



THE SCOTTISH LEGAL AID BOARD Keycard - April 2005

This keycard, for solicitors' use, sets out the various financial limits, contributions and clawback levels in advice and assistance and civil legal aid in force from **11th April 2005**.

In this keycard, the word "partner" is used to denote someone the applicant normally lives with as a couple, whether or not they are married and of the same or different sex: the resources of a partner, in addition to the resources of an applicant, must be taken into account unless:

- (1) the partner has a contrary interest;
- (2) the applicant and partner are living separate and apart; or
- (3) it would be inequitable or impracticable to aggregate their resources

"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

The client must be eligible both on capital and income to qualify for advice and assistance. It may be prudent to assess capital eligibility first, as a failure to qualify on capital will make the client ineligible for advice and assistance even in the event of 'passporting' benefits being in payment.

DISPOSABLE CAPITAL (£1,412 maximum for eligibility)

A person whose disposable capital exceeds the capital limit is not eligible for advice and assistance whatever the level of disposable income or eligibility for one of the 'passporting' benefits.

"Capital" means the amount or value of every resource of a capital nature, but **leave out of account:**

- (1) any capital which is the subject matter of dispute;
- (2) the value of the applicant's main or only dwelling house;
- (3) the value of the applicant's household furnishings and effects, articles of personal clothing and tools and implements of the applicant's trade.

If the applicant has an interest in a dwelling house, other than the main one in which the applicant resides, you must take into account any sum which may be obtained by borrowing money on the security of that house.

To arrive at the figure of disposable capital, you should:

- deduct from the total capital the standard allowances shown below, and
- disregard the appropriate levels of capital in the case of an applicant of pensionable age.

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

- 1) a partner whose resources are required to be aggregated;
- 2) a dependent person who is wholly or substantially maintained.

- For the first such dependant £335
- For the second such dependant £200
- For each other such dependant £100

Where the applicant is of **pensionable age** (60 in all cases), with a weekly disposable income (excluding investment income) below £86, **capital shall be disregarded as follows:**

- Weekly disposable income up to £10 - disregard £25,000
- Weekly disposable income £11 - £22 - disregard £20,000
- Weekly disposable income £23 - £34 - disregard £15,000
- Weekly disposable income £35 - £46 - disregard £10,000
- Weekly disposable income £47 - £80 - disregard £ 5,000

DISPOSABLE INCOME (£203 a week maximum for eligibility)

A person whose disposable income exceeds the income limit is not eligible for advice and assistance, whatever the level of disposable capital, unless in receipt of income support or income-based jobseeker's allowance.

"Income" means the total income from all sources which the person received or became entitled to during or in respect of the seven days up to and including the date of the application. Income tax paid or payable is deductible, as are National Insurance contributions.

Solicitors should, wherever practicable, see the client's benefits book, letter of award or a bank statement either at the first meeting or, if not available, at a subsequent meeting. Where an appointment is made for a client, the client should be asked to bring along vouching of income.

Do not assess disposable income if the applicant is (directly or indirectly) in receipt of income support or income-based jobseeker's allowance.

If in receipt of the following benefits, the applicant is **automatically eligible on income:-**

Income support Income-based jobseeker's allowance

Please note:

- Disabled Persons Tax Credit and Working Families Tax Credit are no longer income "passporting" benefits.
- Disposable capital still requires to be assessed.

Leave out of account:

- Any income which is the subject matter of dispute.
- Payments under the Social Security Contributions and Benefits Act 1992 (except statutory sick pay)
- Tax credits under the Tax Credits Act 2002

The most common **benefits and tax credits to be disregarded** from the income assessment are as follows: -

Attendance Allowance	Housing benefit
Back to work bonus	Incapacity benefit
Bereavement Allowance	Industrial Injuries Disablement Pension
Bereavement Payment	Invalid Care Allowance
Child Benefit	Pension Tax Credit
Child Maintenance Bonus	Severe disablement allowance
Child support maintenance (paid through CSA)	Statutory Maternity Pay
Child Tax Credit	State Retirement Pension
Christmas bonus for pensioners	Sums payable to holders of the Victoria Cross or George Cross
Contribution-based jobseeker's allowance	War Disablement Pension
Council tax benefit	War Widows/Widower's Pension
Disability living allowance	Widowed Parent's Allowance
Disabled person's tax credit	Working tax credit
Guardian's allowance	

Statutory sick pay, National Asylum Support Service and voluntary maintenance payments should be taken into account and not disregarded as income.

You should deduct from the total income the standard allowances shown below. An allowance can be deducted for a partner living with the applicant even if the partner has no means to aggregate. If the applicant and partner are living apart you should not apply the standard allowance but should deduct the actual maintenance payments made by the applicant for the last seven days. Similarly, if maintenance payments are made for a dependent person not part of the household, a deduction should be made in respect of the actual maintenance paid.

Standard allowances against income are deductible for the maintenance of the following persons:

- 1) For a partner living with the applicant **£31.95**
- 2) For any dependent person who is wholly or substantially maintained, being a member of the applicant's household, at the following rate appropriate to the dependant's age:

<i>Band A</i> - aged under 16 or 16 on or after 5 September 2005	£43.88
<i>Band B</i> - aged 16 before 5 September 2005, or older	£43.88

CLIENTS' CONTRIBUTIONS

Disposable income not exceeding £86	No contribution to pay
Exceeding £86 but not exceeding £93 a week	£ 7
Exceeding £93 but not exceeding £100 a week	£ 14
Exceeding £100 but not exceeding £107 a week	£ 21
Exceeding £107 but not exceeding £114 a week	£ 28
Exceeding £114 but not exceeding £121 a week	£ 35
Exceeding £121 but not exceeding £128 a week	£ 42
Exceeding £128 but not exceeding £135 a week	£ 49
Exceeding £135 but not exceeding £142 a week	£ 56
Exceeding £142 but not exceeding £149 a week	£ 63
Exceeding £149 but not exceeding £156 a week	£ 70
Exceeding £156 but not exceeding £163 a week	£ 77
Exceeding £163 but not exceeding £170 a week	£ 84
Exceeding £170 but not exceeding £177 a week	£ 91
Exceeding £177 but not exceeding £184 a week	£ 98
Exceeding £184 but not exceeding £191 a week	£105
Exceeding £191 but not exceeding £198 a week	£112
Exceeding £198 but not exceeding £203 a week	£117

INITIAL LIMIT OF AUTHORISED EXPENDITURE

The standard initial limits of authorised expenditure are £80 for criminal and children's cases and £85 for civil cases.

The initial limits of authorised expenditure are £150 for criminal cases, where applicable, and £160 for civil cases where the solicitor is satisfied that:

- the matter is likely to be resolved only by preparing for proceedings in a civil court for which legal aid is available. (The reference is to "likely", not "possible" or merely "competent".)
- it is likely that the client will qualify on financial grounds for civil legal aid, and
- it is reasonable in the circumstances of the case.

An increase in authorised expenditure is only effective from the date it is granted by the Board.

An increase cannot be authorised retrospectively and any work carried out which exceeds the level of expenditure at any given time cannot be paid for by the Board.

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 shall not apply to property recovered or preserved by virtue of certain family proceedings detailed in regulation 16(2)(b) of the Advice & Assistance (Scotland) Regulations 1996, to the extent set out from time to time in the regulation.

The figure in the regulation was increased from £2,500 to £4,200 with effect from 1 December 2002, without qualification. If the date of the court order or settlement was caught by these regulations, this is the figure to apply.

Subsequent amendments made by way of Scottish Statutory Instruments are qualified to the extent that the regulations, and, therefore the substituted figures, apply only to cases where an application for advice and assistance is made on or after the date on which the regulations come into force (and prior to the next set of regulations).

The limits to be applied are as follows:

Date of order or settlement prior to 1 December '02	£2,500
Date of order or settlement on or after 1 December '02 (and not covered below)	£4,200
Date of application for advice and assistance between 6 April '03 & 11 April '04	£4,275
Date of application for advice and assistance between 12 April '04 & 10 April '05	£4,395
Date of application for advice and assistance on or after 11 April '05	£4,531

REMUNERATION

Solicitors are referred to the terms of Section 12 of the Legal Aid (Scotland) Act 1986 which deals with the hierarchy of payments whereby the solicitor must apply various sources of funding before making a claim against the Fund.

If a contribution is payable by the client, this must be applied to payment of the solicitor's account. This applies also to any expenses payable to the client.

If money or property is recovered or preserved for the client, this too must be applied to payment of the solicitor's account, subject to the exemptions set down in regulation 16(2) of the Advice and Assistance (Scotland) Regulations 1996. Application can be made to the Board in any case where recovery has been made to waive this charge on the ground that it would cause grave hardship or distress to the client [Regulation 16(3)(a)]; or that payment of the solicitor's account from the money or property could only be effected with unreasonable difficulty or after unreasonable delay, provided the solicitor has taken all reasonable steps to have his account paid out of the money or property [Regulation 16(3)(b)].

Where the Board has paid the solicitor under Regulation 16(3)(b), it will be entitled to recover from the client any expenses or property subsequently recovered or preserved to the extent of fees and outlays paid out of the fund, less any amount which would have been payable had the expenses or property been declared to the Board.

Where neither the contribution, expenses nor money or property recovered are sufficient to meet the solicitor's account, payment should be sought from the Legal Aid Fund. An account must be submitted to the Board within one year of completing the advice and assistance (although the Board may accept late accounts if there is special reason) except where civil legal aid has subsequently been granted on the same subject matter when the advice and assistance account must be rendered at the same time as the civil account.

CIVIL LEGAL AID

DISPOSABLE INCOME

For the purposes of completion of the pro-forma calculation sheet where legal aid under Regulation 18 is to be provided, the current eligibility limits are:

- the lower disposable income limit, on or below which a person will not have to pay a contribution from income, is **£2,931**

Over this figure, but below the upper disposable limit, a person will still be eligible but will have to pay a contribution from income equal to one-third of the excess.

- the upper disposable income limit, above which a person will be ineligible on income, is **£9,570**

DISPOSABLE CAPITAL

- the lower capital eligibility limit on or below which a person will be eligible and will not have to pay a contribution is **£6,465**

Over this figure, but below the upper capital limit, a person will still be eligible but will have to pay a contribution of the amount of capital over **£6,465**.

- the upper capital eligibility limit, above which a person may be refused legal aid if the Board considers that the individual can afford to proceed without it, is **£10,779**.

Allowances for a partner and dependants are:

- For a partner living with the applicant **£1,666**
- For any dependent person who is wholly or substantially maintained, being a member of the applicant's household, at the following rate appropriate to the dependant's age:
 - aged under 16 or 16 on or after 5 September 2005 **£2,288**
 - aged 16 before 5 September 2005, or older **£2,288**

CLAWBACK LIMITS

The requirement on the part of a person in receipt of civil legal aid to pay the amount of any net liability to the Scottish Legal Aid Fund shall not apply to property recovered or preserved by virtue of certain family proceedings detailed in regulation 33(b) of the Civil Legal Aid (Scotland) Regulations 2002, to the extent set out from time to time in the regulation.

The figure in the regulation was increased from £2,500 to £4,200 with effect from 1 December 2002, without qualification. If the date of the court order or settlement was caught by these regulations, this is the figure to apply.

The subsequent amendments made by way of Scottish Statutory Instruments are qualified to the extent that the regulations, and, therefore the substituted figures, apply only to cases where an application for civil legal aid is made on or after the date on which the regulations come into force (and prior to the next set of regulations).

The limits to be applied are as follows:

Date of order or settlement prior to 1 Dec '02	£2,500
Date of order or settlement on or after 1 Dec '02 (and not covered below)	£4,200
Date of application for civil legal aid between 7 April '03 & 11 April '04	£4,275
Date of application for civil legal aid between 12 April '03 & 10 April '05	£4,395
Date of application for civil legal aid on or after 11 April '05	£4,531