



NORTHERN IRELAND
Legal Services
Commission

**Financial Eligibility for
Civil Legal Aid in Northern Ireland:**
A Consultation Paper on Proposals for Reform



This document is also available in an accessible format if required i.e. Braille, large print, audio cassette or in a minority ethnic language.

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Gerry Crossan
Chief Executive

Chief Executive's Introduction

The Northern Ireland Legal Services Commission is responsible for the administration of Civil Legal Aid in Northern Ireland and is currently overseeing an extensive reform programme to transform the delivery of Civil Legal Aid in fulfilment of the legislative requirements of the Access to Justice (Northern Ireland) Order 2003.

The Commission has recognised that the current financial eligibility test for access to Civil Legal Aid is complex and lengthy, a consequence of which is that decision-making on an application can be prolonged and efficient access to justice may be impeded. The current test also allows for the exercise of discretion in the assessment process which can render decision-making unfair, inconsistent and lacking transparency. We are committed to implementing a new, simpler financial eligibility test which is fairer, easier to administer and which is tailored to the specific needs and circumstances of the people of Northern Ireland. Legal aid is to help the people who need it most to address the issues that affect them most. Our intention is that the new test should be as cost-neutral as possible and that the current patterns of eligibility and effective targeting of social need are preserved.

Reform of the financial eligibility test for Civil Legal Aid complements another major

aspect of the reform programme, which is the development of a Funding Code for Northern Ireland. This will replace the existing merits test for Civil Legal Aid with a new set of rules to determine which individual cases should receive funding based on clear priorities and criteria and will also ensure that decision making is more consistent and transparent.

We therefore welcome your feedback on this consultation document, particularly on whether you consider that the proposed new financial eligibility test will positively impact on achieving our aims, noted above.

We are also seeking feedback via this consultation on the Draft Equality Impact Assessment of the proposed new financial eligibility test. This is in line with the requirements contained in section 75 of the Northern Ireland Act 1998.

We look forward to receiving your comments on this important area of legal aid reform for Northern Ireland.

Thank you.

Gerry Crossan
Chief Executive

Chapter 1: Introduction

- 1 The Northern Ireland Legal Services Commission (the 'Commission') is responsible for the administration of civil legal services in Northern Ireland. This document sets out for public consultation, proposals for the introduction of a simplified financial eligibility test for Civil Legal Aid in Northern Ireland. The Commission was established under Article 3 of the Access to Justice (Northern Ireland) Order 2003 (AJO) as an Executive Non-Departmental Public Body sponsored by the Northern Ireland Court Service. The AJO provides the legislative basis for the modernisation of the provision and administration of public legal services in Northern Ireland and confers responsibility on the Commission to ensure that within the resources made available to it, people in Northern Ireland have access to high quality, customer focused services that target those in greatest need and demonstrate value for money.
- 2 Legal aid in Northern Ireland is awarded for either civil or criminal proceedings. The judiciary retains responsibility for the award of criminal legal aid while the Commission is responsible for the award of Civil Legal Aid. Reviewing financial eligibility for Civil Legal Aid is an important priority within the Commission's overall reform agenda taking forward full implementation of the AJO which further encompasses:
 - The implementation of the Northern Ireland Funding Code (the Code) which will replace the existing 'merits test' for Civil Legal Aid.
 - The introduction of Standard Fees for legal aid work to enable the Commission to exert greater control over the legal aid fund.
 - The development of a Registration Scheme which will facilitate committed, high quality providers of legal services becoming registered with the Commission so as to ensure that those eligible to receive publicly funded legal assistance have access to competent, appropriate, quality assured and value for money services to meet their needs.
 - Reform of the Statutory Charge to tighten controls on the current application of the Charge in Northern Ireland.

- 3 A Draft Equality Impact Assessment (EQIA) of the proposed new financial eligibility test is circulated with this document in accordance with the requirements contained in Section 75 of the Northern Ireland Act. This consultation document and EQIA are informed by in-depth research undertaken by Dr Tony Dignan¹ on behalf of the Commission.

The full research report² is available on the Commission website and specific links to appropriate sections of the report are contained within this document. Any queries regarding the research can be directed to: accesstojustice@nilsc.org.uk

- 4 We would ask you to consider the contents of this paper and provide comment on whether you think that the proposed changes to the financial eligibility test for Civil Legal Aid are

fair and practicable. We do not intend however that this should limit any response you wish to make and we look forward to hearing your views. Once the consultation exercise has been undertaken and comments received have been considered, the new financial eligibility test must first be approved by the Lord Chancellor and then through local or Westminster parliamentary procedures depending on whether justice has been devolved to the Northern Ireland Assembly. It is likely that the new financial eligibility test will come into operation in 2008/09.

- 5 A list of those the Commission will be inviting to participate in the consultation can be found in Appendix 1. This list is not meant to be exhaustive and responses are welcomed from anyone with an interest in or views covered by this document. **Replies are sought by Friday 8th February 2008.**

¹ Economic Research and Evaluation Consultancy.

² 'Financial Arrangements for Access to Civil Legal Aid: Review of Arrangements. Report prepared for Northern Ireland Legal Services Commission (2006) by Tony Dignan with Graham Stark and Ron Keegan.

Chapter 2: Background - Why Reform?

- 1 Currently there are three main types of Legal Aid in Northern Ireland, these are:
 - **Legal Advice and Assistance (LAA):**
This provides for a solicitor to give oral or written advice on any legal matter whether civil or criminal, albeit with some exceptions³ and up to a prescribed financial limit.⁴ The solicitor can undertake a wide range of tasks, including preparing applications for civil or criminal legal aid, writing letters, drafting documents, getting a legal opinion from a barrister or preparing a case where the applicant is appearing before a tribunal.
 - **Assistance By Way of Representation (ABWOR):**
This is a variant of the LAA scheme and enables a solicitor to personally represent an assisted person in a limited range of situations. These include certain civil proceedings in the Magistrates' Courts such as Children (NI) Order family cases and the Mental Health Review Tribunal.
 - **Civil Legal Aid (CLA):**
Under the CLA scheme, assistance can be granted for all advice and representation in civil court proceedings. There are some exclusions⁵ but most legal matters are covered by the scheme. The scheme does not, however, extend to most tribunals. A full civil legal aid certificate enables a solicitor to undertake all the work in a given case up to and including court proceedings.
- 2 A key objective underpinning the provision of publicly funded legal services is to provide access to justice (in defined areas of law) to those who cannot afford their own legal costs. Civil Legal Aid enables individuals to address a range of problem types (e.g. relating to divorce, children, relationships, domestic violence and/or personal injury/negligence). In the period 2002-03 to 2004-05, just over 9000 Civil Legal Aid certificates were issued; problems to do with personal injury accounted for the largest share (40%), followed by relationships, domestic violence and children (20%) and divorce (18%);

³ Such as advice on slander or queries about the law outside Northern Ireland.

⁴ Currently £88.

⁵ For example, libel and slander, admitted debts, claims relating to elections.

- other problems of a civil nature (4%) and 18% in respect of proceedings to do with criminal cases and legal procedures (eg. injunctions and judicial review).⁶
- 3 A fundamental part of the legal aid process is to determine whether a client has adequate financial resources to pay for his/her legal costs. In practice, an applicant's financial circumstances (means) are therefore assessed to determine if s/he is financially eligible for legal aid assistance.⁷ Currently the three legal aid schemes operate on the basis of the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981 and numerous regulations made there-under.⁸ The assessment process is undertaken with reference to different financial limits that are applied to the client's assessed disposable income and capital, however the rules and financial limits applied across the three schemes are not uniform and compared to the tests for LAA and ABWOR, the Civil Legal Aid test is particularly complex (See Appendix 2).
- 4 The main sources of complexity inherent in the current means test for Civil Legal Aid can be summarised as follows:
- Many expenses and costs based on actual rather than fixed amounts are taken into account when calculating disposable income with relatively little use of standard allowances and/or disregards (compared to the LAA/ ABWOR tests);
 - The assessment of disposable income is based on a one year computation period from the date of the application. Individual circumstances may fluctuate and change rendering original assessments invalid and/or requiring re-calculations and pro-rata adjustments to be carried out;⁹
 - The Personal Injury variant of the Civil Legal Aid test applies higher upper income and capital limits than the main Civil Legal Aid test.

⁶ Dignan (2006).

⁷ Applicants for ABWOR and Civil Legal Aid must also satisfy a merits test in order to be deemed eligible. The merits test is to ensure that it is reasonable for the Commission to grant legal aid in the particular circumstances of the case.

⁸ For example, the assessment of financial eligibility for the Civil Legal Aid scheme is governed by the rules contained within the Legal Aid (Assessment of Resources) Regulations (Northern Ireland) 1981.

⁹ As capital is a stock, the amount or value of every resource of a capital nature ascertained on the date of the application only is taken into account.

- The existing regulations provide for **the use of discretion in the assessment of disposable income** - ‘in computing the income from any source there shall be disregarded such amount, if any, as the assessment officer considers to be reasonable having regard to the nature of the income or to any other circumstances of the case’.¹⁰ The benefit of the discretionary element is that the assessment officer can take account of circumstances of hardship where applicants may be unable to pay for their legal costs due to unusual or atypical outgoings.¹¹ The treatment of a specific item however can still be open to interpretation in any given set of circumstances. Hence, this discretionary power not only adds to the complexity of the process, but also means that the

determination of financial eligibility for Civil Legal Aid is vulnerable to inconsistent decision-making and is less transparent than is desirable. A complex means test, with a lengthy list of disregards (so long as they are well defined) may be regarded as fair in so far as the diverse circumstances of individual lifestyles and expenditures can be taken into account and that a well-informed judgement can be arrived at as to the client’s ability (or not) to pay for his/her legal costs. It has been argued, however, that at its most extreme, a complex means test may enable applicants to fulfil the eligibility criteria almost irrespective of their level of income or capital, provided they have been creative enough in spending it.¹²

¹⁰ Legal Aid (Assessment of Resources) Regulations (Northern Ireland) 1981, Schedule 1, 14.

¹¹ For example arrears of rent, mortgage payments or loan repayments.

¹² Buck, A. and Stark, G. (2003) ‘Simplicity versus Fairness in Means Testing: The Case of Civil Legal Aid’ in *Fiscal Studies*, 24, 4. pp.427-449.

- 5 The complexity of the current Civil Legal Aid test means that determining financial eligibility is an administratively protracted process and decision-making on an application can be prolonged because of the time taken to make an assessment. A particular exigency exists in respect of the issuing of emergency certificates where a legal aid certificate is granted before a client's financial eligibility has been determined. If the emergency certificate is revoked (*see A, B2 and C in figure 1 opposite*), the client must repay to the Commission all the costs paid or payable under the certificate. The client also loses any cost protection and will be fully liable to pay any costs due to the other side under orders made in the proceedings. If s/he is unable to make the required payments, consequently s/he incurs a debt which may have an adverse impact on his/her credit-rating.

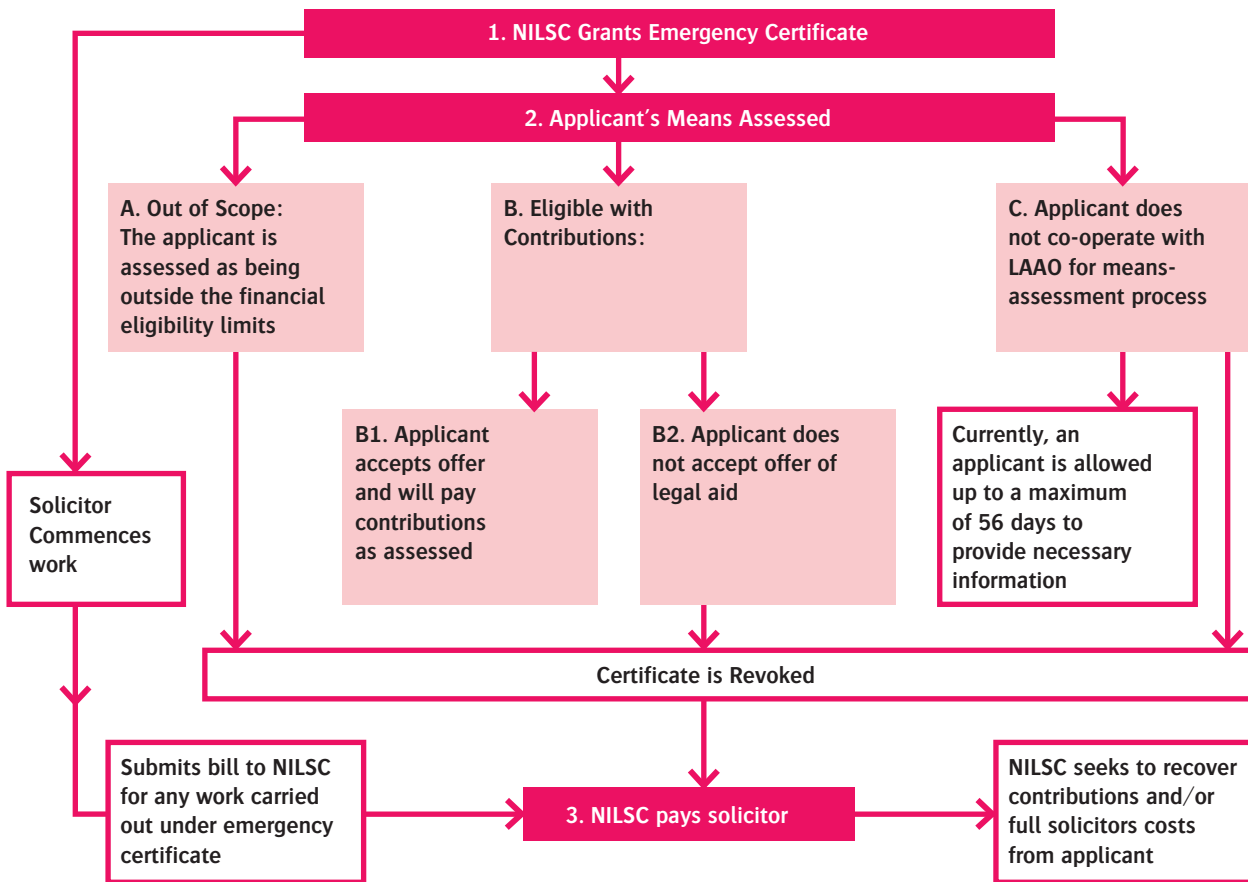
The revocation of emergency certificates also constitutes a substantial financial risk to the legal aid fund. Solicitors are

paid for all work conducted from the date of issue of the emergency certificate until it's revoked and the onus is then on the Commission to recover the costs/contributions from the client. This is a matter of increasing concern to the Commission. An analysis conducted in February 2007¹³ indicated that nearly three fifths (57%) of contributions due at that time were as a result of the revocation of an emergency certificate. Applying this proportion to the current outstanding contributions balance (at 30 September 2007), suggests that approximately £506,730.00 is outstanding as a result of the revocation of an emergency certificate.¹⁴ It is envisaged that a simplified means test will expedite the means assessment process which will help to ensure that the revocation of emergency certificates (where necessary) is actioned at a much earlier stage and concomitantly, will reduce the costs that may be accumulating under the certificate.

¹³ By Debt Recovery Section in the Commission.

¹⁴ It is not possible at present to disaggregate the data by reason for revocation.

Fig 1. Revocation of Emergency Certificates



- 6 The introduction of a number of changes to the tax and benefits system (from April 2003 onwards) has further contributed to the complexity of the system in respect of the coherence between passport benefits¹⁵ and assessment of financial eligibility which also need to be considered in the way forward for legal aid assessment in Northern Ireland *(see pgs.35-37 of research report)*. The key changes include the following:
- The introduction of Working Tax Credit (WTC) and Child Tax Credit (CTC);
 - On foot of the introduction of Tax Credits, the calculation of the applicable amount for Income Support (IS) and Jobseekers Allowance-Income Based (JSA-IB) has been changed;
 - The capital limits for IS and JSA-IB;
 - Pension Credit.
- 7 The Commission recognises that the complexities associated with the current means test for Civil Legal Aid are compromising fair and efficient access to justice for those most in need. In 2006 a consultant¹⁶ was engaged to undertake in-depth research to review current arrangements for the assessment of financial eligibility for access to Civil Legal Aid and to make recommendations on the format of a simplified means test.
- 8 A key requirement of this work was to ensure that any new financial eligibility test must not reduce fair and equal access to justice for those, that most need it, and that the means test targeted social need effectively. Further, the review was not initiated as a cost-cutting exercise as the effects of any change must be cost-neutral.

¹⁵ Passport Benefits are Income Support, Income-based Jobseekers Allowance and Guarantee State Pension Credit. Clients whom are in receipt of any of these benefits automatically qualify for Civil Legal Aid without means assessment. The rationale of passporting is that persons in receipt of such benefits have already been assessed by the Social Security Agency as having in adequate means to provide for themselves a basic or minimum standard of living.

¹⁶ Dr Tony Dignan (Economic Research and Evaluation).

9 The Objectives of the Research were to:

- Establish the effects of the current financial eligibility tests for LAA (which extends to representation via the ABWOR scheme) and Civil Legal Aid;
- Devise and test an alternative means test that would reduce the complexity of the current test but that would target those most in need;
- Provide a detailed profile of those who are currently ineligible/eligible with specific reference to those groups covered under Section 75 of the Northern Ireland (1998) Act;
- With regards to the new test models and characteristics of the potential new eligible population, provide a picture of the likely consequences of a potential new means test to estimate the impact on take-up and expenditure, again with particular reference to Section 75 groups;

- Provide recommendations to the Commission on the most appropriate financial eligibility criteria for the range of legal services funded by the Commission having regard to criteria operated in other jurisdictions.

10 The research was concluded in December 2006 and provided the Commission with a recommended new simplified financial eligibility test for Civil Legal Aid. Whilst the remit of the research in the first instance was to consider financial eligibility arrangements for **all** three Civil Legal Aid schemes, it was determined that the current LAA/ABWOR means tests did not need to be further simplified. The research also determined that harmonising the LAA and ABWOR tests with the simplified test was not a viable option, as this would entail an increase in eligibility for LAA and ABWOR which would increase expenditure and breach the cost-neutral constraint of any proposed change (*see Table 1 overleaf and research report pg.127*).

Table 1: Effects of Harmonising Means Assessment across legal aid schemes based on Northern Ireland Civil Legal Aid simplified test (Dignan, 2006)

	CLA	CLA-PI	ABWOR	LAA
Eligibility (% of adults) Change from baseline (pps)	+2	-1	+7	+11
Awards % change from baseline	0	-3	+21	+16
Costs % change from baseline	0	-3	+21	+16
Disruption Moves as % of adults	4	4	12	15
Low-income targeting Change from baseline (Index)	-0.009	+0.003	+0.086	+0.103
Meeting needs Eligible share – pps change from baseline	0	-2	+10	+10

- 11 The issue of harmonisation of means-testing between the three Civil Legal Aid schemes is therefore **not** being considered at this time and the focus of reform (and this consultation) is on financial eligibility for Civil Legal Aid only.

Chapter 3: Developing New Test - Research

- 1 The methodology employed in the research for developing a simplified means test was the construction of the Northern Ireland Legal Aid Model (NILAM)¹⁷ which enabled the consultant to examine and appraise various options for simplifying the present Civil Legal Aid means test (the research process is summarised in Appendix 3). Options highlighted as potential models of simplification included:
 - Targeting by indicators;
 - Passporting;
 - Increased use of standard allowances and disregards.
- 2 Targeting by indicators is based on the use of a set of indicators which can be measured more easily than income for assessing eligibility. This option however was not pursued, as in practice it is difficult, if not impossible, to identify indicators that are sufficiently highly correlated with low income to serve as the basis of assessing eligibility (*see p.82 of research report*).
- 3 The extension of passporting to other benefits such as Child Tax Credit and Working Tax Credit was considered in some detail. This analysis, however, determined that there is no real scope to extend the use of passporting as a strategy for simplification as it would considerably extend the numbers entitled to legal aid and not be cost neutral (*see p.83 of research report*).
- 4 The third option, using standard allowances and disregards for assessing disposable income and capital was also examined in detail. This approach addresses complexity in so far as:
 - Fewer items of expenditure need to be measured as actual values;
 - There is a reduced need for verification;
 - There is reduced reliance on discretion in deciding what items should or should not be disregarded and by how much.
- 5 The current means test for LAA and ABWOR in Northern Ireland is a simple one based around a set of personal allowances for dependants and no actual disregards for actual expenses and housing. The research examined applying

¹⁷ See Research Report Appendix A: Methodology for details of the NILAM.

this model to Civil Legal Aid and established however that this would have very disparate effects on those with and without dependants. Lone parents and couples with dependent children would experience disproportionately large falls in eligibility, compared to single persons and those aged 60+ (See pgs. 84-87 of *research report*).

- 6 The complexities inherent in the current Civil Legal Aid test are similar to those that existed for legal aid testing in England and Wales prior to simplification in 2001.¹⁸ The simplified England and Wales test was therefore examined in detail in the research as a potential model of reform for Civil Legal Aid in Northern Ireland. The structure of the revised England and Wales test does not differ greatly from the current Civil Legal Aid test in Northern Ireland (see **Appendix 4**), nonetheless there are key distinguishing features between the two tests as set out below:

- **Computation period:** This is monthly in the England and Wales test, compared to the one year assessment period in the current Northern Ireland test;
- **Gross income screening test:** This is applied in the England and Wales test and deems clients with a gross

income in excess of a specified amount as ineligible for funding. This helps to simplify the administration of the test by identifying at an early stage those applicants who would not pass the disposable income test. A critical consideration in designing such a screening test is to ensure that the cap is set at a sufficiently high level so that the applicant whose income exceeds the cap is virtually certain to fail the disposable income test;¹⁹

- **Standard deductions:** In the England and Wales test some disregards are measured in actual values (e.g. mortgage payments) however others are specified as a standard amount to reflect specific circumstances: for example a person in employment receives an automatic disregard. This contrasts to the plethora of disregards included in the current Northern Ireland test;
- **Housing equity:** Unlike the current Northern Ireland Civil Legal Aid test, equity in the main dwelling is included in the calculation of resources for capital in the England and Wales test. Specifically, this is the market value of the applicant's home in excess of £100,000, after allowing for any outstanding mortgage (up to a maximum of £100,000).

¹⁸ New tests were implemented in England and Wales in December 2001 with the intention of simplifying tests for both applicants and assessors and were developed in accordance with a comprehensive means assessment research exercise carried out by the Legal Services Research Centre.

¹⁹ Otherwise, the use of a screening test could reduce fairness, where a person's circumstances were such that they would in fact be deemed eligible on the disposable income test e.g. the applicant may have a large number of dependent children.

- 7 A number of variants around the England and Wales test were specified in order to take into consideration important design differences (notably the inclusion of housing equity on the capital side, Northern Ireland specific circumstances and changes to the IS/JSA-IB capital limits). Each of the options was devised to meet the requirement that any proposed change should be cost-neutral and appraised for their effectiveness in reducing the complexity of the current Civil Legal Aid means-test whilst continuing to target those most in need (*see Chapter 5 of research report*). The various options appraised were:
1. The complete England and Wales test with capital limits of £3,000 and £8,000;
 2. The England and Wales test without the inclusion of housing equity;
 3. The England and Wales test with a £150,000 housing equity disregard, for comparison with the current complete test which features a £100,000 disregard;²⁰
 4. The England and Wales test without housing equity and with a disregard for housing rates and Northern Ireland median travel-to-work costs used as a standard cap on disregards for persons in employment. In Northern Ireland the median travel-to-work costs are £728 compared with the England and Wales disregard of £540 for employees (thus this option tailored disregards to Northern Ireland circumstances);
 5. Option 4 above with the new IS/JSA-IB capital limits used in place of the current limits.
- 8 This analysis determined that the preferred option for Northern Ireland is a variant of the England and Wales test which maintains eligibility at or around current levels and entails only a modest degree of disruption to the current pattern of eligibility (*see Table 2 overleaf*).

²⁰ The £150,000 threshold was selected as representing approximately 20 per cent above the median for the estimated value of all owner-occupied properties in the Northern Ireland Family Resources Survey.

Table 2: Options for change in means assessment for Civil Legal Aid¹:
Summary of appraisal criteria (Dignan, 2006)

	Disruption	
	Eligibility - percentage points difference from baseline	Percentage change in income limits
Baseline	43.8	-
Options		
A. LAA disposable income	+6.6	62
B. England and Wales		
• B.1 Complete	+1.0	37
• B.2 No housing equity	+2.0	17
• B.3 £150k housing equity disregard	+3.2	28
• B.4 Rates, Northern Ireland median travel to work costs, no housing equity	+1.5	9
B.5 Option B.4 with new IS/JSA-IB capital limits	+1.3	6

Key

- Highest-ranking for that criterion
- Lowest-ranking for that criterion

¹ Excluding Civil Legal Aid Personal Injury.

		Low-income targeting		Needs
Moves as percentage of adults	Percentage eligible in bottom 20%	Index	Ratio - eligible share of needs/ share of adults	
-	93	2.246	1.22	
13.6	92	2.157	1.10	
13.8	78	2.118	1.23	
5.3	93	2.223	1.18	
8.3	89	2.191	1.16	
3.7	93	2.238	1.18	
3.6	94	2.239	1.18	

Chapter 4: The New Test

- 1 The Commission has considered the preferred option in detail and agrees that this is a more suitable model for determining financial eligibility for Civil Legal Aid in Northern Ireland and that this can be brought forward. A full socio-economic profile of predicted eligibility and take-up from the recommended new test can be accessed in *Appendix D of the research report*. The tables also show differences in eligibility between the recommended new test and the baseline profile.
 - 2 The key components of the proposed new means test for Civil Legal Aid in Northern Ireland are:
 - **Gross Income Cap:**
A gross income screening cap will be used as an eligibility screening device in the new test. As in England and Wales, this will be set at a level that is high enough to ensure that those failing the screening test would also fail the more detailed means test. The test will entail making some allowance for household size, (as also happens in England and Wales) where a higher limit applies for those with four or more dependant children.
- In the research, modelling was based on the 2005-06 gross income cap figure used in the England and Wales test of £2288 per month which was subsequently increased to £2435 (effective from 9 April 2007).
- **Housing Equity:**
The England and Wales capital test includes housing equity with a £100,000 disregard. The inclusion of this criterion in Northern Ireland however, would result in a considerable degree of disruption to the current pattern of eligibility, have disparate Section 75 effects and reduce the efficiency of low-income targeting. The new test however will incorporate housing equity as a criterion in the means assessment process, but for reasons to do with screening and ‘aura of wealth’ and not as a source of funding. It will therefore be necessary to set the disregard at a sufficiently high level so that it does not affect eligibility amongst the general population. The modelling in the research proposed a figure of £200,000 (this figure being 60 per cent above average Northern Ireland house prices in 2005).

- Standard Deductions and Disregards:**
The calculation of income in the new test will incorporate the standard disregards applied in the England and Wales test. With a more reduced set of deductions and disregards it is possible to raise the income limits in the test by nine per cent and still ensure that the cost-neutral constraint is met.
- The Inclusion of Household Rates as Housing Costs:**
There are no household rates in England and Wales. Council Tax is payable but this is not an allowable deduction in the means assessment process. Household rates are paid on property. The problem in Northern Ireland is that, whereas owner-occupiers pay rates separately from their mortgage, persons living in rented accommodation will generally pay rates as part of their rent bill. In practice this means that those persons applying for legal aid who live in rented accommodation may not be able to draw the distinction between rent and rates. Separating out rates from actual rent would therefore introduce an element of complexity into the new means test, which would of course run counter to the simplification objective.
- A Deduction for Persons in Employment Based on Data for Median Travel-to-Work Costs in Northern Ireland:**
Northern Ireland is a more rural society than England and Wales with lower population density signifying a more dispersed population. This factor will be recognised explicitly in the means assessment process by modulating the employment disregards to take account of potential additional costs from a more dispersed population.
- Capital Limits:**
As part of an effort to encourage household savings, the government raised the capital limits for IS and JSA-IB in April 2006. The lower limit was raised from £3,000 to £6,000 while the upper limit increased from £8,000 to £16,000.²¹ This change has introduced an anomaly into the current Civil Legal Aid test as in principle, a client may fall below the lower disposable income limit in the Civil Legal Aid test, but fail on the capital test through having assessed capital in excess of £6750 (current upper capital limit) but a passported person who is deemed to be in the same disposable income position, will be considered eligible even if they have capital in excess of £6750.

²¹ For Pension Credit for those aged 60 or over, there is no upper limit on capital.

This therefore introduces an inequity into the assessment of financial eligibility as people with similar levels of disposable income may be treated differently on the capital side. The research considered the potential effects of aligning the legal aid limits for the means-tested benefits and the rationale for their introduction and concluded that on balance, there is insufficient justification to raise the existing legal aid capital limits fully in line with the new IS/JSA-IB limits *(see pg 123, 5.48 of research report)*. The upper capital limit for Civil Legal Aid however will be raised to £8,000 which will align the limit with the pre-April 2006 upper capital limit for IS and JSA-IB.

- **Personal Injury Cases**

The research determined that the new Civil Legal Aid test and the Personal Injury variant could be harmonised with minor disruption of the existing pattern of eligibility and low-income targeting. It is therefore proposed to harmonise the upper income and capital limits between the main Civil

Legal Aid test and the Personal Injury variant, which will remove this anomaly. This also makes sense in light of the Lord Chancellor's priorities for legal aid expenditure which do not include personal injury claims. Maintaining a slightly more generous means-test for personal injury applicants is therefore difficult to justify in these circumstances.

- 3 Whilst the one year computation period currently applied to the Civil Legal Aid means test was identified in the research as a source of complexity, the modelling in the research focused on eligibility and take-up and did not lend itself to scenarios for different computation periods. A file review undertaken as part of the research suggests however that this is an issue to be addressed going forward since it remains a source of complexity in the administration of the test. From a simplification perspective it would be preferable to focus on contemporaneous circumstances, such as the preceding month, rather than seeking to project one year ahead.

How to Respond

The Commission welcomes your comments on the proposal to implement a simplified means test for determining financial eligibility for Civil Legal Aid in Northern Ireland. Your views are valued and it is hoped that you will make a contribution.

Please note that your responses may be made publicly available. Should you not wish your consultation response to be published or wish it to be published anonymously, please note this on your response.

The consultation period will run for 14 weeks from 5th November 2007 to 8th February 2008.

All consultation responses and enquires should be sent either to:

The Commission Secretary
Northern Ireland Legal Services Commission
2nd Floor, Waterfront Plaza
Laganbank Road
Mays Meadow
Belfast BT1 3BN

Or

Email: Accesstojustice@nilsc.org.uk
Telephone 028 9040 8888
Fax 028 9040 8990

Should you require this document in a different format such as Braille, large print, audio cassette or in an ethnic minority language, please let us know.

Appendix 1: List of Consultees

Advice NI	Department of Education
Age Concern	Department of Employment and Learning
Age Sector Reference Group	Department of Enterprise, Trade and Investment
Agnew Andress Higgins	Department of Finance and Personnel
Agriculture and Rural Development Committee (Northern Ireland Assembly)	Department of Health, Social Services and Public Safety
Alan M Brown	Department of Social Development
Alexander Forbes	Department of Social Development (Voluntary and Community Unit)
Alliance Party NI	Derry Solicitor Association
Antrim and Ballymena Solicitor Association	Directorate of Legal Services - Central Services Agency
Association of Personal Injury Lawyers	Disability Action
Association of Director's of Social Services	Down & District Solicitor Association
Bangor and Newtownards Solicitor Association	Democratic Unionist Party
Belfast Solicitor's Association	Education Committee (Northern Ireland Assembly)
Central Services Agency	Employment and Learning Committee (Northern Ireland Assembly)
Children and Young People's Unit	Enterprise, Trade and Investment Committee (Northern Ireland Assembly)
Children's Law Centre	Equality Commission Northern Ireland
Childrens Order Advisory Committee	Fermanagh Solicitor Association
Citizens Advice Bureau	Finance and Personnel Committee (Northern Ireland Assembly)
Coalisland and Dungannon Solicitor Association	Forum of Insurance Lawyers
Coalition on Sexual Orientation	General Council of the Bar of Northern Ireland
Coleraine and Ballymoney Solicitor Association	Gingerbread NI
Committee for the Office of First Minister and Deputy First Minister (Northern Ireland Assembly)	Government Legal Service for Northern Ireland (GLSNI)
Cookstown Solicitor Association	Green Party
Council of HM CC Judges in NI	
Department of Agriculture and Rural Development	

Health, Social Services and Public Safety Committee (Northern Ireland Assembly)	NI Prison Service
Help the Aged	NI Resident Magistrates Association
His Honour Judge David Smyth	NI Commissioner for Children and Young People (NICCY)
Housing Rights Service	NI Council for Voluntary Action (NICVA)
James H Rodgers & Co	NI Guardian Ad Litem Agency (NIGALA)
Judge Burgess	Northern Ireland Office
Judge Keegan	Office for First Minister and Deputy First Minister
Justice Weir	Omagh Solicitor Association
Law Centre NI	O'Reilly Stewart
Law Commission (formerly Office of Law Reform)	Parents Advice Centre
Law Society NI	Portadown Solicitor Association
Law Society's Access to Justice Committee	Public Prosecution Service
Legal Services Commission England and Wales	Rev Harold Good (Chair Advice Services Alliance)
Legal Aid Assessment Office (SSA)	Social Democratic and Labour Party
Limavady Solicitor Association	Secretary of Civil Justice Committee, C/O Lord Chief Justice Office
Lisburn Solicitor Association	Sinn Fein
Lord Mayor's Office	Sir Brian Kerr
MacElhatton & Co	Scottish Legal Aid Board (SLAB)
Magherafelt Solicitor Association	Social Development Committee (Northern Ireland Assembly)
Marsh Insurance	Social Security Agency (SSA)
Master Wells	Social Services Inspectorate (SSI)
MENCAP	Strabane Solicitor Association
Newry and Banbridge Solicitor Association	The Honourable Mr Justice Higgins
Newtownabbey Solicitor Association	Tony Dignan
NI Anti-poverty Network (NIAPN)	Ulster Unionist Party
NI Council for Ethnic Minorities (NICEM)	Women's Aid NI
NI Court Service (NICtS)	
NI Human Rights Commission (NIHRC)	

Appendix 2: Summary of Differences Between Three Schemes in Assessing Financial Eligibility of Legal Aid (2005-2006)²²

	Excl PI	PI	ABWOR	LAA
Assessment Period	Annual	Annual	Weekly	Weekly
Limits				
Lower	2,931	2,931	4,472	4,472
Upper	8,681	9,570	10,556	10,556
Allowances (£)				
Partner	1,666	1,666	1,547	1,547
Dependants				
Children				
0-15	2,288	2,288	1,362	1,362
Over 16	2,288	2,288	1,651	1,651
19 & over	2,288	2,288	1,651	1,651
Other	1,666	1,666	1,651	1,651
Sources of Income				
Gross wages or salary	1	1	1	1
Self Employment Income	1	1	1	1
Investment Income	1	1	1	1
Pensions	1	1	1	1
Other Income	1	1	1	1
Income Tax	-1	-1	-1	-1
National Insurance	-1	-1	-1	-1
Passport Benefits				
Guaranteed Pension Credit	Passport	Passport	Passport	Passport on income
Income Support	Passport	Passport	Passport	Passport on income
Income Related JSA	Passport	Passport	Passport	Passport on income
Statutory Disregards				
Disability Living Allowance	0	0	0	0
Attendance Allowance	0	0	0	0
Constant Attendance Allowance	0	0	0	0
Social Fund	0	0	0	0

²² Source: Dignan (2006).

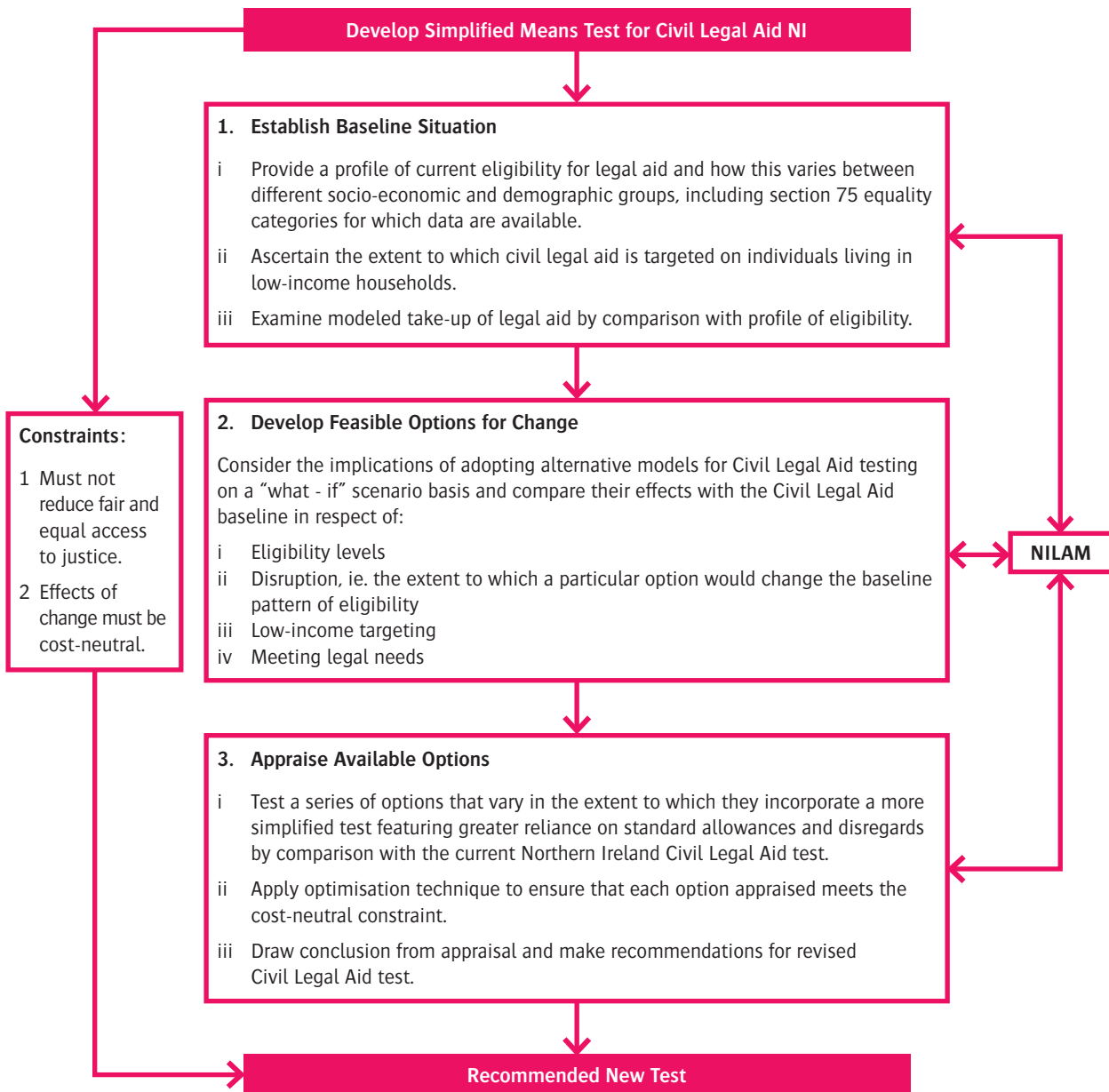
	Excl PI	PI	ABWOR	LAA
Included Benefits				
Child Benefit	1	1	1	1
Savings Pension Credit	1	1	1	1
Retirement Pension	1	1	1	1
Widows Pension	1	1	1	1
Maternity Allowance	1	1	1	1
Widowed Mothers Allowance	1	1	1	1
War Disablement Pension	1	1	1	1
War Widow Pension	1	1	1	1
Severe Disability Allowance	1	1	1	1
Carer's Allowance	1	1	1	1
Contributory JSA	1	1	1	1
Industrial Injury Disablement Benefit	1	1	1	1
Incapacity Benefit	1	1	1	1
Working Tax Credit	1	1	1	1
Child Tax Credit	1	1	1	1
Any Other Benefit	1	1	1	1
Allowable Expenses				
Travel to work expenses	Up to £1,300	Up to £1,300	0	0
Pension contributions	1	1	0	0
AVCs	1	1	0	0
Union fees	1	1	0	0
Child care	1	1	0	0
Friendly Societies	1	1	0	0
Maintenance Payments	1	1	0	0
Student Expenses	Up to £795	Up to £795	0	0
Fines	1	1	0	0
Housing Costs				
Mortgage payments	1	1	0	0
Rates (net of rebates)	1	1	0	0
Ground Rent	1	1	0	0
Service Charges	1	1	0	0
Repairs And Insurance	Up to £322	Up to £322	0	0
Rent (net of rebates)	1	1	0	0
Single Persons Housing Costs Maximum	No limit	No limit	-	-

	Excl PI	PI	ABWOR	LAA
Capital Limits				
Lower	3,000	3,000	3,000	1,000
Upper	6,750	8,560	-	-
Increments				
1 dependant	0	0	+£335	+£335
2 dependants	0	0	+£535	+£535
Each additional	0	0	+£100	+£100
Housing Equity				
Counts as capital?	No	No	No	No
Disregard				
Mortgage	-	-	-	-
Equity	-	-	-	-
Sources				
Bank & PO Savings	1	1	1	1
Savings Certificates	1	1	1	1
Shares or other investments	1	1	1	1
Insurance policies (loan value)	1	1	1	1
Other house property (net value)	1	1	0	0
Other items	1	1	0	0
Statutory (Social Fund)	1	1	1	1
Pensioner	1	1	0	0
Outstanding debts	1	1	0	0
Discretionary	1	1	0	0

Key

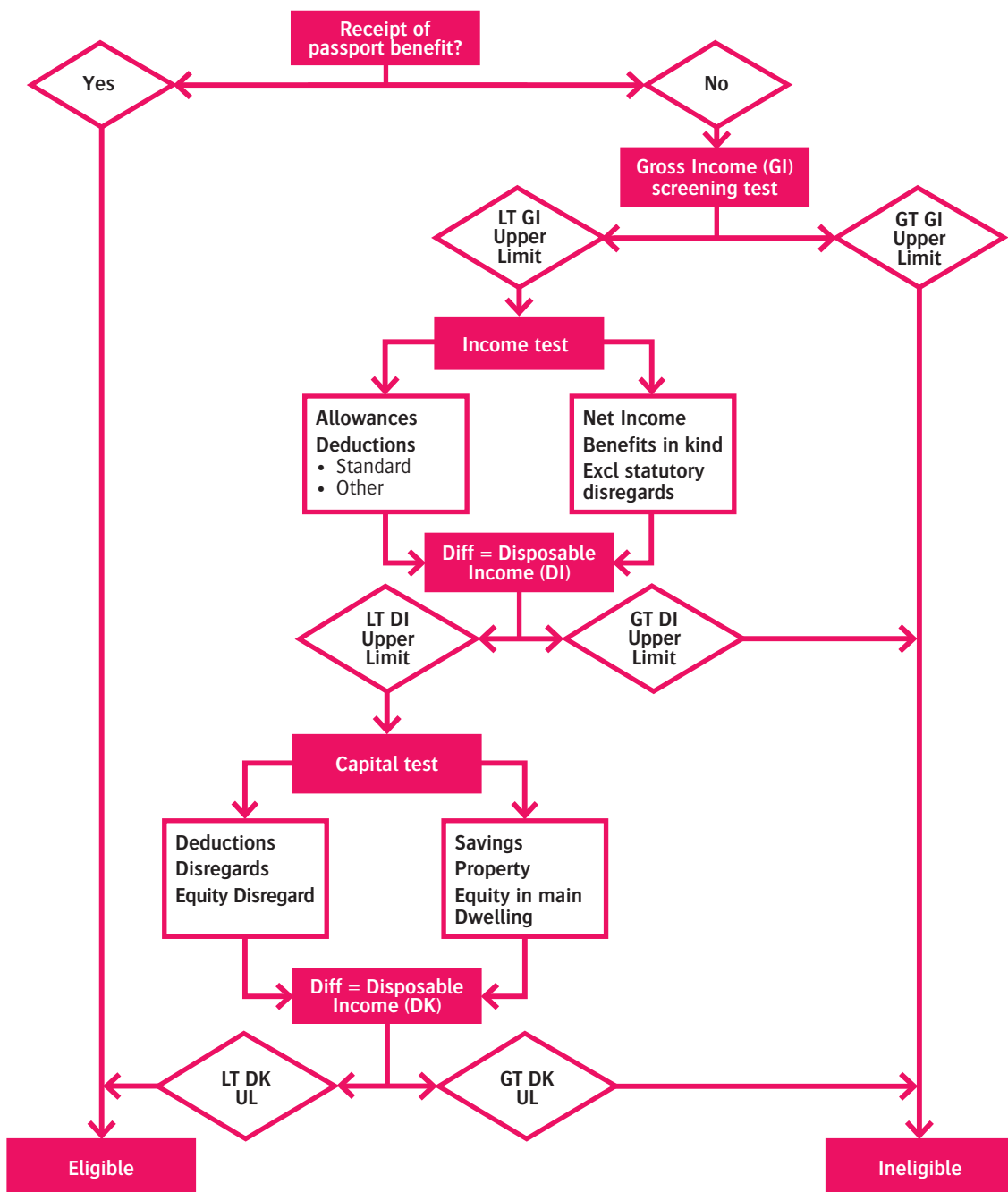
- (1) Add this component
- (-1) Subtract this component
- (0) Not taken into account

Appendix 3: Summary of Research Process for Developing Simplified Test for Civil Legal Aid in Northern Ireland



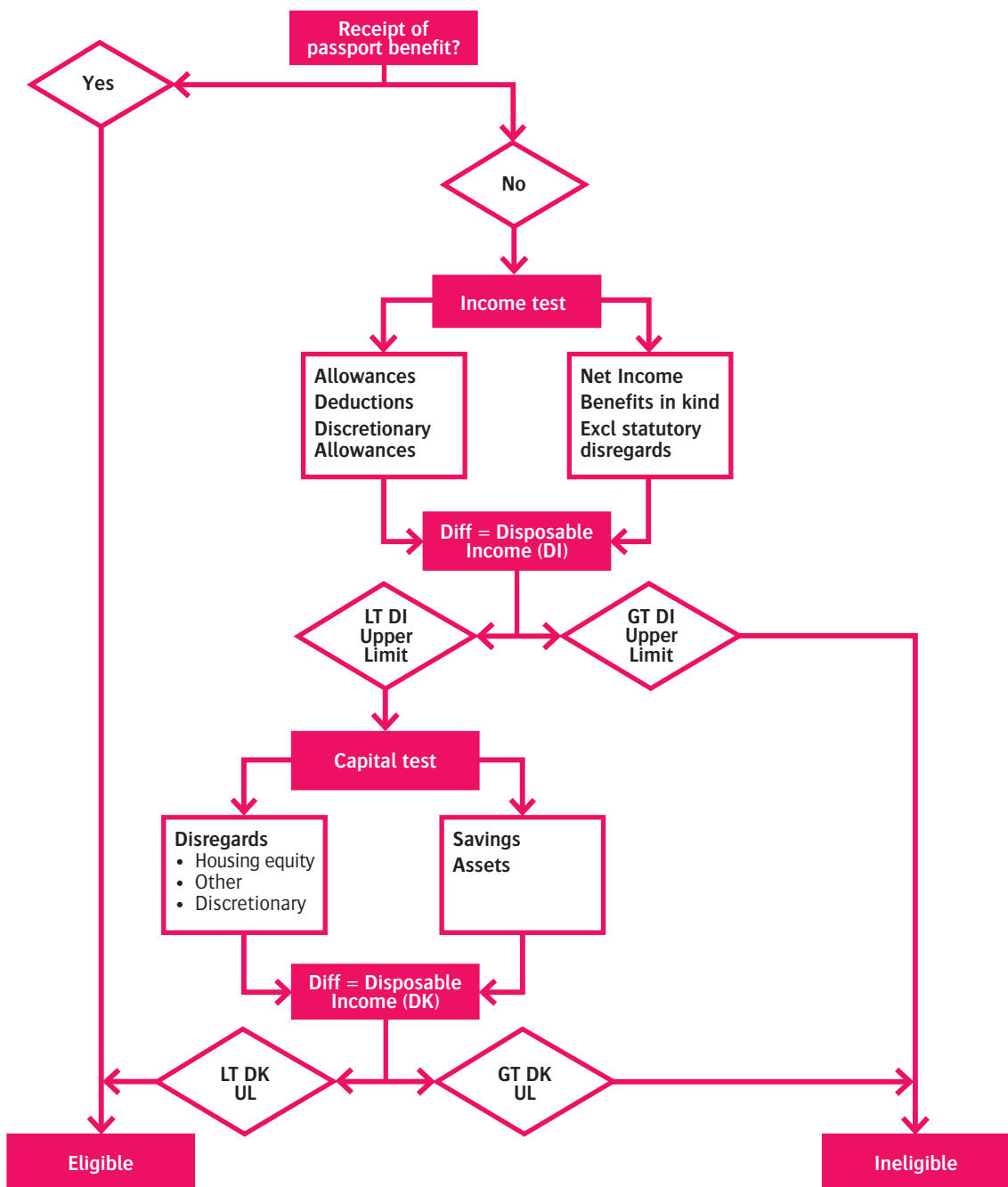
Appendix 4

Fig 1. England and Wales: Means Assessment Process



Source: Dignan (2006).

Fig 2. Northern Ireland: Means Assessment Process



Source: Dignan (2006).



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