

SUMMARY CRIMINAL LEGAL AID



Financial Eligibility for Summary Criminal Legal Aid

April 2009

THE SCOTTISH LEGAL AID BOARD

FINANCIAL ELIGIBILITY FOR SUMMARY CRIMINAL APPLICATIONS

1. Section 24 (1)(a) of the Legal Aid (Scotland) Act 1986 states that the Board must be satisfied:

“after consideration of the financial circumstances of the accused person, that the expenses of the case cannot be met without undue hardship to him or his dependants.”

2. In assessing this test, we must receive full information about the applicant’s own financial situation but also that of any spouse or partner who is living with them, where that spouse or partner receives an income. This is because the test must consider where undue hardship would be caused to dependants. Unlike Advice and Assistance, we do not combine the applicant’s and their spouse or partner’s finances in our financial assessment. However, we do use the information to allow us to take into account any sharing of outgoings.

3. The income of any spouse or partner does not need to be declared if it is not material or substantial, or where the spouse or partner has a contrary interest in the case. So if the spouse or partner’s take home income is less than £10,996, or £211 per week, the current upper income limit, or the spouse or partner is the victim, complainer or a crown witness in the case, their income does not need to be declared..

Income

4. The financial determination is based on the test applied in connection with civil legal aid, which addresses the question of ability to pay for representation in court proceedings. Therefore, we use a weekly equivalent of the current upper income limit of £10,996 (effective from 7 April 2009). This weekly figure of £211 gives an initial cut off point for eligibility on disposable income.

5. The following items will be taken into account as income –

- Pay or sick pay from work (including overtime, commission, bonuses, but after deducting income tax, national insurance, etc)
- Net profit from business if self employed or in partnership.
- Private Pension
- Any other State benefits
- Student grant or bursary
- Money from any other source including maintenance payments.

6. Consideration is then given to the following weekly payments –

- Rent or board and lodgings
- Mortgage (including any endowment or life insurance policies linked to the mortgage)
- Council Tax/water charges
- Loan payments
- Maintenance payments made
- Other reasonable outgoings

7. If any one item exceeds £500 per month, documentary evidence of these payments need to be included with the application.

8. Where the spouse or partner is in receipt of a substantial income, we will make an allowance for half of any essential outgoings from the applicant's income. The full outgoings will be taken into account if the spouse or partner has no income.

Dependants' Allowances

9. An allowance can be given for each dependant at the rates given by the current Advice and Assistance Keycard. With effect from 7 April 2009, these rates are:

- Partner living with the applicant - £36.65 (This will only be given where that partner's income is below the upper income limit).
- Dependant person, being a member of the applicant's household (each) - £56.11

Disposable Income

10. Once these deductions have been subtracted from income, if the remaining figure is less than £211, then the applicant qualifies on disposable income. However, if the figure exceeds £211, then the nature of the case involved needs to be looked at before we can determine whether or not it would cause undue hardship to expect the applicant to pay for his/her own legal costs.

11. A number of factors need to be looked at in this assessment. These include –

- The number of witnesses involved;
- The likelihood that expert evidence would be required;
- Legal complexities involved;
- Any aspects of the case likely to lead to the requirement for significant preparation time.

Capital

12. The summary criminal reforms bring a rationalisation of advice and assistance and summary criminal capital limits. The 2009/10 level is set at £1,639. In this context capital means savings and anything else of value owned by the client:-

- the amount that could be borrowed against all land and buildings the client or their partner own including interests in timeshares;
- money in the bank, building society, post office, premium bonds, national savings certificates etc;
- investments, stocks and shares;
- 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 purposes;
- money that is 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.

13 The following, however can be excluded from capital:-

- the home in which the client and their partner lives;
- 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;
- the value of the client's car unless it is of high net value.

Dependants' Allowances

14. An allowance can be given for each dependant at the rates given by the current Advice and Assistance Keycard. With effect from 7 April 2009, these rates are:

- First dependant (Partner living with the applicant) - £335 (This will only be given where that partner's income is below the upper income limit)
- Second dependant - £200
- Each other subsequent dependants (each) - £100

15. Additionally, if the client is of a pensionable age (60 in all cases), various disregards of capital can be allowed, 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 - £100	Disregard £5,000

Disposable Capital

16. The initial capital limit is £1,639. Any applicant with disposable capital below this limit qualifies for summary criminal legal aid. However, if the figure exceeds £1,639, as is the case for disposable income, the nature of the case involved needs to be looked at before we can determine whether or not it would cause undue hardship to expect the applicant to pay for his/her own legal costs.

17. A number of factors need to be looked at in this assessment. These include –

- The number of witnesses involved;
- The likelihood that expert evidence would be required;
- Legal complexities involved;
- Any aspects of the case likely to lead to the requirement for significant preparation time.