



Not  
Beyond  
Redemption

## Not Beyond Redemption Financial Eligibility Policy<sup>1</sup>

### 1. Purpose

The Charity's objects are to relieve financial hardship by the provision of pro bono services and representation in relation to family law and the law relating to children and the provision of such other support as may be required to individuals who are: (a) in custody; or (b) serving or who have served a prison sentence, and who through lack of means would otherwise be unable to access such services to maintain contact with their children (**Objects**).

In order to achieve the Objects this Financial Eligibility Policy assists the Charity in discerning which individuals to whom it is providing, or is contemplating providing pro bono legal services and representation, lack the financial means to maintain contact with their children. In this way, the Financial Eligibility Policy furthers the Charity's Objects by ensuring that only those who have no other means of access to legal services and representation of the kind which the Charity provides, are receiving them from the Charity.

### 2. Scope

This Financial Eligibility Policy applies to all prospective and current clients of the Charity (**Client** or **Clients**).

### 3. Legal aid entitlement

The Charity may refuse to act for a Client where they are eligible for legal aid for the same legal services and representation, which the Charity intends to provide.

The Charity understands that for civil cases concerning child arrangement orders, alongside a means and merits test, a Client would only be eligible for legal aid where there is evidence that the Client had been the victim of domestic violence or the children at issue in the case are at risk of child abuse. The forms of evidence that entitle a Client to legal aid in these circumstances are prescribed in Schedules 1 and 2 of the Civil Legal Aid (Procedure) Regulations 2012.<sup>2</sup>

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<sup>1</sup> This Financial Eligibility Policy has been written in light of the Charity Commission's Guidance and Compliance Toolkit, and in particular 'Chapter 2: Due diligence, monitoring and verifying the end use of charitable funds' (see [here](#)).

<sup>2</sup> [The Civil Legal aid \(Procedure\) Regulations 2012 \(legislation.gov.uk\)](#)

In the event that a Client is likely to be eligible for legal aid, the Charity will signpost the Client to a legal aid family solicitor. If a client is ineligible for legal aid due to their means being over the legal aid limit NBR may refuse to act.

#### **4. Means Testing**

The Charity may refuse to act for a Client where the Client fails the Charity's means test (***Charity's Means Test***).

The Charity understands that most of its Clients are currently or have in the recent past been serving custodial sentences and therefore are unlikely to be capable of exceeding the Charity's Means Test. However, as the Charity is committed to continuing to act for Clients until the children at issue in a case turn eighteen years old, there is a reasonable likelihood that at some point during the period in which the Charity acts for a Client they may gain sufficient income or disposable capital to exceed the Charity's Means Test.

Following a Client's release from prison, the Charity reserves the right to assess the gross monthly income and disposable capital of a Client up to twice per calendar year. Any gross monthly income assessment will be substantially similar to the form set out in Schedule 1 to this Financial Eligibility Policy and any disposable capital assessment will be substantially similar to the form set out in Schedule 2 to this Financial Eligibility Policy.

The provision of legal services and representation by the Charity to a Client will be conditional on the Client returning their gross monthly income assessment and disposable capital assessment within a reasonable period from the time they are received.

In the event that a Client does not pass the Charity's Means Test, the Charity will only cease acting for a Client if it is appropriate to do so having regard to its obligations as set out in the Objects, the professional obligations of its solicitors and staff under the Solicitors Regulation Authority Principles and Code of Conduct for Solicitors<sup>3</sup>, the common law<sup>4</sup> and Family Procedure Rules<sup>5</sup>.

#### The Charity's Means Test

- A. The Charity's Means Test is made up of an Income Assessment and Disposable Capital Assessment. A Client must pass both Assessments to pass the Charity's Means Test.

#### *Income Assessment*

- B. Does the Client receive any of the following benefits? If they do, they automatically pass the Income Assessment.

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<sup>3</sup> [SRA | SRA Standards and Regulations | Solicitors Regulation Authority](#)

<sup>4</sup> See Underwood, Son & Piper v Lewis [1894] 2 QB 306; Richard Buxton (Solicitors) v Huw Llewelyn Paul Mills-Own [2010] EWHC Civ 122

<sup>5</sup> Family Procedure Rule 26.3

- i. Income Support
  - ii. Income-based Jobseeker's Allowance
  - iii. Universal Credit
  - iv. Guarantee Credit Element of Pension Credit
  - v. Income-related Employment and Support Allowance
- C. Does the Client have a partner whose income should be included in the calculations?
- i. The resources of the Client's partner should be treated as the Client's resources.
  - ii. A partner's resources are not treated as the Client's resources if the partner has a contrary interest in the dispute in respect of which the Charity is providing legal services and representation.
  - iii. For these purposes the definition of "partner" is the same as that used in the Civil Legal Aid (Financial Resources and Payment for Services) Regulations 2013.<sup>6</sup> The full definition can be found in Schedule 3 to this Financial Eligibility Policy.
- D. If the Client's gross monthly income is equal to or less than £2,083.33, they pass the Income Assessment.
- E. If the Client's gross monthly income exceeds £2,083.33, the Charity cannot guarantee that the client will receive pro bono legal representation at court hearings.
- F. If a Client's gross monthly income exceeds £3,333.33 for three consecutive months immediately previous to the assessment, they fail the Income Assessment.
- G. If a Client's gross monthly income exceeds £2,083.33, but does not exceed £3,333.33, the Charity retains the discretion to refer the case to a sub-committee of Directors of the Charity for consideration and a vote by simple majority as to whether the Client has passed the Income Assessment. A case will only be referred for a vote of the sub-committee if the Client has passed the Disposable Income Assessment. A vote to take place no later than 21 days after the date of the referral. Any Directors who have been involved in the provision of legal services and representation to the Client whose case has been referred to a vote by the sub-committee of Directors cannot take part in the vote and all discussions of the sub-committee of Directors prior to a vote will be recorded.

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<sup>6</sup> [The Civil Legal aid \(Financial Resources and Payment for Services\) Regulations 2013 \(legislation.gov.uk\)](https://www.legislation.gov.uk)

- i. Upon referring a case to a vote of the sub-committee of Directors, the Client will be informed of the referral and invited to make written representations to the sub-committee as to why the Charity should continue to provide pro bono legal services and representation to the Client.
- ii. When deciding whether to provide a Client with pro bono legal services and representation, the sub-committee will take into account the following criteria:
  - a. the Client's written representations;
  - b. the complexity of the case;
  - c. the length of time until the case is expected to reach a final hearing;
  - d. the length of time that the Charity has been acting for the Client;
  - e. the source of the Client's income;
  - f. the Client's expected future income; and
  - g. any other information regarding the Client or their case which Directors of the sub-committee consider relevant.
- iii. A Client will be informed of the outcome of the sub-committee's vote no later than 7 days after the vote.
- iv. Following a vote by the sub-committee where it is decided that the Client has failed the Income Assessment, the Charity will continue providing pro bono legal services and representation to the Client until the earlier of: (1) the Client engages an alternative provider of legal services and representation; and (2) 30 days after the date of the sub-committee's vote, unless the Client informs the Charity that they are appealing the decision or is in court proceedings. In the latter case the Charity may cease to act at its own discretion.
- v. A Client will have 30 days from the date they are informed of the outcome of the vote of the sub-committee to appeal the decision.<sup>7</sup> An appealed decision will be placed before all Directors of the Charity for consideration and a vote by simple majority as to whether the Charity should continue to provide legal services and representation to the Client. A vote to take place no later than 21 days after the date of the appeal. All discussions of the Directors prior to a vote will be recorded and in deciding whether to allow or dismiss the appeal the Directors will have regard to the same criteria set out in sub-paragraph (G)(ii) above. A client will be informed of the outcome of the Directors' vote no later

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<sup>7</sup> See the [selection criteria in the Charity Commission's Compliance Toolkit](#).

than 21 days after the vote and following a vote by the Directors where the appeal is dismissed, the same consequences as set out in sub-paragraph (G)(iv) will apply.

#### *Disposable Capital Assessment*

- H. If a Client's disposable capital does not exceed £8,000, they pass the Disposable Capital Assessment.
- I. The definition of "disposable capital" is set out in Schedule 3 to this Financial Eligibility Policy.

### **5. Disbursements**

The Charity may require a Client to pay their own disbursements where they fail the Charity's disbursements means test (***Charity's Disbursements Means Test***). For these purposes "disbursements" includes barristers' fees, court fees, reports required by the court, transcripts of court proceedings, and copies of court documents.

In any event the Charity will continue to require Clients to fill out an Apply for Help with Fees form EX160 where appropriate to ascertain the level of court fee to be paid.

#### The Charity's Disbursements Means Test

- A. The Charity's Disbursements Means Test is made up of an Income Assessment and Disposable Capital Assessment. A Client must pass both Assessments to pass the Charity's Disbursements Means Test.

#### *Income Assessment*

- B. If a Client's gross monthly income does not exceed £1,170, they pass the Income Assessment.

#### *Disposable Capital Assessment*

- C. If a Client's disposable capital does not exceed £3,000, they pass the Disposable Capital Assessment.<sup>8</sup>
- D. The definition of "disposable capital" is set out in Schedule 3 to this Financial Eligibility Policy.

### **SCHEDULE 1**

#### **FORM OF GROSS MONTHLY INCOME ASSESSMENT**

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<sup>8</sup> See EX160A ([Error! Hyperlink reference not valid.](#)).

1. Do you receive any of the benefits listed below? If yes, please provide evidence of the benefit(s) to which you are entitled.

- Income Support
- Income-based Jobseeker's Allowance
- Universal Credit
- Guarantee Credit Element of Pension Credit
- Income-related Employment and Support Allowance

2. What was your income last month before tax and National Insurance?

Type of income	Last month's income (GBP)	Your partner's last month's income (GBP)
Wages (before tax and National Insurance deductions)		
Child Benefit		
Working Tax Credit		
Child Tax Credit		
Contribution-based Jobseekers Allowance		
Contribution-based Employment and Support Allowance		
Regular payments from relatives or friends		
Maintenance payments		
Income from selling goods publicly or privately, including over the internet		
Rent from anyone living with you		
Rent from other properties you own		
Other income (please state)		
<b>Last month's total income</b>		

3. For the each of the two months preceding last month, was your and your partner's income the same or greater than last month?

4. If it was not, please provide a breakdown of each month in the tables below. For example, if you provided information regarding March in response to Question 2, you would provide information regarding February and January below.

Type of income	Monthly income (GBP)	Your partner's monthly income (GBP)
Wages (before tax and National Insurance deductions)		
Child Benefit		
Working Tax Credit		
Child Tax Credit		
Contribution-based Jobseekers Allowance		
Contribution-based Employment and Support Allowance		
Regular payments from relatives or friends		
Maintenance payments		
Income from selling goods publicly or privately, including over the internet		
Rent from anyone living with you		
Rent from other properties you own		
Other income (please state)		
<b>Last month's total income</b>		

Type of income	Monthly income (GBP)	Your partner's monthly income (GBP)
Wages (before tax and National Insurance deductions)		
Child Benefit		
Working Tax Credit		
Child Tax Credit		
Contribution-based Jobseekers Allowance		

Contribution-based Employment and Support Allowance		
Regular payments from relatives or friends		
Maintenance payments		
Income from selling goods publicly or privately, including over the internet		
Rent from anyone living with you		
Rent from other properties you own		
Other income (please state)		
<b>Last month's total income</b>		

I declare that the information I have given on this form is correct and complete. I understand that if I have given false or incomplete information the Charity may cease acting for me.

Name

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Signature

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Date:

## SCHEDULE 2



## FORM OF DISPOSABLE CAPITAL ASSESSMENT

1. Do you have more than £3,000 in savings, investments or articles of value?
2. If you answered yes to Question 1, do you have more than £8,000 in savings, investments or articles of value?

I declare that the information I have given on this form is correct and complete. I understand that if I have given false or incomplete information the Charity may cease acting for me.

Name

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Signature

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Date:

## SCHEDULE 3

### DEFINITIONS

**“disposable capital”** means:

- a) Cash savings which may be in bank current accounts, bank deposit accounts, building society accounts, National Savings accounts, individual savings accounts and any other savings accounts, tax exempt special savings accounts and joint savings accounts.
- b) Non-monetary assets such as National Savings Certificates, National Savings Capital Bonds, National Savings Premium Bonds, fixed rate bonds, investment bonds, Government Stocks, shares in public limited companies, shares in private limited companies, shares in community interest companies, unit trusts, personal equity plan investments, fixed term investments, articles of value (excluding household furniture and effects, personal clothing, the tools and equipment of the individual’s trade, engagement, wedding or eternity rings), and vehicles not in regular use by the individual or their partner.

**“partner”** means:

- a) an individual’s spouse or civil partner, from whom the individual is not separated due to a breakdown in the relationship which is likely to be permanent;
- b) a person with whom the individual lives as a couple; or
- c) a person with whom the individual ordinarily lives as a couple, from whom they are not separated due to a breakdown in the relationship which is likely to be permanent