

# Advice and assistance and civil legal aid



# Keycard 2008

## About the Keycard

This Keycard sets out the various eligibility limits, contributions and clawback levels in advice and assistance and civil legal aid in force from **7 April 2008**.

It also includes changes resulting from reforms to summary criminal legal assistance which were made on **30 June 2008** and changes resulting from the introduction of the employment and support allowance which were effective from **27 October 2008**.

For more guidance on eligibility, contributions and clawback, refer to the Scottish Legal Assistance Handbooks, available on our website [www.slab.org.uk](http://www.slab.org.uk)

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## **Definitions used**

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### **Partner**

In this Keycard, the word “partner” means someone the applicant normally lives with as a couple, whether or not they are married and of the same or different sex.

A partner’s resources, as well as the applicant’s, must be taken into account unless:

- the partner has a contrary interest
- the applicant and partner are living separate and apart
- it would be inequitable or impracticable to aggregate their resources. (If you consider this is the case, please contact the Board for advice).

### **Subject matter of dispute**

Subject matter of dispute means property which is at issue in the dispute or proceedings, and may not be available to the client at the conclusion of the matter.

# Advice and assistance

## Documentary evidence of client's financial circumstances

Solicitors are responsible for deciding if their clients are financially eligible for advice and assistance. You should refer to this Keycard and the guidance in the Legal Assistance Handbooks about assessing disposable income and capital. Clients who are granted advice and assistance must be financially eligible.

Most clients should be able to give their solicitor documentary evidence of their financial position. When arranging an initial meeting with a solicitor, the client should be asked to bring documentary evidence of their capital and income with the proof of identity you need when signing up new clients, whether legally aided or not.

We recommend that solicitors should see, wherever practicable, the following evidence:

### **for income:**

- where the client is employed - a recent wage slip or bank statement
- where the client receives benefits - a letter of award, benefit book (in the few cases where it is paid this way) or a bank statement (which might simply be an ATM receipt showing the credit).

### **for capital:**

- a bank statement and statement/passbook- and certificate for savings and/or investments held.

If you have not seen any evidence, you must explain on the advice and assistance form how you were satisfied that the client was financially eligible.

We appreciate that in some circumstances, clients may not have documentary evidence available when consulting a solicitor. Where they do not – for example, in an emergency, where they are part of some acrimonious dispute which prevents access to documentation or where they are in custody – you may be satisfied from the limited information available, but you should then seek verification from the client at the earliest opportunity, and before seeking any increase in authorised expenditure.

**Keep a copy of this verification on file, so that it can be seen at peer review or at a Board compliance inspection.**

**This advice applies equally to repeat clients. It is not safe for you to assume that your client’s financial position has not changed.**

## **Assessing eligibility**

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A client’s income and capital must be within the current financial limits to qualify for advice and assistance.

We recommend you assess their disposable capital before assessing income, since if they do not qualify on capital, they are ineligible for advice and assistance – even if they receive “passport” benefits (that is, income support, an income-related employment and support allowance or income-based jobseeker’s allowance).

## Assessing eligibility on capital

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### Disposable capital – from 7 April 2008 £1,561 maximum for eligibility

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A person whose disposable capital exceeds the capital limit of £1,561 is **NOT** eligible for advice and assistance, whatever their disposable income or eligibility for a passport benefit.

To calculate disposable capital, you should:

- calculate your client's total capital
- deduct from the total capital the standard allowances
- disregard the levels of capital shown in the section below if the applicant is of pensionable age.

### Working out your client's total capital

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Capital means savings and anything else of value the client and their partner, if appropriate, own. **This excludes the client's main residence and the value of any disputed assets which are part of the subject matter of the advice.**

Examples of capital include:

- the amount that could be borrowed against all land and buildings the client or their partner own, other than the client's main home, including interests in timeshares
- money in the bank, building society, post office, premium bonds, national savings certificates etc
- investments, stocks and shares
- money that can be borrowed against insurance policies
- the value of other non-essential possessions, such as a boat, a caravan, second car, jewellery (but not wedding or engagement rings), antiques or items bought for investment
- money owed to the client or their partner
- money due from the will of someone who has died
- money due from a trust fund
- money that can be borrowed against business assets
- redundancy payments.

You should **NOT** include in capital:

- the home in which the client and their partner live
- the client's household furniture and clothing
- the client's tools and equipment they need for work
- the value of any property or item that is the subject of the dispute.

## Standard allowances

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Standard allowances against capital are deductible for the following persons **living with the applicant:**

- a partner whose resources have to be aggregated – who is considered as the first dependant **and/or**
- a dependent person who is wholly or substantially maintained.

For the first such dependant	<b>£335</b>
For the second such dependant	<b>£200</b>
For each other such dependant	<b>£100</b>

(No allowances should be made for any children where the applicant receives Foster Care Allowance.)

## Disregards for applicants of pensionable age

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Where the applicant is of **pensionable age** (60 in all cases), with a weekly disposable income (excluding investment income) below £95, you should **disregard capital** as:

Weekly disposable income up to £10	<b>disregard £25,000</b>
Weekly disposable income £11 - £22	<b>disregard £20,000</b>
Weekly disposable income £23 - £34	<b>disregard £15,000</b>
Weekly disposable income £35 - £46	<b>disregard £10,000</b>
Weekly disposable income £47 - £95	<b>disregard £5,000</b>

## Assessing eligibility on income

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### Disposable income - from 7 April 2008 £223 a week maximum for eligibility

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A person whose disposable income exceeds the income limit of £223 a week is **NOT** eligible for advice and assistance, whatever their disposable capital, unless they receive a passport benefit (income support, an income-related employment and support allowance or income-based jobseeker's allowance).

“Income” means the total income, from all sources, which the client and their partner received or became entitled to during or in respect of the seven days up to and including the date of the application.

This excludes income that is, the subject matter of the dispute – for example, maintenance being claimed which is part of the subject matter of the advice. Deduct income tax and national insurance contributions from income.

## Calculating eligibility on income

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To calculate eligibility on income, you should:

- check if your client receives a passport benefit
- calculate your client's net weekly income
- deduct from the net weekly income the standard allowances
- calculate if they qualify and if they have to pay a contribution.

If they make any monthly payments, multiply these by 12 and then divide by 52 to work out the weekly figure. To make assessment easier, round the figure up or down to the nearest pound.

## Passport benefits – automatically eligible on income

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If the client or their partner receives a passport benefit:

- income support
- an income-related employment and support allowance
- income-based jobseeker's allowance

**they qualify automatically on income** for advice and assistance and will not have to pay a contribution. However, you must still assess your client's disposable

capital.

## Calculating net weekly income

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### You must include:

- earnings (including any tips), drawings or profits from business
- maintenance payments (unless paid through the Child Support Agency)
- private or employee pensions
- occupational sick pay
- occupational maternity pay
- student grants or bursaries (but do not include student loans)
- National Asylum Support Service (NASS) payments
- money received from friends and relatives (other than loans)
- income from savings and investments
- dividends from shares.

Various benefits which the client may receive are disregarded in the financial assessment. **Do not include:**

- Working Tax Credit
- Child Tax Credit
- Pension Credit
- Child Benefit
- Attendance Allowance
- Back to Work Bonus
- Bereavement Allowance
- Bereavement Payment
- Child Maintenance Bonus
- Child Support Maintenance (only if paid through the Child Support Agency)
- Christmas Bonus
- Contribution-based Jobseeker's Allowance
- Council Tax Benefit
- Disability Living Allowance (DLA)
- Guardian's Allowance
- Housing Benefit
- Incapacity Benefit (Incap)
- Industrial Injuries Disablement Pension (IIDP)
- Care (Invalid) Allowance
- Severe Disablement Allowance
- Sickness Benefit
- State Retirement Pension
- Statutory Maternity Pay (non-occupational)
- Statutory Sick Pay (non-occupational)
- Sums payable to holders of the Victoria Cross or George Cross
- War Disablement Pension
- War Widow's/Widower's Pension
- Widowed Parent's Allowance.

### Particular situations

- Adults with Incapacity – you must assess all income and capital for the adult concerned, not those of the person making the application.
- Foster Care Allowance - do not include any Foster Care Allowance the applicant receives in the calculation for disposable income. Do not deduct dependant allowances for capital and income for any of the foster children.

### Allowances

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You should deduct the following standard allowances against income for the maintenance of :

Partner living with the applicant	<b>£34.45</b>
Any dependent person, adult (other than partner) or child (but do not include any foster children), who is wholly or substantially maintained, being a member of the applicant's household	<b>£52.59</b>

Deduct the actual maintenance paid for the last seven days, not the standard allowance, if:

- the applicant and partner are living apart
- the applicant is paying maintenance for a dependant who is not part of the household.

## Clients' contributions

This applies to criminal, children's and civil advice and assistance, except diagnostic civil advice and assistance – see the next table for these contributions.

<b>Disposable income range</b>	<b>Maximum contribution</b>
Disposable Income not exceeding £95	£0
Exceeding £95 but not exceeding £102 a week	£7
Exceeding £102 but not exceeding £109 a week	£14
Exceeding £109 but not exceeding £116 a week	£21
Exceeding £116 but not exceeding £123 a week	£28
Exceeding £123 but not exceeding £130 a week	£35
Exceeding £130 but not exceeding £137 a week	£42
Exceeding £137 but not exceeding £144 a week	£49
Exceeding £144 but not exceeding £151 a week	£56
Exceeding £151 but not exceeding £158 a week	£63
Exceeding £158 but not exceeding £165 a week	£70
Exceeding £165 but not exceeding £172 a week	£77
Exceeding £172 but not exceeding £179 a week	£84
Exceeding £179 but not exceeding £186 a week	£91
Exceeding £186 but not exceeding £193 a week	£98
Exceeding £193 but not exceeding £200 a week	£105
Exceeding £200 but not exceeding £207 a week	£112
Exceeding £207 but not exceeding £214 a week	£119
Exceeding £214 but not exceeding £223 a week	£124

## **Civil advice and assistance – diagnostic cases**

### **Criminal advice and assistance – general cases**

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A different contribution scale applies to diagnostic civil advice and assistance and general criminal advice and assistance.

Diagnostic civil advice and assistance is where the client’s problem is not among the specific categories approved for standard advice and assistance, and you are providing advice and assistance by way of a diagnostic interview, deciding whether further assistance can be offered, or if the client needs to be advised to contact another agency for help. Where there is a diagnostic interview, the maximum contribution payable is £35.

<b>Disposable income range</b>	<b>Maximum contribution</b>
Exceeding £95 but not exceeding £123 a week	<b>£7</b>
Exceeding £123 but not exceeding £151 a week	<b>£14</b>
Exceeding £151 but not exceeding £179 a week	<b>£21</b>
Exceeding £179 but not exceeding £200 a week	<b>£28</b>
Exceeding £200 but not exceeding £223 a week	<b>£35</b>

## Initial limit of authorised expenditure

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### Civil advice and assistance

The standard initial limits of authorised expenditure in civil advice and assistance are:

- Diagnostic - **£35**
- Standard - **£95**

The initial limit of **£180** applies in certain specified situations where either advice and assistance or ABWOR is given. The **£180** initial limit for advice and assistance applies where

- (a) you are satisfied the matter is likely to be resolved only by preparing for proceedings in a civil court for which legal aid is available, and
- (b) it is likely (on the information provided to you) the applicant will qualify on financial grounds for civil legal aid, and
- (c) it is reasonable in the circumstances of the case.

The **£180** initial limit for ABWOR applies in relation to a petition by a debtor for the sequestration of his estate (inclusive fees are prescribed for this work).

### Criminal advice and assistance

For criminal advice and assistance and criminal ABWOR cases, the initial limits of expenditure can be either **£35**, **£90**, **£185**, **£550**, or **£165**, depending on the type of criminal advice and assistance or ABWOR being used:

- **£35** applies for general advice and assistance, where advice is being given prior to the service of a complaint or direct measure, or if the direct measure is accepted
- **£90** applies for standard advice and assistance where advice is being given after the issue of a summary complaint or if the direct measure is being challenged
- **£90** applies to advice given in connection with solemn criminal matters

- £185 applies for ABWOR cases on a block fee basis in JP court cases. This is the £150 block fee with the £25 fee for any diet where a social enquiry report (SER) is being considered, together with £10 for any outlays.
- £550 applies for ABWOR cases on a block fee basis in the Sheriff Court and Stipendiary Magistrates Court cases. This is the £515 block fee with the £25 fee for any diet where a SER is being considered, together with £10 for any outlays.
- £165 applies for ABWOR cases for Parole Board proceedings, or if a second or subsequent diet has been ordered by the court for any other cases where ABWOR is available on a chargeable basis
- £90 applies where it relates to ABWOR for any other summary criminal matter.

### **Children's advice and assistance**

Section 10 of the Act provides only one initial limit for children's advice and assistance, of **£95**.

### **Increases in authorised expenditure**

An increase in authorised expenditure is only effective from the date we grant it. We cannot authorise increases retrospectively and if you do any work not covered by the authorised expenditure at any given time, we cannot pay for it.

## Clawback and regulation 16(3)

### Clawback limits

The solicitor's right to prior payment of fees and outlays out of any property recovered or preserved for a client under advice and assistance does not apply to property recovered or preserved by virtue of certain family proceedings listed in regulation 16(2)(b) of the Advice and Assistance (Scotland) Regulations 1996, to the extent set out in the regulation.

The limits to be applied are:

	<b>Amount</b>
Date of order or settlement prior to 1 December 2002	<b>£2,500</b>
Date of order or settlement on or after 1 December 2002 (and not covered below)	<b>£4,200</b>
<b>Date of application for advice and assistance between:</b>	
6 April 2003 and 11 April 2004	<b>£4,275</b>
12 April 2004 and 10 April 2005	<b>£4,395</b>
11 April 2005 and 9 April 2006	<b>£4,531</b>
10 April 2006 and 8 April 2007	<b>£4,653</b>
9 April 2007 and 6 April 2008	<b>£4,821</b>
on or after 7 April 2008	<b>£5,009</b>

## Regulation 16(3)

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We pay fees and outlays according to the steps set out in section 12(3) of the Act. The Fund only pays as a last resort – you must first look to the client's contribution, expenses paid by the opponent and property recovered or preserved by the applicant (subject to the exemptions set down in regulation 16(2) of the Advice and Assistance (Scotland) Regulations 1996).

If money or property is recovered, you can apply to us to waive this charge because either:

- it would cause grave hardship or distress to the client [regulation 16(3)(a)];  
or
- payment of your account from the money or property could only be effected with unreasonable difficulty or after unreasonable delay, provided you have taken all reasonable steps to have your account paid out of the money or property [regulation 16(3)(b)].

If, after we have paid a solicitor's account under regulation 16(3)(b), we find that the person who received advice and assistance has

- either received expenses, or recovered or preserved property, and
- not told us about it

we can recover the amount of fees and outlays paid, less any amount which would have been properly payable by way of fees and outlays under section 12(3)(d) of the Act had the person declared the expenses or property to us.

For further information about clawback under advice and assistance, and payment under regulation 16(3), you should refer to chapter 9 of the Civil Legal Assistance Handbook.

# Civil legal aid

## Eligibility limits

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To do work as a matter of special urgency under regulation 18, you have to complete the Special Urgency Mandate form CIV/SU/MAN. This allows you to assess your client's financial eligibility. To complete this form, you need to apply the current eligibility limits and allowances, which are:

### Disposable income

The lower disposable income limit, on or below which a person will not have to pay a contribution from income	<b>£3,156</b>
The upper disposable income limit, above which a person will be ineligible on income	<b>£10,306</b>

### Pension credits

You should disregard any income from a state pension credit under the State Pension Credit Act 2002. However, you should fully assess any other income.

If someone's disposable income is between £3,156 and £10,306 they are eligible on income, but will have to pay a contribution. This contribution is one-third of the amount above the lower disposable limit of £3,156.

### Disposable capital

The lower capital eligibility limit, on or below which a person will not have to pay a contribution	<b>£7,147</b>
The upper capital eligibility limit, above which the Board may refuse a person legal aid if it considers they can afford to proceed without it	<b>£11,847</b>

If someone's disposable capital is between £7,147 and £11,847 they are eligible on capital, but will have to pay a contribution. This contribution is equal to the difference between their capital and **£7,147**.

## Allowances for a partner and dependants

Partner living with the applicant	<b>£1,796</b>
For any dependent person who is wholly or substantially maintained, being a member of the applicant's household, who is not entitled to any income from any source in their own right	<b>£2,742</b>

## Clawback limits

You should refer to the Civil Legal Assistance Handbook for guidance on clawback.

The requirement for someone receiving civil legal aid to pay any net liability to the Fund does not apply to property recovered or preserved under certain family proceedings listed in regulation 33(b) of the Civil Legal Aid (Scotland) Regulations 2002, to the extent set out in the regulation.

Date of order or settlement prior to 1 December 2002	<b>£2,500</b>
Date of order or settlement on or after 1 December 2002 (and not covered below)	<b>£4,200</b>
<b>Date of application for civil legal aid between:</b>	
6 April 2003 and 11 April 2004	<b>£4,275</b>
12 April 2004 and 10 April 2005	<b>£4,395</b>
11 April 2005 and 9 April 2006	<b>£4,531</b>
10 April 2006 and 8 April 2007	<b>£4,653</b>
9 April 2007 and 6 April 2008	<b>£4,821</b>
on or after 7 April 2008	<b>£5,009</b>