



Home Office

# Suitability: unpaid litigation costs

Version 7.0

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# About this guidance

This guidance tells you what to do when an applicant applying for entry clearance, permission to enter or permission to remain owes a litigation debt to the Home Office.

## Contacts

If you have any questions about the guidance and your line manager or senior caseworker cannot help you or you think that the guidance has factual errors, then email the Appeals Policy team

If you notice any formatting errors in this guidance (broken links, spelling mistakes and so on) or have any comments about the layout or navigability of the guidance then you can email the Guidance Rules and Forms team.

## Publication

Below is information on when this version of the guidance was published:

- version **7.0**
- published for Home Office staff on **08 February 2024**

## Changes from last version of this guidance

Ownership of this guidance has changed from the Admin Policy team to the Appeals Policy team.

This guidance has also been updated to clarify that where a person has entry clearance or extant permission, there is no power to refuse entry solely because a person has an outstanding litigation debt.

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# Litigation debt

## What is a litigation debt?

Litigation debt, also referred to as unpaid litigation costs, is a debt owed to the Home Office because a court or Tribunal has ordered a person to pay the Home Office's legal costs.

Litigation debt can arise from all types of litigation, including appeals, judicial reviews and private law claims such as unlawful detention.

You must always check whether an applicant owes a litigation debt. See [How to check if a person owes a litigation debt](#).

The burden of proof is on the Home Office to prove a litigation debt. The standard of proof is the balance of probabilities (which means it is more likely that not) but you must be able provide evidence of the debt if it is contested (generally this evidence will come from the Litigation Finance Team).

Litigation debt is not relevant to, and this guidance does not apply to the following applications:

- protection claims (this means decisions on asylum and humanitarian protection claims, as well as on protection-based claims under article 3 of the European Convention on Human Rights (ECHR)), except under paragraphs 352ZH to 352ZS, and 352I to 352X, and 352A to 352FJ of the Rules
- applications for entry clearance under the ECAA Association Agreement (but it does apply to ECAA Extensions of Stay)
- an application on private life grounds under paragraph 276ADE to 276DH of the Rules
- Appendix S2 Healthcare Visitor
- Appendix Service Providers from Switzerland
- European Economic Area (EEA) nationals and their family members who apply under the EEA regulations
- Appendix EU
- Appendix EU (Family Permit)
- Appendix Domestic Worker who is a Victim of Modern Slavery
- nationality applications

**For suitability considerations under Appendix Electronic Travel Authorisation,** refer to the Electronic Travel Authorisation guidance. Part 9 does not apply to Appendix Electronic Travel Authorisation and so this guidance does not apply to Appendix Electronic Travel Authorisation applications other than the sections specified in Electronic Travel Authorisation guidance.

## Litigation debt and applications made before 6 April 2016

The power to refuse applications on the basis of litigation debt applies only to applications made on or after 6 April 2016.

You must not apply this rule to any applications made before 6 April 2016. For guidance on when an application was made, see Validation, variation and withdrawal of applications.

You must take account of all litigation debts, including those accrued before 6 April 2016, when considering an application made on or after 6 April 2016.

Where this guidance applies, If an applicant is applying for entry clearance, permission to enter you must normally refuse the application on suitability grounds under paragraph 9.12.1. of [Part 9 of the Immigration Rules](#), except cases under Appendix Armed Forces and Appendix FM where different provisions apply.

On those routes, refusal is under:

- [paragraph 10A](#) of the suitability rules if Appendix Armed Forces applies (for more information see: Armed forces)
- [paragraph S-EC.3.1](#) or S-LTR.4.4 of the suitability rules (for more information see: Appendix FM family-members guidance)

Litigation debt is a discretionary ground for refusal and although it would normally be appropriate to refuse an application where there is a litigation debt you must not do so automatically, you must consider whether it is appropriate to do so based on the circumstances of the individual case: see [Considering refusal](#).

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# How to check if a person owes a litigation debt

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**Official – sensitive: end of section**

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# Considering refusal

Once you have confirmed that the litigation debt is still outstanding, you must consider whether to refuse the application on this basis.

If the person has not yet fully paid off the debt but the Litigation Finance Team (LFT) confirm they have entered into an arrangement to pay it off in instalments and the person is paying as agreed, you must not take the debt into account when considering the application.

If the person agreed to pay by instalment but then failed to start making payments, missed payments or stopped paying, LFT will reassess the debt. LFT will confirm to you whether the debt is again outstanding and must therefore be taken into account when you contact LFT to check whether the debt is outstanding.

If you decide to grant the application despite the litigation debt, this does not mean that the debt is written off. It is still a debt. The Home Office expects all litigation debts to be paid.

Litigation debt is a basis for refusing an application on suitability grounds. Although you may refuse an application, you must consider whether refusal is reasonable, taking account of all relevant factors in the case.

You must take account of the evidence and information provided by the applicant with their application and any information provided by LFT when they confirm that the debt exists.

You must consider the case for exercising discretion in the round, taking account of all relevant factors, such as:

## How the debt was accrued

You must consider how the litigation debt was built up and the conduct of the applicant in bringing the litigation. It would not normally be appropriate to grant the application in circumstances where the debt was built up from repeated and unmeritorious litigation. You must always consider whether [human rights and child's best interest factors](#) apply.

### Example 1

The applicant accrued a litigation debt by bringing unsuccessful judicial review (JR) proceedings in an attempt to frustrate their removal from the UK. The JR was found by the court to be totally without merit. It would not normally be appropriate to grant the application in such a case.

## Level of cooperation with Home Office debt recovery attempts



You must take account of the following:

- evidence that the applicant has ignored requests by the Home Office or our debt collecting agencies to make contact about the debt - such evidence may be provided by LFT when they confirm the debt or on previous case notes
- evidence the applicant has not honoured an arrangement to pay their debt in instalments, for example by stopping the payments

It will not normally be appropriate to grant an application where the debtor has failed to engage with the Home Office to resolve the outstanding litigation debt or have failed to honour an agreement to pay, unless there is a reasonable explanation for this behaviour.

## The location of the applicant

If an applicant owes a litigation debt and is outside the UK and applying for entry clearance, they may be less likely to have ongoing ties to the UK and less incentive to pay if they have not done so already, so it will not normally be appropriate to grant the application. The applicant will normally be expected to pay the debt before any application for entry clearance is made. or

## On arrival: entry clearance or extant permission held

Paragraph 2 of Schedule 2 to the Immigration Act 1971 confers on Border Force officers the power to examine arriving passengers and conduct any further examination, for the purpose of determining whether a passenger requires permission to enter the UK. Where a passenger arrives with extant permission (either permission conferred by an entry clearance or continuing leave), they may be examined under Paragraph 2A of Schedule 2 for the purpose of determining whether there are any reasons why that entry clearance or permission should be cancelled.

A person who holds valid entry clearance or who has continuing leave (such as permission to stay in the UK) cannot have their immigration permission cancelled solely on the basis that they have incurred litigation debt. As that does not fall within the powers in paragraph 2A.

Once it is established that a passenger has a litigation debt, and there are no other grounds for concern, they must not be subject to further examination and should be permitted to proceed, unless the Border Force Officer has reason to believe there are grounds for the entry clearance or extant permission to be cancelled, including but not limited to a change of circumstances or false representations - Any questioning undertaken to determine whether entry clearance permission should be cancelled should focus on the reason the passenger is subject to further examination and details of the further examination should be recorded on Home Office systems.

If the litigation debt is considered alongside further indicators which suggest entry clearance or extant permission may be cancelled it may be a contributing factor for a decision to cancel permission.

You can remind the passenger that the outstanding litigation debt may prevent any further permission being granted but must not indicate that the passenger being permitted to proceed beyond the Primary Control Point (PCP) is dependent on the passenger paying the debt.

## Refusal of permission to enter

Paragraph 2 of Schedule 2 to the Immigration Act 1971 confers on Border Force officers the power to examine arriving passengers and conduct any further examination, for the purpose of determining whether a passenger requires permission to enter the UK, and, if so, whether that permission should be granted or refused.

Where such a passenger who has no entry clearance or extant permission seeks permission to enter and has an entry against their name on the Home Office systems due to an unpaid litigation debt to the Home Office you may refuse permission to enter on that basis.

Refusal of permission to enter on the basis that the individual has a qualifying litigation debt is discretionary not mandatory. You must be satisfied that there are no compelling or compassionate circumstances (including human rights considerations) that would make refusal disproportionate. More information on this ground for refusal, is set out in [Considering refusal](#).

There is no facility for, or obligation on you, to ask for, or accept, payment of the outstanding litigation debt at any point in the examination. Although, you should provide the contact details of the litigation finance team if requested by the passenger.

If a debt is settled in full or a repayment plan has been agreed and you can confirm this, there are no longer grounds to refuse entry on this basis, you then need to be satisfied that the passenger meets the other requirements for the route under which they are seeking permission to enter.

Example of refusal wording where a non-visa national passenger is to be refused permission to enter :

'You have sought permission to enter as a **[route]** for **[period]** however I am satisfied that you owe a litigation debt. I have considered whether to exercise discretion and grant you permission to enter but have decided not to do so because (where any issues raised by the passenger raised set them out and give brief reasons why not exercising discretion). I am satisfied that it is appropriate to refuse you permission to enter.'

## The purpose of the application

You must consider whether the purpose of the application discloses any compassionate or other reasons for exercising discretion to grant the application.

### **Example 1**

If someone is applying to come to the UK as a tourist for 2 weeks and owes a litigation debt, it is unlikely that will be appropriate to grant the application.

### **Example 2**

If someone is applying to come to the UK to attend a close relative's funeral and owes a litigation debt but there is evidence that they are not currently able to pay it all, it may be appropriate to grant the application if they meet all the other requirements of the rules.

### **Example 3**

An applicant for permission to stay as a visitor for private medical treatment owes a debt of £800 in respect of JR proceedings. The applicant is in the late stages of pregnancy and is therefore unable to travel and has provided evidence that she is currently unable to pay the litigation debt. It may be appropriate to grant the application if the person is seeking a short extension of her stay as a visitor until she is well enough to travel.

## **The applicant's ability to pay**

If an applicant claims to be unable to pay the debt the burden is on them to provide evidence of that and the standard of proof is the balance of probabilities (it is more likely than not). Inability to pay is unlikely, in and of itself, to justify granting the application. Most applicants are expected to be able to maintain and accommodate themselves without accessing public funds and can also be expected to be able to pay their own litigation debts. Applicants who cannot pay off their debt in lump sum can negotiate a payment plan. If an applicant has entered into a payment plan but temporarily cannot make the payments due to increased outgoings, they are expected to negotiate a revised payment plan.

However, you must consider any compassionate or other circumstances surrounding the inability to pay.

### **Example 1**

An applicant for indefinite leave to remain (ILR) following points-based system (PBS) leave has a repayment plan in place but can no longer meet it due to funding the emergency medical costs of a family member. You must consider whether the applicant could have rearranged their repayment plan, but your assessment must consider everything in the round before you decide that refusal is appropriate. This includes consideration of whether the case is sufficiently compassionate to justify granting the application.

## **How long the debt has been outstanding**

There is no limit on the time for which a litigation debt may be pursued, so such debts do not expire. LFT will confirm that the debt is no longer outstanding if the Home Office is no longer actively pursuing the debt, and they will remove any references to the debt being outstanding from the Home Office case work system. If the debt is recorded as outstanding on the Home Office system, you must assume it is still being pursued by LFT.

If a debt has been outstanding for a long period of time and the applicant has resisted attempts by the Home Office to secure repayment, this would be a factor weighing against the applicant and is more likely to lead to a decision to refuse. If the debt has only just been incurred, you must consider whether the application has had sufficient opportunity to contact the Home Office and make arrangements to pay it. If necessary, you should check with LFT.

## Amount of debt

Debts of any size are considered to be a serious matter. You should not grant the application simply because the amount of a debt is small, that may instead be a reason why the applicant should be expected to repay the debt.

Where an applicant has a very high level of debt, this is a factor that will weigh considerably against granting an application.

### Example 1

The litigation debt was originally £5,050 but is now £50 because the applicant paid most of it in a single payment. The evidence with the application shows that they have enough money to pay the remaining debt. Refusal would normally be appropriate, but you must consider whether the failure to pay the rest of the debt was an accidental oversight or misunderstanding. In this case you should check with LFT that the applicant was told of the outstanding debt and whether and how the applicant responded to that notification.

## Consider all relevant factors

The above factors are not intended to be an exhaustive list when considering the application. You must also take account of any relevant evidence or information provided with the application or by LFT when you consider whether to refuse on the grounds of litigation debt.

## Human rights and child's best interest factors

If the applicant is unable to pay the litigation debt but otherwise qualifies for entry clearance or permission to stay on human rights grounds, or because it is in the best interest of a child, it will not normally be proportionate to refuse the application solely because of a litigation debt.

### Example 1

A partner applicant under Appendix FM owes a debt of £2500. They have savings of £1000 and a regular income of £1500 per month. The applicant started to repay the debt and then stopped. There is no reasonable explanation provided to LFT regarding the stoppage of payments. Refusal of the application on the basis of the litigation debt will normally be proportionate as there is no evidence of an inability to pay.

## Example 2

The applicant owes a debt of £2500. They have no savings and have not had any income for the last 4 years. They are reliant on state benefits and/or the assistance of friends to pay for basic accommodation and food. The application fee for their application was waived because the applicant is destitute. The applicant meets all the other requirements of Appendix FM. It would normally be reasonable to grant the application despite the litigation debt. The debt remains outstanding.

## Requesting evidence

It will normally be appropriate to decide whether to refuse the application on the basis of litigation debt based on the evidence provided by the applicant with their application, and any further information provided by the Litigation Finance Team (LFT) relating to litigation debt.

You must contact LFT if you need further information about whether the person has been correctly notified of the debt, whether they are making the required payments or whether they have notified LFT of any reasons why they can't pay.

However, where it is unclear why the applicant has not paid the debt you may decide to request further information before making a decision. For example, it may be appropriate to contact the applicant or their representative to request further information, if you:

- have considered the relevant factors listed under [considering refusal](#)
- believe that there may be compassionate or other reasons for granting the application despite the debt
- need further evidence before you can reach a decision on whether to grant the application

You must be clear in your request what information you require, how long they have to respond and where they must send the information. You should normally give them 10 working days to provide the information.

You must not contact applicants to request any payment.

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# Case notes and decision notice

## Refused applications

You must fully record your reasons for the decision, including the evidence that you considered. You must explain your decision to refuse the application on the grounds of litigation debt (or on grounds including this ground). You must record in the decision notice that you considered whether or not to refuse and explain why you decided to refuse.

You may use the following refusal wording in your decision notice:

Your application is refused because you have failed to pay outstanding litigation costs to the Home Office of £ [insert figure].

Home Office records show that that these costs were awarded on [insert date] by [add court /Tribunal]. These costs have not been paid.

In deciding whether or not to refuse your application on the grounds of unpaid litigation costs I have carefully considered the circumstances of your case. I am satisfied that refusal is appropriate because [reasons including what evidence has been considered and why discretion has not been exercised].

Any further application is also likely to be refused unless you pay your litigation debt. To make arrangements to pay your debt, contact the Litigation Finance team by telephoning 02081960346 or by email to: [LFTRecoveries@homeoffice.gov.uk](mailto:LFTRecoveries@homeoffice.gov.uk).

Information about the date of the costs award and the court will be in the copy of the court order that LFT will provide when they confirm the debt is outstanding.

## Approved applications

If you decide to grant the application when the person owes a litigation debt, you must explain on the case working system notes why you have decided to do so.

You must use the following wording in your decision notice:

You have failed to pay an outstanding litigation debt to the Home Office of £[insert figure].

Home Office records show that that these costs were awarded on [insert date] by [add court /Tribunal]]. These costs have not been paid.

In deciding whether or not to grant your application I have carefully considered the circumstance of your case. On this occasion I have decided to grant your application despite the outstanding litigation debt.

This does not imply that the same decision will be made on any future application.

The litigation debt remains outstanding and the Home Office is still entitled to recover this debt.

To make arrangements to pay, contact the Litigation Finance team by telephoning 02081960346 or by email to: [LFTRecoveries@homeoffice.gov.uk](mailto:LFTRecoveries@homeoffice.gov.uk).

For entry clearance offices who do not issue a decision letter when granting entry clearance, you must provide the above information in a separate letter.

Information about the date of the costs award and the court will be in the copy of the court order that LFT will provide when they confirm the debt is outstanding.

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# Litigation Finance Team

## How to handle phone calls about litigation debt

To confirm the identity of the caller, you must:

- take the caller's details to confirm that they are the debtor – ask for the caller's name, date of birth, nationality, address, and also ask if they have a HO/VAF reference number or know their Government Legal Department (GLD) reference number
- check their details against the caseworking system and ask them to confirm their place of birth or details of their last application, if they can't provide a reference number
- check their details against CRS instead if the person is overseas and has never made an application in the UK
- refuse to discuss the nature of the debt with the caller if they are unable to provide the requested details to confirm their identity – ask them to write in with their enquiry and proof of their ID instead
- if the caller is a third party, advise them that you can only discuss the case with the applicant or their appointed immigration advisor
- handle the call as below if the person is able to confirm their identity
- if the caller is not on case working systems because they were sent the notification in error, see 'If there is no record of any debt outstanding in relation to the caller'

If the caller has no knowledge of the outstanding debt, you must:

- open their Litigation Finance Team case record
- provide the caller with details of the Court Order which awarded costs and the outstanding debt
- take the caller's address and forward a copy of the Court Order to caller with a covering letter explaining ways to pay
- record action taken on CID debt recovery special conditions or CRS

If there is no record of any debt outstanding in relation to the caller, you must:

- apologise to the caller, explain that the notification was sent in error and that we will amend our records
- not put a note on the caller's CID record, if they have one, because the debt is not related to them
- check what led to the notification being sent in error and update the relevant records to ensure it doesn't happen again
- ask for the caller's correct contact details, if they have a CID and/or CRS record, and update the person's CID and/or CRS record with the correct contact details
- arrange for any incorrect contact details to be removed from the debtor's CID and/or CRS record



If the caller wishes to pay in full or by instalment, you must:

- provide the caller with the appropriate debt agent contact details
- send a message to the debt agent (providing the confirmed telephone or email address of the caller) advising of the caller's willingness to settle the debt or set up an instalment plan
- record action taken on CID/CRS debt recovery special conditions

If the caller states they were publicly funded during the judicial review, you must:

- check the Court Order – if publicly funded, the Order should say costs cannot be enforced without further assessment – if in doubt, refer to your team leader
- if the order does not mention legal aid or public funding, contact the Government Legal Department or Appeals, Litigation and Subject Access Requests (ALS) and ask them to confirm
- if the claimant was publicly funded, advise the caller no further action will be taken and credit the invoice
- if the claimant wasn't publicly funded, explain that we have no evidence to support their claim and send them a copy of the Court Order with a covering letter explaining ways to pay
- record action taken on CID/CRS debt recovery special conditions

If the caller is receiving Asylum Support or Section 4 Support, you must:

- check ASYS to see whether the claimant is receiving asylum support or section 4 support
- direct the caller to the debt agents if they are receiving support but ask to pay by instalment
- send a message to the debt agent (providing the confirmed telephone or email address of the caller) advising of the caller's willingness to settle the debt or set up an instalment plan
- record action taken on CID/CRS debt recovery special conditions

The agent will offer an instalment plan of no more than 15% of support. No deductions will be made from children's support, only the main applicant's – which is consistent with the 'claw back' policy (the 'claw back' policy is a policy under which the Asylum Support Team can recover overpayments by deducting them from support payments).

If the caller advises they are making an assisted voluntary return, you must:

- ask the caller if they wish to make a payment before leaving the UK
- explain that:
  - if they do not wish to make a payment, a record will be kept of the outstanding debt on the Home Office case work system
  - the outstanding debt will be taken into consideration and their application may be refused on that basis should they make an application to re-enter the UK – should their financial circumstances change following their departure

from the UK, the Home Office would remain happy to discuss payment options

- record action taken on CID debt recovery special conditions

If the caller advises they are not able to pay, this may be because they:

- are not permitted to work in the UK
- have no income and receiving support from friends, relatives or charitable organisations
- are in detention or prison

You must explain to the caller that:

- details of the outstanding debt will be recorded on the Home Office case work system
- the outstanding debt will be taken into consideration and their application may be refused on that basis, should they make a subsequent application to enter or remain in the UK
- explain to the caller that, if they have an application for leave to enter or remain pending which was made on or after 6 April 2016, litigation debt owed to the Home Office will be taken into consideration by the caseworker when considering their application
- record action taken on CID debt recovery special conditions or CRS

No advice can be given by the debt recovery officer as to the likely outcome of the person's application for leave.

If the caller advises the payment has been sent to Shared Services Connect Limited (SSCL) or debt agents, you must:

- contact SSCL or debt agents to confirm whether payment has been received
- if there is an outstanding application for leave to enter let the caseworker know if payment has been received
- update CID debt recovery special condition and CRS if payment has been made

If the caller claims that the litigation is ongoing or that they have an outstanding appeal against costs, you must:

- verify with ALS whether an appeal against costs is outstanding
- if an appeal (costs) or litigation is outstanding, notify the caseworker that the potential debt must not be taken into account when deciding the application (unless the litigation is concluded and the debt is confirmed before the application is decided)
- update CID debt recovery special conditions or CRS to reflect the current status
- place the invoice in dispute
- advise the caller that recovery action will be suspended pending the outcome of the appeal against costs or litigation
- record action taken on CID debt recovery special conditions

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