



**Ministry
of Defence**

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

Part 2: Guidance

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.

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.
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.

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 Service Custody and Committal to Service Custody Premises and Civil Prisons

Further Advice and Feedback - Contacts

5. The owner of this JSP is LF-MCS-AFCLAA-HD@mod.uk. 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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Glossary (Abbreviations)

Abbreviations	Details
AAO	Appellant's Assisting Officer
AFA 06	Armed Forces Act 2006
AFCLAA	Armed Forces Criminal Legal Aid Authority
AFLAS 11	Armed Forces Legal Aid Scheme 2011
BFSWS	British Forces Social Work Service
CAO	Courts Administration Officer (Director MCS)
CEA	Continuity of Education Allowance
CILOCT	Charge In Lieu Of Council Tax
CLS	Central Legal Services (MOD)
CM	Court Martial
CMAC	Court Martial Appeal Court
CMEA	Child Maintenance and Enforcement Agency
CMRS	Court Martial Report Service
CO	Commanding Officer
COLA	Cost of Living Allowance (UKBC equivalent of LOA)
CP	Child Protection (Regulations; Public Funding)
Csl	Counsel (Barrister representing at court)
DAO	Defendant's Assisting Officer
DH	Directions Hearing
DO	Divisional Officer [RN]
DOB	Date of Birth (for applicants who are aged 17 or under at the time of application)
DSP	Director of Service Prosecutions [Authority]
EHIC	European Health Insurance Card (for travel within Europe, outside the UK)
HQ MCS	Headquarters Military Court Service
HR	Human Resources
IAC	Interview After Caution (PACE interview)
IOJ (test)	Interests of Justice (test)
JAG	Judge Advocate General
JPA	Joint Personnel Administration
JSP	Joint Service Publication
LA	Legal Aid
LAA	Legal Aid Agency (civilian legal aid)
LEC	Locally Employed Component (not eligible for legal aid through AFCLAA)
LOA	Living Overseas Allowance
MCC	Military Court Centre (part of the MCS)
MCS	Military Court Service (generally referring to HQ MCS, Upavon)
MCTC	Military Corrective Training Centre, Colchester
MDR	Minimum Drawing Rate
MSL	Manual of Service Law (JSP 830)
NCAO	Naval Courts Administration Office (Portsmouth)
NAAFI	Navy Army Air Force Institute

Abbreviations	Details
NFG	Notes For Guidance: NFG regarding logistics and admin matters for legal representatives, issued with the formal letter of instruction, according to the stage in the proceedings; NFG regarding completion of legal aid application forms (Chapter 2, Annex B)
NPS	National Probation Service (working with CMRS to produce Pre Sentence Reports (PSRs))
OJAG	Office of the Judge Advocate General
P1	Personnel and Admin (Discipline) department [RAF]
PCMH	Plea and Case Management Hearing
PH	Preliminary Hearing
POC	Point Of Contact
PRG	Policy Rules and Guidance [Civil Service Regulations]
PSR	Pre Sentence Report
QC	Queen’s Counsel – Senior barristers, who are experienced in the most serious and/or the most complex trials.
RAF	Royal Air Force
RM	Royal Marines
RN	Royal Navy
SAC	Summary Appeal Court
SBAA	Sovereign Base Area Authority (Cyprus)
SCC	Service Civilian Court
SCF	Service Custody Facility
SCSRSR	Service Custody and Service of Relevant Service Rules 2009
SFA	Service Family Accommodation
SJS	Service Justice System
SLA	Service Living Accommodation
Sols	Solicitor or Solicitor Advocate
SP	Service Police
SPA	Service Prosecuting Authority
SPCOP	Service Police Codes Of Practice (JSP 397)
SPCR	Service Police Case Record (number)
SPVA	Service Personnel and Veterans Agency
SSA	Staff Support Assistant [Army]
SSAFA-FH	Soldiers, Sailors, Airmen and Families Association – Forces Help
UKBC	UK-Based Civilian component (including Civil Servants, Teaching staff, NAAFI staff etc, but not LEC)
VJAG	Vice Judge Advocate General
VTC (AKA Live Link)	Video-Tele-Conferencing [facilities]

Glossary (Terms and Definitions)

Term	Definition
Adjudication hearings (MCTC only)	Where a charge against a detainee has been referred to a judge advocate (the Adjudicator) See Chapter 6, Section 2 for details.
Adjusted Annual Income	The calculation carried out at the initial means test stage, to determine the applicant's annual income when adjusted to take account of their personal (family) circumstances. Applicants whose adjusted annual income is below £12,475 are automatically eligible for free legal aid.
Advice and Assistance	The free legal service provided by legal advisors to accused personnel interviewed under caution by the [Service] police.
[AFCLAA] Assistant Case Officer (ACO)	The desk officer responsible for processing applications for legal aid. The main Point of Contact (POC) for units throughout the application process.
[AFCLAA] Case Officer	The desk officer responsible for overall management of legal aid cases. The main POC for units and defence teams, in respect of all case management and funding issues.
Allowances	[in respect of MOD F2263 – Application for Legal Aid] Those financial outgoings which are taken into account when assessing an applicant's likely maximum contributions.
Appropriate Adult	[in respect of SP interviews] An Appropriate Adult may be required to attend a SP interview in support of a juvenile, or a mentally disordered or mentally vulnerable adult. Further information can be obtained from JSP 397 – Service Police Codes of Practice.
Central Funds	<u>For privately funded representation where the Financial Eligibility Threshold was exceeded:</u> Where an applicant was refused legal aid by AFCLAA because they were above the Financial Eligibility Threshold, there may be scope to reclaim some or all private costs under certain circumstances. <u>For all other privately funded legal representations.</u> There is no eligibility to reclaim private legal costs from central funds where legal aid from AFCLAA was, or would have been, available to the applicant. See Chapter 6 Section 5.
Child Protection Proceedings	Assessment or Protection Order hearings, presided over by a judge advocate. Public funding is generally available for the child(ren), the parents and/or others with parental responsibility. See Chapter 6 Section 1.
Civilian Criminal Courts (Overseas)	AFCLAA may provide legal aid for representation of personnel dealt with by a local civilian criminal court outside the UK, but only under specific circumstances. See Chapter 4.
Co-accused	Defendants who are charged in connection with others for the same or related offences, where their cases may, or are to, be heard together.

Term	Definition
Contributions: Capital/Equity (trials only)	The post-trial contribution which may become due (following conviction only) IF legal aid costs remain payable after taking account of pre-trial income contributions paid (if any). Liability only exists where the applicant has capital/equity in excess of £30,000.
Contributions: Income (trial and referral)	The contribution payable from disposable income following assessment of the applicant's personal and financial circumstances. See Chapter 2, Section 1 for details.
Contributions: Summary Appeal or Election for trial	The fixed, post-proceedings contribution which is determined by the level of proceedings and the outcome. See Chapter 2, Section 2 for details.
Custody After Charge	Where a defendant is detained in custody after being formally charged i.e. whether the case has been referred to the DSP, or SPA have directed trial.
Custody Without Charge	Where an individual is detained in custody pending further enquiries or interviews, or pending a decision to charge and/or refer the case the DSP for consideration.
Defence Team	Those involved in the preparation of a defendant's case and representation in court.
Defendant(s)	The person(s) to be represented by the defence team. They may also be referred to as: (LA) Applicant, or the client, depending on the situation.
Dependants	Family members, or persons otherwise financially dependant upon Service or UK-based civilian personnel, where the MOD has recognised the dependent status.
Disposable Income	The amount of income remaining after the applicant's household financial obligations (including their Basic Living Allowance, adjusted according to their personal and household family responsibilities) is deducted from the applicant's (including spouse/civil partner, if applicable) gross annual income.
Documentary Evidence	The evidence required to confirm or support the personal and financial details provided on the application form e.g. pay statements (including JPA print-outs; mortgage statements; loan agreements etc). See Chapter 2, including Annex B, for specific guidance.
Duty Solicitor Scheme	The civilian scheme which provides access to legal advisors qualified to provide advice and assistance to an accused to be interviewed by the police. See Chapter 3 for details.
Expert (witness)	The legal representative may feel it necessary to use an expert to assist in the preparation of the defence case. In all cases, the legal representative will discuss their requirements with, and request prior authority for funding from, AFCLAA.
Financial Eligibility Threshold	The level of disposable income available to the applicant, above which there is no automatic entitlement for legal aid. See Chapter 2 for details.

Term	Definition
HR Disc	HR discipline personnel, with access to relevant JPA information; or unit admin personnel, responsible for ensuring the applicant completes necessary documentation promptly. Also responsible for ensuring prompt and timely payment of legal aid contributions, as advised by AFCLAA; payment via JPA or cash/cheques through the unit imprest account as appropriate.
Income Evidence Sanction	To be applied to contributions where the applicant fails to supply documentary evidence required to support the information provided on the application form(s) with the maximum 21 days. See Chapter 2 for details.
Interests of Justice (IOJ) test	Used to determine whether representation at public expense is appropriate in the interests of justice – see Chapter 2, Appendix 1 to Annex B for details.
Interview After Caution (IAC)	An accused person, to be interviewed after police caution, has the right to consult privately with a legal advisor; free legal advice is available.
Juvenile	[In respect of SP interviews] a person who is, or who appears to be, under 17 years of age. An Appropriate Adult will be required to attend the interview to support the juvenile during questioning.
Legal advisor	Primarily with reference to advice and assistance at SP interviews (IAC). A legal advisor may be a qualified solicitor or an accredited or probationary representative.
Legally aided (defence) costs	Authorised costs incurred by the defence team as part of the preparation of the case, which are subject to scrutiny and payment by AFCLAA post-proceedings.
Legal representative	The suitably qualified ¹ barrister or solicitor who prepares the case for trial/appeal, and who represents the defendant or appellant at all hearings. This may be either a Service or a civilian lawyer, depending on the defendant's choice when applying for legal aid.
Live link	See VTC
Maximum income contribution	The maximum income contribution the applicant will be required to pay towards their legally aided costs. See Chapter 2 for details.
Mentally disordered or mentally vulnerable	[In respect of SP interviews] Where the Service police consider, or are informed, that the accused may be mentally disordered or mentally vulnerable, they may request the assistance of an Appropriate Adult to support the accused. Further information is available in JSP 397 – Service Police Codes of Practice.
Minimum Drawing Rate (MDR)	The minimum rate of pay beyond which no further compulsory deductions can be made (JSP 754 Chapter 2, Section 4 refers). See Chapter 2 for details.

¹ A practising barrister or solicitor, as defined in The Armed Forces (Court Martial) Rules 2009, rule 39(2).

Term	Definition
MOD Forms 2263:	Legal aid application forms. Available via the AFCLAA and the MOD Forms Index webpage, via the internet/intranet. Electronic or faxed copies can be requested directly from AFCLAA where intranet access is not readily available.
MOD F2263	Application for Legal Aid. Initiated by the applicant and their unit. The applicant is required to provide personal and financial details which will inform the grant of legal aid and the level(s) of income and/or capital/equity contributions (if any) required.
MOD F2263A MOD F2263B (Part 1: LA offer)	Contribution Order: MOD F2263A – Referral to DSP or trial); OR MOD F2263B – Summary Appeal or Election for trial. Generated by AFCLAA. The Contribution Order details the maximum income and/or capital/equity contribution liabilities, and the monthly income contributions payable. See Chapter 2 for details.
MOD F2263 (Part 2)	Legal Aid refused. Initiated by AFCLAA. In addition to confirming that an application for, or offer of, legal aid has been declined (by the applicant) or refused (by AFCLAA), the form will provide the reason(s) for this decision. The applicant has the right to appeal a refusal decision, and should refer to Chapter 2, Appendix 2 to Annex B for guidance.
MOD F2263C	Application for Review of Grounds of Hardship. Initiated by the applicant, where appropriate. To be completed where the applicant considers they have additional costs or other circumstances which are not included in the main application form (MOD F2263), and which may impact upon their ability to pay the contributions as stated on the Contribution Order (MOD F2263A or F2263B). See Chapter 2 for details.
CP Insert	Child Protection Insert. To be completed by the applicant(s) in child protection cases only, and submitted to AFCLAA with MOD F2263. See Chapter 6, Section 1 – Discrete Areas of Non-Criminal Public Funding.
Need for Representation test	Child Protection Proceedings only. The test applied by AFCLAA to determine whether there is a conflict of interest between two or more of the interested parties, which would prevent a single legal representative acting for all interested parties together. See Chapter 6, Section 1 for details.
Nomination (of civilian legal representatives)	Applicants are able to nominate a particular legal representative to act for them, or they can ask AFCLAA to nominate one on their behalf. See Chapter 2, Annex A .
Preparation	The work carried out by the defence team in advance of an attendance at trial or hearings.
Pre-Sentence Report (PSR)	Provided by CMRS for defendants pleading or found guilty at trial. The PSR is made available to the judge advocate and the members of the Board for consideration when deliberating sentence; in some cases, an automatic PSR will not be provided, however one can be requested on application (by the defence team) in court.

Term	Definition
Prior authority	Legal representatives are to obtain prior authority from AFCLAA before incurring any additional costs not automatically covered by the grant of legal aid. This is a matter between AFCLAA and the legal representative only; neither the defendant nor the DAO can provide any form of prior authority.
Relevant civilian	All civilian personnel subject to Service discipline. This includes, but may not be limited to, all UK-Based Civilians (UKBC) on permanent or detached duty and all dependants of Service and UKBC personnel based overseas. See JSP 830, Vol 1 Ch 3 for clarification.
Representation	Attendance by the trial advocate (or a stand-in) at court, to represent their client's interests.
Service Justice System	Any/all elements of the system and processes of justice for all personnel subject to Service law and Service discipline.
Service lawyer	A fully qualified barrister or solicitor who is a member of the RN, Army or RAF. Where permitted under these regulations, an applicant who is based or residing overseas, or RN personnel generally, may request representation by a Service lawyer. See Chapter 2.
Service Personnel	All serving members of the Armed Forces, including the Reserve Services (see JSP 830 Volume 1 Chapter 3) while subject to Service law. Includes all ex-Service personnel charged by the SPA or appealing in the SAC.
SPCR (Service Police Case Record)	Police incident record number, annotated on police-generated documentation. If known, this number should be annotated on the application form as AFCLAA use this number to identify different cases, and if appropriate, to link together any/all applications from co-accused.
Summary Hearing	Legal aid can be requested for appeals against the finding and sentence, or sentence alone, following a summary hearing, but not for the summary hearing itself. Legal advice may be sought in advance of a summary hearing but this remains a personal liability which cannot be reclaimed from public funds
Thresholds (Financial Eligibility; Gross annual income; capital/equity)	The points at which the applicant's eligibility to receive legal aid, and/or be liable for contributions towards legal aid costs is determined. See Chapter 2.
VTC	Video-Tele-Conferencing (facilities) or Live Link – widely available on or near MOD establishments, including Military Court Centres, for use by defendants and legal representatives as necessary e.g. for short or urgent conferences between legal representatives and their clients. Custody reviews, short court hearings and some witness testimonies may also be carried out by VTC, subject to court/judge advocate authority.
Warned (Assize) List	A list detailing the hearings, trials and/or appeals scheduled to be heard in a particular Military Court Centre, during a stated period of time.

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.....	ii
Glossary: Abbreviations.....	iv
Glossary: Terms and Definitions.....	vi
Contents.....	xi
1 Legal aid in the Armed Forces: An overview.....	1
The scope of the Armed Forces Legal Aid Scheme.....	1
Criminal legal aid.....	1
Non-criminal public funding.....	1
Exclusions from the Armed Forces Legal Aid Scheme.....	1
Incidents arising during the course of duty.....	2
The Service Justice System (SJS).....	2
The Office of the Judge Advocate General (OJAG).....	3
The Service Prosecuting Authority (SPA).....	3
The Military Court Service (MCS).....	3
General.....	3
MCS independence.....	3
HQ MCS.....	3
Military Court Centres (MCC).....	4
Temporary Court Centres.....	4
The victim and witness support service.....	4
The Armed Forces Criminal Legal Aid Authority (AFCLAA).....	5
Head AFCLAA.....	5
Case teams.....	5
Case Officer.....	5
Assistant Case Officer.....	5
Case management.....	6
Queries.....	6
Units.....	6
Unit admin or HR discipline staff.....	6

Defendant/Appellant Assisting Officer (DAO/AAO).....	6
Annex A: AFCLAA – contact details.....	8
Annex B: Notes to Assist DAO – Cases referred to DSP.....	9
Notes to Assist DAO/AAO – Cases referred for trial/summary appeal.....	10
Annex C: Legal aid processes – Trial (including referral to DSP).....	12
Legal aid processes – Summary appeal or election.....	13
2 Legal aid procedures.....	14
Parity with the civilian system.....	14
Section 1: Legal aid for trials (CM/SCC/criminal courts overseas).....	15
Sub-Section 1a: General information.....	15
Criminal courts overseas.....	15
Where the accused decides legal aid is not required.....	15
The accused decides legal aid/representation is not required.....	15
Application form: legal aid not required.....	15
Change of mind: initial refusal.....	16
An exceptionally late application.....	16
Retrospective applications for legal aid.....	16
Legal representation options.....	16
Using a Service lawyer.....	16
Contacting the Service lawyer.....	16
Limited legal aid for additional costs.....	16
Privately funded representation.....	17
Personal liability.....	17
Financial Eligibility Threshold: recovery of costs.....	17
Legally aided representation.....	17
Transfer of legal aid.....	17
Shared representation (co-accused).....	18
Legal aid costs.....	18
Overview.....	18
Costs covered by legal aid: fees.....	18
Costs covered by legal aid: applicant input.....	18
Discussing fees with the legal representative.....	19
Costs covered by legal aid: travel.....	19
Travel fees not covered by legal aid.....	19
Contributions exceeding costs.....	19

Costs exceeding contributions.....	19
Costs exceeding maximum (combined) contributions.....	19
Judicial apportionment.....	20
Application for judicial apportionment.....	20
Further advice.....	20
Sub-Section 1b: How to apply for legal aid: Trials.....	21
The application form.....	21
Indication of likely contributions.....	21
The application process.....	21
Completing the application form.....	21
Unit responsibility.....	21
Sending the completed form.....	21
Original copy.....	22
Legal aid contributions: automatic exemptions.....	22
Contrary interests.....	22
Multiple applications or Multiple applicants.....	22
Multiple applications: sole applicant (separate cases).....	22
Initial income contribution order ongoing.....	23
Initial income contributions completed.....	23
Multiple applications: acquittal.....	23
Multiple applications: conviction.....	23
Separate applicants: same household.....	23
Financial details required.....	23
‘First’ applicant’s form.....	23
‘Second’ applicant’s form.....	23
Notifying AFCLAA.....	24
The means tests.....	24
The means test: general.....	24
The different means tests.....	24
The income means test.....	24
Accuracy of information.....	24
Changes in circumstances.....	25
Legal aid thresholds.....	25
Allowances: Basic Living Allowance (BLA).....	25
BLA (Applicant).....	25

'Weighted' BLA (dependants).....	25
BLA: Spouse/civil partner.....	26
BLA: Child(ren).....	26
Documentary evidence required.....	26
Evidence not readily available.....	26
Pay statements: Service personnel.....	26
Pay statements: civilian personnel.....	27
Pay statements: long term absentees.....	27
Other forms of evidence.....	27
Childcare costs.....	27
Maintenance payments.....	27
Main/only residence.....	28
Income from rented property.....	28
Mortgage payments.....	28
Privately rented accommodation.....	28
Council tax.....	28
Income Evidence Sanction: trigger.....	28
Income Evidence Sanction: application.....	28
Evidence: capital/equity.....	29
The Financial Eligibility Threshold.....	29
Financial Eligibility Threshold (FET).....	29
Requesting a review.....	29
Mistake in calculation or administrative error.....	29
Eligibility review.....	29
Review process.....	29
Review successful: Contributions.....	30
Review unsuccessful: legal aid refused.....	30
Reapplying for legal aid.....	30
Recovery of private legal costs following acquittal.....	30
The Contribution Order.....	30
Contribution Order: Applicant action.....	31
Contribution Order: Offer declined.....	31
Contributions.....	31
Income contributions.....	31
Nil (income) contribution.....	31

Capital/equity contribution.....	31
Income contributions.....	31
Effect of MDR on contributions.....	32
Missed or incomplete payments.....	32
Acquittal or discontinuance.....	32
The Contribution Cap.....	32
Contribution caps.....	32
Contribution cap: link to costs.....	32
Contribution cap: Contribution Order.....	32
Payment of income contributions.....	32
Payment options.....	32
Applications submitted after direction for trial.....	33
Instalment options.....	33
Payment direct from JPA.....	33
Payments from non-Service personnel.....	33
Payment before trial.....	33
Defaulted payment penalty.....	33
Defaulted payment penalty: MDR payment plan.....	33
Contribution collection: payment from salary.....	34
Contribution collection: cash/cheques.....	34
Applicant responsibility.....	34
Enforcement.....	34
The Minimum Drawing Rate (MDR).....	34
MDR Regulations.....	34
Impact upon income contributions.....	34
Impact upon applicant.....	35
Capital/equity contributions.....	35
Contribution liability.....	35
Re-assessment of contribution liability.....	35
No contribution liability.....	35
The Hardship Review.....	35
Hardship Review application form.....	35
Eligibility.....	35
Changes to personal circumstances.....	36
Changes to financial circumstances.....	36

New financial commitments.....	36
Evidence requirements.....	36
Acceptable forms of evidence.....	36
Boarding school fees.....	36
Legal aid not in place.....	37
Certificate of legal aid not in place.....	37
Legal aid refused by applicant.....	37
Legal aid refused by AFCLAA.....	37
Legal aid declined by applicant.....	37
Reapplying for legal aid.....	38
Unit support.....	38
Sub-Section 1c: Actions following the grant of legal aid.....	39
Completing the application form.....	39
The legal aid contract.....	39
Limited legal aid: DSP referral stage (CM and SCC only).....	39
Funding limitations.....	39
Requesting an increased limit.....	39
Case not proceeding to trial.....	39
Notifying AFCLAA.....	39
Full legal aid: case proceeding to trial (all types).....	40
Legal aid already in place.....	40
Legal aid not in place.....	40
Sub-Section 1d: Actions following the conclusion of proceedings.....	41
Relevant factors.....	41
Case discontinued or applicant acquitted.....	41
Discontinuance or full acquittal.....	41
Acquitted on some but not all charges.....	41
Post conviction.....	42
Applications for leave to appeal.....	42
Advice supporting an appeal.....	42
The CMAC decision.....	42
Change of legal representative.....	42
Advice against appeal.....	42
Review of costs and contributions.....	42
Legal representative: bill of costs.....	43

Initial assessment of legal costs.....	43
Outstanding contributions.....	43
Full assessment of legal aid costs.....	44
Section 2: Legal aid for appeals and elections for trial.....	45
Sub-Section 2a: General information.....	45
Processes and liabilities.....	45
Where the applicant decides legal aid is not required.....	45
The applicant decides legal aid/representation is not required.....	45
Change of mind: initial refusal.....	45
An exceptionally late application.....	46
Retrospective applications for legal aid.....	46
Legal representation options.....	46
Using a Service lawyer.....	46
Contacting the Service lawyer.....	46
Privately funded legal representation.....	46
Personal liability.....	46
Financial Eligibility Threshold: Recovery of costs.....	47
Legally aided representation.....	47
Transfer of legal aid.....	47
Legal aid for applications to the CMAC.....	47
Legal aid costs: summary appeal.....	47
Appeals lodged by the Reviewing Authority.....	48
Legal aid costs: election for trial.....	48
Sub-Section 2b: Applying for legal aid.....	49
The application form.....	49
The application process.....	49
Completing the application form.....	49
Unit responsibility.....	49
Sending the completed form.....	49
Original copy.....	49
Legal aid contributions: automatic exemptions.....	50
The means test.....	50
The means test: general.....	50
The income means test.....	50
Accuracy of information.....	51

Changes in circumstances.....	51
Legal aid thresholds.....	51
Allowances: Basic Living Allowance (BLA).....	51
BLA (Applicant).....	51
'Weighted' BLA (dependants).....	51
BLA: Spouse/civil partner.....	52
BLA: Child(ren).....	52
Allowance: Non-legally aided legal advice.....	52
Documentary evidence required.....	52
Evidence not readily available.....	52
Pay statements: Service applicants.....	52
Pay statements: ex-Service applicants.....	53
Pay statements: long term absentees.....	53
Other forms of evidence.....	53
Childcare costs.....	53
Maintenance payments.....	53
Main/only residence.....	54
Income from rented property.....	54
Mortgage payments.....	54
Privately rented accommodation.....	54
Council tax.....	54
The Contribution Order.....	54
Contribution Order: Applicant action.....	54
Contributions.....	55
The Hardship Review.....	55
Hardship Review application.....	55
Eligibility.....	55
Changes in personal circumstances.....	55
Changes in financial circumstances.....	55
New financial commitments.....	55
Evidence requirements.....	55
Acceptable forms of evidence.....	56
Boarding school fees.....	56
Legal aid not in place.....	56
Certificate of legal aid not in place.....	56

Legal aid refused by applicant.....	56
Legal aid refused by AFCLAA.....	56
Legal aid declined by applicant.....	57
Reapplying for legal aid.....	57
Unit support.....	57
Sub-Section 2c: Actions following the grant of legal aid.....	58
Legal aid in place.....	58
The legal aid contract.....	58
Uncontested summary appeal.....	58
Appeal or election request withdrawn by applicant.....	58
Applicant liability: appeal or election not proceeding.....	58
Sub-Section 2d: Actions following the conclusion of proceedings.....	59
General.....	59
Appeal against finding and sentence.....	59
Appeal against sentence only.....	59
Election for trial.....	59
Overpayments.....	59
Applications to the Court Martial Appeal Court (CMAC).....	60
Application for leave to appeal approved.....	60
Application for leave to appeal rejected.....	60
Payment of contributions.....	60
Payment of contributions: MCTC.....	60
Payment of contributions: Election.....	60
Section 3: AFCLAA: Through-life case management.....	61
Annex A: Processes for the nomination of civilian legal representation.....	63
Nomination by applicant.....	63
Identifying a legal representative.....	63
Nominated representative declines instruction.....	63
Nomination by applicant: non-standard travel costs.....	63
Legal representative outside the broad geographical area.....	63
Applicant action.....	64
AFCLAA action.....	64
Nomination by AFCLAA.....	65
Background.....	65
Key factors taken into consideration.....	65

The nomination process.....	65
Registering an interest.....	66
Availability of representatives.....	66
Recommending legal representatives.....	66
Choosing between solicitor and barrister.....	66
Annex B: Guidance notes: legal aid application forms.....	67
General information.....	67
The information required.....	67
Accuracy of information.....	67
Notes for applicants.....	67
MOD F2263: Application for legal aid (AFLAS).....	67
Section 1 – Personal particulars.....	67
Section 2 – Legal representation.....	68
Section 3 – Entitlement to apply for legal aid.....	69
Service points of contact.....	70
Section 5 – Financial statement.....	70
5b – Description of income.....	70
5c – Description of outgoings.....	71
5d – Description of capital, savings and investments.....	72
Section 6 – Declarations.....	73
MOD F2263C: The Hardship Review application form.....	74
Part A – Personal particulars.....	74
Part B – Reason for review on grounds of hardship.....	75
Appendix 1 to Annex B: The Interests of Justice (IOJ) test.....	77
Appendix 2 to Annex B: Appeal process – legal aid refused.....	79
Eligibility.....	79
Financial Eligibility Threshold.....	79
Interests of Justice test.....	79
Right to appeal.....	79
Unsuccessful appeal.....	81
3 Service Police interviews and custody.....	82
Service Police interviews.....	82
Entitlements to legal advice and assistance.....	82
Contact with legal representative.....	82
Access to legal advice.....	82

	Legal representative declines fees.....	82
	Other financial arrangements – disallowed.....	83
	Custody.....	83
	Custody without charge.....	83
	Custody after charge.....	83
	Detainees with legal aid.....	83
	Detainees without legal aid.....	83
	Legal aid previously declined or refused.....	83
	Legal representation.....	83
	Custody related to AWOL.....	84
	Travel and accommodation.....	84
4	Legal aid for criminal courts outside the UK.....	85
	Eligibility.....	85
	Ineligibility.....	85
	Personal travel.....	85
	Initial actions.....	86
	Applicant responsibility.....	86
	Unit responsibility.....	86
	Emergency contact: Out of hours.....	86
	Emergency contact: AFCLAA action.....	86
	The application process.....	86
	Application process.....	86
	Detached duty.....	86
	AFCLAA process.....	86
	Applicant and unit responsibility.....	87
	Work carried out in advance of legal aid.....	87
	Funding responsibilities.....	87
	Other financial arrangements – disallowed.....	87
	Post proceedings.....	87
	Detention in custody.....	88
	Detention in advance of charge.....	88
	Emergency legal aid funding.....	88
	Delayed application.....	88
	Legal aid declined by applicant.....	88
	Sovereign Base Area Authority.....	88

5	Miscellaneous.....	89
	General.....	89
	Definitions.....	89
	Applicant.....	89
	Legal representative.....	89
	Confirmation of status.....	89
	Prior authority.....	89
	Confirmation of prior authority.....	90
	Custody and Service Police interviews.....	90
	Legal representative attendance.....	90
	Travel: applicants.....	90
	Applicants and DAO/AAO.....	90
	Duty travel.....	90
	Costs.....	91
	Conferences with the legal representative.....	91
	Medical or detention/custody.....	91
	Service/operational reasons.....	91
	Face to face meetings with legal representative.....	91
	Travel: legal representatives.....	91
	Legal representatives.....	91
	Use of MOD vehicles.....	91
	Unauthorised travel.....	92
	Unauthorised personnel.....	92
	Accommodation (UK and overseas).....	92
	Booking accommodation.....	92
	Mess accommodation.....	92
	Receipts.....	92
	Medical attention/facilities (outside UK).....	93
	Use of facilities.....	93
	European Health Insurance Card (EHIC).....	93
	EHIC not valid.....	93
	Insurance.....	93
	Life assurance.....	93
	Travel in operational theatres.....	93
6	Discrete areas of non-criminal public funding.....	94

Introduction.....	94
Potential requirement identified.....	94
Ease of reference.....	94
Section 1: Legal representation – Child Assessment or Protection Order hearings.....	95
MOD responsibility.....	95
Reference documents.....	95
Further general guidance.....	95
Scope of the Armed Forces’ legal representation scheme.....	95
Entitlement to receive public funding.....	95
Status of parent(s).....	96
Reviewing representation requirements.....	96
Applying for publicly funded representation.....	96
Prompt action required.....	97
Instructing the legal representative.....	97
The scope of publicly funded representation.....	97
Legal representative costs.....	97
The ‘Need for Representation’ test.....	97
Separate representation requested.....	97
Conflict of interest identified after authorization.....	98
Section 2: Legal representation at Adjudication Hearings (MCTC only).....	99
Reference of a charge to the adjudicator.....	99
Procedure for obtaining legal advice.....	99
Detainee contact with legal representative.....	99
MCTC staff action.....	99
Legal representative action: post proceedings.....	100
Section 3: Legal representation – Appeals to the Court Martial Appeal Court (CMAC).....	100
A convicted person’s appeal to the CMAC.....	100
Appellants without legal aid at trial.....	100
SPA appeals to the CMAC.....	100
Unduly lenient sentences.....	100
Section 4: Legal representation – Incidents arising during the course of duty.....	101
MOD responsibility.....	101
Chain of Command (CoC) responsibility.....	101
CoC action.....	101
Unit and individual’s actions.....	101

CoC funding withdrawn: Service jurisdiction.....	102
CoC funding withdrawn: UK civilian jurisdiction.....	102
Section 5: Reimbursement of legal fees from central funds.....	103
Recovery of private costs: FET exceeded.....	103
Eligibility and process.....	103
Recovery of private legal costs: other.....	103
Annex A: CP Insert to MOD F2263 – Application for public funding for legal representation at Assessment/Protection Order hearing.....	104
Annex B: Adjudication Hearing – Record sheet.....	105

1 Legal aid in the Armed Forces: An overview

Introduction

The scope of the Armed Forces Legal Aid Scheme

1. **Criminal Legal Aid.** The primary purpose of 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 AFLAS provides publicly funded financial assistance in respect of some, or all, 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 of 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 to the CM, against the finding and/or sentence following their trial before the SCC (relevant civilians only); **or**
- e. Are to be tried in a criminal court outside the UK (see Chapter 4).

2. 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, Volume 1 Chapter 3 – Jurisdiction and Time Limits².

3. **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 thus are beyond the general scope of the Armed Forces Legal Aid Scheme. Chapter 6 provides full details on the eligibility criteria for those who may require publicly funded legal representation and the legal aid processes therein.

4. **Exclusions from the Armed Forces' Legal Aid Scheme.** The Armed Forces Legal Aid Scheme is intended to provide support to Service, and relevant civilian,

² 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.

personnel who may otherwise be disadvantaged by virtue of their employment or place of residence due to Service/MOD commitments³. 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:

- 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 instead⁴; 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 serving 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 Chapter 4 for details).

5. 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 Chapter 6, Section 4, for eligibility and guidance.

The Service Justice System (SJS)

6. Different organisations. A number of different MOD and civilian organisations are involved in the various stages of the SJS, each with their own distinct areas of responsibility. The success of the SJS, necessary for the smooth and prompt resolution of cases in a way which underpins the operational effectiveness of the Armed Forces, depends not only upon efficient processes within each organisation, but also effective interaction between all parties involved.

7. Roles and responsibilities. The following information will provide defendants, appellants, unit personnel and others who may be unfamiliar with the intricacies of the SJS, an insight into the roles and responsibilities of these organisations and key personnel within them. This should promote a better understanding of the processes, minimise confusion and reduce the potential for delay and its impact upon those directly or indirectly involved.

³ 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.

⁴ 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).

The Office of the Judge Advocate General (OJAG)

8. **Judge advocates.** Judges who preside over the CM, the SCC, the SAC and custody hearings are known as judge advocates, and it is their responsibility to oversee the conduct of the proceedings and to give rulings and directions on questions of law, procedure and practice in court. Appointed as judges by the Lord Chancellor, they are always civilians (although some are ex-Serving Officers) and they are always legally qualified. The Judge Advocate General is the judicial head of the SJS, and has power to specify judges for trials or other proceedings. More information about the OJAG and judge advocates is available on the Ministry of Justice website www.justice.gov.uk.

The Service Prosecuting Authority (SPA)

9. **SPA independence.** The Service Prosecuting Authority is a tri-Service organisation which is, like AFCLAA and the MCS, completely independent from all Service Chains of Command. The SPA, under the leadership of a civilian Director of Service Prosecutions (DSP), is responsible for the prosecution of cases heard in the CM and SCC, and acts as the respondent in the SAC and CMAC.

The Military Court Service (MCS)

10. **General.** The Military Court Service is responsible for the administration of every aspect of the arrangement and running of trials, summary appeals and custody hearings for the Armed Forces. There are a number of different branches within the MCS, each with their own specific duties and responsibilities; more information on these roles and responsibilities can be found on the MCS defence intranet website.

11. **MCS independence.** The MCS works closely with (though is independent from) the Office of the Judge Advocate General, the Service Prosecuting Authority, the Service Chains of Command, the MOD personnel branches, the National Probation Service (NPS), the Victim and Witness Services and military court advocates. The MCS incorporates the Court Martial Report Service (CMRS), which provide Pre-Sentence Reports (PSR) for defendants who plead or are found guilty, via a contract with the NPS.

12. **HQ MCS (Upavon).** The MCS is headed up by a B2 Grade Civil Servant (Director MCS), who is supported by 14 staff at the Headquarters in Upavon. All MCS staff are Civil Servants (some of whom are retired military personnel). The Director provides central direction, control and co-ordination for the MCS. Director MCS delegates powers for certain decision-making, administrative and management functions to other members of the HQ staff. The Court Officers, based in the Military Court Centres, are responsible for the day-to-day running of those centres and the operation of the court system. Director MCS also fulfils the role of line manager for Head AFCLAA.

13. **The Court Administration Officer (CAO).** In order to ensure his independence, the Director MCS is appointed by the Defence Council as Court Administration Officer (CAO), whose statutory powers are derived from the Armed Forces Act 2006. The CAO has a legislated function to administer military courts, specify lay members (the Board) and notify witnesses. These duties are conducted in accordance with the current legal requirements, taking into account the wider interests of Service justice and of Service personnel.

14. **Board member selection.** The CAO is responsible for the selection of the Service (and any civilian) members of the court⁵ and ensuring they meet eligibility criteria; effectively jury selection. HQ MCS ensures that members are drawn from outside the reporting chain of the defendant. Court Martial and Summary Appeal Court hearings are usually scheduled during a 2-week 'assize sessions', or Warned List periods, and are held in Military Court Centres. Additionally, particularly lengthy or complex stand-alone trials or summary appeal hearings may be scheduled outside those 'assize sessions'.

15. **Other responsibilities.** HQ MCS assures the availability of judge advocates, notifies all proceedings to all interested parties, and establishes initial contact with witnesses (for both prosecution and defence) as well as specifying lay members. Thereafter the detailed administration of the court falls to the relevant Military Court Centre, where the Court Officer manages the day-to-day running of all cases (including the management of witnesses).

16. **Military Court Centres (MCC).** There are currently 4 permanently manned Military Court Centres in the UK: Bulford, Catterick, Colchester and Portsmouth. In addition, there is one Military Court Centre in Germany, at Sennelager, providing a total of 5 permanent MCCs worldwide. Each of the active MCCs is generally staffed by a Court Officer (currently most Court Officers are retired officers of Lt Col rank), a Deputy Court Officer and two Court Assistants. The MCS currently employs 22 personnel at the MCCs, all of whom are Civil Servants.

17. **Temporary court centres.** Courtroom facilities also exist in Episkopi (Cyprus), Plymouth, Lossiemouth and Kinloss, all of which can be activated for temporary use as and when required. As the system is entirely 'portable', trials can be held outside of normal court facilities; recent examples have included Brunei, Belize, Canada and the USA.

Victim and witness support

18. **Victim and Witness Support Services.** Victim Support is an independent national charity, set up to provide emotional support and practical help to victims and witnesses of crime who are required to attend court (in civilian and Service courts); they are able to provide support before, during and after an appearance at court. The charity works with the MOD to support those attending Service Courts, but remains wholly independent of the Services and the SJS. The help they give is both free and confidential, and is readily available in the UK and in Germany. If necessary, it may also be available elsewhere in the world on request (excluding operational theatres).

19. **Accessing Victim Support.** The SJS positively promotes the use of Victim Support for the benefit of Service and civilian personnel called as witnesses, by providing details of the charity to witnesses when called forward. Court staff also ensure Victim Support are provided with details of witnesses before attending trial, especially if a witness appears to be particularly vulnerable, agitated or nervous about the whole process. The Court Martial Witness Service can be contacted on 01483 300 974, or for more general information, the Victim Support website is www.victimsupport.org.uk.

⁵ Service board members are randomly selected from a list of candidates supplied by the Services; civilian board members are randomly selected from a list of MOD Civil Servants provided by the Defence Business Service (DBS) People Services.

The Armed Forces Criminal Legal Aid Authority (AFCLAA)

20. **The Armed Forces' Criminal Legal Aid Authority⁶.** The Armed Forces Criminal Legal Aid Authority is a tri-Service organisation, which sits wholly outside all Service Chains of Command, and is staffed by MOD Civil Servants. It is responsible for all aspects of the grant and management of legal aid for Service (including ex-Service), and relevant civilian, personnel prosecuted by the SPA through the Court Martial (CM) or the Service Civilian Court (SCC); for Service appellants to the Summary Appeal Court (SAC); and for Service and relevant civilians prosecuted through overseas criminal courts, under specific circumstances.

21. **Head AFCLAA.** The Head is responsible for the overall management of AFCLAA, including the implementation of policy in line with the civilian legal aid scheme as far as is practicable, whilst also taking account of the SJS, and the Services, operational requirements. Although not involved in the day-to-day management of legal aid casework, the Head is ultimately responsible for the efficient and effective management of the Armed Forces Legal Aid Scheme, and the decisions made by AFCLAA staff during the course of their duties.

22. **Case Teams.** There are currently three dedicated Case Teams in AFCLAA, consisting of a Case Officer and an Assistant Case Officer, each with their own discrete areas of responsibility for the management of cases within the terms of the Armed Forces Legal Aid Scheme. All legal aid casework is handled by the Case Team assigned to that case.

23. **Case Officer.** The Case Officer in each team has overall responsibility for ensuring all AFCLAA processes are undertaken in accordance with the established procedures, and that all timelines are fully met. The Case Officer deals directly with legal representatives and other members of the defence legal team in all matters relating to fees and other financial or case management issues. This includes the negotiation of fees as necessary, and processing any requests for prior authority to incur additional costs.

24. **Assistant Case Officer (ACO).** The ACOs are responsible for processing all aspects of the grant of legal aid, including the means-test assessments of pre- and/or post-trial contributions. This includes dealing directly with the unit discipline staff to ensure:

- a. Legal aid application forms are completed correctly;
- b. All documentary evidence required is provided;
- c. Contribution orders issued by AFCLAA are dealt with promptly; and
- d. All documentation is submitted to AFCLAA at the earliest opportunity.

The ACO makes initial contact with the legal representative, following the grant of legal aid, and issues appropriate documentation to all interested parties, to hasten, advise or inform as necessary.

⁶ Contact details for AFCLAA are at Annex A to Chapter 1.

25. **Case management.** Cases are allocated to a specific team upon receipt of first piece of key documentation received by AFCLAA i.e. a completed application form; an acknowledgement of case papers issued by the SPA; or a notification of proceedings issued by HQ MCS. The appointed team remains responsible for all aspects of legal aid casework throughout the life of the case, from receipt of initial documentation through to final settlement of all fees and contributions and case closure. Closed case files are archived for a period of 7 years, in line with civilian practice, before destruction in accordance with standard MOD procedures. For more detailed information on case management responsibilities, refer to Chapter 2, Section 3 of this JSP.

26. **Queries.** Unit personnel, legal representatives and court staff with any enquiries about a particular case are advised to contact either member of the appointed Case Team, as detailed on all case-related documentation issued by AFCLAA. In the absence of both team members, queries will be dealt with in the first instance by another member of AFCLAA staff. For advice or guidance on specific matters not covered elsewhere in JSP 838, Parts 1 or 2, AFCLAA should be contacted, using the details provided at [Annex A](#) to this Chapter.

Units

27. **Unit admin or HR discipline staff.** Unit administration staff have a key role to play in supporting defendants as well as providing continuity and action as a focal point for the various elements of the SJS. In particular, AFCLAA staff contact, and continue to work with, appropriate unit staff at key stages throughout the application process to ensure that:

- a. Timelines are met wherever possible, and reasons for any delay are provided;
- b. Delays are kept to a minimum; and
- c. Real or potential problems are identified and resolved at the earliest opportunity.

28. **Defendant/Appellant Assisting Officer (DAO/AAO).** Throughout the legal aid process, including preparation for trial/appeal and all court attendances, the DAO/AAO has a significant role in supporting the defendant/appellant and their legal representative; a copy of the Notes to Assist the DAO/AAO, provided once legal aid is granted, is attached at [Annex B](#). A properly prepared, and motivated, DAO/AAO will work with the defendant, their legal representative and AFCLAA, to:

- a. Encourage the defendant to engage with the legal aid process;
- b. Attend upon the defendant and their legal representative before and after case conferences;
- c. Remain in attendance for part or all pre-trial conferences in some instances, but only at the request of the defendant and/or legal representative;
- d. Maintain the integrity and confidentiality of all discussions involving the defendant, the legal representative and the case;
- e. Provide practical assistance as required e.g. identify and/or locate potential defence witnesses, including character witnesses; obtain copies of unit documentation as

required by the legal representative; book local travel and accommodation for overseas hearings (see Chapter 5 for details);

f. Once the defendant pleads, or is found, guilty, obtain information and/or documentation to inform and support any plea of mitigations; and

g. Liaise with CMRS to ensure the defendant is prepared for, and attends, any PSR interview required.

29. **Divisional Officer (DO)/Adjutant/OC PSF⁷.** In the majority of cases, staff in these posts are the most suitably placed to provide any local administrative support necessary to facilitate accurate and timely actions through the application process. This includes ensuring monthly income contributions are processed via JPA, in accordance with payment plans agreed between the applicant and AFCLAA. Further guidance on the role and responsibilities of the DAO for CM and SCC is to be found in JSP 830 (Manual of Service Law), Chapter 29, Volume 2, Annex B.

30. **Local advice.** They may also be able to provide specific advice in instances where local difficulties or considerations need to be taken into account e.g. current or impending operational tours, extended exercise or leave periods etc, which may impact upon the legal aid process and/or contact between defendant, DAO and legal representative.

31. **Assistance with application process.** Throughout the legal aid process, especially at the initial application stage, AFCLAA Case Officers will contact the DO/SSA/P1 for specific assistance to obtain completed parts of the application form, complete with supporting documentation as necessary. Whilst the responsibility for applying for legal aid remains with the applicant, there is also a Command responsibility to provide such encouragement, guidance and support as is necessary to ensure the applicant fully understands the options open to them. Further details on the assistance required and provided are contained within Chapter 2 of this JSP.

Process guides

32. **Legal aid process flow charts.** For ease of reference for all users, two legal aid processes flow charts⁸ have been produced at [Annex C](#); these are not intended to replace the detailed guidance contained within the separate Chapters, but should be used as a quick reference guide to the relevant application processes.

⁷ RN, Army and RAF respectively; includes Staff Support Assistant (SSA) (Army) and P1 staff (RAF)

⁸ Legal aid processes in respect of: 1) Trials, including the Referral to DSP stage; 2) Summary Appeal and Election for trial.

The Armed Forces Criminal Legal Aid Authority (AFCLAA)

Contact details

Address:	Bldg 398	
	Trenchard Lines	
	Upavon	
	Pewsey	
	Wiltshire	
	SN9 6BE	
Email address (internal):	LF-MCS-AFCLAA-Group	
Email address (external):	LF-MCS-AFCLAA-Group@mod.uk	
Phone numbers:		
Internal dialling code:	94344 - followed by extension	
External dialling code:	(++44)(0)1980 61 – followed by extension	
Head AFCLAA (including policy enquiries):	5973	
Deputy Head/Business Manager	8915	
Team 1	Case Officer	8035
	Assistant Case Officer	8814
Team 2	Case Officer	5974
	Assistant Case Officer	8041
Team 3	Case Officer	8028
	Assistant Case Officer	8982
Case Officer 4:	5934	
Office Manager (including general enquiries):	8008	
Fax:	5691	
Out of Hours (Duty) mobile:	(44)(0)7766 511314	

**ARMED FORCES CRIMINAL LEGAL AID AUTHORITY
AFLAS11**

**NOTES TO ASSIST A DEFENDANT'S ASSISTING OFFICER (DAO)
FOR CASES REFERRED TO THE DIRECTOR OF SERVICE PROSECUTION**

Reference Documents:

- A. Manual of Service Law – JSP 830 – Chapter 29, Annex B
- B. Rights Of An Accused (as amended) – JSP 830 – Chapter 6, Annex G
- C. JSP 838 – Armed Forces Legal Aid Scheme – Chapter 5, paragraphs 9-31.

Legal Aid is in Place

- Your responsibility as a DAO is to the defendant you are assisting. At no time are you to discuss the case, or the content of any conference held with the defendant and/or legal representative, with anyone unless specifically authorised to do so by the defendant or legal representative.
- AFCLAA will not hesitate to contact the Chain of Command if we become aware that you, the DAO, are not providing full assistance. If you pass this duty to another officer, you are to ensure that they are properly briefed of their responsibilities and you must also inform AFCLAA of their details.
- Your name and contact details have been given to the legal representative. You should initiate contact between the legal representative and defendant as soon as possible. You are to make arrangements for the defendant to have an interview with his legal representative at the earliest opportunity, but no later than 7 days from receipt of this letter. You are also required to make yourself available for that interview. If, for any reason, you cannot continue to provide assistance to the defendant, you must inform AFCLAA.
- You and the defendant **should** travel to the legal representative's office – the legal representative will not be reimbursed by AFCLAA for travelling to interview his client unless the defendant is in custody - such costs may fall to the defendant if incurred.
- If you and the defendant are based overseas, the preferred option is for you to arrange for an interview to be carried out over secure Video-Tele-Conferencing (VTC) link rather than return to the UK. AFCLAA can tell you where such facilities are available. If this is not appropriate, the defendant's unit should provide flights for you both to return to UK; air-trooping should be your first recourse. A meeting with the legal representative is a duty for both the accused and the DAO. As such, travel costs must be met under Unit travel and subsistence arrangements. Reference C provides full guidance.
- As soon as the Service Prosecuting Authority (SPA) has issued their direction whether or not to prosecute, you must ensure that AFCLAA have been made aware of that decision.
- If the SPA decides that the matter should not go to trial by the Court Martial, instructions will then be withdrawn from the legal representative and the Legal Aid Certificate terminated by AFCLAA. There will be no cost to the defendant, although AFCLAA will not pay for any costs incurred after SPA's decision has been published.
- If the SPA decides that the matter should go to trial, the defendant does not need to reapply for legal aid. A new letter of instruction will be issued by AFCLAA at this point.
- The defendant may be liable to pay a contribution towards their legal aid costs, if they have signed an AFCLAA Contribution Order confirming their acceptance to contribute you should liaise with HR Discipline staff to ensure the payment has been actioned.

☎ Should you require further assistance or advice, please do not hesitate to contact the Case Officer identified on any correspondence, which you have received from AFCLAA.

**ARMED FORCES CRIMINAL LEGAL AID AUTHORITY
AFLAS11**

**NOTES TO ASSIST A DEFENDANT'S ASSISTING OFFICER (DAO/AAO/AAO)
FOR CASES DIRECTED FOR TRIAL/SUMMARY APPEAL**

Reference Documents:

- A. Manual of Service Law– JSP 830 – Chapter 29, Annex B
- B. Rights Of An Accused (as amended) – JSP 830 – Chapter 6, Annex G
- C. Court Martial Appeals - JSP 830, Chapter 31, Part 3
- D. JSP 838 – Armed Forces Criminal Legal Aid Scheme
- E. JSP 752 - Paragraphs 04.0101 & 04.0121.
- F. JSP 800, Volume 5, Paragraphs 2.1.23

Legal Aid is in Place

- Your responsibility as a DAO/AAO/AAO is to the defendant you are assisting. At no time are you to discuss the case, or the content of any conference held with the defendant and/or legal representative, with anyone unless specifically authorised to do so by the defendant or legal representative.
- Headquarters Military Court Service (HQ MCS)/Naval Court Administration Office (NCAO) and AFCLAA will not hesitate to contact the Chain of Command if it becomes aware that you, the DAO/AAO/AAO, are not providing full assistance. If you pass this duty to another officer, you are to ensure that they are properly briefed of their responsibilities and you must also inform the MCS/NCAO and AFCLAA of their details.
- Your name and contact details have been given to the legal representative. You should initiate contact between the legal representative and the defendant as soon as possible. You are to make arrangements for the defendant to have an interview with their legal rep at the earliest opportunity, but no later than 7 days from receipt of the instruction letter. You are also required to make yourself available for that interview. If, for any reason, you cannot continue to provide assistance to the defendant, you must inform AFCLAA at once.
- You and the defendant **should** travel to their legal representative's office – the legal rep will not be reimbursed by AFCLAA for travelling to interview their client unless the defendant is in custody - such costs may fall to the defendant if incurred.
- If you and the defendant are based overseas, the preferred option is for you to arrange for an interview to be carried out over secure Video-Tele-Conferencing (VTC) link rather than return to the UK. HQ MCS/NCAO can tell you where such facilities are available. If this is not appropriate, the defendant's unit should provide flights for you both to return to UK; air-trooping should be your first recourse. A meeting with the legal representative is a duty for both the defendant and the DAO/AAO. As such, travel costs must be met under Unit travel and subsistence arrangements. Reference D provides full guidance.
- The defendant may be liable to pay a contribution towards their legal aid costs, if they have signed an AFCLAA Contribution Order confirming their acceptance to contribute you should liaise with HR Discipline staff to ensure the payment has been actioned.

For the Trial

- If the trial is to be held overseas, the legal representative will arrange their own flight(s). You will need to ensure that you are aware of their flight details.
- You are responsible for ensuring that the legal representative is collected from the arrival airport and returned there at the end of the trial, as well as providing transport between accommodation and the trial venue if necessary. Under these circumstances, legal representatives are considered to be on official MOD business, and are therefore entitled (and insured) to travel in Service transport, in accordance with Reference E.

- If accommodation is required in the UK or Overseas, the legal representative is to be given the option of staying in Officers' Mess accommodation or in a hotel/motel. The former should ideally be of field officer status – en-suite, with a writing table and in a quiet location if possible. When the preferred option is for a hotel/motel, there will be a limit of £85 (or equivalent in local currency) per night, to cover bed and breakfast.
- To ensure that the legal representative is **NOT** accommodated in the same hotel as the Judge Advocate (JA) or Board members⁹, the DAO/AO **must** consult the relevant Military Court Centre (MCC) **before** making a booking, to prevent any embarrassment to the legal rep. If you fail to do this, you will be required to make alternative arrangements for the legal rep.
- The legal representative should be reminded that the bill is to be settled personally, prior to departure, and the costs (supported by original receipts) reclaimed from AFCLAA. If the legal rep chooses to dine elsewhere, details will need to be submitted with their hotel bill. Neither AFCLAA, the unit nor the defendant, are responsible for the legal rep's personal expenses such as telephone calls or bar bills. Any requests by the legal rep for the unit or the defendant to pay or reimburse any expenditure should be notified to AFCLAA immediately.
- If the trial is to be held in the UK, and the legal representative's office is not local to the MCC, the solicitor is expected to brief a barrister or instruct a solicitor advocate who resides or who is based nearer to the trial venue. If they believe that they should attend the trial themselves, they **must** provide justification to AFCLAA to request that their travel/accommodation costs be reimbursed; AFCLAA will not refund unauthorised travel costs. You should liaise with the legal rep, and query whether they require transfer from the local train station etc rather than incur the cost of a taxi.
- You must attend the trial in person, and provide any necessary assistance to the legal representative.

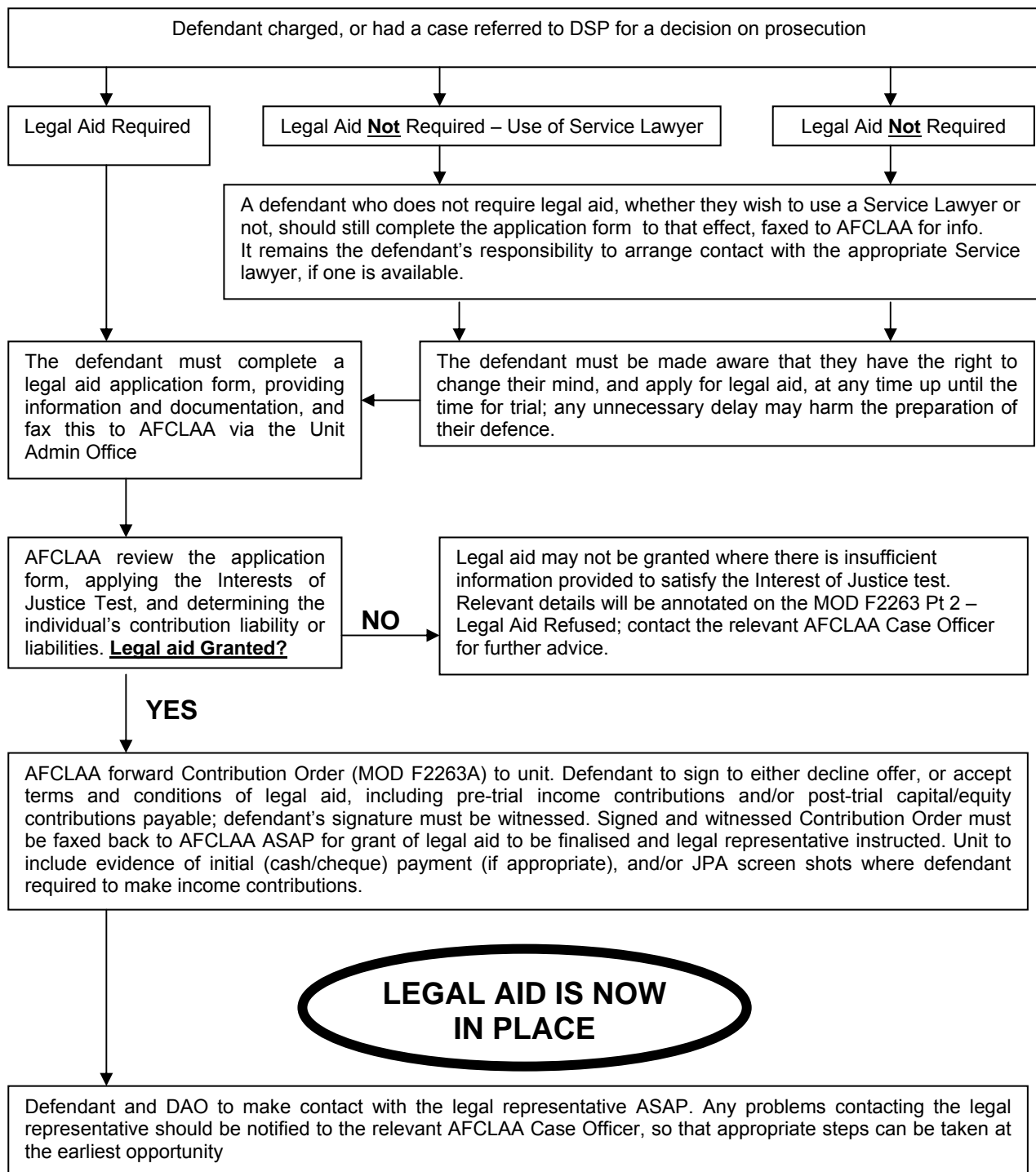
After the Trial

- If the defendant pleads, or is found guilty, a Pre Sentence Report (PSR) may be required. **You are to ensure the defendant attends the interview.** The Court Martial Report Service (CMRS) will contact the DAO/AO/HR Disc to arrange an appointment; you should avail yourself of these details and ensure that appropriate travel arrangements are made for you and the defendant to attend as required.
- If the defendant is convicted and their agreed legal aid contribution does not cover their legally aided defence costs AFCLAA may seek to recover the remaining defence costs from capital and/or equity (if applicable)

☎ Should you require further assistance or advice, please do not hesitate to contact the Case Officer identified on any correspondence that you have received from AFCLA

⁹ Board members are routinely booked into the AROSA hotel in Paderborn, and therefore this hotel is not to be used by the legal representative.

Flow Chart: legal aid processes – Trial (incl referral to DSP¹⁰)

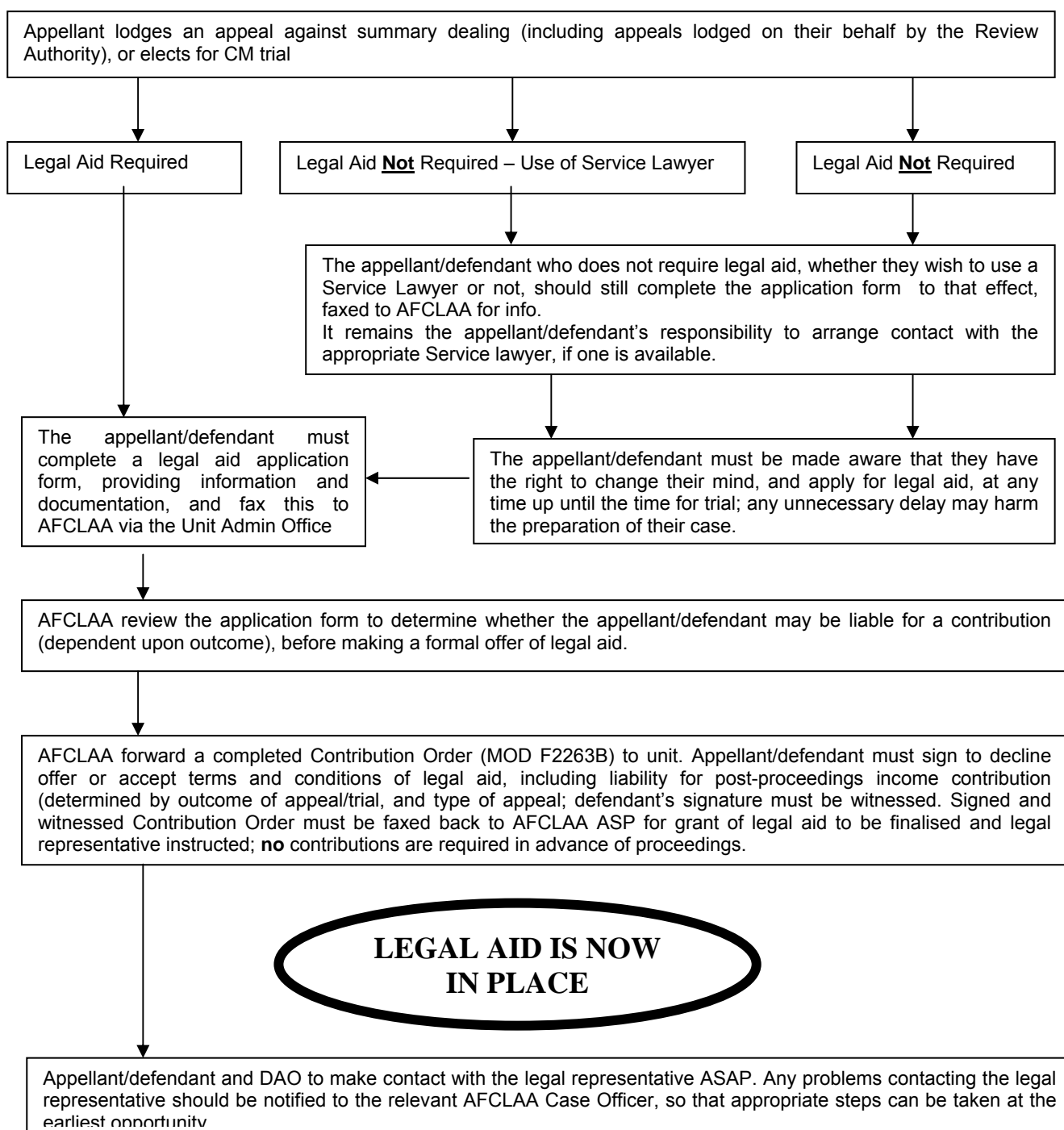


ACQUITTED/DISCONTINUED:
AFCLAA to direct unit to stop any outstanding contributions and provide evidence of payments already made. Upon verification, AFCLAA to authorise refund payment, to include interest..
NO unit action to stop contributions without AFCLAA written authority.

CONVICTED:
AFCLAA direct unit to either continue or cease payment of outstanding income contributions, pending final settlement of legal aid costs. AFCLAA to advise if any contributions from capital/equity are required.
NO unit action to stop contributions without AFCLAA written authority

¹⁰ Includes Court Martial (CM), Service Civilian Court (SCC) and overseas criminal court trials.

Flow Chart: legal aid processes – Summary Appeal or Election



Summary Appeals: AFCLAA issue formal notification to appellant with contribution liability (identified on MOD F2263B), whose appeal was wholly unsuccessful (i.e. appeal failed/denied), or partially unsuccessful (i.e. finding upheld, but sentence varied); notification identifies level of contribution payable, and the payment schedule. Appellants whose appeal was upheld, or whose appeal was lodged by the Reviewing Authority, or who are below the income threshold, will NOT be required to contribute towards their legal aid costs.

Elections: AFCLAA issue formal notification to convicted offender with contribution liability, detailing contribution payment plan. Where actual legal aid costs are less than the contribution originally notified to the convicted offender, AFCLAA will authorise refund of the excess.

Defendants acquitted at trial, or who were below the income threshold, will NOT be required to contribute.

2 Legal aid procedures

Introduction

1. **Parity with the civilian scheme.** The information required by AFCLAA to determine whether an application for legal aid should be granted, is consistent with current practice within the civilian legal aid scheme as operated in England and Wales. It 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, is the authority for AFCLAA to initiate legal aid procedures and therefore commit public funds on behalf of the applicant.

2. **Ease of reference.** For ease of reference, this Chapter is divided into separate Sections and thereafter Sub-Sections, to enable the reader to determine the relevant processes and actions, appropriate to the stage and type of proceedings:

Section 1: Trials held in Court Martial (CM), Service Civilian Court (SCC)¹¹ or civilian criminal courts outside the UK;

Section 2: Appeals to the Summary Appeal Court (SAC) or the Court Martial Appeal Court (CMAC), or Elections for trial by CM.

3. **Different processes.** The processes, particularly for the contribution elements for SAC and Elections, differs from that for trials, and the reader should ensure they are reading the relevant Section to save time and confusion.

¹¹ Including CM and SCC cases at the initial DSP referral stage.

Section 1: Legal aid for trials (CM/SCC/criminal courts overseas)

Sub-Section 1a: General information

Criminal courts overseas

4. **Criminal courts overseas.** Applicants who have been arrested and charged to appear in a civilian criminal court overseas should apply for legal aid without delay, using the same application form as those prosecuted through the SJS¹². Units are advised to contact AFCLAA immediately upon notification of arrest and/or charge, to initiate the process. Chapter 4 to this JSP provides more information for units and should always be referred to in the first instance.

Where the accused decides that legal aid is not required

5. **The accused decides that legal aid/representation is not required.** In all such instances, the individual should nevertheless be strongly encouraged to submit a fully completed application form to AFCLAA, to enable AFCLAA to produce an estimated means test assessment of the applicant's ability to contribute towards their legal aid costs, should they change their mind at a later date¹³. This will enable the individual to make an informed decision on whether they wish to continue with their application, based on their assessed income and/or capital/equity contributions (as at the time of application). **Submitting a completed application form will not commit the individual to any financial liability until and unless they sign the subsequent Contribution Order to accept the offer of legal aid provided therein.**

6. **Application form: legal aid not required.** Should the individual choose not to apply for legal aid funding, whether they wish to use a Service lawyer or not, unit admin staff should endeavour to obtain an application form completed to that effect¹⁴, even if they decline to provide any personal or financial information. This is to provide documentary evidence that the individual:

- Was made fully aware of the availability of legal aid funding;
- Had the opportunity to make a considered decision about legal representation; and
- Freely made the decision not to apply for, or to decline an offer of, legal aid.

A form completed as such will provide an audit trail should the lack of funding and/or representation, and any subsequent delay, be used as the basis of a challenge in court at a later date.

¹² Using the same procedures as other types of cases, but it is necessary to act with more urgency as overseas civilian cases tend to proceed to trial within shorter timeframes, therefore it is imperative that appropriate legal representation is obtained without delay.

¹³ Should the applicant wish to reapply for legal aid at a later stage, they will be required to complete a new application form and any changes to personal and/or financial circumstances are likely to alter the contributions payable (if any).

¹⁴ i.e. the individual should complete their personal and unit contact details, tick the appropriate box to confirm they do not wish to apply for legal aid or that they wish to use a Service lawyer, and sign the declaration at the bottom of the form; as no legal aid funding is required, they are not required to provide any further personal or financial information.

7. **Change of mind: initial refusal.** Any individual who does not obtain legal aid, whether they have, or intended to, instruct a Service lawyer or not, may change their mind and apply for legal aid at any point before trial. They should, however, be advised that a late application for legal aid is likely to cause unnecessary delay and may increase the costs incurred in the case, for which the applicant may be liable.

8. **An exceptionally late application.** An exceptionally late application for legal aid e.g. after a guilty plea has been entered, but before sentence is passed, may be refused, especially if this is likely to delay the sentence hearing unnecessarily.

9. **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 that the applicant and the unit ensure the application process is dealt with as quickly as possible, to prevent the applicant incurring an avoidable personal liability for costs (see paragraph 15).

Legal representation

10. **Legal representation options.** Before completing the form, the applicant should think very carefully about the choices of legal representation available, which may be determined by the nature of the case including whether it is a Service or overseas civilian prosecution. An ill-considered, or ill-advised, decision at this stage may result in delay, unnecessary costs, or other complications, should the applicant later change their mind.

Using a Service lawyer

11. **Service lawyer.** Within the scope of an existing Service Level Agreement between the Army and the RAF, personnel from these Services (including relevant civilians attached to Army or RAF units) based outside the UK may request representation by a Service lawyer from the other Service, provided one is available and willing to accept the case¹⁵. A similar provision exists within the RN, whereby RN personnel, regardless of location, can request representation by an RN barrister, provided one is available and willing to accept the case.

12. **Contacting the Service lawyer.** Where an applicant chooses Service lawyer representation, it remains the applicant's personal responsibility to ensure the Service lawyer is contacted and is available to accept the case. Although legal aid is not required, and AFCLAA bears no responsibility for cases where a Service lawyer is instructed, unit admin staff should ensure that the name and contact details of the lawyer are made known to AFCLAA, so any related documentation sent to AFCLAA can be forwarded to the instructed Service lawyer without delay.

13. **Limited legal aid for additional costs (Service lawyer only).** Although legal aid is not generally required where a Service lawyer is instructed, in

¹⁵ It is unlikely that a Service lawyer will be able to accept a case where the trial is to be held in a mainland UK MCC.

exceptional cases it may become necessary to incur additional costs in order to properly prepare for trial e.g. to obtain an expert's report. Should such a requirement arise, AFCLAA will consider an application for legal aid, limited only to those additional costs, so long as a suitable justification provided by the instructed Service lawyer, is attached to the application form. In such instances, the usual means test will be carried out, but any contribution payable will be limited to the additional costs authorised, or the maximum contribution payable as determined by the applicant's personal and financial circumstances, whichever is the lower. Any contribution received will be refunded, with interest, following an acquittal or case discontinued.

Privately funded representation

14. **Privately funded (civilian) representation.** If the applicant wishes to instruct a legal representative who refuses to accept the AFCLAA terms and conditions, or where the applicant does not accept an offer of legal aid from AFCLAA, the applicant may choose to instruct the legal representative privately instead. Alternatively, if the applicant still requires legal aid, they can either nominate, or ask AFCLAA to nominate, an alternative legal representative who will accept the AFCLAA rates, terms and conditions.

15. **Personal liability.** When instructing a legal representative privately, the applicant will be required to agree a fee structure with their legal representative, usually at the firm's private rates; the applicant will remain personally liable for all fees and other costs incurred throughout the process. There is no scope to reclaim private legal costs from central funds, irrespective of the outcome, due to the availability of legal aid for applicants. In some instances, however, privately funded defendants in the SCC, where an application for legal aid failed to satisfy the Interests of Justice test and therefore legal aid was refused, may apply to AFCLAA for a refund of some or all their private legal costs, but only where they were acquitted in court, or their case was otherwise discontinued.

16. **Financial Eligibility Threshold: recovery of costs.** Where the applicant engages privately funded representation because their disposable income exceeds the Financial Eligibility Threshold (FET)¹⁶, they can apply to reclaim some, or all, of those private costs following an acquittal (on all charges), or if their case is discontinued before trial. See Chapter 6, Section 5 for details of eligibility and processes.

Legally aided representation

17. **Legally aided (civilian) representation.** Any applicant who wishes to have civilian legal representation funded through AFCLAA, may either nominate a particular legal representative or firm/chambers, or ask AFCLAA to nominate one on their behalf. [Annex A](#) to this Chapter contains full details of the AFCLAA nomination process.

18. **Transfer of legal aid.** Once the legal representative accepts the case, 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

¹⁶ The FET is applied where the applicant's annual disposable income exceeds £37,500 and remains in excess of this amount after taking account of the potential private legal costs of representation into account. See paragraphs 79-87 for details.

that there are substantial and compelling grounds to do so¹⁷. 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 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.

19. Shared legal representation (co-accused). Where 2 or more applicants are co-accused (i.e. jointly charged on the same charge sheet), they may wish to consider sharing legal representation as the legal aid costs will be shared equally amongst all co-accused involved. The proportion of the liability remains the same, even if one or more co-accused is acquitted or the case against them is discontinued.

20. Example. For example, a case involves 3 co-accused, all using the same legal representative, but only 2 are convicted. Those convicted each remain liable for an equal third, and no more, of the overall legal aid costs; the third, acquitted, defendant continues to receive a full refund of any income contributions paid, with interest. This is not an option where there is a conflict of interest between 2 or more co-accused, which prevents representation by a single legal representative.

Legal aid costs

21. Overview. The legal aid costs which may be recovered from the convicted offender's contribution(s) towards legal aid i.e. pre-trial income and/or post-trial capital/equity contributions, are limited to those which relate directly to the fees payable¹⁸ to the legal representative(s), including any additional costs for which prior authority has been obtained from AFCLAA e.g. expert report(s); site visits etc, and a notional amount towards travel costs.

22. Costs covered by legal aid: fees. Legal aid costs include all aspects of preparation and representation at court, including any additional costs for which the legal representative has obtained specific authority from AFCLAA e.g. an expert's report; medical reports; site visit costs etc. AFCLAA will apply the same principles as the civilian authority when considering requests to incur additional costs, and no reasonable and justifiable request will be refused.

23. Costs covered by legal aid: applicant input. Applicants, by their instructions to their legal representative(s), have some control over the costs incurred throughout the preparation and representation stages, and should discuss the implications with their legal representative(s) as part of the instruction process. In particular, applicants should discuss any requirements for additional costs, such as expert reports etc, with the caveat that the requirements for the proper preparation and representation of the case will always take priority over costs.

¹⁷ 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.

¹⁸ See also paragraph 112 for costs incurred when trying to recover unpaid income contributions.

24. Discussing fees with the legal representative. To maintain the integrity of the Armed Forces Legal Aid Scheme, and to protect the applicant, the DAO/AO and public funds, it is essential that neither the applicant nor the DAO/AO enter into any financial discussions or commitments with the legal representative. The legal representative should discuss with their client (the applicant), any requirements which might result in incurring additional costs, but must not discuss amounts for costs, fees or other payments; the legal representative is advised at the outset, that these matters may only be discussed directly with AFCLAA. Any attempt by a legal representative, or anyone in the defence team, to discuss fees or any other kind of payment, must be reported to AFCLAA without delay. Legal representatives are not permitted to charge both AFCLAA and the applicant personally for the same item of work or expenditure; such instances must also be reported to AFCLAA without delay.

25. Costs covered by legal aid: travel. An offender's liability towards the legal representative's travel costs are limited to a notional fee to prevent the offender being financially liable for travel costs which are beyond their control e.g. flights (typically to Germany or Cyprus); taxi or train fares to the trial venue or airports; car parking at airports etc. The notional amount payable is determined by the MCC where the trial is held and the nearest local barristers chambers (UK MCC), or an average of the UK notional amount for trials held outside the UK, to maintain parity for all applicants. The use of a notional travel fee, instead of actual costs will prevent offenders from being financially disadvantaged due to their location or the trial/hearing venue(s) when compared to offenders prosecuted through the civilian criminal justice system. There is no offender liability in respect of the defence team's accommodation and subsistence costs where these have been authorised by AFCLAA.

26. Travel fees not covered by legal aid. Applicants who nominate a legal representative whose attendance in court would necessitate travel between Germany or Northern Ireland and mainland UK, are required to accept personal responsibility for the additional travel costs incurred (for travel into or out of mainland UK) – unless the hearing venue is changed after instruction, whereupon no personal liability will be necessary. Should the applicant not accept this responsibility, they are required to either nominate an alternative legal representative more suitably located, or ask AFCLAA to nominate on their behalf. Other than these specific circumstances, neither the applicant nor the DAO/AO are to enter into any financial arrangements with the legal representative.

27. Contributions exceeding costs. If the legal aid costs incurred are less than the pre-trial income contributions paid, the applicant will receive a refund of the overpayment, once all bills have been authorised for payment; this refund will not include any interest payment.

28. Costs exceeding income contributions. Where the legal aid costs exceed the income contributions paid (maximum contribution), the outstanding balance will be recovered from any capital/equity contribution payable, as stated on the Contribution Order.

29. Costs exceeding maximum (combined) contributions. Where legal aid costs exceed the maximum (combined) contributions as stated on the Contribution Order, public funds will remain liable for those remaining costs.

Judicial apportionment

30. **Judicial apportionment.** A judicial apportionment may be sought only in cases where the legally aided defendant pleaded guilty to some, but not all, charges on the indictment and is subsequently acquitted on the remaining charges following a contested trial. In such instances, the convicted offender may, through their legal representative, apply to the Court Martial for an order that they should only pay a proportion of their legal costs on the grounds that it would be manifestly unreasonable to pay the whole amount.

31. **Application for judicial apportionment.** An application for judicial apportionment is to be submitted to the court within 21 days of sentence, and must include the grounds on which the application is made and the proportions (as a percentage) of the costs which the legal representative considers to be reasonable. The trial judge advocate, or in their absence, an appointed replacement, will consider the application and either grant or refuse it.

32. **Further advice.** When considering the application, the judge advocate may seek further advice on costings from AFCLAA before making a final decision. Where an application is granted, the judge advocate will state on the order the percentage of costs payable; there is no requirement for any other convicted co-represented person to pay the outstanding balance of the (judicial apportionment) applicant's costs. There is no right of appeal against a refusal of an application for judicial apportionment.

Sub-Section 1b: How to apply for legal aid: Trials.

33. **The application form.** The application form (MOD F2263) is to be completed by the applicant, with assistance from HR admin/discipline staff and the DAO as necessary. The applicant should be advised to complete a form in all cases, even where they do not want legal aid; this will show that they were made aware of the availability of legal aid, and that the application is a true reflection of their decision in respect of legal aid.

34. **Indication of likely contributions.** Applying for legal aid at the DSP referral stage, even if they subsequently decline the offer, will provide the applicant with an indication of their likely future contributions, should the matter proceed to trial and the applicant want legal aid at that point. In such instances, due to the impending court processes, payment of the first contribution will be required immediately. The applicant should be advised that the contributions, as assessed at this point, may be subject to change if there have been any changes to their personal or financial circumstances between means test assessments (paragraphs 121-123).

35. **The application process.** The application process can be quite complex, especially if the applicant, and their support network at unit level, do not wholly understand the procedures or do not fully cooperate with AFCLAA during this time. Units, and especially DAOs, are advised to seek advice and assistance from the AFCLAA Case Team¹⁹ responsible for a case if they are unsure about any aspect or stage of the process.

36. **Completing the application form.** A properly completed application form will provide all the information necessary to enable AFCLAA to process the application promptly and accurately. Annex B to this Chapter is a guide to completing the form. In particular, it will ensure all relevant information is included in the means test, which will then enable an accurate assessment of what contributions, if any, are payable.

37. **Unit responsibility.** It is of paramount importance, therefore, that unit admin staff, and especially the DAO, give the applicant as much encouragement and support as possible at this stage of the process. The DAO, in particular, should:

- Explain the importance of seeking independent legal advice and representation;
- Discuss the implications of not obtaining such representation;
- Discuss the availability of legal aid to fund civilian representation if so required.

38. **Sending the completed form.** The completed form must be sent to AFCLAA by the fastest possible means, so it can be processed and an offer of legal aid made without delay. In most instances, faxing the application form to AFCLAA is the preferred option, as this will provide AFCLAA with proof of signature by both the applicant and the Certifying Officer. Where faxing is proving difficult due to location/operational

¹⁹ Cases are allocated to a Case Team upon receipt of the first documentation received. The case team will be identified on all correspondence issued i.e. by case reference number: e.g. AFCLAA/14/****T1 (Team 1); or Case Officer: e.g. CO2 (Case Officer, Team 2) or ACO3 (Assistant Case Officer, Team 3). If the case team is not known, initial contact via the group mailbox or Office Manager is advised; contact details at Annex A to Chapter 1.

requirements e.g. on board ship; in an operational theatre, the application may be emailed, so long as the Certifying Officer or their representative confirms the original document has been signed as necessary and will be sent to AFCLAA at the earliest opportunity.

39. Original copy. In all cases, irrespective of how the document was first sent to AFCLAA, the original document i.e. with original, hard copy, signatures (not a photocopy) is to be sent to AFCLAA by recorded or registered delivery. As this is a legal document, authorising AFCLAA to incur costs to public funds on behalf of the applicant, it is necessary that the original document, complete with original signatures, is retained by AFCLAA.

40. Legal aid contributions: automatic exemptions. The following groups of applicants remain exempt from making any income contributions²⁰ towards their legal aid costs:

- a. Applicants* aged 17 or under at the point of application;
- b. Applicants* on certain welfare benefits, known as 'passporting benefits'²¹;
- c. Applicants with 'Adjusted Annual Income'²² below £12,475 per annum (as determined by the initial means test, see paragraph 54a for more detail);
- d. Applicants with less than £3,398 disposable income per annum (as determined by the full means test, see paragraph 54b for more detail).

* As relevant to the applicant only; it does not apply to spouse/civil partner who may meet one or more of these criteria. Applicants aged 17 or under are to provide their date of birth for verification purposes; they are not required to complete Section 5 of the application form, but must complete Section 6 in full.

41. Contrary interests. A spouse/civil partner is considered to have a contrary interest in the case where they are the victim, or a prosecution witness, in the case concerned. In such cases, the income and related outgoings of that person will not be taken into account during the means test; joint or family household income and outgoings e.g. child benefit; rent/mortgage etc, will continue to be included in full.

Multiple Applications (sole applicant) or Multiple Applicants (same household)

42. Multiple applications: Sole applicant (separate cases). This information applies to applicants who have more than one case ongoing at any given time, and are required to submit separate applications for legal aid for each case; it does not apply where the applicant has multiple charges on a single indictment (charge sheet).

²⁰ Although applicants may be exempt from making income contributions, in certain circumstances, they may be required to make post-conviction contributions from capital/equity. See paragraphs 116 -118 for details.

²¹ 'Passporting benefits' are: Income Support; Income-Based Job Seekers Allowance; Guarantee State Pension Credit; Income-Related Employment and Support Benefit. Although unlikely to be relevant to Service applicants, personnel who have left the Service, and some dependants may be eligible.

²² 'Adjusted Annual Income': Gross (household) income, weighted to take account of family circumstances i.e. whether the applicant has a spouse/civil partner, plus number and ages of dependant children.

43. **Initial income contribution order ongoing.** If they are already subject to an income Contribution Order (i.e. part-way through a payment plan) when they submit another application form in respect of a separate case, the contributions from the first application cannot be included as an allowable outgoing in the subsequent application. However, as an applicant can only be required to make one contribution per month, the remaining contributions in respect of any subsequent application (i.e. payments beyond the ‘overlap’ of the payment plans) will only begin once the pre-existing payment plan is completed. That is to say that once the pre-existing contribution order payment plan has concluded, the remaining contributions for the subsequent application will ‘run on’ directly from the pre-existing contribution period²³.

44. **Initial income contribution completed.** If the initial Contribution Order payment plan has been completed before any subsequent application is received, the applicant will be required to pay the full contribution as stated on the Contribution Order in respect of the subsequent application.

45. **Multiple applications: acquittal.** If the applicant is acquitted, or their case discontinued, in respect of the proceedings relating to one or more (but not all) applications, their contribution will be held over pending the outcome of any ongoing case(s), up to their maximum contribution.

46. **Multiple applications: conviction.** If, following a conviction in the first case(s) to conclude, the contribution is greater than the actual legal aid costs, the excess will be added to the contributions received in respect of any/all ongoing case(s), up to the maximum contribution. Should the maximum contribution be reached, any additional monies will be refunded to the applicant, but without interest.

47. **Multiple applicants: separate applicants; same household.**

This applies only to cases where two members of the same household apply for legal aid during the same contribution period; this applies equally to instances where the applicants are co-accused in the same case (subject to any Contrary Interests – see paragraph 41), or are charged separately in unrelated cases.

48. **Financial details required.** Both applicants are required to provide the financial details of the other party (spouse/civil partner only; as dependants aged 17 or under are exempt from making any contributions, their financial circumstances are not relevant here) on their application forms.

49. **‘First’ applicant’s form.** The normal means tests will be carried out on the first applicant’s form, taking account of the total household income, outgoings and living allowances; this will include a Hardship Review, if applicable (see paragraphs 119-126). This applicant will be required to make the income contributions as determined by the means test.

50. **‘Second’ applicant’s form.** The contributions payable by the first applicant will then become a financial commitment in the second applicant’s means test, ensuring any income contributions payable by the second applicant has been adjusted accordingly; in

²³ For example, the applicant has paid 3 out of 5 contributions in respect of their first application when they apply again. The applicant continues to make the final 2 instalments for the pre-existing application, then continues to make a further 3 instalments in respect of the subsequent application, making a total of 8 monthly payments to cover both applications.

many instances, this will reduce the second applicant's contribution to nil. If the first applicant's case is subsequently acquitted, or their case is discontinued, but the second applicant's case remains ongoing, their means will be re-assessed as necessary, and may require the second applicant to start making contributions; any contributions already received in respect of the first applicant will be retained by AFCLAA as contributions already paid as part of that process.

51. **Notifying AFCLAA.** It remains the responsibility of the applicants concerned, to inform AFCLAA of multiple applications from applicants within a single household, and of any changes to their financial circumstances.

The Means Tests

52. **The means tests: General.** The means tests are used to assess the applicant's ability to contribute towards their legal aid costs, after taking account of their personal and financial circumstances at the time of application. The AFLAS 11 means test calculators are wholly based upon the calculators used when assessing applications for legal aid for Crown Court trials held in England and Wales, using the same thresholds and allowances.

53. **The different means tests.** There are two different types of means test. The income means test is used to determine whether the applicant should make any pre-trial income contributions, and if so, what that contribution will be. The capital/equity means test is used to determine whether the applicant should make a post-trial contribution from capital and/or equity (see paragraphs 116-118 for details); a post-trial contribution will only be considered following a conviction.

54. **The income means test.** The income means test consists of two parts:

a. The Initial means test: The applicant's gross annual household income is 'weighted' to take account of family circumstances (i.e. persons forming the household). This will determine the applicant's adjusted annual income and whether this is above or below that threshold (see paragraph 57a). Applicants whose income is below the adjusted income threshold are automatically exempt from any income contribution liability. Applications where the adjusted annual income exceeds that threshold will be subjected to the Full means test.

b. The Full means test: This deducts the allowable outgoings, the Basic Living Allowance (BLA) ('weighted' to take account of any family – see paragraphs 59-62 for details) and any Hardship Review (see paragraphs 119-126, and [Annex B](#) for details) from their gross annual household income, to determine their annual disposable income in relation to that threshold (see paragraph 57b). If the applicant's annual disposable income exceeds the disposable income threshold, the Full means test will determine the amount they will be required to contribute towards their legal aid costs.

55. **Accuracy of information.** It is the applicant's responsibility, and in their own best interests, to ensure the information provided on their application form is complete and is supported by the necessary documentary evidence (see paragraphs 63-78 for further details on evidence requirements); this will ensure that the means test is a fair and accurate reflection of their ability to pay. A failure to disclose all relevant information may result in

incorrect contributions i.e. contributions which are higher, or lower, than appropriate, given the applicant's actual personal and financial circumstances. This may result in further investigations with a view to prosecute where an attempt to commit fraud is suspected.

56. Changes in circumstances. It remains the applicant's personal responsibility to advise AFCLAA of any changes to their personal or financial circumstances during the contribution payment plan period e.g. Personal: marriage, divorce or changes to size of their family (excluding birthdays, as the form specifically asks for children's ages as at their next birthday); Financial: pay rise; promotion/demotion etc.

57. Legal aid thresholds. The MOD promulgates threshold levels, based upon those used in the civilian system for the Crown Courts in England and Wales, which determine the points above which a contribution is required. Until further notice, these threshold points are:

- a. Adjusted Annual Income* - £12,475; thereafter
- b. Disposable Annual Income* - £3,398; and/or
- c. Capital/equity in excess of £30,000
- d. Financial Eligibility Threshold* - Annual disposable income in excess of £37,500²⁴.

* See glossary on pages vii - xii for definitions.

58. Allowances: Basic Living Allowance (BLA). The BLA is an automatic deduction from income, and is designed to take account of the day-to-day living costs for the average applicant, and if appropriate, their family. It includes elements to cover average costs for food and non-alcoholic drinks; clothing and footwear; housing (excluding rent/mortgage/council tax, for which actual costs are accounted for separately); fuel and power; household good and services; health; transport; communications (i.e. phone and internet access); education (excluding school fees – see paragraph 126 for Boarding School fees); miscellaneous goods and services.

59. BLA (applicant). The Basic Living Allowance for the applicant is currently set at £5,676 per annum²⁵ and is designed to take account of the basic living requirements for the applicant in all instances. It forms the baseline BLA which is the starting point to determine the appropriate BLA for each additional dependant.

60. 'Weighted' BLA (dependants). For applicants with family responsibilities i.e. spouse/civil partner and/or dependant children living in the same house, the BLA is increased in order to provide for the additional basic living costs for each additional member of the household. This involves incremental increases, according to the status and/or age of each additional member of the family at the time of application.

²⁴ See paragraphs 79-87 for details on the impact and application of this threshold.

²⁵ Approximately £473 per month for day-to-day living expenses as described in paragraph 58.

61. **BLA: Spouse/civil partner.** The spouse/civil partner's allowance equates to 0.64 of the applicant's BLA (i.e. £3,632.64). Therefore, an applicant with a spouse/civil partner but not dependant children, would have a combined BLA of £9,308.64 (i.e. £775.72 per calendar month) included as part of their financial outgoings deducted from gross annual income, to determine their disposable income.

62. **BLA: Child(ren).** The BLA for each child, again using the applicant's BLA as the basis for the calculation, are (by age group, at the child's next birthday): birth-1 = 0.15; 2-4 = 0.30; 5-7 = 0.34; 8-10 = 0.38; 11-12 = 0.41; 13-15 = 0.44; 16-18 = 0.59. Therefore, an applicant with spouse/civil partner and two children, aged 3 and 6 at their next birthdays, would have a total weighted BLA of 2.28 (consisting of 1 (applicant) + 0.64 (spouse/civil partner) + 0.30 + 0.34) x £5,676 = £12,941.28²⁶. This amount would be included as a deduction from gross annual income, along with other allowable financial outgoings (e.g. actual rent/mortgage, PAYE, child care costs etc) to determine the applicant's disposable income.

Documentary evidence required

63. **Documentary evidence.** All applicants are required to provide suitable documentary evidence of all income and outgoings included on their application form. This will enable the Case Officer to take full and proper account of allowable items at the earliest opportunity, and therefore ensure the contributions required properly reflect the applicant's personal and financial circumstances. Failure to provide any or all of the required documentation may incur a sanction by way of increased contributions (see paragraphs 76-78).

64. **Evidence not readily available.** As some documentary evidence may not be readily available, applicants are allowed a maximum of 21 (calendar) days to provide all required documentation, before any sanctions are applied. Where there are Service or operational reasons which prevent this, the unit are to provide details to AFCLAA as soon as possible so that suitable adjustments can be made and unnecessary sanction action avoided.

65. **Pay statements: Service personnel.** In most cases, the three most recent pay statements are required; JPA print-outs (i.e. pay statements) for the relevant months are acceptable, so long as they are legible when faxed to AFCLAA. Where the pay statement/print-out includes details of the following, further documentary evidence for these items is not required:

- Income tax (PAYE);
- National Insurance Contributions (NIC);
- Accommodation charges;
- Charge In Lieu Of Council Tax (CILOCT);
- Child benefit and Kindergeld (where paid through salary only);

²⁶ This equates to an allowance of £1,078 per month for day-to-day living expenses as described in paragraph 58.

- Child Support Agency (CSA) or Child Maintenance and Enforcement Agency (CMEA) deductions (where deducted directly from salary).

66. **Pay statements: civilian personnel.** Civilian applicants, including dependants and ex-Service personnel, are to provide copies of their three most recent pay statements. As with JPA print-outs, where the pay statement includes details of the payments listed above, further documentary evidence for these items is not required.

67. **Pay statements: long term absentees (including fast-track AWOLs).** Personnel who have been AWOL for a considerable time and who have not received any pay for the full three months preceding their application, should provide the 3 most recent pay statements available. In addition, the applicant should provide pay statements or other documentary evidence to show alternative pay or funding during the 3 months prior to application; if this source of funding is no longer available to the applicant, this must be clearly stated on their application. Applicants who have not received a full month's pay since their return, including those held on remand in MCTC, are unlikely to be required to make a pre-trial income contribution, unless they have been in receipt of other regular income, during the 3 month period prior to their return. Irrespective of whether the applicant has an income contribution liability or not, they may still be required to make a post-conviction contribution from capital/equity where appropriate.

68. **Other forms of evidence.** For income or outgoings not shown on pay statements, the applicant should provide such documentary evidence as is available. For State Benefits paid other than through salary e.g. Child Benefit (and Kindergeld in Germany), Income Support, Tax Credits etc, copies of official notification showing rates and payment intervals are to be supplied. Recent bank statements, showing amounts and payee, may suffice in the short term for some items e.g. mortgage payments, maintenance, council tax etc, where these items are paid by direct debit or standing order²⁷.

69. **Childcare costs.** Evidence for childcare costs below £500 per calendar month will not usually be required, however, AFCLAA reserve the right to request proof by way of a current contract showing the child's details (name, age), the applicable rates, and the service provider, for claims below £500 per month in certain circumstances. Failure to provide requested documentation may result in the item being disallowed, and may incur an Income Evidence Sanction (see paragraphs 76-77).

70. **Maintenance payments.** Copies of Court Order or CSA/CMEA documentation, showing amount and frequency of payments, should be provided (see also paragraph 65). Where no formal order exists, proof of actual payment e.g. bank statements, may suffice, so long as the amount and payee are clearly identified (see footnote 27). In some circumstances, it may be necessary for AFCLAA to request a statement from the recipient to confirm the amount, frequency of payments and the recipient's relationship to the applicant.

²⁷ Bank statements will only be accepted in the short-term, particularly where the applicant is unable to obtain more appropriate documentation due to Service or Operational requirements only. In all other circumstances, the Income Evidence Sanction will be applied where the applicant fails to provide more appropriate documentation within 21 days of issue of the Contribution Order.

71. **Main/only residence.** Where the applicant lives in SLA/SFA²⁸ whilst owning their own private accommodation with the intention of using this as the family residence upon leaving the Service, the privately owned accommodation is deemed to be the main residence for the purposes of the means test, even where that property is rented out to another party in the short term.

72. **Income from rented property.** In such circumstances, AFCLAA will only include both the SLA/SFA charge and the mortgage payments in the means test where the applicant also provides evidence of the income received from the rented property (see paragraph 74). If the privately owned property is not rented out to another party, AFCLAA will only include the larger payment of either the SLA/SFA or the mortgage.

73. **Mortgage payments.** A copy of the most recent annual mortgage statement is to be supplied. Where this is not readily available, a copy of a recent bank statement, with the relevant payment annotated, will suffice in the short-term, pending receipt of the mortgage statement (see also footnote 27). For property valuation purposes, an estimate based upon similar properties within the local area is enough; it is not necessary to obtain a current valuation from a Chartered Surveyor.

74. **Privately rented accommodation.** Where the applicant is a tenant or a landlord of privately rented accommodation, a copy of any rental agreement or rent book should be provided. If a tenant, the applicant should also list any co-tenants e.g. 'common law' partners, or friends/colleagues (but excluding spouse/civil partner and/or dependants) who may be included on any rental agreement or who are otherwise resident in the property and who may therefore share responsibility for the rent.

75. **Council tax.** For applicants in SLA/SFA, where CILOCT is deducted from source, or those in privately rented accommodation with utilities included in the rent, no further documentary evidence is required. In all other instances, a statement/invoice from the service provider is required (see also footnote 27).

76. **Income Evidence Sanction: trigger.** The Income Evidence Sanction (IES) will be applied where documentary evidence required is not provided within a maximum of 21 (calendar) days from the issue of the Contribution Order, UNLESS there are clear Service or operational reasons for the delay e.g. where an applicant is on an operational tour and the outstanding documentation cannot be provided directly to AFCLAA by a spouse/civil partner or other family member; in such instances, the applicant's unit are advised to contact AFCLAA as soon as a potential delay has been identified, to reduce administrative effort by all concerned.

77. **Income Evidence Sanction: application.** The sanction will increase the monthly income contribution payable to either £900 or 100% of monthly disposable income, whichever is the greater. AFCLAA will issue a revised Contribution Order to that effect²⁹; this revised Contribution Order does not need to be signed by the applicant, so units are to instigate appropriate action to collect the IES revised contributions immediately, including via JPA. Once the required evidence has been received by AFCLAA, the information

²⁸ Single Living Accommodation (SLA); Service Family Accommodation (SFA).

²⁹ By signing the application form, and the Contribution Order to accept the offer of legal aid contained therein, the applicant has accepted that failing to provide documentary evidence required is likely to incur increased contributions, therefore there is no need for the applicant to sign the revised Contribution Order before the new payment plan is instigated.

provided will be re-assessed and an updated Contribution Order will be issued if appropriate.

78. Evidence: Capital/equity. Applicants should provide evidence of their capital assets, such as bank/savings account statements, at the time of application or within 21 days of the Contribution Order; for evidence to support equity in property, see also paragraph 73. Where applicants fail to provide evidence of their assets when requested, AFCLAA may remove the £30,000 threshold allowance and require the applicant to pay any outstanding costs in full, up to the full amount of all capital/equity assets or their actual legal aid costs, whichever is the lower.

The Financial Eligibility Threshold

79. Financial Eligibility Threshold. The Financial Eligibility Threshold (FET) is designed to ensure that the wealthiest applicants, who can afford to pay privately for their representation, do not automatically receive legal aid. It applies to all applicants whose disposable income, after a full means test and any Hardship Review (see paragraphs 119-126), exceeds £37,500 per annum. Where the applicant's disposable income exceeds the FET, they will be advised that their application has been refused, and provided with details of the review process.

80. Requesting a review. The applicant can request a review of the decision to refuse legal aid on financial eligibility grounds on one of two ways:

- a. **Mistake in calculation or administrative error:** if the applicant believes a mistake has been made in the calculation of annual disposable income or there has been another error in processing the application; or
- b. **Eligibility review:** if the applicant is over the threshold but can demonstrate that they cannot afford to pay privately for their particular case.

81. Mistake in calculation or administrative error. The applicant should, via their unit HR/Disc staff, inform AFCLAA of the issue as soon as possible and certainly within 21 days³⁰ of the date of the Refusal Certificate issued by AFCLAA. The applicant is to provide as much evidence and information as possible to support their request.

82. Eligibility Review. The applicant must apply, via their unit HR/Disc staff, to AFCLAA using the Hardship Review application form, within 21 days of the date of the Refusal Certificate issued by AFCLAA. They must include details of any/all expenditure not already taken into account in the initial and full means tests, and provide an estimate of the likely private costs of the case; this estimate must be provided by the applicant's solicitor.

83. Review process. Previously unidentified expenditure included in the Hardship Review form, will be used to review the applicant's disposable income. Thereafter the likely private legal costs, as provided by the applicant's solicitor, will be taken into account to determine whether this likely cost will take the applicant's disposable income levels below the FET limit of £37,500. For example, an applicant's annual disposable income was originally assessed as £50,000, after taking account of their identified personal and financial circumstances. The applicant provides details of previously unidentified, but permissible,

³⁰ Unless there are specific Service or operational reasons which prevent earlier notification.

financial commitments of £1,000 (per annum), and provides a written estimate for £30,000, the likely private costs provided by a firm of solicitors. These additional figures are deducted from the annual disposable income as originally assessed by AFCLAA, leaving the applicant with a revised annual disposable income of £19,000, and therefore eligible to receive legal aid.

84. Review successful: Contributions. If the applicant is eligible to receive legal aid following an eligibility review, they may still be required to contribute towards the costs of their legal aid from income, capital/equity or a combination of both. The assessment of their income, used to determine the level of income contribution, will take account of their annual disposable income as assessed under the means test, and including any additional expenditure allowed following the eligibility review (but excluding the likely private legal costs); at this point, the process to determine the contributions and grant legal aid reverts to the standard processes covered in paragraphs 52-78 and 88-115. The estimate of likely private legal costs will not be included when determining the applicant's income for the purpose of working out their level of contribution, as, once the applicant has been granted legal aid, they will no longer be required to pay privately from their income. Once the applicant accepts an offer of legal aid, their case will revert to the normal legal aid procedures as described in this Chapter.

85. Review unsuccessful: legal aid refused. If an applicant has been refused legal aid as a result of being above the FET, and either:

- a. The 21 day time limit to apply for an Eligibility Review has passed (but see footnote 30, above); or
- b. The applicant is assessed as ineligible even after an Eligibility Review

they can reapply for legal aid at any time during the case, if their personal and/or financial circumstances change, and such changes bring them below the FET.

86. Reapplying for legal aid. To reapply for legal aid, the applicant must submit a new application form (including a Hardship Review application form) to AFCLAA. If legal aid is granted following submission of a new application, the applicant will be eligible for legal aid from that point onwards. Legal aid will not be backdated to the date of any previous (unsuccessful) application; private costs incurred up to that point will remain the personal responsibility of the applicant.

87. Recovery of private legal costs following acquittal. Applicants who incurred private legal costs because their annual disposable income exceeded the FET, who are acquitted or their case was otherwise discontinued, should refer to Chapter 6, Section 5 for guidance on the process for recovering some or all of their private costs from central funds.

The Contribution Order

88. Contribution Order. The Contribution Order can only be issued by an AFCLAA Case Officer, and then only once the completed application form has been received and the means test completed. The Contribution Order will contain full details of any income and/or capital/equity contributions required. Applicants who are exempt from

making any contributions, whether automatically or following the means test, will receive a Contribution Order showing a 'Nil' contribution.

89. Contribution Order: Applicant action. The applicant is to carefully consider the Contribution Order and either accept or decline the offer contained therein, by annotating the appropriate box on the Contribution Order and returning the signed and witnessed document, along with proof of payment of the first instalment (if applicable), to AFCLAA by the fastest possible means. In most instances, this will be by fax. The original hard copy document, complete with original signatures, is to be sent to AFCLAA by Recorded or Registered Delivery, to ensure safe receipt by AFCLAA; this is a legal document which must be retained by AFCLAA.

90. Contribution Order: Offer declined. Although an offer of legal aid has been made, the applicant is free to decline that offer if they wish. Further information on declining legal aid is contained within paragraphs 130-132. When declining an offer of legal aid, especially where the case is still at the DSP referral stage, the applicant is advised to take steps to ensure they have sufficient funds available to make the initial contribution immediately, should the matter proceed to trial and they then require legal aid.

91. Contributions. The level and type of contribution(s) payable by an applicant are determined by a number of factors i.e. the type of proceedings, and the particulars of the applicant's personal and financial circumstances. Applicants going to trial, including those whose case has been referred to the DSP for a decision on prosecution, may be liable for pre-trial income, and/or post-trial (post-conviction) capital/equity contributions, depending on their personal and financial circumstances.

Income contributions:

92. Nil (income) contribution. Applicants with Nil contributions from income, due to their age, or because they are in receipt of certain qualifying benefits; or because their adjusted annual income, or disposable income, are below the thresholds, will receive a Contribution Order to that effect. They are simply required to sign the Contribution Order, to accept the offer, including the associated terms and conditions of legal aid, and return this to AFCLAA following the normal procedures.

93. Capital/equity contributions. Some applicants with Nil contributions from income may still be liable for a post-trial contribution following a conviction, if they have capital/equity in excess of the relevant threshold. In such cases, the convicted offender will be required to contribute towards their legal aid costs up to the maximum of their contribution or their actual legally aided costs, whichever is the lower.

94. Income contributions. Monthly contributions from income are set at 90% of the applicant's (household) monthly disposable income³¹, as determined by the means test, including any Hardship Review (see paragraphs 119-126). The total contribution payable, so long as the applicant abides fully by the agreed payment plan, is 5 x their monthly contribution (before the application of the MDR regulations, see paragraphs 113-115 for details). Income contributions are payable pre-trial, and can be paid by way of a lump sum or by monthly instalments; see paragraphs 101-106 for details on payment options.

³¹ The applicant's annual disposable income is divided by 12, to establish the monthly disposable income e.g. an annual disposable income of £8,500 ÷ 12 = £708.33 monthly disposable income. Monthly contributions therefore would be 90% of £708.33 i.e. £637.97 for 5 months.

95. **Effect of MDR on instalments.** In some cases, the Minimum Drawing Rate (MDR) regulations may impact on the amount that can be paid each month (JPA payments only), which will reduce the monthly instalments and increase the payment period, without affecting the overall total contribution payable; see paragraphs 113-115 for clarification.

96. **Missed or incomplete payments.** Failure to make any payment on time and in the full agreed amount will result in a penalty payment equivalent to an additional month's contribution (see paragraphs 107-108 and 112).

97. **Acquittal or discontinuance.** Applicants acquitted at trial, or whose case was discontinued at any time before trial, will receive a full refund of all income contributions paid, plus a further 2% interest. The AFCLAA Case Officer will authorise the refund, plus interest, immediately following receipt of proof of payments from units; units are NOT to refund contributions without written authority from AFCLAA.

The Contribution cap

98. **Contribution caps.** As income contributions are determined by the applicant's disposable income, there is potential for applicants with high levels of disposable income to pay contributions which are significantly higher than the likely legally aided case costs. To minimise the risk of excessive overpayments, and the financial impact this would have upon such applicants, the scheme applies a 'cap' on contributions, using the same levels as the civilian scheme.

99. **Contribution cap: Link to costs.** The contribution cap is linked directly to the upper levels of fees and other costs which are likely to be incurred through the life of a case, based initially on the seriousness of the charge. This means that the maximum contribution any applicant would pay, regardless of their actual levels of disposable income, is determined by the type of offence for which they are charged. Under the current rates (as at issue of this revision), the maximum contributions payable range from £6,731 (5 x £1,346.20) for some minor offences such as burglary and many Service offences, through to £185,806 (5 x £37,161.20) for the most serious offences, such as murder, manslaughter and rape.

100. **Contribution cap: Contribution Order.** As part of the means test process, the Case Officer will check the appropriate contribution cap, according to the nature of the offence, and will make the necessary adjustment on the Contribution Order where the means tested contribution exceeds the relevant contribution cap. To enable the appropriate offence cap to be applied, the applicant should ensure that the type or nature of offence is included on their application form; in the absence of any details of the offence, the highest contribution cap will be applied.

Payment of income contributions

101. **Payment options.** Income contributions become liable within 28 days of the DSP referral, or at the end of the month of application, whichever is the sooner. Where applications are received 28 days or more after referral but before the SPA direct trial, the first payment is due immediately, although payment via JPA may be delayed until the last working day of the month of application, where prior authority has been obtained from

AFCLAA and where proof of forthcoming debit direct from salary (via JPA) can be provided³².

102. Applications submitted after direction for trial. Applicants who did not apply for, or declined an offer of, legal aid before the SPA direct for trial and who subsequently (re)apply at this stage, are advised to ensure they have access to sufficient funds to cover the first instalment immediately, to prevent further delay to the grant of legal aid.

103. Instalment options. The applicant can choose whether to make regular monthly instalments, as stated on their Contribution Order or, where the MDR regulations are applicable, as otherwise authorised (in writing) by AFCLAA. Alternatively, they can choose to make a single lump-sum payment of the full amount of or before the first instalment date.

104. Payment direct from JPA. Service personnel making regular payments are advised to arrange for these to be paid directly from salary via JPA, from the outset. Not only will this ensure regular, prompt, payments and therefore reduce the risk of incurring the default penalty (see paragraph 107-108), but it will also ensure the MDR regulation is applied where appropriate (see paragraphs 113-115 for further details).

105. Payments for non-Service personnel. Non-Service personnel, unable to make automatic payments from salary should ensure they make arrangements to pay by cash or cheque through the unit responsible for providing administrative support. AFCLAA will only receive cheques for payment in extreme circumstances i.e. when immediate payment is due and the applicant is unable to process payment through any other means e.g. due to unit leave stand-down periods.

106. Payment before trial. It will not be necessary to complete all payments before trial, so long as payments are made promptly and in accordance with an authorised payment plan. Where instalments remain unpaid at the conclusion of the proceedings, the Case Officer will review the situation, taking account of the outcome of the trial, the contributions already received and the likely legal aid costs incurred, thereafter advising the unit on the necessary actions to be taken (see Sub-Section 1d – Actions following the conclusion of proceedings for details).

107. Defaulted payment penalty. Applicants who choose to pay their income contribution by regular monthly contributions, whether or not that payment is subject to an MDR revised payment plan (see paragraphs 113-115), remain responsible for ensuring all payments are made promptly and in full (i.e. as stated on their Contribution Order). Failure to make any payment as required will result in the application of a Default Penalty. The default penalty is a further month's income contribution, increasing the total income contribution payable to 6 x monthly contributions instead of 5.

108. Defaulted payment penalty: MDR payment plan. Those with an agreed payment plan, necessitated by application of the MDR, will have that payment plan re-assessed to take account of the additional amount payable; the default penalty is a further month's income contribution before the application of MDR. This may increase the monthly

³² Immediate payment of the first instalment will always be necessary where the case is listed for PCMH before the applicant submits their application form or returns their signed Contribution Order.

payments (whilst still remaining within the MDR limitations), and/or may increase the number of monthly instalments required.

109. Contribution collection: Payment from salary. Unit admin staff and the DAO are required to provide local level assistance with all aspects of completing the application form and the legal aid processes. This includes providing confirmation that the necessary actions have been taken to activate payments through the most appropriate means. In most instances, this will be deductions from salary via JPA, paid directly into the legal aid budget UIN; while JPA business processes do not currently support a standing-order type rollover payment, it will allow administrators to make separate entries for sufficient consecutive months to cover all instalments. Ensuring all payments are entered onto JPA from the outset will reduce the potential for an applicant to default on payments, and therefore incurring an additional financial penalty, and will remove the requirement for urgent action by the unit administrator, should the applicant be discharged (e.g. as a result of a conviction, or sentence) before all payments are made.

110. Contribution collection: cash/cheques. Those responsible for the administration of non-Service applicants, or Service applicants wishing to make alternative payment arrangements (e.g. a single lump-sum payment or payment by cheque through an imprest account), are to contact AFCLAA for further advice without delay.

111. Applicant responsibility. While admin staff and the DAO are required to provide such assistance as is necessary to ensure applicants comply with the agreed payment plans, it remains the applicant's personal responsibility to ensure all payments are made promptly and for the full amount required. Where enforcement action i.e. through the civil courts, becomes necessary to obtain unpaid contributions, the cost of such actions will be added to the applicant's existing liability.

112. Enforcement. Where enforcement action is required in respect of income contributions, and the applicant is subsequently acquitted or their legal aid costs are less than their total contribution, the extra costs of enforcement will be recovered from their contribution before refund action is taken, reducing the amount refunded to them.

The Minimum Drawing Rate (MDR)

113. MDR Regulations. As stated in Service regulations, the MDR is the minimum rate of pay beyond which no further compulsory deductions should be made from an individual's pay account³³; this prevents any compulsory deductions which would reduce the individual's 'take home' wages below 50% of their net pay.

114. Impact upon income contributions. Where the application of the MDR regulation impacts upon the applicant's ability to make the full contribution as stated on the Contribution Order, the unit are to contact AFCLAA immediately to discuss an alternative payment plan; if the applicant has alternative sources of income, in addition to their main salary, they can choose to authorise voluntary payments from salary which would take their pay beyond the MDR point, but they cannot be required to do so. Where applicable, the AFCLAA Case Officer will adjust the monthly payments to enable the applicant to make smaller payments over a longer period of time, equal to the 5 x monthly

³³ JSP 754, Chapter 2, Section 4 refers.

contribution (maximum contribution) as stated on the original Contribution Order³⁴. Any revised payment plan will be limited to the minimum number of equal payments necessary to meet the total income contribution due whilst remaining within the MDR limitations.

115. Impact on applicant. As the application of the MDR regulation is beyond the control of the applicant, the defaulted payment penalty will not be applied in such cases, so long as the applicant ensures prompt and accurate payment of instalments according to the authorised payment plan. Should the applicant subsequently default or otherwise delay payment of the revised instalments, a defaulted payment penalty, as described in paragraph 108 above, will be applied to their income contribution payment plan³⁵.

Capital/equity contributions

116. Contribution liability. Applicants with capital and/or equity in property, held in their own name or jointly with another, which exceeds the current threshold of £30,000, may be liable for a post-trial contribution from that source. Capital/equity contributions are only recoverable from convicted offenders where any income contributions paid (if any) did not fully cover the legal aid costs incurred. The capital/equity contribution will be limited to either the maximum amount shown on the Contribution Order i.e. the amount of capital/equity above the threshold, or the outstanding balance of legal aid costs, whichever is the lower³⁶.

117. Re-assessment of contribution liability. In some instances, especially where the legal aid costs are likely to exceed the contributions payable, AFCLAA may require the applicant to provide up-to-date details of their capital/equity at the point of trial, to enable an accurate and current re-assessment of that contribution liability.

118. No contribution liability. Acquitted applicants and convicted offenders whose income contributions were sufficient to cover their legal aid costs, will not be required to make any contribution from capital/equity.

The Hardship Review

119. Hardship Review application form. To be completed by the applicant, with the assistance of unit admin staff and the DAO, as necessary, where the applicant considers they have financial commitments which may not have been included on the main application form. A successful Hardship Review, whether submitted with or after the initial means test assessment may reduce, or even remove, any income contribution liability which was based on the information provided on the main application form alone.

120. Eligibility. Every applicant is eligible to apply for a Hardship Review in respect of their financial circumstances and their income contributions, and should be encouraged to submit a completed Hardship Review application form alongside their main application form

³⁴ E.g. an applicant is required to make 5 x £900 payments (total contribution of £4,500) but that payment would take him beyond his MDR by £50. A revised payment plan of 6 x £750 (i.e. £4,500) is agreed instead.

³⁵ Using the example in footnote 34 above, if the applicant subsequently defaults on 1 or more payment of £750 from the revised payment plan, they will incur a penalty of £900 (the pre-MDR contribution), making their total contribution £5,400, which, because of MDR, will be payable over 7 months at £771 per month.

³⁶ E.g. the convicted offender has pre-trial income contributions totalling £4,500, and a capital/equity contribution of up to £20,000 (i.e. having capital/equity of £50,000 before the threshold is applied). The legal aid costs of the case total £8,000. The offender will be required to contribute the remaining £3,500 from capital/equity.

wherever possible. In addition to reducing unnecessary administrative action by AFCLAA and unit admin staff, and therefore time, this will enable the Case Officer to provide a Contribution Order which is an accurate reflection of the applicant's ability to pay.

121. Changes to personal circumstances. Changes to personal circumstances, especially where there have been changes to the applicant's householder responsibilities, would require a new application form to be submitted to AFCLAA without delay, so a fresh means test can be carried out. For example, any birth or adoption; marriage/civil partnership event, including divorce or formal separation.

122. Changes to financial circumstances. An application can be submitted at any time while a Contribution Order payment plan is in force i.e. whilst monthly contributions are still being paid, where the applicant's financial circumstances have changed e.g. a fine or County Court Judgement (CCJ); a new or amended CSA/CMEA or maintenance payment; cessation of a regular payment included in the initial means test.

123. New financial commitments. New financial commitments, including loans or HP agreements (including 'pay day loans'), entered into after the applicant has been notified that a case has been referred to the DSP, or after a Contribution Order has been issued, may be subjected to further scrutiny as part of the Hardship Review process, and may be excluded.

124. Evidence requirements. Unlike evidence for information on the main application form, the evidence to support a Hardship Review application is to be submitted at the same time as that application form; units are advised to contact the Case Officer without delay if the applicant is unable to provide the requisite evidence for Service or operational reasons only.

125. Acceptable forms of evidence. The evidence required is determined by the item in question. In most instances, it will be necessary to provide documentary evidence supplied by the organisation to which the debt or other payment is made:

- A copy of the loan agreement, Individual Voluntary Arrangement (IVA) or Bankruptcy Order, detailing the start date and the payment schedule, plus proof of recent payment;
- A copy of the latest credit or store card statement, showing the outstanding balance, the most recent payment and the minimum payment due.

NOTE: for credit or store cards, only the minimum monthly payment required, as shown on the most recent statement, will be allowed as an outgoing for the Hardship Review.

126. Boarding school fees. Where the applicant has boarding school fees for Service or operational reasons and is, as a result, in receipt of Continuity of Education Allowance (CEA), they should include full details of the allowance received and their parental contributions. It is especially important that they include details of any parental responsibility payments due during the income contribution period, and identify any allowances paid with salary during the 3 months prior to application; CEA payments included with salary will not be included as income for the purposes of the means test.

Legal aid not in place

127. **Certificate of legal aid not in place.** This document, issued by an AFCLAA Case Officer, will be issued where legal aid is refused or declined, stating the reasons why legal aid is not in place:

- Refused by the applicant: the applicant can 'refuse to apply' for legal aid' (see paragraph 128 below); or
- Refused by AFCLAA: the application fails due to the FET and any subsequent review (see paragraphs 79-83 and 85), or because it failed to meet the Interests of Justice (IOJ) test (see Appendix 1 to Annex B); or
- Declined by the applicant: the applicant can decline an offer of legal aid, following receipt of a Contribution Order.

128. **Legal aid refused by applicant.** An applicant can refuse to apply for legal aid either because they do not wish to have legal aid funding at the time i.e. where the applicant wishes to instruct a legal representative privately; or they wish to use a Service lawyer to represent them. The applicant should ensure they annotate the relevant box on the application form. If the applicant chooses to use a Service lawyer, it remains their responsibility to make contact with the relevant organisation to establish availability (see paragraph 12).

129. **Legal aid refused by AFCLAA.** AFCLAA will only refuse an application for legal aid under the following circumstances:

- a. Where the applicant's disposable income exceeds the FET (see paragraphs 79-83 and 85); or
- b. Where the application fails the Interests of Justice (IOJ) test. Further details on the IOJ test, and how to appeal a refusal, are contained within Appendix 2 to Annex B to this Chapter; or
- c. Where an application has been submitted in respect of a matter for which there is either no entitlement to legal aid (e.g. internal administrative action) or no entitlement to legal aid provided by AFCLAA (e.g. for a criminal matter to be heard in a UK court, or in an overseas court where the applicant was in that jurisdiction on purely personal business; or
- d. Legal aid may be refused where an application is submitted very late in the proceedings e.g. after pleading but before sentence; this is particularly relevant where the applicant has previously either refused to apply for, or has declined an offer of, legal aid.

130. **Legal aid declined by applicant.** Once the means test has been conducted, and a Contribution Order issued, the applicant must either accept or decline that

offer. The applicant is to annotate the appropriate box on the Contribution Order and return to AFCLAA for further action, without delay.

131. **Re-applying for legal aid.** In all cases, an applicant can change their mind and re-apply for legal aid at any point up to the time of trial. However, delaying an application can add unnecessary delay, increase the legal aid costs incurred, and will require the applicant to make an immediate payment in respect of their first monthly contribution, before legal aid can be granted. See also paragraph 129d, above.

132. **Unit support.** Where legal aid is not in place before a case is warned for trial, irrespective of the type of trial (i.e. CM, SCC or civilian criminal court overseas), the unit are requested to work closely with AFCLAA and the applicant, to ensure they are aware of the availability of legal aid, and to support them through the application process. As there is likely to be only a few weeks (or days, in civilian criminal courts overseas) between notification of trial proceedings and the first hearing, it is imperative that the applicant is encouraged to engage with the process as soon as possible, so that any decision they make regarding legal aid and legal representation can be made with full knowledge and as soon as possible.

Sub-Section 1c: Actions following the grant of legal aid.

133. Completing the application process. Where the applicant accepts an offer of legal aid, and upon receipt of the signed and witnessed Contribution Order along with proof of payment in respect of the first instalment, the Case Officer will contact the nominated legal representative to establish their acceptance of the case. Formal notification will then be sent to all interested parties, especially the applicant and their DAO. The applicant and their DAO are advised to contact the named legal representative as soon as possible and certainly within 7 days of the date of the formal notification letter.

134. The legal aid contract. Once legal aid has been granted, the applicant has entered into a formal and binding agreement with AFCLAA for the provision of legal aid. This means that they have agreed, in writing, to accept the terms and conditions of the Armed Forces Legal Aid Scheme, including an undertaking to pay such contributions towards their legal aid costs as deemed appropriate, based upon their personal and financial circumstances and the case against them. Once legal aid is in place, and the legal representative instructed, it is not possible for the applicant to later withdraw their application and terminate their legal aid contract with AFCLAA. This does not include cases discontinued at any point prior to trial, where the Case Officer will automatically take the necessary action to discontinue legal aid and instigate the process to refund contributions to the applicant, if appropriate (see paragraphs 137 and 142).

Limited legal aid: DSP referral stage (CM and SCC only).

135. Funding limitations. Legal aid granted at this stage is limited, in that it will only provide funding for the legal representative to hold initial conferences with their client, until such time as the SPA notify their decision on whether the case is to proceed to trial or be discontinued.

136. Requesting an increased limit. In most cases, the funding limitations imposed by AFCLAA are sufficient to cover an initial conference and advice. If, after speaking to their client, the legal representative considers there to be good grounds, they may request an increase, subject to the provision of suitable justification. The Case Officer will consider the request and may increase the limitations if appropriate. Legal aid will not, however, be extended to include full preparation for trial, or to incur additional costs e.g. to instruct an expert, until and unless the SPA issue notification of trial.

137. Case not proceeding to trial. If the SPA decide not to prosecute a case, whether the matter is wholly discontinued or referred back to the CO for summary dealing, the Case Officer will make contact with the legal representative at the earliest opportunity, to confirm legal aid is discontinued with immediate effect. Any work carried out by the legal representative after this point is a matter between that legal representative and their client, and will not be paid by AFCLAA.

138. Notifying AFCLAA. In most instances, AFCLAA will be notified that a case has been discontinued at the same time as other interested parties; thereafter the Case Officer will make urgent contact with the unit to instigate legal aid discontinuance procedures. However, if the Case Officer has not made contact with the unit within 1 working day of receipt of notification at unit level, unit admin staff should contact AFCLAA without delay, providing a copy of the written notification as issued by the SPA.

Full legal aid: Case proceeding to trial (all types)

139. **Legal aid already in place.** Upon receipt of notification of trial, the Case Officer will write again to the legal representative, confirming legal aid is extended to cover all trial preparation and representation.

140. **Legal aid not in place.** Upon notification of trial where legal aid is not in place, irrespective of the reasons, the Case Officer will contact the unit to request a new application form. The applicant can continue to refuse legal aid at this point, but unit admin staff and the DAO should encourage the applicant to give serious consideration to their decision. If the applicant chooses to re-apply for legal aid, and subsequently accepts an offer of legal aid, the nominated legal representative will receive full legal aid, to cover all trial preparation and representation.

Sub-Section 1d: Actions following the conclusion of proceedings.

141. **Relevant factors.** The procedures instigated by AFCLAA, once proceedings are concluded, are determined by a number of factors, namely:

- a. The stage at which the proceedings concluded i.e. discontinued before trial, at the conclusion of the trial, or after an application for leave to appeal has been submitted to the CMAC; and
- b. The outcome of the trial i.e. whether the applicant was acquitted or convicted; and
- c. The type of contribution(s) paid or payable i.e. pre-trial income contributions and/or post-trial capital/equity contribution, or Nil contribution; and
- d. The final legal aid costs (only in respect of convicted offenders who were liable for contributions).

Case discontinued or applicant acquitted.

142. **Discontinuance or full acquittal.** Following a discontinuance, or an acquittal on all charges, and upon receipt of written documentation to that effect (i.e. SPA discontinuance letter, or the TRN1, confirming the trial result), the Case Officer will, within 1 working day of receipt of the appropriate documentation (i.e. discontinuance letter or TRN!):

- a. **Income contributions paid.** Contact the unit to obtain documentary evidence to verify contributions paid up to that point³⁷; they will also advise the unit to stop any future deductions³⁸. Upon receipt of the required proof of payment, the Case Officer will issue written authority for the unit to refund all payments made, plus the interest accrued (currently set at 2%), without further delay. Full refunds, with interest, are only payable following discontinuance or acquittal of all charges in a case; see also footnote 38, for advice where the applicant has more than one case ongoing at any given time.

NOTE: units are NOT to stop ongoing contribution payments, nor refund contributions, without the specific written authority of the AFCLAA Case Officer.

- b. **Nil contributions.** As the defendant made no pre-trial contributions, no further AFCLAA or unit action is required.

Where AFCLAA have not made contact with this timescale, especially following discontinuance, the unit should contact the Case Officer as soon as possible, providing a copy of the SPA letter or notice of discontinuance.

143. **Acquitted on some but not all charges.** Full refunds are only payable following discontinuance of the whole case, or acquittal on all charges on the relevant

³⁷ I.e. JPA pay statements/print outs, showing the date and amount of each payment made, and/or imprest account receipts showing amounts paid via the unit pay office.

³⁸ If the applicant concerned has another case ongoing, it may be necessary to continue paying contributions in respect of that case (see paragraphs 42-46); the Case Officer will advise accordingly if appropriate.

indictment. Applicants acquitted on some, but not all, charges on an indictment may be eligible to request a reduction in their legally aided costs liability (known as Judicial Apportionment), but only in specific circumstances (see paragraphs 30-32 for details).

Post conviction

144. **Applications for leave to appeal.** A convicted offender who pleaded, or was found, guilty of some or all charges, may wish to seek leave to appeal against the outcome at the Court Martial Appeal Court (CMAC). Before taking any further action, the convicted offender should obtain legal advice from their representative.

145. **Advice supporting an appeal.** Should the representative(s) involved in the case advise their client to appeal, legal aid funding for the preparation of an Application for Leave to Appeal (Form 1) is automatically available; where the offender had legal aid for the trial³⁹, there is no need to re-apply for legal aid at this stage, unless the offender is also requesting a different legal representative (see paragraph 147, below).

146. **The CMAC decision.** The CMAC will consider the application and, if the appeal is allowed, the CMAC will assume responsibility for all associated legal aid funding requests thereafter. If the CMAC does not grant the initial Application for Leave to Appeal, any subsequent applications are a matter between the offender and their representative; neither the Armed Forces Legal Aid Scheme nor the CMAC will provide any legal aid funding for this work.

147. **Change of legal representative.** If the offender re-applies for legal aid because they wish to use a different legal representative, the Case Officer may contact the original representative to obtain a précis of their advice on appeal, as part of the IOJ test when considering the application. The information provided by those directly involved in the original trial will indicate whether an appeal has any merit, and would therefore be an appropriate use of public funds. Where the advice supports an appeal, legal aid may be granted for the costs of preparing an Application for Leave to Appeal and for submitting this to the CMAC.

148. **Advice against appeal.** Where the advice specifically indicates that an appeal would lack merit, the Case Officer may decide to refuse legal aid. Should legal aid be refused, this will not prevent the offender from entering into a private arrangement with the new legal representative. If an Application for Leave to Appeal is made and in the event is successful, the CMAC may reimburse the offender for any private fees paid.

Review of costs and contributions.

149. **Legal representative: Bill of costs.** Once the representative has submitted any Application for Leave to Appeal, or if there is to be no such application, their bill of costs is to be submitted directly to AFCLAA for consideration (taxation) and payment. Fees claimed for work carried out after this point will be rejected by AFCLAA, and will remain a matter between the legal representative and their client.

³⁹ Offenders who did not have legal aid for their trial, whether they had a Service lawyer, a privately funded legal representative, or were unrepresented, should refer to Chapter 2, Section 2 for further information on applying for legal aid for the application to the CMAC.

150. **Initial assessment of legal aid costs.** Upon receipt of a TRN1 confirming conviction, the Case Officer will carry out an initial assessment of the likely legal aid costs, based upon a number of contributory factors which can only be fully known at the conclusion of the proceedings, namely:

- a. Whether the offender pleaded guilty, and at what point in the proceedings, or was found guilty at the conclusion of a contested trial;
- b. The number of days in court (including all hearings ahead of trial, and trial days);
- c. The amount of prosecution papers (served before and during trial);
- d. The number of prosecution witnesses;
- e. The type and level of (defence) legal representative(s) involved;
- f. Whether there were any additional costs incurred e.g. notional travel; expert(s) reports and subsequent attendances at court during hearings or trial.

151. **Outstanding contributions.** The Case Officer will then carry out an interim review of the income contributions paid up to the point of trial and the amount of any outstanding contributions, before contacting the unit to either:

a. **Suspend any outstanding contributions:** Where contributions already received are likely to significantly exceed the likely legal aid costs, the Case Officer may authorise the unit to suspend payment of any further contributions until all legal aid fees have been agreed. If, once all the legal fees have been agreed, the contributions already paid do not fully cover the offender's legal aid costs, the Case Officer will contact the unit to reinstate the payment plan. The offender will be required to make further contributions up to the full amount of their legal aid costs, or their total contribution, whichever is the lower.

OR

b. **Continue existing payment plan:** Where the contributions paid up to the point of trial are unlikely to cover the probable legal aid costs of the case, the Case Officer will direct the unit to continue with the existing payment plan, at least until all legal aid fees have been agreed and the offender's legal aid cost liability has been determined.

c. **Impact of detention upon contributions.** Where an offender receives a period of detention, payment of the outstanding contributions are to be held in abeyance until they are released from MCTC and returned to their unit. In many cases, their legal aid costs liability will be known by this point, and the unit notified of the amount remaining to be recovered; where appropriate, the unit will be advised if no further contributions are required, and, if appropriate, given authority to refund any overpayment.

NOTE: Units are NOT to stop ongoing contribution payments, nor refund contributions paid, without the specific authority of the AFCLAA Case Officer.

152. **Full assessment of legal aid costs.** Upon receipt of the legal representative(s) bill of costs, the Case Officer will carry out a full assessment (taxation) of their costs, in accordance with standard procedures, before authorising payment. Once all fees are agreed with the legal representative(s), the Case Officer will carry out a final review of the contributions paid by the offender, and take one of the following actions:

a. **Income contributions exceed legal aid costs:** The Case Officer will contact the unit to obtain documentary evidence to confirm the amount paid in contributions. Upon receipt of the requisite evidence, the Case Officer will confirm the balance of contribution to be repaid, and authorise the unit to make a refund. In most instances, this should be paid back via JPA into salary, but the unit may choose an alternative method of repayment if so asked by the offender.

OR

b. **Legal aid costs exceed income contributions:** If outstanding contributions had been previously suspended (see paragraph 151a, above), the Case Officer will confirm the amount remaining to be recovered i.e. the balance of either the legal aid costs or the outstanding contribution, whichever is the lower, and authorise the unit to take the appropriate action.

And/or

c. **Capital/equity contribution:** The Case Officer will then establish whether the offender was liable for a post-trial contribution from capital/equity and the limitations of such a liability. If the offender is liable, the Case Officer will write to the offender to advise them of the amount outstanding and the ways in which that contribution can be made.

OR

d. **No refund payable.** If there is no liability for a post-trial contribution, the Case Officer will confirm that the actual legal aid costs exceeded the income contribution payable, and therefore no refund will be forthcoming.

Section 2: Legal aid for appeals⁴⁰ and elections for trial

Sub-Section 2a: General information

153. **Processes and liabilities.** The means test processes and contribution liabilities for summary appeals or elections for trial by CM are significantly different to those in place for other CM, SCC or overseas civilian criminal court trials. It is therefore imperative that the appellant or person electing is fully aware of the differences, particularly with reference to the way contributions are assessed and paid, before making a decision on legal representation. Paragraphs 178-179 cover the means test processes, whilst Sub-Section 2d provides detailed information in respect of contribution payments.

Where the applicant decides that legal aid is not required.

154. **The applicant decides that legal aid/representation not required.** In all such instances, the individual should nevertheless be strongly encouraged to submit a fully completed application form to AFCLAA, to enable AFCLAA to produce an estimated means test assessment of the applicant's ability to contribute towards their legal aid costs, should they change their mind at a later date⁴¹. **Submitting a completed application form will not commit the applicant to any financial liability until and unless they sign the subsequent Contribution Order, to accept the offer of legal aid provided.**

155. **Application form: legal aid not required.** Should the applicant choose not to apply for legal aid, whether they wish to use a Service lawyer or not, unit admin staff should endeavour to obtain an application form completed to that effect⁴², even if the applicant declines to provide any financial information. This is to provide evidence that the applicant:

- a. Was made fully aware of the availability of legal aid funding; and
- b. Had an opportunity to make a considered decision about legal representation; and
- c. Freely made the decision not to apply for legal aid.

This will also provide an audit trail should the lack of funding and/or representation, and any subsequent delay, be used as the basis of a challenge in court at a later date.

156. **Change of mind: initial refusal.** Any individual who does not obtain legal aid, whether they have, or intended to, instruct a Service lawyer or not, may change their mind and apply for legal aid at any point before trial or summary appeal. They should, however, be advised that a late application for legal aid is likely to cause unnecessary delay and, where the applicant has elected for trial, may increase the costs incurred in the case.

⁴⁰ Includes legal aid for applications to the Court Martial Appeal Court (CMAC) for leave to appeal, but only where there was no legally aided representation at the original trial.

⁴¹ Should the applicant wish to reapply for legal aid at a later stage, they will be required to complete a new application form and any changes to personal and/or financial circumstances are likely to impact upon their contribution liability.

⁴² The applicant should complete their personal and unit contact details, tick the appropriate box to confirm they do not wish to apply for legal aid, or that they wish to use a Service lawyer, and sign the declaration at the bottom of the form; they are not required to provide any financial information in such instances.

157. **An exceptionally late application.** An exceptionally late application for legal aid e.g. less than 2 working days before an appeal or trial is to be heard, or after a guilty plea has been entered (election for CM only), may be refused, especially if this is likely to delay proceedings unnecessarily.

158. **Retrospective applications for legal aid.** Retrospective applications for legal aid (i.e. to fund 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 representative and the applicant, who will remain personally liable for all costs incurred.** It is therefore imperative that the applicant and the unit ensure the application process is dealt with as quickly as possible, to prevent the applicant incurring an avoidable personal liability for costs (see paragraph 163).

159. **Legal representation options.** Before completing the form, the applicant should think very carefully about the choices of legal representative available to them. An ill-considered, or ill-advised, decision at this stage may result in delay, unnecessary costs or other complications, should the applicant later change their mind.

Using a Service lawyer

160. **Service lawyer.** Within the scope of an existing Service Level Agreement between the Army and the RAF, personnel from these Services, based outside the UK (including relevant civilians attached to Army and RAF units) may request representation by a Service lawyer from the other Service, provided one is available and willing to accept the case⁴³. A similar provision exists within the RN, whereby RN personnel, regardless of location, can request representation by an RN barrister, providing one is available and willing to accept the case.

161. **Contacting the Service lawyer.** Where an applicant chooses Service lawyer representation, it remains the applicant's personal responsibility to ensure the Service lawyer is contacted and is available to accept the case. Although legal aid is not required, and AFCLAA bears no responsibility for cases where a Service lawyer is instructed, unit admin staff should ensure that the name and contact details of the lawyer are made known to AFCLAA, so any related documentation sent to AFCLAA can be forwarded to the instructed Service lawyer without delay.

Privately funded representation

162. **Privately funded (civilian) representation.** If the applicant wishes to instruct a legal representative who refuses to accept the AFCLAA terms and conditions, or where the applicant does not accept an offer of legal aid from AFCLAA, the applicant may choose to instruct the legal representative privately instead. Alternatively, if the applicant still requires legal aid, they can either nominate, or ask AFCLAA to nominate, an alternative legal representative who will accept the AFCLAA rates, terms and conditions.

163. **Personal liability.** When instructing a legal representative privately, the applicant will be required to agree a fee structure with their legal representative, usually at the firm's

⁴³ It is unlikely that a Service lawyer will be able to accept a case where the trial is to be held in a mainland UK MCC.

private rates; the applicant will remain personally liable for all fees and other costs incurred throughout the process. There is no scope to reclaim private legal costs from public funds, irrespective of the outcome, due to the availability of legal aid for applicants.

164. Financial Eligibility Threshold: recovery of costs. Where the applicant engages privately funded representation because their disposable income exceeds the Financial Eligibility Threshold (FET)⁴⁴, they can apply to reclaim some, or all, of those private costs following a wholly successful appeal, or an acquittal on all charges (election for trial), or if their case is discontinued before trial. See Chapter 6, Section 5 for details of eligibility and processes.

Legally aided representation

165. Legally aided (civilian) representation. Any applicant who wishes to have civilian legal representation funded through AFCLAA, may either nominate a particular legal representative or firm/chambers, or ask AFCLAA to nominate one on their behalf. [Annex A](#) to this Chapter contains full details of the AFCLAA nomination process.

166. Transfer of legal aid. Once the legal representative accepts the case, 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 so⁴⁵. 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 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.

167. Legal aid for applications to the CMAC⁴⁶ (legal aid not previously in place). Where a convicted offender, who did not have legal aid for the original proceedings (whether they were unrepresented, or were represented by a Service or a privately funded legal representative), requests legal aid to enable an Application for Leave to Appeal to be submitted to the Court Martial Appeal Court (CMAC), they will be subject to the same application and contribution process as those appealing to the SAC.

168. Legal aid costs: Summary appeals. Summary appeal fees are fixed according to the type of appeal lodged i.e. appeal against finding and sentence or against sentence only. The post-appeal contributions are directly linked to those fees, so no appellant will pay more than the actual costs of their appeal. In some exceptional cases, the fees may be increased to reflect the seriousness of the case, but this will not impact upon the fixed, post-appeal, contribution payable by the appellant.

⁴⁴ The financial eligibility threshold is applied where the applicant's annual disposable income exceeds £37,500 and remains in excess of this amount after taking account of the potential private legal costs of representation into account. See paragraphs 79-87 for details.

⁴⁵ 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.

⁴⁶ Where legal aid was in place for the original proceedings, this included costs incurred in relation to an Application for Leave to Appeal being submitted to the CMAC, so no further application is required.

169. **Appeals lodged by the Reviewing Authority.** Where the Reviewing Authority has lodged an appeal on behalf of a Service person, that appellant will not be required to make any contributions towards their summary appeal costs, irrespective of the outcome. The appellant will not be required to complete any financial details on their application form (Section 5), but will be required to complete their personal and contact details, and their choice in respect of legal representation. The form is to be signed by the appellant and their unit, and submitted to AFCLAA in the usual way.

170. **Legal aid costs: Election for trial.** Legal aid costs for elections cover preparation and representation in court, and are not fixed in the same way as fees for summary appeals. However, the applicant's liability will be limited to either the actual legal aid costs in the case, or the post-trial (post-conviction) fixed contribution, **whichever is the lower.**

Sub-Section 2b: How to apply for legal aid: Appeals and Elections for trial.

171. The application form. The application form (MOD F2263) is to be completed by the applicant, with assistance from HR admin/discipline staff and the AAO as necessary. The applicant should be advised to complete a form in all cases, even where they do not want legal aid; this will show that they were made aware of the availability of legal aid, and that the application is a true reflection of their decision in respect of legal aid.

172. The application process. The application process can be quite complex, especially if the applicant, and their support network at unit level, do not wholly understand the procedures or do not fully cooperate with AFCLAA during this time. Units, and especially AAOs, are advised to seek advice and assistance from the AFCLAA Case Team⁴⁷ responsible for a case if they are unsure about any aspect or stage of the process.

173. Completing the application form. A properly completed application form will provide all the information necessary to enable AFCLAA to process the application promptly and accurately. Annex B to this Chapter is a guide to completing the form. In particular, it will ensure all relevant information is included in the means test, which will then enable the Case Officer to accurately assess whether the applicant may be liable to make a contribution.

174. Unit responsibility. It is of paramount importance, therefore, that unit admin staff, and especially the AAO, give the applicant as much encouragement and support as possible at this stage of the process. The AAO, in particular, should:

- Explain the importance of seeking independent legal advice and representation;
- Discuss the implications of not obtaining such representation;
- Discuss the availability of legal aid to fund civilian representation if so required.

175. Sending the completed form. The completed form must be sent to AFCLAA by the fastest possible means, so it can be processed and an offer of legal aid made without delay. In most instances, faxing the application form to AFCLAA is the preferred option, as this will provide AFCLAA with proof of signature by both the applicant and the Certifying Officer. Where faxing is proving difficult due to location/operational requirements e.g. on board ship; in an operational theatre, the application may be emailed, so long as the Certifying Officer or their representative confirms the original document has been signed as necessary and will be sent to AFCLAA at the earliest opportunity.

176. Original copy. In all cases, irrespective of how the document was first sent to AFCLAA, the original document i.e. with original, hard copy, signatures (not a photocopy) is to be sent to AFCLAA by recorded or registered delivery. As this is a legal document,

⁴⁷ Cases are allocated to a Case Team upon receipt of the first documentation received. The case team will be identified on all correspondence issued i.e. by case reference number: e.g. AFCLAA/14/****T1 (Team 1); or Case Officer: e.g. CO2 (Case Officer, Team 2) or ACO3 (Assistant Case Officer, Team 3). If the case team is not known, initial contact via the group mailbox or Office Manager is advised; contact details at Annex A to Chapter 1

authorising AFCLAA to incur costs to public funds on behalf of the applicant, it is necessary that the original document, complete with original signatures, is retained by AFCLAA.

177. Legal aid contributions: automatic exemptions. The following groups of applicants remain exempt from making any contributions towards their legal aid costs:

- a. Applicants* aged 17 or under at the point of application;
- b. Applicants* on certain welfare benefits, known as 'passporting benefits'⁴⁸;
- c. Applicants with 'Adjusted Annual Income'⁴⁹ below £12,475 per annum (as determined by the initial means test, see paragraph 179a for more detail);
- d. Applicants with less than £3,398 disposable income per annum (as determined by the full means test, see paragraph 179b for more detail).

* As relevant to the applicant only; it does not apply to spouse/civil partner who may meet one or more of these criteria. Applicants aged 17 or under are to provide their date of birth for verification purposes; they are not required to complete Section 5 of the application form, but must complete Section 6 in full.

The Means Tests

178. The means tests: general. The means test is used to assess the applicant's ability to contribute towards their legal aid costs, after taking account of their personal and financial circumstances at the time of application. The AFLAS 11 means test calculators are wholly based upon the calculators used when assessing applications for legal aid for Crown Court proceedings held in England and Wales, using the same thresholds and allowances.

179. The income means test. The income means test consists of two parts:

- a. The Initial means test: The applicant's gross annual household income is 'weighted' to take account of family circumstances (i.e. persons forming the household). This will determine the applicant's adjusted annual income and whether this is above or below that threshold (see paragraph 177c). Applicants whose income is below the adjusted income threshold will be exempt from any contribution liability; applications where the adjusted annual income exceeds that threshold will be subjected to the Full means test.
- b. The Full means test: This deducts the allowable outgoings, the living allowance ('weighted' to take account of any family – see paragraphs 183-187 for details) and any Hardship Review (see paragraphs 205-212 for details) from their gross annual household income, to determine their annual disposable income in relation to that threshold and thereafter whether they may be liable for any contributions, dependent upon the outcome of the proceedings.

⁴⁸ 'Passporting benefits' are: Income Support; Income-Based Job Seekers Allowance; Guarantee State Pension Credit; Income-Related Employment and Support Benefit. Although unlikely to be relevant to Service applicants, personnel who have left the Service, and some dependants may be eligible.

⁴⁹ 'Adjusted Annual Income': Gross (household) income, weighted to take account of family circumstances i.e. whether the applicant has a spouse/civil partner, plus number and ages of dependant children.

180. Accuracy of information. It is the applicant's responsibility, and in their own best interests, to ensure the information provided on their application form is complete and is supported by the necessary documentary evidence (see paragraphs 189-201 for further details on evidence requirements); this will ensure that the means test is a fair and accurate reflection of their ability to pay. A failure to disclose all relevant information may result in incorrect liability assessment, which may result in further investigations with a view to prosecute where an attempt to commit fraud is suspected.

181. Changes in circumstances. It remains the applicant's personal responsibility to advise AFCLAA of any changes to their personal or financial circumstances between submitting the application form and the conclusion of the proceedings e.g. divorce, marriage, increase/decrease in family responsibilities (excluding birthdays, as the form asks for children's ages at their next birthday); Financial: pay rise, promotion/demotion etc.

182. Legal aid thresholds. The MOD promulgates threshold levels, based upon those used in the civilian system for the Crown Courts in England and Wales, which determine the points above which a contribution is required. Until further notice, these threshold points are:

- a. Adjusted Annual Income* - £12,475; thereafter
- b. Disposable Annual Income* - £3,398; and/or
- c. Financial Eligibility Threshold* - Annual disposable income in excess of £37,500⁵⁰.

* See glossary on pages vii - xii for definitions.

183. Allowances: Basic Living Allowance (BLA). The BLA is an automatic deduction from income, and is designed to take account of the day-to-day living costs for the average applicant, and if appropriate, their family. It includes elements to cover average costs for food and non-alcoholic drinks; clothing and footwear; housing (excluding rent/mortgage/council tax, for which actual costs are accounted for separately); fuel and power; household good and services; health; transport; communications (i.e. phone and internet access); education (excluding school fees – see paragraph 212 for Boarding School fees); miscellaneous goods and services.

184. BLA (applicant). The Basic Living Allowance for the applicant is currently set at £5,676 per annum⁵¹ and is designed to take account of the basic living requirements for the applicant in all instances. It forms the baseline BLA which is the starting point to determine the appropriate BLA for each additional dependant.

185. 'Weighted' BLA (dependants). For applicants with family responsibilities i.e. spouse/civil partner and/or dependant children living in the same house, the BLA is increased in order to provide for the additional basic living costs for each additional member

⁵⁰ See paragraphs 79-87 for details on the impact and application of this threshold.

⁵¹ Approximately £473 per month for day-to-day living expenses as described in paragraph 183.

of the household. This involves incremental increases, according to the status and/or age of each additional member of the family at the time of application.

186. **BLA: Spouse/civil partner.** The spouse/civil partner's allowance equates to 0.64 of the applicant's BLA (i.e. £3,632.64). Therefore, an applicant with a spouse/civil partner but not dependant children, would have a combined BLA of £9,308.64 (i.e. £775.72 per calendar month) included as part of their financial outgoings deducted from gross annual income, to determine their disposable income.

187. **BLA: Child(ren).** The BLA for each child, again using the applicant's BLA as the basis for the calculation, are (by age group, at the child's next birthday): birth-1 = 0.15; 2-4 = 0.30; 5-7 = 0.34; 8-10 = 0.38; 11-12 = 0.41; 13-15 = 0.44; 16-18 = 0.59. Therefore, an applicant with spouse/civil partner and two children, aged 3 and 6 at their next birthdays, would have a total weighted BLA of 2.28 (consisting of 1 (applicant) + 0.64 (spouse/civil partner) + 0.30 + 0.34) x £5,676 = £12,941.28⁵². This amount would be included as a deduction from gross annual income, along with other allowable financial outgoings (e.g. actual rent/mortgage, PAYE, child care costs etc) to determine the applicant's disposable income.

188. **Allowance: Non-legally aided legal advice.** As there is no entitlement for legal aid funding to cover the cost of any legal advice sought before or after a summary dealing, an additional £500 allowance, to cover any such costs incurred, is included as a deduction against income for the purposes of the means test assessment. This allowance is automatically included in the means test, therefore there is no requirement to provide evidence that such legal advice was sought or of any such payments made.

Documentary evidence required

189. **Documentary evidence.** All applicants are required to provide suitable documentary evidence of all income and outgoings included on their application form. This will enable the Case Officer to properly assess the applicant's contribution liability. Failure to provide any or all of the required documentation may result in a re-evaluation of the applicant's contribution liability, especially if the evidence in question supported a Nil contribution liability.

190. **Evidence not readily available.** As some documentary evidence may not be readily available, applicants are allowed a maximum of 21 (calendar) days to provide all required documentation before the Case Officer disallows the item concerned and re-evaluates the applicant's contribution liability. Where there are Service or operational reasons which prevent this, the unit are to provide details to AFCLAA as soon as possible, so that suitable adjustments can be made.

191. **Pay statements: Service applicants.** In most cases, the three most recent pay statements are required; JPA print-outs (i.e. pay statements) for the relevant months are acceptable, so long as they are legible when faxed to AFCLAA. Where the pay statement/print-out includes details of the following, further documentary evidence for these items is not required:

⁵² This equates to an allowance of £1,078 per month for day-to-day living expenses as described in paragraph 183.

- Income tax (PAYE);
- National Insurance Contributions (NIC);
- Accommodation charges;
- Charge In Lieu Of Council Tax (CILOCT);
- Child benefit and Kindergeld (where paid through salary only);
- Child Support Agency (CSA) or Child Maintenance and Enforcement Agency (CMEA) deductions (where deducted directly from salary).

192. **Pay statements: ex-Service applicants.** Ex-Service applicants are to provide copies of their three most recent pay statements. As with JPA print-outs, where the pay statement includes details of the payments listed above, further documentary evidence for these items is not required.

193. **Pay statements: long term absentees (including fast-track AWOLs).** Personnel who have been AWOL for a considerable time and who have not received any pay for the full three months preceding their application, should provide the 3 most recent pay statements available. In addition, the applicant should provide pay statements or other documentary evidence to show alternative pay or funding during the 3 months prior to application; if this source of funding is no longer available to the applicant, this must be clearly stated on their application. Applicants who have not received a full month's pay since their return, including those held on remand in MCTC, are unlikely to be required to make any contribution, unless they have been in receipt of other regular income, during the 3 month period prior to their return.

194. **Other forms of evidence.** For income or outgoings not shown on pay statements, the applicant should provide such documentary evidence as is available. For State Benefits paid other than through salary e.g. Child Benefit (and Kindergeld in Germany), Income Support, Tax Credits etc, copies of official notification showing rates and payment intervals are to be supplied. Recent bank statements, showing amounts and payee, may suffice in the short term for some items e.g. mortgage payments, maintenance, council tax etc, where these items are paid by direct debit or standing order⁵³.

195. **Childcare costs.** Evidence for childcare costs below £500 per calendar month will not usually be required, however, AFCLAA reserve the right to request proof by way of a current contract showing the child's details (name, age), the applicable rates, and the service provider, for claims below £500 per month in certain circumstances. Failure to provide requested documentation may result in the item being disallowed and the contribution liability re-assessed.

⁵³ Bank statements will only be accepted in the short-term, particularly where the applicant is unable to obtain more appropriate documentation due to Service or Operational requirements only. In all other circumstances, the Income Evidence Sanction will be applied where the applicant fails to provide more appropriate documentation within 21 days of issue of the Contribution Order.

196. **Maintenance payments.** Copies of Court Order or CSA/CMEA documentation, showing amount and frequency of payments, should be provided (see also paragraph 191). Where no formal order exists, proof of actual payment e.g. bank statements, may suffice, so long as the amount and payee are clearly identified (see footnote 53). In some circumstances, it may be necessary for AFCLAA to request a statement from the recipient to confirm the amount, frequency of payments and the recipient's relationship to the applicant.

197. **Main/only residence.** Where the applicant lives in SLA/SFA⁵⁴ whilst owning their own private accommodation with the intention of using this as the family residence upon leaving the Service, the privately owned accommodation is deemed to be the main residence for the purposes of the means test, even where that property is rented out to another party in the short term.

198. **Income from rented property.** In such circumstances, AFCLAA will only include both the SLA/SFA charge and the mortgage payments in the means test where the applicant also provides evidence of the income received from the rented property. If the privately owned property is not rented out to another party, AFCLAA will only include the larger payment of either the SLA/SFA or the mortgage.

199. **Mortgage payments.** A copy of the most recent annual mortgage statement is to be supplied. Where this is not readily available, a copy of a recent bank statement, with the relevant payment annotated, will suffice in the short-term, pending receipt of the mortgage statement (see also footnote 53). For property valuation purposes, an estimate based upon similar properties within the local area is enough; it is not necessary to obtain a current valuation from a Chartered Surveyor.

200. **Privately rented accommodation.** Where the applicant is a tenant or a landlord of privately rented accommodation, a copy of any rental agreement or rent book should be provided. If a tenant, the applicant should also list any co-tenants e.g. 'common law' partners, or friends/colleagues (but excluding spouse/civil partner and/or dependants) who may be included on any rental agreement or who are otherwise resident in the property and who may therefore share responsibility for the rent.

201. **Council tax.** For applicants in SLA/SFA, where CILOCT is deducted from source, or those in privately rented accommodation with utilities included in the rent, no further documentary evidence is required. In all other instances, a statement/invoice from the service provider is required (see also footnote 53).

The Contribution Order

202. **Contribution Order.** The Contribution Order can only be issued by an AFCLAA Case Officer, and then only once the completed application form has been received and the means test completed. The Contribution Order will confirm whether the applicant has a contribution liability, and give an indication of the level of contribution required, as determined by the type and level of proceedings involved and the outcome. Some applicants, including those whose summary appeal was lodged by the Reviewing Authority, will receive a Nil Contribution Order.

⁵⁴ Single Living Accommodation (SLA); Service Family Accommodation (SFA).

203. Contribution Order: Applicant action. The applicant is to consider the Contribution Order, and either accept or decline the offer therein, by annotating the appropriate box and returning the signed and witnessed document to AFCLAA by the fastest possible means. In most instances, this will be by fax. The original hard copy document is to be sent to AFCLAA by Recorded or Registered Delivery. Although an offer of legal aid has been made, the applicant is free to decline the offer if they so wish. Further guidance on the process for declining legal aid is contained within paragraph 216 below.

204. Contributions. Contributions for summary appeals and elections for trial by CM are only payable following the conclusion of the proceedings, and dependent upon the outcome of those proceedings. See Sub-Section 2d for full details.

The Hardship Review

205. Hardship Review application. To be completed by the applicant, with the assistance of unit admin staff and the AAO, as necessary, where the applicant considers they have financial commitments which may not have been included on the main application form. A successful Hardship Review, whether submitted with or after the initial means test assessment, may remove any contribution liability which was based on the information provided on the main application form alone.

206. Eligibility. Every applicant is eligible to apply for a Hardship Review in respect of their financial circumstances and their contribution liability, and should be encouraged to submit a completed Hardship Review application form alongside their main application form wherever possible. In addition to reducing unnecessary administrative action by AFCLAA and unit admin staff, and therefore time, this will enable the Case Officer to provide a Contribution Order which is an accurate reflection of the applicant's ability to pay.

207. Changes to personal circumstances. Changes to personal circumstances, especially where there have been changes to the applicant's householder responsibilities, would require a new application form to be submitted to AFCLAA without delay, so a fresh means test can be carried out. For example, any birth or adoption; marriage/civil partnership event, including divorce or formal separation.

208. Changes to financial circumstances. An application can be submitted at any time while the related proceedings are ongoing i.e. whilst monthly contributions are still being paid, where the applicant's financial circumstances have changed e.g. a fine or County Court Judgement (CCJ); a new or amended CSA/CMEA or maintenance payment; cessation of a regular payment included in the initial means test.

209. New financial commitments. New financial commitments, including loans or HP agreements (including 'pay day loans'), entered into after the applicant has been notified that a case has been referred to the DSP, or after a Contribution Order has been issued, may be subjected to further scrutiny as part of the Hardship Review process, and may be excluded.

210. Evidence requirements. Unlike evidence for information on the main application form, the evidence to support a Hardship Review application is to be submitted at the same time as that application form; units are advised to contact the Case Officer

without delay if the applicant is unable to provide the requisite evidence for Service or operational reasons only.

211. Acceptable forms of evidence. The evidence required is determined by the item in question. In most instances, it will be necessary to provide documentary evidence supplied by the organisation to which the debt or other payment is made:

- A copy of the loan agreement, Individual Voluntary Arrangement (IVA) or Bankruptcy Order, detailing the start date and the payment schedule, plus proof of recent payment;
- A copy of the latest credit or store card statement, showing the outstanding balance, the most recent payment and the minimum payment due.

NOTE: for credit or store cards, only the minimum monthly payment required, as shown on the most recent statement, will be allowed as an outgoing for the Hardship Review.

212. Boarding school fees. Where the applicant has boarding school fees for Service or operational reasons and is, as a result, in receipt of Continuity of Education Allowance (CEA), they should include full details of the allowance received and their parental contributions. It is especially important that they include details of any parental responsibility payments due during the income contribution period, and identify any allowances paid with salary during the 3 months prior to application; CEA payments included with salary will not be included as income for the purposes of the means test.

Legal aid not in place

213. Certificate of legal aid not in place. This document, issued by an AFCLAA Case Officer, will be issued where legal aid is refused or declined, stating the reasons why legal aid is not in place:

- Refused by the applicant: the applicant can 'refuse to apply' for legal aid' (see paragraph 214 below); or
- Declined by the applicant: the applicant can decline an offer of legal aid, following receipt of a Contribution Order.

214. Legal aid refused by applicant. An applicant can refuse to apply for legal aid either because they do not wish to have legal aid funding at the time i.e. where the applicant wishes to instruct a legal representative privately; or they wish to use a Service lawyer to represent them. The applicant should ensure they annotate the relevant box on the application form. If the applicant chooses to use a Service lawyer, it remains their responsibility to make contact with the relevant organisation to establish availability (see paragraph 161).

215. Legal aid refused by AFCLAA. AFCLAA will only refuse an application for legal aid under the following circumstances:

- a. Where an application has been submitted in respect of a matter for which there is either no entitlement to legal aid (e.g. internal administrative action; or
- b. Legal aid may be refused where an application is submitted very late in the proceedings e.g. after pleading but before sentence (elections for trial by CM only); this is particularly relevant where the applicant has previously either refused to apply for, or has declined an offer of, legal aid.

216. **Legal aid declined by applicant.** Once the means test has been conducted, and a Contribution Order issued, the applicant must either accept or decline that offer. The applicant is to annotate the appropriate box on the Contribution Order and return to AFCLAA for further action, without delay.

217. **Re-applying for legal aid.** In all cases, an applicant can change their mind and re-apply for legal aid at any point up to the time of appeal or trial. However, delaying an application can add unnecessary delay to the proceedings and may, in some instances, result in the application being refused by AFCLAA.

218. **Unit support.** Where legal aid is not in place before proceedings are listed within an assize period, the unit are requested to work closely with AFCLAA and the applicant, to ensure they are aware of the availability of legal aid, and to support them through the application process. As there is likely to be only a few weeks between listing and the start of the proceedings, it is imperative that the applicant is encouraged to engage with the process as soon as possible, so that any decision they make regarding legal aid and legal representation can be made with full knowledge and as soon as possible.

Sub-Section 2c: Actions following the grant of legal aid

219. **Legal aid in place.** Upon receipt of the signed and witnessed Contribution Order, and where the applicant has accepted an offer of legal aid, the Case Officer will contact the nominated legal representative to establish their acceptance of the case. Once this is confirmed, formal notification will be sent to all interested parties, especially the applicant and their AAO. The applicant and AAO are advised to contact the named legal representative as soon as possible and certainly within 7 days of the date of the formal notification letter.

220. **The legal aid contract.** Once legal aid has been granted, the applicant has entered into a formal and binding agreement with AFCLAA for the provision of legal aid. This means that they have agreed, in writing, to accept the terms and conditions of the Armed Forces Legal Aid Scheme, including an undertaking to pay such contributions towards their legal aid costs as deemed appropriate, based upon their personal and financial circumstances and the case against them. Once legal aid is in place, and the legal representative instructed, it is not possible for the applicant to later withdraw their application and terminate their legal aid contract with AFCLAA, unless and except where the applicant has withdrawn their appeal, or their election for trial request (see paragraphs 222-223 below).

221. **Uncontested summary appeal.** In some instances, AFCLAA may delay processing the application, until confirmation that the appeal is to be allowed. If, after legal aid has been granted, the SPA decides not to contest the appeal, the Case Officer will make contact with the legal representative at the earliest opportunity, to confirm that legal aid is discontinued with immediate effect.

222. **Appeal or election request withdrawn by applicant.** Where an appeal is abandoned, or an election request is successfully withdrawn, AFCLAA will contact the legal representative at the earliest opportunity, to confirm that legal aid is discontinued with immediate effect. There will be no contribution liability to the applicant in such instances.

223. **Applicant liability: appeal or election not proceeding.** Irrespective of the reasons why an appeal or elected trial does not proceed to court, the applicant will not be required to make any contribution towards legal costs incurred up to the point where legal aid was discontinued, however any work carried out by the legal representative after this point will be a matter for the legal representative and their client, and will not be payable by AFCLAA.

Sub-Section 2d: Actions following the conclusion of proceedings

224. **General.** Once the outcome is known by AFCLAA, usually upon receipt of the TRN2, the Case Officer will contact the unit to advise upon contributions and payments as necessary. The appellant's contribution is determined by the type of appeal lodged, and the outcome:

225. **Appeal against finding and sentence:**

- **Wholly successful:** Where an appeal against both finding and sentence, was wholly successful, that is to say that the finding, and therefore the sentence, were completely quashed, the appellant will not be liable for any post-appeal contributions;

OR

- **Partially successful:** Where an appeal against finding is dismissed, but the sentence is reduced, the appellant will be liable for a post-appeal contribution of £250, to be paid either as a lump sum or in instalments as agreed with AFCLAA;

OR

- **Wholly unsuccessful:** Where an appeal against finding and sentence was dismissed in full, the appellant will be liable for a post-appeal contribution of £500, to be paid either as a lump sum or in instalments as agreed with AFCLAA.

226. **Appeal against sentence only:**

- **Successful:** Where an appeal against sentence is successful, that is where the sentence was altered, the appellant will not be liable for any post-appeal contribution;

OR

- **Unsuccessful:** Where an appeal against sentence is denied, that is to say that the original sentence was not altered, the appellant will be liable for a post-appeal contribution of £250, to be paid either as a lump sum or in instalments as agreed with AFCLAA.

227. **Election for trial.** Applicants who elect for trial by CM will only be liable for a post-trial contribution towards costs following a conviction. Their contribution will be limited to £1,000 or their actual legal aid costs, whichever is the lower. Payment of the contribution can be paid either as a lump sum or in instalments as agreed with AFCLAA; where applicable, contributions will become liable upon the conclusion of the proceedings.

228. **Overpayments.** The Case Officer will assess the legal aid costs as normal, and will refund any overpayment to the applicant as soon as the fees are agreed with the legal representative.

Applications to the Court Martial Appeal Court (CMAC)

229. **Application for leave to appeal accepted.** Once the application has been submitted to the CMAC, the legal aid provided by AFCLAA is complete. If the CMAC accept the application and grant the appeal, the CMAC will assume responsibility for the legal aid funding thereafter; the successful applicant will not be required to make any contribution towards their AFCLAA legal aid costs.

230. **Application for leave to appeal rejected.** Once the application has been submitted to the CMAC, the legal aid provided by AFCLAA is complete. If the application is rejected by the CMAC, the applicant will be required to make a contribution of £250 towards their legal aid costs, which can be paid either as a lump sum or in instalments as agreed with AFCLAA. AFCLAA will not provide legal aid to cover costs associated with any subsequent application to the CMAC, should the original application fail.

Payment of contributions: delayed payments

231. **Payment of contributions: MCTC.** If the applicant is detained in MCTC following conviction or summary dealing, they will be required to make their contributions upon release. In the meantime, units are advised to input payment details onto the applicant's JPA pay account, to ensure appropriate recovery action is taken.

232. **Payment of contributions: Election.** If the legal aid costs are agreed with the legal representative before the applicant is able to complete their contribution payments e.g. where payments are suspended whilst the applicant is in MCTC, the unit will be advised of the final costs (if lower than the maximum contribution payable) and the payment plan amended accordingly.

Section 3: AFCLAA: Through-life case management

233. **Case Team responsibilities.** Each case is allocated to a Case Team who retains full responsibility for every aspect of the (legal aid) case management until all matters are concluded. In many instances, this is limited to the routine administration of all legal aid aspects of the case, including, but not restricted to:

- a. Ensuring relevant documentation (i.e. application and/or Hardship Review forms; Contribution Orders) is received and processed according to set timelines;
- b. Prompting units to obtain further documentation as necessary (e.g. Hardship Review forms; documentary evidence to support financial information etc);
- c. Liaising with unit HR/JPA administrators, to ensure contributions payments are made according to agreed payment plans (trials only: CM, SCC, civilian criminal courts overseas); OR
- d. Liaising with unit HR/JPA administrators to ensure appropriate action is taken to recover post-proceedings contributions as necessary (summary appeals, elections for trial, or capital/equity contributions where appropriate);
- e. Instigating collection and enforcement action, via unit HR/JPA administrators, where appropriate;
- f. Recording and monitoring hearing dates (e.g. PCMH, trial dates, sentencing hearings);
- g. Taking note of directions, orders, rulings of the judge advocate at every stage, where they affect the legal aid costs incurred;
- h. Reviewing (taxing) all bills/invoices submitted in respect of a case, including legal representative(s) and expert(s) fees and disbursements, in accordance with agreed structures, and authorise payment(s) as necessary , within set timelines;
- i. Providing information, and support, to DAO/AO, unit and the legal representative/defence team as necessary;
- j. Maintaining financial and procedural audit trails on all files, according to AFCLAA and MOD policies.

234. **Complex cases: additional responsibilities.** In more complex cases, the Case Officer will liaise directly with the DAO/AO, the unit and the legal representative/defence team as necessary to:

- k. Negotiate fees and/or fee structures as appropriate with the legal representative, subject to the provision of suitable justification;

- l. Review and process requests for prior authority to incur additional costs e.g. to obtain an expert's report, subject to the provision of a suitable justification and a written estimate of costs from the provider;
- m. Consider requests to obtain additional legal representation e.g. to instruct leading counsel, in line with AFCLAA and equivalent civilian scheme policies;
- n. Carry out a detailed review (taxation) of bills post-trial, challenging claims and/or re-examining initial taxation decisions as necessary and where justified;
- o. Liaise with all parties to promote or maintain lines of communication e.g. where regular contact between applicant, DAO/AAO and the legal representative is proving difficult;
- p. Respond to requests for information on specific cases from the Courts, and the judge advocates, as necessary;
- q. Provide advice on legal aid and funding issues to interested parties as necessary.

Processes for the nomination of civilian legal representation⁵⁵

1. **General.** Under the Armed Forces Legal Aid Scheme, applicants are required to make a positive decision about the type of legal representation they receive. Applicants who elect for civilian legal representation funded by the Armed Forces Legal Aid Scheme are then required to choose whether they wish to nominate a particular representative themselves, or ask AFCLAA to nominate one on their behalf.

Nomination by applicant

2. **Applicant nomination: identifying a legal representative.** In many cases, the applicant may have already received advice and assistance from a legal advisor at previous police station interview(s) and/or custody review(s) in the present case. If happy with the service provided, the applicant may choose to nominate that legal advisor or their firm on the application form. In other cases, the applicant may have heard about a particular representative: through family, friends or colleagues; or sought legal advice or assistance from a local solicitor or firm on other matters; or, having attended previous legal proceedings, the applicant may nominate a legal representative they have seen 'in action'.

3. **Instructing a nominated legal representative.** Regardless of how, or why, an applicant nominates any particular legal representative, AFCLAA will honour that nomination so long as the representative is suitably qualified⁵⁶ and is willing to accept the terms and conditions of the Armed Forces Legal Aid Scheme⁵⁷. If the representative, firm or chambers are not already known to AFCLAA, the Case Officer will make contact to establish whether they will accept the case under those terms (providing legal aid is granted). The representative will also be asked if they may be interested in accepting other cases if nominated by AFCLAA in the future.

4. **Legal representative declines instruction.** If the representative refuses to accept those terms and conditions, the applicant may either nominate an alternative, or ask AFCLAA to nominate on their behalf. If the applicant does not wish to change their nomination, the Case Officer will have to refuse legal aid and the applicant will be able to instruct the representative privately instead. Before instructing privately in such circumstances, the applicant is to be made aware that there is no eligibility to recover those private costs if they are subsequently acquitted or their case is discontinued.

Nomination by applicant: non-standard travel costs

5. **Legal representatives outside the broad geographical area.** In some instances, applicants may be required to review their nomination before legal aid can be granted. This requirement will generally apply to an applicant who nominates a legal representative where conferences involving the legal representative, the applicant and their DAO/AO, or the legal representative's attendance in court, would necessitate additional travel between Germany or Northern Ireland and mainland UK. Such a review would be considered appropriate where travel and/or accommodation costs could be considered as an

⁵⁵ The guidance contained in this Annex is supplementary to the main Chapter, and does not apply to applicants who do not require legal aid or who wish to be represented by a Service lawyer (paragraphs 11-16 or 160-164 of the main Chapter refers).

⁵⁶ A practising barrister or solicitor, as defined in The Armed Forces (Court Martial) Rules 2009, rule 39(2).

⁵⁷ The Armed Forces Legal Aid Scheme broadly follows the civilian legal aid scheme, and is therefore known to the majority of criminal law practitioners.

inappropriate use of public funds⁵⁸, i.e. where there are sufficient suitably qualified legal representatives within the broader geographical area; this does not apply to cases heard in Germany, Northern Ireland, Cyprus or other temporary MCC, where the local availability of suitably qualified legal representatives is significantly more limited, or non-existent.

6. **Applicant action.** Where appropriate, and before AFCLAA can provide an offer of legal aid, the applicant will be required to:

a. Provide a justification to support that particular nomination⁵⁹. This is particularly important where both the applicant and the likely venue for any impending proceedings are within the same broad geographical area, but the legal representative is not. This is especially relevant where instructing the nominated legal representative would incur significant travel and other costs (i.e. flight, ferry or channel tunnel crossings; food and accommodation; travelling time (legal representative) etc);

OR

b. Sign a written undertaking that they (the applicant) will accept personal responsibility for all travel, accommodation and other costs associated with their own, their DAO/AAO and their legal representative's travel between Germany or Northern Ireland and mainland UK, for conferences or court proceedings; in respect of court proceedings, the legal representative will be able to claim the notional travel fee appropriate to the court concerned, in accordance with the Notes for Guidance issued with the instruction letter. Other than these specific circumstances, neither the applicant nor the DAO/AAO are to enter into any financial arrangements with the legal representative;

OR

c. Provide AFCLAA with an alternative nomination from within the broad geographical area, or authorise AFCLAA to nominate a suitable legal representative on their behalf, using the procedures laid down within this document.

7. **AFCLAA action.** If AFCLAA accepts the nomination is reasonable following receipt of the justification, or an alternative nomination is agreed, or the formal undertaking is signed and returned to AFCLAA by the applicant, the nominated legal representative will be formally instructed as soon as the Contribution Order has been signed and returned to AFCLAA, along with proof of payment for the first contribution (if appropriate). If, however, the applicant fails to provide a suitable justification, and/or declines to sign the required written undertaking, it will not be possible to grant legal aid to the applicant. The applicant can choose to instruct that legal representative privately, or re-apply for legal aid with an alternative nomination for legal representation.

⁵⁸ Public funds in this instance would include: unit funds, in respect of travel, accommodation and availability, of the applicant, the DAO/AAO, and any defence witnesses; legal aid funds, in respect of the legal representative's travel (including travelling time), accommodation, subsistence etc.

⁵⁹ The justification should provide sufficient detail about the reasons why a particular legal representative is nominated to enable the Case Officer to make an informed decision. Attendance by the legal representative at a previous SP interview(s), on its own, is not sufficient justification to incur such costs.

Nomination by AFCLAA

8. **Background.** The option of requesting AFCLAA to nominate a legal representative on behalf of an applicant exists as a special facility, unique to the Armed Forces, to support those who wish to instruct a civilian legal representative but who are not in a position to find someone suitable by themselves e.g. personnel on board ship, overseas, or serving in an operational theatre. Furthermore, as many Service applicants are unfamiliar with the workings of either the civilian or the Service courts, they are often unsure of how, or where, to obtain suitable representation. This option gives them the opportunity to overcome those difficulties and obtain independent legal advice and representation from a legally qualified and experienced representative.

9. **Key factors taken into consideration.** Where the applicant has asked AFCLAA to nominate, the Case Officer will take into account key factors such as:

- a. The location of the applicant;
- b. The likely trial/appeal venue;
- c. Any particulars about the nature of the allegations or the charge (if known at the time of nomination⁶⁰) which may warrant a representative with specific skills, experience or training e.g. computer-related charges; serious fraud or firearms charges;
- d. Any factors relating to the applicant, or the alleged victim(s), which may warrant particular skills e.g. a juvenile applicant and/or witnesses;
- e. Whether the allegation/charge relates to specifically Service discipline-related offences, which may benefit from using a representative with previous Service experience or who is experienced in dealing with Service offences;
- f. Wherever possible, the Case Officer will try to determine which legal advisor attended any previous police station interview(s) or custody reviews. Where the legal advisor is identified, but not nominated by the applicant, the Case Officer will attempt to contact the unit to establish whether this was a deliberate decision by the applicant; where the applicant confirms this to be a positive decision, the Case Officer will nominate an alternative legal representative instead.

The nomination process

10. **'All inclusive' nomination process.** AFCLAA operates an 'all inclusive' nomination process, which does not limit applicant or Case Officer choices to only named representatives within any pre-determined list or grouping. The AFCLAA database, which maintains full records of all cases, holds details of every legal representative who has received legal aid payments from AFCLAA since 2002⁶¹, this includes legal advisors attending police station interviews carried out by SP outside England and Wales.

⁶⁰ The applicant should ensure they provide sufficient details of the nature of the allegation when completing the application form, to enable the Case Officer in this regard.

⁶¹ This includes every legal representative who received payment from the Army Criminal Legal Aid Authority (ACLAA) before it was subsumed into the tri-Service AFCLAA in 2008.

11. **Registering an interest.** Legal representatives, even if they have not previously acted for applicants within the SJS, may contact AFCLAA to register an interest in accepting future cases, and may be added to the database records. They are requested to provide documentation, including a CV, to show their previous experience and any specialist areas of law practiced. This allows Case Officers to identify and nominate suitably experienced representatives as required, from the widest practicable field.

12. **Availability of representatives.** The AFCLAA system is therefore able to remain current, whilst permitting competition across the various areas of expertise. This system also ensures a good geographical spread of representatives, so applicants, wherever they are based, are not limited to a small number of possible representatives; this also reduces the chances of difficulties due to conflicts of interest which could arise if the scheme were reliant on too limited a number of legal representatives in any particular area e.g. in proximity to Military Court Centres, or near larger establishment or garrisons.

13. **Recommending legal representatives.** AFCLAA staff are not permitted to recommend particular legal representatives (including firms or chambers) in advance of an applicant completing an application form. If there is any suggestion that a unit appears to be favouring a particular representative, firm or chambers, the Case Officer may contact that unit to remind those concerned that the right to choose legal representation remains solely with the applicant.

14. **Choosing between solicitor and barrister.** Conventionally a solicitor is instructed to represent a defendant in the first instance, and a barrister ('counsel') may be briefed for the court proceeding(s) by the solicitor, if required. Some solicitor-advocates appear at hearings themselves. It is also possible for AFCLAA to brief barristers directly, without the involvement of a solicitor; this practice is followed in many cases, particularly where the proceedings are expected to take place outside mainland UK.

Guidance notes: Legal aid application forms (MOD F2263 series)

General information

1. **The information required.** The information requested on the legal aid application forms will be used by AFCLAA to confirm eligibility for legal aid under the Armed Forces Legal Aid Scheme, and thereafter provides the requisite authority for AFCLAA to provide the applicant with legal aid funding.
2. **Accuracy of information.** The information provided by the applicant will be used to determine what, if any, contributions the applicant will be required to make towards their legal aid costs. It is therefore imperative that the form is completed as fully, honestly and accurately as possible, to ensure the contributions are a true reflection of the applicant's ability to pay, based upon their own particular personal and financial circumstances.
3. **Notes for Applicants.** The applicant must read the Notes for Applicants at the start of the application form, as their signature at the end of the form will be accepted as proof that they have read, understood and accepted, the conditions under which legal aid is granted.

MOD F2263: Application for Legal Aid (Armed Forces Legal Aid Scheme)

4. Section 1 – Personal particulars

Box	Explanation/comment
Service/Status	RN, Army, RAF, RM, UK-Based Civilian staff (UKBC) or dependants. This will ensure the correct departments are informed as necessary.
Service No, & Rank/Rate	For dependants, include their parent's Service number, annotated as appropriate i.e. son/daughter/spouse/civil partner of
Unit title, address, postcode	Full postal details are required to ensure documentation is delivered without delay.
Are there any co-accused?	It is vital that the existence of any/all co-accused is notified to AFCLAA asp, to ensure that appropriate action can be taken. It is especially important if there are co-accused in different units, so Case Officers can deal directly with all units, preventing unnecessary delay to the process. It will also ensure that all interested parties are kept informed of relevant details e.g. co-accused's legal representative's details.
Co-accused details	
Nature of charge	This will help determine the appropriate level of legal aid required, should the applicant request legal aid at the DSP referral stage. It may also affect the contribution payable, as contributions are capped according to the type of offence charged (see paragraphs 98-100). It may also assist the Case Officer, should the applicant wish AFCLAA to nominate a legal representative on their behalf (see Annex A for details).

Box	Explanation/comment
Investigation Reference Number (IRN)	If known – this will identify separate cases (i.e. if the applicant has more than one case ongoing), and all case-related documentation; including that of any co-accused not previously known or identified on the application form(s).

5. Section 2 – Legal representation

Tick Box	Explanation/comment
<i>The information provided here by the applicant will clarify their choice of legal representation, and therefore the public funds committed on their behalf. They may seek advice from their DAO/AAO, an independent legal advisor or unit admin staff (who may, in turn, seek advice from AFCLAA), but the final decision on legal aid and representation MUST remain solely with the applicant. Care should be taken to ensure that they are aware of this right, and the potential costs and implications.</i>	
Applicants aged 17 or under	Applicants aged 17 or under at the point of application must provide their date of birth, to confirm eligibility to receive free legal aid; when signing the unit declaration at Section 6b, the Certifying Officer is confirming this information. As no costs will be incurred by the applicant, they are not required to complete Section 5, but must complete all other Sections.
2a	To be ticked where the applicant already has legal aid in place for the case(s) concerned, but needs to re-apply because of changes in their personal circumstances (see paragraphs 121 or 181 and 207). The applicant should also include their AFCLAA Case Reference number (as shown on AFCLAA documentation) in the boxes provided.
2b-2e:	<u>The applicant MUST tick ONE box ONLY, to ensure their choice of legal representation is taken into account from the outset.</u>
2b	Ticking this box will not prevent the applicant from applying for legal aid at any time up to the date of trial, however, they should be made aware that a late application may result in additional delay to the trial process, and may incur additional costs, for which they may be liable. The applicant should be made aware that any application submitted after their case has been referred for trial, will require immediate payment of the first instalment (if applicable) before legal aid can be granted. Furthermore, an application submitted after the applicant has pleaded guilty but before sentence, is likely to be rejected (see paragraphs 8 or 157 of the main Chapter).
2c	If the applicant ticks this box, it is <u>their</u> responsibility to ensure that a Service lawyer is contacted and accepts the case. A tick here will not prevent the applicant from applying for legal aid at any time up to the date of trial, however, they should be made aware any application submitted after their case has been referred for trial, will require immediate payment of the first instalment (if applicable) before legal aid can be granted. Furthermore, an application submitted after the applicant has pleaded guilty but before sentence, is likely to be rejected (see paragraphs 8 or 157 of the main Chapter).
2d	If this box is ticked, AFCLAA will appoint a legal representative on behalf of the applicant, taking into account the requirements of the applicant, and other factors, as detailed in Annex A to this Chapter.

Tick Box	Explanation/comment
2e	If the applicant ticks this box, they must also provide full contact details of the legal representative they wish to nominate. It is not sufficient to simply put a name and location. It is not necessary to nominate a legal representative who is already known to AFCLAA, so long as the nominated legal representative is suitably qualified and is willing to accept the terms and conditions of the Armed Forces Legal Aid Scheme (see Annex A to this Chapter for further details).
2d & 2e	<u>Ticking either of these boxes will authorise AFCLAA to enter into a formal agreement with the legal representative, to provide legal representation for, and on behalf of, the applicant.</u>

6. Section 3 – Entitlement to apply for legal aid

Tick Box	Explanation/comment
3a-l generally	The correct detail here will ensure the Case Officer takes the appropriate internal admin actions, according to type and stage of the proceedings, and will ensure the representative is properly advised from the outset.
3a-c generally	Applicants whose summary appeal has been lodged by the Reviewing Authority will not be required to make any contribution, regardless of the outcome; therefore they do not have to complete any part of Section 5. They should, however, ensure they annotate their application to show the Reviewing Authority lodged their appeal.
3e	<u>For personnel detained in custody after charge only.</u> Personnel in custody without charge should have access to legal advice and assistance under the Duty Solicitor Scheme, accessed via the Service Police station (Chapter 3 refers).
3g	This box should only be ticked where the case has been directed for trial, but legal aid is not yet in place for that case.
3j	A copy of the indictment (charge sheet) should be enclosed wherever possible. NOTE: there is no entitlement to legal aid through AFCLAA unless the applicant is (or was) subject to Service law or discipline, and the alleged incident occurred while the defendant was in the country concerned on permanent or detached duty, at the time of the incident.
3k	This box should only be ticked where the applicant pleaded or was found guilty at trial, but wishes to appeal their case to the Court Martial Appeal Court (CMAC), either where there was no legal aid in place for the trial, or because the applicant wishes to use a different legal representative; legal aid will not be transferred if the original legal representative confirms there are no grounds upon which to appeal. There is no need to apply for legal aid if the original legal representative is preparing the application for leave to appeal, as this is automatically included as part of the legal aid.
3l	This box should only be ticked where the applicant requires non-legal aid public funding i.e. Child Assessment or Protection hearings; Adjudication hearings; some appeals to the CMAC; incidents arising during the course of duty or regarding the reimbursement of costs from central funds (Chapter 6).

Tick Box	Explanation/comment
Interests of Justice (IOJ) test	It may be necessary to clarify the reasons why a case may meet the IOJ test. Applicants should refer to Appendix 1 to this Annex before completing this part of the form.

7. Service Points of Contact (POC)

BOX	EXPLANATION/COMMENT
POC details: Div Officer, HR Disc, DAO, AAO	It is essential that ALL the requested information is provided, including Service and civilian access dialling codes and internal and external email addresses, as this will be used by AFCLAA for case administration and will be passed to the civilian legal representatives and their support staff, to enable and maintain contact throughout the process. Alternative contact numbers, especially mobile phone numbers, will be held on file by AFCLAA, and will only be provided to the legal representative as necessary.

Section 5 – Financial statement for Armed Forces Legal Aid Scheme

8. If, at any stage during the completion of the form, there is any doubt about what information or documentary evidence is required, HR discipline admin staff or the DAO/AAO are advised to contact AFCLAA immediately⁶². If an AFCLAA Case Officer has already made contact with any of these parties, that Case Officer should remain the main POC throughout the process, unless otherwise informed.

9. This information is not required where the applicant is aged 17 or under at the time of application, as they will not be required to make any contribution towards their costs. Nor is it required where the applicant has ticked either box 2b or 2c, as neither option incurs publicly funded legal aid costs. If the applicant later changes their mind and re-submits an application requesting legal aid and/or civilian legal representation instead of a Service lawyer, Section 5 must be completed in full.

10. **5a – Personal details.** Income contributions are determined by a means test which includes a Basic Living Allowance (BLA), adjusted according to the family composition. To ensure the applicant's BLA is calculated correctly, it is essential that the marital status, and ages of each child (as at their next birthday) is annotated on the form.

11. **5b – Description of income.** The applicant MUST complete all boxes. Married applicants, or those who are in a civil partnership MUST also complete all boxes in respect of their spouse/civil partner, so that all relevant information is taken into account when assessing what, if any, income and/or capital/equity contributions are payable. Where information requested is not pertinent to the applicant, and/or their spouse/civil partner, 'none' or 'N/A' should be added.

⁶² The applicant should only contact AFCLAA directly in the absence of either HR Disc staff or the DAO, where an urgent response is required. In all other instances, the applicant is to access advice via their unit representative.

Tick Box	Explanation/comment
Gross salary, and gross income from part-time job/gainful employment	For Service personnel, legible JPA pay statement print-outs are acceptable. For non-Service personnel, or for additional income from civilian sources, pay statements covering the most recent 3 months prior to application are required. Original documentation should be provided, and will be returned after copying for retention on file; photocopies provided by the applicant are not acceptable.
Any other income	This includes any money received on a regular basis, and which forms part of the household income e.g. rental income on house/holiday home let; interest earned e.g. trust fund (where this is paid into a current account – interest accrued on savings where this is added to the savings account should be included under 5d).
Income from State benefits e.g. Child Benefit (including Kindergeld); tax credits; housing benefit etc	Full details of any/all State Benefits are required. Some benefits may be considered as ‘passports’ to automatically free legal aid (see paragraphs 40b or 177b), but can only be considered if appropriate and current supporting documentation is provided i.e. documentation issued by the Dept for Works and Pensions (DWP) or a local Council, detailing type, payee and level of benefit entitlement.
Maintenance payments received by applicant or spouse/civil partner	Details of the amount and frequency of payments is to be provided, along with supporting evidence e.g. statement from the CSA/CMEA, detailing payment schedule, or bank statement with payment clearly identified (see footnotes 27 or 53) for limitations on the use of bank statements.

12. 5c – Description of outgoings

Tick Box	Explanation/comment
Quartering (SLA/SFA); CILOCT; Income tax; National Insurance	Where these items are shown on the applicant’s pay statement, no further documentary evidence is required; where one or more item during the most recent 3 month period is not shown, separate documentary evidence is required.
Other accommodation, private rent; mortgage; council tax	Applicants living in their own, or privately rented, accommodation, MUST provide documentary evidence of these payments. Applicants with both Service provided accommodation (SLA/SFA) and mortgage/private rent MUST provide evidence of both items, but only the highest monthly payment will be included in the means test unless the applicant is also in receipt of rent from a tenant, which is to be shown as income at 5b. Where the applicant is based separately from their spouse/civil partner for Service reasons, further documentary evidence to support this is to be provided for consideration by the Case Officer; where appropriate, both rent/mortgage costs (i.e. for both ‘homes’) will be allowed.

Tick Box	Explanation/comment
Childcare costs (registered childcare provider)	Childcare costs can only be included where the care is provided by a fully registered childcare provider. The applicant MUST provide documentary evidence in all instances where their childcare costs exceed £500 per calendar month; where costs are below £500 per calendar month, documentary evidence is not routinely required. In some instances, however, AFCLAA may request documentary evidence where the monthly costs are below £500 per calendar month, and a failure to provide evidence when requested will cause this item to be excluded.
Maintenance payments to a 3rd party	The applicant must provide documentary evidence to show the amount and frequency of payments, and to define their relationship to the dependant i.e. Court Order or CSA/CMEA payment schedule. Where there is no formal agreement, bank statements with the payment clearly identified may be acceptable (see footnotes 27 or 53) for limitations on the use of bank statements); in some circumstances, AFCLAA may require a statement from the recipient, confirming the amount and frequency of the payment, and the nature of the relationship between themselves, the dependant and the applicant. Failure to provide suitable evidence may cause this item to be excluded from the means test.

13. **5d – Description of capital, savings and investments.** Applicants who have elected for trial, or who are appealing to the summary appeal court, are not required to complete this section as they will not be liable for any post-trial (post-conviction) contributions from capital, savings or investments (including equity in property).

Tick Box	Explanation/comment
Main/only dwelling, and properties other than main/own dwelling.	The requested information is required for each property owned or being purchased by the applicant and/or their spouse/civil partner; this does not include 'mortgage offers' in advance of completion of house-purchase contracts. Where the applicant has more than one property in addition to their main/only dwelling, they should attach a separate sheet containing all the relevant information.
The current value of the property (equally applicable to any/all properties owned or part-owned by either the applicant or their spouse/civil partner)	It is not necessary to obtain a formal valuation from a Chartered Surveyor; an accurate estimate, based on current valuations of similar properties in the area will suffice for properties not recently purchased. For properties purchased shortly prior to the application, the applicant may provide solicitor or estate agent documentation relating to the sale showing the valuation figure.
Amount of outstanding mortgage(s)	The latest annual statement will suffice, provided it was issued during the last 12 months prior to application. Where the purchase took place less than 12 months prior to application, the applicant should provide the mortgage agreement.

Tick Box	Explanation/comment
Savings, Stocks and Shares	Full details of all savings held, including bank and/or building society accounts, ISAs, PEPs, National Savings etc, and of Stocks and/or Shares held, must be provided.

Section 6 – Declarations

14. **“6a – Your declaration”**. Before signing the application form at Section 6, the applicant should take note of the declarations made in the sub-paragraphs set out at Section 6a. By signing the declaration, the applicant is confirming that:

- The information provided is a true statement of their personal and financial circumstances, and that of their spouse/civil partner, at that time;
- They understand that making a false statement, or withholding information, may lead to a prosecution, and that they may become liable for the full costs of any defence work carried out by their legal representative;
- They understand AFCLAA will carry out a means test assessment, which may require them to make a pre-trial, and/or post-proceedings, contribution(s), should their disposable income exceed the relevant thresholds;
- They may be subject to additional contribution payments if they default on agreed payments, or fail to produce required documentary evidence within agreed timelines, as set by AFCLAA;
- Their legal aid contributions will be deducted directly from salary via JPA wherever possible, and, if necessary, from any monies payable on discharge;
- Any/all contributions made will be refunded, with 2% interest, following a full acquittal of all charges (including instances where the case is discontinued at any point before trial);
- That, following a conviction on some or all charges, any contributions paid in excess of the applicant’s legal aid costs liability will be refunded by AFCLAA once all defence bills have been agreed and authorised for payment (refunded overpayments will not attract interest payment).

15. **“6b – Unit declaration”**. The Certifying Officer is to sign the application form to verify the identification of the applicant⁶³, and to certify the financial information provided, as far as can be proved from either JPA or documentary evidence supplied, to be accurate at the date of signing.

16. Section 6 must be signed by both the Certifying Officer and the applicant, even those who have ticked boxes to confirm they do not require legal aid, either because they wish to use a Service lawyer or because they do not wish to apply for legal aid at that point. This will provide evidence that the applicant was fully aware of the availability of legal aid and their eligibility to apply.

⁶³ This includes verification of the applicant’s age or Date of Birth, where they have stated at Section 2 that they are aged 17 or under at the time of application.

17. Immediately upon completion, this form, and a Hardship Review application form if appropriate, must be faxed to AFCLAA on 94344 5691 (01980 615691) without delay. This will ensure the application form(s) can be processed at the earliest opportunity.

18. Where it is not possible to fax the completed document(s) to AFCLAA immediately, a scanned copy of the form(s), showing signatures at Section 6, can be emailed to the group mailbox LF-MCS-AFCLAA-Group@mod.uk in the first instance. In either case, the original (hardcopy) form(s) must be sent to AFCLAA by either Recorded or Registered Delivery, to ensure safe receipt.

19. All documentary evidence requested on the main application form is to be sent to AFCLAA as soon as possible, and certainly within 21 days of submitting the initial application form, unless Service or operational reasons make this impossible. Should this be the case, AFCLAA should be advised at the earliest opportunity; failure to provide this evidence within 21 days, or later only where agreed with AFCLAA, will incur additional contribution costs to the applicant.

MOD F2263C: The Hardship Review application form

20. All applicants, except those exempt from making contributions (see paragraphs 40 or 177), should be encouraged to consider submitting a Hardship Review application form at the same time as their main application. This will enable AFCLAA to fully and accurately assess their ability to contribute from the outset, thereby preventing an applicant from making higher than appropriate contributions, and reduce the likelihood of delay to the grant of legal aid.

21. The Hardship Review is the applicant's opportunity to include additional items of expenditure not included in the main application form. This includes specific financial commitments entered into before their case was referred to the DSP, such as loans etc, but does not include day-to-day living expenses which are covered by the Basic Living Allowance (BLA) element of the means test. For full details of the household items included in the BLA, and how this allowance is 'weighted' to take account of the householder's familial responsibilities, see paragraphs 58-62 or 183-187.

22. Documentary evidence to support the Hardship Review is to be provided at the same time as the application form. Items without supporting evidence will not be processed unless, and until, suitable evidence has been provided. This means that the applicant's contribution will be assessed solely upon the information provided on the main application form and any items included on the Hardship Review form which is supported by appropriate evidence.

23. An applicant can submit a Hardship Review application form at any time whilst making contributions where their financial situation has changed; financial commitments entered into after a case has been referred to the DSP, or after a case has been directed for trial, may be subjected to further scrutiny by AFCLAA and may be disallowed.

24. Part A – Personal particulars

Box	Explanation/comment
Personal details (Number/Rank etc)	To be completed in full, even when submitting both application forms at the same time, to ensure they are processed together.

Box	Explanation/comment
Date offer of legal aid made by AFCLAA.	Only complete where Hardship Review application is submitted after a Contribution Order has been issued by AFCLAA.

25. Part B - Reason for review on grounds of hardship

Box	Explanation/comment
Denied access to income	This section should only be completed where an applicant, still subject to a contribution payment plan, no longer receives an item of funding previously included e.g. child maintenance etc. Such an application will only be considered where the entitlement exists, but the payment has been stopped; details of the amount no longer available to the applicant, the frequency of payments, and the date when the payment was expected but not received are to be provided. If the entitlement no longer exists, e.g. because the child/dependant is no longer considered a dependant, a new application form is required, so that a full re-assessment of their personal and financial circumstances can be carried out.
Extra expenditure:	The applicant should only include items of expenditure which were not already included in their main application form. The applicant must provide details of the type of item, the amount and frequency of payments, and must provide suitable documentary evidence to support their application. Lists of the types of item which may, or may not, be considered as part of the Hardship Review application are listed below; while these lists are comprehensive, there may be unusual items of expenditure not listed – in such circumstances, the unit or DAO/AAO should contact AFCLAA for advice. NOTE: Financial commitments taken out after a case has been referred to the DSP, or after their case has been directed for trial, may be subject to further scrutiny, and may be disallowed.
- Permissible items	Loans: Secured/unsecured loans; car loans Credit/store cards: payments will be limited to the minimum monthly payment, as shown on the most recent monthly statement Student loans Individual Voluntary Arrangements (IVA), or other formal repayment plans entered into in respect of personal debt recovery (e.g. rent arrears) Fines/County Court Judgements (CCJ) Necessary and regular prescription charges (e.g. monthly charges, for long-term or permanent illness or disability) Boarding School Fees: permitted only where it can be shown that these are necessary for Service or operational reasons Travel and other costs associated with specialised medical or educational needs of a dependant. Private pension plans
- Disallowed items	Items already covered by the Basic Living Allowance, and therefore already Food and non-alcoholic beverages Clothing and footwear Fuel and power e.g. gas or electricity bills etc.

Box	Explanation/comment	
	accounted for within the means test assessment (see paragraphs 58 or 183)	Household goods & services e.g. cable or satellite tv etc. Health e.g. prescriptions, unless for long-term or permanent illness or disability (see above) etc.
- Disallowed items (cont'd)	Items already covered by the Basic Living Allowance, and therefore already accounted for within the means test assessment (see paragraphs 58 or 183)	<p>Transport e.g. car insurance, fuel, vehicle repairs etc.</p> <p>Communications e.g. home/mobile phone bills/contracts; broadband/internet etc.</p> <p>Miscellaneous good and services e.g. window-cleaning; gardening services, personal insurances etc.</p> <p>Education e.g. school fees (except for Service or operational reasons); school outings; extra-curricular activities etc.</p> <p>Housing (other than rent/mortgage/council tax already included as actuals in the means test assessment) e.g. household insurances (building, contents); general repairs and maintenance etc.</p> <p>'Luxury' items</p> <p>Tickets to events, including season tickets for sports matches etc.</p> <p>Any costs associated with owning a pet, including insurance, vet's bills, quarantine costs etc.</p> <p>Family activities e.g. holidays, day trips, meals out, entertainment etc.</p> <p>Miscellaneous items e.g. mess or club subscriptions; charity donations; voluntary payments to family members (other than maintenance paid to dependant children)</p>
Additional Circumstances	This box should be used to provide any/all additional information which may further assist the Case Officer to determine the extent to which the applicant's ability to contribute is affected by circumstances which may or may not be beyond their control. This may include a brief explanation to support particular healthcare requirements, or to explain why costs in respect of any item may be significantly higher than normal, for example additional dietary, travel or medical costs necessary for a dependant with special needs. In some instances, it may be beneficial to obtain a brief confirmatory note from a medical practitioner to support the information provided. In such instances, further advice should be sought from AFCLAA in the first instance.	

The Interests of Justice (IOJ) test

1. The Interests of Justice (IOJ) test determines whether an applicant should be entitled to representation at public expense based on the merits of the case⁶⁴. The IOJ test is applicable only to cases heard in the Service Civilian Court, and only where the charges would ordinarily be heard in a magistrate's court had the offence taken place in England or Wales, therefore applicants for trial by CM, including elections, or trials heard in a civilian criminal court overseas, or for appeals in the SAC and the CMAC do not need to complete this section of the application form.

2. The applicant must indicate which of the listed criteria they believe applies to their case. They must also provide sufficient details regarding the potential personal impact of the case and any subsequent conviction, to satisfy the Case Officer that legal aid should be granted.

3. The applicant is not required to provide details in respect of every criterion listed, but should complete only those which apply to the particular circumstances of the case.

Criteria	Explanation and examples
If convicted, it is likely that I will lose my liberty and/or my livelihood.	<p>Liberty: Where a conviction may result in a period of detention or imprisonment. Other instances where this may be relevant include:</p> <ul style="list-style-type: none"> • Cases where the current charge may not necessarily attract a period of detention/imprisonment by itself, but a prior conviction may have to be taken into account when sentencing; • Applicants who have already received a suspended sentence in a previous case, and the current application refers to a new case arising during the period of suspension which may cause the original suspended sentence to be activated. <p>Livelihood: This applies where the likely sentence may affect the convicted offender's livelihood and/or income e.g. a period of imprisonment.</p> <p>This may also apply to certain trades/employments where a lesser sentence awarded may impact upon the applicant's eligibility for that trade/role e.g. employment where a clean Criminal Record Bureau (CRB) record is required, such as schools or other places involving interaction with children.</p>
If convicted, it is likely that I will suffer serious damage to my reputation.	Where the nature of the charge, with or without a subsequent conviction, may cause <u>serious</u> damage to a person's reputation e.g. a school teacher charged with offences relating to children; an accountant charged with offences relating to honesty.
A substantial question of law is involved.	E.g. issues of identification or victim's consent may be raised. If the applicant considers this criterion is applicable, they are advised to seek further legal advice before completing.

⁶⁴ This is also known as the 'Widgery Criteria', as the IOJ is based upon the criteria contained within the 1966 Report of the Committee on Legal Aid in Criminal Proceedings, chaired by Mr Justice Widgery.

Criteria	Explanation and examples
I may not be able to understand the court proceedings or present my case.	Primarily affecting cases where the applicant is a minor, or has a disability, or someone who may not fully understand the court proceedings or the implications of the trial/case for other reasons.
Witnesses have to be traced and/or interviewed on my behalf (state circumstances).	Give brief details of the nature of the witnesses' anticipated role e.g. witness of fact; a witness not personally known to the applicant.
The case involves expert cross-examination of a prosecution witness (give brief details).	This may include instances where it is not in the best interests of the prosecution witness to be cross-examined directly by the applicant e.g. where the victim of an assault is a minor or a current/former spouse/civil partner of the applicant.

Appeal process – Legal aid refused

1. **Eligibility.** This appeals process applies only to those cases where legal aid has been refused by AFCLAA. It does not apply in cases where the applicant did not want legal aid, or where the applicant chose a Service lawyer. In these circumstances, if the applicant has changed their mind and wants legal aid funding for a civilian legal representative, they simply complete a new application form and submit to AFCLAA without delay.

2. **Financial Eligibility Threshold.** If legal aid has been refused by AFCLAA because the applicant's disposable income exceeded the Financial Eligibility Threshold, whether or not an Eligibility Review was subsequently carried out, the applicant should refer to paragraphs 85-87 of the main Chapter for guidance; there is no scope to appeal that decision under this process.

3. **Interests of Justice (IOJ) test.** Where an application is refused because it does not meet the IOJ test, the Case Officer responsible will forward a MOD F2263 Pt 2 – Legal Aid Refused certificate, annotated with the reason(s) why the IOJ test wasn't met. In accordance with the basic principles of legal aid, where there is any uncertainty about a case and whether it fully meets the IOJ test, the decision is always resolved to the benefit of the applicant.

4. **Right to appeal.** When an application is refused⁶⁵, the applicant is advised of their right to appeal this decision. They are advised that any appeal should be submitted in writing, and should be forwarded to AFCLAA within 7 days of receipt of the MOD F2263 Pt 2⁶⁶. Any appeal should provide as much additional information as available; this may include further detailed clarification of information previously submitted. The applicant may also seek specific legal advice as part of this process (the applicant will remain personally liable for any costs incurred in seeking such advice); civilian solicitors are accustomed to dealing with the IOJ test in respect of civilian legal aid applications, and, in the majority of cases, will be able to provide more assistance than the DAO/AO or other Service personnel⁶⁷.

5. **Appeal processes.** There are two, slightly different, appeal processes, determined by the stage of the proceedings at the time of the application:

a. **Referral to DSP:**

I. Where an application is refused at this stage, and before the SPA have decided whether to discontinue or direct for trial⁶⁸, the applicant should submit any appeal to AFCLAA in accordance with paragraph 4 above.

⁶⁵ Except where an application has been submitted where no eligibility for legal aid under the terms of AFLAS 11 exists e.g. for internal Admin Action; for a civil matter to be heard in a magistrate's or crown court (or equivalent) in the UK.

⁶⁶ If there are Service, operational or other practical reasons why an appeal cannot be submitted within 7 days of receipt of the completed MOD F2263 Pt 2, the applicant, their DAO/AO or the unit are advised to contact AFCLAA as soon as possible, to request an extension to this time limit.

⁶⁷ Alternatively, personnel based outside the UK (or RN personnel, regardless of location) may seek further advice from a Service legal representative instead.

⁶⁸ If the SPA direct for trial while the appeal process is underway, AFCLAA will automatically review the application in that context, and advise the applicant accordingly; if the SPA decide to discontinue the matter, the appeal process will cease.

II. The Case Officer will review the application, taking all new information into account. If, after reconsideration, the Case Officer is still not satisfied that the application adequately meets the minimum requirements of the IOJ test, they will refer the matter to Head or Deputy Head AFCLAA.

III. If Head or Deputy Head AFCLAA, after reviewing the whole matter, and after seeking independent legal advice if appropriate, considers there is any uncertainty as to whether the application meets the IOJ test in any way, the appeal will be accepted and legal aid will be granted (subject to the applicant making contribution payments, if applicable, as required on the Contribution Order). However, if they are in agreement with the Case Officer's decision, the appeal will fail.

IV. If the appeal is still refused, the applicant will be provided with the grounds for this decision, and advised that they should re-apply for legal aid if/when the SPA direct for trial. A refusal at the DSP referral stage will not be taken into account when assessing any subsequent application for legal aid should the matter be directed for trial and the applicant re-applies for legal aid.

b. Case directed for trial:

I. The applicant should submit their appeal to AFCLAA, in accordance with paragraph 4 above. The Case Officer will carry out an initial review of the application and all information provided to support the application and appeal.

II. If, after reconsidering all relevant information, the Case Officer is satisfied that the IOJ test has been met, legal aid will be granted (subject to the applicant making contribution payments, if applicable, as required on the Contribution Order). However, if the Case Officer is still not satisfied that the application adequately meets the IOJ test, the appeal will be referred to Head or Deputy Head AFCLAA.

III. If Head or Deputy Head AFCLAA, after reviewing the whole matter, and after seeking independent legal advice if appropriate, considers there is sufficient uncertainty about the merits of the application, the appeal will be accepted and legal aid granted (subject to the applicant making contribution payments, if applicable, as required on the Contribution Order). However, if they are in agreement with the Case Officer's decision, the appeal will fail.

IV. In the event that AFCLAA do not revise their original decision to refuse legal aid, even after consideration of all new and relevant information, the matter will be referred by AFCLAA directly to the Office of the Judge Advocate General (OJAG) for consideration by a judge advocate. The judge advocate will review the application, and make a recommendation on whether or not legal aid should be granted. AFCLAA will abide by the recommendation made by the judge advocate.

6. **Unsuccessful appeal.** Even if the applicant chooses not to appeal the original decision to refuse legal aid, or appeals and is unsuccessful at all stages, they can still instruct a legal representative privately. See paragraphs 14-16 or 162-164 of this Chapter for guidance.

3 Service Police interviews⁶⁹ and custody

Service Police interviews

1. **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.

2. **Contact with legal representative.** An accused person may, at any time, consult and communicate privately, in person, in writing or on the telephone, with a legal advisor⁷⁰, unless the Service Police (SP) delay the exercising of this right in accordance with the SPCOP. Where an accused person wishes to obtain the services of a legal advisor, they must make this known to the Arresting or Investigating Service Policeman without delay. As they have an automatic entitlement to free legal advice and assistance, they are not required to complete any formal application for legal aid from the Armed Forces Legal Aid Scheme at this stage.

3. **Access to legal advice.** The accused person, depending on location of the interview⁷¹, may access free legal advice and assistance by requesting:

a. A named legal advisor of their own choice, so long as that legal advisor is willing to accept the fees payable under the Duty Solicitor Scheme (for interviews conducted within England and Wales), or by AFCLAA for interviews carried out elsewhere (including all other parts of the UK); or

b. A legal advisor via the 'Duty Solicitor Scheme' which operates mainly within England and Wales but is usually able to locate a solicitor who is willing to travel; or

c. A legal advisor from a list held in the police station, of those willing to provide legal advice; or

d. A Services legal advisor⁷². This facility is only available to Army and RAF personnel (including civilian personnel attached to Army or RAF units) who are interviewed by the Service police outside the UK, or to RN personnel worldwide.

4. **Legal representative declines fees.** If the named legal advisor is unwilling to accept the fees payable, the accused will be given the opportunity to either request another solicitor, in accordance with paragraphs 3b-d above, or agree fees privately with the legal advisor – such fees, and all ancillary expenses, become the personal responsibility of the accused, and cannot be reclaimed later from public funds.

⁶⁹ Interviews After Caution, carried out in accordance with the Police And Criminal Evidence Act 1984 (Armed Forces) Order 2009 and the Service Police Codes of Practice (JSP 397).

⁷⁰ A legal advisor may be a qualified solicitor, or an accredited or probationary representative.

⁷¹ 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.

⁷² Under an existing Service Level Agreement between the Army and the RAF, the accused will generally have access to a Service lawyer from the other Service. RN personnel have access to RN legal advisors.

5. **Other financial agreements - disallowed.** Where the legal advisor accepts fees payable by the Duty Solicitor Scheme or AFCLAA, that legal advisor may not enter into any other financial agreement with the accused. Any attempts by the legal advisor to obtain additional fees, or reimbursement for incidental expenses, are to be made known to AFCLAA without delay. If the publicly funded legal advisor has any questions regarding fees, they are to be advised to contact either the Duty Solicitor Scheme or AFCLAA directly. There is to be no attempt, by Service police, the accused or any other unit or Service representative, to deal with any such query.

Custody

6. **Custody without charge.** 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 reviews⁷³. The different ways to access a legal advisor, and other relevant information, are detailed in paragraph 3 above.

Custody after charge

7. **Detainees with legal aid.** Detainees who have been granted legal aid for a forthcoming trial will receive legal advice and advocacy for all related custody reviews under that legal aid authority; this includes those who are detained following a period of AWOL, where legal aid may have been previously granted in respect of an unrelated offence. Units are advised to ascertain whether a detainee has legal aid, and therefore has had dealings with a particular legal advisor in respect of another case, before contacting an alternative legal representative.

8. **Detainees without legal aid.** Anyone held in custody after charge but who is not already in receipt of legal aid, is advised to submit a completed application form to AFCLAA without delay. However, it should be noted that a duty solicitor is most likely to be called to represent a detainee at the first custody review, due to the short timescales with which such hearings are arranged. In all subsequent reviews, the solicitors engaged by AFCLAA, following completion of the application process, will attend. In the event that the detainee wishes to retain the same solicitor throughout, full details of that solicitor and their firm must be included in the application form.

9. **Legal aid previously refused.** Any detainee who has previously declined the opportunity to apply for legal aid, or where an earlier application has been refused, may request access to a legal advisor, free of charge, to provide advocacy at any custody review using the same processes as those held in custody without charge.

10. **Legal representation.** As part of the process of applying to have an accused place in custody after charge, the unit are advised 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 that this will always be the case.

⁷³ This applies to all custody reviews, irrespective of who is entitled to carry out that review.

11. **Custody related to AWOL.** It should be noted that most custody after charge applications involve AWOL charges. As these cases do not, as a rule, involve any SP investigation, a duty solicitor is most likely to be approached in the first instance. Should the accused request an alternative legal advisor, the unit is to make initial contact and establish whether the new advisor is suitably qualified⁷⁴ to represent the accused.

12. **Travel and accommodation.** Legal advisors attending upon an accused person in respect of custody with charge reviews, or any Interview After Caution conducted by SP at any Service police station outside England and Wales, are engaged on official MOD business which is funded by AFCLAA but for which no prior authority or documentation is provided. Such legal advisors are therefore fully covered by the provision of Chapter 5 of this JSP; units (including SP, if appropriate) are advised to consult this Chapter before entering into discussions about travel or accommodation with the legal advisor.

⁷⁴ A practising barrister or solicitor, as defined in The Armed Forces (Custody Proceedings) Rules 2009. rule 2(1) and rule 18.

4 Legal aid for criminal courts outside the UK

1. **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;
- 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.

2. **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:

- a. Locally Employed Component (LEC), living and working in their country of residence or nationality;
- b. Personnel, whether UK- or overseas-based, travelling outside their country of duty or residence on personal business, including holidays;
- c. UK-based personnel visiting family or friends based outside the UK;
- d. Overseas-based personnel visiting family or friends also based overseas, but in a different country; or
- e. Non-Service personnel visiting family or friends based or resident overseas. This includes spouses, siblings, non-dependent adult children or dependent children not officially recognised by the MOD as resident in a particular country.

3. **Personal travel.** All personnel who are travelling outside their usual country of residence on personal business, including holidays, are advised to take out suitable personal and travel insurance before starting any journey.

Initial actions

4. **Applicant responsibility.** An individual is personally responsible for informing their CO, as soon as possible, of any ongoing or likely civilian police investigation. Unlike matters prosecuted through the SJS, AFCLAA is not routinely advised of any forthcoming civilian criminal prosecution. AFCLAA is therefore unable to initiate any form of guidance or support until advised of a situation by the unit concerned.
5. **Unit responsibility.** In many countries, criminal matters are brought to court within very short timescales. Units should therefore ensure that AFCLAA is made aware of a potential civilian criminal case at the earliest opportunity. To prevent or reduce unnecessary delay, units should email or fax AFCLAA as soon as they are notified by the individual that they are under investigation by the local civilian police or authority. The AFCLAA group mailbox – LF-MCS-AFCLAA-Group@mod.uk is manned throughout working hours, and is to be used wherever possible. Alternatively, notification should be faxed to 0044 (0)1980 615691 or 94344 5691.
6. **Emergency contact: Out of hours.** Where urgent advice or assistance is required outside standard (UK) working hours, including weekends or 'Stand down' periods (i.e. Christmas, Easter and Public Holidays), the AFCLAA Out Of Hours mobile (0044 (0)7766 511314 should be used. In the event this number is not answered straight away, leave a voicemail or send a text message, providing a direct dial civilian contact number (including international dialling code), to enable a prompt response. See also paragraphs 17-20 below, where the applicant is immediately detained in custody.
7. **Emergency contact: AFCLAA action.** Upon receipt of notification of a potential requirement for legal aid, an AFCLAA Case Officer will contact the unit, by the most appropriate means depending on the unit location and time difference, to advise on further actions required. Units are advised to contact AFCLAA urgently by telephone or email, if a response to the initial notification is not received within one working day.
8. **Application process.** The individual should complete a legal aid application form (MOD F2263), submitting it to AFCLAA by fax or email, without delay. Wherever possible, the documentary evidence required to support the financial information should be forwarded with the completed application form.
9. **Detached duty.** Where the applicant is on detached duty, and thus unable to provide the documentary evidences immediately, the form should be annotated accordingly. In such instances, the applicant should make every attempt to obtain and forward the documentation at the earliest opportunity. The Case Officer reviewing the application will not delay processing an application pending receipt of these documents. Units are, however, to ensure the relevant JPA pay and deductions print-outs are provided from the outset.
10. **AFCLAA process.** The Case Officer will process the application in the usual manner, after establishing eligibility for legal aid provided by AFCLAA. Where eligibility is confirmed (see paragraph 1 above), a MOD F2263A – Contribution Order – will be faxed or emailed to the unit for the defendant to consider, and sign if they wish to accept the offer. If the applicant is found to be ineligible for legal aid provided by AFCLAA (see paragraph 2 above), a MOD F2263 Pt 2 – Legal Aid Refused – will be issued instead.

11. **Applicant and unit responsibility.** The unit and the applicant should give the Contribution Order their urgent attention, as the legal aid application process cannot be completed until the applicant signs this document to confirm acceptance of the Terms and Conditions of legal aid, and returns it to AFCLAA. As soon as the completed Contribution Order, along with proof of contribution payment(s) if appropriate, has been received by the Case Officer, prompt action to formally instruct the legal representative will be taken. Until and unless all stages of the legal aid process are completed according to prescribed procedures, legal aid cannot be granted and AFCLAA cannot be responsible for any costs incurred.

12. **Work carried out in advance of legal aid.** Any work undertaken by the legal representative in advance of formal instructions from AFCLAA, will be at the applicant's private expense; such costs cannot be reclaimed from either AFCLAA or the applicant's unit. An offer or grant of legal aid cannot be backdated to cover work undertaken in advance of AFCLAA issuing formal instructions. See also paragraphs 17-20 below, where the applicant is immediately detained in custody

AFCLAA actions

13. **Funding responsibilities.** Once legal aid has been granted and the legal representative formally instructed, AFCLAA will assume full responsibility for all financial aspects of legal aid in respect of the case, dealing directly with the legal representative at all times. This will include processing requests from the legal representative for authority to incur additional costs, such as authorising expert witness(es) or to commission other reports.

14. **Other financial agreements – disallowed.** Defendants, DAOs and units are not to discuss any financial aspects of legal aid with the legal representative, but should advise them to contact the relevant AFCLAA Case Officer without delay. As part of the normal case preparation process, the defendant and legal representative should discuss any potential request(s) for such funding, as such costs would be included as part of the contribution liability towards legal aid costs, but responsibility for authorising such costs remains with AFCLAA. Defendants are not permitted to enter into any financial agreement with the legal representative, as this may invalidate the grant of legal aid. If, regardless of the circumstances, an instructed legal representative asks for money, other than through AFCLAA, the details are to be reported to AFCLAA immediately.

15. **Post proceedings.** Following the conclusion of the proceedings, the legal representative will submit the bill of costs to AFCLAA for consideration. AFCLAA will review (tax) the bill, and authorise agreed costs for payment.

16. **Action on contributions.** Acquitted defendants (including those whose case does not proceed to court) will receive a full reimbursement of contributions made, plus interest. Convicted offenders who contributions exceed the actual legal aid costs incurred will have the balance of their contribution returned once the legal aid costs have been settled with the legal representative; no interest will be payable on such refunds. In some instances, it may be necessary for the convicted offender to make a further contribution (see Chapter 2 for more details on the application and contribution processes).

Detention in custody

17. **Detention in advance of charge.** If, due to the nature of the offence and/or local custom, a defendant is immediately detained in custody, legal representation should be obtained at the earliest opportunity. In such circumstances, AFCLAA should be contacted as soon as practicable and certainly within one working day of the start of the detention period.

18. **Emergency legal aid funding.** Exceptionally, in such cases, AFCLAA will fund the initial advice and, if applicable, representation in court, in advance of receiving an application for legal aid. However, in order to regularise the situation as soon as possible, the defendant must apply for legal aid in the normal manner at the earliest opportunity. If unit/DAO access to the defendant is restricted by the civil authorities, AFCLAA must be advised without delay so that temporary measures can be instigated.

19. **Delayed application.** Failure to apply for legal aid without good reason may render the defendant liable for the full costs of their legal representation, with the exception of the costs of any initial advice and/or representation provided whilst the defendant was in custody and before AFCLAA could be contacted.

20. **Legal aid declined by applicant.** If the defendant subsequently declines an offer of legal aid, they will remain wholly liable for the full costs of their legal representation, with the exception of the costs for any initial advice and/or representation provided whilst the defendant was in custody and before AFCLAA could be contacted. The defendant may also be liable for any costs incurred between the initial contact with AFCLAA and their subsequent rejections of the legal aid offer, subject to the nature of the costs incurred and the reasons for any delay before legal aid is declined.

Sovereign Base Area Authority

21. **Sovereign Base Area Cyprus.** Personnel investigated and/or prosecuted by the Sovereign Base Area Authority (SBAA) are not eligible to apply for legal aid from AFCLAA. They should seek further advice or assistance from the Service lawyers at HQ BF Cyprus, if available, or apply to the SBAA Court Legal Aid Office for assistance.

5 Miscellaneous

1. **General.** The provisions within this Chapter, where applicable, are subordinate to the relevant single and joint Service regulations contained within the following publications, which remain the overarching and definitive policy-source documents:

- a. JSP 752 – Tri-Service Regulations for Allowances.
- b. JSP 800 – Road Transport – the Management and Operation of Road Transport in the MOD.

Definitions

2. **Applicant.** The term ‘applicant’ includes Service (including ex-Service) personnel, members of the UKBC, and other non-Service personnel who have been granted legal aid by AFCLAA. For practical reasons, all applicants are covered by the provisions contained within this Chapter, unless and except where their specific terms of employment make alternative provision. In particular, UK-Based Civil Servants may wish to consult the relevant Civil Service Policy Rules and Guidance (PRG) for further guidance.

3. **Legal representative.** For the purposes of this Chapter, the term ‘legal representative’ includes any member of the civilian ‘defence team’ where their attendance has been formally authorised by AFCLAA. This includes:

- a. The instructed solicitor or barrister, as named on relevant AFCLAA correspondence, or their representative; and, subject to prior authorisation by an AFCLAA Case Officer:
- b. Expert witness(es) tasked by the instructed solicitor or barrister to undertake investigations and/or interviews in order to prepare a report(s) to assist in the preparation of the defence case; and
- c. Other non-legally qualified agents or staff who may be tasked to obtain information for, or on behalf of, the instructed solicitor or barrister.

4. **Confirmation of status.** In case of doubt regarding the status of any legal representative as defined in paragraph 3 above, the unit or DAO must contact AFCLAA directly for confirmation. This should be done before any travel or accommodation arrangements are made, to prevent any misuse of public funds, services or amenities by unauthorised civilians.

5. **Prior authority.** Before a legal representative incurs any additional costs, other than those already encompassed in the relevant letter of instruction issued by AFCLAA, written prior authority must first be obtained from an AFCLAA Case Officer. Without the appropriate authority, especially in respect of any travel and/or accommodation costs, the legal representative cannot be classified as being on official duty, and is therefore not authorised to travel in any MOD vehicle, and ineligible to use any MOD facilities.

6. **Reasons for requesting prior authority.** Prior authority may be granted to allow the legal representative to undertake a number of different, specified activities in connection with a case e.g.: to visit the site of an alleged incident; to obtain access to documentation or equipment in situ; to attend upon a defendant who is unable to travel; to interview a number of potential defence witnesses in the same location or general area where it is more time and cost-effective to do so. In all cases, the legal representative will be required to submit a formal request to AFCLAA, giving a full justification for the request and, if appropriate, including a written estimate of costs from the service provider.

7. **Confirmation of prior authority.** The DAO or unit representative should satisfy themselves that prior authority has been obtained before accepting any commitments, financial or otherwise, for or on behalf of the legal representative. If there is any doubt, the DAO or unit representative is to contact AFCLAA for further advice or clarification.

Custody and Service Police interviews

8. **Legal representative attendance.** Legal representatives attending upon a detainee in respect of a custody without charge review, or an accused person in respect of any Interview After Caution conducted by SP at any Service police station, held outside England/Wales, are engaged on official MOD business which is funded by AFCLAA but for which no prior authority or documentation is provided. Such legal representatives are therefore fully covered by the provisions of this Chapter, but only insofar as their services are requested by the accused as either a 'duty' or 'own' solicitor, and where such attendance is acknowledged by an appropriate disciplinary authority⁷⁵. Legal representatives attending custody after charge hearings do so in accordance with their formal grant of legal aid instruction; privately instructed legal representatives i.e. where the detainee has refused legal aid, are not on official MOD business and therefore the provisions of this Chapter do not apply. Further guidance on SP interviews and custody is available in Pt 1 Ch 3 and Pt 2 Ch 3 to this JSP.

Travel: Applicants

9. **Applicants and DAO/AAO.** Service⁷⁶, and relevant civilian, applicants in receipt of legal aid for their defence, are entitled to travel at public expense to consult with their legal representative⁷⁷. They should be accompanied by their DAO or equivalent, who is also entitled to travel at public expense. Where necessary, this may also include an 'Appropriate Adult', who may be the parent or guardian of a defendant under 17 years of age.

10. **Duty travel.** As such journeys are considered to be 'duty travel', the general principles laid down in JSP 752⁷⁸ should be applied at all times. Personnel should travel via a recognised direct route, and in the most economical manner. In particular, personnel returning to the UK at public expense should use air trooping flights

⁷⁵ E.g. Service Police; unit Chain of Command; P1 etc

⁷⁶ JSP 752, paragraph 04.0121 refers

⁷⁷ See also paragraphs 5-7 of Annex A to Chapter 2, in respect of travel between Germany or Northern Ireland and mainland UK in some circumstances.

⁷⁸ JSP 752, paragraph 04.0101 applies.

wherever possible. Applicants and their DAO should therefore endeavour to book meetings with their legal representative to coincide with appropriate air trooping flights.

11. Costs. All travel and related costs (including accommodation and subsistence⁷⁹, where necessary) for the applicant and DAO remain a unit responsibility; this includes costs associated with an 'Appropriate Adult' if necessarily travelling with the applicant.

12. Conferences with the legal representative. Unless there are clear operational, Service or compassionate reasons which prevent or restrict an applicant's capability to travel, all meetings with the legal representative (as defined in paragraph 3 above) are to be held at the legal representative's offices or chambers.

13. Medical or detention/custody. Personnel who are unable to travel for medical reasons, or because they are in detention or custody in advance of trial or appeal, will not be expected to travel. In such cases, the unit or DAO should advise the AFCLAA Case Officer at the earliest opportunity so that appropriate authority to incur travel costs can be issued to the legal representative.

14. Service/operational reasons. Where there may be specific Service or operational reasons which prevent an applicant travelling, the unit or DAO are to contact AFCLAA for advice before authorisation to incur travel costs can be issued to the legal representative. Failure to allow an applicant to travel to see their legal representative without suitable justification may cause the unit to be held wholly liable for any travel and subsistence costs (including travelling time) incurred by the legal representative.

15. Face to face meeting. It is essential that the applicant has at least one face-to-face meeting with the legal representative before any trial or appeal. Serious or complex cases will usually require more than one such meeting. In some cases it may be possible, and more practicable, for applicants to use Video-TeleConferencing (VTC) links instead, to hold short conferences with their legal representative. Further advice on this option may be sought directly from AFCLAA.

Travel: Legal representatives

16. Legal representatives. Where AFCLAA have authorised the attendance of civilian legal representatives (as defined in paragraph 3 above), they are classified as MOD contractors⁸⁰, and are therefore permitted to travel at public expense in MOD vehicles, but only insofar as the journey undertaken can be considered as 'duty travel' and is in direct relation to the case in which they are instructed.

17. Use of MOD Vehicles. The use of MOD transport should be limited to situations where it is not possible, practicable or cost-effective for the legal representative to use either public or privately owned transport. This will mainly apply to cases outside mainland UK, and will be limited to transportation between a local train station or airport and the Military Court Centre (MCC) and, if appropriate, local overnight accommodation. There may be other instances where the use of MOD transport may be appropriate; units

⁷⁹ JSP 752, Chapter 3 refers.

⁸⁰ JSP 800, Vol 5, Chapter 2, paragraphs 2.018(a)(i); 2.068; 2.076 apply.

are to be aware of the principles of duty travel when considering such requests, and to seek further advice directly from AFCLAA if in doubt.

18. **Unauthorised travel.** Legal representatives are not permitted to have use of MOD transport for personal or social travel, other than that which is necessary for journeys to and from the MCC or other duty venue. The legal representative should use public transport, including taxi if necessary, and obtain receipts which must be submitted to AFCLAA for consideration along with their final bill of costs. At no time are legal representatives permitted to drive MOD owned or hired road transport.

19. **Unauthorised personnel.** Unauthorised civilian personnel travelling with a legal representative, such as trainees, spouses or other family members, are not permitted to travel at public expense in MOD vehicles. Further confirmation of the status of any member of the civilian defence team should be obtained from AFCLAA before proceeding. Legal representatives using public transport with such unauthorised personnel, instead of making use of available MOD transport, will be unable to reclaim these costs from public funds.

20. **Accommodation (UK and overseas).** Where it is envisaged that the trial or hearing location, likely duration and/or other factors may require overnight accommodation near to the venue, legal representatives must seek prior authority from AFCLAA before incurring accommodation and subsistence costs; at no time are the unit, DAO or applicant able to authorise such expenditure on behalf of AFCLAA. Where overnight accommodation is authorised, the legal representative may elect to stay either in a local Officers' mess or hotel.

21. **Booking accommodation.** The DAO is usually expected to arrange appropriate accommodation, in consultation with the legal representative. However, before making any bookings for accommodation for the duration of a trial or appeal, the DAO **MUST** contact the relevant MCC to establish which hotels are deemed 'Out of Bounds' for the defendant/appellant's legal team because of use by either the judge advocate or Board members hearing the case. This is to prevent any potential conflict of interest.

22. **Mess Accommodation.** Where the legal representative elects to stay in a local Officer's mess, the Mess Manager should be informed that the legal representative is attending on official business, fully funded by the MOD, and should therefore be charged 'entitled persons' rates for food and accommodation. Should the Mess Manager have any queries, AFCLAA will provide specific written authority as necessary.

23. **Receipts.** As with any public transport costs, the legal representative should obtain receipts for all food and accommodation costs, as they will be required to submit all original receipts to AFCLAA along with their bill of costs, for consideration and, if appropriate, payment. Items such as personal phone calls, laundry or entertainment, including alcoholic beverages) are considered to be personal and therefore cannot be reclaimed from the applicant, the DAO or the unit; AFCLAA will not reimburse such items is claimed on the bill of costs.

24. Where the legal representative has obtained prior authority from AFCLAA to travel other than in direct relation to court proceedings, the same regulations regarding travel

and accommodation apply (except the need to verify which hotels may be 'Out of Bounds').

25. **Medical attention/facilities (outside UK).** Should a legal representative fall ill whilst overseas on official business, they are entitled to receive treatment at either a Service Primary Health Care Facility (Medical Centre) or on referral to the DGP (the contracted hospital). For 'non-elective treatment' the legal representative may attend a Medical Centre. The DAO should ensure that appropriate arrangements are made; they should ensure the Court Officer is informed at the earliest opportunity.

26. **Use of facilities.** These facilities should only be used for treatment for conditions arising while the legal representative is overseas on official business; appointments are not to be made to receive treatment or medication for pre-existing conditions unless there is an urgent, and unforeseen, requirement to do so. Legal representatives should be advised that Service medical facilities typically cater for military populations and that many medicines routinely found in civilian practice may not be available. Legal representatives should ensure they carry sufficient medication and medical equipment with them for the duration of their trip.

27. **European Health Insurance Card (EHIC).** Before travelling to another EU country outside the UK, legal representatives are advised to obtain a European Health Insurance Card (EHIC) if they do not already hold one. In the event of an emergency arising whilst in Germany, they can present an EHIC in the interim if transferred to a local hospital (not DGP), as they are covered by BFG HS while on MOD business.

28. **EHIC not valid.** Units based in countries where the EHIC is not valid are to ensure that they are aware of the procedures for obtaining similar medical assistance for legal representatives, as part of the staff clearance process.

29. **Insurance.** As a general rule, the MOD does not purchase commercial insurance for the risks it faces, as it is more cost-effective for the Department to bear the risk of receiving claims. Where it is necessary for a legal representative to travel to/within operational theatres, or travel on MOD aircraft, in connection with a forthcoming trial or appeal⁸¹, and an individual sustains an injury or loss, the MOD will consider any claim on a legal liability basis. Where it can be shown that the loss or injury was caused through MOD negligence, the MOD will pay appropriate compensation.

30. **Life assurance.** If a legal representative's insurance company were to reject a claim under a life assurance policy for reasons solely due to the deployment to an operational area or travel on an MOD aircraft in the performance of official duties for the MOD, then the MOD would indemnify the individual to the extent of the benefit that would otherwise have been payable under the policy.

31. **Travel in operational theatres.** If a need to travel into an operational area is identified, AFCLAA will ensure that those deploying are made aware of the relevant provisions (paragraphs 30-31), and will ensure that appropriate administrative action is taken locally.

⁸¹ Including any other case-related matter, for which prior authority has been obtained from AFCLAA.

6 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 civilian⁸², 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 heard by a judge advocate are not disadvantaged with compared to others participating in similar proceedings within the civilian system in the UK.

2. **Potential requirement identified.** As soon as a potential requirement for public funding under the terms of this Chapter is identified, AFCLAA should be notified without delay, using the most appropriate means available⁸³. This will ensure that all appropriate actions by AFCLAA, the individual and unit are taken promptly and in accordance with equivalent civilian practices where applicable and/or practical. It is important that those contacting AFCLAA have as much information as is available ready to hand, 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 guidance here, each section details the specific Service regulations and other documentation relevant to that proceeding or public funding issue.

⁸² As defined in JSP 830, Volume 1 Chapter 3.

⁸³ I.e. A phone call in the first instance, to any AFCLAA number (see Annex A to Chapter 1) during standard (UK) working hours. Outside those hours, using Hd AFCLAA (landline) or out of hours (duty) mobile number, leaving a voicemail 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. **MOD responsibility.** 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 (see paragraph 8 below for further clarification).

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.

6. **Further general guidance.** In addition, personnel directly affected by legal proceedings concerning the care or protection of children may obtain useful general guidance from the Gov.uk website <https://www.gov.uk/civil-legal-advice> or by phoning (0044) (0)345 345 4 345. Details of solicitors who are experienced in dealing with such proceedings may be obtained from the Law Society website www.lawsociety.org.uk.

7. **Scope of the Armed Forces' legal representation scheme.** 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.

8. **Entitlement to receive public funding.** The provisions within this Chapter are designed to support those who are entitled to receive public funding for legal representation at Assessment or Protections 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.

9. **Status of parent(s).** As the regulations may be applied to any child, regardless of residency status (see paragraph 7 above), the provisions of this Chapter 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 representation 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.

10. **Reviewing representation requirements.** Persons entitled to receive public funding for legal assistance and representation for CP proceedings under the terms of this Chapter 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. This will ensure that the different parties are not unnecessarily represented separately where a common legal position is shared between some or all parties with an interest in the CP proceedings (see also paragraphs 17-19 below).

11. **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 Aid⁸⁴ to AFCLAA without delay. As this type of public funding is without reference to means, the applicant (as described in paragraph 8 above) need only complete:

- a. MOD F2263 – Sections 1 – 4, and 6⁸⁵; and
- b. Insert to MOD F2263 – Application for Public Funding for Representation at Assessment/Protection Order hearing ([Annex A](#)).

Further guidance on the completion of MOD F2263 is available in Chapter 2: Section 2 and Annex B to Chapter 2.

12. **CP Insert to MOD F2263.** The applicant is required to complete the CP Insert to MOD F2263 ([Annex A](#)), with as much detail as possible, to ensure that AFCLAA are aware of all aspects of the case, and can therefore take appropriate action promptly.

⁸⁴ A blank copy of Mod F2263 is available via Unit Admin Offices, or on the AFCLAA website via the internet or Defence intranet.

⁸⁵ The applicant is not required to complete the 'Nature of charge' box, nor Section 5, as any relevant information will be requested on the Insert to MOD F2263, at Annex A to this Chapter.

13. **Prompt action required.** As the timescales between submitting an application for an Assessment or Protection Order to the judge advocate, and the hearing itself, are relatively short⁸⁶, it is imperative that the applicant completes and submits their application form as soon as possible, so that AFCLAA can authorise funding and the instruction of legal representation without delay. Should the applicant have any concerns about the application process, or is aware of any issues which may cause delay to that process, they should contact AFCLAA immediately for advice⁸⁷.

14. **Instructing the legal representative.** AFCLAA will contact the legal representative as soon as possible following receipt of the completed MOD F2263 and CP Insert, to discuss and agree the level of funding and representation required in the circumstances. This will include any issues relating to the legal representative's travel to either the hearing venue overseas, or, if appropriate, to the nearest suitable venue for a live link into the court. The judge advocate hearing the application may authorise the use of a live link if this is considered to be in the best interests of the child, or the most practical and expeditious way for representations to be heard.

15. **The scope of publicly funded legal representation.** The grant of public funding in a CP case will cover legal representation at any subsequent application to have an Assessment or Protection Order varied or discharged. Once an Assessment or Protection Order has been discharged, any subsequent applications for a new Assessment or Protection Order will require a new application for public funding to be submitted to AFCLAA.

16. **Legal representative costs.** At the conclusion of the proceedings, the legal representative is advised to submit their bill of costs to AFCLAA for consideration and payment. As funding is a matter between the legal representative(s) and AFCLAA, neither the applicant nor any other interested party is authorised to enter into any financial agreement with the legal representative, for the payment of fees or any related costs.

17. **The 'Need for Representation' test.** Should those seeking public funding, or their legal representative, once instructed, consider there to be a conflict between themselves and another interested party, they must inform AFCLAA without delay. This is likely to be of relevance where parents or other parties with parental responsibility would appear to have the same interests in the proceedings and, in the case of a couple, they are not living separately and apart.

18. **Separate representation requested.** If separate representation is to be justified on the basis of a known conflict of interests, brief details of the conflict must be given⁸⁸. If a conflict is anticipated, AFCLAA should be given an indication of the nature of this potential conflict. These details are required to provide the necessary justification before incurring the additional costs of instructing separate representation. It is unlikely that children in the same family who are the subject of proceedings will be in conflict with one another at the commencement of the proceedings.

⁸⁶ The Court Administration Officer must give those involved (including parents and/or others with parental responsibility) 7 clear working days' notice of the hearing.

⁸⁷ Using any AFCLAA number during standard (UK) working hours (see Annex A to Chapter 1) or the AFCLAA out of hours (duty) mobile outside these hours.

⁸⁸ 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, but should provide sufficient detail to enable AFCLAA to make a decision.

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

Section 2: Legal representation at Adjudication Hearings (MCTC only)

20. **Reference of a charge to the adjudicator.** Where, under SCSRSR Rule 47⁸⁹, 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 hearing; such legal advice and representation will be at public expense.

21. **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 representative⁹⁰ is instructed without delay.

22. **Detainee 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 will be able 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.

23. **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 [Annex B](#), MCTC staff are to keep accurate records of the date, time and duration of phone calls and conferences; they are also requested to keep a record of the date, time and duration of the adjudication hearing. Once the adjudication hearing is concluded, MCTC staff are to fax the completed Record Sheet to AFCLAA, in order that the legal representative’s bill of costs can be verified and authorised for payment without delay.

24. **Legal representative action: post proceedings.** At the conclusion of the adjudication proceedings, the legal representative is advised to submit their bill of costs to AFCLAA for consideration and payment. As funding is a matter between the legal representative and AFCLAA, neither the detainee nor any other interested party (including MCTC staff) is authorised to enter into any financial agreement with the legal representative, for the payment of fees or any other related costs.

⁸⁹ 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.

⁹⁰ As defined in Part 1, paragraph 1(2) of 2009 SI 1096 – The Service Custody and Service of Relevant Sentence Rules 2009.

Section 3: Legal representation – Appeals to the Court Martial Appeal Court (CMAC)

25. **A convicted person’s appeal to the CMAC.** A convicted person may appeal to the CMAC, whether against both conviction and sentence, or against sentence alone, with the leave of the CMAC only. The trial advocate will advise their client on the merits of such an appeal; where applicable, the original legal aid order issued by AFCLAA for the proceedings in the Court Martial covers the legal representative for the work necessary to prepare and complete the Application for Leave to Appeal (Form 1), and the submission of that form to the CMAC for its decision whether to allow or refuse the application. Should the application be allowed, the CMAC will assume responsibility for all further legal aid matters. See also Chapter 2, paragraphs 144-148.

26. **Appellants without legal aid at trial.** Where the convicted offender did not have legal aid funding for their trial, whether they were unrepresented, or instructed a Service lawyer or a privately funded legal representative, they may apply for legal aid to fund the preparation of their Application for Leave to Appeal to the CMAC. The convicted person should refer to Chapter 2, paragraphs 167 and 229-230 of this publication for further information and guidance on how to complete the application form; depending on their circumstances, they may have a contribution liability, which will become due should their application be rejected by the CMAC.

27. **SPA appeals to the CMAC.** The SPA has the right of appeal to the CMAC where a judge advocate makes a ruling in relation to a trial in the CM. If the prosecution appeal against a ruling is unsuccessful, it follows that the defendant is acquitted on the charge(s) to which the ruling relates. In such instances, the defendant is entitled to be legally represented by their instructed representative; that legal representation is automatically included within the original legal aid order, and no further application for legal aid is required.

28. **Unduly lenient sentences.** If the Attorney General considers that a sentence or any other order made by the CM is unduly lenient⁹¹, they may, with the leave of the CMAC, refer the case to the CMAC for it to review the sentencing of the offender. In such instances, the CMAC will assume responsibility, including funding, for the offender’s legal representation throughout these proceedings. This means that there is no scope for the offender or their legal representative to apply to AFCLAA for public funding.

⁹¹ See JSP 830 – Manual of Service Law, Volume 2, Chapter 31, paragraph 14 for clarification.

Section 4: Legal representation – Incidents arising during the course of duty⁹².

29. 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. Further advice may be sought from Central Legal Services (CLS), Directorate of Judicial Engagement Policy (DJEP) or Head AFCLAA in the first instance.

30. Chain of Command 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 29 above.

31. 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 Chain of Command (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.

32. 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; see Chapter 2, Section 1 for further details.

33. CoC funding withdrawn: Service jurisdiction, including overseas civilian criminal courts. Where the case has been referred to the DSP, AFCLAA will carry out a means test assessment based on the information provided, to determine whether the individual may be eligible to make a contribution, should the CoC funding be withdrawn at any stage during the proceedings. If, following further legal advice or for any other reason, the CoC notify AFCLAA that funding is to be withdrawn, AFCLAA will request a new application for legal aid if more than one full calendar month has passed

⁹² Although primarily in reference to criminal proceedings, this Section (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.

since the initial application, to determine whether there have been any changes to the individual's personal and/or financial circumstances. If appropriate, a new Contribution Order will be issued, which the applicant will need to sign, and if appropriate, make the initial contribution required, before legal aid can be transferred; if the applicant declines the revised offer of legal aid, legal representation funding will be withdrawn and the applicant will become personally liable for any costs incurred after this point. If the applicant receives a Nil Contribution Order, they will still be required to sign and return the Contribution Order, but no further action will be required by either the applicant or the legal representative; it will remain AFCLAA's responsibility to ensure legal costs are attributed to the legal aid budget, not the CoC budget from that point onwards.

34. **CoC funding withdrawn: UK civilian Jurisdictions.** Where the (UK) civilian authorities retain jurisdiction, and the CoC funding is withdrawn at any stage during those proceedings, the individual will need to apply for legal aid through the civilian legal aid scheme and should seek guidance from their legal representative as a matter of urgency; CoC funding will cover costs reasonably incurred from the point of instruction until formal notification of withdrawal has been issued by AFCLAA.

Section 5: Reimbursement of legal fees from central funds⁹³.

35. **Recovery of private legal costs: Financial Eligibility Threshold exceeded.**

Applicants refused legal aid by AFCLAA because they were above the Financial Eligibility Threshold (FET), who were thereafter required to pay privately for their legal representation, may be eligible to reclaim some or all their costs following the conclusion of their case under certain circumstances. If they are acquitted, or their case was otherwise discontinued, they can apply to reclaim their privately incurred legal costs from central funds; this applies only where the applicant was acquitted, or the case discontinued, on all charges in a case. Chapter 2, paragraphs 79-87 provide further guidance on the FET and how it is applied.

36. Eligibility and process. The maximum amount that can be reclaimed is equivalent to that which would have been paid if legal aid had been granted by AFCLAA; reclaimed costs will be limited to either the amount paid by the applicant to their legal representative, or the appropriate legal aid rates, whichever is the lower. Applicants will only be able to reclaim these costs where AFCLAA have previously received a fully completed application for legal aid from the applicant, and thereafter provided the applicant with a Refusal Certificate to show that the applicant's annual disposable income exceeded the FET. To apply for reimbursement, the applicant is to provide suitable evidence of the private legal costs incurred i.e. the legal representative(s) bill(s) of costs, and proof of payments made to the legal representative.

37. Recovery of private legal costs: other. Where an individual incurs private legal costs for any other reason, e.g. because they declined to properly apply for legal aid, or they refused a previous offer of legal aid, from AFCLAA, choosing to instruct a legal representative privately instead, there is no scope to recover such costs from central funds, irrespective of the outcome of the case.

⁹³ Not to be confused with the RAF Central Funds, which is a separate, non public, fund.

**CP INSERT TO MOD F2263 – APPLICATION FOR PUBLIC FUNDING FOR
LEGAL REPRESENTATION AT ASSESSMENT/PROTECTION ORDER
HEARING**

A.	Surname*		
B.	First Name*		
C.	Service/Status*		
D.	Direct contact phone number (to be passed to legal representative)		
E.	Overseas residency status (e.g. Permanent duty station or temporary visitor)		
F.	Type of Hearing	Assessment Order/Protection Order [□]	
G.	Names of the child(ren) concerned in the Proceedings and your relationship to them [‡]	Child's Name	
		Your relationship	
		Child's Name	
		Your relationship	
		Child's Name	
		Your relationship	
H.	Please provide the name of any other interested party to the proceedings, and their role (e.g. parent; step-parent; others with parental responsibility) [‡]	Surname and Initials	
		Role	
		Surname and Initials	
		Role	
		Surname and Initials	
		Role	
I.	Are you aware of any conflict of interest between yourself and any of those named at serial H, which would require you to be separately represented? Please provide brief details [‡]	Yes or No [□]	
J.	Date, Time and Location of Hearing (if known)		

* For cross-referencing only.

□ Delete as applicable.

‡ Continue on a separate sheet if necessary

**SERVICE DETENTION
ADJUDICATION HEARING – RECORD SHEET (MCTC USE ONLY)**

Ser	Detainee information			
1	Surname and initial(s):			
2	Service number:			
3	Service/status:			
	Legal representative information			
4	Name of representative:			
5	Name of firm/chambers:			
6	Address:			
7	Phone and fax numbers: (including dialling code)	Phone:		
		Fax:		
	Attendance details	Date	Start time	Duration
8	Initial phone contact:			
9	Subsequent phone contact or initial attendance (if applicable)			
10	Subsequent contact (if applicable)			
11	Adjudication hearing.			

The completed Record Sheet is to be returned to AFCLAA within 1 month of the adjudication hearing, either by fax: 94344 5691 or 01980 615691, or via email: LF-MCS-AFCLAA-Group@mod.uk.