

# **ILPA** information sheet

---

Information sheets provide general information only, accurate as at the date of the information sheet. Law, policy and practice may change over time.

ILPA members listed in the directory at [www.ilpa.org.uk](http://www.ilpa.org.uk) provide legal advice on individual cases. ILPA does not do so.

The ILPA information service is funded by the Joseph Rowntree Charitable Trust.

An archive of information sheets is available at [www.ilpa.org.uk/infoservice.html](http://www.ilpa.org.uk/infoservice.html)

**Steve Symonds** ILPA Legal Officer 020-7490 1553 [steve.symonds@ilpa.org.uk](mailto:steve.symonds@ilpa.org.uk)

**Immigration Law Practitioners' Association** [www.ilpa.org.uk](http://www.ilpa.org.uk) 020-7251 8383 (t) 020-7251 8384 (f)

---

## **Legal Aid 7 – Immigration Proposals**

*22<sup>nd</sup> December 2010*

This information sheet provides more detail about how the Government's Legal Aid proposals would affect immigration and asylum. For more general information, see the "Legal Aid 6" information sheet.

### **Immigration**

The Government proposes to remove Legal Aid for immigration cases. This would include cases about citizenship, permission to enter or stay in the UK and deportation. The consultation gives the following reasons for this:

- Immigration can raise important family and private life matters but these are not as important as asylum cases, and these cases are a matter of personal choice.
- Immigration cases are not generally complex.
- The Tribunal system is designed to be user-friendly.
- Unlike asylum-seekers, appellants in immigration cases are not particularly vulnerable and can represent themselves.

Many immigration cases are very complex. The Immigration Rules are very long and not straightforward. They also change frequently. Many immigration cases are not a matter of personal choice. For example, a person facing separation from his or her British partner or children is not making a choice. Rather it is the Government that is choosing to separate them. Tribunal procedure rules are not straightforward, and immigration law is complex. Whether someone is able to get a fair hearing depends on several factors – including understanding the process, the relevant law, the right evidence to produce and the right questions to ask. The UK Border Agency can choose to be represented.

### **Asylum support**

The Government proposes to remove Legal Aid for all welfare-related matters (for British citizens, asylum-seekers and other migrants). This includes asylum support. Currently Legal Aid can be available for initial advice in relation to asylum support, but is not available for asylum support appeals. The Government's proposals would remove it for advice also. The consultation gives the following reasons for this:

- Asylum support applications are relatively straightforward.
- Asylum support applications do not require legal expertise.
- There are clear guidance notes available for asylum support applications.
- Some voluntary sector organisations provide free advice with asylum support applications.

It is difficult to understand how the difficulties asylum-seekers' face (e.g. unfamiliarity with the UK and formal processes, lack of English, isolation from friends and family, trauma from past

experiences including torture) make them any better placed to deal with asylum support claims than asylum claims. Asylum support regulations are complex, and the UK Border Agency has more than 30 public policy documents interpreting these regulations. Wrong decisions can leave or make someone homeless and destitute; and asylum-seekers in these situations find it very much more difficult to engage with the asylum process (including with their lawyer). Refusing Legal Aid for asylum support may, therefore, increase delays and inadequacies in the asylum process; and therefore the cost of that process (including Legal Aid costs). Nor are the forms straightforward, and making a false statement on a form could lead to a criminal prosecution.

### **Asylum**

The Government proposes to keep Legal Aid for asylum cases. The consultation gives the following reasons for this:

- Asylum cases concern immediate and severe risks to individuals.
- Asylum-seekers may be suffering from trauma and so unable to represent themselves.
- Generally, asylum-seekers face difficulties dealing with the asylum process.
- European Union law on asylum requires some provision of free legal assistance (for appeals).

These are good reasons. However, removing Legal Aid for immigration cases (see below) could lead to an increase in asylum claims. Some immigration cases can raise asylum matters – e.g. many immigration cases about domestic violence are currently dealt with as immigration cases but may also raise grounds for an asylum claim where the person would not be safe from harm in his or her home country. In other cases, a person is able and chooses to make an immigration claim (e.g. to study or work in the UK) rather than claiming asylum even though he or she may be at risk of serious harm in his or her home country.

### **Immigration detention**

The Government proposes to keep Legal Aid for immigration detention matters. This would include challenges to immigration detention and cases about immigration bail (including renewing bail or varying bail conditions). The consultation gives the following reasons for this:

- Matters of liberty are particularly important.
- Individuals cannot be expected to resolve these matters without assistance.
- There is no sufficient alternative source of funding to Legal Aid to provide assistance.

These are good reasons. However, while Legal Aid would be available for a challenge to a person's immigration detention, under the Government's proposals it would not be available to deal with the underlying immigration issue that had led to the person's detention and is the reason he or she remains detained. The Government's proposal does not, therefore, place such importance on liberty as is claimed. For example, a person may be detained for the purpose of his or her deportation. However, in order to show that his or her deportation is unlawful, the person will often need legal representation. In those circumstances, having Legal Aid to be advised there is no challenge that can be made against the detention could be useless. Assistance is needed with the deportation.

### **Judicial review**

The Government proposes to keep Legal Aid for judicial review challenges. It accepts it is important that decisions and actions by public bodies (including the Government) can be subject to judicial oversight. The Government is right, but the proposals to remove Legal Aid for immigration cases (and for other cases about decisions by public bodies) risk greatly increasing the amount of judicial review challenges. Those proposals may mean that more expensive judicial review challenges are left to pick up the pieces of cases that have not been properly dealt with – e.g. because the appellant in an immigration case (as opposed to the UK Border Agency) did not have the benefit or option of representation before the Tribunal.