

Criminal Assets Bureau Ad-hoc Legal Aid Scheme

1. General

This document sets out the provisions of the Criminal Assets Bureau Ad-hoc Legal Aid Scheme and provides guidance on the administration of the Scheme by the Legal Aid Board.

2. Commencement and administration of the Scheme

The Criminal Assets Bureau (CAB) Ad-hoc Legal Aid Scheme was introduced by the Department of Justice and Equality with effect from the 2nd April 1998. When originally introduced, the Scheme was applicable to persons who were Respondents and / or Defendants in any Court proceedings brought by, or in the name of, the Criminal Assets Bureau or its Chief Bureau Officer or any member of the Criminal Assets Bureau. This included certain proceedings under the Proceeds of Crime Act, 1996, the Revenue Acts and the Social Welfare Acts. The Scheme's scope has been broadened over the intervening years and further details on the types of proceedings now covered are set out in Section 4 of this document. From its introduction, the Scheme was administered by the Courts Policy Division in the Department of Justice and Equality. However, from 1st January 2014 the remit for the administration of the Scheme transferred to the Legal Aid Board. The budgetary responsibility for the Scheme remains with the Department of Justice and Equality.

3. Purpose and application of the Scheme

The purpose of the Scheme is to provide, in certain circumstances, legal representation for persons that need it but who cannot afford it. It is not an alternative to costs. For this reason it is necessary for the application for access to the Scheme to be made at the commencement of the proceedings. Where an application for a grant of legal aid is not made to the Court at the commencement of the proceedings, the payment of fees will only be considered from the actual date of the application and in such circumstances, the Scheme will not be applied retrospectively.

Access to the Scheme is not automatic and the applicant must satisfy the Court that the proceedings are embraced by the scope of the Scheme and that he / she is not in a position to retain a solicitor (or, where appropriate, counsel) unless he or she receives the benefit of the Scheme. Members of the public should obtain their own legal advice as to whether the litigation involved falls under the provisions of the Scheme and also as to their entitlement (if any) under the Scheme.

There is no obligation on a person requiring him or her to make an application for access to the Scheme. However, a person who elects to apply for assistance under the Scheme will, if successful with their application, only be provided with legal representation within the provisions of the Scheme.

In addition, legal practitioners and other service providers who elect to provide representation to the Scheme's applicants will only be reimbursed in accordance with the Scheme's provisions as set out in this document. It is recommended that legal practitioners should by

the earliest possible date satisfy themselves that both their client and the litigation involved are encompassed by the provisions of the Scheme.

4. Scope of the Scheme

The Criminal Assets Bureau Ad-hoc Legal Aid Scheme originally applied to persons who were Respondents and / or Defendants in certain Court proceedings brought under the Proceeds of Crime Act, 1996 as amended by the Proceeds of Crime (Amendment) Act 2005, the Revenue Acts or the Social Welfare Acts. On the 23rd March 1999 the scope of the Scheme was extended to include appellants in Social Welfare Appeals made to the Circuit Court under Section 34 of the Social Welfare Act, 1997 (this is now considered to apply to Social Welfare Appeals under Section 307 of the Social Welfare Consolidation Act 2005) and Tax Appeals made to the Circuit Court under the Taxes Acts where the Criminal Assets Bureau or its Chief Bureau Officer or any member of the Criminal Assets Bureau is the Respondent and / or Defendant.

On the 11th November 1999, the scope of the Scheme was further expanded to include applications made by the Director of Public Prosecutions under Section 39 of the Criminal Justice Act, 1994.

The scope of the Scheme does not cover any Court proceedings other than those specifically referred to above. Where the proceedings are of a type that fall outside the scope of the Scheme, the Scheme cannot be applied because public funds may only be applied for the purpose for which they have been provided by the Oireachtas. It is not within the discretion of the Legal Aid Board to apply public funds to other purposes.

5. Eligibility under the Scheme and the application procedure

The Criminal Assets Bureau Ad-hoc Legal Aid Scheme provides that:

The grant of legal aid under the Scheme, including the level of legal representation and / or witness expenses allowed, is a matter for the Court with the appropriate jurisdiction to deal with the specific case subject to the Court being satisfied that:

- (i) the means of the applicant for legal aid are insufficient to enable him / her to obtain legal representation on his / her own behalf, and
- (ii) by reason of exceptional circumstances it is essential, in the interests of justice, that the applicant should have legal aid in the preparation and conduct of his / her case, and
- (iii) the type of proceedings are embraced by the scope of the Scheme.

These provisions require the Court to be satisfied on all of the above tests.

The applicant must satisfy the Court that it is essential that he / she receives legal representation and that he / she is not in a position to retain a solicitor (or, where appropriate, counsel) unless he or she receives the benefit of the Scheme. To this end the applicant must file an affidavit and / or provide such information as the Court deems appropriate to confirm that he / she satisfies the criteria set out above. This will allow the Court to consider the applicant's financial means from a fully informed position and to decide accordingly on whether to: (a) seek further information as considered appropriate, or (b) refuse to grant legal aid under the Scheme, or (c) grant legal aid under the Scheme.

Where the Scheme has been granted for proceedings in one Court and a matter is appealed to

a higher Court, a new application to confirm eligibility under the Scheme must be made to the Court hearing such an appeal (i.e. a grant of eligibility in one Court does not imply or confirm eligibility in another Court).

6. The payment of fees under the Scheme.

Where the applicant and the litigation involved are encompassed by the Scheme's provisions and the Court decides to make a grant of legal aid, the exact details of who should be paid under the Scheme (e.g. solicitor, junior and / or senior counsel) will, as granted by the Judge, be stipulated in the Court Order. This Order may in specific circumstances include, for example, the engagement of an expert witness such as a forensic accountant. A claim for payment cannot be considered or processed by the Legal Aid Board for any legal representative or expert witness for whom the payment of fees is not specified in the Court Order. If the final Court Order omits to specify someone whose fees were in fact recommended by the Judge, the responsibility rests with the relevant solicitor to apply to have the Court Order amended in Court to rectify that omission.

The calculation of the fees which will apply to counsel representing the legally aided person will be made in accordance with the "parity" mechanism which is in operation under the Criminal Justice (Legal Aid) Act, 1962 and the Regulations (including S.I. 234 / 76) made under that Act. The fees payable to counsel under the Scheme are, at most, those which would be payable to counsel appearing for the State in each individual case. In effect, the counsel representing the legally aided person will, with all necessary modifications applied, be paid fees on a parity basis with the State counsel. The Brief Fees and, where appropriate, Refresher Fees payable to a solicitor are calculated at twice the rate payable to junior counsel with the exception of cases pertaining to Section 39 of the Criminal Justice Act, 1994 where solicitors are paid a Brief Fee at a rate equivalent to that of junior counsel.

Where appropriate, solicitors (only) may also be reimbursed in respect of necessary disbursements which are of a reasonable amount and are fully itemised and vouched.

It is not possible for the Legal Aid Board to pre-sanction payments under the Scheme and all payments to the legally aided person's legal team and expert witnesses will be considered on foot of the Court Order and with due consideration to the fees which have been paid on the State side. In that context, should the Court Order stipulate that the fees (collective or individual) payable to the legal professionals or to expert witnesses etc. are to be capped at a certain level, such a stipulated figure will represent the maximum sum that the Legal Aid Board will consider authorising in respect of that case.

7. Tax compliance

All parties making a claim for fees under the Scheme must be tax compliant. A practitioner claiming fees under the Scheme who is not currently on the Criminal Legal Aid Panel must submit a current Tax Clearance Certificate with their claim for fees.

8. The submission of claims under the Scheme

Where fees are being claimed in respect of the services provided to a person who has received a grant of legal aid under the Scheme from the Court, the claim for fees must be submitted to the Legal Aid Board on a fully completed [CLA 8\(A\) Ad-hoc Legal Aid Scheme \(CAB\) Claim Form](#). While the claim should be signed and dated by all relevant parties, it is

the relevant solicitor who should collate, finalise and formally submit the entire claim on behalf of all parties to the Legal Aid Board for consideration.

The claim should be submitted along with all relevant Court Orders which pertain to the application for access to the Scheme or which stipulate that the Scheme would apply. The claim should always include original invoices from all parties setting out itemised accounts for the various aspects of the claim and the services provided.

Where fees are being claimed in respect of forensic accountants, expert witnesses or other costs, the claim for such fees must be submitted by the relevant solicitor who, by necessity, engaged with the individual / company to provide the services to assist in matters associated with the proper preparation and conduct of their client's case. A solicitor who engages any of the above services is responsible for:

- certifying that the relevant service was sanctioned by the Court and that the person or company providing the services has the appropriate competence to provide a professional service
- certifying that the service provider attended on the dates and times directed by the solicitor and also certifying the accuracy of the hours worked and the amount claimed
- where appropriate, certifying that the service provider prepared and produced a report
- where the solicitor has commissioned a report, the necessity for such a report should be clarified and it should be stated if it was produced in Court
- in respect of translation or interpretation costs, certifying that the claim only refers to the client's specific case and that it does not pertain to any services provided for in the Courts that are the subject of a separate contract arranged by the Courts Service
- ensuring that an original invoice from the relevant company or individual (which must include full details of the services provided) is submitted for consideration
- for audit purposes, solicitors should retain evidence of the services commissioned (including copies of reports).

While interim claims pertaining to individual cases under the Scheme should be submitted to the Legal Aid Board at the end of each law term, the final claim pertaining to the case must be submitted by the earliest possible date but no later than twelve months from the date on which the case was finalised. It should be noted that claims submitted after this deadline will not be considered or processed for payment by the Legal Aid Board.

It should be noted that incomplete or illegible claim forms or claims submitted without the required accompanying documentation will be returned to the solicitor for proper completion and re-submission. Fully completed and legible claim forms along with all required accompanying documentation should be sent at the end of each law term to the Legal Aid Board at the contact details set out in Section 9 below.

9. Queries and further information

All queries either specifically pertaining to individual cases or to the implementation of the Criminal Assets Bureau Ad-hoc Legal Aid Scheme should be addressed to the Legal Aid Board. In that regard, the Legal Aid Board welcomes feedback on the Scheme from all involved in its day to day implementation.