Assessing Means Assessment

A Summary of the First Phase of the Means Assessment Research Project

Alexy Buck

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Executive Summary

This summary document provides an overview of the findings of the first phase of the Legal Services Research Centre’s (LSRC)\(^1\) means assessment research project. It relates to work conducted from the end of 1997 to summer 1999. The results of the second phase will be published early next year.

The Legal Services Research Centre’s means assessment research project was designed to explore the possibility of improving upon the current civil legal aid means test so as to make it simpler, more administratively efficient, fairer and more in line with other means tests. An aim of the project was to achieve these goals within a context of cost neutrality.

The project was conducted in a number of stages. First, current eligibility levels and patterns were modelled and a survey of means tests used by other agencies and in other jurisdictions undertaken. Then, alternative tests based on gross income levels (along with limited and defined allowances) were modelled so as to ascertain their effect on eligibility levels and also to allow a determination of the social characteristics of the winners and losers under each potential scheme. Finally, a cost analysis was undertaken.

The results of the project to date clearly indicate that a radical new means test is possible which incorporates greater fairness, simplicity, administrative ease and cost neutrality. The latest model tested - which incorporates a gross income cap of £20,000, fixed dependants’ allowances, a capped housing allowance, an employment expenses allowance, £2,625 (full) and £10,000 (contributory) disposable income limits, an upper capital limit of €8,000\(^2\), and current passporting rules\(^3\) - resulted in a slight net reduction in full eligibility levels and a small net increase in partial eligibility levels. When the migration patterns between the full, partial and non-eligible groups were analysed it was determined that the winners were likely to be those in the lower gross income deciles, pensioners and employees. The losers were likely to be higher earners and home owners.

A cost analysis indicated that, on the figures used, cost neutrality would be achieved within a 2% margin.

During the course of the first phase of the project it has become clear that a number of anomalies exist within the current scheme. For example, and most importantly, the capital rules penalise non-passported applicants who are in a financially identical position to passported applicants, thereby disadvantaging working applicants. This was determined by modelling the effect of removing passporting from the means testing scheme. The simple solution of equalising the Income Support and legal aid capital thresholds is recommended.

The analysis conducted during the project also indicated that passporting additional benefit recipients (most notably Family Credit\(^4\) recipients) would not be an effective route towards the project goals. In the case of Family Credit there was a significant migration from the partial to full eligibility groups. Given the problematic nature of the winners and losers of a civil means test which would see Family Credit recipients passported, the abolition of automatically passporting, on income, recipients of Working Families Tax Credit for other levels of service should be considered.

The second phase of the research project, currently in progress, will update and fine-tune the current alternative working model.

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\(^1\) Formerly the Legal Aid Board Research Unit (LABRU).

\(^2\) The current allowances relating to home ownership were maintained.

\(^3\) Applicants in receipt of Income Support or Income-based Jobseeker’s Allowance are passported to free, non-contributory civil legal aid.

\(^4\) Partial eligibility refers to those eligible persons required to contribute to the cost of a case.

\(^5\) Family Credit was replaced by Working Families Tax Credit (WFTC) in October 1999.
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1. Introduction

The Legal Services Research Centre's project on civil legal aid means assessment commenced at the end of 1997. The overall objective of the first phase of the research project was to explore whether a new means test, aimed at affording greater fairness and administrative simplicity, could be developed. The project proceeded on the basis that the total number of persons eligible for civil legal aid and the net spend on legal aid assistance should remain unaffected by any change to an improved means test.

This summary document presents the key findings of the first phase of the project. It starts by providing an overview of the background to the project. The document then sets out the research project's objectives and questions, and the research methodology is also explained. Following this, a summary of two comparative studies is given, focusing on legal aid means tests used in other jurisdictions. The research report then discusses the most important results, starting with the effects of the current means test on civil legal aid eligibility and applicants. Examples of alternative tests will be given, with a particular focus on how a final alternative working means test model was arrived at.

2. Background

The present means test is based on a calculation of disposable income and disposable capital. The income test involves a calculation of weekly gross income, a calculation of weekly deductible allowances and expenses and a recalculation to yearly disposable income\(^1\) to which the income limits are applied. The income limits are uprated in April of each year.

The current lower disposable income limit is £2,723 and the upper disposable income limit £8,067. The upper disposable income limit is deemed as the level above which people do not require financial help with their litigation. Applicants with a disposable income of between £2,723 and £8,067 are asked to pay a contribution towards the cost of the case. Contributions from income are paid on a monthly basis for the lifetime of the case.

As regards disposable capital, applicants with an amount under £3,000 are in the same position as those with none. Applicants with up to £6,750 capital have to contribute all of their disposable capital over £3,000\(^2\).

Applicants in receipt of Income Support or Income-based Jobseeker's Allowance are passported to free, non-contributory civil legal aid. Recipients of these two benefits do not have to go through the process of having their means assessed for the purposes of civil legal aid eligibility.

Assessment officers retain discretion in some cases. There are, for example, discretionary income allowances: “these are allowances against income for expenditure which is not specifically covered by the rules but that the assisted person is either required to make or has reasonably provided for.”\(^3\)

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1. Anticipated changes also have to be factored into the income calculation, adding to its complexity.
2. The calculation of disposable capital is different for pensioners who may benefit from an extra allowance.
A Special Investigations Unit (SIU) was established in 1995 to deal with civil means assessments for applicants with complex and unusual finances and who are apparently wealthy. The Unit is managed by the Legal Services Commission's Policy and Legal Department. Cases are referred to SIU by assessment officers or by the Commission either before or after civil legal aid has been granted. SIU is an important mechanism to ensure only applicants who qualify financially are admitted to the legal aid scheme.

Until April 1997 the Benefits Agency’s Legal Aid Assessment Office at Preston was responsible for civil legal aid means assessment. The Legal Aid Board brought the means test “in house”, transferring on a phased basis the means assessment process to the area offices between October 1997 and February 1998. The transfer of responsibility to the Legal Aid Board represented an opportunity to undertake a full review of the content of the rules and guidance relating to means assessment so as to achieve a number of improvements, although all within the existing legal aid framework.

Despite the improvements, however, the system remains complex, and, in some cases, problematic. One area of particular concern is the assessment of disposable income and in particular some of the allowances made for expenditure. This can advantage, for example, applicants with a relatively high income and reasonable standard of living and with relatively large mortgages and maintenance payments which count as expenditure. This problem applies to both the employed and self-employed.

It can further be argued that the current means test can be complicated, time-consuming and expensive. Additionally, although the Legal Aid Board provided greater guidance on discretion to ensure increased consistency when it brought means assessment in-house, there are still areas of ambiguity.

In order to determine whether there were ways of significantly improving the current means test for civil legal aid, the Legal Services Research Centre embarked on a long-term research project, taking a more fundamental look at eligibility for civil legal aid. The objective was to identify a radically new means test which could confine the assessment of applicants’ means to essential elements, whilst maintaining, or even improving upon, fairness and maintaining current eligibility levels.

3. Research Objectives

At the start of the project, information on means testing in other jurisdictions as well as information confronting issues of means testing in Britain was obtained. Meeting this objective served to ensure that lessons of experience informed the development of the research and the early formulation of proposals.

In order to effectively proceed to devising and testing alternative fairer and simpler means tests, the effects of the current means test needed to be established. A detailed profile of current applicants including each of the fully eligible, partially eligible and ineligible groups was required. An understanding of the nature of the current means test is the foundation stone of the means assessment project. Investigating the effects of fundamental changes to the means test necessitates a

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4 Formerly the Legal Aid Board (LAB), replaced in April 2000 by the Legal Services Commission (LSC).
comparison with the pattern of civil legal aid applicants and the eligible population under the existing means test.

Alternative means tests for civil legal aid then had to be devised and tested. These means tests were aimed at reducing the complexity of the current test and targeting those least likely to be able to meet their own legal costs. The extension of passporting to other means tested benefits was also explored.

Determinations needed to be made of which people were advantaged and which disadvantaged by specific changes to the means test. This meant going beyond mere numbers of eligible persons to providing a detailed picture of the consequences of a potential new means test for a range of categories of applicants.

In respect of the best new test model it was then necessary, on the basis of the characteristics of the potential new eligible population, to estimate the impact on legal aid take-up rate and legal aid expenditure.

4. Research Questions

The principal research questions, in line with the objectives set out above, were as follows:

(i) Can lessons be learnt through examining other means testing schemes?
(ii) Can advantageous aspects of other systems be incorporated into a new, civil legal aid means test?
(iii) What are the effects of the current civil legal aid means test in terms of both eligibility and applicants?
(iv) Who are the winners and losers at present?
(v) What should an alternative means test entail, in terms of income and capital measurement and in terms of passporting?
(vi) Would a radical change to the test alter the fairness of the test?
(vii) How can the effects of alternative means tests best be measured?
(viii) Of the various viable alternative tests, who are the winners and who the losers?
(ix) What meaningful conclusions can be made about take-up, under the current means test and under a proposed change to the means test?
(x) How might any change in eligibility and take-up affect the Legal Aid Fund?
5. Research Methodology

A triangulated methodology was necessary to address the many complex and interdependent research questions. Triangulation is an important mechanism of ensuring the validity and reliability of research results. In essence, six different research exercises were undertaken. These are set out below.

Means testing in other jurisdictions and in Britain

A study of means tests in other jurisdictions and a comprehensive review of issues confronting means testing in Britain was undertaken to provide background information, ideas as to testing methods and adequacies, and to introduce a comparative element to the project.

Civil legal aid applicants

To provide information on current civil legal aid applicants, data was collected from the Legal Aid Board’s electronic data systems during 1998. The electronic data provided information relating to age, sex, employment status, disposable income and disposable capital bands and contribution offers to civil legal aid applicants.

Survey data was needed to supplement the electronic data which proved not to be as extensive as had been hoped. The survey was undertaken over the summer of 1998. 200 questionnaires were sent out to each of the area offices, resulting in detailed demographic, socio-economic and legal information being collected on a sample of over 2,500 legal aid applicants. This information, apart from being of interest in itself, was used to model the take-up of civil legal aid amongst those currently eligible.

Micro-economic modelling

Micro-economic modelling was undertaken to model the civil legal aid means test and alternatives. Microsimulation models are based on micro-data for representative samples of the population. They are employed to mimic how current programme provisions apply to individuals and groups of individuals. Microsimulation models can also simulate and evaluate the potential consequences of policy changes to existing programmes.

The micro-economic aspect of the research project was conducted in collaboration with the Institute for Fiscal Studies (IFS), and the Microsimulation Unit of the Department of Applied Economics in the University of Cambridge. Two large-scale government social surveys, the Family Expenditure Survey (FES) and the Family Resources Survey (FRS), were used. Both contain information on income and expenditure and are representative samples of the population. The FES includes details of over 6,000 households and is carried out annually by the Office for National Statistics (ONS). The FRS contains information on over 25,000 households and was launched in 1992 by the Department of Social Security. Information is also collected on an annual basis.

5 The second phase of the research project is being conducted in collaboration with the Institute for Fiscal Studies.
First, a model of the current civil legal aid means test was constructed to simulate eligibility rules. The model developed was applied to the representative samples of the population in England and Wales in order to calculate the numbers eligible for civil legal aid, as well as defining their characteristics. The model was then developed to simulate a variety of alternative means tests.

**Devising tests**

Prior to and in parallel to the micro-economic modelling, alternative means tests had to be devised and assessed. This necessitated discussions and qualitative judgements in regard to eligibility rules and their consequences. More specifically, judgements had to be made about income thresholds, capital assessment, benefits, types of allowances and whether these should be fixed or flexible. A teleological approach to model development was adopted. The models tested were therefore often informed by the outcomes of previous models. The final model was arrived at after having continuously narrowed down and developed sensible options.

**Take-up**

Information on applicants and information on the eligible population was combined into a take-up study. This meant that the LSRC’s own data set, giving information on applicants, had to be made compatible with the Family Resources Survey dataset, providing information on the eligible population. The take-up rate was ultimately applied to the population output from the micro-economic model of the final alternative means test.

**The self-employed**

The main emphasis of the means assessment research project was directed at employed applicants. The self-employed make up only around 5% of applicants. They are, however, an important group and a group often regarded as being particularly problematic in the context of means assessment.

A radically simplified means test, e.g. just computing the turnover of an applicant’s business, is unlikely to be viable due to the heterogeneity amongst the self-employed and the difficulties involved in establishing and verifying their often complex means. Two external researchers from the University of York and from Middlesex University Business School were commissioned to conduct a small study of possible improvements to self-employed means assessment. Their work involved a critical evaluation of the current means assessment system, in technical accounting terms, and the implications of this in terms of equity for applicants, congruency with other systems and administrative efficiency and effectiveness. The researchers were also asked to look at the scope for potential simplification, the impact that any changes might have, any options for different treatments for different kinds of self-employment and the scope for greater harmonisation across government.

Introduction

Means-tests are used to target benefits and other resources towards those most in need. They involve an enquiry into claimants' personal and financial circumstances to assess whether they qualify for the relevant benefit or resource. Claimants are required to provide documentary evidence in the form of bank statements, recent wage-slips, medical certificates etc. Most means tests involve an enquiry into both income and capital. Many means tests also include an assessment of necessary expenditure. Means tests are relatively expensive to administer, with their cost increasing with complexity.

Despite many similarities, there are a diverse range of different approaches and ways of looking at a person’s means. To take account of this diversity, the LSRC conducted two comparative studies. The first study looked at means testing in Britain. The second study was concerned with legal aid means testing in other jurisdictions. This summary document only provides “snapshots” of these studies.

Means Testing in Britain

In Britain, means tests affect large numbers of people. According to Hills et al:

"The extent of means-testing has steadily expanded since the War - more than 10 per cent of the population now claim Income Support; including their partners and families, more than 17 per cent depend on it." 6

Currently, the following benefits are means tested: Income Support, Family Credit, Disability Working Allowance, Tax Credits (Working Families Tax Credit, Disabled Person’s Tax Credit, Childcare Tax Credits), Earnings Top-up, Housing Benefit and Council Tax Benefit. In addition to means tested benefits other resources such as Housing Renovation grants, financial help for students, child maintenance, as well as legal aid are distributed through means testing.

Comparison of various means tests reveals that on the whole most agree on what is to be counted as income and capital, although the capital thresholds vary considerably. Those that take into account essential expenditure generally include housing, a personal allowance and childcare costs.

The survey of means testing in Britain was used to base proposed alternative means test models on a thorough and informed evaluation of means tests used in Britain. The survey was also designed to investigate the potential of promoting an underlying coherence between different means tests. Further, the LAB’s/LSC’s current passporting rules were analysed. The civil legal aid means test specifies that applicants on Income Support or Income-based Jobseeker’s Allowance are automatically passported to free civil legal aid. It was therefore important to ensure that there is continuity between the means test for these passported benefits and the civil legal aid means test. Lastly, the survey of means testing in Great Britain

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was also used to give insights into the potential of extending automatic free civil legal aid to recipients of other means tested benefits.

However, every system is functionally determined, and it was therefore not proposed that financial eligibility rules for civil legal aid in England and Wales should be made strictly identical to other tests. It is crucial to stress the different purposes behind various means assessment tests. For example, the Income Support test exists to guarantee a minimum standard of living. In this sense, the means test for Income Support purposes is not strictly comparable to the civil legal aid means test. The Income Support test is intended to ensure a subsistence level of income, the minimum deemed necessary for decent survival. Legal aid, on the other hand, is aimed at giving access to justice in defined areas of need to those who cannot afford their own legal fees.

Means assessment tests, therefore, cannot be viewed in isolation from their target groups, the nature of the payments made, the purpose of the test, the resources available and the overall context in which means tests operate within any given country. This is especially important to bear in mind when comparing different tests.

**Legal Aid Means Testing in Other Jurisdictions**

Tests of varying complexity are in operation throughout Australia, Canada and the European Union. For the purposes of the survey, they have been classified as ranging from *open*, i.e. flexible and individually oriented means tests, through *complex* systems to *closed* financial means tests which do not take account of applicant's individual needs and circumstances. All tests, however, consider income and capital in some form, and in most jurisdictions a contribution is expected from those who can afford it. Often, applicants in receipt of their country's social assistance are eligible without a contribution to be paid.

**Open Systems**

At the one extreme, some means tests are highly discretionary. They take account of the applicant's needs and individual circumstances. These means tests are *open* systems in the sense that rules applied to applicants' income or capital are not rigid.

The civil legal aid scheme (*patrocinio gratuito*) in Italy provides an example of this type of individually oriented means test. The means test for civil cases in Italy is personal to the legal aid applicant and "not related to a general scale of disposable income or capital". Means assessment takes into account the applicant's

"global situation, income, expenses, number of dependants and is made on the basis of prudent appraisal. In general, legal aid is granted to applicants whose income is below 10,000,000 lire".

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7 For a summary of Australian eligibility criteria in the 1980s see Attorney-General's Department, Office of Legal Aid Administration, *Who Gets Legal Aid? - Summary of the Eligibility Criteria of Major Legal Aid Bodies throughout Australia*, February 1987.


9 The current exchange rate is approximately 3,200 lire to £1.
A Legal Aid Committee, attached to each Court, Court of Appeal, Regional Administrative Court and the State Council, decides whether the applicant is unable to pay the published scale fees. If legal aid is granted, the Commission appoints a lawyer.

**Complex Systems**

Complex systems are characterised by fixed rules and processes (with only very limited discretionary elements). Most of the means tests examined fall within this category, including the current civil legal aid means test in England and Wales. These means tests take account of applicants' income and capital. They also aim to take account of living expenses by allowing for various capital and income disregards. Allowances for dependants are commonly used, as are allowances for housing which are often capped. Further, some means tests include fixed allowances in relation to, for example, travel to work or childcare. Eligibility is then assessed on disposable income and capital.

The means tests discussed in this section take account of individual needs and expenses, albeit within defined boundaries of need. Thresholds for financial eligibility are often set with reference to a poverty line or a benefit such as Income Support. In British Columbia (BC), for example, “most applicants with incomes above basic income assistance (BC Benefits) rates pay a contribution ranging from $30 - $150"¹², depending on their income"¹². As regards setting income level thresholds, Luxembourg also provides some interest, in so far as comparisons are made with minimum wages as set out in statute.

The National Means Test in Australia is an example of a test operating within a complex set of rules and regulations. The National Means Test was developed and adopted by all Legal Aid Commissions (LAC) in 1995. The Test has been formulated to reflect current economic and social realities by imposing monetary limits on assets, income and expenses. The means test is based on the Henderson Poverty Line. The poverty line, updated regularly, is the unofficial standard of poverty. It is calculated with reference to household disposable income and average weekly earnings.

An applicant for legal aid must satisfy both the income test and the assets test in order to financially qualify for a grant of legal aid. The test also assesses ability to pay for a particular case.

All Australian States and Territories look at the means of the applicant as well as any “financially associated person” (such as spouses, de facto partners, trusts and companies). The Income Test calculates all income and then deducts Department of Social Security (DSS) allowances and Income Tax. Housing costs, dependants' allowances and child care costs are deducted to a ceiling set by each LAC. There are additional deductions for other expenditure items. Lifestyle indicators, where

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¹¹ The current exchange rate is approximately $2.6 to £1.
known, are also taken into account. Depending on the level of disposable income after the above deductions, a contribution is calculated.

The assets test calculates all assets, excluding reasonable household furniture and effects, clothing, tools of trade and certain lump sum payments which are treated as income by the DSS. Equity in principal residence, equity in motor vehicle and equity in farm or business are deducted to a ceiling set by each LAC.

Closed Systems

Closed means tests do not take account of individual's specific circumstances. They are therefore relatively simple means tests and tend to be more transparent and less time-consuming to administer compared to more complex means tests.

A number of eligibility tests within the EU take account of net income and the existence or number of dependants only. The tests operating in France and the Netherlands provide examples.

In the Netherlands, net monthly income thresholds vary depending on whether the applicant is single or one of either married, cohabiting, a single parent or in a two-parent family. There are no additional allowances for the number or age of dependants, as for example is found in the means test in England and Wales. All legal aid recipients must pay something towards the cost of their case, based on a sliding scale of contributions. Legal Aid recipients with dependants contribute at a lower rate.

Other means tests which can be described as closed are those which take gross income and only a limited set of basic allowances into account. The test in Queensland, Australia provides an example of a simple means test which determines legal aid eligibility by using a gross income measure. This means assessment procedure differs substantially from Australia's National Means Test. The test in Queensland, implemented in 1997, is a test of particular relevance and interest to the LSRC's means assessment work.

Research for the new means test was conducted by the National Centre for Social and Economic Modelling at the University of Canberra. Similar to the LSRC's project, this study used a microsimulation model of the Queensland population. The legal aid means test in operation at the time of the research project was simulated in order to compare its outcomes with those of alternative simpler tests. Particular attention was paid to finding a restricted set of indicators that could successfully predict legal aid eligibility. The researchers concluded that

"Where appropriate, acceptable gains in efficiency can be achieved by using reduced versions of financial test criteria. While some levels of error will always be encountered, the effect of this can be controlled by excluding elements of the test where the overall error rate is found to be excessive (for example, in predicting asset levels) and by excluding groups whose income and asset levels are found to be particularly difficult to predict (for example, the self-employed)."13

In essence, the simplified means test in Queensland is based on the above recommendation. The current assessment process has the following two key characteristics:

1. Applicants in receipt of a Department of Social Security benefit are automatically deemed to be financially eligible for legal aid provided they are within the assets test guidelines (in Queensland approximately 75% of legal aid applicants receive DSS payments as their main source of income).

2. The simplified model assesses eligibility for salary earners by reference to household type (the number of people depending on the income) and gross weekly income figures as well as applicants’ assets. The formula takes into account the number of people in an applicant’s household who are dependent on the income, including maintenance dependants. Household members are taken to include anyone who is financially related to the applicant. The income of any financially associated person must be declared as part of the total household weekly income. There are allowed gross weekly income limits for households of various sizes.

Adopting this approach has meant that the full means test is only required in relation to applicants who are self-employed or in other circumstances where a detailed review of means is indicated.

Legal Aid Queensland has found the simplified test saves valuable processing time. Applicants have benefited from a reduced requirement for information. There are also plans to administer the application of the test electronically, thereby increasing simplicity and further improving processing time.

There is interest in adopting this simplified system in other Australian States and Territories, as criticism of the Australian National Means Test has highlighted the need for simplification and increased efficiency.

7. The Effects of the Means Assessment Test: Eligibility

As shown in Figure 1, the results of the micro-economic modelling exercise indicate that 48% of benefit units in England and Wales are eligible for civil legal aid. This percentage corresponds with recent figures estimated by the Office for National Statistics for the Lord Chancellor’s Department. For example, in both 1996/1997 and 1995/1996, the Office for National Statistics found that 48% of benefit units in England and Wales were eligible for civil legal aid.

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14 Benefit unit is a standard Department of Social Security term and defined as a single adult or married/living as married couple and any dependent children. The term benefit unit is used throughout as a description of an individual/groups of individuals regardless of whether they are in receipt of any Social Security benefits.
Figure 1. Civil Legal Aid Eligibility\textsuperscript{15}

<table>
<thead>
<tr>
<th>Eligibility Status</th>
<th>No. of Benefit Units in England and Wales (in 000s)</th>
<th>Percentage of Benefit Units in England and Wales (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Complete (passported and non-passported)</td>
<td>7,113</td>
<td>26</td>
</tr>
<tr>
<td>Partial\textsuperscript{16}</td>
<td>5,849</td>
<td>22</td>
</tr>
<tr>
<td>None</td>
<td>14,141</td>
<td>52</td>
</tr>
<tr>
<td>Total</td>
<td>27,093</td>
<td>100</td>
</tr>
</tbody>
</table>

Data source: IFS Legal Aid Model

It is important to stress that levels of access to justice cannot be solely assessed by the calculation of a particular percentage of eligibility. This percentage needs to be supplemented by an overview of who the people eligible for civil funding are. Defining the characteristics of the groups in question is an important step in determining whether the civil means test targets access to justice in a fair and coherent way.

Therefore, the Means Assessment Research Project took account of some of the key characteristics used in the Family Resources Survey and the Family Expenditure Survey to describe benefit units. Particular attention was paid to the benefit unit type, tenure and the employment status of the head of the household. It was also felt to be important to include regional information. Lastly, gross income deciles were seen as an insightful mechanism to highlight possible fairness issues. Gross income deciles refer to the position in the income distribution of each benefit unit, ranging from the poorest 10% (Decile 1) to the richest 10% (Decile 10).

Results showed that most of the fully eligible population is located in the poorest 40% of the general population, in gross income terms, although some are drawn from the 5\textsuperscript{th}, 6\textsuperscript{th} and even 7\textsuperscript{th} gross income deciles. As would be expected, the fully eligible tend to be single unemployed persons, single pensioners or single parents. They also tend to live in the local authority rented property sector.

Those in the partially eligible population are also more likely to live in local authority rented accommodation. However, there are also many mortgagees and owner occupiers in this group. In terms of gross income deciles, 29% of those partially eligible under the current test can be found in the richest 40% of the population. For example, 11% of those partially eligible can be found in the 7\textsuperscript{th} gross income decile. It might be concluded from these gross income findings that the current civil means test could be improved in terms of targeting the most deserving applicants.

8. The Effects of the Means Assessment Test: Applicants

Merely looking at the eligible population does not give a satisfactory picture of the effects of the current means test. Information on applicants was crucial in order to determine take-up patterns. Knowing, for example, that certain benefit units are

\textsuperscript{15} The microsimulation modelling for the first phase of the research project was conducted in 1998 and early 1999. The eligibility model and all of the alternative models discussed in this summary document therefore relate to the financial year April 1998 - April 1999. During that time, the lower disposable income limit was £2,625 and the upper disposable income limit was £7,777 (£8,751 in Personal Injury cases). The lower disposable capital limit was £3,000, the higher disposable capital limit £6,750.

\textsuperscript{16} Eligible for civil legal aid with a contribution to be paid from income and/or capital.
eligible does not mean that the corresponding number of benefit units will actually come forward and apply.

Two data sources were used to provide an extensive profile of civil legal aid applicants. The larger data set derived from the Legal Aid Board's own electronic data systems and provided a good macro-picture of civil legal aid applications. The smaller data set provided more detailed information and was collected specifically for the purposes of the Legal Services Research Centre's means assessment project. Only selected findings are highlighted in this summary research report.

Legal Aid Board Data Set

The data collected from the Legal Aid Board's own electronic data systems provided information on 185,467 civil legal aid applicants in the six month period from September 1997 to February 1998. Of the 185,467 means assessment applications for civil legal aid, 163,500 fell within current eligibility criteria. Of these 163,500 applications, 54% were on Income Support or Income-based Jobseeker's Allowance and therefore passported automatically to free civil legal aid on the means test. The next largest group were those employed and all others who are not classed as self-employed. This group made up 43% of all successful applications. Self-employed applicants made up only 3% of the total number of successful applicants. This includes company directors who are classified as self-employed for the purposes of civil legal aid eligibility.

90% of applications made by employed people were deemed eligible compared to 78% of those from self-employed people.

In passported cases, 60.2% of the individuals were female. The largest group, when looking at age, were 25-35 year olds who made up 37%. The next largest age group were 35-45 year olds.

Just over half of the applicants in the employed group were female (53.2%), and again the largest group were the 25-35 year olds (27%). The next largest age group were also again 35-45 year olds.

The self-employed group displays noticeably different characteristics from the other main groups. Considerably more applicants in this group were male (66%). In terms of age, the largest group were 35-45 year olds, representing a slightly older group.

LSRC Survey Data Set

Figure 2 illustrates the employment status of the non-passported applicants in the LSRC survey data set. Over half of these applicants were employees. In contrast, only about 5% are self-employed or company directors. Children under 16 make up 7.53% of the sample.
Figure 2  Applicant's Employment Status  
(All Non-passported Applicants)

<table>
<thead>
<tr>
<th>Employment Status</th>
<th>Frequency</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Employee</td>
<td>629</td>
<td>51.78</td>
</tr>
<tr>
<td>Company Director</td>
<td>5</td>
<td>0.41</td>
</tr>
<tr>
<td>Self-employed</td>
<td>57</td>
<td>4.71</td>
</tr>
<tr>
<td>Retired</td>
<td>68</td>
<td>5.62</td>
</tr>
<tr>
<td>Not Employed</td>
<td>176</td>
<td>14.58</td>
</tr>
<tr>
<td>Sick (long-term)</td>
<td>107</td>
<td>8.85</td>
</tr>
<tr>
<td>Sick (short-term)</td>
<td>27</td>
<td>2.23</td>
</tr>
<tr>
<td>Student</td>
<td>23</td>
<td>1.90</td>
</tr>
<tr>
<td>Child under 16</td>
<td>91</td>
<td>7.53</td>
</tr>
<tr>
<td>Other</td>
<td>29</td>
<td>2.40</td>
</tr>
<tr>
<td>Total</td>
<td>1209</td>
<td>100</td>
</tr>
</tbody>
</table>

Data source: LSRC Civil Legal Aid Survey

Figure 3 and Figure 4 show the marital status amongst non-passported applicants (excluding children under 16). As can be seen, there were more married and less single applicants amongst the self-employed.

Figure 3  Marital status of non-passported civil legal aid applicants

Data source: LSRC Civil Legal Aid Survey
Figure 4  Marital Status of Self-employed Applicants

Data source: LSRC Civil Legal Aid Survey.

Figure 5 illustrates the type of housing applicants lived in. Again, there was a remarkable difference between the self-employed and all non-passported applicants. For example, 54.1% of self-employed applicants lived in mortgaged accommodation compared to 37.5% of all non-passported applicants. Overall, fewer self-employed applicants owned their own house outright.

<table>
<thead>
<tr>
<th>Type of Housing</th>
<th>All Non-passported Applicants excluding Children under 16</th>
<th>Self-employed Applicants</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mortgaged</td>
<td>419 (37.5%)</td>
<td>33 (54.1%)</td>
</tr>
<tr>
<td>Rented</td>
<td>429 (38.4%)</td>
<td>17 (27.9%)</td>
</tr>
<tr>
<td>Owned Outright</td>
<td>47 (4.2%)</td>
<td>1 (1.6%)</td>
</tr>
<tr>
<td>Lodging</td>
<td>54 (4.8%)</td>
<td>2 (3.3%)</td>
</tr>
<tr>
<td>Living with Family</td>
<td>113 (10.1%)</td>
<td>7 (11.5%)</td>
</tr>
<tr>
<td>Other</td>
<td>53 (4.7%)</td>
<td>1 (1.6%)</td>
</tr>
<tr>
<td>Total</td>
<td>1115 (100%)</td>
<td>61 (100%)</td>
</tr>
</tbody>
</table>

Data source: LSRC Civil Legal Aid Survey

Figure 6 shows the distribution of case types amongst applicants in LSRC’s civil legal aid survey. Amongst all types of applicants, family cases are the most frequent at 54.9%. The second most frequent case category is personal injury, although amongst the self-employed these cases are far less frequent. Noticeably, there are more contract cases amongst the self-employed (11.5%) compared to other non-passported applicants (2.5%) and passported applicants (2.19%).
Figure 6  
**Case Type**

<table>
<thead>
<tr>
<th>Case Type</th>
<th>All Non-passported Applicants excluding Children under 16</th>
<th>Self-employed Applicants</th>
<th>Passported Applicants</th>
</tr>
</thead>
<tbody>
<tr>
<td>Family</td>
<td>618 (56.3)</td>
<td>35 (57.4)</td>
<td>651 (50.98)</td>
</tr>
<tr>
<td>Contract</td>
<td>27 (2.5)</td>
<td>7 (11.5)</td>
<td>28 (2.19)</td>
</tr>
<tr>
<td>Judicial Review</td>
<td>6 (0.5)</td>
<td>2 (3.3)</td>
<td>5 (0.39)</td>
</tr>
<tr>
<td>Welfare</td>
<td>1 (0.1)</td>
<td>0</td>
<td>4 (0.31)</td>
</tr>
<tr>
<td>Commercial</td>
<td>4 (0.4)</td>
<td>1 (1.6)</td>
<td>3 (0.23)</td>
</tr>
<tr>
<td>Housing</td>
<td>23 (2.1)</td>
<td>2 (3.3)</td>
<td>58 (4.54)</td>
</tr>
<tr>
<td>Personal Injury</td>
<td>344 (31.3)</td>
<td>8 (13.1)</td>
<td>346 (27.09)</td>
</tr>
<tr>
<td>Don't know</td>
<td>41 (3.7)</td>
<td>4 (6.6)</td>
<td>99 (7.75)</td>
</tr>
<tr>
<td>Other</td>
<td>34 (3.1)</td>
<td>2 (3.3)</td>
<td>83 (6.50)</td>
</tr>
<tr>
<td>Total</td>
<td>1098 (100%)</td>
<td>61 (100%)</td>
<td>1277 (100%)</td>
</tr>
</tbody>
</table>

Data source: LSRC Civil Legal Aid Survey

Figure 7 illustrates that partners of a sizeable number of civil legal aid applicants were the opponents in cases. This number is clearly a reflection of the percentage of family cases (see Figure 6).

**Figure 7  Is the Applicant's Partner the Opponent in the Case?**

<table>
<thead>
<tr>
<th>Partner Opponent?</th>
<th>All Non-passported Applicants excluding Children under 16</th>
<th>Self-employed Applicants</th>
</tr>
</thead>
<tbody>
<tr>
<td>No</td>
<td>590 (54.7%)</td>
<td>34 (57.6%)</td>
</tr>
<tr>
<td>Yes</td>
<td>488 (45.3%)</td>
<td>25 (42.4%)</td>
</tr>
<tr>
<td>Total</td>
<td>1078 (100%)</td>
<td>59 (100%)</td>
</tr>
</tbody>
</table>

Data source: LSRC Civil Legal Aid Survey

As regards maintenance payments and receipts, in 8.7% of cases the applicant or partner were paying maintenance. 13.7% of applicants were receiving maintenance payments.

As Figure 8 shows, a high percentage of the sample applicants qualified for legal aid on the means test, although the self-employed were less likely to qualify.

73% of those applicants in the sample who did not qualify on the means test were unsuccessful because of their income, 21% because of their capital. 6% of applicants were unsuccessful because of both income and capital.

**Figure 8  Does Applicant Qualify on the Means Test?**

<table>
<thead>
<tr>
<th>Does Applicant Qualify on Means Test?</th>
<th>All Applicants excluding Children under 16</th>
<th>Non-passported Applicants</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>916 (86.6%)</td>
<td>40 (74.1%)</td>
</tr>
<tr>
<td>No</td>
<td>142 (13.4%)</td>
<td>14 (25.9%)</td>
</tr>
<tr>
<td>Total</td>
<td>1058 (100%)</td>
<td>54 (100%)</td>
</tr>
</tbody>
</table>

Data source: LSRC Civil Legal Aid Survey

Similarly, a relatively high percentage of sample applicants qualified on the merits test. As opposed to the means test, however, self-employed applicants were more likely to qualify (see Figure 9).
Does Applicant Qualify on the Merits Test?

<table>
<thead>
<tr>
<th>Does Applicant Qualify on Merits Test?</th>
<th>All Applicants excluding Children under 16</th>
<th>Self-employed Applicants</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>864 (79.9%)</td>
<td>53 (86.9%)</td>
</tr>
<tr>
<td>No</td>
<td>87 (8%)</td>
<td>5 (8.2%)</td>
</tr>
<tr>
<td>Further Information Required</td>
<td>8 (0.7%)</td>
<td>2 (3.3%)</td>
</tr>
<tr>
<td>Other/Don’t know</td>
<td>122 (11.3%)</td>
<td>1 (1.6%)</td>
</tr>
<tr>
<td>Total</td>
<td>1081 (100%)</td>
<td>61 (100%)</td>
</tr>
</tbody>
</table>

9. Alternative Tests

A large number of potential alternative means tests were devised and tested in the process of this study, each new model narrowing down the options which might sensibly be put forward. A small selection of the models tested is discussed below. The focus in this summary document is on tests which helped determine the rules of the final means test model.

Passporting

This section focuses on tests which saw recipients of various means tested benefits passported, without changing other elements of the civil legal aid means test. Extending automatic free civil legal aid to recipients of other means tested benefits seemed to be an option worth exploring, as it had the potential to increase both fairness and administrative simplicity.

Passporting Other Means Tested Benefits

The effects of passporting all means tested benefits to full civil legal aid were explored. This would result in a considerable increase to eligibility. This exercise proved useful as it illustrated that means tested benefits do not target identical groups of the population and vary in terms of their rules and eligibility levels.

Passporting Family Credit

As part of the project the potential impact of passporting Family Credit to free, non-contributory civil legal aid was also examined. Passporting Family Credit would, of course, result in administrative simplicity and would align the civil legal aid means tests with other legal aid means tests. On the surface, it might also seem to

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17 This includes Income Support, Income-based Jobseeker’s Allowance, Family Credit, Disability Working Allowance, Earnings Top-up, Housing Benefit and Council Tax Benefit.
18 Family Credit was replaced by Working Families Tax Credit (WFTC) in October 1999. This benefit, though very similar to Family Credit, is more generous than Family Credit, with a more generous taper and higher income threshold. The aim is that many more families will receive WFTC.
19 At the time the research project was undertaken, applicants for the Legal Advice and Assistance scheme automatically qualified on income if in receipt of Income Support, Income-based Jobseeker’s Allowance, Family Credit or Disability Working Allowance, unless their disposable capital exceeded £1,000. Applicants for the Assistance by Way of Representation (ABWOR) scheme qualified automatically if in receipt of Income Support or
increase fairness, eliminating the often fine line between working families on a low income on Family Credit and those on Income Support who are therefore passported.

Figure 10 shows the population of England and Wales by eligibility for civil legal aid under both the current means test and a means test which would see Family Credit recipients passported to free civil legal aid. The column on the left shows the number of benefit units fully entitled under the present means test. The next predominantly white column shows the number of fully entitled under a reformed means test with Family Credit recipients passported. The white part of the column represents the benefit units who remain fully entitled. The grey part of the column represents those benefit units who are partially entitled under the present system but become fully entitled under the new system. The light grey columns show the numbers of benefit units partially entitled. The dark grey columns on the right show the number of benefit units not entitled.

Figure 10  Passporfing Family Credit
Civil legal aid eligibility status by number of benefit units eligible (in thousands)

Data source: IFS Civil Legal Aid Model

Figure 10 indicates that passporting Family Credit does not lead to a particularly great increase in eligibility. However, further findings suggest that passporting Family Credit might not actually be as sensible and fair a route to take as might be thought.

Most of the winners, if Family Credit recipients were passported, would not previously have fully qualified for civil legal aid. Microeconomic modelling has

Income-based Jobseeker’s Allowance. Recipients of Family Credit or Disability Working Allowance automatically qualified on income.
suggested that only 6% of Family Credit recipients are fully eligible for civil legal aid. 81% are partially eligible and 13% are not eligible at all under the present system. This indicates that extending free automatic civil legal aid to Family Credit recipients is unlikely to target the most deserving group of people.

This disadvantage seems to outweigh the potential advantage of administrative simplicity, especially in the light of the introduction of the Working Families Tax Credit to replace Family Credit. The WFTC actually sees all Family Credit benefits become invisible to the final alternative model means test as gross income levels remain static.

The findings in regard to passporting Family Credit for full civil legal aid eligibility should be applied to the current means test for Legal Help; Help at Court; and Legal Representation before Immigration Adjudicators and the Immigration Appeal Tribunal. Given the problematic nature of the above described winners and losers of a civil means test which would see Family Credit recipients passported, the abolition of automatically passporting, on income, recipients of Working Families Tax Credit for other levels of service should be considered. In addition to greater harmonisation between the different levels of service available, it is also likely to maximise targeting the most deserving applicants across the Community Legal Service’s schemes.

**Capital**

*Means testing without a capital test*

The data from the Legal Aid Board’s electronic data systems and LSRC’s survey of civil legal aid applicants showed that most applicants have less than £3,000 capital, which is the limit for full civil legal aid. Similarly, research results derived from a means survey conducted by the Lord Chancellor’s Department in the early 1990s, found that only 2,235 (28%) had capital resources. Of these, only 366 (5%) has disposable capital above the free limit of £3,000, and 233 (3%) were eligible for contributory civil legal aid. Further, the Microsimulation Unit at the University of Cambridge found that of all the benefit units partially eligible for civil legal aid, only 11% would have to make a contribution from both income and capital and only 1% would have to contribute to their legal costs from capital only. Lastly, a report by the National Audit Office in 1996 stated that “a high proportion of applicants declared no savings or investment at all and others declared only modest amounts.”

In order to validate these findings, a test was modelled in which only the current income test was applied - capital being ignored.

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20 Applicants for this level of assistance automatically qualify on income if in receipt of Income Support, Income-based Jobseeker’s Allowance, Working Families Tax Credit and Disabled Persons Tax Credit. Recipients of the last two means-tested benefits are passported only if the amount (if any) to be deducted under Sections 128(5)(b) or 129(5) of the Social Security Contributions and Benefits Act 1992 has been determined at not more than £70 per week. There is no automatic qualification on capital, which means that disposable capital must be assessed in all applications.


Figure 11  No capital test  
Civil legal aid eligibility status by number of benefit units eligible (in thousands)

<table>
<thead>
<tr>
<th>Partial</th>
<th>Complete</th>
</tr>
</thead>
<tbody>
<tr>
<td>ORIGINAL</td>
<td>REFORMED</td>
</tr>
<tr>
<td>ORIGINAL</td>
<td>REFORMED</td>
</tr>
<tr>
<td>ORIGINAL</td>
<td>REFORMED</td>
</tr>
</tbody>
</table>

Data source: IFS Civil Legal Aid Model

As Figure 11 illustrates, it was found that ignoring capital does not lead to a particularly great increase in eligibility. However, the twin aims of targeting and fairness do not permit the exclusion of a capital assessment. Although there would be relatively few winners from such a development, an examination of the characteristics of the people affected demonstrates that a significant number of “nightmare case” applicants would become partially, or even fully, eligible. These are people who are asset rich and are able to live comfortably off their capital and investment income.

This model illustrates the importance of defining the people affected by any change to the means test, in addition to establishing mere new eligibility levels.

Improvements to the current capital test

A comparison of the civil legal aid means test capital limits with the capital limits for Income Support shows that the test applied for Income Support purposes is in some ways more generous than that for legal aid. Income Support recipients are allowed £8,000 in capital\(^\text{23}\). The legal aid means test has a capital limit of under £6,750. This can mean that working individuals, who earn an amount equivalent to Income Support rates, can be worse off than their out of work counterparts. Conversely, it can be observed that if the practice of passporting Income Support were ended and

\(^{23}\) It should be noted here that if Income Support/Income-based Jobseeker’s Allowance recipients’ capital is over £3,000, they are treated as having an assumed income from it, called tariff income. Recipients are assumed to have an income of £1 for every £250, or part of £250, by which their capital exceeds £3,000 but does not exceed £8,000.
Income Support benefits counted as income, some families currently passported would become ineligible.

The effects of developing the means test to achieve horizontal equity as between these population groups were tested through micro-economic modelling and found to be minimal. It is suggested that the civil upper capital limit be brought in line with the capital limits for other benefits, notably Income Support.

The second phase of the research project will expand this proposal on matching the civil capital limit to the Income Support upper capital limit. It will investigate the disadvantages and advantages of adopting the same test as used for calculating Income Support eligibility on the capital side. The modelling will test the effects of the Income Support rules on civil eligibility, as well as looking into the possibility of applying a simple, gross capital test.

Income

Means Tests with Gross Income

As the capital model illustrated, the most important aspect of the means test is the income test. Tests were devised with the ultimate aim of arriving at a standardised system with straightforward calculations on income.

Following logically from the objective of reducing complexity and moving away from calculating disposable income, it was decided to concentrate on modelling means tests which calculate eligibility with reference to gross annual income. A two-tier system was tested in which benefit units are “filtered through” a basic gross income test before allowances are applied to determine eligibility and contribution levels.

A gross income cap has advantages of transparency as well as reducing administrative effort. At present the complexity of the current assessment process militates against clarity of decision making, resulting in the current system being not as user friendly as it could be. It is not always easy for applicants and their legal representatives to understand the outcome of the assessment process.

The approach taken was to develop a test with the following structural elements:

- **gross income cap** - People whose annual gross income is above this figure are ineligible for civil legal aid whatever their outgoings. This initial cap acts as a filter. It is an initial, simple, gross income ‘hurdle’ test.
- **upper income limit** - People who are above this upper income limit once defined allowances are taken off their net income do not qualify. If they are between the upper and lower limits, then they qualify with contributions to be paid.
- **lower income limit** - People who have an income below this figure once defined allowances are taken off their net income qualify without a contribution to be paid.
Allowances

In order to arrive at a simpler means test for calculating income, it was essential to dispense with many of the allowances permitted under the current test.

A complex test which takes account of many and varied expenses promotes certain approaches to life at the expense of others. At its most extreme, a complex means test has the effect of making applicants able to fulfil the eligibility criteria almost irrespective of the level of income or capital they have been entitled to receive - provided they have been creative enough in spending it all. In that sense, complexity does not equal fairness. In addition, discretionary allowances have further potential to introduce anomalies. For example, prior to the transfer of means assessment to the Legal Aid Board, private school fees were used by assessment officers as a deductible discretionary allowance in the determination of civil legal aid eligibility. This quite clearly rewards a particular lifestyle and a particular income group. Along these lines, therefore, simplification can be seen as a possible means to promote fairness: targeting with a simpler and more transparent test the most deserving applicants.

There were, however, key allowances which needed to be retained in all of the alternative means test models. These allowances were dependant's allowances and housing allowances.

For these allowances, it was necessary to examine whether they should be standardised allowances or flexible allowances. Standardisation can be brought about on three levels. Set allowances can be included as part of the assessment process where a personal circumstance trigger is present. This is a common method used to standardise allowances for children and other dependants. Such allowances can easily be tiered to allow for a range of potential circumstances, for example different numbers of children and other dependants. Standard calculable allowances allow for greater flexibility, but still avoid any need for actual expenditure to be detailed or accounted. An example would be a travel to work allowance calculated by multiplying the distance to work by a standard amount. Capped allowances reduce the level of calculation necessary by restricting allowances to a capped level of actual expenditure. An example would be the capping of mortgage debt repayments to an amount equivalent to a £100,000 debt.

In all of the alternative means test models, the dependants allowances were set at current rates. They are tied into the Income Support allowances for dependants, which vary with the age of the dependant. It was decided that the continued use of Income Support rates would be the most straightforward way to calculate the essential needs of dependants, as well as allowing for overall coherence with the benefits system.

As regards the housing allowance, a large number of models had to be tested in order to decide whether the final alternative model should have a fixed or flexible housing allowance. In many of the models housing caps, allowing housing costs

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24 On a more practical level, a gross income cap and a limited set of allowances reduces the amount of information applicants need to provide in order to have their means assessed, as well as reducing the amount of time needed to make a decision on applicants' eligibility status.
only to a certain weekly maximum amount, were used. No housing costs were allowed for benefit units who owned their homes outright. Some of the tests had an extra £10 per week for benefit units in the Greater London region to take account of the high cost of accommodation in this area. In some of the models benefit units with children were given an extra £5 per child housing allowance (up to a maximum of £15). This was introduced in order to take account of the special housing needs of families with children. It was decided that in the final model the wide variation in housing needs and the geographic disparity in costs justified making an allowance for actual housing costs instead of having a fixed allowance. However, the allowance was capped.

In addition to housing and dependants allowances, a fixed allowance of £10 per week for travel to work/employment expenses was included in some of the models. In the current means test, disposable income is calculated taking travel to work into account. It was felt to be important to retain a travel to work allowance, in particular in light of the work incentive effect such an allowance might have.

Example 1

<table>
<thead>
<tr>
<th>Gross income cap: £20,000</th>
</tr>
</thead>
<tbody>
<tr>
<td>Upper income limit: £15,000</td>
</tr>
<tr>
<td>Lower income limit: £10,000</td>
</tr>
</tbody>
</table>

- Current dependants' allowances
- Fixed housing allowances of £50 per week
- Current passporting rules
- Original capital system

Figure 12 illustrates the effects the Example 1 means test would have on eligibility.

---

25 LSRC researchers used information contained in the Family Expenditure Survey and the Family Resources Survey to estimate average housing costs and to set appropriate levels. Particular attention was paid to housing costs in the 5th lowest deciles, to regional variation and to differing housing costs depending on whether homes were rented, mortgaged or owned outright.

26 Actual housing costs included water rates and housing maintenance. The final alternative model was also modelled without these allowances. It resulted in 0.48% less benefit units fully eligible, and 0.09% more benefit units partially eligible, compared to the final working model.
This model, one of the first to be tested, helped to establish the gross income boundaries. This test resulted in an 11% increase in eligibility from the levels of the current scheme. It indicated clearly that the threshold for full eligibility needs to be set at just a fraction of average earnings in order to maintain eligibility levels. The winners of this early, generous test are mainly employees and mortgagees and those located in the higher gross income deciles.

**Example 2**

- Gross income cap: £20,000
- Upper income limit: £10,000
- Lower income limit: £2,625

- Current dependants' allowance
- Fixed housing allowances of £50 per week rent allowance, £40 per week mortgage allowance, an additional £5 per week for children of householders
- Current passporting rules
- Original capital system
Figure 13  Example 2
Civil legal aid eligibility status by number of benefit units eligible (in thousands)

This test results in almost identical aggregate entitlement to the current scheme, mainly due to the lower income limit being reduced to £2,625. Winners of this model are to be located in gross income deciles 2 to 5. They tend to be pensioners and to be living in local authority rented accommodation. The losers are Londoners, mortgagees and benefit units living in private rented accommodation, single employees and single earner couples.

10. The Final Alternative Working Model

By working through examples such as those outlined above an optimum alternative model was obtained which potentially fulfils the main objectives of the project.

In the alternative model, the gross annual income cap is set at £20,000. The upper annual income limit is £10,000 and the lower annual income limit is £2,625. As the previous examples have shown, these are the limits necessary to arrive at current eligibility levels.

The upper disposable capital limit has been raised to £8,000 in order to bring the means test in line with the Income Support upper capital limit.
Actual housing costs (rent and mortgage) are used\(^27\), with a cap of £125 per week for benefit units without dependants. There is a travel to work/employment expenses allowance of £10 per week.

Passporting rules and dependants’ allowances remain identical to the current means test. As illustrated earlier on in this research report, micro-economic modelling showed that extending passporting to other means-tested benefits did not seem to be a viable alternative.

<table>
<thead>
<tr>
<th>Gross income cap: £20,000</th>
<th>Upper income limit: £10,000</th>
<th>Lower income limit: £2,625</th>
</tr>
</thead>
</table>

- Current dependants’ allowances\(^28\)
- Actual housing costs with a cap of £125 per week for benefit units without dependants
- Actual housing costs without a cap for benefit units with dependants
- Employment expenses for people in work: £10 per week
- Current passporting rules
- Upper disposable capital limit of £8,000, lower disposable capital limit remains at £3,000

The final alternative model results in almost identical eligibility entitlement to the current scheme. As can be seen in Figure 15, the final alternative model leads to identical full eligibility entitlement and to a 1% increase in partial eligibility. Figure 14 shows that 64,000 benefit units move from partial eligibility to complete eligibility as a consequence of the changes to the test. 576,000 benefit units move from being not eligible to being partially eligible. 294,000 benefit units move from being partially eligible to being not eligible.

**Figure 14**  
**Final Alternative Model**  
(in thousands)

<table>
<thead>
<tr>
<th></th>
<th>Complete</th>
<th>Partial</th>
<th>None</th>
<th>Total Reformed Eligibility</th>
</tr>
</thead>
<tbody>
<tr>
<td>Complete</td>
<td>7,002</td>
<td>64</td>
<td>0</td>
<td>7,067</td>
</tr>
<tr>
<td>Partial</td>
<td>111</td>
<td>5,495</td>
<td>576</td>
<td>6,183</td>
</tr>
<tr>
<td>None</td>
<td>9</td>
<td>294</td>
<td>13,549</td>
<td>13,852</td>
</tr>
<tr>
<td><strong>Total Current Eligibility</strong></td>
<td><strong>7,122</strong></td>
<td><strong>5,855</strong></td>
<td><strong>14,126</strong></td>
<td><strong>27,093</strong></td>
</tr>
</tbody>
</table>

*Data source: IFS Civil Legal Aid Model*

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\(^{27}\) In the final working model, council tax was included as an allowable expense. The final alternative means test was, however, also modelled with council tax abolished as an allowable expense. The effects of this on eligibility, compared to the final means test model depicted here, are minimal: 140,000 (0.5%) less benefit units fully eligible, and 76,000 (0.3%) less benefit units partially eligible compared to the final means test working model.

\(^{28}\) The final alternative means test was also modelled with the addition of maintenance payments as deductible expenses. It was found that the differences are negligible, with an estimated 30,000 extra entitlements.
Figure 15  Final Alternative Model  
(in percentages)

<table>
<thead>
<tr>
<th></th>
<th>Complete</th>
<th>Partial</th>
<th>None</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Complete</td>
<td>26</td>
<td>&lt;1</td>
<td>&lt;1</td>
<td>26</td>
</tr>
<tr>
<td>Partial</td>
<td>&lt;1</td>
<td>20</td>
<td>2</td>
<td>23</td>
</tr>
<tr>
<td>None</td>
<td>&lt;1</td>
<td>1</td>
<td>50</td>
<td>51</td>
</tr>
<tr>
<td>Total Current</td>
<td>26</td>
<td>22</td>
<td>52</td>
<td>100</td>
</tr>
</tbody>
</table>

Data source: IFS Civil Legal Aid Model

Figure 16  Final Model  
Civil legal aid eligibility status by number of benefit units eligible  
(in thousands)

Data source: IFS Civil Legal Aid Model

Winners of this model are to be located in the lower gross income deciles. They tend to be pensioners and employees. The losers, though very few, are located in the higher gross income deciles, in the 'mortgaged' and 'owned outright' property sector, and are more likely to be in the South East region. In broad terms, it is suggested that this test far better targets those generally regarded as the most needy members of the community.
LSRC researchers compared the characteristics of the eligible population (under the current system and under the final model) and actual applicants. The aim was to estimate take-up by showing the relationship between benefit units eligible for civil legal aid, and benefit units applying for civil legal aid. Data from LSRC's means assessment survey and from the Family Resources Survey were used to determine a propensity to apply for each of the applicant groups.

The data seems to suggest that there is a wide variation in the propensity to apply for civil legal aid amongst the different population groups. Single parent families, for example, are far more likely to apply for civil legal aid than others. This, not surprisingly, is especially the case in respect of family cases, but also more generally. Conversely, earning couples with children are less likely to come forward. Pensioners are also less likely to come forward, and this is particularly the case in respect of the lowest gross income deciles.

By applying these propensities to the eligible population generated by the final alternative working model, it was possible to estimate the number of legal aid certificates that the new test would generate. It was estimated that it would have led to a net increase of around 10,000 legal aid certificates (in the context of 350,000 certificates issued per year).

After subtracting the likely administrative saving generated through the greater simplicity of the test, it was concluded that the overall cost impact would most likely fall within 2% of current spend. Further work, involving fine-tuning the final alternative model, will produce a model in which absolute cost neutrality is the most likely consequence.

**Conclusion**

The first phase of the means assessment research project started as an essentially exploratory and theoretical piece of research, investigating alternatives to the current means test. It examined whether the means test can be improved in coherence, simplicity and fairness. The aim has been to produce possibilities for radical change to civil legal aid means assessment. Findings showed that a gross income cap and allowances for dependants, housing and travel to work, as well as current capital and passporting rules, could result in current civil legal aid eligibility levels. The comprehensive project results have therefore pointed towards promising routes which can be taken forward in the future.

The second phase of the research project is building on the work conducted to date, focusing on updating the current working model to the year 2001/2002. The model will also be fine-tuned, including investigating in more depth winners and losers, allowances and the level of income caps. Further work also needs to be conducted on the potential cost of a new scheme. Arriving at a cost-neutral model might involve a slight change to the current alternative working model. The results of the second phase of the Means Assessment Research Project will be available in late 2000.

29 The figures set out here do not take account of the scope changes implemented in 2000.