



Policy

The Armed Forces Legal Aid Scheme (AFLAS)

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This policy contains the direction on the practicalities of the legal aid scheme and should be read in conjunction with the Armed Forces Legal Aid Scheme (AFLAS) procedures.

CHAPTER 1: THE ARMED FORCES LEGAL AID SCHEME - OVERVIEW

1 The Armed Forces Legal Aid Scheme: Access and Eligibility

1.1 Access to justice

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

1.2 The underpinning principles

The legal aid scheme is underpinned by the basic principle that those who can afford to pay some, or all their defence costs should do so, whereas those who cannot afford to contribute should receive legal aid support free of charge. Applying this basic principle enables public funds to be used to assist as many people as possible whilst also providing value for money for the taxpayer. The contribution paid by any convicted offender is limited to either their maximum contribution (based upon their personal and financial circumstances at the time of application) or their legally aided costs, whichever is the lower.

1.3 The Armed Forces Legal Aid Scheme (AFLAS)

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

1.4 Maintaining parity with the civilian scheme

The information required by AFCLAA to determine whether an applicant is eligible to receive legal aid, and thereafter the level of contribution required (if appropriate), as part of the legal aid process, is consistent with the civilian scheme's current practice. This means that the allowances, limitations, thresholds and documentary evidence required are the same, or at least broadly similar, to those used in the civilian system for matters heard in the Crown



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Court. The grant of legal aid, based upon the information provided and accepted by the applicant when signing the Contribution Order, is the authority for AFCLAA to initiate legal aid procedures and therefore commit public funds on behalf of the applicant.



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2 The Armed Forces Criminal Legal Aid Authority (AFCLAA)

2.1 The Armed Forces Criminal Legal Aid Authority (AFCLAA) Function

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

- a. appeal against findings and/or award of a punishment following summary hearings at unit level, including applications for extensions of the appeal period by the Summary Appeal Court (SAC), for leave to appeal out of time (Service and ex-Service personnel only); or
- b. have a case referred to the Director of Service Prosecutions (DSP), for a decision whether the charges will result in a prosecution; this includes offences under [Schedule 2 of the Armed Forces Act 2006](#) which are referred directly to the DSP by the service police as well as matters referred to the DSP by the Commanding Officer; or
- c. are to be tried in the Court Martial (CM) or the Service Civilian Court (SCC); or
- d. wish to appeal to the CM, against the finding and/or sentence following their trial before the SCC (relevant civilians only); or
- e. wish to submit an Application for Leave to Appeal to the Court Martial Appeal Court (CMAC); applicable only to convicted offenders who did not have legal aid funding for their Court Martial; or
- f. are to be tried in a criminal court outside the UK, where the individual concerned was serving overseas on permanent or detached duty in that country at the time of the alleged offence, even if the charge or allegation relates to an 'off duty' incident.

2.2 Non-criminal public funding

In certain circumstances, there may be a requirement for legal proceedings involving Service or relevant civilian personnel which fall outside the sphere of criminal proceedings and therefore the general scope of the AFLAS. [Chapter 5](#) provides full details on the eligibility criteria for those who may require publicly funded legal representation and the legal aid processes therein.

2.3 Incidents arising during the course of duty

The MOD is committed to standing behind its people who act reasonably and in good faith in the course of their duties or work-related activities. The MOD will consider formal requests to provide publicly funded legal representation for an individual in certain civil or criminal



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proceedings. The responsibility for approving funding in such instances remains within the Chain of Command/Top Level Budget area; decision making should be elevated to the appropriate level at which funding commitments can be made and taking into account the seriousness of the legal proceedings for the individuals, the MOD and in accordance with the principles and guidance contained within [2024DIN01-005 - Support available for current and former staff involved in legal proceedings](#) for full details. See also [Section 51](#).

The legal aid scheme applies equally to all members of the Armed Forces, including the Reserve Forces (when subject to Service law) and to civilians who are subject to Service discipline (relevant civilians). See [JSP 830, Vol 1, Chapter 3 - Jurisdiction and Time Limits](#).

2.4 Exclusions from the Armed Forces Legal Aid Scheme

The scheme does not provide support at public expense for the following:

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

2.5 AFCLAA

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

2.6 Head AFCLAA

The Head is responsible for the overall management of AFCLAA, including the implementation of policy in line with the civilian legal aid scheme as far as is practicable, whilst also taking account of the SJS, and the Services' operational requirements. Although not involved in the day-to-day management of legal aid casework, the Head is ultimately responsible for the



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efficient and effective management of the AFLAS, and the decisions made by AFCLAA staff during the course of their duties.

2.7 AFCLAA Case Teams

There are four dedicated Case Teams in AFCLAA with each team undertaking full responsibility for every aspect of appointed legal aid casework throughout the life of the case, from receipt of initial documentation through to final settlement of all legal fees and case closure; closed case files are archived for a period of 7 years, in line with civilian practice, before destruction in accordance with standard MOD procedures.



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3 Unit Admin Key Roles

3.1 Unit admin or HR discipline staff

Unit administration staff have a key role to play in supporting applicants (including Ex-Serving personnel) as well as providing continuity and acting as a focal point for the various elements of the SJS. AFCLAA staff contact, and continue to work with, appropriate unit staff at key stages throughout proceedings.

3.2 Defendant/Appellant Assisting Officer (DAO/AAO)

Throughout the legal aid process, including preparation for trial/appeal and all court attendances, the DAO/AAO has a significant role in supporting the defendant/appellant and their legal representative; a copy of the Notes to Assist the DAO/AAO is provided once legal aid has been granted and is attached at Appendix 3 to Annex A of the AFLAS Procedures. Further guidance on the role and responsibilities of the DAO for CM and SCC is to be found in [JSP 830, Vol 2, Chapter 29, Annex B](#).

3.3 Divisional Officer (DO/Adjutant/OC P1)

In most cases, staff in these posts are the most suitably placed to provide any local administrative support necessary to facilitate accurate and timely actions through the application process. They may also be able to provide specific advice in instances where local difficulties or considerations need to be taken into account, e.g. current or impending operational tours, extended exercise or leave periods etc, which may impact upon the legal aid process and/or contact between defendant, DAO and legal representative.

3.4 Legal aid process flow charts

For ease of reference for all users, two legal aid process flow charts have been produced at Annex A; these are not intended to replace the detailed guidance contained within AFLAS Procedures but should be used as a quick reference guide to the relevant application processes.

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4 Different Organisations within the Service Justice System (SJS)

A number of different MOD and civilian organisations are involved in the various stages of the SJS, each with their own distinct areas of responsibility. The success of the SJS, necessary for the smooth and prompt resolution of cases in a way which underpins the operational effectiveness of the Armed Forces, depends not only upon efficient processes within each organisation, but also effective interaction between all parties involved. The following information provides an insight into the key roles and responsibilities of these organisations and personnel within them.

4.1 The Office of the Judge Advocate General (OJAG)

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

4.2 The Service Prosecuting Authority (SPA)

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

4.3 The Military Court Service (MCS)

The Military Court Service is responsible for the co-ordination, administration, and support for all aspects of the arrangement and running of trials, summary appeals and custody hearings for the Armed Forces. There are several different branches within the organisation, each with their own specific duties and responsibilities; more information on the MCS strategic plan, key objectives and principal tasks can be found on the gov.uk website [The Military Court Service](#).



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5 Legal Aid Application Forms

As the sole authority responsible for all aspects of legal aid in respect of the types of proceedings listed in Section 2 above, all applications for legal aid from eligible applicants are to be completed and sent to AFCLAA as soon as possible after completion. A [digital version](#) of the application for legal aid is available for personnel who have access to MODNET. Alternatively, [MOD Form 2263](#) - Application for Legal Aid - and [MOD Form 2263C](#) - Hardship Review, should be completed in all instances, even if they do not require legal aid at that point in time.

5.1 The accused decides legal aid/representation is not required

In all such instances, the individual should nevertheless be strongly encouraged to submit a fully completed application form to AFCLAA. This will enable AFCLAA to produce an estimated means test assessment of the applicant's ability to contribute towards their legal aid costs, thereby assisting the individual in making an informed decision on whether they wish to continue with their application, based on their assessed income contribution at that time, or reapply at a later date should they change their mind.

Submitting a completed application form will not commit the individual to any financial liability until and unless they sign the subsequent Contribution Order accepting the offer of legal aid provided therein.

5.2 Application form: legal aid not required

Should the individual choose not to apply for legal aid funding, whether they wish to use a Service lawyer or not, an application form with personal and unit contact details, and the relevant box ticked to that effect, must be completed and signed by the individual. The completed form will provide documentary evidence that the individual:

- a. was made fully aware of the availability of legal aid funding.
- b. had the opportunity to make a considered decision about legal representation.
- c. freely made the decision not to apply for legal aid.

Provide a full audit trail should the lack of funding and/or representation be used as the basis of a challenge in court at a later date.

5.3 Change of mind: initial refusal

Any individual who does not wish to obtain legal aid, may change their mind, and reapply for legal aid at any point before trial. They should, however, be advised that a late application



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for legal aid is likely to cause unnecessary delay and may result in an inability to grant legal aid and secure legal representation before court proceedings.

5.4 Reapplying for legal aid

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

5.5 An exceptionally late application

An exceptionally late application for legal aid, e.g. after a guilty plea has been entered, but before sentence is passed, will be considered, particularly if the trial judge advocate considers it necessary for the defendant to have access to legal advice, and advises the defendant to apply for legal aid in order to obtain that legal advice and representation.

5.6 Retrospective applications for legal aid

Retrospective applications for legal aid (i.e. to fund legal costs incurred prior to the formal grant of legal aid) will not be considered by AFCLAA.

Any work carried out by a legal representative in advance of a formal grant of legal aid is a private matter between the legal representative and the applicant, who will remain personally liable for all costs incurred.

It is therefore imperative for the applicant and the unit to ensure the application process is dealt with as quickly as possible, to prevent the applicant incurring an avoidable personal liability for costs.

5.7 Unit responsibility

The applicant's unit, or the unit appointed to provide administrative support for relevant civilian or ex-Service personnel, are to liaise with AFCLAA following the processes laid out in AFLAS Procedures, Chapter 1.

Unit level administrative support must continue to be provided for applicants until all legal aid matters are concluded, irrespective of whether the applicant is dismissed, detained in MCTC or imprisoned, in the meantime.

Unit discipline staff are to abide by timelines for actions issued by AFCLAA on any correspondence wherever possible; where a required timeline cannot be met, e.g. because the applicant is absent on duty or leave, the unit are to advise AFCLAA of the delay at the earliest opportunity, and give an indication of when they and/or the applicant will be in a position to complete the relevant process or documentation.



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5.8 Legal aid for civilian court proceedings

With the exception of proceedings in overseas criminal courts relating to allegations arising whilst the applicant was overseas on permanent or detached duty, there is no entitlement to legal aid support from AFCLAA in respect of civilian criminal court proceedings. Such individuals should contact a local solicitor for advice on the process and for assistance with completion of the application forms.



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6 Service Police Interviews and Custody

6.1 Entitlement to legal advice and assistance

In the UK, any person who is brought to a police station under arrest or arrested at the station having gone there voluntarily, is entitled to receive free independent legal advice and assistance if they are questioned by the police, whether they have been arrested or not; this includes the right to consult privately with a legal advisor.

Service and civilian personnel (this refers to all civilian personnel subject to Service discipline, including UK-based civilians (UKBC) where they are overseas on permanent or detached duty, and dependents. This also includes ex-Service or civilian personnel who were subject to Service law or Service discipline at the time of the alleged incident to which the investigation refers.) arrested by the Service police (SP) or detained within MOD detention facilities, are similarly entitled to free and independent legal advice and assistance, wherever in the world they may be questioned or detained in custody. This includes persons arrested by Service Police in connection with a European Arrest Warrant.

6.2 Service Police Codes of Practice

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

6.3 Custody without charge reviews

Those held in custody without charge at any Service Custody Facility are entitled to receive free legal advice and advocacy in respect of all detention reviews (this applies to all custody reviews, irrespective of who is entitled to carry out that review). The different ways to access a legal advisor are detailed in AFLAS Procedures, Chapter 2.

6.4 Custody after charge

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

6.5 Legal representation

Regardless of whether the accused wishes to retain their previous legal advisor, or obtain a new one, the unit is to contact the nominated legal advisor to establish availability and



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acceptance of the case, before submitting a formal application for a custody review in front of a judge advocate.

6.6 Custody after charge reviews

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



7 Civilian Criminal Courts Overseas

7.1 Entitlement to legal representation

Personnel based or living outside the UK, who are investigated in respect of criminal matters arising whilst based overseas, are entitled to receive the same support as personnel living in England and Wales. This includes the right to apply for legal aid to fund their defence in a local criminal court.

In countries where accused personnel have no access to publicly funded legal aid from the country, or the local criminal court, in which they are to be prosecuted, AFCLAA will consider an application to provide legal aid, to ensure that such individuals are not disadvantaged when compared to their counterparts in the UK.

7.2 Eligibility

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

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

7.3 Ineligibility

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



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



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8 Legal Representation

Before completing the legal aid application form, the applicant should think very carefully about the choices of legal representation available, which may be determined by the nature of the case including whether it is a Service or overseas civilian prosecution.

An ill-considered, or ill-advised, decision at this stage may result in delay, unnecessary costs, or other complications, should the applicant later change their mind. All decisions about legal representation remain the sole responsibility of the applicant; at no point is it acceptable for anyone within the Chain of Command or unit admin support (including the DAO) to interfere or influence the applicant's decision.

8.1 Using a Service Lawyer

Army and RN personnel (including 'relevant civilians' attached to Army or RN units), based or deployed to Cyprus may request representation by an RAF lawyer, provided one is available and willing to accept the case. A similar provision exists within the RN, whereby RN personnel, regardless of location, can request representation by a RN barrister, provided one is available and willing to accept the case.

Service lawyers can only undertake representation in the Service courts - they are unable to represent personnel in civilian criminal courts.

8.2 Contacting the Service Lawyer

Where an applicant chooses Service lawyer representation, it remains the applicant's personal responsibility to contact the Service Lawyer to establish availability. Although legal aid is not required, and AFCLAA bears no responsibility for cases where a Service lawyer is instructed, unit admin staff should ensure that the name and contact details of the lawyer are made known to AFCLAA, HQ MCS and the SPA. Should a Service Lawyer not be available, the applicant may resubmit an application for legal aid.

8.3 Limited legal aid for additional costs (Service lawyer only)

In order to properly prepare for trial, it may become necessary to incur additional costs, e.g. obtain an expert's report or to instruct additional counsel. Should such a requirement arise, AFCLAA will consider an application for legal aid, limited to those additional costs only, so long as full justification is provided by the instructed Service lawyer. The usual means test will be carried out, but any contribution payable will be limited to the additional costs authorised, or the maximum contribution payable, whichever is the lower. Following an acquittal on all charges or the case is otherwise discontinued, any contribution received will be refunded, with interest.



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8.4 Privately funded representation

Where the applicant does not accept an offer of legal aid from AFCLAA, or if the applicant wishes to instruct a legal representative who refuses to accept the AFCLAA terms and conditions, they may choose to instruct a legal representative privately instead. Alternatively, if the applicant still requires legal aid, they can either nominate, or ask AFCLAA to nominate a legal representative who will accept the AFCLAA rates and terms and conditions.

8.5 Personal liability

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

8.6 Financial Eligibility Threshold: recovery of costs

Where the applicant engages privately funded representation because their annual disposable income exceeds the Financial Eligibility Threshold (FET), currently set at £37,500, and remains in excess of this amount after taking account of potential private legal costs of representation into account, they can apply to reclaim some, or all, of those private costs following an acquittal (on all charges), or if their case is discontinued before trial. See [Section 24](#) for details of eligibility and processes.

8.7 Legally aided representation

Any applicant who wishes to have civilian legal representation funded through AFCLAA, may either nominate a particular legal representative or firm, or ask AFCLAA to nominate one on their behalf. Conventionally a solicitor is instructed to represent a defendant in the first instance, and a barrister ('counsel') may be briefed for the court proceeding(s) by the solicitor, if required. Some solicitor-advocates appear at hearings themselves.

8.8 Shared legal representation (co-accused)

Where 2 or more applicants are jointly charged on the same charge sheet, they may wish to consider sharing legal representation as the legal aid costs will be shared equally amongst all co-accused involved. The proportion of the liability for legal costs remains the same, even if one or more co-accused is acquitted (on all charges) or the case against them is otherwise discontinued. For example, a case involves 3 co-accused, all required to contribute towards their legal aid, and all use the same legal representative, but only 2 are convicted. Those convicted each remain liable for an equal third of the overall legal aid costs; the third,



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acquitted, defendant continues to receive a full refund of any income contributions paid, with interest. Should a conflict of interest between 2 or more co-accused be identified, shared legal representation by a single legal representative is not an option.



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9 Nomination of Civilian Legal Representation Processes

9.1 Applicant nomination: identifying a legal representative

The applicant may have already received advice and assistance from a legal advisor at their police station interview(s) and/or custody review(s). If they were content with the service provided, they may choose to nominate that legal advisor or their firm for further representation; or the applicant may have heard about a particular representative through family, friends, or colleagues; or they may have sought legal advice or assistance from a local solicitor or firm on other matters. Alternatively, the applicant may nominate a legal representative they have seen 'in action', when attending proceedings in either the Court Martial or civilian Courts.

9.2 Instructing a nominated legal representative.

Regardless of how, or why, an applicant nominates any legal representative, AFCLAA will honour that nomination so long as the representative is suitably qualified to practice criminal law and is willing to accept the rates and terms and conditions of the Armed Forces Legal Aid Scheme (AFLAS). If the representative or firm are not already known to AFCLAA, the Case Officer will make contact to establish whether they will accept the case under those terms once legal aid has been granted.

9.3 Legal representative declines instruction

If the representative refuses to accept the rates and terms and conditions of the AFLAS, the applicant may either nominate an alternative legal representative, or ask AFCLAA to nominate on their behalf. If the applicant does not wish to change their nomination, the Case Officer will have to refuse legal aid and the applicant will be able to instruct the representative privately instead. In such circumstances, before instructing privately, the applicant must be made fully aware of their personal liability for all legal costs incurred, and that there is no eligibility to recover those private costs if they are subsequently acquitted or their case is discontinued.

9.4 AFCLAA nomination

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



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9.5 Availability of representatives

The AFCLAA database, which maintains full records of all cases, holds details of every legal representative who has received legal aid payments from AFCLAA, this includes legal advisors attending service police station interviews outside of England and Wales. This ensures a good geographical spread of representatives, so applicants, wherever they are based, are not limited to a small number of possible representatives.

9.6 Recommending legal representatives

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



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10 Legal Representation - Child Assessment or Protection Order Hearings

MOD has a responsibility for safeguarding and promoting the welfare of children residing or staying outside the UK with Service families or with families of civilians subject to Service discipline.

In doing so, MOD seeks to replicate, as far as appropriate and practical, the same procedures and levels of service as would be found in England and Wales; this includes the same access to publicly funded legal representation for those who would be entitled to receive such help in similar circumstances in the UK.

Anyone who requires publicly funded support for such procedures are to refer to AFLAS Procedures, Chapter 5, Section 12 for details on entitlement, and the application processes.

10.1 Reference documents

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

- a. [JSP 834 Volume 1 - Safeguarding Children](#).
- b. [JSP 830 Volume 1, Chapter 26 - Safeguarding Children: Armed forces child protection powers](#).
- c. [The Armed Forces \(Protection of Children of Service Families\) Regulations 2009 SI 1107](#).
- d. [The Armed Forces Act 1991](#) (Sections 17-23).

10.2 The scope of the Armed Forces legal representation scheme

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

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



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10.3 Entitlement to receive public funding

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

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

10.4 Status of parent(s)

As the regulations may be applied to any child, regardless of residency status (see Section 10.2 above), the provisions of this section apply equally to the parents or those with parental responsibility for such a child. This means that any person who is a parent or has parental responsibility for a child who is the subject of legal proceedings under the Armed Forces (Protection of Children of Service Families) Regulations may apply for public funding for their legal representations from AFCLAA, regardless of whether they are:

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

10.5 Reviewing representation requirements

Persons entitled to receive public funding for legal assistance and representation for CP proceedings under the terms of this section will be granted funding without reference to means, prospect of success or reasonableness; however, following civilian practice, the Need for Representation test will be applied.

10.6 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 (as described in Section 10.4 above) need only complete:

- a. MOD Form 2263 Sections 1-4 and 6 (the 'nature of charge' box and Section 5 need not be completed as any relevant information is to be supplied on the CP insert to MOD F2263; **AND**



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- b. CP Insert to MOD Form 2263 - Application for Public Funding for Representation at Assessment/Protection Order Hearing (available at AFLAS Procedures, Annex B).

Further guidance for the completion of MOD Form 2263 is available in AFLAS Procedures, Annex A.

10.7 Need for representation test

Should those seeking public funding, or their legal representative once instructed, consider there may be a conflict between themselves and another interested party, they must inform AFCLAA without delay.

10.8 Conflict arising after instruction

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



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11 Legal Representation - Adjudication Hearings (MCTC only)

11.1 Reference of a charge to the adjudicator

Where, under SCSRSR Rule 47¹, the Commandant refers a charge against a detainee to a judge advocate (referred to in the regulations as 'an adjudicator'), that detainee is automatically entitled to receive legal advice and, if required, legal representation at the adjudication; such legal advice and representation will be at public expense.

11.2 Procedure for obtaining legal advice

Under SCSRSR Rule 45, save in exceptional circumstances, every charge brought to the adjudicator shall be heard within four days of referral by the Commandant MCTC. Given that the detainee is entitled to receive legal advice before the adjudication hearing, it is imperative that a suitably qualified legal representative (as defined in [The Service Custody and Service of Relevant Sentence Rules 2009](#)) is instructed without delay.

11.3 Initial contact with legal representative

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

11.4 MCTC staff action

MCTC staff are to provide such assistance as is necessary to enable detainees to discuss their case with their legal representative, i.e. access to phone and meeting room facilities in accordance with MCTC rules.

Using the Record Sheet provided at Annex C to AFLAS Procedures, MCTC staff are to keep accurate records of the date, time and duration of phone calls and conferences; MCTC are also requested to keep a record of the date, time and duration of the adjudication hearing.

Once the adjudication hearing is concluded, MCTC are to email the completed form to AFCLAA, in order that the legal representative's bill of costs can be verified and authorised for payment.

¹ 2009 SI 1096 - The Service Custody and Service of Relevant Sentence Rules 2009. See also JSP 837 (Service Codes of Practice - Custody and Detention and Committal to Civil Prisons), Chapter 8 - Incident Management and Discipline.



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12 Legal Representation - Incidents arising during the course of duty²

12.1 MOD responsibility

In certain circumstances, the MOD will consider paying for the representation of an individual in legal proceedings relating to an allegation arising from an act committed in the course of the individual's employment or duties, and in accordance with any applicable regulations/instructions or orders (insofar as this can be determined at the time); this would not be considered 'legal aid' or 'public funding' in the real sense of the meaning, but a legal representative may be provided by the MOD to represent the individual and the MOD interests. See AFLAS Procedures, Chapter 5, Section 13 for further guidance, including the application process.

12.2 Chain of Command (CoC) responsibility

The cost of providing the individual with representation in legal proceedings will normally be borne by the CoC where it takes the view that the alleged incident occurred during the course of an individual's duties; representation will not be provided if the CoC believes that the individual was acting outside the scope of their employment or duties. Decisions on CoC funding are made on a case-by-case basis, taking due account of all relevant factors, as described in [Section 51](#).

12.3 Chain of Command action

Where an individual is charged with an offence arising from an act which occurred whilst on duty and in the course of their employment or duties, they must inform their CoC in accordance with local practice or orders. The CoC are to review the case in accordance with [2024DIN01-005 - Support available for current and former staff involved in legal proceedings](#) and seeking guidance from the Directorate of Judicial Engagement (DJEP) and Ministry of Defence Legal Advisors (MODLA) as appropriate, as part of the process to determine whether it is appropriate for the CoC to assume funding responsibility for legal representation. Where the CoC are satisfied that they have a responsibility to provide legal representation, they must provide AFCLAA with written authority to incur costs on behalf of the CoC. As part of that written authority, the CoC are to provide the appropriate UIN and RAC details and identify a suitable POC to be kept informed of all funding issues and decisions.

12.4 Unit and individual actions

The individual is to complete a legal aid application [MOD Form 2263](#), or the [digital version](#),

² Although primarily in reference to criminal proceedings, this section may also be applied to representation at inquests in exceptional circumstances, where authorised by the appropriate departments, including DIU, DJEP and the CoC. The decision to provide exceptional individual representation will be made on a case-by-case basis.



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which will provide AFCLAA with the authority to engage legal representation on behalf of the individual. AFCLAA will issue a Nil Contribution Order, which the individual is required to sign and return to AFCLAA to complete the application process. Thereafter, normal AFCLAA casework, procedures will be followed. Units are to provide such administrative support as is required throughout the application process.



13 Legal Aid Costs

Legal aid costs recovered from the convicted offender's contribution towards legal aid are limited to the fees payable to the legal representative(s) at case conclusion plus a notional amount towards travel costs; liability for travel costs will be determined once all legal bills have been received.

13.1 Costs covered by legal aid

Legal aid costs include all aspects of preparation and representation at court for both litigation and advocacy, any additional costs for which the legal representative has obtained specific authority from AFCLAA, e.g. an expert's report; medical reports; site visits costs etc. Applicants should discuss any implications or requirements for additional costs with their legal representative(s) as part of the instruction process, with the caveat that the requirements for additional costs for the proper preparation and representation of their case will always take priority over costs. AFCLAA will apply the same principles as the civilian authority when considering requests to incur additional costs, and no reasonable and justifiable request will be refused.

13.2 Income contributions exceeding costs

If the legal aid costs incurred are less than any income contributions paid, the convicted offender will receive a refund of the overpayment once all legal bills have been authorised for payment; this refund will not include any interest payment.

13.3 Costs exceeding income contributions

Where the legal aid costs exceed the maximum income contributions payable, AFCLAA may request the outstanding balance be recovered from any capital/equity contribution payable, as stated on the Contribution Order.

13.4 Costs exceeding maximum (combined) contributions

Where legal aid costs exceed the maximum contributions payable (including any capital/equity contribution) by an individual as stated on the Contribution Order, any excess costs will be managed by public funds.

14 How to apply for legal aid: trials

14.1 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. It is of paramount importance that the applicant is given as much encouragement and support as possible at this stage, and advised of the importance of seeking independent legal advice and representation and the implications should they choose not to. The applicant must complete a form in all cases, even where they do not want legal aid; this will show that they were made aware of the availability of legal aid and will provide a record of the applicant's decision in respect of legal aid.

Applying for legal aid at the DSP referral stage, even if they subsequently decline the offer, will provide the applicant with an indication of their likely future contributions, should the matter proceed to trial and the applicant wants legal aid at that point.

14.2 The application process

The application process is relatively straight forward however, if the applicant, and their support network at unit level, are unsure about any aspect or stage of the process, they are advised to seek advice and assistance from the AFCLAA team, via MCS-AFCLAA-group@mod.gov.uk as soon as possible.

14.3 Completing the application form

A properly completed application form will provide all the information necessary to enable AFCLAA to process the application promptly and accurately; where possible, all financial supporting documentary evidence should be provided at the time of application. AFLAS Procedures, Annex A to Chapter 1, 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.

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.

14.4 Legal aid contributions: automatic exemptions

The following groups of applicants remain exempt from making any income contributions towards their legal aid costs but may still be required to make post-conviction contributions from any capital/equity:

- a. applicants* aged 17 or under at the point of application.
- b. applicants* on certain welfare benefits, known as 'passporting benefits': Income Support (IS); Income-Based Job Seekers Allowance (JSA); Universal Credit (UC);



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Guarantee State Pension Credit; Income-based Employment and Support Allowance (ESA).

c. applicants with 'Adjusted Annual Income' below £12,475 per annum (as determined by the initial means test).

d. applicants with less than £3,398 disposable income per annum (as determined by the full means test).

e. applicants whose case involves accusations arising from operations in Iraq and Afghanistan - see AFLAS Procedures Chapter 5, Section 14 for details on the application process.

*As relevant to the applicant only; it does not apply to spouse/civil partner who may meet one or more of these criteria. Applicants under the age of 18 are to provide their date of birth for verification purposes; they are not required to complete Section 5 of the application form but must complete Section 6 in full.

14.5 Contrary interests

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



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15 Multiple Applications: Sole Applicant (Separate Cases)

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

15.1 Initial income contribution order ongoing

If the applicant is already part-way through a Contribution Order payment plan for an ongoing case when they submit another application form in respect of a separate case, the contributions relating to their pre-existing plan cannot be included as an allowable outgoing in the subsequent application. However, as an applicant can only be required to make one contribution per month, any contribution payments beyond the 'overlap' of the first application's payment plan will only begin once the first payment plan is completed.

FOR EXAMPLE: the applicant has paid 3 out of 8 contributions in respect of their first application when they apply again. The applicant continues to make the final 5 instalments for the pre-existing payment plan, then continues to make a further 3 instalments in respect of the subsequent application, making a total of 11 monthly payments to cover both applications.

15.2 Initial income contribution completed

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

15.3 Multiple applications: acquittal

If the applicant is acquitted, or their case discontinued, in respect of the proceedings relating to the first application, any contribution payments made will be retained, pending the outcome of any subsequent ongoing case(s).

15.4 Multiple applications: conviction

If, following a conviction in respect of proceedings relating to the first case, contribution payments made in excess of the actual legal aid costs for that case, will be added to the contributions received in respect of any/all subsequent ongoing case(s). Should the maximum contribution for the subsequent case(s) be reached, any additional monies will be refunded to the applicant, but without interest.



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16 Multiple Applicants: Same Household

This applies to cases where two members of the same household apply for legal aid during the same contribution period, either as co-accused in the same case, or where they are charged separately in unrelated cases. Both applicants are required to provide the financial details of the other party (spouse/civil partner only) on their application forms. It remains the responsibility of the applicants concerned, to inform AFCLAA of multiple applications within a single household, and of any changes to their financial circumstances.

16.1 'First' applicant's form

The normal means tests will be carried out on the first applicant's form, taking account of the total household income, outgoings and living allowances; this will also include any Hardship, if applicable this applicant will be required to make the income contributions as determined by the means test.

16.2 'Second' applicant's form.

The contributions payable by the first applicant will then become a financial commitment (hardship) in the second applicant's means test. In many instances, this will reduce the second applicant's contribution to nil. If the first applicant's case is subsequently acquitted, or their case is discontinued, but the second applicant's case remains ongoing, a means test re-assessment will become necessary which may then require the second applicant to start making contributions; any contributions already received in respect of the first applicant will be retained by AFCLAA as contributions already paid until the second applicant's case concludes.



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17 The Means Tests

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

There are two different types of means test. The income means test is used to determine whether the applicant should make any pre-trial income contributions, and if so, what that contribution will be. The capital/equity means test is used to determine whether the applicant should make a post-trial contribution from capital and/or equity see [Section 22](#) for details; a post-trial contribution will only be considered following a conviction.

17.1 The income means test

The income means test consists of two parts:

- a. The Initial Means Test. The applicant's gross annual household income is 'weighted' to take account of family circumstances (i.e. persons forming the household). This will determine the applicant's adjusted annual income and whether this is above or below that threshold (see para 17.2). Applicants whose income is below the adjusted income threshold are automatically exempt from any income contribution liability. Applications where the adjusted annual income exceeds that threshold will be subjected to the Full means test.
- b. The Full Means Test. This deducts the allowable outgoings, the Basic Living Allowance (BLA) (also 'weighted' to take account of any family – see para 17.3 for details) and any Hardship (see [Section 19](#)) from their gross annual household income, to determine their annual disposable income. If the applicant's annual disposable income exceeds the disposable income threshold, the Full means test will determine the amount they will be required to contribute towards their legal aid costs; if the applicant's annual disposable income is below the threshold, they will not be required to make income contributions.

17.2 Legal aid thresholds

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

- a. Adjusted Annual Income* - £12,475; thereafter
- b. Disposable Annual Income* - £3,398; and/or



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- c. capital/equity in excess of £30,000.
- d. Financial Eligibility Threshold* - Annual disposable income in excess of £37,500.

* See [Glossary](#) for definitions.

17.3 Allowances: Basic Living Allowance (BLA)

The BLA is an automatic deduction from income and is designed to take account of the day-to-day living costs for the average applicant, and if appropriate, their family. It includes elements to cover average costs for food and non-alcoholic drinks; clothing and footwear; housing (excluding rent/mortgage/council tax, where actual costs are accounted for separately); fuel and power; household goods and services; health; transport; communications (i.e. phone and internet access); education (excluding school fees – see [para 19.3](#) for boarding school fees); miscellaneous goods and services.

- a. The BLA is currently set at £5,676 per annum and is designed to take account of the basic living requirements for the applicant in all instances.
- b. Applicants with family responsibilities, i.e. spouse/civil partner and/or dependent children living in the same house, the BLA is increased in order to provide for the additional basic living costs for each additional member of the household. This involves incremental increases, according to the status and/or age of each additional member of the family at the time of application.

17.4 Accuracy of information

It is the applicant's responsibility, and in their own best interests, to ensure the information provided on their application form is complete and is supported by the necessary documentary evidence; this will ensure that the means test is a fair and accurate reflection of their ability to pay. A failure to disclose all relevant information may result in an incorrect contribution liability which may advantage/disadvantage the applicant. Where an attempt to commit fraud is suspected, an investigation with a view to prosecute may be initiated.



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18 Documentary evidence required

All applicants are required to provide suitable documentary evidence, where applicable, of all income and outgoings included in their application form. This will enable the AFCLAA Case Officer to take account of allowable items at the earliest opportunity, and therefore ensure the contributions required accurately reflect the applicant's personal and financial circumstances. Failure to provide any of the required documentation may incur a sanction by way of increased contributions (see para 18.12).

18.1 Pay statements: Service personnel

In most cases, the three most recent pay statements are required; JPA screenshots of pay statements for the relevant months are acceptable. Where the pay statement includes details of the following, further documentary evidence for these items is **not** required:

- a. Income tax (PAYE).
- b. National Insurance Contributions (NIC).
- c. accommodation charges.
- d. Charge In Lieu Of Council Tax (CILOCT).
- e. child benefit (where paid through salary only).
- f. child maintenance (CMS) deductions (where deducted directly from salary).

18.2 Pay statements: civilian personnel

Civilian applicants, including spouse or civil partner, and ex-Service personnel, are to provide copies of their three most recent pay statements. Where the pay statement includes details of the payments listed above, further documentary evidence for these items is **not** required.

18.3 Pay statements: long term absentees (including fast-track AWOLs)

Personnel who have been AWOL for a considerable time and who have not received any pay for the full three months preceding their application, must provide the 3 most recent pay statements that are available. If the applicant has received alternative pay or funding during the months prior to application, pay statements or other documentary evidence to show this must be provided; if this source of funding is no longer available to the applicant, this must be clearly stated on their application. Applicants who have not received a full month's pay since their return, including those held on remand in MCTC, are unlikely to be required to make a pre-trial income contribution.



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18.4 Other forms of evidence

For income or outgoings not shown on pay statements, the applicant must provide suitable documentary evidence as is available. Where payments such as Child Benefit, Universal Credit, Tax Credits etc are not paid through salary, copies of official notification showing rates and payment intervals are to be supplied. Recent bank statements showing payments made by direct debit or standing order for some items, e.g. mortgage or rent, council tax, maintenance etc, will suffice until more appropriate documentation can be obtained; applicants have 21 (calendar) days from issue of the Contribution Order to provide AFCLAA with the appropriate documentation before an Income Evidence Sanction (IES) is applied (see para 18.12)

18.5 Childcare costs

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

18.6 Maintenance payments

Copies of Court Order or CMS documentation, showing amount and frequency of payments, should be provided. Where no formal order exists, proof of actual payment, e.g. bank statements, may suffice, so long as the amount and payee are clearly identified. In some circumstances, it may be necessary for AFCLAA to request a statement from the recipient to confirm the amount, frequency of payments and the recipient's relationship to the applicant.

18.7 Accommodation: SLA/SFA and privately-owned property

Where an applicant owns their own private accommodation but resides in SLA/SFA whilst that property is rented out to another party, AFCLAA will only include both the SLA/SFA charge and the mortgage payments for the privately-owned property in the means test assessment if evidence of the income received from the rented property is provided. If the privately-owned property is not rented out to another party, AFCLAA will only include the larger payment of either the SLA/SFA or the mortgage.

18.8 Living separately for Service reasons

Where the Service person is living separately from their spouse/civil partner for Service reasons, e.g. where the Service person is based at their permanent duty station (paying accommodation charges locally), but their immediate family live in the main/family residence in another part of the country, AFCLAA will include both accommodation charges (rent/mortgage). The applicant is to ensure this information is provided on their application form, to ensure all relevant details are included in the means test assessment.



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18.9 Mortgage payments

A copy of the most recent annual mortgage statement is to be supplied as supporting evidence. Where this is not readily available, a copy of a recent bank statement, with the relevant payment annotated, will suffice in the short-term, pending receipt of the mortgage statement. For property valuation purposes, an estimate based upon a search of similar properties within the local area is acceptable.

18.10 Privately rented accommodation

Where the applicant is either a tenant (or a landlord) of privately rented accommodation, a copy of any rental agreement should be provided plus details of any co-tenants (excluding immediate family) who may be included on any rental agreement or who are otherwise resident in the property and share responsibility for the rent.

18.11 Council Tax

For applicants in SLA/SFA, where CILOCT is deducted from salary, or those in privately rented accommodation where council tax is included in the rent, no further documentary evidence is required. In all other instances, a statement/invoice from the Council is required.

18.12 Income Evidence Sanction (IES)

Unless AFCLAA have been advised there are clear Service or operational reasons for a delay, the IES will be applied where the applicant has failed to provide the required documentary evidence within the deadline specified in the legal aid offer.

Upon application of the IES, the monthly income contribution will increase to either £900 or 100% of monthly disposable income, whichever is the greater. A revised Contribution Order will be issued by AFCLAA, and action taken to revise payments as appropriate. As the applicant has already signed the application and initial Contribution Order to accept the terms of legal aid, there is no requirement for the applicant to sign the revised Contribution Order before the new payment plan is instigated.



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19 Hardship

Financial commitments, i.e. personal loans, car finance, credit/store cards etc may reduce, or even remove, any income contribution liability; where the applicant has any financial commitments, these must be declared in the appropriate section within their application form, with the necessary supporting evidence provided in the first instance. This will ensure they are taken into consideration in the initial means test assessment and will enable the AFCLAA Case Officer to produce a Contribution Order which is an accurate reflection of the applicant's ability to pay. If, after provision of a Contribution Order, the applicant considers they have additional financial commitments that have not already been declared, further information/evidence may be submitted for further consideration.

19.1 Hardship evidence requirements

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. Where there are Service or operational reasons which prevent meeting this deadline, the unit are to contact AFCLAA as soon as possible so that suitable adjustments can be made, and unnecessary sanction action avoided.

19.2 Acceptable forms of evidence

The following should be provided in support of any financial commitments declared:

- a. a copy of the loan agreement, Individual Voluntary Arrangement (IVA) or Bankruptcy Order, detailing the start date and the payment schedule, plus proof of recent payment (1 x month's unedited bank statement).
- b. a copy of the latest credit or store card statement, showing the outstanding balance, the most recent payment and the minimum payment due.

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

19.3 Boarding school fees

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



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19.4 New financial commitments

New financial commitments, including loans or HP agreements (including 'pay day loans'), entered into after the applicant has been notified that a case has been referred to the DSP, or after a Contribution Order has been issued, may be subjected to further scrutiny and are likely to be excluded, unless there are good grounds for undertaking such a commitment, e.g. to buy a car upon the applicant's return to the UK from an overseas posting.



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20 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. Applicants who are exempt from making any contributions, whether automatically or following the means test, will receive a Contribution Order showing a 'Nil' contribution.

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

It remains the applicant's personal responsibility to advise AFCLAA of any changes to their personal or financial circumstances during the contribution payment plan period, e.g. personal - marriage, divorce or changes to size of their family; or financial - pay rise, promotion/demotion (except where a demotion is the sentence awarded in the related Court Martial etc). Changes to an individual's personal and/or financial circumstances would require a new application form to be submitted to AFCLAA without delay, so a means test re-assessment can be carried out.

20.1 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.

20.2 Contribution Order: offer declined

Although an offer of legal aid has been made, the applicant is free to decline that offer if they wish. Further information on declining legal aid is contained within AFLAS Procedures, Chapter 1, para 4.2.



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21 Income Contributions

21.1 Nil contribution

Applicants who are assessed as a Nil contribution from income will receive a Contribution Order to that effect. They are simply required to sign the Contribution Order, to accept the offer, including the associated terms and conditions of legal aid, and return this to AFCLAA following the normal procedures.

21.2 Capital/equity contributions

Some applicants with nil contributions from income may still be liable for a post-trial contribution following conviction if they have capital/equity in excess of the £30,000 threshold. In such cases, the AFCLAA Case Officer will determine actual legal costs upon case conclusion and will inform the applicant of their requirement to contribute towards these costs; up to the maximum of their capital/equity contribution or the actual legally aided costs, whichever is the lower.

21.3 Monthly income contributions

The applicant's (household) annual disposable income, as determined by the means test, including any Hardship, is divided by 12 to establish the monthly disposable income; monthly contributions are set at 90% of the monthly disposable income. The total contribution is calculated as 5 x the set monthly contribution, payable pre-trial, and can be either be paid by way of a lump sum or in regular instalments spread over 8 months. See AFLAS Procedures, Chapter 1, Section 5 for details on payment options.

21.4 Contribution cap: Contribution Order

Monthly contributions are capped according to the Class (type) of offence as defined in the Criminal Legal Aid (Remuneration) Regulations 2013, latest revise. Using the same levels as the civilian scheme and as part of the means test process, AFCLAA will check the appropriate contribution cap according to the offence type, and, if appropriate, will make the necessary adjustment on the Contribution Order. To enable the appropriate offence cap to be applied, the applicant must ensure that the type or nature of offence is included on their application form.

21.5 Minimum Drawing Rate Regulations: impact upon income contributions

In some cases, the Minimum Drawing Rate (MDR) regulations (JSP 754, Chapter 7, Section 4 refers) may impact the applicant's ability to make the full monthly contributions as stated on the Contribution Order (JPA payments only). In such instances, AFCLAA will issue 2 separate Contribution Orders, this gives the applicant the option of either paying the original payment plan (8 x payments), or an alternative payment plan where AFCLAA will adjust the



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monthly contribution payments so smaller payments, over a longer period, can be made to meet the total income contribution whilst remaining within MDR regulations.

21.6 Missed or incomplete payments

Failure to make any payment on time, in the full agreed amount, will result in a penalty payment equivalent to an additional month's contribution.



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22 Capital/Equity Contribution Liability

Applicants with capital and/or equity in property, held in their own name or jointly with another, which exceeds the current threshold of £30,000, may be liable for a post-trial contribution. Capital/equity contributions are only recoverable from convicted offenders where the income contributions paid (if any) did not fully cover the legal aid costs incurred.

The capital/equity contribution will be limited to either the maximum amount above the threshold, as shown on the Contribution Order, or the outstanding balance of legal aid costs, **whichever is the lower**. AFCLAA may require the applicant to provide up-to-date details of their capital/equity at case conclusion, to enable an accurate re-assessment of that contribution liability.

23 Legal aid not in place

23.1 Legal aid refused by applicant

An applicant can refuse to apply for legal aid either because they do not wish to have legal aid funding at the time, i.e. where the applicant wishes to instruct a legal representative privately; or wishes to use a Service lawyer to represent them; or intends to represent themselves as litigant in person (LiP) in court. The applicant should ensure they annotate the relevant box on the application form. If the applicant chooses to use a Service lawyer, it remains their responsibility to make contact with the relevant organisation to establish availability (see [para 8.2](#)).

23.2 Legal aid declined by applicant

Once the means test has been conducted, and Contribution Order issued, the applicant must either accept or decline the legal aid offer contained therein; the appropriate box must be selected and the signed Contribution Order returned to AFCLAA for further action, without delay.

23.3 Recovery of private legal costs

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

23.4 Legal aid refused by AFCLAA

AFCLAA will only refuse an application for legal aid under the following circumstances:

- a. where the applicant's disposable income exceeds the FET (see [Section 24](#)); or
- b. where the application fails the Interests of Justice (IOJ) test. Further details on the IOJ test, and how to appeal a refusal, are contained within AFLAS Procedures, Appendix 1 to Annex A; or
- c. where an application has been submitted in respect of a matter for which there is no entitlement to legal aid, e.g. internal administrative action; a criminal/civil matter to be heard in a civilian court in the UK; a criminal/civil matter to be heard in an overseas court where the applicant was in that jurisdiction purely on personal business.



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23.5 Certificate of legal aid not in place

This document (MOD Form 2263A) will be issued by an AFCLAA Case Officer where legal aid is refused or declined, stating the reasons why legal aid is not in place.

23.6 Reapplying for legal aid

Where an applicant initially refused to apply for legal aid, or declined an offer of legal aid, they can change their mind and re-apply for legal aid at any point up to the time of trial or before sentencing.

Where an application was refused by AFCLAA under Section 24 below, the applicant can reapply if their circumstances change and the grounds for the initial refusal are no longer valid. To reapply, the applicant must submit a new application form to AFCLAA; if legal aid is granted following submission of a new application, the applicant will be eligible for legal aid from that point onwards.

Legal aid will not be backdated to the date of any previously unsuccessful application; private costs incurred up to that point will remain the personal responsibility of the applicant.

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

24 The Financial Eligibility Threshold

The Financial Eligibility Threshold (FET) is designed to ensure that applicants, who can afford to pay privately for their representation, do not automatically receive legal aid. All applicants whose disposable income exceeds £37,500 per annum, after a full means test, will be advised that their application has been refused and provided with details of the review process.

24.1 Requesting a review

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

- a. if the applicant believes an error has been made in processing the application and/or the calculation of annual disposable income, they should inform AFCLAA of the issue within 21 days of the date of refusal and provide the necessary information/evidence to support their request.
- b. if the applicant is over the threshold of £37,500 but can demonstrate that they cannot afford to pay privately for their particular case, details/evidence of any/all expenditure not previously taken into account in the initial means test assessment must be supplied along with an estimate of the likely private costs of the case; this estimate must be provided by the applicant's solicitor on company headed paper, or emailed directly to AFCLAA at MCS-AFCLAA-group@mod.gov.uk.

24.2 Review process

Previously unidentified expenditure (Hardship) and the estimated private legal costs provided, will be used to review the applicant's annual disposable income figure as previously determined by AFCLAA in the original means test. If the revised annual disposable income figure takes the applicant below the £37,500 threshold, they then become eligible to receive legal aid.

24.3 Review successful: contributions

If the applicant becomes eligible to receive legal aid following an eligibility review, they may still be required to contribute towards the costs of their legal aid. The annual disposable income assessed under the original means test, plus any additional expenditure allowed following the eligibility review, will be used to determine the level of monthly income contributions. The estimate of private legal costs will not be included as, once legal aid has been granted, the applicant would not be required to pay privately from their income therefore, these costs are no longer relevant. A Contribution Order will be issued accordingly, and their case will revert to the normal legal aid procedures as described in this chapter.



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24.4 Review unsuccessful: legal aid refused

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

- a. the 21-day time limit to apply for an Eligibility Review has passed (unless there are specific Service or operational reasons which prevent this); or
- b. the applicant is assessed as ineligible even after an Eligibility Review,

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

Legal aid will not be backdated to the date of any previous unsuccessful application; private costs incurred up to that point remains the personal responsibility of the applicant.

24.5 Recovery of private legal costs: Financial Eligibility Threshold exceeded

Applicants refused legal aid by AFCLAA because their annual disposable income was assessed as being above the Financial Eligibility Threshold (FET), and therefore, paid privately for their legal representation, may, under certain circumstances, be eligible to reclaim some or all their privately incurred legal costs from central funds following the conclusion of their case. However, this only applies where the applicant was acquitted on all charges, or their case was otherwise discontinued.

24.6 Eligibility and process

The maximum amount that can be reclaimed is the amount equivalent to that which would have been paid if legal aid had been granted by AFCLAA; reclaimed costs will be limited to either the amount paid by the applicant to their legal representative, or the appropriate legal aid rates, **whichever is the lower**.

Applicants will only be able to reclaim these costs where AFCLAA have previously received a fully completed application for legal aid from the applicant, and thereafter provided the applicant with a Refusal Certificate to show that the applicant's annual disposable income exceeded the FET. To apply for reimbursement, the applicant is to provide suitable evidence of the private legal costs incurred, i.e. the legal representative(s) bill(s) of costs, and proof of payments made to the legal representative.



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25 Actions following the grant of legal aid

Where the applicant accepts an offer of legal aid, and upon receipt of the signed and witnessed Contribution Order, the AFCLAA Case Officer will contact the nominated legal representative to establish their acceptance of the case and notification of their subsequent instruction will be sent to all interested parties. The applicant and their DAO are advised to contact the named legal representative as soon as possible and certainly within 7 days of the date of the formal notification letter.

25.1 The legal aid contract

Once legal aid has been granted, the applicant has entered into a formal and binding agreement with AFCLAA and has agreed, in writing, to accept the terms and conditions of the Armed Forces Legal Aid Scheme, including payment of any contribution towards legal costs as previously determined. Once legal aid is in place, and the legal representative instructed, it is not possible for the applicant to later withdraw their application and terminate their legal aid contract with AFCLAA.



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26 Limited legal aid: DSP referral stage

26.1 Funding limitations

Legal aid granted at this stage is limited, in that it will only provide funding for the legal representative to hold initial conference with their client, until such time as the SPA notify their decision on whether the case is to be discontinued or will proceed to trial. A request from the legal representative to increase funding limitations at this stage will be considered, if deemed appropriate however, Legal Aid will not be extended to include full preparation for trial, or to incur additional costs, e.g. to instruct an expert, until and unless the SPA issue notification of trial.

26.2 Case not proceeding to trial

If the SPA decides not to prosecute a case, whether the matter is wholly discontinued or referred back to the CO for summary dealing, AFCLAA will be notified at the same time as other interested parties; thereafter the AFCLAA Case Officer will make contact with the legal representative and unit admin staff to confirm legal aid is discontinued with immediate effect and to instigate legal aid discontinuance procedures.

Any work carried out by the instructed legal representative after this point is a matter between that legal representative and their client and will not be paid by AFCLAA.

26.3 Case proceeding to trial

Upon receipt of notification of trial, the AFCLAA Case Officer will write again to the legal representative, confirming legal aid is extended to cover all trial preparation and representation.

Upon receipt of notification of trial where legal aid is not in place, irrespective of the reasons, the AFCLAA Case Officer will contact the unit and request a new legal aid application form be submitted. The applicant can continue to refuse legal aid at this point, but unit admin staff and the DAO should encourage the applicant to give serious consideration to their decision.



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27 Transfer of legal aid

Once legal aid has been granted and a legal representative has accepted the case, AFCLAA will only consider an application from a defendant to transfer legal aid to a different legal representative at public expense if it can be shown that there are substantial and compelling grounds to do so.

27.1 Transfer at applicant request

Any application to transfer legal aid at the applicant's request will be referred to the designated trial judge who will provide AFCLAA with their recommended course of action.

Where the applicant is unable to provide suitable grounds for a transfer at public expense, changes to legal representation will only be authorised if the applicant agrees, in writing, to accept personal responsibility for all costs incurred by the originally instructed legal representative. This is in addition to any contribution liabilities the applicant has towards their legal aid costs and is irrespective of the outcome of proceedings.

27.2 Transfer at legal representative request

Should the instructed legal representative request to be removed or replaced, irrespective of the reasons for such a request, AFCLAA will transfer legal aid to another representative at no cost to the applicant. The applicant will be asked to nominate an alternative legal representative before a new legal representative is instructed, alternatively, AFCLAA will nominate.



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28 Actions following the conclusion of proceedings

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

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

28.1 Acquittal or discontinuance

Applicants acquitted of all charges at trial, or whose case was discontinued at any time before trial, will receive a full refund of all income contributions paid, plus a further 2% interest. Upon receipt of the Trial Notification (TRN1), issued by the relevant Military Court Centre, the AFCLAA Case Officer will authorise and action the refund within 1 working day of receipt.

28.2 Acquitted on some but not all charges

Applicants acquitted on some, but not all charges on an indictment, will not receive a full refund but may be eligible to request a reduction in their legally aided costs liability known as Judicial Apportionment.



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29 Judicial Apportionment

A convicted offender may, through their legal representative, apply to the trial judge advocate for an order that they should only pay a proportion of the legal costs incurred, on the grounds that it would be manifestly unreasonable to pay the whole amount. A judicial apportionment can only be requested for those offenders who have been convicted on one or more, but not all, of the offences for which they were charged.

29.1 Application for judicial apportionment

The application for judicial apportionment is to be submitted to AFCLAA in the first instance, within 21 days of sentence, and must include the grounds on which the application is made and the proportion (as a percentage) of the costs, or an amount which the legal representative considers to be reasonable.

Upon receipt of the judicial apportionment request, AFCLAA will collate information regarding the offender's maximum contribution(s) payable, confirmation of contributions already paid and an estimate of the likely legal costs. AFCLAA will then submit this information, together with the judicial apportionment request, to the trial judge advocate (or a judge specified by the Judge Advocate General), for their consideration.

29.2 Judicial apportionment granted

If an application for judicial apportionment is granted, the judge advocate will state the percentage of costs payable by the offender. AFCLAA will review the applicant's contributions paid, and, where appropriate, automatically authorise a refund where contributions paid exceed the judicial apportionment amount authorised. There is no requirement for a co-accused who was convicted to pay the outstanding balance of the (judicial apportionment) applicant's costs.

There is no right of appeal against a refusal of an application for judicial apportionment.



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30 Post Conviction

30.1 Application for leave to appeal

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

30.2 Advice supporting an appeal

Should the representative involved in the case advise their client to appeal, legal aid funding for the preparation of an Application for Leave to Appeal (Form 1) is automatically available; where the offender had legal aid for the trial, there is no need to re-apply for legal aid at this stage, unless the offender is also requesting a different legal representative. Any convicted offender who did not have legal aid for trial should refer to [para 32.1](#) for further information on applying for legal aid for the application to CMAC.

30.3 Change of legal representative

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

30.4 Advice against appeal

Where the advice specifically indicates that an appeal would lack merit, the AFCLAA Case Officer may decide to refuse legal aid. However, this will not prevent the offender from entering into a private arrangement with the new legal representative if they so wish. If an Application for Leave to Appeal is successful, the CMAC may reimburse the offender for any private fees paid.

30.5 The CMAC decision

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



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30.6 Legal representative: bill of costs

Once the legal representative has submitted any Application for Leave to Appeal, if appropriate, their bill of costs is to be submitted directly to AFCLAA for consideration and payment. Fees claimed for work carried out after this point will be rejected by AFCLAA and will remain a matter between the legal representative and their client.

31 Review of legal aid costs and contributions upon conviction

31.1 Initial assessment of legal aid costs

Upon receipt of the Trial Result Notification 1 (TRN 1) from the relevant Military Court Centre confirming conviction, the AFCLAA Case Officer may carry out an initial assessment of the likely legal aid costs for the case before any legal bill(s) has been submitted.

31.2 Outstanding legal aid contributions

The AFCLAA Case Officer may then carry out a review of the income contributions paid by the applicant up to the point of receiving the TRN1 and the amount of any outstanding contributions:

- a. where contributions already paid are likely to exceed the likely legal aid costs, the Case Officer may suspend payment of any further contributions however, the payment plan will be reinstated if, once all the legal fees have been agreed, the contributions already paid do not cover the legal aid costs.
- b. where contributions already paid do not cover the likely legal aid costs, the existing payment plan will remain in force until all legal aid fees have been agreed and costs have been determined.

31.3 Impact of detention upon contributions

Where a convicted offender receives a period of detention, payment of outstanding contributions will continue each month, accumulating as an In-Service debt, recoverable upon return to unit, until all legal fees have been met or, their maximum contribution has been reached, whichever is the lower amount; where no further contributions are required, and, if appropriate, the AFCLAA Case Officer will refund any overpayment.

31.4 Full assessment of legal aid costs

Upon receipt of the legal representative(s) final bill of costs, the AFCLAA Case Officer will carry out a full assessment of their costs before authorising payment. Once all fees are agreed by both the legal representative(s) and AFCLAA, the Case Officer will carry out a final review of the contributions paid by the convicted offender.

31.5 Legal aid costs exceed income contributions

The AFCLAA Case Officer will assess the balance of contributions still to be recovered and take the appropriate action either to meet the actual legal aid costs, or the maximum outstanding contribution, whichever is the lower. The Case Officer will also establish whether the convicted offender was liable for a post-trial contribution from capital/equity (as



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annotated on their Contribution Order); where the offender is liable, they will be advised of the amount and the ways in which that contribution can be made.



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32 Legal Aid for Appeals (including the CMAc) and Elections for Trial

The application process for summary appeals or elections for trial by CM is the same as that in place for other CM, SCC or overseas civilian court trials (see [Section 14](#)). However, the contribution liabilities are significantly different.

Applicants are not required to make any contributions in advance of proceedings however, the appellant or person electing for trial will only be required to pay either the actual legal aid costs in the case, or the post-trial fixed contribution, whichever is the lower, should their appeal be unsuccessful or their trial result in a conviction.

32.1 Applications to the CMAc (legal aid not previously in place)

Where a convicted offender, who did not have legal aid for the original proceedings (whether they were unrepresented, or were represented by a Service Lawyer or a privately funded legal representative), requests legal aid to enable an Application for Leave to Appeal to be submitted to the Court Martial Appeal Court (CMAc), they will be subject to the same application and contribution process as those appealing to the summary appeal court.

32.2 Appeals lodged by the Reviewing Authority

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

32.3 Legal aid costs: unsuccessful summary appeal

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

32.4 Legal aid costs: election for trial (conviction)

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



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33 Means Test Assessment: Appeals and Elections for Trial

33.1 The income means test

Unlike CM trials, applicants applying for legal aid for summary appeals or elections are only assessed on their income at the time of application, without reference to any capital or equity (in property) which they might have. Please refer to [para 17.1](#) for further information on the two parts of the income means test and [paras 17.2 and 17.3](#) for Legal Aid Thresholds and the Basic Living Allowance (BLA), respectively.

33.2 Allowance: non-legally aided legal advice

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

33.3 Contributions for summary appeals and elections for trial

Contributions for summary appeals and elections for trial by CM are only payable following the conclusion of the proceedings, and dependent upon the outcome of those proceedings. See [Section 35](#) for full details.

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34 Actions following the grant of legal aid for appeals and elections for trial

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 nominated legal representative to establish their acceptance of the case.

34.1 The legal aid contract

Once legal aid has been granted, the applicant has entered into a formal and binding agreement with AFCLAA for the provision of legal aid. This means that they have agreed, in writing, to accept the terms and conditions of the Armed Forces Legal Aid Scheme. Once the legal representative is instructed, it is not possible for the applicant to later withdraw their application and terminate their legal aid contract with AFCLAA, unless and except where the applicant has withdrawn their appeal, or their election for trial request.

34.2 Uncontested summary appeal

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

34.3 Appeal or election request withdrawn by applicant

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

34.4 Applicant liability: appeal or election not proceeding

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



35 Actions following the conclusion of appeal and election proceedings

35.1 Appeal against finding and sentence: wholly successful

Where an appeal against both finding and sentence, was wholly successful, i.e the original finding is overturned and therefore sentence quashed, the appellant will not be liable for any post-appeal contributions.

35.2 Appeal against finding and sentence: wholly unsuccessful

Where an appeal against finding and sentence was dismissed in full, i.e. the finding still stands and the sentence remains unchanged, the appellant will be liable for a post-appeal contribution of £500, to be paid either as a lump sum or in instalments as agreed with AFCLAA.

35.3 Appeal against finding and sentence: partially successful

Where an appeal against finding is unsuccessful, i.e. the finding still stands, but the sentence is amended, the appellant will be liable for a post-appeal contribution of £250, to be paid either as a lump sum or in instalments as agreed with AFCLAA.

35.4 Appeal against sentence only: successful

Where an appeal against sentence is successful, i.e. the sentence was amended, the appellant will not be liable for any post-appeal contribution.

35.5 Appeal against sentence only: unsuccessful

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

35.6 Election for trial: conviction

Applicants who elected for trial will 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.



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CHAPTER 2: SERVICE POLICE INTERVIEWS AND CUSTODY

36 Service Police Interviews (Interviews after Caution (IAC))

36.1 Entitlement to legal advice and assistance

In the UK, any person who is brought to a police station under arrest or arrested at the station having gone there voluntarily, is entitled to receive free independent legal advice and assistance if they are questioned by the police, whether they have been arrested or not.

36.2 Contact with legal representative

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

36.3 Access to legal advice

The accused person, depending on location of the interview, may access free legal advice and assistance by requesting:

- a. a named civilian legal advisor of their own choice, so long as that legal advisor is willing to accept the fees payable under the Duty Solicitor Call Centre Scheme (for interviews conducted within England and Wales), or by AFCLAA for interviews carried out elsewhere (including all other parts of the UK); or
- b. a civilian legal advisor via the 'Duty Solicitor Call Centre', which operates mainly within England and Wales but is usually able to locate a solicitor who is willing to travel to the relevant location; or
- c. a civilian legal advisor from a list held in the police station, of those within the local vicinity willing to provide legal advice.

NOTE: Where an interview is to be held in Scotland or NI, a locally based legal advisor, with the appropriate PACE awareness training, is to be used wherever possible. Only where this is not an option, an England-based legal advisor who is within easy travelling distance of the interview venue, to minimise unnecessary travel costs, should be used. If in doubt, please contact AFCLAA for further guidance.



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Access to a Services legal advisor is generally only available via the RAF Legal Services in Cyprus, or where necessary in an operational theatre.

36.4 Access to legal advice outside Europe

When seeking to arrange an IAC in locations outside Europe due consideration **must** be given to the wider costs to public funds and whether alternative provisions could be made, to ensure the accused is able to receive appropriate legal advice, without incurring significant unnecessary costs. This is particularly important where the distances involved would require expensive flights, and/or hotel accommodation, as the legal advisor is entitled to claim an hourly allowance for reasonable and justified travelling time (including waiting time at airports or other departure points), in addition to flight, accommodation and other expenses. In such instances, the Investigating Officer should contact AFCLAA for further guidance.

36.5 Alternative provisions

Whilst the particulars, especially the seriousness, of the allegation(s) and the investigation take priority, the Investigating Officer should also consider whether it would be appropriate to use one of the following options, as an alternative to the personal attendance of a legal advisor:

- a. telephone advice.
- b. VTC or Skype.
- c. returning the accused to the UK for interview.
- d. using a Service legal representative (subject to location and availability of a suitably qualified legal advisor).

36.6 Factors to be considered

When considering conducting an interview by telephone, VTC or Skype, the Investigating Officer must ensure there are suitable facilities available which allow the accused to hold a private conversation with their legal advisor before and after the IAC. If suitable facilities are not available, or if the accused requires their legal advisor to attend in person, the Investigating Officer should seek authority to return the accused back to the UK as a more practical and cost-effective option.

36.7 Travel costs outside Europe.

In the event that none of the alternative options listed in paragraph 38.5 above are considered suitable, the legal advisor is to contact AFCLAA directly, to seek further guidance and obtain prior authority to incur the appropriate level of travel and subsistence costs; **failure to obtain specific prior authority may result in such costs being disallowed.**



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36.8 Legal advisor declines legal aid fees

If the named legal advisor is unwilling to accept the legal aid fees payable, the accused person will be given the opportunity to either agree fees privately with the legal advisor, or request an alternative legal advisor; fees agreed privately and all other related expenses, e.g. travel and subsistence, are the personal responsibility of the accused, and cannot be reclaimed later from public funds.

36.9 Legal advisor accepts legal aid fees

Where the legal aid fees payable by the Duty Solicitor Call Centre Scheme or AFCLAA are accepted by the legal advisor, no other financial agreement with the accused may be entered into. Any attempts by the legal advisor to obtain additional fees, or reimbursement for incidental expenses, are to be made known to AFCLAA without delay.

If the publicly funded legal advisor has any questions regarding fees, they are to contact either the Duty Solicitor Call Centre (for IACs held in England and Wales) or AFCLAA (for IACs held elsewhere) directly. There is to be no attempt, by Service Police, the accused or any other unit or Service representative, to deal with any such query.



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37 Custody Without Charge

Those held in custody without charge at any Service Custody Facility, are entitled to receive free legal advice and advocacy in respect of all detention reviews (this applies to all custody reviews irrespective of who is entitled to carry out that review). The different ways to access a legal advisor, and other relevant information, are detailed in [para 36.3](#) above.

38 Custody After Charge

38.1 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.

38.2 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.

38.3 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.

38.4 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 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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39 Travel and Accommodation - IACs and Custody Reviews

39.1 IACs held within Europe

Legal advisors attending IACs conducted by Service Police at any Service police station outside England and Wales, but within Europe (commonly Germany and Cyprus) where prior authority is unlikely to have been provided, are engaged on official MOD business funded by AFCLAA. As such, those legal advisors are fully covered by the provision of [Chapter 4](#) of this JSP.

39.2 IACs held outside Europe

Legal advisors requested to attend IACs held outside Europe are required to contact AFCLAA, without delay, to discuss the request and to obtain written prior authority to incur costs (if appropriate). The Service Police arranging the IAC and the legal advisor are to take note of [paras 36.4 - 36.7](#) above and [Chapter 4](#) of this JSP before committing to any flight or accommodation expenditure.

39.3 Custody after charge reviews

Legal advisors attending an accused person in respect of custody after charge reviews, where prior authority is unlikely to have been provided, are engaged on official MOD business funded by AFCLAA. Units are advised to consult this Chapter for their own guidance but should advise the legal advisor to contact AFCLAA directly for any questions relating to travel, accommodation and subsistence.



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CHAPTER 3: LEGAL AID FOR CRIMINAL COURTS OUTSIDE THE UK

40 Eligibility and Ineligibility for Legal Aid through AFCLAA

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

- a. persons subject to Service Law (PSSL) in a country on permanent or detached duty.
- b. UK-based civilians subject to Service Discipline (CSSD) (also known as 'relevant civilians') in a country and within a designated area, whilst on permanent or detached duty; see [JSP 830 \(Manual of Service Law\), Vol 1, Chapter 3, para 17](#) for clarification regarding who is and isn't classified as CSSD.
- c. dependents of PSSL and CSSD (whilst within a designated area). This includes boarding school pupils, residing with their parent(s) or guardian(s) who are PSSL or CSSD, during holiday periods.
- d. PSSL and CSSD traveling to their permanent or detached duty station, provided they are travelling at public expense, are on an authorised route or are using authorised transport.

40.1 Ineligibility

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

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

40.2 Personal travel

All personnel who are travelling outside their usual country of residence on personal



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business, including holidays, are advised to take out suitable personal and travel insurance before starting any journey.

40.3 Identifying support available locally

Before contacting AFCLAA, the unit should ascertain whether there is any form of publicly funded legal assistance, including advice during police station interviews, and/or legal aid through the local courts which the defendant may be entitled to. Where there is a publicly funded legal assistance scheme, which is broadly similar to AFLAS 11, available to the defendant, there is no entitlement to legal aid support from AFCLAA.

40.4 Applicant responsibility

The individual is personally responsible for informing their unit of any ongoing or likely civilian police investigation in accordance with local regulations. Unlike matters prosecuted through the SJS, AFCLAA is not routinely advised of any forthcoming civilian criminal prosecution and is therefore unable to initiate any form of guidance or support until advised of a situation by the unit concerned.

40.5 Unit responsibility

In many countries, criminal matters are often brought to court within very short timescales. Units should therefore ensure that AFCLAA are made aware of any individuals that are under investigation by the local civilian police or authority, or of a potential civilian criminal case, at the earliest opportunity to prevent or reduce unnecessary delays. The AFCLAA group mailbox MCS-AFCLAA-Group@mod.gov.uk is staffed throughout working hours and is to be used wherever possible.

40.6 Emergency contact: out of hours

Where urgent advice or assistance is required outside standard (UK) working hours, including weekends or 'stand down' periods (i.e. Christmas, Easter and public holidays), the AFCLAA Out of Hours (OOH) mobile should be used: **(0044) (0)7766 511314**. In the event this number is not answered straight away, leave a voicemail or send a text message, providing a direct dial civilian contact number (including international dialing code), to enable a prompt response.

40.7 AFCLAA action

Upon receipt of notification of a potential requirement for legal aid, AFCLAA will contact the identified POC to advise on further actions required. If a response to the initial notification is not received within one working day; as the group email account is not routinely checked outside normal (UK) working hours, the sender is advised to notify AFCLAA via the OOH mobile.



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40.8 Application process

The applicant should complete and submit a legal aid application form (MOD Form 2263) without delay. 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; see [Chapter 1 Section 14](#) for guidance on the completion of the form and documentary evidence required.

After establishing eligibility for legal aid, a Contribution Order will be emailed (or faxed) to the unit for the applicant to consider if they wish to accept the offer. If the applicant is found to be ineligible for legal aid provided by AFCLAA, a Legal Aid Refused certificate will be issued instead ([Chapter 1 para 23.5](#) refers).

40.9 Applicant and unit responsibility

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.

Until all stages of the legal aid process are completed, legal aid cannot be granted. AFCLAA will not be responsible for any costs incurred by a legal representative in advance of formal instruction from AFCLAA, the applicant will be responsible for these costs at private expense and cannot be reclaimed from AFCLAA or the unit.

NOTE: Under no circumstances will legal aid be granted retrospectively to cover any such work undertaken.

40.10 Accessing local legal representation

The applicant and their unit should be aware that they can only be represented by a local legal representative with the appropriate 'Rights of Audience'; Service legal representatives cannot represent personnel in overseas courts. AFCLAA do not have sufficient knowledge of local legal representatives in most overseas locations to be able to identify suitable representation. Therefore, the applicant, with the support of their unit and DAO, should identify a suitably qualified legal representative within the local area, and provide full contact details on the application form, to enable AFCLAA to proceed.



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41 AFCLAA Actions and Funding

41.1 Funding responsibilities

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

The applicant and legal representative should only discuss any potential request(s) for additional funding (as described in Section 40 above), as such costs would be included as part of the contribution liability towards legal aid costs; responsibility for authorising such costs remains with AFCLAA.

The applicant is not permitted to enter into any other financial agreement with the legal representative, as this may invalidate the grant of legal aid. If, regardless of the circumstances, an instructed legal representative asks for money, other than through AFCLAA, the details are to be reported to AFCLAA immediately.

41.2 Post proceedings

Following the conclusion of the proceedings, the legal representative will submit their bill of costs to AFCLAA for consideration. AFCLAA will review the bill and authorise agreed costs for payment.

41.3 Action on contributions

Acquitted personnel (including those whose case does not proceed to court) will receive a full reimbursement of contributions made, plus interest. Convicted offenders whose contributions exceed the actual legal aid costs incurred will have the balance of their contribution returned once all legal aid costs have been agreed and settled with the legal representative; no interest will be payable on such refunds.



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42 Detention in Custody

42.1 Detention in advance of charge

If, due to the nature of the offence and/or local custom, an applicant is immediately detained in custody, legal representation should be obtained at the earliest opportunity. In such circumstances, AFCLAA should be contacted immediately.

42.2 Emergency legal aid funding

Where an applicant is immediately detained, exceptionally, AFCLAA may fund the initial advice and, if applicable, representation in court, in advance of receiving an application for legal aid. This will be limited to an initial hearing, such as a bail application, if held within 24-48 hours of the initial detention. However, the applicant must apply for legal aid in the normal manner at the earliest opportunity. If unit/DAO access to the applicant is restricted by the civil authorities, AFCLAA must be advised without delay so that any temporary measures may be identified and instigated as soon as possible.

42.3 Delayed application

Any subsequent failure to apply for legal aid, without good reason, may render the applicant liable for the full costs of their legal representation, except for the costs of any initial advice and/or representation provided whilst the defendant was in custody and before AFCLAA could be contacted.

42.4 Legal aid declined by applicant

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



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43 Sovereign Base Area Authority

43.1 Sovereign Base Area Cyprus

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

Applications for support from AFCLAA will only be considered in exceptional cases, i.e. where local legal representatives do not have the experience or expertise to properly represent their client and the SBAA Court Legal Aid Office is unable to fund UK-based representation because the charge is serious, and exceptional when compared to other cases held in the SBAA and Republic of Cyprus Courts.



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.](#)

44 Definitions

44.1 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.

44.2 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.
- 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 in para 44.2 above, the unit or DAO is to contact AFCLAA directly for confirmation. The DAO should also



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familiarise themselves with the requirements for prior authority (paras 44.3 - 44.4 below), before any travel or accommodation arrangements are made, to prevent any misuse of public funds, services or amenities by unauthorised civilians.

44.3 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.

44.4 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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45 Custody Reviews and Service Police Interviews (IACs)

45.1 Custody reviews

Legal representatives attending upon a detainee in respect of any custody review, where legal aid is not in place because the detainee has either not completed the application, or has refused an offer of legal aid, are engaged on official MOD business. Such legal representatives are therefore fully covered by the provisions of this Chapter but only insofar as their services are requested by the accused as either a 'duty' or 'own' solicitor, and where such attendance is acknowledged by an appropriate disciplinary authority, e.g. Service Police; unit CoC; P1, SSA etc.

Legal representatives attending custody after charge hearings do so in accordance with their formal grant of legal aid instruction. Privately instructed legal representatives, i.e. where the detainee has refused legal aid, are not on official MOD business and therefore the provisions of this chapter do not apply. Further guidance on Service Police interviews and custody can be found in [Chapter 2](#) of this JSP.

45.2 Interviews After Caution (IACs).

Legal advisors attending upon an accused person in respect of any IAC conducted by SP at any Service police station, held outside England/Wales but within Europe, are engaged on official MOD business which is funded by AFCLAA but for which no prior authority or documentation can be provided.

For IACs held elsewhere in the world, e.g. Canada, Kenya, Bahrain, the legal advisor is to contact AFCLAA for guidance and prior authority to incur travel and accommodation costs, before making any arrangements; when in doubt, the Service Police arranging the IAC are to contact AFCLAA for advice.



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46 Travel: Applicants

46.1 Applicants and DAO/AAO

Service, and relevant civilian, applicants in receipt of legal aid for their defence, are entitled to travel at public expense to consult with their legal representative. They should be accompanied by their DAO or equivalent, who is also entitled to travel at public expense. Where necessary, this may also include an 'Appropriate Adult', who may be the parent or guardian of an applicant under 18 years of age. [JSP 752](#), paragraphs 06.0731 and 06.0732 refer.

46.2 Duty travel

As such journeys are considered to be 'duty travel', the general principles laid down in [JSP 752](#), paragraph 06.0701, should be applied at all times. Personnel should travel via a recognised direct route, and in the most economical manner. In particular, personnel returning to the UK at public expense should, wherever possible, endeavor to book meetings with their legal representative which coincide with appropriate air trooping flights.

46.3 Costs

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

46.4 Conferences with the legal representative

It is essential that the applicant has at least one face-to-face meeting with their legal representative, to be held at the legal representative's office or chambers, before any trial or appeal (serious or complex cases usually require more than one). Where there are clear Service or operational reasons which prevent the applicant travelling to meet their legal representative, the unit or DAO are to contact AFCLAA for advice on alternative arrangements before authorisation to incur travel costs can be issued by AFCLAA to the legal representative. In some cases, it may be possible, and more practicable, for applicants to use Video-Tele-Conferencing (VTC) links instead, to hold short conferences with their legal representative. The DAO/AAO should also refer to the 'Notes to Assist a DAO/AAO', provided with a copy of the legal aid instruction letter (and at Appendix 3 to Annex A of AFLAS Procedures) for further guidance.

46.5 Medical or detention

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



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46.6 Compassionate reasons

Where the applicant considers there are compassionate reasons which might restrict their capability to travel, particularly for those based outside the UK, the unit or DAO/AAO should contact AFCLAA for further guidance; if appropriate, AFCLAA will issue authorisation to the legal representative, to incur reasonable travel costs.



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47 Travel and accommodation: legal representatives

47.1 Legal representatives' travel

Where AFCLAA have authorised the attendance of civilian legal representatives, they are classified as MOD contractors, and are therefore permitted to travel at public expense in MOD vehicles, but only insofar as the journey undertaken can be considered as 'duty travel' and is in direct relation to the case in which they are instructed. [JSP 800 Volume 5 Leaflet 16](#) refers.

47.2 Use of MOD vehicles

The use of MOD transport should be limited to situations where it is not possible for the legal representative to use either public or privately owned transport. This will mainly apply to cases outside mainland UK and will be limited to transportation between a local train station or airport and the relevant Military Court Centre (MCC) and, if appropriate, local overnight accommodation. There may be instances where the use of MOD transport may be appropriate if it is considered relevant within the context of legal aid funding; units are to be aware of the principles of duty travel.

47.3 Unauthorised travel

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

47.4 Unauthorised personnel

Unauthorised civilian personnel travelling with a legal representative, such as trainees, spouses or other family members, are not permitted to travel at public expense in MOD vehicles under any circumstances. Legal representatives using public transport with such unauthorised personnel, instead of making use of available MOD transport, will be unable to reclaim these costs from public funds.

47.5 Overnight accommodation

Where it is envisaged that overnight accommodation near to the MCC may be required for the trial or appeal, prior authority from AFCLAA, before incurring any accommodation and subsistence costs must be sought; at no time are the unit, DAO or applicant able to authorise such expenditure on behalf of AFCLAA. Where overnight accommodation is authorised, the legal representative may elect to stay either in a local Officers' mess or hotel.



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47.6 Booking accommodation

Upon receipt of prior authority issued by AFCLAA, the legal representative is responsible for booking and paying for their accommodation; AFCLAA's prior authority will confirm the appropriate travel, accommodation, and subsistence rates payable. Legal representatives should refer to the Notes for Guidance issued with their instruction letter to establish which hotels are deemed 'Out of Bounds' for the defendant/appellant's legal team because of use by either the judge advocate or Board members hearing the case.

47.7 Mess Accommodation

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

47.8 Receipts

As with any public transport costs, the legal representative should obtain receipts for all food and accommodation costs, to be submitted with their bill of costs for AFCLAA's consideration and payment. Items such as personal phone calls, laundry or entertainment, (including alcoholic beverages) are considered to be personal and will not be authorised for payment by AFCLAA and cannot therefore, be reclaimed from the applicant, DAO or the unit.

47.9 Medical attention/facilities outside UK

Should a legal representative fall ill whilst overseas on official business, they are entitled to receive treatment at either a Service Primary Health Care Facility (Medical Centre) or on referral to the DGP (the contracted hospital), but only where such facilities exist for Service/MOD personnel and their families. Appointments are not to be made to receive treatment or medication for pre-existing conditions unless there is an urgent and unforeseen requirement to do so. The DAO/AAO should ensure that appropriate arrangements are made, and the Court Officer informed at the earliest opportunity.

47.10 Travel insurance

As a general rule, the MOD does not purchase commercial insurance for the risks it faces, as it is more cost-effective for the Department to bear the risk of receiving claims. Where it is necessary for a legal representative to travel to/within operational theatres, or travel on MOD aircraft, in connection with a forthcoming trial or appeal (or any other case-related matter, for which prior authority has been obtained from AFCLAA), and an individual sustains an injury or loss, the MOD will consider any claim on a legal liability basis.



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Where it can be shown that the loss or injury was caused through MOD negligence, the MOD will pay appropriate compensation. In case no Service medical facilities are available, legal representatives may wish to obtain suitable travel insurance before travelling abroad but should be aware that these costs cannot be reclaimed from the MOD.

47.11 Life assurance

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

47.12 Travel in operational theatres

If a need to travel into an operational area is identified, AFCLAA will ensure that those deploying are made aware of the relevant provisions in respect of insurance and assurance. The DAO and the applicant's unit remain responsible for ensuring appropriate staff clearances and other associated administrative action is taken locally.



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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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48 Legal Representation - Child Assessment or Protection Order Hearings

MOD has a responsibility for safeguarding and promoting the welfare of children residing or staying outside the UK with Service families or with families of civilians subject to Service discipline. In doing so, the MOD seeks to replicate, as far as appropriate and practical, the same procedures and levels of service as would be found in England and Wales; this includes the same access to publicly funded legal representation for those who would be entitled to receive such help in similar circumstances in the UK (see [para 48.2](#) below for further clarification).

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

- a. [JSP 834 Vol 1: Safeguarding Children.](#)
- b. [JSP 830 Volume 1 Chapter 26 - Safeguarding children: Armed forces child protection powers.](#)
- c. [The Armed Forces \(Protection of Children of Service Families\) Regulations 2009 \(SI 1107\).](#)
- d. [The Armed Forces Act 1991, Sections 17-23 - Protection of Children of Service Families.](#)

In addition, personnel directly affected by legal proceedings concerning the care or protection of children may obtain useful general guidance from the GOV.UK website at <https://www.gov.uk/civil-legal-advice>, by phoning (0044) (0)345 345 4 345 or by texting 'legalaids' and your name to 80010 to ask the Civil Legal Aid (CLA) for a call back. Details of solicitors who are experienced in dealing with such proceedings may be obtained from the [Law Society website](#).

48.1 Scope of the Armed Forces' legal representation scheme

The Armed Forces (Protection of Children of Service Families) Regulations 2009 may be applied to any child who:

- a. forms part of the family of a Person Subject to Service Law (PSSL), or a Civilian Subject to Service Discipline (CSSD), also known as a 'relevant civilian', where that person is serving or based outside the UK, in a designated area; and
- b. resides outside the UK with that family or another such family; or
- c. is staying with such a family (for however short a time), whereupon the child will be considered as residing with that family for the purposes of the relevant proceedings.



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48.2 Entitlement to receive public funding

The provisions within this Section are designed to support those who are entitled to receive public funding for legal representation at Assessment or Protections Order hearings. This may include:

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

48.3 Status of parent(s)

As the regulations may be applied to any child, regardless of residency status (see para 48.1 above), the provisions of this chapter apply equally to the parents or those with parental responsibility for such a child. This means that any person who is a parent or has parental responsibility for a child who is the subject of legal proceedings under the Armed Forces (Protection of Children of Service Families) Regulations may apply for public funding for their legal representation from AFCLAA, regardless of whether they are:

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

48.4 Reviewing representation requirements

Persons entitled to receive public funding for legal assistance and representation for CP proceedings under the terms of this section will be granted funding without reference to means, prospect of success or reasonableness; however, following civilian practice, the Need for Representation test will be applied. This will ensure that the different parties are not unnecessarily represented separately where a common legal position is shared between some or all parties with an interest in the CP proceedings (see also paras 48.6 and 48.7 below).

48.5 The 'Need for Representation' test

In most instances, AFCLAA anticipate all interested parties seeking publicly funded support would share legal representation for CP hearings. Should any applicant or their legal representative, once instructed, consider there to be a conflict between themselves and another interested party, they must inform AFCLAA without delay. This is likely to arise as an issue where parents or other parties with parental responsibility would appear to AFCLAA



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to have the same interests in the proceedings and, in the case of a couple, they are not living separately and apart.

48.6 Separate representation requested

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

48.7 Conflict of interest identified after authorisation

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



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49 Legal Representation at Adjudication Hearings (MCTC only)

49.1 Reference of a charge to the adjudicator.

Where, under [The Service Custody and Service of Relevant Sentences Rules 2009](#) (SCSRSR) (see also [JSP 837 Chapters 8-9](#)) the Commandant refers a charge against a detainee to a judge advocate (referred to in the regulations as 'an adjudicator'), that detainee is automatically entitled to receive legal advice, and, if required, legal representation at the adjudication hearing; such legal advice and representation will be at public expense.

49.2 Procedure for obtaining legal advice

Under SCSRSR [Rule 45](#), save in exceptional circumstances, every charge brought to the adjudicator shall be heard within four days of referral by the Commandant MCTC. Given that the detainee is entitled to receive legal advice before the adjudication hearing, it is imperative that a suitably qualified legal representative ([SCSRSR 2009 Part 1, paragraph 1\(2\)](#) refers) is instructed without delay.

49.3 Detainee contact with legal representative

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

49.4 MCTC staff action

MCTC staff are to provide such assistance as is necessary to enable detainees to discuss their case with their legal representative, i.e. access to phone and meeting room facilities in accordance with MCTC rules. Using the Record Sheet provided at Annex C to AFLAS Procedures, MCTC staff are to keep accurate records of the date, time and duration of phone calls and conferences; they are also requested to keep a record of the date, time, and duration of the adjudication hearing.

Once the adjudication hearing is concluded, MCTC staff are to email the completed Record Sheet to AFCLAA at MCS-AFCLAA-Group@mod.gov.uk in order that the legal representative's bill of costs can be verified and authorised for payment without delay.

49.5 Legal representative action: post proceedings

At the conclusion of the adjudication proceedings, the legal representative is advised to submit their bill of costs to AFCLAA for consideration and payment. As funding is a matter between the legal representative and AFCLAA, neither the detainee nor any other interested



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party (including MCTC staff) is authorised to enter into any financial agreement with the legal representative, for the payment of fees or any other related costs.



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50 Legal Representation - Appeals to the Court Martial Appeal Court (CMAC)

50.1 A convicted person's appeal to the CMAC

A convicted person may appeal to the CMAC, whether against both conviction and sentence, or against sentence alone, with the leave of the CMAC only. The trial advocate will advise their client on the merits of such an appeal; where applicable, the original legal aid order issued by AFCLAA for the proceedings in the Court Martial covers the legal representative for the work necessary to prepare and complete the Application for Leave to Appeal (Form 1) and submit it to the CMAC for a decision on whether to allow or refuse the application.

50.2 Appellants without legal aid at trial

Where the convicted offender did not have legal aid funding for their trial, whether they were unrepresented, or instructed a Service lawyer or a privately funded legal representative, they may apply for legal aid to fund the preparation of their Application for Leave to Appeal to the CMAC.

The convicted person should refer to [Chapter 1, Section 14](#) of this publication for further information and guidance on how to complete the application form; depending on their circumstances, they may have a contribution liability, which will become due should their application be rejected by the CMAC.

50.3 The CMAC decision

The CMAC will consider the application and, if the appeal is allowed to proceed, the CMAC will assume responsibility for all associated legal aid funding requests thereafter. If the CMAC does not grant the initial Application for Leave to Appeal, any subsequent application(s) is a matter between the offender and their representative; neither the AFLAS nor the CMAC will provide any legal aid funding for this work.

50.4 SPA appeals to the CMAC

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

50.5 Unduly lenient sentences

If the Attorney General considers that a sentence or any other order made by the CM is unduly lenient (see [JSP 830 Volume 2, Chapter 31, paragraph 14](#) for clarification), they may,



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with the leave of the CMAC, refer the case to the CMAC for it to review the sentencing of the offender. In such instances, the CMAC will assume responsibility, including funding, for the offender's legal representation throughout these proceedings. This means that there is no scope for the offender or their legal representative to apply to AFCLAA for public funding.

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51 Legal Representation - incidents arising during the course of duty

Although primarily in reference to criminal proceedings, this Section may also be applied to representation at inquests in exceptional circumstances, where authorised by the appropriate departments, including DIU, DJEP and the CoC. The decision to provide exceptional individual representation will be made on a case-by-case basis.

The Department is committed to standing behind its people who act reasonably and in good faith in the course of their duties or work-related activities. Therefore, in certain situations, the MOD will consider paying for legal advice, assistance and (if appropriate) representation for an individual who is subject to legal proceedings arising from an act committed in the course of their employment or duties. The responsibility for approving funding in such instances remains within the Chain of Command/Top Level Budget area, in accordance with the principles and guidance contained within [2024DIN01-005](#) - Support available for current and former staff involved in legal proceedings.

51.1 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 MODLA 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.

51.2 CoC funding withdrawn: Service jurisdiction or overseas 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 Ch 1 of this JSP.

51.3 CoC funding withdrawn: UK civilian jurisdictions

Where the (UK) civilian authorities retain jurisdiction, and the CoC funding is withdrawn at any stage during those proceedings, the individual will need to apply for legal aid through the civilian legal aid scheme and should seek guidance from their legal representative as a



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matter of urgency; AFCLAA will notify the legal representative of the change in circumstances and confirm the effective date of funding withdrawal. CoC funding will cover costs reasonably incurred from the point of instruction until formal notification of withdrawal has been issued by AFCLAA.



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52 Incidents arising during the course of duty - Iraq or Afghanistan (Op Telic / Op Herrick)

Service, including ex-Service, personnel investigated in relation to incidents occurring in Iraq or Afghanistan (i.e. whilst on Op Telic or Op Herrick) are automatically exempt from making any contributions towards their legal aid. This applies to legal advice and assistance provided before, during and after any interview after caution (IAC) by the Service Police, and to any case which is subsequently referred to the SPA for a decision on whether to prosecute in the service courts or not. Full guidance on the processes to obtain legal support and funding is provided in AFLAS Procedures, Chapter 5, Section 15.



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

53.1 The application process - Iraq or Afghanistan (Op Telic / Op Herrick)

Those 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 soon as possible after receiving notification that:

- a. they are to be interviewed after caution by the Service Police; **OR**
- b. their case has, or is about to be, referred to the SPA; **OR**
- c. the SPA has directed their case for trial by Court Martial.

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.



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54 Document Information

This policy supersedes all previous MOD policy on the Armed Forces Legal Aid Scheme.

54.1 Document Information

Filename:	The Armed Forces Legal Aid Scheme Policy
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

54.2 Document Versions

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

MOD will review this policy on a regular basis or when changes to legislation or best practice dictates.

54.3 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



55 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.
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
Adjudication hearings (MCTC only)	Where a charge against a detainee has been referred to a judge advocate (the Adjudicator). See Chapter 5, Section 49 for details.
Adjusted Annual Income	The calculation carried out at the initial means test stage to determine the applicant's annual income when adjusted to take account of their personal (family) circumstances. Applicants whose adjusted annual income is below £12,475 are automatically eligible for free legal aid.
Advice and Assistance	The free legal service provided by legal advisors to accused personnel interviewed under caution by the [Service] police.
[AFCLAA] 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. See Chapter 1, para 24.5 .
Child Protection Proceedings	Assessment or Protection Order hearings presided over by a judge advocate. Public funding is generally available for the child(ren), the parents and/or others with parental responsibility. See Chapter 5, Section 48 .
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.



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Term	Definition
Contributions: Capital/Equity (trials only)	The post-trial contribution which may become due (following conviction only) IF legal aid costs remain payable after taking account of pre-trial income contributions paid (if any). Liability only exists where the applicant has capital/equity in excess of £30,000.
Contributions: Income (trial and referral)	The contribution payable from disposable income following assessment of the applicant's personal and financial circumstances.
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 35 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 1, Section 18 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.



Policy

The Armed Forces Legal Aid Scheme (AFLAS)

Term	Definition
Financial Eligibility Threshold	The level of disposable income available to the applicant, above which there is no automatic entitlement for legal aid. See Chapter 1, Section 24 for details.
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. See Chapter 1, para 18.12 for details.
Interests of Justice (IOJ) test	Used to determine whether representation at public expense is appropriate in the interests of justice. See AFLAS Procedures, 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. See Chapter 2, Section 36 for details.
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). See Chapter 1, para 21.5 for details.
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.



Policy

The Armed Forces Legal Aid Scheme (AFLAS)

Term	Definition
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. Generated by AFCLAA. The Contribution Order details the maximum income and/or capital/equity contribution liabilities, and the monthly income contributions payable.
MOD Form 2263A (Part 2: LA refused)	Legal Aid refused. Generated by AFCLAA. In addition to confirming that an application for, or offer of, legal aid has been declined (by the applicant) or refused (by AFCLAA), the form will provide the reason(s) for this decision. The applicant has the right to appeal a refusal decision.
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. See Chapter 5, para 48.5 for details.
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. See Chapter 1, Section 9 .
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.



Policy

The Armed Forces Legal Aid Scheme (AFLAS)

Term	Definition
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. See Chapter 1, para 8.1.
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.
SPCR (Service Police Case Record)	Police incident record number, annotated on police-generated documentation. If known, this number should be annotated on the application form as AFCLAA use this number to identify different cases and, if appropriate, to link together any/all applications from co-accused.
Summary Hearing	Legal aid can be requested for appeals against the finding and sentence, or sentence alone, following a summary hearing, but not for the summary hearing itself. Legal advice may be sought in advance of a summary hearing, but this remains a personal liability which cannot be reclaimed from public funds.
Thresholds (financial eligibility; gross annual income; capital/equity)	The points at which the applicant's eligibility to receive legal aid and/or be liable for contributions towards legal aid costs is determined. See Chapter 1, para 17.2.
VTC	Video-Tele-Conferencing (facilities) or Live Link – widely available on or near MOD establishments, including Military Court Centres, for use by defendants and legal representatives as necessary, e.g. for short or urgent conferences between legal representatives and their clients. Custody reviews, short court hearings and some witness testimonies may also be carried out by VTC, subject to court/judge advocate authority.

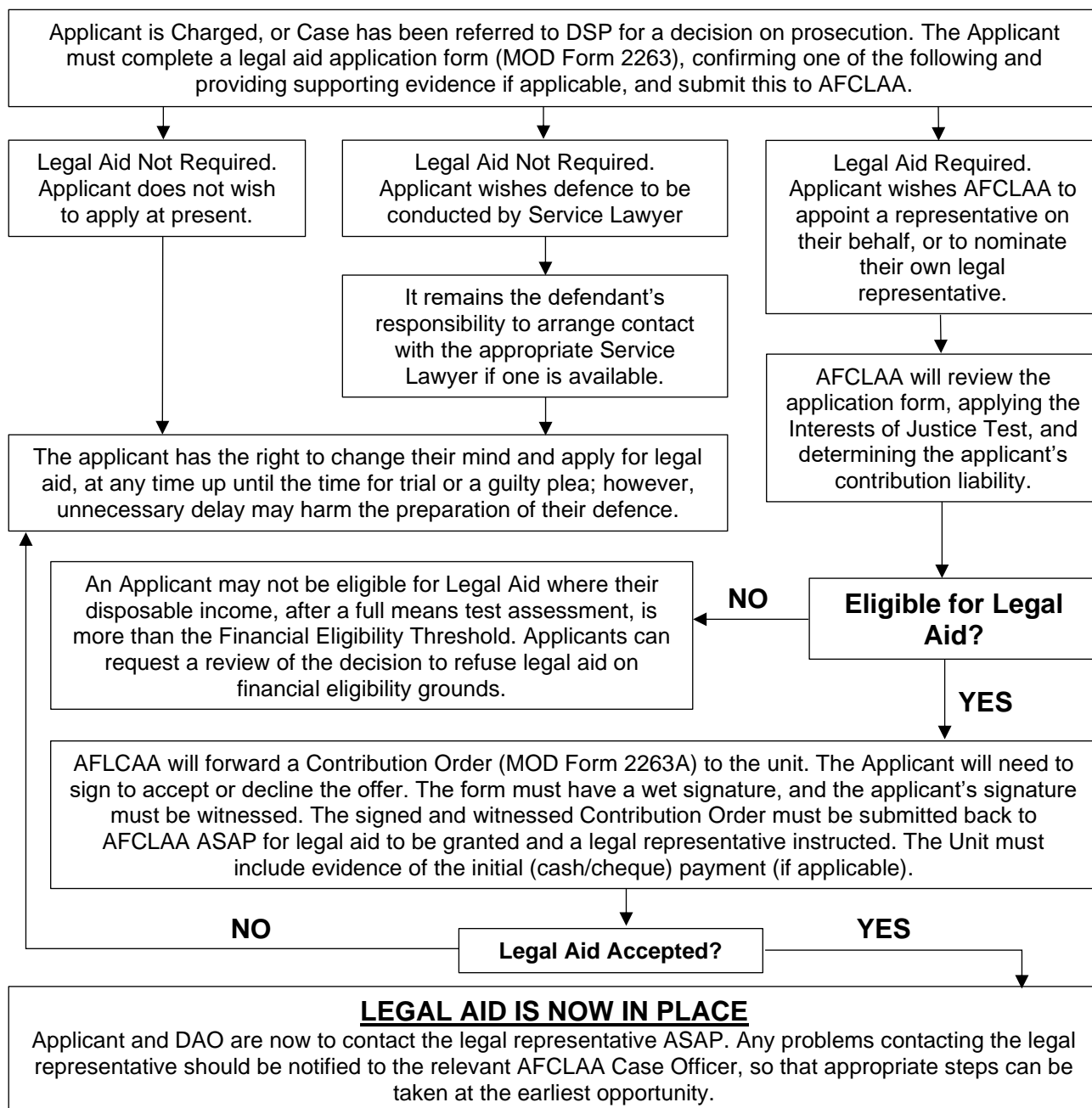


Policy

The Armed Forces Legal Aid Scheme (AFLAS)

Annex A - Legal Aid Process Flow Charts

FLOW CHART: LEGAL AID PROCESSES - TRIAL (INCLUDING REFERRAL TO DSP)



ACQUITTED / DISCONTINUED

AFCLAA will stop any outstanding contributions and verify payments already made. Upon verification, AFCLAA will authorise a refund payment, including 2% interest. Units should not take any action to stop contributions without AFCLAA's written authority.

CONVICTED

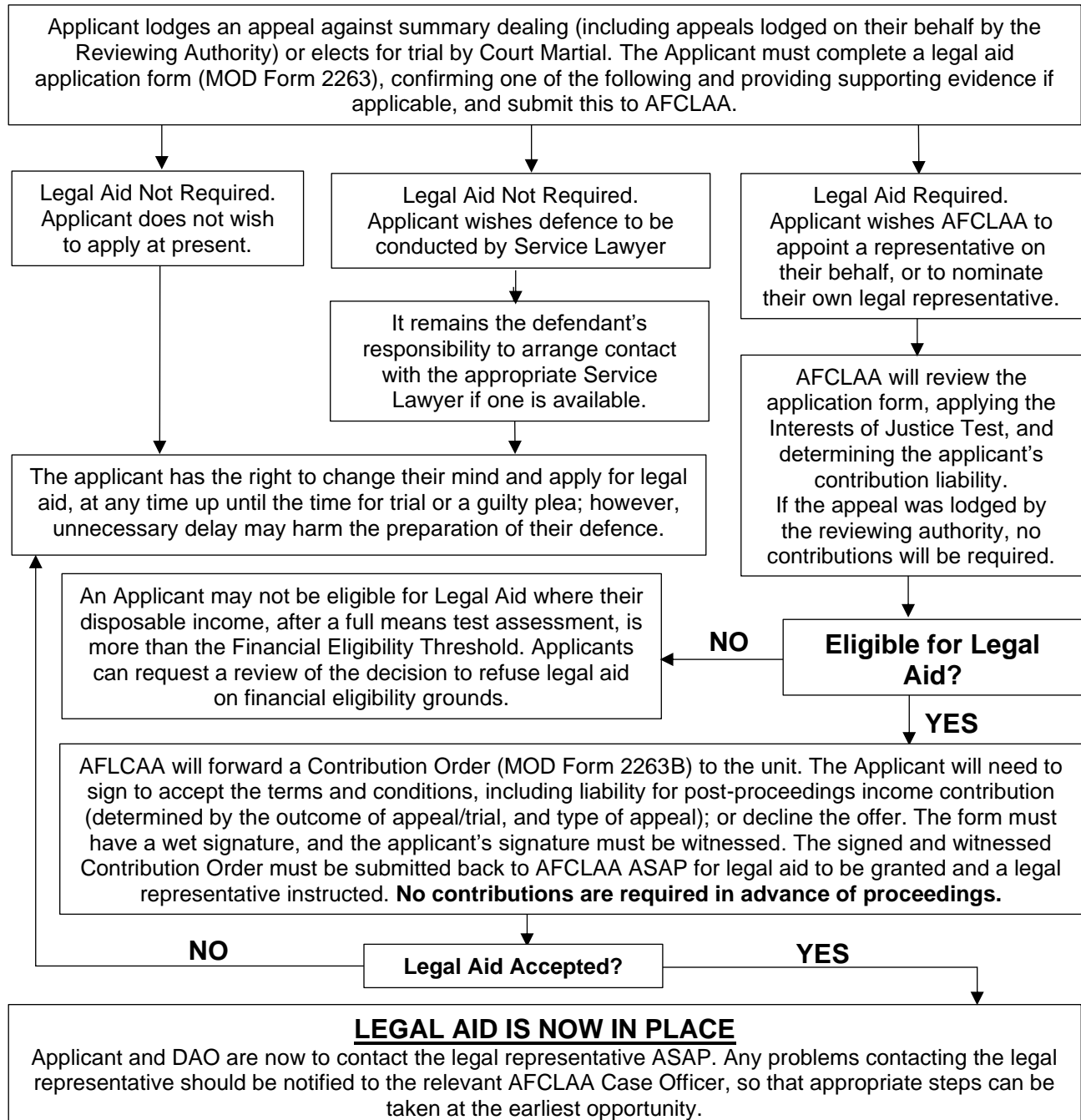
AFCLAA will determine whether outstanding income contributions are to continue or cease, pending final settlement of legal aid costs. AFCLAA will advise if any contributions from Capital/Equity are required. Units should not take any action to stop contributions without AFCLAA's written authority.



Policy

The Armed Forces Legal Aid Scheme (AFLAS)

FLOW CHART: LEGAL AID PROCESSES - SUMMARY APPEAL OR ELECTION



Summary Appeal

AFCLAA will issue formal notification to applicant with contribution liability (identified on MOD Form 2263B), whose appeal was wholly unsuccessful, or partially unsuccessful. Notification identifies level of contribution payable and payment schedule. Applicants who are below the income threshold, or whose appeal was lodged by the Reviewing Authority, will **not be required to make contributions.**

Election

AFCLAA issue formal notification to convicted offender with contribution liability, detailing contribution payment plan. Where actual legal costs are less than the contribution originally notified to the convicted offender, AFCLAA will authorise refund of the excess. Defendants acquitted at trial, or who were below the income threshold, will **not be required to make contributions.**