

SECURING ACCESS TO JUSTICE

The need for legal aid in immigration

JOINT BRIEFING FROM 71 ORGANISATIONS

September 2024

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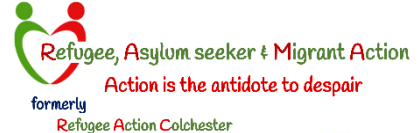
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Background

People across the UK are currently unable to access justice because of the crisis within the civil legal aid system.¹ This creates huge problems for communities, as well as leading to greater knock-on costs for local authorities and others. This is especially true within the immigration system, where large numbers of people are locked out of access to justice. Urgent change is needed to overhaul the legal aid system and ensure that people can access the support they need. The Ministry of Justice's ongoing 'Review of Civil Legal Aid' is an opportunity to bring about this change based on the expertise and recommendations shared from across the civil legal aid sector.

Recommendations

- Cross-departmental solutions to a cross-departmental issue - **overhaul the hostile approach** to migration policy-making thereby decreasing reliance on legal aid.
- Ensure those in need of legal aid can access it - **expand the scope** of cases covered by legal aid to what it was before 2012.
- Urgently **increase legal aid fee rates** to ensure practitioners are paid for their work and to avoid knock-on costs elsewhere.
- **End 'legal aid deserts'** - ensure that there are legal aid providers available across the country, not just in certain regions.

The importance of legal aid

A functional and sustainable legal aid system that allows people to access justice, no matter their socio-economic background, is a bedrock of our democracy. It is a vital, cost-effective way to ensure that people can resolve problems before they become more serious, whether that be a rogue landlord, precarious immigration status or family breakdown. Having a well-funded legal aid system will save the Government money in the long term by avoiding spillover costs to Local Authorities, health services, the Courts and other government departments as a result of people not receiving advice early on. Recent research by the Access to Justice Foundation finds that the cost saving to the public purse for every 100,000 clients in receipt of free legal advice was around £908 million in 2023.²

The need for legal aid for immigration cases

The UK's immigration system is extremely complex. The last decade of harmful and costly policies, including unworkable immigration and asylum legislation, have left people stuck in limbo for long periods of times, at risk of removal and denied the possibility of settling into safe, dignified and independent lives.

¹ '[Legal Aid Deserts](#)' (The Law Society, February 2024)

² '[The value of justice for all](#)' (Access to Justice Foundation, August 2024); '[Unlocking the door](#)' (Homeless Link & NACCOM, June 2022) shows the benefits of access to early immigration advice in homelessness prevention

Past Governments' changes have been disastrous for communities, and have only increased the need for legal advice and representation.³ Yet we have seen recently how the anti-migrant rhetoric used by the last Government has emboldened the far-right⁴ and led to attacks against legal advisors.⁵

Particular challenges for the immigration legal aid system

Over the last 14 years, and in particular following the [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(LASPO\)](#), the immigration legal aid sector has been brought to its knees. We have seen years of cuts by prior Governments to the scope of civil legal aid (amongst other vital public services), stagnant pay rates and poor administrative oversight of legal aid work. LASPO made large swathes of people ineligible for legal aid. The system supposed to protect the most vulnerable, those at risk of human rights breaches - Exceptional Case Funding (ECF) - is slow, bureaucratic and costly to run. Recent research estimates that the Legal Aid Agency spends nearly £500,000 a year on assessing ECF applications in immigration, yet in 2022-23 87% were approved.⁶ In the face of these grant numbers, it is difficult to justify upholding this barrier to representation.

As a result, **people across the country have been left without proper legal support.** Over 50% of people seeking asylum are now unable to find a legal aid lawyer,⁷ and this is only growing with the backlog of people in the asylum system. We have seen a 330% rise in asylum appeals compared to last year, due in part to woefully poor asylum decision-making by the previous administration, and Tribunals now also face unmanageable backlogs.⁸ Many people who have the right to legal aid are being forced to go to appeal without any legal advice at all, which is only costing the government more money.

Despite a cost of living crisis and rising housing costs, the means threshold for assessing financial eligibility for legal aid has not increased for over a decade. The result is that many people cannot afford legal help, but do not meet the means threshold for legal aid, leaving them unable to argue for and enjoy their rights under the law.

The situation for practitioners

Finally, **working in legal aid has become unsustainable.** Civil legal aid rates have not increased since 1996. In fact, they were reduced by 10% in 2012. This is impossible for practitioners to maintain, as highlighted in the ongoing legal challenge relating to legal aid fees brought by Duncan Lewis Solicitors.⁹ Increasing legal aid expenditure would not come at significant public cost and indeed is likely to be cost-saving in the long-term: MOJ expenditure on

³ ['Survey of civil legal aid providers in England and Wales'](#) (PA Consulting, January 2024) Figure 4.1 shows that immigration legal aid providers were significantly more likely to report high levels of demand (85%) than providers in other areas of civil legal aid

⁴ ['UK government's anti-migrant rhetoric is 'feeding' the far right'](#) (The Guardian, May 2023)

⁵ ['Immigration lawyers 'at risk' amid far-right threats to target advice centres'](#) (The Guardian, August 2024)

⁶ ['New research on legal aid cuts shows wasted money and "embarrassing" data gaps'](#) (Dr Emma Marshall, Dr Samuel Engle and Sian Pearce, July 2024)

⁷ ['Over half of people seeking asylum are now unable to access a legal aid lawyer'](#) (Dr Jo Wilding, October 2023)

⁸ ['New statistics call into question Sunak's claim of clearing asylum backlog'](#) (The Guardian, June 2024)

⁹ ['Duncan Lewis takes government to court over legal aid fees'](#) (Law Society Gazette, June 2024)

immigration legal aid in 2023/24 was £51 million,¹⁰ less than the cost of one week of asylum hotel accommodation.¹¹

Put simply – doing legal aid loses money for providers. ‘Fixed fees’ for certain cases make it near impossible to be paid for the entirety of work required to resolve someone’s problem and act as an unnecessary barrier to providing high-quality legal representation. The Legal Aid Agency (LAA) often takes a punitive approach to management of the system, with high administrative demands that require a huge amount of unpaid work from advisors. These demands have been cited by advisors as a reason for leaving the legal aid sector.¹²

This is driving legal aid providers to reduce work¹³ or to shut down entirely at a time when they are most needed, leaving vast ‘legal aid deserts’ where no advice is available.¹⁴

Need for holistic approach

Urgent changes to immigration legal aid are needed to resolve these problems. But a sustainable legal aid system cannot be built by one Government department alone.

We urge the new Government to **engage with the broad expertise and recommendations made in the course of the Review of Civil Legal Aid** for both the immediate and long-term measures needed to address the legal aid crisis.¹⁵

Further, we urge the Government to consider legal aid within the context of wider governmental policy. Urgent change to the UK’s immigration system is needed so that people are treated fairly and equitably. This Government must **end the decades-long hostile environment for migrants**,¹⁶ which in turn would reduce dependence on specialist legal advice. Investing in a sustainable and accessible legal aid system now is an essential first step to building a fair, functional and humane immigration system.

¹⁰ [Legal aid statistics table – Civil tables – Workload & Expenditure](#), 2023-24

¹¹ [‘Migrant hotel costs rise to £8m a day’](#) (BBC, September 2023)

¹² [‘Legal Aid Sustainability Survey’](#) (ILPA, July 2023)

¹³ [‘Immigration lawyers like us need more than warm words’](#) (Law Society Gazette, August 2024)

¹⁴ [‘No Access to Justice: How legal aid deserts fail refugees, migrants and our communities’](#) (Dr Jo Wilding, May 2022)

¹⁵ [Review of Civil Legal Aid responses](#) (March 2024)

¹⁶ [‘A Guide to the Hostile Environment’](#) (Liberty, May 2019)

In-depth recommendations

1. Ensure everyone who needs legal aid can access it

- **Restore the scope of legal aid** to where it was pre-LASPO 2012, to cover all non-asylum immigration work.
- **Adjust the means threshold** for accessing legal aid so that those who cannot afford to pay can access publicly-funded legal advice.
- **End 'legal aid deserts'** by providing grants to providers within 'advice deserts' to encourage them to remain in the sector and ensure that people in that area can still access legal aid when they need it.

2. Fair pay and conditions for workers

- **Immediately increase pay rates**, at the very least with the amount they have lost in the decades of inflation since they were set in 1996, to ensure that practitioners are fairly remunerated for their work. This should be reviewed annually.
- **Abolish the 'fixed fee' system and return to hourly pay rates.**
- Take a **collaborative approach to working with legal aid providers**, including a trust-based billing and auditing model from the Legal Aid Agency.
- Introduce **more accessible traineeships and apprenticeships** to qualify as an immigration lawyer, to allow new people to enter and remain in the sector.

3. Commit to working across Government departments to fix the legal aid system

- Immigration, asylum and legal aid law and policy changes should only be introduced after **meaningful consultation** with those concerned, including the legal aid sector.
- **End the Hostile Environment** and keep the Home Office accountable for its inefficiencies, poor decision making and delays which create significant additional demand for legal aid.
- **Cease the hostile rhetoric** against migrant communities and those supporting them, including legal representatives.

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OF IMMIGRANTS

Full list of co-signatories:

Action for Refugees in Lewisham

Asylum Support Appeals Project

Ashton Churches Asylum Project

Assist Sheffield

Asylos

Asylum Aid

Asylum Matters

Bail for Immigration Detainees

BEACON

Boaz Trust

Bristol Law Centre

City of Sanctuary Sheffield

Daaro Youth Project

Darlington Assistance for Refugees

Detention Action

Devon and Cornwall Refugee Support

Doncaster Conversation Club

End Violence Against Women Coalition

Freedom From Torture

Gatwick Detainee Visitors Group

Gloucestershire Action for Refugees and Asylum Seekers (GARAS)

Greater Manchester Immigration Aid Unit

Helen Bamber Foundation

HIAS+JCORE

Hibiscus

Happy Baby Community

Haringey Migrant Support Centre

Hope for Justice
Immigration Law Practitioners' Association
Jesuit Refugee Service
Kalayaan
Latin American Women's Rights Service
Lewisham Refugee & Migrant Network
Manchester Refugee Support Network
Manuel Bravo Project
Micro Rainbow
Migrant Legal Project
NACCOM - The No Accommodation Network
North Yorkshire Citizens Advice & Law Centre
One Strong Voice
Penrith and Eden Refugee Network
Public Law Project
Project 17
Reclaim the Sea
Refugee Action
Refugee Action York
Refugee and Migrant Centre - Birmingham
Refugee Asylum Seeker and Migrant Action
Refugee Legal Support
Refugee Support Devon
Refugee Support Group Berkshire
Refugees at Home
Right to Remain
RootsMove

Samphire

Southeast and East Asian Centre

South London Refugee Association

Southall Black Sisters

Southampton and Winchester Visitors' Group

South Yorkshire Refugee Law and Justice

St. Augustine's Centre Halifax

Together with Migrant Children

Upbeat

Voices in Exile

Waging Peace

West London Welcome

Women for Refugee Women

Work Rights Centre

Young Roots