

ILPA information sheet

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Legal Aid 11 – Consultation: Final

7th February 2011

The consultation on Legal Aid closes at 12.00 noon on Monday, 14 February 2011. This information sheet sets out a series of bullet points on the Government's proposals. If any of these bullet points seem important to you, please take the opportunity to respond to the consultation. You can do this simply by writing a letter or sending an email to:

Legal Aid Reform Team, Ministry of Justice, 102 Petty France, London SW1H 9AJ
legalaidreformmoj@justice.gsi.gov.uk

You do not need to use the formal consultation form or answer any or all of the specific consultation questions. If you do send a letter (or an email), please send a copy to your local MP. You can find out who that is, and where to contact him or her, by using the "Find Your MP" at:

<http://www.parliament.uk/mps-lords-and-offices/mps/>

- Immigration cases are often complicated. Last year, a Court of Appeal judge said: "*I am left perplexed and concerned how any individual whom the Rules affect... can discover what the policy of the Secretary of State actually is at any particular time... It seems that it is only with expensive legal assistance, funded by the taxpayer, that justice can be done.*" The Government's proposals are wrong to treat immigration cases as cases that people can deal with themselves, and Legal Aid should remain for immigration work.
- Immigration cases involving people's family and private life (Article 8, European Convention on Human Rights) raise complicated matters of law and fact. The courts have established a five-stage test to be carried out in these cases, and the Supreme Court has this year reiterated the point that: "*The search for a hard-edged or bright-line rule to be applied in the generality of cases is incompatible with the difficult evaluative exercise which article 8 requires.*" The Government's proposals treat these cases as being relatively straightforward. This is wrong, and Legal Aid should remain for these cases.
- Immigration cases involving people's family and private life often require a wide range of evidence including witness statements from family members (and others), and various reports (such as school reports, social work reports, medical reports). A non-lawyer will normally not know what is needed or how to get it. Without this evidence, a decision-maker or a judge will not be able to properly assess the case. Legal Aid should remain because justice may not be done in such cases without it.
- The Government's proposals treat immigration cases as if these are simply about choices

that people decide to make. However, many immigration cases – particularly those involving families – are about people who are not making or able to make choices. For example, children born or brought to the UK have not made choices. Someone, who has lived here all or nearly all their life, facing deportation is not involved in a choice. The Government's assumptions are wrong, and Legal Aid should remain for these cases.

- The Government's proposals for family law give some recognition to the particular and important interests of children, and circumstances which may lead to separation of children from a parent. However, many immigration cases involve this same question, and in circumstances where the chances will be that any separation will be permanent. Legal Aid should remain for these cases.
- The Government proposes that Legal Aid remain for immigration detention. However, it will be vital to deal with the reasons for detention – including the person's immigration case. It makes no sense to permit assistance while someone is in detention, but to refuse assistance beforehand or afterwards. This will simply lead to people being detained because it seems they have no good immigration case, being released because it seems they do have a good case but being detained all over again because they have been unable to properly put their case forward. Legal Aid should remain for immigration work generally.
- There are many reasons why asylum-seekers become homeless. One reason is that they do not receive the support to which they are entitled. The Government's proposals concerning debt and housing recognise the importance of situations where someone may immediately become homeless. If asylum support is not provided, asylum-seekers face homelessness. Legal Aid for asylum support should remain, and be extended to asylum support appeals.
- Refugee family reunion is a fundamental aspect of the asylum claim of many refugees. The Government's proposals do not make clear, and the Government should make clear, that Legal Aid is to remain for refugee family reunion as it is to remain for asylum generally.
- The Government's proposals recognise, in relation to family law, the importance of situations involving domestic violence. Some immigration cases concern domestic violence, and where they do it is often the person's immigration problem that leaves them unable to escape domestic violence. A similar situation can arise in some domestic worker cases. The Government should make clear that Legal Aid will remain for such cases.
- The Government proposes that anyone needing Legal Aid must first speak to a telephone operator. This is not sensible. Many people will have difficulty explaining themselves, and often it is only when a lawyer sees the person's documents that the case becomes clear. The clear risk is that people do not get assistance to which they are entitled because the operator does not recognise their entitlement. Even if the operator does recognise this, passing them on to a telephone adviser is not adequate.
- Legal Aid is to ensure equality of arms in legal proceedings. In immigration cases, the Home Office is represented; and it has specialist legal advice. Legal Aid should remain for claimants and appellants who cannot afford legal assistance. Moreover, the criminal law restricts who is permitted to advise and assist with an immigration case, so options that may be available in other legal areas are not open for those needing help with this type of case.
- The Government proposes to reduce Legal Aid fees by 10%. Many people cannot now find a good quality Legal Aid lawyer. This proposal is likely to make that problem even worse.