

## Introduction

In April 2000, Legal Aid was abolished for personal injury cases. It is still available for Medical Negligence claims. It is now called "Public Funding" and is operated by the Legal Services Commission (LSC).

## Qualifying for public funding

There are two tests that you must satisfy in order to qualify for public funding:

- Financial Test
- Merits Test

## Financial test

If you are on income support or income-based job seeker's allowance you will qualify automatically for public funding free of any contribution.

Otherwise, there are financial limits for public funding and your means will be assessed by the LSC. You must be able to show that your capital and your income are within the current financial limits.

The LSC will assess your disposable income (i.e. the money that is left from your income after taking away expenses such as mortgage payments or rent, council tax and after certain allowances for members of your family) and disposable capital, (this includes any savings but not the first £100,000 of equity in your home.)

If your disposable income is £2,288 or less you will not be required to pay any contribution towards your public funding. If it is between £5,279 and £5,649 you will qualify for public funding but will need to pay some contribution to the LSC.

If your disposable capital is assessed at £3,000 or less, no contribution will be payable. If it is between £3,000 and £8,000, you will still qualify for public funding but will have to pay a contribution.

Pensioners may be allowed a higher amount of capital depending upon their income.

Please contact us for further details.

Children are assessed on their own means and are therefore almost always financially eligible for public funding.

You have a duty to disclose to the LSC any change in your circumstances, or those of your child, once an assessment has been made. This might affect the amount of any contributions or your entitlement to public funding.

There is no right of appeal against refusal of public funding on financial grounds.

However it is possible to obtain a copy of the calculations made by the LSC and to ask for a review of these.

## Merits test

You must satisfy the LSC that you have reasonable grounds for taking proceedings (the merits test) and that the likely benefit to be gained from the proceedings justify the likely cost (the proportionality test).

In effect, this means that you must be able to satisfy the LSC that your case has a reasonable prospect of success. If the prospects are uncertain, a limited certificate might be granted to allow investigations to take place. If the LSC considers that further investigation is unlikely to produce information which will help, public funding will be refused.

Since most medical negligence cases require an initial investigation (see our Client's Guide to Medical Negligence) in order to assess the strength of the case, we will initially apply for a certificate limited to all steps necessary to obtain, identify and examine the relevant medical notes and records and to obtain an expert's preliminary opinion. There will usually be a financial limitation in relation to the amount of work we can do at this stage.

Under the proportionality test, you could be refused public funding or have it withdrawn even if you pass the merits test if, for example, the amount that you are likely to recover is less than the likely costs. In medical negligence cases where the claim is worth less than £10,000 and there is limited evidence of negligence at the outset, public funding may be refused on the basis that the NHS complaints procedure may be deemed more appropriate.

There is a right of appeal against refusal of public funding on merits.

## Urgent cases

We hold a contract for public funding in medical negligence claims and are therefore able to offer emergency Legal Representation in appropriate cases without delay.

What happens next?

If you qualify for public funding without a contribution, a certificate will be issued. This takes about 4-6 weeks.

If you are required to pay a contribution, an offer of public funding will be sent to you, usually within 1 to 3 months. If you accept, you need to pay the amount of the contribution when you return the form. If the contribution is from savings it will be a single amount; if it is from income it will be payable in monthly instalments and the first of these needs to be sent with the form. A funding certificate will then be issued.

If you are to pay by instalments it is very important that you continue to pay these until the end of the case, otherwise your certificate may be terminated.

Unless you have been given emergency Legal Representation, we will not usually begin work on your case until a certificate has been issued. If there are reasons for beginning work before your application has been processed we will discuss this with you, and how it can be funded.

## What costs do I pay?

In return for funding your claim, the LSC has a charge on any compensation that you receive as a result of the claim. This is known as the statutory charge.

If the other side pay all your legal costs, you will not be required to anything for the statutory charge.

However, even when the other side is ordered to pay your costs at the end of the case, it is often not possible at this stage to be certain that they will pay all your costs. For this reason we may need to keep back some of your compensation until the costs have been assessed and the position is known. This money is held in respect of the statutory charge.

Normally, the statutory charge must be paid to the LSC as soon as the compensation is paid to us by the other side. The exact amount of the charge will probably not be known at this stage as the costs will probably not have been determined. We will therefore make our best estimate as to the amount of costs that we think might not be recovered from the other side. This is the amount that we will deduct from your compensation and send to the LSC.

If we are subsequently able to obtain payment of all your legal costs from the other side, we will inform the LSC immediately and they should then refund the amount that has been sent to them for the statutory charge. This will be paid to you, together with any interest which has accrued on it.

## Example:

Suppose you recover compensation of £10,000 and other side pay most of your legal costs, but are not liable to pay costs of £1,000, the statutory charge would be £1,000. We would need to keep £1,000 and send this to the LSC. You would receive compensation of £9,000. If we are subsequently able to recover payment of all your costs from the other side we will tell the LSC. They will then refund £1,000 and any contribution to you, together with any interest which has accrued on it.

## At the end of the case

If the other side pay all your costs the LSC will refund any contributions you have paid.

If you lose your case, normally you will not pay any more than the contributions you have paid under the certificate. If a court order has been made stating that the other side are entitled to payment of their costs, any amount that you are liable to pay personally will be determined by the court. It is rare for any such payment to be enforced.

If it is not possible to agree the amount of costs that the other side should pay, our bill will be sent to the court for assessment. The court will then assess the amount payable by the other side and any amount payable in respect of the statutory charge. As you will have financial interest in this procedure we will tell you if it is necessary to have our costs assessed and send you a copy of the bill at that stage. You will also be entitled to attend the assessment and we will send you notice of this. You do not need to attend if you do not wish to do so.