

# ILPA information sheet

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## Legal Aid 5 – 2010 Update

22<sup>nd</sup> November 2010

The Government published its full coalition agreement on 20 May 2010. This included a commitment to review Legal Aid “to make it work more efficiently.” Just over a month later, on 23 June 2010, Kenneth Clarke MP, the Secretary of State for Justice, made a statement to Parliament. He indicated that the Government would make proposals and consult on these. He also said:

*“We will seek to develop an approach which is compatible with fair and necessary access to justice for those who need it most, the protection of the most vulnerable in our society, the efficient performance of the justice system, and our international legal obligations.”*

This information sheet provides information about the current situation regarding Legal Aid in immigration and asylum cases. In particular, it highlights three developments that have caused or threaten to cause further damage to the provision of legal advice and representation in this area.

### **Closure of Refugee and Migrant Justice**

In June 2010, Refugee and Migrant Justice (formerly known as the Refugee Legal Centre) went into administration. It closed its doors that same month. The Refugee and Migrant Justice website gives information about the closure and how individuals formerly represented by Refugee and Migrant Justice (or their new legal representatives) may retrieve their files:

[http://refugee-migrant-justice.org.uk/?page\\_id=4](http://refugee-migrant-justice.org.uk/?page_id=4)

The closure of Refugee and Migrant Justice is widely acknowledged to be a major loss of Legal Aid advice and representation available to asylum-seekers. It is estimated that Refugee and Migrant Justice had more than 10,000 clients at the time of its closure. Up until its closure, Refugee and Migrant Justice was an important source of advice and representation for asylum-seekers at all stages of the asylum process – including many, who had been let down by previous legal representatives. Refugee and Migrant Justice was also responsible for many of the key cases that have developed asylum law and practice over the years.

### **The tender process and results for legal aid contracts from November 2010**

In June 2010, the Legal Services Commission announced the results of the tender process for Legal Aid contracts in immigration and asylum. It was a requirement that those bidding agreed to do Legal Aid work in both immigration and asylum. The tender process took place at the beginning of the year. It had originally been said that the results would be announced at the end of March 2010. The Legal Services Commission announced several delays, and eventually announced the results at the end of June 2010. These contracts were to start in October 2010, but in the end their start was put back to 15 November 2010. However, some of those who were not awarded a contract to do

immigration and asylum Legal Aid work, or who were given very small contracts, are challenging the results in the courts. They argue that the tender criteria were not fair.

Some legal representatives have been offered no contract at all. Many others have been offered contracts of a very much smaller size than that which they previously had or that which they bid for. The Legal Services Commission's decision to offer such small or no contracts has had no regard to the quality of work provided by these representatives. Many of those who have been offered smaller contracts than for which they bid have been forced to consider whether it is financially viable for them to continue to do any Legal Aid work. Already Devon Law Centre has had to close and a number of firms are not able to take as many cases as they did before.

The Legal Services Commission has also contracted with a number of firms to provide Legal Aid work for those in detention. A list of the firms contracted to do this work at particular Immigration Removal Centres is available at:

<http://www.legalservices.gov.uk/civil/immigration/5527.asp>

### **Legal Aid proposals and consultation**

Most recently, on 15 November 2010, Kenneth Clarke MP, the Secretary of State for Justice announced proposals for changes to Legal Aid. His full statement is available at:

<http://www.publications.parliament.uk/pa/cm201011/cmhansrd/cm101115/debtext/101115-0001.htm#10111511000003>

The Ministry of Justice has published a consultation on these proposals. That consultation (which closes on 14 February 2011) is available at:

<http://www.justice.gov.uk/consultations/legal-aid-reform-151110.htm>

The Ministry of Justice intends to cut Legal Aid by around £350 million. It is proposed that this should be done by ending the provision of Legal Aid for a number of areas, including immigration, asylum support (but not decisions on asylum claims), social welfare, housing, debt, employment and private family disputes. Under these proposals, there would or could be some exceptional cases where Legal Aid would still be available in an area in which Legal Aid was generally ended. However, it is not clear how this would work; and the intention is that in most or nearly all cases in these areas, Legal Aid would not be provided.

### **Previous information sheets on Legal Aid**

The October 2007 "Legal Aid 1 – General" information sheet provides general or background information about how Legal Aid is currently provided in immigration and asylum cases.

### **The purpose of Legal Aid**

The idea that free legal assistance should be available for those, who cannot afford legal assistance (advice and representation) to help them enforce their legal rights, is not new. Schemes were developed in Scotland and England to try and achieve this more than 600 years ago. The forerunner to the current Legal Aid system for England and Wales was established in 1949. The reasons for developing such schemes (in the UK and elsewhere) were described by Professor Ernst Joseph Cohn in 1943 in the following terms:

*“Just as the modern State tries to protect the poorer classes against the common dangers of life, such as unemployment, disease, old age, social oppression, etc., so it should protect them when legal difficulties arise. Indeed the case for such protection is stronger than the case for any other form of protection. The State is responsible for the law. That law again is made for the protection of all citizens, poor and rich alike. It is therefore the duty of the State to make its machinery work alike, for the rich and the poor.”*