



Public Law Project

New legal aid 'mortgage cap' rules now in force

New legal aid rules came into force on 28 January 2021. If you have been refused legal aid recently due to the value of your property, you should check again to see if you are now eligible.

Background

A challenge brought by PLP on behalf of a domestic violence survivor led to an important change in the legal aid rules that mean more homeowners on low incomes will qualify for legal aid. The rule change applies to all areas of civil law (not criminal law).

Legal aid is subject to means testing of both income and capital. Before the rule change, the average homeowner would not qualify for legal aidⁱ even if they earned under the income threshold and could not afford to pay for a lawyer.

PLP's client 'Rebecca' was denied legal aid for family proceedings because she owned her own home. The old rules artificially increased the value of her home because they did not allow the full amount of a person's mortgage to be deductedⁱⁱ when calculating the value of their property. Rebecca failed the eligibility test even though there was almost no equity in her home – certainly not enough to fund her legal costs.

What has changed?

As a result of Rebecca's judicial review case the Government agreed to change the rules to end 'imaginary capital'. The new regulationsⁱⁱⁱ change how property value is calculated for the purposes of the legal aid means test. They get rid of the 'mortgage cap', so the true value of a person's mortgage will now be deducted.



Actual equity



Mortgage



Value for legal aid purposes

How the rule change affects home owners with a low income and a mortgage



Why does this matter?

More homeowners will be eligible for legal aid as a result of this rule change. These are people who would not be able to pay for legal representation on their own. This is important because access to legal aid is vital for upholding access to justice. The old rules were completely out of touch with reality. The £100,000 cap was introduced following a consultation in 1994 and was never increased despite a five-fold hike in average house prices since that time.

What steps should be taken if legal aid has been refused before the rule change?

The new rule came into force on 28 January 2021. If you have been refused legal aid recently due to the value of a property, you should check if you are eligible now. You can apply again after 28 January 2021 based on the new rules.

Who will be impacted?

This change will be particularly important for people who need legal aid, have a mortgage, and own a low percentage of the equity in their home. For example, those that live in areas with high property prices, or victims of domestic violence that have remained in their marital home but are on a low income.

How can I check whether I now qualify for legal aid?

A legal aid lawyer who specialises in the area of law that you need help with can tell you whether you qualify for legal aid for your issue. The rules around means testing are complicated and the exact limits depend on your circumstances and the nature of the case.

PLP acted for domestic violence survivor ‘Claire’ in another important case which secures greater access to legal aid for homeowners^{iv}. Read our update [here](#).

ⁱ Any homeowner whose interest was valued at over £214,450 would be disqualified as a result of the capital threshold. The average house price in England in March 2020 purchased with a mortgage was £255,688 – <https://www.gov.uk/government/news/uk-house-price-index-for-march-2020>.

ⁱⁱ Under the old the old regulation 37(2) of the Civil Legal Aid (Financial Resources and Payment for Services) Regulations 2013, rules, ‘the mortgage cap’ meant that only £100,000 of mortgage debt could be deducted when calculating an applicant’s interest in their property.

ⁱⁱⁱ Regulation 2(4) of the Civil Legal Aid (Financial Resources and Payment for Services) (Amendment) Regulations 2020 <https://www.legislation.gov.uk/ukxi/2020/1584/contents/made>

^{iv} R (oao GR) v Director of Legal Aid Casework [2020] EWHC 3140 (Admin)