



# Legal aid briefing

## Civil financial assessment and eligibility

### Purpose of this briefing

This briefing sets out for the Committee a summary of the assessment of financial eligibility in legal aid.

### Our role and use of discretion

The Committee's attention is drawn to the wide range of circumstances in which we can use our discretion to grant legal aid.

#### We have discretion to:

- Grant legal aid where financial evidence we ask for is not available
- Disregard types of income an applicant receives from our assessment
- Subtract types of expenses from an applicant's income
- Assess in a different way debt that has been accrued without the applicant's knowledge
- Disregard capital from our assessment
- Grant legal aid if the applicant has capital over the eligibility threshold, such as where there is "trapped capital".

It is our role to admit people to legal aid following an appropriate assessment. We are not here to find ways to prevent people from accessing help. We will often ask for evidence to accompany the application so we can carry out a proper assessment to assist the applicant.

We are not trying to create barriers.

**It is imperative that the applicant's situation is fully explained to us during the application process so we can use our discretion to help if possible.**

### The applicant is automatically financially eligible

If the applicant is in receipt of certain benefits such as **Universal Credit, Income-related ESA, Income-based JSA or Income Support**, they will automatically be financially eligible with no contribution to pay. We must be able to verify receipt of these benefits via the DWP.

This is often referred to as '**passporting**'.

Other income received in addition to these benefits is disregarded. Any capital that the applicant has is also disregarded.

# The applicant's finances are assessed

As well as our use of discretion, there are several key features in the assessment process.

- **Disposable income is the difference between the income the person expects to receive during the assessment period minus the reasonable expenses the person has over the same period**
- **Where any capital is part of the subject matter of dispute between the parties, which is common in family cases, we have an obligation to disregard it**
- **We have a statutory obligation to disregard the value of the applicant's main or only dwelling in which they reside**

For cases where no passporting benefit is in payment we will initially ask for supporting evidence.

We require copies of pay slips for those in employment and copies of bank statements for all accounts held. We are not looking to stop people accessing legal aid by doing this but ensuring that we can carry out a proper assessment.

**It is important for the solicitor or the applicant to explain to us clearly if information cannot be provided.** Where evidence such as bank statements are not available or accessible, such as in cases where people have fled the marital home, **we have the discretion to grant legal aid without this evidence.**

## Disposable income

We are required by law to carry out an assessment of an applicant's disposable income over a fixed period of 12 months. This starts from the date the application is made. This is also known as the "Computation Period."

**Disposable income means that we consider the income the person expects to receive during that period. From that, we take away all the reasonable expenses the person has over the same period.**

## Disregarding income

The legal aid regulations list benefits/government payments we must disregard in the assessment of income.

**We also have the discretion to disregard other income.** This is done on a case-by-case basis. If an applicant or their solicitor requests that we disregard any form of income, such as a hardship or crisis grant, then this must be clearly set out to us and the reasons why.

## Expenses

### Housing related

We subtract from income in relation to the main dwelling outgoings such as **mortgage, rent, council tax** and **water**. We will make allowances for the full liability due, even if this is not being paid.

### Work related expenses

We subtract from income any outgoings such as **travel costs to work, income tax, national insurance contributions, childcare etc.**

### Discretionary expenses

We have discretion to make further allowances. For example, we currently subtract from income any debt repayments made during the assessment period such as **bank loans, personal loans, credit, and store cards**.

**If an applicant or their solicitor tells us that they have discovered there are debts in their name which they were not aware of, then we can use our discretion to disregard these.**

### Disposable income result

The upper disposable income eligibility limit is currently £26,239 and the lower limit is £3,521. If the applicant has a disposable income between the two then they will be assessed as having a contribution to pay based on a sliding scale.

Income contributions are payable by monthly instalments ranging from 20 to 48 months depending on the level of the contribution. Our Collections team can consider extending the period to pay on a case-by-case basis if requested to do so.

### Disposable Capital

The legal aid regulations state that the amount of capital the applicant has must be brought to account.

**Where any capital is part of the subject matter of dispute between the parties, which is common in family cases, we have an obligation to disregard that.**

### Capital resources

If an applicant has money in a bank account, we will ask to see evidence of this. If such evidence is not available, then we can use our discretion to proceed with the assessment in the absence of that evidence.

We can use our discretion to disregard money/savings needed for the applicant needed to set up home, following fleeing a domestic abuse situation. Like items such as beds, washing machines, cookers etc.

In line with our regulations, we must disregard items of personal clothing, household furniture and tools and equipment for work.

### Main/only dwelling

We must disregard the value of the applicant's interest in their main or only dwelling in which they reside.

We can also use our discretion to disregard the applicant's interest in the main or only dwelling of the opponent in the case, so for example when the application relates to a Divorce action and the applicants spouse continues to live in the former matrimonial home.

We will also use our discretion where the applicant has had to flee the home on a temporary basis due to fear of an ex-partner/spouse, but it is their intention to return to live in the property when it is safe to do so.

### Free proceeds from the sale of the former matrimonial/family home

We can consider disregarding some or all of the applicant's share of funds resulting from the sale of their former main dwelling, where we are satisfied that the money will be used directly towards the purchase of new main dwelling soon. **The applicant or their solicitor must tell us about this.**

### Discretionary disregards

**The legal aid regulations give us the discretion to disregard any amount of capital.** The applicant or their solicitor need to explain why they believe a capital asset should not be brought to account in our eligibility assessment. This will be decided on a case-by-case basis.

### Disposable capital result

Where the Disposable Capital is less than the Upper Capital eligibility Limit of £13,017 but more than £7,853 (Lower Capital Limit) the difference will be payable as a capital contribution. It is expected that capital contributions will be paid in one lump sum, however, our Collections team can discuss putting a hold on the payment where the contribution has been calculated based on assets that is not immediately realisable.

### Conditional grants

We have discretion in cases where a person's disposable capital is above the eligibility threshold (currently £13,017) if we believe they cannot afford to proceed without legal aid.

**The applicant and their solicitor should discuss this with us.**

This may be where the capital assessed is not accessible and the applicant has no other resources to allow them to proceed without legal aid.

Using the powers included in the Act the applicant will be asked to sign a mandate agreeing to the terms of the conditional offer. So, for example that the capital contribution amount will be paid direct to SLAB when funds in relation to that particular capital resources later become available. This can often be referred to as "trapped capital."

### Provisional assessments

Where we consider it reasonable in certain cases we can do a provisional assessment of the applicant's eligibility. This can be where evidence is not currently available and/or use our discretion to disregard resources on the basis that we will amend our assessment later when such evidence or resources are available. A provisional assessment may also be considered where changes are expected in the future but are not entirely known.