

# LEGAL AID IS CHANGING

In Crown Courts in England and Wales those people who can afford it will pay towards their defence. If they are found not guilty any payment made is repaid with interest. We estimate only 1 in 4 defendants will be asked to pay. Once this has been rolled out nationally, this will save around £50 million from the legal aid budget. The savings will help ensure the legal aid budget continues for the future and is targeted at those who need it most.

A similar scheme in the magistrates' court has so far delivered savings of £80 million.

## How to use this document

Click on the question on the right hand side to go straight to the answer.

**home:** to come back to this page

**back arrow:** to take you to the page you previously viewed

**forward arrow:** to take you to the following page

Alternatively, scroll through like you would any PDF document.

# when will it happen?

We're rolling out the means testing scheme gradually. In January 2010 the first Crown Courts (and the magistrates' courts that commit cases to them) started using the scheme in:

- Blackfriars
- Swansea
- Preston
- Bradford
- Norwich

From April 2010, the scheme will be rolled out across all other Crown Courts in the rest of England and Wales. The national roll-out schedule is as follows:

12 April - South West  
26 April - Midlands  
10 May - North West  
17 May - North East  
24 May - Wales  
14 June - South East  
28 June - London

## National roll-out in England and Wales

Crown Court means testing starts in these areas on the following dates:

### South West (from 12 April)

Taunton Crown Court  
Bristol Crown Court  
Truro Crown Court  
Plymouth Crown Court  
Exeter Crown Court  
Bournemouth Crown Court  
Weymouth & Dorchester Crown Court  
Gloucester Crown Court  
Winchester Crown Court  
Southampton Crown Court  
Portsmouth Crown Court  
Newport (Isle of Wight) Crown Court  
Swindon Crown Court  
Salisbury Crown Court  
Barnstaple Crown Court

### Midlands (from 26 April)

Birmingham Crown Court  
Coventry Crown Court  
Derby Crown Court  
Leicester Crown Court  
Lincoln Crown Court  
Northampton Crown Court  
Nottingham Crown Court  
Shrewsbury Crown Court  
Stafford Crown Court  
Stoke Crown Court  
Warwick Crown Court  
Wolverhampton Crown Court  
Worcester Crown Court  
Hereford Crown Court

### North West (from 10 May)

Carlisle Crown Court  
Manchester Crown Court (Crown Square)  
Manchester Crown Court (Minshall Street)  
Bolton Crown Court  
Liverpool Crown Court  
Chester Crown Court  
Warrington Crown Court  
Burnley Crown Court  
Preston Crown Court\*  
Barrow in Furness Crown Court  
Knutsford Crown Court  
Lancaster Crown Court

### North East (from 17 May)

Doncaster Crown Court  
Durham Crown Court  
Grimsby Crown Court  
Kingston-upon-Hull Crown Court  
Leeds Crown Court  
Newcastle upon Tyne Crown Court  
Sheffield Crown Court  
Teesside Crown Court  
York Crown Court  
Bradford Crown Court\*

### Wales (from 24 May)

Mold Crown Court  
Cardiff Crown Court  
Newport (South Wales) Crown Court  
Merthyr Tydfil Crown Court  
Swansea Crown Court\*  
Caernarfon Crown Court  
Dolgellau Crown Court  
Haverfordwest Crown Court  
Welshpool Crown Court  
Carmarthen Crown Court

### South East (from 14 June)

Aylesbury Crown Court  
Basildon Crown Court  
Cambridge Crown Court  
Canterbury Crown Court  
Chelmsford Crown Court  
Chichester Crown Court  
Guildford Crown Court  
Ipswich Crown Court  
Lewes Crown Court  
Luton Crown Court  
Maidstone Crown Court  
Oxford Crown Court  
Peterborough Crown Court  
Reading Crown Court  
St Albans Crown Court  
Norwich Crown Court\*  
Bury St Edmunds Crown Court  
King's Lynn Crown Court  
Southend Crown Court

### London (from 28 June)

Croydon Crown Court  
Harrow Crown Court  
Inner London Crown Court  
Isleworth Crown Court  
Kingston Crown Court  
Snaresbrook Crown Court  
Southwark Crown Court  
Wood Green Crown Court  
Woolwich Crown Court  
Blackfriars Crown Court\*  
Central Criminal Court

\*Preston, Bradford, Swansea, Norwich and Blackfriars Crown Courts joined the scheme in January 2010 together with the 'feeder' magistrates' courts listed on page 4. Any 'feeder' magistrates' courts not listed on page 4 will join the scheme on the date shown on this page.

## **The following courts were included in the scheme introduced in January 2010:**

### **Preston Crown Court**

Magistrates' courts included in the scheme:

- Blackpool (Fylde Coast)
- Preston
- Lancaster
- Blackburn, Darwen and Ribble Valley
- Chorley (South West Lancashire)
- Furness & District
- Fleetwood

### **Bradford**

Magistrates' courts included in the scheme:

- Bradford
- Calderdale & Halifax
- Huddersfield
- Keighley (Bingley)
- Skipton

### **Swansea Crown Court**

Magistrates' courts included in the scheme:

- Swansea
- Neath
- Llanelli
- Aberaeron
- Haverfordwest (Pembrokeshire)
- Port Talbot
- Aberystwyth (Ceredigion)
- Cardigan

### **Norwich Crown Court**

Magistrates' courts included in the scheme:

- Great Yarmouth
- Kings Lynn (West Norfolk)
- Norwich

### **Blackfriars Crown Court**

Magistrates' courts included in the scheme:

- Highbury Corner

# does everyone pay?

Not if they're under 18 or on qualifying state benefits\*. Otherwise it depends.

**In the magistrates' court:** income, living costs and family circumstances are taken into account.

If the annual income left over is:

- £12,475 or less, applicants get free legal aid
- £22,325 or more, applicants have to pay privately

If the income left over is more than £12,475 and less than £22,325, the applicant's disposable income will be calculated:

- if this is £3,398 or less per year (£283.17 per month or less), they get free legal aid
- If this is more than £3,398 per year (£283.17 per month), they have to pay privately.

**In the Crown Court:** defendants pay towards their defence if they can afford to do so. There are four possible scenarios:

1. defendants don't have to pay towards their defence if:
  - they are under 18
  - they are on a qualifying state benefit\*
  - their annual disposable income is £3,398 or less (£283.17 per month or less) **and** their capital is less than £30,000
2. defendants may make a contribution from their income
3. defendants may make a contribution from their capital
4. defendants may make a contribution from both their income and capital

\*the qualifying state benefits are: income support, income-based job seeker's allowance, guarantee state pension credit, income-related employment and support allowance

# how do defendants pay?

Defendants who don't qualify for free legal aid will be asked to pay towards their costs from:

- income or
- capital or
- both

## Paying from income

Defendants have to pay from income if they have a annual disposable income of more than £3,398 (£283.17 per month).

They will be expected to pay 90% of their total disposable income each month for five months whilst the case is ongoing. Or they can pay the whole amount up front. If payments are late they will be expected to make one extra payment.

All defendants will be sent a contribution order with their representation order telling them if and how much they need to pay. The first payment will be expected within 28 days of receiving the order.

## Paying from capital

Defendants have to pay from capital if they:

- are found guilty
- have outstanding case costs
- have more than £30,000 of capital assets (eg savings, equity in property, shares or Premium Bonds)

The amount they will be expected to pay depends on the overall costs of their case and how much capital they have. They may only be expected to pay some of their final defence costs. But if they do not provide evidence of their capital when asked, they may be asked to pay all of their defence costs.

If defendants don't pay from their income or capital, a range of enforcement actions can be taken against them, eg charging interest, taking part of their earnings.

*(continued on next page)*

## How do defendants prove their income, capital and outgoings?

They need to provide evidence when submitting their legal aid application form. If they don't have it at the time, they have 14 days. If they don't provide proof of their income they may be asked to make monthly payments of £900 or 100% of their disposable income, if this is greater.

### Evidence required

Defendants applying for legal aid need to provide evidence of their income, outgoings and capital assets as follows:

#### Proof of income:

- on qualifying state benefits

**evidence:** National Insurance number or letter confirming the benefits

- unemployed or on other benefits

**evidence:** National Insurance number and information requested on application form

- private pension

**evidence:** bank or pension statement where pension income is more than £1,000 per month

- employed

**evidence:** latest payslip or letter from employer confirming earnings

- self-employed

**evidence:** latest full self-assessment tax return form or latest set of accounts. If it is a new business we can accept other records

- paid in cash

**evidence:** letter from employer confirming earnings

#### Proof of outgoings:

- housing costs over £500/month

**evidence:** copy of tenancy agreement or mortgage statement

- childcare costs over £500/month

**evidence:** receipts or bank statements

- maintenance costs over £500/month

**evidence:** receipts, bank statements or copy of court order

#### Proof of equity and capital:

- equity

**evidence:** information requested on application form

- capital

**evidence:** this should support the value, eg bank or building society statement, premium bond certificate, share dividend counterfoil

# what if defendants can't afford to pay?

If they think they can't afford the payments or have additional outgoings they think should be taken into account, they can ask for a hardship review. This means filling in a hardship application and providing evidence. Details of any extra expenditure can then be considered. If any extra expenditure is allowed, their income contribution will be reduced or removed.

Details about the hardship review are on the contribution order the defendant receives.

## **What happens if a defendant doesn't make their payments?**

If a defendant fails to make the required payments from their income or capital, a range of enforcement actions can be taken against them, eg charging interest, taking part of their earnings, putting a charge on their property.

# how are partners and families affected?

The defendant must include a partner's income, outgoings, equity and capital when completing the application forms. The partner must also sign the application form. This is because the means test calculation is based on household financial circumstances for both income and capital. This is the most accurate and fair way of assessing a defendant's ability to pay. The living allowance that is included in the means test is increased if they have a partner and/or children.

## **What if a partner is an alleged victim or witness?**

If a partner has a contrary interest in the case - for example, they are a victim or a witness for the prosecution - their income or assets will not be taken into account when assessing a defendant's liability for a contribution.

# how do defendants pay from equity?

If the equity can't be released and there are no other ways of making the payment, defendants could ask to delay payment.

If payments are not made straight away, a charge could be put on the property until the debt is repaid. This could accrue interest at 8%. The individual circumstances of the case will determine if the charge is interest or non-interest bearing.

This is very similar to how it works for civil cases and the Legal Services Commission has 10 years of experience in applying property charges in appropriate circumstances.

## **Will you force people to sell their family homes after they have been convicted?**

Placing a charge on a property is very different from asking or forcing someone to sell their home. It is important to understand that placing a charge on a property is only one of a range of enforcement actions available and it will be undertaken appropriately. Applying for an order for sale is a last resort.

We would not pursue orders for sale in circumstances where the partner or dependants have a contrary interest and are continuing to live in the property.

Any order for sale requires an application to the courts. Any decision to apply for an order for sale needs to carefully consider the individual circumstances of each case and take into account a range of factors, eg the ownership of substantial equity, whether any dependants live in the property and consistency with wider government policy.

# what if a defendant is found not guilty?

If they have made contributions from their income whilst the case was ongoing they will be refunded with interest.

If enforcement action has been taken against the client, the costs of this can be deducted from the refund.

Very occasionally the client may be required to make a contribution towards their defence costs, even if they have been found not guilty, eg they mislead the prosecution or the court or otherwise appear to have brought the prosecution on themselves by their own conduct. The judge would decide this.

# does pleading guilty lower the cost?

Costs can vary significantly depending on the plea. If someone pleads guilty at an early stage, their costs can be lower. If they are found guilty after a trial, their defence costs could be much higher.

We recognise that there could be a risk that people plead guilty due to financial pressures, but we're confident that the thresholds are sufficiently high to prevent this. The judge also has a part to play. As now, the judge must be satisfied that when a defendant enters a guilty plea, it's because they acknowledge their guilt and not because of financial expediency.

# could defendants represent themselves?

It is always better to be represented by a skilled and experienced legal practitioner because there could be complex areas of law and rules of evidence that many people will not know or understand. However people still have the right to represent themselves.

We recognise that by introducing means testing for Crown Court cases there is a possibility that more people could choose to represent themselves rather than pay towards their defence costs. However, as only 1 in 4 defendants will be asked to contribute to their costs, we expect the numbers who choose to represent themselves to be relatively low. We will closely monitor this.

has also been retained for those defendants who have been asked to pay but genuinely cannot afford to do so.

We are promoting the benefits of having a solicitor through leaflets and posters in police stations and courts, and through websites that defendants or their families may use. The benefits we promote are that solicitors:

- have the knowledge and expertise to build the defence
- can support the client throughout the prosecution
- can call witnesses and experts on the client's behalf. This can be difficult for an unrepresented defendant, particularly if they are in custody.

# what about equality and diversity?

## **Black, Asian and Minority Ethnic (BAME) groups**

We know that BAME groups are currently over represented within the criminal justice system, compared with the general population as a whole. We will be monitoring the impact while we introduce the scheme. We will report on our findings in April 2010 and if the evidence shows we need to take action, we will investigate how that might be done.

We are aware that it may be difficult for asylum seekers to provide the documentary evidence required when asked and this is reflected in the guidance document for solicitors and court staff.

## **People with learning difficulties**

Some of the materials we are producing will be available in 'easy read' format. This will help people with learning difficulties and language issues understand the process by using pictures and simple, clear language. The materials will be reviewed before national roll-out to evaluate their effectiveness.

## **Gender**

We believe that as means testing in the Crown Court is based solely on financial information, there will be no negative impact as a result of a defendant's gender.

## **Age**

There is likely to be an impact as a result of a defendant's age. It is more likely that younger and older defendants will be given free legal aid as they're under 18, receive specific benefits, or their income is below the threshold.

## **Those remanded in custody**

Legal Service Officers in prisons will have up to date information so they are able to advise defendants who are in custody.

# want to know more?

If you would like more detail on the scheme click on the link below:

If you have any questions email:  
[ccmt@legalservices.gov.uk](mailto:ccmt@legalservices.gov.uk)

