



**Ministry
of Defence**

**JSP 838
The Armed Forces Legal Aid Scheme**

Part 1: Directive

Foreword

People lie at the heart of operational capability; attracting and retaining the right numbers of capable, motivated individuals to deliver Defence outputs is critical. This is dependent upon maintaining a credible and realistic offer that earns and retains the trust of people in Defence. In order to achieve this, all personnel must be confident that, not only will they be treated fairly, but also that their families will be treated properly and that Service veterans and their dependants will be respected and appropriately supported.

The importance of access to justice for all and the right to legal representation has long been recognised in the UK. The basic principle for the provision of publicly funded legal aid is that those who can afford to pay some or all of their defence costs should do so, whilst providing free legal aid support to those who cannot. JSP 838 is the authoritative policy and guidance on the legal aid scheme available to those personnel who are subject to Service discipline or Service law, to ensure their access to publicly funded support is maintained.

**Lieutenant General Andrew Gregory
Chief of Defence Personnel**

Defence Authority for People

Preface

How to use this JSP

1. JSP 838 is intended to be a practical handbook containing policy direction and guidance on the Armed Forces Legal Aid Scheme (AFLAS), how to apply for it and the subsequent processes. It is designed to be used by everybody who has a stake in the AFLAS, from the applicant, those charged with assisting them in preparing for the legal proceedings, and all staff responsible for discipline and HR administration. This JSP contains the policy and direction on the practicalities of the legal aid scheme and guidance on the processes involved and best practice to apply. This JSP will be reviewed at least annually.
2. The JSP is structured in two parts:
 - a. Part 1- Directive, which provides the direction that must be followed in accordance with statute or policy mandated by Defence or on Defence by Central Government.
 - b. Part 2 - Guidance, which provides the guidance and best practice that will assist the user to comply with the Directive(s) detailed in Part 1.

Coherence with other Defence Authority Policy and Guidance

3. Where applicable, this document contains links to other relevant JSPs, some of which may be published by different Defence Authorities. Where particular dependencies exist, these other Defence Authorities have been consulted in the formulation of the policy and guidance detailed in this publication.

Related JSPs	Title
JSP 397	Service Police Codes of Practice (SPCOP) (MOD)
JSP 752	Tri-Service Regulations for Allowances
JSP 800	Road Transport – The Management and Operation of Road Transport in the MOD
JSP 830	Manual of Service Law
JSP 833	Minor Administrative Action
JSP 834	Safeguarding Children
JSP 837	Service Codes of Practice for the Management of Personnel in Services Custody and Committal to Service Custody Premises and Civil Prisons.

4. This JSP supersedes all previous single and joint Service regulations and other guidance in respect of all legal aid matters for Armed Forces and relevant civilian personnel.

Further Advice and Feedback – Contacts

5. The owner of this JSP is LF-MCS-AFCLAA-HD. For further information on any aspect of this guide, or questions not answered within the subsequent sections, or to provide feedback on the content, contact:

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Contents

Foreword	i
Preface	ii
How to use this JSP	ii
Coherence with other Defence Authority Policy and Guidance	ii
Further Advice and Feedback – Contacts	iii
Contents.....	iv
Chapter 1 - The Armed Forces Legal Aid Scheme: Access and eligibility.....	1
Section 1: The background to legal aid within the UK.....	1
Access to justice.....	1
The underpinning principles.....	1
The Armed Forces Legal Aid Scheme (AFLAS).....	1
Maintaining parity with the civilian scheme.....	1
Section 2: The scope of the Armed Forces Legal Aid Scheme (AFLAS).....	2
Criminal legal aid.....	2
Non-criminal public funding.....	2
Exclusions from the Armed Forces Legal Aid Scheme.....	2
Incidents arising during the course of duty.....	3
Section 3: Process and policy.....	4
Legal aid application forms.....	4
Unit responsibility.....	4
Legal aid for civilian court proceedings.....	4
Retrospective applications for legal aid.....	4
Transfer of legal aid.....	4
Section 4: Service Police interviews and custody.....	6
Entitlement to legal advice and assistance.....	6

Service Police Codes of Practice	6
Custody without charge reviews	6
Custody after charge	6
Legal representation	6
Custody after charge reviews	6
Section 5: Civilian criminal courts overseas	7
Entitlement to legal representation	7
Eligibility	7
Ineligibility	7
Chapter 2 - Discrete areas of non-criminal public funding	9
Introduction	9
Notification to AFCLAA	9
Section 1: Legal representation – Child Assessment or Protection Order hearings	10
Background	10
Reference documents	10
The scope of the Armed Forces legal representation scheme	10
Application	10
Entitlement to receive public funding	10
Status of parent(s)	11
Reviewing representation requirements	11
Applying for publicly funded legal representation	11
Need for Representation test	11
Conflict arising after instruction	12
Section 2: Legal representation – adjudication hearings (MCTC only)	13
Reference of a charge to the adjudicator	13
Procedure for obtaining legal advice	13

Initial contact with the legal representative.....	13
MCTC staff action.....	13
Section 3: Legal representation – Incidents arising during the course of duty.....	14
MOD responsibility.....	14
Chain of Command (CoC) responsibility.....	14
Chain of Command action.....	14
Unit and individual’s actions.....	14

1 The Armed Forces Legal Aid Scheme: Access and eligibility

Section 1: The background to legal aid within the UK

1. **Access to justice.** The importance of access to justice for all and the right to legal representation has long been recognised in the UK. To support these principles, a formal legal aid scheme was established to provide publicly funded legal representation e.g. to defend against criminal charges in the magistrates' and Crown Courts, for those who would otherwise be denied access to justice because they could not afford to pay for it.

2. **The underpinning principles.** The legal aid scheme is underpinned by the basic principle that those who can afford to pay some or all of their defence costs should do so, whereas those who cannot afford to contribute should receive legal aid support free of charge. Applying this basic principle enables public funds to be used to assist as many people as possible whilst also providing value for money for the taxpayer. As part of this tenet, it follows that, ultimately, the contribution paid by any convicted offender is limited to either their maximum contribution (based upon their personal and financial circumstances at the time of application¹) or their actually legally aided costs, whichever is the lower; the maximum contribution includes the full pre-trial income contribution plus any post-trial capital/equity contribution. These principles remain as relevant today as when the first legal aid schemes were established in the UK in 1949².

3. **The Armed Forces Legal Aid Scheme (AFLAS).** Although non-statutory, the Armed Forces Legal Aid Scheme is based upon the same basic principles as the civilian criminal legal aid scheme in England and Wales³, and is designed to mirror that scheme as much as possible whilst making necessary adjustments to take into account the specific circumstances, and needs, of defendants and appellants, as well as the operational requirements of the Services and the Service Justice System. It is vital that the scheme ensures personnel receiving legal aid through AFCLAA are not significantly advantaged or disadvantaged when compared to another supported by the civilian legal aid scheme, simply because of their employment or place of residence.

4. **Maintaining parity with the civilian scheme.** The information required by AFCLAA to determine whether an applicant is eligible to receive legal aid, and thereafter the level of contribution required (if appropriate), as part of the legal aid process, is consistent with the civilian scheme's current practice. This means that the allowances, limitations, thresholds and documentary evidence required are the same, or at least broadly similar, to those used in the civilian system for matters heard in the Crown Court. The grant of legal aid, based upon the information provided and accepted by the applicant when signing the Contribution Order, is the authority for AFCLAA to initiate legal aid procedures and therefore commit public funds on behalf of the applicant.

¹ The post-trial capital/equity contribution may be amended if there are changes between application and conviction, depending on the type of changes incurred.

² At the same time, the Services accepted the need to make similar provisions for Service personnel prosecuted through the Court Martial. Each Service made separate provisions for their Service personnel, until the tri-Service Authority was established in 2008.

³ All parts of the civilian legal aid scheme are laid down in statute, and the AFLAS is amended as and when necessary to reflect changes in statute.

Section 2: The scope of the Armed Forces Legal Aid Scheme

5. **Criminal Legal Aid.** The primary purpose of the Armed Forces Criminal Legal Aid Authority (AFCLAA) is to provide legal aid case management and funding for those who are, or were at the time of an alleged incident, subject to Service law or Service discipline. Legal aid provided by the AFLAS provides publicly funded financial assistance in respect of some, or all, of the costs of legal representation for defendants and appellants who:

- a. Appeal against findings and/or the award of a punishment following summary hearings at unit level, including applications for extensions of the appeal period by the Summary Appeal Court, for leave to appeal out of time (Service and ex-Service personnel only); **or**
- b. Have a case referred to the Director Service Prosecutions (DSP), for a decision on whether the charges will result in a prosecution; this includes offences under Schedule 2 of the Armed Forces Act 2006 which are referred directly to the DSP by the Service police as well as matters referred to the DSP by the Commanding Officer; **or**
- c. Are to be tried in the Court Martial (CM) or the Service Civilian Court (SCC); **or**
- d. Wish to appeal in the CM, against the finding and/or sentence after trial in the SCC (relevant civilians only); **or**
- e. Are to be tried in a criminal court outside the UK (see Part 1, Section 5, and Part 2 Chapter 4).

6. The legal aid scheme applies equally to all members of the Armed Forces, including the Reserve Forces (when subject to Service law) and to civilians who are subject to Service discipline (relevant civilians). See JSP 830, Vol 1 Ch 3 – Jurisdiction and Time Limits⁴.

7. **Non-criminal public funding.** In certain circumstances, there may be a requirement for legal proceedings involving Service or relevant civilian personnel which fall outside the sphere of criminal proceedings and therefore the general scope of the Armed Forces Legal Aid Scheme. Part 1 Chapter 2 and Part 2 Chapter 6 provides full details on the eligibility criteria for those who may require publicly funded legal representation and the legal aid processes therein.

8. **Exclusions from the Armed Forces Legal Aid Scheme.** The Armed Forces Legal Aid Scheme is intended to provide support to Service, and relevant civilian, personnel who may otherwise be disadvantaged by virtue of their employment or place of residence due to Service/MOD commitments⁵. It is not intended to provide support at public expense where it would not be routinely available to a person working and/or residing within the UK. The scheme does not, therefore, include:

⁴ This includes, but is not limited to: UK-based civilian employees (MOD Civil Servants, school teachers, NAAFI personnel etc) on permanent or detached duty outside the UK; dependants of Service or UK-based civilian employees where they are officially recognised as such by the MOD.

⁵ The civilian legal aid scheme does not provide legal aid for any Service Justice System related proceedings, nor does it provide for criminal proceedings heard in foreign jurisdictions.

- a. Legal aid for personnel who have been charged by a civilian jurisdiction in respect of a criminal offence committed within the UK (e.g. those appearing before a Magistrate's/Sheriff's Court or Crown Court). The defendant should seek civilian legal aid instead⁶; or
- b. Legal aid for any civil or personal matters (e.g. housing, family, divorce, dissolution of civil partnership etc); or
- c. Legal aid for criminal cases heard in overseas courts, where the individual concerned was in that country on purely personal business at the time of the alleged incident e.g. whilst on holiday. NOTE: This exclusion does not apply to personnel overseas on permanent or detached duty in that country at the time of the alleged offence, even if the charge or allegation relates to an 'off duty' incident (See Part 1, Section 5 and Part 2 Chapter 4 for details).

9. **Incidents arising during the course of duty.** In certain situations, the MOD will consider paying for the defence of an individual who is charged with an offence arising from an act committed in the course of the individual's employment or duties, and in accordance with any applicable regulations/instructions or orders (insofar as this can be determined at the time); this would not be considered 'legal aid' or 'public funding' in the real sense of the meaning, but a legal representative may be provided or funded by the MOD, to represent the individual and the MOD interests. See Part 1 Chapter 2 and Part 2 Chapters 2 and 6 for eligibility and guidance.

⁶ Further advice, and details of solicitors with experience in criminal or civil legal matters may be obtained from: The Citizens Advice Bureau (CAB) (www.citizensadvice.org.uk); or the Law Societies of England and Wales (www.lawsociety.org.uk), Scotland (www.lawscot.org.uk) or Northern Ireland (www.lawsoc-ni.org.uk).

Section 3: Process and policy

10. **Legal aid application forms.** As the sole authority responsible for all aspects of legal aid in respect of the types of proceedings listed in paragraph 5 above, all applications for legal aid from eligible applicants are to be sent to AFCLAA as soon as possible after completion. Applicants are to complete a MOD F2263 – Application for Legal Aid, in all instances, even if they do not require legal aid at that point in time⁷. Applicants should also consider completing a MOD F2263C – Hardship Review, if they require legal aid, to enable AFCLAA to complete a full and accurate assessment of their ability to contribute at the earliest opportunity.

11. **Unit responsibility.** The applicant's unit, or the unit appointed to provide administrative support for relevant civilian or ex-Service personnel, are to liaise with AFCLAA following the processes laid out in Part 2 Chapter 2 of this JSP. Units are to provide unit level administrative support for applicants until all legal aid matters are concluded, irrespective of whether the applicant is dismissed, detained in MCTC or imprisoned, in the meantime. Unit discipline staff are to abide by timelines for actions issued by AFCLAA on any correspondence wherever possible, as unnecessary delay can impact upon future proceedings and costs; where a required timeline cannot be met, e.g. because the applicant is absent on duty or leave, the unit are to advise AFCLAA of the delay at the earliest opportunity, and give an indication of when they and/or the applicant will be in a position to complete the relevant process or documentation.

12. **Legal aid for civilian court proceedings.** With the exception of proceedings in overseas criminal courts relating to allegations arising whilst the applicant was overseas on permanent or detached duty (see paragraph 5e above, and Part 2 Chapter 4), there is no entitlement to legal aid support from AFCLAA in respect of civilian criminal court proceedings. Such individuals should contact a local solicitor for advice on the process and for assistance with completion of the application forms.

13. **Retrospective applications for legal aid.** Retrospective applications for legal aid (i.e. to fund legal costs incurred prior to the formal grant of legal aid) will not be considered by AFCLAA. **Any work carried out by a legal representative in advance of a formal grant of legal aid is a private matter between the legal representative and the applicant, who will remain personally liable for all costs incurred.** It is therefore imperative for the applicant and the unit to ensure the application process is dealt with as quickly as possible, to prevent the applicant incurring an avoidable personal liability for costs (see Part 2, Chapter 2, paragraphs 15 (trials) or 163 (summary appeal or elections)).

14. **Transfer of legal aid.** Once the legal representative accepts the case in accordance with AFCLAA's terms and conditions, and has received copies of relevant documentation, legal aid will only be transferred to a different legal representative at public expense at the applicant's request, if it can be shown that there are substantial and compelling grounds to do so⁸. Where the applicant is unable to provide suitable grounds for a transfer at public expense, changes to legal representation will only be authorised if the applicant agrees, in writing, to accept personal responsibility for all costs

⁷ If legal aid is not required, the applicant is to tick the relevant box at Section 2 of MOD F2263.

⁸ It is insufficient for an applicant simply to assert that they are not satisfied with the legal representative or the service provided. They must provide sufficient detail or examples to enable the Case Officer to make an informed decision. The Case Officer should be advised of any potential problem without delay. The applicant, or their legal representative, need not go into the specifics of their case, especially where to do so may break client/representative confidentiality or legal privilege.

incurred by the originally instructed legal representative; this responsibility will be in addition to any income and/or capital/equity contribution liabilities the applicant has towards their legal aid costs and is irrespective of the final outcome of proceedings. Should the legal representative request to be removed or replaced, irrespective of the reasons for such a request, AFCLAA will transfer legal aid to another representative at no cost to the applicant.

Section 4: Service Police interviews and custody

15. **Entitlement to legal advice and assistance.** In the UK, any person who is brought to a police station under arrest or arrested at the station having gone there voluntarily, is entitled to receive free independent legal advice and assistance if they are questioned by the police, whether they have been arrested or not; this includes the right to consult privately with a legal advisor⁹. Service and civilian¹⁰ personnel, arrested by the Service police (SP) or detained within MOD detention facilities¹¹, are similarly entitled to free and independent legal advice and assistance, wherever in the world they may be questioned or detained in custody¹². This includes persons arrested by Service Police in connection with a European Arrest Warrant.

16. **Service Police Codes of Practice.** The regulations, as they apply to SP and those they question, are contained within JSP 397, Service Police Codes of Practice (SPCOP). The Codes provide a clear statement of the right of the individual and the powers of the SP. Copies of the SPCOP must be readily available in all SP establishments for consultation, as necessary, by the SP, suspected or arrested persons and members of the public.

17. **Custody without charge reviews.** Those held in custody without charge at any Service Custody Facility are entitled to receive free legal advice and advocacy in respect of all detention reviews¹³. The different ways to access a legal advisor are detailed in JSP 838 Part 2 Chapter 3 paragraph 3.

18. **Custody after charge.** As part of the process of applying to have an accused placed in custody after charge, the unit are to verify the accused's wishes in respect of legal representation at the earliest opportunity. In many instances, the accused will wish to use the services of the legal advisor who attended the previous SP interview(s); it is, however, unwise to assume this will always be the case.

19. **Legal representation.** Regardless of whether the accused wishes to retain their previous legal advisor, or obtain a new one, the unit is to contact the nominated legal advisor to establish availability and acceptance of the case, before submitting a formal application for a custody review in front of a judge advocate.

20. **Custody after charge reviews.** The initial custody review must be held as soon as is practicable i.e. within 24 hours of charge. The first review is always conducted 'in person' before a judge advocate. All subsequent reviews are automatically 'on the papers' and are conducted by a judge advocate sitting alone in chambers. The accused's legal advisor has the right to make an application to the judge advocate for a review 'in person' at any time whilst the accused remains in custody. In all instances, the accused must be given the opportunity to consult the legal advisor, in private, before, during and after custody reviews, and throughout the period of detention as necessary.

⁹ A legal advisor may be a qualified solicitor, or an accredited or probationary representative.

¹⁰ This refers to all civilian personnel subject to Service discipline, including UK-based civilians where they are overseas on permanent or detached duty, and dependants. This also includes ex-Service or civilian personnel who were subject to Service law or Service discipline at the time of the alleged incident to which the investigation refers.

¹¹ For further information, refer to the Service Police Codes of Practice (JSP 397) and the Service Police Codes of Practice for the Management of Personnel in Service Custody and Committal to Service Custody premises and Civil Prisons (JSP 837).

¹² Access to a civilian legal advisor in some circumstances, particularly within operational theatres, may not be possible; however, access to an independent Service legal advisor will be available in the first instance.

¹³ This applies to all custody reviews, irrespective of who is entitled to carry out that review.

Section 5: Civilian criminal courts overseas

21. **Entitlement to legal representation.** Personnel based or living outside the UK, who are investigated in respect of criminal matters arising whilst based overseas, are entitled to receive the same support as personnel living in England and Wales¹⁴. This includes the right to apply for legal aid to fund their defence in a local criminal court. In countries where accused personnel have no access to publicly funded legal aid from the country, or the local criminal court, in which they are to be prosecuted, AFCLAA will consider an application to provide legal aid, to ensure that such individuals are not disadvantaged when compared to their counterparts in the UK.

22. **Eligibility.** Access to legal aid through AFCLAA, for proceedings in non-UK criminal courts, is limited to personnel who are, or were, based or otherwise officially resident in the country where they are to be prosecuted, at the time of the incident to which the proceedings refer. This includes:

- a. Service personnel in a country on permanent or detached duty;
- b. UK-Based Civilian (UKBC) employees in a country on permanent or detached duty. This includes MOD Civil Servants, school teachers, NAAFI personnel and others. However, only personnel recruited in the UK and 'posted' abroad are covered by this provision.
- c. Dependants of Service, and eligible UKBC, personnel officially recognised as resident in that country by the MOD. This includes boarding school pupils during holiday periods, while with their parent(s) or guardian(s) who are based overseas; and
- d. Service and eligible UKBC personnel en route to their permanent or detached duty station, provided they: are travelling at public expense; are on an authorised route; or are using authorised transport.

23. **Ineligibility.** Personnel arrested or otherwise prosecuted, who do not meet the criteria described above, are not eligible to apply for legal aid from AFCLAA. This includes, but may not be limited to:

- e. Locally Employed Component (LEC), living and working in their country of residence or nationality;
- f. Personnel, whether UK- or overseas-based, travelling outside their country of duty or residence on personal business, including holidays;
- g. UK-based personnel visiting family or friends based outside the UK;
- h. Overseas-based personnel visiting family or friends also based overseas, but in a different country; or

¹⁴ In certain circumstances, the MOD will consider paying for the defence of an individual who is charged with an offence arising from an act committed in the course of the individual's employment or duties, and in accordance with any applicable regulations/instructions or orders (insofar as this can be determined at the time); Part 1, Chapter 2, Section 3, and Part 2, Chapter 2 and Chapter 6, Section 4 refer. Further advice may be obtained from Hd AFCLAA or DJEP.

i. Non-Service personnel visiting family or friends based or resident overseas. This includes spouses, siblings, non-dependant adult children, or dependant children not officially recognised by the MOD as resident in a particular country.

2 Discrete areas of non-criminal public funding

1. **Introduction.** The purpose of this chapter is to provide details of the support available to Service, and relevant civilian, personnel who may require public funding for legal advice, assistance or representation for certain types of legal proceedings for which there is no other provision under the terms of the Armed Forces Legal Aid Scheme. The intention of these provisions is to ensure that those who may be subject to such proceedings are not disadvantaged when compared to others participating in similar proceedings within the civilian scheme in the UK.

2. **Notification to AFCLAA.** As soon as a potential requirement for public funding under the terms of this chapter is identified, AFCLAA are to be notified without delay, using the most appropriate means available¹⁵. This will ensure that all appropriate actions by AFCLAA, the individual and the unit, are taken promptly and in accordance with the equivalent civilian practices where applicable and/or practical. It is important that those contacting AFCLAA have to hand as much information as is available, before making contact.

3. **Ease of reference.** For ease of reference, this chapter is arranged into sections, each dealing with a single discrete area of public funding. To assist those seeking direction here, each section will detail the specific single Service regulations and other documentation relevant to that proceeding or public funding issue.

¹⁵ I.e. a phone call in the first instance, to any AFCLAA number (see Part 2, Chapter 1, Annex A) during standard (UK) working hours. Outside those hours, using either Hd AFCLAA (landline) or the Out Of Hours (duty) mobile numbers, leaving a voicemail message if necessary. Emails should be marked URGENT, and sent to the group mailbox (LF-MCS-AFCLAA-Group@mod.uk) as this mailbox is monitored throughout the working day.

Section 1: Legal representation – Child Assessment or Protection Order Hearings

4. **Background.** The MOD has a responsibility for safeguarding and promoting the welfare of children residing or staying outside the UK with Service families or with families of civilians subject to Service discipline. In doing so, the MOD seeks to replicate, as far as appropriate and practical, the same procedures and levels of service as would be found in England and Wales; this includes the same access to publicly funded legal representation for those who would be entitled to receive such help in similar circumstances in the UK. Anyone who requires publicly funded support for such procedures are to refer to Part 2, Chapter 6, Section 1 for details on entitlement, and the application processes.

5. **Reference documents.** The listed documents are the primary sources of reference in respect of Child Protection (CP) regulations as they apply to children residing or staying outside the British Isles with Service families or the families of civilians subject to Service discipline:

- a. JSP 834 - Safeguarding Children;
- b. JSP 830 – Manual of Service Law: Chapter 26 – Safeguarding Children: Armed Forces Child Protection Powers;
- c. The Armed Forces (Protection of Children of Service Families) Regulations 2009 (2009 SI 1107); and
- d. The Armed Forces Act 1991, Sections 17-23, as amended by the Armed Forces Act 2006, Section 353 and Schedule 13 – Protection of Children of Service Families.

The scope of the Armed Forces legal representation scheme

6. **Application.** The Armed Forces (Protection of Children of Service families) Regulations 2009 may be applied to any child who:

- a. Forms part of the family of a person subject to Service law, or a relevant civilian subject to Service discipline, where that person is serving or based outside the UK, and
- b. Resides outside the UK with that family or another such family; or
- c. Is staying with such a family (for however short a time), whereupon the child will be considered as residing with that family for the purposes of the relevant proceedings.

7. **Entitlement to receive public funding.** The provisions within this section are designed to support those who are entitled to receive public funding for legal representation at Assessment or Protection Order hearings. This may include:

- a. The child (with the support/assistance of an appropriate independent adult e.g. a member of the British Forces Social Work Service (BFSWS) as necessary);
- b. The parent(s); and/or
- c. Any other person with parental responsibility.

8. **Status of parent(s).** As the regulations may be applied to any child, regardless of residency status (see paragraph 6 above), the provisions of this section apply equally to the parents or those with parental responsibility for such a child. This means that any person who is a parent or has parental responsibility for a child who is the subject of legal proceedings under the Armed Forces (Protection of Children of Service Families) Regulations may apply for public funding for their legal representations from AFCLAA, regardless of whether they are:

- a. Overseas on official or personal business;
- b. Service or relevant civilian personnel, or their dependants; or
- c. Temporary visitors staying with friends or family, where a person within the 'hosting' family is subject to Service law or Service discipline.

9. **Reviewing representation requirements.** Persons entitled to receive public funding for legal assistance and representation for CP proceedings under the terms of this section will be granted funding without reference to means, prospect of success or reasonableness; however, following civilian practice, the Need for Representation test will be applied (see Part 2, Chapter 6, Section 1 for details).

10. **Applying for publicly funded legal representation.** Persons who require publicly funded legal representation for Assessment or Protection Order hearings must submit a completed MOD F2263 – Application for Legal Aid¹⁶ to AFCLAA without delay. As this type of public funding is without reference to means, the applicant (as described in paragraph 7 above) need only complete:

- a. MOD F2263: Sections 1 – 4, and 6¹⁷; **AND**
- b. CP Insert to MOD T2263 – Application for Public Funding for Representation at Assessment/Protection Order Hearing (Annex A).

Further guidance for the completion of MOD F2263 is available in Part 2, Chapter 2 of this JSP.

11. **Need for Representation test.** Should those seeking public funding, or their legal representative once instructed, consider there may be a conflict between themselves and another interested party, they must inform AFCLAA without delay (see Part 2, Chapter 6, Section 1 for details).

¹⁶ Available via Unit Admin Offices, or the AFCLAA website on the intranet or internet, or by fax from AFCLAA.

¹⁷ The applicant is not required to complete the 'nature of charge' box, nor Section 5, as any relevant information is to be supplied on the CP Insert to MOD F2263, at Annex A to this Chapter.

12. **Conflict arising after instruction.** Where a conflict of interest is identified after authorisation has been granted by AFCLAA, the applicant or their legal representative must contact the AFCLAA Case Officer immediately, so that appropriate actions to instruct an additional legal representative can be taken without causing unnecessary delay to the proceedings.

Section 2: Legal representation – adjudication hearings (MCTC only)

13. **Reference of a charge to the adjudicator.** Where, under SCSRSR rule 47¹⁸, the Commandant refers a charge against a detainee to a judge advocate (referred to in the regulations as “an adjudicator”), that detainee is automatically entitled to receive legal advice and, if required, legal representation at the adjudication; such legal advice and representation will be at public expense.

14. **Procedure for obtaining legal advice.** Under SCSRSR Rule 45, save in exceptional circumstances, every charge brought to the adjudicator shall be heard within four days of referral by the Commandant MCTC. Given that the detainee is entitled to receive legal advice before the adjudication hearing, it is imperative that a suitably qualified legal representative¹⁹ is instructed without delay.

15. **Initial contact with legal representative.** Once a detainee has been informed that the matter has been referred to the adjudicator, they should make contact with a suitably qualified legal representative without delay; MCTC staff are to assist the detainee in this matter. As the right to legal advice and representation in such matters is automatic, the detainee is not required to apply for legal aid in advance of seeking legal advice.

16. **MCTC staff action.** MCTC staff are to provide such assistance as is necessary to enable detainees to discuss their case with their legal representative i.e. access to phone and meeting room facilities in accordance with MCTC rules. Using the Record Sheet provided at Part 2, Chapter 6, Annex B, MCTC staff are to keep accurate records of the date, time and duration of phone calls and conferences; MCTC are also requested to keep a record of the date, time and duration of the adjudication hearing. Once the adjudication hearing is concluded, MCTC are to fax the completed form to AFCLAA, in order that the legal representative’s bill of costs can be verified and authorised for payment.

¹⁸ 2009 SI 1096 – The Service Custody and Service of Relevant Sentence Rules 2009. See also JSP 837 (Service Codes of Practice for the Management of Personnel in Services Custody & Committal to Service Custody Premises and Civil Prisons), Chapter 7 – Breaches of Discipline and Mechanical Restraints.

¹⁹ As defined in Pt 1, paragraph 1(2) of 2009 SO 1096 – The Service Custody and Service of Relevant Sentence Rules 2009.

Section 3: Legal representation – Incidents arising during the course of duty²⁰

17. MOD responsibility. In certain circumstances, the MOD will consider paying for the representation of an individual in legal proceedings relating to an allegation arising from an act committed in the course of the individual's employment or duties, and in accordance with any applicable regulations/instructions or orders (insofar as this can be determined at the time); this would not be considered 'legal aid' or 'public funding' in the real sense of the meaning, but a legal representative may be provided by the MOD to represent the individual and the MOD interests. See Part 2, Chapter 6, Section 4 for further guidance, including the application process.

18. Chain of Command (CoC) responsibility. The cost of providing the individual with representation in legal proceedings will normally be borne by the CoC where it takes the view that the alleged incident occurred during the course of an individual's duties; representation will not be provided if the CoC believes that the individual was acting outside the scope of their employment or duties. Decisions on CoC funding are made on a case-by-case basis, taking due account of all relevant factors, as described in paragraph 17 above.

19. Chain of Command action. Where an individual is charged with an offence arising from an act which occurred whilst on duty and in the course of their employment or duties, they must inform their CoC in accordance with local practice or orders. The CoC are to review the case in accordance with 2014DIN01-147 (or its replacement), and seeking guidance from CLS and/or DJEP as appropriate, as part of the process to determine whether it is appropriate for the CoC to assume funding responsibility for legal representation. Where the CoC are satisfied that they have a responsibility to provide legal representation, they must provide AFCLAA with written authority to incur costs on behalf of the CoC. As part of that written authority, the CoC are to provide the appropriate UIN and RAC details, and identify a suitable POC to be kept informed of all funding issues and decisions.

20. Unit and individual's actions. The individual is to complete a legal aid application form (MOD F2263), which will provide AFCLAA with the authority to engage legal representation on behalf of the individual. AFCLAA will issue a Nil Contribution Order, which the individual is required to sign and return to AFCLAA to complete the application process. Thereafter, normal AFCLAA casework, procedures will be followed. Units are to provide such administrative support as is required throughout the application process; Part 2, Chapter 2 provides details of the process and the administrative support required.

²⁰ Although primarily in reference to criminal proceedings, this Section (especially Part 2, Chapter 6, Section 4, paragraphs 29-32) may also be applied to representation at inquests in exceptional circumstances, where authorised by the appropriate departments, including DIU, DJEP and the CoC. The decision to provide exceptional individual representation will be made on a case by case basis.