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Solicitors

AVAILABILITY OF LEGAL AID AFTER 1ST APRIL 2013

LEGAL AID, SENTENCING AND PUNISHMENT OF OFFENDERS ACT 2012

To qualify for Legal Aid after 1st April 2013, clients will have to pass a number of ‘hurdles.’ It is important that you know when a client is likely to be entitled to Legal Aid so that you can give accurate information and refer them to a solicitor effectively. We hope that this leaflet will provide you with useful information.

A: SCOPE

Most family work will be ‘out of scope’ which means that Legal Aid will not be available. The following exceptions apply.

1. Care Proceedings

If the Local Authority issues care proceedings (including applications for Care, Supervision and Secure Accommodation Orders), a parent or person with parental responsibility will be entitled to Legal Aid. The client does not have to prove that they are financially eligible. This also applies if that person is given a “Public Law Outline Letter,” by the Local Authority although the amount of legal advice that can be given at that stage is limited.

2. Other public law children matters

If legal advice is sought about issues involving the Local Authority, but before proceedings or the PLO letter, Legal Aid *may* be available. The client will have to pass Means and Merits Tests (see below). Legal Aid is not usually available for Child Protection Conferences or Core Group Meetings.

3. Injunctions – Non-Molestation Orders and Occupation Orders

Legal Aid will still be available for this type of work. The client will have to pass the Means and Merits Tests.

4. Private Law Children Matters e.g. Residence, Contact and Special Guardianship

Legal Aid will not be available for this type of work *unless* the client has been the victim of domestic violence from the other party or the child is/has been at risk of abuse within 2 years prior to the application for Legal Aid. This will have to be proved. The client will still have to pass the general Means and Merits Tests.

5. Other family matters e.g. Divorce and Finances between married or unmarried couples

Legal Aid will not be available for clients seeking legal advice about these issues *unless* the client has been the victim of domestic violence from the other party within 2 years prior to the application for Legal Aid. Once again this will have to be proved and the Means and Merits Tests will apply.

B: MEANS TEST

Unless a client is involved in Care Proceedings (as above), they will have to prove that they are financially entitled to Legal Aid. This test involves two parts; capital and income.

- a) Capital: A client is not eligible for Legal Aid if they are considered to have relevant capital exceeding £8,000. This will be assessed during their first appointment with a solicitor but we will need to take into their account savings, investments and property, including their home.
- b) Income: Clients on passported benefits i.e. Income Support, Income Based JobSeekers' Allowance, Income Related Employment & Support Allowance or Guarantee Credit will pass the income test. All other clients will have to have their monthly income (from all sources) assessed. We will carry out a detailed

assessment at the initial appointment to decide whether a client qualifies but an eligibility calculator is available under 'Legal Aid' at www.justice.gov.uk.

C: MERITS TEST

Even if the type of advice and representation that the client is seeking is available under Legal Aid, the client will have to prove the merits of their case. In general, Legal Aid is only available for a case that a privately paying client would reasonably pay for. From 1st April 2013, Legal Aid will not be available to a client if there is somebody else who should be making the application instead.

PROOF OF DOMESTIC VIOLENCE

If a client wishes to rely on domestic violence or concerns about child abuse to obtain Legal Aid, they will have to produce proof of this before any legal advice can be given. It is the client's responsibility to get this evidence and to pay any fees that are charged for this document. Only incidents that have happened in the 2 years before the application for Legal Aid is submitted will be relevant.