



# Legal Aid Agency

## CIVIL REPRESENTATION

### Lord Chancellor's guidance on determining financial eligibility for certificated work (April 2021)

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# 1. Preface

## 1.1 Introduction and purpose

1. The following guidance is 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”]. The Director must have regard to this guidance in determining whether an individual is financially eligible for civil legal aid services. As in practice, applications will be considered by caseworkers within the Legal Aid Agency on the Director’s behalf, this guidance is addressed to the relevant caseworkers responsible for processing such cases.
2. This guidance sets out the key elements that must be considered by the Director in determining an individual’s financial eligibility for the following forms of civil legal services:
  - (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>; and
  - (b) **Family Help (Higher)**;
3. This guidance also covers further determinations i.e. where there has been a change in the individual’s financial circumstances, and amended determinations where it appears that there has been an error or new information has come to light which requires a previous determination to be amended.
4. 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. A determination that an individual qualifies for emergency representation may be made on the basis of limited information and documents if the Director considers it is in the interests of justice to do so; however the determination must be revoked if subsequently, following receipt of the application for substantive amendment and any documents requested, it is determined by the Director

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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. Refer to Appendix 6.

that the individual does not qualify financially for legal representation or family help (higher). Applications must be submitted in accordance with the 2018 Standard Civil Contract Specification terms.

## **1.2 Representations against a determination**

1. The Director will occasionally be presented with conflicting pieces of information, particularly when the opponent in the proceedings considers that the applicant should not receive legal aid and makes representations to that effect. The Director will balance the weight of evidence given by the applicant and any third parties concerned, before deciding whether to withdraw a determination that an individual qualifies for civil legal services under Part 1 of the Act in accordance with section 11(1)(a.) The third party will be informed of the outcome of the investigation.

## **1.3 Reviews**

1. There is no right of appeal against a financial determination. 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). The Director should always be willing to review and if appropriate amend the original decision when representations are made by the individual or their representatives, taking into account all relevant circumstances; if, however, the outcome of this review leads the Director to believe the original decision was correct, this will also be communicated to the individual. Where the representations involve a change of circumstances following a refusal of legal aid, this would normally require a fresh application to be made.

## **1.4 Format of guidance**

1. The guidance falls into three main headings:
  - (a) Calculating income;
  - (b) Deductions from income; and
  - (c) Calculating capital.

The determination of business cases, (Income and Capital), is also covered.



## **2. General Matters for Determinations**

### **2.1 Regulatory framework**

1. The Legal Aid, Sentencing and Punishment of Offenders Act 2012 as amended [“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 the 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. References to regulation numbers in this guidance are therefore references to those 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.

### **2.2 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 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.
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). Thus 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 client'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 funding, which agrees that third parties may be contacted and enquiries made where necessary.
8. The client 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 client's interest and to disclose any relevant information provided by the client. Equally, it may in some cases be necessary to raise enquiries with the client'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 client'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 client may not wish their employer to know about—in particular, a client may tell us that she is having a baby but may not have informed her employer yet.

**Cross-reference:** paragraph 4.5

**Note:** *It would never be appropriate to disclose the information to the opponent or other maker of representations without the client's consent, even if it would aid the purpose of carrying out the client'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 a client to knowingly fail to disclose relevant information or to deliberately make false statements or false representations for the purpose of receiving funding.

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

12. With the exception of information obtained under section 22 of the Act which is therefore subject to the disclosure provisions contained within section 33 (see guidance below), information relating to the application can of course be disclosed with the client's permission.

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

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.

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

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 client's interests in disputed assets exceeds £100,000, the excess must be brought to account within the financial determination. (Worked examples showing the operation of the SMOD rule can be found in s.7.1).
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 applicant generally. Therefore each application should be taken on its own particular set of facts—what is SMOD for one application may not be for another—although if a client is genuinely unable to gain access to an asset that is disputed by the parties in *connected* proceedings [see judgement in the case of *Hanlon v Law Society* [1981] AC 12 concerning the statutory charge] it may be appropriate to obtain additional guidance from the Legal Aid Agency's Central Legal Team.
4. More than one asset can be the subject matter of dispute in any particular case. The client is asked to specify property or items which 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 has to be under specific attack in the proceedings, i.e. be 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.
- (b) Special difficulties arise in matrimonial proceedings. Both parties in the marriage may have a range of assets which may in some way be taken into account in any financial proceedings arising from the divorce. However, it is only those assets which 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 will be treated as disposable income.

- (d) Income cannot be regarded as SMOD since the issue here is simply whether the client 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:*

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

## **2.4 Deprivation and Conversion of Resources – 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 Director 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 or loaned a large part of his capital to a friend or associate.  
**Cross-reference:** see paragraph 6.9 on Trust Funds.
4. Deprivation may also mean simply failing to claim an asset or resource to which the individual 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 civil legal services.
6. In each case, the individual’s intention must, in the opinion of the Director, 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 to reduce a contribution for the same) 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 Director therefore decides, after seeking the individual’s explanation that deprivation or conversion has taken place with the appropriate intention, the relevant assets will be assessed:
  - (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, as if the asset was still in its original form.

## 2.5 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, they 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 ("the 2019 Regulations") 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.
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 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 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 paragraph 3.1 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 assessed 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 6, 7 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.

## **2.6 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.
2. There are special rules concerning an application for the funding of legal representation for proceedings relating to domestic violence, 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. The eligibility limits and contributions (all or part) may be waived in certain inquests (Regulation 10) where the Director considers it equitable to do so. This applies to an application for a relevant determination to the extent that this relates to services that consist of advocacy in proceedings at an inquest into the death of a member of the family of the individual.
4. Regulation 9 provides for a waiver of eligibility limits and contributions (all or part) in respect of specific issues in relation to a multi-party action of significant wider public interest if the Director considers that it is equitable to do so.
5. 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 to fund those services only in relation to the specific

issues. 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 clients 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.

6. 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.
7. 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.
8. 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.
9. If a client'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 client 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].

10. Where an individual applies on or after exit day for Legal Help or 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 (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.





## 3. Whose Resources are to be assessed?

### 3.1 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 under regulation 16(1). A partner is defined in Regulation 2 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 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.
3. 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 for the purpose of making a financial determination.
4. 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. Thus the term partner is used on the CIVMEANS1 and in this guidance to include a spouse, civil partner or anyone with whom the individual lives or ordinarily lives as a couple.
5. 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:** *It is not strictly speaking necessary for a partner to be the opponent in the proceedings to have a contrary interest. However, if they are 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 property. This would be the case if they regarded their relationship to be 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.

**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.*

### **3.2 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 has been maintaining the individual or his partner;
- (b) resources from another person have been made available to the individual or his partner.

**Note:** *"Person" for these purposes includes a company, partnership, trust, etc.*

2. If either one of the above scenarios apply, the Director 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 Director's discretion as to how much of the resources of the other person should be treated as belonging to the individual.

4. The Director will 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 financial determination will be carried out on that basis. This situation may commonly arise in, but is certainly not limited to, scenarios where the individual has been supported by a wealthy family, even though the individual himself has no assets.

5. Note that the resources belonging to the other person will be calculated in accordance with the normal rules of making a financial determination. If that other person refuses to co-operate then the Director has power to estimate the value of such resources.

### **3.3 Application on behalf of a child or a 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, children's guardian or guardian ad litem who is bringing/defending the proceedings on their behalf.
2. However, in family cases where the applicant for funding is a child, the resources of a parent, guardian or any other person who is responsible for maintaining him, or who usually contributes substantially to his maintenance, are required to be treated as his resources, unless, having regard to all the circumstances, including the age and resources of the child and any conflict of interest, it appears inequitable to do so.
3. The provider should submit the application providing means information for the child, as well as the parent(s), guardian(s) or any other person who is responsible for maintaining the child, or who usually contributes substantially to the child's maintenance; or, more usually in the first instance, explain in submitting the application why non-aggregation of means is considered to be appropriate in the circumstances of the particular case, having regard to the position of each of the parent(s) or others on the issues in the case and the party status of the child.
4. Where children have sufficient understanding to decide that they want to seek an order in family proceedings for themselves and actually start proceedings there may be no conflict with one or both parents and it may be reasonable to take the means of the parents or one of them into account (for example where the child wants to live with one of the parents or with a third party). Similarly, where a child is joined as a party in ongoing proceedings by an order of the court, the assessing officer will carefully consider whether there is in fact any conflict of interest with the parents. If there is no conflict with one or both parents it may be reasonable to take their means into account; the party status of the child will not automatically justify non-aggregation.

### **3.4 Application in a representative, fiduciary or official capacity**

1. This is dealt with under regulation 15. Examples of this situation include a individual who is:

- (a) a trustee suing on behalf of a trust fund;
  - (b) an executor suing on behalf of an estate.
2. 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.
3. 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 they are also a beneficiary.
4. Where the financial determination has taken place under regulation 15 the Director will 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.

**Note:** *Where there are a large number of potential beneficiaries, it may not be possible to assess all of their means individually under regulation 15— in such a case the Director 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.*

### **3.5 Proceedings in which others have an interest Regulation 44(6)**

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 – who 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 civil legal services. 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 clients.

3. In order 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 financial determination of those other persons, although a full determination of their means 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 are a large number of those with the same interest, the Director may decide to refuse the application if it appears to him to be 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. A common scenario where typically the Director may decide to undertake a financial determination of the third party involved is, for example, a possession case where the individual who has made an application for civil legal services to defend possession proceedings, has a non-dependant adult child or relative of the family living permanently in the home. In such circumstances the Director may request full details of the third party's financial resources to determine an appropriate contribution.
6. If an application is granted and a decision is made to call for a contribution from a third party, then it is the responsibility of the individual to ensure that the extra contribution is paid. The Director may waive this element of the contribution if satisfied that the individual has unsuccessfully taken all reasonable steps to obtain payment of the contribution.



## 4. Gross Income – What Income Includes

### 4.1 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.

**Cross-reference:** see paragraph 4.6 child benefit

2. Gross Income means income under regulation 21 before any deductions are made other than 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 and certain state benefits as specified within 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 4.6.

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.
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 is still meeting all outgoings. In some cases particularly where a change occurred during the past month it might not be appropriate to base the financial 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 the next calendar month based on their changed circumstances. In these circumstances the individual may 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.

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 Director will consider what best reflects the individual's normal income. How to treat these situations is dealt with in the following guidance.

## 4.2 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 p. Singer* [1973] 1 W.L.R. 713; [1973] 2 All E.R. 931DC. 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 had been 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.
  - (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:** see paragraph 4.11 on income from friends and relatives.

### 4.3 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 three monthly wage slips, or six 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 three 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 using 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 to determine the gross amount that the individual has earned or will earn to be used in the calculation.
5. Where the wage slip or L17 evidence a particular reason for any significant salary variations, the Director will determine the most appropriate way of estimating their individual's normal gross earnings as follows:
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 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 gross earnings, then the normal salary can be ascertained by taking an average of the other two months.
7. Where the Director considers that the one month's higher salary is a better indication of the anticipated earnings for the next few months, for example, pay was affected in each of the other two months owing to a period of illness, or the applicant has recently changed jobs and is now earning a significantly greater sum, the determination will be based on the higher figure alone.

*Example 1:*

Wage slips or L17 indicates that the past three months earnings have been stated as £1,010, £1,000, and £950. There is no indication of sickness or major change of circumstances. Then last month's salary of £1,010 should be used in the financial determination.

*Example 2:*

Wage slips or L17 indicates the past three months earnings have been: £500, £1,000, £1,050. The low earnings in month one is due to the employee being off sick for three weeks during that month.

The normal salary should be calculated by reference to the last two months salary, i.e. the average of £1,000 and £1,050. The normal monthly salary should be assessed as £1,025.

*Example 3:*

Wage slips or L17 indicates the past three months earnings have been stated as: £750, £750, £900. 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.

## **Known changes of circumstances**

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 form 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 financial determination (i.e. using the power set out within regulation 14(3) to vary the calculation period).
10. Where the change will occur more than a month after the date the application was made, the current circumstances should be used for the financial determination. If it appears that the change when it occurs will lead to a change in gross income, disposable income or disposable capital of more than the review limits for further determination set out in regulation 20, then the case should be diarised for review at that time.

## 4.4 Employee absent from work through sickness

1. The L17 or the individual may specify that they are 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).  
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 Employment and Support Allowance.

**Note:** *Company sick pay may top up or include SSP 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 it will be assumed that the individual is in receipt of state benefits. If none of the above forms of income are declared in the application, further enquiries will be made.*

**Cross-reference:** see paragraph 4.6

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

2. Individuals who are absent from work owing to sick leave 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 determination.
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 determination.
5. If the individual is currently out on sick or maternity leave and 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 in the financial determination. If no such benefits are declared further enquiries will need to be made.
6. If no date of return or reasonable estimate is given, the Director will, 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 financial determination. If the individual challenges this assumption and provides

further details of the expected return to work, then an amended determination will be carried out as appropriate.

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.

## 4.5 Individual having a baby

1. The individual or their partner may advise within their application that they will be having a baby during the next nine 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 six 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 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 advised to seek a further determination following the birth of the child.

## 4.6 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 within regulation 24(1). **Cross reference to paragraph 5.3 for disregarded payments (which may apply to gross or disposable income calculations).**
2. All other state benefits are included in the determination as gross income as follows:

- (a) The amount declared by the individual of any state benefits or allowances (including pensions) will be included subject to (b) and (c) below.
  - (b) Where a monthly figure is quoted, the benefit will usually be payable four weekly. [Universal Credit is the main exception to this, as it is payable for a calendar month. Universal Credit is a passporting benefit for a client who is properly in receipt (directly or indirectly) of this payment; if the client is not included within the benefit claim of their partner e.g. client is in prison, include the payment as a monthly income].
  - (c) All payments will be converted to 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. 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**

- 4. Any 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 included as income in the determination. Child Benefit which the individual appears to be entitled to will be included, even if not declared.
- 5. From 7 January 2013 a High Income Child Benefit Charge applies to households claiming child benefit where at least one individual has income of more than £50,000. However child benefit remains a tax free benefit for households with income below this threshold.

### **4.7 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 determination.

### **4.8 Income from tenants/sub-tenants and boarders**

- 1. In non-business cases the gross amount of rent received by the individual/partner from boarders, lodgers, tenants or sub tenants will be included 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 a reasonable sum may be deducted from the income received from the boarder before it is brought into account.
  - (b) The individual does not occupy the property from which the income is received.

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 ss.8 and 9).

#### **4.9 Income from court order or voluntary maintenance**

1. The Director will include as income any amounts declared by the individual as maintenance received for themselves and/or their child dependants. This will usually be maintenance paid by a former partner or other parent of the child.
2. The maintenance may be being paid voluntarily, through a court order, or through the Child Support Agency.
3. Included as the individual's income will be 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, this will not be included as the individual's income but the dependant's allowance will be reduced by the amount of the maintenance.

**Cross Reference:** see paragraph 5.6 on dependants' allowances.

4. If the child is the individual any court order payments to or for a child will only be included as that child's income if the child receives and controls the money.
5. Maintenance payments are not generally treated as taxable income in the hands of the recipient. As a general rule therefore, tax will not be deducted from this income unless the individual indicates that they are paying it.

**Cross Reference:** see paragraph 5.1.6 (a) on taxable income.

## 4.10 Student grants and loans

1. Any income received by a individual who is a student including any amount of grant (this will therefore include bursaries), student loan or parental contribution to be received during the calculation period will be included as income by taking the annual student loan or contribution obtained by the student and dividing by 12.

## 4.11 Income from friends and relatives

1. The individual must declare past and current financial support from friends and relatives within their application. The Director will assume that a similar level of support will be made to the individual in the future.

**Cross Reference:** see paragraph 3.2 on resources of other persons.

## 4.12 Training scheme and training for work

1. Any earnings received on these schemes will be included as income under regulation 21 but amounts received purely as a reimbursement of travel expenses paid by the individual will not be included as income.

## 4.13 Benefit in kind

### General

1. The Director will include benefits in kind paid to the individual (i.e. benefits provided instead of or in addition to cash payments or normal salary) as income under regulation 21.
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. Employers may also provide childcare vouchers or help to pay the employee's mortgage.
3. All of these benefits, even though not received in cash, are treated as taxable income by HM Revenue and Customs (HMRC). As a general rule therefore, the value of any benefit in kind for the purposes of a financial determination will be taken to be the taxable value thereof, i.e. the Director will treat this benefit as income in the same way as HMRC.
4. 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. 1/12 of this value will therefore be added on to the individual's gross income.
5. The Director may request evidence of the value of the benefit in kind through sight of HMRC Form P2/P11D.

**Note:** *Where the total of the individual's earned income (including the benefit in kind) does not exceed £8,500 per annum, 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 will therefore be nil.*

**Cross-reference:** see s.8.4.8 (d) on Business Guidance for the treatment of Benefit in kind for directors of private limited companies.

## Deductions

6. It is necessary, as outlined above, to include the taxable value of benefits in kind as gross income as to do otherwise would make the financial determination incorrect.
7. Where the benefit in kind is provided in respect of an item, the expense of which would normally be allowed 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) will be deducted when determining disposable income. 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. For individuals with no dependants, i.e. where no dependants' allowances have been made, the maximum monthly allowance in this respect will be £545.
  - (b) Childminding fees  
If childminding fees would otherwise be allowed in accordance with paragraph 5.4.2 then the taxable value of the childminding fees as stated on the L17 or obtained from tax form P2/P11D will be allowed as a deduction from disposable income.
  - (c) Provision of free health insurance  
No deductions from disposable income will be made in relation to this benefit as the expense of health insurance is not otherwise allowable under the regulations.
  - (d) Luncheon vouchers  
Again, no deductions from disposable income will be made in relation to these items.

## Summary

8. To sum up, where benefit in kind is provided, it will be determined as follows:
  - (a) the taxable value of the benefit in kind declared in the L17/P2/P11D will be taken as income;
  - (b) the tax on the income including the benefit in kind will be calculated;



- (c) an allowance against income will be made of the notional figure for expenses which would normally be allowed under the regulations (refer to points (a) to (d) above for the main categories of case); and
- (d) 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 will be allowable against income (subject to the normal rules for those expenses) as well as the notional allowance made for the benefit in kind.



## 5. Disposable Income Allowances and Disregards

### 5.1 Income Tax allowances

1. This section deals with the calculation of tax payable for the purposes of regulation 23 i.e. as a deduction against a person's income.
2. Wage slips provided by the individual for the calculation period will indicate the amount of tax and National Insurance paid. Alternatively, the employer is asked to provide details of tax and National Insurance paid by the individual on the gross income declared on form L17 statement of earnings. The Director will allow the tax shown on the wage slip or L17, or will otherwise calculate the tax payable on the basis of the relevant income figures used in the determination of the individual's gross monthly 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 yet, e.g. new business), then no allowance will be made.

### 5.2 National Insurance (NI) contributions

#### General

1. This section deals with the calculation of NI contributions payable, as a deduction against income for the purposes of 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 NI contributions are:
  - (a) **Class 1 contributions**  
These are paid by employees and company directors.
  - (b) **Class 2 contributions**  
These are for self employed persons and are paid at a fixed weekly rate.
  - (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**

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 profits.

4. Wage slips or Form L17 will indicate the amount of NI contributions paid on the relevant wages and salaries. The Director will allow the declared NI contribution or calculate the NI contribution payable on the basis of the relevant income figures used in the determination of the individual's gross income (see paragraph 4.3).
5. For the self-employed, a deduction of the fixed monthly Class 2 contribution will be made. In addition, if the individual can evidence a current assessment of Class 4 contributions payable, an allowance will be made for such payments provided there is parity in the level of income being assessed from that business.
6. If the person has more than one job, then NI will be calculated separately for each job.

### **5.3 Disregarded payments**

1. The following payments set out within regulation 24 must be disregarded when determining disposable or gross 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) Carer's Allowance; and
    - (v) any payment made out of the social fund.
  - (b) 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;
  - (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 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;
- (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;
- (l) Any payment made under the Windrush Compensation Scheme; and any Windrush connected payment;<sup>2</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; and
- (o) Any payment made from a Relevant Infected Blood Support Scheme or earlier support schemes.<sup>3</sup>

2. Where an individual applies on or after exit day for Legal Help or Legal Representation for cross-border dispute proceedings and they are in receipt of a payment by a EU Member State that is equivalent to a payment listed in paragraph 5.3 (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.

3. The Director may exercise discretion provided by regulation 24(3) to disregard a payment which meets all of the following conditions:

- (i) the payment was made to an individual who is a victim of the fire at Grenfell Tower;
- (ii) the payment was made to that individual because the individual was a victim of the fire at Grenfell Tower; and

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<sup>2</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>3</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.

(iii) 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>4</sup>
- (b) the National Emergencies Trust.
- (c) the We Love Manchester Emergency Fund.
- (d) the London Emergencies Trust.

## 5.4 Employment expenses and child care expenses

1. Where the individual or partner is assessed as receiving a wage or salary from employment – including company directors – a deduction of £45 for work related expenses should be made in respect of each person so assessed. This is a set amount in Regulation 27(1) and it is therefore unnecessary to obtain details of actual employment expenses; however, see guidance paragraphs on child care expenses below. An allowance for the standard employment expense is not available to the self-employed but an allowance for child care expenses may be considered (see below).
2. Where the individual 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 childcare that is incurred as a result of the individual'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.
3. 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.

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<sup>4</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

4. Where the individual declares expenditure on child care, documentary evidence (e.g. copy of bank statement, copy of agreement/contract with childcare provider) is required to support the figures stated.
5. Pension contributions (of any description), union fees, professional subscriptions, and any other expenses that the employer may deduct from income at source, or that the self-employed individual may be paying are not allowable deductions in the determination of disposable income.

## 5.5 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 main or only dwelling. The costs of a second dwelling are not allowable except in the circumstances where the individual pays maintenance to an ex-partner in the form of mortgage repayments on a former matrimonial home – those payments fall within regulation 26.

**Cross-reference:** see paragraph 5.8 on Allowances for maintenance in payment.

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 10 - 13 **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 must 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, and this 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 Director 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 the landlord or lender/mortgagee for payment deferral. Where the individual has agreed a 'mortgage holiday' with the lender/mortgagee for a specified period of time, the Director 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.

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 in this respect will be £545 [regulation 28(7) refers]. Where a partner allowance or dependants' allowance have been deducted under regulation 25 then the rent or mortgage repayments paid or payable can be allowed in full.
6. 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. Council Tax, water rates, insurance premiums and other associated housing costs are **not** allowable deductions in the financial determination.
7. Where an individual who is not a householder indicates that they are paying board and lodging then a reasonable amount in respect of the cost of accommodation only, can be allowed. Where no partner or 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 doubted, then it should be assumed that half of the declared board and lodging payment 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.



8. Where the individual states expenditure on housing costs, documentary evidence (e.g. copy of bank statement, mortgage statement, or rent book) is required to support the figures stated.
9. Where the mortgage or loan secured on the individual's property exceeds £100,000, consideration should be given as to whether the individual is understating gross income. Where the Director is satisfied that all income has been properly disclosed and the individual is within the gross income limit, and that the individual is actually meeting the monthly mortgage instalment, then subject to the restriction set out in paragraph 5 above there is otherwise no limit to the amount that can be allowed in the financial determination.

### **Adjustments to housing costs**

10. If the individual is sharing the property with other people (excluding their partner and dependants) then only those housing costs actually being paid by the individual themselves will be allowed.
11. Where the individual is a co-owner or joint tenant of a property with a person or persons whose means are not aggregated it will be assumed 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.
12. Where the individual has sub-tenants, lodgers or other non dependants at the property, money being paid by them to the individual will be included as income. (See cross-reference below). Again, if no information is available, it will be assumed that expenditure is apportioned equally amongst the adult occupants.

**Cross-reference:** see paragraph 4.8.

13. If the individual's resources are not being aggregated with the partner's due to contrary interest, but they remain living together as a couple in the same dwelling, only deduct the housing costs that the individual declares he / she is paying from the resources included in the determination. If in doubt, apportionment will be assumed as follows:
  - (a) If both the individual and their partner work, then half the housing costs will be apportioned to the individual.
  - (b) If only one person works, then it will be assumed that the housing costs are met in full by the person who is working.

### **5.6 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 4.

## Allowance for partner

2. Where the individual has a partner (as defined under regulation 2), the scale rate for a partner that is in force at the beginning of the calculation period is deducted. For the avoidance of doubt, the allowance is still deducted where the individual has a contrary interest to his or her partner in respect of the case for which civil legal services has been applied for, as long as they are not permanently separated.

## Allowance for children

3. To qualify for an allowance the child must be:
  - (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 child, 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 full fostering allowance for that child has been wholly disregarded from the gross income calculation.*

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.
5. Since April 2003, the scale rates for children aged 15 or under and each such dependant aged 16 or over have been the same.
6. 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 relative's allowance can be made – see below.*

7. Adjustments to the allowance:
  - (a) Allowance for parents whose means are not aggregated.  
A decision will need to be made whether to grant the dependant's allowance to the individual (it cannot be granted to both the individual and their partner). It would be normal to grant the allowance to the individual if they are receiving the child benefit. If this is not clear the allowance will be granted if the individual appears to be supporting the child from their money.  
*Example:*  
The wife is the legal aid applicant. She and her estranged husband are living separate and apart in the same house. The husband pays maintenance for her and their children from which she meets their

living expenses. The maintenance is taken as income and the dependant's allowance given as she will be paying for the child out of that income.

- (b) Regulation 25(3) provides that the amount of the dependant's allowance may be reduced by the income and other resources of the child dependant. 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 will be reduced accordingly.

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

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

- 8. An allowance of the appropriate scale rate (see Appendix 4) is given for a dependant relative if:
  - (a) the relative lives in the individual's household; and
  - (b) the individual fully supports the relative.
- 9. Details of such relatives should be provided within the application. Any allowance will be reduced by the amount of any independent income or benefit the relative may receive. Any excess of income over the allowance will not be included as the individual's income. An allowance will not be made if the relative's capital is over £8,000.

### **5.7 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) former partner (including a spouse from whom the individual is living separate and apart);
  - (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 5.6 above.

- 3. Payment of maintenance can be voluntary, by agreement, or through a court order or the Child Support Agency.
- 4. Only such payments as are genuinely being made are allowable. Regulation 26 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, enquiries will be made as to how long the maintenance has been in payment and how the obligation arose. The Director 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. The Director 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**

7. 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 the determination. The individual should declare any payments they are actually making. Any housekeeping received by the individual will be treated as maintenance income. Likewise, any housekeeping paid out by the individual to meet the former partner's needs, can be deducted as maintenance.

**Cross-reference:** see paragraph 5.5 on Housing Costs.

## **5.8 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 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.



## 6. Disposable Capital – What Capital Includes

### 6.1 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 determination the Director will 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 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 financial determination 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, will not be taken into account.

**Cross-reference:** see paragraphs 6.2.3 and 6.2.4 below.

### 6.2 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.

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, any credits to the account after this balance which are not related to payment of regular income will also be taken into account (i.e. added back to the balance).

**Note:** *If there has been a substantial capital withdrawal from the account consideration will be given to including the withdrawn capital in the financial determination pursuant to regulation 17 (Deprivation rule).*

**Cross-reference:** see s.2.4.

**Note:** *An overdrawn account will not be offset against an account in credit when calculating 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.*

## **Deposit accounts**

5. The current balance in the account (including any interest which has remained in the account) will be included as capital.

## **National Savings accounts**

6. National Savings can comprise three kinds of investment which are included as capital.
  - (a) **Income Bonds**  
The value of an income bond remains constant and therefore the amount held will be included as capital. However such bonds accrue interest which is paid to the investor as a monthly income and this should be declared as a source of income.
  - (b) **Investment Account**  
The amount held in the account at the date of application including accrued interest retained in the account will be included as capital.
  - (c) **Ordinary Account**  
Treat as per investment account.

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

7. The current amount held on the ISA/TESSA account either from the passbook or from the last statement held will be included as capital.



## 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 appears to the Director to be equitable. The Director will therefore assume that the asset is owned in equal shares, unless documented evidence of the asset being owned in unequal shares (e.g. trust document showing 70:30 divisions etc) exists and is provided by the client
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 all the money in the account will necessarily be 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 will 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 assessed 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.*

## 6.3 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 a discretion under regulation 31(b) to assess the value of the non-monetary capital asset in such other manner as appears to the Director to be equitable.
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 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. Guidance on how to value the most common type of assets is given below:

### **National Savings Certificates**

9. There are two types of National Savings Certificate: fixed interest and index-linked. The current value of the certificate held by the individual can be obtained via the National Savings and Investments website at <http://www.nsandi.com> and following the instructions given.
10. 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.
11. New issues of units that are not covered in valuation tables are valued at actual purchase cost.

### **National Savings Capital Bonds**

12. 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 the purpose of the financial determination 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**

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

### **Government Stocks**

14. The value will be as quoted in the latest Financial Times (FT) or other up-to-date daily newspaper or relevant internet site.

15. 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]. This price is multiplied by the number of units held.

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

16. These are normally sold through the stock exchange and their price shown in the press.
17. The current value of the shares of the particular company is as quoted in the Financial Times (FT). The price of one share is quoted under the heading "price" (ignore the high/low figure in the first two columns). This price is multiplied by the number of shares held and divided 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. The individual should supply details of the shares held and evidence of the current sale price, e.g. via a letter from a broker.*

### **Share save schemes**

18. 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.
19. If it is clear that the individual is currently paying into a share save scheme, the individual should provide details of the amount of capital held in the scheme on his behalf and this amount will be included as capital in the financial determination.
20. If shares have already been allocated to the individual under a share save scheme, then their value will be calculated in accordance with paragraph 17 above.

### **Share option schemes**

21. 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.
22. 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.
23. If the individual holds share options which have not been exercised, then the individual should provide:

- (a) a copy of the scheme rules;
  - (b) confirmation of the date on which the options were granted and of the exercise price.
24. This information will allow the Director 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, included as capital will be the difference between:
- (a) the value of the shares on which the options are held, calculated in accordance with paragraph 17 above; **and**
  - (b) the price at which the individual can exercise the option.
- If (b) is greater than or equal to (a), then the share options have no value.

### **Share Incentive Plan**

25. 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**

26. Private limited companies are not floated on the stock market. The shares are usually held by a small number of individuals.
27. 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.
28. 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 Director from calculating their capital value in accordance with this guidance. The valuation for the determination 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**

29. “Majority interest” means the individual owns (either alone or with a partner whose means are aggregated) 51 per cent or more of the shares. If an individual has a majority interest in the company, then the capital value of the company as a whole will be assessed.

**Cross reference:** see paragraph 9.5 on Business Capital.

### **All other individuals**

30. 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;
- (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; and
- (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.

31. 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 financial determination should be available from such a search.

32. If information is supplied of recent transactions under paragraph 24(f) above and if it seems that the price paid per share in the previous transaction was reasonable, then this figure will be used as the capital value per share of the individual’s shareholding.

33. Otherwise, when the information requested above is provided, the following separate calculations will be performed:

(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 per cent and 50 per cent of the total ordinary shares, and by 3 where the shareholding is less than 25 per cent.  
If the Director 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 per cent and 50 per cent and 2 where the shareholding is less than 25 per cent.
- (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 per cent and 50 per cent and by 4 where the shareholding is less than 25 per cent.
- (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 per cent (in order to add back income tax deducted) and multiply the resultant figure by 6 where the individual's shareholding is between 25 per cent and 50 per cent and by 5 where the shareholding is less than 25 per cent.
- (ii) Multiply this figure by the number of shares held by the individual to arrive at the total value of the shareholding.

34. 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.

## Unit Trusts

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

## PEP (Personal Equity Plan) investments

37. 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.
38. To value, the individual should provide a letter from the management company stating the current value of the PEP. This value is brought 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.*
39. If the individual receives a regular cash return from the PEP this is brought into account as income in the normal way.

## Fixed term investments

40. 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 the current value of the investment is included 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.
41. However, even if the funds cannot be withdrawn the individual may be able to sell his interest. In order to arrive at the sale value in such a case, the individual should send in full documentation setting out the terms and conditions of the investment. The Director may seek a valuation of the individual's interest in the investment from the Government Actuary's Department. The valuation received will be included as capital.
42. If the funds cannot be withdrawn and the investment has no sale value, then the capital value is nil. If the fixed term expires and the monies are released during the life of the legal aid certificate then a further determination will be necessary.

## Articles of value/motor cars

43. Household furniture and effects, personal clothing and the tools and equipment of the individual's trade are normally disregarded under regulation 34.
44. If, however, the individual owns any articles which by virtue of their quantity or value are of exceptional value, then that value can be included in the

financial determination. Examples might be where the individual collects antiques or owns a valuable painting. Items of jewellery are also included, apart from engagement, wedding or eternity rings which are disregarded.

45. 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.
46. In calculating the value of motor cars under regulation 31 for the purposes of a financial determination, there are three different scenarios to consider:
  - (a) Vehicles in regular use by the individual or individual's partner which have a value of less than £15,000, or which were bought more than three years ago; such cars are valued under regulation 31(b) as £nil for the purpose of the financial determination.
  - (b) 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 car will be valued under regulation 31(b) as the amount by which the net equity exceeds £15,000.
  - (c) Vehicles not in regular use (e.g. because it is a "classic" car purchased as an investment); the value of such cars will be assessed under 31(a) as the value for which it could be sold. The individual is asked to declare such vehicles and to state their value in their application for legal aid.
47. For the purposes of determining the net equity for cases falling under category (b) above; this will 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:
  - (a) if the car was bought less than 12 months ago, the value will be the purchase price of the vehicle;
  - (b) if the car was purchased between 12 and 24 months ago, the value will be 80 per cent of the purchase price; and
  - (c) if the car was purchased between 24 and 36 months ago, the capital value will be 60 per cent of the purchase price.
48. The amount of any loan/HP outstanding on the car is then deducted from the above value to arrive at the net equity.
49. If the net equity in the car is £15,000 or less, then the amount to include within the financial determination is £nil in respect of that vehicle.
50. If the net equity exceeds £15,000 then the capital value will be determined by deducting £15,000 from the net equity and including the resulting figure as capital.



**Note:** *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 the capital value of the car will be treated as £nil in these circumstances.*

*Example:*

The application states that the individual bought the car 13 months before 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

## **6.4 The individual's dwelling house**

### **Main dwelling**

1. This is dealt with by Regulations 37 and 39.
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, after deducting any debt secured by a mortgage or charge on it.
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. The individual is asked to specify the size and type of the property and to give an estimate of its value in their application.
5. The individual's valuation will be compared with the average valuation for the type of property in the individual's area. If, after comparing the individual's valuation with the average, the individual's estimate appears to be low and there is no apparent explanation, then the average figure will be used as the value of the property. The individual will be informed of this assumption.
6. 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.

7. Regulation 39 stipulates that where a property is an individual's main or only dwelling, up to £100,000 must be disregarded 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 in relation to disputed properties – see section 7.1.
8. Therefore, when the individual owns all or part of their only or main dwelling, the capital value of that property will be assessed in the following way:
  - (a) Obtain the current market value of that interest as above.  
Deduct 3 per cent 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 other property owned.*
  - (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 per cent 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 main dwelling equity disregard	-£100,000
Capital	£29,500

In this example the client 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 his case.

*Example 2:*

The house value is £165,000. The mortgage and secured loans outstanding total £80,000.  
Deduct 3 per cent from the house value to obtain net market value.

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

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

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

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

1. If the individual owns a property which is not their main dwelling, then the value of that other dwelling must also be assessed.
2. The net market value of the other property is valued as with the main dwelling above.
3. There is no equity disregard on other property; the equity disregard only applies to the main dwelling. The total amount of any mortgage or other secured debts on the other property must be deducted.

### *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	-£70,000
Less main dwelling equity disregard	-£100,000

Capital	£4,600
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**Second property:**

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. In this example the client is ineligible for civil legal services unless a waiver of the upper capital limit applies in the particular circumstances of his case.

- 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 s.9 in the Business section.

## Timeshares

- 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.
- The individual should supply a letter from the timeshare company confirming the above information.

## 6.6 Shared ownership of property

- 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 will be brought to account in accordance with paragraphs 6.4 or 6.5 as appropriate, depending on whether it is the individual's main dwelling or second property.
- 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 that amount will be used 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 2.4 guidance on regulation 17 deprivation of resources). In some cases the ownership of the property may actually be in dispute in the proceedings in which case it will be treated as SMOD (see also paragraph 2.3).

3. In all other cases (i.e. where the individual's share has not been bought out) the market value of the property will be established as per paragraph 1 above. Deduct 3 per cent sale costs to arrive at the sale value of the property. Deduct the mortgage allowance. The resulting figure is multiplied 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, then the individual's share will be assumed to be 50 per cent unless better information or evidence has been provided to show otherwise. If the property is the individual's main dwelling, then the first £100,000 of the individual's share of the net equity is disregarded and the remainder of their share brought to account as capital. In all other cases the individual's share of the net equity is brought to account as capital.

*Example 1:*

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
Less 3%	-£7,500
Less mortgage allowance	-£150,000
Net equity	£92,500
Individual's share of the net equity	£46,250
Less main dwelling equity disregard	-£100,000
Capital	£nil

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

*Example 2:*

If, however, the above individual in Example 1 also jointly owned a second property valued at £200,000 with a mortgage of £100,000, the calculation would be as follows, dealing with the second property first:

Second Property value	£200,000
Less 3% sale costs	-£6,000

Less mortgage allowance	-£100,000
Net equity	£94,000
Individual's share of net equity	£47,000

There is no equity disregard on the second property, and therefore the capital value is £47,000.

The calculation on the main dwelling is as set out above in Example 1.

The total capital in the main property (in Example 1) and the second property would be £nil + £47,000 = £47,000. In this example the client is ineligible for civil legal services unless a waiver of the upper capital limit applies in the particular circumstances of his case.

## 6.7 Money owing to the individual

### General

1. Regulation 32 provides that the present value of any money due to the individual should be included in the determination, whether or not that money is payable immediately or otherwise and whether the payment is secured or not.
2. What this means is that if money is owing to an individual it may have a present value to them, even if its full value is not realisable immediately and even if the payment has not been secured. The overriding principle is that if the individual can get the money owing back immediately then the full value of the money owing will be brought to account in the calculation of capital. The following paragraphs give guidance on how the present value of the money owing will be assessed in cases where the money owing will not be repaid to the individual immediately.

### Loans made by the individual

3. The following paragraphs deal with the situation where the individual states that they have loaned money to someone and are unable to obtain immediate repayment of the loan.
4. Care needs to be taken in such cases and the Director must be satisfied that neither Regulation 16(5) nor 17 applies.

**Cross-reference:** see paragraphs 3.2 and 2.4.

5. If the money owing is a debt or loan, the repayment of which is the purpose of proceedings for which funding is sought then it will be treated as SMOD.
6. If the borrower is a member of the individual's family, or the loan is an informal arrangement between friends, then it will be assumed that the

individual will obtain immediate repayment of the full loan. The full amount of the loan will be taken as capital available to the individual.

7. In other cases where there is a formal written agreement from which it is clear that the loan was not due for repayment during the month leading up to the date of application or during the following month, then it will be assumed 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 the present value of the money owing will be taken to be 70 per cent of the amount of the loan outstanding.
8. 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 the money owing will be considered 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 per cent then that reduced value will be taken as the value of the money owing.
9. In such cases any regular repayments of the loan to the individual will be brought to account in calculating their gross income. If those repayments include an element of interest then that interest will be treated as taxable income for the purposes of calculating the tax payable by the individual.

**Cross-reference:** see paragraph 5.1.3.

### **Private mortgages**

10. The value of the individual's interest in the mortgage will be ascertained by the Director by reference to the Government Actuary's Department (GAD).
11. If the individual has already borrowed money on the basis of their interest in the mortgage then this will be deducted from the valuation provided by the Government Actuary's Department.
12. If the Government Actuary's Department describe the individual's interest as having only a speculative value the value will be taken to be "nil".

### **Wills**

13. If the individual is a beneficiary to the estate of a person who has died and the estate is distributed during the calculation period, then the value of the share of the estate as declared on Form CIVMEANS1 will be treated as capital in the financial determination. If the asset which will be received is non-monetary, e.g. a property, then that asset will be valued in accordance with the normal rules for that type of asset (see relevant paragraph(s) for details).
14. If, however, the individual can show that they will not in fact receive those assets during the calculation period then the value of those assets will be treated as "nil".

## 6.8 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 the purposes of the financial determination will 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, the individual should 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. This documentation will be sent to the District Valuer who will supply a valuation of the current market value of the property taking account of the lease.

**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. The property will be assessed as capital in the normal way under paragraph 6.4 or 6.5.*

## 6.9 Regulation 36(4) – Trust Funds

### General

1. The following guidance applies where the individual has an interest in a trust. The Director will have to determine both the individual’s capital interest in the trust and establish any income he may reasonably expect to receive from the trust 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.
3. The relevant provisions governing the valuation of the individual’s interest in a trust are:



- (a) Regulation 36(4) which provides that the value of any interest in a trust should be computed “in such a manner as appears to the Director to be both equitable and practicable”;
- (b) Regulation 21 (gross income);
- (c) 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 Director has the power to treat all or any part of the resources of the trust as resources of the individual;
- (d) Regulation 17 which deals, for these purposes, 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; and
- (e) Regulation 39 of the Civil Legal Aid (Merits Criteria) Regulations 2012 which provides that funding for legal representation 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**

- 4. 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. Documents may be sent to the Government Actuary’s Department to value the interest in the trust.
- 5. It is necessary to consider whether the trustees will be willing to pay for the litigation.

**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 as belonging to the individual.*

**Cross-reference:** see paragraph 3.2 for guidance on regulation 16(5).

### **Discretionary Trusts**

- 6. In the case of a discretionary trust fund the situation is more complicated.
- 7. The starting point on the income calculation for a discretionary trust fund is the normal one as set out in regulation 21.
- 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 cases 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) consideration will be given to applying regulation 17, i.e. treating the trust assets as if they were still the individual's own resources;
  - (b) furthermore, if in the opinion of the Director, the reality of the situation is that, whatever is actually stated on the trust deed, the individual controls the trust assets, then those assets will be treated as belonging to the individual by virtue of regulation 16(5).
12. In either of the above scenarios, careful examination of the individual's means will be required.
13. If the trustees indicate that payments will be made to the individual during the calculation period, these payments will be included as income or capital as appropriate.
14. Consideration will be given as to whether it would be appropriate to refuse funding pursuant to regulation 39 of the Civil Legal Aid (Merits Criteria) Regulations 2012.

## **6.10 Life assurance and endowment policies**

1. Regulation 33 provides that the value of a life assurance or endowment policy is calculated as the amount which the individual could readily borrow on its security. This is the policy's "loan value".
2. 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.
3. Any loan value stated by the company is taken as capital.
4. If the individual supplies details of the surrender value of the policy, 90 per cent of this figure will be taken as an approximate figure for the 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 a further determination to be made on the basis that the individual will start to make repayments immediately if a loan is taken out.*



## 7. Capital Allowances and Disregards

### 7.1 Subject matter of dispute (Regulation 38)

1. Regulation 38 provides for a disregard of capital which is subject matter of dispute.
2. However, the amount disregarded under the subject matter of dispute rule shall not exceed £100,000; where the individual's interests in such assets exceed £100,000, the excess will be included within the financial determination.
3. For disputed assets held in joint names, the guidance on jointly owned assets (and joint accounts), set out in paragraphs 6.2.8-10 will still apply.
4. In dealing with property assets which are in dispute the following hierarchy of disregards will apply.

#### **Where an individual's main or only dwelling in which he resides is the subject matter of dispute –**

Step 1(a). Apply the **mortgage disregard** to the value of the property to establish the total amount of equity within the property;  
(b) Determine the individual's share of this equity. Multiply total equity assessed under Step 1(a) by the individual's percentage share of the property.

Step 2. Apply the **subject matter of dispute disregard** of £100,000 to the individual's share of any equity within the property.

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.

**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 (main dwelling only).**

5. 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 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 1:*

The applicant has a home worth £500,000 and the mortgage is £150,000.

Value of Home	£500,000
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Deduct selling costs 3%	-£15,000
Deduct mortgage:	-£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>

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

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

The individual is therefore **eligible** for civil legal services in this example, provided other capital does not exceed the £8,000 upper limit.

*Example 2:*

The applicant has a home worth £600,000 and the mortgage is £150,000.

Value of Home	£600,000
Deduct selling costs 3%	-£18,000
Deduct mortgage:	-£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	-£100,000
Remaining Equity	£116,000
Apply Equity exemption for main dwelling property	-£100,000
<b>Capital assessed</b>	<b>£16,000</b>

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

**Cross-reference:** see paragraph 2.3.

## 7.2 Disregarded payments (Regulation 40)

1. Regulation 40(1) provides that the following payments are disregarded from disposable capital:
  - (a) “back to work bonus” payments received under s.26 of the Jobseeker’s Act 1995;
  - (b) (i) any payment made out of the social fund under the Social Security Contributions and Benefits Act 1992 or the Social Security Contributions and Benefits (Northern Ireland) Act 1992; or  
(ii) 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;
  - (c) the whole of any payment made out of the Independent Living Funds 2006 or out of the Welsh Independent Living Grant;
  - (d) Any payment made under the Windrush Compensation Scheme; and any Windrush connected payment.<sup>5</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; and
  - (g) Any payment made from a Relevant Infected Blood Support Scheme or earlier support schemes.<sup>6</sup>

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<sup>5</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>6</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.

2. The Director may exercise discretion provided by Regulation 40(2) to disregard a payment which meets all of the following conditions:
  - (i) the payment was made to an individual who is a victim of the fire at Grenfell Tower;
  - (ii) the payment was made to that individual because the individual was a victim of the fire at Grenfell Tower; and
  - (iii) the payment was not made directly to the individual 'A' 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>7</sup>
  - (b) the National Emergencies Trust.
  - (c) the We Love Manchester Emergency Fund.
  - (d) the London Emergencies Trust.

### **7.3 Household furniture, clothing, tools of the trade (Regulation 34)**

1. Except in exceptional circumstances, the following items are disregarded:
  - (a) the household furniture and effects of the individual's main dwelling. (Included in this category is any motor vehicle in regular use by the client and/or their partner save for those of exceptional value).  
**Cross-reference:** see paragraph 6.3.37 and 6.3.40.
  - (b) articles of personal clothing.
  - (c) the implements of the individual's trade (unless forming part of the individual's business capital).

If any of these articles are of exceptional value or quantity, there is discretion to include them as capital.

### **7.4 Pensioner's disregard (Regulation 41)**

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

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<sup>7</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.

**Note:** Do not anticipate a individual or 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 3 i.e. £100,000 will be applied to their capital.
3. For non-passported individuals meeting the age criterion, follow the process below:
  - (a) the disposable income is calculated 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 over the lower income limit, the amount of disposable capital is assessed in accordance with the normal regulations;
  - (c) if, however, the disposable income (calculated in accordance with (a)) is the same or less than the lower income limit, then the capital held up to the maximum available for the particular income is disregarded in accordance with the table in regulation 41; and
  - (d) the income produced from capital (e.g. interest on savings or dividends from shares excluded at (a)) will then be added back to the calculation of the individual's disposable income

*Example:*

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

Total disposable capital (after other allowances and disregards) is £75,000. Deduct the pensioners disregard in accordance with the table in regulation 41 of £70,000.

Disposable capital is therefore £5,000

Contribution from capital required £2,000.

## **7.5 Interim payments (Regulation 42)**

1. Capital received in connection with the incident giving rise to the dispute will not be automatically disregarded. Regulation 42 provides discretion to disregard such payments.
2. Interim payments are exempt from the statutory charge where essential to protect the legally aided party's interests or welfare. The purpose of this exemption (i.e. to allow the legally-aided individual to receive the interim payment whilst the case is going on) will be defeated if it is paid to the Lord Chancellor by way of a capital contribution. Further, interim payments are often made to meet an individual's immediate needs. Therefore, in general, the Director will disregard interim payments unless, having regard to the amount and purpose of the payment, the Director is of the view that the legally-aided individual can afford to proceed without the benefit of legal aid.



3. 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 legal aid, then the interim payment *will* be taken into account and the previous determination withdrawn. Any contribution from capital will usually only be called for to meet costs incurred after the date the interim payment was made.

## **7.6 Capital subject to a restraining/freezing order (Regulation 43)**

1. This is a court order which freezes all or part of the client's assets pending the outcome of litigation. The client 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 client 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 Director must be provided with a copy of the court order and any associated affidavit of means as this will list relevant assets and show the amount the individual is allowed access to.
3. The starting point in these cases is, therefore, to carry out the financial determination ignoring the injunction. 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 interest 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 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 Director under regulation 43 may 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.*

## **7.7 Allowance for secured debts (Regulation 37)**

1. There is no provision in the regulations for unsecured debts including loans or credit cards. The Director will make a deduction for debts secured on the individual's property by way of a charge. Such debts are dealt with by regulation 37.

**Cross-reference:** see paragraphs 6.4 and 6.5





## 8. Calculating Business Income

### 8.1 Introduction

1. 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 individual concerned. 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. It is entirely within the Director'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.

**Cross Reference:** see paragraphs 8.2.3-4 on assessing income from accounts.

2. As a general principle, the determination of income will be based on the amount the individual has earned from the trade or business during the calculation period i.e. usually the last month.
3. 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.
4. For that reason, regulation 22 provides that the Director may have regard to the profits of the last accounting period for which accounts have been prepared.
5. 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:  
$$\text{Total Income from business} - \text{business expenses} = \text{Net Profit}$$
6. 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.
7. 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. the loss is not offset against any other income or net profit which the individual may derive from other sources (including other businesses).*

## 8.2 Sole traders

1. A sole trader is entitled to receive the whole of any profits for the particular business activity. The Director 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; and
  - (c) their HMRC calculation sheet and/or statement of account.

If accounts are not available then form L31 should be 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 three line account at question four on CIVMEANS1A.

### Financial determinations based on accounts

3. 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.
4. The net profit figure shown on the individual's profit and loss account forms the basis of the income calculation. It will, however, be necessary to adjust the net profit figure as shown on the accounts in accordance with paragraphs (a)–(d).

(a) Adjustments to net profit figure in accounts:

(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 determination 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 lives and works in the same property or the business owns motor vehicles.

If no figure for private use is in the accounts then it will be assumed that:

- (a) the private use element of motor vehicle is 20 per cent
- (b) the private use element of accommodation costs is 20 per cent—these costs will be listed in the accounts as light and heat, rental payments, “loan interest”, water rates, etc.

The private use element will be added back 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. claimed as both business expenses under regulation 22 and housing costs under regulation 28. Only those housing costs (i.e. rent or mortgage) which have not already been allowed as business deductions in the accounts, should be deducted under (where this relates to the individual's main dwelling) under regulation 28.*

- (ii) Entertainment costs  
Not allowable for tax purposes. Therefore any deductions made in the accounts for entertainment are added back onto the net profit in full.
- (iii) Other income  
Any other income declared in the accounts will be added back 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.  
If, however, amounts are shown for drawings in the profit and loss account, these are added back onto the net profit figure.  
**Note:** *If the individual's spouse's or cohabitee's salary is deducted from the net profit do not add this back but instead include the amount as the spouse's/cohabitee's taxable income in the financial determination.*

**Cross reference:** see paragraph 8.1.1 concerning the use of profits or drawings.

(v) Depreciation  
Any depreciation included in the accounts is added back. A deduction for Capital Allowances will be made instead.

(vi) Bad Debts  
Any provision for bad debts contained in the accounts will be added back. The assumption is that these are a one-off provision which will not necessarily be repeated in the future.

(b) Capital Allowances claimed on CIVMEANS1A for paper applications or as declared on relevant CCMS question will be deducted.

**Note:** Where the *accounting period is for a period other than 12 months, the figures will be apportioned accordingly.*

(c) The resulting 12 month profit will then be divided by 12 to give the monthly income.

### **Financial determination based on L31**

5. If no other evidence is available, profit will be based on the individual's estimate of net profit.
6. If the turnover is greater than £15,000 then the individual must complete form L31 providing details of monthly receipts and outgoings. Any expenses claimed will be adjusted in accordance with paragraph 4—above on accounts.
7. The average monthly income (profit) will be based on the average income from the last six months as declared on Form L31.
8. Any capital allowances claimed on form CIVMEANS1A for paper application or as declared on the relevant CCMS question, will be deducted from the estimated profit and this revised figure will be used as income (where profit is used in preference to drawings) in the determination.

### **Financial determination based on CLSMEANS1A**

9. If the turnover from the business is less than £15,000 and no accounts are available then profit will be based on the three line account on the CLSMEANS1A or as declared on relevant CCMS question. No adjustments will need to be made to this figure for private use etc. but a deduction will be made for any capital allowances claimed. The net profit figure declared will be apportioned to a monthly figure, e.g. divided by 12 if annual figures have been provided and that monthly figure will be used in the financial determination.

## **8.3 Partnerships**

### **Calculating net profit**

1. For partnerships the general principles for financial determination as outlined in 8.1 above still apply, but each business partner will only be entitled to a share of the net profit for the business. The Director 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 above.
3. Having determined the net profit for the business it is necessary to apply the relevant share of the profit to each business partner. 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), will be multiplied 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 business partner may also be entitled to a salary or wage. Any wage or salary declared (at question six on CIVMEANS1B for paper applications or relevant question on CCMS) will be included in the financial determination. This will be in addition to any share of the net profit calculated above.

## **8.4 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 is the sole shareholder and director of a company who therefore 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.
3. In most cases Form CIVMEANS1C together with the company accounts will provide all the information needed about the company and the director's income.
4. Company accounts are requested on the CIVMEANS1C. The provision of accounts will be expected as a matter of course for financial determinations involving a limited company.



5. The accounts supplied should be the most recent, which will normally be for the accounting period ending in the preceding tax year.

## Company Director's income

6. Company 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.
7. Company 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 sometimes as drawings.
8. Details of the most common payments to company directors are given below:

- (a) Salary

The salary that the company director may expect to receive during the calculation period will be given on Form CIVMEANS1C or L17. Salary may be described as drawings on the form. Both are treated as income.

Questions about the directorship on page two of Form CIVMEANS1C asks how much the director has received and over what period it was paid. The amount declared on the Form CIVMEANS1C will be divided by the period stated to establish a monthly amount.

- (b) Bonus/commission

Included as income will be one twelfth of the annual amount of any bonus or commission that the individual has earned or will earn, as declared on the CIVMEANS1C.

- (c) Dividends

Included as income will be one twelfth of the annual amount of dividend that the individual has received, or is likely to receive, taken from page five of the CIVMEANS1C or the accounts.

- (d) Benefit in kind. The annual taxable value of the benefit in kind will be declared on page three of Form CIVMEANS1C. One twelfth of this taxable value is treated as income.

- (e) Director's fees

It will be established whether any directors fees have been voted **in addition** to the director's salary and other payments declared on the CIVMEANS1C. Included as income will be one twelfth of the annual amount of any voted director's fees whether paid or not.

- (f) Other Income

It will be established whether the company director receives income in any other form not declared on the CIVMEANS1C. If so, the Director (of the Legal Aid Agency) will assume that the income will continue to be received and include that income in the financial determination.

- (g) Allocation of profits from the accounts  
If the individual and/or their partner (as defined within regulation 2) have a controlling interest in the company (i.e. together or in aggregate they own 51 per cent 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 Director will include the allocation of profit in the financial determination by the following method:

- (i) Establish the issued ordinary share capital i.e. the total number of shares issued by the company from the CIVMEANS1C or accounts.

- (ii) Establish the number of ordinary shares held by the individual and their partner.  
The percentage shareholding will be calculated as follows.

Ordinary shares held (Issued ordinary share capital  $\times$  100).

This calculation will 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 per cent 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, the following steps will be carried out:

- (iii) The company's net profit after taxation will be established. This will be obtainable from the company accounts or CIVMEANS1C. The figure after the payment of corporation tax and dividends will be used.

Any previous losses that are shown on the accounts will not be offset.

Any items already allocated as director's income under the above categories will not be included in the profit.

- (iv) **Allocation of profit.** The profit after taxation will be multiplied by the percentage shareholding of the individual and their partner to obtain their individual shares of the profits. One twelfth of this annual figure will be factored in as income.

## 8.5 Business Income Allowances

### 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. 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 which have been passed through the business accounts.
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 any amount which is declared in the accounts as private use will be allowed under regulation 28. If no figure is contained in the accounts then 20 per cent of the property costs in the accounts will be assumed as private use expenses and allowed as a deduction under regulation 28. The remainder will not be allowed as a deduction, as this will have been taken into account in the net profit figure calculated as income.
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, the figure entered on Form CIVMEANS1 will be ignored. For on-line applications through CCMS the figure should be amended to zero.
4. Where the individual has declared partial housing costs on CIVMEANS1 or CCMS and property costs have been included in the accounts then the personal housing costs allowable under regulation 28 will be restricted to the amount which has been added to the net profit figure as "private use".

**Cross-reference:** see paragraph 5.5.

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

5. 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. No further deduction from income will be made in the financial determination in such cases. If the repayments are not included in the accounts then these will be treated as any other personal loans i.e. no allowance will be made for unsecured loans; an allowance can be made under regulation 28 for monthly repayments where the debt is secured by way of a charge on the individual's main home.

## 8.6 Special Groups: Business Cases

### Sub postmasters/postmistresses

1. 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.
2. The post office salary will be declared on wage slips or Form L17. This is brought to account in the normal way and included as income for tax purposes and Class 1 National Insurance contributions.
3. 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.
4. The process for determining income is as outlined in paragraph 8.2. However, it is important that the net profit figure excludes the salary from the post office. If the accounts for the business include the salary from the post office then the amount of the salary will be deducted before determining net profit.
5. The person will be liable for NI Class 1 contributions on their salary and Class 2 and 4 contributions on their business profit.

**Cross-reference:** see paragraph 5.2.3 for calculating NI contributions for an individual who is both employed and self-employed.

### Child Minders

6. 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 three line account on CIVMEANS1A or on the relevant question on CCMS. If no records of expenses are kept then two-thirds of the gross receipts will be taken as the net profit even if the estimated net profit figure on the CIVMEANS 1A or CCMS is less than that amount.
7. Income tax and national insurance (class 4 payment) will only be deducted where there is evidence of a liability, as set out in sections 5.1 and 5.2 of this guidance.

## **Shell Holding Companies**

8. 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 share holding the other companies will be known as either “subsidiary” or “associated” companies.
9. The consolidated accounts should be provided if a person is a director of a shell holding company. The procedure outlined in paragraph 8.4 will then be followed using those accounts to calculate income. See also paragraph 9.5 company directors, to calculate business capital.

## **Bankruptcy**

10. 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. Details of current earnings and/or any estimated net profit if they have commenced a new business should be provided. In addition, information will be sought from the Trustee in Bankruptcy to determine what assets and income may still be available to the individual.

## **Liquidation and Receivership**

11. If the company is in the process of liquidation, receivership or administration then previous accounts will not be used to calculate income. A business capital calculation will not be undertaken in such circumstances.
12. 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.
13. The gross amount of any income the individual will be receiving from the firm will be brought to account as income.
14. If it is stated that during the calculation period the individual will receive capital following the liquidation, this will be brought to account under regulation 32 as money owing to the individual.
15. Following the liquidation the person appointed as liquidator/receiver is required to file a statement of liquidation at Companies House. A copy of this statement should be provided by the individual to check capital.



## 9. Determination of Business Capital

### 9.1 Introduction

1. Valuing business capital is dealt with by regulation 36. 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.
2. 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.
3. 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 will be taken into account. The capital of the business as a whole will 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.

4. The individual may own or co-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 6.3.20. It will be appropriate to do this if the individual either wholly owns the business or is a director and owns at least 51 per cent of the company shares.

### 9.2 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 business capital calculation.
3. The individual must provide to the Director 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. 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.
5. If the individual owns more than one business, each business will be assessed separately, unless they are Shell holding companies. **cross-reference:** see paragraph 8.6 Special Groups).

## 9.3 Sole Traders

### Regulation 36(2)(a) capital that can be withdrawn

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 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.  
If the Director 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 will be brought to account.
  - (c) Current bank accounts.  
This may appear as cash at bank in a balance sheet.  
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. In certain circumstances, however, this money may be treated as capital in the financial determination.

(d) Bank deposit accounts.

If the individual has funds accumulating in the business deposit accounts it will 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.

(e) Overdrafts.

Accounts in credit will not be offset against overdraft accounts in considering capital unless the individual is able to confirm the overdraft facility is withdrawn or the bank requires 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 a individual's business may have an overdraft facility available does not mean that this should be treated as capital.*

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

1. As this valuation is based on the individual's borrowing power it is not appropriate to apply this valuation to an individual who is in receipt of a passporting benefit listed in regulation 6(2); otherwise, it is not appropriate to calculate a business borrowing value in respect of an individual whose disposable income does not meet the condition set out in Regulation 44(2)(b).
2. In order to calculate the individual's borrowing power it is first necessary to calculate the underlying value of the business. The Director will 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. This constitutes, in effect, the lowest valuation of a business as unlike other methods a liquidation value does not take into account the expected future profits.
3. 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 calculated under regulation 36(2)(b).

## 9.4 Partnerships

### General

1. Where the Director is carrying out a financial determination where the individual's partner (as defined under regulation 2) is also the individual's business partner:
  - (a) if together they own the whole of the business then the business will be treated as that of a sole trader for the purposes of the determination;
  - (b) if there are other business partners, then the individual's and partner's aggregated share of the business will be used in the valuation.
2. If the individual and partner are business partners in the same business but their financial resources are not to be aggregated (i.e. contrary interest in proceedings), then the individual's share will be worked out 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 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. For individuals who are not passported, this income will therefore be included in the financial determination in accordance with the usual rules.*

**Cross-reference:** see paragraph 2.3 on SMOD.

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

3. If the individual (include partner's share, if aggregated) owns less than 100 per cent of the business capital—the value of the asset taken into account under regulation 36(2)(a) will be multiplied by the percentage of the business owned by the individual (and partner). The individual is asked to state his/her share of the business on CCMS or in respect of paper applications on form CIVMEANS1B (or on Form CIVMEANS 2A if in receipt of passporting benefit).
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, no adjustment will be made 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 the liquidation value of the business as a whole will be calculated.
8. Once the liquidation value is obtained, it will be necessary to adjust the same to reflect the individual's share (include partner's share, if aggregated). This is because it is only the borrowing value of the individual's interest in the business which will provide the value. Only the share of the capital which is attributable to the individual is brought into account in the determination as follows:
9. The total liquidation value is multiplied by the individual's percentage share of capital. To obtain the business borrowing value this is multiplied by 67 per cent.

## 9.5 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 6.3.20.

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 included in the financial determination in accordance with regulation 36(2). In other words, the individual will be treated as if he or she was a sole owner/business 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)(b). Generally, directors of small family companies will 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. The capital value of the company as a whole will not be calculated 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 per cent 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.
4. Instead, if any of (a)–(d) above apply, the value of the shares owned by the individual will be calculated in accordance with paragraph 6.3.26 of this guidance.

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

- 5. The current value of the asset or assets under regulation 36(2)(a) will be worked out in the normal way – using the guidance in paragraph 9.3.1 above.
- 6. The figure obtained will be taken in full as capital if the individual/partner owns 75 per cent or more of the shares in the company.
- 7. Any figure obtained will be multiplied by 80 per cent if the individual owns between 51 per cent and 74 per cent of the shares.

*Example:*

Value of assets = £20,000.

If individual owns 60% of the shares.

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

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

8. Where a business borrowing value has been calculated for a company under regulation 36(2)(b), a reduction will be made to take into account the percentage of the company's shares owned by the particular individual. The following procedure will be followed:
- (a) 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 their means are aggregated, the aggregated shares held and voting shares controlled will be used when calculating the percentage shareholding and abatement.  
The total liquidation value will be multiplied by the individual's percentage shareholding. To calculate the individual's percentage shareholding, the number of shares held by the individual will be divided by the total number of shares issued by the company and multiplied by 100.
  - (b) 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 per cent, 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 per cent to 74 per cent of the shares, the figure is multiplied by 80

per cent. If the individual owns 75 per cent of the shares or more, it is multiplied by 100 per cent.

If the individual and/or their aggregated partner own in total less than 51 per cent of the shares, a business borrowing value will not be calculated, but instead the value of the shares themselves will be calculated.

**Cross-reference:** see paragraph 6.3.20.

**Note:** *When working out the abatement, any voting shares owned by the individual will be included in the calculation of the percentage shareholding above.*

- (c) To calculate the borrowing value the figure now arrived at representing the individual's share of the liquidation value, will be multiplied by 67 per cent. This figure will be included in the calculation of the individual's capital.

## **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 company 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 company director has put into 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 a loan/current account is treated in the financial determination is as follows:
  - (a) the amount owing to the director under these accounts is taken as capital under regulation 30;
  - (b) if only part of the money is repayable now, then that part is taken as capital;
  - (c) if documentary evidence shows that a loan is repayable in regular instalments, the full loan will not be taken but instead the repayments receivable during the calculation period set out in regulation 14(3) will be factored in as income.



## 10. Special Groups – Non Business

### 10.1 Child applications

1. An application by a child is any application submitted by a person who is under the age of 18 years. In such cases the application for civil legal services must be made on behalf of the child by a person aged 18 years or over.
2. The financial determination is normally carried out based on the child's resources; however where the application is made in respect of family proceedings, the resources of a parent, guardian or any other person who is responsible for maintaining him, or who usually contributes substantially to his maintenance, are required to be treated as his resources, unless, having regard to all the circumstances, including the age and resources of the child and any conflict of interest, it appears inequitable to do so (regulation 16(4)). More generally, in all cases, regulation 16(5) allows for the resources of any person providing financial support to the applicant to be considered for inclusion within the financial determination.
3. For a child applicant under the age of 16 years, a shortened assessment may be undertaken (for paper applications Form CIVMEANS4 may be submitted), if the child does not have any regular income and if capital is less than £2,500. Therefore, in such cases, provided it is **not** considered appropriate to aggregate the child applicant's resources with their parent, guardian or a third party under regulation 16(4) or regulation 16(5) respectively, a financial determination will be made that the child is eligible for civil legal services.
4. In all other cases, a full assessment is required (paper applications would be made on Form CIVMEANS1) and the child's income and capital (as well as the income and capital of any person with whom their resources are to be aggregated will be calculated in the normal way.

**Cross-reference:** see paragraph 3.3 for further guidance on child applicants in family cases

### 10.2 Applications submitted on behalf of children/patients

1. Applications by children and patients (as defined by the Mental Health Act 1983) will 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 necessary information to the provider. 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.

2. In cases where the application is made by a professional guardian ad litem or a provider acting for a child direct, there is a separate declaration signed to that which is usually signed by applicants (on paper application this would be the declaration at "B" in the CIVMEANS1 form). This is a limited form of declaration which recognises that the provider or guardian is dependent on others for the completeness and accuracy of information given and refers to making reasonable enquiries and exercising due care and diligence.
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 refusing applications or withdrawing a determination on the basis of non-co-operation.

### **10.3 Police Officers**

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 and will be added to the person's gross income for these purposes. In the absence of any better information the income shown on the pay slip or quoted on Form L17 will be assumed to include these payments.

**Cross-reference:** see paras.5.1 and 5.2.

The housing costs as stated on CCMS or paper form CIVMEANS1 will be allowed as normal.

### **10.4 Prisoners**

1. Any earnings received under the pre-release employment scheme along with any prison wages will be included as income.
2. The resources of a partner will 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 Director 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 paragraph 3.1.2.

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 will 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 benefit listed in regulation 6(2), the individual will not be "passported" as the partner's benefit claim will not include a payment in respect of the individual. In such cases regulation 4 will apply i.e. the Director must determine whether the individual's income and capital are such that he is eligible for civil legal services in accordance with the regulations.

## **10.5 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 CIVMEANS1). Different rates of tax and child benefit may apply in such cases. Disposable income and capital is then calculated in the normal way.

## **10.6 Individual resident outside UK (not HM Armed Forces)**

1. Applications will be dealt with by the relevant regional office, (the Special Cases Unit retains responsibility for carrying out the financial determination for Multi Party Action cases).
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 CIVMEANS3) 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 their 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;
  - (d) the value of any benefits in kind;

4. Rates of exchange will be taken from the Financial Times (or other appropriate newspaper or website) as they apply at the date the financial determination is made.
5. Where, in the view of the Director, a more detailed investigation should be performed, and the referral criteria are met, then consideration will be given to referring the case to the Counter Fraud and Investigations team.

## 10.7 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. The various types of payments are received by such individuals, and the guidance below indicates how each of these will be treated in calculating gross income and disposable income.
2. Income:
  - (a) **Local Overseas Allowance**—This is a cost of living addition for a serviceman living abroad which is similar to London Weighting. This is included as income.
  - (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 is included as income.
  - (c) **London Allowance**—This is a cost of living addition for a serviceman living in London which is similar to London Weighting. This is included as income.
  - (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 instead of an order book etc. This is included as income (see also cross-reference, below).  
**Cross-reference:** see paragraph 4.6.4 on Child Benefit.
  - (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.
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.
  - (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 for these expenses will be made.

- (c) **Quartering 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 is made for these additional accommodation costs.
- (d) **Food charges**—The lower income limit i.e. the figure prescribed in regulation 44(2)(b) is designed to cover ordinary household expenditure such as food. An allowance for these charges **will not** be made.
- (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 these will be brought to account in the financial determination.
- (f) **Voluntary Allotments**—A serviceman may choose to allot a certain amount of money to a dependant or other person. An allowance in this respect will not be made, unless the individual states that these payments are in respect of voluntary maintenance paid as a result of separation or divorce.



## 11. Further and Amended Determinations

### 11.1 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.

### 11.2 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 7 below), a further determination is only made if either the individual's gross or disposable income or capital has changed by more than a fixed amount (for individual's in receipt of passporting benefits, a further determination of capital will be made if 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 deciding whether the review limits have been exceeded, the new income or capital figure will be compared to the corresponding figure(s) contained in the most recent determination on which the current funding certificate is based.
2. It may be that the particular change itself exceeds the review limit but has no effect upon the amount of income or capital calculated under the regulations, because that particular item was disregarded in the previous determination and under the regulations it is appropriate for the item to continue to be disregarded. In such a case a further determination will not be made.
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 using the original calculation period.

**Cross-reference:** see paragraph 11.3.

4. Even where the review limits have been exceeded, the Director will not undertake a further determination unless that change is likely to be permanent. For example, if an individual contacts the Director 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 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 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 calculation of both income and capital can be made to determine whether the individual remains eligible for civil legal services.
8. Where a new source of capital has been acquired, then the further determination of capital will include the value of that capital at the time that it was received.

**Cross-reference:** see paragraph 11.4.

### **11.3 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 determined as "nil contribution" and where the amendment will lead to a reduction in the disposable income or capital, there is no need for 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 determination 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.

4. It is not always necessary to undertake a complete further determination of disposable income and capital. 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. The amended determination will be made using the original calculation period.

## 11.4 Further determinations due to receipt of capital

### General

1. Where an individual receives a capital sum during the proceedings, following a previous determination of eligibility for civil legal services, the individual should report the change and complete form CLSMEANS5 where necessary in order that all relevant information can be obtained.
2. A further determination will be made where it appears that disposable capital may have increased by an amount greater than the review limit (£750). The further determination must however take account of any capital disregards.

**Cross Reference:** see s.7.

3. In calculating disposable capital, the value of each asset (including any capital derived from a bank loan or borrowing facilities) will be taken to be its value at the date that it was received.
4. Where the individual has indicated that they have already spent some/all of the capital since receiving it, then consideration will 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 furniture etc.
5. 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 or a discretionary disregard that the Director is minded to apply, then there are no grounds to treat this as deprivation.

**Cross Reference:** see paragraph 2.4.

6. If the asset in question previously formed the Subject Matter of the Dispute (SMOD), then the statutory charge may apply, in which case no further determination will be made if this is the only asset which has been received.

### Calling for contributions from capital

7. Once a further determination has been carried out 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 determination.

8. 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 that stage.
9. 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 the limit set out in 44(3)(b) (i.e. £3000), whichever is the lesser figure.
10. 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 disposable 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.
11. Where the determination is withdrawn i.e. the client 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.
12. Where a determination in relation to which a certificate was issued is to be withdrawn on capital grounds (i.e. as the individual's capital exceeds the upper limit) the Director will consider whether to call for a contribution to cover the costs of the case prior to receipt of the capital as well as any costs incurred after, i.e. to call for a retrospective contribution covering all costs incurred under the certificate. 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.
13. In all cases where the asset had been wrongly claimed as SMOD at the outset of the case, then a retrospective capital contribution will always be called for, as the statutory charge will not attach to such assets.
14. In most other cases a retrospective capital contribution will also be called for before the certificate is withdrawn. Exceptionally, a retrospective contribution will not be required in the following circumstances:
  - (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.

- (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 capital towards the purchase of a new home. In these circumstances the Director will not require a retrospective contribution to be made prior to the certificate being withdrawn. (If this was the only asset received, then no further determination needs to be undertaken as the statutory charge may apply. Refer to paragraph 6 above).
  - (c) Where during a matrimonial dispute the former matrimonial home is sold 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. In such cases, however, 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 relatively small lump sum payment from their pension fund (or their partner's/former partner's pension fund), i.e. a sum not exceeding £8000. In such a case, the capital will be included in the calculation of disposable capital, but a retrospective contribution will not be required from that capital prior to the certificate being immediately withdrawn.
15. If the individual advises that there are exceptional circumstances that will mean a retrospective contribution will cause particular hardship, the Director may review the decision on that basis.



## 12. Transitional Cases

### Further assessment of certificates granted under the Access to Justice Act 1999 and Legal Aid Act 1988

#### 12.1 General

1. 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. 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.

**Cross-reference:** see also paragraph 12.1.5 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 5].

- (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 –
    - (i) the gross income cap will not be applied to such certificates;
    - (ii) as well as the allowances against income described in paragraphs 5.1 – 5.8 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. 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 12.3.1 below
5. 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.

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

### **General**

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

### **Council Tax**

- 2. Any Council tax paid by the individual is deductible from income. Therefore, the annual amount declared will be deducted for these transitional cases.
- 3. If the individual declares that the Council tax is being paid:
  - (a) monthly – then the monthly figure will be multiplied 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 (councils in Scotland) to give the total annual figure; or
- (b) weekly – then the weekly figure will be multiplied by 44.

4. Council tax allowable should be net of any Council tax reduction.

## Employment expenses

5. The following allowances apply to applications received before 3 December 2001 —

(a) Reasonable expenses incurred in travelling to and from work. The amount declared by the individual will be allowed provided it seems reasonable:

- (i) if a weekly figure is given, the figure is multiplied 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 travel expenses for the periods when it is assumed that the individual will actually be working will be allowed;
- (iii) where the individual is travelling to and from work by car then the mileage rate in Appendix 5 will be used taking the information on length of journey provided by the individual.

The general running costs of the vehicle will be included in the mileage figure and will 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.

(c) Superannuation and pension contributions are allowable as deductions against income. Also 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

6. This allowance is 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 x £1,081.12 x 12 = £7,642.68

7. If a mortgage debt is £100,000 or less, payments will be allowed in full.
8. If the individual has a second mortgage secured on the main dwelling, then these repayments will also be included, subject to the overall maximum debt not exceeding the £100,000 limit outlined above.

**Note:** *For reassessments on original applications made before 1<sup>st</sup> June 1996, mortgage repayments on the individual's only or main dwelling house are allowable in full even if the amount of the mortgage exceeds £100,000.*

### **Water rates**

9. The annual amount declared by the individual is allowed.
10. If the individual declares a monthly amount, this is multiplied by 10 to obtain the annual amount.
11. If the individual states that he pays water charges but does not specify a precise figure (e.g. because the water is metered) then the national average amount, specified in Appendix 5 is used.

### **Ground Rent and Service Charges**

12. These payments are allowable for pre-3 December 2001 transitional cases where the individual owns a leasehold property and is obliged to meet these payments. These will normally be allowed as declared.

### **Repairs and insurance**

13. For home owners a fixed allowance for repairs and insurance—see Appendix 5—will be allowed.
14. If an individual provides evidence that they face costs above the fixed allowance for necessary repairs during the calculation period, then consideration will be given to allowing the excess amount over the fixed allowance if these costs will be paid from income.

### **Discretionary income disregards**

15. Further assessments of pre-3 December 2001 applications may include discretionary disregards from income. These will fall into two categories:
  - (a) deductions against income for expenditure which the individual is either required to make or has reasonably provided for. The Director 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.

16. This will normally mean that the allowance relates to payments that are made periodically.
17. Only those payments which will actually be made within the calculation period will be allowed.
18. Even if the individual has a legal obligation to make the payments, if it is apparent that they will not be making them, then the payments will not be allowable as against income. An allowance could however be made subsequently if the individual provides evidence that they are now making payments, e.g. because they have had judgement entered against them.
19. Since the discretion deals with expenditure not specifically treated in regulations, care will be taken in exercising it. The following general points will 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, these would not normally be allowed as additional deductions from income.
  - (b) No allowance will be made where it is considered that the individual is acting to deliberately deprive himself of income, therefore the date when any commitment was entered into will be relevant.  
**Cross-reference:** paragraph 2.4
  - (c) An allowance will not be made solely because the 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 Director may decide to allow only part of the expenditure if he thinks the total amount is unreasonable.
  - (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.

### **Allowance against capital for money owed under a contingent liability**

20. An allowance shall be made 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.
21. **Note:** *Only contingent liabilities which arise under a "statute, bond, covenant, guarantee or other instrument" can be allowed.*

### **Overdrafts:**

22. For applications prior to 3 December 2001 only: the debt represented by an overdraft will be a deduction from disposable capital to the extent that the

individual satisfies the Director that the bank require it to be paid off during the calculation period.

## **Discretionary Capital Disregards**

23. For applications prior to 3 December 2001 there is general discretion to disregard all or part of any capital to meet the circumstances of the particular case.
24. The discretion will not be exercised in a manner inconsistent with the other regulations on capital assessment. In general, the discretion will be exercised with caution since the regulations do contain specific disregards and since the lower capital limit allows a substantial fund for contingencies.
25. It would normally be inappropriate to disregard capital, using general discretion, that 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 computed in accordance with Regulations.
26. 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.

## **12.3 Certificates Issued under the Legal Aid Act 1988**

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 will 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 client's interest in his only or 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.

### **Property owned which is not the main dwelling house – applications made before 1st April 2000**

- 2. For reassessments of applications made before 1 April 2000, the mortgage allowance is no longer capped at £100,000 — **Cross reference:** see paragraphs 6.4 – 6.6.
  
- 3. 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.

**Cross reference:** see paragraph 9.2 Business capital.

### **Debts – Reassessment of certificates issued under the Legal Aid Act 1988**

- 4. 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 during the calculation period. Documentary evidence of the existence of the debt and the obligation to repay it should be provided. If only part of the debt is payable during the calculation period, then only part of the debt will be allowed.

### **Interim payments - Reassessments on applications received before 1 October 1996**

- 5. Regulation 14B of the Civil Legal Aid Assessment Regulations (abolished with effect from 1<sup>st</sup> 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.
  
- 6. The present relevance of the regulation is on reassessments where the original assessment was made before 1<sup>st</sup> October 1996. In such a case, if a sum was disregarded under regulation 14B of the Civil Legal Aid Assessment Regulations on the original assessment, then any capital remaining from that sum will continue to be disregarded on reassessment. However, any further sums received after that date will be taken into account in the reassessment.

## **12.4 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 the 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 withdrawal (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 as applicable. 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 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 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 will then be amended accordingly.



## Appendix 1: Eligibility Limits

New and further determinations from 1 April 2013 (per month)				
Gross Income Limit	Disposable Income Limits		Lower Capital Limit	Upper Capital Limit
£2,657 higher limit applies where more than 4 child dependants	Lower £315	Upper £733	£3,000	£8,000

Gross income cap (per month)	
No. of dependant children	Gross income cap
Up to 4	2657
5	2879
6	3101
7	3323
8+	Add 222 to the above figure for 8th and each subsequent child



## Appendix 2: Determining Contributions

Income Contribution bands for new and further determinations of applications made on or after 1 April 2013:

Contribution bands from 1 April 2013 (per month)			
BAND	Monthly Contribution	Examples of Assessed Contributions	
A (£316 to £465)	35% of income in excess of £311	£316.00	$(316-311) \times 35\%$ = <b>£1.75</b>
		£390.50	$(390.50-311) \times 35\%$ = <b>£27.82</b>
		£465.00	$(465-311) \times 35\%$ = <b>£53.90</b>
B (£466 to £616)	£53.90 + 45% of income in excess of £465	£466.00	$53.90 + [(466-465) \times 45\%]$ = <b>£54.45</b>
		£541.00	$53.90 + [(541-465) \times 45\%]$ = <b>£88.20</b>
		£616.00	$53.90 + [(616-465) \times 45\%]$ = <b>£121.85</b>
C (£617 to £733)	£121.85 + 70% of income in excess of £616	£617.00	$121.85 + [(617-616) \times 70\%]$ = <b>£122.70</b>
		£675.00	$121.85 + [(675-616) \times 70\%]$ = <b>£163.30</b>
		£733.00	$121.85 + [(733-616) \times 70\%]$ = <b>£203.75</b>

Income contributions are payable monthly until the certificate is withdrawn.

### 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 amount.



## Appendix 3: Pensioner Capital Disregards

(N.B. These disregards apply, where the individual or their partner are aged 60 years or over at the start of the calculation period)

Monthly disposable income (excluding net income derived from capital)	Amount of capital disregard
Passporting benefit recipient	£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
<b>Above £315</b>	<b>NIL</b>





## Appendix 4: Dependants' Allowances

The following allowances are payable for a partner and dependants in the client's household (age refers to child's age at the start of the calculation period):

<b>Applications/reassessments received on/after 12.04.2021</b>	
Child aged 15 or under	£298.08
Child aged 16 or over	£298.08
Partner	£185.54
Adult dependant relative	£298.08



## Appendix 5: Access to Justice Act Transitional Cases - Eligibility thresholds and miscellaneous limits

<b>Eligibility limits for certificates granted on applications made before 1 April 2013 and after 3 December 2001 (per month)</b>				
<b>Gross Income Limit</b>	<b>Disposable Income Limits</b>		<b>Lower Capital Limit</b>	<b>Upper Capital Limit</b>
£2,657 higher limit applies where more than 4 dependant children	Lower £315	Upper £733	£3,000	£8,000

<b>Contribution bands for certificates on applications made before 1 April 2013 and after 3 December 2001</b>		
<b>BAND</b>	<b>Monthly Disposable Income</b>	<b>Monthly Contribution</b>
A	£316 to £465	1/4 of income in excess of £311
B	£466 to £616	£38.50 + 1/3 of income in excess of £465
C	£617 to £733	£88.85 + 1/2 of income in excess of £616

<b>Additional gross income cap on applications made before 1 April 2013 and after 3 December 2001</b>	
<b>No. of dependant children</b>	<b>Gross income cap</b>
4	2657
5	2879
6	3101
7	3323
8+	Add 222 to the above figure for 8th and each subsequent child

**Miscellaneous limits and rates for further assessment of applications received before 3 December 2001 only.**

<b>Assessment limits for certificates on applications before 3<sup>rd</sup> December 2001 cases (per annum)</b>			
<b>Lower Income Limit</b>	<b>Upper Income Limits</b>	<b>Lower Capital Limit</b>	<b>Upper Capital Limit</b>
£3,780	£8,796	£3,000	£8,000

<b>Personal Injury Limits (apply to 1988 Act cases only) (per annum)</b>			
<b>Lower Income Limit</b>	<b>Upper Income Limits</b>	<b>Lower Capital Limit</b>	<b>Upper Capital Limit</b>
£3,780	£8,796	£3,000	£8,560

<b>Miscellaneous allowances/rates</b>	<b>values:</b>
Accommodation provided by employer (Maximum Taxable Value)	£16,200 Per annum
Interest on Savings (Assumed Rate)	1.25%
Mileage Rate (Based on AA Mileage Rate)	15p per mile
Pay Rise Factor Based on RPI	2.0%
Rent Allowance (Maximum Monthly)	£1,350 per month
Repairs and Insurance (Fixed Allowance)	£285
Statutory Redundancy Payment Maximum	£6,300
Student Grants Disregard	£520
Water Rates (National Average)	£225



## Appendix 6: Legal Representation for proceedings in the Immigration and Asylum Chamber of the Upper Tribunal.

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’.
- 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 Regulation 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)].
- An individual who is directly or indirectly in receipt of Asylum Support provided under s.4 or s.95 of the Immigration and Asylum Act 1999 is ‘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 (IAC) Work 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

See Appendix 7 for details of evidential requirements for Upper Tribunal (IAC) work (and other proceedings).

## Transitional Arrangements where controlled work matters started before 1 Sept 2018

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. (Refer to the assessment guidance within the Guide to Determining Financial Eligibility for Controlled work and Family Mediation, for transitional cases).

## Summary of miscellaneous limits applicable to Upper Tribunal (IAC) work:

<b>New and further determinations (per month)</b>		
<b>Gross Income Limit</b>	<b>Disposable Income Limit</b>	<b>Disposable Capital Limit</b>
£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 12.04.21</b>	
<b>Dependants Allowances:</b>	
Dependant aged 15 or under	£298.08
Dependant aged 16 or over	£298.08
Partner	£185.54
<b>Employment Expenses</b>	£45
<b>Housing Cap</b> (for those without partner or dependants)	£545

See also the **Pensioner Disregard table in Appendix 3**. 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 or Universal Credit – are deemed to have nil income and therefore 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.



## Appendix 7: Evidence

The following guidance is provided to clarify the type and amount of evidence that should be provided in support of an application for civil legal aid (certificated work).

### **Bank Statements:**

Following advice from the National Audit Office, statements for all financial accounts held i.e. bank, post office, building society accounts etc. (“bank statements”) are requested for all applications where an assessment of means is to be carried out. Bank statements are required for all accounts held in the name of the individual and their partner (where applicable) or in the name of a business entity to which they are a signatory. Bank statements are required for all accounts that the individual or partner has access to (including children’s accounts). The latest transaction on the bank statements for accounts in regular use, (e.g. current or household accounts etc), should usually be within one month of the date of application.

**Full assessments:** Bank statements covering three consecutive months are requested for non-passported individuals.

**Capital-only assessments:** Bank statements covering one month are requested for individual’s in receipt of passporting benefits where a capital assessment is still required. However, the Director may ask for statements covering a longer period (i.e. more than one month) if certain risk factors are present. Such risk factors may include amongst others: the amount held in the account where it appears that the individual’s capital is near a financial threshold [i.e. the contribution threshold of £3000 applicable to most certificated work or the upper capital threshold of £3000 applicable to Upper Tribunal (IAC) immigration cases or £8000 applicable to other certificated work including Upper Tribunal (IAC) asylum cases]; or the previous conduct of individual in relation to an application for, or continuance of a legal aid certificate (i.e. non-disclosure or non-cooperation).

The tables A - C below set out guidance on the type of evidence that is generally required to verify income, expenditure and capital.

### **Vulnerable Individuals:**

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:**

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

Source of income	Guidance on Evidence
Wage / Salary from employment	<p>Wage Slips:                      Latest 3 wage slips for 4 weekly or monthly paid;                      Latest 6 wage slips for weekly or fortnightly paid.</p>
Benefits-In-Kind from employment	<p>Tax form P11D should be provided</p>
State Benefits and Tax Credits	<p>This will usually be evidenced by the bank statements provided.</p> <p>Otherwise, an award notification or change of circumstances letter or bespoke letter from paying agency advising current award of benefit may be required.</p> <p>NB receipt of <b>passporting benefits</b> (income support; income-based jobseekers allowance; income-related employment and support allowance; guarantee credit or universal credit) will be checked directly through an IT link with the paying agency when the application is entered through CCMS; if the response indicates that the individual is not in receipt of the benefit or it is undetermined, the individual must provide recent written evidence showing receipt of the passporting benefit (i.e. within the past month) to facilitate a review.</p>
Income from self employment / partnership / company directorship	<p>This will usually be evidenced through trading accounts or relevant self assessment tax return if they have been trading for more than one year.</p> <p>If the business has been trading for less than a year then cash books or any other documentation showing the individual's business-related incomings and outgoings may need to be submitted.</p> <p>Drawings may be evidenced from the bank statements provided.</p> <p>Company Directors should provide form CIVMEANS 1C signed by an accountant.</p>
Pension Income	<p>Pension statement / letter                      Bank statement</p>

Source of income	Guidance on Evidence
Maintenance income	This will usually be evidenced from the bank statements provided – if these transactions are not clear, copies of receipts should be provided.
Student Income	A copy of the Student Award letter showing the bursary, grant or student loan amount for the current academic year should be provided
Rental / Board and Lodgings Income	This may be evidenced from the bank statements provided; otherwise provide copies of the relevant tenancy or lodging agreement or copies of receipts.
Asylum support (previously known as NASS support)	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.
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>If the individual or their partner are receiving financial support from a third party and the level of support cannot be evidenced from the bank statements provided, it is likely that a letter from the third party will be requested to confirm the nature and extent of 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 owned by the third party, or payment of the individual's mortgage / rent / board and lodging elsewhere).</li> </ul> <p>The completion of form CIV Means 1 may be required where the individual appears to be wholly financially dependant on the third party, to determine whether an aggregated assessment is appropriate.</p>

Source of income	Guidance on Evidence
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: Expenditure

Type of Expenditure	Guidance on Evidence
Income Tax	<p>This will usually be gleaned from the wage slips provided for employees</p> <p>Latest HMRC tax calculation for the self employed / company directors, showing evidence of the tax liability.</p>
National Insurance	<p>This will usually be gleaned from the wage slips provided for employees</p> <p>Latest HMRC tax calculation for the self employed / company directors showing evidence of the liability. (The standard deduction of Class 2 liability only will be made for the self-employed unless evidence of Class 4 liability is provided via the tax calculation sheet).</p>

Type of Expenditure	Guidance on Evidence
Evidence of housing costs: mortgage / rent / accommodation fees (board and lodgings)	<p>Mortgage and rent payments will usually be evidenced via the bank statements</p> <p>Cash rent payments should be evidenced by receipts from the landlord / copy of rent book / rent statement. (The relevant cash withdrawals should be highlighted on the bank statements).</p> <p>Non-householder accommodation fees (“board and lodgings”): the individual is expected to provide a letter from the landlord / person they are making the payments to. The letter should specify how much of the payment covers for food and utilities, and how much is for accommodation where these are set amounts. If a lodging agreement is held a copy should be provided.</p>
Evidence of childcare payments	<p>This will usually be evidenced from the bank statement (where it is clear what the payment relates to – direct debits/standing orders).</p> <p>Cash payments should be evidenced by receipts from the care provider. (The relevant cash withdrawals should be highlighted on the bank statements).</p> <p>Copy of agreement / contract with child care provider</p>
Evidence of maintenance payments	<p>This will usually be evidenced from the bank statement (where it is clear what the payment relates to – direct debits/standing orders).</p> <p>Copy of agreement / court order/ CSA assessment (n.b. proof of payment is required).</p> <p>Cash payments should be evidenced by receipts. (The relevant cash withdrawals should be highlighted on the bank statements).</p>
Evidence of criminal legal aid contributions	Copy of income contribution order.

Table C: Capital

Source of Capital	Guidance on Evidence
Cash Savings	Declarations on forms for cash in hand and Bank Statements
Property Assets	<p>Property valuation – NB individuals will usually not be required to provide an independent valuation of their main dwelling property or other residential property, as their own declaration of the property value will be checked against prices in the local area through the internet.</p> <p>If the individual disagrees with the valuation used in the assessment they may at that point be asked to provide an independent valuation to support a review.</p> <p>A Mortgage Statement – along with documents evidencing the value of any other land charge registered on the property – should be provided to evidence the total amount of debt secured on the property.</p>
Business Capital – sole traders / partnerships (directors in analogous position in relation to a company)	<p>Trading Accounts including Balance Sheet or self assessment return including relevant pages.</p> <p>Bank Statements</p> <p>(Where land / property assets are held, independent property valuations may be requested, as necessary).</p>
Shares	PLC share certificates
Premium Bonds	Evidence showing amount of capital held in premium bonds
Antiques / items of value	Independent valuations may be required for items (usually items worth over £500).
Endowment / Life assurance policy	Evidence of loan or surrender value from the policy provider.
Trust	Copy of Trust deed and accounts; letter from trustees
Legacy (inheritance)	Copy of Will; letter from trustees



Source of Capital	Guidance on Evidence
BTE (Before the event) Insurance	The individual will be asked to provide a copy of an insurance policy if there is the possibility that legal costs coverage may fund the costs of the proceedings to which the legal aid application relates.

Where the individual concerned advises that their access to capital is affected by bankruptcy or a restraint / freezing order covering their assets relevant documentation must be provided with the legal aid application i.e. copy of bankruptcy order, along with statement of assets and liabilities (if available); copy of restraint order and any variations sought.

If the individual holds assets as a trustee on behalf of another person, documentary evidence of the trust arrangement should be provided.