

# Advice and assistance and civil legal aid



# Keycard 2011

## 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 **11 April 2011**.

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, you may wish to contact us for advice).

### **Child**

The definition of a child under advice and assistance civil legal aid is, generally, a person under 16 years. However, for the purposes of assessing the financial eligibility of an applicant, whether under A & A or civil, the definition of “child” has the meaning given in section 1(5) of the Family Law (Scotland) Act 1985.

From the 31 January 2011 new rules have applied to the assessment of financial eligibility for a child seeking advice and assistance and civil legal aid. The resources of any person who owes an obligation of aliment to that child, within the definition given in section 1(1)(c) or (d) of the Family Law (Scotland) Act 1985, must be included, along with the child’s resources in establishing financial eligibility, unless in the particular circumstances it would be unjust or inequitable to do so. (If you consider this is the case, you may wish to contact us for advice).

This includes circumstances where the child has a contrary interest with the person who owes a duty of aliment as described in section 1(1)(c) or (d), but goes beyond conflict situations.

We will be developing guidance in its Civil Legal Assistance Handbook to assist you.

### **Subject matter of dispute**

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

# Advice and assistance

## Documentary evidence of client's financial circumstances

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You as the solicitor, are responsible for deciding if a client is financially eligible for advice and assistance. In civil, children's and criminal cases we have the authority to withhold or to recover payments made to a solicitor where, in granting advice and assistance or ABWOR, it is found that the tests, including the financial test, have not been applied properly.

You should refer to this Keycard and the guidance in the Legal Assistance Handbooks about assessing disposable income and capital. A client who is 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 you, 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, where practicable, you should see 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 the client's 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 11 April 2011**  
**£1,716 maximum for eligibility**

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A person whose disposable capital exceeds the capital limit of £1,716 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>  |

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## Assessing eligibility on income

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### Disposable income - from 11 April 2011 £245 a week maximum for eligibility

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A person whose disposable income exceeds the income limit of £245 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.

If not:

- 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. Of course, 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 to be disregarded in the financial assessment. So do not include:

- Working Tax Credit
  - Child Tax Credit
  - Pension Credit
  - Child Benefit
  
  - Attendance Allowance
  - 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
  - Contribution-based Employment and Support 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's allowances for capital and income for any of the foster children.
- Applications from children

The resources of any person who owes an obligation of aliment to that child, within the definition given in section 1(1)(c) or (d) of the Family Law (Scotland) Act 1985, must be included, along with the child's resources in establishing financial eligibility unless it would be unjust or inequitable to do so. (If you consider this to be the case, please seek further guidance from the Board).

## Allowances

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

|  |               |
|--|---------------|
| Partner living with the applicant  | <b>£38.45</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>£62.33</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 £105         | <b>£0</b>                   |
| Exceeding £105 but not exceeding £112 a week | <b>£7</b>                   |
| Exceeding £112 but not exceeding £119 a week | <b>£14</b>                  |
| Exceeding £119 but not exceeding £126 a week | <b>£21</b>                  |
| Exceeding £126 but not exceeding £133 a week | <b>£28</b>                  |
| Exceeding £133 but not exceeding £140 a week | <b>£35</b>                  |
| Exceeding £140 but not exceeding £147 a week | <b>£42</b>                  |
| Exceeding £147 but not exceeding £154 a week | <b>£49</b>                  |
| Exceeding £154 but not exceeding £161 a week | <b>£56</b>                  |
| Exceeding £161 but not exceeding £168 a week | <b>£63</b>                  |
| Exceeding £168 but not exceeding £175 a week | <b>£70</b>                  |
| Exceeding £175 but not exceeding £182 a week | <b>£77</b>                  |
| Exceeding £182 but not exceeding £189 a week | <b>£84</b>                  |
| Exceeding £189 but not exceeding £196 a week | <b>£91</b>                  |
| Exceeding £196 but not exceeding £203 a week | <b>£98</b>                  |
| Exceeding £203 but not exceeding £210 week   | <b>£105</b>                 |
| Exceeding £210 but not exceeding £217 a week | <b>£112</b>                 |
| Exceeding £217 but not exceeding £224 a week | <b>£119</b>                 |
| Exceeding £224 but not exceeding £231 a week | <b>£126</b>                 |
| Exceeding £231 but not exceeding £245        | <b>£135</b>                 |

## 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.

Where advice is being given prior to the service of a summary complaint or direct measure, or if the direct measure is accepted the maximum contribution is, again, £35.

| Disposable income range                      | Maximum contribution |
|--|----------------------|
| Exceeding £105 but not exceeding £134 a week | <b>£7</b>            |
| Exceeding £134 but not exceeding £163 a week | <b>£14</b>           |
| Exceeding £163 but not exceeding £193 a week | <b>£21</b>           |
| Exceeding £193 but not exceeding £222 a week | <b>£28</b>           |
| Exceeding £222 but not exceeding £245 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

- 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
- it is likely (on the information provided to you) the applicant will qualify on financial grounds for civil legal aid, and
- it is reasonable in the circumstances of the case.

Alternatively, you may wish to use a template intimation.

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 fixed payments basis in JP court cases. This is the £150 fixed payment 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 fixed payments basis in the Sheriff Court and Stipendiary Magistrates Court cases. This was the £515 fixed payment with the £25 fee for any diet where a SER is being considered, together with £10 for any outlays. The fixed payment has now been reduced to £485 (Sheriff Court) and £390 (Stipendiary Court) but the limit of authorised expenditure remains the same.
- **£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**

**£95** applies to all children's advice and assistance.

#### **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 limits 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 granted before 1 April 2011 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<br>(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> |
| 7 April 2008 and 5 April 2009  | <b>£5,009</b> |
| 6 April 2009 and 11 April 2010   | <b>£5,259</b> |
| 12 April 2010 and 31 March 2011  | <b>£5,338</b> |
| On or after 1 April 2011   | <b>NIL</b>    |

In advice and assistance applications granted on or after 1 April 2011 no partial exemption, on the basis set out on this table, can be applied to any property recovered or preserved.

Also, exemptions from clawback will no longer apply to

- An order made by the Employment Appeal Tribunal which continues in existence under section 20 of the 1996 Act or under any settlement arrived at to prevent or bring to an end proceedings in which such an order may be made;
- any payment of money in accordance with an order made under section 21 of the 1996 Act by the Employment Appeal Tribunal;
- any dwelling recovered or preserved for the client as a result of advice and assistance given to him by a solicitor.

## 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 Part VII, Chapter 1 of the Civil Legal Assistance Handbook.

# Civil legal aid

## Eligibility limits

To do work as a matter of special urgency under regulation 18, you have to complete the Aide Memoire which is designed to assist you to assess your client's financial eligibility. The mandate can be found either in section D of the CIV/SOL Family or CIV/SOL Non Family forms or in the CIV/SU form. To complete the mandate 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>£3,521</b>  |
| The upper disposable income limit, above which a person will be ineligible on income                          | <b>£26,239</b> |

### Allowances for a partner and dependants

|   |               |
|---|---------------|
| Partner living with the applicant   | <b>£2,004</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>£3,250</b> |

### Particular situations

- **Adults with Incapacity**
  - Where the applicant is seeking orders relating to the welfare of the Adult or a combined order dealing with welfare and the financial affairs of the Adult no assessment of financial circumstances need be undertaken.
  - If the orders sought deal solely with the financial affairs of the Adult you must assess the disposable income and capital of the Adult concerned, not those of the person making the application.

- **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 exceeds £3,521 they are eligible on income, but will have to pay a contribution. The following table sets out how the contribution should be calculated

| Disposable income | Contribution rates applied to income in that range |
|-------------------|--|
| Below £3,521      | 0%   |
| £3,521 - £11,540  | 33%  |
| £11,540 - £15,743 | 50%  |
| £15,743 - £26,239 | 100%   |
| Over £26,239      | Not eligible                                       |

## Disposable capital

|  |                |
|--|----------------|
| The lower capital eligibility limit, on or below which a person will not have to pay a contribution  | <b>£7,853</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>£13,017</b> |

If someone's disposable capital is between £7,853 and £13,017 they are eligible on capital, but will have to pay a contribution. This contribution is equal to the difference between their capital and **£7,853**.

Unlike advice and assistance there are no statutory allowances from capital for partners or dependants.

## Clawback limits

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

The requirement for someone receiving civil legal aid made available **before 1 April 2011**, 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> |
| 7 April 2008 and 5 April 2009   | <b>£5,009</b> |
| 6 April 2009 and 11 April 2010  | <b>£5,259</b> |
| 12 April 2010 and 31 March 2011   | <b>£5,338</b> |
| On or after 1 April 2011  | <b>NIL</b>    |

Where civil legal aid is granted **on or after 1 April 2011** no partial exemption, on the basis set out in this table, can be applied to any property recovered or preserved.

Also, exemptions from clawback will no longer apply to

- an order made by the Employment Appeal Tribunal or under any settlement arrived at to prevent or bring to an end proceedings in which such an order may be made.