

# CLS Support Email bulletin (contracting) no. 45: Further Guidance on Eligibility – June 2005

## 1 Introduction

- 1.1 The purpose of this email bulletin is to provide a summary of the enquiries about changes to financial eligibility that CLS Support has received recently along with clarification of the requirements. It is applicable to both Solicitor and Not-for-Profit (NfP) General Civil Contract holders.
- 1.2 This bulletin has been checked and agreed for accuracy by the Legal Services Commission (LSC).
- 1.3 All contracted agencies should have now received [the April 2005 edition of FOCUS](#) from the LSC, which contains more detailed information on the eligibility changes including a new Keycard (No 41).

## 2 Previously ineligible clients and reassessment

- 2.1 In view of the changes, agencies should consider whether clients who were previously ineligible (before the changes on 11<sup>th</sup> April 2005) should be invited back in and/or re-checked on their next visit using the new rates.
- 2.2 If they are then found to be eligible then at least that part of the work, ie from the point of the new assessment and when a new **Controlled Work 1 - Legal Help and Help at Court** form (CW1) is completed, will count against an NfP contract or be paid for under a solicitor contract.

## 3 Capital and passporting benefits

- 3.1 We can confirm that if a client is in receipt of a passporting state benefit (ie Income Support, Income Based Jobseekers Allowance or Guarantee State Pension Credit), then since 11<sup>th</sup> April 2005 they have been passported on both income and capital grounds.
- 3.2 This means that if a client receives one of these benefits then you do not need to perform the capital part of the means assessment calculation on the CW1.
- 3.3 Please note: capital includes any equity that a client might have in their home or other property – so, if a client is in receipt of a passporting benefit then even if they have substantial equity in a property they will still be passported and automatically eligible for Legal Help.
- 3.4 Please refer to CLS Support contracting bulletin no. 43 for guidance on completing the current version of the CW1 (Version 09 October 2004) from 11<sup>th</sup> April 2005 where clients are in receipt of a passporting benefit.

## 4 Using the current version of the CW1 form

- 4.1 Enquiries in response to our recent bulletins on the eligibility changes have highlighted that a number of agencies might still be using old versions of the CW1.
- 4.2 Please check that you are using the current version of the form, [Version 9 October 2004](#), which should be in your Forms Masterpack. If you are not, then you need to begin using the current version immediately and should consider contacting the CLS Support consultancy service for further guidance (see contact details at the end of this bulletin).
- 4.3 Also, please note that the LSC has released an updated version of the CW1 form, Version 10 July 2005, which we have also attached, as a result of the [A New Focus for Civil Legal Aid reforms](#). **However, the new version of the CW1 will only be accepted from 25<sup>th</sup> July onwards. You should continue to use Version 9 until then.**

## 5 Changes in tribunal funding

- 5.1 The scope of Help at Court has been widened to include tribunals that were already in scope, but in which only Legal Representation was previously possible.
- 5.2 The two<sup>1</sup> tribunals specified in the Access to Justice Act 1999, in which licensed work (Legal Representation not Legal Help) was previously available are:
  - The Employment Appeals Tribunal (the appellate stage, not the initial Employment Tribunal, which remains out of scope); and
  - Mental Health Review Tribunals.
- 5.3 The effect of the changes means that Help at Court may now be provided in either of these tribunals, where it is necessary and reasonable to do so; please note that other rules eg sufficient benefit remain unchanged.
- 5.4 There has been no change to the rules regarding other tribunals eg welfare benefit appeal tribunals, which remain out of scope of the Legal Aid scheme.
- 5.5 CLS Support contracting briefing no. 8 covers the relevant provisions of the Access to Justice Act 1999.

## 6 Subject Matter of Dispute (SMOD) rule

- 6.1 The SMOD rule remains unchanged from the position it was prior to 11<sup>th</sup> April 2005 where the level of service the client needs is:
  - Legal Help and Help at Court; or
  - Controlled Legal Representation (Immigration); or
  - Family mediation.

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<sup>1</sup> Some other minor tribunals were added later.

- 6.2 At these levels of service the whole value of the assets that are in dispute can be disregarded.
- 6.3 However, in Legal Representation cases (all types of Legal Representation other than Controlled Legal Representation for Immigration) there will be an upper ceiling of £100,000.
- 6.4 This means that in Legal Representation cases, the client's interest in any capital assets that are in dispute beyond £100,000 should be taken into account in the means assessment.
- 6.5 Please note: if it is clear that the client is ineligible for funding on the basis of **other** capital assets which are **not** in dispute, the decision may be notified on that basis, ie there is no need to go through the process of assessing the assets which are in dispute, where this will not change the assessment result.

## **7 Allowance for child care costs**

### **Self-employed clients**

- 7.1 Before 11<sup>th</sup> April 2005 the allowance for childcare costs when performing the means assessment was only applicable if a client was in employment, ie it was not applicable to the self-employed.
- 7.2 Following the April changes the allowance is also now available, and should be applied, to clients who are self-employed as well as those in employment.

### **Amount of allowance and whether it should be applied**

- 7.3 The amount of allowance to be applied and the evidence requirements remain the same as they were before the April changes and apply to both employed and self-employed clients.
- 7.4 The allowance that should be applied is the actual costs of the childminding fees that the client is obliged to pay as a consequence of being away from home and unable to look after the child due to work.
- 7.5 The LSC do not require that the child minding payments be made in respect of a registered childminder; for instance, the allowance should still be applied even if the childminding fees were money paid to a family member for looking after the child.
- 7.6 However, even if childminding fees are being paid, the allowance should not be included in the assessment where the client is part of a couple and one of the couple could be reasonably expected to look after the child, eg where one of the couple is not working.
- 7.7 The LSC also state that the allowance should only be made where childminding fees are being paid for a child aged 15 years or under, unless exceptional circumstances apply, eg where the child is older than 15 years but is disabled.

## **Does the client need to provide evidence of the costs of childminding?**

- 7.8 If the costs of childminding are £600 or less per month then you do not need to obtain documentary evidence of the actual costs being paid to a childminder; it is sufficient to rely on the client's statement of the costs.
- 7.9 However, if the client states that the childminding costs are in excess of £600 per month and is working full time ie 35 hours per week (or part-time equivalent, see paragraph 7.10) then evidence should be obtained eg a copy of the agreement/contract with the childminder or, a copy of the client's bank statement showing the payment(s) being made.
- 7.10 The pro-rata equivalent would mean that if a client were working 17.5 hours per week (half of 35 hours) then evidence should be obtained of childminding fees in excess of £300 (ie half of £600).

## **8 Pensioner capital disregards**

- 8.1 If a client, and/or their partner where their means are to be aggregated, is a pensioner (aged 60 years or older at the time of assessment) and is in receipt of a passporting benefit, then there is no need to perform a full means assessment as they will be automatically passported on both income and capital grounds (as per section 3 of this bulletin).
- 8.2 However, where a client (and/or spouse/partner where means are to be aggregated) is not in receipt of a passporting benefit then a full means assessment should be conducted, ie both income and capital should be assessed.
- 8.3 Where the capital of the client is £8000 or less (including any capital from a spouse/partner whose means are to be aggregated) then the client would satisfy the capital aspect of the calculation.
- 8.4 However, where the capital is in excess of £8000 then as well as the usual capital disregards (eg first £100,000 equity in main or sole dwelling) you might also be able to apply an additional capital disregard ('pensioner capital disregard'), but this would depend on the disposable income available to the client (and his/her spouse/partner where their means are to be aggregated).
- 8.5 This Pensioner capital disregard applies where:
- A client (and/or their spouse/partner) is aged 60 years or older at the time of the assessment; and
  - Their disposable income is less than £272 per month.
- 8.6 Where a client meets these criteria then you should apply the disregard on a tariff basis (depending on their disposable income) as shown in the following table.

<b>If the monthly disposable income is between (£)</b>	<b>Then the amount of capital that can be disregarded is (£)</b>
0 – 25	100,000
25 – 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 – 272	10,000
Over 272	Nil

### **Example 1 (capital consists of savings and other items):**

- A client over 60 years of age with no partner approaches you for assistance and tells you s/he lives in rented property and has savings of £73,000 but no other capital assets;
- As the client is over 60 years of age it is possible that the pensioner capital disregard might apply so you assess their disposable income, which turns out to be £90 per month;
- As this is below £272 per month you apply the capital disregard as in the table above (as disposable income is between £71 and £100 the disregard = £70,000) and disregard this amount from the client's capital;
- This means that for the purposes of assessment the client is now left with disposable capital of £3000;
- As this is below the £8000 capital limit the client is eligible for assistance.

### **Example 2 (capital consists of equity in property):**

- A prospective client over 60 years of age with no partner approaches you for assistance and tells you s/he has approximately £185,000 equity in his/her property;
- As the client is over 60 years of age it is possible that the pensioner capital disregard might apply so you assess their disposable income, which turns out to be £74 per month;
- You apply the usual capital disregard on equity in a client's sole or main dwelling which applies to all homeowners, irrespective of age, of £100,000;
- As this client has disposable income which is less than £272 per month you also apply the additional pensioner capital disregard according to the tariff rate in the table above (as disposable income is between £51 and £75 the disregard = £80,000);
- You then disregard this amount from the client's capital

- This means that for the purposes of assessment the client is now left with disposable capital of £5000;
  - As this is below the £8,000 capital limit the client is eligible for assistance.
- 8.7 Where you are aggregating the means of a client's partner/spouse in the calculation then it does not matter which one is 60 years old or over for the pensioner capital disregard to apply.
- 8.8 For example, the client could be 45 years old but if his/her spouse whose means were to be aggregated were 60 years old then the pensioner capital disregard would still apply when performing the calculation, despite the spouse/partner not being the actual client.
- 8.9 Please note: where the client has a partner (whether a pensioner or not) the amount of capital disregard remains as set out in the table ie the amount is not doubled.

## 9 Immigration category and capital limits

- 9.1 The new capital limit of £8000 applies to all levels of service other than Controlled Legal Representation (CLR) in the Immigration category, where the limit is still £3000.
- 9.2 However, this limit of £3000 in the Immigration category only applies to CLR; if providing Legal Help and Help at Court to a client within the Immigration category then the revised capital limit of £8000 applies, but only at this level of service.
- 9.3 The LSC are looking into an appropriate contributions system which will enable the CLR capital limit to be aligned with that of other forms of Legal Representation ie £8000.

## 10 Further support and guidance

- 10.1 If you require guidance on any of the issues covered in this email bulletin, please contact the CLS Support consultancy service on **0870 7700 447 Monday to Friday 1pm–4pm** or email [cls.support@asauk.org.uk](mailto:cls.support@asauk.org.uk) at any time.