



Legal Aid
Agency

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National Crime Applications Team: Help Us Say Yes Webinar – Your Questions

Getting your criminal applications right first time

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National Insurance numbers

Q: What if a client does not know their National Insurance number (NINO) and has no way of finding out? Can you help on this point?

A: If your client is remanded into court custody, we can process their application without the NINO being provided in the first instance. However, if proceedings are in the Crown Court, you must provide it once obtained.

If your client is in police custody, or not in custody, they will need to find out their NINO from the Department for Work and Pensions (DWP), HM Revenue and Customs (HMRC) or their previous employer.

Q: Following on from the previous question, how can that be done if they are street homeless or a drug addict (has a substance addiction)?

A: Street homeless applicants will pass the means assessment as there is no income. However, you must declare it in the 'Income' section of the eForm.

If your client has a substance addiction, but is not street homeless:

- If your client is remanded into court custody, we can process their application without the NINO in the first instance. However, if proceedings are in the Crown Court, you must provide it once obtained.
- If your client is in police custody, or not in custody, they will need to find out their NINO from the Department for Work and Pensions (DWP), HM Revenue and Customs (HMRC) or their previous employer. Please see, however, the question on page 6 about applicants produced from police custody on the day of the sending hearing.

If the case progresses to the Crown Court on or after the date stamp, and they have declared receipt of a passported benefit, we will reject the form as incomplete. The date stamp will be retained. However, if the committal date was before the date stamp, the date stamp will be lost. Before rejecting, we check previous records to see if we have been provided with the NINO previously.

If the applicant has declared nil income, and the case progresses to Crown Court, then we will send an income evidence request for their NINO.

If they do not have one, you should explain this, for example, if they are an illegal immigrant or an asylum seeker.

If you are unable to obtain the NINO, you should detail the attempts you have made to obtain it. Email this to one of the NCAT (National Crime Applications Team) teams.

Q: Do the DWP require a consent form from the client to provide their NINO?

A consent form is needed when asking for information via correspondence on behalf of your client. Please note, DWP does not supply NINOs to third parties.

HMRC do not provide NINOs over the phone. They will post it to your client within 15 working days: Telephone: **0300 200 3500**

For more details: [Find a lost National Insurance number - GOV.UK \(www.gov.uk\)](https://www.gov.uk)

Q: Is there any way to get legal aid granted where a client is on benefits, and cannot provide their NINO? We used to be able to do a workaround but that is no longer possible.

A: If your client is in court custody and does not know their NINO, you can submit without it,

If your client is not in custody, we expect the NINO to be obtained before submitting the form. Except in limited circumstances where they are produced from custody on the day of the sending hearing. See our response to the Crown Court question on page 6.

The workaround, or 'Benefit Bypass' as it is now known, has always been for when the NINO has been provided but a benefit check has not confirmed receipt. If your client is not in court custody and declares receipt of a passported benefit, they need to provide their NINO for an automatic confirmation with DWP. If the check returns a 'No' or 'Undetermined' result you should first check that the name, date of birth, and NINO are correct. You can then either provide evidence of the benefit or full details of their income. The applicant will be required to complete further questions on the eForm, confirming the applicant and partner's financial situation including any capital and equity. They will need to provide the amount and frequency of the benefits they receive to allow us to carry out a means assessment. This is the 'Benefit Bypass'. See section 10.1 of the Criminal Legal Aid Manual.

If you are providing evidence, this must have sufficient details to show that it relates to your client (or their partner). It also needs to show that it is a passported benefit. If the applicant is receiving Job Seekers Allowance (JSA) or Employment and Support Allowance (ESA), check that this is *income based* JSA or ESA. Contribution based benefits are not passported and are subject to means testing.

If they receive a non-passported benefit, they can self-declare this. If the case is in the Crown Court or later progresses to the Crown Court, the NINO will need to be provided within 14 days. We will send an evidence request for this.

Cash in hand work

Q: How do you progress matters for defendants earning cash in hand, having no wage slips and refusing to provide their employer's details?

A: By law, employers must give all their employees payslips (Employment Rights Act 1996). This includes those on zero-hour contracts and agency workers. Agency workers receive their payslips from their agency.

In the absence of a wage slip:

- an employee may receive a pay packet which details the amount paid and deductions made
- a signed and dated letter (preferably on headed company paper), or email, from a registered company address stating the amounts earned is acceptable

If your client refuses to provide their employer's details, we will be unable to process the application. In the Crown Court, we may apply an income sanction if evidence is not provided.

If the employer is refusing to provide the details, you need to tell us what attempts you have made to get this information.

If your client works for cash in hand but is not 'employed', for example, they do odd jobs or are a takeaway delivery driver, we need the following information:

1. What was or is the exact nature of the work undertaken?
2. Did your client carry out the work on an employed (on someone else's instruction) or self-employed basis?
3. What evidence can be supplied regarding this work? If no evidence exists, explain why.
4. Can your client provide contact details for any employers or customers? If not, why not?
5. When did your client begin this work? Tell us the month and year if they cannot remember the exact date)
6. When did your client last work?

7. How much did they receive for their last pay and on average? Please note, a daily rate cannot be applied to a means assessment if we do not know how many days per week your client works.
8. How did or does your client obtain their work?

Crown Court

Q: We often lose the fee if the matter is going to Crown Court, and we cannot provide the NINO on the day of the sending hearing (and they are not remanded). Is there any way to avoid this?

A: We are aware that clients produced from overnight police custody on the day of the sending hearing may not know their NINO. The action you should take depends on whether it is an either way or an indictable case. You should do the following to ensure you can claim the Sending Hearing Fixed Fee:

Either way cases

You must ensure you get a date stamp on the day of the sending hearing. Once you have entered the basic information about your client and their case, you will be able to use the 'Get Date Stamp' button and then submit your form later once you have the NINO.

Indictable cases

As there is no option to get a date stamp before submission you must submit the eForm without the NINO on the day of the sending hearing.

You should submit the application with the rest of the information, and tell us why you are unable to obtain the NINO. You should tell us that the client has been produced from custody. You must still select Indictable. You should not select either way to get a date stamp.

To submit the CRM14 eForm without the NINO, you should tick the court custody box but then explain at the 'Submit Form' stage that they were only in police custody.

We will then reject the eForm back to you for the NINO. Once you have obtained it, you should resubmit, and ask us to backdate the representation to the first submission date. Provided your client is financially eligible for magistrates' court funding we will issue a Through order. It will be dated from the original submission date. This will allow you to claim the Sending Hearing Fixed Fee.

This process is set out in Section 3.4 of the Criminal Legal Aid Manual.

Q: Would a date stamp on each way offence committed to the Crown Court which was dated the day of the first Crown Court hearing be honoured? Or would the representation order date be the date of submission?

A: It should not be possible for you to obtain a date stamp before submission if you have not already done so on or before the sending hearing. You must select 'Trial already in Crown Court'. The 'Get Date Stamp' button will not appear. A date stamp will only be assigned once you submit the eForm. We will date the representation order from this date.

Magistrates' court

Q: I have had a couple of magistrates' court legal aid orders which have been dated the date of the first hearing, rather than the date of submission?

A: The eForm date stamp should be used for magistrates' court representation orders. If the representation order has been issued with a different date, please contact us.

Additional question

Q: Do the Nottingham, Liverpool and Birmingham offices conduct different work? Previously it used to specify the office on the representation order, so you knew where to direct it.

A: All 3 offices have caseworkers trained to deal with most queries. If a query needs to be dealt with by a particular office, we will forward it.

Representation orders show the office from which they originated. However, the Birmingham office does not receive Royal Mail post, so representation orders from there currently show the Jarrow / South Tyneside postal address.



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