



Scottish Legal
Aid Board

Response and analysis:
Consultation on SLAB's
approach to civil legal
aid financial eligibility
assessment

June 2023

The Scottish Legal Aid Board

www.slab.org.uk

Executive Summary

Background

1. The Scottish Legal Aid Board (SLAB) is a non-departmental public body responsible for the administration of the legal aid schemes in Scotland. Our core business is taking decisions in connection with applications for legal aid and assessing claims for payment for work done from solicitors and counsel. As a public body our powers, functions and duties are set out in the legal aid legislation. We have some discretion in how we apply statutory tests, but that discretion can be broad, or can be focused by tests, factors or criteria contained in regulations.
2. The [consultation](#) presented a summary of key decisions we make when assessing financial eligibility in civil legal aid, based on both regulatory requirements and discretion.
3. The consultation also presented options for change using our discretion that we identified as part of an ongoing review into our financial eligibility assessment policies. Those options for change proposed:
 - amending our housing deductions policy to make allowance for housing costs liable, not just being met
 - change to our travel for work policy so that a standard rate was applied for calculating the costs of a personal vehicle
 - a move from individualised allowances to standardised allowances that include general costs of living and broader use of our discretion to consider any other allowance from disposable income.
4. Our aim in exploring and pursuing these options for change is to simplify the assessment process while maintaining scope of eligibility. This aim is aligned with the Legal Aid Review's strategic aim of maintaining scope but simplifying.
5. This is a part of our long-term project to develop the framework for our decision-making on legal aid applications and accounts - the Guidance on the Administration of Legal Aid (GALA) Project.¹

¹ <https://www.slab.org.uk/news/legal-aid-framework-project-publishes-first-policies-and-decision-makers-guidance/>

Summary

6. The financial eligibility assessment consultation² opened on 1 December 2021 and closed on 11 February 2022. We issued the consultation to 60 stakeholder organisations that spanned the justice sector, representatives of equality groups and other third sector organisations that may have an interest in policy on financial eligibility assessment. This was supplemented by news items on the SLAB website and notifications on social media. Additionally, we sent out reminder emails on 10 and 24 January.
7. We received four consultation responses. Four respondents agreed to have their response published and these are available on our website. We received three responses from organisations and one from an individual.
8. There were 21 open ended questions in the consultation. Respondents were not required to answer all questions. We have published responses, where permission has been provided, on our website.³
9. Below we have set out:
 - the key responses to our change proposals
 - the main reflections from the consultation in response to our decisions, and our response, where appropriate.

Options for change

Housing policy

10. The first change proposed was to our assessment of housing costs policy. We recommended amending the policy so that housing costs an applicant⁴ is liable for but not paying, and therefore incurring a priority debt for⁵, shall be deducted from their income.
11. All respondents viewed this change positively and we will proceed with this change.

² Available on our website from: <https://www.slab.org.uk/news/consultation-launched-about-civil-legal-aid-financial-eligibility-assessment/>

³ Available on our website from: <https://www.slab.org.uk/corporate-information/publications/consultations/financial-eligibility-assessment-published-responses/>

⁴ We use applicant in this consultation response for simplicity. The technical term is ‘person concerned’ alongside ‘applicant’ for different parts of the financial eligibility assessment process.

⁵ Schedule 2 of the Civil Legal Aid (Scotland) Regulations 2000 requires SLAB to deduct council tax an applicant is liable for but not necessarily paying, so this is already a factor in our current assessment.

Travel to work policy

12. The second change proposed was to our assessment of travel to work costs - specifically the assessment of costs of travelling to work by car. We recommended amending our policy on what can be considered a travel cost for work purposes so that instead of deducting the actual costs associated with running and maintaining a vehicle used to travel to work, we would instead deduct the HMRC standard rate, which is currently set at 45p per mile, for an applicant's travel to work.
13. This would not change our approach to payment of travel costs where the applicant takes public transport to work. Public transport would remain a deduction based on actual costs of that travel.
14. Respondents viewed this change positively, although one response noted concerns that some applicants may incur higher costs not reflected in this standard rate, and recommended there be a mechanism to take these into account also.
15. This comment perhaps reflects that there is a risk to those with higher vehicle running costs in this change, as not all expenses they incur may be deducted. On balance, however, our proposed change would simplify an area of the assessment and align our policy in applications with that in accounts.
16. We will be changing our policy and publishing guidance.

Use of our discretion for outgoings

17. A change proposal was outlined relating to our use of discretionary powers when determining disposable income: namely how we use our discretion to make allowances for additional expenses and services not specified in the regulations.
18. One respondent provided fulsome support for a change to standardised allowances incorporating basic living costs, while two respondents reflected potential impact of that change on particular groups such as higher income earners and women who have experienced financial abuse. We will take these considerations into account as we finalise our policy options.
19. We intend to implement standardised discretionary allowances, subject to further consultation on the detailed proposed option.

Key decisions

20. In the consultation paper we sought views on how we make key decisions regarding financial eligibility at the moment, and asked for evidence of potential impact of these. We have used the feedback gathered to inform our

review and development of policy statements and decision-makers guidance that will be made public.

Key decisions - computation

21. Comments on the computation period by respondents reflected concerns about the length of time it covers and what this can mean for applicants, including abandoning or that the process allows applicants to hide assets and income.
22. We are bound by the regulations to assess a 12 month period. As part of the GALA project, we have reviewed our policy on the period of computation. This will be published in due course along with the decision-makers' guidance and guidance for applicants.

Key decisions - aggregation

23. Respondents noted that modern relationships are difficult to categorise, and highlighted the difficulty of having a relationship scrutinised as part of an application for legal aid. As part of the GALA project we have reviewed our policy in relation to aggregation, and considered options for change that reflect contemporary experiences and circumstances. This will reduce the need for a relationship to be scrutinised as a routine part of a legal aid application.
24. The aggregation of resources of a person with obligation of aliment to a child applicant was raised by two respondents, noting that children can be in contention with those who owe an obligation of aliment to them, or may not be safe with those who financially support them or their families. It was suggested that this requirement discriminates against this group.
25. We have a regulatory duty to bring the resources of a person owing obligation of aliment to a child applicant into an assessment, unless it would be unjust or inequitable to do so. We have reviewed our policy on this topic. This makes clear that in the scenarios described by respondents, resources will not be aggregated. The policy will be published in due course along with the decision-makers guidance and guidance for applicants.

Key decisions - capital

26. Two respondents reflected concerns or queries about how capital is assessed - what is considered disposable capital and how it is valued - especially for applicants who are older and leaving a relationship, or those who appear to have capital assets but are unable to access them.
27. We will consider these issues as we review our policy on capital assets as part of the GALA project.

Key decisions - income

28. One respondent commented directly in relation to our income assessment decisions, advocating that child applicants are not subject to financial eligibility assessment for legal aid. This was also a recommendation made by another respondent, and a further respondent recommended that women in domestic abuse situations not be assessed financially for legal aid.
29. We are bound by regulations to undertake a financial eligibility assessment except for specific categories of case. Removing the means test for some cases would require change to statute, which is a matter for the Scottish Government. The Scottish Government has consulted on these issues and is considering legal aid reforms.

Additional comments and queries

30. Three respondents provided views on aspects of the financial eligibility assessment process that were not explicitly discussed in the consultation. Themes raised related to usability of forms, verification requirements, objections to legal aid from opponents and scrutiny in the application process - in particular for women experiencing domestic abuse and child applicants. We will consider all issues raised as we continue our review of financial eligibility assessment and as part of our general process improvement activity.
31. We encourage applicants to phone the assessment team to discuss any concerns or questions they have about what they require for completing the form, or to discuss possible alternative forms of verification we may accept other than those listed. Our contact details are: financial@slab.org.uk or phone (Monday to Friday, 8.30am to 5pm): 0131 560 2164.