



Response to consultation on financial assessment and contributions in civil legal aid

March 2026

The Scottish Legal Aid Board

www.slab.org.uk

Our response to the consultation

1. We consulted on intended changes to how we approach the giving of discretionary allowances and the setting of contributions in civil legal aid over the period December 2025 to February 2026. Thank you to all those stakeholders who took part.
2. Our current plan is to implement these changes later in 2026. This consultation exercise has been a useful exercise in allowing us to gather and consider feedback on the possible impacts of the changes. As a result of the consultation we commit to the following alongside the changes to policy:
 - Screening questions in our financial assessment forms to help us to identify where an applicant may be experiencing economic abuse;
 - Further engagement with organisations representing people with disabilities to ensure the changes are communicated appropriately and effectively;
 - Provide clarity in our published materials on the arrangements for uprating the new allowances and on how the new allowances are on top of most existing ones, rather than replacements; and
 - Provide clarity in our published materials about how we make case-by-case decisions, particularly in relation to exceptional circumstances.
3. As we committed to in the discussion sessions, we are publishing in this document a summary of the key points raised by stakeholders, as well as our responses to them.

How we consulted

4. We outlined our specific proposals and our analysis of the intended impacts in [a briefing document](#) for stakeholders. This document was intended to inform stakeholders of the planned changes, to assist in any written responses to our consultation and to facilitate their involvement in our engagement sessions.
5. The consultation document was available from our website and was promoted via a news article. With regards to these changes to civil means assessment, we identified that two recent parliamentary enquiries¹ provided a possible set of stakeholders who had expressed an interest in this topic – through their submissions to, or appearances at, the committees. The full list of stakeholders invited to participate is provided in the appendix.
6. We offered two methods for stakeholders to provide their views. One was an online form for written responses to the questions, provided on page 15 of the briefing document. The other was an invitation to attend a discussion session
7. We invited a range of stakeholders to discussion sessions held in January and February 2026: these stakeholders can be grouped around four main themes:
 - a. Solicitors, law accountants and the Law Society of Scotland
 - b. CAS and other advice organisations, or other generalist stakeholders with a potential interest (for example, the Scottish Refugee Council)
 - c. Domestic abuse (solicitors + support organisations)
 - d. Children’s organisations and law centres.

¹ The Equalities, Human Rights and Civil Justice Committee’s inquiry into legal aid: [Legal aid | Scottish Parliament Website](#); and the Social Justice and Social Security Committee’s inquiry into financial considerations when leaving an abusive relationship: [Financial considerations when leaving an abusive relationship | Scottish Parliament Website](#).

8. Attendees at discussion groups substantially outnumbered written responses. This tallies to our experience in other efforts to consult on our policies and changes. It may be that the ease of providing views in discussion, with Chatham House rules, outweighs any potential stakeholder concerns that the points they raise are not recorded in a written consultation response. Attendees at discussion groups came from across academia, private practice solicitors, third sector generalists and organisations specifically concerned with domestic abuse (including economic abuse).

Summary of issues raised and our response

9. The discussion sessions provided us with comfort that most stakeholders had no fundamental concerns with the proposals, with some expressly welcoming the changes and the simplifications they would bring.
10. Stakeholder input was valuable across several practical aspects. We received information that will help us with communications to support implementation. In particular, the feedback received will prompt us to:
 - a. clarify that the new standard discretionary allowances and premiums will be given *in addition to* existing allowances like the lower income limit
 - b. be clear in explaining how premiums and their operation will operate (for instance, how eligibility to receive a premium will be established)
 - c. be clear on when and how the standard discretionary allowance and premium will be updated
 - d. to work with disability organisations on communicating these changes
 - e. to provide clarity on the circumstances in which applicants can apply for the use of our discretion where required, and how we will approach our decision-making in this area (this issue was specifically highlighted with regards to the instalment periods for contributions).
11. With regards to the issue of economic abuse specifically, we were offered practical suggestions around screening questions that could help us to further identify where assets or income sources are not controlled by the person concerned, with a view to taking this into account in our assessment of an applicant's means. Any new screening questions would be in addition to our current processes, including reviewing bank statements, the application for legal aid and any court documents linked to the application.
12. There were a few topics where stakeholders did raise concerns about possible impacts. We have set these out – alongside our response to each – in the paragraphs below.

The impacts on eligibility

13. Firstly, some stakeholders questioned the potential impacts of these on eligibility. We modelled the impact of the changes from a year's worth of previous actual applications (received in 2022-23) and found that around 1% of those applicants would have been ineligible under the proposed arrangements: this would be outweighed by much larger proportions of people moving from contributory to non-contributory legal aid. We also considered the impacts on Scottish population eligibility, which suggested an increase in total eligibility of around 5%. We are confident that the overall impacts of these changes on eligibility will be positive for a large majority of people engaging with civil legal aid. We also note that the key determinants of eligibility – the disposable income and capital thresholds – are a matter for Scottish Government and not within SLAB's discretion to change.

Will the allowances be large enough?

14. Secondly, several stakeholders asked whether the allowances and premiums provided under the new policy would be adequate to reflect actual living costs (including additional costs associated with disabilities). It is important to note that, conceptually, personal allowance is intended as an amount provided to reflect that applicants may have a range of possible outgoings which are not covered by statutory allowances; however, it is not *designed* to cover actual living costs in full.
15. Our view is that objectively identifying and setting a level for what might be deemed even essential living costs has proven impossible in the past, so there is no clear level at which we'd consider any spend to be additional to essential living costs due to disabilities (for instance).² Successive governments have found that the basic difficulty is in arriving at a consensus which is based in objective standards:

“First and foremost, despite a wide range of research into budget standards, there is no simple answer to the question of what level of income is adequate. Different research methods tend to make different assumptions that are essentially subjective. Even methods that purport to define the cost of a ‘scientifically determined diet’ in effect have to make a number of subjective assumptions about needs. This can produce inconsistent answers to the same questions. For example, two pieces of analysis can produce different figures for a minimum income necessary for a lone parent with one child aged 5.”³

16. We have adopted the DWP's applicable amounts as the relevant values, because they are aligned to other statutory allowances in our statutory framework. Our analysis of the cohort of applications data shows that only a small minority of applicants (14%) would be disadvantaged by the introduction of the standard allowances. Our view is that this suggests that the allowance is set at a broadly appropriate level. Those likely to be worse off under the changes were persons with particularly high levels of for example debt, who tend to be those in higher income groups more readily able to access credit and carry debt.
17. Stakeholders were also keen to clarify the arrangements for uprating of the allowances. We intend to uprate the allowances and premiums annually in line with UK Government's annual increases, as we do for other allowances that form part of means assessment. (For example, see [2025 update](#)).

The impacts on people with disabilities

18. Thirdly, some stakeholders suggested the changes may have particularly problematic impacts for people with disabilities. On this point, we would note firstly that the current system of discretionary allowances is not the only means by which disabled people's circumstances are considered in our means assessment processes: in particular, disability benefits are already entirely disregarded as income, and this will continue. The new personal allowance and disability premium will be given in addition to this income having already been disregarded.
19. We set out some of the data in the following table in our briefing; we have now expanded the table to show the impacts specifically as they relate to the applicants in the cohort who would qualify for the disability premium.

² <https://commonslibrary.parliament.uk/research-briefings/cbp-9498/>.

³ As above.

SDA eligibility outcomes	% of total cohort	% of cohort with disabilities
<i>No change: contributory to contributory</i>	62.7%	42.0%
<i>of which higher total contribution</i>	10.9%	1.4%
<i>of which lower total contribution</i>	51.8%	40.6%
No change: non-contributory to non-contributory	17.2%	17.4%
Contributory to non-contributory	15.2%	36.2%
Non-contributory to contributory	2.1%	1.4%
No change: ineligible to ineligible	1.4%	0.0%
Contributory to ineligible	1.2%	1.4%
Ineligible to contributory	0.2%	1.4%
Combined no change	18.6%	17.4%
Combined better off	67.2%	78.2%
Combined worse off	14.2%	4.2%

20. As the table illustrates, the proportion of persons with disabilities who would be worse off under the proposed structure is considerably lower than the position for the whole cohort: less than 5% of the cohort would be worse off in some way with regards to eligibility outcomes. In terms of specific points of interest, whilst only 15% of the full cohort move from contributory to non-contributory eligibility, the equivalent figure for people with disabilities is over twice as high, at 36%. The proportion of people with disabilities who would have a higher total contribution is also lower, at 1% (compared to 10% for the full cohort).
21. This reflects broader evidence we sourced for our equality impact assessment that suggests people with disabilities are likely to have lower incomes, so will hold less debt, and therefore are likely to benefit under the proposed change. That evidence highlights that many additional costs disabled people face are not distinct from general living costs, such as higher food, heating or electricity bills. There is no objective measure for these kinds of general living costs, beyond which a clear additionality can be calculated. The personal allowance combined with the disability premium allow us to recognise these additional costs.

SLAB's use of discretion and dealing with exceptional circumstances in calculating disposable income

22. It was suggested that SLAB is narrowing the use of its discretion, potentially in a way likely to have negative consequences for people with disabilities. Under current arrangements, it is extremely rare that we are asked to exercise discretion: individualised discretionary disregards in relation to disabled persons' additional costs are challenging to calculate and verify. As such, in practice, the new policy position will be more generous than the current approach. Where the relevant conditions are satisfied, we will be providing a premium to all disabled people without being asked to (contrary to the existing position) – that is, more often – and will retain an exceptional flexibility further to that where required.
23. Finally, stakeholders suggested that SLAB's approach to exercising case-by-case discretion in relation to both standardised discretionary allowances and contribution periods was likely to disadvantage applicants and represented a problematic narrowing in SLAB's use of discretion.
24. On SDAs, with regards to how we use our discretion in the calculation of disposable income, it is important to recognise that under the new system, a personal allowance is given to all applicants: at present, only some applicants receive a discretionary allowance, where they have expressly

requested it, verified the relevant outgoings, and we have approved it. In practice, the new policy means we will be using our discretion to give a personal allowance more frequently.

25. We recognise that there is a need for further use of discretion in exceptional circumstances. The specific test we will apply in determining whether exceptional circumstances exist for the calculation of disposable income is whether applying the standard position ‘would result in a materially inequitable outcome or effect’. In considering whether this is an appropriate test, we have considered the findings from our data analysis – which, as already pointed out, found there would be a negative impact on only around one in seven applicants we looked at – and whether a lower bar (for example, reasonableness) would undermine the benefits sought. Our view is that the test above strikes an appropriate balance between facilitating the intended policy benefits of standardisation against the need to take applicants’ personal circumstances into account. Overall, we are not persuaded that the effects of this policy can be characterised as narrowing the use of our discretion.

SLAB’s use of discretion in setting contribution instalment periods

26. Some stakeholders also suggested that SLAB’s proposed approach to the contribution instalment plans – having a standard 20-month plan – could be problematic and would fail to properly consider differences in applicants’ circumstances. We note firstly that the shift in the median size of monthly contributions is from around £46 under current arrangements, to £69 under the proposed policy position. We accept that for some applicants with the highest disposable incomes – and therefore largest contributions – the increases will be considerably larger.
27. We would reiterate that our experience is that applicants are considerably less likely to pay in full over long instalment plans, in part because the incentive to do so may disappear once the case concludes; and in part because their financial circumstances change, they find themselves less able to pay, but we are unable to reassess due to being outside the computation period. Reducing the length of the instalment periods mitigates against both these issues somewhat and is a responsible position for us to take as a public body. Moreover, as the analysis in the briefing paper showed, those most likely to see an increase in instalment sizes tend to be those with higher aggregate incomes.
28. We recognise that we must be transparent on the circumstances in which discretion will be exercised (for both standard allowances and in relation to contributions). We intend to publish policies and guidance covering our decision-making in both these areas, which will include statements setting out the factors we intend to consider.

Next steps

29. We intend to monitor the impact of these policy changes, and to undertake a full review after 12 months, with a view to determining whether any further change or refinement is required. We will seek further feedback from stakeholders at this point.

Contact us, feedback and queries

30. In terms of ensuring we stay up to date with how our policies on financial assessment and contribution setting for civil legal are experienced, we look forward to undertaking further external engagement in future and welcome any feedback on the operation of these changes policy.
31. If you have any questions about this consultation, or more broadly on our policies on civil legal aid financial eligibility assessment or contribution setting, please contact Kieran Forbes on forbeski@slab.org.uk.

Appendix: List of stakeholders contacted

1. Scottish Women's Aid
2. Amina MWRC
3. Scottish Women's Rights Centre
4. Glasgow Violence Against Women Partnership (GVAWP)
5. SafeLives
6. Women's Support Project
7. Edinburgh Women's Aid
8. ASSIST
9. Law Society of Scotland
10. Brown Owl Legal Support
11. Michaela Guthrie – medical negligence solicitor
12. Jo Wilding – Academic researcher
13. Katie Boyle – Academic researcher
14. Paul Brown – Former CEO and Principal Solicitor of Legal Services Agency
15. Environmental Rights Centre for Scotland
16. University of Strathclyde Law Clinic
17. Fiona McPhail
18. Shared Parenting Scotland
19. Faculty of Advocates
20. Citizens Advice Scotland
21. Grampian Regional Equality Council (GREC)
22. No Recourse North East (NRNE) Partnership
23. Human Rights Consortium Scotland
24. Friends of Scottish Settlers – Charity
25. Consumer Scotland
26. Counselling Services Glasgow
27. Scottish Refugee Council
28. Amnesty International
29. Scottish Human Rights Commission
30. Housing & Money Advice, CHAI
31. Inclusion Scotland
32. Financially Included, GEMAP
33. Coalition for Racial Equality and Rights (CRER)
34. STUC
35. Scottish Disability Forum
36. Child Poverty Action Group Scotland
37. Social Work Scotland
38. ALLIANCE
39. Clan Child Law
40. Children and Young People's Commissioner Scotland
41. Aberlour Children's Charity
42. Govan Law Centre
43. Scottish Association of Law Centres
44. SCRA

45. Scottish Child Law Centre
46. Ethnic Minorities Law Centre
47. Who Cares? Scotland
48. JustRight Scotland.