



Legal Aid Department

# How Your

Financial Resources and Contribution are Calculated



For more details relating to financial eligibility limits for legal aid, scale of contribution and the Director of Legal Aid's first charge, readers are requested to refer to the "Financial Information Sheet".

## How Your Financial Resources and Contribution are Calculated

In order to qualify for legal aid, you must pass a means test and a merits test. You pass the means test if your financial resources do not exceed the financial eligibility limit for ordinary legal aid or for supplementary legal aid.

The amount of contribution you need to pay towards the costs and expenses incurred by the Legal Aid Department (the Department) varies depending on your financial resources.

### **Warning**

You commit a criminal offence if you make false statement in order to obtain legal aid. This will lead to the cancellation of your Legal Aid Certificate whereupon you will be required to pay back all legal costs incurred by the Director of Legal Aid (the Director) on your behalf.

### ***What are financial resources?***

Financial resources are taken as your monthly disposable income multiplied by 12, plus your disposable capital.

### **Disposable Income**

Monthly disposable income is your monthly income less allowable deductions. Deductions include items such as rent, rates, care allowance for dependants who are unable to care for themselves, maintenance payment and statutory personal allowances for your own living expenses and those of your dependants.

The amounts of personal allowances are adjusted in February each year in line with Consumer Price Index A, and every five years in line with the latest Household Expenditure Survey conducted by the Census and Statistics Department.



### **Disposable Capital**

Disposable capital consists of all assets of a capital nature, such as cash, bank savings, jewellery, antiques, stocks and shares, and property. Some assets are excluded from the calculation of your capital, for example:

- the property in which you live
- household furniture and effects, clothing, and the tools and implements of your trade

### ***Does Spouse's Income Count?***

Your spouse's income and assets will also be taken into account when calculating your financial resources unless:

- you are separated from your spouse
- your spouse has an opposing interest in the dispute for which you are seeking legal aid

### ***How are Children Assessed?***

An infant is defined in the Legal Aid Ordinance as an unmarried person who has not attained the age of 18. The financial resources of an adult applying on behalf of an infant will be disregarded, and only the financial resources of the infant will be taken into account.

### ***Change in financial circumstances***

If your application for legal aid is refused on means, you may re-apply for legal aid when as a result of changes to your financial circumstances, your financial resources are reduced to a level below that of the applicable financial eligibility limit. However, the Director may refuse legal aid if you have disposed of any capital or income or fail to maximise your earning potential so as to expend or reduce your financial resources for the purpose of satisfying the financial eligibility limit.

## Examples of Means Tests (For reference only)

### Example 1 - Nil Contribution

**Assuming the personal allowances for the applicant and dependants are \$11,610 and assuming 'Nil' contribution is payable for person whose financial resources are below \$20,000**

#### Means test calculation

Monthly disposable income

= \$24,000 (gross monthly income) - \$11,610 (personal allowance for applicant and dependants) - \$12,000 (accommodation and related expenses) = \$390

Disposable capital = \$13,000

Total financial resources

= Monthly disposable income x 12 + disposable capital  
= \$390 x 12 + \$13,000 = \$17,680

#### Assessment

As the applicant's total financial resources are less than \$20,000, he passes the means test without needing to pay any contribution.

Financial position of applicant	\$
Monthly income (gross)	24,000
Monthly mortgage payment	12,000*
Monthly rates and management fee	450*
Savings account credit balance	13,000

\* a maximum of 50% of income is allowed for accommodation and related expenses

Wife is unemployed

Applicant has two sons aged 6 and 12

### Example 2 - Contribution Payable

**Assuming the personal allowances for the applicant and dependants are \$7,170**

#### Means test calculation

Monthly disposable income

= \$23,000 (gross monthly income) - \$7,170 (personal allowance for applicant and dependant mother) - \$4,500 (rent) - \$1,000 (salaries tax on a monthly basis) - \$316 (rates on a monthly basis) - \$3,000 (monthly payment to ex-wife for maintenance of their son as ordered by the Court) - \$2,500 (monthly care allowance for dependant) = \$4,514

Disposable capital = \$20,000

Total financial resources

= Monthly disposable income x 12 + disposable capital  
= \$4,514 x 12 + \$20,000  
= \$74,168

#### Assessment

As the applicant's financial resources lie between \$60,001 and \$80,000, he passes the means test. However, he is required to pay a contribution.

Financial position of applicant	\$
Monthly income (gross)	23,000
Monthly rental payment	4,500
Salaries tax for previous year	12,000
Quarterly rates payment	948
Monthly payment to ex-wife for maintenance of their son as ordered by Court	3,000
Monthly payment for the care of mother	2,500
Savings account credit balance	20,000

Applicant is divorced and has one son aged 6.  
The custody of his son is granted to his ex-wife.  
Applicant has a mother aged 80 who has suffered a stroke and is wheelchair bound.



### Example 3 - Over on Means

**Assuming the personal allowances for the applicant and dependants are \$13,780 and assuming the financial eligibility limit for legal aid is \$155,800**

#### Means test calculation

Monthly disposable income  
 = \$30,000 (gross monthly income of applicant and wife) - \$13,780 (personal allowance for applicant and dependants)  
 - \$10,000 (rent) = \$6,220

Disposable capital  
 = \$30,000 (applicant's savings) + \$31,000 (wife's savings) + 45,000 (value of shares)  
 = \$106,000

Total financial resources  
 = Monthly disposable income x 12 + disposable capital  
 = \$6,220 x 12 + \$106,000  
 = \$180,640

#### Assessment

As the applicant's financial resources exceed the financial eligibility limit, he fails the means test and is not eligible for legal aid.

Financial position of applicant	\$
Monthly income (gross)	20,000
Wife's monthly income	10,000
Monthly rental payment	10,000
Savings account credit balance	30,000
Wife's savings account credit balance	31,000
Shareholdings	45,000
Applicant has three sons aged 2, 5 and 9	

### Costs and contribution

#### What happens if you lose your case?

If your case is unsuccessful, any contribution paid by you will be used to offset the costs and expenses incurred by the Department. If the contribution has been partially paid and the amount paid is less than the costs and expenses incurred, you will be asked to pay an amount up to the full amount of the contribution payable to cover the difference. If the contribution paid is more than the costs and expenses incurred, you will receive a refund for the difference.

#### Example A.

'A' is granted legal aid to take proceedings against 'X'

Contribution payable: \$40,000

The case is unsuccessful. The court orders 'A' to pay costs to the opposite party. The costs incurred by the Department come to \$60,000. If 'A' has paid up his contribution, he will not need to make any further payment.

**Example B.**

'A' is granted legal aid to take proceedings against 'X'

Contribution payable: \$40,000

The case is unsuccessful. The court orders 'A' to pay costs to the opposite party. The costs incurred by the Department come to \$30,000. If 'A' has paid up his contribution, he will receive a refund of \$10,000.

***What happens if your money or property claim is successful?***

Even though you are not required to pay a contribution or the contribution paid does not cover the costs and expenses incurred by the Department (including legal costs which cannot be recovered from the opposite party), the Director has a right to recover the costs and expenses incurred or any shortfall from property recovered or preserved in the proceedings. This right is known as the Director's First Charge. However, all maintenance for children and maintenance for the spouse not exceeding a certain amount each month are exempted from the Director's First Charge.

After deduction of the sum liable to be paid by you, the balance will be paid to you. It may take some time to work out the amount to be deducted. Where appropriate, the Department may release an interim payment to you pending finalisation of your account.

***Registration of Director's First Charge***

If the property recovered or preserved on your behalf is landed property, the Director will register this charge against the property in the Land Registry as security for payment.

If the property in question is to be used as a home for yourself or your dependants, the Director may defer enforcing the charge (i.e., delay selling the property to raise money to pay for the costs and expenses incurred by the Department). In this case, you will be liable to pay simple interest at a prescribed rate on the amount of the charge, plus the costs and disbursements incurred by the Director in connection with the registration of the charge at the Land Registry.

The Director has the discretion to waive or reduce the interest if he considers that it would cause you serious hardship, or that it is just and equitable to do so. You may apply in writing to the Director to have the interest waived or reduced at the time of satisfaction of the charge and should give reasons in support.

Legal aid was granted to 'A' to seek damages from 'X' for injuries sustained in a traffic accident.

Sum expended by the Department on behalf of 'A': \$55,000

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|------------------------------|-----|
| Contribution paid or payable | Nil |
|------------------------------|-----|

If the costs are not recovered from 'X', balance due to 'A':

Legal aid was granted to 'A' to sue 'X' for breach of a sale and purchase agreement.

Sum expended by the Department on behalf of 'A': \$120,000

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|-------------------|----------|
| Contribution paid | \$40,000 |
|-------------------|----------|

If the costs are not recovered from 'X', balance due to 'A':

Legal aid was granted to 'A' to take divorce proceedings against her spouse 'X'. The court orders the matrimonial home, registered in joint names, to be transferred to 'A' for use as her continuous residence.

Contribution paid	\$6,000
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As the property is a landed property and used as a home for 'A', the Director will register the charge against it to secure the payment of \$29,000. An interest will be levied on this amount until it is repaid.

If you have any queries concerning these matters, you are advised to seek clarification from your lawyer or a lawyer of the Legal Aid Department before accepting the offer of legal aid.

## Finalising the account of a case

