally be considered to be eligible for legal services from the Refugee Legal Service. If an applicant is in Direct Provision, he/she may apply to have the contribution to the RLS waived, at the discretion of the Legal Aid Board.

Where do I get more Information?

Forms to apply for civil legal aid and advice are available from the Legal Aid Board. The forms can be downloaded on their website at the following link: <http://bit.ly/civillegalaidapp>

Forms to apply for civil legal aid or advice should be sent to your local law centre where you wish to apply. A full list of all the Legal Aid Board Law Centres is available on their website at:

http://legalaidboard.ie/lab/Publishing.nsf/Content/Law_Centres

Contact details for the Refugee Legal Service are available at:

http://legalaidboard.ie/lab/publishing.nsf/Content/RLS_Offices

Further, the Legal Aid Board has a LoCall number for more information: **1890 615 200**

Applications will be sent by the Law Centre to the Head Office of the Board for assessment. The address for the Legal Aid Board's Head Office is:

Legal Services Section, Legal Aid Board, Quay Street, Cahirciveen, Co. Kerry

About FLAC:

FLAC is an independent non-governmental organisation that seeks to facilitate access to justice for all. FLAC is interested in facilitating applicants to the State service of the Legal Aid Board to ensure that they access the civil legal aid and advice that they are entitled to and require.

However, FLAC is also aware of enormous pressure on the Legal Aid Board in the current economic climate. FLAC provides a service where individuals can obtain information regarding civil legal aid and advice through our LoCall phone line and also advice through clinics available throughout the country.

If you wish to see a solicitor while you are waiting for your appointment with your legal aid solicitor through the Legal Aid Board, you can get an initial consultation with a FLAC solicitor free of charge.

FLAC does not seek to replace the state Legal Aid service, which it believes is fundamental in our society, but rather to supplement it by providing initial legal advice to those who need it. The FLAC solicitor will provide the necessary advice, but will not be in a position to provide representation.

This service is provided by the Legal Aid Board as is outlined in this factsheet.

Details on how to contact FLAC or find your nearest centre are available on our **website** at:

<http://www.flac.ie/help/>