

# Representations

*What we do when you think Community Legal Service funding should not have been granted*



legal services

COMMISSION

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## About this leaflet

This leaflet explains what happens if you think somebody has incorrectly been granted a Community Legal Service Funding certificate.

## What is a 'representation'?

Each year the Legal Services Commission grants certificates to people to enable them to take or defend or be a party to court proceedings. Sometimes the 'other side' or a third party provides information suggesting that a certificate should not have been granted. This is known as making a representation against the granting of a certificate.

The representation could be about:

- the merits of the case itself, i.e. suggesting that the case should not be pursued with the benefit of public money, or
- the means of the person, i.e. suggesting that the person is not financially eligible.

The Legal Services Commission welcomes genuine representations and we have procedures to help us to process them as efficiently as possible.

## How do we process representations?

*Representations about merits:*

- If we receive a representation about the merits of a case, we usually send a copy of it to the solicitors acting for the person asking them to comment on the issues raised. The consent of the person making the representation is obtained before we forward details to the solicitor. Failure to give that consent could mean that the representation is not investigated. We then make a decision in the light of any reply and all other information we have.

- If we decide to allow the certificate to continue, we notify everyone involved.
- If we think funding should not continue, we must write to the person who has the certificate giving them the opportunity to give reasons why their certificate should not be withdrawn. We consider any reasons given, make our decision and notify everyone involved.

*Representations about means:*

- If we receive a representation about the financial circumstances of the client, we refer it to our means assessment team. They look at the representation in the light of the information given in the person's original application and investigate any points which are unclear. If necessary, they write to the client or make enquiries elsewhere.
- When the investigation is finished, everyone involved is notified of the decision.

## Disclosure of representations following a Data Protection Act request

Where the funded client has requested access to their personal data under the Data Protection Act 1998 we may be required to disclose the representations to them, even where the individual making the representations has not consented to the disclosure. If you provide us with reasons for not wanting us to disclose the representations then those reasons will be taken into consideration when we decide whether or not disclosure is appropriate.

## When do we not investigate a representation?

We only investigate representations if sufficient information has been provided to justify an investigation. We are less likely to investigate a representation in the following circumstances:

### *Representations about merits:*

- Representation raises issues which have already been taken into account when funding was granted and there has been no new information to change that original decision.
- There is not enough time before the trial to investigate the representation. In general, representations received less than one month before the trial date will not be considered, unless there are exceptional circumstances.

- The representation relates to a question of fact which should be left for the court to decide.

It is the court's role to try the case, not the Legal Services Commission's.

- The representation is about something that, even if it were proved true, would not affect the continuation of the certificate.
- The representation relates to an offer or compromise which, on the information available, is not enough to settle the matter, e.g. because it falls well below a reasonable estimate of the value of the case put forward by the client's solicitor, or because it does not include a provision for costs.
- The case has already finished.

### *Representations about means:*

- The representation is about assets which are not taken into account in means assessment (e.g. an ordinary motor vehicle of low value).
- The representation is about something that, even if proved true, would not affect the person's financial entitlement.
- The representation is about an observation of some part of the person's lifestyle, which they could still afford if they were financially eligible for CLS funding, e.g. they have been on holiday.

## How long does the Legal Services Commission take to process representations?

The LSC's investigations usually rely on someone providing us with information, so the process can take longer than we would like. Sometimes the issues are clear and we can confirm our position in a matter of days. In other cases our investigations can take considerably longer (sometimes up to 12-14 weeks or even longer). However, in all cases, we keep the person who made the representation informed of our progress.

## Confidentiality

The Access to Justice Act 1999 prevents us from disclosing confidential information given to us in relation to the client's case. Therefore, when our investigations result in us allowing a certificate to continue, we always tell the person who made the representation what our decision is, but, very often, we are not allowed to explain why we came to that decision. For example, we often receive favourable and persuasive advice from the barrister acting for the client. We would not be able to disclose details of that advice to the person objecting to the grant of a certificate. We understand this can be frustrating, but it does protect confidentiality.

## Appeals to Independent Funding Adjudicator

In most cases where funding is refused or withdrawn because of a representation, the client can ask for a review of our decision by an independent funding adjudicator. The adjudicator will be a solicitor or barrister who works in private practice. They are not employees of the Legal Services Commission. If a client's review application is successful, we write to the person who made the original representation to tell them that the client's certificate has been reinstated. Although applications for review are normally lodged within two weeks of our decision to withdraw funding, it can take 6-10 weeks.

## Withdrawing funding as a result of a representation

A certificate can be withdrawn either by discharging or by revoking the certificate. A discharged certificate simply means that the funding for the person's case stops from that point on. A revoked certificate means the person is treated as if their case never received any funding and they have to pay back all of the costs incurred on their behalf. A certificate is likely to be revoked if the person has provided false or misleading information to the Legal Services Commission or has failed to co-operate with our enquiries. If a certificate is revoked, the person also loses any costs protection they had whilst their case received funding, which means that if they are unsuccessful in the proceedings they may be liable for the other side's costs.

## Some common misunderstandings

Many people who raise concerns about the issue of a certificate are not aware of the controls and procedures we have to prevent weak cases from going ahead.

For example, the financial position of the applicant and the merits of their case are always assessed.

There are different types of certificates. For example, a certificate for 'Investigative Help' in civil proceedings restricts work to obtaining information to find out the strength of the applicant's case. A certificate for 'Full Representation' would only be granted when there is sufficient information to assess the merits of the case. Please see our leaflet "A Step-By-Step Guide to Legal Aid" for more information on different levels of funding.

The grant of a certificate is always subject to limitations. This means that solicitors must report to the LSC once they have reached a certain stage in their work or spent a certain amount of money. Certificates are often limited to obtaining an opinion from a barrister. The LSC reviews the position once it has the barrister's opinion and at other key stages of the case to ensure the certificate should continue.

The fact that someone is working does not necessarily mean they are not entitled to a certificate. The means assessment takes account of income but also makes allowances for some outgoings.

A certificate is often not free. Many people are required to repay their costs at the end of the case through the LSC's 'statutory charge'. Some people are required to pay a monthly contribution towards their funding from their income or a lump sum from their capital.

People in receipt of income support or income based job seeker's allowance are automatically financially eligible for a certificate. However, the LSC has limited powers to investigate representations which allege that someone is wrongly in receipt of these benefits. Eligibility for income support or income based job seeker's allowance is a matter for the Benefits Agency and not for the Legal Services Commission.

## Comments or concerns

If you have any comments or concerns about our handling of a representation please contact the Customer Services Manager in the LSC office dealing with the case.

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produces the following leaflets:

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*A Practical Guide to Criminal Defence Services*

*Criminal Defence Services at the Police Station  
and in Court*

*Paying For Your Legal Aid*

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***Representations***

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