



Legal Aid
Agency

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

'Trapped' capital: Practicalities and a case study

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Owner – Technical Leads



Practicalities

These notes provide further, practical guidance for providers making the case for an asset to be valued equitably using Regulation 31(b) of the Civil Legal Aid (Financial Resources and Payment for Services) Regulations 2013 on the basis that it is trapped or inaccessible.

Please note: This does not replace the detailed guidance set out in the Lord Chancellor's Guidance on Determining Financial Eligibility for Certificated Work.

When making a 'trapped' capital argument:

- Please ensure that the information is easily accessible and identifiable to the caseworker(s) processing the application. This will allow the caseworker to quickly refer the matter to a lead means assessor for a decision.
- Please set out your case under the heading 'Trapped Capital / Inaccessible Capital' within the further information section at the end of the means report, or by uploading a separate document to CCMS or 'Apply'.

When making an argument concerning trapped, or inaccessible, capital:

- Please ensure that you reference the appropriate case i.e., R (GR) v Director of Legal Casework [2020] EWHC 3140 (Admin)
- Include an explanation as to how your client's asset(s) are trapped / inaccessible and how your client's Convention rights and / or right of access to justice would be affected if they didn't receive legal representation in the case for which they are seeking legal aid.
- When this information is provided from the outset, it lessens the need for further information requests and post assessment reviews.

Each case will be decided on its own facts. An anonymised case study is set out below where it was accepted that an asset should be valued at 'nil' under Regulation 31(b):

Case Study

- The client had left the matrimonial home due to domestic abuse and was living with their parents on a temporary basis. Legal aid was required to defend an application made by their ex-partner for child contact.
- The main asset was the former matrimonial home which was held in joint names with the opponent in the contact case. The client was in receipt of Universal Credit. An assessment of the property, under the bespoke regulations 37 and 39 after all deductions were applied, would lead to an equity calculation above the £8,000 disposable capital limit.
- The client's solicitor made the argument that the property was 'trapped' capital on the means report. They provided evidence that the opponent would not agree to the sale of the property, and the client was unable, otherwise, to raise funds against their interest in the property as lending institutions would not provide them a loan.
- In terms of the client's Convention rights the solicitor argued based on the particular facts of the legal case and background of the client that it would breach the client's Article 6 rights for her to be unrepresented, which required legal aid as there was no alternative funding available.
- The Legal Aid Agency accepted the arguments made and agreed that an equitable assessment of the value of the property under Regulation 31(b) of the Civil Legal Aid (Financial Resources and Payment for Services) Regulations 2013 was 'nil' equity.



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