



African Rainbow Family
A World Without Prejudice

Providing counselling, financial, training and housing support for the Lesbian, Gay Transgender and Intersex community and refugees.

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Legal Aid access for LGBT+ people seeking asylum
 Briefing for Afzal Khan MP, Gorton, Shadow Minister for Legal Aid

The Legal Aid Agency provides both civil and criminal legal aid and gives advice to people that need help dealing with their legal problems. The agency is responsible for **ensuring that legal aid services from both solicitors and barristers are made readily available** to the general public.

In the Crown Court there is means testing against income. An individual is eligible for legal aid if that individual's gross annual income does **not exceed £12,475**, or where their gross annual income is greater than £12,475 and disposable annual income is less than £37,500.

Merits test

The Legal Aid Agency advised that “When making a determination regard must be had to the interests of justice. This applies for both the magistrates’ court and superior court venues such as the Crown Court. The “Interests of justice” is not defined, but in practice will be deemed to have been passed by any defendant facing a custodial sentence and will be automatically passed by a defendant in the Crown Court or a Higher Court venue. There is, however, a link to the Standard Crime Contract which requires that work only be undertaken where it is of “sufficient benefit” to the client”¹.

¹ https://consult.justice.gov.uk/digital-communications/legal-aid-eligibility-and-universal-credit/supporting_documents/annexsummaryofcurrentlegalaidfinancialegibilityrules.pdf

Registered Office	Manchester Centre	Birmingham Centre	Leeds Centre	London Centre	Registered Charity Number
The Monastery	The Monastery	SAFS / Windmill	Yorkshire MESMAC	Outside Project	
89 Gorton Lane	89 Gorton Lane	Community Centre	22-23 Blayds Yard	Unit 1	
Manchester	Manchester	Messenger Road	Leeds	5 Lant Street	1185902
M12 5WF	M12 5WF	Smethwick. B66 3DX	LS1 4AD	London SE1 1RB	



Means test

When assessing the “Means Test” limb, the Legal Aid Agency suggested that “As with civil legal aid, where criminal legal aid is means tested, the means test looks at both the applicant’s income and capital. The general rule is that the resources of the partner of the individual applying for legal aid are to be included in the calculation of the financial resources of the applicant. However, resources are not to be aggregated if the individual has a contrary interest in the dispute in respect of which the application is made. In order to be eligible for criminal legal aid, the applicant must pass both the income and the capital eligibility test”².

The Current Legal Aid Financial Eligibility Rules – Summary stated that “An applicant who is in receipt of qualifying benefits will automatically be passported and deemed eligible for legal aid³. People seeking asylum who are supported by The National Asylum Support Service (NASS) are eligible to access legal aid⁴.

Case study: JK

JK, a service user with African Rainbow Family, JK flee from Iraq where it was illegal to be an LGBT person.

“It is difficult for any person from a country where it is illegal to be an LGBT person to have any evidence to support their asylum claim as an LGBT person from their country of origin.

Whilst in the UK, it is more challenging to have evidence to support my sexual orientation claim as I face doubly disadvantage in being able to do so as someone seeking asylum. I cannot afford to have a consensual same sex relationship because I earn as little as £39.63 per week which I could not afford to spend on nurturing a relationship.

Another challenge for me is the fact that when I approach a same sex person for a relationship, once it is discovered that I am seeking asylum, the relationship would not go any further. This is because such individual assumes that I want to use them in order to obtain my refugee status or sometime, they see me as a subclass person to have a sexual relationship with.

When I approached a Legal Aid Solicitor for help with my asylum claim, the solicitor asked me to provide evidence of a same sex relationship. When I could not provide same, the solicitor advised that my case does not merit the threshold for a legal aid assistance.

² https://consult.justice.gov.uk/digital-communications/legal-aid-eligibility-and-universal-credit/supporting_documents/annexcsummaryofcurrentlegalaidfinancialegibilityrules.pdf

³ https://consult.justice.gov.uk/digital-communications/legal-aid-eligibility-and-universal-credit/supporting_documents/annexcsummaryofcurrentlegalaidfinancialegibilityrules.pdf

⁴ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/99032/2847-support-asylum-seekers.pdf

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JK is currently supported by NASS which means that JK passes the “Means Test” of the legal aid agency as JK’s income is £39.63 per week. JK however, has been adjudged to fail the “Merits Test”.

In view of the above, African Rainbow Family feels regard has not been given to the interests of justice head under the Merit Test limb.

The Legal Aid Agency avers that “The “Interests of justice” is not defined, but in practice will be deemed to have been passed by any defendant facing a custodial sentence⁵. In this case, a person seeking asylum. We feel that people seeking asylum who have no other source of income except from support from NASS, passed the Means Test and should be able to access legal aid as their safety and ability to access justice is of sufficient benefit to them.

Recommendation

Consideration should be given to people seeking asylum particularly LGBT+ people as it is not possible for them to always be able to provide evidence in support of their sexual orientation or gender identity from back home (countries of origin) where it is illegal to identify as an LGBT+ person. Even when they arrive in the UK, to start a nonsexual same sex relationship is a big challenge. Not being able to access legal aid and find a legal team to present their case is arguably, a denial to justice.

About African Rainbow Family

African Rainbow Family is a grassroot Charity that supports LGBTIQ people of African heritage and the wider Black and Asian Minority Ethnic groups seeking asylum in the UK and campaigns for global LGBTIQ equality. Our vision is a World without Prejudice.

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⁵ https://consult.justice.gov.uk/digital-communications/legal-aid-eligibility-and-universal-credit/supporting_documents/annexsummaryofcurrentlegalaidfinancialegibilityrules.pdf

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