

Children's Legal Assistance



Keycard 2017

About the Keycard

This Keycard sets out the various eligibility limits and contributions in children's advice and assistance and children's legal aid in force from **3 April 2017**. It should be used only where the advice or representation is being given about proceedings under the Children's Hearings Act (Scotland) Act 2011.

For more guidance on eligibility and contributions, please refer to the [Children's Legal Assistance Handbook](#), available on our website www.slab.org.uk.

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Definitions used

Partner

In this Keycard, the word “partner” means someone the applicant normally lives with as a couple, whether or not they are married and of the same or different sex.

A partner’s resources, as well as the applicant’s, must be taken into account unless:

- the partner has a contrary interest
- the applicant and partner are living separate and apart - by “separated” we mean that they consider their marriage or relationship to be at an end.
- it would be inequitable or impracticable to aggregate their resources (if you consider this is the case, please contact SLAB for advice).

Child

The definition of “a child” given in the Children’s Legal Assistance (Scotland) (Miscellaneous Amendment) Regulations 2013 is that given in [section 199](#) of the Children’s Hearings (Scotland) Act 2011.

If the applicant is a child in terms of this definition and is, in your view, capable of giving instructions and receiving advice, the resources to be taken into account are those of the child only. In Children’s Legal Assistance, the resources of a child are not aggregated with those of any person owing an obligation of aliment to the child.

Advice and assistance

Documentary evidence of clients' financial circumstances

Solicitors are responsible for deciding if their clients are financially eligible for advice and assistance. In children's cases SLAB has the authority to withhold or to recover payments made to solicitors' firms where, in granting advice and assistance, it is found that the financial tests have not been applied properly.

You should refer to this Keycard and the guidance in the Children's Legal Assistance Handbooks about assessing disposable income and capital. Clients who are granted advice and assistance must be financially eligible.

Most clients should be able to give their solicitor documentary evidence of their financial position. When arranging an initial meeting with a solicitor, the client should be asked to bring documentary evidence of their capital and income with the proof of identity you need when signing up new clients, whether legally aided or not. This advice applies equally to repeat clients. It is not safe for you to assume that your client's financial position has not changed since the last time you gave them advice.

We recommend that solicitors should see, wherever practicable, the following evidence:

For income:

- where the client is employed - a recent wage slip or bank statement
- where the client receives passport benefits - we will check this directly with the DWP
- where the client receives non-passport benefits - a letter of award, benefit book (in the few cases where it is paid this way) or a bank statement (which might simply be an ATM receipt showing the credit).

For capital:

- a bank statement or certificate for savings and/or investments held.

If you have not seen any evidence, you must explain in the advice and assistance application how you were satisfied that the client was financially eligible.

We appreciate that in some circumstances, clients may not have documentary evidence available when consulting a solicitor. For example: in an emergency, where they are part of an acrimonious dispute which prevents access to documentation, or where they are in custody.

Where they do not have access to documentary evidence, you may be satisfied from the limited information available, but you should then seek verification from the client at the earliest opportunity, and before seeking any increase in authorised expenditure.

Nil Income and/or Capital

Where the applicant has no income/capital or is supported by parents, family, friends etc., make sure you tell us about this. Always make sure that you tell us how a client is supported if they have no income and are not in custody or on remand.

If the applicant has a bank account, you should try to get a statement from the client to confirm the position. Again, if this is not provided by the client, make sure you tell us about the steps you have taken to obtain this.

If the client has no capital, please do not say something like “cannot prove a nil”. Most applicant’s will have at least one bank account, especially if they own or rent their home, have any regular outgoings which are paid by standing order or direct debit or receive a salary or state benefits. The balance(s) held in these accounts should be recorded in the application as capital savings. Where the account is a current account or the only account held by the applicant, the balance held in the account once all monthly standing orders and direct debits have deducted should be recorded. You can then select “Bank Statement” from the capital verification options as evidence seen. If in the very exceptional circumstances they do not have a bank account you should select “Other” from the capital verification options and then provide information on how you satisfied yourself that your client does not have any capital.

If you have obtained verification, you should advise us at the questions “I have seen the most recent evidence of the applicant's income” and “I have seen the most recent evidence of the applicant's capital” by selecting one of the options available e.g. bank statement, wage slip etc. The Other option should only be used where there is no appropriate option available. Quite often we see bank statements selected and then in the "Other" option something like “I have seen the client’s bank statement”. Doing this may result in a delay in the approval of the application as it needs to be separately checked by an officer at SLAB.

Keep a copy of this verification on file, so that it can be seen at peer review or at a SLAB compliance inspection.

Assessing eligibility

A client's income and capital must be within the current financial limits to qualify for advice and assistance.

We recommend you assess their disposable capital before assessing income, since if they do not qualify on capital, they are ineligible for advice and assistance - even if they receive "passport" benefits (that is, Income Support, income-related employment and support allowance, income-based jobseeker's allowance or Universal Credit).

Assessing eligibility on capital

Disposable capital - from 6 April 2017

£1,716 maximum for eligibility

A person whose disposable capital exceeds the capital limit of £1,716 is **NOT** eligible for advice and assistance, whatever their disposable income or eligibility for a passport benefit.

To calculate disposable capital, you should:

- calculate your client's total capital
- deduct from the total capital the standard allowances
- disregard the levels of capital shown in the section below if the applicant is of pensionable age.

Working out your client's total capital

Capital means savings and anything else of value the client and their partner, if appropriate, own. **This excludes the client's main residence and the value of any disputed assets which are part of the subject matter of the advice.**

Examples of capital include:

- the amount that could be borrowed against all land and buildings the client or their partner own, other than the client's main home, including interests in timeshares
- money in the bank, building society, post office, premium bonds, national savings certificates etc
- investments, stocks and shares, including ISAs
- money that can be borrowed against insurance policies
- the value of other non-essential possessions, such as a boat, a caravan, second car, jewellery (but not wedding or engagement rings), antiques or items bought for investment
- money owed to the client or their partner
- money due from the will of someone who has died
- money due from a trust fund
- money that can be borrowed against business assets
- redundancy payments.

You should **NOT** include in capital:

- the home in which the client and their partner live
- the client's household furniture and clothing
- the client's tools and equipment they need for work.

Standard allowances

Standard allowances against capital are deductible for the following persons **living with the applicant**:

- a partner whose resources have to be aggregated - who is considered as the first dependant **and/or**
- a dependent person who is wholly or substantially maintained.

For the first such dependant	£335
For the second such dependant	£200
For each other such dependant	£100

No allowances should be made for any children where the applicant receives Foster Care Allowance.

Disregards for applicants of pensionable age

Where the applicant is of **pensionable age** (60 in all cases), with a weekly disposable income (excluding investment income) below £105, you should **disregard capital** as:

Weekly disposable income up to £10	disregard £25,000
Weekly disposable income £11 - £22	disregard £20,000
Weekly disposable income £23 - £34	disregard £15,000
Weekly disposable income £35 - £46	disregard £10,000
Weekly disposable income £47 - £105	disregard £5,000

Assessing eligibility on income

Disposable income - £245 a week maximum for eligibility

A person whose disposable income exceeds the income limit of £245 a week is **NOT** eligible for advice and assistance, whatever their disposable capital, unless they receive a passport benefit (Universal Credit, Income Support, an income-related employment and support allowance or income-based jobseeker's allowance).

“Income” means the total income, from all sources, which the client and their partner received or became entitled to during or in respect of the seven days up to and including the date of the application.

Calculating eligibility on income

To calculate eligibility on income, you should:

- check if your client receives a passport benefit (see below)
- calculate your client's net weekly income
- deduct from the net weekly income the standard allowances
- calculate if they qualify and if they have to pay a contribution.

When calculating monthly income, multiply it by 12 and then divide by 52 to work out the weekly figure. To make assessment easier, round the figure up or down to the nearest pound.

Passport benefits - automatically eligible on income

If the client or their partner receives a passport benefit:

- Income Support
- an income-related employment and support allowance
- income-based jobseeker's allowance
- Universal Credit.

they qualify automatically on income for advice and assistance and will not have to pay a contribution. However, you must still assess your client's disposable capital.

Calculating net weekly income

You must include:

- earnings (including any tips), drawings or profits from business
- maintenance payments (unless paid through the Child Support Agency)
- private or employee pensions
- occupational sick pay
- occupational maternity pay
- student grants or bursaries (but do not include student loans)
- National Asylum Support Service (NASS) payments
- money received from friends and relatives (other than loans)
- income from savings and investments
- dividends from shares.

Various benefits which the client may receive are disregarded in the financial assessment. You should **NOT include:**

- Working Tax Credit
- Child Tax Credit
- Pension Credit
- Child Benefit
- Attendance Allowance
- Bereavement Allowance
- Bereavement Payment
- Child Maintenance Bonus
- Child Support Maintenance (only if paid through the Child Support Agency)
- Christmas Bonus
- Contribution-based Jobseeker's Allowance
- Contribution-based Employment and Support Allowance
- Council Tax Benefit
- Disability Living Allowance (DLA)
- Personal Independence Payments
- Armed Forces Independence Payments
- Guardian's Allowance
- Housing Benefit
- Incapacity Benefit (Incap)
- Industrial Injuries Disablement Pension (IIDP)
- Care (Invalid) Allowance
- Severe Disablement Allowance
- Sickness Benefit
- State Retirement Pension
- Statutory Maternity Pay (non-occupational)
- Statutory Sick Pay (non-occupational)

- Sums payable to holders of the Victoria Cross or George Cross
- War Disablement Pension
- War Widow’s/Widower’s Pension
- Widowed Parent’s Allowance.

Particular situations

Foster Care Allowance, Adoption Allowance and Kinship Carers’ Allowance - do not include payments of these allowances the applicant receives in the calculation for disposable income. Do not deduct dependant’s allowances for capital and income for the children these payments relate to. .

Applications from children - Provided the child is, in your opinion, capable of giving instruction and receiving advice the resources of the child only should be taken into account. You do not need to aggregate the resource of any person owing an obligation of aliment to a child when assessing financial eligibility for children’s advice and assistance and ABWOR.

Allowances

You should deduct the following standard allowances against income for the maintenance of:

Partner living with the applicant	£41.75
Any dependent person, adult (other than partner) or Child (but do not include any foster children), who is wholly or substantially maintained, being a member of the applicant’s household	£66.90

Clients’ contributions

Disposable income range	Maximum contribution
Disposable Income not exceeding £105 a week	£0
Exceeding £105 but not exceeding £112 a week	£7
Exceeding £112 but not exceeding £119 a week	£14
Exceeding £119 but not exceeding £126 a week	£21
Exceeding £126 but not exceeding £133 a week	£28
Exceeding £133 but not exceeding £140 a week	£35
Exceeding £140 but not exceeding £147 a week	£42
Exceeding £147 but not exceeding £154 a week	£49
Exceeding £154 but not exceeding £161 a week	£56
Exceeding £161 but not exceeding £168 a week	£63
Exceeding £168 but not exceeding £175 a week	£70
Exceeding £175 but not exceeding £182 a week	£77
Exceeding £182 but not exceeding £189 a week	£84
Exceeding £189 but not exceeding £196 a week	£91
Exceeding £196 but not exceeding £203 a week	£98
Exceeding £203 but not exceeding £210 a week	£105
Exceeding £210 but not exceeding £217 a week	£112
Exceeding £217 but not exceeding £224 a week	£119

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Exceeding £224 but not exceeding £231 a week	£126
Exceeding £231 but not exceeding £245 a week	£135

Initial limit of authorised expenditure

Children's advice and assistance

£95 is the initial limit of authorised expenditure for children's advice and assistance.

Increases in authorised expenditure

An increase in authorised expenditure is only effective from the date we grant it.

We cannot authorise increases retrospectively and if you do any work not covered by the authorised expenditure at any given time, we cannot pay for it.

Assistance by Way of Representation (ABWOR)

For ABWOR granted for proceedings under the Children's Hearings (Scotland) Act 2011, the financial eligibility criteria and contributions are the same as in advice and assistance.

If you have previously granted advice and assistance for advice in relation to the same proceedings under the Children's Hearings (Scotland) Act 2011, then you will already have established their eligibility and any contributions payable. There is no need for a separate grant of advice and assistance to apply for ABWOR for representation at the hearing. You can apply for ABWOR under the same grant of advice and assistance by making an increase application.

Automatic Children's Legal aid

If you are instructed as Duty solicitor to represent the child at any one of the four specified hearings namely:

- An application to sheriff for variation or termination of a child protection order (sheriff court proceeding)
- A second working day children's hearing following the granting of a child protection order (children's hearing proceeding)
- A children's hearing where placement of the child in secure accommodation is in contemplation (children's hearing proceeding)
- A S69(3) children's hearing where child been arrested and detained in a place of safety for the alleged commission of a criminal offence (children's hearing proceedings)

then, Automatic children's legal aid can be made available to a child client, if that child is not already in receipt of ABWOR, (which would tend to suggest he/she had already instructed a solicitor of choice), and without the need for tests being applied to financial eligibility or the merits of the application.

If you're not acting as Duty Solicitor but have been instructed by the child as the child's solicitor of choice then automatic children's legal aid IS NOT AVAILABLE. However you may grant ABWOR to cover the cost of representing your client at any one of the four specified hearings without the need to apply the financial or merits tests.

Children’s Legal Aid

Eligibility limits

To do work as a matter of special urgency under regulation 18, you have to complete the online declaration form which is designed to assist you to assess your client’s financial eligibility. The form, CHLA/LAO 2011 ACT can be found on our website by accessing the Forms and Declarations option. To complete the form you may need to apply the current eligibility limits and allowances, which are:

Disposable capital

The capital eligibility limit, on or below which a person will not have to pay a contribution	£7,405
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If the applicant’s disposable capital exceeds £7,405 they can only be considered financially eligible if it can be shown that it would cause undue hardship if children’s legal aid is not granted. If the application is granted on these grounds the applicant will be expected to contribute the amount of capital they own which exceeds £7,405.

A person involved in the proceedings in terms of section 126 of the Children’s Hearings (Scotland) Act 2011 whose disposable capital exceeds £7,405 can only be granted children’s legal aid if it can be shown that not to do so would cause undue hardship to them or their dependants. If the application is granted on these grounds the applicant will be expected to contribute the amount of capital they own which exceeds £7,405.

Unlike advice and assistance there are no statutory allowances from capital for partners or dependants.

Disposable income

The lower disposable income limit, on or below which a person will not have to pay a contribution from income	£68.00 per week
The upper disposable income limit, above which a person will be ineligible on income	£222.00 per week

Calculating eligibility on income

To calculate eligibility on income, you should:

- check if your client receives a passport benefit (see below)
- calculate your client’s net weekly income
- deduct from the net weekly income the standard allowances and any reasonable expenditure
- calculate if they qualify and if they have to pay a contribution.

When calculating monthly income, multiply it by 12 and then divide by 52 to work out the weekly figure. To make assessment easier, round the figure up or down to the nearest pound.

Passport benefits - automatically eligible

If the client or their partner receives a passport benefit:

- Income Support
- income-related employment and support allowance
- income-based jobseeker's allowance
- Universal Credit.

they qualify automatically on income for Children's Legal Aid and will not have to pay a contribution. If they are in receipt of a passport benefit there is no requirement to assess the disposable capital.

Calculating net weekly income

You must include:

- earnings (including any tips), drawings or profits from business
- benefits (except those listed below)
- maintenance payments (unless paid through the Child Support Agency)
- private or employee pensions
- occupational sick pay
- occupational maternity pay
- student grants or bursaries (but do not include student loans)
- National Asylum Support Service (NASS) payments
- money received from friends and relatives (other than loans)
- income from savings and investments
- dividends from shares.

Various benefits which the client may receive are disregarded in the financial assessment. You should **NOT include:**

- Pension Credit
- Disability Living Allowance (DLA)
- Personal Independence Payments
- Armed Forces Independence Payments

Allowances for a partner and dependants

Partner living with the applicant	£41.75
For any dependent person who is wholly or Substantially maintained, being a member of the applicant's household, who is not entitled to any income from any source in their own right	£66.90

If the applicant's disposable income capital exceeds £222 per week, they can only be considered financially eligible if it can be shown that it would cause undue hardship if children's legal aid is not granted. If the application is granted on these grounds the applicant

will be expected to pay a contribution based on their actual disposable income.

A person involved in the proceedings in terms of section 126 of the Children's Hearings (Scotland) Act 2011 whose disposable income exceeds £222 per week can only be granted children's legal aid if it can be shown that not to do so would cause undue hardship to them or their dependants. If the application is granted on these grounds the applicant will be expected to pay a contribution based on their actual disposable income.

Particular situations

- **Applications by children**

It is not required to aggregate the resources of any person who owes an obligation of aliment to the child, with that child's resources in establishing financial eligibility in assessing financial eligibility for children's legal aid.

Clients' contributions

Contributions in children's legal aid are linked to the type of proceedings and are grouped in the table below according to the relevant section of the Children's Hearings (Scotland) Act 2011.

Contributions in children's legal aid will be calculated by SLAB but this table shows how contributions will be calculated using examples of weekly disposable income of £100, £130, £160 and £222.

Type of proceedings under the Children's Hearings (Sc) Act 2011	S98,S99,S160	S101,S110,S154,S161,S162,S166,S48	S163, S164, S165, S167
Average duration	4 weeks	12 weeks	24 weeks
Weekly disposable income £100	Contribution is £25.60 Calculation: £100-£68 = £32 (£32@20%x4)	Contribution is £57.60 Calculation: (£32@15%x12)	Contribution is £76.80 Calculation: (£32@10%x24)
Weekly disposable income £130	Contribution is £73.60 Calculation: £25.60 + (£30@40%x4)	Contribution is £147.60 Calculation: £57.60 + (£30@25%x12)	Contribution is £220.80 Calculation: £76.80 + (£30@20%x24)
Weekly disposable income £160	Contribution is £139.60 Calculation: £73.60 + (£30@55%x4)	Contribution is £309.60 Calculation: £147.60 + (£30@45%x12)	Contribution is £436.80 Calculation: £220.80 + (£30@30%x24)
Weekly disposable income £222	Contribution is £313.20 Calculation: £139.60 + (£62@70%x4)	Contribution is £808.08 Calculation: £309.60 + (£62@67%x12)	Contribution is £1032.00 Calculation: £436.80 + (£62@40%x24)

We have noted the various sections of the Children's Hearings (Scotland) Act 2011 that govern proceedings in the top row. We have assigned average duration times to these cases, which are noted in the second row: sections 98, 99 and 160 cases have been assigned an average duration of 4 weeks; cases under sections 101, 110, 154, 161, 162, 166 and 48 have been assigned a duration of 12 weeks; and those under sections 163, 164, 165 and 167 have been assigned an average duration of 24 weeks.

The first column shows some average disposable incomes, £100, £130, £160 and the current maximum £222. The next column shows what the applicant's contribution from the average disposable incomes used in the illustration will be if they are involved in proceedings under Sections 98, 99 and 160, the second column what they will pay if involved in proceedings under Section 101, 110, 154, 161, 162, 166 and 48 and so on.

In order to calculate the contribution you need to know:-

1. The applicant and any partner's (if appropriate) actual disposable income.
2. Which section of the 2011 Act applies to the proceedings.

The table below illustrates how we will calculate the contribution

Proceedings	S98, S99, S160	S101, S110, S154, S161, S162, S166, S48	S163, S164, S165, S167
Disposable income up to £100	<p>Example disposable income of £100</p> <p>Step 1: £100 - £68.00 Step 2: Multiply balance x 20% x 4 = Contribution (Answer A)</p>	<p>Example disposable income of £100</p> <p>Step 1: £100 - £68.00 Step 2: Multiply balance x 15% x 12 = Contribution (Answer A)</p>	<p>Example disposable income of £100</p> <p>Step 1: £100 - £68.00 Step 2: Multiply balance x 10% x 24 = Contribution (Answer A)</p>
£101-£130	<p>Disposable income of £120</p> <p>Step 1: £120 - £100 Step 2: Multiply balance x 40% x 4 = Answer B Step 3: Contribution = Answer A + Answer B</p>	<p>Disposable income of £120</p> <p>Step 1: £120 - £100 Step 2: Multiply balance x 25% x 12 = Answer B Step 3: Contribution = Answer A + Answer B</p>	<p>Disposable income of £120</p> <p>Step 1: £120 - £100 Step 2: Multiply balance x 20% x 24 = Answer B Step 3: Contribution = Answer A + Answer B</p>
£131 - £160	<p>Disposable income of £140</p> <p>Step 1: £140 - £130 Step 2: Multiply balance x 55% x 4 = Answer C Step 3: Contribution = Answer B + Answer C</p>	<p>Disposable income of £140</p> <p>Step 1: £140 - £130 Step 2: Multiply balance x 45% x 12 = Answer C Step 3: Contribution = Answer B + Answer C</p>	<p>Disposable income of £140</p> <p>Step 1: £140 - £130 Step 2: Multiply balance x 30% x 24 = Answer C Step 3: Contribution = Answer B + Answer C</p>
£161 - £222	<p>Disposable income of £200</p> <p>Step 1: £200 - £160 Step 2: Multiply balance x 70% x 4 = Answer D Step 3: Contribution = Answer C + Answer D</p>	<p>Disposable income of £200</p> <p>Step 1: £200 - £160 Step 2: Multiply balance x 67% x 12 = Answer D Step 3: Contribution = Answer C + Answer D</p>	<p>Disposable income of £200</p> <p>Step 1: £200 - £160 Step 2: Multiply balance x 40% x 24 = Answer D Step 3: Contribution = Answer C + Answer D</p>

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