

Legal Help: CW1 Form

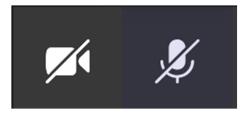
23 March 2022

Technical tips for this webinar

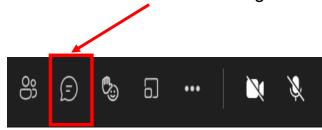
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Content

Introduction **Assessing means** Income **CW1 form completion**

Legal Help: CW1 form

Purpose of the webinar:

To assist you in completing the CW1 form and evidencing your clients' income



By the end of the webinar, you will have an understanding of:

- Requirements for assessing means and capital
- Evidence requirements for your clients' income
- How to fully complete the CW1 form

Financial eligibility
Kerry Shephard

Means assessment

- The means test requirements are set out in the Civil Legal Aid (Financial Resource and Payment for Services) Regulations 2013
- The application process depends on the level of help that your application covers
- The rules differ for controlled work and licensed work
- Guidance for undertaking the means test for controlled work is contained in the guide to determining financial eligibility for controlled work and family mediation
 - Please refer to slide 28 for links to guidance

Means assessment: Period of eligibility

- For controlled work, the period of eligibility is the calendar month up to and including the date of the application:
 - e.g. if an application is made on 8
 December the period of eligibility will cover
 9 November to 8 December inclusive
- Any evidence of means /income will need to cover this full period

Please note:

Although the eligibility periods are the same, the evidence of means requirements for controlled work & licensed work are different

Assessing means:

Whose means should you be assessing?

- Your client
- Your client's partner
 - Someone they are married to or in a civil partnership with
 - A person they live with as a couple this includes a person of the same sex

Top tip:

This includes:

- If your client is living apart from their partner due to illness, imprisonment or working away
- If the partner is living abroad and the relationship is on-going. However, particularly in Immigration matters, you may need to consider if the income of the partner, and assets left behind, are currently truly "disposable" and /or available to the client
- If your client is a child applicant:
 - Assess the person who is maintaining them, unless they are "looked after" by the local authority

Assessing capital:

- Capital must be assessed in all circumstances even if your client is in receipt of a passporting benefit for Income purposes:
 - Exceptions: NASS S4 or S95 payments in the Immigration category
- Where the capital details are not fully completed it may result in the application being rejected (certificated work) or a claim being void (controlled work)
- Ensure that capital is evidenced as appropriate
- Subject matter of dispute:
 - Disregarded up to a limit of £100,000
- Equity disregard in main home:
 - Up to £100,000
- Upper capital limits (excluding CLR immigration): £8,000. If above this, they do not qualify
- Upper capital limit CLR immigration: £3,000

Please note:

Crossing through is not sufficient. You must complete the figures: Use a zero or nil

Income: Passported benefits

Your client will be passported for income purposes (controlled work and certificated) if they are directly or indirectly in receipt of the following benefits:

- Income Support
- Income-based Job Seekers Allowance (JSA)
- Income-related Employment Support Allowance (ESA)
- Guarantee State Pension Credit
- Universal Credits

Income: Passported benefits additional guidance

- To qualify as receiving a passporting benefit it must be currently in payment
 - It is not sufficient to say that a passporting benefit has been applied for, or a decision is pending.
 - Further enquiries should be made to ascertain how the client was supporting themselves over the computation period.
 - To be indirectly in receipt of a passporting benefit the individual must be included in the benefits claim of someone else. If they are not included in the claim, they are not passported.

Please note:

Contribution-based JSA and contribution-related ESA are **not** passporting benefits. When an individual is in receipt of these please complete a full Income assessment.

- As stated previously where an individual qualifies for a passported benefit a capital assessment must be completed:
 - The only exception is for asylum and immigration-controlled work matters where the client is in receipt of NASS (S4 or S95 support). In these cases, they automatically qualify on capital and income.

Evidencing a passported benefit:

- A letter from DWP.
 - It must be within 6 months from the date the relevant application form is signed. If it is older, please obtain alternative or additional information.
- A bank statement covering the computation period will be sufficient, so long as it confirms your client is in receipt of a passported benefit.
- Where you cannot produce evidence of a passported benefit (that is at the initial appointment under controlled work), telephone confirmation from the relevant benefits agency will suffice:
 - The call must be detailed on the file/application form. The full name, and contact no, of the individual spoken to.
 - A written request should be submitted as soon as possible and followed up if necessary.

- For NASS payments (S4 & S95) please obtain written confirmation within the last 6 months.
- Where the NASS letter is outside the 6-month period post office receipts of NASS payments, within the computation period, can be accepted.
- Post office receipts on their own, even where they cover the computation period, will only be accepted where they can be directly linked to the client (either through a NASS or Home Office reference number or the client's details).

Income: Evidencing wages and earnings

- Wages must be evidenced by way of a wage slip:
 - Bank statements are **not** sufficient
- The gross income figure must be used in the calculation:
 - Do not use the net figure as it appears on a bank statement
- For controlled work you should provide the most recent monthly wage slip (from the date on the application form):
 - If paid fortnightly, the 2 most recent pays slips should be provided
 - If paid weekly the latest 4 pay slips

- Certificated work If the client is employed and paid weekly or fortnightly, please submit six recent and consecutive wage slips. If they are paid monthly, please send three recent and consecutive wage slips. If wage slips are unavailable, an L17 should be provided
- If your client is a prisoner, we expect you to provide prisoner income and expenditure statements for the last three months as part of the application:
 - Exception: If the prison income is the only income, and there are no savings, you do not need to provide a prison statement

Income: No income cases

Situations may arise where a client has not received, or become entitled to, any direct income at all in the preceding month. This is common in family and matrimonial and asylum matters:

- This may be the case where the client is living separate and apart from their spouse in the same home and the spouse still meets the outgoings.
- In some cases, particularly where the change occurred during the past month, it may not be appropriate to base the determination on the income received for the whole of the previous month.
 - In these cases, make an estimate of what the client is likely to receive in the next calendar month based on the income received since the change took place. In these circumstances, the client may be assessed as having no income.

The situation can also arise in immigration and asylum matters where the client has recently arrived in the country and has not applied for, or is not in receipt of, NASS:

• The client will often be accommodated and supported by family or friends. In these circumstances, obtain a letter of support from the supporting party.

Income: Letters of support

Any letter of support should:

- Contain the supporters' full details: Name, address and contact number
- · Be clearly dated
- Set out when the support commenced. If this does not cover the full computation period other
 enquiries should be undertaken, as regards the period not covered, unless the client has not been
 in the country that long
- Confirm the nature and type of support being provided
- · Confirm whether any monies (including for sundries and incidental expenses) are being given

Please note:

Where money is being provided, the figure (converted to the monthly equivalent) **must** be transposed to the income details on the application form

Income: Letters of support – additional guidance

- If the letter does not confirm that any monies are being given, you should undertake reasonable enquiries to how your client is meeting their day-to-day needs and costs. For example, this may include how they managed to travel to the firm (if at a distance).
- Where your client has been in the country for a long period and is relying on a letter of support from a
 friend or relative, more detailed enquiries should be carried out. Has the client worked previously, or have
 they always been supported? You should reasonably assess the accuracy of the information provided.
 Who is providing the support: A family member or a friend?
- Where a letter of support is being relied on you should, where possible, obtain verification of the third parties' identity and address details, for example a utility bill, council tax bill, drivers' licence, etc.
- In some limited circumstances the supporter, for whatever reason, may not be prepared to provide written
 confirmation of the support being provided. You should set out exactly the reasons why this is and make
 every effort to obtain the information. This includes writing to the third party explaining that any
 information will be held confidentially.
- Where no evidence can be obtained you need to consider, and set out on file, whether it is appropriate to
 apply the exemption under paragraph 3.24 of the Standard Contract Specification. Here the LAA want to
 see that you have considered and applied the exemption. The details should be retained on file.

Income: Evidencing other incomes

- State benefits: (including IS, JSA, ESA, Guarantee Credit, Universal Credit)
 - Most recent letter from DWP, Job Centre Plus (to include award notification letter). The letter must be
 within 6 months. If it is outside 6 months, a recent bank / building society statement will suffice (in
 support of letter). However, the benefit type must be specified on the statement.

NASS:

Written notification from NASS or the Local Authority within last 6 months.

Working Tax and Child Tax Credit:

- A copy of the most recent Tax Credit Award Notice, which can be used to calculate the monthly payment.
- Bank statements covering the computation period are acceptable evidence.

Student grants or loans:

- A letter of confirmation of the grant setting out the amount of the loan take the annual amount received and divide by 12 to get the monthly amount.
- Tuition fees are not needed.
- Bank statements showing regular loan or grant payments can be used.

Income: Evidencing other incomes continued

Maintenance payments (court ordered or voluntary)

- Copy of maintenance order or agreement.
- Cashed cheques or bank statements (showing regular payment).
- When the benefits of any of the payment go to the child: Who has control of the money?
 - Exclude these from your clients' income but deduct amount from dependents allowance.

Self-employment: For certificated work submit the latest:

- Certificated matter: Trading accounts, HMRC income tax calculation and bank statements.
- Controlled work: (Drawings taken in computation period)
 - You should base the calculation on the level of drawings. If no drawings have been taken in the last month, or they appear low (consider out-goings), the normal monthly drawings should be established and included in the calculation.
 - If your client states no drawings have been taken, you should establish how they have been meeting their day to day living costs during the relevant period. Any such income should be considered.

Income: Deductions

Housing costs (rent /mortgage /accommodation fees):

- Applies in respect of your clients' main dwelling only
- Amount allowed must be net of housing benefit (where in payment)
- Capped at £545 where no dependents
- Arrears that are "actually" being paid can be considered

Dependents Allowance:

(Dependents Allowance must be maintained by the applicant)

- Partner
- Adult dependant
- Children

Additional guidance:

- When your client indicates they are paying board and lodgings, only the accommodation costs can be allowed. Your client should provide a letter from the person they pay the money to. This must outline how the money is apportioned between food, utilities and rent
- Please highlight the appropriate cash withdrawals on their bank statements
- When your client states their housing expenditure is more than one third of their gross income (aggregated where appropriate), please provide documentary evidence to support the figure: For example, bank statements, mortgage statement, tenancy agreement or rent book
- When rent is paid in cash, please highlight the withdrawals on the bank statement

Income: Deductions continued

Childcare costs:

The actual costs incurred due to work /study:

- Nursery, child minder etc, or a combination
- Be deducted for students paying childcare if they are receiving study related income (student loan etc) during the time they are absent from home by reason of their course of study
- Proof is required if high (over £600 per month for FTE & pro rata for PTE)
- Please evidence by way of bank statements, childcare agreements or recent receipts
- If the client pays childcare in cash, please ask them to highlight the relevant cash withdrawals on the bank statements, before the application is submitted to the LAA

Maintenance payments:

- Allow any payments "actually being made" to:
 - An ex-partner, child, dependent relative
- The recipient does not live in the individual's household
 - The only exception: The individual and partner are living separate and apart under the same roof. Housekeeping paid out by the individual to meet the partner's needs can be treated as an allowance in the same way as maintenance
- Liability to the Child Maintenance Service is not sufficient to allow deduction – payment must be made within the computation period
- Evidence of payment (bank statements, wage slips showing child maintenance deductions or recent receipts) should be provided

Key points

- More is more when it comes to information:
 - The more information you include on the file, or application form, the easier it is for the caseworker to verify the means assessment.
- Clarify any unexplained transactions on bank statements.
- Explain how calculations have been made:
 - Show clear calculations of what has been included when assessing eligibility for controlled work matters.
 - Explain why any income, earnings, or credits have not been considered in the calculation.
 - Please undertake a more in-depth review of information that is provided, that looks or feels wrong, or there are concerns regarding depravation of income /capital, or an aura of wealth. Detail your findings on the file or application.

- Refer to the relevant reference materials and guidance.
- Ensure the evidence of means is provided and covers the full computation period:
 - Clearly explain why evidence is not provided.
 Please include all efforts made to acquire the evidence.
- For controlled work where paragraphs 3.25
 (Standard Civil Contract Specification) are
 applied, a clear written explanation as to why
 this decision was made should be noted on file.
- Ensure all application forms are fully completed, signed and dated:
 - All applications are fully considered by the LAA. Please ensure there are no unanswered questions. This may result in the application being rejected.

CW1: Form completion

Kerry Shephard

CW1 form: Financial eligibility and subject matter of dispute (SMOD)

The financial eligibility section of the CW1 form will assist you in your decision making.

If there are assets belonging to your client, that are a subject matter of dispute, they must be entered in 'Part A: Capital – SMOD'.

Questions 1-6 take you step-by-step through the calculation of your client's equity in their property assets

- Q1: Enter the current market value and outstanding mortgage amount
- Q2 & Q3: Determine your client's percentage share of the property

| Financial Eligibility | | | |
|--|-----------|------------------|--|
| The client is directly or indirectly in receipt of S.4 or S.95 Asylum Support (Immigration and Asylum category work only): | | | |
| Yes Go directly to the Evidence section on page 7. | | | |
| No Go to question 2. | | | |
| The client has a partner whose means are to be aggregated: | | | |
| Yes Please provide details of both client's and partner's means. | | | |
| No Please provide details of client's means only. | | | |
| Type of case (e.g. family): | | | |
| The case is about ownership or possession of assets and / or financial provision: | | | |
| Yes Go to guestion 5. | | | |
| No Go directly to Part B Capital. | | | |
| 5. The client's assets (held in sole name or jointly held) have been claimed by the opponent: | | | |
| Yes Please complete Part A Capital - Subject matter of dispute. | | | |
| No Go directly to Part B Capital. | | | |
| The subject matter of dispute disregard only applies to assets that are specifically claimed by the opponent. All assets that have not been specifically claimed by the opponent must be included in Part B Capital. | | | |
| Part A: Capital - Subject matter of dispute (SMOD) | | | |
| ▶ Please list any property, assets or possessions that the opponent ha | | to in this case: | |
| 1. Property: | Main home | Other property | |
| Current market value £ | | | |
| Outstanding Mortgage/secured loan £ | | | |
| Is property held in joint names with the opponent? | □Yes | □Yes | |
| If property is held in joint names with the opponent, equal shares will normally be assumed for assessment purposes. | □No | □No | |
| shares will normally be assumed for assessment purposes. | | | |
| Client's share of property for assessment? | % | 9 | |
| Enter 50% when property is jointly owned with opponent. Select 100% when property is solely owned by client or jointly with partner. Enter an appropriate % if another party has an interest. | | | |
| | | | |

CW1 form: Subject matter of dispute (continued)

- Q4: Calculate the total net equity, that is the current market value minus mortgage disregard.
 - Additional notes are provided on the form to assist you.
- Q5: Calculate the client's share of the total net equity.
- Q6: Calculate the final assessed amount of client's equity, after applying the SMOD and 'Equity Disregards'
- Q7: Enter savings and other assets that are SMOD

Top Tip:

Total capital (Part A) is the figure after the SMOD disregard has been applied to the *client's* share assets

| Part A: Capital - Subject matter of dispute (SMOD) continued | | |
|--|--------------------------|--|
| 4. Total Net Equity (i.e. current market value minus mortgage disregard): • Deduct the full amount of any debt secured by a mortgage or charge on the property. | Main home Other property | |
| Client's share of Total Net Equity: Multiply answer to question 4 by answer to question 3. | £ | |
| 6. Final assessed amount of Client's equity: Calculated by applying the SMOD disregard; followed by the equity disregard of £100,000 to the main home. The maximum SMOD disregard is £100,000. The SMOD disregard must be applied to the main home first (i.e. deducted from the client's share of total net equity shown | £ | |
| as answer to question 5); any remainder (i.e. only if client's share of total net equity in main dwelling is less than £100,000) should then be applied to other property. You must not reverse the order of the disregards | | |
| 7. Other assets and possessions claimed by the opponent: Savings (bank, building society, etc) Investments (shares, insurance policies, etc) Valuable items (boat, caravan, jewellery, etc) Other capital (including money due to the client) | Client and Partner £ £ £ | |
| Total capital Part A | £ | |
| This is the total capital amount after applying the SMOD disregard of £100,000 to the assets in this section. If there are no SMOD property assets, apply the full £100,000 SMOD disregard to the assets set out in question 7 above. | | |

PLEASE DON'T STRIKE THROUGH THE ENTIRE PAGE TO INDICATE THAT THE QUESTIONS DO NOT APPLY - QUESTIONS MUST BE ANSWERED

CW1 form: Capital

All other assets, that are not specifically claimed by the opponent, must be entered in Part B: Capital. Questions 1-6 take you step-by-step through the calculation of your client's equity in their property assets:

- Q1: Enter the current market value and outstanding mortgage
- Q2 & 3: Determine your client's percentage share of the property
- Q's 4-6: Assist you to calculate the final assessed amount of your client's equity after mortgage and equity disregards are applied.
- **Q7**: Enter savings and other assets
- Finally add total capital Part B, to the total capital from part A

| Part B: Capital | | | | |
|---|--------------------|----------------|--|--|
| ▶ Please list all client's and partner's property, assets or possessions not included in Part A. | | | | |
| Capital excludes household furniture and effects (unless exception tools of trade. | onal value), cloth | es and | | |
| 1. Property: | Main home | Other property | | |
| Current market value: | | - | | |
| Outstanding Mortgage/secured loan: | £ | | | |
| | | | | |
| Is property held in joint names with the opponent? | Yes | ☐ Yes | | |
| If property is held in joint names with the opponent, equal | □No | □ No | | |
| shares will normally be assumed for assessment purposes. | | | | |
| Client's share of property for assessment: | 9 | 6 % | | |
| ▶ Enter 50% when property is jointly owned with opponent. | | | | |
| Select 100% when property is solely owned by client or jointly | | | | |
| with partner. Enter an appropriate % if another party has an interest. | | | | |
| interest. | Main home | Other property | | |
| Total Net Equity (i.e. current market value minus mortgage | | | | |
| disregard): | £ | | | |
| ▶ Deduct the full amount of any debt secured by a mortgage or | | | | |
| charge on the property. | | | | |
| | £ | | | |
| Client's share of Total Net Equity: Multiply answer to guestion 4 by answer to guestion 3. | £ | | | |
| Multiply answer to question 4 by answer to question 3. | | | | |
| Final assessed amount of Client's equity: | | | | |
| After applying equity disregard of £100,000 to client's share of | £ | | | |
| total net equity in main home (shown as answer to question 5). | | | | |
| | | | | |
| Other assets and possessions: | Client | Partner | | |
| Savings (bank, building society, etc) | £ | £ | | |
| Investments (shares, insurance policies etc) | | £ | | |
| Valuable items (boat, caravan, jewellery, etc) | £ | £ | | |
| Other capital (including money due to the client) | £ | £ | | |
| Total capital Part B | £ | _ | | |
| Total of all conital access (Boot A and Boot B) | £ | | | |
| Total of all capital assets (Part A and Part B) | | - | | |
| | | | | |

CW1 form: Income

Passporting benefits are listed at the top of 'Part C: Income'

- If your client is passported, tick Yes and proceed to the evidence section
- If the client is not in receipt of a passporting benefit, tick No and complete ALL income details
- Enter all income unless specifically exempted
- See guidance for full list of exempted income such as disability living allowance
- Monthly allowances are indicated on the form. Enter details which apply to your client
 - Where applicable the Civil Means Calculator enters the relevant dependants' allowances and standard employment allowance for you
- Finally, calculate the total monthly disposable income – that is, the total gross income minus total allowances

| Part C: Income | | |
|---|---|---|
| | ctly in receipt of Income Support, I and Support Allowance, Guarante | ncome-based Jobseeker's Allowance, e Credit or Universal Credit. |
| | tly to the Evidence section on pag | ge 7. |
| No Continue | with income details. | |
| Use monthly figures (if paid weekly, multiply) | by 52 & divide by 12) tiply by 13 & divide by 12) | |
| | ipiy by 13 & divide by 12) | Client Partner |
| Income includes: | | Client Partner |
| Gross monthly earnings Other income | | £ £ |
| (including child benefit, p dividends, tax credits, be | | tt |
| | Total gross income | £ £ |
| Total gross | s income (Client and Partner) | £ |
| Less monthly allowances: | | |
| Housing costs, including | r . | |
| Mortgage instalment* (or | apped if client has no dependents) | £ £ |
| Rent* (capped if client has r | no dependents) | £ |
| * amounts should be ne | t of housing benefit | |
| ▶ Dependents' allowances | | |
| Pa | rtner | £ |
| Dependents Ag | ed 15 and under | £ |
| Ag | ed 16 or over | £ |
| ▶ Tax and National Insura | nce | £E |
| Standard allowance for example of the standard allowance for example. | employment expenses | £ £ |
| Maintenance payments: (eg for children and/or a form) | | ££ |
| Childcare costs because | | £ |
| Payment of income cont legal aid) | ribution order (criminal | ££ |
| | Total allowances | £ |
| Tota | I monthly disposable income | £ £ |
| Tota | I monthly disposable income (Client and Partner) | £ |

CW1 form: Evidence Checklist

- The **evidence checklist** is on page 6 of the form
- Please indicate on the checklist if you have provided evidence in support of means
- If you cannot provide evidence, please provide justification or exceptional circumstance for proceeding without it

Top tip:

Evidence must be retained on file

Evidence Checklist

- Please tick the relevant box(es) to indicate evidence collected.

| Priesse refer to the detailed financial eligibility guidance for controlled work. | | | |
|--|--|--|--|
| Income | | | |
| Employed (P.A.Y.E.) Income: | State benefits (including passporting benefits): | | |
| ■ Wage slips | Bank statements | | |
| Self Employed Income: | Name and type of benefit e.g. | | |
| Recent bank statements | Income-based Jobseekers Allowance must be specified on the statement or | | |
| Complete financial accounts | additional evidence will be required e.g. | | |
| Self Assessment Tax Return | notification letter. | | |
| Cash book | Original notification letter (for passporting | | |
| Benefits in Kind | benefit, please refer to the table providing | | |
| | examples of acceptable and unacceptable | | |
| P11D tax form (benefits in kind) | evidence in Lord Chancellors Guidance). | | |
| Other Income: | Latest letter advising change in benefit | | |
| □ Private /Occupational Pension documents | amount | | |
| Evidence of rental income (bank | Letter from paying agency i.e. Department for Work and Pensions. Jobcentre Plus. | | |
| statement or tenancy agreement) | Pension Service confirming receipt of the | | |
| Trust income (bank statement or letter | passporting benefit at the date of | | |
| from trustees) | application. | | |
| Letter from friend/family providing support | Letters must specify name and type of benefit. Letters over 6 months old must be | | |
| student grant/loan letter | supported by a recent bank statement. | | |
| Other: | Asylum Support (AS): | | |
| (e.g. bank statements) | Letter from AS or Local Authority that | | |
| For pensions and any other income that is subject to income tax, evidence must show | the individual is in receipt of support. | | |
| the gross amount before tax is deducted. | Letter must be less than 6 months old. | | |
| | Tax Credits: | | |
| | Tax Credit Award Notice (most recent). | | |
| | Other recent HMRC letter confirming | | |
| | amount received. Letter must be less than 6 months old. | | |
| Expenditure (refer to guidance on risk-based | • | | |
| | | | |
| Income Tax and National Insurance: | Child Care costs in excess of £600 per month | | |
| Wage slips (employees P.A.Y.E.) | | | |
| Tax calculation sheet form SA302 (self | Copy of agreement/contract | | |
| employed) Housing costs (where amount exceeds | Bank statement | | |
| one-third of client's gross income): | Maintenance (see guidance) | | |
| Rent book/tenancy agreement | Receipts | | |
| Mortgage statement | Bank statement | | |
| Bank statement | Copy of Maintenance Order | | |
| Capital (refer to guidance on risk-based evidence) | ence): | | |
| ☐ Bank statement | Other: | | |
| Share certificate | | | |
| National savings certificate/passbook | | | |
| Premium Savings Bonds or Bond Record (summary) | | | |
| and the state of t | | | |



Useful links and information

Useful links:

- CW1 form and guidance: <u>CW1: financial eligibility for legal aid clients GOV.UK (www.gov.uk)</u>
- LAA training website: Ministry of Justice
- Controlled work application forms: <u>Controlled work application forms GOV.UK (www.gov.uk)</u>
- The Civil Legal Aid (Remuneration) Regulations 2013 (legislation.gov.uk)
- Guide to determining controlled work (publishing.service.gov.uk)
- The Civil Legal Aid (Financial Resources and Payment for Services) Regulations 2013 (legislation.gov.uk)



