

insideinformation – fact sheet

Legal Aid

Information courtesy of William Cordingly of Morgans Solicitors Cardiff

Legal Aid

There is legal aid funding in place in order to enable solicitors firms to assist prisoners on a number of issues. This consists of 2 schemes; the Advice and Assistance scheme and the advocacy assistance scheme.

Advice and Assistance

This applies to cases which will not involve a prisoner needing representation at any kind of hearing. It can be applied for to fund work on a very wide range of issues including treatment within prison, transfer, ROTL, appeals against conviction or sentence and sentence planning. It is means tested and can only be granted to those with a disposable income of less than £99 a week and savings of less than £1000 (which includes any equity in a property above £100,000 allowing for a mortgage of the same amount) if no dependants or £1335 for those with 1 dependent (this limit increases by £200 for two extra dependants and £100 for each further dependant). Your partner or wife will also be included in the assessment if you would be living as a couple if not in prison.

The solicitor applying legal aid must apply the sufficient benefit test, this means cases must involve English law and must be something which would lead to a positive outcome for the prisoner if successful. This test limits the type of work that can be carried out by solicitors on behalf of prisoners and works to exclude minor complaints from the scheme. If a case which initially passed the test no longer does then the solicitor must stop working on it immediately.

The application can be passed by the solicitor and it does not need to be sent to the Legal Services Commission to begin with. The initial grant enables approximately 6 hours work to be carried out and this can be extended to 12 hours and more in some cases, although in order to extend the limit an application justifying the extension must be sent to the Legal Services Commission.

This type of funding can be applied for by completing forms CDS 1 and CDS 2. You cannot use it to ask for a second opinion as there is a strict rule that a different solicitors firm cannot work on the same issue unless 6 months have passed and it cannot be used for advice on appeal if your trial solicitors and barrister have already given you advice.

Advocacy Assistance

This applies to cases which involve a prisoner needing representation at any kind of hearing. It can be applied for to fund work on such things as Parole Board oral hearings or adjudications before the independent adjudicator (not normally governor adjudications). It does not cover court appearances as these are subject to a different kind of legal aid. Advocacy assistance is also means tested and can only be granted to those with a disposable income of less than £209 a week and savings of less than £3000 if no dependants or £3335 for those with 1 dependent £3535 for two dependents and £100 for each extra dependant (the same rules apply as in relation to the Advice and Assistance Scheme as far as equity in any property is concerned). Your partner or wife will also be included in the assessment if you would be living as a couple if not in prison.

Legal Aid

The solicitor granting the legal aid must also apply the sufficient benefit test, but this is normally much more straightforward than in advice cases.

The application can also be passed by the solicitor themselves it does not need to be sent to the Legal Services Commission to begin with. This type of funding can be applied for by completing forms CDS 1, CDS 2 and CDS 3. The funding for advocacy assistance is more substantial than for Advice and Assistance to acknowledge the extra work that will be involved in preparing for a hearing. It is still limited however and is extremely difficult to extend.

If you are being helped by a solicitor under either scheme you should bear in mind the restrictions upon them. If a solicitor visits a prisoner for an hour for example this will use up about a third of the funding available. The amounts allowed include travel and waiting, letters, telephone calls and attendance. The Legal Services Commission limit the distance that solicitors can travel to visit a client which is why you will sometimes find your firm uses a local agent to see you.

The details above are correct at the time of writing but the Legal Services Commission are currently changing the rules regarding prison law applications to make it more difficult to both be allowed to carry out the work and to grant funding. These changes are due to apply from July 2010 but the final details have not been published yet.

IMPORTANT NOTICE

Information is given on a strictly 'without-liability' basis, and should be considered for use as guidance only. If you propose taking further action based upon this information you are strongly advised to take further and more specific legal advice before doing so.

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