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Legal Aid
Agency

**Guidance on determining financial eligibility for criminal legal aid
under The Civil And Criminal Legal Aid (Financial Resources And
Contribution Orders) (Amendment) Regulations 2024**

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1. Background and Introduction

1. The following guidance is issued by the Lord Chancellor to the Director of Legal Aid Casework, under section 4(3) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 [“the Act”]. The Director must have regard to this guidance in determining whether an individual is financially eligible for criminal legal aid services. As in practice, applications will be considered by caseworkers within the Legal Aid Agency on the Director’s behalf, this guidance is addressed to the relevant caseworkers responsible for processing such cases.

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2. Criminal advice and assistance

2.1. Mandatory deductions from income

1. Regulation 11(3) of the Criminal Legal Aid (Financial Resources) Regulations 2013 (“the 2013 Regulations”) sets out payments made to an individual during the relevant calculation period that must be deducted when determining their disposable income. The Civil and Criminal Legal Aid (Financial Resources and Contribution Orders) (Amendment) Regulations 2024 (“the 2024 Regulations”) add two additional payments to this list:
 - (i) any Modern Slavery Victim Care Contract (MSVCC) or equivalent payments¹; and
 - (ii) any payment of compensation for a miscarriage of justice made under section 133 of the Criminal Justice Act 1988.

2.2. Discretionary deductions from income

1. The Director may exercise discretion provided by regulation 11(4) of the 2013 Regulations to deduct the following payments made to an individual during the relevant calculation period when calculating their disposable income:
 - (a) any payment that meets all of the following conditions:
 - (i) the payment was made to an individual who is a victim of the fire at Grenfell Tower;
 - (ii) the payment was made to that individual because the individual is a victim of the fire at Grenfell Tower; and
 - (iii) the payment was not made directly to the individual by an individual known personally to the individual; and
 - (b) any payment of compensation made under the Victims of Overseas Terrorism Compensation Scheme 2012.
2. The payments prescribed in regulations 11(4) may be deducted in accordance with regulations 11(5) and 11(6) (see section 6 of this guidance).

2.3. Mandatory deductions from capital

1. Regulation 13(1) 2013 Regulations states that the following payments must be deducted when calculating an individual’s disposable capital:

¹ “Modern Slavery Victim Care Contract or equivalent payment” means any payment of government-funded financial assistance made— (a) in England and Wales under the Modern Slavery Victim Care Contract in accordance with guidance issued by the Secretary of State under section 49 of the Modern Slavery Act 2015; (b) in Northern Ireland under section 18 of the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015; (c) in Scotland under section 9 of the Human Trafficking and Exploitation (Scotland) Act 2015 and regulation 3 of the Human Trafficking and Exploitation (Scotland) Act 2015 (Support for Victims) Regulations 2018.

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- (a) any Modern Slavery Victim Care Contract (MSVCC) or equivalent payment²; and
- (b) any payment of compensation for a miscarriage of justice made under section 133 of the Criminal Justice Act 1988.

2.4. Discretionary deductions from capital

1. The Director may exercise discretion under regulation 13(1A) of the 2013 Regulations to deduct the following payments when calculating an individual's disposable capital:
 - (a) any payment that meets all of the following conditions—
 - (i) the payment was made to an individual who is a victim of the fire at Grenfell Tower;
 - (ii) the payment was made to that individual because the individual is a victim of the fire at Grenfell Tower; and
 - (iii) the payment was not made directly to the individual by an individual known personally to the individual; and
 - (b) any payment of compensation made under the Victims of Overseas Terrorism Compensation Scheme 2012.
2. The payments prescribed under regulation 13(1A) may be deducted in accordance with regulations 13(1B) and 13(1C) (see section 6 of this guidance).

² "Modern Slavery Victim Care Contract or equivalent payment" means any payment of government-funded financial assistance made— (a) in England and Wales under the Modern Slavery Victim Care Contract in accordance with guidance issued by the Secretary of State under section 49 of the Modern Slavery Act 2015; (b) in Northern Ireland under section 18 of the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015; (c) in Scotland under section 9 of the Human Trafficking and Exploitation (Scotland) Act 2015 and regulation 3 of the Human Trafficking and Exploitation (Scotland) Act 2015 (Support for Victims) Regulations 2018.

3. Criminal representation – Magistrates’ Court

3.1. Mandatory deductions from annual gross income

1. Regulation 20(2) of the 2013 Regulations sets out payments made to an individual during the relevant calculation period that must be deducted when determining their gross annual income. The 2024 Regulations add two additional payments to this list:
 - (i) any Modern Slavery Victim Care Contract (MSVCC) or equivalent payment³; and
 - (ii) any payment of compensation for a miscarriage of justice made under section 133 of the Criminal Justice Act 1988.

3.2. Discretionary deductions from annual gross income

1. The Director may exercise discretion provided by regulation 20(2A) of the 2013 Regulations to deduct the following payments made to an individual during the relevant calculation period when calculating their gross annual income:
 - (a) any payment that meets all of the following conditions:
 - (i) the payment was made to an individual who is a victim of the fire at Grenfell Tower;
 - (ii) the payment was made to that individual because the individual is a victim of the fire at Grenfell Tower; and
 - (iii) the payment was not made directly to the individual by an individual known personally to the individual; and
 - (b) any payment of compensation made under the Victims of Overseas Terrorism Compensation Scheme 2012.
2. The payments prescribed under regulation 20(2A) may be deducted in accordance with regulations 20(2B) and 20(2C) (see section 6 of this guidance).

³ “Modern Slavery Victim Care Contract or equivalent payment” means any payment of government-funded financial assistance made— (a) in England and Wales under the Modern Slavery Victim Care Contract in accordance with guidance issued by the Secretary of State under section 49 of the Modern Slavery Act 2015; (b) in Northern Ireland under section 18 of the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015; (c) in Scotland under section 9 of the Human Trafficking and Exploitation (Scotland) Act 2015 and regulation 3 of the Human Trafficking and Exploitation (Scotland) Act 2015 (Support for Victims) Regulations 2018

4. Criminal representation – Crown Court

4.1. Mandatory deductions from annual gross income

1. Regulation 33(2) of the 2013 Regulations sets out payments made to an individual during the relevant calculation period that must be deducted when determining their gross annual income. The 2024 Regulations add two additional payments to this list:
 - (i) any Modern Slavery Victim Care Contract (MSVCC) or equivalent payment⁴; and
 - (ii) any payment of compensation for a miscarriage of justice made under section 133 of the Criminal Justice Act 1988.

4.2. Discretionary deductions from annual gross income

1. The Director may exercise discretion provided by regulation 33(2A) of the 2013 Regulations to deduct the following payments made to an individual during the relevant calculation period when calculating their gross annual income:
 - (a) any payment that meets all of the following conditions:
 - (i) the payment was made to an individual who is a victim of the fire at Grenfell Tower;
 - (ii) the payment was made to that individual because the individual is a victim of the fire at Grenfell Tower; and
 - (iii) the payment was not made directly to the individual by an individual known personally to the individual; and
 - (b) any payment of compensation made under the Victims of Overseas Terrorism Compensation Scheme 2012.
2. The payments prescribed in regulation 33(2A) may be deducted in accordance with regulations 33(2B) and 33(2C).

Cross Reference: see section 6 of this guidance on Applying the Discretion.

⁴ "Modern Slavery Victim Care Contract or equivalent payment" means any payment of government-funded financial assistance made— (a) in England and Wales under the Modern Slavery Victim Care Contract in accordance with guidance issued by the Secretary of State under section 49 of the Modern Slavery Act 2015; (b) in Northern Ireland under section 18 of the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015; (c) in Scotland under section 9 of the Human Trafficking and Exploitation (Scotland) Act 2015 and regulation 3 of the Human Trafficking and Exploitation (Scotland) Act 2015 (Support for Victims) Regulations 2018

5. Crown Court - contribution orders

5.1. Mandatory deductions from annual gross income

1. Regulation 10(2) of The Criminal Legal Aid (Contribution Orders) Regulations 2013 (“The Criminal Contribution Regulations”) sets out payments made to an individual during the relevant calculation period that must be deducted when determining their gross annual income. 2024 Regulations add two additional payments to this list:
 - (i) any Modern Slavery Victim Care Contract (MSVCC) or equivalent payments⁵; and
 - (ii) any payment of compensation for a miscarriage of justice made under section 133 of the Criminal Justice Act 1988.

5.2. Discretionary deductions from annual gross income

1. The Director may exercise discretion provided by regulation 10(2A) of the Criminal Contribution Regulations to deduct the following payments received by an individual during the relevant calculation period when calculating their gross annual income:
 - (a) any payment that meets all of the following conditions:
 - (i) the payment was made to an individual who is a victim of the fire at Grenfell Tower;
 - (ii) the payment was made to that individual because the individual is a victim of the fire at Grenfell Tower; and
 - (iii) the payment was not made directly to the individual by an individual known personally to the individual; and
 - (b) any payment of compensation made under the Victims of Overseas Terrorism Compensation Scheme 2012.
2. The payments prescribed in regulation 10(2A) may be deducted in accordance with regulations 10(2B) and 10(2C) when assessing gross income (see section 6 of this guidance).

5.3. Mandatory deductions from capital

1. Regulation 28(3) of Criminal Contribution Regulations sets out payments that must be deducted when calculating an individual’s disposable specified capital. The 2024 Regulations add two additional payments to this:

⁵ “Modern Slavery Victim Care Contract or equivalent payment” means any payment of government-funded financial assistance made— (a) in England and Wales under the Modern Slavery Victim Care Contract in accordance with guidance issued by the Secretary of State under section 49 of the Modern Slavery Act 2015; (b) in Northern Ireland under section 18 of the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015; (c) in Scotland under section 9 of the Human Trafficking and Exploitation (Scotland) Act 2015 and regulation 3 of the Human Trafficking and Exploitation (Scotland) Act 2015 (Support for Victims) Regulations 2018

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- (a) any Modern Slavery Victim Care Contract (MSVCC) or equivalent payment⁶; and
- (b) any payment of compensation for a miscarriage of justice made under section 133 of the Criminal Justice Act 1988.

5.4. Discretionary deductions from capital

1. The Director may exercise discretion under regulation 28(3C) of the Criminal Contribution Regulations to deduct the following payments when calculating an individual's disposable capital:
 - (a) any payment that meets all of the following conditions—
 - i) the payment was made to an individual who is a victim of the fire at Grenfell Tower;
 - ii) the payment was made to that individual because the individual is a victim of the fire at Grenfell Tower; and
 - iii) the payment was not made directly to the individual by an individual known personally to the individual; and
 - (b) any payment of compensation made under the Victims of Overseas Terrorism Compensation Scheme 2012.
2. The payments prescribed in regulation 28(3C) may be deducted in accordance with regulations 28(3D) and 28(3E) (see section 6 of this guidance).

⁶ "Modern Slavery Victim Care Contract or equivalent payment" means any payment of government-funded financial assistance made— (a) in England and Wales under the Modern Slavery Victim Care Contract in accordance with guidance issued by the Secretary of State under section 49 of the Modern Slavery Act 2015; (b) in Northern Ireland under section 18 of the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015; (c) in Scotland under section 9 of the Human Trafficking and Exploitation (Scotland) Act 2015 and regulation 3 of the Human Trafficking and Exploitation (Scotland) Act 2015 (Support for Victims) Regulations 2018

6. Applying the discretion

6.1. The limbs of the discretion

1. In exercising the discretion to deduct the payments described in sections 2.2, 2.4, 3.2, 4.2, 5.2, and 5.4 of this guidance, the regulations provide:
 - i) The Director may deduct a payment which was for personal harm or was for a specified purpose;
 - ii) The Director should not deduct payments for past or future loss of income;
 - iii) The Director may nevertheless deduct payments falling outside of (i) and (ii) where the legal service that the individual is applying for directly relates to the loss or harm suffered by an individual for which the payment has been made. This means that payments not made for personal harm or a specified purpose, as well as payments made for loss of income, can be deducted in this circumstance.
2. Where it is clear that the payment is mixed – where the payment for personal harm or a specified purpose includes, in part, an amount for a loss of income – then only the part of the payment that is for personal harm or a specific purpose should be deducted.
3. We recognise that it may not always be possible to ascertain which part of the payment is for loss of income (for example, there may not be a clear breakdown of the payment). In these circumstances, the entirety of the payment may be deducted.

Purpose of the payment

4. Limbs (i) and (ii) of the discretion require the Director to consider the purpose of the payment.
5. A payment is considered to have been made for personal harm where the reason for its award was a non-monetary loss or harm caused to the individual. This definition encompasses, for example, damages or similar payments for personal injury, mental distress, damage to reputation and physical inconvenience.
6. As all payments made in respect of a non-monetary loss or harm caused to an individual would constitute a payment for personal harm, it is only necessary to consider whether a payment has been made for a specified purpose where it relates to a monetary loss or harm caused to an individual; for example, where there is a loss of capital or damage to property.

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7. For the purposes of the discretionary deductions, a payment should be considered to have been made for a specified purpose only where it was intended to meet an essential need of an individual. Payments made for an essential need will not include payments made for any financial-only loss, such as loss of profits or the capital value of an asset.
8. To determine whether a need is essential, it may be useful to consider whether the payment is critical to prevent personal risk to an individual, to ensure their health and safety, or to secure their personal (non-financial) wellbeing and independence.
9. Circumstances where a payment is likely to be made for an essential need include, but are not limited to, where the payment is made for the following reasons:
 - (a) To facilitate the provision of care, such as assistance with eating and drinking, cooking food and washing;
 - (b) Provision and management of medical and therapeutic treatments;
 - (c) To enable necessary communication with others;
 - (d) To enable the recipient to work;
 - (e) To repair damage to a main residence which prevents the occupant achieving a reasonable standard of living (such as where repair is needed to a broken boiler which prevents the occupant from adequately heating the residence);
 - (f) To allow the recipient independence (for example, where the payment is to replace a car where the recipient has no access to public transport, or to fund travel by taxi or public transport where the individual would otherwise be unable to travel).
10. A payment should not be considered to meet an essential need where it was awarded for a purpose that is merely desirable to the recipient. For example, a payment to make repairs following flooding of a main residence is likely to be considered essential, as the occupant will otherwise have an unreasonable standard of living. However, a payment to make repairs following flooding of a holiday home is only desirable, as this will not affect an individual's standard of living.
11. For that reason, we expect that the following types of payments would not usually suggest an essential need:
 - (a) Payments to repair damage to second residences, holiday homes and other property that do not constitute a main residence (unless the individual in receipt of the payment is a landlord, and the payment has been made to enable essential repairs to be made in order to maintain the standard of living of tenants residing there);

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- (b) Payments to repair damage to a main residence which is purely cosmetic and does not affect the occupant's ability to achieve a reasonable standard of living there;
- (c) Transport for non-essential purposes such as socialising or hobbies, unless not having that transport would compromise the recipient's wellbeing, deprive them of their independence or put them at personal risk.
- (d) Repairing damage to personal property, unless it is necessary to meet one of the needs listed in **paragraph 6.1.9**.

The third limb of the discretion

12. Regardless of the purpose of the payment, the Director may deduct the whole of a payment where the criminal legal aid that the individual is applying for relates to the loss or harm suffered by an individual for which the payment has been made.
13. This is to ensure that individuals are not required to use payments made for a loss or harm to fund legal services that are directly related to the loss or harm they have suffered.
14. In determining whether this limb of the discretion applies, the Director may have regard to the following indicative factors:
 - (a) Whether the matter for which criminal legal aid is being sought ("harm B") has arisen as a direct consequence of the underlying loss or harm that the compensation was awarded for ("harm A");
 - (b) Whether harm B is temporally closely linked to harm A. If the matters occurred at or around the same time, it may be more likely that they are directly related;
 - (c) Whether harm B is a direct consequence of harm A.
15. For example, two matters are likely to be considered directly related where the applicant has received compensation for harm suffered during an incident and is seeking criminal legal aid for a defense against prosecution in relation to their own actions during or in relation to that incident.

7. Transitional Cases

1. Regulation 5 of the 2024 Regulations sets out that any amendments made to the 2013 Regulations and the Criminal Contribution Regulations by the 2024 Regulations will apply to an application for criminal legal services:
 - (a) Made before 20 November 2024;
 - (b) That has yet to be determined; and
 - (c) has not been withdrawn as of 20 November 2024.
2. The circumstances in which an individual, who has previously been refused representation under section 16 of the Act on the grounds of means, can renew their application are governed by Regulations 27 and 36 of the 2013 Regulations for Magistrates' Court and Crown Court proceedings respectively. Regulation 5 of the 2024 Regulations provides that Regulations 27 and 36 should be read so as to allow individuals who were refused legal aid before 20 November 2024 on the grounds of means to renew their application where:
 - (a) the criminal proceedings for which representation was sought have not concluded; and
 - (b) the new mandatory and discretionary income and capital deductions introduced or expanded under the 2024 Regulations may affect the individual's financial eligibility.
3. For the purposes of the transitional arrangements, regulation 5(8) of the 2024 Regulations amends the Criminal Contribution Regulations where:
 - (a) an individual made an application for representation under section 16 of the Act in Crown Court proceedings that was determined before 20 November 2024;
 - (b) the individual is required to make income or capital contributions; and
 - (c) the new mandatory and discretionary income deductions introduced or expanded under the 2024 Regulations may have applied if the determination had been made on or after the 20 November 2024.
4. Where the above circumstances apply, regulation 18 of the Criminal Contribution Regulations should be read so as to allow an individual to request a reassessment of their income and, where such a request is made, to require the individual to provide evidence that the relevant payment deductions may have applied to them.
5. If a reassessment under regulation 18 in the above circumstances results in:
 - (a) an individual's liability to make income contributions being withdrawn; or
 - (b) an individual's liability to make income contributions being varied the relevant date of the withdrawal or variation for the purposes of regulations 20 and 21 is 20 November 2024.
6. Regulation 5(8)(e) of the 2024 Regulations sets out that if a reassessment in the above circumstances results in an individual's liability to make income

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contributions being withdrawn or varied, regulation 22 of the Criminal Contribution Regulations should be read as though the individual's liability for overdue payments due before 20 November 2024, or on or before the date the proceedings concluded if earlier, remains.

7. Regulation 5(8)(g) of the 2024 Regulations sets out that, if a reassessment in the above circumstances results in an individual's liability to make income contributions being reduced after one or more contribution payments have already been made, the relevant date for the purposes of calculating any repayment due to the individual under regulation 24 of the Criminal Contribution Regulations (repayment following a reassessment of income) is 20 November 2024.
8. Regulation 5(8)(h) of the 2024 Regulations sets out that regulation 35 of the 2013 Criminal Contribution Regulations should read as though the Director must reassess an individual's capital if an individual makes a request for reassessment of their capital within 28 days of the date on which the capital contribution order was issued, or otherwise with a reasonable excuse and, where such a request is made, requires that individual to provide evidence that the new mandatory and discretionary capital deductions introduced or expanded under the 2024 Regulations apply.

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