



Legal Aid  
Agency

## Means Assessment Guidance

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12	April 2024	April 2024	Legal Aid Agency

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## Version History

Version:	Date	Reason
1	August 2014	Original Version
2	April 2015	<p>s3.6 Consequential amendments arising from Care Act 2014 implementation; disregard for Special Educational Needs direct payments</p> <p>s4.4 Updates to child care costs guidance</p> <p>Appendix 1 – Up-rating of dependants allowances</p> <p>Appendix 2 – Up-rating of state benefits</p> <p>Appendix 4 – Tax allowances and Rates 2015/16</p> <p>Appendix 6 – National insurance 2015/16</p> <p>Appendix 9 – Updates to Frequently Asked Questions</p> <p>Appendix 11 – Updates to Step by Step guide</p>
3	April 2018	<p>S1.6 – updates to waivers section.</p> <p>S3.6 – updates to disregarded benefits and discretionary disregards for Grenfell victims.</p> <p>S3.11 – further scenario added to redundancy guidance.</p> <p>S5.1 – residual balance guidance.</p> <p>S5.3 – share in CIC.</p> <p>S6.4 – update to disregarded payments.</p> <p>S7.1 – definitions of business entities added.</p> <p>S13 – updated contact details for suspected fraud cases.</p> <p>S14 – new advice on DROs.</p> <p>S15 – updates to evidence table.</p> <p>Appendix 1 – Amended dependants allowances.</p> <p>Appendix 2 – Up-rating of state benefits.</p> <p>Appendix 4 – Tax allowances and Rates 2018/19.</p> <p>Appendix 5 – Amended to reflect changes in Class 1 rates.</p> <p>Appendix 6 – National insurance 2018/19.</p> <p>Appendix 9 – Updates to Frequently Asked Questions.</p> <p>Appendix 11 – Updates to Step by Step guide.</p> <p>Otherwise, general updates throughout to reflect move to online working from paper forms.</p>
4	September 2018	<p>New Appendix 12 added for Legal Representation in the Immigration and Asylum Chamber of the Upper Tribunal; general updates to reflect introduction of 2018 Standard Civil Contract.</p> <p>s1.2 References to DPA replaced with GDPR.</p> <p>s4.9 and s6.10 additional guidance on criminal contribution orders.</p>

		Appendix 9 FAQs added
5	April 2019	Updates to reflect 2019/20 benefit and tax rates and dependants allowances - Appendices 1,2,4,6,11 & 12.
6	February 2021	Updates to reflect changes to legislation (disregarded payments and removal of mortgage cap) and recent court judgment in the case of GR. Updates to reflect state benefit and tax rates and dependants allowances. Updates to FAQs – including new FAQ on NRPF immigration status.
7	May 2021	Updates to reflect changes to state benefits, dependants allowances and tax rates. Inclusion of Breathing Space guidance.
8	January 2022	Update to reflect changes to legislation (ECF inquests).
9	April 2022	Updates to reflect changes to state benefits, dependants allowances and tax rates.
10	May 2023	Updates to section 4.3 and section 6.4 to reflect new 'cost of living' payments disregarded from income and capital. 4.7(6)(a) updates to dependants allowances paragraph to reflect court judgement. Update to section 9.2 concerning Special Education Needs Appeals to the First-Tier Tribunal (Special Educational Needs and Disability). Update to section 9.7 – new email address for certificate of indigence applications. Updates to Appendix 3 to include new benefits / incorporate name changes. Updates to Appendix 1,2, 4 and 6 to reflect changes to dependants allowances, state benefits uprating and changes to tax and NI rates for 2023/4. New Appendix 14 -Disregarded "cost of living" payments.
11	August 2023	Updates to reflect phase 1 of changes arising from the means test review: Updates to section 1.6 to remove outdated guidance, New section 1.7 for non-means work including: child applicants, certain life sustaining treatment cases, Special Education Needs Appeals (updated for Welsh Tribunal and transferred from section 9.2) and inquests. Revisions to sections 2.3, 3.9, 9.1 and 9.2 arising from child applicants no longer being means tested. Updates to Appendix 9 FAQ to amend out of date guidance and reflect under 18s means changes. Updates to Appendices 11 and 12 to reflect 2023 dependants allowance changes. Updates to section 9.6 and 13.2 to reflect team name changes.

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		Minor changes to numbering in sections 4.5,5.4 & 7.1 .
12	April 2024	Updates to reflect changes to state benefits, dependants allowances and tax rates.

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## Overview

### 1.1 Introduction and Purpose

1. This guidance document supplements the main guidance issued by the Lord Chancellor to the Director of Legal Aid Casework, under Section 4(3) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 [“the Act”] set out in the Lord Chancellor’s guidance on determining financial eligibility for certificated work: <https://www.gov.uk/civil-legal-aid-means-testing>.
2. This guidance is applicable to individuals applying for the following forms of civil legal services only:
  - (a) Full Representation (Legal Representation **other than**: (i) for proceedings in the Health, Education and Social Care Chamber of the First-tier tribunal under the Mental Health Act 1983 or paragraph 5(2) of the Schedule to the Repatriation of Prisoners Act 1984; (ii) the Mental Health Review Tribunal for Wales; or (iii) the Immigration and Asylum Chamber of the First-tier Tribunal);<sup>1</sup>
  - (b) Family Help (Higher); and
  - (c) Other legal services within the meaning of Regulation 10 of the Civil Legal Aid (Procedure) Regulations 2012 (“Exceptional cases”).
3. These forms of civil legal services (described in paragraph 2 above) are contributory i.e. if the individual qualifies within the upper eligibility limits for income and capital, a contribution may be required from the individual’s income and/or capital if the relevant contributions threshold is exceeded.
4. Financial determinations for controlled work and family mediation are **not** covered by this guidance. The Director has delegated responsibility for those forms of civil legal services to providers and separate guidance has been provided [see – *Lord Chancellor’s guidance on determining financial eligibility for controlled work and family mediation*: <https://www.gov.uk/civil-legal-aid-means-testing>]

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<sup>1</sup> Under changes that come into force on the implementation of the 2018 Standard Civil Contract, Legal Representation for proceedings in the Immigration and Asylum Chamber of the Upper Tribunal, in relation to an appeal or review from the Immigration and Asylum Chamber of the First-tier Tribunal, has become certificated work. This work has moved from controlled work to certificated work under the 2018 Contract for matters started on or after 1 September 2018. Assessment guidance for these cases is now incorporated into this guide. Transitional arrangements apply to cases where the controlled work matter that gave rise to the appeal to the Upper Tribunal started before 1 September 2018. See Appendix 12.

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5. It is intended by publishing this guidance, that providers, i.e. those contracted to provide civil legal services under Part 1 of the Act, will also be able to ascertain whether someone is *likely* to be financially eligible, and advise their clients accordingly. This will be of particular importance to providers who are authorised to make a determination that a client qualifies for emergency representation under their delegated functions and to the individuals in receipt of emergency representation. [See Section 12 **Emergency Representation**].

## Representations

6. Occasionally, caseworkers will be presented with conflicting pieces of information, particularly when the opponent in the proceedings believes that an individual should not be funded by legal aid and makes representations to that effect to the Agency (see Appendix 10 – details required from persons making representations). The caseworker will need to balance the weight of evidence given by the individual and the third party and perhaps seek further guidance from a senior colleague before deciding on financial eligibility.

## Reviews

7. There is no right of appeal against a determination that an individual does not qualify financially for civil legal services). An individual may apply for a review by the Director of a determination that the individual does not qualify or no longer qualifies for civil legal services, within 14 days of receipt of the notice of determination, amendment or withdrawal (i.e. the original decision).

Caseworkers should always be willing to review and if appropriate amend the original decision, when the individual or their representatives make representations within a reasonable timeframe, taking into account all relevant circumstances.

If however, the outcome of this review leads the caseworker to believe the original decision was correct this will be communicated to the individual.

If further representations are made, the caseworker should refer the case to their supervisor. The supervisor will fully review the financial determination and, if confirmed as correct, will communicate this to the individual.

Financial determinations must **not** be placed before the independent adjudicator [see regulation 45(1)(a) of the Civil Legal Aid (Procedure) Regulations 2012].

Where the dispute over the financial determination has not been resolved and the provider has indicated that the decision will be challenged by way of judicial review, the judicial review pre-action protocol requires that the provider concerned writes a *letter before action* to the Principal Legal Adviser to the Agency (c/o the central legal team, based in 102 Petty France, London, SW1H 9AJ) prior to issuing proceedings. Where the caseworker is given advanced notice of such a threat, the Means Assessment Policy Advisor should be consulted as a matter of urgency to confirm the appropriateness of the original decision.

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## **Format of Guidance**

8. The guidance falls into three main headings:
  - (a) Income, which may include benefit payments;
  - (b) Deductions from Income;
  - (c) Capital.
9. In addition, this handbook contains guidance on business cases, further determinations and transitional cases, emergency representation and evidence requirements. Contact details are provided for reporting cases of fraud or suspected fraud.

## **Other Reference Material**

10. This guidance should be read in conjunction with the legislation.

## **Updates**

11. The guidance is designed to be used electronically; it is a living document that will be updated for major policy changes and eligibility limit uprating as necessary.



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# 1. General Matters for Financial Determinations

## 1.1 Regulatory Framework

1. The Legal Aid, Sentencing and Punishment of Offenders Act 2012 [“the Act”] provides the legal framework for making a determination that an individual is eligible for civil legal services and specific references are contained in the guidance where appropriate.
2. The main provisions governing determination of financial eligibility for Legal Representation and Family Help (Higher) are the Civil Legal Aid (Financial Resources and Payment for Services) Regulations 2013 as amended [“the Regulations”]. References to regulation numbers in this handbook are therefore references to these regulations unless otherwise stated.
3. Further assessments of civil legal aid certificates issued under the Access to Justice Act 1999 and Legal Aid Act 1988 continue to be assessed under the Community Legal Service (Financial) Regulations 2000 as amended and the Civil Legal aid (Assessment of Resources) Regulations 1989 respectively. Transitional arrangements apply under the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Consequential, Transitional and Saving Provisions) Regulation 2013.

**Cross reference: see section 11 transitional cases.**

## 1.2 Confidentiality and Disclosure of Information

### General

1. Personal financial information provided to assist the Director in making a determination as to whether an applicant is eligible for civil legal services in accordance with Section 21 of the Act, will be processed in accordance with the Data Protection Act 2018 and any applicable law relating to data protection. In addition, if the information regarding financial eligibility is obtained under section 22 of the Act it is subject to the provisions of section 22 and section 33.

### Section 34

2. Section 34 of the Act 2012 prohibits the disclosure of information provided to the Director in connection with a case of an individual seeking or receiving civil legal services, subject to exceptions set out in section 35. Disclosure contrary to this provision is a criminal offence.
3. Disclosure in circumstances falling within an exception in section 35 means that disclosure will not be contrary to section 34 of the Act. However, even if within an exception in section 35 of the Act, before disclosure takes place, it is necessary to consider whether disclosure can take place consistently with the Data Protection Act 2018 and any applicable law relating to data protection.

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4. Section 34 also applies to information given to the Director by any outside party (however financial information provided through the legal gateway by the DWP or HMRC is governed by a separate provision, Section 33 – see below). Therefore if the opponent or another third party provides financial information as part of making representations against the grant of civil legal services, this too is covered by section 34.
  5. Reference should be made to section 35(1)-(5) of the Act for a full list of exemptions from section 34.
  6. One exemption under section 35(1) confirms that section 34 does not prevent disclosure where the purpose of the disclosure is to enable or assist the Director to discharge the Director's functions under the Act. One of these functions is obviously the determination of means. If it is necessary for the purpose of the determination to disclose information relating to the individual's finances then the disclosure will be authorised.
  7. It is worth noting in this connection that the client signs a declaration when applying for legal aid, which agrees that third parties may be contacted and enquiries made where necessary.
  8. The individual may, for example, disclose an interest in a trust fund. It would therefore be proper for the Director to raise inquiries with the trustees as to the extent of the individual's interest and to disclose any relevant information provided by the individual. Equally, it may in some cases be necessary to raise enquiries with the individual's accountant or with the District Valuer or Government Actuary's Department and again any information necessary to enable those enquiries to be dealt with can be disclosed.
  9. The disclosure will be limited to the information which the third party will need in order to answer the question or questions raised.
  10. It may be necessary to raise enquiries with the individual's employer in order for example to clarify matters on the wage slip or L17. Care will be taken not to disclose information which the individual may not wish their employer to know about—in particular, an individual may tell us that she is having a baby but may not have informed her employer yet.

**Cross-reference: section 3.5 on individual having a baby**

**Note:**

*It would never be appropriate to disclose the information to the opponent or other maker of representations without the individual's consent, even if it would aid the purpose of carrying out the individual's financial determination to do so.*

11. Among other exemptions contained in section 35(2): the exemption for the investigation or prosecution of any offence will include disclosure for the purpose of criminal proceedings under s.36 of the Act. Section 36 makes it a criminal offence for an individual to knowingly fail to disclose relevant information or to deliberately make false statements or false representations for the purpose of receiving funding.

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## **Disclosing information with the individual's consent**

12. Apart from information obtained under section 22 of the Act which is therefore subject to the disclosure provisions contained within section 33 (see below), information relating to the application can of course be disclosed with the individual's permission (and, if the information was provided by a third party, with that other person's consent). This consent should usually be supplied in writing. In correspondence with the individual's current solicitors or a Member of Parliament who has written on behalf of the legally aided individual it can be assumed that the individual consents to information being given to the solicitor or MP unless the opposite is known.

### **Disclosure of financial information obtained through Legal Gateway – Section 33**

13. Where information is obtained from the DWP or HMRC through the new legal gateway (information request under section 22 of the Act to facilitate a determination), section 33(1) of the Act restricts the circumstances when it may be disclosed and section 34 does not apply. Disclosure contrary to section 33 is a criminal offence.

## **1.3 Subject Matter of Dispute (SMOD)**

### **Cross reference section 6.3**

1. Regulation 38 provides for a disregard of the amount or value of assets that are the subject matter of dispute (SMOD); however the total amount disregarded must not exceed £100,000.
2. Where the total value of the individual's interests in disputed assets exceeds £100,000, the excess must be brought to account within the financial determination.
3. Whether something is the subject matter of dispute depends on whether it is in issue in the particular proceedings. In other words, the question is specific to the application and not to the asset or the individual generally. Therefore, each application should be taken on its own particular set of facts, as what is SMOD for one application may not be for another. If representations are made that an individual is genuinely unable to gain access to an asset that is in dispute in a connected matter i.e. a case which arises from the same dispute it may be appropriate to refer the matter to the Means Assessment Policy Advisor along with any documents provided by the individual for a ruling as to whether the asset can be disregarded. This will most often be seen in family cases, where an individual may be dealing with a number of connected matters arising from the breakdown of a relationship (e.g. children, domestic abuse injunction, financial issues), if it is advised that assets are SMOD in a connected case that is being advised under legal help, ask the provider for a copy of the initial attendance note and any correspondence showing the asset has been specifically claimed by the opponent prior to referring the matter to the Means Assessment Policy Advisor for consideration.

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4. More than one asset can be the subject matter of dispute in any particular case. The individual is asked to specify property or items that are in dispute on their financial application. However, this information is not necessarily conclusive and the following should be noted:
- (a) The test for whether an item is the subject matter of dispute is the same test as to whether that item is in issue in the proceedings for statutory charge purposes. To be in issue, an asset must be under specific attack in the proceedings i.e. being specifically claimed in them. The fact that an individual's assets are theoretically at risk if judgement is given against him in the proceedings because he will have to use the assets to satisfy the judgement does not place those assets in issue. Thus, a generalised claim for damages or for a lump sum will not make the individual's savings subject matter of dispute. It is important that consistency is maintained between the test for SMOD and the test for the statutory charge; it is not acceptable for an asset to be advised to be 'in issue' to attract the SMOD disregard, but subsequently claimed never to have been in issue when deciding whether the Statutory Charge applies to the asset that the individual has kept or gained as a result of legal aid. However, if it is found that an asset was never in issue and wrongly attracted the SMOD disregard, an amended determination of capital should be undertaken (if the disposable capital figure would have been higher than previously calculated) to include the asset and a retrospective contribution requested from the individual concerned.
  - (b) Special difficulties arise in matrimonial proceedings. Both parties in the marriage may have a range of assets that may in some way be taken into account in any financial proceedings arising from the divorce. However it is only those assets that have been specifically claimed by the opponent which form the subject matter of dispute.
  - (c) Even though a particular capital asset may be in issue, it may in fact be producing an income which in fact the individual still receives and can use.

**Example:**

*Where the individual is seeking to obtain possession of a property from a tenant - the property itself would be subject matter of dispute but any rent actually being received by the individual in the meantime would not be SMOD and should be treated as disposable income.*

- (d) Income cannot be regarded as SMOD since the issue here is simply whether the individual is currently receiving the income or not. If the source of income is being received then it should be included in the financial determination even if the dispute relates to the level of that income.

**Example:**

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*A matrimonial dispute where the dispute is about the level of maintenance being paid: Even if the individual is challenging the level of maintenance in payment the actual amount of any maintenance currently being received should be included in the assessment.*

#### **1.4 Deprivation and Conversion - Regulation 17**

1. Briefly expressed, this refers to the situation where the individual has moved assets around or disposed of them, usually (but not necessarily) with a view for qualifying for legal aid or to avoid judgement or enforcement against him in the litigation.
2. Regulation 17 allows the caseworker to include in the financial determination any resources which it appears to him that the individual has with the intention of reducing his disposable income or capital; whether for the purposes of making himself eligible for civil legal services, reducing his liability to make a contribution, or otherwise:
  - (a) directly or indirectly deprived himself of ('deprivation'); or
  - (b) transferred to another person; or
  - (c) converted into other resources which are either wholly or partly disregarded under the regulations or treated as having a nil value ('conversion').
3. Deprivation usually means deliberately giving up an asset, by giving it away or transferring it somewhere else. For example, where the individual has transferred property into a trust fund or to a member of his family (includes item advised to be a 'gift' made "in consideration of natural love and affection..." for the person concerned) or loaned a large part of his capital to a friend or associate. Also where the individual has set up a discretionary trust or has 'hidden' their assets in a series of companies. Such cases will require careful consideration.

**Cross-reference: see section 5.7 on trust funds.**

4. Deprivation may also mean simply failing to claim an asset to which one is entitled e.g. not collecting an income which is due to the individual, and this will include a circumstance where the individual forgoes resources that he would normally expect to receive from a discretionary or other trust in which he has a beneficial interest.
5. Conversion means changing an asset (usually money, which would normally be brought into account in full as capital) into an asset which would not normally be brought into account in full under the regulations. For example the purchase of expensive items of furniture or a new car, shortly before the application for public funding.

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6. In each case, the individual's intention must, in the opinion of the caseworker, have been to reduce his disposable income or capital. This will usually be for the purpose of making himself eligible for civil legal services or in order to place his assets beyond the reach of his opponent in the litigation. Regulation 17 can still however apply if the individual had some other purpose, such as to avoid his creditors or as a tax saving measure and so on.
  7. If the caseworker therefore decides, after seeking the individual's explanation that deprivation or conversion has taken place with the appropriate intention, the relevant assets should be included in the financial determination:
    - (a) in the case of deprivation or transfer, as if the assets were still in the individual's possession
    - (b) in the case of conversion, if the asset was still in its original form.
  8. There is no time limit set in the Regulation as to how far back in the individual's circumstances the caseworker can look in considering whether deprivation or conversion has taken place. As a rough guide however, it would normally be appropriate to look at the situation in the twelve months before the application for civil legal services or the commencement date of the litigation if earlier.
  9. Caseworkers should particularly watch out for:
    - (a) large capital withdrawals shown on the individual's bank, building society statements etc.
    - (b) statements by the individual that they have made loans to family or friends (this will be apparent from the capital and other assets section of the CIVMEANS1).
    - (c) the existence of assets in trust funds - especially if set up by the individual himself.
  10. Before applying Regulation 17, the caseworker will usually need to contact the individual to ask for an explanation of the expenditure or transfer. The following considerations may be relevant when requesting further information and considering any explanation supplied:
    - (a) Was the individual aware of the need to take or defend proceedings at the time the money (or other capital or income) was spent or transferred? If so, did firm plans exist to spend or transfer the income or capital before the individual was so aware (e.g. contract previously signed)? If, from the information provided, it appears that the individual was aware of litigation at the time the resources were spent or transferred and there were no prior existing firm plans to spend or transfer the resources, then apply Regulation 17.

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- (b) Did the individual have the resource at the time of a previous application that had resulted in him being deemed ineligible for legal aid or refusing an offer where a large contribution was asked for? If so, apply Regulation 17 unless there appears to have been an unforeseen emergency during the intervening period e.g. partial roof collapse requiring emergency repairs, or similar.
  - (c) Does the expenditure fit to a normal pattern e.g. the individual makes an annually payment of a lump sum into a personal pension scheme? If the expenditure appears to be out of the ordinary, and does not relate to an unforeseen emergency (e.g. urgent roof repairs) apply Regulation 17.
  - (d) Was there any other event taking place around the time of the transfer from which the individual could have gained by reducing their income or capital (e.g. divorce or bankruptcy proceedings)? If so, it will usually be appropriate to apply Regulation 17.

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## 1.5            **Passporting – Regulation 6**

1. Individuals in receipt of certain types of support are deemed eligible for civil legal services, subject to their capital not exceeding the £8000 upper limit, by virtue of Regulation 6.
2. If the individual is properly in receipt (directly or indirectly) of Income Support, Income-Based Jobseekers' Allowance, Income-Related Employment and Support Allowance, Guarantee Credit or Universal Credit, the individual will qualify automatically on income. These are known as passporting benefits.
3. There are relevant changes made by the Civil Legal Aid (Amendment) (EU Exit) Regulations 2019 which came into force at 11pm on 31 December 2020 (exit day). An individual who applies on or after exit day for Legal Help or Legal Representation for cross-border dispute proceedings and who is in receipt of an equivalent passporting benefit paid by an EU Member State, will no longer be passported on income. This change does not apply where one of the conditions in [regulation 8](#) of the 2019 Regulations is satisfied.  
<https://www.legislation.gov.uk/uksi/2019/505/contents/made>.

The conditions in regulation 8 are as follows:

- I. The application was submitted to the Director in accordance with article 13(1)(b) and article 16 of the Cross-Border Legal Aid Directive and it was received by the Director before exit day, or
  - II. The application was transmitted to the Director by a transmitting authority and received by the Director before 5.00pm on the fifteenth date after exit day, or
  - III. Where 1 or 2 above do not apply and it is an application for Controlled Work and the application is signed and dated before exit day, or
  - IV. Where 1 or 2 above do not apply and it is an application for Licensed Work (except emergency representation) and the application is signed and dated before exit day and is received by the Director by 5pm on the seventh day after exit day or, the application is submitted through the Client and Costs Management System before exit day, or
  - V. Where I or II above do not apply and it is an application for emergency representation and the provider determines the individual is eligible before exit day and the determination is notified to the Director within 5 working days of the determination, or the application is emailed or faxed to, and received by the Director before exit day or, the application is submitted through the Client and Cost Management system before exit day.
4. The passporting benefit must be currently in payment (e.g. the individual will not be passported if the benefit claim is still being processed or if payments are suspended pending a fraud investigation) and the individual must be legally entitled to the payment. If the passporting benefit is in payment but

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there is a suspicion that an individual may not be “properly” in receipt—e.g. representations have been made against the individual’s means or the individual’s own declarations have indicated that relevant facts such as a partner, employment, sources of income and capital etc. have not been advised to the benefit office—their legal aid claim will not be passported.

5. “Indirect” receipt of benefit means that the individual is passported if their partner is in receipt of a passporting benefit and the individual is included in the partner’s benefit claim. Since 5<sup>th</sup> December 2005, a same sex couple that is claiming state benefits is paid as a couple (prior to that date they were paid as two single people); this applies whether or not the couple have a registered civil partnership in accordance with the Civil Partnership Act 2004. Passporting arrangements will therefore apply to civil partners, married and cohabiting couples (including couples of the same sex). Where the individual is not included in their partner’s benefit claim (e.g. the individual is in prison, and the partner is being paid for by themselves and any child dependants alone) then the individual is not passported for funding purposes. In such cases the individual’s financial resources should be calculated and the partner’s income support included in the financial determination as a source of income for the couple.

**Cross reference:** see section 2.1 individual and partner

6. New claims for passporting benefits since 8 September 2005 do not include any child-related elements because support for children is provided through Child Tax Credits. For claims starting before that date parents can continue to receive the child-related elements (i.e. dependant’s allowances / premiums) until the children are no longer dependants or the claim stops. Working Tax Credit and Child Tax Credit are not passporting benefits; in such cases the individual’s means should be calculated and the net amount of tax credit received each week included in the financial determination as a source of income. Therefore a child who is being supported via child tax credits is not indirectly in receipt of a passporting benefit.
7. Individuals in receipt of a passporting benefit will be subject to a capital means test, guidance for which is provided in sections 5, 6 and 9 of this guidance. This means that the passported individual will be refused funding for civil legal services where capital exceeds the upper limit, or if eligible may be required to pay a contribution from capital.

## **1.6 Waiver of eligibility limits and contributions in certain circumstances**

1. In general, the financial eligibility limits set out in Regulations 7 and 8 for gross income, disposable income and disposable capital are ‘hard’ limits, funding is refused if income and/or capital exceeds the amounts stated. However, Regulations 9 to 12 set out specific circumstances under which these limits may be waived.

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2. There are special rules concerning an application for the funding of legal representation for proceedings relating to domestic abuse, female genital mutilation protection orders and forced marriage. The Director may waive the eligibility limits for gross and disposable income and disposable capital for this category of work where an injunction or other order for protection from harm to the person is sought; or committal for breach of any such order (Regulation 12). Any contribution from income or capital which is applicable under the regulations **cannot** be waived, therefore contributions will arise where the individual's disposable income exceeds £315 per month and will apply to all assessed disposable income above £311 per month, therefore contributions are not limited to the previously waived upper disposable income threshold (£733 per month) for such cases. An individual whose disposable capital exceeds £3000 is required to pay a contribution of either the capital exceeding that sum or the likely maximum costs of the funded service whichever is the lesser.
  3. Regulation 9 provides for a waiver of eligibility limits and contributions (all or part) in respect of specific issues in relation to a multiparty action of significant wider public interest if the Director considers that it is equitable to do so.
  4. One of the considerations in deciding whether it is equitable to disapply the eligibility limits, is whether the Director considers that it is cost effective for the Lord Chancellor. Generally, it is important in Multi-Party Actions that legal aid is directed to where it is most needed and that a fair balance is achieved between public and private funding rather than the full burden falling to public funding through legal aid. In the past this has been difficult to achieve because private clients had little incentive to participate in Multi-Party Actions, being deterred by the prospect of a significant but uncertain liability for own generic costs as well as potential liability for the other side. In this way Multi-Party Actions have tended to be dominated by financially eligible individuals placing the burden on legal aid for almost the totality of individual and generic costs. The power to waive the financial eligibility limit in the above circumstances along with the power to obtain third party contributions enables the Director to structure funding in a different way. The Director will need to be satisfied that in relation to the multiparty action satisfactory proposals have been made in relation to private contributions to generic costs.
  5. Regulation 44(9) also provides limited power to waive contributions for tests cases. The Director's aim is to ensure that issues with a significant wider public interest are brought to the court for determination in the most cost effective way. This may mean funding an individual test case to resolve the issue, even if the damages alone in that test case would not make it cost effective in itself. If the case is complex and not all issues are resolved in the client's favour, it is quite likely that a public interest test case would have significant irrecoverable costs. In the normal event these would come out of the client's damages. The powers to waive contributions under Regulation 44(9) and to waive the statutory charge under Regulation 9 of the Civil Legal Aid (Statutory Charge) Regulations 2013 exist to ensure that such a client is not unduly penalised in relation to the client's own contribution or damages through having been chosen as the test case.

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6. Even though it will be made clear from the outset that a case is being funded as a test case, the formal discretion as to the statutory charge will only be exercised by the Lord Chancellor at the conclusion of the case when damages have been recovered. The existence of the limited power to waive the charge under the above regulation does not diminish the responsibility of providers to seek to maximise the recovery of costs from the other side in a successful public interest case. The Lord Chancellor would be unlikely to consider it to be equitable to waive any amount of the charge, if a case was settled without recovery of costs simply in the expectation that the waiver would apply.
  7. Where contributions or the statutory charge are waived under the above regulation, it will not necessarily be waived in full. The aim of the regulation is to put the test case client in the same position as an individual claimant, who might still have some contribution or irrecoverable costs.
  8. If an individual's claim is funded as a test case to resolve an issue of principle, it may be undesirable for the opponent to deprive the court of an opportunity to resolve the issue by making a settlement offer to dispose of the individual case. The Director will therefore usually require the individual in such a case to sign an agreement before funding is granted, confirming that they will not settle the case without the consent of the Director, who will consider the interests of the wider group of people affected by the test case in making the decision. [Regulation 55(3) of the Civil Legal Aid (Procedure) Regulations 2012 refers].
  9. Where an individual applies on or after exit day for Legal Representation for cross-border dispute proceedings, the Director is no longer required to disapply the relevant eligibility limits and waive all or part of any contributions payable if the individual is unable to pay for the cost of proceedings or unable to pay assessed contributions as a result of the differences in the cost of living between the Member State where they are domiciled<sup>2</sup> (or habitually resident) and England and Wales (regulation 11). This change does not apply where one of the conditions in [regulation 8](#) of the 2019 Regulations is satisfied:
    - I. The application was submitted to the Director in accordance with article 13(1)(b) and article 16 of the Cross-Border Legal Aid Directive and it was received by the Director before exit day, or
    - II. The application was transmitted to the Director by a transmitting authority and received by the Director before 5.00pm on the fifteenth date after exit day, or
    - III. Where 1 or 2 above do not apply and it is an application for Controlled Work and the application is signed and dated before exit day, or

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<sup>2</sup> In order to determine whether an individual is domiciled in a Member State whose courts are seised of a matter, the internal law of that Member State must be applied. If the individual is not domiciled in the Member State whose courts are seised of the matter, then in order to determine whether they are domiciled in another Member State, the internal law of that Member State must be applied.

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- IV. Where 1 or 2 above do not apply and it is an application for Licensed Work (except emergency representation) and the application is signed and dated before exit day and is received by the Director by 5pm on the seventh day after exit day or, the application is submitted through the Client and Costs Management System before exit day, or
  - V. Where I or II above do not apply and it is an application for emergency representation and the provider determines the individual is eligible before exit day and the determination is notified to the Director within 5 working days of the determination, or the application is emailed or faxed to, and received by the Director before exit day or, the application is submitted through the Client and Cost Management system before exit day.

## **1.7 Exceptions to the Means Test**

### **General**

1. There are a range of circumstances in which no determination of an individual's financial resources is required, a full list of which is set out in regulation 5.

### **Child applicants**

2. One exception to the means test is for applicants aged under 18, who are seeking legal aid for civil representation or family help (higher). In these cases, no financial determination will be required. Applications such as these are usually made on the child's behalf by a litigation friend, children's guardian or guardian ad litem, and the certificate will be issued in the name of the child.
3. It is inevitable that, in some cases, an individual aged under 18 receiving legal aid for civil representation will turn 18 whilst their case is still ongoing. At this point, it will usually be appropriate to carry out a full assessment of their financial resources to determine whether they remain eligible for legal aid. Subsequently, depending on the individual's financial resources, they may become ineligible for legal aid, may have to pay contributions towards their legal costs, or may continue to be eligible for means-free legal aid. Whether to conduct this assessment falls within the general discretion afforded to the Director as to whether to withdraw a legal aid certificate where the individual is no longer eligible, set out in Regulation 42 of the Civil Legal Aid (Procedure) Regulations 2012.
4. It is envisaged that, in most cases where an individual receiving legal aid turns 18 during the course of their case, an assessment of their financial eligibility for legal aid will be undertaken. This is because when a person turns 18, their entitlement to benefits changes and, if continuing in Higher Education, student finance will become available to them. It is also more likely that they will start working, as (in England) those under 18 are currently required to undertake some form of education or training.
5. In certain circumstances, however, this assessment may be considered unnecessary. In considering whether to exercise their general discretion not to withdraw the existing determination, the Director may consider factors such as

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the likelihood that the individual will remain financially eligible, whether they lack capacity, and the stage of the proceedings.

6. For instance, an individual who is not permitted to obtain employment, has no recourse to public funds and is receiving no support from relatives is likely to remain eligible, and so caseworkers may elect not to conduct an assessment. Similarly, where an individual lacks capacity to represent themselves and/or earn an income through employment in accordance with section 2 of the Mental Capacity Act 2005, an assessment of their financial means is likely to be unnecessary. Furthermore, even where the individual is likely to be financially ineligible for legal aid, if the individual has turned 18 close to the anticipated conclusion of the proceedings, the Director may choose not to withdraw the existing certificate.
7. Where non-means tested legal aid is granted for representation of a child, but during the course of the case the individual is found to have been over the age of 18 at the time the application was submitted, a full means test should be conducted. If, following this, the individual is determined to be financial eligible, then funded legal services will usually continue to be provided. If the individual is found to be eligible for contributory legal aid, funded legal services will usually continue to be made available on the condition that the individual pays contributions in line with Regulations 44(4) and (5) of the Civil Legal Aid (Financial Resources and Payment for Services) Regulations 2013. However, if, following the assessment, the individual is found to be financially ineligible for legal aid, the certificate will usually be withdrawn. This is at the discretion of the Director, set out in Regulation 42 of the Civil Legal Aid (Procedure) Regulations 2012. If there is evidence that the individual deliberately misrepresented any information supplied in the legal aid application, the Director may choose to exercise their power to revoke the legal aid certificate and may seek to recoup the costs of the work conducted from the individual.
8. In the event that the individual has been found by the Home Office, relevant local authority and/or National Age Assessment Board (NAAB) to be over the age of 18, but this is challenged by the individual and is yet to be conclusively determined by a court or tribunal, the individual should be treated as a child for the purposes of legal aid until the court or tribunal has made a determination that the individual is over the age of 18.

**Parents and those with parental responsibility involved in proceedings relating to the withdrawal or withholding of life-sustaining treatment from children**

9. Another exception to the means test is for parents and those with parental responsibility involved in proceedings where their child is under the age of 18 and facing the proposed withdrawal or withholding of life-sustaining treatment. In this context, life-sustaining treatment is defined as any treatment that serves to prolong life without reversing the underlying medical condition.
10. This exception does not cover other treatment dispute proceedings, such as disputes regarding whether a particular treatment (including a new or experimental treatment or treatment to improve quality of life) should be used.

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11. This exception to the means test applies to parents and those with parental responsibility of children aged under 18 at the time of the application for legal aid. Where the child in question turns 18 during the course of a case, no assessment of means is necessary.

### **Representation in relation to certain types of inquests**

12. Certain civil legal services for matters concerning an inquest into the death of a member of the family of an individual are available without a determination in respect of the individual's financial resources and without the need for the individual to make any financial contribution. These specific civil legal services are: other legal services under the Exceptional Case Funding (ECF) scheme, where a determination is sought under section 10 of the Act; and legal help following any such successful determination. These measures came into effect on 12 January 2022 and apply to all matters opened on or after that date and any applications pending at that time awaiting a determination. Individuals making contributions towards the costs of their ongoing matter at that time would no longer be required to do so as of that date.

### **Applications to the First Tier Tribunal (Special Educational Needs and Disability) or the Welsh Tribunal for Education, made on behalf of the child or young person**

13. Where foster parents and/or approved prospective adoptive parents (APAP) make an appeal to the First Tier Tribunal (Special Educational Needs and Disability) (FTT/SEND) or Education Tribunal for Wales in respect of a looked after child in accordance with section 51 of the Children and Families Act 2014 or section 70 of the Additional Learning Needs and Education Tribunal (Wales) Act 2018, respectively, the legal aid certificate will be in the name of the foster parent or APAP.
14. In line with regulation 5 of the Civil Legal Aid (Financial Resources and Payment for Services) Regulations 2013, as amended by the Criminal and Civil Legal Aid (Amendment) Regulations 2023, the means of the foster parents and/or APAP are exempt from the determination of financial eligibility.
15. Similarly, where a young person<sup>3</sup> who lacks mental capacity (within the meaning given in section 2 of the Mental Capacity Act 2005) continues to reside with their former foster parent in a 'staying put' arrangement<sup>4</sup>, and cannot make an appeal to the FTT/SEND or Education Tribunal for Wales in their own right such that their former foster parent has to make the appeal, the former foster parent's means will be exempt from the determination of financial eligibility. Furthermore, the legal aid certificate will be in the name of the foster

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<sup>3</sup> The definition of 'young person' covers anyone over compulsory school age under 25 (i.e. between the ages of 16 and 25). The exemption applies where a young person cannot make the appeal themselves and if 18 or over, where they are in a staying put arrangement and their former foster parent must apply on their behalf.

<sup>4</sup> Section 98 of the Children and Families Act 2014 introduces a staying put duty which is a duty on the local authority to support young people to continue to live with their former foster carers once they turn 18. Support for the staying put arrangement includes financial support to the carer.

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parent or APAP, and so the means of the young person should not be taken into account.



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## 2. Whose Resources are to be Assessed?

### 2.1 Individual and Partner

1. As well as the resources of the individual, the resources of his or her partner are assessed and taken into account.
2. A partner is defined in regulations as:
  - (a) A person to whom the individual is married or in a civil partnership, and is not separated due to a breakdown of the relationship which is likely to be permanent;
  - (b) A person with whom the individual lives as a couple; or
  - (c) A person with whom the individual ordinarily lives as a couple, and from whom they are not separated due to a breakdown of the relationship which is likely to be permanent.
3. This means that there must be a breakdown in the relationship that is likely to be permanent (i.e. at least one of the parties considers the relationship to be at an end) rather than mere physical separation if the partner's means are not to be aggregated with the individual. Therefore a couple who is physically separated owing to financial or practical reasons, e.g. job location or the fact that one of the parties is in prison, hospital, residential care etc. must be aggregated.
4. Where it is advised that a couple are married according to English law but are not planning to live together until they have undergone their traditional cultural ceremony, you must aggregate their resources in the assessment.
5. A couple do not have to be married for this procedure to apply; the aggregation rule applies to anyone living as a couple including partners of the same sex. Therefore the term partner includes a spouse, civil partner or anyone with whom the individual lives or ordinarily lives as a couple.
6. The means of the individual's partner are not included in the financial determination in the following circumstances:
  - (a) Where the partner has a contrary interest in the dispute in respect of which the application is made.

Means will therefore not be aggregated where the partner is the opponent or the potential opponent in the proceedings. The most obvious example is in a matrimonial dispute.

**Note:**

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*It is not strictly speaking necessary for a partner to be the opponent in the proceedings to have a contrary interest. However, if he or she is not the opponent, the establishment of the contrary interest is more difficult. One indication is where the parties are separately legally represented in a dispute. This is not an exhaustive test since, for example, parties might be legally represented if there is only a potential conflict of interest rather than an actual one. Further enquiries may have to be made in cases of doubt and it will be a question of fact in each case whether a contrary interest exists.*

*The guidance note on the financial application forms advises applicants not to include their partner's resources where the partner is the opponent in the proceedings.*

- (b) Where the individual and partner are separated due to a breakdown in the relationship which is likely to be permanent.

In general, this will involve the parties living in separate locations. However, this may not always be the case. It is possible for former partners to live separate and apart (which in the context of matrimonial law refers to a breakdown in the relationship) in the same household. This would be the case if they regarded their relationship to be permanently at an end and no longer pooled their financial resources.

An example of this would be where a couple have decided to split and have separated their finances and are now simply waiting for the house to be sold before going their separate ways.

As is made clear by the definition of a partner in paragraph 1(c), even if they are physically separated (i.e. they live in separate houses) this does not necessarily mean that their means should not be aggregated; the couple must be aggregated unless they are permanently separated for the purpose of the regulations.

**Note:**

*If an individual's partner's means have not been aggregated because they are living separately and apart and there is a subsequent reconciliation then a further determination will be necessary unless the partner has a contrary interest in the proceedings.*

## **2.2 Assets Belonging to Others**

1. Regulation 16(5) provides for certain other circumstances in which assets belonging to persons other than the individual can be taken into account. There are two scenarios:
  - (a) where another person is, or has been, or is likely to be substantially maintaining the individual or his partner.
  - (b) resources from another person have been, or is likely to be, made available to the individual or his partner.

**Note:**

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*'Person' for these purposes includes a company, partnership, trust etc.*

2. If either of the above scenarios apply, the caseworker has power to treat all or part of the resources of the other person concerned as belonging to the individual.
3. It is in the caseworker's discretion as to how much of the resources of the other person should be treated as belonging to the individual and the following guidelines should be followed.
4. The caseworker can assume, unless compelling evidence is provided to the contrary, that assistance given to and resources made available for the individual in the past will continue to be given/made available in the future and the assessment can be carried out on that basis. This situation will most commonly arise where the individual has been supported by a wealthy family, even though the individual himself has no assets. As a rough guide, the caseworker should look at what financial support was given within the 12 months before the application, or from the date of commencement of the litigation if earlier.
5. Note that the resources belonging to the other person should be assessed in accordance with the normal rules of assessment. If that other person refuses to co-operate then the caseworker has power to estimate the value of such resources. Evidence can be called for from the individual to show the amount of money either given to or received from the other person in the past.
6. Any payments made direct to third parties on behalf of the individual can also be included as income or capital by virtue of Regulation 16(5)(b). This could be, for example, mortgage payments made direct to the lender by an ex-partner, to pay the mortgage on the former matrimonial home where the individual is residing. This would count as maintenance income. Or, for example, a parent has paid off a credit card debt of £10,000 direct to the lender on behalf of their adult child or has purchased a car on the adult child's behalf. This would count as capital.

### **2.3 Application on Behalf of an Adult Person Incapable of Managing Their Own Affairs**

1. A certificate is issued in the name of the protected party and it is their resources which are assessed in the normal way, not those of the litigation friend who is bringing/defending the proceedings on their behalf.

### **2.4 Application in a Representative, Fiduciary or Official Capacity**

1. This is dealt with under regulation 15.
2. Examples of this situation include an individual who is:
  - (a) a trustee suing on behalf of a trust fund;
  - (b) an executor suing on behalf of an estate.

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3. In those circumstances the personal resources of the individual acting in such a capacity are not assessed unless the individual is also to benefit from the proceedings.
  4. The value of any estate or property or fund out of which the individual is entitled to be indemnified is taken into account as well as the disposable income and capital of those who have a beneficial interest in that property, estate or fund. Thus, in the most common example, that of proceedings being brought by the executors of a will, the assets of the estate will be assessed as well as the resources of any beneficiaries but not the resources of any executor unless he or she is also a beneficiary.
  5. Where a financial determination has taken place under Regulation 15 the caseworker can decide, whether or not in fact to call for a contribution from the fund or estate and to what extent to take into account the resources of the beneficiaries. Therefore if one of the beneficiaries is out of scope for funding this will not lead to an automatic refusal of the application. The Director will consider all resources available and the likelihood of the other beneficiaries funding the case in the absence of legal aid [see regulation 39(a) and (c) of the (merits criteria) regulations 2012].

**Note:**

*Where there are a large number of potential beneficiaries, it may not be possible to assess every person's means individually under Regulation 15- in such a case the caseworker may decide not to require a full financial determination of each individual but simply an indication of the number of potential beneficiaries to the proceedings and the broad range of their means.*

## **2.5 Proceedings in Which Others Have an Interest**

1. The Director may call for a contribution from other persons or bodies – including those who have the same or a similar interest to the individual or who might benefit from any proceedings – which can reasonably be expected to contribute to the cost of the civil legal services under Regulation 44(6). This regulation also applies where some other source of funding exists which could be used to contribute towards the cost of the case. The Director may add a reasonable amount to the contribution (if any) due from the individual. This means that a contribution from the third party may be requested even where the individual would not be required to pay a contribution from his own resources.
2. Sometimes the other persons who may benefit from the case are already parties or proposed parties to the proceedings. Where we fund a test case on behalf of a wider group we will normally expect that group to make a contribution towards costs. In a multi-party action, the Director's concern is that there should be fair and appropriate cost sharing arrangements between all the individuals so that legal aid bears no more than an appropriate share of the total costs. Legal aid may be refused if the Director considers that an unfair proportion of the total costs were being allocated to legal aid through eligible individuals.

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3. To make a decision as to the contribution required from the other persons, it may be necessary to ascertain the financial details of those third parties. This may be by way of a full financial determination of their means, although this will not always be necessary or practicable if there are several such persons involved. Where for example an association is involved, then an appropriate contribution can be called for from that association which may have its own resources. In the context of a potential Multi-Party Action, the question is what the wider group can reasonably be expected to contribute, not merely what proportion of the wider group are likely to be financially eligible. Equally however, if there a large number of those with the same interest, the Director may decide to refuse the application if it is likely that the other persons will proceed to fund the action in any event.
  4. Most third party contributions will take the form of a one-off capital sum; however the Director may require periodical (i.e. monthly) payments from income, or one or more lump sums paid out of capital as appropriate
  5. Generally, it is preferable to request the whole of the third party contribution by way of a capital lump sum at the beginning of the case – however if the third party does not have sufficient capital to do this, a contribution may be requested from income and/or capital. Where the third party is an individual rather than an association, and it is not a multi-party action, it will generally be equitable to set the contribution at an amount so that the costs are to be shared equally i.e. where there is an individual and one other non-legally aided party, the non-legally aided party may be required to pay 50% of the expected costs of the case plus VAT. The caseworker should determine an appropriate contribution when dealing with an association or a multi-party action, it should **not** automatically be assumed that costs should be split 50:50 between the individual and the third party.
  6. A common scenario where a caseworker may decide to undertake a full financial determination of the third party involved is a possession case where the individual who has made the application has a non-dependant adult child or relative of the family living permanently in the home who is working full time. In such circumstances a contribution may be requested due to their shared interest in preserving the home. In these circumstances the caseworker may request full details of the third party's financial resources to determine an appropriate contribution. However where based on initial enquiries (e.g. this may be a telephone call to the provider), or information provided with the application, it becomes clear that the third party is a full-time student or a person in receipt of means-tested income benefits who due to age / financial background etc. is unlikely to have accumulated savings then it may be deemed unnecessary to pursue further. Some examples are considered below:

#### **Example 1:**

The individual is defending possession proceedings, his adult son lives with him at the property. The individual is passported on income as he receives Income-Based Jobseeker's allowance, and his capital does not exceed £3000. The son is employed full time and has a gross income of £2,000 per month.

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Regulation 44(6) should be applied: The son will also benefit from the proceedings by preserving his home and could be expected to contribute to the cost of proceedings, even though the legal aid applicant is not liable to pay a contribution from his own resources.

**Example 2:**

The individual is bringing a disrepair action against her landlord. The individual works part-time, her 19 year old daughter is in full time Higher Education, and receives a student loan for maintenance. The mother is required to pay a contribution from income of £50 per month based on her own resources (a dependants allowance is not deducted as the daughter's student income exceeds the standard dependants' allowance rate).

Regulation 44(6) should **not** be applied: whilst the daughter may benefit from the proceedings and has an independent income from the student loan, it would be unlikely to generate a contribution if she had applied in her own right. Generally it will not be necessary to target enquiries on full time students for the purpose of determining a third party contribution under Regulation 44(6) unless in all the circumstances it is considered that they may have accumulated savings or hold significant capital resources.

**Example 3:**

The individual is defending possession proceedings and making a counter claim for disrepair. The tenancy agreement was signed by the individual and a friend who shares the flat; his friend works part time 30 hours earning £1,500 per month, and has capital savings of £6000.

Regulation 44(6) should be applied as the friend has the same or similar interests to the legal aid applicant in the proceedings, as the possession proceedings if successful would render both of them homeless. A contribution from capital should be requested.

**Example 4:**

In the scenario above, there is a third friend who works full time who has been living at the property since they moved in; his name is not on the tenancy agreement.

Regulation 44(6) should still be applied. However if this person had previously made arrangements to move out of the property and does so during the course of the assessment, it would not be appropriate to call for a third party contribution from him

**Example 5:**

The individual is defending possession proceedings; her 18 year old niece who is in receipt of an income- passporting benefit is staying at the property.

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Regulation 44(6) should not be applied. Generally it will not be necessary to target enquiries on persons in receipt of income passporting benefits for the purpose of determining a third party contribution under Regulation 44(6) unless it is otherwise indicated that they may have accumulated savings or hold significant capital resources.

**Example 6:**

Application is for a housing matter where the client has stated that she and her spouse will typically have a couple of lodgers living in their property at any one time, whose board money goes towards the mortgage payments. The current lodgers are not family members, there is a lodging agreement which states that the client can cancel the arrangement with a week's notice, they are stated to be paying £150 between them.

Regulation 44(6) should **not** be applied to request a contribution from the lodgers.

**Example 7:**

The individual has applied for civil legal services for a family dispute, seeking an injunction for protection from harm against her former partner and various orders relating to their children. The individual lives with her non-dependant adult son aged 20 years who is working full time, along with two minor children to whom the proceedings relate.

Regulation 44(6) should **not** be applied: It would be inappropriate to request an additional contribution in this scenario from the adult son, even if the adult son is supportive of the mother's position; the caseworker however should include any income the individual receives from the 20 year old (e.g. payment for board and lodgings) in determining her eligibility for civil legal services.

7. Where it is considered appropriate to undertake a full calculation of the third party's resources, information can be requested using the standard means forms i.e. CIV MEANS 1 (or CIV MEANS 2 if the individual is receiving a passporting benefit for a determination of capital if it is suspected or indicated that significant capital may be held). The usual passporting check for those supplying the CIV MEANS 2 and evidence requirements for both CIVMEANS 1 and 2 will generally apply. Note: if the third party has income or capital in excess of the eligibility limits this does *not* mean that the individual applying for legal aid must be determined to be ineligible – the decision to obtain a contribution under Regulation 44(6) is different to a decision to aggregate the applicant's means with the resources of a third party under Regulation 16(5).
8. If a financial determination is made that the individual is eligible for civil legal services subject to a contribution from a third party, then it is the responsibility of the individual to ensure that the extra contribution is paid. The caseworker may however waive this element of the contribution if satisfied (based on clear and compelling evidence) that the individual has unsuccessfully taken all reasonable steps to obtain payment of the contribution.

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9. A senior means caseworker should also be consulted before withdrawing an individual's certificate owing to arrears of contribution, where this results from *the third party* not paying their contribution. Where the arrears stem from the legally aided individual not paying their own contribution, the normal procedure for withdrawing the certificate applies.
  10. **Internal control and monitoring:** Where the offer is sent to an individual which includes the requirement for a third party to pay a contribution, a senior means caseworker should be notified. Do not manipulate the figures inputted for the individual's financial determination so that CCMS requests the third party contribution as part of an amalgamated contribution sum. Make an appropriate note on CCMS confirming both the individual's contribution based on their own resources and the additional contribution due from the third party; send a letter to the individual explaining that along with their own contribution they are expected to collect the additional contribution from the third party, stating the amounts. If a full calculation of income and capital was carried out for the third party, the details should be noted on the system but do not provide these details or any specific financial information about the third party (beyond stating the additional contribution amount) on the letter sent to the individual who has applied for legal aid. In some cases, where you have been sent information directly from the third party, it will be appropriate to also write to the third party at the end of the assessment, to return any original documents and, as appropriate, to advise the additional contribution amount and next steps.
  11. The usual triggers (e.g. changes in income or capital, new partner, change of address etc.) may result in a further determination of the individual's means. Also, keep in mind whether the expected cost of the case / the cost limit on the certificate has increased and therefore whether a further contribution may be required from the third party to reflect this.
  12. There is a risk that because the contribution record will show that the legally aided individual has paid in an amount of money in excess of their own required contribution, that these additional funds may be refunded by a Finance caseworker at the conclusion of the case. To mitigate against this, a clear note 'for the attention of Finance' should be recorded on the system advising the amount (including third party contribution) that is meant to be paid in monthly (until the case ends or for a limited number of instalments) / or was required as a lump sum from the third party.



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## 3. Gross Income - What Income Includes

### 3.1 Introduction

1. The Director will refuse an application for civil legal services where gross income exceeds the limit set out in Regulation 7(4) i.e. £2657 per month. An increment of £222 per month must be added to this figure where the individual has more than 4 child dependants for whom he or she receives child benefit, for the fifth and each subsequent child.
2. “Gross income” means income under regulation 21 before any deductions are made other than housing benefit and certain state benefits as specified within the regulation 24. Regulation 21 states that the income of the individual must be taken to be:
  - (a) the gross amount the individual has earned or will earn;
  - (b) the gross amount of any entitlements that have accrued, or will accrue, to the individual; and
  - (c) any other gross sums from any source which the individual has received, or is likely to receive,

in cash or in kind, during the period of calculation.

**Cross Reference: see paragraph 3.6.1**

3. All income must be included whether from employment, state benefits or elsewhere, e.g. assistance from friends or relatives. Only the main types of income are discussed in this guidance. The list is not exhaustive and income from any source including a source not specifically discussed in this guidance (e.g. income from a private pension) should be taken into account.
4. Gross earnings will include bonuses, commission, overtime payments etc. However where an individual has received an annual bonus in the period of calculation then this should be treated as capital.
5. The income that should be taken into account should include any income that is due or will become due for the period of calculation. If an individual has become entitled to money in the previous month which he has not yet received (e.g. he has earned a commission), then that income too must be included in the financial determination.

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6. Situations may arise, especially in the family/matrimonial context, where an individual has not received or become entitled to any direct income at all in the preceding month. This may be so where the individual is living separate and apart from their spouse in the same home, with the individual not being employed but the spouse still meeting all outgoings. In some cases particularly where the change occurred during the past month it might not be appropriate to base the determination on the income received for the whole of the previous month. In such cases it may be appropriate to change the calculation period, i.e. base the determination on income the individual will earn or benefits the individual will accrue for individual the next calendar month based on their changed circumstances. In these circumstances the individual can be assessed as having no income. If, however, the individual is receiving money from the partner, or a friend to pay bills or as maintenance, this must be shown as income in the financial determination. Any payments made direct to a third party on behalf of the individual will count as the individual's gross income by virtue of Regulation 16(5)(b). Where income has been included due to an ex-partner paying the individual's mortgage or rent, the relevant mortgage or rent payment should be allowed against income as a housing cost, in accordance with the rules for that particular allowance when determining disposable income.
  7. Under regulation 21 the Director may have regard to the average income of the individual during such other period as the Director considers appropriate. If the current income of the individual appears different to what they would normally earn or receive e.g. a short term period of sickness for which they do not receive normal pay, then the assessor will need to consider what best reflects the individual's normal income. How to treat these situations is dealt with in the following guidance. (See guidance on wages and salaries paragraph 3.3).

### **3.2 Income or Capital?**

1. Questions may arise in a particular case as to whether a particular receipt or more likely, a series of receipts is to be treated as income or capital.
2. Guidance on this issue was given by the Divisional Court in *R v Supplementary Benefits Commission ex parte Singer* [1973] 2 All ER 931. This case concerned the interpretation of the Legal Aid (Assessment of Resources) Regulations 1960, under which income was brought to account within the determination. The individual had received a series of gifts and loans from various sources, all of which the assessment officer had treated as income. The court said that this was inappropriate and set out the following general principles:
  - (a) the essential feature of income is that it relates to receipts which have an element of periodic recurrence. Ad hoc or one off receipts should not be regarded as income.
  - (b) receipts which would as a matter of common sense be regarded as income should be so treated even though the individual did not have a legal right to them but received them as a benefit or privilege. The example given was a periodic allowance made by a father to his son.

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- (c) periodic gifts or loans were in theory capable of forming part of a person's income, but they should not be treated as income indiscriminately. The court found it difficult to visualise the circumstances in which loans could be treated as income, but did not rule it out.
3. In practice, difficulties will usually arise where the individual receives or will receive a series of gifts or loans during the calculation period from family, friends or a business with which they are associated. Each case will need to be considered on its own facts, but it would usually be appropriate to treat these receipts as income if:
    - (a) they are all from the same source; **and**
    - (b) they have an element of recurrence or regularity; **and**
    - (c) they are used to meet expenses that would normally be met from income; **and**
    - (d) if the receipts are described as loans, the individual can demonstrate no genuine intention or ability to repay them in the foreseeable future

**Cross reference: Section 3.12 on income from friends and relatives.**

### **3.3 Wages and Salaries**

1. Income from employment will be evidenced through the provision of wage slips; where wage slips are not available the Director may accept Form L17 completed by the individual's employer.

**Note:**

*Individuals must provide the latest 3 monthly wage slips, or 6 wage slips if paid weekly or every two weeks.*

2. The wage slips or L17 will provide evidence stretching back past the calculation period of gross salary including bonus, commission and overtime, received by the individual (usually for the past 3 months). From this information it is necessary to determine what the individual's normal monthly gross income is likely to be.
3. Where it is clear from the wage slips or L17 that the individual's earnings are reasonably consistent then the normal monthly salary can be ascertained by simply taking the last monthly salary details.
4. Where however the wages show significant variations in income, e.g. because of exceptional overtime in a particular month or because the individual has been out sick during some of the period then a further study of the figures will be required. Remember it is what the caseworker regards as being the normal monthly income that should be used in the calculation.
5. Where the wage slip or L17 evidence a particular reason for significant salary variations, the caseworker will determine the most appropriate way of estimating the individual's normal gross earnings as follows.

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6. If the individual has clearly been out sick in one month or has had a reduced amount of overtime in one particular month then the normal gross earnings can be ascertained by taking an average of the other two months. A similar exercise can be undertaken if any one month shows a significant temporary increase in income, then the normal gross earnings can be ascertained by taking an average of the other two months.
  7. Where the caseworker considers that the one month's higher salary is a better indication of the anticipated earnings for the next few months e.g. pay was affected in each of the other two months due to sick leave, or the applicant has recently changed jobs and is now earning a significantly greater sum, the financial determination will be based on the higher figure alone.

### **Example 1**

Wage slips or L17 indicates that the past 3 months earnings have been stated as £1010, £1000, and £950. There is no indication of sickness or major change of circumstances. The last month's salary of £1010 should be used in the financial determination.

### **Example 2**

Wage slips or L17 indicates the past 3 months earnings have been: £500, £1000, £1050. The employer gives the reason for the low earnings in month one as being due to the employee being off sick for 3 weeks during that month.

The normal salary should be calculated by reference to the last 2 months salary i.e. the average of £1000 and £1050. The normal monthly salary should be assessed as £1025.

### **Example 3**

Wage slips or L17 indicates the past 3 months earnings have been stated as: £900, £750, £750. The employer states the reason for the higher salary as being due to the employee being promoted.

The normal monthly salary should be calculated by reference to the most recent higher salary alone. The salary of £900 should therefore be used in the financial determination.

### **Note:**

*If using 6 weekly/fortnightly wage slips take the average, (convert fortnightly amount into weekly amount) then multiply by 52 and divide by 12.*

## **Known changes of circumstances**

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8. The individual may indicate in their initial application that their financial circumstances are about to change. Where salary or wage is evidenced by form L17 rather than wage slips, the employer is asked to indicate on the L17 to show any changes in the normal monthly salary or wages which are anticipated in the next 12 months. More generally, the individual is also required under Regulation 18 to immediately inform the Director of any change in their financial circumstances which *has* occurred since the application or determination, which may affect a financial determination that the individual is eligible for civil legal services including any contribution payable.
  9. Generally, where the change will occur within a month of the date of application then the revised circumstances should be used in the assessment.
  10. Where the change will occur more than a month after the date of application, the current circumstances should be used. If it appears that the change when it occurs will lead to a change in either disposable income or disposable capital of more than the reassessment review limits then the case should be diarised for review at that time.

### **3.4 Employee Absent From Work through Sickness**

1. The L17 or the individual may specify that he or she is currently absent from work through sickness. In those circumstances the following may be paid to the individual:
  - (a) Company sick pay.

This will be an amount paid by the company which must be no less than the appropriate rate of statutory sick pay up to the normal basic wage of the employee.
  - (b) Statutory Sick Pay (SSP)
    - i) Statutory sick pay must be paid by the employer in respect of qualifying days of absence due to incapacity for work. It is paid at a set rate after the first three days of absence and continues for a maximum of 28 weeks thereafter. If the individual is to be absent thereafter then the relevant payment will be Incapacity Benefit (IB) or Employment and Support Allowance (ESA).
    - ii) The relevant rates of IB and ESA are set out in Appendix 2. For those receiving IB assume the short term higher rate for the first 24 weeks of payment and the longterm rate thereafter. Remember to include any element for adult dependants if applicable.

**Note:**

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Company sick pay may top up or include SSP or Incapacity Benefit or Employment and Support Allowance. If the individual is currently off work on sick leave but the L17 does not state any company sick pay or SSP, then assume the individual is in receipt of state benefits; if none of the above forms of income are declared in the application, request further information.

**Cross-reference: see paragraph 3.6**

**Projected return to work (following sick or maternity leave)**

2. Individuals who are absent from work owing to sick or maternity leave at the time of making an application, may provide an indication of when their return to work is expected.
3. If a date or reasonable estimate is provided which indicates that the individual is likely to return to work in the next month then the normal monthly salary will be used in the assessment.
4. Where the individual is unlikely to return to work in the next month then the current level of sickness or maternity pay will be included in the assessment. The case should then be diarised for review for the earliest of:
  - (a) Anticipated date the individual will return to work;
  - (b) Date of any major changes in the level of sickness or maternity payments indicated on L17 (where this change is within one month of date of assessment then those revised figures should be used in the current assessment); or
  - (c) A period of 6 months from date of assessment.
5. Company sick / maternity pay may top up or include Statutory Sick Pay (SSP) / Statutory Maternity Pay (SMP) or other state benefits payable due to sickness or maternity absence. If the individual is currently out on sick or maternity leave but not in receipt of any company sick/maternity pay or SSP/SMP, it would be usual to expect that individual to declare being in receipt of state benefits (e.g. Incapacity Benefit, Employment and Support Allowance or Maternity Allowance) and the relevant amounts will be included as state benefits in the assessment. If no such benefits are declared further information should be obtained.
6. If no date of return or reasonable estimate is given, then the assessment officer can, if it appears reasonable to do so, assume that the individual will return to work in the next month and the normal monthly salary will be used in the assessment. If the individual challenges this assumption and provides further details of the expected return to work then a reassessment will be carried out as appropriate.

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7. In some cases, it will be inappropriate to assume return within a month, even if the date of return is not known. For example, it may be apparent that the individual has had a serious accident, making it unlikely that he will return to work in the following month. The financial determination can, in such a case, be completed based on the assumption that he will be absent from work and, where appropriate, the file can be diarised for a review after 6 months, so that confirmation of the up to date position can be sought at that time.

### **3.5 Individual having a baby**

1. The individual or their partner may advise within their application that they will be having a baby during the following 9 months. If the baby is expected to be born in the next month then the person having the baby may already be on maternity leave and the relevant financial details will have been included in the application.
2. If they are still currently working then it may be that they will shortly begin maternity leave in which case they may receive maternity benefits from the employer or DWP instead of their normal salary. In the absence of any other information it should be assumed that maternity leave will commence approximately 6 weeks before the baby is born for the purpose of diarising a further assessment. If it appears that the maternity leave will commence within the next month then details of maternity benefits should be obtained now and the financial determination should be based on those details.
3. The individual's disposable income may decrease further once the baby is born. The individual should therefore be further advised to seek a further determination following the birth of the child. A note to this effect can be added to the assumptions box on CIS/CCMS. In any event a diary date should be set for an appropriate period
4. There are two types of maternity benefit: statutory maternity pay and maternity allowance:

(a) Statutory maternity pay (SMP)

This is paid by an employer to a qualifying employee for up to 39 weeks. The maternity pay period normally runs from the time the claimant stops work and begins maternity leave, but the earliest it can begin is at start of the eleventh week before the week in which the baby is due, assuming the claimant stops work before that point. However, if the claimant gives birth earlier than 11 weeks before the expected week of confinement (EWC), payment will run from the day after she has given birth.

A qualifying employee is one who:

- i) has had 26 weeks continuous employment with the employer at the qualifying week (ending the fifteenth week before the EWC); and
- ii) whose average earnings are at or above the lower earnings limit of National Insurance Contributions (see Appendix 6 for current rate).

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SMP is paid for the first 6 weeks at 90% of average weekly earnings, for the remaining 33 weeks the claimant is paid the lesser of the standard rate or 90% of average weekly earnings.

(b) Maternity Allowance (MA)

This allowance is payable to some claimants who do not qualify for SMP depending on eligibility. Where a claimant has recently changed jobs or is self-employed or unemployed and therefore does not qualify for SMP but has worked for at least 26 weeks and earned an average of £30 per week for at least 13 weeks out of the 66 weeks before the expected week of confinement (EWC), the claimant may be entitled to maternity allowance. The self-employed must have paid Class 2 National Insurance for at least 13 weeks of the 66 weeks before the EWC to get the full amount of Maternity allowance.

Maternity allowance is paid if the claimant qualifies as above and is expecting a baby within 11 weeks or has given birth. The claimant should not be working during the claiming period and maternity allowance is paid for the same period as SMP.

Maternity allowance is payable for up to 39 weeks.

The claimant is paid the lesser of the standard rate or 90% of average weekly earnings. (See Appendix 2). The appropriate rate should therefore be brought into the financial determination as income.

The claimant may be entitled to an increase in benefit for an adult dependant i.e. their spouse or someone who cares for the child.

- (c) If the application does not provide enough information or is unclear, then a telephone call should be made to the individual.

**Note:**

Do not telephone the employer unless it is apparent that the employer already knows about the fact the employee is having a baby.

5. Statutory paternity pay (SPP) and statutory adoption pay (SAP) were introduced on 6 April 2003. For SPP, SAP, SMP (birth) and SMP (adoption) claimants must be in continuous employment with the same employer for a period of at least 26 weeks (ending 15 weeks before expected date of confinement for birth child, or in the case of adoption ending with the week in which the adoptive parent was notified of the match with the child). For SPP (adoption) only, the claimant must also have been continuously employed from the end of the week in he/she was notified of the match until the day the child is placed for adoption.
6. While only women can qualify for SMP, both men and women can qualify for SPP or SAP. For SPP the partner of the child's mother or partner of the adopter is someone who lives with him/her in an enduring family relationship. Same sex partners as well as partners of the opposite sex can claim SPP.

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- (a) Statutory paternity pay is paid for a period of either one or two (consecutive) weeks. The claimant receives the lesser of the standard rate or 90% of average weekly income. (SPP may be paid for a child who has been adopted if the claimant has not elected to receive SAP).
  - (b) Statutory adoption pay is paid for a period of 39 weeks, throughout which the claimant receives the lesser of the standard rate or 90% of average weekly income.

### 3.6 State Benefits

#### General

1. For the purposes of calculating gross income, income excludes housing benefit paid under section 130 of the Social Security Contributions and Benefits Act 1992 or section 129 of the Social Security Contributions and Benefits (Northern Ireland) Act 1992, along with the full amount of any payments set out in regulation 24. [**Cross reference: see paragraph 4.3 disregarded payments** (which may apply to gross and disposable income calculations)].
2. All other state benefits are included in the assessment as gross income as follows:
  - (a) Include the amount declared by the individual of any state benefits or allowances (including pensions).
  - (b) Where a monthly figure is quoted, the benefit will be payable 4 weekly. [Universal Credit is the main exception to this, as it is payable for a calendar month. Universal Credit is a passporting benefit for an individual who is properly in receipt (directly or indirectly) of this payment; if the individual is not included within the benefit claim of their partner e.g. individual is in prison, include the payment as a calendar monthly income].
  - (c) To calculate calendar monthly income, multiply by 52 and divide by 12 if payment is weekly and multiply by 13 and divide by 12 if payment is four weekly.
3. Appendix 2 contain details of the rates of benefits. Individuals will also provide bank statements when making an application for legal aid: include the amount declared by the individual of any state benefits subject to reasonable checks with the evidence provided / above sources of information.
4. For the purposes of assessing gross and disposable income, the welfare benefits listed at the top of this section are to be disregarded from income.

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5. Arrears of benefit (including tax credits) should be treated as having been actually received when they were due i.e. they should not be taken to be current income if paid in respect of a period before the calculation period. Such payments however are not automatically disregarded from the assessment altogether, as retained income or 'savings' form part of an individual's disposable capital.

### **Child Benefit**

6. Child Benefit [paid under section 141 of the Social Security Contributions and Benefits Act 1992 or section 137 of the Social Security Contributions and Benefits (Northern Ireland) Act 1992] is payable to a claimant who is responsible for a child who qualifies. Child benefit was a tax-free universal benefit for many years and remains a tax free benefit for households where the benefit claimant and their partner individually have income under £60,000 (even if their combined income exceeds that amount).
7. Where at least one individual within the household (i.e. the claimant or partner) has an income of £60,000 or more, some or all of the child benefit is recouped via the High Income Child Benefit Charge (HICBC) at the rate of 1% every £200. The entire amount of child benefit is recouped under the HICBC where an individual within the household has income of £80,000 or more. Income for the purpose of the HICBC is calculated by HMRC before deduction of the 'personal allowance' and income tax. Individuals can decide to opt out of receiving child benefit payments (rather than receive the money and have it recouped via the self-assessment process or since April 2013 via their tax code). See Appendix 9 for further details.
8. Child for the purpose of determining entitlement to child benefit means someone:
  - (a) Under the age of 16; or
  - (b) Under the age of 20 if remaining in full-time education (12 hours supervised study a week) up to and including GCE A levels or equivalent.
9. Benefit is paid for each qualifying child, at a higher rate for the first or only child and a lower rate for each subsequent child. Current rates are set out in Appendix 2.
10. Any Child Benefit paid to the individual/partner is included as income in the financial determination.
11. Include Child Benefit that the individual appears to be entitled to it **even if not declared**.
12. The child will cease to qualify for child benefit payments if they:
  - (a) Turn 20; or
  - (b) If over 16, will leave full-time education.

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13. If it is not certain whether or not a child will leave full-time education e.g. the individual states “uncertain” or “dependant on grades”, then assume that the child will remain in full-time education.
  14. If a child aged 16 is to leave full-time education, then the child benefit is still paid until the first of the following dates which occurs after the child leaves school:
    - (a) The second Monday in September
    - (b) the second Monday in January
    - (c) the second Monday after Easter Monday.
  15. If therefore a child is to turn 16 and leave school during the month following the date of the application for civil legal services, details should be obtained now and the financial determination based on those details. Otherwise, diarise an appropriate date for a further determination. The applicant remains under a duty to notify any change in his/her financial circumstances.
  16. Similarly, if a child aged 17 or over is to leave full-time education during the month following the date of application, details should be obtained now and the financial determination based on those details. Otherwise diarise an appropriate date for a further determination. If child benefit is to cease because the child reaches 20 years, then child benefit will be stopped the first Monday following the child’s twentieth birthday. Remember, if the eldest child ceases to qualify, the next child will receive the higher rate after that date.

### **Welfare to Work (Background to the Work Programme)**

17. The Work Programme was launched in June 2011 replacing previous programmes such as New Deal and Flexible New Deal. The Work Programme is a universal programme for those receiving out-of-work income-replacement benefits rather than being designed for specific groups. Participants include recipients of Jobseeker’s Allowance, Employment and Support Allowance, Income support and incapacity benefits. Refer to the following participant category guidance:

### **The Work Programme (Jobseekers Allowance recipients)**

18. For those who have claimed Jobseeker’s Allowance (JSA) referral under the Work Programme will occur 9 months into the claim for people aged 18-24 years old, or at 12 months for those aged 25+. Work Programme providers are able in these circumstances to require the participants to undertake work-related activity.
19. Those who are seriously disadvantaged in the labour market including some who have recently received incapacity benefits will be referred after 3 months. Participation will be required in some instances but for other individuals it will be voluntary.

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20. If the claimant finds employment their entitlement to JSA (or other out-of-work income-replacement benefit) will end and a reassessment will be required. Remember that in addition to their wage or salary, such individuals will be eligible to apply for in-work benefits such as Tax Credits.
  21. The Work Programme can last up to two years, and is designed so that programme providers receive financial incentives to continue offering support once the participant moves into work.
  22. If the claimant has not found a job by the end of the programme they will continue to receive benefits.

#### **The Work Programme (Employment and Support Allowance recipients)**

23. Employment and Support Allowance (ESA) recipients in the Work Related Activity Group will be referred to the Work Programme when close to being fit for work – participation is required rather than voluntary. For all other ESA recipients referral can be made at any time and attendance is voluntary. Otherwise, details are as above.

#### **The Work Programme (Income Support and incapacity benefits recipients)**

24. Recipients of Income Support and incapacity benefits (England only) may be referred at any time and participation is voluntary. Otherwise, details are as above.

#### **Employment and Support Allowance**

25. Employment and Support Allowance (ESA) replaced Incapacity Benefit and Income Support paid on incapacity grounds for new claims since 27 October 2008 for customers aged 16 or over (but below pension age), with limited capacity for work.
26. People who are not entitled to Statutory Sick Pay (SSP) – a payment made by employers to employees who are absent from work due to illness – or whose SSP is coming to an end (SSP is paid for 28 weeks) will be advised to claim ESA.
27. The person may receive contributions-based ESA (if they have paid enough National Insurances Contributions) or income-related ESA (that is means tested). Persons in receipt of income-related ESA are passported for legal aid. Individuals in receipt of contributions-based ESA alone (i.e. with no income-related element) must undergo the full means test.
28. When someone becomes entitled to ESA they enter a 13-week assessment phase during which they receive the basic rate of payment. From week 14 the amount of payment for those in receipt of income- or contribution-based ESA will depend on whether they are in the 'Work-Related Activity Group' or 'Support Group'. The ESA payment rate remains constant once in the main phase i.e. payments are not increased due to a person staying on ESA long-term.

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29. An individual in receipt of ESA will not be entitled to Working Tax Credit (as the qualifying conditions for the two benefits are incompatible) but may claim Child Tax Credit as the person responsible for a child or qualifying young person living with them.

### **Incapacity Benefit**

30. Incapacity Benefit is a non means tested benefit payable to a person who is unable to work due to illness or disability which started before 27 October 2008. There are no new claims for Incapacity Benefit as of 27 October 2008 (or from 26 January 2009 if backdated for maximum period of three months; linking rules may apply). Live Incapacity benefit claims are being reviewed between October 2010-2014 and individuals migrated to ESA if qualifying conditions are met or advised to claim JSA. The relevant rates for Incapacity Benefit are set out in Appendix 2.
31. Long term Incapacity Benefit is paid after 52 weeks (1 year) of absence i.e. from week 53. An 'age addition' may be paid if the individual was under 45 when he / she became too ill or disabled to work.
32. An adult dependency increase may be payable for the individual's spouse or civil partner or the person who looks after their children.
33. A child dependency increase can continue to be received by customers who claimed for this increase before 6 April 2003. For claims that started after that date, the child dependency increase is no longer available but they can claim child tax credit.

### **3.7 Income from Savings and Investments**

1. Income paid on savings and investments during the preceding year and accumulated by the individual will have been treated as capital.
2. Where the capital produces a regular monthly income then that income will be included in the financial determination.
3. The individual is under a duty to declare the amount of any income received from savings when applying for legal aid. However, there is no need to include this figure if the amount of income from this source is under £12 p.a.
4. No assumption should be made as to the interest rate for savings or other capital; if you suspect that the individual may receive an income from capital that has not been declared, request documentary evidence such as bank statements to determine the true picture.
5. The income for the monthly calculation period will however have to be reduced pro rata to that arising on the amount of capital that will not be called for as a contribution. This will therefore normally leave up to a maximum of £3000 on which interest will be earned.
6. Assume for these purposes that the individual will pay their contribution from non-interest bearing liquid capital first.

#### **Example 1:**

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*Individual has savings of £4,000 Building Society Account, interest advised to be 2.5% and £1,000 Non-interest bearing bank account.*

*The capital contribution based on these two assets only will be £2,000.*

*Assume that they will pay the contribution from non-interest bearing capital first, in this case £1,000 from the bank account. The remaining £1,000 contribution will be met from the building society account. This leaves a balance of £3,000 in the building society account.*

*Interest = £3,000 x 2.5% = £75.00 divide by 12 for monthly figure £6.25*

### **3.8 Income from Tenants/Sub-Tenants and Boarders**

1. In non-business cases include the gross amount of rent received by the individual / partner from boarders, lodgers, tenants or sub tenants as income.
2. There are two basic scenarios:
  - (a) The property concerned is also occupied by the individual as their only or main dwelling.

In those circumstances the expenditure of that dwelling will be allowed in the normal way under Regulation 28.

If the individual claims that there is additional expenditure incurred as a result of the other occupant (e.g. the individual pays for their food or pays extra heating costs) then this extra expenditure may be deducted from the income received before it is brought into account – i.e. a reasonable sum may be deducted. The total of such allowable deductions should not exceed 2/3 of the gross amount paid by the other occupant.

- (b) The individual does not occupy the property from which the income is received.
3. Include the rent received from the tenant/sub-tenant as income. If the individual operates a business producing rental income then the financial determination will be made in accordance with the guidance on business cases (see sections 8 and 9).

### **3.9 Income from Court Order or Voluntary Maintenance**

1. Include as income the amount declared by the individual as maintenance received for themselves and/or their child dependants. This will be maintenance paid by a spouse, former spouse or other parent of the child.
2. The maintenance may be being paid voluntarily, through a court order, or through the Child Support Agency.

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3. Include as the individual's income any maintenance payments received for the individual's children whether or not the order specifies that the payments are made to or for the children. However, in such circumstances where it is clear that the child receives and controls the money do not include the money as the individual's income but reduce the dependant's allowance by the amount of the maintenance.
  4. Maintenance payments are not generally treated as taxable income in the hands of the recipient. As a general rule therefore, do not deduct tax from this income unless the individual indicates that they are paying it.

### **3.10 Student Grants and Loans**

1. Include in the usual way any income received by an individual who is a student. Income includes any amount of grant (this will therefore include any bursaries received from the university / college or from national schemes such as Initial Teacher Training or nursing bursaries), student loan or parental contribution to be received during the calculation period or any other income such as scholarships, sponsorships and access to learning funds. Take the annual amount received and divide by 12 to obtain the monthly figure.
2. Do not include tuition fees loans within the calculation of gross or disposable income. Under the loan scheme, the tuition fees loan is paid directly to the University concerned. There is a limited amount of discretion under Regulation 16(5) that deals with the inclusion of third party funds, caseworkers are therefore advised to exercise that discretion by **not** including the tuition fees loan as income within the financial determination. This guidance relates specifically to the tuition fees loan under the UK scheme. Student loans for maintenance **are** included as income for legal aid (and other state benefits) as they are specifically paid to maintain the individual.

### **3.11 Redundancy Payments**

1. These are paid to employees as a compensation for loss of employment by reason of redundancy. Employees have the right to a redundancy payment if they have worked continuously for an employer for at least two years. These payments can be statutory (based on the employee's age, length of service and the amount of a week's pay, subject to a maximum ceiling) or paid pursuant to the individual's rights under their contract. To assess:
  - (a) Establish the total amount of redundancy pay the individual has received. Include as income any redundancy payments received in the calculation period up to the maximum limit of £6300 per annum (i.e. include £525 per month).

This limit is based on the old maximum ceiling of statutory redundancy compensation set out in Appendix 8, and therefore also applies to cases prior to 3 December 2001.

- (b) Treat any excess over this limit as capital.

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- (c) If the individual received the payment before the calculation period but remains unemployed then treat any amount remaining according to the above formula. This also applies to individuals who are in receipt of contributions based state benefits (but do not apply the formula to those in receipt of passporting benefit<sup>5</sup>).
  - (d) If however the individual is in new employment at the time of application (or is reassessed after gaining employment) treat any redundancy money remaining as capital.

### **Example 1:**

*The individual states that he has received a redundancy payment of £20,000 during the month leading up to the legal aid application:*

*Treat £6,300 as income. Divide by 12 to calculate monthly income (£525). The balance, i.e. £13,700, will be treated as capital.*

**Cross-reference: see paragraph 4.1.9(c) for income tax treatment of redundancy payments.**

### **3.12 Income from Friends and Relatives**

1. The individual must declare past and current financial support from friends and relatives within their application. Otherwise further enquiries in any particular case might reveal an additional source of financial support (e.g. because the individual's expenditure exceeds his income and he has been asked how the shortfall has been met).
2. If it appears that the income is likely to be significant to the financial determination, or if the individual appears to have large outgoings even though this is the only or main form of income then documentary evidence of the full level of income provided should be called for. This evidence should be in an independently verifiable form e.g. credits identified in bank accounts and building society passbooks etc. to show how much the individual is actually receiving from the friend or relative.
3. Refer to the guidance on Regulation 16(5) - section 2.2. If the individual has received income previously it may be reasonable for the caseworker to assume that a similar level of support will be made to the individual in the future.

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<sup>5</sup> For those in receipt of passporting benefit, treat any remaining redundancy money at the date of the legal aid application as **capital**. Refuse legal aid if disposable capital is above £8000; a contribution will be required if capital is between £3001-£8000. Passporting clients are automatically deemed to have income below the contributions threshold. [NB In deciding whether the individual was entitled to means-tested benefit, the DWP will have included the full statutory and contractual redundancy payment as capital; if the individual is still within the capital limits for passporting benefit, the DWP will include a small income of £1 for every £250 that is held above £6000 (or if over pension age £1 for every £500 of capital that is held above £10,000)].

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4. Often money received from friends or relatives will be described as 'loans'. Usually there will be no repayment agreement or requirement to repay the sum. It will usually be appropriate to treat such payments as income (as a series of gifts) provided the criteria in paragraph 3.2 are met.

**Cross-references: sections 3.2 and 2.2**

### **3.13 Training Scheme and Training for Work**

1. Training Schemes include Work Based Learning for young people 16-18 and Apprenticeship programmes. Training for Work is a training programme for adults in Scotland which provides training to those who are unemployed and actively looking for work, Work Based Learning for Adults in Wales undertakes a similar role in Wales. Include – as income – any earnings received on these schemes, but do not include amounts paid in reimbursement of travel expenses.

**Cross-reference: see section 3.6 Welfare to Work**

### **3.14 Benefit in Kind**

#### **General**

1. This is income taken into account under Regulation 21 and refers to benefits provided, usually by an employer, instead of or in addition to cash payments or normal salary.
2. The most common example is the provision of a company car and/or fuel allowance. Free health insurance, free accommodation and luncheon vouchers are other common types of benefit in kind. Sometimes employers provide childcare vouchers or help to pay the employees mortgage.
3. All of these benefits, even though not received in cash, are treated as taxable income by HM Revenue and Customs.
4. As a general rule therefore, the value of any benefit in kind from an assessment point of view should be taken to be the taxable value thereof i.e. the Agency will treat this benefit as income in the same way as the H.M. Revenue & Customs.
5. The individual must declare receipt of any benefits from work that are not money within the application; where Form L17 is supplied, the employer will specify the annual taxable value of any benefit in kind received on the Form L17. 1/12 of this value should therefore be added on to the individual's gross income before tax is deducted.
6. If the L17 does not specify the value of the benefit in kind, or alternatively if wage slips are provided, HMRC Form P2 / P11D may be requested from the individual which will specify the taxable value of the benefit.

**Note:**

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*Where the total of the individual's earned income (including the benefit in kind) does not exceed £8,500, then those benefits which cannot be converted into cash or cash equivalent by the recipient (e.g. company cars or medical insurance) are disregarded for tax purposes. Their taxable value as stated on the L17 should therefore be nil.*

**Cross-reference: see paragraph 8.4.15(d) on the treatment of Benefit-in-kind for directors.**

### **Deductions**

7. It is necessary, as outlined above, to include the taxable value of benefits in kind as disposable income as to do otherwise would make the tax calculation within the financial determination incorrect.
8. However, where the benefit in kind relates to the provision of an item which is allowed as a deduction against gross income under the regulations, then a notional figure for those expenses, (normally in the same amount as the taxable value of the benefit in kind subject to the specific examples given below) should indeed be deducted. The appropriate allowances for the most common benefits in kind are worked out as follows:

(a) Provision of accommodation

If the individual is provided with accommodation by the employer then the taxable value stated by the employer on the L17 or obtained from tax form P2/P11D will be allowed as a deduction from the individual's income, up to the maximum of the figure provided (Remember to limit to £545 per month if figure exceeds this amount for individuals without dependants living in the same household).

(b) Provision of a car and/or petrol

A set allowance of £45 per month is given in respect of employment expenses.

(c) Childminding fees

If childminding fees would otherwise be allowed (see guidance on employment expenses) then allow the taxable value of the childminding fees as stated on the L17 as a deduction from disposable income.

(d) Provision of free health insurance

Do not make any deductions from disposable income in relation to this benefit as the expense of health insurance is not otherwise allowable under the regulations.

(e) Luncheon vouchers

Again make no deductions from disposable income in relation to these items.

### **Summary**

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9. To sum up, where benefit in kind is provided, assess as follows:
- (a) Take as income the taxable value of the benefit in kind declared in the L17/P2/P11D.
  - (b) Make an allowance against income of the notional figure for expenses which would normally be allowed under the regulations. Refer to points to (a) to (e) above for the main categories of case.
  - (c) In some cases, the employer may provide only a partial benefit in kind e.g. pay some of the employee's accommodation or child care costs. In such an instance, then the amounts actually paid by the individual are allowable against income (subject to the normal rules for those expenses) as well as the notional allowance made for the benefit in kind.



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## **4. Disposable Income Allowances and Disregarded payments**

### **4.1 Income Tax Allowances**

1. This section deals with the calculation of tax for the purposes of regulation 23 i.e. as a deduction against a person's income.
2. Wage slips will show details of income tax and National Insurance paid by the individual. Alternatively, the employer is asked to provide details of income tax and National Insurance paid by the individual on the gross income declared on form L17 statement of earnings. Allow the tax declared, or where necessary calculate the tax payable, on the basis of the relevant income figures used in the assessment of the individual's gross income.
3. For the self-employed, a notional income tax figure will be based on 1/12th of the individual's income tax liability for the preceding year (i.e. of their last income tax bill). If the individual does not have the information (e.g. because the individual has not submitted any returns, or because no such payments have been assessed by the HRMC e.g. new business), then no allowance will be made.

#### **What income is assessable for tax purposes?**

4. A list of taxable and non-taxable income is set out in Appendix 3.
5. Unless other information is provided, it is assumed that maintenance payments received by a person are non-taxable.
6. For business cases the person's share of the adjusted net profits (see cross-reference below) of the business, form part of the individual's taxable income and is added to the person's gross income for the purposes of calculating tax (as will be shown on the HM Revenue and Customs tax calculation sheet).
7. If the individual has two or more businesses then the adjusted profit from each business is included in their tax calculation. If a business is operating at a loss then this is offset by HMRC against other income in the calculation of tax (which differs to our approach for the financial determination).
8. Income tax for directors is assessed in the same way as for those in salaried employment however note that dividends and allocation of profit are not be added to the person's gross income for tax purposes.

#### **Cross-reference: see section 7**

9. Some types of income are only taxable in certain circumstances. The common types of income falling into this category are benefits in kind; income from boarders, tenants, or sub-tenants; and redundancy payments.

#### **Income which may be assessable to tax**

- (a) Benefits in Kind

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The taxable element of benefits in kind will be stated on tax form P2/P11D or by the employer on Form L17 along with tax paid on gross income.

(b) Boarders, tenants, or sub tenants

If this income is being declared to the HM Revenue and Customs the individual should confirm this as a business on applying for legal aid. Request a copy of latest tax calculation.

In all other cases assume that this income is not declared to the HM Revenue and Customs and should therefore be regarded as non-taxable income.

(c) Redundancy Payments

Redundancy payments are made to compensate for ending a person's employment. This may be part of a wider redundancy package, which can include payments made for reasons other than the redundancy. There are specific tax rules relating to different parts of a redundancy package, which are broadly summarised in the table below:

<b>Payment</b>	<b>Is it taxable?</b>	<b>payable?</b>
<b>Redundancy payment</b>	Only on the amount above £30,000	
<b>Unpaid wages</b>	Yes	
<b>Bonus payment</b>	Yes	
<b>Occupational pension</b>	Yes	

Source: HMRC 04/11

The position for Payments in Lieu of Notice (PILONs) is complicated by the fact that the term is used to cover a variety of legal situations and therefore the tax position depends on the precise circumstances. PILONs where an employer does not require the employee to work their contracted period of notice but the employee is still entitled to receive payment for that period are treated by HMRC as normal salary payments (whether or not it is paid as a lump sum) and are taxable. Obtain evidence of gross payment and net figure (after tax).

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An individual may receive a statutory redundancy payment, which is a lump sum payment that the employer is legally required to make in certain circumstances. These payments are not taxable. In addition, the employee may receive a non-statutory lump sum from the employer by way of compensation for the redundancy. This payment may or may not be paid as part of the person's contract of employment and might be referred to as a 'golden handshake'. Such payments are not always taxable. Generally, a person will only be taxed on the excess over £30,000 of the combined statutory/non-statutory payment; if the non-statutory payment is not part of the contract of employment the whole sum may not be taxable. If the individual has advised (for the purposes of a new application or further determination of means) that they are about to receive a redundancy payment, request documentary evidence to confirm the type of payment and tax position (i.e. whether tax is payable and if so, the amount).

## **4.2 National Insurance (NI) Contributions**

### **General**

1. This section deals with the calculation of NI contributions as a deduction against income for the purposes Regulation 23.
2. NI contributions are not paid by:
  - (a) People aged under 16
  - (b) Employees over state pension age (currently 66 years, but expected to increase to 67 years between 2026 and 2028)and therefore no calculation is necessary for these groups.
3. The four classes of National Insurance contributions are:
  - (a) Class 1 contributions  
These are paid by employees and company directors. The categories of Class 1 contribution are set out in Appendix 5.
  - (b) Class 2 contributions  
These are for self employed persons and are paid at a fixed weekly rate [see Appendix 6].
  - (c) Class 3 contributions  
These are voluntary contributions paid by either non-employed people in order to qualify for long-term benefits, or anyone trying to make up their contribution record.
  - (d) Class 4 contributions

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These are for self employed persons and are paid in addition to Class 2 contributions. Class 4 contributions are calculated as a percentage of the person's earnings. See Appendix 6 for the relevant rates of contribution.

### **Class 1 contributions**

4. The wage slips or Form L17 gives the amount of National Insurance contributions paid on the relevant wages and salaries. Allow the National Insurance declared on the basis of the relevant income figures used in the assessment of the individual's gross income. For the self employed, a deduction of the fixed monthly Class 2 contribution will be made. In addition, if the individual can show a current assessment of Class 4 contributions payable then those will be allowed in the financial determination provided there is parity in the level of income being included from that business.
5. If the person has more than one job, then NI will be calculated separately for each job.
6. Earnings for NI purposes differ from those for tax purposes. Appendix 7 lists common types of payments and whether they are included as income for NI purposes.
7. Directors are classed as employees and therefore are liable for Class 1 contributions on their earnings. Note however that income from dividends, share of profit and benefit in kind do not count as earnings for NI purposes. Lump sum bonuses do attract Class 1 contributions.

### **Individuals who are both employed and self employed**

8. Such a person can be liable for payment of Class 1, 2 and 4 contributions. Allow amounts stated on wage slips / L17/tax calculation sheet (but do not double-count the contribution).

### **4.3 Disregarded Payments**

1. The following payments set out in regulation 24 must be disregarded when determining gross and disposable income:
  - (a) The following payments under the Social Security Contributions and Benefits Act 1992 (or the Social Security Contributions and Benefits (Northern Ireland) Act 1992) namely:
    - i) Disability living allowance;
    - ii) Attendance Allowance;
    - iii) Constant Attendance Allowance paid as an increase to a disablement pension;
    - iv) Carers Allowance; and

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- v) Any payment made out of the social fund<sup>6</sup>.
- (b) So much of any back to work bonus under Section 26 of the Jobseekers Act 1995 as is by virtue of that section to be treated as payable by way of jobseeker's allowance;
- (c) Community Care and Special Educational Needs direct payments i.e. any direct payments made under section 49(3) of the Children and Families Act 2014 (personal budgets and direct payments), sections 31 to 32 of the Care Act 2014 (direct payments), section 57(1) of the Health and Social Care Act 2001 (direct payments), section 17A of the Children Act 1989 (direct payments) or section 8(1) of the Carers and Direct Payments Act (Northern Ireland) 2002;
- (d) Severe Disablement Allowance paid under the Social Security Contributions and Benefits Act 1992 (or the Social Security Contributions and Benefits (Northern Ireland) Act 1992);
- (e) Exceptionally Severe Disablement Allowance paid under the Personal Injuries (Civilians) (Amendment) Scheme 1983;
- (f) Any pensions paid under the Naval, Military, Air Forces etc. (Disablement & Death) Service Pensions Order 2006(c).
- (g) Any financial support paid under any agreement for the care of a foster child (to the extent that it exceeds the relevant dependants allowance made under regulation 25(2)(b));
- (h) Any payment made out of the Independent Living Fund (2006) or out of the Welsh Independent Living Grant;
- (i) Any personal independence payment under Part 4 of the Welfare Reform Act 2012 or Part 5 of the 2015 (Northern Ireland) Order and Armed Forces Independence Payment;
- (j) Payments on Account of Benefits and Budget Advances made under Part 2 or 3 of the Social Security (Payment on Account of Benefit) Regulations 2013 or Part 2 or 3 of the Social Security (Payments on Account of Benefit) Regulations (Northern Ireland) 2016;
- (k) Transfer Advances of Universal Credit paid under regulation 17 of the Universal Credit (Transitional Provisions) Regulations 2014 or regulation 17 of the Universal Credit (Transitional Provisions) Regulations (Northern Ireland) 2016;

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<sup>6</sup> Since April 2013, certain elements of the social fund were abolished including community care grants and crisis loans. The remaining elements of the social fund e.g. budgeting loans, cold weather payments, winter fuel payments etc. continue to be disregarded. See also section 6.4 for further details.

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- (l) Any payment made under the Windrush Compensation Scheme; and any Windrush connected payment<sup>7</sup>;
  - (m) Any payment made under the Vaccine Damage Payments Act 1979;
  - (n) Any payment from the trust established out of funds provided by the Secretary of State in respect of persons who suffered, or who are suffering, from variant Creutzfeldt-Jakob disease for the benefit of persons eligible for payments in accordance with its provisions;
  - (o) Any payment made from a Relevant Infected Blood Support Scheme or earlier support schemes;<sup>8</sup>
  - (p) Any payment made to an individual under section 13 or 15 of the Energy Prices Act 2022<sup>9</sup> and any payment under the Social Security (Additional Payments) Act 2022<sup>10</sup>;
2. Where an individual applies on or after exit day (11pm 31 December 2020) for Legal Representation for cross-border dispute proceedings and they are in receipt of a payment by an EU Member State that is equivalent to a payment listed in paragraph 4.3 (1) (a)-(o) above, that payment will not be disregarded from the calculation of disposal income or gross income. This change does not apply where one of the conditions in regulation 8 of the 2019 Regulations is satisfied:
- I. The application was submitted to the Director in accordance with article 13(1)(b) and article 16 of the Cross-Border Legal Aid Directive and it was received by the Director before exit day, or
  - II. The application was transmitted to the Director by a transmitting authority and received by the Director before 5.00pm on the fifteenth date after exit day, or

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<sup>7</sup> “Windrush connected payment” means a payment where: i) the individual has made a claim under the Windrush Compensation Scheme and ii) a request included in that claim has been referred by the Home Office to another person and iii) that other person makes a payment to the individual as a result of the referral.

<sup>8</sup> Relevant scheme means: England Infected Blood Support Scheme; Wales Infected Blood Support Scheme; Northern Ireland Infected Blood Support Scheme; or Scottish Infected Blood Support Scheme. Payments by or under the earlier support schemes are also to be disregarded, namely the Macfarlane Trust, the Macfarlane (Special Payments) Trust, the Macfarlane (Special Payments) (No.2) Trust, the Eileen Trust, MFET Limited, the Skipton Fund or the Caxton Foundation.

<sup>9</sup> These provisions set out that power to provide support for meeting energy costs which includes financial assistance. This financial assistance will be disregarded.

<sup>10</sup> This provision sets out the means tested additional payments of £326 and £324, the disability additional payment of £150. These payments will be disregarded.

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- III. Where 1 or 2 above do not apply and it is an application for Controlled Work and the application is signed and dated before exit day, or
  - IV. Where 1 or 2 above do not apply and it is an application for Licensed Work (except emergency representation) and the application is signed and dated before exit day and is received by the Director by 5pm on the seventh day after exit day or, the application is submitted through the Client and Costs Management System before exit day, or
  - V. Where I or II above do not apply and it is an application for emergency representation and the provider determines the individual is eligible before exit day and the determination is notified to the Director within 5 working days of the determination, or the application is emailed or faxed to, and received by the Director before exit day or, the application is submitted through the Client and Cost Management system before exit day.
3. The Director may exercise discretion provided by Regulation 24(3) to disregard a payment which meets all of the following conditions:
    - (a) The payment was made to an individual who is a victim of the fire at Grenfell Tower;
    - (b) The payment was made to that individual because the individual was a victim of the fire at Grenfell Tower
    - (c) The payment was not made directly to the individual by an individual known personally to the individual.
  4. The Director may exercise discretion provided by regulation 24(3A) to disregard payments out of the following schemes:
    - (a) the Criminal Injuries Compensation Schemes in Great Britain and Northern Ireland.<sup>11</sup>
    - (b) the National Emergencies Trust.
    - (c) the We Love Manchester Fund.
    - (d) the London Emergencies Trust Fund.

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<sup>11</sup> For Great Britain: Schemes established under the Criminal Injuries Compensation Act 1995 or any arrangements for compensation by the Secretary of State for criminal injuries in operation before the commencement of those schemes. For Northern Ireland: the scheme established under the Criminal Injuries Compensation (Northern Ireland) Order 2002, or any earlier Northern Ireland criminal injuries compensation schemes in operation before the commencement of that scheme.

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5. **Criminal Injuries Compensation payments:** decisions concerning the exercise of discretion will be made on a case by case basis. Discretion will usually be exercised to disregard a payment made to compensate a victim of violent crime under a relevant scheme in the following circumstances:

- The compensation payment has been paid to the individual within the last 12 months leading up to the date of the legal aid application;
- The compensation payment has been paid to the individual in respect of sexual or physical abuse under part B of the criminal compensation scheme tariff;
- The compensation payment has been paid to the individual to cover special expenses – i.e. certain costs that the CICA determine that the victim has incurred as a direct result of an incident where the victim's injuries mean they have been unable to work or have been incapacitated to a similar extent for more than 28 weeks;
- The compensation payment has been paid to an individual who is a child (under 18 years), where the child will not have access to the payment until the age of 18 years;
- The compensation payment has been paid to the individual within the 12 months immediately following the legal aid application, and has been disclosed to the Agency in line with the individual's duty to immediately report changes;
- The compensation payment has been paid to the individual as a lifetime award in respect of a mental or physical injury following a crime of violence under Part A of the criminal compensation scheme tariff; or
- The compensation payment has been paid to the individual under Part B of the criminal compensation scheme tariff and is one of the following: a bereavement payment, a payment for loss of parental services and financial dependency; a funeral payment.

This list is not exhaustive. Where the conditions listed above do not apply e.g. the compensation payment has been received more than 12 months before the legal aid application submission date and is not paid as a lifetime award, discretion may still be exercised after considering the individual's full circumstances, having regard in particular to the time period specified within the injury tariff. Individuals should provide evidence from the awarding body specifying the details of their award (i.e. amounts, tariffs etc.).

#### **4.4 Employment Expenses and Childcare expenses**

1. There are allowances under Regulation 27 as follows:

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- (a) Where the individual or partner receives a wage or salary from employment (i.e. this does not include the self-employed – sole traders or those involved in a business partnership – but does include company directors), a deduction of £45 for work related expenses should be made in respect of each person so assessed. This is a set figure, and it is therefore unnecessary to obtain details of actual expenses. Note this £45 deduction is not available to the self-employed. However, see **childcare** guidance below for employees, the self-employed and students.
  - (b) Where the individual or their partner receives a wage or salary from employment, or an income from self-employment or *study-related income* (i.e. student loan, student grant or other income received from a person who is not their partner or relative for the purpose of supporting the individual's course of study), a deduction can be made in respect of actual monthly expenditure on childcare incurred as a result of that person's absence from home by reason of his employment, self-employment or course of study. If it appears to the Director that the individual does not make a regular payment each month, e.g. child care expenses are only incurred during the school holidays, a deduction will not usually be made.
2. Unless there are exceptional circumstances e.g. disability of the child, it would only be reasonable to make a deduction for childcare in respect of a child dependant aged 15 or under. It would also be unreasonable to make such an allowance where one parent / guardian in the household is available to look after that child.
  3. Where the individual declares expenditure on child care, documentary evidence (e.g. copy of bank statement, copy of agreement/contract with childminder) is required to support the figures stated.
  4. Pension contributions (of any description) paid by the individual or partner (including employees and the self-employed), union fees, professional subscriptions, and any other expenses that the employer may deduct from income at source are not allowable deductions in the financial determination of disposable income.

#### **4.5 Housing Costs - The individual's only or main dwelling**

1. The allowance for the individual's housing costs is set out in Regulation 28. The allowance under that regulation is restricted to the individual's only or main dwelling; if the individual is a householder who resides in more than one dwelling, the caseworker must determine which is the main dwelling [see regulation 28(2)(b)] for the purpose of the financial determination. The costs of a second dwelling are not allowable. (However where the individual makes monthly mortgage repayments on an ex-partner's home, allow these payments under the category of 'maintenance' payments).

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2. Subject to paragraph 4 below, where the individual is a householder (i.e. the person who, in relation to domestic premises, owns the dwelling or rents accommodation at that address) a deduction must be made in respect of net rent payable for the period of calculation (i.e. any monthly rent or monthly mortgage/secured loan instalment). The amount allowed should be net of housing benefit and adjusted where part of the premises are sub-let or part of the rent of mortgage can reasonably be attributed to someone else (see paragraphs 11 - 14 **Adjustments to Housing Costs** below).
  3. The net rent payable must be deducted where the individual applies for civil legal service in respect of possession proceedings where the individual is resisting a court order for possession of their main home [Regulation 28(5)].
  4. However for other proceedings where the amount of net rent paid by the individual is less than the amount payable, regulation 28(4) provides discretion to allow the lesser sum where this is reasonable in all the circumstances having regard to:
    - (a) The likelihood that the individual will recommence payment of the full contractual rent or mortgage amount in the future i.e. whilst in receipt of the legal aid certificate. If the individual has consistently (i.e. for a period of three months or more) paid a lesser sum (including £nil payment cases) during the period leading up to the application for civil legal services, it must be assumed unless there is compelling evidence to the contrary that the individual will continue to pay that lesser sum in the future and the housing allowance shall be restricted to the amount paid. Where the individual has applied for funding to resist an eviction brought about by rent arrears, it will normally be reasonable to allow the full amount payable, reflecting the fact that the provider will advise the individual to recommence payment of rent as it becomes due.
    - (b) The individual's relationship with the landlord. This refers to circumstances where there is or appears to be close kinship, familial, friendship or other ties between the individual and the landlord that has in the period leading up to the application for civil legal services allowed for informal arrangements to be reached to set aside or reduce rental payments. In these circumstances, the caseworker must restrict the deduction to the amount of net rent actually paid, unless there is compelling evidence that such an arrangement will not be made available in the future;
    - (c) Any agreement with landlord or lender/mortgagee for payment deferral. Where the individual has agreed a mortgage holiday with the mortgage provider for a specified period of time, the caseworker must make an allowance for the new reduced amount. Where it is evidenced that the mortgage holiday period is scheduled to end during the month following the application for civil legal services, an allowance will be made for the full amount payable unless it appears that the individual is unlikely to make this payment in the future.

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5. For individuals without a partner or dependants living in their household i.e. where no partner or dependants' allowances have been deducted under regulation 25, the maximum monthly allowance for housing costs will be £545 (regulation 28(7) refers). No excess over this amount can be allowed. Where any partner or dependants' allowances have been deducted then rent or mortgage repayment can be allowed in full.
  6. Where an individual declares expenditure on housing costs, documentary evidence (e.g. copy of bank statement, mortgage statement, tenancy agreement or rent book) is required to support the figures stated.
  7. Where the individual declares that they have a mortgage in excess of £100,000 then consideration should be given to whether the individual is understating their gross income, as having obtained a mortgage of this size may indicate that they have income in excess of the gross income limit. Where the caseworker is satisfied that the gross income is as stated and that the individual is actually meeting the monthly mortgage commitments from that income then, subject to the restriction set out in paragraph 5 above, there is no limit to the amount that can be allowed in the financial determination.
  8. Mortgage repayments include the monthly premiums on a mortgage-linked life assurance or endowment policy, mortgage protection policy, PEP or other instruments which will be used to repay the capital sum borrowed.

**Example:**

*The mortgage outstanding is £169,750. Repayments on mortgage and connected policy is declared at £1,081.12 per month. The individual has no dependants.*

*Monthly mortgage repayments are restricted to £545 per month.*

*If the individual has dependants i.e. a dependants allowance is given within the financial determination, payments can be allowed in full.*

*If the individual has a second mortgage or loan secured on the main dwelling, then these repayments can also be included, subject to the above restriction.*

9. Council Tax, water rates, insurance premiums (including Mortgage Payment Protection Insurance "MPPI") and other associated housing costs (e.g. service charges and ground rent) are not allowable deductions in the financial determination.
10. If there is a clearly identifiable amount relating to water rates or service charges included in the rent amount advised by the individual then these should not be included as rent. However it is not necessary to routinely seek clarification as to whether or not the rent declared by the client includes a sum for water rates/service charges.

**Adjustments to housing costs**

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11. If the individual is sharing the property with other people (excluding their partner and dependants) then only allow those housing costs actually being paid by the individual.
  12. Where the individual is a co-owner or joint tenant of a property with a person or persons whose means are not aggregated it would be reasonable to assume that the individual is only responsible for a proportion of the costs (e.g. 50% if sharing with one other person) in the absence of information to the contrary.
  13. Where the individual has sub tenants, lodgers or other non-dependants at the property, include money being paid by them to the individual as income. It would be reasonable to assume expenditure is apportioned equally amongst the adult occupants.

**Cross-reference: see paragraph 3.8.**

14. If the individual has a contrary interest to their partner in the dispute for which legal aid is sought, but they are not living separate and apart, their resources should not be aggregated. Only allow the housing expenses which the individual declares that they are paying themselves. If in doubt, assume apportionment as follows:
  - (a) If both the individual and their partner work, then apportion half the housing costs to the individual.
  - (b) If only one person works, then assume that the housing costs are met in full by the person who is working.

#### **Non-householders - Board and lodgings**

15. If an individual who is not a householder indicates they are paying board and lodgings, then a reasonable amount in respect of accommodation (only) can be allowed. Where no dependants' allowances have been deducted within the financial determination, the maximum monthly allowance in this respect will be £545. Where the arrangement is informal (usually this will be where the individual is lodging with a close family member or friend) and the amount in respect of food, utilities and other incidentals is not specified in the evidence provided or zero (or negligible) payment is declared but this is doubt, then it should be assumed that half of the declared board and lodging element is for accommodation, unless compelling evidence is produced to the contrary. Otherwise if the amount declared for food, utilities and other incidentals causes doubt, further investigation may be undertaken and / or the assumption of 50 per cent accommodation costs invoked.

#### **4.6 Housing Costs for People Detained in Prison/Hospital etc.**

1. Where an application is received from an individual who is detained in prison, a long stay hospital or care home etc., then the prison / hospital / care home will usually be treated as the individual's main dwelling property for the purposes of the financial determination.

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2. This will often mean that for individuals in prison / long stay hospital no deduction for housing costs will need to be made. However an allowance can be made for any accommodation fees payable by the individual, where applicable (e.g. for a care home), up to maximum of £545 per month for individuals with no dependants. The allowance for accommodation does not include any additional fees that relate to nursing care, food etc. (remember that the lower income limit covers basic expenses).
  3. However where the individual is a householder, the caseworker can *exceptionally* treat his/her property as the main dwelling whilst they continue to be in prison / a long stay hospital/ a care home etc. if: 1) the individual is aggregated with a partner in the financial determination who resides in the property as their main home; 2) owing to the circumstances of the case it would be reasonable to do so (see paragraph 5 below).
  4. If the individual is aggregated with a partner, remember that only one property can be treated as the main dwelling, therefore do **not** add the accommodation costs of the care home with those of the property where the partner resides (i.e. you cannot allow both, you must choose which is the main dwelling and allow the appropriate housing costs). Remember to also deduct the dependants allowance for a partner.
  5. Where the individual has applied for civil legal services to resist possession proceedings on their property or eviction from their property on the basis that it is their main dwelling, or the proceedings are about returning the individual to their property it will be appropriate where the merits criteria have been met, to treat that property as the main dwelling for the purpose of the financial determination.

#### **4.7 Dependants' Allowances**

1. Regulation 25 provides for fixed allowances to be made for the individual's partner and dependants. These rates are set by reference to the income support regulations and are published annually. Current rates are set out in Appendix 1.

##### **Allowance for partner**

2. Unless the individual and their partner are permanently separated or there is a contrary interest in respect of the case, their resources are aggregated in the financial determination. Allow the scale rate for a partner in force at the beginning of the calculation period. In cases where the individual and their partner have a contrary interest in respect of proceedings brought by/against a third party (e.g. a mortgage company) but they are still a couple, the partner allowance should be given within the financial determination.

##### **Allowance for children**

3. To qualify for an allowance the child must be:

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- (a) Dependent upon the individual or their partner (if aggregated) and living in the individual's household (though they need not be living there full-time e.g. a child at boarding school). The child will normally be the individual's and/or partner's, but an allowance can be given for other children (e.g. the individual's grandchildren) if the criteria are met; and
  - (b) at the start of the calculation period, either under school leaving age or in full-time education or undergoing training for a trade profession or vocation.

**Note:**

*No dependants allowance is given for a foster child, if the fostering allowance for that child has been wholly disregarded from gross income.*

- 4. The scale rate is allowable for each child dependant and is determined by the child's age at the beginning of the calculation period. The scale rates for children aged 15 or under and each such dependant aged 16 or over are the same, having been equalized since 7 April 2003.
- 5. An allowance may still be made even after the child's nineteenth birthday if they are still continuing in full time education or undergoing training for a trade profession or vocation.

**Note:**

*The individual's adult children may remain dependant on their parent for other reasons, e.g. disability, in which case a dependant relatives allowance can be made - see below.*

- 6. Adjustments to the allowance:
  - (a) Allowance for parents whose means are not aggregated: the Director will have regard to the judgment in the case of R(WA) v Director of Legal Aid Casework and Lord Chancellor [2023] when considering how to apply dependants' allowance.
  - (b) Regulation 25(3) provides that the amount of the dependant's allowance is reduced by the income and other resources of the dependent child. It would be normal to assume (unless information is given to the contrary) that a child under sixteen would not have any income but children over that age who are in full-time education or training may for example be receiving a grant or if in an apprenticeship will be receiving a wage. This income should be declared by the individual within their application and the amount of the dependant's allowance reduced accordingly.

**Note:**

*Any excess of the child's income over the allowance should not be treated as the individual's income.*

**Example:**

Individual has the following child dependants:

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A child aged 10 years at school.

A child aged 19 years who is in full time education and receives a student loan of £4370.

A child aged 16 years who will leave school at the end of the next school term (approximately two months).

The calculation period is the month leading up to the date of the application for civil legal services.

The child dependant allowance will be payable in respect of the child who is 10. The child who is 19 at the start of the calculation period is in full-time further education at the start of the calculation period however the student loan (monthly income equivalent £364) is higher than the dependants allowance amount, so no deduction will be made for this child.

The child dependants allowance will also be deducted for the child who is 16 at the start of the calculation period. A diary date may be set for a review to be carried out following the expected change in three months' time.

#### **Allowance for a dependent relative**

7. An allowance of the appropriate scale rate (see Appendix 1) is given for a dependant relative if:
  - (a) the relative lives in the individual's household; and
  - (b) the individual fully supports the relative.
8. Details of such relatives should be provided within the application. Reduce any allowance by the amount of any independent income or benefit the relative may receive. Do not include any excess of income over the allowance as the individual's income. Do not make an allowance if the relative's capital is over £8,000.

#### **4.8 Allowances for Maintenance in Payment**

1. An allowance may be made under Regulation 26 for maintenance payments regularly made by the individual to the following:
  - (a) a spouse or former spouse
  - (b) a child
  - (c) a dependant relative.
2. The allowance is only made if the recipient does not live in the individual's household. If the recipient lives with the individual, then only the standard dependant's allowance is available.

**Cross-reference: see paragraph 4.7 above.**

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3. Payment of maintenance can be voluntary, by agreement, or through a court order or the Child Support Agency.
  4. Obviously only such payments as are genuinely being made are allowable. The Regulation also provides that to qualify, the payments must have been made "throughout such period as the Director considers to be adequate."
  5. This means that, if appropriate, the caseworker can make enquiries as to how long the maintenance has been in payment and how the obligation arose. The caseworker may seek verification of the payments by, for example, checking with the recipient of the maintenance or asking the individual for documentary evidence (e.g. cashed cheques, court receipts, bank statements, copies of court orders etc.) showing the payments and the period over which they had been made.
  6. Such enquiries would only be made if there was something unusual to suggest that the payments or level of payments declared by the individual were not genuine or that it would not be reasonable to make an allowance in any event.
  7. Further enquiries should be made if:
    - (a) the payments seem unusually large compared to the individual's income or the payments are irregular.
    - (b) the individual claims to be supporting a relative who is not a spouse, former spouse or child of theirs or their partner. Care should be made before making such an allowance, as the relative will usually be eligible for state benefits in any event and the individual will usually be under no legal obligation to support the relative. In addition, the requirement that the payments should have been regularly made in the past in order to qualify is particularly relevant here. As a rule of thumb, the payments should have been made regularly for at least twelve months before the legal aid application before an allowance should be considered.
  8. The caseworker can, if appropriate in any case, consider allowing only part of the maintenance claimed as a deduction from income.

**Separate and apart under the same roof**

9. If the individual and partner are living separate and apart under the same roof, they are no longer part of the same household. The application should provide enough information to carry out a financial determination. The individual should declare any payments they are actually making. Any housekeeping received by the individual should be treated as maintenance income. Likewise any housekeeping paid out by the individual to meet the partner's needs, can be deducted as maintenance.
10. If however clarification is required, obtain confirmation of the figures in writing.

**Cross-reference: see paragraph 4.5 on Housing Costs.**

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#### **4.9 Contribution payment towards Criminal Legal Aid (income)**

1. Any assessed monthly contribution from income that is payable under a criminal legal aid income contribution order (ICO) under the Criminal Legal Aid (Contribution Orders) Regulations 2013, can be deducted from gross income under Regulation 29. If the Director has decided that the individual must pay a contribution from income towards the costs of their representation in the Crown Court, this will usually be a monthly payment for a period of six months and if monthly contributions are paid promptly the last payment will be dropped so that only five months' instalments are required. However, further payments can be imposed under the Criminal Legal Aid (Contribution Orders) Regulations 2013 if upon reassessment of income it is found that the ICO should have been for a greater amount or the individual should have had an ICO but one was not imposed. These payments can be imposed following a reassessment of income, which can take place up until the point when the final defence cost is known and a decision on whether to issue a capital contribution order has been made.
2. Where a deduction has been made for contributions payable under an ICO in making a financial determination, a further determination may be required when such payments have ceased where the review limits set out in Regulation 20(1)(b) are likely to be exceeded. The Director will diarise the case for review accordingly.
3. If it appears that the individual has made the final monthly payment under an ICO in the month leading up to the date of the application for civil legal services, so that no further contribution is due under the Order, the Director will make no allowance for the income contribution within the financial determination. Using the power under Regulation 14(3) to vary the calculation period, the financial determination will be based on the individual's changed circumstances for the month following the date of the application.
4. Following enforcement action: if an attachment of earnings order is in place to deduct contribution payments at source, i.e. from the individual's wages, an allowance can be made for this payment.



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## 5. Disposable Capital - What Capital Includes

### 5.1 General

1. Regulation 30 provides that, unless exempted by the regulations, every capital resource belonging to the individual on the date of application is made must be included. This includes capital derived from a bank loan or borrowing facilities.
2. The value of each resource is taken as at the date the financial determination is made. For practical purposes this will be the value at the date of application.
3. However, where there is a substantial difference between the capital held at the date of the application and the capital held at the date of the financial determination, the caseworker should compute the capital resources of the individual taking into account the changed circumstances. Adjustments may therefore be made if, between the date of the application and the date of the financial determination:
  - (a) There has been a substantial fluctuation in the value of a resource. For example, shares held by the individual at the date of application have substantially increased or decreased in value by the date of assessment due to a fluctuation in the market; or
  - (b) There has been a substantial variation in the nature of the resource. For example, the individual has sold his shares and now has the cash in a bank account. The amount in cash will be taken as the value of the resource; or
  - (c) A resource has ceased to exist; or
  - (d) A new resource has been acquired.
4. Routine variations in the amount held in a current account, between the date of the application and the date of the determination, because of normal monthly expenditure and/or wage payments must not be taken into account.

**Cross-reference: see paragraphs 5.2.3 and 5.2.4 below.**

### 5.2 Liquid Capital

#### General

1. This term describes cash savings which may be in bank current accounts, bank deposit accounts, building society accounts, National Savings (Post Office) accounts (but not National Savings certificates), etc.
2. In the case of bank current accounts or building society accounts used as current accounts, because these are used to receive regular income and pay out regular living expenses it may be unreasonable to assess the amount of money in the account as at the date of application as capital, particularly if this is the highest balance of the account in a particular period.

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3. If therefore the individual is in receipt of regular income, the residual capital held in the account will be calculated in such a way as appears to the Director to be equitable and practicable. This will usually be achieved by using the balance in the account immediately before the last regular credit of income (e.g. just before the monthly salary or main state benefit is credited), prior to the date of application. Where it appears that this would still lead to an inflated figure, the calculation may be carried out by using the lowest balance shown on the current account statement for the month leading up to the date of the application.
  4. However, take into account also (i.e. add back to the balance) any credits to the account after this balance which are not related to payment of regular income.

**Note:**

*If there has been a substantial capital withdrawal from the account consider raising further enquiries and/or including the withdrawn capital in the financial determination pursuant to Regulation 17 (deprivation rule).*

**Cross-reference: see Section 1.4.**

**Note:**

*Do not offset an overdrawn account against an account in credit when assessing the capital value of the latter. The rationale for this is that the individual has the cash in the account in credit available to him.*

**Cross-reference: see sections 6.2 and 6.8 on debts.**

**Deposit accounts**

5. Include as capital the current balance in the account (including any interest which has remained in the account).

**National Savings accounts**

6. National Savings can comprise three kinds of investment which are included as capital under Regulation.

(a) Income Bonds

The value of an income bond remains constant; therefore include the amount of bonds held as capital. However such bonds accrue interest which is paid to the investor as a monthly income and check that this has been declared as a source of income.

(b) Investment Account

Include the amount held in the account at the date of application including accrued interest retained in the account.

(c) Ordinary Account

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Treat as per investment account.

**ISA (individual savings account) / TESSA accounts (tax exempt special savings accounts)**

7. Include as capital the current amount held on the ISA/TESSA account either from the passbook or from the last statement held.

**Joint accounts**

8. Regulation 35 provides that the interest of an individual in assets owned jointly or in common with any other person may be treated as: (a) owned in equal shares or (b) in such other proportions as appear to the Director to be equitable. Caseworkers must assume that the asset is owned in equal shares, unless documentary evidence is provided by the individual to show that the asset is in fact owned in unequal shares (e.g. trust document showing 70:30 divisions etc.).
9. In the case of an account held jointly with another person, normally the individual and the other person will have full access to this account. If a joint account holder dies the total balance of the account will normally automatically become the property of the surviving account holder without the need for probate. If the individual and the joint-account holder's means are aggregated then no problem arises since all the money in the account is included as capital.
10. If the individual and the joint account holder's means are not aggregated, then the whole of the monies in the account must still be treated as available to the individual unless evidence can be shown to the contrary.

**Note:**

*If the account is shared with a partner whose means are not being aggregated because they have a contrary interest in the proceedings, then the whole of the monies in the account will still be treated as available to the individual. However it may be that the individual will not have full access to an account. Where representations are received in such a case, the amount the individual actually has access to will be included as capital and, in the absence of any better information, it will be assumed that the individual has access to 50% of the monies in the account.*

**5.3 Non-Monetary Capital**

**General**

1. Regulation 31 applies to all assets which do not consist of money.
2. Regulation 31(a) provides that the value of such resources shall be taken to be the amount which the resource would realise if sold.
3. Alternatively, the Director has discretion under Regulation 31(b) to assess the value of the non-monetary capital asset in such a way as appears to the Director to be equitable.

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4. Regulations 33-37 provide further, specific rules around the calculation of particular types of capital assets, for example regulation 37 provides for the assessment of interests in land (i.e. property).

**Regulation 31(b) – The Director’s discretion to value assets other than at sale value.**

5. The judgment in the case of *R (GR) v DLAC [2020] EWHC 3140 (Admin)* confirmed that the Director’s discretion under regulation 31(b) is a discretion open to the Director in all cases where resources of a capital nature are being valued, save in respect of the valuation of money. This includes the valuation of those non-monetary assets specifically mentioned in regulations 33-37.
6. Whether the discretion is to be exercised should be determined on a case by case basis. Applying *R(GR) v DLAC*, it should be exercised in those cases where the Director considers that valuing the asset under Regulation 31(a) or the bespoke rules in Regulations 33-37 would cause a breach of the individual’s Convention rights and/or right of access to justice.
7. The Lord Chancellor’s guidance confirms that the Director should consider any representations made by the applicant or their representative at the outset of the case as to why the Director should exercise discretion under regulation 31(b). This includes consideration of any evidence that the individual’s Convention rights and/or right of access to justice would be breached without representation.
8. Where it is advised that any of the following factors apply which may prevent access to assets held in the UK or oversea by an individual, supporting information or documents should be provided to the Agency (where possible) at the earliest opportunity to illustrate the circumstances i.e.: evidence of any legislative constraints imposed by the relevant country that would prevent the sale of the asset; evidence of an inability to arrange a sale or financing owing to the prevailing dangerous conditions (widespread political unrest / warzone) or major economic crises within that country; evidence of any danger specifically targeted on the individual which render it impossible for the individual to realise the asset through sale or financing; evidence as to any structural/safety reasons preventing the sale of the property, evidence that a co-owner has raised an objection to the sale of the property.
9. The Director in considering whether to exercise discretion may have regard to any conclusions reached by other government agencies concerning the asset(s) but is not bound to reach the same conclusions in deciding the appropriateness of exercising discretion.
10. Guidance on how to value the most common type of assets is given below:

**National Savings Certificates**

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11. There are two types of certificate: fixed interest and index-linked. The current value of the certificate held by the individual can be obtained from the National Savings and Investment by visiting the website at [www.nsandi.com](http://www.nsandi.com) and following the instructions given.
  12. Depending upon the year of purchase each certificate has an issue number and a cost for each certificate unit or certificate; this information will be required for valuation purposes.
  13. New issues of units not covered in valuation tables are valued at actual purchase cost.

#### **National Savings Capital Bonds**

14. The individual should have the value of such bonds as an updated investment certificate is issued annually to each investor. The current value of the investment for assessment is the amount on the last updated certificate or the purchase price of the bond if the investment has not run for 12 months.

#### **National Savings Premium Bonds**

15. These are valued at £1 per unit. They do not earn interest.

#### **Government Stocks**

16. Assess the value as quoted in the latest Financial Times (FT) or other up-to-date daily newspaper held or relevant internet site.
17. The value of 100 units of stock is quoted in the FT in pounds under the heading "price" [ignore the high/low figures in the first two columns]. Multiply this price by the number of units held.

#### **Shares in public limited companies**

18. These are normally sold through the stock exchange and their price shown in the press.
19. Assess the current value of the shares of the particular company as quoted in the FT newspaper. The price of one share is quoted under the heading "price" (ignore the high/low figure in the first two columns). Multiply this price by the number of shares held and divide the answer by 100 to convert this price from pence to pounds.

#### **Note:**

*Some companies do not sell their shares through the Stock Exchange and therefore the price may not be quoted in the FT. Ask the individual to supply details of the shares held and evidence of the current sale price e.g. via a letter from a broker.*

- (a) Share save schemes

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Employees may pay, usually by deduction from wages, periodic contributions to share save schemes. This allows them to be allocated shares in the company which employs them. Shares are not normally allocated to the employee until the specified time of the saving scheme is finished. These schemes are usually only operated in public limited companies.

If it is clear that the individual is currently paying into a share save scheme, ask the individual to provide details of the amount of capital held in the scheme on his behalf and include this amount as capital in the assessment.

If shares have already been allocated to the individual under a share save scheme, then calculate their value in accordance with the introductory paragraph above.

(b) Share option schemes

There are several different types of such schemes, which again will only usually operate in public limited companies. Generally under these schemes, employees will be granted options to buy shares in the company at a future date at a pre-determined price. That future date will vary, but will usually be not more than ten years from the grant of the options.

The expectation with such schemes is that the value of the shares will be substantially greater than the exercise price at the date the options are exercised, thus giving the employee a 'gain' at that time.

If the individual holds share options which have not been exercised, then ask the individual for:

- i) a copy of the scheme rules.
- ii) confirmation of the date on which the options were granted and of the exercise price.

This information will allow the caseworker to establish the date on which the share options can be exercised.

If the individual will be able to exercise the option within the calculation period, include as capital the difference between:

- i) the value of the shares on which the options are held, calculated in accordance with the introductory paragraph above; and
- ii) the price at which the individual can exercise the option.

If ii) is greater than or equal to i), then the share options have no value.

(c) Share Incentive Plan

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The purpose of a Share Incentive Plan (SIP) is to benefit employees of a company through shares which give them a continuing stake in that company. Under the plan, subject to certain statutory constraints and limits, a company may each year: (i) provide employees with 'free shares' (ii) give employees the chance to buy 'partnership shares' through deductions out of their pre-tax salary, and (iii) match each partnership share with up to two free 'matching shares'. In addition, a plan may provide that dividends on the shares can be reinvested in buying further 'dividend shares' for the employee. The scheme is administered by a trust set up by the company; the trustees then administer the aspects of the scheme outlined above i.e. purchasing shares, awarding free and matching etc. The employee is absolutely entitled to the SIP shares as against the trustees of the scheme from the date they are awarded or acquired on his behalf but has to agree to leave free, matching and dividend shares in the trust for a specified period.

Documentary evidence will be required to determine the value of the individual's shares that can be sold, as at the date of the financial determination.

### **Shares in private limited companies**

20. Private limited companies are not floated on the stock market. The shares are usually held by a small number of individuals.
21. Valuation of an individual's shareholding can be difficult, as shares in private limited companies are not typically marketed on a regular basis. Their prices are not quoted in the Financial Times. Indeed, the Articles of such companies generally contain restrictions, which enable directors to veto registration of any share transfer. They will often also contain pre-emption rights, which require that any shares being offered for sale must first be offered to existing shareholders. Such restrictions and pre-emption rights mean that there is generally no open market in shares of private companies, and they can be difficult to sell or to borrow against.
22. However, shares in such companies do have a capital value, and the formulae for calculation of this value are set out below. They all have built into them a reduction to take into account the restrictions on the market. A statement, therefore, from the individual or company accountant to the effect that "the directors will not agree to a sale", or "no-one is willing to buy the shares" will not prevent the caseworker from calculating their capital value in accordance with this guidance. The valuation for assessment purposes is based on the notional sale value of the shares in the restricted market (i.e. the amount they would realise if sold (see Regulation 31) and does not depend, therefore, on an actual sale taking place.

### **Individuals with a majority interest.**

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23. "Majority interest" means the individual owns (either alone or with a partner whose means are aggregated) 51% or more of the shares. If an individual has a majority interest in the company, then refer the case for a business assessment of the capital value of the company as a whole - do not assess the value of the shares under this paragraph.

**All other individuals**

24. In order to value any shares held in a private limited company it is necessary to obtain the following information from the company secretary or company accountant:
- (a) A copy of the latest company accounts.
  - (b) The total number and par value of the shares issued by the company.
  - (c) The number of shareholders and the number of shares allocated to each one.
  - (d) The amount of gross dividend per share received by the individual in the last accounting period and the amount expected to be paid in the coming year.

**Note:**

*It may be difficult for the company to estimate this latter information accurately - however this information will enable the caseworker to establish whether these shares normally pay dividends and thus to choose the basis of valuation of the shares below. If the shares have paid a reasonable dividend in the past, the normal expectation would be that this will continue and onus would be on the individual to show why it would not.*

- (e) An estimate of the price at which the shares could be expected to change hands after allowing for any restrictions on sale, or arrangements for fixing a price in the company's articles of association.
  - (f) Details of recent transactions, if any, in the company shares, stating the number of shares sold, the price per share and the names of the parties to the transaction.
25. In the rare case where the individual is genuinely unable to obtain the co-operation of the company in obtaining the above information (as a shareholder they will be entitled to the information), they should be advised to carry out a company search at Companies House. Since all companies are required by law to submit annual returns to the Registrar of Companies, including accounts and current details of shareholders and directors, the information to complete the calculation should be available from such a search. Exceptionally, the caseworker can carry out this search on the individual's behalf if it is felt appropriate in the particular circumstances.

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26. If information is supplied of recent transactions under 17(f) above and if it seems that the price paid per share in the previous transaction was reasonable, then use this figure as the capital value per share of the individual's shareholding. (If in doubt, cross-check the figure by performing the relevant calculations in the paragraph below.)
27. Otherwise, when the information requested above is provided, perform the following separate calculations:
28. Methods of calculation.

(a) Calculate the earnings per share of the company.

- i) Take the profits after corporation tax and any preference dividends as shown in the last accounts.
- ii) If a dividend has been paid or is expected to be paid, multiply these earnings by 4 where the individual's shareholding is between 25% and 50% of the total ordinary shares, and by 3 where the shareholding is less than 25%.

If the caseworker is satisfied that no dividend or only a negligible dividend, is expected to be paid on the shares, Multiply these earnings by 3 for holdings between 25% and 50% and 2 where the shareholding is less than 25%.

- iii) Divide the resulting figure by the total number of ordinary shares in issue.
- iv) Then multiply this figure by the number of shares held by the individual to arrive at the total value of the shareholding.

(b) Calculate the assets value per share:

- i) Take the total figure for shareholders' funds as shown in the balance sheet (i.e. fixed and current assets less current liabilities - if the figure is not specifically shown) and divide the result by the total number of ordinary shares in issue.
- ii) Divide the resulting figure by 2 where the individual's shareholding is between 25% and 50% and by 4 where the shareholding is less than 25%.
- iii) Multiply by the number of shares held by the individual and/or their partner to arrive at the total value of the shareholding.

(c) Calculate the dividend per share value:

- i) Gross up the last annual dividend per share by 20 % (in order to add back income tax deducted) and multiply the resultant figure by 6 where the individual's shareholding is between 25% and 50% and by 5 where the shareholding is less than 25%.

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- ii) Multiply this figure by the number of shares held by the individual to arrive at the total value of the shareholding.
29. Compare the figures calculated on the various bases in paragraphs (a) to (c) above, depending upon size of holding and whether dividend is paid or not with the company secretary's or accountant's valuation and include as capital whichever is the greater.
30. If the individual challenges the assessment and the dispute cannot be resolved, ensure that a copy of the company's most recent accounts and of the articles of association are obtained and refer the matter to the Means Assessment Policy Adviser in the Central Legal Team.

### **Shares in Community Interest Companies**

31. Shares in a Community Interest Company (CIC) will usually be valued at their nominal value (i.e. the face or par value of the shares) given the low risk nature of this enterprise. Exceptionally, if turnover is £250k or over and dividends are being paid by the CIC the caseworker may request confirmation, from the company accountant or person completing the CIV MEANS 1C, of the market value of the shares.

### **Unit Trusts**

32. The value of unit trusts are shown in the press. To value unit trusts, use the bid price for each unit quoted in pence in the latest FT. Multiply the bid price by the number of units held and divide by 100 to convert from pence to pounds.
33. If the individual's investment is with a number of unit trusts and a breakdown of these investments is not available, ask the individual to provide a current valuation through their broker or banker.

### **PEP (Personal Equity Plan) investments**

34. These were tax-free investments taken out for a fixed number of years. Income received is usually reinvested, although the investor may choose to receive a regular cash return.
35. To value, ask the individual to provide a letter from the management company stating the current value of the PEP. Bring this into account as capital.

#### **Note:**

*Even though these investments are for a fixed period, the investor can withdraw the monies before the end of the term, although at the cost of an interest penalty.*

*If the individual receives a regular cash return from the PEP bring it into account as income in the normal way.*

### **Fixed term investments**

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36. Money invested for a fixed term can normally be withdrawn before the end of the term although with loss of interest. Therefore as a general rule include the current value of the investment as capital, unless it appears from the information supplied that the individual is legally unable to withdraw the funds before the end of the term.
37. However, even if the funds cannot be withdrawn the individual may be able to sell his interest. In order to determine how the investment should be treated for assessment purposes:
- (a) ask the individual to send in full documentation setting out the terms and conditions of the investment;
  - (b) send all the information received to the Means Assessment Policy Adviser who will decide whether to refer the case to the Government Actuary's Department to ask them to value the individual's interest;
  - (c) include any valuation received as capital.
38. If the funds cannot be withdrawn and the investment has no sale value, then the capital value will be assessed as nil. Of course if the fixed term expires and the monies are released during the currency of the certificate then a reassessment will be necessary.

#### **Articles of value/motor cars**

39. The following guidance applies to the treatment of Articles of Value and Motor cars:

- (a) Articles of value

Household furniture and effects, personal clothing and the tools and equipment of the individual's trade are normally disregarded as capital - see guidance section 6.5 on Regulation 34.

If however the individual owns any articles which by virtue their quantity or value are of exceptional value, then that value can be included in the assessment. Examples might be where the individual collects antiques or owns a valuable painting. Items of jewellery are also included, save for engagement, wedding or eternity rings which are disregarded.

The individual is asked to declare the value of such items in their application and may be required to provide evidence of value. Acceptable evidence could include a professional disposal valuation, proof of purchase cost (if the article was purchased within the last few years) or adverts in the specialist press for similar articles.

- (b) Motor cars

There are three different scenarios in respect of motor cars, and these are:

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- i) Vehicles in regular use by the individual or individual's partner<sup>12</sup> which have a value of less than £15,000, or which were bought more than three years ago; such cars are not included in the assessment.
  - ii) Vehicles in regular use by the individual or individual's partner which have been bought within the last three years and which have net equity of more than £15,000. In such cases the amount by which the net equity exceeds £15,000 should be taken in as the individual's capital.<sup>13</sup>
  - iii) Vehicles not in regular use (e.g. because it is a 'classic' car purchased as an investment); the value of such cars should be taken into account in full in the financial determination. The individual is asked to declare such vehicles and to state their value in their application for legal aid.

For the purposes of determining the net equity for cases falling under the second category above; this should be taken to be the value of the car less any outstanding financial commitment linked to the car. The individual is asked to give the purchase price of the vehicle and the amount of any loan/HP outstanding within their application. The procedure for valuation is as follows:

- i) If the car was bought less than 12 months ago, the value will be the purchase price of the vehicle.
- ii) If the car was purchased between 12 and 24 months ago, the value will be 80% of the purchase price.
- iii) If the car was purchased between 24 and 36 months ago, the capital value will be 60% of the purchase price.

The amount of any loan/HP outstanding on the car is then deducted from the above value to arrive at the net equity.

If the net equity in the car is £15,000 or less then the car has nil capital value for legal aid purposes.

If the net equity exceeds £15,000 then the capital value for legal aid purposes can be determined by deducting £15,000 from the net equity and taking the resulting figure as capital.

**Note:**

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<sup>12</sup> If the car in this scenario I) or scenario II) is in regular use by someone other than the individual's partner e.g. an adult child or relative, you can still apply this formula.

<sup>13</sup> Unless the vehicle is a Motability Scheme car, scooter or powerchair, in which case exclude the vehicle from this calculation.

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*Technically with certain HP agreements the vehicle remains the property of the finance company until the HP has been fully paid off. If therefore the individual can show that the finance company will not agree to a sale, or that following the sale no funds will be released to the individual, then disregard the capital value of the car in these circumstances.*

**Example:**

The individual purchased the car 13 months before making an application for legal aid for £26,000. There is outstanding finance on the car of £5,300.

Calculate capital value as follows:

Car bought between 12 and 24 months ago

- take 80% of purchase price	£21,200
less outstanding loan	£ 5,300
less disregard	£ 15,000
capital value	£ 900

If the individual subsequently challenges this valuation on the grounds that the vehicle is worth less than the value which we have taken into the financial determination they should be expected to provide documentary evidence of the present value of the vehicle e.g. reference to the AA valuation, or copies of advertisements for similar vehicles. If the evidence is satisfactory, amend the determination taking the individual's valuation and deducting any outstanding loans/HP. Again deduct £15,000 from the resulting figure to arrive at the capital value.

If the individual appears to have purchased an expensive car in the last 3 years then further enquiries may be necessary to determine how this was funded on the basis of their declared income.

**Note:**

If the individual declares that they have the use of a car which neither they nor their partner own consider making further enquiries - this may be a case where other resources are available to the individual - cross refer to the guidance on Regulation 16. If the car is provided by the individual's employer then this should also be declared on their application and will be taken into account as a benefit in kind.

**Cross reference: section 3.14**

## **5.4 The individual's Dwelling House**

### **Main dwelling -**

1. This is dealt with by Regulations 37 and 39.

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2. Regulation 37 provides that the value of any property or other interest in land is the amount for which the individual's interest in it (or them) could be sold.
  3. Thus, where for example, the individual and his partner (whose means are aggregated) own the whole of the house, the price the property would realise if it was sold will be taken to be the valuation.
  4. If it is not already clear from the application, the caseworker should decide which property is the main dwelling. This will be the dwelling at which the individual and his family normally reside.
  5. The individual is asked to specify the size and type of the property and to give an estimate of its value in their application. The individual's valuation will be compared with the average valuation for the type of property in the individual's area obtained through an internet search. If after comparing the individual's valuation to the guide value, the individual's estimate appears to be low (i.e. is more than 10% below the guide valuation) and there is no apparent explanation then take the figure obtained from the internet as the value of the property.
  6. The individual must be informed if the internet valuation is used in preference to their valuation.
  7. If the individual subsequently challenges this valuation, they should be expected to provide documentary evidence of their contentions - e.g. a professional valuation. If the evidence is satisfactory, re-assess taking into account the individual's valuation.

**Note:**

*It is unnecessary to follow the procedures set out in the preceding two paragraphs if it appears that, even taking into account a higher valuation in the property guide, the property will not have more than £100,000 equity after deduction of the relevant mortgage allowance in any event.*

8. Once the figure for the valuation of the property is ascertained then any mortgage or other debts secured on the property will be deducted before calculating the net equity.
9. Regulation 39 stipulates that where a property is an individual's main or only dwelling, up to £100,000 must be deducted from the value of the individual's interest in the property. If it is not already clear from the application, the Director will decide which property is the main dwelling. This will be the dwelling at which the individual and his family normally reside. This is also relevant to disputed properties – see section 6.3.
10. Net equity is defined for these purposes as the market value of the property or interest less an allowance for the mortgage outstanding.
11. Therefore when the individual owns all or part of their only or main dwelling, the capital value of that property should be assessed in the following way:
  - (a) Obtain the current market value of that interest as above.

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Deduct 3% from this figure to reflect notional sale costs. This will give the net market value.

(b) Deduct the outstanding mortgage(s) and any loans secured by a charge on the property.

(c) There will then be a disregard of £100,000 on the equity of the property.

**Note:**

*The £100,000 equity disregard will not apply to any second property owned.*

**Cross-reference: paragraph 5.4.3**

(d) The remainder will be taken in as capital.

**Example 1:**

The house value is £350,000. The mortgage outstanding is £210,000.

Deduct 3% from the house value to obtain the net market value.

Deduct the mortgage allowance (i.e. total mortgage amount) from the net market value. Then deduct the £100,000 equity disregard. The remainder will be treated as capital, i.e.:

House value	£350,000
Less 3%	£10,500
Net value	£339,500
Less mortgage allowance	£210,000
Less disregard	£100,000
Capital	£29,500

In this example the individual is ineligible for civil legal services as their capital exceeds the £8,000 threshold, unless a waiver of the upper capital limit applies in the particular circumstances of the case.

**Example 2:**

The house value £165,000. The mortgages outstanding total £80,000.

Deduct 3% from the house value to obtain net market value.

Deduct the outstanding mortgages of £80,000. Then disregard £100,000 of the equity. The remainder will be treated as capital i.e.:

House value	£165,000
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Less 3%	£4,950
Net value	£160,050
Less mortgage allowance	£80,000
Less disregard	£100,000
Capital	£nil

The individual is therefore eligible in this example (provided other capital does not exceed the £8,000 limit).

### **Property owned which is not the main dwelling house**

12. If the individual owns a property which is not his main dwelling, then the value of that other dwelling must also be calculated.
13. The net market value of the other property is valued as with the main dwelling above.
14. There is no equity disregard on the second property and the maximum mortgage allowance which can be applied against all properties is £100,000. In making the calculation the mortgage allowance is made against any mortgage on the main dwelling last. It is irrelevant whether the individual resides in this second property.

#### **Example:**

The following is a worked example of the situation where the individual owns a main dwelling house and a second property which is not part of a business.

The main dwelling is valued at £180,000. The mortgage outstanding is £70,000.

The second property is valued at £60,000 and has an outstanding mortgage of £40,000.

#### **Main dwelling:**

House value	£180,000
Less 3%	£5,400
Net value	£174,600
Less mortgage allowance	£60,000
Less disregard	£100,000
Capital	£14,600

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### **Second dwelling:**

House value	£60,000
Less 3%	£1,800
Net value	£58,200
Less mortgage allowance	£40,000
Capital	£18,200

The total capital value of the two properties for calculation purposes is therefore £14,600 + £18,200 i.e. £32,800. In this example the individual is therefore ineligible for civil legal services unless a waiver of the upper capital limit applies in the particular circumstances of this case.

Remember that any rent received from a tenant should be taken into account as income. If the individual owns the separate property as part of a business, then it should be assessed as a business asset and not in accordance with the above rule.

**Cross-reference: see Section 8 concerning Business assets.**

### **Timeshares**

15. If the individual owns a timeshare property, the amount to be taken as capital will be the sale value of the property, less any administrative charges on sale and the amount of any loan outstanding on the property.
16. The individual should be asked to supply a letter from the timeshare company confirming the above information.

### **Shared ownership of property**

17. In some cases the individual may share the ownership of a property. Typically this will be a couple with a 50/50 share in a property or alternatively a group of friends each with a share in the property. If the resources of all parties with an interest in the property are to be aggregated in the financial determination then the whole of the value of that property can be brought to account in accordance with the preceding paragraphs depending on whether it is the individual's main dwelling or other property.

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18. Where the resources of the interested parties are not to be aggregated then it is important that only the individual's share of the property is included in those calculations. If the co-owner buys out the individual's share of the property for a particular amount then use that amount in preference to any other value of the individual's interest in the property, unless it appears that the individual has acted with intent to reduce the amount of their disposable capital (see paragraph 1.4 guidance on regulations 17 deprivation of resources. In some cases the ownership of the property may actually be in dispute in the proceedings in which case treat as SMOD (see also paragraphs 1.3 and 6.3).
19. In all other cases (i.e. where the individual's share has not been bought out) establish the market value of the property as set out in the preceding paragraphs. Deduct 3% sale costs to arrive at the sale value of the property. Deduct the mortgage allowance. Multiply the resulting figure by the individual's percentage share of the property to give the individual's share of the net equity. In cases where the property is jointly owned the individual is assumed to hold an equal share to the other co-owners (in accordance with Regulation 35), e.g. if there is one other co-owner assume the individual's share of the property to be 50%, unless better information or evidence has been provided to show otherwise. If the property is the individual's main dwelling then up to £100,000 of the individual's share of the net equity must be disregarded and bring the remainder of their share to account as capital. In all other cases bring the individual's share of the net equity to account as capital.

**Example:**

The individual has a main dwelling which is jointly owned with a friend. The property is valued at £250,000 with a mortgage of £150,000.

The property value is	£250,000
deduct 3% sale costs	£7,500
less mortgage allowance	£150,000
net equity	£92,500

the individual's share of the net equity = 50% = £46,250

Disregard £100,000 net equity on main dwelling, therefore the capital value is nil.

If the above individual also jointly owned a second property in which they reside valued at £200,000 with a mortgage of £100,000, the calculation on that property would be as follows.

Second Property value	£200,000
deduct 3% sale costs	£6,000
less mortgage allowance	£100,000



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4. Care needs to be taken in such cases and you must be satisfied that neither Regulation 16(5) nor 17 applies.

**Cross-reference: see sections. 2.2 and 1.4.**

- (a) If the money owing is a debt or loan, the repayment of which is the purpose of proceedings for which funding is sought then treat as SMOD.
- (b) If the borrower is a member of the individual's family, or the loan is an informal arrangement between friends then assume that the individual will obtain immediate repayment of the full loan. Take the full amount of the loan as capital available to the individual. If the individual provides clear evidence that none of the money will be repaid during the month leading up to the date of application or during the following month because for example the borrower is on a state benefit, then treat the value of the money owing as 'nil'. If the individual is only able to gain repayment of part of the outstanding debt then take the total amount which the individual will be able to secure into account.
- (c) In other cases where there is a formal written agreement from which it is clear that the loan is not due for repayment during the calculation period or the following month then assume that the individual will be able to sell the debt to a relevant financial institution. In such cases this will incur a penalty and therefore take the present value of the money owing to be 70% of the amount of the loan outstanding.
- (d) If the individual can provide evidence such as copies of correspondence with a relevant financial institution to show that the debt cannot be sold then consider the money owing to have a present value of 'nil' until such times that the money is repaid. If the individual provides evidence to show that the sale value is less than 70% then take that reduced value as the value of the money owing.

In such cases any regular repayments of the loan to the individual should be brought to account in the calculation of their disposable income. If those repayments include an element of interest then that interest should be treated as taxable income for the purposes of calculating the tax payable by the individual.

**Cross-reference: see section 4.1. income tax**

### **Private mortgages**

5. Please refer all such cases to the Means Assessment Policy Adviser (MAPA) who will decide whether the value of the individual's interest in the mortgage can be ascertained from the information provided by the individual or whether further assistance is required from the Government Actuary's Department (GAD). Issue letter M6 to the individual to request the relevant details.

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6. If clearance is given by the MAPA, enquiries may be made to the Government Actuary's Department (send all the information received from the individual on the completed letter M6 with a copy of the individual's signed declaration). They will provide a valuation of the individual's interest in the mortgage.
    - (a) If the individual has already borrowed money on the basis of their interest in the mortgage then this should be deducted from the valuation provided by the Government Actuary's Department.
    - (b) If the Government Actuary's Department describe the individual's interest as having only a speculative value take the value to be 'nil'.

### **Wills**

7. If the individual is a beneficiary to the estate of a person who has died and the estate will be distributed during the calculation period, then treat the value of the share of the estate as declared in their application as capital in the financial determination. If the asset which will be received is non-monetary e.g. a property then that asset should be valued in accordance with the normal rules for that type of asset (see relevant paragraph(s) for details).
8. If however the individual can show that they will not in fact receive those assets during the calculation period then treat the value of those assets as 'nil'.
9. A further determination will be required when distribution is made and the individual remains under a duty to disclose any change of circumstances. If the individual seeks to delay distribution in order to qualify for funding, this will be treated as deprivation.

### **5.6 Regulation 36(4) - Other Interests in Land; Freehold Property Subject to a Lease**

#### **Interest in reversion - land**

1. Where a person owns land which is leased out to another, he is said to have a freehold interest "in reversion" in the property. The property, will in other words, revert to him once the lease is ended.
2. If an individual therefore owns a property which he has let out on a long lease, the valuation of that property for assessment purposes should be taken to be the value of the freehold reversion. This means the amount that the individual could obtain by selling the property on the open market, bearing in mind that it is subject to a lease and will therefore be occupied by someone else for the term of the lease.
3. To obtain this value, ask the individual to supply:
  - (a) an estate agent's or surveyor's valuation of the property, i.e. a normal valuation, ignoring the fact that the property has a tenant.
  - (b) a copy of the lease.

4. Send this documentation to the District Valuer and ask for a valuation of the current market value of the property taking account of the lease.
5. Include the valuation supplied as capital.

**Note:**

*If an individual has let out the property on an assured tenancy (these tenancies are normally for 6 or 12 months and the tenant can be removed on two months' notice thereafter) then the value of the freehold should normally be unaffected. Assess the property as capital in the normal way under section 5.4. If the individual contends that the property is let out on a longer lease, or to a protected tenant who cannot be removed on notice, then follow the procedure for a long lease outlined in this paragraph.*

## **5.7 Regulation 36(4) - Trust Funds**

### **General**

#### **Definition and Legal Terms**

1. There is no single agreed definition of a trust, two separate definitions are provided below:

*“A legal arrangement in which an individual, the settlor, gives fiduciary control of property to a person or institution (the trustee) for the benefit of someone else (the beneficiary).”* (Business Dictionary)

*“An obligation binding a person who holds legal title, the trustee, to deal with the property for the benefit of another person; the beneficiary.”* (HMRC manual)

2. Here follows a list of legal terms relating to trust funds and their meaning:

<b>Settlor</b>	<i>The person who creates the trust or settlement; a person who puts property into a trust.</i>
<b>Trustee</b>	<i>The person who holds the legal title of the property and holds that property on trust for the beneficiaries.</i>
<b>Beneficiary</b>	<i>The person who benefits from the trust property, they hold the “equitable title” to the trust property.</i>

<b>Trust Fund / Settlement</b>	<i>The property that is being held on trust. This may be real property (i.e. land or an interest in land, including leases, land or property abroad) or money, objects, stocks and shares, other financial assets etc. A settlement occurs where property is held on trust for successive beneficiaries; the property is referred to as “settled property”.</i>
<b>Trust Deed / Deed of Settlement</b>	<i>The written instrument which contains the various provisions setting out the terms of trust including the legal nature of the trust, administrative powers of trustees, powers to distribute funds, power to add or exclude beneficiaries etc. Most trust instruments will then have two schedules: 1) setting out the powers of the trustees (this may be in addition to that implied or granted by operation of law); 2) a summary of the initial trust fund (this will commonly be a nominal amount of money e.g. “£1 sterling” but you should not assume that to be the present value of the fund).</i>

3. Overlapping roles: Be aware that an individual may have more than one role in relation to a trust. It is possible for someone to create a trust of his own property and name himself as trustee (known as a “self-declared trust”) and be one of the beneficiaries thus being settlor, trustee and beneficiary. However it is not possible for a trustee to hold property on trust for himself as sole beneficiary.
4. Applications may be received from individuals holding any of these positions in relation to a trust; the trust documents should be provided to clarify the terms of the trust and the individual’s role.

### **Types of trusts**

5. There are three main types of trust
  - Express
  - Implied
  - Constructive
6. Constructive and implied trusts are mainly concerned with legal issues which will be the subject of the claim for which the individual needs legal aid.

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7. For example, applicant 'A' has separated from her husband 'B', the matrimonial home was registered in B's sole name; throughout the marriage A has looked after the children of the marriage and played a supportive role in respect of B's business. B has claimed the house as his asset alone; A wants funding to fight for her share and has registered a restriction on the property (citing her interests under the Matrimonial Causes Act 1973).
  8. The court may ultimately decide that a constructive trust was set up in relation to that house, as there was a common intention by A and B that the property was to benefit A and B jointly, and thus the benefit is for them both. However at the time of applying for legal aid, we cannot assume this end result. If the property is registered in B's (the husband's) sole name it will be treated as his asset, do not assess the property as belonging to A.
  9. An implied (resulting) trust is one that is assumed due to the actions of the parties (this may be enforced by a court as a result of surrounding circumstances). An example is a gift on marriage to A and B; if their relationship breaks down it will be implied that the intention of the settlor was to give the property to both A and B so they will both be beneficiaries.
  10. **For the purpose of making the financial determination:** the types of trust to be considered will fall within the umbrella term of **Express trusts** i.e. a trust created by express declaration of the person in whom the property is vested. Such trusts will be evidenced in writing (will, trust deed etc.). Therefore if an individual claims that he is holding assets on trust for someone else, documentary proof must be provided as to the arrangement including the identity of the beneficial owner for a financial determination to be completed on that basis. Trust documents should be made available to you upon request i.e. a copy of the trust deed (this should be the final version of the deed – if it is not dated and signed it is likely to be a draft).

#### **Different types of (express) trusts:**

11. **Bare or simple trust:** A bare or simple trust is one in which each beneficiary has an immediate and absolute title to both capital and income. The beneficiaries of a bare trust have the right to take actual possession of trust property. A bare trustee has no active duties to perform, and is essentially a nominee.

For example, Mrs A left the residue of her estate to such of her grandchildren as were alive at the date of her death. She directed that the funds should not be paid to the grandchildren until they respectively attain age 21 years. All of the grandchildren who were alive when Mrs A died are entitled to an equal share in the residue of the estate. There are no other conditions that they must fulfil before they become entitled. The direction about payment does not affect this basic position. The beneficiaries have a vested interest and the trust is a bare trust.

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12. **Interest in possession:** This is a term in general law. Generally, a person has an interest in possession in property held in trust if they have the immediate right to use or enjoy the property or receive any income arising from it. This may also be referred to as Fixed Interest or Life Interest trust; the terms of the trust, the beneficiaries and trust property will be clearly defined.

Example: Mrs A leaves on trust 6 shares to grandchild B. B will be entitled to all income generated from the trust property and has a definite interest in all the trust property.

Example: Mr B's will leaves his property and other assets (share portfolio) to his children, but the income from those assets is to be paid to the surviving spouse during her lifetime and the will stipulates that the spouse has the right to live at the property for the remainder of her life. The surviving spouse is the life tenant and has a life interest in the trust assets.

13. **Discretionary trust:** A trust under which no individual has a right to interest in possession. The trustees have the power (or absolute discretion) to decide who should receive the trust property and in what portions.

The trust deed for a discretionary trust will provide that the individual has no absolute present or future entitlement to any income or capital from the trust at all, but that it is entirely up to the trustees' discretion whether to advance income or capital to the individual or to any other beneficiaries or class of beneficiaries named in the trust deed.

In such a case the beneficiary does not have a right to the income or capital of the trust but has a hope or expectation of receiving a benefit. These trusts usually provide that the individual has a discretionary interest for his lifetime but may set out a shorter period, such as a term of years e.g. an interest until he attains 21 years.

Example: individual A receives a payment or settlement following an accident in which he sustained a serious injury and sets up a personal injury discretionary trust. In this case the individual A will be both the settlor and beneficiary of the trust. Often a close family member will be installed as trustee.

14. Other types of trusts include **Trust for Bereaved Minors (TBM)** and **Age 18-25 trusts**. TBMs can be set up under (a) the will (or intestacy) of a deceased parent or (b) the Criminal Injuries Compensation Scheme, for a bereaved minor: i.e. a person under the age of 18, at least one of whose parents has died (this can be a step-parent; also, the trust may arise under the intestacy of a grandparent in certain circumstances). Any of the settled property that is applied for the benefit of a beneficiary, must be applied for the benefit of the minor; the minor must be entitled to all of the income from the settled property, or no such income must be applied to anyone else. Age 18-25 trusts have similar provisions to TBMs, but the beneficiary must receive absolute ownership of the settled property on or before their 25<sup>th</sup> birthday. (A key difference to the now defunct accumulation and maintenance trusts is that in relation to 18-25 trusts, the capital may be distributed).

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15. An individual trust may be a mixture of these types (mixed trust) e.g. the trust may be part discretionary and part interest in possession.
  16. The most common types of trust fund are those set up under the terms of a Will or Deed of Settlement and for our purposes will include:
    - (a) A trust whereby the assets produce an income which is paid to the life tenant (see example under interest in possession above)
    - (b) A trust whereby the assets become available to the individual only upon the death of another person.
    - (c) A trust whereby the assets become available to a beneficiary upon reaching a certain age or the happening of a certain event - in most cases this will be upon the beneficiary reaching eighteen. [Note: most trust deeds give the trustees discretion to advance capital to the beneficiaries so in this scenario trusts will often have discretion to pay the money over early].
    - (d) A discretionary trust (previously explained).

**Note:** a trust may be created by the statutory intestacy rules which apply where the deceased person has not left a valid will.

#### **5.7A Individual's interest in trust fund**

1. Where the individual has an interest in a trust, the caseworker will have to determine both the individual's capital interest in the trust and establish any gross sums he has received or is likely to receive during the period of calculation.
2. Capital held in trust for an individual is the legal property of the trustees and cannot be included as the individual's capital automatically. The individual will instead be a 'beneficiary' of the trust. The most common types of trust fund are those set up under the terms of a Will or Deed of Settlement and for our purposes will include:
  - (a) A trust whereby the assets produce an income which is paid to a person throughout their lifetime - this person is the 'life tenant' and has a 'life interest' in the trust assets. Often a house will be left in such a trust, with the life tenant having the right to live there for life with the property to go to somebody else after his death.
  - (b) A trust whereby the assets become available to the individual only upon the death of another person.
  - (c) A trust whereby the assets become available to a beneficiary upon reaching a certain age or the happening of a certain event - in most cases this will be upon the beneficiary reaching eighteen.

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- (d) Although most trust deeds give the trustees a discretion to advance capital to the beneficiaries (e.g. a discretion to pay the money over early in scenario (c) above), occasionally a trust deed provides that the individual has no absolute present or future entitlement to any income or capital from the trust at all but that it is entirely up to the trustees discretion whether to advance income or capital to the individual or to any other beneficiaries or class of beneficiaries named in the trust deed. This is known as a "discretionary trust". These trusts usually provide that the individual has a discretionary interest for his lifetime but may set out a shorter period, such as a term of years.

The relevant provisions governing the valuation of the individual's interest in a trust are:

- i) Regulation 36(4) which provides that the value of any interest in a trust should be computed 'in such a manner as is both equitable and practicable.
- ii) Regulation 21 which provides our definition of gross income.
- iii) Regulation 16(5) which provides, for these purposes, that where an individual has transferred any resources to a trust, or trustees have been maintaining the individual or any of the resources of trust have been made available to the individual, then the caseworker has the power to treat all or any part of the resources of the trust as resources of the individual.
- iv) Regulation 17 which for these purposes, deals with the situation where the individual has transferred property to a trust with the intention of reducing the amount of his disposable income or disposable capital.
- v) Regulation 39 of the Civil Legal Aid (Merits Criteria) Regulations 2013 which provides that funding may be refused where alternative funding is available to the individual or there are other persons or bodies who can reasonably be expected to bring or fund the case. An interest under a trust could, in an appropriate case amount to such funding.

### **Principles for including trust assets**

3. The way in which the trust will be treated for the purpose of the financial determination will depend on the nature of the individual's interest in the trust.

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4. If the individual has an interest which is either fixed or contingent upon the happening of a specified event, (i.e. broadly, an interest included in categories (a) - (c) above), then the interest in the trust should be relatively straightforward to value. For example, if trustees hold money in trust for a child individual until he is eighteen and it then becomes his money absolutely, the valuation is made taking account of the likelihood of his dying before he becomes eighteen, and on the basis that his interest can be sold. A similar approach to valuation is taken if the individual will become absolutely entitled to trust money after some other event has occurred, e.g. the death of his parent or ending of the trust. In these cases, the trusts are drawn on the basis that the individual is expected, at some time in the future, to become absolutely entitled to a trust asset.
  5. It is necessary to consider whether the trustees will be willing to pay for the litigation. Send standard letter M6 to the individual. If the trustees are unwilling to fund the litigation, then make sure the trustees have supplied all the information requested in letter M6 and proceed as follows:
    - (a) Send the documentation in the first instance to the Means Assessment Policy Adviser (MAPA) who will decide whether a valuation can be made on the information provided or whether the case should be referred to the Government Actuary's Department (GAD). If clearance is received from the MAPA to refer the case to GAD.
    - (b) Take in as capital the valuation of the individual's interest supplied.
    - (c) Take in as income any amounts expected to be received from the trust in the calculation period. In the absence of better information, assume the gross income likely to be received from the trust will be the same as that received in the last 12 months.

**Note:**

*If, however, the information obtained in accordance with paragraph (b) above shows that the income from the trust has declined substantially over the last three years - consider whether it may be appropriate to invoke Regulation 17.*

**Cross-reference:** see section 1.4 on Deprivation.

**Note:**

*If the individual has set up the trust himself (i.e. he is the settlor), with the intention of reducing their disposable income or capital, then it will be appropriate to treat all or part of the trust assets, established in accordance with (b) above, as belonging to the individual.*

**Example:** *individual A receives a payment or settlement following an accident in which he sustained a serious injury and sets up a personal injury discretionary trust to preserve his entitlement to state benefits. Individual A is the settlor and sole beneficiary of the trust.*

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*In these circumstances the capital will normally be treated as available to the individual. If the individual is in receipt of income support or another passporting benefit then he will be automatically satisfy the income test by virtue of Regulation 6, however disposable capital must be assessed to determine whether the individual is eligible for civil legal services.*

**Note:**

*Individuals often think that the financial determination for legal aid will treat personal injury trusts in the same way as income-related state benefits: Under Regulation 51(2)(a) of the Income Support (General) Regulations 1987 funds held within a discretionary trust are excluded from being included within the person assessment of means under the deprivation rule; and, under Schedule 10 Paragraph 12 of the Income Support (General) regulations 1987 the value of the trust fund may be disregarded. However the rules are different for civil legal services.*

*The financial determination for legal aid is carried out in accordance with the rules laid down within our financial regulations and may lead to the refusal of legal aid (individual not financially eligible) / withdrawal of the certificate.*

**Court Appointee Deputy, Annual Return & Deputyship Accounts**

**Example:** *An application has been submitted for Individual B who has been deemed incapable of managing his financial affair, money is held by the Court Funds Office of the Court of Protection, as created by the Mental Capacity Act 2005.*

*In this scenario the court will appoint a deputy who will either be a profession person (e.g. solicitor or local authority) or a family member/friend. The deputy then takes responsibility for managing the funds subject to the supervision of the court (e.g. the deputy will make an annual return showing income and expenditure during the period and will otherwise be accountable for decisions taken).*

*Most deputies will have an order allowing them to remove money at any time if they believe it is in the interest of the person who lacks capacity to do so. Therefore the majority of individuals will be able to remove funds from the court and can be considered to have an absolute entitlement to the protected assets. The fund will be valued on the basis that the capital is available to the individual.*

**Cross-reference:** see section 2.2 for guidance on Regulation 16(5).

**Discretionary Trusts**

6. In the case of a discretionary trust fund (2(d) above) the situation is more complicated.
7. The starting point on the income assessment for a discretionary trust fund is the normal one as set out in regulation 21 and above.

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8. As regards capital, since under a discretionary trust, the individual has no definite entitlement to receive any or all of the capital, the capital interest in the trust is likely to be assessed as nil by the Government Actuary's Department.
  9. However, in some of these case the trust assets are worth considerable sums and the question is whether firstly it is appropriate to take those assets into account and secondly, whether or not it is reasonable for funding to be granted to an individual who, subject to the discretion of the trustees, has available to him such assets.
  10. The first step in such a case is to consider how the discretionary trust arose.
  11. If the individual set up the trust himself i.e. he is the settlor and transferred his own assets to it, then:
    - (a) consider applying regulation 17 i.e. treating the trust assets as if they were the individual's own resources.
    - (b) further, if in the opinion of the assessment officer, the reality of the situation is that, whatever is actually stated on the trust deed, the individual controls the trust assets, then those assets can be treated as belonging to the individual by virtue of regulation 16(5).

In either of the above scenarios, if the assets are substantial, careful examination of the individual's means will be required.

12. Otherwise, or where the individual did not create the trust himself, then send letter M6 to the individual.
13. Following receipt of the information requested in letter M6, complete the financial determination as normal, taking into account all the individual's disposable income for the calculation period and capital. Do not include the assets of the trust fund as the individual's capital.
14. If the trustees indicate that payments will be made to the individual during the calculation period, include these payments as income or capital as appropriate. If the trustees give no precise information, assume that the payments made in the calculation period will be the monthly equivalent to those made in the last 12 months.
15. Consideration should be given as to whether it would be appropriate to refuse funding pursuant to the provisions of Regulation 39 of the Civil Legal Aid (Merits Criteria) Regulations 2012.

## **5.8 Life Assurance and Endowment Policies**

1. A life assurance policy combines life insurance and a savings aspect. The benefit will be payable either on death or the ending of the term of the policy, whichever comes sooner.
2. An endowment policy is a life assurance policy where the accrual of the benefit is linked to paying off a loan taken out to purchase a particular asset - usually but not necessarily, a house.

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3. Regulation 33 provides that the value of a life assurance or endowment policy for the purposes of the financial determination is taken as the amount which the individual could readily borrow on its security. This is the policy's 'loan value'.
  4. The individual is asked on their application to declare any such policies and to confirm the date they were taken out and the amount of the payments.
  5. If appropriate verification can be sought, by requesting a letter from the insurance company confirming the loan value.
  6. Include as capital any loan value stated by the company.
  7. If the individual supplies details of the surrender value of the policy only, take 90 % of this figure as the loan value. If further evidence (e.g. a letter from policy provider) is subsequently supplied that confirms the loan value is less than this figure, use the loan value figure advised.
  8. Do not seek verification of loan value where the individual declares the following:
    - (a) a policy less than two years old
    - (b) an endowment mortgage linked to the purchase of a house.
    - (c) a term assurance / death policy i.e. a life insurance policy where the benefit is payable only on death but not otherwise.

None of the above are likely to have any, or any significant, loan value.

**Note:**

*Loans taken out on life assurance policies are usually repaid from the proceeds when the policy matures. It will generally therefore be unnecessary for individuals to make repayments immediately if a loan is taken out.*



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## **6. Capital Allowances and Disregards**

### **6.1 Interim Payment from Court Proceedings (Regulation 42)**

1. Capital received in connection with the incident that gave rise to the dispute will not be automatically disregarded; however Regulation 42 provides a discretionary power to disregard such payments.
2. Regulation 42 provides that any interim payment made to the individual in respect of *any* court proceedings, may be disregarded when calculating capital.
3. Interim payments are exempt from the statutory charge where essential to protect the legally aided party's interest or welfare. The purpose of this exemption (i.e. to allow the funded individual to receive the interim payment whilst the case is going on) will be defeated if the Agency take the payment by way of a capital contribution. Further, interim payments are often made to meet an individual's immediate needs. Therefore, in general, interim payments will be disregarded, unless, having regard to the amount and purpose of the payment, the caseworker is of the view that the individual can afford to proceed without the benefit of funding.
4. In other words, if the interim payment will take the individual over the upper capital limit (£8000) and, taking account of the purpose of the payment, it is considered the individual can afford to proceed without legal aid, then the payment will be taken into account and the previous determination withdrawn (the certificate will be withdrawn on that basis). Any retrospective contribution from capital will usually be limited to those costs incurred after the date the interim payment was made.

### **6.2 Allowance for Debts (Regulation 37)**

1. There is no specific provision in the regulations for debts other than a debt secured by a mortgage or charge on the individual's property. Such debts are dealt with by Regulation 37.

### **6.3 Subject Matter of Dispute (Regulation 38)**

1. Regulation 38 provides for a disregard of capital which is subject matter of dispute (SMOD).
2. However the amount disregarded under the SMOD rule must not exceed £100,000. Where the individual's interests in such assets exceeds £100,000, the excess will be included in the financial determination.
3. The individual's interest in disputed assets is determined in the following way:

SMOD ASSET	CAPITAL DETERMINATIONS
Held in individual's sole name	Include asset on the basis of individual's interest being 100%.
Held in joint names with opponent	Include individual's part-share in the asset.
Held in opponent's sole name	Do not include the asset in the individual's financial determination.

4. For disputed assets held in joint names (including joint accounts), the guidance set out in paragraphs 5.2.8-10 applies.
5. In dealing with property assets which are in dispute the following hierarchy of disregards will apply:
  - (a) **Step 1 part (a)** Apply the mortgage allowance to the value of the property to establish the total amount of equity within the property; **part (b)** determine the individual's share of this equity – for joint assets with two co-owners assess 50% unless there is evidence of a different division of property. Multiply total equity assessed under Step 1(a) by the individual's percentage share of the property.
  - (b) **Step 2** Apply the subject matter of dispute disregard of £100,000 to the individual's share of any equity within the property.
  - (c) **Step 3** Apply the equity disregard of £100,000 to the remainder (if any) of the individual's share of the equity within the main dwelling. (Do not apply the equity disregard to a property which is not the main dwelling).

### Example 1:

The applicant has a home owned jointly with former partner worth £500,000 and the mortgage is £150,000.

Value of Home	£500,000
Deduct selling costs 3%	minus £15,000
Deduct mortgage:	minus £150,000
<b>Equity</b>	<b>£335,000</b>
<b>Individual's share of Equity (assume asset held in equal shares):</b>	<b>£167,500</b>

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Is the individual's share of the property in dispute – Yes/ No? **If Yes:**

Apply Subject Matter of Dispute disregard	minus £100,000
Remaining Equity	£67,500
Apply Equity exemption to main dwelling	minus £100,000
<b>Capital assessed</b>	<b>£0</b>

The individual is therefore **eligible** for legal aid in this example provided other capital which is not in dispute, when added to this figure, does not exceed the capital limit.

### **Example 2:**

The applicant has a home owned jointly with former partner worth £600,000 and the mortgage is £150,000.

Value of Home	£600,000
Deduct selling costs 3%	minus £18,000
Deduct mortgage:	minus £150,000
<b>Equity</b>	<b>£432,000</b>
<b>Individual's share of Equity (assume asset held in equal shares):</b>	<b>£216,000</b>

Is the individual's share of the property in dispute – Yes/ No? **If Yes:**

Apply Subject Matter of Dispute disregard	minus £100,000
Remaining Equity	£216,000
Apply Equity exemption to main dwelling	minus £100,000
<b>Capital assessed</b>	<b>£16,000</b>

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The individual is therefore **ineligible** for legal aid in this example, unless a waiver of the upper capital limit applies in the particular circumstances of the case.

For cases where the assets in dispute include the main dwelling property and other capital assets, the subject matter of dispute disregard is applied to the individual's interest in the his main or only dwelling first. The remainder (if any) can then be applied to the other disputed assets. The total amount disregarded must not exceed £100,000:

**Example 3:**

The applicant has a home owned jointly with former partner worth £600,000 and the mortgage is £150,000. The individual also has personal jewellery of £12,000.

Value of Home	£600,000
Deduct selling costs 3%	minus £18,000
Deduct mortgage:	minus £150,000
<b>Equity</b>	<b>£432,000</b>

**Individual's share of Equity (assume asset held in equal shares):**  
**£216,000**

Individual's jewellery £12,000

Is the individual's share of the property and jewellery in dispute – Yes/ No?  
**If Yes:**

Apply Subject Matter of Dispute disregard	minus £100,000
Remaining Equity and Jewellery	£116,000 + £12,000
Apply Equity exemption to Main Dwelling	minus £100,000
<b>Capital assessed</b>	<b>£28,000</b>

The individual is therefore **ineligible** for legal aid in this example.

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**Example 4:**

The applicant has a home owned jointly with former partner worth £500,000 and the mortgage is £150,000. The individual also has full access to a joint savings account, residual balance £9,000

Value of Home	£500,000
Deduct selling costs 3%	minus £15,000
Deduct mortgage:	minus £150,000
<b>Equity</b>	<b>£335,000</b>
<b>Individual's share of Equity (assume asset held in equal shares):</b>	<b>£167,500</b>
<b>Individual's savings</b>	<b>£9,000</b>

Is the individual's share of the property and savings in dispute – Yes/ No?  
**If Yes:**

Apply Subject Matter of Dispute disregard	minus £100,000
Remaining Equity and Savings	£67,500 + £9000
Apply Equity exemption to main dwelling	minus £100,000
<b>Capital assessed</b>	<b>£9,000</b>

The individual is therefore **ineligible** for legal aid in this example.

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**Example 5:**

The applicant resides in a home worth £400,000, nil mortgage. The individual also has a holiday home worth £60,000; the mortgage on the second property is £40,000. Both properties are owned jointly with former partner.

Value of Main Dwelling Home	£400,000
Deduct selling costs 3%	minus £12,000
Deduct mortgage:	nil
<b>Equity Main Dwelling</b>	<b>£388,000</b>
<b>Individual's share of Equity (assume asset held in equal shares):</b>	<b>£194,000</b>
Value of second property	£60,000
Deduct selling costs 3%	minus £1,800
Deduct mortgage:	minus £40,000
<b>Equity second property</b>	<b>£18,200</b>
<b>Individual's share of Equity (assume asset held in equal shares):</b>	<b>£9,100</b>

Is the individual's share of the properties in dispute – Yes/ No? **If Yes:**

Apply Subject Matter of Dispute disregard	minus £100,000
Remaining Equity both properties	£94,000 +£9,100
Apply Equity exemption to main dwelling	minus £100,000
Capital assessed	£9,100

The individual is therefore **ineligible** for legal aid in this example.

**Cross-reference: see section 1.3.**

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## 6.4 Disregards – Certain payments (Regulation 40)

1. Regulation 40(1) provides that the following are disregarded in the assessment:
  - (a) “back to work bonus” payments received under s.26 of the Jobseeker’s Act 1995;
  - (b) (i) Social fund payments under the Social Security Contributions and Benefits Act 1992 or the Social Security Contributions and Benefits (Northern Ireland) Act 1992; or  
(ii) any arrears of payments made under section 17A of the Children Act 1989 (direct payments), section 49(3) of the Children and Families Act 2014 (personal budgets and direct payments) or the Community Care (Direct Payments) Act 1996 or sections 31 to 32 of the Care Act 2014 (direct payments) or under section 57 of the Health and Social Care Act 2001 (direct payments); or  
(iii) Payments on Account of Benefits and Budget Advances made under Part 2 or 3 of the Social Security (Payment on Account of Benefit) Regulations 2013 or Part 2 or 3 of the Social Security (Payments on Account of Benefit) Regulations (Northern Ireland) 2016; and
  - (c) any payment made out of the Independent Living Fund 2006 or out of the Welsh Independent Living Grant.
  - (d) Any payment made under the Windrush Compensation Scheme; and any Windrush connected payment.<sup>14</sup>
  - (e) Any payment made under the Vaccine Damage Payments Act 1979.
  - (f) Any payment from the trust established out of funds provided by the Secretary of State in respect of persons who suffered, or who are suffering, from variant Creutzfeldt-Jakob disease for the benefit of persons eligible for payments in accordance with its provisions.
  - (g) Any payment made from a Relevant Infected Blood Support Scheme or earlier support schemes;<sup>15</sup>

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<sup>14</sup> “Windrush connected payment” means a payment where: i) the individual has made a claim under the Windrush Compensation Scheme and ii) a request included in that claim has been referred by the Home Office to another person and iii) that other person makes a payment to the individual as a result of the referral.

<sup>15</sup> Relevant scheme means: England Infected Blood Support Scheme; Wales Infected Blood Support Scheme; Northern Ireland Infected Blood Support Scheme; or Scottish Infected Blood Support Scheme. Payments by or under the earlier support schemes are also to be disregarded, namely the Macfarlane Trust, the Macfarlane (Special Payments)

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- (h) Any payment made to an individual under section 13 or 15 of the Energy Prices Act 2022<sup>16</sup> and any payment under the Social Security (Additional Payments) Act 2022<sup>17</sup>.
2. The Director may exercise discretion provided by Regulations 40(2) to disregard a payment which meets all of the following conditions:
- (a) The payment was made to an individual who is a victim of the fire at Grenfell Tower;
  - (b) The payment was made to that individual because the individual was a victim of the fire at Grenfell Tower;
  - (c) The payment was not made directly to the individual 'A' (i.e. the victim, who is the legal aid applicant or a person whose means are to be included in the legal aid assessment) by an individual 'B' who is known personally to the individual 'A'.
3. The Director may exercise discretion provided by regulation 40(2A) to disregard payments out of the following schemes:
- (a) the Criminal Injuries Compensation Schemes in Great Britain and Northern Ireland<sup>18</sup>;
  - (b) the National Emergencies Trust;
  - (c) the We Love Manchester Fund;
  - (d) the London Emergencies Trust Fund.

**Cross Reference: see paragraph 4.3.5 for additional guidance on Criminal Injuries payments.**

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Trust, the Macfarlane (Special Payments) (No.2) Trust, the Eileen Trust, MFET Limited, the Skipton Fund or the Caxton Foundation.

<sup>16</sup> These provisions set out that power to provide support for meeting energy costs which includes financial assistance. This financial assistance will be disregarded.

<sup>17</sup> This provision sets out the means tested additional payments of £326 and £324, the disability additional payment of £150. These payments will be disregarded.

<sup>18</sup> For Great Britain: Schemes established under the Criminal Injuries Compensation Act 1995 or any arrangements for compensation by the Secretary of State for criminal injuries in operation before the commencement of those schemes'. For Northern Ireland: the scheme established under the Criminal Injuries Compensation (Northern Ireland) Order 2002, or any earlier Northern Ireland criminal injuries compensation schemes in operation before the commencement of that scheme.

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4. From April 2013 certain elements of the social fund were abolished including community care grants and crisis loans. The remaining elements of the social fund including payments for funeral expenses, cold weather payments, winter fuel payments (for individuals born on or before 5 January 1952) and Sure Start maternity grants continue to be disregarded. Budgeting loans will also continue to be available out of the social fund to legacy benefit recipients (i.e. those remaining on income support, jobseekers allowance etc.) until Universal Credit is fully rolled out; such payments are disregarded.

#### **6.5 Disregards - Household Furniture, Clothing, Tools of the Trade (Regulation 34)**

1. Except in exceptional circumstances, disregard the following items:
  - (a) the household furniture and effects of the individual's main dwelling. (Include in this category any motor vehicle in regular use by the individual and/or their partner save for those of exceptional value).

**Cross-reference: see paragraph 5.3.31.**

- (b) articles of personal clothing.
  - (c) the tools and equipment of the individual's trade (unless forming part of the individual's business capital).
2. If any of these articles are of exceptional value or quantity, they must be included as capital.

**Cross-reference: see paragraph 5.3.31.**

#### **6.6 Pensioner's Disregard (Regulation 41)**

1. These are additional capital disregards for financial determinations where either the individual or partner is aged 60 years or over at the date of calculation and their disposable income (not including any income received from capital) is less than the lower income limit.

**Note:**

*Do not anticipate an individual or their partner reaching 60 years of age in the months following the calculation period.*

2. Where the individual is directly or indirectly in receipt of a passporting benefit, and meets the age criterion set out above (or the partner meets the age criterion), the maximum disregard set out in the table in Appendix 1 i.e. £100,000 will be applied to their capital. For non-passported individuals the process is set out below
3. For non-passported individuals meeting the age criterion, follow the process below:

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- (a) Calculate the disposable income without taking into account any source of income produced from capital e.g. interest on savings or dividends from shares.
  - (b) If the disposable income (calculated in accordance with (a)) is equal to or more than the lower income limit, the amount of disposable capital must be calculated in accordance with the normal regulations.
  - (c) If however the disposable income (calculated in accordance with (a)) is less than the lower income limit, then disregard the capital held up to the maximum available for the particular income in accordance with the table supplied at Appendix 1.
  - (d) The income from capital should then be added back to the individual's disposable income in the financial determination.

**Example:**

The individual is aged 66. Total disposable income excluding interest from capital is £225 per month.

Total disposable capital (after other allowances and disregards) is £24,000.

Deduct the pensioner's disregard in accordance with Appendix 1 of £20,000.

Disposable capital is therefore £4,000.

Contribution from capital required £1,000.

## **6.7 Disregards – Capital held under a restraint order (Regulation 43)**

1. This is a court order which freezes all or part of the individual's assets pending the outcome of litigation. The individual will not be able to gain access to the assets except as far as the freezing order allows him to until the injunction is lifted.
2. However, the freezing order will normally allow the individual access to some money in order to meet living expenses (a weekly or monthly amount will be stated on the order) and the court has a general power to vary the order to allow further access to funds if required, e.g. to meet the costs of the case. The caseworker should be provided with a copy of the court order along with evidence of any subsequent variation to the order and any associated affidavit of means, as this will list relevant assets and show the amount the individual is allowed access to.

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3. The starting point in these cases is, therefore, to carry out the financial determination ignoring the injunction. Remember that any assets which are specifically claimed in the proceedings will not be taken into account as they will be the subject matter of dispute, unless the value of the individual's interests in such assets exceeds £100,000. The mere fact that the assets are subject to the freezing order does not of itself make them SMOD.
  4. If the individual challenges the financial determination and can show that the court has refused an application to release further funds (or that such request must be refused by operation of law, such as under section 41(4) of the Proceeds of Crime Act 2002 – see paragraph 5 below), or that even taking into account the funds which he is allowed access to by the order, the individual has no means of funding such an application, then the caseworker has discretion to disregard any assets or income which are the subject of the injunction, save those which the court order leaves the individual access to.

**Note:**

The fact that the order may allow the individual to spend a certain amount per week or month does not automatically mean that the individual has that amount available to him. It is necessary to look at what his assets actually are.

**Proceeds of Crime Act cases – Section 41 Order:**

5. The following guidance applies where the restraint order has been made under **Section 41** of the Proceeds of Crime Act 2002 (“POCA”), pending investigation of criminal offences and possible confiscation following conviction. **Note:** not all POCA orders are made under Section 41; the order should be carefully read to confirm the type of order granted.
6. Assets that are restrained under a Section 41 Order are specifically prohibited from use for legal costs in the POCA proceedings. However, the order will usually contain an “exclusion provision” which allows the Court to release frozen funds to the individual for living costs. Any frozen costs released for this purpose should be included as income to the individual.
7. For cases where a Section 41 Order has been granted under POCA but the legal aid application is for an unconnected case (e.g. family proceedings), then evidence of an application to the court to vary the order to fund the case will be required.

**Note:**

*For individuals whose financial circumstances are complex, which may well be the case where the court is considering whether the individual has a criminal lifestyle or has benefited from crime, referral of the application to the Counter Fraud Investigations may be appropriate.*

**Confiscation and forfeiture orders:**

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8. A confiscation order is an order made against a convicted defendant requiring him to pay the amount of his benefit from crime i.e. to deprive him of the benefit he has gained from criminal activity. A confiscation order is not directed towards a particular asset; it is an order to pay a sum of money enforced as if it were a fine. (If the order is not paid voluntarily then either the magistrates' court enforces the order as if it were a fine or the prosecutor may apply to the High Court to appoint a receiver). Assets that remain titled to the individual are therefore not to be automatically disregarded due to the operation of what is a general fine. However the likelihood in these circumstances is that there is also a **restraint order** covering the individual's assets, in which case the guidance covering restraint orders (above) will apply. If the confiscation order has already been discharged i.e. paid, then in any event the remaining assets must be included in the assessment (unless an allowance applies under legal aid regulations).
  9. A forfeiture order in contrast to a confiscation order will be directed towards a particular asset and upon being made, deprives the defendant of title to that asset. On that basis, the asset or assets covered by such an order will be disregarded from the financial determination on the basis that the asset no longer vests or belongs to the individual.

**Example:**

The individual has applied for funding for a family case where there are domestic abuse issues. He is serving a sentence in prison but owns a property which is not SMOD. The individual is subject to a confiscation order, and has advised that his property must be sold and the proceeds must go towards satisfying the confiscation order. He has said that the property should be disregarded. A copy of a restraint order, which was obtained to preserve the assets for confiscation, has been supplied with the application form.

The confiscation order operates in the same way as a fine and no allowance should be made on the basis of a confiscation order.

Apply the guidance for assets held under a restraint order i.e. the property will be included within the financial determination unless the court has refused an application to release the funds to pay for the current proceedings.

**6.8 Mesher order, foreign exchange controls (Regulation 36(4)):**

1. The following guidance applies where the Individual advises:
  - (a) Capital is held under foreign exchange controls;
  - (b) Capital consists of a deferred interest in a property i.e. Mesher Order or chargeback on property, realisable after a future event e.g. when former spouse remarries or the youngest child attains a certain age.

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If the individual has a deferred interest in an asset, usually the former matrimonial property, this will be viewed as the individual's interest being held in trust. Using Regulation 36(4)(d), the individual's interest in the property will be assessed in a way that is both 'practicable and equitable'. A copy of the Order should be obtained. If it is clear that the 'trigger' events set out in the Order that would allow the property to be sold have not yet occurred and are not due to occur during the month after the application is made, we will exceptionally determine that the interest in the property is not realisable at present. The individual's current interest will be valued as 'nil'. If any of the events specified in the Order occur following the grant of civil legal services the individual is under a duty to advise the change of circumstances, at which point a further determination should be made. A contribution must be obtained (where capital exceeds the £3000 limit) if funding is to continue; a retrospective contribution should be called for if the certificate is to be withdrawn.

## 6.9 Contribution payment towards Criminal legal aid (Capital)

1. Defendants facing criminal proceedings within the Crown Court may be required to pay a contribution from capital towards the costs of their defence at the end of the case, if they are found guilty.
2. Situations may arise where an individual who has applied for legal aid in a civil dispute is also in receipt of criminal legal aid, and states that a Capital Contribution Order is likely to be made at the end of the criminal case. **No allowance should be made.** We are not in a position to pre-judge the outcome of the case, whether an order will be made, and if so, the amount required. More generally we do not make allowances for 'contingent liabilities' i.e. a debt that may or may not be incurred depending on the outcome of a future event. Calculate the individual's capital as normal.
3. If an individual has received a Final Contribution Order – i.e. the notification that an individual is required to make a contribution following conviction, which confirms the amount that is required to be paid – and their capital has recently been reduced as a result of paying off this sum, this will **not** be treated as deliberate deprivation of resources.
4. Where the individual does not pay the capital contribution, there are a number of enforcement options open to the Agency (or its agents) including but not limited to: a charging order secured on any property owned; 8% interest on charging orders; Third Party Debt Orders (TPDO) on money deposited in accounts; attachment of earnings order; High Court enforcement; distress warrants where goods can be seized, removed and sold; order to clamp and/or sell vehicles.
5. If enforcement action has been taken, whether an allowance can be made will depend on what orders are in place. For example, if a charging order secures the contribution debt on property, the guidance in section 5.4 applies (the maximum allowance for debt across all property owned is £100,000). If a restraint order is in place refer to the guidance in section 6.7.

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6. A TPDO (previously known as a garnishee order) requires a third party to pay over money owed to the individual to the Agency (or its agents) instead; the first step is to serve an interim order (which will tell the bank to freeze the account<sup>19</sup>, up to the amount owed to the creditor), following which a hearing can be arranged to determine whether to make that order final. The third party can intervene to object to the order being made. If the order is made final, the bank will have to pay over the amount held in the account on the date of the interim order or enough to pay the balance owing<sup>20</sup>. The TPDO doesn't freeze any money paid into the account **after** the date the bank received the interim order.

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<sup>19</sup> The bank or building society is only required, unless the order states otherwise, to retain money in accounts held solely by the individual with the judgement debt and to search and disclose information about such accounts. The bank or building society is not required to retain money in, or disclose information about, an account that is held jointly with another person who is not covered by the judgement debt. If the assessment concerns a legal person, note that if the judgement order is against a company it will not apply to accounts held in the names of individuals involved in the company.

<sup>20</sup> Final orders relating to building society or credit union accounts will not require a payment which would reduce to less than £1 the amount in the debtor's account.



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## 7. Calculating Business Income

### 7.1 Introduction

1. In referring to business cases we mean financial determination involving those individuals who are business owners (i.e. self-employed) and/or company directors. The process for undertaking a financial determination for the self-employed is in essence the same as that for employed earners, in that we seek to establish their gross income, disposable income and capital. However, income from the business itself is established in a fundamentally different way than income from salaried employment. In addition, we must also look at what capital value can be attached to the individual's interest in the business.
2. Some simple working definitions relating to business entities are provided in the following table and (where applicable) the relevant tax classification of the individuals concerned as "self-employed" or an "employee":

Sole Trader	An individual who owns and manages a business where all of its profits belong to that person and he is personally liable for any debts; the business set up is known as a sole trader business. A sole trader is classed as self-employed for tax purposes
Partnership	A general business partnership is an association of 2 or more persons to carry on, as co-owners, a business for profit. These co-owners are known as partners. The profits of the business will be shared between the partners in the proportions set out within the partnership agreement; each partner is jointly and severally liable for the debts of the business. Partners are classed as self-employed for tax purposes.
Limited Liability Partnership (LLP):	A partnership which is incorporated (registered) at Companies House with limited liability for its "members" i.e. partners. The LLP is a legal business entity in its own right that is separate from a general partnership or a company. The liability of members for debts is limited by the terms set out in the members' agreement. Registered members of an LLP will be taxed on the income they derive from the LLP as self-employed trading profits – i.e. members are classed as self-employed for tax purposes.

<p>Limited Company (private and public)</p>	<p>This is a business registered (or ‘incorporated’) as a limited company. It is a legal entity with a separate identity from those who run it or own it. The liability of members for debts is limited by shares or by guarantee. There are distinct rules governing the incorporation of a business in the UK (business “ABC” in this example) as either a Private Limited Company (the name will be styled “ABC Ltd”) or Public Limited Company (the name will be styled “ABC PLC”).</p> <p>A PLC unlike a private company, is permitted to offer its shares to the public on an open stock exchange.</p>
<p>Community Interest Company (CIC)</p>	<p>This is a relatively new type of limited company which, as above, is a separate legal entity to those who own or run it. The liability of members for debt is limited by shares or guarantee (a CIC will usually be limited by guarantee).</p> <p>The CIC is incorporated by individuals (or groups of individuals) with the state purpose of providing benefits for the community i.e. trading with a social purpose. An essential feature is an ‘asset-lock’ making sure the assets are retained by the CIC and not transferred away from it (other than to another CIC or charity), which must be mentioned in the articles of association.</p> <p>Where the CIC is limited by shares, a ‘dividend cap’ must be put in place to ensure that the majority of profits are applied for the community benefit rather than shareholders.</p> <p>Directors (see below) may derive remuneration from the enterprise.</p> <p>A CIC can be owned by a charity, becoming the trading arm of a parent charity.</p>
<p>Director</p>	<p>A person appointed to run a company by its shareholders (see below) in accordance with the objects set out in the memorandum of association (the formation document), carrying out the duties that are set out in the articles of association (its internal rule book). A director is an officer of the company and is therefore classed as an employee for tax purposes</p>

	An individual can be both a director and shareholder of the same company. This is commonly found to be the case in small family companies.
Shareholder	<p>A person who owns one or more shares (or shares of stock) in a company and in whose name a share certificate is issued; also known as a stockholder.</p> <p><b>Note:</b> a shareholder is not always an individual but may in fact be a group or organisation (company, trust, etc) holding shares in a company.</p>
Subcontractors under the Construction Industry Scheme (CIS)	Under the rules of CIS, an individual is a subcontractor if he agrees to do construction work for a contractor. Any type of business including sole traders, partnerships and companies can in fact be a CIS sub-contractor. However, if there is a contract of employment for a particular job then the individual is an employee and CIS will not apply to that contract and tax will be paid through the pay as you earn (PAYE) scheme. It is quite possible to work as a self-employed contractor on one job and an employee on the next.
Franchisees	Business format franchising is the granting of a license by one person (the franchisor) to another (the franchisee), entitling that person to trade as their own business under the brand of the franchisor. Running a franchise means the person has made a contract with the franchisor to sell the products or services. The franchisee pays an initial fee at the outset together with on-going management service fees to the franchisor - usually based on a percentage of annual turnover or mark-ups on supplies. In return, the franchisor has an obligation to support the franchise network, (notably with training, product development, advertising, promotional activities and with a specialist range of management services). Franchisees are generally classed as self-employed for tax purposes.

- Regulation 22(1) provides that the income from a trade, business or gainful occupation other than employment at a wage or salary is deemed to be either the profits which have accrued or will accrue to the individual in the period of calculation, or the drawings of the person concerned.

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4. Drawings in this context, is an accounting term which is taken to have its normal meaning i.e. monies or goods withdrawn by the owner or co-owners of the business for personal use.
  5. It is entirely within the caseworker's discretion whether to use drawings or profits, based on whichever is considered to be more appropriate and practicable in the particular circumstances. In general it will usually be appropriate and practicable to assess the income by reference to the profits of the business. However, if the drawings from the balance sheet (or the amount attributable to the individual where there are co-owners involved) significantly exceed the declared profits of the business, or it is clear from the person's expenditure that the drawings more accurately reflect the level of income derived from the business, then it will be appropriate (and practicable) to use drawings. Therefore, (a) if the business is making a net loss (following adjustments), the caseworker will use drawings, (b) where the business is making a net profit, but drawings exceed this figure by more than £60 per month (£720 per annum) the caseworker calculate income from the business on the basis of drawings.

**Note:**

*If income is based on drawings, it is important to remember that the tax and NI should still be calculated using the net profit figure from the accounts. This is because these allowances should reflect an estimate of what the individual will actually pay during the calculation period, which will be based on their net profits. Please note that in such cases you do not need to adjust the net profit figure e.g. for private use, depreciation etc., before calculating the tax. This is because the net profit figure in the accounts will usually be the same as, or lower than the actual taxable profit.*

**Cross Reference: paragraphs 8.2.1 and 8.3.1 on calculating income from accounts**

6. As a general principle, the determination of income should be based on the amount the individual has earned from the trade or business during the month leading up to the application (calculation period).
7. In practice, it is difficult to determine such earnings with great accuracy since the income from a business will of course vary with fluctuations of trade.
8. For that reason, Regulation 22 provides that the caseworker may have regard to the profits of the last accounting period for which accounts have been prepared.
9. Regulation 22(2) states that in calculating the profits from the business all sums necessarily expended in order to earn those profits should be deducted. This can be summarised by the following simple formula:  
$$\text{Total Income from business} - \text{Business expenses} = \text{Net Profit}$$
10. This means that, for the purpose of making a determination of financial eligibility, it is the net profit of the business rather than gross profit that is included as income from trade, business or gainful occupation other than salaried/waged employment for the calculation period.

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11. The method of determining that income will differ for each of the different business entities i.e. sole trader, partnership or limited company.

**Note:**

*If it is established that the business is operating at a loss, then this is treated as 'nil' income from that particular business for the purpose of making a financial determination i.e. do not offset the loss against any other income or net profit which the individual may derive from other sources. The position for tax purposes is different since losses can be offset when calculating tax, and this should be remembered when undertaking the tax calculation on business cases.*

**Cross-reference: paragraph 4.1.1 on tax**

## **7.2 Sole Traders**

1. A sole trader is entitled to receive the whole of any profits for the particular business activity. The caseworker will therefore seek to establish the net profit for each sole trader activity undertaken by the individual and/or their spouse.
2. The individual is asked to provide the following information:
  - (a) A completed CIVMEANS1A for paper applications, (these questions are incorporated into CCMS for on-line applications)
  - (b) A copy of their latest accounts
  - (c) Their HM Revenue and Customs calculation sheet and/or statement of account.
3. If accounts are not available then form L31 should have been completed by the individual if the turnover is more than £15,000 per annum. If the turnover is less than £15,000 and no accounts are available the individual will simply complete the 3 line account at question 4 on CIVMEANS1A.

### **Financial determinations based on accounts**

4. The individual's most recent available accounts must be used. These should be for an accounting period ending not more than 18 months ago. Earlier accounts should not be used and in such cases the financial determination will be based on form L31. In such cases the earlier accounts will however provide a useful cross reference for the purpose of analysing risk.
5. The net profit figure shown on the individual's profit and loss account forms the basis of the income brought to account for funding purposes. It will however be necessary to adjust the net profit figure as shown on the accounts in accordance with paragraphs (a) - (d). Use Form L57 to calculate the adjustments.
  - (a) Adjustments to net profit figure in accounts

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i) Private Use

Accounts may include some items as business expenses which in fact relate to private costs incurred by the individual or his family. These could be for travel expenses, private use of telephones, or for accommodation where the individual lives and works from the same premises and so on.

As these are not business expenses they should be added back in to the assessment in order to ascertain what the net income available to the individual from the business was.

Any element of private use in the accounts should therefore be added back on to the net profits.

However in many instances the private use element will not be stated in the accounts.

Special care will be needed in such cases where the individual both lives and works in the same property or the business owns motor vehicles.

If no figure for private use is in the accounts then:

- assume that the private use element of motor vehicle is 20%
- assume that the private use element of accommodation costs is 20% - these costs will be listed in the accounts as light and heat, rental payments, 'loan interest', water rates, etc.

Add back the private use element on to the net profit figure.

**Note:**

*It is important to ensure that accommodation costs are not double-claimed by an individual who lives and works from the same premises, i.e. both as business expenses regulation 22 and housing costs under regulation 28. Only those housing costs which have not already been allowed as business deductions in the accounts should be deducted (where this relates to the individual's main dwelling) under Regulation 28.*

*Where a general amount is stated in the accounts for 'use of home' this will be added back to the net profit figure in full. (This is a long standing simplification for the purposes of the legal aid means assessment which reflects the fact that this is a payment the business is making to the individual).*

ii) Entertainment costs

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Not allowable for tax purposes. Therefore add any deductions made in the accounts for entertainment back onto the net profit.

iii) Other income

Add on any other income declared in the accounts if this is not already included in the net profit figure. An example of this could be a New Enterprise Allowance made by Jobcentre plus or Enterprise Grant from the Dept. for Business Innovation and Skills or other source of finance. The capital account on the balance sheet may also give an indication of other income which the individual may or may not have declared.

iv) Individual's salary or drawings

This is the amount the individual has taken out of the business in the accounting period. This figure will normally appear in the balance sheet.

**Note:**

*If the individual's partner's salary is deducted from the net profit do not add this back but instead include the amount as the partner's taxable income in the financial determination. If wages slips/Form L17 has been submitted by the partner, check the figure against the figure in the accounts and take whichever is the higher figure.*

v) Depreciation

Add back any depreciation included in the accounts. A deduction for Capital Allowances will be made instead.

vi) Bad Debts

Add back any provision for bad debts contained in the accounts. The assumption is that these are one off provision which will not necessarily be repeated in the future.

- (b) Deduct capital allowances claimed on CIVMEANS 1A for paper applications or as declared on relevant CCMS question.
- (c) Individuals are required to provide accounts for an accounting period ending in the last 18 months or otherwise must provide form L31.
- (d) Compare the resultant figure with the individual's net profit given on the most recent HMRC calculation sheet and proceed as follows.
  - i) Where the calculation sheet relates to income for the same accounting period as that used in the accounts on which the financial determination is based then take the HMRC calculation of profit divided by 12 as the individual's expected income from the business during the calculation period.

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- ii) If the accounts provided to you are more current than those on which the calculation was made consider the risk of accepting the net profit figure when comparing it to the net profit recorded on the HMRC statement of account e.g. if there is a dramatic downturn in profit has an explanation been given. If the risk criteria are satisfied, then use the adjusted net profit from the accounts as this is the most recent information.

**Note:**

*If you are given a self-assessment tax return, which will include the necessary adjustments for private use and other add-backs you can use this form for the purpose of the financial determination, taking the adjusted profit figure directly from that form.*

*If the accounting period is for a period other than twelve months, ensure that the figures are adjusted accordingly.*

**Financial determination based on L31**

6. If no other evidence is available, the calculation will have to be based on the individual's estimate of net profit.
7. If the turnover is greater than £15,000 then the individual should have completed form L31 providing details of expected monthly receipts and outgoings. Adjust as necessary any expenses claimed in accordance with paragraph 8.2.1 (a) - (d) above on accounts.
8. Work out the average monthly income based on the average income from the last 6 months declared on Form L31. Multiply the resultant figure by 12 to obtain an annual estimate of net profit.
9. Deduct any capital allowances claimed on form CIVMEANS1A for paper application or as declared on the relevant CCMS question, from the estimated profit and use this revised figure as income in the financial determination after converting back to a monthly figure.

**Note:**

Take the estimate of net profit from any plan supplied if this is higher than the individual's estimate on Form L31

**Financial determination Based on CIVMEANS1A**

10. If the turnover from the business is less than £15,000 and no accounts are available then the financial determination will be based on the 3 line accounts on the CIVMEANS1A or as declared on relevant CCMS question. No adjustments need to be made to this figure for private use etc., but a deduction should be made for any capital allowances claimed.

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11. Particular attention should be paid to the reasonableness of the turnover when undertaking the risk analysis. In addition a comparison can be made with any available HMRC statement of account to determine the reasonableness of the profit declared. If any concerns are raised through this then additional documentation should be sought before making a determination of financial eligibility.

### **7.3 Partnerships**

#### **Calculating net profit**

1. For partnerships the general principles for financial determination as outlined in section 7.1 above still apply, but each partner will only be entitled to a share of the net profit for the business. The caseworker will therefore seek to establish the share of the net profit for each business partner whose resources are being assessed.
2. This process is identical to that outlined in paragraph 8.2.1 above except that form L58 should be used instead of form L57.
3. Having determined the net profit for the business it is necessary to apply the relevant share of the profit to each partner. Multiply the individual's percentage share of the profit as declared on the CIVMEANS1B for paper applications, these questions are incorporated into CCMS for on-line applications), by the adjusted profit calculated above to arrive at the revised share of the profit.

#### **Salary from Partnership**

4. In addition to a share of the net profit a partner may also be entitled to a salary or wage. Include any wage or salary declared (at question 6 on CIVMEANS1B for paper applications or relevant question on CCMS) in the financial determination. This will be in addition to any share of the net profit calculated above.

### **7.4 Company Directors**

1. Company directors are employees of the limited company concerned. However, determining their income from the company is less straightforward than with normal employees. The term "director" can embrace a whole range of situations, from someone who is a non-executive director of a large company to someone who owns a company with his spouse and effectively controls it.
2. Form CIVMEANS1C is used where the individual or their partner is a director of a company. The form should be used even if the individual states that the company is dormant or non-trading since the company may still own capital assets.

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3. If the individual also returns Form L17 in relation to their employment with the company and there is a discrepancy between the two forms, take whichever is higher. If the discrepancy is large, consider raising further enquiries with the company accountant.
  4. In most cases Form CIVMEANS1C together with the company accounts will provide all the information needed about the company and the director's income. If further information or documents are required then ask the individual to obtain them from the Company Secretary or the Company Accountant.
  5. If the individual requests that the Company Secretary or Accountant is approached directly then this may be done if such an approach is likely to produce results.
  6. Company accounts are requested on the CIVMEANS1C. The provision of accounts should be expected as a matter of course in financial determinations involving a limited company.
  7. The accounts supplied should be the most recent, which will normally be for the accounting period ending in the preceding tax year.
  8. With all companies, and sometimes with sole traders and partnerships, the financial accounts will include a section called "notes to the accounts". These give additional information about the company in addition to the financial data. For most companies the notes will be in a similar format as set out by the Companies Act.
  9. Not all of the notes will be relevant for the purposes of the financial determination. However, perhaps the most useful information is in determining the remuneration received by the director, and any other transactions involving the director.
  10. The director's report is usually found at the start of a set of company accounts. It is in this report that the director is required to disclose his interest in the company. Also, from this report you will be advised what the activity of the company is. This is important when reading a set of accounts as it gives them meaning beyond the numbers. It is often helpful to try and "picture" the business.
  11. Not all financial accounts will provide an auditor's report. Once the turnover of the business is above a certain level an auditor is required by law to verify the accounts. Where an auditor's report is provided it is usually worthwhile quickly reading this to see if there is anything unusual.
  12. The role of the auditor is not to verify that the accounts are 100% correct, but merely to form an opinion as to whether they give a true and fair view of the state of the businesses affairs. To do this the auditor reviews the accounting procedures of the business, and its compliance with those procedures, and will also sample some business transactions to check that they have been accounted for correctly.

**Note:**

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If the company was set up in the last twelve months, accounts will not be available. If no accounts are available then the financial determination will have to be based on Forms CIVMEANS1C and L17 supplied. However, if the company has been trading for 12 months or more, trading accounts for that period should be produced even if accounts have not yet been formally been prepared for tax purposes.

### **Director's income**

13. Directors may have a variety of types of income from the company. In small companies, remuneration is voted at the end of each financial year by shareholders. Directors of larger companies sometimes have contracts of employment to specify their remuneration. With smaller companies the amount voted normally depends upon trading results.
14. Directors normally receive payments on account during the year. These payments may be described in the accounts as director's salary, director's current account or drawings.
15. Form L63 is used to assist with the calculation of director's income. Transfer the necessary information from Forms CIVMEANS1C, L17 and accompanying accounts into the relevant box on Form L63. This form enables separate totals for taxable income, income for National Insurance and income for the purposes of the financial determination to be readily calculated. Details of the most common payments to directors are given below:

(a) Salary

The salary that the director may expect to receive during the calculation period will be given on Form CIVMEANS1C or L17. As indicated above accept the higher figure if there is a conflict.

Salary may be described as drawings on the form. Treat both as income.

Questions about the directorship on page 2 of Form CIVMEANS1C asks how much the director has received and over what period it was paid. Divide the amount declared on the Form CIVMEANS1C by the period stated to establish the monthly amount for inclusion within the financial determination.

Where a pay rise is indicated on the Form L17 request clarification from the company accountants.

(b) Bonus/commission

Include as income one-twelfth of the amount of any bonus or commission declared on a CIVMEANS1C. Assume the amount of the bonus/commission will be the same as that received in the last financial year unless it is known otherwise.

(c) Dividends

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Include as income one-twelfth of the amount of dividends declared on the CIVMEANS1C. Assume the amount of the dividend will be the same as that received in the previous financial year unless known otherwise.

(d) Benefit in kind

The taxable value of the benefit in kind will also be declared on Form CIVMEANS1C. Treat this taxable value as income, including one-twelfth of the total amount. If the level of other income is low it may be that the director receives benefit in kind that is not declared to the HMRC.

**Cross-reference: see section 3.14 Benefit in Kind.**

(e) Director's fees

Examine the company accounts to establish whether any directors fees have been voted in addition to the director's salary and other payments declared on the CIVMEANS1C. Include as income one-twelfth of the annual amount of any voted director's fees whether paid or not.

(f) Other Income

Examine the company accounts to establish whether the directors receive income in any other form not declared on the CIVMEANS1C. If so, include one-twelfth of the annual figure.

(g) Allocation of profits from the accounts

Note: for a director of a Community Interest Company (CIC) do **not** include an allocation of profits from the CIC in your calculation of income. For other types of company, if the individual and/or their spouse/cohabitee have a controlling interest in the company (i.e. together or in aggregate they own 51% or more of the shares) then they will be in a position to take out any unallocated profits from the business.

The relevant shareholding will therefore need to be established.

The caseworker will need to find out:

- i) The issued ordinary share capital. This is the total number of shares issued by the company. This figure should be taken from the CIVMEANS1C. Check that this figure equates with the issued shares shown in the accounts (this should not be confused with allotted shares - see glossary). Clear up any discrepancies with the individual/accountant.

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- ii) The number of ordinary shares held by the individual and their partner (if applicable). Transfer the figure from Form CIVMEANS1C. Check that the figure equates with the number of shares held as shown in the company accounts. Clear up any discrepancies with the individual/accountant.

Calculate the percentage shareholding as follows.

Ordinary shares held ÷ Issued ordinary share capital x 100.

This calculation should be done for the individual and their partner separately, as it will show the percentage of profits each are entitled to.

If the total percentage shareholding held by both the individual and their partner (together with any voting shares they control) exceeds 51% of the issued ordinary share capital, then the individual will have control of the company and will be able to secure the release of undistributed profits. If this is the case, carry out the following steps:

- i) Establish the company's net profit after taxation. This will be obtainable from the company accounts or CIVMEANS 1C. Use the figure after the payment of corporation tax and dividends. This will be referred to as profit after tax or residual profit (this latter term can sometimes include profits/losses for previous years, if so, see below for treatment of previous losses).

Do not off-set any previous losses that are shown on the accounts, if representations are made that the company is unable to distribute profits due to previous year's loss confirmation must be obtained from the accountants before off-setting the losses can be considered.

Do not include in the profit any items already allocated as director's income under the above categories.

- ii) Allocation of profit. Multiply the profit after taxation by the percentage shareholding of the individual and or their partner to obtain their individual shares of the profits. Factor these in as income.

## **7.5 Representations by individual challenging the Financial Determination**

1. Because financial determinations for business cases are based on historical information i.e. on the accounting period ending in the previous tax year, representations may be received from individuals alleging that the profitability of the business has fallen since their last tax return was made or accounts were prepared and that therefore their income in the calculation period will be less than that factored into the financial.
2. Such representations will only bear weight if they are backed up by appropriate evidence as requested by CCMS or on the CIVMEANS1A, B or C.

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3. The most acceptable evidence will be a more up to date set of business accounts.
  4. However, if these are not available, lesser evidence (e.g. last three months' bank statements if the change in the business has already occurred) may be acceptable.
  5. In any event, representations should not be accepted without accounting evidence unless they point to some specific and credible reason for the decline in profit.
  6. Examples of where it may be appropriate to accept representatives would include:
    - (a) a business partner (co-owner) has left the business.
    - (b) the individual is returning to work following sickness, maternity leave, or an accident and may need to build up business again. A self employed person may still receive an income from their business even if they are absent due to sickness, for example a shop owner may employ staff to cover sickness. Other sole traders such as a window cleaner may not be in a position to do this and any period of sickness absence may affect their net profit. Do not adjust the net profit unless the person makes specific representations to this effect. Also the individual may receive state benefits such as Employment and Support Allowance or Incapacity Benefit for the period of sickness.
    - (c) the individual is having a baby. The individual may be entitled to Maternity Allowance during their maternity absence. A self employed person may still receive an income from their business even if they are absent due to having a baby. Do not adjust the net profit unless the person makes specific representations to this effect.
    - (d) a specific outgoing has increased without any consequent increase in profits e.g. the individual has had to move to more expensive premises.
    - (e) a major contract has been lost and not replaced.
  7. The above list is not, of course, exclusive, but vague reasons for a decline in profit e.g. "the recession" will not be acceptable unless backed by hard financial evidence.
  8. It is important, particularly when dealing with financial determinations which are being challenged to know whether a particular issue will affect the profit and loss account, and hence the disposable income calculation, or the balance sheet and hence the disposable capital calculation.

**Example:**

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A sole trader is determined to be financially ineligible for civil legal services based on capital. He then makes representations in respect of the determination and tells you that his circumstances have changed as his landlord has just put up the annual rental on his business premises by £10,000. This representation will only affect his profit and loss account and not his balance sheet, hence he will still be ineligible based on capital.

9. Frequently we will receive representations such as the above which deal with only one specific item in the accounts. It is generally not appropriate to accept these unless a full set of more recent accounts are available. For instance while rental may have increased it is possible that sales have also increased, or that staff costs have decreased.
10. If drawings have been used then the individual may state that they will not be able to take similar drawings in the future. The question then arises as to how they will be able to meet their day to day living costs on the basis of declared profits.
11. If the representations are accepted then the net profit/drawings figure taken for the business will have to be reduced to take into account the representations.
12. A further or amended determination will be necessary when the next HMRC return is due, if the actual profit proves to have been higher than the estimated profit. In these circumstances any increased contribution will be backdated to the date of the original determination. The individual should be advised of this at the time of the original determination.

## **7.6 Business Income Allowances**

### **Tax and National Insurance**

**Cross reference: see section 4**

### **Housing Costs**

#### **Note:**

*The following paragraph only applies if the individual's private and business address is the same.*

1. If the individual uses the same property for both business and residential purposes, e.g. lives in a flat above a shop or a public house, the property costs will be shared between business use and private use. In such cases the individual will usually pass all the property costs through their business accounts. The proportion of the costs which are for business usage are an allowable expense in terms of arriving at the net profit for the business and these will therefore have already been taken into account in the net profit figure used as income in paragraph 8.2.1. It is important therefore that these business expenses are not included in the housing costs which are declared on CIVMEANS1 or CCMS. The individual is therefore asked on CIVMEANS1 or when declaring housing costs on CCMS to exclude any property costs that have been passed through the business accounts.

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2. In business cases therefore where the business address and the home address are the same the housing costs declared will usually be nil. If this is the case then allow any amount that is declared in the accounts as private use under Regulation 28. If no figure is contained in the accounts then assume that 20% of the property costs in the accounts are private use expenses and allow these as a deduction under Regulation 28. Do not allow the remainder as a deduction, as this will have been taken into account in the net profit figure.
  3. Where the individual has declared full property costs on the CIVMEANS1 or CCMS and in the accounts, i.e. the amounts are approximately the same, it is important that these costs are not double-counted. In such cases, ignore the figure entered on Form CIVMEANS1. For on-line applications through CCMS the figure should be amended to zero. Allow any amount that is declared in the accounts as private use under Regulation 28. If no figure is contained in the accounts then assume that 20% of the property costs in the accounts are private use expenses and allow these as a deduction under Regulation 28.
  4. Where the individual has declared partial housing costs on CIVMEANS1 or CCMS and property costs have been included in the accounts then restrict the personal housing costs allowable under Regulation 28 to the amount that has been added to the net profit figure as 'private use'.

**Cross-reference: see section 4.5 housing costs.**

#### **Travelling Expenses**

5. The standard deduction given to employees for work related expenses is not available to the self employed. This deduction is however available to directors as they are employees of the limited company.

#### **Pension Premiums**

6. No allowance should be given for pension premiums within the financial determination.

#### **Superannuation Payments**

7. Superannuation or contributions to a company pension scheme may be paid by an individual who is a company director or who has employed income in addition to their self-employed income.
8. The percentage rate would be disclosed on Form CIVMEANS1C. A director only pays superannuation on a salary or bonus, not on profits, dividends or benefits in kind.
9. No allowance should be given within the financial determination for superannuation or contributions to the pension scheme.

#### **Individual voluntary arrangements and previous business debts**

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10. An individual voluntary arrangement (IVA) allows an insolvent individual to arrange with their creditors a schedule for the repayments of the debt. The preparation of an IVA may allow an individual to stave off bankruptcy proceedings.
  11. No allowance should be made for IVA payments.

**Cross reference: Section 14 Insolvency and Bankruptcy.**

### **Repayment of loans made to the business**

12. If the individual states that he will have to repay personal loans made by others to the business then such repayments will usually be included in the accounts and will be reflected in the net profit figure. If the figures are not included in the accounts then treat these as any other personal loans i.e. no allowance should be made.

## **7.7 Special Groups: Business Cases**

### **Assessment of sub-contractors**

1. Sub-contractors will be assessed as self employed individuals in the normal way. However the individual may also be able to supply wage slips or Form L17 for the relevant period as evidence of earnings.
2. Take the gross income figure from the forms supplied.

### **Sub postmaster/postmistresses**

3. Sub postmasters/postmistresses will usually receive a salary from the post office (which in law is chargeable to tax as employment income) but may also operate a business from which they may receive an income. HMRC rules allow in practice for the salary to be deducted for income tax purposes only as a trade receipt, although for national insurance purposes the employee class 1 deduction applies.
4. The post office salary will be declared on wage slips or Form L17. If they are operating a business then they will have to submit a self-assessment return to the HMRC and they should therefore complete the relevant self employment questions on CCMS (or CIVMEANS1A or B for paper applications) for the purposes of their application for civil legal services.
5. The process for determining income is as outlined in paragraph 8.2.1. However it is important to make sure that the net profit figure excludes the salary from the post office. If the accounts for the business includes the salary from the post office then the amount of the salary should be deducted before determining net profit.
6. The person will be liable for Class 1 contributions on their salary and Class 2 and 4 contributions on their business profit.

**Cross-reference: see paragraph 4.2.3 for the assessment of NI contributions for a person who is both employed and self-employed.**

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## **Child Minders**

7. A registered child minder who is contracted with parents to provide services in the child minder's home is self employed, (note: a home child-carer is a registered childminder based in the home of the children's parents and would therefore be expected to be an employee of the parents). Child minders are expected to register with HMRC as self employed. Where accounts or a tax return is not available, the individual will provide the 3 line account on CIVMEANS1A or on the relevant question on CCMS. If no records of expenses are kept then take 2/3 of the gross receipts as the net profit.
8. Income tax and national insurance (class 4 payment) will only be deducted where there is evidence of a liability, as set out in sections 4.1 and 4.2 of this guidance.

## **Share Fishermen**

9. Share fishermen receive a share of the boat's profit rather than a set salary. Share fisherman pay a special rate of Class 2 National Insurance contributions as set out in Appendix 6. In addition they do not work all year round and may claim Jobseekers Allowance during those periods they are not working. Diarise for review as appropriate.

## **Shell Holding Companies**

10. A shell holding company does not trade but owns shares in other companies that do. Depending on whether the holding company owns a majority or minority shareholding the other companies will be known as either 'subsidiary' or 'associated' companies.
11. The consolidated accounts should be requested if a person is a director of a shell holding company. The procedure outlined in paragraph 8.4 should then be followed using those accounts.

## **Bankruptcy**

12. The individual may continue to earn even if their business has ceased to trade. Not all assets or income will vest with the Trustee in Bankruptcy. Request details of current earnings and/or any estimated net profit if they have commenced a new business. In addition information should be sought from the Trustee in Bankruptcy to determine what assets and income may still be available to the individual.

## **Liquidation and Receivership**

13. If the company is in the process of liquidation, receivership or administration, then do not use previous accounts to calculate income. A business capital assessment should not be undertaken in such circumstances.
14. The individual may still continue to receive a salary and may receive a share of any proceeds if the company is finally wound up. The liquidator or receiver who is appointed to oversee the process will be able to confirm the amount of income the individual is receiving and whether or not they can expect a share of the assets.

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15. Bring to account as income the gross amount of any income the individual will be receiving from the firm.
  16. If it is stated that during the calculation period the individual will receive capital following the liquidation bring to account under Regulation 28 as money owing to the individual. If the capital is to be received at a later time make an appropriate diary date to carry out a further determination.
  17. Following the liquidation the person appointed as liquidator/receiver is required to file a statement of liquidation at Companies House. Request a copy of this statement from the individual to check on capital.

**Cross reference: Section 14 Insolvency and Bankruptcy.**



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## 8. Calculating Business Capital

### 8.1 Introduction

1. Valuing business capital is dealt with by Regulation 36.
2. This rule provides for two different methods of establishing the amount of business capital available to the individual:
  - (a) Regulation 36(2)(a). The amount that could be withdrawn from the business assets (or the individual's share of such assets) without substantially impairing the profits of the business, or its normal development.
  - (b) Regulation 36(2)(b). The amount that the individual could borrow using the security of their interest in the business without injuring the commercial credit of that business.
3. Regulation 36 requires that both methods are considered and the individual's capital is valued by whichever method produces the higher amount. In other words, the individual's business capital must be valued as a whole by applying either rule but not on some combination of both.
4. Under either method, what is being considered is the individual's own share of the business. This means that if the individual owns the business in partnership with others whose means are not aggregated in the financial determination, then only the individual's share of the business capital should be taken into account. The capital of the business as a whole should be determined in the normal way and the value arrived at reduced according to the size of the individual's share.

**Cross-reference:** see paragraphs 9.4 and 9.5 below.

#### **Note:**

*The individual may own or part-own a business which is incorporated as a private limited company. Regulation 36(3) confirms that, in those circumstances, the business can be valued as a whole under Regulation 36(2) (as if in effect it was not incorporated) as an alternative to simply taking the value of the individual's issued shareholding as indicated in paragraph 5.3.13. It will be appropriate to do this if the individual either wholly owns the business or is a director and owns at least 51% of the company shares.*

### 8.2 When to Assess Business Capital

1. Not all businesses will have a capital value for the purposes of the financial determination. Usually only those businesses with fixed assets will produce a value under Regulation 36.
2. Individuals who own a business which has fixed assets of any substance will normally be able to provide a balance sheet. If so, the individual's balance sheet will form the basis of the capital assessment.

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3. The individual must provide the most recent balance sheet (the date on the sheet should be the last day of the accounting period covered by the latest profit and loss account) or a schedule of assets.
  4. However, in some cases the individual may not provide a balance sheet because they may never have prepared one. This may be because the business has little or no assets. For example, if the individual's business is as a window cleaner with very limited capital assets then it will be unlikely that he will incur the additional expense of having a balance sheet prepared.
  5. In general you should not expect a balance sheet where the business is of a type which would not have required any significant capital investment (of not more than £3000) to set up. Examples would be those who run businesses as domestic helps, childminders or street vendors.
  6. A balance sheet should not be expected if the business has only one substantial asset. An example would be a taxi driver whose car forms the only capital invested in the business.
  7. Equally, for many businesses, their only relevant asset will be the premises out of which they operate, e.g. where the individual runs a guest house and they are again unlikely to have a balance sheet prepared in those circumstances.
  8. Regulation 36(2)(b) is concerned with the amount that the individual could borrow based on the security of his interest in the business. The individual's interest in the business is his share in the amount by which the assets of the business exceed the liabilities. The individual's interest may represent the whole of this sum or part thereof if the business is owned jointly.
  9. Do not attempt to calculate a business borrowing value if the individual's income (including that from the business) is below the lower income limit. This is because the individual will not in fact be able to borrow money on the security of the business if he does not have the income to meet repayments. Equally do not attempt to calculate a business borrowing value if the individual is in receipt of an income passporting benefit such as income support etc.
  10. Land or property normally forms the greater part of the value of the assets of the business and is the most acceptable form of security for a loan. Because of this it will not normally be worthwhile to attempt a calculation of business borrowing value unless the business owns land or buildings.
  11. If the individual owns more than one business each business should be assessed separately, except Shell holding companies - see cross-reference below. A capital contribution from one business would not normally affect the working of another business and separate business should not normally off-set against each other for capital purposes.

**Cross Reference: paragraph 8.7.10**

### **8.3 Sole Traders**

#### **Regulation 36(2)(a) current/market value**

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1. This rule is concerned with the amount of capital that an individual can withdraw from the business. This capital may be withdrawn from liquid sources such as bank, or building society accounts, other savings or from the sale of fixed assets such as land, buildings, machinery and equipment.
  2. The application of this rule is restricted by the need to consider the profits and the development of the business. Only where assets are not contributing substantially to profits and are not being retained in order to develop the business in some specific way, can their value be taken into account under Regulation 36(2)(a).
  3. The following paragraphs describe circumstances under which the use of this Regulation may be appropriate.

- (a) Assets of a type that you would not normally expect to be used by the business in the generation of its profits.

This would include valuable paintings, yachts and other luxury items.

- (b) Unutilised land or buildings.

Examination of the individual's balance sheet, accounts or other information may identify land or buildings which are not actually being used by the business and do not contribute to the generation of profits, e.g. they are simply retained as potential investments.

It may be that the asset, while not contributing to current profit, is being retained for a future development. If the individual provides evidence of concrete plans to utilise the property in expanding the business (as opposed to a vague and merely generalised intention to utilise the property at some point in the future) then it would be inappropriate to assess its capital value under Regulation 36(2)(a).

If however the caseworker decides that the asset is no more than an investment and to enforce a sale of the asset would not materially affect either the profits of the business or its normal development, the current market value of the asset after deduction of any outstanding loans may be brought to account.

The individual is asked to supply the most recent valuation of the property and confirmation of the amount of loans outstanding. The difference between the two figures should be assessed as capital under Regulation 36(2)(a).

**Cross reference: paragraph 9.3.2(a) if the property is used only partly for business use.**

- (c) Current bank accounts

This may appear as cash at bank in a balance sheet.

If not already provided, request further details of the individual's business bank accounts if necessary. This should be done if the cash at bank figure appears unusually high.

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At any moment in time, the business current account may show a high balance because the individual has not settled bills or a low balance because the people who owe the business money have not yet paid. To trade normally a business must keep enough money in its accounts to pay suppliers and allowing a margin for delay receiving monies due.

Normally, assume that any money held in the business current account is needed to support the normal trading of the business and therefore would not be available for accounting in the financial determination. However, where the lowest account balance over a sustained period usually 12 months appears excessively high then it may be that money is being retained in the accounts in excess of the amount needed to sustain normal trading. Further questions could be raised as to whether a similar balance is expected to be maintained. If so, it can be assumed that the amount of money is unnecessary to support normal trading and it may be presumed that this is available capital under Regulation 36(2)(a); in these circumstances include the lowest balance figure as disposable capital.

(d) Bank deposit accounts

If the individual has funds accumulating in the business deposit accounts it may be reasonable to assume that the balance at the date of the application is available capital and thus can be included in the financial determination.

However, bearing in mind the restrictions in Regulation 36(2)(a), consideration must be given to the purpose for which money is being saved. If the individual is using the deposit account to make VAT and income tax payments it will be incorrect to bring the money into account as capital. Similarly, if the individual intends to use the money to replace a capital item in the business, it would be incorrect to bring the money into account as to do so would affect the normal trading of the business.

(e) Overdrafts

Do not off-set accounts in credit against overdraft accounts in considering capital unless the individual is able to confirm the overdraft facility is withdrawn or the bank required the overdraft to be reduced within the calculation period. In such case the amount by which the overdraft must be reduced may be off-set against the account from credit.

**Note:**

*An overdraft facility is a negative amount and cannot be assessed as capital. Thus, the fact that an individual's business may have an overdraft facility available does not mean that this should be treated as capital.*

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4. Consider any representations made by the individual against a calculation of capital under Regulation 31(2)(a). If the individual can demonstrate that a particular asset contributes substantially to the profits of the business or is earmarked for a specific business purpose, it would be inappropriate to apply Regulation 36(2)(a) to that asset.

#### **Regulation 36(2)(b) Business Borrowing Value (BBV) - SOLE TRADER**

5. In order to calculate the individual's borrowing power it is first necessary to calculate the underlying value of the business. One way of looking at this is to take the liquidation value - that is the amount which would be realised if all the assets of the business were sold at once in order to meet the liabilities. There may be different ways of calculating the value of the business. Unlike other methods a liquidation value does not take into account the expected future profits and therefore constitutes, in effect, the lowest valuation of a business.
6. Following calculation of the liquidation value of the business, a further adjustment is made to reflect the amount that a bank or financial institution would be prepared to lend against the security of the business. This would be an amount less than the total value. The amount obtained following this further adjustment is known as the business borrowing value (BBV). This is the value of the business capital under Regulation 36(2)(b).
7. The BBV is calculated using the Form L60 for sole traders. The information necessary to complete the Form L60 is obtained from the individual's balance sheet and entered on the left hand side of the form.
8. The balance sheet figures must be adjusted in order to calculate the business borrowing value and these figures are entered into the right-hand side of Form L60.
9. The liquidation value will be the net total of the figures transposed to the right-hand side of the L60, i.e. assets less liabilities.
10. In order to achieve the business borrowing value, multiply this figure by 67%.
11. Enter the amount obtained on Form L60. This is the capital value of the individual's business under Regulation 36(2)(b).
12. The following paragraphs detail the assets and liabilities that may be recorded on an individual's balance sheet. These paragraphs also describe the various adjustments that may be necessary before calculating the BBV.

#### **Note:**

*If accounts are not available and therefore the financial determination is based on the 3 line accounts stated on the CIVMEANS1A or CCMS, treat the assets and liabilities declared at question 12 of the form or on the relevant CCMS question as the balance sheet.*

- (a) Fixed assets
  - i) Land and Buildings

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Enter on the left-hand side of Form L60 the value of any land and buildings shown in the balance sheet. The amount to be transferred to the right hand side of the L60 will be the current value as declared on CIVMEANS1A or CCMS question. The balance sheet amount should not generally be used, unless this shows a higher figure, as this may be an historical value from when the balance sheet was first drawn up.

Do not deduct any outstanding mortgages from this figure as they will be dealt with later in the form.

If the individual uses the same property for both business and residential purposes, only the value of the business proportion should be included in the assessment. Deduct the appropriate proportion for private use from the value of land and property and enter the adjusted amount into the right-hand side of Form L60. Further enquiries should be raised if the amount of private use is unknown.

**Note:**

*The proportion of the property taken for private use should be dealt with in accordance with Regulation 37.*

**Cross reference: see section 5.4.**

If the individual uses less than 50% of the property for business purposes the whole value of the property should be excluded when calculating the business borrowing value and taken into account under Regulation 37. This would apply when, for example, the individual only uses a room in his home for business purposes.

ii) Plant and machinery, fixtures and fittings

Enter on the left-hand side of the L60 current value of these after depreciation as shown in the individual's balance sheet. It is unlikely that any adjustment in respect of private use would be appropriate and the figure may therefore be transferred directly to the right-hand side of the form.

iii) Vehicles

Enter at the left-hand side of the Form L60 the current value after depreciation of any vehicles shown in the individual's balance sheet.

Carry this figure over to the right-hand side making a deduction for any apportionment for private use stated in the accounts. Take only the proportion of the capital value which relates only to the business use.

(b) Current Assets

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i) Stock and "work in progress"

Enter at the left-hand side of the L60 the value of stock shown on the individual's balance sheet.

If the individual's business was liquidated, it is unlikely that the full market price of stock could be obtained as it may be necessary to offer some sort of discount in order to clear the stock in bulk. To reflect this, the value of such stocks should be multiplied by 50% and the reduced figure entered at the right-hand side of Form L60.

Treat "work-in-progress" as for stock.

ii) Debt

Enter at the left-hand side of Form L60 any amounts shown as debtors on the individual's balance sheet.

Debtors are people who owe the business money. If the individual's business was liquidated, it is unlikely that all the monies outstanding to the business could be recovered. To reflect this, the amount shown to debtors should be multiplied by 80% and the reduced amount entered in the right-hand side on Form L60.

iii) Prepayments

Enter at the left-hand side of Form L60 any amounts shown as prepayments on the individual's balance sheet. Prepayments are amounts which the business has paid for services, e.g. phone, electricity, etc., in advance.

Include any prepayments of VAT shown as a current asset.

Transfer this amount in full on to the right-hand side of the Form L60.

iv) Bank and cash

Enter at the left-hand side of Form L60 any amounts shown as bank and cash in the individual's balance sheet. Transfer this amount without alteration to the right-hand side of Form L60.

If the financial determination is based on Form L31 only, enter the total of the lowest balances in the last 12 months and transfer this figure across to the right hand side of the L60. If this is a negative figure, enter under overdrafts, below.

**Note:**

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*Goodwill. This is the value of a business over and above the value of the physical assets. If the business is to be liquidated as opposed to being sold as a going concern the goodwill has no value. Do **not** therefore record this figure if it appears on the balance sheet.*

(c) Liabilities

i) General

Any liability shown in the individual's balance sheet should be deducted from the assets in order to calculate the business borrowing value.

ii) Creditors

Enter at the left-hand side of Form L60 any amounts shown to creditors on the individual's balance sheet.

Creditors are those who have supplied the business with goods or services for which payment has not been made at the date the balance sheet was prepared. If the individual's business was liquidated, he would remain liable for these debts in full and therefore the full amount should be transferred directly to the right hand side of the L60.

Treat amounts owed for VAT and tax as for creditors.

iii) Hire purchase (HP)

Enter at the left-hand side of the Form L60 any amount shown on the individual's balance sheet in respect of outstanding HP payments from a business. Transfer across to the right-hand side, reducing the amount of HP by any appropriate element of private use for the item purchased on HP.

iv) Bank overdraft

Enter the amount of any bank overdraft or overdrafts on the left-hand side of the L60 and transfer this across, unaltered, to the right-hand side. The individual would remain liable for the whole overdraft on liquidation of the business.

If the financial determination is based on the L31, and the total figure for the lowest balances for accounts in the last 12 months is negative, treat as per overdraft.

v) Loans

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Treat any outstanding loans (including mortgages) as per bank overdrafts. Entries for outstanding loans may appear either on the individual's balance sheet under current liabilities or under the individual's capital account. If the loan appears to be from a close friend or relative then it should be assumed that these loans will not need to be repaid and therefore these should not be transferred to the right hand side of form L60.

**Note:**

*If it is known that the outstanding loan was used to purchase property or land and the value of that asset has been adjusted for private use, then make an equivalent adjustment for the amount of mortgage loan outstanding. If the loan was used to purchase business property and the value of this property has been excluded in full because it has less than 50% business use, then do not include any of the loan in the calculation of the business borrowing value.*

## **8.4 Partnerships**

### **General**

1. If the financial determination is to be aggregated and the individual's partner is also a partner in the business (i.e. the individual's business partner):
  - (a) If together they own the whole of the business then treat the business as that of a sole trader for the purposes of calculating capital.
  - (b) If there are other business partners, then use the individual and partner's aggregated share of the business.
2. If the individual and partner are business partners in the same business but their means are not aggregated (i.e. there is a contrary interest in the proceedings) then work out the individual's share separately as set out in the following paragraphs.

**Note:**

*In a divorce case the business (or company if the individual and his spouse are directors) may be the subject matter of dispute (SMOD) and the capital assets of that business will only be brought into account where the individual's interest in SMOD assets exceeds the £100,000 limit. However, the individual may still be entitled to income from the business and may still be receiving this in the normal way. This income should therefore be included in the financial determination in accordance with the usual rules and would not be the subject matter of dispute.*

**Cross-reference: see section 1.3 on SMOD.**

### **Calculation under Regulation 36(2)(a) for partners**

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3. If the individual (and/or their partner, if aggregated) owns less than 100% of the business capital - multiply the value of the asset taken into account under Regulation 36(2)(a) by the percentage of the business owned by the individual. The individual is asked to state their share of the business on CCMS or in respect of paper applications on form CIVMEANS 1B or CIVMEANS 2A.
  4. If this is in doubt, the individual's share of the business capital can be further established from the business capital account.
  5. However, if the particular asset is owned by the individual as part of his share of the business capital, do not make any adjustment to the Regulation 36(2)(a) figure.

### **Calculation of BBV for partnerships**

6. It will be appropriate to adjust the business borrowing value if the individual is not the sole owner of the business. The accounts will specify those individuals who are in partnership.
7. The first step is to calculate the liquidation value of the business as a whole. This is done in the same way as per a sole trader, as outlined above, except that Form L61 should be used.
8. Once the liquidation value is obtained, it will be necessary to adjust the same to reflect the partner's share. This is because it is only the borrowing value of the individual's interest in the business that will provide the legal aid assessment value. Only the share of the capital which is attributable to the individual is brought into account in the financial determination as follows:
9. Multiply the total liquidation value by the individual's percentage share of capital and enter at point H on L61.
10. To obtain the business borrowing value multiply the individual's share of capital by 67%.

## **8.5 Company Directors**

### **General**

1. Where the individual is a director who owns shares in a limited company it may be appropriate to simply take the capital value of those shares in order to value the individual's capital in that company.

**Cross-reference: see paragraph 5.3.13 and paragraph 5.3.24 for CIC.**

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2. However, in other cases if the individual not only owns shares in the company but is effectively in the position of sole owner or partner in the business of the company (i.e. usually will be a director of the company as well as owning a substantial shareholding) then Regulation 36(3) provides that the capital value of the company itself can be calculated for assessment purposes in accordance with Regulation 36(2). In other words, the individual will be treated as if he was a sole owner/partner in a non-incorporated business. Therefore, consideration will need to be given to calculating the capital value of any company assets under Regulation 36(2)(a) or the business borrowing value of the company as a whole under Regulation 36(2)(a). Generally, directors of small family companies should be treated under this category. Larger companies may appoint long serving employees as directors giving them nominal shareholdings but these directors have no real control and therefore it would not be appropriate to invoke regulation 36(3).
  3. Do not, therefore, calculate the capital value of the company as a whole in accordance with Regulation 36(2) in the following circumstances:
    - (a) The individual owns shares in a company listed on the Stock Exchange (i.e. a public limited company), Unlisted Securities Market, or the Alternative Investment Market (AIM).
    - (b) The individual is a shareholder but not a director or employee.
    - (c) The individual either alone or with his/her partner, if their means are aggregated, does not own 51% or more of the company's shares.
    - (d) If it appears that the assets of the business are not property based, i.e. that given the size of the business or the nature of its assets it is unlikely that applying Regulation 36(2) will produce a value anyway.
    - (e) The individual owns shares in a Community Interest Company (CIC) and therefore the assets of the company are 'asset-locked' in accordance with its articles of association.
  4. Instead, if any of (a) - (e) above apply, the value of the shares owned by the individual will be calculated in accordance with paragraph 5.3.13 (paragraph 5.3.24 for CIC).

**Calculating current value for a company's assets under Regulation 36(2)(a)**

5. Work out the current value of the asset or assets under Regulation 36(2)(a) in the normal way - using the guidance in paragraph 9.3.1 above.
6. Take in the figure obtained in full as capital if the individual/partner owns 75% or more of the shares in the company.
7. Multiply any figure obtained by 80% if the individual owns between 51% and 74% of the shares.

**Example:**

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Value of assets = £20,000.

If individual owns 60% of the shares.

Current value = £20,000 x 80% = £16,000.

### **Calculation of BBV for directors**

8. Where a business borrowing value has been calculated for a company under Regulation 36(2)(b), a reduction will need to be made to take into account the percentage of share the company's shares owned by the particular individual. Follow the following procedure:

- (a) Use Form L62 to assess the liquidation value of the company following the procedures outlined in the paragraphs above in relation to the Form L60.
- (b) If the individual is only a part-owner of the company it is necessary to calculate their share of the total liquidation value with reference to the percentage shareholding.

If the individual and partner are both directors in the same company and the financial determination is aggregated, use the aggregated shares held and voting shares controlled when calculating the percentage shareholding and abatement.

Multiply the figure of the total liquidation value by the individual's percentage shareholding to obtain figure J. To calculate the individual's percentage shareholding, divide the number of shares held by the individual by the total number of shares issued by the company and multiply by 100.

- (c) The individual's percentage shareholding will determine the extent of his control over the company. However, if the individual's percentage shareholding is less than 75%, he will not have total control over the affairs of the company, and, to reflect this a further abatement is necessary. Therefore, if the individual owns 51% to 74% of the shares, multiply the figure at point J on Form L62 by 80%. If the individual owns 75% of the shares or more, multiply by 100%.

Enter the amount obtained at point L on the Form L62.

Remember that if the individual and partner (if aggregated) own in total less than 51% of the shares, do not calculate a business borrowing value; but instead calculate the value of the shares themselves.

**Cross-reference: see paragraph 5.3.13.**

#### **Note:**

*When working out the abatement, include any voting shares owned by the individual in the calculation of the percentage shareholding above.*

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- (d) To calculate the borrowing value multiply the figure now arrived at representing the individual's share of the liquidation value by 67%. Include this figure as capital in the financial determination.

### **Directors' loan and current accounts**

9. It is not unusual for a private limited company to be financed, at least in part, by directors' loans and current accounts. Although loans and current accounts are not the same thing, in practice the terms are often used indiscriminately.
10. A loan account represents a loan made to the company by the director. Such a loan should be evidenced by documentation showing the amount of the loan and the terms of repayment including any interest.
11. A director's current account may also consist of money which the director has put in to the company but is the result usually of him not drawing his full salary or share in the profits. The current account usually does not have any terms of repayment as it is normally repayable on demand subject only to the availability of funds.
12. Form CIVMEANS1C gives details of any outstanding loan account, and any outstanding current account.
13. The way to treat a loan/current account in the assessment is as follows:
  - (a) Take in the amount owing to the director under these accounts as capital under Regulation 30 if there appears to be no valid reason why the company cannot repay the loan/current account immediately.

Form CIVMEANS1C asks what element of the loan/current account can be repaid to the director within the next 12 months. Examine the replies critically and give consideration to the information supplied before deciding whether the money can be repaid now. It may be necessary to raise further enquiries with the accountant as to why the amounts cannot be repaid to the directors.

- (b) If only part of the money is repayable now, then include that part as capital.
- (c) If documentary evidence shows that a loan is repayable in regular instalments, do not factor in the full loan but instead factor in the repayments receivable during the calculation period as income. Do not treat as taxable income unless it is known that the individual is paying tax on the repayments.

### **8.6 Representations by an individual against the borrowing value**

1. If representations are received against a financial determination of business capital these will usually be on the following grounds:

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- (a) Where the individual does not understand/does not accept that the business borrowing value is a true reflection of the value of the business. A standard letter should be sent enclosing a copy of the L60 explaining that the borrowing value is based on the figures in the balance sheet and a basis of calculation, i.e. based on the lowest possible valuation via the liquidation value.

If the individual contends that the information in the balance sheet is incorrect it is up to him / her to provide more up-to-date information and, if appropriate, evidence, e.g. written valuations of properties from valuers and letters from the accountant in other cases.

- (b) That the individual is in fact unable to borrow money on security of the business.

This will be either because they could not afford the repayments or because no bank will lend them the money.

A calculation of business capital under Regulation 36(2)(b) is an attempt to calculate how much the individual could borrow based on the security of the business. However, if a bank or other financial institution is considering whether to lend money to a person in business two aspects need to be considered:

- i) how much the business is worth; and
- ii) whether the person could afford the loan repayments through the business or otherwise.

Therefore, it would be unfair to take a business borrowing value under Regulation 36(2)(b) if the individual could not in fact borrow on the security of the business.

If, therefore, the individual makes representations to that effect, evidence should be called for in the form of letters from the individual's bank and at least one other financial institution confirming the position, i.e. whether they will be prepared to lend on the security of the business and if not why not. The reasons for the refusal of the loan should be clear. If the bank or other institution states that a maximum amount will be loaned (e.g. because of the individual's low income), take in this amount as the business borrowing value. The letters should therefore normally state what amount if any they are prepared to advance on the individual's holding in the business.



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## **9. Special Groups - Non Business**

### **9.1 Child Applications**

1. An application by a child is any application submitted by an individual who is under the age of 18 years. In such cases the application for civil legal services is usually made on behalf of the child by a person aged 18 years or over.
2. Since 3 August 2023, there has been no requirement to make a determination in respect of the financial resources of an individual under the age of 18, where they are seeking legal aid for representation in civil matters or family help (higher). The means exemption for representation and family help (higher) applies where the child has made an application in their own right, or the application has been made on their behalf by a litigation friend, children's guardian or guardian ad litem who is bringing/defending proceedings on their behalf.

**Cross-reference: section 1.7**

### **9.2 Applications Submitted on Behalf of Children / Patients**

1. Applications by children and patients (as defined by the Mental Health Act 1983) will usually be submitted on their behalf by someone who is of full age and capacity. The child / patient will be the party to any proceedings but the provider will be instructed by the representative of the child / patient who will sign the application forms and furnish the provider with information.
2. Regulation 30(2) of the Civil Legal Aid (Procedure) Regulations 2012 provides that applications on behalf of a child must be made by (a) a person who is, or proposes to be, the child's litigation friend, professional children's guardian or parental order reporter; or (b) the proposed provider in proceedings which the child may conduct without a children's guardian or litigation friend (in accordance with rule 16.6 of the Family Procedure Rules 2010 or rule 21.2 of the Civil Procedure Rules 1998). Regulation 30(4) of the Civil Legal Aid (Procedure) Regulations provides that an application on behalf of a protected person must be made by a person who is, or proposes to be, the protected party's litigation friend.
3. In cases where an application is submitted by a professional it is reasonable to allow some additional flexibility in relation to the time given for the production of necessary information (because enquiries will have to be made and the professional may have difficulty in obtaining the information without delay). Care should also be taken in closing applications / certificates on the basis of non-co-operation.

### **9.3 Police Officers**

#### **Rent Allowance and Compensatory Grants**

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1. A Police Officer's pay may include a rent allowance, force housing allowance and compensatory grant. These amounts are taxable and liable for Class 1 National Insurance contributions. In the absence of any better information assume that the income shown on the payslip or quoted on Form L17 includes these payments.
  2. Allow the housing costs as stated on CCMS or paper form CIVMEANS1 as normal.

#### **9.4 Prisoners**

1. Include as income any prison earnings received under the pre-release employment scheme. Any wages from outside employment where the individual is participating in a 'working out' scheme (or where an individual has been released on temporary license) must also be assessed. (See also **section 15.1.5** for guidance on evidence requirements for prisoners).
2. The resources of a partner should be aggregated where the couple are simply geographically separated by the fact that one of them is in prison. If it is advised, and the caseworker is satisfied, that the individual has permanently separated from that person, the former partner's resources will not be aggregated with the individual under regulation 16(1).

**Cross-reference: see also section 2.1 Individual and Partner.**

**Cross-reference: see also section 4.6 and 5.4.20-21 on housing costs and treatment of property.**

3. The partner's financial information must be entered on CCMS or for paper applications on the form (if details have not been entered on the form, then a separate CIVMEANS1 should be issued direct to the partner).
4. If the individual is in prison and their partner is in receipt of Income Support or a similar passporting benefit, the individual will not be 'passporting' as the partner's benefit claim will not include a payment in respect of the individual. In such cases you will need to determine whether the individual's income and capital are such that he is eligible for civil legal services.

#### **9.5 Individual Resident in the Isle of Man, Jersey and Guernsey**

1. All such applications should be made in the normal way (paper applications will use Form CIVMEANS 1). Note: different rates of tax and child benefit may apply in such cases, ensure the correct rates and method of calculation are used.
2. Disposable income and capital is then calculated in the normal way.

#### **9.6 Individual Resident outside UK (Not HM Armed Forces)**

1. All such applications including further determinations where the individual has become resident outside the UK since the original application was made) are dealt with by the relevant Regional Office. Applications meeting the criteria for the Exceptional and Complex Cases Team and Counter Fraud Investigations will be directed to those teams.

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2. Regulation 31 of the Civil Legal Aid (Procedure) Regulations 2012 provides that the application must be made in English where the individual resides within the UK (the application may be made in Welsh if the individual is present or resides in Wales, or the application relates to proceedings which may be heard in Wales). Where the individual resides outside of the UK, and is not present in England and Wales when the application is made, the application may be in English or French. The application must include a written statement of the individual's financial resources; and be certified by a statement that the individual believes that the facts stated in the application (Form CIVMEANS 3) are correct.
  3. The level of verification of income and capital should be no less than that for an individual resident in the UK. Payslips must be provided or a letter from the individual's employer stating:
    - (a) how much they earn before tax and other payments;
    - (b) the amount of tax and National Insurance they pay;
    - (c) the currency in which the payments have been made; and
    - (d) the value of any benefits in kind.
    - (e) In addition, the letter may include the dates and percentages of any pay rises the employee will get in the next 12 months (if known), but this is not essential.
  4. Rates of exchange can be obtained from the internet (record the date and source) or appropriate newspaper as they apply at the date the financial determination is made.
  5. Where, in the view of the caseworker, a more detailed investigation should be performed, and the referral criteria are met, the case should be sent to the Counter Fraud Investigations.

**9.7 European Court of Human Rights, The Strasbourg Agreement 1977 and Transmission of Applications between Jurisdictions:**

1. Applications for a certificate of indigence for the European Court of Human Rights should be sent to the [contactcivil@justice.gov.uk](mailto:contactcivil@justice.gov.uk) email address.

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2. The European Court of Human Rights (ECtHR) based in Strasbourg administers the European Convention on Human Rights. The ECtHR operates its own legal aid scheme and will consider an application if the case is “communicated” (passes through initial screening). The ECtHR will ask the individual to obtain a ‘certificate of indigence’ from the Legal Aid Agency confirming whether they would be financially eligible for legal aid in England and Wales. An application for that certificate may be made through their solicitor or directly by the individual concerned upon completing the relevant Means form that would apply if the case was taking place in the domestic courts (i.e. CIVMEANS 1 or CIVMEANS 2), sending a covering letter saying that they are applying for a **certificate of indigence** for the ECtHR. They do not need to fill an application form on the merits. The means caseworker will undertake a financial determination applying the normal rules, notifying the relevant solicitor/individual of the result. The solicitor or individual is responsible for forwarding that notification to the ECtHR who will then make their determination of the application for legal aid.
  3. After 31 December 2020, the European Union Legal Aid Directive (2002/8/ESC) ceased to be effective in the United Kingdom; the UK will however still be subject to the earlier international treaty on cooperation between European countries who are part of the Council of Europe concerning legal aid, known as the European Agreement on the Transmission of Applications for Legal Aid (the Strasbourg Agreement 1977). A full list of EU and non-EU countries that have ratified the Strasbourg Agreement can be found in the **Guidance on authorities and legal aid for cases outside England and Wales** via this [link](#).
  4. Where the legal aid application is being *received* (i.e. the individual is applying for legal aid for proceedings in England and Wales), the financial determination is carried out under the normal rules; under the Strasbourg Agreement 1977 there are no special means (or merits) criteria that have to apply to these cases.
  5. The address for transmitting and receiving legal aid applications in England and Wales is: Corporate Centre Correspondence Team, Legal Aid Agency, 102 Petty France, London SW1H 9AJ. Email [CorporateCorrespondenceTeam@justice.gov.uk](mailto:CorporateCorrespondenceTeam@justice.gov.uk).

## 9.8 HM Forces Applications

1. Members of Her Majesty’s Forces will apply in the normal way. Confirmation of their wages will be given on the reverse side of Form L17 (if supplied). Various payments (allowances) are received by such individuals and various deductions (charges) will be advised. The guidance below indicates how each of these must be treated in calculating gross income and disposable income.
2. Income:

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- (a) Local Overseas Allowance - This is a cost of living addition for a serviceman living abroad which is similar to London Weighting. This must be included as income in the financial determination.
  - (b) Excess Rent Allowance - This is where the cost of accommodation in the present posting is greater than normal and an allowance towards the additional cost is made. This must be included as income in the financial determination.
  - (c) London Allowance - This is a cost of living addition for a serviceman living in London which is similar to London Weighting. This must be included as income in the financial determination.
  - (d) Separation Allowance - This is for extra costs incurred by servicemen whose families cannot join them abroad. This is **not** included as income.
  - (e) Overseas Child Benefit - This is normal child benefit which is paid to a serviceman living abroad via his pay packet. This must be included as income. (See also cross-reference, below). Ensure that Child Benefit is only brought to account once for each child.
  - (f) Education Allowance - This is an allowance to go towards the costs of private school fees for individuals who are required to remain mobile for postings and who wish to secure continuity of education provision. The amount quoted will be net of tax. This is not a benefit in kind. This is not included as income.

**Cross-reference: see section 3.6. on Child Benefit.**

3. Deductions from income:

- (a) Accommodation charges - This is rent which is paid by single servicemen or married servicemen whose family have not joined them in posting and who are residing in barracks. The barracks would not usually be regarded as the main dwelling for the purposes of Regulation 28 and therefore no allowance will be made for these charges.
- (b) Overseas facility charges - These are incurred by a serviceman posted overseas to pay towards services, e.g. education in a foreign country. No allowance will be made for these charges.
- (c) Quarters charges - These are accommodation charges incurred by those servicemen whose family have joined them in the posting. If the payments relate to the main dwelling, then the charges will be allowed for in the normal way under Regulation 28. The serviceman may also be paying accommodation charges on another property; no allowance will be made for these additional accommodation costs.
- (d) Food charges - The lower income limit is designed to cover ordinary household expenditure such as food. Do not make an allowance for these charges.

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- (e) Tax and National Insurance - The actual tax and NI calculations for servicemen are complex. A simplified arrangement therefore exists for calculating these expenses. The employer is asked for the tax and NI payments for the individual on Form L17 and a deduction will be made in the financial determination.
  - (f) Voluntary Allotments - A serviceman may choose to allot a certain amount of money to a dependant or other person. No allowance will be made unless the individual confirms that these payments are in respect of voluntary maintenance paid as a result of separation or divorce.

**Cross-reference: see Section 11.4 for certificates granted on HM Forces Applications prior to 3 December 2001**

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## 10. Further and Amended Determinations

### 10.1 Reviewing income and capital

1. A review of a financial determination may be required because the individual's financial circumstances have changed since the original determination (e.g. because of starting work or redundancy), or an error in the original determination may have come to light, or clarification may have been received from the individual regarding an assumption that was made in the original determination.
2. Where there has been a **change** in financial circumstances, then a further determination is made under Regulation 20. Where there has been an **error** in the original determination or new information has come to light, then an amended determination is made under Regulation 19.

### 10.2 Further determination (Regulation 20)

1. With the exception of cases where notification is received that the individual is no longer in receipt of a passported benefit (see paragraph 6 below), a further determination is only made if either the individual's disposable income or capital has changed by more than a fixed amount. These fixed amounts are known as review limits. The current review limits state that no further determination should be made unless the individual's gross or disposable income has increased by more than £60 per month or decreased by more than £25 per month, or disposable capital has increased by more than £750. Where an individual's financial circumstances have changed, the case needs to be reviewed to decide whether or not a further determination is required. In determining whether the review limits have been exceeded, the new income or capital figure should be compared to the corresponding figure(s) contained in the most recent determination on which the current certificate is based.
2. It may be that the particular change itself exceeds the review limit but has no affect upon the amount of income or capital calculated under the regulations, because that particular item was disregarded in the previous determination. In which case do not undertake a further assessment.

**Cross-reference: see section 10.3.**

3. It may be that the change was anticipated at the time of the previous determination and the change was taken into account in that determination (e.g. the individual may have advised that a planned pay increase was due to commence the month following his/her application). If this is the case and the original assumption was correct, then there is no need for a further determination. Where the original assumption was incorrect (e.g. an extended period of sickness which means the original assumption relating to the individual's date of return to work is incorrect) an amended determination under regulation 19 will be made (subject to paragraph 11.3.3 below) using the original calculation period.

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4. Even where the review limits have been exceeded, the caseworker should not undertake a further determination unless that change is likely to be permanent. For example, if an individual writes in to state that their income has decreased because of loss of overtime, a further determination will not be undertaken unless that is likely to be permanent, i.e. a change to the individual's normal monthly income. Even then, a further determination will only be carried out if the change is more than the review limits.
  5. If the change will result in a decrease in the disposable capital, then a further determination is not required because the original capital contribution will already have been paid as a lump sum and cannot therefore be amended.
  6. If the original financial determination resulted in the refusal of legal aid, then the individual will need to make a new application for civil legal services.
  7. If notification is received that the individual is no longer in receipt of a passported benefit, then a further assessment will need to take place, so that a full calculation of both income and capital be made to determine whether the individual remains eligible for civil legal services. The review limits therefore do not apply in these circumstances.
  8. Apart from circumstances where an individual is no longer in receipt of a passported benefit, if the change occurs within 3 months of the date of application then it is not always necessary to undertake a complete further determination of disposable income and capital. Using a new calculation period which will run from the date of the change, only the item(s) of income, allowances or capital affected by the change will be amended, assuming that there are no changes to any of the other details. It may be necessary to amend linked items such as Income Tax and National Insurance.
  9. Where a new source of capital has been acquired, then the further determination should include the value of that capital at the time that it was received.

**Cross-reference: see section 10.4.**

### **10.3 Amended determination (Regulation 19)**

1. If new information is received regarding income and capital which means that the basis of the original determination was incorrect, then it may be appropriate to amend the determination.
2. In cases which were originally assessed as 'nil contribution' and where the amendment will lead to a reduction in the disposable income or capital, there is no need to undertake an amended determination as the contribution will be unaffected by such action.
3. In general, the review limits set out in paragraph 11.2 do not apply to amended determinations made under Regulation 19. However, where an assumption was made in the previous determination, e.g. it was assumed that the individual was sick for six weeks, and this assumption proves incorrect, an amended determination will only be undertaken if the amendment will lead to a change in disposable income or capital which is greater than the review limits set out in paragraph 11.2

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4. It is always not necessary to undertake a complete amended determination of disposable income and capital. Only the item(s) of income, allowances or capital affected by the error / new information will be amended, assuming that there are no changes to any of the other details. It may be necessary to amend linked items such as tax and National Insurance. The amended determination is made using the original calculation period.

#### **10.4 Further determination due to receipt of capital**

##### **General**

1. Where an individual receives a capital sum during the proceedings then it may be necessary to consider making a further determination. In such cases the individual should report the change and complete form CIVMEANS 5 where necessary in order that all relevant information can be obtained.
2. The rules relevant to the further determination are set out in Regulation 20.
3. Regulation 20 requires the caseworker to make a further determination whenever it appears that the disposable capital may have increased by an amount greater than the review limit (i.e. £750). The further determination must however take account of any capital disregards.

##### **Cross Reference: see Section 6.**

4. In determining the disposable capital of the individual, the value of each asset (including any capital derived from a bank loan or borrowing facilities) should be taken to be its value at the date that it was received.
5. Where the individual has indicated that they have already spent some/all of the capital since receiving it, then consideration should be given as to whether the individual has deliberately deprived themselves of the asset or converted it into a form which is not taken into account in the determination, e.g. spent the money on a car, holiday or luxury goods.
6. It will be more difficult for the individual to claim legitimate reasons for the expenditure, given that the individual is fully aware of the proceedings at the time the capital is received. Clearly if the expense relates to one which would be covered by a mandatory capital disregard, then there are no grounds to treat this as deprivation.

##### **Cross Reference: see section 1.4 on Deprivation**

7. If the asset in question previously formed the Subject Matter of the Dispute (SMOD), then the statutory charge may apply. Where it is confirmed that the statutory charge will attach to the asset it is not necessary to undertake a further determination if this is the only asset that has been received.

##### **Calling for contributions from capital**

8. Once a further determination has been made it is necessary to consider what action needs to be taken in respect of calling for a capital contribution, under Regulation 20(5) or 20(6) where capital exceeds the prescribed amount set out in regulation 44(3)(b), and/or withdrawing the certificate.

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9. Where a further determination is made that the individual is eligible for civil legal services: if the costs incurred or likely to be incurred under the certificate are unlikely to exceed the amount of any contribution already made by the individual then the certificate will continue in force and no further contribution will be called for at this stage.
  10. However, where the costs incurred or likely to be incurred under the certificate are likely to exceed the amount of any contribution already made by the individual, then a further contribution may be called for – to cover the difference or for the total excess capital above £3000, whichever is the lesser figure it is necessary to consider whether the certificate should be amended and a further contribution called for before the certificate is discharged.
  11. For the avoidance of doubt, where the certificate is not to be withdrawn, it will always be necessary in these circumstances to call for a contribution (where capital exceeds £3000) to cover the costs already incurred and those which will be incurred after the date the asset was received unless the contribution already paid by the individual exceeds these sums.
  12. Where the determination is withdrawn i.e. the individual is no longer eligible to receive civil legal services: if it becomes apparent that the costs of the case will in fact exceed the level of contributions already paid, then the certificate may be amended at that stage and a contribution of the difference called for (or a contribution of the total excess capital above the limit set out in 44(3)(b) whichever is the lesser figure), before the certificate is withdrawn. The principles set out below will also be relevant to such a decision
  13. Where a determination is withdrawn on capital grounds (i.e. the individual's capital exceeds the upper limit) it is also necessary to consider whether to call for a contribution to cover the costs of the case prior to receipt of the capital i.e. to call for a retrospective contribution. This will be particularly relevant where the capital has been received at the end of the case. It is likely that the amount of capital received and the purpose for which it was received will be relevant factors here
  14. In all cases where the asset had been wrongly claimed as SMOD at the outset of the case then a retrospective capital contribution should always be called for, as the statutory charge will not attach to such assets.
  15. In most other cases, a retrospective contribution will also be called for before a certificate is withdrawn. The Agency's view is that in circumstances where a new capital asset is received the starting position should almost always be to call for a contribution for the life of the certificate unless there are exceptional circumstances. There is no notion of any contribution being to meet specific periods of costs, but rather it is to meet any costs incurred under certificate. An exception to this general rule applies to requests for a retrospective contribution from an interim payment. Any retrospective contribution from capital will usually be limited to those costs incurred after the date the interim payment was made (see section 6.1.4).
  16. There are however certain circumstances where it would be inappropriate to call for a capital contribution prior to withdrawing the certificate. These exceptional circumstances are set out below in the following examples:

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- (a) Where the further determination is required to aggregate the individual with a new partner, and it is the new partner's assets that give rise to the capital included in the financial determination. In such a case the capital should be included as normal but a contribution will not be called for from that capital prior to the certificate being withdrawn, provided the individual had fully and immediately disclosed the change in circumstances. If however, there is a suggestion that a partner has previously been concealed and / or it appears that the new partner's assets were previously made available to the individual and should have been included under Regulation 16(5) consider whether to revoke the determination in accordance with Regulation 42(2) of the Civil Legal Aid (Procedure) Regulations 2012 on conduct grounds i.e. failed to provide information or documents / made a statement knowing or believing it to be false; or consider withdrawing the certificate calling for the retrospective contribution.
- (b) Matrimonial proceedings where the property which was previously SMOD is sold half way through the proceedings and the individual uses his/her share of the capital to purchase a new home. In this circumstance no contribution should arise from this capital prior to the certificate being withdrawn. (If this was the only asset received, then no further determination is in fact necessary as the statutory charge may apply, refer to paragraph 7 above).
- (c) Where during a matrimonial dispute, the former matrimonial home is sold shortly before the end of the proceedings and the individual receives a relatively small sum as their share of the proceeds, e.g. a sum not exceeding £8,000, which they are unable to utilise towards the purchase of a new home. The statutory charge may not apply to that capital as the property may never have been in dispute. Here the capital should still be included in the financial determination, but again it would be unfair to call for a retrospective contribution from that capital prior to the certificate being withdrawn.
- (d) Where the individual has received a lump sum pension payment not exceeding £8,000. Again include the capital received but do not call for a retrospective contribution from that capital prior to the certificate being withdrawn.
17. If the individual advises that there are exceptional circumstances that will mean the determination of a retrospective contribution will cause particular hardship, full details should be obtained and advice should be sought from the Means Assessment Policy Advisor, Central Legal Team who will consider whether on the basis of the individual circumstances, the contribution should be waived.



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## **11. Transitional cases - Further Assessment of certificates granted under the Access to Justice Act 1999 and Legal Aid Act 1988.**

### **11.1 General**

1. Civil legal aid certificates issued under the Access to Justice Act 1999 (“1999 Act”) and Legal Aid Act 1988 (“1988 Act”) continue to be assessed under the Community Legal Service (Financial) Regulations 2000 and the Civil Legal aid (Assessment of Resources) Regulations 1989 respectively. The Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Consequential, Transitional and Saving Provisions) Regulation 2013 provide for any eligibility thresholds under the Civil Legal Aid (Financial Resources and Payments for Services) Regulations 2013 which are more beneficial to the individual, along with certain other specified deductions from income and capital allowances if increased under those regulations, to be applied to these older cases. See also paragraph 5 below.
2. In the following guidance:
  - (a) “Legal Aid Assessment Regulations” means the Civil Legal Aid (Assessment of Resources) Regulations 1989;
  - (b) “CLS Financial Regulations” means the Community Legal Service (Financial) Regulations 2000; and
  - (c) “the 2013 Regulations” means the Civil Legal Aid (Financial Resources and Payments for Services) Regulations 2013
3. Much of the preceding guidance for financial determinations under the 2013 regulations can be applied to further assessments / amended assessments of cases under the CLS Financial Regulations. However, the main differences are:
  - (a) Individuals who are properly in receipt, directly or indirectly, of a passporting benefit listed in regulation 4(2) of the CLS Financial Regulations – i.e. Income Support, Income-Based Jobseekers’ Allowance, Income-Related Employment and Support Allowance, Guarantee Credit or Universal Credit – qualify automatically on both income and capital.
  - (b) The income contribution bands that were in place prior to 1 April 2013 continue to apply to these cases [see contributions table in Appendix 8].
  - (c) For certificates granted on applications made prior to 11 April 2005: Assets that are SMOD are wholly disregarded from the assessment of means.
  - (d) For certificates granted prior to 3 December 2001 –

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- (i) the gross income cap will not be applied to such certificates;
  - (ii) as well as the allowances against income described in s.5 there are different rules for some deductions against income as described below;
  - (iii) an annual calculation period is used for assessing disposable income based on an estimate of the likely income and allowances for the following 52 week period.
4. Certain assumptions were made under the rules prior to 3 December 2001 that no longer apply (for example, assuming an interest rate of 1.25% for savings accounts where no rate was advised; or for business cases basing the assessment on a 2 – 3 year old set of accounts but inflating the figures by 10%). There is no need to undertake an amended assessment of these cases to apply new guidance
  5. The differences set out in paragraph 3(c) and (d) above which distinguish an assessment of a pre-commencement case under the CLS Financial Regulations from financial determinations under the 2013 Regulations, will also apply to reassessments / amended assessments of cases under the Legal Aid Assessment Regulations. Individuals in receipt of the passporting benefits set out in Rule 5 of Schedule 2 and Rule 7 of Schedule 3 of the Legal Aid Assessment Regulations will also qualify automatically on both income and capital. Contributions are calculated in accordance with Regulation 4 of the Legal Aid Assessment Regulations.

**Cross-reference:** see also paragraph 12.6 reassessment of 1988 Act cases
  6. Reference must be made to Regulation 9 of Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Consequential, Transitional and Saving Provisions) Regulation 2013 to confirm the rates of certain allowances and the eligibility limits that will apply to further assessments or reassessments of pre-commencement cases under the CLS Financial Regulations or the Legal Aid Assessment Regulations.
  7. In particular it provides that regulation 25 of the 2013 regulations (dependants allowances in respect of the partner and children of the individual) will apply to all further assessments, amended assessments or reassessments of 1999 Act and 1988 Act cases – See Appendix 1 for current rates.
  8. The individual's eligibility must be calculated by reference to the higher of the relevant figures in the 2013 Regulations, CLS Financial Regulations or the Legal Aid Assessment Regulations as set out in the following table:

regulation 4(2)	regulation 5(2)	regulation 8(2)
regulation 4(2)(a)	regulation 5(2)	regulation 8(2)
regulation 4(3)	regulation 5(2)	regulation 8(2)
regulation 4(3)(a)	regulation 5(2)	regulation 8(2)
	regulation 5A	regulation 7
regulation 4(4)(a)	regulation 38(2)(b)	regulation 44(2)(b)
regulation 4(4)(b)	regulation 38(2A)(b)	regulation 44(3)(b)
	regulation 23(1)(a)	regulation 27(1)(a)
	regulation 24(7)	regulation 28(7)
paragraph 10(a) of Schedule 3	regulation 32(2)	regulation 37(2)
	regulation 32A(2)	regulation 38(2)
paragraph 10(b) of Schedule 3	regulation 32B(2)	regulation 39(2)
	regulation 35(1)(c)	regulation 41(1)(b)

9. **Retrospective contributions from capital for previously passported individuals - Access to Justice Act 1999 certificates:** In addition to the examples of the exceptional circumstances where it would be inappropriate to call for a capital contribution prior to withdrawing the certificate. A further exceptional circumstance applies where immediately prior to the further determination the individual was passported and the capital that now arises in the assessment is as a result of regulatory differences between the legal aid means test and passporting benefits (i.e. equity in the individual's LSC financial assessment and that of the DWP rather than it being new capital. In other words where the capital was previously known by the DWP but they were deemed eligible for the passporting benefit. The most common example will be equity in the main dwelling or capital held in a person injury trust that is wholly disregarded for benefit purposes. In such cases the capital clearly falls to be assessed which may lead to discharge, but it would be wrong to call for a contribution from capital prior to the immediate discharge. It would however be appropriate to call for a retrospective contribution from a previously passported individual where there had been an improvement in means due to new capital e.g. lottery win, inheritance etc.
10. Particular care should be taken to consider representations of hardship where the individual was in receipt of a passporting benefit immediately prior to the further determination.

## 11.2 Further assessment of certificates on applications received before 3 December 2001

### General

1. The proceeding paragraphs apply only to certificates granted on applications received before 3 December 2001:

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## **Council Tax**

2. For certificates granted on applications made prior to 3 December 2001, any Council Tax paid by the individual is deductible from income. Therefore, deduct the annual amount declared.
3. If the individual declares that the Council Tax is being paid:
  - (a) monthly - then multiply the monthly figure by 10 (for councils in England and Wales), unless evidence is provided that the individual has arranged to pay in 12 instalments; (or by 12 in Scotland) to give the total annual figure; or
  - (b) weekly - then multiply the weekly figure by 44.

Any allowance given within the assessment for Council Tax payments should be net any Council Tax reduction. In other words the individual should only be given credit for the payments he or she is actually making during the period.

## **Employment Expenses**

4. The following allowances apply for pre 3 December 2001 cases:
  - (a) Reasonable expenses incurred in travelling to and from work

Allow the amount declared by the individual provided it seems reasonable. This may be declared in the extra information section of the CIVMEANS 1 or within an accompanying letter.

- i) If a weekly figure is given, multiply the figure by 48 to give the annual figure, as this will reflect annual holidays.
- ii) If the individual is not currently working or is absent from work for part of the calculation period, then only allow travel expenses for the periods when it is assumed that the individual will actually be working.
- iii) Where the individual is travelling to and from work by car then the mileage rate in Appendix 8 should be used taking the information on length of journey provided on the CIVMEANS1.

The general running costs of the vehicle will be included in the mileage figure and should not therefore be allowed in addition.

The purchase cost of a vehicle is not usually allowed as a deduction against income or capital. There are however cases where it would be fair to allow full purchase costs if claimed - where, for example, the individual has a disability which makes it difficult to travel by other means.

- (b) Trade union and professional association fees payable during the calculation period.

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- (c) Child-minding fees whilst the individual is at work- unless the individual's partner is the other parent and is available to look after the child or children.

If the individual is paying private nursery fees instead of or as well as child minding fees, then these can also be allowed subject to the above conditions.

- (d) Superannuation and pension contributions are allowable as deductions against income. Also allow any reasonable pension contributions, such as those paid by people who are self-employed or in non-pensionable employment or have opted out of their occupational pension schemes.

### **Housing Costs - The individual's Only or Main Dwelling**

5. The allowance is restricted to the individual's only or main dwelling. The costs of a second dwelling are not allowable except in the circumstances where a discretionary allowance is provided for a pre 3 December 2001 case.

**Cross-reference: see Discretionary Income Allowances below.**

### **Mortgages**

6. Allow the total annual mortgage repayments, (including the premiums on a mortgage-linked endowment policy or mortgage protection policy), as declared by the individual.
7. In the case of applications prior to 3 December 2001, this allowance is however subject to a proportional reduction if the total debt secured on the amount of mortgage outstanding exceeds £100,000. Therefore if the individual has a £120,000 mortgage, the mortgage repayments allowable are limited to those due on a £100,000 mortgage.

#### **Example:**

The mortgage outstanding is £169,750. Repayments declared on CIVMEANS1 at £1,081.12 per month.

Mortgage repayments are allowable on £100,000 only.

Therefore the total allowable mortgage costs during the 12 month contribution period =

$$£100,000 / £169,750 \times £1,081.12 \times 12 = £7,642.68$$

8. If a mortgage debt is £100,000 or less, payments can be allowed in full.
9. If the individual has a second mortgage secured on the main dwelling, then these repayments can also be included, subject to the overall maximum debt not exceeding the £100,000 limit outlined above

### **Water rates**

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10. For applications made prior to 3 December 2001, allow the annual amount of water rates declared by the individual.
  11. If the individual declares a monthly amount multiply this by 10 to obtain the annual amount.
  12. If the individual states that he pays water charges but does not specify a precise figure (e.g. because the water is metered) then use the national average amount, specified in Appendix 8.

### **Ground Rent and Service Charges**

13. For applications made prior to 3 December 2001 ground rent and service charges are allowable where the individual owns a leasehold property and is obliged to meet these payments. These should normally be allowed as declared.

### **Repairs and insurance**

14. For applications made prior to 3 December 2001 a fixed allowance for repairs and insurance as set out in Appendix 8 is made for home owners.
15. If an individual provides evidence that they face costs above the fixed allowance for necessary repairs during the computation period then consider allowing the excess amount over the fixed allowance if these costs will be paid from income.

**Cross-reference: see section 11.5 Discretionary Capital Disregards if the costs will be met from capital**

#### **Note:**

If the individual moves from becoming a homeowner to rented accommodation or vice versa then the above allowances will have to be apportioned for the relevant period.

### **Housing costs for individuals in rented accommodation**

16. For applications made prior to 3 December 2001 allow the amount declared on the Form CIVMEANS1 for rent payable, subject to the maximum limit set out in Appendix 8.
17. This limit is based on the equivalent of repayments on a £200,000 mortgage and is designed to place individuals who rent accommodation in a similar position to those who own their own home.
18. The amount declared should be net of Housing Benefit - however deduct any such benefit being received if it is apparent that the individual has not done so. Housing Benefit is paid by calendar month - therefore multiply by 12 if a monthly figure is stated.
19. Allow water rates declared as for a householder, along with any service charges or garage rental on the property.

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### **Discretionary income disregard**

20. For applications made prior to 3 December 2001, there is discretionary power to make further disregards from income.
21. Discretionary income disregards will fall into two categories:
  - (a) allowances against income for expenditure which is not specifically covered by the rules but that the legally aided individual is either required to make or has reasonably provided for. The caseworker may, in the circumstances of the case, allow the expenditure in whole or in part as a deduction from disposable income.
  - (b) disregards of particular sources of income which it is thought would be inappropriate to include in the assessment.

### **Discretionary allowances**

22. Only those payments which will actually be made within the calculation period i.e. the following 12 months should be considered. This principle applies irrespective of whether there is a legal obligation to make the payment concerned.
23. Since the discretion deals with expenditure not specifically treated in regulations, care should be taken in exercising it. This guidance sets out some common types of expenses which can be allowed under discretion. This is not an exclusive list and caseworkers retain discretion in any particular case. The following general points should be considered:
  - (a) The lower income limit is designed to cover ordinary household expenditure such as food, heating and lighting, clothing and other basic household bills. Therefore you should not normally allow these types of expenses as additional deductions from income.
  - (b) The date when any commitment was entered into is relevant, bearing in mind the deprivation rule; i.e. has the individual entered into the commitment whilst being aware of the forthcoming litigation and/or application for funding with the intention of reducing their disposable income? If so, no allowance should generally be made.

### **Cross-reference: section 1.4. Deprivation**

- (c) As well as the circumstances of the individual's case, the principle of fairness between different individuals needs to be considered. The caseworker should not therefore make an allowance solely because the particular individual would be paying a contribution or be ineligible for legal aid without the allowance being made.
- (d) If it is decided to make an allowance for a particular type of expenditure, the caseworker may decide to allow only part of the expenditure if he thinks the total amount is unreasonable.

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- (e) It would not normally be appropriate to make an allowance for a particular type of expenditure if a loan to meet that expense would not be allowable.

### **Specific Allowances**

24. The most common situations where a discretionary allowance may be justified are set out below:

- (a) Arrears: tax arrears and arrears connected with the home (i.e. rent, mortgage payments, Council Tax, electricity gas and water).

**Note:**

*Payment of mortgage arrears should be allowable on the first £100,000 of the mortgage only.*

- (b) **Solicitor's fees:** costs incurred before the date of the legal aid application, for the services of a solicitor for the litigation for which funding is being sought or for related litigation i.e. arising from the same dispute.
- (c) Loans - certain specified types of loans, HP and credit payments: namely loans for house purchase or household repairs or essential items e.g. cooker; loans connected with employment expenses e.g. season ticket loans; student loans; loans for funeral expenses for family and dependants; loans taken out for special needs arising due to disability.
- (d) Childminding: for students and unemployed individuals undergoing job training
- (e) Court orders and judgements
- (f) Criminal Legal Aid
- (g) Student Allowances: for full-time students or a parent of a student who is required to make a parental contribution, the standard allowances detailed in Appendix 8
- (h) Visiting expenses to patients and prisoners
- (i) Special expenses incurred by sick or disabled people: e.g. expenses for a special diet, medical items or travel expenses to hospital for treatment that are not covered by a 'extra cost' disability benefit (e.g. Disability Living Allowance) previously disregarded in the assessment

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- (j) Maintaining a second home: in the following circumstances
    - i) The individual works some considerable distance from their family and pays for accommodation near the workplace.
    - ii) The main dwelling is undergoing considerable renovation or similar or is being built and is not currently habitable.
    - iii) The individual is in HM Forces and lives in barracks.
    - iv) The individual has recently moved out of the former matrimonial home, but is continuing to pay the housing costs on that home.

The allowance for the second dwelling is made on the same principles as for the main dwelling i.e. with the same restrictions on rent and mortgage allowable.

### **Discretionary disregards of income**

- 25. Generally speaking, disregards are made of:
  - (a) Certain charitable payments.
  - (b) Income received (usually from the State) for certain special needs (e.g. war pensions and extra-cost disability benefits and fostering payments).
  - (c) Income which the individual is genuinely unable to gain access to during the calculation period and which it is impractical to expect the individual to utilise towards the expenses of the case. An example of where it may be appropriate to make an allowance under this category is where the individual's income is subject to a freezing order. However if income has been made available in the past the assumption will be that it will continue to be available unless there is compelling evidence to the contrary.
- 26. For further assessment of certificates granted on applications made prior to 3 December 2001 where any discretionary allowance has been asked for which you have decided should be allowed, then you may need to ask for evidence from the bank statements that the amount is being paid. No allowance should be given unless you are satisfied that the arrears are being paid.

### **11.3 Business Cases - Reassessments of applications made before 3 December 2001**

- 1. Allowable deductions for such cases include the following:

#### **Travelling Expenses**

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2. Where the individual business address is separate to his home address, and it is established that these expenses are for travel to work and have therefore not been put through the business accounts, a deduction can be made (allow travelling expenses for up to 48 weeks).

### **Superannuation or Pension Premiums**

3. If the individual or the partner are paying Superannuation or contributions to a company pension scheme or premiums in respect of a retirement, a deduction can be made.

### **Individual voluntary arrangements and previous business debts**

4. Such payments can be allowed where the individual provides evidence of payment.

## **11.4 HM Forces Applications Certificates prior to 3 December 2001**

1. For further assessments of certificates for applications made prior to 3 December 2001 the following additional deductions can be made under general discretionary powers: Accommodation charges; Overseas Facilities charges; Quatering charges. (Cross reference **section 9.8 –Deductions from income**)

## **11.5 Capital Allowances and Disregards**

1. **The following guidance relates to applications made prior to 3 December 2001:**

### **Allowance for money owed under a contingent liability**

2. The caseworker must make an allowance for money owed under a "contingent liability" of such an amount as is reasonably likely to become payable within the 12 months following the application for a certificate. Evidence can be requested to determine if a deduction should be made and the amount.
3. A contingent liability is where a person will become liable for a debt only on the happening of some uncertain future event. An example may be where an individual has stood guarantor for someone else to buy goods on hire purchase. The individual will become liable for the debt if the payments are not kept up by the other person. An allowance could therefore be made if, in fact, it is likely that the individual will have to meet the guarantee within the calculation period.

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4. The allowance can also apply where it is known for certain that the individual will be liable for a debt within the calculation period but the exact amount of it is not yet known. In such circumstances an allowance can be made of such amount as seems reasonable, although if the amount is so uncertain that a reasonable estimate cannot be made then it would not normally be appropriate to make an allowance.
  5. Only contingent liabilities which arise under a "statute, bond, covenant, guarantee or other instrument" can be allowed.
  6. In other words unless the liability arose under statute then there must be some written, legally binding, obligation on the individual in a contract or other deed before this liability can be taken into account. Thus for example, the fact that the individual had verbally promised to act as a guarantor to a loan and feels "morally obliged" to repay the creditor would not be sufficient to invoke this allowance.

#### **Discretionary capital disregards**

7. The caseworker has general discretion to disregard all or part of any capital to meet the circumstances of the particular case.
8. The discretion should not be exercised in a manner inconsistent with the other regulations on capital assessment. In general, the discretion should be exercised with caution since the regulations do contain specific disregards and since the lower capital limit allows a substantial fund for contingencies.
9. It would normally be inappropriate to disregard capital under discretion which is specifically included in the assessment by the other regulations. Discretion would not normally be exercised to disregard, inter alia, the following:
  - (a) Equity over £100,000 in a main dwelling house.
  - (b) Equity in a second or other dwelling house.
  - (c) The value of the individual's business share assessed under the Regulations.
10. In general terms, the capital disregard should be exercised in the following circumstances:
  - (a) Where capital has been set aside for a special purpose and it is reasonable to accept that priority must be given to this exceptional need or commitment, or
  - (b) Where for some other reason it is unfair or impracticable to expect the individual to utilise the capital towards the expenses of the case.

#### **Capital set aside for a special purpose**

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11. In general, only certain types of special needs should come underneath this category. In any event, the amount of expenditure and thus the amount of capital to be disregarded must be reasonable. If appropriate only part of the expenditure should be allowed.

12. Examples of appropriate disregards under this category are:

(a) The individual is buying a home. If the individual either:

Has in the last six months sold their only or main dwelling house and can provide proof of intention to purchase a new house within the next six months (e.g. they have instructed solicitors on the proposed purchase or have exchanged contracts or can show that they have moved employment and so are looking for new accommodation) then any monies earmarked for the new purchase should be disregarded up to a maximum of £100,000; or

Has saved capital to purchase a house and has exchanged contracts to purchase a new home then disregard the funds to be used towards the new purchase up to a maximum of £100,000.

(b) The individual is to use capital to buy furniture and effects or for relocation expenses.

This discretion may be exercised where the individual is setting up a home from scratch, buying basic furnishings and equipment. This could arise from a matrimonial breakdown or where the individual has moved to a different part of the country for work and is buying a new property. The proposed expenditure must be reasonable and evidence must be provided of the costs to be incurred. Except in exceptional circumstances, no more than £5,000 should be disregarded under this category.

(c) In a non-business case, capital which the individual is to use within the contribution period to purchase the tools and equipment of his trade can be disregarded.

A disregard should be made if capital is to be used within the computation period to meet the special needs of a disabled individual or his partner. Examples would be money to be used to purchase special equipment or to carry out the necessary alterations to the individual's home.

(d) Payments from capital for items which would normally be allowable as deductions from income. This may be because it is necessary for the individual to pay the expenses as one-off payments from capital rather than from income.

Examples could include arrears of maintenance payments, payment of a court judgement, payment of annual travel expenses to work (e.g. season tickets) as a one-off purchase.

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- (e) Disregard where the individual has an income under the lower income limit.

As a general regulation, the lower capital limit already provides a fund for contingencies. Therefore normal living expenditure would not normally be regarded as a deduction from capital. The exception would be where an individual is in receipt of disposable income below the lower income limit and states that they will have to withdraw capital during the calculation period to cover normal living expenses. In those circumstances the caseworker can disregard from capital the amount by which disposable income falls short of the lower income level.

- (f) Exceptionally, capital can be disregarded where the individual has to meet an unavoidable essential expense e.g. urgent repairs to the home or to pay for an urgent private operation unavailable on the NHS.

- (g) Debts:

This refers to existing debts where the amount of the indebtedness is known.

The person concerned must provide evidence to satisfy the assessment officer that the debt or part of it will be discharged within the contribution period and the assessment officer, if he makes an allowance, can do so to the extent which he considers reasonable.

Thus documentary evidence of the existence of the debt and the obligation to repay it during the contribution period should be called for. If only part of the debt is payable then only part of the debt could be allowable.

The nature of the debt and the timing of the repayment are also relevant. Deprivation rules should be borne in mind at all times. The individual must demonstrate that the debt will be repaid using the capital assessed rather than through some other source.

- (h) Interim payments

Interim payments under the Access to Justice Act 1999 are exempt from the statutory charge. The purpose of this exemption (i.e. to allow the funded individual to receive the interim payment whilst the case is going on) will be defeated if the Agency take the payment by way of a capital contribution. Further interim payments are often made to meet an individual's immediate needs. Therefore, in general, interim payments should be disregarded, unless, having regard to the amount and purpose of the payment, the caseworker is of the view that the individual can afford to proceed without the benefit of funding.

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In other words, if the interim payment will take the individual over the upper capital limit and, taking account of the purpose of the payment, it is considered the individual can afford to proceed without funding, then the payment should be taken into account and the certificate discharged on the basis of that reassessment. However, a retrospective contribution from capital from that interim payment should not normally be called for. Any contribution from capital should usually only be called for to meet costs incurred after the date the interim payment was made.

**Capital which it is unfair or impracticable to expect the individual to utilise to make a contribution to the costs of the case**

13. In general this category covers assets which the individual has no reasonable prospect of realising in order to fund legal aid expenses. This would usually be assets which the individual cannot sell, charge, or realise in any other way.

Examples of where this might apply are:

- (a) Property occupied by an ex-spouse or ex-partner whose means are not aggregated and which the individual is not able to dispose of.

The main example of this category would be where the individual's ex-spouse occupies the former matrimonial home under the terms of a court order and the individual has been given a deferred share in the property. If it is not possible for the individual to realise this share until the happening of a certain event (e.g. children reaching 16) the capital should be disregarded under this Regulation if the event will not happen during the calculation period.

- (b) Property subject to a freezing order.

The starting point in these cases where assets have been frozen by court order is to carry out an assessment of the individual's disposable capital or income, ignoring the injunction. If the individual challenges the assessment and shows either that the court has refused an application to gain access to further funds or that, even taking into account the funds which he is allowed access to by the order, the individual has no means of funding such an application, then the caseworker has a discretion to disregard any assets or income which are the subject of the injunction, save those which the court order leaves the individual access to.

- (c) Capital held abroad.

The value of money or assets held abroad should be included in the assessment.

However, a disregard may be given where the individual is able to show that the funds or capital cannot be transferred from the relevant country to meet the costs of the case here.

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The onus should be on the individual to provide independently verifiable evidence from a third party to show that the money cannot be transferred. Evidence from for example, the relevant bank, or from the diplomatic community, will be acceptable.

14. It is important to distinguish the situation where the laws or political situation in a foreign country will not allow the money to be transferred, from one where realising the funds will simply cause the individual's practical difficulties e.g. because they will have to sell an asset such as land which they would rather hang on to or change currency at an unfavourable rate. In the latter case, the asset should be taken into account in the assessment in the normal way.

## **11.6 Reassessment of Certificates Issued Under the Legal Aid Act 1988**

### **General**

1. The means assessment will be made under the provisions of the Civil Legal Aid Assessment Regulations which differ from the above provisions of the CLS Financial Regulations in the following respects.
  - (a) A partner for the purposes of aggregating resources refers to a man and a woman living together as husband and wife. Therefore resources of same sex partners should not be aggregated in the assessment.
  - (b) A different calculation applies for the assessment of equity available when the individual and/or their partner own more than one property. And for applications made prior to 1 June 1996, the value of the individual's interest in the main dwelling is wholly disregarded.
  - (c) There is a specific disregard for debts which will be repaid from capital within the next 12 months.
  - (d) For Personal Injury cases the higher upper eligibility limits will continue to apply.

### **Allowance for Debts**

2. Under the Civil Legal Aid Assessment Regulations Rule 14 of Schedule 3 provides that a capital allowance may be granted in respect of any debts which will be repaid by the individual from capital in the calculation period. This refers to existing debts where the amount of the indebtedness is known. Documentary evidence of the existence of the debt and the obligation to repay it must be provided.
3. If the caseworker decides to make an allowance, this will be to the extent which he considers reasonable, so if only part of the debt is payable during the calculation period, then only part of the debt will be allowed.

### **Capital connected to the Proceedings (including Interim Payments).**

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4. Capital received in connection with the incident giving rise to the dispute will not be automatically disregarded
  5. The general discretion under Rule 15 of Schedule 3 of the Civil Legal Aid Assessment Regulations may apply to the payment in the particular circumstances of each case. In addition special provisions apply for certificates issued before 1 October 1996.
  6. Reassessments on applications received before 1 October 1996: Rule 14B of Schedule 3 of the Civil Legal Aid Assessment Regulations (abolished with effect from 1 October 1996) provided that any capital payment received in relation to the incident giving rise to the dispute for which the legal aid application had been made was wholly disregarded. The regulation applied to make exempt interim awards and payments from, amongst other sources, compensation funds, or insurance policies taken out by the individual to cover personal injuries.

**Example:**

*The individual was granted legal aid in January 1995 to take personal injury proceedings arising out of a road accident. He receives an interim payment of £10,000 damages from the other side in August 1995 and a payment of £40,000 from his own accident insurance policy in relation to the accident in March 1996. Both of these payments would have been disregarded under Rule 14B.*

7. The present relevance of the regulation is on reassessments where the original assessment was made before 1 October 1996. In such a case, if a sum was disregarded under Regulation 14B on the original assessment, then any capital remaining from that sum will continue to be disregarded on the reassessment. However, any further sums received after that date will be treated in accordance with the rules that applied at the date of receipt. Thus in the above example, if the individual received a further £20,000 from his own insurance policy after 1 October 1996, this would be treated as his disposable capital (although there is a general discretion to disregard the capital under Rule 15 of Schedule 3 of the Civil Legal Aid Assessment Regulations).

**Property owned which is not the main dwelling house - applications made before 1 April 2000.**

8. For reassessments of applications made before 1 April 2000, the mortgage allowance is no longer capped at £100,000.

**Example:**

The following is a worked example of the situation where the individual owns a main dwelling house and a second property.

The main dwelling is valued at £180,000. The mortgage outstanding is £70,000.

The second property is valued at £60,000 and has an outstanding mortgage of £40,000.

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Main Dwelling:

House value	£180,000
Less 3%	£5,400
Net value	£174,600
Less mortgage allowance	£70,000
Less disregard	£100,000
Capital	£4,600

Second dwelling:

House value	£60,000
Less 3%	£1,800
Net value	£58,200
Less mortgage allowance	£40,000
Capital	£18,200

The total capital value of the two properties for assessment purposes is therefore £4,600 + £18,200 i.e. £22,800.

Any rent received from a tenant should be taken into account as income. If the individual owns the separate property as part of a business, then it should be assessed as a business asset and not in accordance with the above rule.

**Cross reference: see section 8.2 Business Capital.**

**Note:**

*For further assessments on initial applications made prior to 1 June 1996 the value of the individual's interest in his only or main dwelling is wholly disregarded. Assess a second property as in the example in (b) above, i.e. the individual's interest in the property less the total mortgage or mortgages outstanding. There is no limit on the amount of the mortgage debt allowable. This applies whether or not the individual resides in the second property.*

**Main dwelling – mortgage repayments**

9. For reassessments on original applications made before 1 June 1996, the guidance on mortgage repayments on the individual's only or main dwelling house differs to that set out in the previous section (as being applicable to applications made prior to 1 April 2000), insofar as such repayments are allowable in full even if the amount of the mortgage exceeds £100,000.

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### **Third Party Resources:**

10. The inclusion of third party resources does not apply to reassessments where the initial application was made before 1 June 1996.

### **Personal Injury Applications**

11. For reassessments of certificates issued under the 1988 Legal Aid Act the old higher PI limits will continue to apply. The assessment of disposable income and capital is made in the normal way but using the higher limits. See Appendix 8.

### **11.7 Reassessments of certificates due to receipt of new applications**

1. Regulation 45 of the 2013 Regulations provides that where there is more than one certificate in force for an individual at any one time, contributions from income under only one certificate are payable and the Director may decide under which certificate contributions must be paid. Where a new application is received for an individual who is already in receipt of a certificate issued on a pre-commencement case, and the new application leads to an offer of a certificate, the contribution will be payable under the new certificate.
2. However if the new determination does not result in a certificate being issued the following considerations will be necessary:
  - (a) Where the individual is ineligible for civil legal services this will lead to the refusal of the new application but will not necessarily lead to the discharge of the old certificate. It will be necessary to undertake a reassessment of the old certificate using the updated financial information contained in the new application but applying the old regulations. Following the reassessment a decision can then be made as to whether the old certificate should be discharged or contribution amended etc.
  - (b) Where the new determination results in an offer of a legal aid certificate with an increase to the contribution the individual has previously paid, but the offer lapses and the new certificate is not issued because the individual has refused to accept the offer on the new certificate, then the revised contribution cannot automatically be applied to the old certificate. It will be necessary to undertake a reassessment of the old certificate(s) using the updated financial information contained in the new application but applying the old regulations. The contribution on the old certificate should then be amended accordingly.



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## 12. Emergency Representation

### 12.1 Emergency Representation

1. Emergency representation is primarily addressed within the Civil Legal Aid (Procedure) Regulations 2012 (“the procedure regulations”) and by Regulation 46 of the Civil Legal Aid (Merits Criteria) Regulations 2013. It is not in itself a form of service but a way in which legal representation or family help (higher) are made available to an applicant.
2. A determination (i.e. decision) under Regulation 52 of the Procedure Regulations that an individual qualifies for emergency representation may be made on the basis of limited information and documents if it is considered to be in the interests of justice to do so. This determination may be made on behalf of the director by a caseworker or by a provider using delegated functions. Whilst this has the advantage of speed for the client, it creates a financial risk to both the client and the Lord Chancellor as the client may turn out to be financially ineligible when further information and documents are provided.
3. Regulation 52(2) of the Procedure Regulations confirms that where a determination that an individual qualifies for emergency representation has been made using limited information, this must be conditional upon the provision within a specified time limit of all the necessary information and documents that would have been required for the substantive or non-emergency application, and the determination that the client qualifies for emergency representation “may be disregarded” if the outstanding information or documents are not provided within the time limit. The substantive amendment application must be submitted in accordance with the 2018 Standard Civil Contract Specification terms.
4. Where, following the provision of further information and documents, it is determined that the individual is not financially eligible for legal aid, the emergency certificate **must be revoked** [Regulation 52(2)(c) procedure regulations]. This means that the client will be responsible for the full costs of his or her representation, as well as potentially the costs of the opponent. The provider can however be paid for the work carried out under the emergency certificate even if the individual is subsequently found to be financially ineligible.
5. An issue may arise following a determination that the individual does not qualify for legal aid based on income and/or capital, where it appears that the provider had used delegated functions inappropriately to grant emergency representation in the first place, either because the provider failed to carry out a means assessment or because it was clear from the limited information and documents available at the time that the individual was not financially eligible. In this way the provider has failed to make an appropriate or accurate financial determination as required under Regulation 4 of the Financial Regulations; the provider’s actions therefore has potentially put the individual at financial risk, having failed to correctly advise their client as to

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their financial eligibility, and has caused a loss to the Lord Chancellor by funding an individual who was not financially eligible.

6. Clause 7.1 of the Standard Terms of the 2018 Standard Civil Contract (“the Contract”) states “You [i.e. the provider] must comply with the Contract Documents.” Clause 7.14 states that the provider must comply with all relevant legislation (including legal aid legislation), and have regards to the Lord Chancellor’s Guidance and must comply with the Lord Chancellor’s Directions and the terms of any authorisations. The Contract Specification at paragraph 5.1 makes it clear that a provider may only perform licensed work that is within the scope of the Act and for which the client qualifies in accordance with the Financial, Merits and Procedure Regulations.
7. Therefore in relation to means, it is a breach of the Contract where the provider has granted emergency representation without making an appropriate or accurate financial determination as required under Regulation 4; i.e. either by not carrying out an assessment or where the provider has made a clear error by not applying the financial regulations or guidance correctly to the (limited) information and documents held at that time. Where it is considered that the actions of the provider have caused a financial loss under clause 14.15(b) we have the right under clause 14.14 to “set off” any amounts payable by the Agency to the provider under the Contract (including the specification) or otherwise. We may issue a notice of assessment or notice of debt due to us in connection with Contract Work, which has the effect of making the amount specified in it payable to us (this loss could include counsel’s fees as well as solicitors’ costs and disbursements)<sup>21</sup>. This will be ‘set off’ against any amounts payable by us to the provider (Clause 14.14).
8. If the individual does not co-operate by providing the necessary information and documents or the individual decides not accept an offer where a contribution is required as a condition of funding the case through legal aid, the emergency certificate may be revoked or withdrawn. In both of those circumstances the emergency certificate will usually be revoked due to the financial risk represented by these actions.
9. The “show cause” procedure set out in Regulation 42(3) of the Procedure Regulations does **not** apply to emergency representation i.e. if the individual does not qualify for legal aid there is no need to send a letter notifying the individual of the intention to revoke, similarly if the offer of legal aid is subject to payment of a contribution and the individual does not arrange for the payment to be made, there is no need to write out and invite representations prior to withdrawing or revoking the determination.

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<sup>21</sup> Costs are assessed under the contract with a right of internal review. If counsel has been instructed then there should be an assessment (with a right of appeal to an ICA in respect of counsel’s fees). That is because any sum paid to counsel should be recovered from the provider being part of the loss we have suffered.



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## 13. Risk Analysis and Fraud Awareness

### 13.1 Principles of Risk Analysis

1. Everyone has a duty to be vigilant to ensure that only those who are financially eligible receive legal aid. Risk in this context is the possibility of making a financial determination that an individual is eligible for legal aid inappropriately, granting legal aid to an individual who has not provided the correct information about their income and capital or requiring an incorrect contribution amount from an individual. The LAA has put in place various measures to identify higher risk cases and to protect the legal aid scheme from fraud and abuse.
2. Risk for civil legal aid is managed by: 'passporting' benefits screening for individuals declaring receipt of a qualifying benefit; the collection of evidence in support of the submissions made on CCMS (or paper forms) for income and capital for non-passported individuals, and for capital submissions for passported individuals, undertaking a risk assessment of the information provided and the referral of suspected fraud cases to our specialist teams.
3. Appropriate evidence must be provided with the application as requested on CCMS or paper forms. **Note:** for emergency representation, a financial determination may be made on the basis of limited information and documents if the Director considers that it would be in the interests of justice subject to full information and documents subsequently being provided.
4. All applications from individuals declaring receipt of a passporting benefit i.e. income support, income-based jobseekers allowance, income-related employment and support allowance, guarantee credit or universal credit are screened against records held by the Dept. of Work and Pensions (DWP). If the DWP records do **not** confirm that a passporting benefit is in payment; the individual will be subject to full assessment or may at that point provide any supporting evidence of the claim to passporting benefits (e.g. recent benefit notification letter) to facilitate further screening checks.
5. A risk analysis must be completed for all individuals, to determine whether the case is high or low risk.

### 13.2 Fraud Awareness

1. Fraud can be defined as "causing loss or making gain at the expense of someone by deception and dishonest means". In the context of legal aid, all staff, providers of legal aid services and recipients of legal aid are required to act honestly and with integrity, to safeguard the public resources for which they are responsible. Suspected or discovered legal aid fraud should be reported immediately to the Legal Aid Agency. All information provided to the Legal Aid Agency will be treated in confidence. Further information is provided on the Gov.Uk website on the LAA Counter Fraud and Investigations page: <https://www.gov.uk/guidance/legal-aid-agency-special-investigations>.

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2. Details of who to contact:

FRAUD BY LEGAL AID CLIENTS	ALL OTHER FRAUD (INCLUDING FRAUD BY PROVIDERS OF LEGAL AID SERVICES)
<p>TELEPHONE:</p> <p><b><i>COUNTER FRAUD &amp; INVESTIGATIONS</i></b></p> <p><b>0203 334 5588</b></p> <p>EMAIL:</p> <p><a href="mailto:MoJCounterFraudInvestigations@justice.gov.uk">MoJCounterFraudInvestigations@justice.gov.uk</a></p>	<p>TELEPHONE:</p> <p><b><i>COUNTER FRAUD AND INVESTIGATIONS</i></b></p> <p><b>0203 334 5588</b></p> <p>EMAIL:</p> <p><a href="mailto:MoJCounterFraudInvestigations@justice.gov.uk">MoJCounterFraudInvestigations@justice.gov.uk</a></p>



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## 14. Insolvency and Bankruptcy.

### 14.1 General

1. Insolvency occurs when individuals or businesses:
  - Cannot pay their debts as they become due; or
  - Do not have enough assets to cover their debts
2. Here follows a list of common terms and their meaning in the context of insolvency or bankruptcy:

**Assets** – Anything that belongs to the bankrupt

**Bankruptcy Order** – A court order making a person bankrupt

**Bankruptcy restrictions order or undertaking** – A procedure whereby a bankrupt person may have a court order made against him or give an undertaking which will mean that bankruptcy restrictions continue to apply for a period of between 2 to 15 years.

**Bankruptcy petition** – A request made (by the person as the debtor or by a creditor) to the court for the person to be made bankrupt and giving the reasons why.

**Charging order** – An order made by the court which gives the trustee a legal charge on the bankrupt person's interest in his home. This continues even after the person is discharged from bankruptcy

**Creditor** – Someone to whom the bankrupt person owes money.

**Debt** – Money the bankrupt person owes.

**Debt Relief Order (DRO)** – This is a procedure whereby an individual with limited means (i.e. who does not own their own home, has net income of £50 or less after household bills are paid, a vehicle worth less than £1000 etc.) who has debts of £20,000 or less, can apply for an order to obtain relief on certain qualifying debts.

**Discharge** – Freed from bankruptcy.

**Estate** – The assets or property of the bankrupted person which the trustee can deal with to pay the creditors.

**Income payments agreement (IPA)** – Where the bankrupt enters into a written agreement with the trustee, to pay him or her part of his wages, salary or other income for an agreed period.

**Income payments order (IPO)** – Where the court orders the bankrupt to pay part of his wages, salary or other income to the trustee if the bankrupt’s income is deemed to be more than that amount needed for the bankrupt and his family to live on.

**Insolvency practitioner** – An authorised person who specialises in insolvency, usually an accountant or solicitor. They are authorised either by the Secretary of State or by one of a number of recognised professional bodies.

**Interest** – A right to, or share in, a property.

**Legal charge** – A form of security (e.g. a mortgage) to ensure payment of a debt.

**Trustee** – The trustee in bankruptcy is either the official receiver or an insolvency practitioner who takes control of the bankrupt person’s assets. The trustee’s main duties are to sell these assets and share the money out among the creditors.

## 14.2 Personal insolvency

- The following summary table explains the 2 main procedures that apply to individuals who are insolvent i.e. Individual Voluntary Arrangements and Bankruptcy Orders, the implications of each procedure for the individual and how this affects income and capital for the legal aid means test:

<b>Personal Insolvency and Bankruptcy</b>	
<b>Individual unable to meet debts as they fall due</b>	
<b>Individual Voluntary Arrangement (IVA)</b>	<b>Bankruptcy Order</b>
<p><b>What is an IVA?</b></p> <p>This is a formal agreement where a debtor (a person who owes money) comes to an arrangement with their creditors as to how debt(s) will be repaid, usually to prevent bankruptcy.</p>	<p><b>What is a Bankruptcy Order?</b></p> <p>Where a person is deemed insolvent by the High Court in London or a local County Court under the provisions of the UK Insolvency Act 1986. The bankruptcy order is made following the presentation of a bankruptcy petition – either by the debtor or by one or more creditors.</p>
<p><b>Implications of an IVA?</b></p> <ul style="list-style-type: none"> <li>The debtor arranges for an insolvency practitioner to act as his nominee; the nominee will draw up a proposal to put to creditor and if agreed (by 75% - by value of total debt - of creditors), he will administer the assets in accordance</li> </ul>	<p><b>Implications of the bankruptcy order?</b></p> <ul style="list-style-type: none"> <li>The court appoints a trustee in bankruptcy (usually the Official Receiver) to administer and dispose of assets for the benefit of credits. The trustee will manage payment of the bankrupt’s debts; the bankrupt may be asked (or required) to pay a</li> </ul>

with the proposal – all creditor will be bound by the agreement even where they initially voted against it. Regular payments will be made at an agreed amount, over an agreed period (such as 5 – 6 years).

- An application may be made to the court for an interim order to stay all other legal procedures against the debtor or their property (moratorium).
- Income and capital belongs to the individual but their nominee (insolvency practitioner) administers the assets for the creditor in accordance with the agreement
- The individual can still work or be self employed
- Secured creditors (e.g. mortgage provider) and preferential creditors (e.g. employees that are owed pay and occupational pension schemes) must be paid first unless they consent to other arrangements.
- If there is equity in the individual's home they will be expected to remortgage property usually in 5<sup>th</sup> year of agreement to release or pay for their share; or if this is not possible, continue payments for up to another year.
- At the end of the IVA period the remaining balance of debts will be written off. This may involve the creditors writing off a maximum 80% of the debt.

regular amount under an Income Payment Agreement (or Income Payment Order following application to the court). The bankruptcy period is normally 12 months.

- The courts, bailiffs, HMRC and Land Registry will be notified by the official receiver, who will also give notice of the bankruptcy order in the London Gazette and has discretion to advertise in any other way he or she thinks it is appropriate to do.
- Capital vests with the trustee in bankruptcy whilst the bankruptcy is in place; assets are not returned when the bankruptcy is discharged 12 months later if creditors have not yet been paid (the sale of assets may take several years).
- The individual can work (but not as an MP or local councillor\* in England and Wales) or can be self employed (starting / running a business in his own name) whilst being an un-discharged bankrupt. However the individual cannot be a company director or otherwise be involved in the running of a company (i.e. influencing its directors) whilst being an un-discharged bankrupt.
- HMRC will apply a 'nil tax' code for the remainder of the tax year in which the individual was made bankrupt. (If a person is made bankrupt in March this may apply for a very short period only). The additional money retained from non-payment of tax will normally be put towards the income payment agreement/order.

	<ul style="list-style-type: none"> <li>• The individual must by law disclose his bankruptcy when obtaining credit of £500 or more.</li> <li>• The bankrupt individual must tell the bank / building society of his status prior to opening an account or obtaining overdraft facilities.</li> <li>• At end of 12 month bankruptcy period the individual will be released from some/most of their debts, but will not be released from certain debts including student loans, court fines; mortgage/secured debt, new debts following the bankruptcy.</li> <li>• The bankruptcy may continue for longer than 12 months if the individual refuses to co-operate e.g. by withholding information and documents.</li> <li>• Restrictions may be imposed on person for between 2 to 15 years (Bankruptcy Restriction Order) where it is considered by the court that the bankruptcy was the result of reckless or irresponsible behaviour.</li> <li>• Individual may enter a post bankruptcy IVA i.e. if 75% of creditors agree to an IVA, bankruptcy order is annulled.</li> </ul> <p>*local councillors disqualified if subject to Bankruptcy Restriction Order.</p>
<p><b>Income Assessment (IVA)</b></p> <p>Assess all income belonging to the individual; the IVA does not divest the individual of 'ownership'.</p> <p>Remember to include:</p> <ul style="list-style-type: none"> <li>• Income of spouse / partner</li> </ul>	<p><b>Income Assessment (Bankruptcy Order)</b></p> <p>Assess all income belonging to the individual; establish details of current earnings and / or any estimated net profit if the individual has started a new business. The Bankrupt's income does not automatically vest in the trustee in bankruptcy but can be reached by the IPA/IPO;</p>

<ul style="list-style-type: none"> <li>• <b>Any financial support from third parties – family, friends.</b></li> </ul> <p><b>No allowance should be made for payments made under the IVA.</b></p>	<p>Remember to include:</p> <ul style="list-style-type: none"> <li>• Income of spouse/partner</li> <li>• Any financial support from third parties – family, friends.</li> </ul> <p>No allowance should be made for IPA / IPO payments. No allowance should be made for (the bankrupt’s) income tax where the requirement to pay tax has been waived.</p>
<p><b>Capital Assessment (IVA)</b></p> <p>Assess all capital belonging to the individual.</p> <p>If the individual claims there is a legal restriction on sale of property refer to MAPA.</p>	<p><b>Capital Assessment (Bankruptcy Order)</b></p> <p>All assets will normally vest with the trustee.</p> <p>If residual assets are left over at the end of the process after creditors have been paid (as may have been confirmed by the Trustee) include any capital that the individual has received, or will shortly receive (as money due to the Individual, Regulation 32).</p> <p>Remember to include:</p> <ul style="list-style-type: none"> <li>• Spouse / partner’s assets in their sole name, or 50% share of joint assets.</li> <li>• If the spouse / partner had bought out the individual’s interest in the home include 100%.</li> </ul>
<p><b>Evidence (IVA)</b></p> <ul style="list-style-type: none"> <li>• IVA agreement.</li> </ul>	<p><b>Evidence (Bankruptcy Order)</b></p> <ul style="list-style-type: none"> <li>• Statement of Affairs: schedule of assets/liabilities.</li> <li>• Report to creditors.</li> </ul>

2. There is no discretion to allow for deductions to be made from income for payments towards an Individual Voluntary Arrangement (IVA).

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3. Under the bankruptcy procedure, income does not vest in the Trustee in Bankruptcy but he may reach the individual's income via an Income Payment Agreement (IPA) or Income Payment Order (IPO) if agreement cannot be reached. There is no fixed amount for an IPA or IPO as it is based on the individual's surplus income after the bankrupt's 'reasonable domestic needs' are taken into account, this includes expenses such as a TV license, household and car insurance, mobile phone, dry cleaning etc. An IPA/IPO would not normally be made if the person's main income comes from state benefits.
  4. When the bankruptcy order is made and notified to HMRC, it will apply a 'nil tax' code for the remainder of the tax year in which the individual was made bankrupt. Where income tax payments stop being deducted from the individual's wage, this increased income may form the basis of the IPA. Often the individual will claim that the trustee is 'collecting tax' on behalf of HMRC but that is a misunderstanding of the position where the HMRC have applied a nil tax code. No deduction will be made for income tax within the financial determination, where income tax is not in payment.
  5. Include the individual's current gross income from earnings or self-employment. There is no discretion under the financial regulations to allow for a deduction to be made from gross income for payments made under an IPA / IPO. (Note: it may be possible for an IPA to be varied if there is a change in the bankrupt's circumstances).
  6. Where the individual is subject to an IVA we will include all capital assets in the usual way. If it is advised that there are legal restrictions on the sale of assets e.g. individual's home, evidence should be obtained from the individual and advice sought from Means Assessment Policy Advisor (MAPA).
  7. The capital position will generally be dealt with differently where someone is bankrupt as opposed to being subject to an IVA. The bankrupt individual's capital assets will usually vest with the trustee in bankruptcy; but we will include any capital that the individual has received or is due to be paid back after debts are met.
  8. It is important to remember for the purposes of a financial determination where the individual is aggregated with a partner, that it does not necessarily follow that because one member of the couple is bankrupt or subject to an IVA that both are subject to the same restrictions. In the case of bankruptcy, where one member of the couple has been made bankrupt this may leave assets that the partner legitimately holds in their sole name (i.e. not held as a result of the bankrupt divesting himself of assets prior to the bankruptcy), as well as the partner's share of joint assets which may include the main dwelling home. The partner of the bankrupt may be given the opportunity to buy out the bankrupt's share of the main dwelling to allow the family to remain in occupation rather than have the property sold to a third party. Remember to include any assets (or share of assets) that are not captured by the bankruptcy – so if for example the partner as a result of a buy-out or otherwise, owns the family home in his or her sole name, include this 100% interest in the property in full, in accordance with the normal rules (Regulation 37 for property). Include any financial support received from third parties.

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9. If the trustee decides that he cannot for the time being sell the home, he may obtain a charging order on the bankrupt person's interest in the home; once the charging order is obtained that interest in the property will be returned to the bankrupted person i.e. it will no longer vest in the trustee, but the charge over the bankrupt's interest will remain. In those circumstances include the home in the financial determination in accordance with the normal rules (See Regulation 37 for details of the allowance for debts secured on the main home).
  10. When dealing with an application from someone who has gone through bankruptcy in the last three years, keep in mind that after a certain time, usually 3 years, if the trustee has not sold or obtained a charge over the bankrupt's interest in the property, or applied for an order of possession or obtained a charging order against the property, or the bankrupt has not come to any arrangement with the trustee about that interest, the asset may be returned to that person.
  11. **Debt Relief Order (DRO):** This procedure is available to individuals with limited means who have debts of up to £20,000. An individual may apply to the insolvency service (with the assistance of a DRO adviser) for relief of qualifying debts: e.g. credit cards, overdrafts and loans; rent arrears, utility bills, telephone bills, council tax and income tax; benefit overpayments, hire purchase agreements and business debts. Certain debts **cannot** go into a DRO including court fines and confiscation orders; child support and maintenance; student loans; social fund loans and compensation for death and injury. The DRO, if granted, lasts for a year and certain restrictions apply to the individual e.g.: they cannot borrow £500 or more without telling the creditor about the DRO; to set up a limited company or become a director, they will need the permission of the court; their details will appear on the Insolvency Service's individual Insolvency Register while the DRO is in force and for 3 months after. During the 12 months whilst the DRO is in force, "the moratorium", the individual will generally not have to make any payments towards the debts listed on the order (they may have to return certain items e.g. HP goods); however, there are exceptions e.g. payments to landlord for housing arrears to ward off possession proceedings; payments to bailiffs (enforcement agents) and normal household expenses (e.g. rent, council tax and utilities) should still be paid. When the period has ended the individual will not have to pay off the debts included in the order (except where the debt was obtained through fraud).

### 14.3 Business insolvency

1. For business cases, the individual may be a self employed sole trader, a co-owner in a general or limited liability partnership or a director / shareholder of a limited company that is going through insolvency procedures. These procedures can be categorised as either business rescue procedures which are entered into with a view to the business continuing or formal insolvencies that are aimed at winding up the business to realise any assets for creditors.
2. Detailed guidance is provided in **Section 7.7 Special Groups – Business Cases (Bankruptcy, Liquidation and Receivership)** on how income and capital from the business in this scenario should be assessed.

3. For a sole trader, whilst a bankruptcy will usually mean the end of his or her business, it would not be unusual or unexpected for that individual to start up a new business. The sole trader business is the simplest business model with very little legal constraints or formalities thus a new business may be formed and trading in a relatively short period of time. The individual is however restricted from carrying on business (directly or indirectly) in a different name from that in which he or she was made bankrupt, without advising those with whom they are doing business about the bankruptcy.
4. Individual members of a business partnership may go through bankruptcy although there are different insolvency procedures for dealing with business partnerships (general and limited liability) and limited companies themselves.
5. The following tables (A to D) explain the different types of insolvency procedures (under the two broad headings of business rescue or winding up) that may operate depending on the main business models:

**Table A**

<b>Business Insolvency</b>	
<b>Business cannot meet its debts as they fall due.</b>	
<b>Sole trader</b>	
(see also personal insolvency and bankruptcy – section 14.2)	
<b>Sole trader is personally liable for the debts of the business</b>	
<p><b>Debt Repayment – Continuing Business:</b></p> <p><b>County Court Administration Order.</b></p> <p>The court:</p> <ul style="list-style-type: none"> <li>• Makes an order for regular payments to be made over a period of time in settlement of debts; and</li> <li>• Administers the scheme.</li> </ul> <p>The scheme is only available to individuals.</p>	<p><b>Winding Up – End of Business:</b></p> <p><b>Bankruptcy.</b></p> <ul style="list-style-type: none"> <li>• A bankruptcy will usually mean the end of the business (i.e. business is closed down and any employees are dismissed).</li> <li>• Any business assets will be claimed by the trustee unless they are exempt (exemptions include tools, books, vehicles and other items of equipment which the bankrupt needs to use personally in their employment, business or vocation).</li> <li>• The bankrupt will have to give the official receiver all accounting records.</li> </ul>

	<ul style="list-style-type: none"> <li>The bankrupt is still responsible for completing all tax and VAT returns.</li> </ul> <p>There is nothing to prevent a bankrupt from being self-employed. So the person may start to trade again, but is restricted from carrying on business (directly or indirectly) in a different name from that in which the individual was made bankrupt, without advising those with whom they are doing business about the bankruptcy.</p>
<p><b>IVA</b></p> <p>(refer to table in section 14.2 - personal insolvency IVA).</p>	<ul style="list-style-type: none"> <li></li> </ul>

**Table B**

<p><b>Business Insolvency</b></p> <p><b>Business cannot meet its debts as they fall due.</b></p>	
<p><b>General Partnership</b></p> <p>(see also personal insolvency and bankruptcy)</p> <p>Partners are jointly and severally liable for any debts. Where a partnership becomes insolvent, any partner may be pursued for any liability due.</p>	
<p><b>Debt Repayment – Continuing Business:</b></p> <p><b>Voluntary Arrangement</b></p> <ul style="list-style-type: none"> <li>Modelled on the Company Voluntary Arrangement (see below) but because of joint and several liability partners often propose IVAs at the same time.</li> <li>Proposals drafted by partners, nominated supervisor appointed to oversee proposal and sponsor it to the court and creditors.</li> <li>If any creditor was not to accept the proposals, that creditor could then take enforcement action against the</li> </ul>	<p><b>Winding Up – End of Business:</b></p> <p><b>Partnership winding up</b></p> <p>The court orders a compulsory winding up as a result of the presentation of a petition by:</p> <ul style="list-style-type: none"> <li>the members of the partnership; or</li> <li>a creditor.</li> </ul>

<p>personal assets of each individual partner.</p> <ul style="list-style-type: none"> <li>• Partners remain in control of the day to day affairs of the Partnership.</li> <li>• Avoids stigma of bankruptcy.</li> </ul>	
<p>Partnership Administration Order</p> <ul style="list-style-type: none"> <li>• <b>The court appoints an administrator following an application by the members of the partnership or by a creditor</b></li> <li>• <b>Intended to allow i) the partnership to survive in a restructured form; ii) approval of a partnership voluntary arrangement; iii) a better realisation of the business's asset than would be obtained from winding up the partnership.</b></li> </ul>	

**Table C**

<p><b>Corporate Insolvency:</b></p> <p>LLP or company cannot meet its debts as they fall due.</p>	
<p><b>Limited Liability Partnership</b></p> <p>LLP is a legal person in its own right; the LLP is responsible for its debts rather than its members whose liability for debt is therefore limited.</p>	
<p><b>Debt Repayment – Continuing Business:</b></p> <p><b>Voluntary Arrangement</b></p> <ul style="list-style-type: none"> <li>• Closely modelled on the Company Voluntary Arrangement (see below) but proposals are drafted by members of the LLP.</li> <li>• Members remain in control of the day to day affairs of the Partnership</li> </ul> <p>Avoids stigma of bankruptcy</p>	<p><b>Winding Up – End of Business:</b></p> <p><b>Creditors' Voluntary Liquidation</b></p> <ul style="list-style-type: none"> <li>• Voluntary way of dealing with LLP's insolvency.</li> <li>• Members determine that LLP cannot continue in business as it is unable to pay its debts and that it is advisable to wind up.</li> </ul>

	<ul style="list-style-type: none"> <li>• LLP Members agreement will detail how determination is to be made of winding up or otherwise a majority of members will make the decision.</li> <li>• Notice of liquidator’s appointment must be published in the Gazette and notification sent to Companies House.</li> <li>• Liquidator will call in all the LLP’s assets and distribute funds to creditors.</li> <li>• Liquidator’s statement of affairs sent to companies house within 5 days of creditor’s meeting.</li> </ul>
<p><b>Debt Repayment – Continuing Business: Administration order (“Administration”)</b></p> <ul style="list-style-type: none"> <li>• The LLP enters administration upon the appointment of an administrator by: an administration order made by the court; the holder of a floating charge; its members.</li> <li>• Intended to allow i) the partnership to survive in a restructured form; ii) approval of a partnership voluntary arrangement; iii) a better realisation of the business’s asset than would be obtained from winding up the partnership.</li> <li>• Moratorium on insolvency and other legal proceedings. Any pending winding up petitions will be dismissed or suspended.</li> <li>• Notice of appointment of Administrator must be sent to the Gazette and placed in a local newspaper, and notice sent to the Registrar at Companies House.</li> </ul>	<p><b>Winding Up – End of Business: Compulsory Liquidation</b></p> <p><b>Based on arrangements for companies:</b></p> <ul style="list-style-type: none"> <li>• The court orders a compulsory winding up of LLP as a result of the presentation of a petition of creditors, the LLP itself; one or more LLP members, the Financial Services Authority, the Official Receiver, Secretary of State for Business, Innovation and Skills</li> <li>• Petition must be advertised in the Gazette.</li> <li>• Official Receiver becomes the liquidator upon making of a winding up order (unless court orders otherwise) and will investigate the affairs of the LLP and causes of failure. He takes decision whether to call meeting of creditors and other contributories to appoint Liquidator in his place</li> <li>• Liquidator’s duties include realising assets, distributing funds, holding creditors’ meetings.</li> </ul>

<ul style="list-style-type: none"> <li>• Every business document issued by the LLP will name the Administrator and state he / she is managing the affairs, business and property of the LLP</li> <li>• The Administrator will request a statement of the LLP's affairs from relevant people and within 8 weeks will make a statement setting out proposals explaining purpose of administrator or explaining if it cannot be achieved. This report will be sent to Companies House, members of the LLP, creditors of the LLP</li> <li>• Administration will last 1 year unless extended with consent of creditors and the court.</li> <li>• Administration may end and move to Creditor Voluntary winding up, if Administrator thinks secured creditors can be paid and a distribution made to unsecured creditor.</li> <li>• Administration may end and move to dissolution if Administrator believes company has no property with which to make a distribution to creditors. In these circumstances company will be dissolved after 3 months unless further Order made.</li> </ul>	<ul style="list-style-type: none"> <li>• When the winding up is complete, the Official Receiver sends notice to the Registrar at Companies House (or other appointed Liquidator sends notice of final meeting of creditors). The Registrar will register it and publish its receipt in the Gazette.</li> <li>• Official Receiver must send the winding up order to Companies House and it will be placed on the LLP's public record (but the petition itself does not appear on the public record).</li> <li>• LLP will be wound up within 3 months of presentation of notice to Companies House</li> </ul>
<p><b>Debt Repayment – Continuing Business:</b></p> <p><b>Administrative Receivership (“receivership”)</b></p> <ul style="list-style-type: none"> <li>• Only available to a secured creditor who holds a debenture agreement containing floating, or fixed and floating, charges over the whole, or substantially the whole, of a LLP's assets (i.e. bank).</li> </ul>	

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|---|--|
| <ul style="list-style-type: none"><li>• Licensed insolvency practitioner is appointed, at which point the floating charges crystallise.</li><li>• Must treat the business assets covered by the charge in such a way as to recover the money owed to the secured creditor. If the receiver believes it to be in the best interests of the secured creditor the business will continue to trade.</li><li>• Receiver sends report explaining the action he / she is taking to: the Registrar at Companies House, the creditors of the LLP, holders of a floating charge, any trustees for secured creditors of the LLP.</li><li>• The Report will include a statement of affairs summarising the LLP's assets, liabilities and creditors</li><li>• Receiver will send an account of receipts and payment for the first 12 months to the Registrar, and thereafter every 12 months.</li><li>• [Receivers who are not administrative receivers may be appointed in other circumstances under a charge or instrument creating a charge over LLP property until a debt is recovered, this is an appointment under the Law of Property Act 1925. They will report to the Registrar in a similar way but at 6 monthly intervals].</li></ul> |  |
|---|--|

**Note:**

6. An LLP does not have to go through insolvency proceedings before being dissolved. An LLP that is not trading can apply to the Registrar at Companies House to be struck of the register.
7. A solvent LLP may be wound up by the designated members making a statutory declaration of solvency – this is called a members voluntary liquidation. This will state that having made a full inquiry of the LLP’s affairs it will be able to pay its debts in full within 12 months from the start of winding up. The declaration will include a statement of the LLP’s assets and liabilities at the latest practicable date before making the declaration. If the liquidator subsequently determines that the LLP will not be able to pay its debts in full in the period stated in the designated member’s statutory declaration of solvency, this may be converted to a creditors voluntary liquidation.

**Table D**

<p><b>Corporate insolvency:</b></p> <p>LLP or Company cannot meet its debts as they fall due</p>	
<p><b>Limited Company</b></p> <p>A legal person in its own right, members’ liability is limited by share or guarantee.</p>	
<p><b>Debt repayment – continuing business:</b></p> <p><b>Company Voluntary Arrangement</b></p> <ul style="list-style-type: none"> <li>• Proposals may be made by directors, administrators or liquidators.</li> <li>• If agreed by in excess of 75% of creditors (by value of those present) nominee becomes supervisor and implements the arrangements.</li> <li>• The plan may involve delayed or reduced debt payments, capital restructuring or disposal of assets.</li> <li>• Unlike Individual Voluntary Arrangement there no protection by means of a moratorium granted by the Interim Order Procedure.</li> <li>• However under the Insolvency Act 2000 the CVA may be preceded by</li> </ul>	<p><b>Winding Up – End of Business:</b></p> <p><b>Creditors Voluntary Liquidation</b></p> <ul style="list-style-type: none"> <li>• Voluntary way of dealing with company’s insolvency.</li> <li>• Directors consult licensed insolvency practitioner.</li> <li>• Needs extraordinary resolution of shareholders to wind up.</li> <li>• Creditor meeting held within 14 days, given statement of affairs, history of business and cause of failure.</li> <li>• Liquidator’s duties include realising assets, distributing funds, holding creditors’ meetings.</li> <li>• Notice of liquidator’s appointment must be published in the Gazette</li> </ul>

<p>a short moratorium (normally 28 days).</p> <ul style="list-style-type: none"> <li>Once the CVA is approved, the supervisor will send a copy of the Chair's report of the meeting to Companies House and updates every 12 months.</li> </ul>	<p>and notification sent to Companies House.</p> <ul style="list-style-type: none"> <li>Liquidator's statement of affairs sent to companies house within 5 days of creditor's meeting; liquidators report for the first 12 months of liquidation and every 12 months until winding-up is complete.</li> </ul>
<p><b>Debt repayment – continuing business: Administration Order (“administration”)</b></p> <ul style="list-style-type: none"> <li>Designed to hold business together while plan is formulated to i) rescue the business or ii) to achieve a better result for creditors than would be achieved through winding up.</li> <li>Petition to court by company, directors or creditors holding a floating charge.</li> <li>Court must be persuaded that it is more beneficial to remain a going concern than to liquidate business to grant the Administrative Order. (When the company enters administration any winding-up petitions will be dismissed or suspended).</li> <li>Court appoints licensed insolvency practitioner (Administrator) to manage business, prepare proposal, and meet creditors. If majority of creditors approve, the Administrator reports to the court and the proposal is implemented.</li> <li>Administration will last 1 year unless extended with consent of creditors and the court.</li> </ul> <p>Administration may end and move to dissolution if Administrator believes company has not property</p>	<p><b>Winding Up – End of Business: Compulsory Liquidation/Winding up</b></p> <ul style="list-style-type: none"> <li>Order by court on petition presented by creditors, the company, directors or one or more shareholders, the Financial Services Authority, the Official Receiver, Secretary of State for Business, Innovation and Skills</li> <li>Referred by court to Official Receiver, who usually becomes liquidator on making of order.</li> <li>Where compulsory liquidation follows administration the former Administrator may be appointed liquidator</li> <li>Liquidator's duties include realising assets, distributing funds, holding creditors' meetings.</li> <li>The petition must be advertised in the Gazette</li> <li>If the petition is successful a copy of the winding up order is forwarded to the Registrar at Companies House (the petition does not appear on the public record).</li> <li>When the winding up is complete, the Official Receiver sends notice to the Registrar at Companies House (or other appointed Liquidator sends notice of final meeting of creditors).</li> </ul>

<p>with which to make a distribution to creditors. In these circumstances company will be dissolved after 3 months unless further Order made.</p>	<p>The Registrar will register it and publish its receipt in the Gazette.</p>
<p><b>Debt repayment – continuing business:</b></p> <p><b>Administrative Receivership (“receivership”)</b></p> <ul style="list-style-type: none"> <li>• Only available to a secured creditor who holds a debenture agreement containing floating, or fixed and floating, charges over the whole, or substantially the whole, of a company's assets (i.e. bank)</li> <li>• Licensed insolvency practitioner is appointed, at which point the floating charges crystallise.</li> <li>• Receiver must treat the business assets covered by the charge in such a way as to recover the money owed to the secured creditor. If the receiver believes it to be in the best interests of the secured creditor the business will continue to trade.</li> <li>• Receiver does not act for unsecured creditors.</li> </ul>	<p><b>Winding Up – End of Business:</b></p> <p><b>Provisional Liquidation</b></p> <ul style="list-style-type: none"> <li>• The court may appoint a provisional liquidator after the presentation of a petition for a winding up in order to protect the assets of a company before a winding up order is made.</li> <li>• NB where a provisional liquidator has been appointed, HMRC do not treat the case as an insolvency until a winding up order is made and a 'permanent' liquidator appointed.</li> </ul>

**Note:**

8. A solvent company may be wound up e.g. the sole director / shareholder wants to retire and unlock capital – this is called a members voluntary liquidation. If the liquidator determines that the company will not be able to pay its debts in full in the period stated in the director's statutory declaration of solvency this may be converted to a creditors' voluntary liquidation.

**Sequestration - Scotland**

9. Sequestration is the bankruptcy process in Scotland. The petition for sequestration may be presented by
  - The debtor
  - A creditor

- A trustee acting under the trust deed

#### 14.4 Sources of Information:

1. The following table sets out various sources of information relating to Insolvency and Business Liquidation:

Procedure	Sources of Evidence (income and capital)
Administrative Order	Various notices filed with Companies house including: Notice of Administrator's appointment / statement of affairs / statement of proposals/ Administrator's progress report / Order to deal with charged property.
Administrative Receivership	Administrative Receiver's Report to Companies House and Statement of Affairs.
Bankruptcy	Bankruptcy Order.  Statement of Affairs.  Letter from Trustee in Bankruptcy.  <i>(Made against an individual i.e. sole trader or individual partners in general business partnership, or former director who provided personal guarantees).</i>
Debt Relief Order	Debt Relief Order
Individual Voluntary Arrangement	IVA agreement.  <i>(Sole trader or individual partners in general business partnership).</i>
Partnership Voluntary Arrangement	PVA agreement.  <i>(General partnership).</i>
Voluntary Arrangement (Company or LLP)	CVA / PVA (LLP) agreement.  Notices filed with Companies House under Insolvency (Amendment) Rules: Notice of Voluntary arrangement; order of revocation or suspension of voluntary arrangement; supervisor's progress report; notice of termination or completion of voluntary arrangement.
Voluntary Liquidation (Creditors)	Statement of Affairs.  Liquidator's report.

	Return of final meeting.
Voluntary Liquidation (Members)	Members' voluntary winding-up declaration embodying a statement of assets and liabilities.  Closing accounts.  ( <i>Company <u>not</u> insolvent</i> ).
Winding Up / Liquidation (Company or LLP)	Companies house documents:  <i>Voluntary Liquidation</i> (see above).  <i>Compulsory Liquidation-</i>  Notice of final meeting,  Notice from Official Receiver that winding-up is complete.



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## 15. Evidence of Means

### 15.1 General

1. Where a new application is made or a further determination is required, the individual must provide the necessary information to enable a decision to be made (Regulation 13). This will include any supporting evidence requested through CCMS or on the standard forms.
2. The means assessment process has been strengthened in recent years through a combination of measures including cross office quality control / auditing and training to identify areas of inconsistency and to regularise the approach taken for financial determinations across all teams dealing with certificated work. As part of that process, following advice from the National Audit Office, the evidence requirements have also been strengthened in recent years; in particular bank statements are now routinely requested.
3. Means evidence requirements are advised in the Lord Chancellor's Guidance on Determining Financial Eligibility for Certificated Work, the Civil Representation Financial Assessment Forms Checklist and evidence checklists attached to the relevant means forms where a paper application is required (CIVMEANS 1 and CIVMEANS 2 etc.) which will include requirements to complete supplementary forms based on particular circumstances i.e. CIVMEANS 1A-B or CIVMEANS 2A where the client owns a business (for paper applications) or CIVMEANS 1C where the individual is a company director, or supplementary form CIVMEANS 1P where the individual is in prison (See paragraph 5 below). All individuals (or those applying on an individual's behalf) are expected in the first instance to provide the necessary supporting evidence as outlined on the evidence checklist.
4. The Civil Legal Aid (Financial Resources and Payment for Services) Regulations 2013 do not prescribe which supporting documents are acceptable (as for example the Procedure Regulations do for Gateway evidence). This provides scope for some flexibility to be shown in appropriate cases – i.e. where it is impracticable given the client's circumstances to provide a particular piece of evidence requested by the checklist, the individual may be able to provide an alternative piece of evidence to enable the caseworker to build a picture of their finances including authorities to approach third party institutions (as appropriate) which hold relevant information. The checklist will often set out alternative pieces of evidence which can be provided to evidence income or outgoings e.g. wage slips are generally required to evidence income from employment however Statement of Earnings form L17 may be accepted in substitution where wage slips are not available.
5. Where the individual is a prisoner on remand or serving a sentence, financial eligibility for legal aid must still be evidenced with supporting documents. Supplementary form CIVMEANS 1P must be completed providing information about the individual's income and assets. Financial statements for the last 3 months will be required for any *open* bank / building society accounts and the last 3 months Prisoner's Income and Expenditure

Statement (PIES) for any prison account held. Evidence of wages (e.g. payslips) from outside employment will be required for prisoners released on temporary license and those on “working out” schemes. (**Note:** the CIV MEANS 1P is **not** required where the individual is being held under immigration powers in a prison).

## 15.2 Summary of evidence requirements:

1. Summary tables for income, outgoings and capital with examples of supporting documents are set out below.

### Vulnerable Individuals:

2. If an individual is particularly vulnerable and struggling to provide documents the legal aid provider should attach / upload through CCMS as much evidence as is available, having regard to tables A – C below, and notify the Director of the circumstances for not providing full documentation when the application is made. The Director will determine whether in the circumstances it is possible to proceed on the basis of the available evidence.

### Upper Tribunal (IAC) Work:

3. If an individual has applied for Upper Tribunal (IAC) Work and his or her circumstances are such that they are struggling to provide documents, the legal aid provider should attach / upload through CCMS as much evidence as is available, having regard to tables A – C below, and notify the Director of the circumstances for not providing full documentation when the application is made. The Director will consider whether, based on the evidence that has been provided, the individual can be determined to be financially eligible.

**Table A: Income**

Income	Examples of Satisfactory evidence
Salary /Wage	<p>Wage slips:</p> <ul style="list-style-type: none"> <li>• 3 most recent consecutive payslips if paid monthly or 4-weekly.</li> <li>• 6 most recent consecutive pay slips if weekly or fortnightly paid</li> </ul> <p>L17 statement of earnings - if wage slips unavailable</p>
Benefits in Kind	P11D tax form
State Benefits and Tax Credits (non-passporting benefits)	<p>Bank statements</p> <p>Recent notification letter (no more than six months old)</p>
Self employment, Partnership, Directorship	<p>Latest Trading Accounts</p> <p>[If you are provided with abbreviated accounts on the basis that the company is a ‘small’ or ‘micro-entity’ business you will need additional information. Request the statutory accounts along with the company tax form CT600 and supporting schedules; you can also request a copy of the management accounts if available].</p>

	<p>HMRC income tax calculation Bank statements</p> <p>Relevant Supplementary forms:</p> <p><b>CIVMEANS 1 (Non- passported client):</b></p> <ul style="list-style-type: none"> <li>• CIVMEANS 1A (self employed sole traders),</li> <li>• CIVMEANS 1B (business partnerships),</li> <li>• CIVMEANS 1C (directors and shareholders of limited companies)</li> </ul> <p><b>CIVMEANS 2 (Passported clients) –</b></p> <ul style="list-style-type: none"> <li>• CIVMEANS 2A (self employed sole traders and business partnerships),</li> <li>• CIVMEANS 1C directors and shareholders of limited companies)</li> </ul>
Maintenance Payments	Bank statements
Student Loan or grant	Student loan/grant award letter Bank statements
Pensions	Pension statements Bank statements
Rental income / Board or rent from family lodgers tenants	Tenancy agreements Bank statements Lodging agreement / letter from lodger / receipts
Asylum support (previously known as NASS support)	<p>Confirmation from the Home Office or Migrant Help that the individual is in receipt of support. Written evidence must be no more than 6 months old. Asylum Support may also be evidenced by completing the LAA's Asylum Support enquiry form or otherwise a detailed telephone note confirming: Asylum Support reference number, type and amount of Asylum Support (ss.4, 95 or 98) received, date and details of individual and department confirming support.</p> <p>The provider's note of the call must be uploaded to CCMS.</p>
Section 17 support / other local authority payments	A confirmation letter from the Local Authority that the individual is in receipt of support is required, with type of support and amounts paid out for accommodation and any weekly allowance specified.
Third party financial support	<p>Bank statements</p> <p>Letter from the third party confirming the nature and extent of the support, including:</p> <ul style="list-style-type: none"> <li>• The amount of any monthly allowance;</li> <li>• Details of support with accommodation (e.g. placement within the third party's home or in a separate property</li> </ul>

	<p>owned by the third party, or payment of the individual's mortgage / rent / board and lodging elsewhere.</p> <p>The completion of form CIV Means 1 may be required where the individual appears to be wholly financially dependent on the third party, to determine whether an aggregated assessment is appropriate.</p>
Various for prisoner (not applicable to immigration detention)	<p>3 months of Prisoner Income and Expenditure Statements (PIES) are required.</p> <p>Also, evidence as set out above for 'outside' income e.g. Wages slips if employed outside the prison.</p>

**Table B: Outgoings**

<b>Expenditure</b>	<b>Examples of Satisfactory evidence</b>
Tax and National Insurance	Wage slip HMRC tax calculation
Child Care Costs	Bank statements Child Care Agreement Recent Receipts
Maintenance Payments	Bank statements Wage slips showing CSA deduction Receipts
Rent/Mortgage/ Accommodation fees	Rent account statement Mortgage statement Lodging Agreement Receipts Bank statement  Copy of Housing Benefit Award (where applicable) to determine the rental liability actually paid by the client).
Criminal legal aid contributions	Copy of income contribution order.

**Table C: Capital** (including assets held under Restraint Order and Bankruptcy)

<b>Assets</b>	<b>Examples of Satisfactory evidence</b>
Monies held in Bank / building society / other financial accounts	Financial Statements from the institution concerned PIES statement (prison account)
Investments: e.g. National Savings Certificates Premium bonds Capital bonds Stocks and Shares etc.	Investment / share certificates / financial statements.

Valuables: e.g. Painting Jewellery Antiques etc.	Valuations (sale price)
Beneficiary under a Trust Fund	Trust instrument, Trust accounts
Legacy (Will beneficiary)	Copy of Will / financial statement showing amount received.
Life Assurance / Endowment policy	Letter from policy provider (loan /surrender value)
Insurance covering Legal Fees (e.g. contents/building/motor/ other insurance)	Copy of policy.
<i>Restrained Assets</i>	A copy of the Restraint Order will be required along with Amended Order (as applicable).
<i>Insolvency and bankruptcy</i>	A copy of the Bankruptcy Order will be required along with latest schedule of assets and liabilities.  Refer to Section 14 for detailed guidance on insolvency and bankruptcy documentation.

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# Appendices

## Appendix 1 Normal Assessment Limits

**NEW AND FURTHER DETERMINATIONS OF CASES GRANTED UNDER THE LEGAL AID, SENTENCING AND PUNISHMENT OF OFFENDERS ACT 2012 FROM 1 APRIL 2013 (£ INCOME PER MONTH)**

Gross Income Limit	Disposable Income Limits	Lower Capital Limit	Upper Capital Limit				
<b>£2657 PER MONTH*</b>	<table style="width: 100%; border-collapse: collapse;"> <tr> <td style="text-align: center; width: 50%;">LOWER</td> <td style="text-align: center; width: 50%;">UPPER</td> </tr> <tr> <td style="text-align: center;"><b>£315 PM</b></td> <td style="text-align: center;"><b>£733 PM</b></td> </tr> </table>	LOWER	UPPER	<b>£315 PM</b>	<b>£733 PM</b>	<b>£3,000</b>	<b>£8,000</b>
LOWER	UPPER						
<b>£315 PM</b>	<b>£733 PM</b>						
<p><b>*HIGHER LIMIT APPLIES WHERE MORE THAN 4 CHILD DEPENDANTS</b></p>							

SEE APPENDIX 12 FOR IMMIGRATION AND ASYLUM UPPER TRIBUNAL WORK ASSESSMENT LIMITS

### ADDITIONAL GROSS INCOME CAP

No. of child dependants	Gross income cap
0 - 4	£2,657
5	£2,879
6	£3,101
7	£3,323
8+	Add £222 to above figure for each additional child.

### CONTRIBUTION BANDS: 1 APRIL 2013 ONWARDS

Band	Monthly Disposable Income	Monthly Contribution
<b>A</b>	<b>£316 to £465</b>	<b>35% of income in excess of £311</b>
<b>B</b>	<b>£466 to £616</b>	<b>£53.90 + 45% of income in excess of £465</b>
<b>C</b>	<b>£617 to £733*</b>	<b>£121.85 + 70% of income in excess of £616</b>

**\*FOR DOMESTIC ABUSE CASES AND OTHER CASES WHERE THE MONTHLY INCOME LIMIT OF £733 HAS BEEN WAIVED, THE BAND C CONTRIBUTION IS CALCULATED ON DISPOSABLE INCOME OF £617 AND ABOVE (I.E. IT IS NOT LIMITED TO DISPOSABLE INCOME OF £733).**

## **DEPENDANT'S ALLOWANCES**

**THE FOLLOWING ALLOWANCES ARE PAYABLE DEPENDING ON THE AGE AT THE START OF THE CALCULATION PERIOD**

	<b>Applications/reassessments received on/after 8.04.24</b>
Child aged 15 or under	£361.70 pm (4340 pa)
Child aged 16 or over	£361.70 pm (4340 pa)
Partner	£224.87 pm (2698 pa)
Adult dependant relative	£361.70 pm (4340 pa)

**PENSIONER CAPITAL DISREGARDS (INDIVIDUAL OR THEIR PARTNER ARE AGED 60 YEARS OR OVER AT THE START OF THE CALCULATION PERIOD)**

<b>MONTHLY DISPOSABLE INCOME (£) (Excluding net income derived from capital)</b>	<b>AMOUNT OF CAPITAL DISREGARD</b>
Individual receiving passporting benefit	£100,000
0 – 25	£100,000
26 – 50	£90,000
51 – 75	£80,000
76 – 100	£70,000
101 – 125	£60,000
126 – 150	£50,000
151 – 175	£40,000
176 – 200	£30,000
201 – 225	£20,000
226 – 315	£10,000
Above 315	Nil



## Appendix 2 Rates of State Benefits

TYPE OF BENEFIT	RATE FROM 08.04.24 (PER WEEK)
<b>CHILD BENEFIT</b>	
1 <sup>st</sup> Child	£25.60
Other children	£16.95
<b>INCAPACITY BENEFIT</b>	
<b>Claimant under pension age</b>	
Short term lower rate – paid to the unemployed or those not entitled to SSP	
Basic	£104.85
Adult dependency increase	£62.85
Short term higher rate – paid after 28 weeks of SSP	
Basic	£124.00
Adult dependency increase	£62.85
Long term – paid after 24 weeks at short term higher rate	
Basic	
Incapacity began before aged 35	£153.60

TYPE OF BENEFIT	RATE FROM 08.04.24 (PER WEEK)
<p>Incapacity began between aged 35-44</p> <p>Incapacity began aged 44+</p> <p>Adult dependency increase</p> <p>Child dependency increase</p> <p>    First child</p> <p>    Each other child</p>	<p>£147.05</p> <p>£138.90</p> <p>£80.70</p> <p>£8.00</p> <p>£11.35</p>
<p><b>INCAPACITY BENEFIT (CONT'D)</b></p> <p><b>Claimant over pension age</b></p> <p>Short term rate</p> <p>    Basic / higher</p> <p>    Adult dependency increase</p> <p>    Child dependency increase</p> <p>        First child</p> <p>        Each other child</p>	<p>£133.25 / £138.90</p> <p>£77.70</p> <p>£8.00</p> <p>£11.35</p>
<p><b>CONTRIBUTION BASED JSA</b></p> <p>Under 25</p>	<p>£71.70</p>

TYPE OF BENEFIT	RATE FROM 08.04.24 (PER WEEK)
25 +	£90.50
<p><b>EMPLOYMENT AND SUPPORT ALLOWANCE- (CONTRIBUTION-BASED)</b></p> <p><b>Assessment Phase</b></p> <p>Under 25</p> <p>25+</p> <p><b>Main phase</b></p> <p>Work related Activity Group</p> <p>Support Group</p>	<p><b>UP TO £71.70</b></p> <p><b>UP TO £90.50</b></p> <p>Up to £126.45</p> <p>Up to £138.20</p>

TYPE OF BENEFIT	RATE FROM 08.04.24 (PER WEEK)
<p><b>MATERNITY ALLOWANCE</b></p> <p><b>Standard Rate</b></p> <p><b>(Claimant paid the lesser of Standard Rate or 90% of earnings).</b></p> <p><b>MA Threshold</b></p>	<p><b>Up to £184.03</b></p> <p><b>£30.00</b></p>
<p><b>STATUTORY MATERNITY PAY</b></p> <p><b>STATUTORY PATERNITY PAY</b></p> <p><b>STATUTORY ADOPTION PAY</b></p> <p><b>Earnings Threshold</b></p> <p><b>(SPP/SAP: Claimant paid the lesser of Standard Rate or 90% of average weekly earnings throughout the claim).</b></p> <p><b>(SMP/SSP: See below for details).</b></p>	<p><b>UP TO £184.03</b></p> <p><b>UP TO £184.03</b></p> <p><b>UP TO £184.03</b></p> <p><b>£123.00</b></p>
<p><b>STATUTORY SICK PAY</b></p> <p><b>Earnings Threshold</b></p> <p><b>(SMP/SSP: Claimant paid 90% of average earnings for the first 6 weeks; thereafter the Claimant is paid the lesser of Standard Rate or 90% of average weekly earnings).</b></p>	<p><b>£116.75</b></p> <p><b>£123.00</b></p>



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## Appendix 3 Taxable and Non-Taxable Income

### Taxable Income

Annuities (except the capital portion of some annuities)

Benefits in kind

Bonuses

Carer's Allowance

Christmas boxes to employees

Commission

Employment and Support Allowance (Contribution-based)

Incapacity Benefit (from week 29)

Income from property or land

Invalidity Allowance when paid with retirement pension

Jobseeker's Allowance (Income and Contribution based)

Other emoluments from employment

Pensions

Profits for business or profession

Retirement Pension

Salaries

Statutory Maternity Pay (SMP)

Statutory Sick Pay (SSP) and Company Sick Pay

Territorial Army earnings

Tips

Trust Income

Wages

Widowed Parent's Allowance (legacy claims where partner died before 6 April 2017)

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## **Non- taxable income**

Armed Forces Independence Payment

Attendance Allowance

Bereavement Support Payment

Child Benefit (unless income is over £50,000)

Child Tax Credit

Christmas Bonus

Constant Attendance Allowance

Council Tax Reduction / Council Tax Support

Direct Payments (Community Care or Special Educational Needs)

Disability Living Allowance

Disability Working Allowance

Disablement Pension

Employment and Support Allowance (Income-based)

Exceptional Severe Disablement Allowance

Free TV Licence for over-75s

Guardians Allowance

Housing Benefit

Housing grants paid by Local Authorities

Incapacity Benefit (first 28 weeks)

Income received from private sickness insurance schemes

Income from savings (for legal aid purposes)

Income Support (unless you are on strike when you claim)

Income-Related Employment and Support Allowance (ESA)

Industrial injuries benefits

Interest on National Savings Certificates

Lump-sum bereavement payments

Maternity Allowance

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Mobility Allowance

MOD Special payment

Pension Credit (Guarantee / Savings)

Personal Independence Payment

Prison Earnings

Reduced Earnings Allowance

Retirement Allowance

Severe Disablement Allowance

Severe occupational disablement allowance

Share dividends (for legal aid purposes)

Social Fund Payments (including Winter Fuel Payments)

Student grants / loans received by full time students

Trust Fund Income (for legal aid purposes)

Universal Credit

War Widows or Widowers Pension (legacy payments where partner died as a result of service in HM Armed Forces before 6 April 2005).

Working Tax Credit



## Appendix 4 Tax Allowances and Rates

**APPLICABLE FROM 6.04.24**

**TABLE A: TAX ALLOWANCES APPLIED AGAINST INCOME.**

ALLOWANCE	Born 5/4/48	after	Born 5/4/48- 6/4/38	Born before 6/4/38
<b>Personal Allowance*</b>	<b>£12,570</b>		<b>£12,570</b>	<b>£12,570</b>
<b>Blind Allowance</b>	<b>£3,070</b>		<b>£3,070</b>	<b>£3,070</b>

\* The same PA applies irrespective of age; PA reduces where income is above £100,000 by £1 for every £2 of income above the £100,000 limit.

**TABLE B: TAX BANDS AND RATES**

TAXABLE INCOME 2024/25	RATE (%)	TAX ON FULL BAND (CUMULATIVE)
<b>£1 - £37,700</b>	<b>20</b>	<b>£7,540</b>
<b>£37,701 - £125,140</b>	<b>40</b>	<b>Not calculated (individual above gross income cap)</b>
<b>Over £125,140</b>	<b>45</b>	<b>N/A</b>

\*0% starting rate for savings income / interest up to £5,000; above this limit savings income is charged at the rates shown above.

\*Personal Savings Allowance: 0% rate for basic rate taxpayers for up to £1000 of savings income, 0% for higher rate taxpayers up to £500 savings income.

\*Dividend's allowance: individuals will not have to pay tax on the first £500 dividends income received. Tax rates for dividend income above the tax free amount: ordinary rate 8.75%; upper rate 33.75%; additional rate 39.35%.

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**TABLE C: OTHER ADDITIONAL ALLOWANCES AND RELIEF AGAINST TAX**

		<b>DEDUCTION FROM TAX</b>
<b>Married Couple's Allowance*</b>	Basic	<b>Abolished</b>
	Age Related (born before 6/4/35)	<b>Max £1108</b> <b>Min £428</b>
<b>Marriage Allowance**</b>		<b>Up to £252</b>

\* MCA income limit: £100,000 (born after 5/4/48), £37,000 (born before 6/4/48); MCA is reduced by £1 for every £2 over this limit [if born before 6/4/48 MCA reduced only to PA unless income is over £100,000].

\*\*Marriage allowance is only available to basic rate taxpayers with partners who earn less than the personal allowance.



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## Appendix 5 Categories of Class 1 Contributions

- A All employees apart from those in groups B,C,J,H,M and Z
- B Married women and widows entitled to pay reduced national insurance
- C Employees over pension age
- H Apprentice under 25
- J Employees who can defer National Insurance because they are already paying it in another job
- M Employees under 21
- Z Employees under 21 who can defer National Insurance because they are already paying it in another job

**Contracted out rates D, E, F and G were abolished on 6 April 2016**



## Appendix 6 National Insurance

**APPLICABLE FROM 6.04.24**

### CLASS 1

**Primary Threshold (PT) = £12,570 (£242 p.w.)**

**Upper Earnings Limit (UEL) = £50,270 (£967 p.w.)**

TOTAL NI EARNINGS LEVEL	ANNUAL LEVEL OF CONTRIBUTION BY CATEGORY			
	A, H, M	B	C	J, Z
<b>Below PT</b>	Nil	Nil	Nil	Nil
<b>Between PT and UEL</b>	8% of earnings above PT	1.85% of earnings above PT	Nil	2% of earnings above PT
<b>Above UEL</b>	2% of earnings >UEL	2% of earnings >UEL	Nil	2% of earnings >UEL

### CLASS 2

**Small Profit Threshold = £6,725 per year [individuals with profits between SPT and LPL are credited as having paid Class 2 by HMRC].**

**Standard Rate of Class 2 Contributions = £14.95 per month (from 6/4/24 payment is voluntary)**

**Share Fisherman's Rate per Month = £16.47 per month**

**Volunteer development workers = £26.65 per month**

### CLASS 4

**Lower Profit Limit (LPL) = £12,570 per year**

**Upper Profit Limit (UPL) = £50,270 per year**

**Rate of Contributions = 6.00% rate on Profits between LPL and UPL, 2.00% on profits above UPL.**



## Appendix 7 Treatment of Income for NI Purposes

DESCRIPTION OF PAYMENT	TREATMENT FOR NI PURPOSES
<p><b>BENEFITS IN KIND:</b></p> <p style="padding-left: 40px;"><b>Shares and unit trusts</b></p> <p style="padding-left: 40px;"><b>Company car/petrol</b></p> <p style="padding-left: 40px;"><b>Medical insurance</b></p> <p style="padding-left: 40px;"><b>Accommodation</b></p>	<p><b>Include, except shares in a company for which the individual works.</b></p> <p><b>Exclude</b></p> <p><b>Exclude</b></p> <p><b>Exclude</b></p>
<b>BONUSES</b>	<b>INCLUDE</b>
<b>COMMISSION</b>	<b>INCLUDE</b>
<b>FEES</b>	<b>INCLUDE EXCEPT FEES RECEIVED BY A MINISTER OF RELIGION WHICH DO NOT FORM PART OF THE SALARY OR STIPEND.</b>
<b>HOLIDAY PAY</b>	<b>INCLUDE</b>
<b>OVERTIME</b>	<b>INCLUDE</b>
<b>PAY AFTER EMPLOYMENT HAS ENDED</b>	<p><b>INCLUDE EXCEPT FOR:</b></p> <p><b>PAYMENTS IN LIEU OF NOTICE</b></p> <p><b>LONG SERVICE, RETIREMENT OR ILL HEALTH PENSION</b></p> <p><b>REDUNDANCY PAYMENTS</b></p>

<b>PROFIT SHARING SCHEME</b>	<b>EXCLUDE</b>
<b>PROFIT RELATED PAY</b>	<b>INCLUDE</b>
<b>SICK OR MATERNITY PAY</b>	<b>INCLUDE</b>
<b>SSP OR SMP</b>	<b>INCLUDE</b>
<b>TIPS AND GRATUITIES</b>	<b>INCLUDE IF PAID TO THE EMPLOYER FOR DISTRIBUTION</b>  <b>EXCLUDE IF PAID DIRECT TO EMPLOYEE</b>
<b>TRAVELLING EXPENSES</b>	<b>INCLUDE PAYMENTS TO AN EMPLOYEE TO COVER THE COST OF HIS JOURNEY FROM HOME TO WORK.</b>



## Appendix 8 Transitional cases – Eligibility thresholds and miscellaneous limits

### CASES GRANTED UNDER THE ACCESS TO JUSTICE ACT 1999

Further Determinations from 1 April 2013 (£ income per month)			
Gross Income Limit	Disposable Income Limits	Lower Capital Limit	Upper Capital Limit
£2657*	LOWER    UPPER	£3,000	£8,000
*HIGHER LIMIT APPLIES WHERE MORE THAN 4 CHILD DEPENDANTS	£315    £733		

### ADDITIONAL GROSS INCOME CAP

No. of child dependants	Gross income cap
0 - 4	£2,657
5	£2,879
6	£3,101
7	£3,323
8+	Add £222 to above figure for each additional child.

Band	Monthly Disposable Income	Monthly Contribution
<b>A</b>	£316 to £465	1/4 of income in excess of £311
<b>B</b>	£466 to £616	£38.50 + 1/3 of income in excess of £465
<b>C</b>	£617 to £733	£88.85 + 1/2 of income in excess of £616

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**MISCELLANEOUS LIMITS AND RATES FOR FUTURE ASSESSMENTS OF  
APPLICATIONS RECEIVED BEFORE 3 DECEMBER 2001**

**ASSESSMENT LIMITS – PRE 3 DECEMBER 2001 CASES (£INCOME PER ANNUM)**

<b>Lower Income Limit</b>	<b>Upper Income Limit</b>	<b>Lower Capital Limit</b>	<b>Upper Capital Limit</b>
<b>£3,780</b>	<b>£8,796</b>	<b>£3,000</b>	<b>£8,000</b>

**PERSONAL INJURY LIMITS (APPLY TO 1988 ACT CASES ONLY) (£INCOME PER ANNUM)**

<b>Lower Income Limit</b>	<b>Upper Income Limit</b>	<b>Lower Capital Limit</b>	<b>Upper Capital Limit</b>
<b>£3,780</b>	<b>£8,796</b>	<b>£3,000</b>	<b>£8,560</b>

**MISCELLANEOUS LIMITS AND RATES FOR FUTURE ASSESSMENTS OF APPLICATIONS RECEIVED BEFORE 3 DECEMBER 2001 ONLY.**

<b>ACCOMMODATION PROVIDED BY EMPLOYER (MAXIMUM TAXABLE VALUE)</b>	<b>£16,200 PER ANNUM</b>
<b>BUSINESS PROFITS (PROJECTION)</b>	
<b>Accounts 1-2 years old</b>	<b>4.7%</b>
<b>Accounts 2-3 years old</b>	<b>10%</b>
<b>INTEREST ON SAVINGS (ASSUMED RATE)</b>	<b>1.25%</b>
<b>MILEAGE RATE (BASED ON AA MILEAGE RATE)</b>	<b>15P PER MILE</b>
<b>PAY RISE FACTOR BASED ON RPI</b>	<b>2.0%</b>
<b>RENT ALLOWANCE (MAXIMUM MONTHLY)</b>	<b>£1,350 PER MONTH</b>
<b>REPAIRS AND INSURANCE (FIXED ALLOWANCE)</b>	<b>£285</b>
<b>STATUTORY REDUNDANCY PAYMENT MAXIMUM</b>	<b>£6,300</b>
<b>STUDENT GRANTS DISREGARD</b>	<b>£520</b>
<b>WATER RATES (NATIONAL AVERAGE)</b>	<b>£225</b>



## Appendix 9 Frequently Asked Questions: A - Z Topics

Topic	Question and Answer
Aggregation	<p><b>I am assessing an applicant who is not working or claiming benefits, he is living with his parents who support him. Whose resources should I assess?</b></p> <p>Regulation 16(5) allows us to include third party assets where:</p> <ul style="list-style-type: none"> <li>• Another person is, has been or is likely to be maintaining the individual;</li> <li>• The resources from another person are, have been, are likely to be made available to the individual.</li> </ul> <p>Where the individual is wholly dependent upon a third party such as in this case, it is reasonable to include all of the resources of the third party (in this case the parents) when making a financial determination for the individual. The easiest way to obtain this information is to request that the third party (parents) complete a CIVMEANS 1.</p> <p>The caseworker will consider the overall circumstances of a case and decisions will be influenced by all relevant factors such as length of time providing support, whether the client has made or intends to make an application for state benefits and the reason for not doing so previously where such funds are potentially available; or whether it is a scenario where a person has no recourse to public funds (e.g. a failed asylum seeker); the degree of affiliation with the third party providing support i.e. a distinction may be drawn between a registered charity providing support and a close family member who the client is living with and fully supported by; along with some consideration of the level of financial support provided.</p> <p>In general, where the individual <i>is</i> working or claiming benefits in his own right and therefore has an independent income by which he largely supports himself whilst living with his parents / relatives / friends (or living in own accommodation), the approach taken will usually be to look at actual amounts of monetary support (e.g. any allowance) provided by the third parties rather than basing the financial determination on the third parties' resources. There is no need to attempt to assess a notional amount for food and heating.</p>
Aggregation Geographical separation	<p><b>– The applicant lives here in the UK, his wife and children live abroad. Should we aggregate?</b></p>
	<p>Yes. Geographical separation of itself does not affect the aggregation principle (i.e. inclusion of partner's assets under Regulation 16(1)); this applies whether the partner is abroad as in this case, or in hospital or in prison. We do not aggregate where a couple are permanently separated i.e. where the relationship has</p>

	<p>broken down; or in circumstances where there is a contrary interest between the individual and their partner in the proceedings.</p> <p><b>See also “Cohabitation”.</b></p>
	<p><b>The applicant is in prison, do I aggregate his means with his spouse? His wife is in receipt of income support (passporting benefit on income) and has also applied for legal aid. How do I assess?</b></p>
	<p>Yes – aggregate the individual with his spouse unless they are living separate and apart i.e. relationship is at an end. A geographical separation alone is not sufficient for us to base the financial determination on his resources alone.</p> <p>The individual, as he is in prison, will <b>not</b> be included in wife’s income support claim; she will be paid for herself and any child dependants.</p> <p>For his application: He is not passported on income. Include any prison wages and include her income support as a separate income.</p> <p>For her application: She is passported on income; capital must still be assessed.</p> <p><b>See “passporting benefits”.</b></p>
Alternative Funding	<p><b>Can we consider alternative funding [Regulation 39 of the Civil Legal Aid (Merits Criteria) Regulations 2012] when the individual is in receipt of a passporting benefit?</b></p>
	<p>Yes. For applications made since April 2013 the legally aided individual is not passported on capital; but even for older cases under the Access to Justice Act that were passported on both income and capital the answer is still yes in any event, as it is a <b>merits</b> decision as to whether there are alternative funds with which to pursue the legal case e.g. the individual has Before the Event (BTE) insurance covering legal expenses. It can therefore be applied to a case whether or not the individual is passported on means. Where the individual applies for legal aid on the basis of a passporting benefit, funding may be refused if BTE insurance is held; if any form of legal expenses insurance is held, the policy should be provided.</p>
Application in a representative capacity	<p><b>The individual has made an application in a representative capacity, whose means do we assess?</b></p>
	<p>Include the value of the estate or any fund, under which the person is entitled to be indemnified, as well as the disposable income and capital of the <b>beneficiaries</b>. Do not include the individual’s personal resources in the financial determination if they are acting in a purely representative capacity; you would only include the individual’s resources if he / she will also benefit from the proceedings.</p>

Arrears of Benefit / Backdated Benefit	<p><b>The legally aided individual has advised that she is now getting state benefit, she has received a payment for this month and a lump sum backdated payment. How do I assess these changes?</b></p>
	<p>The review limits for carrying out a further assessment (further determination) are an increase in disposable income of more than £60 per month or an increase in capital of more than £750.</p> <p>For income purposes: include the new monthly amount as the individual's income. Treat the arrears payment as having been received when due i.e. do <b>not</b> include the lump sum arrears payment as income received for the calculation period (which for a further assessment will usually be the period of one month <i>following</i> the change).</p> <p>For capital purposes: The lump sum arrears payment is treated as capital. If the amount received is less than or equal to £3000 and the individual has no other capital, a contribution will not arise (given the lower capital limit of £3000). If the amount received is above £3000 or increases the individual's capital to an amount above £3000, a contribution will arise:</p> <p>When assessing the balance within a current account it is the residual capital figure that is included i.e. after normal outgoings have left the account. This is achieved by taking the balance prior to the last regular credit of wage/benefits to the account or otherwise, the lowest balance in the account during the preceding month. If the arrears payment is made into the current account, this will then need to be added to the residual balance.</p> <p><b><u>Example:</u></b></p> <p>The individual's new benefit entitlement is £75 per week (paid 4 weekly); arrears are paid for past period. A statement is provided showing the following:</p> <p>Bank statement shows:</p> <p>08.02 Balance prior to latest state benefit credit: £2,500</p> <p>11.02 State benefit – arrears payment: £780</p> <p>11.02 State benefit – revised 4 weekly amount: £300</p> <p>Income: revised amount £300 multiply by 13 divide by 12 = £325 per month.</p> <p>Residual capital as at 11.02: balance prior to last regular benefit payment £2,500 + arrears payment £780 = £3280</p> <p>Individuals are required to notify changes immediately.</p>
	<p><b>I have an applicant who received a backdated benefit payment two months ago, she was aware of litigation at that time. She has now applied for legal aid. Should I use the capital balance</b></p>

	<b>from the time the backdated payment was made or her current balance?</b>
	Disposable capital is calculated based on the amount or value of capital resources belonging to the individual <b>on the date the application is made</b> (if an emergency certificate was granted under delegated functions prior to the substantive application use that date). The approach to take, if it is considered that the applicant has acted to deliberately reduce her disposable capital, is to add back those sums that have been deliberately deprived / converted or transferred during the interim period.
	<b>Does the guidance for arrears of benefit apply to Tax Credits as well?</b>
	Yes, the same guidance applies.
Bankruptcy	<b>The individual has petitioned for bankruptcy – should I disregard her property?</b>
	Although the individual has put in a (debtor) petition to file for bankruptcy, we are not advised that an Order has in fact been made; therefore ownership of the property still at this point vests with the individual. Not all hearings end in the petition being granted, other outcomes can include: a delay, while seeking further information; a refusal to grant the petition; appointment of an Insolvency Practitioner to set up an Individual Voluntary Arrangement instead.
	<b>The individual is bankrupt; will he qualify / continue to qualify for legal aid?</b>
	<p>The LAA will need to determine whether the <b>merits</b> of granting or continuing funding in the case are affected by the bankruptcy. If the merits test is passed, the individual's means must still be considered.</p> <p>If the individual is in receipt of a passporting benefit will satisfy the income test but capital will need to be calculated see below.</p> <p>Otherwise, the financial (re)determination for the bankrupt will involve a calculation of income and capital. The individual must disclose the bankruptcy and provide a copy of the Bankruptcy Order. Full income details are required (including any income from employment / self employment, financial support received from third parties – NB this type of financial support from friends and family may not be declared to the Trustee in Bankruptcy, but is relevant for our financial determination - and any income released by the trustee in bankruptcy).</p> <p>We will need details of capital assets to determine whether they all vest in the trustee in bankruptcy or if any are retained by the individual.</p> <p>Useful information / documents to obtain: the latest schedule of assets/liabilities and any reports to creditors prepared by the</p>

	trustee in bankruptcy. [Remember the individual's assets may outweigh the debt and therefore he / she will be owed the residual funds after the debt has been discharged].
	<b>An individual who is bankrupt has said that she is paying tax to the Trustee in Bankruptcy, upon investigation it appears that her tax payments are being waived and this money is being paid to the official receivers – can I give an allowance for this?</b>
	The general guidance that we do not allow for debt repayment (apart from monthly repayments of a mortgage or loan secured on the individual's main dwelling property) applies. If the individual has been given a waiver on tax by HMRC (i.e. of the full amount or a partial waiver) as he or she is making payments to the insolvency service, we cannot allow a deduction for the payments to the trustee; we also cannot allow a deduction for income tax if it is not in fact being paid/payable for the calculation period. Any deduction would be limited to the amount of tax (if any) actually being paid/payable for the calculation period.
	<b>The Trustee in bankruptcy is in dispute with the individual and partner (the bankrupt) about their home. The Trustee says the partner owns 50% beneficial interest, but the partner says he only owns 1%. Can I assess the <u>individual's</u> undisputed 50%?</b>
	Yes assess the individual's undisputed 50% share of the property.
	<b>The individual's bankruptcy has been discharged. His home is worth £400,000 charges amount to £437,000; he says the official receiver holds interest in all the equity in the property.</b>
	<p>The individual would need to provide evidence from the Trustee in Bankruptcy (TiB) that the asset in question continues to vest with the TiB following the discharge of the bankruptcy; otherwise he is ineligible based on the equity in the home.</p> <p>It is possible following the discharge of the bankruptcy for assets of the bankrupt's estate still to be controlled (and sold) by the TiB but there are special rules for the applicant's home. The Enterprise Act 2002 (EA2002) amends the Insolvency Act 1986 by introducing a new section 283A, concerning the process for dealing with a bankrupt's family home. These provisions are intended to provide a timescale within which the bankrupt's interest in a family home may be realised by a trustee; this basically provides a 3 year timescale from the time the bankrupt's interest is disclosed to the TiB.</p> <p>The TiB may have decided to put a charge on the property rather than sell, in which case remember that the mortgage allowance covers the total amount of all debts secured by a mortgage or charge on the property.</p>
Benefits	<b>See State Benefits</b>
Benefits in Kind	<b>What are Benefits in Kind?</b>

		Benefits in Kind (BIKs) are benefits other than cash paid by an employer, this may include private health care, a company car etc. BIKs are included as gross income within the assessment based on 1/12 of the annual taxable value.
Business Capital	Cases -	<b>When should I <u>not</u> assess a Business Borrowing Value?</b>
		<p>Do not attempt to assess a BBV if the individual's income is below the Lower Income Limit or if the individual is in receipt of a benefit that is passporting on income e.g. income support.</p> <p>The guidance sets out other circumstances to consider:</p> <ul style="list-style-type: none"> <li>• Usually only those businesses with fixed assets will produce a value under Regulation 36(2)(b).</li> <li>• As land and property normally form the greater value of the business and is the most acceptable security for a loan it will not normally be worth pursuing a BBV in its absence.</li> </ul> <p>This is specifically referring to small scale businesses with low start-up costs (less than £3k is stated in the guidance) i.e. a sole trader street vendor or child minder or window cleaner: a) you would not expect in these circumstances for the business owner to produce a balance sheet, and b) if he / she were to produce a balance sheet you wouldn't expect the BBV figure to be significant (or in practice for a high street bank to loan money to these individuals specifically based on the 'assets' of his/her business). Do not expect a balance sheet from a business owner with only one substantial asset i.e. a taxi driver.</p> <p>If the business that is being assessed fits in with the examples given above then the guidance is not to assess a BBV.</p> <p>However, the guidance does <b>not</b> prohibit you from assessing a more substantial business which may not own property (bricks and mortar) but has other assets such as valuable licenses or copyrights.</p>
Business Dormant Company	Cases -	<b>Should I request information about a Dormant Company?</b>
		<p>Information (including Form CIVMEANS1C) is still required where the individual or their partner is a director of a company, even if the individual states that the company is dormant or non-trading since the company may still own capital assets.</p> <p>A company is called 'dormant' by Companies House if it's had no 'significant' transactions in the financial year that it would normally report. Significant transactions don't include:</p> <ul style="list-style-type: none"> <li>• filing fees paid to Companies House</li> <li>• penalties for late filing of accounts</li> <li>• money paid for shares when the company was incorporated</li> </ul>

		Dormant companies that qualify as ‘small’ don’t need to be audited. (see below: Business Cases - Micro Entities and Small Companies).
Business Cases - Employed or self- employed?		<b>How can I tell if the applicant is self employed if I am unsure?</b>
		<p>Confirm whether the individual has registered as self-employed with HMRC.</p> <p>Some useful questions developed by HMRC are set out below:</p> <p>Can you hire someone to do the work, or take on helpers at your own expense?</p> <p>Can you decide where to provide the services of the job, when to work, how to work and what to do?</p> <p>Can you make a loss as well as a profit?</p> <p>Do you agree to do a job for a fixed price regardless of how long the job may take?</p> <p><b>If the individual can answer ‘yes’ to one or more of the questions above he/she is likely to be self-employed. If the answer is ‘no’ to all of above, he/she is still likely to be self-employed if the answer is ‘yes’ to most of the following questions</b></p> <p>Do you risk your own money?</p> <p>Do you provide the main items of equipment (not the tools that many employees provide for themselves) needed to do the job?</p> <p>Do you regularly work for a number of different people and require business set up in order to do so?</p> <p>Do you have to correct unsatisfactory work in your own time and at your own expense?</p>
Business Cases - Income		<b>Should I assess net profit or drawings?</b>
		<p>Regulation 22 states we will decide whether to use net profit or drawings in a particular case, based on which is considered ‘more appropriate and practicable.’ This will usually be income calculated on the basis of adjusted net profit, which links our financial determination to the process undertaken by HMRC; but exceptionally, if the drawings from the balance sheet appear large compared to the profit of the business, or it is clear from the person’s expenditure that the drawings more accurately reflect the level of income derived from the business, then we can use drawings in preference to net profit:</p>

	<ul style="list-style-type: none"> <li>• If the business is making a net loss (following adjustments for private use, deprivation etc.), then calculate income on the basis of drawings for personal use.</li> <li>• Where the business is making a net profit, then if the difference between the adjusted net profit figure and drawings figure does not exceed £60 per month (equivalent £720 pa) use adjusted net profit; but if drawings exceed the net profit by more than £60 per month use drawings.</li> </ul>
Business Cases- Income (capital allowances)	<b>The applicant’s accountant has advised that there are ‘stored up’ capital allowances that were not used in the previous year due to her income being so low. Should these be allowed against net profit for this period?</b>
	HMRC allow an individual to not claim the full capital allowance they are entitled to in an accounting period and to carry the unrelieved expenditure forward. If it is confirmed that the full capital allowance is now to be claimed in this accounting period, it can be allowed against the net profit figure. If the net profit is substantially lower than drawings (a difference of more than £60 per month), calculate income based on the drawings from the business.
Business Cases- Income (private use)	<b>Should I always add 20% private use? What if the accounts show a different private use % has been calculated – my present case concerns motoring expenses for a taxi driver?</b>
	If the private use element is stated on the accounts or the self-assessment return, we accept that figure. If it is not stated we assume 20% for a motor vehicle and 20% for accommodation costs such as light and heat, rent, loan interest etc. For a taxi driver as with any other individual, if the accounts or tax return shows a different private use figure we will use that instead.
Business Cases - Micro Entities and Small Companies	<b>I have been provided with abbreviated / abridged accounts, the director says this is satisfactory for Companies House, can I get further information?</b>
	<p><b>Small companies:</b> a company will be classified as ‘small’ if it has any 2 of the following:</p> <ul style="list-style-type: none"> <li>• a turnover of £10.2 million or less</li> <li>• £5.1 million or less on its balance sheet</li> <li>• 50 employees or less</li> </ul> <p>If a company is small, it can send abridged accounts to Companies House. Abridged accounts contain a simpler balance sheet, along with any notes. The balance sheet must have the name of a director printed on it and must be signed by a director.</p> <p>If a company is small, it may also:</p> <ul style="list-style-type: none"> <li>• use the exemption so that the company’s accounts don’t need to be audited.</li> </ul>

	<ul style="list-style-type: none"> <li>choose whether to send a copy of the director's report and profit and loss account or not to Companies House.</li> </ul> <p><b>Micro-entities:</b> these are very small companies which have any 2 of the following:</p> <ul style="list-style-type: none"> <li>a turnover of £632,000 or less</li> <li>£316,000 or less on its balance sheet</li> <li>10 employees or less</li> </ul> <p>If the company is a micro-entity, it can:</p> <ul style="list-style-type: none"> <li>prepare simpler accounts that meet statutory minimum requirements</li> <li>send only the balance sheet with less information to Companies House</li> <li>benefit from the same exemptions available to small companies</li> </ul> <p><b>The majority of business cases for legal aid purposes, are likely to involve small and micro-entities.</b></p> <p><b>In either case if you are provided with abridge accounts request further information including the company tax return CT600 and accompanying schedules with the statutory accounts, you may also ask for the management accounts (if available) and request the tax assessment/calculation.</b></p>
BTE insurance	<b>An individual has Before The Event (BTE) insurance limited to £50,000 and has been refused funding; can she reapply once the limit has expired?</b>
	Where the individual holds BTE insurance, legal aid may be refused on <b>merits</b> using Regulation 39 of the Civil Legal Aid (Merits Criteria) Regulations 2012 that deals with the availability of alternative funding and on <b>means</b> , owing to Regulation 16(5) third party funds available to the individual. If the limit has expired and the individual can therefore show that these resources are not available then a fresh application can be made.
Calculation period	<b>The individual was made redundant during the month leading up to his application for legal aid and received his final wage-slip covering two weeks' wages. He is currently unemployed and receives contribution-based Jobseekers Allowance – over what period should his income be assessed?</b>
	The calculation period is normally the month leading up to the date of application. However where a change in circumstances has occurred during the past month it may not be appropriate to base the assessment on the income received for the whole of the

	<p>previous month. In such cases the calculation period can be changed to the month <b>following</b> the date of application.</p> <p>In this case, the calculation period should be changed for the financial determination to calculate the individual's income based on the month following the date of the application i.e. assess income based on the JSA (C) payment.</p>
Capital Limit	<p><b>The individual has a high cost case. Can I waive the upper capital limit?</b></p>
	<p>The upper capital limit of £8000 is a 'hard limit' in the same way as the upper income limits. (The disposable income and capital limits are set out in Regulation 8(2); the gross income limit is set out in Regulation 7). Legal aid will be refused where capital is above £8000.</p> <p>A waiver of the eligibility limits may only be applied where the case meets the criteria set out in Regulations 9 - 12 (See section 1.6 and <b>Waivers</b> topic question below).</p> <p>The individual may reapply for legal aid subsequently when his / her capital is within the limit; as long as there is no suggestion of deprivation this is entirely legitimate.</p>
Certificate of Indigence	<p><b>I have an application for a Certificate of Indigence – what does that mean? Are the assessment rules the same?</b></p>
	<p>We do not fund proceedings before the European Court of Human Rights (ECtHR) but that court administers its own legal aid scheme. To be considered for the ECtHR legal aid scheme the court asks the LAA for confirmation that if the case were taking place in the domestic courts (in England and Wales) the applicant would be financially eligible.</p> <p>The individual should complete a statement of means form (CIVMEANS 1 or CIVMEANS 2 as appropriate). This will be supplied with a covering letter from the individual or their legal representative stating that they are applying for a 'certificate of indigence' (they do not need to submit an application form on the merits). The caseworker will undertake the financial determination under the normal rules and advise the individual/solicitor of the outcome who will send that notification to the ECtHR.</p>
Child Benefit	<p><b>How does the High Income Child Benefit Charge affect our assessment?</b></p>
	<p>Child benefit is a state benefit paid to those responsible for a child under school leaving age, or below the age of 20 in relevant education or training. From 7 January 2013 onwards it ceased to be a universal benefit following the introduction of a tax charge called the "High Income Child Benefit Charge" (HICBC), which recoups the child benefit where income is over a certain threshold.</p>

From 6 April 2024, households where at least one individual (i.e. claimant or partner) has an income of £60,000 or more will have to repay some of their child benefit entitlement via a tax charge called the “High Income Child Benefit Charge” (HICBC). The rate of charge is 1% child benefit for every £200 earned above the threshold. For those households where at least one individual has an income of £80,000 or more, child benefit is fully withdrawn. Income is calculated before deduction of the ‘personal allowance’ and income tax. Individuals can decide to opt out of receiving child benefit payments (rather than receive the money and have it recouped via the self-assessment process).

Households where the individual(s) concerned each have an income less than £60,000 – even if their income exceeds £60,000 when combined – are not affected by the HICBC.

### Legal Aid

The Gross Income Cap of £2657 per month (which equates to £31884 per annum) for families with up to 4 children, with £222 added for 5th and each additional child, means that there is a very small likelihood of someone who is subject to repaying their child benefit via the HICBC applying for or qualifying for legal aid.

For the vast majority of cases where the HICBC does not arise, there is no change to our policy i.e. assume child benefit is in payment where there appears to be an underlying entitlement, whether or not it is declared, and include the amount of child benefit within the assessment on that basis.

You may occasionally have to carry out an assessment for an individual who is affected by the HICBC, and (although rare) some individuals may be eligible for legal aid – for example (i) a case where the domestic abuse waiver or other waiver applies, or (ii) an application from an individual with a contrary interest to his/her partner in the particular case (so that you cannot aggregate their resources together) who, whilst having a low income personally, is affected by the HICBC due to his/her partner’s high income.

Where you are dealing with a case where HICBC may apply to any child benefit payments received i.e. where either the individual’s or partner’s annual income individually is £60,000 or above, please note the following:

- (i) If either the individual’s or partner’s income is **£6,666.67 per month or above (i.e. £80,000 + per annum)** and it appears that they have opted out of payments i.e. no child benefit payments are evidenced on bank statements, then there is *no need* to include child benefit within the assessment of gross income. If the individual declares or evidence otherwise shows that child benefit payments *are* still being received they must be included within the assessment of gross income. **Remember that you will normally assess these cases ineligible on**

	<p><b><u>gross income unless a waiver applies or contrary interest prevents aggregation with the high earner.</u></b></p> <p>(ii) If either the individual's or partner's income is £5000 or above (i.e. £60,000 + per annum) but less than the £6,666.67 per month threshold, include any child benefit payments received as gross income and include the child benefit amount the individual appears to be entitled to within the assessment even if payment is not declared.</p> <p>(iii) If an individual is liable for the HICBC they can choose to pay as a lump sum through Self-Assessment or through their tax code.</p> <p>(iv) Where it is appropriate to assess disposable income: if the individual is paying the HICBC through the tax code then the amount of HICBC payable will be automatically deducted as part of our calculation of the individual's income tax liability.</p> <p>(v) Where you evidence that the individual has repaid their HICBC liability as a lump sum from capital, this would not normally be viewed as deprivation.</p>
Child Care Costs, Averaging figures	<p><b>Is there a duty to average out childcare costs if they differ during school holidays and term time?</b></p>
	<p>There is no requirement under the regulations to average out or "week-count" childcare costs to take account of temporary changes during school holidays (i.e. increased or decreased costs). Base the monthly outgoing figure on the term time cost – e.g. the individual states that she pays £125 per week during term time and pays £135 per week during the school holidays; monthly expenditure is calculated as <math>£125 \times 52 \div 12 = £542</math> per month.</p> <p>(Do <b>not</b> restrict the deduction to 39 weeks).</p>
Child Care Costs, school holidays	<p><b>The individual only pays for child care during school holidays do I have to average this into a monthly figure for assessment.</b></p>
	<p>There is no requirement to make a deduction for childcare costs paid for a few weeks during the year during school holidays; such costs do not represent a regular monthly outgoing.</p>
Child Care Costs: students	<p><b>Can an allowance be made for the childcare costs of students?</b></p>
	<p>Yes an allowance can be made for individuals who receive study-related income for child care costs incurred whilst the individual is undertaking their course of study outside of the home.</p> <p>Study related income refers to a student loan, student grant or other income received from a person who is not their partner or relative for the purpose of supporting the individual's course of study (e.g. career development loan),</p> <p>Generally, where the individual is part of a couple, no allowance should usually be made if one or more of the adults is <b>not</b> engaged</p>

			in paid work (employment/self employment) or a course of study outside of the home, as they will usually be considered to be available to look after the child / children and the allowance will not be given.
Child Care Costs: student nurses			<b>Can an allowance be made for the childcare costs of a student nurse?</b>
			Yes, see above.
Child Care Costs: maternity leave, sickness etc.			<b>Can an allowance be made for childcare costs if the individual is off work sick, or on maternity leave?</b>
			<p>The allowance for child care costs is only available to individuals undertaking remunerative work or those receiving study related income where these costs derive from the individual and/or partner's absence from the home whilst undertaking that activity.</p> <p>If the individual is long term sick, or is on maternity leave and is not due to return to work or to the course of study within the month following the date of the application for legal aid, the child care allowance will normally not be given (but see below).</p> <p>Generally, where one or more of the adults is not engaged in remunerative work or a course of study outside of the home they will normally be considered to be available to look after the child / children and the allowance will not be given.</p> <p>However, there may be cases (couples) where childcare costs derive because of the partner's or individual's work or study outside the home, but due to particular circumstances e.g. severe illness, disability it is advised that the other non-working/studying adult is unavailable to look after the child. Guidance should be sought from the local means supervisor and if necessary the Means Assessment Policy Adviser in these cases, to consider whether it is appropriate to make a deduction for these costs. Related guidance concerning the age of the child, disability etc. is also relevant to your considerations.</p>
Child Care Cost: vouchers, sacrifice scheme			<b>The individual has child care costs deducted from gross pay – how do I assess?</b>
			For all salary sacrifice schemes i.e. for child care vouchers, pensions etc., add back the amounts deducted at source in the first instance to determine gross income. If the individual is within the gross income limit, an allowance/deduction will be made when calculating disposable income for expenditure allowed under the regulations e.g. a deduction can be made for child care but not for a pension.
Children			<b>Do I need to carry out a means assessment for a child applicant?</b>

	<p>No. Children under 18 are exempt from the means test for certificated work (including Exceptional Case Funding). Merits rules still apply.</p> <p>An assessment will usually be required when the child turns 18 if the certificate is still in force.</p>
Children	<p><b>Do I include capital held in a child dependant's savings account when assessing the parent?</b></p>
	<p>Where there is a savings account in the child's name that the parent effectively controls (the parent may or may not be named as trustee of the account) include the balance as part of the individual's resources. The regulatory basis for this is Regulation 30 that provides that we include all assets of a capital nature belonging to the individual; alternatively, Regulation 16(5) provides for the inclusion of assets belonging to another person which can be accessed by the individual. Either way, the money should be included.</p> <p>Also, keep in mind the rules about deprivation/transfer of assets (Regulation 17) as depending on the individual circumstances of the case, an add-back under this rule may apply.</p> <p>Exceptions:</p> <p>Money held in a Child Trust Fund (CTF). This refers to the government scheme providing for CTF accounts for children that were born between 1 September 2002 and 2 January 2011. This money belongs to the child, and cannot be accessed by the child before they are 18, (and cannot be accessed by the parents at all). The only exception under the government scheme is if the child is terminally ill and proof of the terminal illness is provided to the registered contact who is administering the CTF account. These funds therefore are assessed as 'nil' capital.</p> <p>Junior Individual Savings Account – Junior ISA. These are long term, tax-free savings accounts for children under 18 living in the UK (only available outside the UK for Crown Servants – UK's armed forces, diplomatic service or overseas civil service). Parents or those with parental responsibility can open a Junior ISA and manage the account, but the money belongs to the child. The child cannot withdraw money until they turn 18.</p> <p>For other child savings accounts, if evidence is provided that the funds in the child's account belong to the child and cannot legally be withdrawn by the parent an exception can be made. In considering representations made concerning the inclusion of funds held in a child savings account and making a determination, the Director may consider whether any withdrawals have ever been made by the individual from the child's account.</p>
Children	

		<b>See also Child Care Costs, Dependants allowances, Maintenance.</b>
Contributions		<b>Are there any circumstances in which small contributions i.e. under £5 should be waived?</b>
		No. Small contributions should not be waived. The contribution formula was designed so that contributions would exceed £1.  The lowest monthly contribution based on disposable income of £316 per month is £1.75 (or £1.25 if the application was made before 1 April 2013).
Contributions, backdated contributions	income	<b>Do we have regulatory authority to ask for backdated income contributions when an individual has failed to disclose a change?</b>
		Yes. The individual is under a duty to immediately report changes in circumstances under Regulation 18. This may lead to a further determination of resources under Regulation 20 and the contribution payable. Regulation 20(3) makes it clear that the period of calculation in these circumstances is the month following the date of the change and therefore any change in contribution would apply from that time.
Contributions, Third party		<b>Can I call for a contribution from a third party when the individual is passported on income / nil contribution etc.?</b>
		Yes. If there is a third party with an interest in the case, the LAA has power to call for a contribution from the third party regardless of whether the individual has to pay a contribution from income or capital based on his own resources.
Dependants allowances		<b>How are dependants' allowances allocated where there are two separated parents?</b>
		Decisions will be made on a case by case basis, having regard to the judgment in the case of <b>R(WA) v Director of Legal Aid Casework and Lord Chancellor [2023]</b> .
Deprivation		<b>Is there a time limit to a deprivation decision?</b>
		The power set out in Regulation 17 to "add back" capital or income that the individual has deprived, converted or transferred is not time limited and therefore may apply to any future applications for legal aid that are made by the individual. However we should consider each application on its own particular circumstances. In general, the less time that has elapsed since a deprivation decision, the more likely that the same decision would apply to any new application for legal aid i.e. the same circumstances are likely to be relevant.  For example, Individual 'A' spent £12,000 on a new conservatory whilst in receipt of a certificate with a financial limit of £5000; this was not immediately disclosed but is revealed during a further

	<p>determination and led to the revocation of the certificate. Individual 'A' reapplies for legal aid as there is an upcoming hearing on the same case; the revocation of the previous certificate occurred within 6 months of the new application.</p> <p>The deprivation decision would apply to the new application:</p> <ul style="list-style-type: none"> <li>I) The new application was for the same case on which the original deprivation decision was made (or relates to an appeal/further appeal to a higher court), therefore in respect of the new application, the individual was aware of litigation when the deprivation occurred.</li> <li>II) The deprivation of money occurred following the grant of legal aid and led to the revocation of the certificate for failure to disclose a material fact.</li> <li>III) The financial limit of the certificate was less than the sums expended in respect of the conservatory; and</li> <li>IV) Only 6 months has elapsed since the revocation of the certificate; to grant legal aid for the same case would be to render this decision meaningless i.e. it would weaken the sanction that had been imposed.</li> </ul> <p>The caseworker must consider the particular circumstances of any given case. It will not be necessary for all 4 conditions that applied to the case above to apply in the case you are dealing with e.g. condition 1 in the above case would suffice as a reason to add back the funds as deprivation whether or not condition 3 applied.</p>
Deprivation	<b>Is there an amount of capital that can be routinely ignored when considering deprivation?</b>
	No. If however the amount when added back would not affect the individual's liability to pay a contribution, as the individual's capital will remain below £3,000 with this sum added, then on the facts of that particular case it is not worth pursuing.
Discretion	<b>Can I disregard amounts for other expenditure that is not laid down in the regulations e.g. credit card payments?</b>
	Not for certificates under the Act or for cases under the Access to Justice Act 1999 for applications made on or after 3 December 2001.  See section 11 for rules on transitional cases for older certificates.
Disregarded Benefits, disability benefits	<b>Why certain disability benefits are wholly disregarded from the assessment when other disability benefits such as incapacity are not? Can I disregard the disability element of Tax Credits?</b>

Regulation 24 contains the full list of disability benefits that can be disregarded from income. Regulation 40 lists payments that can be disregarded from capital.

These types of benefits (e.g. disability living allowance, personal independent payments) are known as 'Extra Cost Benefits' and are to provide help towards additional costs incurred as a result of disability. They are tax-free and not means tested, and they are usually disregarded when calculating income for other means tested benefits.

Other benefits paid because of a person's illness but which are included in the financial determination are Statutory Sick Pay, Incapacity Benefit and Employment and Support Allowance. These are known as 'Earning Replacement Benefits' and are to provide an income for individuals unable to earn as a result of sickness or disability. They may be short or long term. They are in the main taxable. They are not means tested, and are taken into account when calculating income for other means tested benefits.

Working Tax Credits (including the disability element) is a 'means tested' benefit. The purpose of these benefits is to top up income to a minimum level. The number of people in the household, any special needs, and housing costs determines the exact amount of tax credits received. These are not strictly speaking disability benefits, although disabled people may receive them and be eligible for additional premiums.

The disability element of working tax credits is an in work means tested benefit designed to top up earnings of disabled workers. The disability element of the working tax credit replaced the Disabled Persons Tax Credit in 2003. Both the Disabled Persons Tax Credit and its predecessor the Disability Working Allowance were both included in the means assessment and were also taken into account as income when assessing eligibility for other means tested benefits.

For the sake of completeness, there are also benefits known as 'Compensatory Benefits'. These are described as being for those who have become sick or disabled as a result of 'serving the nation' whether in a military or ordinary occupational capacity, the best known example being Industrial Injuries Disablement Benefit (IIDB). They are tax-free and are not means tested, although some (such as IIDB) are taken into account when assessing income for other means tested benefits.

To summarise, we can only disregard those disability benefits listed in Regulation 24 (from income) or Regulation 40 (from capital). If a person is receiving a benefit because of illness / disability which is not on the list, it is likely that it is not classed as 'extra cost' benefit.

Disregarded Benefits, Council Tax benefit	<b>Is Council Tax benefit still paid?</b>
	Council tax benefit was abolished on 1 April 2013 and replaced with Local Council Tax Support, these local schemes reduce the individual's council tax liability. The amount by which the full council tax liability is reduced is <b>not</b> to be included in the legal aid assessment as a notional income to the individual.
Disregarded Benefits, fostering payments	<b>How do I treat fostering allowances; residence order payments; kinship payments</b>
	<p>Under Regulation 24 we can disregard any payment made for the care of a foster child to the extent that it exceeds the standard dependants allowance for children. For practical purposes you are advised to wholly disregard (i.e. exclude in full) the fostering allowance, but do not give a dependants allowance for the foster child when calculating disposable income.</p> <p>If the individual is receiving payments for a child for whom they have a residence order the child is to be considered a permanent member of their household. The individual will also be entitled to claim child benefit (and may also be claiming tax credits) for that child. Include any payment received from the local authority for the child as income but give a dependants allowance for the child when calculating disposable income.</p> <p>Kinship allowance / Kinship care allowance is paid to a family member looking after a child of a relative; however the term kinship allowance isn't universally used; various councils have slightly different entitlement conditions. Basically whether it can be disregarded as a type of fostering payment will depend on the child's legal status - i.e. whether the child is the responsibility of the local authority, a "looked after" child or not.</p> <p>If the child is the responsibility of the local authority i.e. a "looked after" child and is placed under fostering arrangements with a relative who is paid a 'Kinship allowance', then the money received from the local authority is in fact payment made for the care of a foster child, and is therefore to be disregarded. Do not give a dependants allowance for the child when calculating disposable income</p> <p>If however the relative has a residence order for the child and is receiving a kinship allowance from the local authority, we would see this in the same way as other 'residence order allowances' and include the payment as income. The individual would be entitled to the standard dependants' allowances when calculating disposable income.</p>
Disregarded Benefits, savings in bank account	<b>The individual has a savings account with £13,000. It is advised that this is made up of Disability Living Allowance monies that have been saved up. Should I assess this money?</b>

	DLA payments are disregarded from income (on the basis that it is paid to meet the extra costs of disability). There is no requirement to disregard savings made up of this money when calculating disposable capital. Assess the residual amount in the bank account i.e. the amount prior to the last regular credit of DLA.
Disregarded Benefits, Social Fund	<b>Does the Social Fund still exist or is the money all passed to the local authority, will a disregard apply to payments made under the new regime?</b>
	Certain elements of the Social Fund have been abolished (i.e. community care grants and crisis loans); the government now distributes that money from a consolidated fund to local authorities to spend on local schemes/support. However some elements of the Social Fund do continue to exist such as funeral payments, cold weather payments and Sure Start Maternity grants (and budgeting loans to benefit recipients) and are disregarded from the determination of financial eligibility.
Disregarded Benefits, War Pensions	<b>The individual receives a war pension and over £600 on top of this under a Service Attributable Pension, should we take this into account or is it linked to the war pension and disregarded?</b>
	Service Attributable Pension and Service Invalidity Pension is paid separately to the War Pension but falls under the Naval, Military and Air Forces etc. (Disability and Death) Service Pensions Order 2006 and is therefore disregarded.  Regulation 24 provides for (k) ‘ <b>any pensions</b> paid under the Naval, Military and Air Forces etc. (Disability and Death) Service Pensions Order 2006’ to be disregarded. An individual may list some of the extra/supplementary allowances paid under the 2006 Service Pensions Order to those qualifying for a War Disablement Pension. [War Disablement Pension -Allowance for lowered standard of occupation; age allowance; clothing allowance; comforts allowance; constant attendance allowance; exceptionally severe disablement allowance; funeral expenses; invalidity allowance; mobility supplement; severe disablement occupational allowance; unemployability supplement]. Where this occurs you can disregard the payment.
Domestic Abuse Waiver	<b>The individual lives in an expensive property but this is a domestic abuse case, do I call for a contribution?</b>
	The domestic abuse waiver relates to the eligibility limits for income and capital, but not to the contribution.  The capital contribution is calculated as the excess capital above the lower capital limit of £3000, or the likely maximum cost of the funded services case, whichever is the lesser. Where the domestic abuse waiver has been applied to the individual’s capital, it will be necessary to clarify the costs of the case so that the contribution can be limited to that figure.

	<p>Under Regulation 36 of the Civil Legal Aid (Procedure) Regulations 2012 the contribution must be paid within any time limit specified in the determination.</p> <p><b>[NB if the likely cost of the case is not indicated on the form, contact the provider to obtain an estimate (inclusive of VAT) and ask for that by way of contribution.]</b></p> <p><b>See also, question below on the treatment of property for domestic abuse cases under ‘property, main dwelling’</b></p>
Domestic Abuse Waiver / Protection from harm	<b>Can this waiver apply to other types of injunction cases e.g. harassment?</b>
	No. The waiver is limited to domestic abuse, female genital mutilation protection order and forced marriage injunctive proceedings only.
Emergency Representation	<b>My assessment has found that the client is not eligible for legal aid. There is an emergency certificated granted under delegated functions and I have been asked if we can discharge (withdraw) rather than revoke –can I do that?</b>
	Where an applicant is financially ineligible for legal aid the emergency certificate <b>must</b> be revoked. Regulation 52(2)(c) of the Civil Legal Aid (Procedure) Regulations 2012 states, ‘A determination made on the basis of limited information and documents—must be revoked where, following the provision of further information and documents, the Director determines that the individual does not qualify for legal representation or family help (higher) in accordance with section 21 of the Act and regulations made under that section.’
	<b>I have revoked an emergency certificate as the client is not financially eligible, is there a right of appeal?</b>
	<p>No. Where the revocation is based on a decision that the client is not financially eligible for legal aid, there is <b>no right to appeal</b> that decision to the Adjudicator. This is confirmed by Regulation 45(1)(a) of the Civil Legal Aid (Procedure) Regulations 2012.</p> <p>If there is new information that affects your previous decision or if an error was made, you should be willing to review your decision;</p>
Employed or self-employed?	<b>See Business cases (Employed or self-employed?)</b>
Employment Expenses	<b>Do we assess the standard £45 per month allowance for a person who is a company director?</b>
	Yes if the company director receives a wage or salary from the company (this rule applies even if he is also one of its shareholders i.e. owners). A company director is an officer of the company (in

	<p>effect an employee) and pays Class 1 National Insurance Contributions.</p> <p>The allowance is not available to the self-employed i.e. sole traders or partners in a business.</p>
	<p><b>Do we allow the standard employment expenses allowance for someone who is long term sick or on maternity leave?</b></p>
	<p>Regulation 27 states:</p> <p><i>(1) Where the income of the individual consists, wholly or partly, of a wage or salary from employment, there shall be deducted - (a) the sum of £45 per month.</i></p> <p>The £45 allowance is therefore only available to employees (including company directors) who receive a wage or salary from employment.</p> <p>Where the individual is on maternity leave or has suffered a period of illness during the calculation period (i.e. the month leading up to the date of application) but is back at work or is due back at work in the month following the date of application, the allowance can be given.</p> <p>However, no allowance will normally be given if a) the person was on maternity leave or sick leave throughout the calculation period, b) they are not due back at work in the month following the date of the application and c) they are no longer in receipt of contractual earnings payments i.e. wages/salary or occupational sick pay scheme payments. (Receipt of company sick pay will normally be evidenced on the L17 form or from the applicant's wage slip).</p>
Employment Expenses; travel increment added to wages	<p><b>The individual travels as part of her job her wage slips show a basic salary with an increment (additional standard rate) added to the salary for travel expenses – should this be included as part of her gross income or should this be calculated on the basic salary?</b></p>
	<p>If the individual receives additional payments that are treated as part of her gross income for income tax and national insurance purposes by HMRC, which is normally the case if there is an additional standard rate on the wage slip, we will also include this as income. In cases of doubt further enquiries can be made to the individual or to the payroll department listed on the L17 form, if supplied (although care should be taken to protect individual's confidentiality if contacting the individual's place of employment).</p> <p>Where the individual is receiving non-standard payments and it is clear that she is only being reimbursed (e.g. via expense claims) for her travel rather than getting an increment to the wage, and she is not being taxed on the basis of these payments, do not include as gross income.</p>

	Remember to give the standard £45 employment expenses allowance (which is in recognition of the additional expenses faced by those who undertake work including travel costs to and from work etc.).
Evidence of Means	<b>What is satisfactory evidence of means and how does this relate to our fraud strategy?</b>
	The LAA has strengthened the evidential requirements for certificated work as part of our continuing efforts to improve financial stewardship of legal aid. Detailed information is now requested through CCMS or provided by an evidence checklist at the back of the CIVMEANS 1 and CIVMEANS 2 and section 15 of this guidance.
Fostering Allowances	<b>See Disregarded benefits</b>
Gross Income Cap	<b>The individual has income above the gross income limit but states her outgoings are high. Should I calculate disposable income?</b>
	No, the individual is ineligible for legal aid.
Housing Costs; arrears payments	<b>What if rent or mortgage payments include a payment for arrears of rent / mortgage?</b>
	<p>In practical terms, you will normally not be aware whether the individual is paying off arrears along with their monthly payment, as the individual will generally declare and evidence this as a single revised payment. The payment of arrears as part of the monthly payment is allowed where required under Court Order (e.g. possession case) or where the individual has come to an arrangement with the landlord/mortgagee prior to the legal aid application or awareness of litigation, and is meeting this payment.</p> <p>If it appears that the individual has commenced paying off arrears in order to reduce their disposable income for the purposes of qualifying for, or reducing their contribution for legal aid, then only the normal monthly rent or mortgage payment (i.e. excluding the arrears element) should be allowed. For the avoidance of doubt, where an individual has recently recommence payment of their rent or mortgage after a long gap based on the advice of the provider in support of an application to defend possession proceedings, this will not be considered as intentional deprivation.</p>
Housing costs; Council tax	<b>Can I allow Council Tax payments as a housing cost?</b>
	No. Only allow mortgage or rental payments. Do not deduct Council Tax payments, service charges, ground rent.

	See section 11 for guidance on further assessments of certificates where application made before 3 December 2001.
Housing Costs; fixed sum for water rates/service charges included in "rent" figure	<b>What if the rent agreement includes a fixed sum for water rates?</b>
	If upon sight of a rental statement/tenancy agreement there is a clearly identifiable amount relating to water rates or service charges etc. included in the "rent" figure advised by the individual, this should not be included as "net rent" for assessment purposes (i.e. no allowance should be made for that fixed amount). However it is not necessary to routinely seek clarification as to whether or not the rent declared by the individual includes a sum for water rates or service charges.
Housing Costs; insurance, mortgage linked life insurance and endowments	<b>The individual is paying MPPI (mortgage payment protection insurance) is that deductible as a housing cost?</b>
	No. Insurance payments, including MPPI which is designed to cover mortgage payments for a period of time (e.g. 12-24 months) in the event of a drop in income (e.g. in the case of redundancy or critical illness), are not allowable deductions.  However it is not necessary to routinely seek clarification as to whether or not the mortgage amount declared by the individual includes a sum for MPPI.
	<b>Can I make a deduction for monthly premiums of an endowment policy that is linked to the mortgage and therefore is designated to repay the capital sum?</b>
	Yes. Mortgage repayments include the monthly premiums of any linked life assurance/endowment policies, PEPs, or other instruments which will be used to repay the capital sum borrowed
Housing Costs; mobile homes, static caravans and boats	<b>Can I allow payments towards a personal loan used to purchase a caravan or boat that the individual lives in as a housing payment?</b>  <b>Can I allow mooring fees if the individual's main dwelling is a boat?</b>
	No. The repayment of a personal unsecured loan is <b>not</b> a housing cost i.e. the repayment of the loan is not directly related to the individual's continued occupation of the boat or caravan.  Mooring fees are akin to a service charge and therefore are <b>not</b> allowed.

<p>Housing Costs, overpayments, flexible mortgages</p>	<p><b>Monthly mortgage liability is £440 per month but the individual has a flexible mortgage which allows her to make overpayments. She is regularly paying £600 per month, which amount should I deduct?</b></p>
	<p>£440 is 'the net rent payable' in accordance with Regulation 28(2). The regulation allows us under paragraph (4) to make an adjustment where 'the amount of net rent paid by the individual is less than the amount of net rent payable' but there is no such provision to accommodate voluntary overpayment. Only allow the amount payable</p> <p>In an arrears situation where the person's monthly payment has been increased by the mortgage company in lieu of the debt, the new amount is deemed to be the 'net rent payable' and therefore it is allowed on that basis.</p>
<p>Housing Costs – Students and others paying rent in advance each term or quarterly etc.</p>	<p><b>The client is a student who pays rent for the term, at the beginning of the term when she receives her student loan. Can I make an allowance for monthly rent?</b></p> <p><b>What about others who are not students who pay quarterly for example?</b></p>
	<p>Yes a deduction can be made.</p> <p>With students, we treat their annual loan or grant as income converted to a monthly amount (i.e. divided by 12). Student loans are paid in 3 instalments; if out of that money the student pays their housing costs for the term, allow the pro rata monthly amount to reflect the fact that the student is meeting a rental liability from his or her current income.</p> <p>This is quite different from a scenario where rent has been paid in advance from a capital sum (e.g. student's parents have paid 6 month's rent in advance) so that the rent liability is not to be met from the current annual award or other income, in which case the rent deduction should <b>not</b> be made as it is not met from current income.</p> <p><b>For non-Students</b></p> <p>Generally:</p> <p>1) if a client's rent agreement states that the rent is due say bi-monthly or quarterly (or even six monthly) then convert that figure to the calendar monthly equivalent to allow a deduction to be made; and / or</p> <p>2) if the client is paid bi-monthly or quarterly or six monthly and then meets their rental liability for a broadly equivalent period from that money i.e. from their income, make a deduction for their</p>

	<p>housing costs by converting their payment to the calendar monthly equivalent amount; or</p> <p>3) if it is otherwise clear that a regular payment is being made out of their income, then it is reasonable to allow the converted monthly payment.</p> <p><b>Case study:</b> the individual has income of £1200 per month, he has to make a rent payment of £4500 every 6 months as per the tenancy agreement. He sets aside an amount of money each month towards the payment (in this case he transfers an amount to a second account every couple of months before transferring it out to the landlord). An allowance should be made for the applicant's monthly rent liability i.e. tenancy rent amount divided by 6.</p> <p>These examples above are different from a scenario where it is advised that the client (or a third party on their behalf) has paid 6 or 12 months' rent in advance from capital and has asked for the monthly rent to be disregarded from their gross income for that past payment. In that scenario the individual is not currently paying / required to pay their rent out of their current income as the liability has been already met from capital. If the individual is within the legal aid financial limits despite no deduction being made for housing costs and the offer of funding is accepted, a further determination can be made to take account of their rent liability as per the tenancy agreement after the relevant time period covered by the advanced payment has elapsed.</p>
<p>Immigration, 'no recourse to public funds (NRPF)'</p>	<p><b>Can an individual still apply for legal aid if there is a 'no recourse to public funds (NRPF)' condition applied to their immigration status?</b></p>
	<p>An individual with NRPF under section 115 of the Immigration and Asylum Act 1999 is <u>not</u> barred from receiving legal aid. The individual may apply for legal aid in the usual way and, if eligible under the normal rules, receive legal aid.</p>
<p>Income, annual bonus</p>	<p><b>The client received their annual bonus during the calculation period as shown on their wage slip – do I include this as income or capital?</b></p> <p><b>Is the position the same for ordinary employees and company directors?</b></p>
	<p>The employee's annual bonus should be included as <b>capital</b>.</p> <p>Our treatment of the annual bonus as capital for ordinary employees differs to the HMRC; this change was made when we introduced the simplified means test in 2001 moving from an annual to a monthly calculation period. Annual information is not routinely required / made available for non-business assessments; the inclusion of this one-off payment as capital ensures that income calculations are not overly inflated for individuals applying for</p>

		<p>funding during a month when the annual bonus happens to be paid and evidenced in the wage slip, as opposed to those applying at different times of the year.</p> <p><u>Company directors</u></p> <p>For company directors; information about their income in all its forms will be shown on company accounts, pay slips etc. Include as income one-twelfth of the amount of any bonus or commission declared on a CIVMEANS1C. Assume the amount of the bonus/commission will be the same as that received in the last financial year unless it is known otherwise.</p>
Income, Earnings	Averaging	<p><b>When do we average income from earnings shown on wage slips or the L17? What does ‘reasonably consistent’ as stated in the guidance mean?</b></p>
		<p>Where income is reasonably consistent and there is no indication of sickness or major change of circumstances, there is no need to average. What is ‘reasonably consistent’ is a matter of judgement; for practical purposes this is generally linked to the review limit of £60 so if the difference across the three months is less than £60 then you can generally be confident that income is relatively consistent and therefore the last month’s salary may be used in the calculation.</p> <p>Remember, if the individual has experienced a permanent change of circumstances e.g. the latest wage is higher than the previous two months due to the individual receiving a pay rise, then you should assess using the new salary amount only, do not average the salary over the 3 months as this will be unrepresentative of normal income going forward. If the latest month’s salary is significantly less than the previous two months due to illness, it will be appropriate to assess income by taking an average of the other two months.</p>
Income, L17 pay rise		<p><b>If the L17 states that the individual is due a pay rise in the following month which figure should I take? If the pay rise is due more than one month later how do I assess?</b></p>
		<p>If the individual’s wage is due to go up the next month (i.e. within a month of the date of the application) then the revised figure should be used in the financial determination.</p> <p>If the individual’s pay increase is scheduled to take place more than one month after the date of the application, a further determination should be scheduled for that time. However a further determination is only necessary if the review limits set out in Regulation 20 are exceeded i.e. if the change will increase monthly disposable income by £60 or more.</p>

Income Tax	<b>When is the income tax allowance made for the self-employed? How is it calculated?</b>
	An allowance can be made where the individual has provided evidence of their tax liability as shown on their latest tax assessment. 1/12 of the annual figure stated on the bill, is allowed in the assessment.
Individual Voluntary Arrangement	<b>Can I allow a deduction for payments towards an IVA?</b>
	There is no allowance under the regulations for payments towards an IVA or bankruptcy.
Loans as Capital	<b>Can I include a loan as capital</b>
	Yes capital includes money derived from loans including commercial loans and informal loans from family and friends.
Loans as Income	<b>Are loans income or capital?</b>
	Loans are a resource to be included within the assessment. If it is a one-off lump sum as is typically the case, this will be included as capital.  Loans can be included as income in specific circumstances set out within the guidance: i.e. if they are from the same source; are being used to meet expenditure normally met from income, there is an element of recurrence / regularity and there is no genuine intention or no ability to repay. <b>See detailed guidance within section 3.2.</b>  Types of loans may range from large commercial loans (e.g. from banks, building societies) to informal loan from friends and family.
Loans for debt consolidation	<b>The client states that a loan was for debt consolidation should I still include as capital?</b>
	We include all capital assets held including money derived from commercial loans.  However, if the individual provides evidence confirming that the loan was <b>only</b> available for debt consolidation i.e. applied for on that basis and used for that purpose, then this is not treated as an additional capital resource. This is the scenario where for example your client on modest means is called in by the bank and offered an unsecured loan at a much lower monthly repayment than the credit card debts she/he is meeting.  Where it is advised that the loan has only been <i>partly</i> used for debt consolidation, you should normally include the <b>full</b> amount of the loan as capital – on the basis that it is not evidenced that the loan amount was specifically obtained and only made available to the client for the purpose of debt consolidation rather than being an

	<p>amount generally that they could borrow. – For example, an individual obtains a loan for £10,000, pays off credit card debts and has £5,000 remaining in the account. This indicates that the loan decision was not contingent upon the client repaying old debts. If the individual can prove to the contrary i.e. that there was an inbuilt uplift specifically to consolidate a previous commercial debt within the larger amount then an adjustment can be made in those circumstances.</p>
Maintenance, fees for using Child Maintenance Service (CMS)	<p><b>Is an allowance made for the collection fee charge to payer and payee using CMS to collect maintenance payments from 11 August 2014?</b></p>
	<p>From 11 August 2014 parents who use the CMS's Collect and Pay service will have to pay a fee each time they make or receive a payment.</p> <p>Paying parents will pay a 20% fee on top of their regular child maintenance payment</p> <p>Receiving parents will have a 4% fee deducted from their regular child maintenance.</p> <p>No deduction will be made from gross income for the 20% fee paid on top of the maintenance, where the legally aided individual is a paying parent using the Collect and Pay service</p> <p>Where the legally aided individual is the receiving parent using the Collect and Pay service, include the <b>gross</b> amount of the entitlement. The full amount of maintenance is in fact being paid albeit that a small fee is being deducted by the service.</p>
Maintenance, Income	<p><b>Where the ex-partner pays money directly to a third party on behalf of the individual e.g. pays the mortgage on the former matrimonial home direct to the lender, does that count as gross income to the individual?</b></p>
	<p>Yes. Any payments made directly to a third party on behalf of the individual will count as the individual's gross income. The full mortgage payment made will be included as the individual's income where the ex-partner has moved out of the property, as the full payment is in effect maintaining a roof over the individual's head.</p> <p>If the ex-partner is still resident at the property, 50% of the payment will count as maintenance income to the individual, the remaining 50% is the ex-partner's contribution to keeping a roof over his/her own head.</p>
Maintenance, Payments	<p><b>Individual is a person who has permanently separated from his former partner but lives under the same roof, they have</b></p>

	<b>two children. The mother receives dependant's allowances for the two children, he is paying maintenance?</b>
	<p>The allowance for maintenance payments under Regulation 26 refers to payments regularly made and provides us with power to allow 'a reasonable amount in respect of such payments' This applies whether the payments are made under a court order, CSA ruling or voluntary agreement. These payments could include simply paying an ex-partner's household bills or mortgage.</p> <p>Where the legal aid applicant is living separate and apart under the same roof as his/her former spouse / partner and children, a deduction can be made for maintenance payments to the former spouse and the children where evidence is provided that these payments are being made. Allow half of the mortgage payment as a maintenance deduction (the other half is allowed as a housing cost deduction for the applicant's main dwelling).</p>
Meshes Order	<b>See Property, Meshes Order</b>
Mortgages: Offset and Current Account Mortgage; Mortgage Reserve	<b>See Property, Mortgages: Offset and Current Account Mortgages;</b> <b>See Property Mortgage Reserve</b>
Mortgages: overpayments; flexible mortgage.	<b>See Housing Costs, overpayments, flexible mortgages</b>
National Insurance	<b>Should I always give an allowance for payment of Class 2 National Insurance for self employed individuals? Can I also allow Class 4 contributions?</b>
	<p>A deduction of the fixed amount of Class 2 contributions will automatically be made unless the individual's income is below the small profit threshold (SPT) (this replaced the small earnings exemption limit from 6 April 2015) shown in Appendix 6.</p> <p>If income is below SPT an allowance can still be made if the individual provides evidence of a current assessment of Class 2 contributions (and there is parity with the level of earnings they have declared). Clients who could qualify for an exemption from payment may choose to pay in any event to protect their long term benefit entitlement. Payment of national insurance in these circumstances would <b>not</b> be regarded as deliberate deprivation of income.</p> <p>Class 4 contributions, which are based on a percentage of the person's earnings, will be allowed if the individual can show a</p>

		current assessment of Class 4 contributions (and there is parity in the level of income being assessed from that business).
Overpayment Benefit; income	of	<b>The individual has an amount deducted from her award of Tax Credit due to an overpayment the previous year; how do I assess?</b>
		Due to the way changes of circumstances are reported and administered under with the Tax Credits scheme, individuals' awards are often adjusted from one year to the next. Assess the actual net amount paid to the individual within the financial determination.
Overpayment Benefit; savings	of	<b>The individual states that money in his savings account includes an overpayment of tax credits, should I disregard this money?</b>
		No. The HMRC are unlikely to request the repayment immediately as a lump sum and no allowance can be made for future liabilities. However if documentary evidence is presented showing that the money must be repaid immediately and has been transferred between the date of application and date of assessment, do not include that sum in the legal aid assessment.
Passporting Benefits		<b>What are the passporting benefits</b>
		<p>These are benefits that provide automatic qualification below the income limits <b>but capital must be calculated in all cases</b>. There are 5 passporting benefits:</p> <ul style="list-style-type: none"> <li>▪ Income Support</li> <li>▪ Income Based Jobseekers Allowance</li> <li>▪ Income Related Employment and Support Allowance</li> <li>▪ Guarantee Credit</li> <li>▪ Universal Credit</li> </ul> <p>If the individual receives one of these benefits, subject to capital not exceeding £8000, they are financially eligible for legal aid.</p>
Passporting Benefits, Crown Dependencies		<b>Is income support / income –based job seekers allowance paid by the crown dependencies Isle of Man or Channel Islands a passporting benefit?</b>
		Isle of Man: yes. The secondary legislation governing the payment of income support and income-based jobseekers allowance in the Isle of Man i.e. under their own scheme, is made respectively under s124 the Social Security Contributions and Benefits Act 1992 and the Jobseekers Act 1995 as those UK Acts have effect in the Island; Therefore recipients of income support and income-based

	<p>jobseekers allowance paid under the Isle of Man scheme <i>are in receipt of</i> income-passporting benefits for legal aid under Regulation 6(2)(a) and (b).</p> <p>Channel Islands: no. The position is different for the States of Guernsey and Jersey as their income support and supplementary and unemployment benefits schemes are governed by separate Acts passed in the Channel Islands rather than the relevant UK Acts and therefore these benefits are not listed as passporting benefits under Regulation 6(2)(a) and (b).</p>
Passporting Benefits EU equivalent benefits	<b>Can someone in receipt of benefits from a EU member State e.g. Germany be passported?</b>
	Following the UK's exit from the EU at 11.00pm on 31 December 2020 for an application made on or after exit day, an individual in receipt an equivalent benefit from an EU member state will not be passported unless the conditions set out in Regulation 8 of the Civil Legal Aid (Amendment) (EU Exit) Regulations 2019 apply. (see Section 1.5 of this guidance)
Pensioners; capital disregards	<b>Are there any special rules for pensioners?</b>
	There are capital disregards for pensioners (i.e. where individual or partner is age 60 or over) on low incomes i.e. where disposable income does not exceed the lower income limit. See Pensioner Disregard Table in Appendix 1.
Property	<b>The individual has valued her property to be worth £200,000. The internet valuation of the property is £210,000. Which valuation should be used for assessment purposes?</b>
	<p>The individual's valuation should be used as it is within 10% of the internet valuation.</p> <p>If the individual's valuation is lower than the internet valuation by more than 10% use the internet valuation.</p> <p>If the individual's valuation on the CIVMEANS1 is higher than the internet valuation (by any amount), use the individual's valuation.</p>
	<b>The individual originally valued his property at £180,000 the internet valuation suggested similar properties were selling for £210,000. He has now provided a local agent's valuation of his property stating it is worth £185,000 to £195,000 – can we accept that valuation? Does the 10% lower rule still apply? The provider has said that we should use the lowest valuation in the range given, is that correct?</b>

	<p>The Estate Agent's valuation of the individual's property has been provided to challenge the internet valuation and can be used in preference to it – the '10% lower rule' applies to the client's estimate where it is not supported by a valuation rather than to an independent valuation.</p> <p>Where a range is given for the property value we will normally use the maximum value.</p>
<p>Property, Domestic Abuse cases and Main Dwelling property</p>	<p><b>Domestic Abuse case, the individual is in a refuge. Can I treat the former matrimonial home as her main dwelling? Are there other circumstances when I can do this if they are not actually in the property?</b></p>
	<p>The starting point is our financial regulations and guidance. Regulation 37 refers to the 'main or only dwelling in which he resides'. We have said in cases where an individual has had to temporarily flee their home (e.g. due to children or domestic abuse issues; or natural disasters such as flooding) that we can exceptionally continue to treat it as the person's main dwelling. This is however normally a short term circumstance (i.e. the individual is in a refuge or other temporary accommodation) and in the case of domestic abuse the person will usually be in the process of applying for legal aid to be returned to the property.</p> <p>In circumstances where the individual has set up a new tenancy and declared this address as their main dwelling to another government agency (e.g. in order to obtain housing benefit at the new address), it would usually <b>not</b> be appropriate to continue to treat the former family home as the main dwelling for legal aid purposes.</p>
<p>Property, Help to Buy Scheme (equity loan)</p>	<p><b>I'm assessing an individual who purchased their property using the Help to Buy Scheme, does this mean the government own a share of the property or is it like a mortgage?</b></p>
	<p>Where a property has been purchased with the assistance of an equity loan provided under the help to buy scheme to the individual; a percentage share of the sale value (equivalent to the contribution the equity loan made to the purchase as a percentage share of the original purchase price) must be repaid: if the market value of the property goes up so does the amount the individual owes and has to pay back on their equity loan; if the property value goes down so does the amount owed on the equity loan.</p> <p>Example – an individual purchased a house for £260,000 with the assistance of an equity loan of £52,000 (which was 20% of the funds required to purchase the property) and a mortgage of £150,000 (their own savings made up the remainder of funds). The current value of the property is £280,000:</p>

	<p>The client's Interest in the property is calculated as follows</p> <p>£280,000 – 3% selling costs (£8,400) = £271,600</p> <p>less £150,000 mortgage</p> <p>net equity = £121,600</p> <p>less repayment of equity loan = 20% of £280,000 = £56,000</p> <p>client's share of equity = £65,600.</p>
Property, Help to Buy scheme (ISA)	<p><b>I'm assessing an individual who has money in a Help to Buy ISA, do I include these funds?</b></p>
	<p>Yes, include any money saved in a Help to Buy ISA in the assessment of capital. The funds are not locked away and can be withdrawn at any time</p> <p>[An individual may start the account with a deposit of up to £1200 and thereafter save up to £200 per month. The Help to Buy ISA allows the individual to save for a first home and claim a government bonus of 25% (for savings between £1600 and £12000) up to a maximum of £3000 (The maximum applies to savings of above £12000); the bonus is applied for when the individual is ready to buy a property. The Help to Buy ISA was closed to new accounts from 30 November 2019 but existing savers can continue to save into the account until November 2029].</p>
Property, Mesher Order or Chargeback	<p><b>How do we assess cases where the individual has a deferred interest/chargeback on a property?</b></p>
	<p>Where a Court Order provides that the individual has a deferred interest in a property, this will be viewed as the individual's interest being held in trust [Regulation 36(4)]. A copy of the Order should be obtained. Regulation 36(4) provides that the value of any interest in a trust should be computed in a way that is equitable and practicable. If it is clear that the 'trigger' events set out in the Order (that would allow the property to be sold) have not yet occurred and are not due to occur during the month after the application is made, we will exceptionally determine that the asset is not 'truly disposable' at present and the interest will be valued as 'nil'. If any of the events specified in the Order occur following the financial determination (e.g. youngest child reaches the specified age / stage of education, or the former partner remarries) the individual is under a duty to advise the change of circumstances, at which point a further determination should be made and a contribution obtained (where capital exceeds the £3000 limit).</p>

Property: Mortgages; Offset and Current Account Mortgages	<b>How should we treat an instant access savings account used as part of an offset mortgage, or savings in a Current Account Mortgage? Do we disregard the savings as we would an endowment policy that is linked to the mortgage?</b>
	<p>An offset mortgage is linked to a separate saving account or accounts,</p> <p>A Current Account Mortgage combines savings and debts in one account.</p> <p>This situation is <b>not</b> analogous to the linked endowment. For saving accounts which are part of an offset mortgage or savings in a Current Account Mortgage, essentially the balance of the savings is linked for the purpose of interest calculation but the savings are not 'tied' in the sense of being unavailable (as the linked endowment would be) - there is instant access and the individual has purposed it to be so. This is a flexible arrangement whereby the person has decided that the reduction in interest payments on their mortgage is greater than the interest that would otherwise have been earned by their savings (which would be taxed).</p> <p>Offset mortgages are available for both interest-only and repayment (capital and interest) mortgages – clearly in the latter case the mortgage will ultimately be repaid regardless of the offset – the savings account should be assessed as capital available to the individual in accordance with Regulation 30.</p>
Property: Mortgage Reserve	<b>What is a Mortgage Reserve? Should I include the agreed limit as capital?</b>
	<p>A mortgage reserve is a secured overdraft facility on a Mortgage Current Account, where the person has the option of borrowing against the equity on their home up to an agreed limit. The Reserve must be repaid upon redemption of the mortgage and a charge over the property will have been required as security.</p> <p>Do not treat the overdraft facility as capital. If however the individual draws down money using the facility (e.g. for home improvements, holidays etc.) at the date of applying for legal aid, or whilst being in receipt of legal aid then include that amount drawn down in accordance with Regulation 30. (Also consider 'adding back' any amounts drawn through the facility at a time when the individual was aware of litigation, using the deprivation rule under Regulation 17).</p>
Property, Shared Ownership	<b>The individual jointly owns a property with a friend (market value £145,000; mortgage £110,000), she lives elsewhere in rented accommodation with her boyfriend, how do I assess the owned property?</b>
	The individual's share of the property will be included in the assessment by establishing the market value in the usual way,

	<p>deducting the mortgage allowance and calculating her share of the equity:</p> <p>The property value is = £145,000,</p> <p>less 3% selling costs = £4350</p> <p>less mortgage allowance = £110,000</p> <p>net equity = £30,650</p> <p>individual's share of the net equity = 50% of £30,650 = £15,325</p> <p><b>Main dwelling equity disregard does not apply.</b></p>
<p>Property, Shared Ownership with Local Authority Landlord/housing association.</p>	<p><b>The individual states that she owns 50% of her home under a shared ownership scheme, the mortgage only attaches to her share of the property (market value £160,000; mortgage £70,000), how do I assess the property?</b></p>
	<p>With shared ownership under this scheme, the local authority or housing association's share of the property is not subject to the mortgage on the property, i.e. the landlord's share is a percentage of the market value of the property rather than a percentage of the net equity. This requires an adjustment to be made in calculating the individual's equity for our assessment purposes:</p> <p>The local authority's share is 50% of the market value (£160,000) = £80,000.</p> <p>Calculation:</p> <p>Value = 160,000</p> <p>less 3% selling costs = £4800</p> <p>less mortgage allowance = £70,000</p> <p>net equity = £85,200</p> <p>client's share of equity is = [£85,200 – landlord's share £80,000] = £5200</p> <p><b>Main dwelling equity disregard applies, Nil capital for assessment.</b></p>
<p>Restraint Order</p>	<p><b>The individual has declared that her assets are held under a freezing order and attached a copy. Do I have to check whether they have tried to vary the order or can I automatically apply a capital disregard?</b></p>

	<p>The individual will usually need to show that they have requested a variation to access funds for their legal costs and that the court has refused their application, for the disregard (Regulation 43 restrained assets) to be applied.</p> <p>The exception to this rule relates to individuals who have assets restrained by an order made under Section 41 of the Proceeds of Crime Act 2002 (POCA) where the legal aid application relates to POCA proceedings; in such cases it is known that access to these funds for the purpose of meeting legal costs is prohibited. However if the legal aid application is for some other matter e.g. family proceedings, then the individual will still need to show that they have sought to vary the order to allow access to funds and the application has been refused, as access to funds is not explicitly prohibited in these other scenarios.</p>
<p>Separate and Apart, assessments</p>	<p><b>How do we assess income and allowances for a former couple living separate and apart, either under the same roof or at separate addresses, where the husband pays the mortgage for both?</b></p>
	<p>Where a couple are permanently separated, in assessment terms two separate households have been formed even if they remain under one roof. The former couple's finances will not be aggregated, but we must include money/assets that they respectively have access to.</p> <p><b>Example 1: A former couple are living separate and apart at different properties:</b></p> <p>Where the individual advises that her former partner is paying the mortgage or other household bills at her address (even if this is paid directly to the mortgage or utility company), then for gross income purposes the full amount paid will be included as maintenance income to the individual (i.e. the full payment is being made to benefit the individual by maintaining that home). An allowance should be given for the individual's housing costs i.e. monthly mortgage / rent where disposable income is being assessed.</p> <p>If the former partner i.e. the person paying the mortgage or other household bills applies for legal aid, a deduction can be made from gross income for the maintenance paid to his former spouse i.e. the full amount paid.</p> <p><b>Example 2: A former couple are living separate and apart under the same roof:</b></p> <p>Where it is advised that the former couple have formed separate households under the same roof, we assume that they benefit equally from the maintenance of the home, and that they are equally responsible for housing costs (basically apportioning half the costs to each household under that roof). Therefore where the</p>

	individual advises that her former partner is paying the full mortgage but also living at the property, ½ of the amount paid is to maintain his household, the other ½ is to maintain her household and therefore is calculated as maintenance income to the wife for gross income purposes. An allowance may be given for the individual's housing costs which will be calculated as ½ of the monthly mortgage / rent where disposable income is being assessed.
Separate and Apart Assessments	<b>The applicant has advised that her income is paid into a joint bank account along with her estranged husband's income. How do we assess income where all monies are paid into a joint bank account, i.e. child benefit, child tax credit and husband's wages?</b>
	<p>Child benefit and Child Tax Credit are paid to the main carer, so if the benefits are paid to the applicant (i.e. she is the claimant), include the full amounts. Although the husband's wage is being paid into the joint account, we will usually include only the money that is in practice supporting the applicant in view of the fact that they are separated and have a contrary interest. We need to establish what part of his wage, if any, is supporting her: e.g. if the mortgage is paid from the husband's wage and he is living at the property, ½ of the mortgage payment should be included as maintenance income to the applicant (the other ½ of his payment is basically to meet his own housing cost) and the applicant's housing cost deduction will be for ½ the total mortgage (assuming that the child dependants allowances are deducted, the housing allowance will not be capped at £545 per month if it is higher than that figure); if the husband was living elsewhere then the applicant is deemed to receive the full benefit of the mortgage payment in terms of it meeting her housing costs, and therefore the full amount of the mortgage payment should be included as maintenance income (and the full mortgage payment should be deducted under the housing costs allowance when determining disposable income – assuming the applicant is within the gross income limit).</p> <p>NB guidance on the assessment of capital held in a joint bank account is set out in section 5.2(8-10) of the preceding guidance.</p>
Signature: Blind applicant	I have received a telephone call from a provider who has a blind client, who has queried whether the forms need to be signed – what should I advise?
	<p>If the legal aid applicant is blind or partially sighted so that there is a problem providing a signature –:</p> <ul style="list-style-type: none"> <li>• The provider or a third party witness chosen by the individual (legal aid applicant) should read out the form to the individual and its implications as to what the individual is agreeing to in the authority statement;</li> <li>• The provider or third party witness must sign a statement saying to the effect ... "I certify that the information has been read to</li> </ul>

	<p>&lt;name of individual&gt; by me and I further certify that I am satisfied that he/she appeared to understand it perfectly.'</p> <ul style="list-style-type: none"> <li>• If the individual (i.e. legal aid applicant) is able to make some sort of signature or mark, the witness can direct the person's hand to the correct point on the form.</li> </ul>
State Benefit, Arrears/Backdated	<b>See Arrears of Benefit/Backdated Benefit</b>
State Benefit, Declaration on CIVMEANS 1	<b>The individual has ticked 'yes' they receive one of the state benefits on the CIVMEANS 1 form, but not the amount – should I write out for further information?</b>
	In these circumstances it is sufficient to make a telephone call to the individual/provider to obtain the amount, making a note of the date and time of the call and information obtained.
	<b>If the figure declared by the individual on the CIVMEANS 1 differs from the standard rate, which figure should I take?</b>
	The higher figure is usually taken. If the client's bank statements confirm the lesser amount is received, you can use that figure if you have established that the reduced payment is <b>not</b> due to a deduction at source for an expense that is not allowed under the financial regulations e.g. a debt. [See below, <b>reduction of benefit</b> ].
State Benefit, Not declared	<b>The individual has stated that she has a 7-year old daughter living in her household but has not advised that she is receiving any benefits including child benefit and child tax credit, should I assume she is receiving these benefits?</b>
	<p>If the individual (or partner) is claiming to be the main carer of a child under school leaving age living in her household, we assume receipt of child benefit. Child benefit to which the individual appears to be entitled will be included even if not declared. Use the standard rate published by HMRC.</p> <p>Check the bank statements provided with the application, for evidence of state benefits and tax credit payments. Receipt of child tax credit is not automatically assumed and is not included in the financial determination where the individual is not in receipt of this benefit (unless it appears that the individual has deliberately deprived herself of this income).</p>
State Benefit, Reduction of benefit	<b>The individual is receiving less than his normal entitlement amount of incapacity benefit, as he is repaying a crisis loan – what figure should I include?</b>
	Include the full entitlement amount. Incapacity benefit is a substitute for income earned at work. If someone who works has deductions at source for maintenance payment, debts, pensions etc., we include gross income and only allow those deductions

	<p>which are set out in the regulations i.e. for income tax, national insurance, maintenance to an ex-partner etc. No allowance is available for monthly repayment of debts apart from a mortgage payment. We are therefore consistent for both wage earners and benefit recipients.</p>
Subject Matter of Dispute (SMOD)	<p><b>Divorce/Ancillary relief proceedings: the individual has said ‘everything is SMOD’ but is freely accessing her account that holds £20,000 and the case papers suggest that only the former matrimonial home is being claimed by the opponent, can I include these funds?</b></p>
	<p>Yes include the £20,000 in the means test. The SMOD disregard applies to those assets that are specifically under attack in proceedings and would not be applied to the money held in the account that the individual is freely accessing. The SMOD disregard applies to the former matrimonial home which is being claimed in the proceedings. The SMOD disregard is limited to £100,000 of the individual’s interest in the disputed assets.</p>
Tax	<p><b>See Income Tax</b></p>
Trust, Personal Injury	<p><b>Are monies held in Personal Injury Trusts disregarded from the legal aid means test as they are for Income Support?</b></p>
	<p>No. Legal Aid has different rules to Income Support. For Legal Aid purposes where the individual has an interest in a trust, this must be assessed under Regulation 36(4)(b).</p> <p>The rules for income support are different as it serves a separate (longer term) function to that of legal aid; under the income support regulations individuals are allowed to set up a personal injury trust without a deprivation ruling being made. If the individual is in receipt of a passporting benefit on income, you will still need to carry out a further determination of capital.</p>
Trust, MacFarlane Trust; Skipton Fund	<p><b>Are MacFarlane Trust or Skipton Fund payments disregarded from the assessment of means?</b></p>
	<p>A disregard must be made for any payment from a relevant infected blood support scheme (see guidance paragraphs 4.3 and 6.4) or earlier support schemes including the MacFarlane Trust and Skipton Fund.</p>
Uprating	<p><b>When do legal aid limits go up?</b></p>
	<p>Eligibility limits are reviewed periodically. If an uprating is to occur this will usually take place on the first Monday in April. Dependents Allowances are governed by income support legislation; upratings will similarly take place on the first Monday in April.</p>

VAT	<b>When limiting the contribution from capital to the estimated cost of proceedings should we add VAT to that figure? What happens if the expert/counsel is not VAT Registered?</b>
	When we limit the capital contribution to the likely cost of proceedings – or for practical purposes to the cost limitation on the certificate, add VAT. This will most often apply to cases where we have used the Domestic Abuse Waiver; we are ensuring that the individual does not pay an unnecessarily high contribution but we must also protect the fund. If the costs at the end of the case are less than the contribution paid, the difference will be returned to the individual.
Waivers	<b>Is the Domestic Abuse Waiver the only one available?</b>
	No. In addition to the waiver for Domestic Abuse, forced marriage cases and female genital mutilation (FGM), there are waivers for certain Multiparty Action cases. <b>See Section 1.6 of this guidance</b>
War Pensions	<b>See Disregarded Benefits, War Pensions</b>



## Appendix 10 Details Required From Persons Making Financial Representations

TYPE OF REPRESENTATION	ESSENTIAL INFORMATION	FURTHER INFORMATION TO BE PROVIDED IF AVAILABLE
Property	Address or Title Number	Land Registry Office Copy Entries Title Deeds
Land	Title Number or Map Showing Relevant Area	Land Registry Office Copy Entries Title Deeds
Boats/Caravan	Site Address/Contact	Indication of Value Dates of Purchase
Companies	Company Name	Estimate Interest/Value Copies of Entries on the Company House Register
Share Holding/Unit Trust	Company	Number/Value of Shares Copies of Entries on the Company House Register
Self Employment	Type of Work. Dates and places where work carried out.	Customers Adverts/Newspaper Clippings/Yellow Pages Letter Headed/Bill Of Work Details of Earnings from HM Revenue and Customs Copies of VAT Returns
Employment	Employer Name & Contact Dates	Confirmation of Dates of Employment and Salary
Trust Funds	Names and addresses of trustees. Estimate of Value	Trust Deed Valuation of Assets
Undisclosed Money	Bank or Building Society (Name & Address)	Account Number Value/Amount Payee if Income (e.g. maintenance/employer if redundancy)
Cars/Number Plates	Registration, model & make	Dates Of Ownership Value
Tenants	Address Name of Tenant(s)	Copy Lease Rent Paid

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Jewellery	Specific Detail of items and their estimated value	Valuations
Co - habitees	Joint Mortgage/Personal Bank Accounts/Credit Cards/Store Cards Divorce Proceedings	Determination of Co-Habitation by the Court or DWP



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## Appendix 11 Step by Step Guide and Calculating contributions

### STEP BY STEP GUIDE

**Step One** Establish whether or not the client has a partner whose means should be aggregated for the purposes of the financial determination (see Reg.16 and section 2.1 of this guidance).

**Step Two** Establish whether the client is properly in receipt, directly or indirectly, of a 'passporting' benefit in order to determine whether the client automatically satisfies the gross and disposable income limits.

Passporting benefits are:

- income support;
- income based jobseekers allowance;
- income related employment and support allowance;
- guarantee credit; and
- universal credit.

If the client **is** passported on income go directly to Step Five as capital will still need to be assessed. If the client is **not** passported go to Step Three.

**Step Three** For any cases which are not 'passported' calculate the gross income of the client, including the income of their partner. Where gross income is above £2,657 per month, then the client is ineligible for civil legal services (unless a waiver applies e.g. domestic abuse waiver) and the application must be refused without any further calculations being performed. Certain sources of income must be disregarded (see section 4.3 of this guidance), and a higher gross income cap applies to families with more than 4 child dependants (add £222 for the 5<sup>th</sup> and each subsequent child dependant).

**Step Four** For those clients whose gross income is not more than £2,657 per month, calculate disposable income. Fixed allowances are made for dependents and employment expenses, and these are set out in the table below. Other deductions can be made for: tax; national insurance; maintenance paid; housing costs; child-care costs incurred because of remunerative work or a course of study outside of the home (where study related income is received); and criminal legal aid contributions. If the resulting disposable income is above £733 per month then funding must be refused (without any further calculations being necessary).

Fixed rate allowances from 8 April 2024:	£ Amount (per month)
<b>Employment Expenses (employees only)</b>	£45
Dependants Allowances:	
<b>Partner</b>	£224.87
<b>Dependant aged 15 or under</b>	£361.70
<b>Dependant aged 16 or over</b>	£361.70
Housing cap (for those without dependants)	£545

**Step Five** Where a client's disposable income is within the relevant limit or the client is passported on income, then it is necessary to calculate the client's disposable capital. The value of the client's interests in disputed assets will be disregarded up to the maximum subject matter of dispute disregard of £100,000. If the resulting capital is above £8000, then the application must be refused (unless a waiver applies e.g. domestic abuse waiver).

**Step Six** For those clients whose income and capital have been calculated (or *deemed* if passported) to be within the relevant limits, the client may be required to pay a contribution from either income or capital as appropriate, or from both. (Clients passported on income will **not** be required to pay an income contribution but may be required to pay a contribution from capital)

Income contributions are payable monthly, capital contributions are payable immediately as a lump sum. If a contribution is payable, an offer of legal aid will be sent to the individual setting out the contribution amount(s). If disposable income and capital are below the lower disposable income and capital limits (£315 per month and £3000 respectively) contributions are not required. (Clients passported on income are deemed to have income below the threshold).

**Income Contribution bands for new and further determinations of applications made on or after 1 April 2013:**

<b>Contribution bands from 1 April 2013 (per month)</b>			
<b>A</b> (£316 to £465)	<b>35% of income in excess of £311</b>	£316.00	<b>(316-311) x 35%</b> = £1.75
		£390.50	<b>(390.50-311) x 35%</b> =£27.82
		£465.00	<b>(465-311) x 35%</b> = £53.90
<b>B</b> (£466 to £616)	<b>£53.90 + 45% of income in excess of £465</b>	£466.00	<b>53.90 + [(466-465) x 45%]</b> = £54.45
		£541.00	<b>53.90 + [(541-465) x 45%]</b> =£88.20
		£616.00	<b>53.90 + [(616-465) x 45%]</b> =£121.85
<b>C</b> (£617 to £733)	<b>£121.85 + 70% of income in excess of £616</b>	£617.00	<b>121.85 + [(617-616) x 70%]</b> =£122.70
		£675.00	<b>121.85 + [(675-616) x 70%]</b> = £163.30
		£733.00	<b>121.85 + [(733-616) x 70%]</b> = £203.75

Income contributions are payable monthly until the certificate is withdrawn.

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## **Capital Contributions**

An individual whose disposable capital exceeds £3,000 is required to pay a contribution of either the capital exceeding that sum or the likely maximum costs of the funded service whichever is the lesser.



## Appendix 12 – Miscellaneous assessment guidance for Immigration and Asylum Upper Tribunal work.

The 2018 Standard Civil Contract Specification (paragraph 8.54) confirms that legal representation of a client in any application to the Immigration and Asylum Chamber of the Upper Tribunal [“Upper Tribunal (IAC)”], including an application for permission to appeal lodged in either the First-Tier Tribunal or the Upper Tribunal, is certificated work (previously this was paid for as controlled work).

As with other certificated work:

- Legal Aid can be granted for Upper Tribunal (IAC) work even if the individual is subject to asylum controls which state they have no recourse to public funds (“NRPF”).
- Individuals who are properly in receipt (directly or indirectly) of Income Support, income-based Jobseekers Allowance; income-related Employment and Support allowance, Guarantee Credit or Universal Credit qualify automatically on income, but capital must still be assessed.
- As well as the resources of the individual, the resources of their partner are assessed and taken into account under Regulation 16(1); third party resources may be taken into account in certain circumstances, as provided for under Regulations 16(5).
- Assessments for asylum and immigration cases are carried out applying the usual deductions / allowances from gross income and capital as provided for under the regulations, to determine disposable income and capital. For example, if the individual’s means are aggregated with a partner, and / or if the household includes dependants, the standard allowances are deducted in the usual way and for the usual amount (unless the ‘dependant’ has a separate income of their own requiring an adjustment to be made).

However, the eligibility limits and some other assessment rules for Upper Tribunal (IAC) work are *different* to other certificated work cases in the following way:

- The eligibility limits for income are the same i.e. gross monthly income £2657 and disposable monthly income £733, but the disposable capital limit is £3000 for immigration cases [Regulation 8(3)]. The limit for asylum cases is £8000.
- The individual will not be required to pay a contribution if their income and capital are within the eligibility limits – Upper Tribunal (IAC) work is non-contributory [Regulation 44(2)(a)(i)(bb)].
- Individuals directly or indirectly in receipt of Asylum Support provided under s.4 or s.95 of the Immigration and Asylum Act 1999 are ‘passported’ through the means

test for **both** income and capital [Regulation 6(1)(b)]. (Individuals in receipt of s98 emergency support are **not** passported).

- The capital test is simplified for individuals with an interest in a business or trust. The business borrowing value or unutilised capital value of an individual's business (i.e. those who are self-employed, in a partnership, or stand in an analogous position in relation to a company) is not calculated. Similarly, for Upper Tribunal Work (IAC) only, there is no need to calculate the capital value of a trust fund [Regulation 36(1)(a)]. However, if the individual owns shares in a company, the value of those shares **can** be assessed and included in the assessment. Also, if the individual has received / is receiving / is expected to receive income or capital from a trust fund, that money can be assessed and included in the assessment.

Evidence requirements for certificated work are set out in **Section 15 Evidence of Means**.

If an individual has applied for Upper Tribunal (IAC) Work and his or her circumstances are such that they are struggling to provide documents the legal aid provider should attach / upload through CCMS as much evidence as is available, and notify the Director of the circumstances for not providing full documentation when the application is made. The Director will consider whether, based on the evidence that has been provided, the individual can be determined to be financially eligible.

### Transitional Arrangements

This work has moved from controlled work to certificated work under the 2018 Contract for matters started on or after 1 September 2018. If the controlled work matter that gave rise to the appeal to the Upper Tribunal (IAC) started before 1 September 2018 transitional arrangements apply i.e. the Upper Tribunal (IAC) matter should be assessed by the provider using the guidance within the Lord Chancellor's guidance on determining financial eligibility for Controlled Work and Family Mediation.

### Summary of miscellaneous limits applicable to Upper Tribunal (IAC) work:

New and further determinations (per month)			
Gross Income Limit	Disposable Limit	Income	Disposable Capital Limit
£2,657 higher limit applies where more than 4 child dependants	£733		£3,000 Immigration £8000 Asylum

<b>Gross income cap (per month)</b>	
<b>No. of dependant children</b>	<b>Gross income cap</b>
Up to 4	2657
5	2879
6	3101
7	3323
8+	Add 222 to the above figure for 8th and each subsequent child

<b>Fixed rate allowances (per month) from 08.04.24</b>	
<b>Dependants Allowances:</b>	
Dependant aged 15 or under	£361.70
Dependant aged 16 or over	£361.70
Partner	£224.87
<b>Employment Expenses</b>	£45
<b>Housing Cap</b> (for those without partner or dependants)	£545

See also **Pensioner Disregard table in Appendix 1**. Individuals who are properly in receipt (directly or indirectly) of passporting benefits Income Support, income-based Jobseekers Allowance, income-related Employment and Support allowance, Guarantee Credit and Universal Credit are deemed to have nil income and to be entitled to the maximum capital disregard of £100,000. This does not apply to individuals who are directly or indirectly in receipt of s4 or s95 Asylum Support as they are in any event passported through both income and capital tests.



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## Appendix 13 – Legal Aid and the Debt Respite Scheme (Breathing Space and Mental Health Crisis Moratoriums).

This section is designed to assist providers and applicants understand the interactions between the Debt Respite Scheme and civil legal aid.

The Debt Respite Scheme comes into force on 4 May 2021. It will give an individual who is in *problem debt* legal protections from their creditors during a **moratorium period**, during which they can obtain advice from a debt professional to address, and where possible make arrangements to pay, discharge or liquidate some or all of their debts.

Further information in relation to the scheme can be located here:

<https://www.gov.uk/government/publications/debt-respite-scheme-breathing-space-guidance/debt-respite-scheme-breathing-space-guidance-for-creditors> and <https://www.legislation.gov.uk/ukdsi/2020/9780348209976/contents>

There are two types of moratoriums under the scheme:

- 1) A standard **breathing space moratorium** (which will give an individual legal protection from their creditors for 60 days); or
- 2) A **mental health crisis moratorium** (which potentially will see a longer moratorium period provided for individuals in receipt of mental health crisis treatment).

### **If the applicant has entered a moratorium before/upon applying for legal aid**

If the applicant has entered a breathing space or mental health crisis moratorium due to problem debts you should inform us of this upon applying for legal aid. The Insolvency service will have separately sent a notification to the Legal Aid Agency (“LAA”) if there are any eligible debts, under the civil or criminal legal aid schemes, which fall within the moratorium.

Please note, that any financial determination of eligibility for civil legal aid will be carried out under the normal rules, and any contribution that is assessed to be payable as a condition of entitlement to legal aid must be paid for a funding certificate to be granted.

### **If the individual enters into a Moratorium during the life of their Certificate**

If the individual enters into a breathing space or mental health crisis moratorium following the grant of the legal aid certificate due to a missed legal aid contribution or other eligible legal aid debt, the LAA will be notified electronically by the Insolvency Service. The LAA will update its records accordingly and apply the protections to any eligible debts from the dates set out in the notification.

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If your client's financial circumstances have also changed since their original application (e.g. their income has increased/decreased since their original assessment), and this has not previously been notified to the LAA, they should also submit details of the change in financial circumstances for reassessment.

**Please note:** if the individual is up to date with their legal aid contributions upon entering the moratorium (e.g. they have entered a moratorium owing to other legal aid debt), the monthly contribution itself will not be classed as a 'debt' or indeed an 'eligible debt' during that moratorium period, and therefore will not be subject to the protections of the debt respite scheme should the client subsequently fall into arrears during the moratorium period.

### **What happens at the end of the Moratorium period?**

At the end of the moratorium period, the LAA will resume / follow the usual enforcement procedure in place for the legal aid debt, e.g. if the debt relates to civil contribution arrears that are not subsequently paid off within 1 month, the certificate will be discharged.



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## Appendix 14 – Disregarded “Cost of Living” Support Payments.

The following payments, provided to assist individuals with the cost of living crisis, have been added to the list of mandatory disregarded payments within regulations 24(1) and 40(1):

- any payment made under the **Social Security (Additional Payments) Act 2022**;
- any payment made to an individual under **section 13 or 15 of the Energy Prices Act 2022**.

### What are these payments?

[Social Security \(Additional Payments\) Act 2022 \(legislation.gov.uk\)](https://www.legislation.gov.uk/ukpga/2022/12)

This legislation covers the main “cost of living” payments made to eligible households and disability payments made to eligible individuals–

- (i) **Means-Tested Additional payments (main payments)** paid to persons in receipt of pension credit, tax credits or income-related benefits.

A payment of £326 was made to eligible households during summer 2022, with a second payment of £324 sent to eligible households during winter 2022. Payments of £301 and £300 are due in Spring and Autumn 2023 respectively, with a further payment of £299 in Spring 2024.

- (ii) **Disability Additional payments** paid to persons in receipt of disability benefits (including certain payments under the civilian personal injury scheme and war pensions).

A payment of £150 was issued to eligible individuals during Summer 2022. A further payment of £150 is due for Summer 2023.

**Please note:** the main “cost of living” payment is applicable to households but entitlement to the disability payments will be applicable to individual members of a household; this means that multiple people within a household may be entitled to the disability payments.

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[Energy Prices Act 2022 \(legislation.gov.uk\)](https://legislation.gov.uk)

This legislation covers the power of the Secretary of State to provide support with meeting energy costs and the roles of other bodies in giving support to persons with their energy costs.

The support currently provided to individuals consists of the £400 reduction on energy bills given to all domestic electricity customers and the 'Energy Price Guarantee' limiting energy costs for households.

**Changes are applicable to Determinations / Further Determination from 10 January 2023**

The "cost of living" support payments listed above i.e. main payments, disability payments and energy support payments, must be disregarded when undertaking calculations of gross and disposable income and disposable capital, for any determinations (including further determinations of certificates) made from 10 January 2023 onwards.

**Other "Cost of living" support paid to Pensioners through the Social Fund**

**Pensioner "Cost of Living" Payments** – Pensioners during winter 2022/23 will receive a one-off payment of an amount between £150 and £300 to assist with the cost of living; a further payment of £300 has been announced for winter 2023/24. The pensioner payment is paid through the Winter Fuel Payment which will therefore be a higher amount (£500 or £600 in total). Winter Fuel Payments are **Social Fund Payments** and therefore are disregarded from income and capital under Regulations 24(1)(d) and 40(1)(b) respectively.

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**End of Document**