



ASYLUM AID
protection from
persecution

PART OF THE HELEN BAMBER GROUP

Date: 21 February 2024

Response to Review of Civil Legal Aid Call for Evidence

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Introduction

1. Asylum Aid provides legal advice and representation to some of the most vulnerable people seeking asylum. We have built an expert service, delivering vital and life-saving services in some of the most complex legal cases, with a particular specialty working with survivors of trafficking, torture or other forms of human cruelty, unaccompanied minors and stateless people.
2. Asylum Aid is regulated by the OISC at Level 3 in asylum and protection and immigration. Our casework service is provided by OISC registered advisers and solicitors regulated by the Solicitors Regulation Authority. All caseworkers are accredited under the Law Society's Immigration and Asylum Accreditation Scheme and we hold the Lexcel quality mark. We hold legal aid contracts in immigration and asylum and public law. Our evidence below is focused on immigration and asylum legal aid.
3. Since August 2020, Asylum Aid has been part of the Helen Bamber Foundation Group. Asylum Aid operates as an independent charity, led by its own Executive Director within the group structure, and is ambitious about growing its impact and reach in the future to ensure protection from persecution for those who need it. The Helen Bamber Foundation is a pioneering Human Rights charity supporting refugees and asylum seekers who are the survivors of trafficking, torture, including gender-based and 'honour-based' violence.
4. Asylum Aid's vision is that all those who come to the UK in need of protection from persecution and other forms of human cruelty obtain it, and are treated fairly and with dignity. We work towards this vision through three main strands of work: the provision of specialist legal representation through the asylum and statelessness determination process; the establishment of partnerships to build capacity and increase expertise in the immigration advice sector; and drawing on our experience and expertise built up through our casework to engage in policy, advocacy and strategic legal work

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**Immigration
& Asylum**

Lexcel
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to make the asylum system fair and dignified, and to improve access to effective and quality legal advice for those seeking protection.

Overarching questions

1. Do you have any suggestions of changes that could improve civil legal aid – both short-term and longer-term changes?

1.1. Do you have any suggestions of changes – both short-term and longer-term changes – that could improve each of the following categories of law?

5. The fees for immigration and asylum work are clearly not sustainable and have resulted in many providers dropping out of the sector. At Asylum Aid the fees we receive from Legal Aid only cover about 25% of the income needed to run our legal service. Without additional funding from alternative sources our Legal Aid work would not be viable.
6. The Civil Legal Aid rates have not increased since 1996 and were reduced in 2011. This is clearly not sustainable, especially given the high cost of living increases we have seen over the past few years. We therefore think that there needs to be an immediate increase in fees across the board for Legal Aid. This increase should be substantial as the Law Society calculated civil legal aid fees have depreciated by about 50% since 1996. We therefore propose the fees should be increased by 50% and then index linked to ensure the fees remain sustainable.
7. We also believe that all immigration, citizenship and National Referral Mechanism (“NRM”) work should be brought back into the scope for legal aid. In order to meet the needs of our clients we are often working with people who have a mix of out-of-scope and in-scope work. Time and resources are wasted applying for Exceptional Case Funding (“ECF”) in these cases. In our experience ECF applications are rarely refused, especially for applications such as family reunion. It is a waste of providers’ and the LAA’s time to make and administer ECF applications for people who should be entitled to legal aid. We believe these applications should be brought back into scope. Asylum and immigration law and procedures are extremely complex and constantly changing. People need advice and representation to properly navigate this system. The clients we represent can face disastrous consequences if they fall into irregular situations. Our clients are often very vulnerable to abuse and exploitation in addition to homelessness and destitution.
8. There is a crisis in Legal Aid provision in asylum and immigration. Many providers have dropped out mainly due to financial reasons. A substantial increase in fees may attract more providers to the sector. However there needs to be a clear strategy about how to increase service provision. There needs to be a strategy to end advice deserts and the MOJ should look to make different arrangements for legal aid, including grants, to ensure legal aid provision is provided in advice deserts.
9. We also believe that the administrative burden of a Legal Aid contract is also a reason why providers have stopped providing legal aid. The Legal Aid Agency contract and guidance needs to be simplified as is extremely complex in its current form. There needs to be a sensible collaborative approach between providers and the Legal Aid Agency in relation to audits as currently the risks are all with the provider in relation to possible claw backs and reductions on assessment. We believe this discourages providers from doing legal aid work.

10. The MOJ should invest in training so that the workforce can be maintained and replenished. For example, a reduction of cost or no cost accreditations should be funded for IAAS and OISC. We welcome the recent decision by the MOJ to meet the cost of accreditation and re-accreditation for senior caseworkers in 2024, which will save approximately £12,000 in fees this year alone. This scheme should be extended to all future years. There should be fully-funded traineeships / apprenticeships to qualify as an immigration adviser.

2. What are the civil legal aid issues that are specific to your local area? Please provide any specific evidence or data you have that supports your response.

11. The provision of legal aid for asylum and immigration matters is in crisis. Our office is in London where there are a number of other providers. However, the provision is not nearly enough to meet the need. We are not able to assist the vast majority of people who contact us for legal representation.

12. In February 2023 we tracked referrals requesting legal representation to our organisation via e-mail. We did not include phone referrals as these were more difficult to track. In one month we received 134 referrals by e-mail. During that month we were only able to take on 1 referral during this time due to capacity. In addition to this we receive about 5 -10 phone calls per day asking for representation so the true number of referrals in the month is much higher.

13. We do not have the resources to track referrals in this manner on a permanent basis but this gives a snap-shot of the unmet need at this time. We do not think the situation has improved since February 2023. We also monitored the type of cases that were being referred. These cases referred included Unaccompanied Asylum Seeking children referred by social services, victims of torture, victims of trafficking and victims of domestic violence. These are extremely vulnerable people who are in desperate need of legal representation. They are currently being failed by the lack of legal aid service provision in asylum and immigration.

14. Our main office is in Westminster. One of our services is the provision of generalist advice to local residents who have a refugee or migrant background. We provide advice in a community language on issues such as housing and welfare benefits. However, our generalist advice service is not accredited to provide immigration advice and they find it increasingly difficult to refer people seeking immigration advice to any local providers where our own specialist advice team is unable to assist (either due to capacity or because the issue is not one for which legal aid is available). There is a critical shortage of immigration advice provision in Westminster which cannot meet the need. Moreover, the Home Office has over the last 2-3 years placed a large number of people seeking asylum in hotels in Westminster, many of whom are unable to find legal aid representation for their cases.

3. What do you think are the changes in the administration of civil legal aid that would be most beneficial to providers? Please provide any specific evidence or data you have that supports your response.

15. As stated above the Legal Aid contract and procedures need to be simplified as these are incredibly complex. There needs to be a reduction in the administrative burden on providers to minimise unpaid work that is required to manage a Legal Aid contract. Billing processes need to be simplified and there needs to be a collaborative approach between providers and the Legal Aid agency

in relation to audits and assessments. There should be greater emphasis on real quality of advice. As stated above there needs to be fair remuneration.

4. What potential risks and opportunities do you foresee in the future for civil legal aid: i) in general; and ii) if no changes are made to the current system? Please provide any specific evidence or data you have that supports your response.

16. As we have already stated, the civil legal aid system is already in crisis. An estimated 51% of asylum claimants in England and Wales are going unrepresented and the Law Society estimates that 66% of people do not have access to a local immigration lawyer. Through our own monitoring we have seen that some of the most vulnerable people are unable to secure representation. If no changes are made, the risks are that more providers will drop out as the fees essentially decrease year on year in real terms.

17. This review is an opportunity to change this desperate situation, but very significant changes are required to the provision of legal aid in asylum and immigration matters for this to be effective.

5. What do you think are the possible downstream benefits of civil legal aid? The term 'downstream benefits' is used to describe the cost savings, other benefits to government and wider societal benefits when eligible individuals have access to legally aided advice and representation. Please provide any specific evidence or data you have that supports your response.

18. As already discussed, many of our clients are extremely vulnerable. People can get lost in the asylum and immigration system in the UK and require expert advice and representation to navigate through complex legal processes. They are more likely to have a successful and timely resolution to their immigration problem with legal representation. Without legal representation, people can suffer from lengthy instability in relation to their status in the UK. They may have no right to work and no recourse to public funds. This can lead to more reliance on the state for assistance. Individuals without status can develop very complex problems in relation to health care, destitution, and homelessness. This can be prevented with good quality legal advice at the beginning of their case.

Fees

6. What are your views on the incentives created by the structure of the current fee system?

19. We have already mentioned that the legal aid fees are currently at unsustainable levels as they are based on 1996 rates. The lack of increase in the level of fees mean that in real terms the fees are reducing year on year.

20. The fixed fees are set too low as a result of the completely inadequate hourly rates. We do not think that having fixed fees for asylum and immigration work creates the right incentives. Fixed fees can incentivise poor practice as they reward providers who spend the least time on cases. It is welcome the threshold to escape the fixed fee has been reduced but we would much prefer the cases to be remunerated at hourly rates. The process for claiming hourly rates on escape fee cases is a further administrative burden and also results in a further delay of payment for the work carried out.

6.1. Do you think these support the effective resolution of problems at the earliest point?

21. These incentives do not support the effective resolution of problems at the earliest point as the fees are far too low. Many providers have left the sector. This means people are not able to access advice at an early point. Even the most vulnerable clients, including unaccompanied asylum seeking children, have to try for many months before they can secure legal representation.

6.2. How could the system be structured better?

22. The system could be structured better by significantly increasing legal aid rates and increasing them year on year with inflation. Fixed fees should be abolished, and the work should be paid at hourly rates.

Career development and diversity

7. Is there anything in particular in civil legal aid that prevents practitioners with protected characteristics from starting and continuing their careers? If yes, how could this be addressed? Please provide any specific evidence or data you have that supports your response.

23. The root problem with civil legal aid work attracting and retaining practitioners, including those with protected characteristics, is that it is not financially viable. Low legal aid fees lead to low salaries, which in turn lead to less stability and worse work/life balance as practitioners are compelled to work more to make up for low fees.

24. Those from less affluent backgrounds and/or without family support to rely on cannot afford to make a living on legal aid salaries, given the ever-increasing cost of living. As a result, social welfare law practitioners are often not representative of the communities they serve.

25. Furthermore, social welfare law is often stressful because of the nature and urgency of client needs. We often deal with people at a crisis point. This, coupled with low fees and high caseloads (to make up for the low fees), makes civil legal aid work unattractive not only to those from less affluent backgrounds, but also to people with disabilities and/or neuro-diversities, and those with caring responsibilities, because of the potential lack of flexibility in their work arrangements.

26. The starting point in addressing this problem is recognising that the civil legal aid sector as stands is not economically viable. The next step is to take measures to make it economically viable by increasing civil legal aid rates so that practitioners can expect to receive a competitive salary when working in legal aid.

8. How can the diversity of the profession be increased in legal aid practice, including ethnicity, disability, sex, age and socio-economic background? Please provide any specific evidence or data you have that supports your response.

27. In the area of immigration and asylum, we strive to attract and retain people with lived experience of the immigration system. To do so successfully, competitive salaries, career progression, and flexibility in working arrangements are necessary. Fair civil legal aid fees are the

cornerstone of this, without which the social welfare sector will be for the (diminishing) privileged few who can afford to work in it.

User needs

9. What barriers/obstacles do you think individuals encounter when attempting to access civil legal aid? Please provide any specific evidence or data you have that supports your response.

28. The paucity of available and accessible initial advice and signposting to specialist legal services is the *first* obstacle people encounter when attempting to access civil legal aid. This is further compounded by a language barrier and resulting lack of agency on the part of people whose first language is not English. There needs to be better dissemination of reliable information in the most spoken languages about where people can seek specialist legal advice. For example, Asylum Support accommodation providers/Migrant Help should ensure that residents are informed that legal aid is available to those seeking international protection who meet the relevant financial eligibility requirements, and that they are signposted to legal aid providers, ideally, in their local area.
29. The obvious difficulty here is that there are very few, if any, legal aid providers left in many asylum dispersal areas, which have become advice deserts with potentially catastrophic consequences for some of the most vulnerable people. Even in London, the demand for legal aid immigration and asylum advice and representation significantly outstrips supply.
30. Obtaining relevant evidence of means often poses a significant challenge for those who are destitute, not in regular employment or on mainstream benefits, and/or supported by third parties. The complexity involved in evidencing means can delay progressing eligible cases effectively and at pace. This needs to be simplified.
31. Another major obstacle in the way of accessing legal aid services is that immigration, namely Article 8 ECHR and family reunion, has been taken out of scope for Legal Help/Controlled Legal Representation and require a successful ECF application to bring it into scope. Again, this process is complex and lengthy. As practitioners in this area of law, we believe that immigration should be brought back into scope due to its legal and procedural complexity, and the unlikely ability of eligible clients to represent themselves effectively without the benefit of Legal Help/Controlled Legal Representation.

10. What could be done to improve client choice such that it is easier for clients to find civil legal aid providers and make informed decisions about which one best meets their needs? Please provide any specific evidence or data you have that supports your response.

32. There is a failure of the civil legal aid system in the area of immigration and asylum. The alarming lack of legal aid providers compared with the high demand for our service means that the vast majority of potentially eligible individuals end up with no choice about who to instruct and often end up having to go private in the absence of legal aid provision. We tracked enquiries for our

service over a month's period in February 2023. We received 134 self-referrals during that month, all of which but 1 we had to turn down due to capacity. This is an ongoing trend.

11. Do you think that some people who are eligible for civil legal aid may not know that it is available and/or how to access it? If so, how do you suggest that this is addressed? Please provide any specific evidence or data you have that supports your response.

33. Increasing awareness of legal aid and how to access it must go hand in hand with increasing legal aid provision. Legal aid provision will not increase unless and until it is made financially viable and sustainable.
34. As stated above in response to Question 9, there needs to be better dissemination of reliable information in the most spoken languages about where individuals can seek specialist legal advice. In the asylum context, for example, the Home Office should provide a leaflet in the relevant language, if possible, at the point of screening to inform claimants about the availability of legal aid for those seeking international protection who meet the relevant financial eligibility requirements. This information should be reinforced by Migrant Help when responding to enquiries such as about Asylum Support, and in Asylum Support accommodation. To make this meaningful, there must be legal aid provision available, which is currently not.
35. We urge the MOJ to take the recommendations of Dr Jo Wilding and the National Audit Office, among others, and invest in tools that quantify unmet legal need. This information is necessary to measure the actual impact of any changes implemented to improve sustainability with reference to user needs.

12. How do you think that people receiving civil legal aid can be supported in cases where they have multiple or 'clustered' legal issues and some of these are outside of the scope of civil legal aid? Please provide any specific evidence or data you have that supports your response.

36. Our immigration and public-law Civil Legal Aid contracts enable us to represent clients in multiple matters, including asylum, human rights, trafficking, and public law. Client matters related to Article 8 ECHR and family reunion are outside the scope for Legal Help/Controlled Legal Representation. This adds unnecessary additional complexity and complications to an already complex and complicated process. In our experience, all ECF applications we make on behalf of our clients are granted because it is accepted that the issues involved are complex and that clients cannot effectively represent themselves without the benefit of legal aid. Therefore, we strongly urge the MOJ to (1) bring matters related to Article 8 ECHR and family reunion back into scope for Legal Help/Controlled Legal Representation and (2) change the contract categorisations so that Asylum Support is covered by the immigration contract, as well as the housing contract.
37. We expect that without the need for ECF, some legal aid providers will more readily accept instructions in the above matters, whilst those providers already assisting clients on in-scope matters will be able to continue providing essential service without unnecessary red tape and delays.

13. How do you think that the Exceptional Case Funding scheme is currently working, and are there any ways in which it could be improved? Please provide any specific evidence or data you have that supports your response.

38. Following from the above, ECF represents an unnecessary obstacle in the way of clients accessing justice in a timely manner. Given the “at risk” and complexity of the ECF application process, some providers are reluctant to take on out-of-scope cases of otherwise eligible clients. Unrepresented individuals are unlikely to successfully argue, in legal terms, that they would be unable to represent themselves effectively without the benefit of Legal Help in support of their ECF application. This makes the ECF system inaccessible to the most vulnerable individuals.

39. Despite our firm view that the ECF scheme does not serve the purpose it was designed for and should therefore be scrapped, we would like to highlight the following specific issues with the current scheme:

- (i) Once ECF is granted at the Legal Help stage, it should be unnecessary to re-apply for ECF at the Controlled Legal Representation stage, provided that the client meets the relevant means and merits criteria;
- (ii) CW3 Self-grant should be available to matters where ECF has been granted, subject to the relevant self-grant conditions being met.

We would be very happy to discuss any of the above or suggestions for improvement in more detail.