



Working with others to achieve excellence in the delivery of legal aid

Legal Aid
Agency

Self-employed defendants

A guide for providers

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Self-employed defendants and rejects

We have worked to improve the understanding of guidance and evidence provisions to significantly reduce the need to reject applications. Electronic submissions have helped with this also, however, to reduce the necessity to reject applications further and to continue to improve the quality of applications and information provided we have produced this guidance to supplement the Criminal Legal Aid Manual.

We recognise that providers may face difficulties obtaining the evidence required for some self-employed applicants. However, appropriate evidence is necessary to ensure we can assess applicants' income accurately.

This ensures we only grant funding to eligible defendants, and those who can contribute towards their legal aid in the Crown Court do so. It also prevents applicants being incorrectly denied access to legal aid or requested to contribute.

This document is designed to help you identify what evidence is required for different types of self-employment. This will help you obtain a Representation Order, avoiding multiple rejects and ensuring proceedings within the courts are not delayed.

Documentation required to make an application

Magistrates' court

Applications for representation in the magistrates' court will not be considered complete unless the CRM14 eForm has been fully completed and is accompanied by supporting evidence of the applicant's income and (where applicable) outgoings.

As per section 3.5.1. of the Criminal Legal Aid Manual (CLAM) applicants who have been remanded into custody by the court, or are already serving a custodial sentence, can self-declare. They do not need to evidence their income or outgoings.

Crown Court

Applications for representation in Crown Court trials, retrials and voluntary bills will not be complete unless the CRM14 eForm has been fully completed.

As per section 3.5.2. of the Criminal Legal Aid Manual (CLAM) applications for representation in Crown Court trials can initially be processed without supporting evidence of income or capital.

Where applicants are required to provide evidence of their income, outgoings and capital and this was not provided at the point of application, this must be submitted within 14 days of submission.

This requirement extends to those that previously self-certified on either way cases. They will have 14 days from the date of committal.

Failure to provide the required income evidence could result in a sanction. This would mean the applicant being liable to pay a monthly contribution of £900 or 100% of their disposable income, whichever is higher.

If evidence cannot be provided we will require evidence of attempts to obtain this, such as letters/emails to the applicant's employer or customers. We will also require three months' bank statements, dated prior to the application signed date, for each bank/building society account held.

Sole trader

A sole trader is a person who works for him/herself and is the sole owner of their business.

A sole trader is responsible for their own tax and National Insurance, and must submit an annual tax return to HM Revenue & Customs (HMRC).

Acceptable evidence

Provide one or a combination of the following:

- full tax return dated within the last two financial years
- full accounts showing turnover, profit and any business expenses¹ within the last two financial years
- tax calculation sheet (SA100) but only if the profit is below £12,475
- if profit is more than £12,475, we require a full breakdown of business expenses¹

If trading under a year

Provide one or a combination of the following:

- running accounts/cash book/invoices
- bank statements (all credits should be annotated confirming nature/source of payments)

¹ By business expenses we mean a list of the expenses and their costs, such as wages and salaries, repairs and telephone expenses that were deducted from your client's turnover to arrive at their net profit figure.

Subcontractor

A subcontractor is self-employed. Whilst they usually work for a main contractor, a subcontractor is responsible for their own tax and national insurance.

A subcontractor will usually receive a Construction Industry Scheme (CIS) slip which is similar to a wage slip, but will usually show that they have been taxed at a rate of 20%, that no national insurance has been deducted and have a Unique Taxpayer Reference (UTR) number.

Acceptable Evidence

Provide one or a combination of the following:

- full tax return dated within last two financial years
- tax calculation sheet (SA100) but only if the profit is below £12,475
- CIS slips/invoices/annual statement (provide as many consecutive CIS slips as possible, dated within 3 months of the date the application was signed)

Business partnership

A business partnership is a business operation between two or more individuals who share management and profits.

Individuals in a Business Partnerships are responsible for their own Tax and National Insurance, and must submit an annual Tax Return to HMRC.

Acceptable Evidence

Provide one or a combination of the following:

- full accounts, showing Profit/Loss and balance sheet dated within the last two financial years
- full tax return dated within the last two financial years
- tax calculation sheet (SA100) but only if the profit is below £12,475
- if profit is more than £12,475, we require a full breakdown of business expenses

If trading under a year

Provide one or a combination of the following:

- running accounts/cash book/invoices
- bank statements (all credits should be annotated confirming the nature/ source of payments)

Directors of a limited company

Directors are self-employed for legal aid purposes. Whilst a director may be an employee of their company, they may also have a controlling share of the company profits. All directorships should be declared on the eForm.

Hint

Run a quick search on www.companieshouse.gov.uk – NCT have to reject the application as incomplete if they identify an undeclared directorship. A quick search before the eForm is submitted should highlight if your client is a director.

Acceptable Evidence

Full Set of Accounts dated within last two financial years – this must include a profit/loss statement balance sheet²

If trading under 1 year

Running Accounts or letter from accountant confirming the following:

- controlling share of profit
- profit figure
- director's remuneration
- dividends received

² Micro-Entity Accounts or Abbreviated Accounts are not sufficient. A tax return alone is not sufficient, as it will not show the profit of the company, but can be used alongside full company accounts.

Cash in hand

‘Complex’ applications are often rejected because no evidence has been provided for defendants who are working ‘cash in hand’.

We acknowledge that evidence of cash-in-hand work can be more difficult to obtain, but as a rule of thumb, we require one of the following:

- If the defendant is employed on a cash in hand basis a letter from employer confirming the amount paid and frequency of payments (for example, someone working cash in hand in a shop or car wash)
- If the defendant is self-employed on a cash in hand basis, a cash book should be provided, or if no records are available, a letter from customers confirming the frequency and cost of the work (for example, a gardener or window cleaner)

If you are having trouble getting this information, for example if the employer is refusing to provide a letter, you will need to provide evidence of your attempts to obtain it (for example, letters or emails you have sent).

Alternatively, if the income goes straight into bank accounts, provide consecutive, annotated bank statements showing the credits from this income.

Other sources of income

Support from family/friends

If your client is receiving financial support from family and/or friends, an amount and frequency of this must be declared on the eForm. Without this, we are unable to complete a means assessment and the eForm will be rejected.

Rental income/income from board and lodgings

If your client is receiving income from additional properties, or board and lodgings from family members, this must be declared on the eForm. All rental income³ received should be attached to the eForm.

Living off savings

If your client is living off savings, provide 3 months consecutive bank statements for all accounts held.

³ Provide evidence of all rental income - such as tenancy agreement, tax return showing profit from land/property or annotated bank statements.

Bank statements

There are some instances where bank statements will be the only evidence that can be provided. If alternative evidence is available, this should be provided in the first instance.

Bank statements should cover 3 consecutive months and all credits should be annotated. If business expenses can be evidenced on bank statements as outgoings, these debits should also be annotated.

Annotating the bank statements to show both the income and expenses of the business will ensure that the assessment gives a more accurate picture of the net profit.

Annotating bank statements will also ensure that the eForm is not rejected for clarification of credits received.

Bank statements evidencing income should cover the immediate 3 months prior to signing the application for legal aid.

Hints/tips

Insufficient evidence for applications in the magistrates' court is one of the most common reasons for rejecting applications. Whilst cases are in the magistrates' court, evidence is a mandatory requirement.

If the profit figure is above £12,475 we will require a breakdown of the business expenses (such as a profit/loss sheet).

We need as much information as possible to understand the applicant's financial position, and therefore require all directorships, partners and property to be declared at the point of applying for legal aid for both magistrates and crown court cases.

Whilst evidence of directorships in the Crown Court is not needed upfront we do require a fully completed form including turnover, profit, director's salary, date of incorporation of the company, the applicant's percentage of shares in the limited company and any dividend income received.

Evidence provision fee

Solicitors may be able to claim an evidence provision fee to support applicants through the process of providing evidence to support applications for Crown Court trials.

Solicitors may have to contact family members or friends of an applicant in custody to arrange for the collection of evidence to support the application. As an alternative contact may be made directly with third parties who can confirm the applicant's financial position such as their employer or their bank.

An evidence provision fee will only apply where evidence is required, and provided, in cases that are committed, sent or transferred for trial to the Crown Court.

The demands created by some of the more complex applications means that a two-tier fee structure is in place.

- Lower Tier - Flat fee of £45 + VAT for the majority of standard applications that do not involve applicants on passporting benefits and are not 'complex'.
- Upper Tier - Flat fee of £90 + VAT for a complex application.

Complex applications are where the applicant is required to provide 5 or more pieces of evidence to establish an accurate picture of their income and capital.

The higher tier fee can also be claimed for applicants who are self-employed, where the case has been committed, sent or transferred for trial to the Crown Court and the application has been referred to the National Crime Team (NCT).

See Annex A of the Criminal Legal Aid Manual (CLAM).

Glossary of terms

Dividend

The amount a limited company pays to its shareholders as their share of the profits each year.

Director's Remuneration

This is a director's salary separate from dividends/profit.

Trading Accounts

Accounts showing profit/loss over a year, including detailed profit/loss, balance sheets, capital information. Usually compiled by an accountant.

Running Accounts

Where a business has been trading for less than a year full accounts may not yet be prepared. Running accounts will be a list of all income and business expenses maintained since trading commenced.

Tax return

A tax return is a document that is submitted in paper or online to HMRC every year showing details of income and certain costs. From these figures the tax return shows a calculation of how much tax/National Insurance is due.

'Add-Backs'

We will add back expenses such as 'use of home', 'depreciation' and 'subsistence' to the net profit to arrive at an 'adjusted net profit'. This is to ensure we do not allow for

provisions for bad debts/depreciation or allow expenses twice such as housing costs or that are included in the living allowance already.



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