

## Legal Services and Applications Department

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To: All solicitors who undertake legal assistance work

*Direct dial number:*

*Your ref:*

*Please quote the department above and our reference: keycard 09*

4 April 2009

### Legal aid changes from Tuesday 7 April 2009:

- new Keycard with revised financial eligibility limits
- new Category Codes Card for advice and assistance/ ABWOR

This mailshot contains important information about changes to legal assistance coming into force on Tuesday 7 April 2009. Please ensure that all staff involved in providing advice and assistance / ABWOR and civil legal aid are made aware of its contents.

### Contents and enclosures

1. **Annual changes to financial eligibility and clawback limits for advice and assistance / ABWOR and civil legal aid - effective 7 April 2009**
  - changes to capital and income eligibility limits and increase in clawback limits.
2. **Major civil legal aid financial eligibility changes** - further information on important financial eligibility changes
3. **Summary criminal legal aid** - changes in eligibility limits used by the Board
4. **Advice and assistance/ ABWOR Category Codes Card - changes from 7 April 2009**
  - Information on the revised and updated category codes for use with advice and assistance / ABWOR
5. **Revised Equality Card** - information for solicitors who do not undertake criminal legal assistance work (who received details of these changes in June 2008).
6. **Revised materials for the public** - online calculators and revised information leaflets
7. **Ordering copies of the new Keycard and Category Codes Card, and forms and materials**
8. **Enclosed with this mailshot:**
  - One copy of the **Keycard 2009** - which includes all allowances, clarification of the various clawback limits for advice and assistance / ABWOR and civil legal aid, plus the income and capital eligibility limits effective 7 April 2009
  - One copy of the new **Category Codes Card** for advice and assistance / ABWOR
  - One copy of the **Equality Card** - for solicitors who do not undertake criminal legal assistance work
  - New order form to request forms and materials from Stewarts.

# 1. Annual changes to financial eligibility and clawback limits - effective Tuesday 7 April 2009

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## Advice and assistance / ABWOR - civil, children's and criminal cases

### Changes to capital eligibility limits

- the capital limit, above which a person is not financially eligible for advice and assistance / ABWOR, has been increased from £1,561 to **£1,639** [Section 8 of the Act]

### Changes to income eligibility limits

- the limit above which advice and assistance / ABWOR is not available has been increased from £223 to **£234** [Section 8(a)]
- the lower limit above which a contribution is payable has been increased from £95 to **£100** [Section 11(2)(a)]
- the table to be used in assessing the contribution, depending on the client's disposable income, has been amended and is contained in the Keycard
- the allowances have also been updated - see Keycard.

### Increases in "clawback" limit

- the figure prescribed in regulation 16(2)(b) of the Advice & Assistance (Scotland) Regulations 1996 has been increased from £5,009 to **£5,259**
- detailed advice is contained in the Keycard on what is the appropriate figure to apply in the circumstances of each case.

### Legal Aid Online

- for the many firms using our Legal Aid Online service, these changes to eligibility will be included in our online service from Tuesday 7 April.

### Income-related employment and support allowance (ESA)

- Please remember that this benefit, which came into force on 27 October 2008, is a passport benefit for advice and assistance/ABWOR, so a client receiving it would qualify on income automatically. However, as with the other two passport benefits - income support and income-based jobseeker's allowance - you must still assess eligibility on capital.

## Civil legal aid

There are major changes to financial eligibility on income from 7 April - please see section 2 of this letter for more information.

### Changes to capital eligibility

- the lower disposable capital limit, on or below which a client shall be financially eligible on capital without payment of a contribution, has been increased from £7,147 to **£7,504** [Section 17(2)(b)]
- the upper disposable limit, above which the applicant may not be financially eligible for civil legal aid unless the Board considers that the applicant cannot afford to proceed without legal aid, has been increased from £11,847 to **£12,439** [Section 15(2)(a)]

### Changes to income eligibility limits

- the lower disposable income limit, on or below which a client shall be financially eligible on capital without payment of a contribution, has been increased from £3,156 to **£3,355** [Section 17(2)(a)]
- the upper disposable income limit, above which the applicant shall not be financially eligible for civil legal aid, has been increased from £10,306 to **£25,000** [Section 15(1)]
- a new tapered system of contributions is introduced where applicant's total disposable income is between £3,355 and £25,000 - see the Keycard and section 2 of this letter.

### Increases in "clawback" limit

- the figure in Regulation 33(b) of the Civil Legal Aid (Scotland) Regulations

2002 has been increased from £5,009 to **£5,259**

- detailed advice is contained in the Keycard on what is the appropriate figure to apply in the circumstances of each case.

### Special urgency forms

- To do work as a matter of special urgency under regulation 18, you have to complete the special urgency form CIV/SU or the special urgency sections in the application forms CIV/SOL/FAMILY or CIV/SOL/NON-FAMILY. These forms include the questions which allow you to assess if you client is financially eligible, that were previously included in the pro-forma calculation sheet and CIV/SU/MAN. You can order these forms from our printers, Stewarts, on the enclosed order form.

## 2. Major civil legal aid financial eligibility changes

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As part of our civil simplification project, and as explained in our letter to civil legal aid solicitors on 25 March 2009, major changes are being made to the financial eligibility test on income for civil legal aid from 7 April 2009.

Up to a million more people will now be eligible for civil legal aid as financial eligibility is extended to those with disposable incomes of up to £25,000. This means that around three quarters of Scottish adults are likely to qualify financially for civil legal aid.

Also from this date, a tapered system of contributions for civil legal aid is introduced. As set out in the Keycard, the tapered system of contributions is in four bands where disposable income is:

- Nil to £3,355 - no contribution from income to pay
- £3,356 to £10,995 - 33% of income in that range
- £10,996 - £15,000 - 50% of income in that range
- £15,001 - £25,000 - 100% of income in that range.

Please remember that an applicant who pays a contribution based on income, normally pays in monthly instalments, to a maximum of 48 months.

Where you wish to apply under special urgency provisions, you should use the information in the Keycard to see if they qualify financially:

- When our Legal Aid Online service for civil legal aid is available, the special urgency application form will calculate financial eligibility for you
- you can use the online calculator for the public on our website to give an indication on financial eligibility and contributions that may be paid
- by manually working out the eligibility and contributions calculation.

The eligibility changes mean that people who previously did not qualify, may now be eligible for civil legal aid - and special urgency work.

For example, an applicant is single with no children earning £32,000pa, who pays a mortgage of £7,200pa, income tax of £5,865, national insurance payments of £3,520 and council tax of £1,400. As this makes their disposable income £14,015, they previously would not have qualified for civil legal aid. From 7 April 2009, they qualify financially for civil legal aid.

They would have to pay a maximum contribution based on income of £4030.37- this is calculated as 33% of (£10,995 minus £3,356) plus 50% of (£14,015 minus £10,996). Normally they would pay this in 48 monthly instalments of £83.97. (They may also have to pay a contribution from capital).

Please also remember that an applicant may also be able to get some or all of their contribution back if:

- the court orders their opponent to pay the costs of the case (and the opponent pays these)
- where the opponent agrees to pay expenses (and the opponent pays these)
- they pay more in contributions than the cost of the case.

Also, please remember that an applicant should inform us of changes to their financial situation within the financial eligibility computation period - which is 12 months on income and the lifetime of the case on capital - as that may affect the amount of contribution and instalments to be paid.

### **Estimated costs of a case**

Estimated case costs can make substantial differences to the monthly contribution instalments payable by applicants.

If you can give us an estimated cost of a case, we can initially limit the contribution to be paid by the applicant to this amount. (If the case costs more than the estimate we will collect the cost up to the assessed contribution).

The table below shows an example where a solicitor has provided an estimated case cost. This clearly shows the significant difference this could make to their client.

Please therefore provide us with an estimated cost of the case, wherever possible.

Assessed contribution	Assessed contribution-monthly instalments	Solicitor's estimate of case cost	Estimated case cost monthly instalments	Monthly reduction in instalments
£3,000	£62.50	£2,500	£52.08	<b>£10.42</b>
£5,000	£104.16	£2,500	£52.08	<b>£52.08</b>
£10,000	£208.33	£2,500	£52.08	<b>£156.25</b>
£14,000	£291.67	£2,500	£52.08	<b>£239.59</b>

### 3. Summary criminal legal aid - financial eligibility

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In summary criminal cases, we conduct the financial test. From 7 April 2009, the initial eligibility thresholds will be £211 for disposable weekly income, and £1,639 for disposable capital.

In assessing disposable income we take into account income from all sources, including benefits. We then take into account essential household expenses such as rent or mortgage payments, and make allowances for any dependants. We can also take into account any additional expenses incurred if a client has special needs such as a disability. If any one item exceeds £500 a month, you must include documentary evidence of these payments with the application.

As the test is one of "undue hardship", clients whose income and capital exceed these limits may still be eligible, if it can be shown that it would cause undue hardship to expect the applicant to pay for their own legal costs. We have to look at a number of factors in this assessment, including: the number of witnesses involved; the likelihood that expert evidence will be needed; any legal complexities involved; and any aspects of the case likely to lead to a need for significant preparation time.

Further information on the financial test for summary criminal legal aid is available in the legal profession section of our website.

## 4. Changes to the Category Codes Card for advice and assistance/ ABWOR

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Enclosed with this mailing is an updated Category Codes Cards, for use from 7 April 2009, which replaces those issued last April and June. The main changes are detailed below. All of these changes will be included in our Legal Aid Online service.

You use this card to identify the correct code to use and to check if a civil advice and assistance subject is standard or diagnostic.

You can order further printed copies of the Categories Code Card from Stewarts - see enclosed order form, or download it from our website.

### **Civil advice and assistance/ ABWOR**

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#### **Changes to name of existing codes**

- BEN - Benefits - changed to BEND
- CGA - Civic Government Act - changed to CVGA
- CON - Conveyancing- changed to CONV
- DBT - Debt - value £500 and above - changed to DBTS

#### **Change to description**

- ASY - Asylum application - changed to Asylum application /appeal

### **Criminal advice and assistance/ ABWOR**

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#### **New codes**

- ATTP - Attempt to Pervert Course of Justice
- EXTR - Extradition

#### **Changes to name of existing codes**

- BPO - Breach of a probation order - changed to BPRB
- FTA - Breach of bail conditions - 27(1)(a) - changed to FTAP
- WIT - Witness citation - criminal - changed to WITR

## 5. Revised Equality Card

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*This is information for solicitors who do not undertake criminal legal assistance work (who received details of these changes in June 2008).*

We have to collect information to monitor equality of access of people applying for and/or receiving services paid for from the public funds we administer. It is important that you ask your client to complete the equality information on our application forms, to allow us to gather information to monitor equality of access to legal aid.

From June 2008, we have introduced new simplified equality questions on applications forms and a revised issue of our Equality Card. The new equality questions are now included on the civil legal aid application forms introduced in February, as well as criminal legal assistance forms.

For those solicitors who do not undertake criminal legal assistance work, enclosed is a copy of the new Equality Card. You can now destroy the Equality Card issued in 2007 (which is on yellow card). (We provided criminal legal assistance solicitors with the card last June as part of the summary criminal reforms).

To complete the equality questions, you should give the Equality Card to your client and either:

- have the client complete the equality section - which is just before the application's declaration, where they sign the form
- ask them to tell you their answers to complete on the form.

There are three equality questions on the new forms to be answered:

- having asked your client to answer the questions, if they do not wish to answer, put a cross at question 1
- question 2 about ethnic group is now easier to complete. There is now just one number to be provided, with the option of writing in a specific answer where an "other" answer option is chosen.

- question 3 about disability now has answer options as cross boxes on the form. The card includes a definition of disability.

Although we will not return applications where the client has not answered these questions, it is important that you encourage clients to answer these questions.

You should also note that:

- the front page of the Equality Card explains to your client why we collect equality information
- your client should return the Equality Card to you after completing the section • if you wish further copies of this card, you can order them from our printers Stewarts, on the enclosed order form
- the Equality Card is available in a number of other languages on the Board's website [www.slac.org.uk](http://www.slac.org.uk) in the other languages section. If you require a version in a language or format not available on our website, please contact our Communications Department.

### **Civil and children's advice and assistance form**

Please note that the civil advice and assistance/ABWOR and children's advice and assistance application forms have not been updated and contain the older equality set of questions. Therefore, when using the new Card, please give the answer for:

- question 2 on ethnic group by completing the answer boxes provided for answering question 2 part B
- question 3 on if the applicant considers that they have a disability, please write in the box either: Y for yes; N for no or NA for no answer.

## 6. Revised materials for the public - online calculators and revised information leaflets

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### Online calculators

To help the public see if they may qualify for legal assistance, our website [www.slab.org.uk](http://www.slab.org.uk) contains simple and easy to use financial eligibility calculators, which are based on our information leaflets. They are in the *Getting legal help* section of our site.

We have revised the calculators for use from 7 April 2009, to make them more helpful at giving an indication of whether someone is likely to qualify financially:

- advice and assistance calculators - now also give the amount of contribution that may be payable, and are easier to use for those with a passport benefit
- civil legal aid - now also give the amount of contribution on income and capital that may be payable, including the likely monthly amount to be paid for contributions from income. This is particularly helpful since the introduction of tapering makes the calculation for a contribution from income more complex.
- summary criminal legal aid - this is a new calculator to give an indication of financial eligibility.

Solicitors and their staff may also find it helpful to use these calculators to give a client an initial indication of whether they are likely to qualify for legal aid.

Our website also contains information for the public on the civil legal aid eligibility changes, with examples of financial eligibility calculations.

### Leaflets

We will be publishing a number of revised information leaflets materials for the public shortly. These will be automatically sent to civil legal assistance solicitors in April, and will be available from our printers, as well as on our website [www.slab.org.uk](http://www.slab.org.uk)

The revised leaflets include:

- *A guide to civil legal aid* - updated information booklet with the new financial eligibility information
- *Civil legal aid - what you may have to pay* - updated information booklet
- *Complaints and comments about the Scottish Legal Aid Board* - updated information on making complaints, including details of the Scottish Legal Complaints Commission.

In addition, we also publish our leaflets in other languages and formats on request. A number of our leaflets in other languages are available on our website. If you wish to request a leaflet in other languages or formats, please contact our Communications Department on 0131 240 1985.

## 7. Ordering copies of the new Keycard and Category Codes Card, and forms and materials

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Enclosed is a new legal aid materials order form for our printers, Stewarts. This is also available on our website [www.slab.org.uk](http://www.slab.org.uk) from the forms page of our legal profession section.

As well as legal aid application and accounts forms, you can also order from Stewarts other legal aid materials including:

- further copies of the Keycard, Category Codes Card and Equality Card
- legal aid window stickers, which were previously available from the Board
- promotional leaflets and materials for the public - please note that some new leaflets and materials are being introduced and these will shortly be distributed to legal aid offices.

The best way to order is to complete the form and fax it to Stewarts. Orders will be sent to you within 5 working days. Stewarts contact details are:

- fax: 01506 460 129
- tel: 01506 405 480
- postal address: 1 Lister Road, Kirkton Campus, Livingston EH54 7BL.

Please remember that most forms and materials, such as the cards, are also available in the legal profession section of our website [www.slab.org.uk](http://www.slab.org.uk).

## 8. Who to contact if you have any questions

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For further information or questions on:

- advice and assistance - financial eligibility or category codes
  - civil and children's' advice and assistance - contact Alison Smith  
tel 0131 240 1958
  - criminal advice and assistance/ABWOR - contact Alison Craig  
tel 0131 240 2098
- civil legal aid - financial eligibility - contact our Financial Assessment Unit on  
tel 0845 123 2330.
- Legal Aid Online:
  - using the online service or getting started using it - Pat O'Connor  
0131 240 1892 or Diane Ireland 0131 240 2013 or email [online@slab.org.uk](mailto:online@slab.org.uk)
  - for technical help or problems contact us by email [online@slab.org.uk](mailto:online@slab.org.uk) or call our  
legal aid online helpline on 0131 240 2037.
- Please tell us if the firm or address details we have used are incorrect. You should notify  
our Receipts and Payments Department in writing of any changes in address or  
practitioner details. If you have any queries on mailing addresses please contact:  
Receipts and Payments on 0131 240 2080.
- Copies of forms and leaflets are available from our printers, Stewarts -  
tel 01506 405480. You can also find all of our publications, including this mailing, online  
at [www.slab.org.uk](http://www.slab.org.uk)