



Procedure

The Armed Forces Legal Aid Scheme (AFLAS)

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Introduction

This document sets out the procedure for Service personnel (including ex-Service) and relevant civilians who wish to apply for legal aid through the Armed Forces Legal Aid Scheme (AFLAS). It should be read in conjunction with the Armed Forces Legal Aid Scheme Policy which sets out the principles/rules governing legal aid funding.

It is not intended for this document to be read cover to cover – you should only read the section that is relevant to you at the time.



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CHAPTER 1: LEGAL AID PROCESSES

1 Legal aid for trials: CM, SCC and Criminal Courts Overseas

1.1 Case referred to the DSP / directed for trial

Where an individual's case has been referred to the Director of Service Prosecutions (DSP) for a decision on whether the charges will result in a prosecution; or whose case has been directed for trial (CM or SCC), should apply for legal aid at the earliest opportunity. A [digital version](#) of the application for legal aid is available for personnel who have access to a MODNET account; for those personnel (ex-Service) who cannot access MODNET, an application can be made using [MOD Form 2263](#) - Application for Legal Aid - and [MOD Form 2263C](#) - Hardship Review.

1.2 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 and procedures as those prosecuted through the Service Justice System (SJS). Units are advised to contact AFCLAA immediately upon notification of arrest and/or charge to initiate the process, as overseas civilian cases tend to proceed to trial within shorter timeframes. [Chapter 3](#) provides more information for units and should always be referred to in the first instance.



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2 How to apply for Legal Aid

2.1 Completing the application form

The legal aid application is to be completed by the applicant, with assistance from HR admin/discipline staff and/or the DAO. The form must be completed in all cases, even where legal aid is not required; this will show an awareness of the availability of legal aid and will provide a record of the applicant's decision in respect of legal aid. The completed form must be electronically signed by both the applicant and Certifying Officer and submitted to AFCLAA as soon as possible, so it can be processed, and an offer of legal aid made without delay. [Annex A](#) is a guide to completing the form and will ensure all relevant information is captured for a means test assessment and contribution liability, if any.

2.2 Documentary evidence

All applicants are required to provide suitable documentary evidence, where applicable, of all income and outgoings included in their application form. The three most recent pay statements are also required to support the application; JPA screenshots of pay statements for the relevant months are acceptable. Evidence to support any Hardship declared is to be submitted at the same time as the application form; should documentary evidence not be readily available at this time, applicants are allowed a maximum of 21 (calendar) days to provide all requisite evidence, before any sanctions are applied.



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3 The Contribution Order

Once the completed application form for legal aid has been received and the means test completed, a Contribution Order will be issued by AFCLAA and will contain full details of any income and/or capital/equity contributions required.

3.1 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 scanned document by email to MCS-AFCLAA-group@mod.gov.uk. 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.

Applicants who are assessed as a Nil contribution from income 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.

3.2 Contribution Order: AFCLAA action

Upon receipt of the signed and witnessed Contribution Order, and where the applicant has accepted an offer of legal aid, the AFCLAA Case Officer will contact the legal representative, chosen by the applicant or nominated by AFCLAA, to establish their acceptance of the case. Upon acceptance, AFCLAA will grant legal aid and issue the formal legal aid instruction. A copy of the instruction letter will be sent to the unit for information, a copy of the letter must be passed to the applicant immediately.

Where an offer of legal aid has been declined by the applicant, the AFCLAA Case Officer will issue a legal aid refused certificate (MOD Form 2263A) to the unit, stating the reasons why legal aid is not in place, a copy of the certificate must be passed to the applicant. Should the applicant change their mind, they may re-apply for legal aid at any point up to the time of trial or before sentencing by submitting a new application.

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4 Payment of Income Contributions

4.1 Payment options

The applicant becomes liable for income contributions within 28 days of acceptance of the legal aid offer; where possible, all payments are taken each month, directly from JPA, for the duration of the contribution period. Due to restrictions with the JPA payroll cut-off dates, if acceptance of legal aid (signed Contribution Order) is received before the main payroll cut-off date, the first contribution will be taken from JPA at the end of that month. Where an acceptance is received after the main payroll cut-off date, a cash payment to cover the first contribution must be made, via the unit admin staff, within 28 days of receipt of acceptance. However, the applicant can choose to make a single lump-sum payment, in cash, of the full amount if preferred.

4.2 Payment direct from JPA

The second, and all subsequent contribution payments made directly from salary via JPA, will be set up by the AFCLAA Case Officer from the outset, to be taken at the end of each consecutive month for the duration of the contribution period. Not only will this ensure regular, prompt, payments therefore, reducing the risk of incurring the default penalty, but will also ensure the MDR regulation is applied where appropriate.

4.3 Payments for non-Service personnel

Non-Service personnel, unable to make automatic payments from salary, are to make arrangements to pay by cash or cheque through the unit staff responsible for providing administrative support.

4.4 Payment before trial

It is not necessary to complete all payments before trial, so long as payments are made promptly and in accordance with the authorised payment plan. Where instalments remain unpaid at the conclusion of the proceedings, the AFCLAA 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. Where it is deemed that contributions already received will likely cover legal aid costs, or the full amount of any outstanding contributions are not required, AFCLAA will take the necessary action on JPA to either stop or amend further contributions until all legal bills have been determined.

4.5 Defaulted payment penalty

Applicants remain responsible for ensuring all payments are made promptly and as stated on their Contribution Order regardless of whether payments are made via JPA or in cash. 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, thereby increasing the total



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income contribution payable to 9 x monthly contributions instead of 8. Those with a MDR revised payment plan will be re-assessed to take account of the default penalty payable, which may increase the number of monthly instalments required whilst remaining within the MDR limitations.

4.6 Contribution collection: AFCLAA responsibility

The Case Officer responsible for an individual's case will undertake the necessary action on JPA upon receipt of the signed Contribution Order. The maximum contribution will be input onto JPA from the outset, spread over the agreed 8-month contribution period and paid directly into the legal aid budget UIN; AFCLAA will maintain responsibility to manage those payments thereafter. Unit admin staff will be informed of all actions undertaken on JPA. Should an individual leave the services before the contribution payments are complete or is dismissed as a result of their court martial proceedings, debt recovery action will automatically be initiated where it becomes necessary to obtain any unpaid contributions.

4.7 Contribution collection: unit responsibility

Where automatic contribution payments from salary are not possible because the applicant is no longer serving, unit admin staff will be required to assist those individuals in making the requisite payments, either by cash, cheque or BACS. Units must assign those payments to the legal aid budget UIN and provide AFCLAA with the COMS receipt as a record of the transaction. Likewise, should the applicant, choose to make a single lump-sum payment of the full amount, in cash, units are to facilitate this transaction and provide AFCLAA with a receipt as confirmation.



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5 Actions following the conclusion of proceedings

5.1 Acquittal or discontinuance

Upon receipt of the Trial Notification (TRN1), issued by the relevant Military Court Centre, the AFCLAA Case Officer will authorise a refund of all income contributions paid, plus a further 2% interest, within 1 working day of receipt.

5.2 Acquitted on some but not all charges

Applicants acquitted on some, but not all charges on an indictment, will not receive a full refund. Upon receipt of the TRN 1, the AFCLAA Case Officer will review the income contributions already paid and any contributions outstanding up to the point of receiving the TRN 1. Where contributions already paid are likely to exceed the likely legal costs, payment of any further contributions may be suspended. Where contributions already paid do not cover likely legal costs, the existing payment plan will remain in force until such time all legal aid fees have been agreed and costs have been determined.



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6 How to apply for legal aid: Appeals and Elections for trial

The application form (MOD F2263) is to be completed by the applicant (even where they do not want legal aid) in the same way as applications for trial by CM, with assistance from HR admin/discipline staff and the AAO as necessary and submitted to AFCLAA. [Annex A](#) is a guide to completing the form.

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 [para 2.2](#) for further details on evidence requirements).

A properly completed application will enable AFCLAA to process the application promptly and accurately assess whether the applicant may be liable to make a contribution or not. 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.



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7 Actions following the conclusion of appeal and election proceedings

Once AFCLAA receive formal notification of the outcome of proceedings (TRN1 – election for trial or TRN2 - summary appeal), the AFCLAA Case Officer will advise the defendant/appellant of their contribution liability, if applicable, and payments as necessary. The appellant's contribution is determined by the type of appeal lodged, and/or the outcome of the appeal or elected trial.

7.1 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, the AFCLAA Case Officer will input payment details onto the applicant's JPA pay account, to ensure appropriate recovery action is taken.

If the final 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, and those final costs are lower than the maximum contribution payable the payment plan will be amended by the AFCLAA Case Officer as appropriate.

7.2 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 either £1,000 or their actual legal aid costs, whichever is the lower. Contributions will become liable upon the conclusion of proceedings; payment of the contribution can be paid either as a lump sum or in instalments as agreed with AFCLAA. The AFCLAA Case Officer will input payment details onto the applicant's JPA pay account, to ensure appropriate recovery action is taken.

7.3 Overpayments

Once the final fees have been assessed by the AFCLAA Case Officer and subsequently agreed with the legal representative, AFCLAA will action a refund of any overpayment to the applicant.



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8 Applications to the Court Martial Appeal Court (CMAC)

8.1 Application for leave to appeal accepted

Once the application (Application for Leave to Appeal (Form 1)) 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.

8.2 Application for leave to appeal rejected

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.



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CHAPTER 2: SERVICE POLICE INTERVIEWS AND CUSTODY

9 Custody After Charge

9.1 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; 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. Where time constraints allow, units are advised to contact AFCLAA directly 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.

9.2 Detainees without legal aid

Anyone held in custody after charge 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.

For all subsequent reviews, and provided the application process has been completed in time, the solicitors engaged by AFCLAA will attend. If the detainee wishes to retain the same solicitor throughout, full details of that solicitor and their firm must be included in the application form.

9.3 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 still 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.

The detainee is to be made aware that the legal advisor is only able to provide advice and representation in respect of the custody review; they are not authorised to provide advice on any other matters, including any subsequent proceedings. If the detainee wishes to retain the legal advisor to represent them, should the matter be directed for trial, they will either have to obtain legal aid or instruct the legal advisor privately.

9.4 Custody related to AWOL

It should be noted that most custody after charge applications involve AWOL charges. As these cases do not generally involve any Service Police investigation, a duty solicitor is most likely to be approached however, should the accused request an alternative, the unit is to



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contact that legal advisor and establish whether they are suitably qualified (a practising barrister or solicitor, as defined in [The Armed Forces \(Custody Proceedings\) Rules 2009](#) (rule 2 (1) and rule 18) to represent the accused.



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CHAPTER 3: LEGAL AID FOR CRIMINAL COURTS OUTSIDE THE UK

10 The Application Process

10.1 Applicant and unit responsibility

Once an individual's eligibility to apply for legal aid through AFCLAA has been established, the applicant should complete a legal aid application (MOD F2263) in the same way as applications for trial by CM, with assistance from HR admin/discipline staff and the AAO as necessary and submit to AFCLAA without delay. [Annex A](#) is a guide to completing the form.

10.2 Documentary evidence

Wherever possible, the documentary evidence required to support the financial information should be provided with the application form. AFCLAA should be notified where the applicant is on detached duty and is unable to provide the documentary evidence immediately. In such instances copies of online bank statements should be provided wherever possible.

The AFCLAA Case Officer reviewing the application will not delay processing an application pending receipt of documentary evidence however, units are to ensure the relevant JPA pay statements are provided from the outset.

10.3 Contribution order

Upon receipt of a completed application and eligibility for legal aid has been established through means testing, AFCLAA will email a Contribution Order with an offer of legal aid to the unit for the applicant's consideration.

The Contribution Order should be given urgent attention, as the legal aid application process cannot be completed until the applicant signs and returns this document to AFCLAA. As soon as the completed Contribution Order has been received by AFCLAA, prompt action to formally instruct the legal representative (if appropriate) will be taken.



CHAPTER 4: TRAVEL AND ACCOMMODATION REGULATIONS

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 Expenses and Allowances](#)
- b. [JSP 800 Volume 5 - Road Transport Policy](#)

11 Definitions

11.1 Applicant

The term 'applicant' includes Service (including ex-Service) Personnel (PSSL), and relevant civilians (CSSD) 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.

11.2 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 may include any or all of the following:

- a. The instructed solicitor and/or barrister, as named on relevant AFCLAA correspondence, or their representative(s) e.g. an alternative solicitor or barrister from within their organisation or another solicitor, appointed as an agent for a specific time or piece of work connected to the case, **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, for which AFCLAA has provided written prior authority; and
- c. Other non-legally qualified agents or staff, e.g. trainee solicitor, pupil barrister or barrister's clerk, who may be tasked to obtain information for, or on behalf of, the instructed solicitor or barrister.

In case of doubt regarding the status of any legal representative as defined above, the unit or DAO is to contact AFCLAA directly for confirmation. The DAO should also familiarise



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themselves with the requirements for prior authority (paras 38.3 - 38.4 below), before any travel or accommodation arrangements are made, to prevent any misuse of public funds, services or amenities by unauthorised civilians.

11.3 Prior authority

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

11.4 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 etc.

In all circumstances, the legal representative is required to submit a formal request to incur such costs to AFCLAA, providing full justification and, if appropriate, including a written estimate of costs from the service provider. If AFCLAA are satisfied that the request is justified, a written authority, detailing the agreed work and costs, will be provided to the legal representative.



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CHAPTER 5: DISCRETE AREAS OF NON-CRIMINAL PUBLIC FUNDING

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

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 available, e.g. a phone call in the first instance, to any AFCLAA number during standard (UK) working hours. Outside of those hours, using the out of hours (duty) mobile number **(0044) (0)7766 511314**, leaving a voicemail if necessary. Emails should be marked 'Urgent' and sent to the group mailbox MCS-AFCLAA-Group@mod.gov.uk as this mailbox is monitored throughout the working day. 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.

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.

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12 Legal Representation - Child Assessment or Protection Order Hearings

12.1 Applying for publicly funded legal representation

Persons who require publicly funded legal representation for Assessment or Protection Order hearings must submit a completed MOD Form 2263 - Application for Legal Aid - to AFCLAA without delay. As this type of public funding is without reference to means, the applicant need only complete:

- a. MOD Form 2263 - Sections 1-4 '(Nature of Charge' box does not need to be completed) and Section 6; and
- b. Insert to MOD Form 2263 - Application for Public Funding for Representation at Assessment / Protection Order Hearing ([Annex B](#)).

Further guidance on the completion of MOD Form 2263 is available in [Chapter 1, Section 2](#) and [Annex A](#).

The CP Insert to MOD Form 2263 ([Annex B](#)) must be completed 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.

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

12.3 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 in the best interests of the child, or the most practical and expeditious way for representations to be heard.



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12.4 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.

12.5 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.

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13 Legal Representation - incidents arising during the course of duty

13.1 Chain of Command action

Where an individual is made aware that they are, or might be, subject to legal proceedings arising from an act committed in the course of their employment, duties, or work-related activities, 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 [2024DIN01-005](#) 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, and if they require AFCLAA to provide case management support, 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 within the CoC to be kept informed of all funding issues and decisions.

13.2 Unit and individual actions

The individual is to complete Sections 1-4 and Section 6 of [MOD Form 2263](#), the legal aid application form, or the [digital version](#), to provide AFCLAA with the authority to engage legal representation on behalf of the individual and submit to AFCLAA by email to MCS-AFCLAA-Group@mod.gov.uk. Thereafter, normal AFCLAA casework procedures will be followed; see [Chapter 1](#) for further details.

13.3 CoC funding withdrawn: Service jurisdiction or overseas civilian criminal courts

If, following further legal advice or for any other reason, the CoC notify AFCLAA that funding is to be withdrawn whilst proceedings are still underway, the individual(s) concerned will be required to apply for legal aid from AFCLAA without delay, following the procedures laid down in [Chapter 1, Section 2](#).

Thereafter, AFCLAA will issue a Contribution Order 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 this 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, rather than the CoC, budget from that point onwards.



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14 Legal Representation - Incidents arising during the course of duty: Iraq or Afghanistan (Op Telic / Op Herrick)

14.1 The Application Process

Those who applying for legal aid funding under the terms of the Iraq/Afghanistan operational exemption are to complete [MOD Form 2263](#) - Application for Armed Forces Criminal Legal Aid Iraq (Op Telic) or Afghanistan (Op Herrick).

As the applicant is automatically exempt from making legal aid contributions, they are not required to provide any personal or financial information, other than their name, Service number and rank for identification purposes only (unless Special Identity Personnel (SIPs)).

The applicant should confirm the name and contact details of the legal representative they wish to be instructed or confirm that they wish AFCLAA to nominate a legal representative on their behalf. Thereafter, the applicant's unit (or administrative unit, for ex-Service applicants) are to complete the unit and DAO contact details, and submit the form to AFCLAA by email to MCS-AFCLAA-Group@mod.gov.uk.

Upon receipt of the completed form, AFCLAA will verify the applicant's eligibility for exemption, before contacting the legal representative to confirm their acceptance of the case in accordance with AFCLAA's standard terms and conditions; if the applicant's nominated legal representative is unwilling or unable to accept instruction, AFCLAA will inform the applicant, via their DAO or unit, seeking an alternative nomination or authority to nominate on the applicant's behalf.

Once the legal representative accepts the case, and is formally instructed, the case will be managed according to AFCLAA standard procedures.



15 Support Available

15.1 AFCLAA Policy and Procedure Queries

Personal questions not answered within this publication and cases of doubt over eligibility or entitlement are to be directed as follows:

- a. **Unit HR First POC** for all serving (ex-serving) personnel for any aspect of personnel administration.
- b. **AFCLAA by email** at MCS-AFCLAA-Group@mod.gov.uk for all legal aid enquiries.
- c. **Telephone** - 94344 8915 (Mil) or 01980 618195 (STD).
- d. **AFCLAA Duty Mobile** - 07766 511314 (out of hours emergencies only).



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16 Roles and Responsibilities

MOD expects all those involved to apply this procedure in accordance with the following generic roles and responsibilities:

Role	Key responsibilities in carrying out this procedure
Service Person	Responsible for: <ul style="list-style-type: none">• understanding the primary purpose of the AFLAS and the support available to them.• providing honest and accurate information for legal aid eligibility/liability purposes.• understanding the terms and conditions of the legal aid contract once legal aid is granted.
Unit and Chain of Command	Responsible for: <ul style="list-style-type: none">• understanding the primary purpose of the AFLAS and support available to personnel.• providing encouragement, guidance and support to personnel through the legal aid application process.• providing continuity and acting as a focal point for various elements of the SJS.• working closely with AFCLAA to identify and resolve real or potential problems at the earliest opportunity.
Defence Business Services (DBS)	Responsible for: <ul style="list-style-type: none">• providing MI, as required.• publishing announcements in support of the Policy SME.• uploading and managing documents and other material within internal and external sites.• answering employee queries through the DBS Enquiry Centre or through the Digital Workplace (DWP).• providing new or amended services to meet the needs of policy, as required, and in accordance with the CR process
Policy SME	Responsible for: <ul style="list-style-type: none">• engaging stakeholders (including DBS) on proposed policy or procedure changes.• drafting changes to policy sets and passing to DBS for publication.
CDP	Responsible for: <ul style="list-style-type: none">• the sign-off and fair and consistent application of this procedure.• deciding whether a policy exception can be made after consulting the Policy SME.• overseeing compliance audit requirements and compliance action plans that arise as a result.



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The Armed Forces Legal Aid Scheme (AFLAS)

17 Document Information

17.1 Document Coverage

This procedure supersedes all previous MOD procedures on The Armed Forces Legal Aid Scheme. The totality of documents included in this policy set, of which this document is a part, are listed in the Policy and Guidance Portal.

17.2 Document Information

Filename:	The Armed Forces Legal Aid Scheme Procedure
Document ID:	To be confirmed
Owning Function / Team:	The Armed Forces Criminal Legal Aid Authority
Service Owner (1*):	Conduct, Equity and Justice Directorate - SJDC
Approving Authority:	Chief of Defence People

17.3 Document Versions

Version	Publication Date	Revision History	Revised Pages
1	Jul 2024	Policy Simplification Revamp	N/A

MOD will review this Procedure in two years or when changes to legislation or best practice dictates.

17.4 Linked JSPs

JSP No	JSP Name
752	Tri-Service Regulations for Expenses and Allowances
754	Tri-Service Regulations for Pay
800 Vol 5	Road Transport Policy
830	Manual of Service Law
834	Safeguarding
837	Service Codes of Practice - Custody & Detention & Committal to Civil Prison
839	Service Justice System - Services for Witnesses and Victims of Crime



18 Glossary

AAO	Appellant's Assisting Officer
AFCLAA	Armed Forces Criminal Legal Aid Authority
AFLAS 11	Armed Forces Legal Aid Scheme 2011
AWOL	Absent Without Leave
BFSWS	British Forces Social Work Service
CEA	Continuity of Education Allowance
CILOCT	Charge In Lieu Of Council Tax
CM	Court Martial
CMAC	Court Martial Appeal Court
CMRS	Court Martial Report Service
CO	Commanding Officer
CoC	Chain of Command
CP	Child Protection (Regulations; Public Funding)
CSSD	Civilian Subject to Service Discipline
DAO	Defendant's Assisting Officer
DSP	Director of Service Prosecutions [Authority]
HQ MCS	Headquarters Military Court Service
IAC	Interview After Caution (Service Police station interview)
IOJ (test)	Interests of Justice (test)
JAG	Judge Advocate General
JPA	Joint Personnel Administration
JSP	Joint Service Publication
KC	King's Counsel - senior barristers who are experienced in the most serious and/or the most complex trials.
LA	Legal Aid
LAA	Legal Aid Agency (civilian legal aid)
LEC	Locally Employed Component (not eligible for legal aid through AFCLAA)
LiP	Litigant in Person
MCC	Military Court Centre (part of the MCS)
MCS	Military Court Service (generally referring to HQ MCS, Bulford)
MCTC	Military Corrective Training Centre, Colchester
MDR	Minimum Drawing Rate
MOD	Ministry of Defence
MSL	Manual of Service Law (JSP 830)
NFG	Notes For Guidance: <ul style="list-style-type: none"> • 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 (Annex A).
OJAG	Office of the Judge Advocate General



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P1	Personnel and Admin (Discipline) department [RAF]
PACE	Police And Criminal Evidence Act (commonly in reference to (Service) Police station interviews)
POC	Point of Contact
PRG	Policy, Rules and Guidance [Civil Service Regulations]
PSR	Pre-Sentence Report
PSSL	Persons Subject to Service Law
RAF	Royal Air Force
RN	Royal Navy
SAC	Summary Appeal Court
SBAA	Sovereign Base Area Authority (Cyprus)
SCC	Service Civilian Court
SCE	Service Children's Education
SCSRSR	Service Custody and Service of Relevant Service Rules 2009
SFA	Service Family Accommodation
SJS	Service Justice System
SLA	Service Living Accommodation
SP	Service Police
SPA	Service Prosecuting Authority
SPCOP	Service Police Codes of Practice (JSP 397)
SSA	Staff Support Assistant [Army]
TRN (1 or 2)	Trial Result Notification (1: trial; 2: Summary Appeal)
UKBC	UK-Based Civilian (i.e. CSSD but not LEC)
VTC (aka Live Link)	Video Tele-Conferencing [facilities]



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Term	Definition
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] 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 Form 2263 - Application for Legal Aid] Certain financial outgoings which can be 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 the Service Police Codes of Practice (SCOP), available directly from the Service Police station.
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.
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 5, Section 12 .
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 3 .
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.
Contributions: Capital/Equity (trials only)	The post-trial contribution which may become due (following conviction only) <u>IF</u> 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.



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Term	Definition
Contributions: Income (trial and referral)	The contribution payable from disposable income following assessment of the applicant's personal and financial circumstances.
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 1, Section 7 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 to 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 the (LA) Applicant or the client, depending on the situation.
Dependants	Family members, or persons otherwise financially dependent upon PSSL or CSSD, where MOD has recognised the dependant 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 3, para 10.2 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 2 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 should discuss their requirements with their client before requesting prior authority for funding from AFCLAA. See also 'Prior Authority' definition below.
Financial Eligibility Threshold	The level of disposable income available to the applicant, above which there is no automatic entitlement for legal aid.



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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 COMS 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) within the maximum 21 days.
Interests of Justice (IOJ) test	Used to determine whether representation at public expense is appropriate in the interests of justice. See Appendix 1 to Annex A 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.
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 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.
Litigant in Person	A defendant/appellant who decides to represent themselves in court instead of being represented by a solicitor or barrister.
Live link	See VTC.
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).
MOD Form 2263	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 Form 2263A MOD Form 2263B (Part 1: LA offer)	Contribution Order: <ul style="list-style-type: none">• MOD Form 2263A - Referral to DSP or trial; OR• MOD Form 2263B - Summary Appeal or Election for trial. <u>Generated by AFCLAA</u> . The Contribution Order details the maximum income and/or capital/equity contribution liabilities, and the monthly income contributions payable.



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Term	Definition
MOD Form 2263A (Part 2: LA refused)	Legal Aid refused. <u>Generated by AFCLAA</u> . 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 the AFLAS Policy document for guidance.
CP Insert	Child Protection Insert. To be completed by the applicant(s) in child protection cases only and submitted to AFCLAA with MOD Form 2263. See Chapter 5 - 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.
Nomination (of civilian legal representatives)	Applicants may nominate a particular legal representative to act for them or they can ask AFCLAA to nominate one on their behalf.
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.
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 (CSSD) as defined in JSP 830 Vol 1, Chapter 3, para 17 .
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 for proceedings within the SJS.
Service Personnel	All serving members of the Armed Forces, including the Reserve Services (see JSP 830 Vol 1 Chapter 3), while subject to Service law. Includes all ex-Service personnel charged by the SPA or appealing in the SAC.



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Term	Definition
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.
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.



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Annex A - Guidance Notes: Completing MOD Form 2263

AFCLAA takes active decisions in the processing of personal data and is bound by MOD Policy and Data Protection Legislation (DPA 18). In processing personal data, AFCLAA is acting on behalf of the Data Controller, the MOD. AFCLAA has put policy and processes in place to ensure processing is conducted appropriately, safely and by trained administrators, in accordance with the six Data Protection Principles.

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. The application form is retained on file, archived and then destroyed after 7 years, in accordance with MOD policy; personal and financial documentation provided in support of the application is destroyed once the case has concluded, and before the file is archived.

The information provided by the applicant will be used to assess their ability to contribute towards their legal aid costs therefore, it is imperative that the form is completed as fully, honestly, and accurately as possible, to ensure a true reflection of the applicant's ability to pay, based upon their own particular personal and financial circumstances.



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The Armed Forces Legal Aid Scheme (AFLAS)

Section 1 - Personal Particulars

Field	Explanation/comment
Service/Status	RN, Army, RAF, RM, UK-based civilian personnel (CSSD) or dependants.
Service No, & Rank/Rate	For dependants, include their parent's Service number, annotated as appropriate, i.e. son/daughter/spouse/civil partner of
Unit address and postcode	Address details, including postcode, required.
Are there any co-accused?	It is vital that the existence of any/all co-accused is notified to AFCLAA as soon as possible to ensure that appropriate action can be taken. It is especially important if there are co-accused in different units so AFCLAA 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	
Title 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. It may also assist the AFCLAA Case Officer should the applicant wish AFCLAA to nominate a legal representative on their behalf.
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).
Applicants aged under 18	Applicants aged under 18 at the point of application must provide their date of birth to confirm eligibility to receive free legal aid. As the applicants will not be liable for contributions, they are not required to complete Section 5 but must complete all other sections.

Section 2 - Legal Representation

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.

The applicant **MUST** select **ONE** box **ONLY** to ensure their decision regarding legal aid and representation is taken into account from the outset.



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Section 3 - Entitlement to apply for legal aid

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 legal representative is properly advised from the outset.

Field	Explanation/comment
Summary Appeal Court	The applicant must complete all sections on the MOD Form 2263 for all Summary Appeals; no contributions are required in advance of proceedings. However, 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.
Elect for trial by CM	No contributions are required in advance of proceedings therefore, it is essential any applicant who has elected for trial by Court Martial annotates their application accordingly. This will ensure the correct Contribution Order is issued from the outset, avoiding any requirement for an immediate, pre-proceedings income contribution.
In Custody after Charge	Applicable for personnel detained in custody after charge only. 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).
DSP Referral	Applicants applying at the DSP referral stage must provide a brief description of the potential charge/allegation, so the Case Officer can consider whether a contribution cap should be applied.
SPA Direction for CM	This box should only be ticked where the SPA has directed the case for trial at the Court Martial, but legal aid is not yet in place.
Service Civilian Court	Applicable where the applicant is a civilian being tried by the Service Civilian Court (SCC) or, in certain circumstances, the Court Martial.
Overseas Criminal Court	NOTE: This option is only applicable if the applicant is (or was) subject to Service law or discipline at the time of the alleged incident and is (or was) in the country concerned on permanent or detached duty. A copy of the indictment (charge sheet) should be enclosed wherever possible.
Court Martial Appeal Court (CMAC)	This box should only be ticked where the applicant either did not have legal aid in place for their trial or wishes to use a different legal representative to appeal their case to the Court Martial Appeal Court (CMAC) after trial conclusion; 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.



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Field	Explanation/comment
Discrete areas of Legal Aid	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 CMAAC or incidents arising during the course of duty (see Chapter 6 for further details).
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.

Section 4 - Service Points of Contact (POC)

Field	Explanation/comment
POC details: Div Officer, HR Disc, DAO, AAO	Where known, the requested information in this Section should be provided, including Service and civilian telephone numbers and email addresses, as these 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.

Section 5 - Financial statements for AFLAS

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 immediately for further guidance.

As the information requested within this section is only required for applicants who may be liable for contributions; there is no requirement for the following applicants to complete any part of this section:

- a. Applicants automatically exempt from making contributions, i.e. those aged under 18 at the time of application; those in receipt of certain 'passporting' benefits; applicants whose case involves accusations arising from operations in Iraq or Afghanistan (the latter should complete the Op Telic / Op Herrick specific application form (available directly from the AFCLAA GOV.UK website)).
- b. Applicants who wish their defence to be conducted by a Service Lawyer, as no publicly funded legal costs incurred, or applicants where the Reviewing Authority have applied for a summary appeal on behalf of the appellant, as legal costs are not attributed directly to the appellant.

NOTE: 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.



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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 is annotated correctly on the form.

Spouse / civil partner

The applicant must indicate if their spouse/civil partner has a contrary interest in the case and confirm whether they are the victim or a prosecution witness; where a contrary interest exists, certain items are specifically excluded from the means test assessment. If this is not applicable, the applicant should tick the 'No' box.

Income and outgoings (including Grounds for Hardship)

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 (unless they are a victim or prosecution witness in the case), 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, 'not applicable' must be ticked.

Documentary evidence

All supporting documentary evidence for income/outgoings (including Hardship) must be submitted with the application. Where this is not possible, AFCLAA should be advised at the earliest opportunity; failure to provide this evidence within 21 days of legal aid being granted, or later with agreement from AFCLAA, will result in the applicant incurring additional contribution costs i.e. Income Evidence Sanction.

NOTE: Items declared where there is no supporting evidence will not be included.

Field	Explanation/comment
Gross salary and gross income from part-time job / gainful employment	For Service personnel, JPA pay statement print-outs are required. For non-Service personnel, or for additional income from civilian sources, pay statements covering the most recent 3 months prior to application are required.
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).



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Field	Explanation/comment
Income from State benefits and/or government credits, e.g. child benefit, housing benefit, tax credits etc	Full details of any/all State Benefits are required. Some benefits may be considered as 'passports' to automatically free legal aid but can only be considered if appropriate and current supporting documentation is provided. See AFLAS Policy document for further details.
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.

Description of outgoings

Field	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	<p>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.</p> <p>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.</p>
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. However, AFCLAA may request documentary evidence where the monthly costs are below £500 per calendar month.



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Field	Explanation/comment
Maintenance payments	The applicant must provide documentary evidence (Court Order or CSA/CMEA payment schedule) to show the amount and frequency of payments, and to define their relationship to the dependant. Where there is no formal agreement, bank statements with the payment clearly identified may be acceptable; 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. Voluntary payments to family members, other than maintenance payments, are likely to be disallowed.
Grounds for Hardship (income)	You should complete this section if you are going to be denied access to a source of income that was included in the 'Income' section for means testing.
Grounds for Hardship (outgoings) and Additional Circumstances	Complete this section for any extra expenditure that has not been listed in 'Outgoings', i.e. loans, credit/store cards, car finance, IVAs etc. You should also provide details of any additional circumstances not already taken into account which may effect your ability to contribute towards your legal aid costs.

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). Applicants in all other instances MUST complete all boxes accordingly.

	Explanation/comment
Main/only dwelling and properties other than main/own dwelling	The requested information is required for each property owned, or partially owned, by the applicant and/or their spouse/civil partner. An accurate estimate, based on current valuations of similar properties in the area will suffice. The latest annual statement showing the mortgage agreement and amount of outstanding mortgage(s) must be provided.
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

Applicant's declaration

Before completing the declaration at Section 6, applicants should take note of the declarations set out in the sub-paragraphs. By signing the declaration, applicants are confirming that:



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- a. the information provided is a true statement of their personal and financial circumstances, and that of their spouse/civil partner, at that time.
- b. 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.
- c. they understand AFCLAA will carry out a means test assessment, which may require them to make a contribution(s) towards their legal costs, should their annual disposable income exceed the relevant thresholds.
- d. 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.
- e. their legal aid contributions will be deducted directly from salary via JPA wherever possible, and, if necessary, from any monies payable on discharge.
- f. 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).

Certifying Officer's details

The Certifying Officer is to approve the application form to verify the identification of the applicant and to certify the information provided is accurate at the date of application. Thus, all boxes in Section 6 MUST be completed by the applicant, even for those who have ticked boxes to confirm they do not require legal aid. This will provide evidence that the applicant was fully aware of the availability of legal aid and their eligibility to apply.

Application submission

Upon completion and subsequent submission of the application, the applicant will receive an email confirming the information they have provided. The certifying officer will also receive a copy of the application in order to verify and approve the information contained within. Once approved by the certifying officer, AFCLAA will receive the completed application form for processing at the earliest opportunity.



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Appendix 1 to Annex A - The Interests of Justice (IOJ) test

The Interests of Justice (IOJ) test determines whether an applicant should be entitled to representation at public expense based on the merits of the case. The IOJ test is applicable only to cases heard in the Service Civilian Court or an Overseas Civilian Criminal 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 for appeals in the SAC and the CMAAC do not need to complete this section of the application form.

The applicant must indicate which of the listed criteria they believe applies to their case and provide sufficient details regarding the potential personal impact of the case and any subsequent conviction to satisfy the AFCLAA Case Officer that legal aid should be granted; the applicant need only complete those which apply to the particular circumstances of their 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. This may also apply to certain trades/employment where a lesser sentence awarded may impact upon the applicant's eligibility for that trade/role, e.g. employment where a clean Disclosure and Barring Service (DBS) 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 serious 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.	For example, issues of identification or victim's consent may be raised. If the applicant considers this applicable, they are advised to seek further legal advice before completing.



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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 (including overseas criminal courts, or where proceedings are conducted in a language which is not the applicant's first language).
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.

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Appendix 2 to Annex A - Appeal Process - Legal Aid Refused

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 are to submit a newly completed application form to AFCLAA.

Financial Eligibility Threshold

If legal aid has been refused by AFCLAA because the applicant's disposable income exceeded the Financial Eligibility Threshold, regardless of whether an Eligibility Review was subsequently carried out, the applicant should refer to Chapter 1, Section 24 of the AFLAS Policy for guidance; there is no scope to appeal that decision under this process.

Interests of Justice (IOJ) test

Where an application is refused because it does not meet the IOJ test, the AFCLAA Case Officer will provide a Legal Aid Refused certificate (MOD Form 2263A), annotated with the reason(s) why the IOJ test wasn't met.

Right to appeal

The applicant is advised of their right to appeal AFCLAA's decision and are further advised that any appeal should be submitted in writing, and forwarded to AFCLAA within 7 days of receipt of the Legal Aid Refused certificate (unless there are Service, operational or other reasons why this deadline cannot be met). Any appeal should provide as much additional information as possible, including further detail of any information previously submitted which may support their appeal. The applicant may choose to seek specific legal advice as part of the appeal process (but 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. Personnel based outside the UK (or RN personnel, regardless of location) may seek further advice from a Service legal representative instead.

Appeal processes

There are two, slightly different, appeal processes, determined by the stage of the proceedings at the time of the application, i.e. Referral to DSP and Case Directed for trial:

a. **Referral to DSP.**

- (1) Where an application is refused at this stage, and before the SPA have decided whether to discontinue or direct for trial, the applicant should submit any



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appeal to AFCLAA. Should the SPA decide to discontinue the matter, the appeal process will cease.

(2) The AFCLAA Case Officer will review the appeal, 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 Hd AFCLAA for further consideration.

(3) If, after reviewing the whole matter, Hd AFCLAA 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 under the usual AFCLAA terms and conditions.

(4) If Hd AFCLAA agrees with the Case Officer's decision and 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.

b. Case directed for trial.

(1) The same processes as those detailed for the Referral to DSP stage, as above, will be undertaken by the Case Officer, and Hd AFCLAA where necessary.

(2) If AFCLAA do not revise the 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 legal aid should be granted. AFCLAA will abide by the recommendation made by the judge advocate.

Unsuccessful appeal

If the applicant is unsuccessful at all stages of the appeal process, they can still instruct a legal representative privately.



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Appendix 3 to Annex A - Notes to Assist a DAO/AAO

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 Policy

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.



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- As soon as the Service Prosecuting Authority (SPA) has issued their direction whether to prosecute or not, you must ensure that AFCLAA have also 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 AFCLAA via email at: MCS-AFCLAA-Group@mod.gov.uk.



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Appendix 4 to Annex A - Notes to assist a DAO/AAO

ARMED FORCES CRIMINAL LEGAL AID AUTHORITY AFLAS11

NOTES TO ASSIST A DEFENDANT'S ASSISTING OFFICER (DAO/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 Policy
- E. [JSP 752](#) - Tri-Service Regulations for Expenses and Allowances - paras 06.0701 and 06.0730
- F. [JSP 800 Volume 5](#) - Road Transport Policy - Leaflet 16, para 27.

Legal Aid is in Place

- Your responsibility as a DAO/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) and AFCLAA will not hesitate to contact the Chain of Command if it becomes aware that you, the DAO/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 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 can tell you where such facilities are available. If this is not



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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. References E and F provide further 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, as failing to make payments in full and on time will incur financial penalties for the defendant.

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 on official MOD business, and are therefore entitled (and insured) to travel in Service transport, in accordance with Reference F.
- 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 £100 (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 members, the DAO/AAO 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 either original or certified true copies of 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



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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/AAO/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 AFCLAA via email at: MCS-AFCLAA-Group@mod.gov.uk.



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Annex B - CP Insert to MOD Form 2263

Application for public funding for legal representation at assessment/protection order hearing

	Surname		
	First Name		
	Service/Status		
	Direct contact phone number (to be passed to legal representative)		
	Overseas residency status (e.g. permanent duty station or temporary visitor)		
	Type of Hearing	Assessment Order <input type="checkbox"/> / Protection Order <input type="checkbox"/>	
	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	
	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	
	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 <input type="checkbox"/> / No <input type="checkbox"/>	
	Date, Time and Location of Hearing (if known)		

*Continue on a separate sheet if necessary.



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Annex C - 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 via email at: MCS-AFCLAA-Group@mod.gov.uk.