

## CONTROLLED WORK

### Guide to Determining Financial Eligibility for Controlled Work and Family Mediation April 2018 (updated September 2018)

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# 1. Introduction

## 1.1 General

1. The following guidance constitutes the Lord Chancellor's guidance for determinations in respect of an individual's financial resources, in accordance with Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 ["the Act"], for controlled work and family mediation. As in practice responsibility for financial determinations in respect of an individual for these services has been delegated to providers, this guidance is addressed to providers responsible for processing such cases.
2. Responsibility for financial determinations in respect of an individual has been delegated to providers for the following forms of civil legal services:
  - (a) Legal Help;
  - (b) Help at Court;
  - (c) Help with Family Mediation
  - (d) Family Mediation
  - (e) Family Help (Lower)
  - (f) Legal Representation for proceedings in:
    - (i) 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;**or where transitional arrangements apply.1**

These forms of civil legal services are all **non-contributory** i.e. if the client qualifies within the financial limits these services can be provided without payment of a contribution from income or capital.

Family Help (Higher) and Legal Representation other than the categories above are **not** covered in this guidance, as the Director has **not** delegated responsibility to providers for making the financial determinations for such cases. Providers exercising delegated powers for emergency representation should refer to the detailed guidance provided for certificated work [see Civil Representation – Guide to Determining Financial Eligibility for Certificated Work April 2018].

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### 1 Transitional Arrangements.

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. If the controlled work matter that gave rise to the appeal to the Upper Tribunal started **before** 1 September 2018 transitional arrangements apply and the guidance herein is applicable to the financial determination.

3. The financial limits and method of calculating disposable income and capital for the various forms of civil legal services are fixed in the Civil Legal Aid (Financial Resources and Payment for Services) Regulations 2013 as amended [“the Financial Regulations”]. References to regulations in this guidance are references to the Financial Regulations, unless otherwise stated.

## **2. How is financial eligibility determined?**

### **2.1 General**

1. The basis for making a financial determination is the same across all forms of civil legal services for which the provider is responsible. There are both income and capital limits for each form of civil legal services. These limits are set out in regulations 7 and 8 and are summarised in section 3 below.
2. Under regulation 5 certain cases are exempt from the requirement to make a determination in respect of the individual’s financial resources. This includes legal help in contemplated proceedings or legal representation in proceedings or contemplated proceedings in relation to any matter described in paragraph 5(1)(a) or (b) (mental health and repatriation of prisoners) of Part 1 of Schedule 1 to the Act to the extent that the individual’s case or application to the Health, Education and Social Care Chamber of the First-tier Tribunal or Mental Health Review Tribunal for Wales under the Mental Health Act 1983 or paragraph 5(2) of the Schedule to the Repatriation of Prisoners Act 1984 is, or is to be, the subject of proceedings before the Health, Education and Social Care Chamber of the First-tier Tribunal or Mental Health Review Tribunal for Wales. Refer to the regulation 5 for the full list of exempted cases.
3. Unless a case is exempt from financial determination, the provider has, as a first step, to determine the client’s financial eligibility on information provided by the client. This should be done on the requisite form provided by the Legal Aid Agency.
4. The forms must be completed in full and sufficient information held on file to allow the determination to be audited as necessary. See the 2018 Standard Civil Contract Specification r.3.23).
5. Reasonable steps, for instance requesting sight of the latest monthly pay slip (if the client is weekly paid it is best practice to obtain the latest 4 weekly pay slips i.e. to cover the full calculation period), must be taken to verify the information provided by the client. It is good practice to emphasise to clients the importance of giving a full and fair picture when they are applying for funding. The client is required under regulation 13 to provide information necessary to make the financial determination. See 2018 Standard Civil Contract Specification r.3.23 and the guidance within s.12 below, regarding evidential requirements.
6. Any determination that an individual is financially eligible for legal services must comply with all relevant regulatory and contractual provisions. Providers must apply the Lord Chancellor’s Guidance contained herein, in relation to determining financial eligibility on assessment and any determination that an individual qualifies for services which is in direct conflict with this guidance will usually be considered manifestly unreasonable for the purpose of assessing costs at the end of the case.

### 3. Does the client qualify financially?

#### 3.1 General

1. Under Regulation 7(4) for all forms of civil legal services the client's gross income must be £2657 per month or less; for clients with more than four child dependants (for whom they receive child benefit) a higher gross income limit applies (see paragraph 6 below). If the client's gross income exceeds this level then they are financially ineligible for civil legal aid and the application must be refused.
2. A client who is properly in receipt, directly or indirectly, of Income Support, Income-Based Jobseeker's Allowance, Income-Related Employment and Support Allowance, Guarantee Credit (under s.1(3)(a) of the State Pension Credit Act 2002) or Universal Credit automatically satisfies the gross income test for all forms of civil legal service. The benefit must be currently in payment (i.e. do not passport if claim is suspended) and the client must be legally entitled to the payment. If it is advised that the client is in receipt of a passporting benefit but there is a clear suspicion that the client is not in fact entitled to the benefit, e.g. the client has indicated that relevant facts such as a partner, employment, sources of income and capital etc. have not been advised to the benefit office, do not passport; carry out a full determination of means and include the state benefit received as income.
3. Where an individual who has applied for legal help in a cross-border dispute is properly in receipt (directly or indirectly) of a means-tested benefit or support paid by another EU Member State that is equivalent to a benefit or support listed in regulation 6(2), that individual will be passported on income [Advice must be sought from the Legal Aid Agency in these circumstances to determine if the benefit received is equivalent, this decision is not delegated to providers].
4. If the client is directly or indirectly in receipt of Asylum Support payments under s.4 or s.95 of the Immigration and Asylum Act 1999 (previously known as NASS support), they qualify automatically on gross income for the forms of civil legal services set out in Regulation 6(1): i.e. Legal Help for matters described in paragraphs 24 to 30 (immigration and asylum) and 32(1) (victims of trafficking in human beings) of Part 1 of Schedule 1 to the Act, Help at Court and Legal Representation before the Immigration and Asylum Chamber of the First-tier Tribunal.<sup>2</sup>
5. Gross income for this purpose means income under Regulation 21 (see section 5.1 paragraph 6 below) before any deductions are made apart from those sums disregarded under Regulation 24 (set out in section 5.4 of this guidance) and any 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. This gross income cap acts as a filter and a client whose gross income is below

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#### 2 Transitional Arrangements.

For providers undertaking financial determinations where transitional arrangements apply: clients directly or indirectly in receipt of Asylum Support payments under s.4 or s.95 of the Immigration and Asylum Act 1999 will also qualify automatically on gross income for Legal Representation before 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.

the relevant cap must then have their disposable income and disposable capital assessed in order to determine financial eligibility for civil legal services.

6. The relevant gross income cap can be ascertained by reference to the table below.

<b>No. of dependant children</b>	<b>Monthly gross income cap from 01.04.13</b>
0–4	£2657
5	£2879
6	£3101
7	£3323
8	£3545
9+	Add £222 per month for each additional child

For the purpose of the gross income cap only, a child dependant is anyone for whom the client and/or their partner (if client and partner’s resources are being aggregated) receives Child Benefit.

7. Both disposable income and disposable capital must also be within the eligibility limits in force at the time the application form is signed. Disposable income and capital refer to the income and capital after prescribed allowances and disregards have been applied. If either disposable income or capital are above the limits, the client will not be eligible for civil legal aid and the application must be refused.
8. A client who is properly in receipt, directly or indirectly, of Income Support, Income-Based Jobseeker’s allowance, Income-Related Employment and Support Allowance, Guarantee Credit or Universal Credit automatically satisfies the disposable income test for all forms of civil legal services. A client who is in receipt, directly or indirectly, of Asylum Support payments under s.4 or s.95 of the Immigration and Asylum Act 1999, , will automatically be financially eligible for the forms of civil legal services set out in Regulation 6(1) for asylum and immigration matters (as outlined in paragraph 4 above).
9. The relevant financial limits and passporting arrangements for controlled work and family mediation are set out below:

Level of service	Income limit	Capital limit	Passporting Arrangements
Legal Help; Help at Court; Family Help (Lower); Help with Family Mediation; Family Mediation; Legal Representation	Gross income not to exceed <b>£2,657</b> per month*  Disposable income not to exceed <b>£733</b> per month	Disposable capital not to exceed <b>£3,000</b> [Legal Representation in respect of an immigration matter set out in Regulation 8(3)]  Disposable capital not to exceed <b>£8,000</b> [All other forms of civil legal services]	Passported through the gross income and disposable income test if in receipt of: <ul style="list-style-type: none"> <li>• Income Support,</li> <li>• Income-Based Job Seeker's Allowance,</li> <li>• Income-Related Employment and Support Allowance,</li> <li>• Guarantee Credit or</li> <li>• Universal Credit</li> </ul> <b>Capital must be assessed in all cases.**</b>  <b>**[For controlled work asylum and immigration matters only: for matters described in regulation 6(1) of the Financial Regulations: clients in receipt of s4 or s95 Asylum Support are passported through both the income and capital test].</b>
*Additional gross income cap for those with more than four dependant children (see separate table at s.3.1 para.5).			

### 3.2 Contributions for Legal Aid

1. Controlled work and family mediation are non-contributory forms of civil legal services. Guidance on how to calculate contributions for Family Help (Higher) and Legal Representation other than the categories covered by this guidance is provided separately in the guidance for certificated work.

## 4. General Principles of a Financial Determination

### 4.1 Period of Calculation

1. The period of calculation when determining income is the calendar month up to and including the date of the application for civil legal services (see regulation 14).  
For example, if the application is made on 8<sup>th</sup> December then the period of calculation will commence on 9<sup>th</sup> November. In practical terms when income/allowances do not vary month on month then the relative amounts can be taken by reference to the most recent payment, i.e. the most recent monthly wage; where weekly pay slips provided by the client show that a consistent amount is paid, the calculation can be based on the latest pay slip.
2. The calculation period may be varied to an equivalent period of a calendar month only in the circumstances set out in paragraphs 5.2.7 and 5.3.1 below.

### 4.2 Aggregation of Means

1. Regulation 16 contains a general provision that the resources of the client's partner must be taken into account and added to those of the client. Partner is defined as:
  - (i) an individual's spouse or civil partner, from whom the individual is not separated due to a breakdown in the relationship which is likely to be permanent;
  - (ii) a person with whom the individual lives as a couple; or
  - (iii) a person with whom the individual ordinarily lives as a couple, from whom they are not separated due to a breakdown in the relationship which is likely to be permanent;
2. 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 partners' means are not to be aggregated. 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.
3. In asylum cases, there may be occasions where the client is physically separated from their partner due to the partner still being abroad, but the relationship is still intact. In such cases the normal rules of aggregation still apply and the client and their partner will still be treated as a couple for aggregation purposes. However in such cases it may be necessary to consider whether the assets and income of the partner, together with any of the client's assets that have been left behind, are currently truly "disposable" as far as the client is currently concerned. In such cases the provider should make reasonable enquiries of the client to determine to what extent that income and those assets are available. If it is decided in an individual case that the partner's income and assets are not available to the client and therefore excluded from the assessment then it would not be appropriate to make any dependant's allowance for the partner (see s.6 below).
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. This is a change to our previous guidance.

5. Although in general a former couple who are permanently separated due to the breakdown of their relationship will usually live in separate properties, this may not always be the case. It is possible for former partners to live separate and apart in the same property. This would be the case if they regarded their relationship as at an end but remained living in the same property simply waiting for the property to be sold before going their separate ways.
6. In addition for unmarried couples, although not conclusive it would be usual for there to be some evidence of a pooling of financial resources and they must regard themselves as a couple. It would not be appropriate to aggregate the resources of say a brother and sister, or flatmates who are not living as a couple. Further evidence of living as a couple may include joint care of a child of the couple.
7. However, there is an important exception to this rule and means are not aggregated where the partner has a contrary interest in the matter in respect of which the client is seeking legal aid.

Contrary interest in the most obvious sense will mean that the partner is the opponent or potential opponent in proceedings. However, this will not necessarily be the case – the client and their partner could in theory have a contrary interest in a claim made by a third party, such as in the case of a mortgagee seeking possession where undue influence by the partner may be a defence.

In disputes between divorcing or separating couples, whether as to children or property, one partner will by definition have a contrary interest to the other. However, if a client has left his or her spouse and has gone to live with a new partner as a couple in the same household, then the means of the new partner should be aggregated with those of the client.

## 5. Determining Gross Income

### 5.1 General

1. If the client is properly in receipt (directly or indirectly) of Income support, Income-Based Jobseekers' Allowance, Income-Related Employment and Support Allowance, Guarantee Credit (under s.1(3)(a) of the State Pension Credit Act 2002(a) or Universal Credit, they qualify automatically on income (by virtue of reg.6(2) for all forms of civil legal services. If the client is in receipt (directly or indirectly) of Asylum Support payments under s.4 or s.95 of the Immigration and Asylum Act 1999 (, they qualify automatically on income for the forms of civil legal services set out in Regulation 6(1) for asylum and immigration matters: Legal Help, Help at Court and Legal Representation before the Immigration and Asylum Chamber of the First-tier Tribunal.<sup>3</sup> All of these passporting arrangements are set out in Regulation 6.
2. A client is "directly in receipt" of passporting benefit, and therefore deemed eligible on income (however capital must be assessed), if he or she is the benefit claimant. A client is "indirectly in receipt" of passporting benefit if he or she is included in the benefit claim of someone else i.e. their partner (or in the case of a child included in their parent's/guardian's claim); the client is therefore deemed eligible on income if his or her partner is in receipt of a passporting benefit and the client is included in that benefit claim. Since December 2005 same-sex couples have been recognised by the Dept for Work and Pensions and paid for as a couple rather than as two single people; passporting arrangements will therefore apply to civil partners, married and cohabiting couples (including couples of the same sex).
3. Where the client is not included in their partner's benefit claim (e.g. if the client is in prison, his or her partner's benefit claim will not include a payment for the client) then the client is not passported for civil legal services. In such cases the client's means should be determined and the partner's benefit payment (e.g. Income Support, Income-Based Jobseekers' Allowance etc) included in the determination as a source of income for the couple.
4. Other tax credits and state benefits e.g. Working Tax Credit and Child Tax Credits are not passporting benefits. In such cases the client's means should be assessed and the benefit or tax credit amount received each week must be included in the determination as a source of income (unless exempted - see section 5.4).
5. Clients in receipt of the passporting benefits in paragraph 1 will also satisfy the disposable income limit for the forms of civil legal services specified above, but capital will need to be assessed to determine whether they are eligible (except for clients passported by s4 or s95 Asylum Support).

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#### 3 Transitional Arrangements.

For providers undertaking financial determinations where transitional arrangements apply: clients directly or indirectly in receipt of Asylum Support payments under s.4 or s.95 of the Immigration and Asylum Act 1999 will also qualify automatically on income for Legal Representation before 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.

6. Under Regulation 21 “income” for the calculation period means:
  - (i) the gross amount the individual has earned, or will earn;
  - (ii) the gross amount of any entitlements that have accrued, or will accrue, to the individual; and
  - (iii) any other gross sums from any source which the individual has received, or is likely to receive,

in cash or in kind in respect of the calendar month up to and including the date of the application for funding. In determining gross income all income must be included whether from employment, state benefits or elsewhere, e.g. assistance from friends or relatives (unless exempted: see section 5.4).

7. Any payments made direct to third parties on behalf of the client will count as the client’s gross income by virtue of reg.16(5)(b) of the Regulations. This could be for example payments made by an ex-partner as maintenance direct to a third party on behalf of the client, e.g. ex-partner pays the mortgage on the former matrimonial home direct to the lender. When determining disposable income the relevant mortgage payment should be allowed against income as a housing cost in accordance with the rules for that particular allowance.
8. 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. Note: where a monthly amount is stated for state benefits and tax credits, this will in fact be a 4-weekly payment that will need to be adjusted to represent a calendar monthly figure. Universal Credit payments however are paid for a calendar month.

## **5.2 Erratic Income (including the self employed)**

1. Where a client’s income is erratic (because of bonuses, commission, nature of employment or payment etc.) they may be ineligible for funding one month, but eligible the next as the calculation is based on the calendar month prior to the application. Where a client has received an annual bonus in the period of calculation then this should be treated as capital.
2. As long as there is no question of the client having deprived themselves of income (see s.8 below) with a view to qualifying, then there would be nothing to stop them from delaying their application for funding until the next month. In these situations, the client should be made aware of the basis of the assessment and the effect of good/bad months. It will be for the client to decide if they wish to proceed immediately on a private fee paying basis if on the previous month’s income they are ineligible.
3. It is important to remember that this situation differs from deprivation of income or capital (see s.8 below). This is not allowed and the resources which have been disposed of must still be taken into account in the assessment.
4. The income that should be taken into account should include any that is due or will become due for the period of calculation. If a client 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 assessment.

5. In relation to parental contributions to students, student grants (this will therefore include bursaries) and student loans these should be treated as income by taking the annual payment or contribution obtained by the student and dividing by 12.
6. In the case of a self employed client, it is the level of drawings taken from the business for personal use which will count as the client's income. There are no special deductions for the self-employed. If no drawings have been taken in the last month, or the most recent month's drawings appear low, then consideration should be given as to whether the client is attempting to deliberately reduce his or her income for the purpose of qualifying for civil legal services. In such cases the normal monthly drawings should be established and included in the determination invoking the deprivation rule (see s.8). If the client states that they have not taken any drawings from the business for their personal use e.g. because it is a new business then enquiries should be made of the client to determine how they have met their day to day living costs during the relevant period. Any income or assistance that has been made available to the client from other sources, e.g. assistance from friends or relatives with bills, should be treated as income and included in the determination.
7. If the client reports that they are to start a new job within the month following the date of the application for controlled work or family mediation, and the gross amount that the client will earn means that the client will not be eligible for civil legal services (i.e. earnings will exceed the gross income limit, or after relevant deductions are made income exceeds the disposable income), it will be appropriate to base the determination on what the client is to receive in the next calendar month and therefore to refuse the application.

### **5.3 “No income” cases**

1. Situations may arise, especially in the family/matrimonial context, where a client has not received or become entitled to any direct income at all in the preceding month. This may be the case where the client is living separate and apart from their spouse in the same home, with the client 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 an estimate should be made of what the client is likely to receive in the next calendar month based on the income received since the change took place. In these circumstances the client can be assessed as having no income. If, however, the client is receiving money from the partner, a friend to pay bills or as maintenance, this must be shown as income.

### **5.4 Disregarded income**

1. Certain state benefits are disregarded when determining gross income or disposable income [Regulation 24(1)]. The disregarded benefits are:
  - (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 disability pension;
  - (iv) Any payment made out of the social fund; and
  - (v) Carer's Allowance.
- (b) 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;
- (c) So much of any back to work bonus received under s.26 of the Jobseekers Act 1995 as is by virtue of that section to be treated as payable by way of jobseeker's allowance;
- (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. (Disability & Death) Service Pensions Order 2006(c);
- (g) To the extent that it exceeds the relevant dependants allowance made under reg.25(2)(b), any financial support paid under any agreement for the care of a foster child; and
- (h) Any payment made out of the Independent Living Fund (2006) or out of the Welsh Independent Living Grant;
- (i) Any personal independence payment paid under 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; and
- (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.
2. Where an individual who has applied for legal help in a cross-border dispute is properly in receipt (directly or indirectly) of a means-tested benefit or support paid by another EU Member State that is equivalent to a benefit or support listed in regulation 24(1), the benefit will be disregarded. [Advice must be sought from the Legal Aid Agency in these circumstances to determine if the benefit received is equivalent, this decision is not delegated to providers].
3. Providers, as part of their delegated responsibility, 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

## 6. Determining disposable income – allowances against income (figures are monthly unless otherwise stated)

### 6.1 Dependants' allowances

1. In determining disposable income, the following deductions can be made in respect of the client's dependants (Regulation 25) from 9 April 2018:

**£181.41** is allowed against income if the applicant has a partner (see partner definition in section 4.2). Note this allowance applies regardless of whether there is a contrary interest between the client and partner in respect of the claim provided their relationship hasn't permanently broken down (such as in a case where the couple have a contrary interest in respect of a third party mortgagee seeking possession of their property but remain together); but the deduction should not be made in disputes between divorcing or separating couples. If the client is living with a new partner with whom you have aggregated their means, the deduction should be given in respect of the new partner.

**£290.70** is allowed for each dependent child (including a foster child) or dependent relative of the applicant who is living in the same household and is aged 15 or under (at the beginning of the period of calculation).

**£290.70** is allowed for each such dependant aged 16 or over.

2. Any allowance for a dependant child/relative aged 15 or under, or aged 16 or over, will be reduced by the amount of any independent income or benefit the relative may receive. Where the dependant child's/relative's income exceeds the amount of the allowance no deduction will be made, but the excess income will not be included in the determination as the client's income. An allowance must not be made if the relative's capital is over £8,000.
3. 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 student loan, or a wage from an apprenticeship
4. Where a financial determination is carried out for a client who has separated from the other parent of the child, you must determine whether the deduction for a child dependant can be made (the deduction cannot be applied to both parents, even where residence is shared). Generally the deduction is made where the child lives in the client's household and the client appears to be the main carer of the child; the main carer is usually the person who receives child benefit for that child, but this may not always be the case. If no one with parental responsibility has claimed child benefit, the allowance will be granted if the child lives with the client and the client appears to be supporting the child from their money. (Note, if the dependants allowance does not apply, a deduction can be made for maintenance paid for the child see section 6.3)

## 6.2 Tax and National Insurance

1. The following sums should be deducted from total income (under Regulation 23) when calculating the disposable income for the calendar month:
  - (a) Any income tax paid on that income. For the self employed, a notional income tax figure should be based on 1/12th of the client's income tax liability for the preceding year (i.e. of their last income tax bill). If the client either does not have the information (e.g. because they have not submitted any returns), or because no such payments have been assessed yet, e.g. new business, then no allowance should be made.
  - (b) Any National Insurance contributions paid on that income under Pt I of the Social Security (Contributions) Act 1992. For the self employed, a deduction of £12.78 per month can be made for National Insurance contributions (the class 2 payment).

## 6.3 Maintenance paid by the client

1. In calculating disposable income an allowance can be made for maintenance payments to a former partner (including a spouse from whom the client has permanently separated), a child or relative, who is not in any such case a member of the household of the client (regulation 26). An allowance can be made whether the payments are being made under a court order, CSA ruling or voluntary agreement. Only payments actually made can be taken into account. This allowance should be the expenditure incurred during the month of calculation. In theory there are no set limits to the amount that can be allowed under this heading but evidence of payments should be sought where the amount claimed appears unreasonable. Maintenance payments could include simply paying an ex-partner's household bills or mortgage.

## 6.4 Housing Costs

1. In calculating disposable income an allowance can be made in respect of mortgage or rent payable for the period of calculation in respect of the client's main dwelling (regulation 28). The amount allowed must be net of housing benefit i.e. the amount payable as per the tenancy agreement minus the amount met by housing benefit.
2. For clients with no dependants living in their household i.e. where no dependants' allowances have been made (see s.6.2 above) the maximum monthly allowance in this respect will be £545. No excess over the amount can be allowed. Where any dependants allowance(s) have been made then the rent or mortgage repayments can be allowed in full.
3. The amount to be allowed in the determination is the monthly rent or mortgage payable. In practical terms it will not be easy to identify separately arrears of mortgage payments, as the client will generally declare these as a single revised monthly mortgage payment. If the client has already come to an arrangement to pay off arrears by increasing their monthly rent or mortgage payment, then, provided those increased payments are actually being paid by the client, that increased rent or mortgage payment can be treated



as the monthly rent or mortgage payable in the determination. This is different from a situation whereby a client has commenced paying off arrears in order to reduce their disposable income with a view to qualifying for funding. Such a situation would be regarded as intentional deprivation of income and only the normal monthly rent or mortgage payments should be allowed in the determination in such circumstances.

4. Mortgage repayments include the monthly premiums of any linked life insurance/endowment policies, PEPs, or other instruments which will be used to repay the capital sum borrowed.
5. Council Tax, water rates, insurance premiums and other associated housing costs are not allowable deductions in the determination. If there is a clearly identifiable amount relating to water rates included in the rent payable by the client then these should not be included as rent. However it is not necessary for providers to routinely seek clarification as to whether or not the rent declared by the client includes a sum for water rates.
6. Where a client indicates they are paying board and lodging then only the amount in respect of accommodation can be allowed. In those cases where informal arrangements exist, for example lodging with a close family member, and therefore the amount in respect of accommodation cannot be specified by the client then it should be assumed that 50% of the declared board and lodging element is for accommodation, the remainder is assumed to be for food and other incidentals which do not have a separate allowance under the regulations.
7. Where the client states expenditure on housing costs which is more than one third of their gross income then documentary evidence (e.g. copy of bank statement, mortgage statement, or rent book) to support the figures stated should be obtained.

## **6.5 Employment related expenses and child care expenses**

1. Where the client or partner is assessed as receiving a wage or salary from employment, i.e. not the self employed, a deduction of £45 for work related expenses must be made in respect of each person so assessed. This is a set figure within Regulation 27, and it is therefore unnecessary to obtain details of actual expenses, but also see childcare expenses below.
2. Where a client or their partner is assessed as receiving 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 child care incurred as a result of that person's absence from home by reason of his employment/self employment/course of study.
3. Unless there are exceptional circumstances e.g. disability of the child, it would only be reasonable to make such a deduction in respect of a child dependant aged 15 or under. It would also be unreasonable to make such an allowance where one or other of a couple was available to look after that child.
4. Where the client states expenditure on child care which is more than £600 per month for someone working or studying full time (pro rata for part-time work or study), then

documentary evidence (e.g. copy of bank statement, copy of agreement/contract with child care provider) to support the figures stated should be obtained. As long as evidence is obtained the full sum can be deducted.

5. Where it is accepted in accordance with the criteria above that the client's (and where applicable, partner's) circumstances are such that a deduction for child care costs is appropriate, the deduction shall be made once per determination (i.e. to avoid double-counting the costs).

## **6.6 Criminal legal aid contributions**

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 disregarded under Regulation 29. If the Director has decided that the client 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 6 months and if monthly contributions are paid promptly the last payment will be dropped so that only 5 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 assessment of final defence costs is completed
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. (See s.11 for guidance as to when further determinations are necessary).
3. If it appears that the client 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 ICO, do not make an allowance for the income contribution within the financial determination; in that respect the financial determination will be based on the client's changed circumstances for the month following the date of the application.

## 7. Determining Disposable Capital

### 7.1 General

1. For all forms of civil legal services, client's properly in receipt (directly or indirectly) of Income Support, Income-Based Jobseekers' Allowance, Income-Related Employment and Support Allowance, Guarantee Credit or Universal Credit will require a determination of capital, they do **not** qualify automatically on capital. This is a change to the position under the Community Legal Service (Financial) Regulations 2000. However, if the client is directly or indirectly in receipt of Asylum Support payments under s.4 or s.95 of the Immigration and Asylum Act 1999, he or she will qualify automatically on capital for the forms of civil legal services for asylum and immigration matters set out in Regulation 6(1): Legal Help, Help at Court and Legal Representation before the Immigration and Asylum Chamber of the First-tier Tribunal<sup>4</sup>.
2. "Capital" means the amount or value of every resource of a capital nature, including all savings and any other capital assets (other than the exceptions listed below). Capital derived from a bank loan or borrowing facilities that a client has accessed must be taken into account. There are special rules about assessing the value of the client's dwelling which are set out below.
3. The only items of capital which are not taken into account are the following:
  - (a) household furniture and effects (unless of exceptional value);
  - (b) clothes;
  - (c) tools and implements of trade;
  - (d) so much of any back to work bonus received under s.26 of the Jobseekers Act 1995 as is by virtue of that section to be treated as payable by way of Jobseekers' Allowance;
  - (e) payments that are:
    - (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);
    - (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;

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#### 4 Transitional Arrangements.

For providers undertaking financial determinations where transitional arrangements apply: clients directly or indirectly in receipt of Asylum Support payments under s.4 or s.95 of the Immigration and Asylum Act 1999 will also qualify automatically on capital for Legal Representation before 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.

- (f) capital value of the client's business in the case of the self employed;
  - (g) capital value of the client's interest in a trust fund (however, do include any capital sum that is paid out to or on behalf of the client, and assess as income any regular payments made to or on behalf of the client);
  - (h) any payment made out of the Independent Living Fund (2006) or out of the Welsh Independent Living Grant;
4. In addition, providers may exercise discretion provided by Regulation 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' by an individual 'B' known personally to the individual 'A'
5. Cars or other vehicles in regular use are generally treated as nil value for assessment purposes under Reg 31(b), unless they are of exceptional value (e.g. classic cars, luxury vehicles) in which case the vehicle must be valued under Reg 31(a) as the amount for which that resource would realise if sold.

## **7.2 The client's share of joint assets when the partner is the opponent or contrary interest exists**

1. 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. There will often be assets which are jointly owned by the opposing parties or to which both parties have access. Where assets are held in joint names the provider, must assume that the asset is owned in equal shares, unless documented evidence of the asset being owned in unequal shares (e.g. 70:30 division etc) exists and is provided by the client.
2. In the case of a joint bank account, if the client has full access to the money, then the whole amount must be included in the client's assets. If the client establishes that there is an agreement or understanding about the balance being split equally between the opposing parties, then it would be equitable to include half of the balance in the calculation. (See also section 7.4 Subject matter of the dispute below).

## **7.3 Value of property**

1. Provided it is not the subject matter of the dispute (see s.7.4 below for details), a client's main or only dwelling in which he resides must be taken into account as capital subject to the following rules (Regulations 37 and 39):

- (a) The dwelling should be valued at the amount for which it could be sold on the open market;
- (b) The amount of any mortgage or loan secured by a charge registered on the property must be deducted but the maximum amount that can be deducted for such a mortgage or loan is £100,000 (this is known as the **mortgage disregard**); and
- (c) The first £100,000 of the value of the client's interest after making the above mortgage deduction must be disregarded (this is known as the **equity disregard**).

*Example 1:*

The applicant has a home worth £150,000 and the mortgage is £75,000:

Value of home:	£150,000
Deduct mortgage (actual amount or £100,000 if figure exceeds maximum):	£75,000
Deduct equity disregard:	£100,000
Amount to be taken into account in determining financial eligibility:	£nil

In this example the client is therefore eligible in this example (provided other capital when added to this figure does not exceed the £8000 upper limit).

*Example 2:*

The applicant has a home worth £215,000 and the mortgage is £200,000:

Value of home:	£215,000
Deduct mortgage (actual amount or £100,000 if figure exceeds maximum):	£100,000
Deduct equity disregard:	£100,000
Amount to be taken into account in determining financial eligibility:	£15,000

In this example the client is ineligible.

2. Where the applicant has more than one property the value of all other properties should be taken into account but the total amount which can be allowed in respect of mortgages and loans secured by charges on all the properties cannot exceed £100,000. In applying this rule the mortgage for the main dwelling is deducted last. There is no equity disregard for second properties.

*Example 3:*

The client has a main dwelling worth £150,000 and a second dwelling worth £100,000. Each has a mortgage of £80,000.

Value of second dwelling:	£100,000
Deduct mortgage (actual amount or £100,000 if figure exceeds maximum):	£80,000
Amount to be taken into account in assessing financial eligibility:	£20,000

Only £20,000 of the £100,000 maximum mortgage disregard remains:

Value of home:	£150,000
Deduct mortgage up to maximum allowable:	£20,000
Deduct equity disregard:	£100,000
Amount to be taken into account in assessing financial eligibility:	£30,000

In this example the client is ineligible.

## 7.4 Subject matter of the dispute

1. Under regulation 38, the value of the subject matter of any claim in respect of which an individual is seeking funding, is required to be disregarded from that individual's capital; however the amount disregarded under the subject matter of dispute ("SMOD") rule must not exceed £100,000 for all forms of civil legal services. Where the client's interests in assets that are SMOD exceeds £100,000, the excess will be included within the determination.
2. For disputed assets that are jointly owned the guidance set out in section 7.2 applies.
3. The SMOD disregard applies to the **client's interest** in assets that are in dispute, which is determined in the following way:

SMOD ASSET	CAPITAL DETERMINATIONS
Held in client's sole name	Include asset on the basis of client's interest being 100%.
Held in joint names with opponent	Include asset on the basis of client holding an equal part-share in the asset. Client's interest assumed to be 50%. (Note: Do an appropriate adjustment if a third party also holds a share in the asset).

Held in opponent's sole name	Do not include the asset in the client's financial determination.
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The financial determination is based on how the asset is currently held or registered, not on what each party is hoping to achieve if they are successful at the end of the case. So, for example, in a family dispute where the former matrimonial home is SMOD, if the client is seeking 50% of the property but the property is currently registered in the opponent's sole name, treat the client's interest in the asset as nil and do not include the asset in the determination of the client's financial eligibility for legal aid.

4. The SMOD disregard only applies to capital assets. Income cannot be regarded as SMOD since the issue here is simply whether the client is currently receiving the income or not. If income is being received then it should be included in the determination even if the dispute relates to the level of that income. For example if the client is challenging the level of maintenance in payment i.e. seeking an increased amount, the amount of any maintenance currently being received should be included in the determination.
5. Equity from property is determined under the regulations after applying mortgage and equity disregards as appropriate (See Section 7.3 above). In dealing with property assets which are in dispute, the following hierarchy of disregards will apply:

**Where a client's main or only dwelling (held in sole or joint names with opponent) is the subject matter of dispute**

- Step1(a). Apply the **mortgage disregard** (actual mortgage or £100,000 whichever is the less) to the value of the property to establish the total amount of equity within the property; (b) Determine the client's share of this equity – if property is in joint names assume an equal share of the property (i.e.50% or adjust if a third party also owns a share) unless evidence is provided of a different division of property. Multiply total equity assessed under Step 1(a) by the client's percentage share of the property.
- Step 2. Apply the **subject matter of dispute disregard** of £100,000 to the client's share of any equity within the property.
- Step 3. Apply the **equity disregard** of £100,000 to the remainder (if any) of the client's share of the equity within the main dwelling.

Therefore, the mortgage disregard will be applied **before** the subject matter of dispute disregard. The equity disregard is applied **after** the subject matter of dispute disregard to any remaining property equity.

*Example 1:*

The applicant has a home worth £320,000 and the mortgage is £150,000. The property is registered in joint names with his opponent.

Value of Home:	£320,000
Deduct mortgage up to maximum allowable:	minus £100,000
Equity:	£220,000

Client's share of Equity (assume asset held in equal shares):	<b>£110,000</b>
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Has the opponent made a claim against these assets – Yes/No? **If Yes:**

Apply Subject Matter of Dispute disregard:	minus £100,000
Remaining Equity:	<b>£10,000</b>
Apply Equity disregard:	minus £100,000
Capital to be included in determination:	<b>£nil</b>

The client is therefore eligible for funding in this example (provided other capital which is not in dispute when added to this figure does not exceed the £8000 upper limit).

*Example 2:*

The applicant has a home worth £520,000 and the mortgage is £150,000. The property is registered in his sole name.

Value of Home:	£520,000
Deduct mortgage up to maximum allowable:	minus £100,000
Equity:	£420,000
Client's share of Equity :	<b>£420,000</b>

Has the opponent made a claim against these assets – Yes/ No? **If Yes:**

Apply Subject Matter of Dispute disregard:	minus £100,000
Remaining Equity:	<b>£320,000</b>
Apply Equity disregard:	minus £100,000
Capital to be included in determination:	<b>£220,000</b>

The client is therefore ineligible for funding in this example.

*Example 3:*

The applicant has a home worth £500,000 and the mortgage is £150,000. The property is registered in joint names with her opponent. The client also has full access to a joint savings account, account balance £9,000

Value of Home:	£500,000
Deduct mortgage up to maximum allowable:	minus £100,000
Equity:	£400,000



Client's share of Equity (assume asset held in equal shares):	<b>£200,000</b>
Client's savings (from joint account):	<b>£9,000</b>

Has the opponent made a claim against these assets – Yes/ No? **If Yes:**

Apply Subject Matter of Dispute disregard:	minus £100,000
Remaining Equity and Savings:	<b>£109,000</b>
Apply Equity exemption to property equity only:	minus £100,000
Capital to be included in determination:	<b>£9,000</b>

The client is therefore ineligible for funding in this example.

*Example 4:*

The applicant's main home is worth £240,000 and her other property is worth £90,000, both properties are registered in joint names with her opponent and both have mortgages of £80,000.

Value of Other property:	£90,000
Deduct mortgage (maximum £100,000 if higher):	minus £80,000
Equity:	£10,000
Client's share of Equity (assume asset held in equal shares):	<b>£5,000</b>
Value of Main home:	£240,000
Deduct actual mortgage or remainder of overall £100,000 maximum allowance available:	Minus £20,000
Equity:	£220,000
Client's share of Equity (assume asset held in equal shares):	<b>£110,000</b>

Has the opponent made a claim against these assets – Yes/ No? **If Yes:**

Apply Subject Matter of Dispute disregard to main home:	minus £100,000
Remaining equity in main home	<b>£10,000</b>
Remaining equity in other property	<b>£5,000</b>
Apply Equity Disregard (main dwelling only)	Minus £100,000
Capital to be included in determination	<b>£5,000</b>

The client is therefore eligible for funding in this example (provided other capital which is not in dispute, when added to this figure does not exceed the £8000 upper limit)

6. Where the client's interest in the main dwelling property and in other capital assets is the subject matter of dispute, the subject matter of dispute exemption (i.e. £100,000 disregard) should be applied to the main dwelling property first; the remainder (if any) should then be applied to the other assets which are in dispute (see example 4 above). The total amount disregarded as subject matter of dispute is not to exceed £100,000.
7. **Where the property in dispute is not the client's main dwelling:** Carry out Steps 1 (mortgage disregard) and 2 (subject matter of dispute disregard) above, but do not apply the main dwelling equity disregard (i.e. Step 3) to the client's share of property equity.
8. Sometimes it will be obvious that a particular asset is in dispute between the parties, but in the family/matrimonial context the point is more difficult to determine if parties seek funding at an early stage and there are a range of assets which may or may not be at issue. The general approach should be that an asset should not be treated as the subject matter of the dispute if the other party has made no specific claim against it.
9. If the funding is for services on issues about a child or children, then assets cannot be treated as subject matter of the dispute, even if the parties are litigating or otherwise in dispute over those assets (although the assets may be disregarded under any other appropriate heading).

## 7.5 Pensioner's disregard (Regulation 41)

1. The pensioner disregard applies where either the client or an individual whose resources are to be treated as the client's resources (e.g. partner with whom their resources are to be aggregated) is aged 60 years or over at the date of calculation and their disposable income is less than £315 per month.
2. The following process is followed:
  - (a) Calculate the client's (and partner's) disposable income;
  - (b) If the disposable income figure is **above** £315 per month, the amount of disposable capital is assessed in accordance with the normal regulations;
  - (c) If the disposable income figure is £315 per month or less, then the capital held, up to the maximum available for the particular income, is disregarded in accordance with the following table:

Monthly disposable income - excluding net income derived from capital (£)	Amount of capital disregard
Passporting Benefit	£100,000
0 – 25	£100,000
26 – 50	£90,000
51 – 75	£80,000

Monthly disposable income - excluding net income derived from capital (£)	Amount of capital disregard
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
Over 315	nil

*Example:*

The client is aged 66. Total disposable income excluding interest from capital is £90.

Total disposable capital including property and other assets (after other allowances and disregards) is £73,000.

Deduct the pensioner's disregard in accordance with the above table i.e., £70,000.

Disposable capital is therefore £3,000.

The client will therefore be eligible for funding.

- Client or partner aged 60 or over on passporting benefit: Where the client (or an individual whose resources are to be treated as the client's resources) is aged 60 years or over, and 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 assume nil income and apply the maximum pensioner allowance of £100,000. The maximum pensioner disregard will therefore always apply to a person who is in receipt of Guarantee Credit due to the age criteria for receipt of that benefit.

**Please note:** if both the client and partner are aged 60 years or over, do **not** double the allowance – only one amount of disregard will apply in respect of that determination (as set out in the above table), e.g. if aggregated disposable income is £160 per month, one amount of £40,000 should be disregarded.

## **8. Intentional deprivation of resources**

### **8.1 General**

1. Occasionally an individual will deliberately transfer or dispose of income or assets to another person in order to make him- or herself eligible for civil legal services. This is not permitted. If it appears that the applicant has directly or indirectly deprived him- or herself of any resources or has converted any part of his resources into resources which are to be disregarded wholly or partly under the regulations, the resources which have been transferred or converted must still be taken into account in the determination. This will normally mean that the individual will not qualify for funding.
2. Note that this rule applies where it appears to the provider that the person concerned has transferred or deprived himself of assets with the intention of reducing the amount of his gross income, disposable income, or disposable capital, whether for the purpose of becoming eligible or otherwise (e.g. the reason may be to hide assets from his opponent). Obviously this rule would not apply if the person had lost assets or money without intending to do so (e.g. an investment has lost value).

## **9. Eligibility of children**

### **9.1 General**

1. When assessing the means of a child, the resources of a parent, guardian or other person who is responsible for maintaining him or who usually contributes substantially to the child's maintenance must be taken into account, as well as any assets of the child. There is a discretion not to aggregate assets in this way if it appears inequitable to do so, having regard to all the circumstances including the age and resources of the child and any conflict of interest between the child and the adult(s). For example, in consideration of the age and resources of the child, the provider may determine that it is inequitable to aggregate a child of 17 years who is estranged from his parents, living separately from them and who is fully financially independent from his parents.
2. Where a child is a 'looked after' child i.e. the responsibility of the local authority, it would usually be inequitable for his or her foster carer's/social worker's income and capital to be aggregated with that of the child.

## **10. Errors and New Information**

### **10.1 General**

1. Sometimes a mistake will be made in determining an individual's financial eligibility or new information will come to light which suggests that an earlier determination was inaccurate. Where this happens the determination can and should be reviewed and a new determination carried out which may mean that the individual was never eligible for civil legal services. If it is shown that the client was ineligible at the time of the application, the provider should immediately cease to provide help under the current Controlled Work form; if the client's circumstances have changed so that he is now eligible then a new application for Controlled Work may be made. If any dishonesty or improper conduct in relation to disclosure of assets is discovered, the details should be reported to the Legal Aid Agency. In such cases the costs incurred prior to such a discovery will be assessed in accordance with the Director's externally published costs assessment guidance.

## 11. Changes in circumstances

### 11.1 General

1. Where on an accurate determination a client is found financially eligible for funding by the provider, a further determination of means may be required if the client's circumstances change. The client is under a duty to report any change of his financial circumstances of which he is or should reasonably be aware which has occurred since the original determination and which may affect the terms on which the client was determined to be eligible to receive civil legal services. Such improvements in means, which may include new employment, a change of benefits, or a new asset, lottery win etc., should be notified to the provider in relation to any existing application or fresh application for civil legal services.
2. However the provider may decide not to make a further assessment in relation to an existing application, if he or she considers such a further determination inappropriate, having regard in particular to the period during which funded services are likely to continue to be provided to the client. For controlled work where the determinations are delegated to the provider, a further determination is unlikely to be appropriate unless:
  - (a) the client's means have improved dramatically i.e. a new capital receipt e.g. the client receives a substantial inheritance or lottery win etc of £8000 or more, or new source of income in excess of the gross income limit; or
  - (b) the matter is likely to run for three months or more, after a significant change in circumstances. A significant change is an increase in capital in excess of £750 or an increase in income in excess of £60 per month that takes the client's income or capital above the relevant eligibility limit.

However, it will be appropriate to carry out a new determination reflecting the client's changed circumstances in respect of any fresh application for civil legal services.
3. For example, the client reports that he has received a capital sum of £10,000. This is considered a dramatic improvement in means, and a further determination should be undertaken immediately. Unless the client is aged 60 years or older and on a low income, in which case an additional disregard may apply (see s.7.5 above), it will only be necessary to review capital and determine that the client is no longer eligible on the basis of the £10,000 receipt. Any capital receipt of £8,000 or more should be considered a dramatic improvement in means.
4. An example of a dramatic improvement of income would be where a client reports that they have started a new job that provides a salary of £3000 per month i.e. an amount in excess of the gross income limit. A further determination of income should be undertaken immediately in these circumstances, in which case the client will be no longer eligible on the basis of gross income.
5. Where the client reports a significant change of circumstances, (e.g. a client whose capital was previously assessed as £7,000 reports that they have received further capital of £1,500 or a client whose disposable income was £600 per month reports that they are receiving an additional income of £150 per month, i.e. a sum which takes the client above the eligibility limit), the provider will only need to carry out a further determination if the case is likely to last for three months or longer following the change; otherwise a further determination will not be necessary. If the case is likely to continue for longer than 3

months, the further determination should be carried out immediately and if the client is ineligible, the provider should cease work on the case.

6. For Licensed work i.e. Family Help (Higher) or Legal Representation (other than controlled work), there continues to be provision for the Director to reassess entitlement to Legal Representation at any point during the life of a certificate when a client's means change (see Guide to Determining Financial Eligibility for Certificated Work).
7. Where a client is initially ineligible there is nothing to prevent a further application and determination where a change in circumstances makes him eligible (subject to section 8.1 intentional deprivation of resources). You may only claim for work carried out following a new determination that the client is eligible.



## 12. Evidence of Means

### 12.1 General

1. Rule 3.23 of the 2018 Standard Civil Contract Specification provides that subject to the exceptions set out within r.3.24, satisfactory evidence in support of the client's information as to their means must be provided to you before you assess, and the evidence (or a copy) retained on the file.

### 12.2 Evidence of means

1. Satisfactory evidence as to means will need to be supplied and a copy kept on file. Examples of satisfactory evidence for income are set out at para.5 below. **This list is not exhaustive and other evidence may be accepted** provided it is reasonably sufficient to establish the client's and (if aggregated) their partner's income during the calculation period i.e. nature of income and amount(s) received. The calculation period is the calendar month ending on the day of the application and providers should attempt to obtain evidence relating to that period.
2. Where it is not practicable to obtain evidence relating directly to the calculation period, written evidence that does not refer directly to the calculation period itself may be accepted as confirmation of the client's statement of their income during that period where it seems reasonable to do so. For state benefits, tax credits and financial support from local authorities such as payments under Section 17 of the Children Act 1989, notification letters may be issued only at specified times or following a change in circumstances affecting payment of the benefit, tax credit or financial support. For example, where the client produces a letter from the Department of Work and Pensions confirming their award of benefit – this may well be dated some time before the start of the calculation period. In such cases, providers should try to ensure that the evidence the client provides is the most up to date in the client's possession – such as the last letter confirming an up rating of benefit, tax credits or financial support. If the notification letter is over six months old, further supporting evidence will be required to evidence continued payment (see table in para.5 below).
3. In the case of the self-employed, corroborative evidence may sometimes not relate directly to the calculation period. Accounts may not have been prepared for that period but earlier accounts can be used to back up the client's statement of drawings from the business for personal use, as opposed to business expenses, if no more up to date evidence is available.
4. Where the income consists of a benefit, tax credits or other local authority financial support, the evidence must show the type of benefit, tax credit or financial support in payment and where relevant the amount. Clearly the amount will be irrelevant if the benefit is Income Support, Income-Based Jobseekers Allowance, Income-Related Employment and Support Allowance, Guarantee Credit (under s.1(3)(a) of the State Pension Credit Act 2002(a)) or Universal Credit [or s4 or s95 Asylum Support for asylum and immigration matters], but it is imperative that the type of payment is specified. Particular care should be taken where there are passporting and non-passporting

versions of a benefit (e.g. Jobseekers' Allowance can be income-based or contributions-based); to passport the individual, it must be clear that the relevant type of benefit (i.e. the passporting element) is in payment. In these circumstances where there are two versions of the benefit, a bank statement by itself will not specify the type of payment and therefore will **not** be satisfactory evidence for passporting. In lieu of written evidence (including where the evidence provided is unclear as to the type of benefit or amount in payment) providers may telephone the relevant agency who makes the payment, e.g. Department of Work and Pensions, HM Revenue and Customs, Home Office / Migrant Help or the local authority as appropriate, whilst the client is in attendance to confirm details of type and amount of benefit, tax credit or financial support, and current entitlement. A note of that conversation including the relevant details, along with any unique reference number and name of person spoken to, will be acceptable evidence on audit.

5. Examples of acceptable (and unacceptable) evidence for income.

<b>Source of income</b>	<b>Satisfactory evidence</b>
<b>Employed (P.A.Y.E.)</b>	Most recent payslip(s).
<b>Self Employed</b>	Recent bank statements or working accounts/cash book showing drawings. Most recent tax assessment or set of accounts.
<b>State Benefits (various) – Direct Payment of benefit to Client's bank / building society / post office card account</b>	1) Recent bank / building society statement i.e. showing transactions during the calculation period –benefit type must be specified on the statement; 2) original benefit notification letter supported by a recent bank statement i.e. showing transactions during the calculation period, where the notification letter is dated more than 6 months prior to the date of the application; 3) most recent letter notifying a change in benefit amount (must be no more than 6 months old, unless supported by recent bank statement showing transactions during the calculation period); 4) if the client can only provide a bank statement which does not specify the type of benefit (in particular where there is a passporting or non-passporting version, or otherwise the name is unclear), the provider should refer to para.12.2.4 above concerning evidence in lieu of written confirmation for audit requirements.
<b>Income Support – IS</b>	See Direct Payments information above. Alternatively a letter from the Department Of Work and Pensions confirming the client was in receipt of IS at time of applying for Legal Help. Written evidence must be no more than 6 months old.  [Order Books are now largely obsolete – however if a current order book is held, a copy of the front of the benefit book showing the type of benefit and the date of the last payment order (or if not clear, include copy of second page / inside cover confirming benefit in payment)].

<b>Source of income</b>	<b>Satisfactory evidence</b>
<b>Income-Based Jobseekers Allowance (IBJSA)</b>	See Direct Payments information above. Alternatively a letter from the Jobcentre Plus / Department Of Work and Pensions confirming the client was in receipt of IBJSA at time of applying for Legal Help. Written evidence must be no more than 6 months old.
<b>Income-Related Employment and Support Allowance (IRESA)</b>	See Direct Payments information above. Alternatively a letter from the Jobcentre Plus / Department Of Work and Pensions confirming the client was in receipt of IRESA at time of applying for Legal Help. Written evidence must be no more than 6 months old.
<b>Guarantee Credit (under s.1(3)(a) of the State Pension Credit Act 2002(a))</b>	See Direct Payments information above. The Award Letter together with the Award Calculation Sheet (or the clerical versions of these forms) should be accepted as satisfactory evidence of claim (if no more than 6 months old). Otherwise any relevant correspondence from the paying agency in the client's possession would be acceptable such as a Statement of Entitlement that explains how the client's Pension Credit has been worked out. Written evidence must be no more than 6 months old.
<b>Universal Credit</b>	See Direct Payments information above. Award notification letter should be accepted (if no more than 6 months old), Alternatively a letter from the Jobcentre Plus confirming receipt. Written evidence must be no more than 6 months old.
<b>Asylum Seekers in receipt of Asylum Support</b>	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 (see para 12.2.4 above).  [Asylum Support paid under s4 or s95 the Immigration and Asylum Act 1999 is only a passporting payment for the asylum and immigration matters covered by this guidance at Legal Help, Help at Court and Controlled Legal Representation].
<b>Section 17 support/ other local authority payments</b>	Confirmation from Local Authority that the individual is in receipt of support, with type of support and amounts paid out for accommodation and any weekly allowance specified. Written evidence must be no more than 6 months old.

Source of income	Satisfactory evidence
<b>Working Tax Credit and Child Tax Credit</b>	A copy of the most recent Tax Credit Award Notice issued to the client should be accepted as satisfactory evidence of the claim. Otherwise any relevant correspondence from the paying agency (HM Revenue and Customs) in the client's possession would be acceptable. Written evidence must be no more than 6 months old. Recent bank statements i.e. showing transactions during the calculation period are also acceptable evidence. (NB Evidence must also be obtained of the client's other income, e.g. salary).

Source of income	Satisfactory evidence
<p><b>Unacceptable evidence as to means</b></p>	<p>Copies of the ES40 (signing on card) or jobseekers agreements – these are not evidence of receipt of benefits –they merely show the client has at some time registered as available for and actively seeking work.</p> <p>The debit card of a Post Office card account.</p> <p>The Award Letter for Employment and Support Allowance does <b>not</b> provide satisfactory evidence of the client being in receipt of a passporting benefit simply by virtue of the standard paragraph on page 3/4 which states: ‘this payment of ESA is based on your National Insurance contribution record and any additional amounts the law says you need to live on. We call this contribution-based and income related ESA...’ This statement appears on all award notices irrespective of the type of ESA in payment.</p> <p>Bank statements are not sufficient evidence of salary/wages from employment as it does not show gross earnings and may include deductions that are not allowed under the legal aid rules.</p> <p>The Award Letter or the “short version” Statement of Entitlement will not be accepted by itself as evidence that the Guarantee State Pension Credit is in payment where the form does not specify the type of Pension Credit received.</p> <p>Reference to the individual being in receipt of income support (or other passporting benefit) in the text of a housing benefit or tax credit notification letter is not sufficient evidence that passporting benefit is in payment – evidence must be from the relevant paying agency e.g. Department of Work and Pensions letter.</p> <p>[Order books are largely obsolete, however if a book is held, the front cover only of an order book is unacceptable if it does not show the type of benefit or, where the client is not passported, the amount received].</p> <p>This list is not exhaustive.</p>

6. Evidence of expenditure is required in specific circumstances (based on risk) that are set out in the preceding guidance. Examples of acceptable evidence is given below:

<b>Expenditure type</b>	<b>Satisfactory Evidence</b>
<b>Income Tax</b>	For employees: most recent payslip(s). For the self employed: copy of latest tax calculation sheet (i.e. last income tax bill).
<b>National Insurance</b>	Employees: most recent payslip(s). [The standard deduction of N.I. Class 2 of £12.78 per month can be made for the self-employed].
<b>Housing costs (i.e. where housing costs are more than one-third of client's income)</b>	Rent book. Tenancy Agreement. Copy of mortgage statement. Copy of bank statement (where it is clear what the payment relates to).
<b>Child Care costs (i.e. that are more than £600 per month if working/studying full time or pro rata for part time hours)</b>	Copy of bank statement (where it is clear what the payment relates to). Copy of agreement / contract with child care provider.
<b>Maintenance (i.e. where amount declared appears to be unreasonable / cases of doubt)</b>	Bank statements. Copy of maintenance order (where applicable).
<b>Criminal legal aid Contribution</b>	Copy of income contribution order.

7. For capital, the client's statement and signature on the application form will normally be sufficient evidence, but other documentary evidence of disposable capital must be obtained in cases of doubt (e.g. statements for current accounts, savings or other financial accounts; independent valuations for property or items of value, share certificates etc). In general terms, providers should obtain evidence of capital if they have reason to believe, whether through previous dealings with the client, the circumstances of the case, wealthy lifestyle indicators, or otherwise, that the client may have capital in excess of the limit or may have acted to deprive themselves of capital; particular care should also be taken on cases where a client declares capital just under the £3000 limit (for Legal Representation in respect of an immigration matter set out in Regulation 8(3)) or £8000 limit (all other cases).
8. Generally the client's means should be assessed together with the accompanying evidence. Clients should be asked to bring the evidence with them at their first appointment.
9. The 2018 Standard Civil Contract Specification r.3.24 sets out the circumstances when you may assess the client's means without the accompanying evidence.
10. Exceptionally, the personal circumstances of the client (such as age, mental disability or homelessness) may make it impracticable for any evidence to be supplied. In such cases, eligibility can be assessed without evidence. However, the attendance note

must give the reason why evidence could not be obtained and providers must be prepared to justify this on audit if necessary.

11. Whether or not it is impracticable to obtain evidence will depend on the circumstances of the case. Those who are homeless, or who are in detention will have particular difficulty in supplying evidence. For asylum seekers, there may be a difference between those who apply for Legal Help when they have just arrived in the country and cannot be expected to provide evidence, and those who apply when they have been in the country long enough to receive benefits/vouchers or to work, who can provide evidence. It will often be impracticable to obtain evidence of income from patients with mental health problems who are in hospital (for example, those detained under the Mental Health Act). Providers should however attempt to obtain oral or written confirmation of the position (e.g. type of benefit received) from the ward manager or social worker where practicable. It may on occasion prove impracticable to obtain evidence of a partner's income, for example where the partner refuses to provide the information despite repeated requests. In such circumstances the provider will rely on the best estimate that the client can give of their partner's means for the purposes of aggregation. The provider must record the justification for lack of evidence on the file.
12. There may be exceptional cases where a client never attends the provider's office during the course of a matter, for example the client is disabled and cannot access the office so the case is entirely conducted via home visits and correspondence. In such cases the provider may not be able to obtain a copy of the evidence of income for the file. It will be acceptable for the provider to confirm on the file that he or she has seen acceptable evidence of income and to record brief details, for example type and amount of benefit and applicable dates.
13. It is important to remember in this context that the evidence to be supplied must relate to the time of application, so that it is the client's circumstances at that time that are relevant in judging whether or not it was impracticable to obtain evidence.
14. Thus, if at the time of the application for Controlled Work the client has applied for state benefits, tax credits or Asylum Support and their application has not yet been assessed, then it will be impracticable to produce evidence of receipt of such benefit in relation to the period of computation. The supplier should ask the client to produce any written acknowledgement of the application that they have received and clarify whether there is an alternative source of income from which their expenses are currently being met (see also para.16 below). Where practicable, the provider should later obtain confirmation as to whether the benefit was granted. If it was refused on means grounds, the supplier should reconsider whether or not the client was financially eligible. The provider should not passport a client on the basis of Income Support, Income-Based Jobseeker's Allowance, Income-Related Employment and Support Allowance, Guarantee Credit or Universal Credit (or s4 or s95 Asylum Support where applicable) without evidence of a live claim in payment.
15. As long as evidence is obtained of the main source of income, it will be unnecessary to carry on and obtain evidence of small additional amounts of income that are unlikely to affect eligibility. Where the client is in prison, it will be unnecessary to obtain documentary evidence of their prison income (although the amount stated by the client should be added in to the determination) as the amounts that can be earned are strictly limited. However evidence of wages from outside employment will be required for prisoners released on temporary license and those on 'working out' schemes.

16. Some clients will state that they have no access to any income or capital. It would be for the provider to decide whether such a statement was credible and whether or not it was therefore impracticable to obtain evidence of means. However, a note of the circumstances should be kept on the file. Clients without any income at all are likely to be those whose circumstances have recently changed. This might be where, for example, they have just separated from a partner and have applied for benefit or have just arrived in this country and applied for asylum. The provider should enquire how the client is meeting their day-to-day expenses. If a client states that a relative or friend is supporting them, a letter from the relative or friend should be obtained identifying the nature and extent of support (where this is monetary support, amounts must be specified).