



# Public Law Project

## Exceptional Case Funding ('ECF') – Applying as an Unrepresented Person

### Contents

Introduction .....	2
What is ECF?.....	2
Who can get ECF? .....	2
Who doesn't need ECF? .....	2
When is ECF available? .....	3
Top Tips when applying for ECF .....	3
What are the merits criteria?.....	4
When will not granting funding breach a person's rights?.....	4
How do you apply for ECF? .....	5
What do you send to the LAA? .....	5
What information should I give the LAA? .....	6
Why can't you do the case yourself? .....	7
Is your case complicated? .....	7
Can you do the case without legal assistance?.....	8
Which forms do I send? .....	9
Financial Evidence.....	10

## Introduction

It is possible to apply for ECF without a solicitor's help. Doing so is not easy but it is not impossible. This guide is intended to help you work out if this is something you want to do. If you decide that it is, it will hopefully help you apply successfully, but it is only an introduction and cannot answer every problem you might face.

## What is ECF?

ECF is a kind of legal aid. If you are granted ECF, then it will mean that for a particular legal matter, you should be able to receive free legal services, like advice and possibly representation. What legal services you receive will depend on what kind of case you have, and what the Legal Aid Agency grants you. Your lawyer will be working for you, but will be paid by the government.

Decisions about who gets ECF are made by the Legal Aid Agency ('LAA'). This is part of the Ministry of Justice, but its decision-making is supposed to be independent and free from political interference.

## Who can get ECF?

Anyone can get ECF, if they have the right kind of legal problem, and if their case meets the criteria, and if they meet the financial eligibility criteria. You get ECF for a particular case, not for all your legal problems. If the case changes (for instance, you want to appeal) then you may have to re-apply.

You must be financially eligible for legal aid. The same financial eligibility rules apply for ECF as for other legal aid. These rules are complex and cannot be explained here in detail. However, in order to qualify for legal aid you must be receiving means-tested welfare benefits, or you must have a very low income from other sources, and you must not have significant savings or other valuable property. The LAA provides an [online tool](#) to help work out if you are eligible or not, but it is quite complex.

## Who doesn't need ECF?

ECF is not for criminal cases, for instance if you have been arrested by the police.

ECF is only relevant for you if you have a civil legal problem for which you can't normally get legal aid. Legal aid is still available for many types of case, including some immigration problems, discrimination claims, family cases where the person getting legal aid has suffered domestic violence, and other problems.

Before putting work into applying for ECF, you need to check whether you can get normal legal aid. The LAA has some information online about this at

[www.gov.uk/check-legal-aid](http://www.gov.uk/check-legal-aid). You may also be able to get help from the Civil Legal Advice telephone service on [0345 3454 345](tel:03453454345). You could also contact a local solicitor who does legal aid work of the kind you might need. You can check for legal aid providers in your area on <http://find-legal-advice.justice.gov.uk/>.

## When is ECF available?

If you:

- Qualify financially (that means have a low income, or are on certain benefits, and have little savings or property), and
- Have a legal problem for which legal aid is not normally available

You may be able to get ECF. But to get ECF you will need to show:

- That your case meets the relevant 'merits criteria', and
- That if you are not granted funding, there will be a breach of your human rights or EU rights.

## Top Tips when applying for ECF

Applying for ECF isn't simple. This guide therefore contains a lot of information. But there are three really important things to remember:

- 1 Check if you can get legal aid without applying for ECF.** Applying for ECF is stressful and time-consuming. Use the phone numbers and websites near the beginning of this guide to see if you can get help without applying for ECF.
- 2 Spend some time on the forms, but don't get too worried about them.** The forms are complicated, but the most important thing is to sign them and send them. If you don't understand something or don't know the answer, just explain that is the case.
- 3 Put most of your effort in to explaining why you can't do the case yourself.** This is generally the most important issue and the most difficult to prove. If you have any evidence which shows why it is difficult for you, then include that with your application.
- 4 What you need to show the LAA is that:**
  - a. You can't do the case yourself**
  - b. It is important to you**
  - c. You qualify financially**
  - d. The LAA will also want to know that your case is good enough to receive legal aid.** But that is very hard to show unless you have some legal help or training, so present the information that you have.
- 5 Keep a list or copies of what you send to the LAA so you know what you have already sent them**

## **What are the merits criteria?**

The merits criteria are a set of regulations that the LAA use to decide whether your case is 'good enough' to get legal aid funding. This is to make sure that legal aid is not given for cases which a person is likely to lose, because the government thinks that is not a good use of public money.

Usually, you need some legal training to tell whether a case is 'good enough' to get legal aid. How good a case needs to be will depend on what kind of case it is. These rules are complicated in detail, but in summary, in most cases you cannot get legal aid if it looks more likely than not that you will lose your case. In some cases, you can get legal aid to receive basic legal advice without meeting this criterion.

## **When will not granting funding breach a person's rights?**

To get ECF, a person must show that, if funding is not granted, there will be a breach of their human rights or their rights under EU law.

This is not a simple area of law, and this guide cannot give all details of when human rights will or won't be relevant to a case. But there are some basic principles about when human rights or EU law mean a person must be given legal aid. These principles are:

- Legal aid is there to make sure that everyone has access to legal procedures when they need to. It is there to help people who cannot get access to legal procedures themselves, without a lawyer's help. ECF is to make sure that no-one falls through the gaps.
- ECF is required when, without legal aid, the legal procedure would not be fair, or where the person who needs legal aid couldn't present their case effectively.
- ECF is more likely to be required under human rights or EU law if the case is very important to the person concerned. If, for example, it concerns living in the person's home, what country they live in, or how often they get to see their child, it is going to be very important to them. If the case concerns, for example, a small amount of money, or someone saying nasty things about them, it is less likely to be important enough for them to get ECF.
- Legal aid is more likely to be available if the person involved can't fairly be expected to deal with it themselves. This depends on both:
  - o How complicated the case is
  - o How able that person is to deal with it
- For instance, a trained lawyer might be able to deal with a case themselves, even if it was really complicated. The same complicated case would be much harder to deal with if you weren't trained.

- In another example, a person who was quite educated might be able to deal with a simple case themselves. But a person who had limited education, or other difficulties, probably wouldn't be able to deal with even a simple case.
- A person's ability to deal with a case on their own might also be affected by their emotional involvement in the case. If a case is very upsetting, for example because it is about being separated from your child, it might be harder for a person to deal with their own case effectively.
- Examples of what sorts of difficulties or complications might exist are given later in this guide.

In any case, whether ECF is given will depend on that particular case.

## How do you apply for ECF?

Applying for ECF is not simple or easy. If you can get help from a solicitor or another lawyer to make the application for ECF, that is much better. But it can be hard to find someone willing and able to help because the Legal Aid Agency (LAA) does not pay lawyers to make applications which are refused.

If you don't have a solicitor or a lawyer but want to apply for ECF, you need to send an application to the LAA. You can do this by post or by e-mail. The ECF team at the LAA also has a special phone number. You can't apply over the phone but you may be able to get some information. The table below has details.

Telephone	E-mail	Post
0203 334 6060	ecf@legalaid.gsi.gov.uk	Exceptional Case Funding Team Legal Aid Agency (8.51) 102 Petty France London SW1H 9AJ

There is no fee for applying for ECF, and you can do so as many times as you want.

## What do you send to the LAA?

Before they will grant funding, the LAA will want:

- Information about your case
- Signed application forms
- Evidence that you qualify financially

The sections below explain each part of what you need to send.

## **What information should I give the LAA?**

The LAA will need information about your case in order to make a decision about it. The information you provide to the LAA about your case is important, and is the part of the application which anyone needs to take most care about.

As a starting point, you should generally send the LAA copies of any legal documents relevant to your case. That might include letters you have received about the case, any court documents you have been sent, or which you have handed in to the court. It might also include e-mails, or even pictures or print-outs of text messages, if those are relevant. The LAA will want documents which show what is going on in your case.

You don't want to lose your original documents, so send copies. It may be easiest to send it by e-mail if that is possible for you, so it is easy to see what documents you sent. Make a list of the documents which you send, so you can check what the LAA has seen or not seen.

If you don't have what you think is an important document, or if you have very few documents at all, you should try to explain why you can't get hold of the documents, or why they don't exist. You might want to explain what you have done to try and get hold of them, if there are things you can do.

The documents on their own are not likely to tell the whole story, however. You need to tell the LAA:

- What case you want ECF for (for instance, you want to appeal a particular immigration decision, or, you want to make an application to the Family Court for contact with a child)
- Why the case is important to you
- Why you cannot do the case yourself. That might be because the case is complicated, or because you have particular reasons you cannot do it, or a combination of those.
- Anything important which has happened in that case in the past, so that the LAA can tell what was happening when your documents were produced. Documents on their own usually don't make clear everything that has happened, and may leave some important facts out.

You can do this in a letter, or other document that you send in with your application.

### **Why can't you do the case yourself?**

This is often the most difficult thing to show in an ECF application, but it is really important. To get ECF, you need to show either that:

- Without legal aid, the legal procedure you are involved with would be unfair, or
- Without legal aid, you cannot effectively present your case.

As said above, the main reasons why someone can't do a case without ECF would be because it is complex, or because they have a reason they don't have the ability to do the case effectively, or a mixture of the two.

### **Is your case complicated?**

There are many reasons why a case might be complicated. These are some examples of common reasons, but there are others:

- It involves a difficult legal question. This is likely to be the case with most cases in the Court of Appeal, or in the Upper Tribunal. It may also be relevant in other cases, where a court or a tribunal needs to make up its mind about what the law means or how the law is relevant to a particular case. It isn't always easy to tell if a case involves a complicated legal question unless you are a lawyer, however. If your case involves a complex question of law, it is more likely to get ECF.
- It involves a lot of facts or complicated information, especially if that information is new to you. It might be that your opponent in a case has provided a lot of documents which you don't understand, or need to go through very carefully. It might be that the story leading up to your case is very complicated and you need to go through it in detail to explain your situation to a court. If your case involves a lot of facts, it is more likely to get ECF.
- You need to cross-examine someone in a court or tribunal. That might be because the other person has accused you of doing something, or it might be because you have accused them of doing something. Either way, cross-examining someone isn't easy without training, and if it is really necessary in your case, you are more likely to get ECF.
- The case needs expert evidence from someone. For example, your health (or another person's health) might be an important issue in the case, so that without accurate information about the medical situation, the court or other decision maker couldn't make a properly informed decision. That could mean you can't present your case without an expert medical report, so you need ECF. There could be other kinds of expert evidence, where the court needs information about (as examples) the law in another country, or how likely a

person is to commit a crime again. If expert evidence is needed, ECF is more likely to be granted.

- You need to know what the law is before you can get the right kind of evidence together. For instance, you might know that a tribunal will decide your case on the basis of certain criteria. But if you don't know what those criteria are, then you can't get the evidence together to show whether you meet them or not. You might end up going to a tribunal hearing with completely the wrong evidence because you didn't know what you needed. If you can explain that this is a problem for you, it may help you get ECF.

### **Can you do the case without legal assistance?**

There are lots of reasons a person might find it difficult to do a case themselves. Below is a list of some common reasons, but there could be other reasons which apply to you.

If you have it, it is very helpful to give the LAA evidence of what difficulties you have. That might be a letter from a doctor perhaps, saying you have a medical problem, or a letter from a friend who helps you to read and understand letters perhaps.

If you don't have a letter or if it isn't the sort of difficulty which you can get a letter about (for example, you are very emotionally involved in the case) then try to explain what sort of things you find difficult and which are easier for you. You could explain when you left school, or what kinds of problems you have had dealing with complicated problems in the past. A more detailed explanation is usually better.

- You don't understand English well. That might be because you grew up in a different country, or because you find it difficult to understand any language. The more difficulty you have in understanding English, the more likely you will get ECF.
- You have problems with reading or writing. Almost all legal cases involve some written material, and there is often very limited help for people. If you are trying to understand what the law is, it will almost always be through writing. So if you have a visual impairment, or if you have never been taught how to read and how to write, or if you can speak English but don't know how to read it, all of that will make it more likely you will get ECF.
- You have difficulty understanding complicated issues or ideas. Much of the law, even that which isn't unusually complicated, is more complicated than most people deal with in their normal lives. You might find understanding the law difficult because you don't have a lot of education, or you might have problems with understanding in general, for instance because you have a learning disability. The more difficult you find it to understand things, the more likely you are to get ECF.



- You suffer from a condition or have a disability which stops you from communicating easily with other people. For instance, you might be well educated and intelligent but have problems speaking, which would mean you can't communicate effectively in a court or tribunal.
- You have a mental health problem which means you don't understand the situation, or if you do understand it, you can't react to it in the same way that other people would, and you may make your situation worse.
- The case has particular emotional difficulties for you. That might be because the issues at stake are so huge for you (for instance, they involve whether you will ever see your child again) that you cannot take an objective view of your own case and work out what is relevant and what is not. In such circumstances, you might cause your own case harm. If this is the case, you are more likely to get ECF.
- Although you might be capable of doing the case yourself if you had the resources, you might be in a situation that means you can't access what you need to do the case. You might be in prison, or in another country where you don't have access to the information you need.
- Although you are intelligent and educated, a case might be so complicated that you still can't do it on your own. This is most likely to be the case if the case involves a really difficult legal issue that any untrained person couldn't realistically handle themselves.

### **Which forms do I send?**

Which forms you send will depend on what kind of case you want ECF for. Most people will need to send the LAA two or three forms, of different kinds. This guide isn't perfect, and doesn't cover all cases, but it should help.

All the legal aid forms are made for lawyers to use, not for people without legal training. They are hard to understand. If you don't know what something means or what it is asking you, then just leave it blank and write "I don't understand" or "I don't know". These forms are important, but the LAA should accept that someone without legal training can't do them on their own. So try not to worry about them too much, and say that you don't know when that is the case.

Everyone who applies for ECF needs to send the LAA form 'CIV ECF1', which you can find on the LAA [website](#). This is the special ECF form. It is never the only form the LAA will want from you.

You also need to send another application form. What kind of form depends on what kind of case you have.

- If you are involved in a family court case, or you want to start a family court case, use form 'CIV APP3'

- If you are involved in a non-family court case, or you want to start a non-family court case, use form 'CIV APP1'
- If you have an immigration appeal case, or want to start one, use form 'CW2'
- If you don't have a court case, and you're not planning on starting one (for instance, if you need some advice on an issue, or you need a lawyer to write a letter to someone), use form 'CW1'

If you used form 'CIV APP1' or 'CIV APP3', you will also need to send in a form about your financial situation. This will be:

- If you are receiving a means-tested welfare benefit, like Income-Based Jobseekers' Allowance, or Income-Related Employment and Support Allowance, then you need to use form 'CIV MEANS2'
- If you are not receiving a means-tested welfare benefit, you need to use form 'CIV MEANS1'

There are some cases where it is hard to know which form to use. It isn't simple, but the LAA should tell you which forms you need to fill in, if you send them the wrong ones. You can also phone the ECF team beforehand, using the number above, to ask them which form to send it.

### **Financial Evidence**

The financial evidence required is complex and will be different in each case. If you don't send the LAA the right information, they should ask for more information and tell you what you need. You might call the LAA before sending your application to check what financial evidence you need. But on the whole, you will need to give the LAA:

- Bank statements, usually for the last three months. This is still the case if you don't use your bank account or if it has nothing in it. If you don't have a bank account, you should tell the LAA.
- Some evidence of where you get the money which you live on. That might be your payslips if you are working, or a letter from the Jobcentre about your benefits.
- If you don't have any money at all, you will probably need letters from the people or organisations who give you food and shelter. That might be food banks, a local authority, or community members and friends. If you can't get these, you should tell the LAA why.

**PLP February 2017**