



 **Criminal Legal Aid**


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 **Aims of this lecture**

- n Briefly explain the role of LSC/CDS
- n Explore the provision of state funding for criminal defence services;
- n Explain how to apply for a representation order;
- n To illustrate and explain how to articulate the interests of justice test ('merits' aspect of an RO); and
- n To explain how the means test is conducted for cases to be tried in the magistrates' court.


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 **How is the application made?**

- n A defendant (with the assistance of a solicitor) will be required to complete CDS Form 14 (interests of justice) and (if applicable CDS Form 15 –means test);
- n The application is processed administratively by the magistrates' court at which the defendant is to appear;


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The interests of justice test

- n Explained and illustrated in Chapter 9;
- n Also read the guidance produced by Justices' Clerks Society.... reproduced in the yellow section of your support pack!
- n The IOJ test is illustrated in the Handbook's three case studies (Appendix 1 and on-line);
- n Articulate as many of the interests of justice criteria that you can;
- n Be specific, clear and comprehensive in your articulation.



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It will be in the IoJ to grant a RO

if.....

- n D is likely to lose his liberty if convicted (which is why knowledge of sentencing practice is useful!)-You can use Blackstone's Criminal Practice to research relevant sentencing guidelines or the Magistrates Court Sentencing Guidelines (2008) which can be accessed via Sentencing Guidelines Council web-pages;
- n D will lose his livelihood if convicted;
- n D will suffer serious damage to reputation if convicted;

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IoJ test continued.....

- n Case involves a substantial question of law;
- n D may not be able to understand the proceedings;
- n Witnesses need to be traced or interviewed on D's behalf;
- n Case involves expert cross-examination;
- n It is in the interests of another person (i.e. complainant or other witness) for D to be represented;
- n Any other reason.

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The Means Test (Magistrates' Court)


- n Applicants qualifying automatically in terms of their means and therefore don't need to complete CDS 15)
- n Those actually in receipt of 'passported' benefits:
 - o Income support;
 - o Income based job seeker's allowance;
 - o Guaranteed state pension credit...
- n (it matters not whether the applicant is the claimant of the benefit or is a dependant of the claimant)
- n An applicant under the age of 18 at the date of application.



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The Means Test (Magistrates' Court)

- n For all non-passported applicants, the test involves 2 stages in some cases depending upon the applicant's 'weighted' gross annual income....
- n Once the **initial assessment** has been undertaken, the applicant will either be
 - n Eligible;
 - n Ineligible; or
 - n A **full means test** will be required



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Thresholds based on the initial assessment

- n Less than **£12,475**—you qualify (still must complete CDS Form 15)
- n Greater than **£22,325**—you are ineligible
- n Between the two figures—proceed to full means test

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What counts as gross annual income?


- n Total annual gross income (in preceding 12 months) from all sources as at the date of the application including child benefit;
- n Proof of income must be provided (wage slips/accounts/tax returns-(note if client is in custody and is employed the requirement to produce proof of income is waived on completion of CDS Form 17)
- n Partners income must be included unless there is a contrary interest.....partner must also sign CDS 14 and 15 (if applicable) unless applicant is in custody



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Who is a partner?

- n Anyone (including a person of the same sex) with whom the applicant lives as a couple.....(this can include a partner in prison!)
- n A partner will have a contrary interest (and hence their income will not be aggregated) if.....
 - n the partner is the alleged victim;
 - n the partner is a prosecution witness;
 - n both are defendants and there is a conflict between them;




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How to apply the weighting scale

- n Gross annual income is then divided by weighting factor to give you the applicant's gross weighted annual income!
- n Weighting scale (used to calculate weighting factor)

n Applicant	1. 0
n A partner	0. 64
n Child aged 0-1	0. 15
n Child aged 2-4	0. 30
n Child aged 5-7	0. 34
n Child aged 8-10	0. 38
n Child aged 11-12	0. 41
n Child aged 13-15	0. 44
n Child aged 16-18	0. 59
- n The child's age is their next birthday from the date of application.




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Example

- n D lives with partner and 2 children who will be 8 and 5 on their next Birthdays. D's total annual income is £25,000.
- n Applying the weighting scale, the applicant's 'weighted' income based on the **initial assessment** is:
- n $(1.00 + 0.64 \cdot 0.38 + 0.34 = 2.36)$
- n $£25,000 / 2.36 = £10,593.22$
- n Based on this calculation the applicant is financially eligible on the **initial assessment**-therefore no need to complete full means test!
- n D must complete CDS 15 and provide proof of income. His partner must also sign the application forms.




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Full Means Test

- n Ascertain applicant's **annual disposable income**.....
- n Less than £3,398-eligible;
- n Assessed by reference to applicant's annual gross income (as opposed to weighted filtered income) after making deductions for income tax/NI/housing costs and applying a 'generous' annual living allowance of £5676 multiplied by reference to the weighting formula;




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Hardship Review

- n Suppose a case to be tried summarily is going to end up being a costly case.....
- n Suppose the defendant has a lot of outgoings which cannot be included under the means test within CDS Form 15....
- n The LSC will review applications on the ground of hardship if D genuinely cannot fund his own defence;
- n Requires completion of another form CDS Form 16-lots more detail required!




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Appeals and reviews

- n Right of appeal to magistrates' court where refused on the basis of merits;
- n No right of appeal against refusal based on means;
- n If means change D can re-apply;




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Consequences for firms

- n Legal aid refused on merits...claim existing costs under Pre-Order Cover Scheme;
- n Legal aid refused on means but passed on merits (claim £75 under the Early Cover Scheme but note-pre-requisites apply);
- n Legal aid refused both on merits and means-claim under Pre-Order Cover Scheme;
- n Legal aid granted-claim all costs from date that the RO was granted!



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Indictable-only offences (funding is in a state of transition)

- n Means testing in the Crown Court will apply to the following Crown Courts from January 2010
 - n Blackfriars
 - n Swansea
 - n Preston
 - n Bradford
 - n Norwich
- n Thereafter a phased roll out for other Crown Courts from April 2010.

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Indictable-only offences (Non-pilot Crown Courts)

- n A separate **non-means** tested scheme applies to indictable-only offences in non-pilot areas
- n Applicant will complete CDS 14 and Form B (http://www.hmcourts-service.gov.uk/HMCSCourtFinder/GetForm.do?court_forms_id=312)
- n Convicted accused remains at risk of a **Recovery of Defence Costs Order (RDCO)** the Crown Court.



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What is a RDCO?

- n It applies upon conviction before a Crown Court;
- n The Crown Court may determine that the convicted defendant can afford to contribute towards the costs of his defence (based on means disclosed in Form B).
- n Passported applicants are excluded;
- n Only defendants with:
 - n an annual income in excess of £22,235
 - n capital in excess of £3,000
 - n or equity in their home of over £100,000can receive Recovery of Defence Costs Orders.

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A summary of means testing coming to a Crown Court near you....soon....

- n See separate hard-copy handout and note the introduction of means testing in the Crown Court is tied to significant changes to an award of costs out of central funds;
- n In the past, private paying defendants who have been acquitted could expect to recover the majority of their legal costs out of central funds (which meant that firms could charge at a higher rate than legal aid rates!);
- n The rate of payment out of central funds will shortly be capped at.....legal aid rates!

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