

Legal Aid for Mediation

Legal Aid allows people who would not otherwise be able to afford it to get help for their legal problems. The Scottish Legal Aid Board can provide funding to help people who qualify to get legal advice and “representation” (where a solicitor puts their case in court). Applications for legal aid can only be made through a solicitor.

In civil cases legal aid is known as civil legal assistance and has two parts:

Advice and Assistance:

- Helps to pay for advice from a solicitor, including help trying to settle a dispute without going to court.

Civil Legal Aid:

- Funding for a solicitor to put your case to court, this includes preparation and the fees for things like expert witnesses.

Who can get Legal Aid?

Whether you can receive legal aid or not is based on both the merits of your case and your financial position. You may receive civil legal aid but still have to make a contribution to the cost of your solicitor. Your solicitor will be able to give you information based on your earnings and outgoings each month, for things like your mortgage or rent and bills. The Scottish Legal Aid Board has a website with a guide to help you see if you might get legal aid: <https://www.slab.org.uk/new-to-legal-aid/eligibility-estimators/estimator-civil-legal-aid/>

What is a Civil Case?

Civil legal assistance is available for any civil court proceedings before a Scottish court, or in a court dealing with Scottish Legal issues such as the UK Supreme Court. You know that your dispute is “civil” if there are no criminal charges involved; these are disputes between individuals and/or organisations. For example, a dispute with your employer, a personal injury claim, or a dispute with your family.

There are some exceptions to legal aid being available in civil cases, which include:

- Election petitions
- Simplified divorce applications
- Small claims (less than £3,000)
- Petitions for bankruptcy

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When will the costs of mediation be covered?

The Scottish Legal Aid Board will consider requests to cover the costs of mediation in civil cases. There is no restriction on the type of case that can be considered suitable for mediation. Funding can only be made available for mediation through a solicitor for a client. If you want the costs of mediation covered by legal aid, your solicitor will need to ask the Scottish Legal Aid Board for approval. The costs of mediation will be treated as an outlay in your account with your solicitor. Only your share of the mediation costs will be covered (half).

Who can be my mediator?

The Scottish Legal Aid Board has indicated that Scottish Mediation Registered Mediators will be deemed as appropriate for applications for mediation. This will be reflected in their guidance when it is updated. Current guidance states that they will also consider requests for mediators who are accredited by CEDR, Core and the Law Society of Scotland Accord scheme.

The Scottish Legal Aid Board may also agree to the use of other accredited specialists. Through the Scottish Mediation Register, mediators can be found by specialism and geographic area. The Scottish Mediation Register is run by the Scottish Mediation Network and supported through funding from the Scottish Government.

What information will my solicitor need?

In order to authorise the use of mediation, the Scottish Legal Aid Board need your solicitor to provide the following information:

- The form the mediation will take place and whether you want legal representation to be there
- How much the mediator is going to charge and whether this will be by the hour or at a flat rate
- An estimate of how much time your solicitor will need to spend advising you before and after the mediation
- The prospect of success and likelihood of the dispute being resolved through mediation
- Your attitude towards mediation and the likelihood of both parties accepting the outcome of mediation
- The costs that could be avoided if the mediation were to go ahead, such as avoiding a proof or other court hearing

Where can I get help?

If you are an "assisted person" (receiving legal aid) and you are referred to family mediation by a court, no prior approval is required for mediation and your share of the mediation costs will be funded by the Legal Aid Fund. However, if you are an assisted person and you are considering asking the court to refer your case to mediation, your solicitor must apply to the Scottish Legal Aid Board in advance.

There are several providers of Family Mediation. The Scottish Legal Aid Board recognises the charity Relationships Scotland (formally Family Mediation Scotland) and Comprehensive Accredited Lawyer Mediators (CALM). However family mediators are not restricted to these two groups, there are also a number of independent Registered Family Mediators on the Scottish Mediation Register, who the Scottish Legal Aid Board will also consider.

Relationships Scotland generally focus on disputes involving children, this mediation service is often free. Where the service is free there is no legal aid implication and you can use the service without having to get authority from the Scottish Legal Aid Board. Where there is a charge for family mediation, your solicitor must get approval from the Scottish Legal Aid Board.

Can I have legal representation during mediation?

If you want your solicitor to be with you during mediation, then the Scottish Legal Aid Board will consider paying your solicitor's fees so that they can attend, but only when this would be reasonable, necessary and would help the process of mediation.

Usually, the parties in mediation will make an agreement that they are both happy with. The Scottish Legal Aid Board normally expects that you make this agreement legally binding through your solicitor. The Scottish Legal Aid Board will be told whether or not your case was concluded through mediation and if this resulted in a settlement. If the mediation was not successful, the Scottish Legal Aid Board will need to know why not, especially if your solicitor is going to ask for a further increase in expenditure.

This information is intended as a guide only. Please seek independent legal advice and consult the Scottish Legal Aid Board for further information.

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