



Review of Civil Legal Aid

About HMSC and who we represent:

Haringey Migrant Support Centre is a charitable organisation offering free advice and casework support on immigration, housing, homelessness and destitution to migrants across London. In 2022-23 we supported 500 individuals, along with their 490 dependent children. Of these, the largest group of visitors in terms of immigration status were undocumented (34%) another 25% had Limited Leave to Remain. 18% of our visitors were Asylum Seekers, Refugees, or refused Asylum Seekers. The rest of our visitors had other statuses including EEA, Discretionary Leave, Indefinite Leave and others. Our response is therefore based on our experience supporting people to obtain legal aid for varied and often complex immigration cases.

Overarching questions

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

We support the recommendations made by Jo Wilding in her menu of civil legal aid policy options for a new government.

9 What are the civil legal aid issues that are specific to your local area?

It is nearly impossible to place cases with legal aid providers and too many of our referrals go unanswered. Currently, we are supporting 35 people who are eligible for and in need of legal aid. Of these, 25 have been waiting on our solicitor referral list for over 3 months, 13 have been waiting over 6 months and 9 people have been waiting for a legal aid solicitor for over a year. In that time, the referrals we have made on their behalf have gone unanswered or been declined because legal aid providers lack the capacity to take on cases.

We carried out some monitoring research for a period of 6 months in 2021-2022 and found that only 4.1% of our referrals to legal aid providers were successful. If you exclude those providers who our organisation already had a working relationship with, only 2.8% of referrals to non-partner legal aid providers made via a normal referral process were successful. The civil legal aid system is at a crisis point. These unsuccessful referrals place a big burden on the capacity of small frontline charities like ours, who often end up doing much of the preparatory work for potential legal aid representation or offering pro bono representation in lieu of non-existent legal aid provision.

11 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?

Access to justice is a fundamental right and legal aid is an important vehicle for upholding this right. For those who cannot afford legal advice and representation, the inaccessibility or unavailability of civil legal aid leaves their basic rights unprotected. This is especially true in immigration and asylum law, where recent legislative changes have become increasingly complex making it near-impossible for an individual to represent or resolve their own case. The risks of poorly presenting a case or application in this area of law have also increased, with hostile environment policies restricting a person's right to work, rent and access services, and rendering them more vulnerable to deportation,

exploitation, detention, health complications or family separation. The legal aid crisis therefore has grave consequences for the protection of people’s fundamental rights.

The inaccessibility of legal aid means demand is only partially met. This leaves many people paying for private advice and representation which they cannot afford, often resulting in debt. In our experience, since they don’t have a choice of provider, people are more likely to accept poor quality or poorly supported advice. Applications which are poorly prepared, or prepared without legal representation, are more likely to be incorrectly refused and require further work to appeal. There is a risk that with the capacity and resourcing pressures facing legal aid providers, shortcuts will be taken to meet high demand resulting in a poorer experience for those needing legal support (e.g. no face-to-face rapport building or no interpreter present). It also creates a bottleneck between the one-off advice that frontline organisations like ours can offer and longer-term legal representation and casework. As detailed in question 9, organisations like ours often end up picking up casework in lieu of non-existent legal aid provision and increasingly supporting people to have their basic needs met while they await support to resolve their cases.

User needs

18 What barriers/obstacles do you think individuals encounter when attempting to access civil legal aid?

As explained in question 9, legal aid providers lack the capacity to provide legal aid. People we support who are eligible for and are attempting to access legal aid will have referrals and requests made on their behalf go unanswered or denied. Between 01/12/2021 and 31/05/2022 we spent some time monitoring and documenting our legal aid referrals over a 6-month period. As a small organisation, we have limited capacity and resources to continue such monitoring activities - especially since many of the referrals were not going anywhere. While these figures are a little outdated, from our daily experience supporting migrants to obtain legal advice, the situation has got increasingly worse.

In this period, we referred 93 people’s cases to 55 different firms, 43 of which are legal aid providers. In total, we made 910 referral attempts, which works out to 11 attempts per visitor. Only 33% of the cases were placed with legal aid solicitors who don’t have a formal referral pathway with us, i.e. via a normal referral process. 22% of the cases that went via a normal referral process ended up with pro-bono solicitors, charities or private solicitors, who often end up covering for the lack of legal aid providers. We were unable to place 38% of visitors over this period. Only 4.1% of referrals to legal aid providers were successful. If you exclude those legal aid providers who already have a formal relationship with HMSC, only 2.8% of referrals to non-partner legal aid providers were successful.

We are currently supporting 9 people who have been waiting for a solicitor for over a year and a further 13 who have been waiting for over 6 months. Not being able to access civil legal aid has detrimental consequences for people’s lives. One visitor with a history of domestic violence and abuse was made homeless while we made a total of 41 unsuccessful referrals in a year before her case was taken on. Another visitor in her 70s with mobility issues was also made homeless while we made 52 unsuccessful attempts at legal aid referrals over 19 months before her case was finally taken on. Many people we support are made destitute and left in prolonged precarious circumstances since they are unable to resolve their cases without legal advice and therefore prevented from exercising their rights or accessing services, support, housing or work. Others fall off the long route to settlement if they are

not able to submit applications on time or fall into debt as they search for private lawyers to pick up their cases despite being eligible for legal aid. This puts people in difficult situations and places a big strain on their mental and physical health. We also see that the limited supply of legal aid means a lack of choice of provider and often the people we support end up with poor advice which complicates their case further.

As this data highlights, it is extremely difficult for our organisation to support people to access civil legal aid. While complex Article 8 cases are particularly difficult, now even first asylum applications are nearly impossible to place. For a small frontline organisation like ours, this access issue heavily drains our resources as while we continue searching for legal aid providers to take on our visitors' cases, we also offer destitution and housing support for issues that are exacerbated by a person's inability to resolve their immigration case, which is near-impossible without legal advice. In response to this lack of capacity in the legal aid sector, we have seen the burden fall on charities and organisations providing pro bono representation. Crucially, if it's this difficult for us to place cases despite working in the migrant support space and having an understanding of the legal and justice system, it must be impossible for people without support to access civil legal aid. There are too many obstacles and a lack of providers.

19 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?

From our experience, the inability to access legal aid due to short supply and extreme lack of capacity means that people do not have any choice in civil legal aid providers. The current state of the dysfunctional legal aid system is very far from the point at which people have a choice and can make decisions about providers which most suitably meet their needs. Vulnerable individuals lack access to legal representation. An increase in provider capacity is urgently needed (which includes changes such as increasing rates for legal aid providers and reducing administrative burdens) before we can address improving client choice.

20 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?

We do see instances where people come to us for support having already spent a lot of money on a private solicitor unaware that they would have qualified for legal aid or that legal aid is an option. But even if they did know, as explained in the last few answers, it's likely that they wouldn't have been able to access legal aid and our referrals would have gone unanswered. If legal aid capacity wasn't at crisis point and we imagine people were able to access civil legal aid as they should when needed, the other things that might help is more active outreach from legal aid providers or co-location (e.g. in a library or alongside local authority support). Ultimately, the immigration system is impossible to navigate. Simplifying immigration laws and making it easier for people to understand their rights would make it easier for people to access civil legal aid when they need it.

21 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.

Make legal aid less tightly limited and bring more in scope by expanding what qualifies as legal aid. Some people who we support have immigration cases interlinked with other issues (such as healthcare charges or family law issues) which act as a barrier to progressing their immigration case. Qualifying

for legal aid exclusively for their immigration case is no use if they cannot then get advice for these other issues on which their case depends, or which are holding up the case. Another idea would be for a more holistic and coordinated handover between providers who work on specific legal issues so that the focus is not on siloed providers but on the client's journey and how these legal aid providers fit within that.

We agree with the recommendations for legal aid policy options made by Jo Wilding, on “co-locating free and low-cost legal services with other services (especially trusted services) like primary and secondary health care, libraries and schools” and “holistic provision which takes account of the ‘user journey’ from end to end, with ‘warm handovers’ between organisations where one cannot deal with all issues or all stages of a problem.”

22 How do you think that the Exceptional Case Funding scheme is currently working, and are there any ways in which it could be improved?

Many of the routes to regularisation for our visitors are not eligible for legal aid funding. This includes long residency applications, humanitarian protection applications, family life applications, and many others. However, the majority of our visitors are either destitute, or cannot afford high private representation fees, and face multiple barriers to representing themselves in their case.

While ECF in theory exists to ensure that legal aid remains available to those who need it, in practice it creates an extra hurdle to accessing justice. ECF applications are time-consuming and not easy to make by yourself as there is a lot of evidence needed and the forms are complex. This reduces the possibility of making an application without support. ECFs therefore create more work and are an extra burden for small frontline organisations like ours, as legal aid providers rely on us to make these. Waiting for an ECF application to be granted also causes further delays before the legal aid provider can begin work on supporting a person's case. Due to the capacity issues and long wait times explored in previous questions, we have now begun waiting for an expression of interest from a provider in taking the case on before making the ECF application because grants of ECF become out of date which causes another obstacle.

Complicated ever-changing immigration laws create a system that is difficult to navigate without legal support. ECF applications are also complex and daunting for people to make themselves, so many go without the legal aid they're eligible for. Others will end up borrowing money to pay private solicitors rather than trying to access something they are eligible for because the process of making ECF applications is so time-consuming and difficult. Even for an established and connected organisation like ours, it is a struggle to get evidence to support people's applications, such as evidence of local authority financial support, which requires back-and-forth email communication to obtain.

We also see cases of people's ECF applications being refused despite them being obviously at risk of destitution because the scheme's rules of financial evidence are so narrowly and strictly defined. They don't take into account the person's circumstances or experience. For instance, one person we recently supported had taken an overdraft on a work bank account to pay into his personal bank account to fund his solicitor. Taking account of that overdraft was key to understanding his financial situation and the real risk of destitution. Yet his application for ECF was refused because his personal account had money in it.

The scheme is useless because it fails to fairly or adequately assess financial need and therefore does not provide an adequate safety net. It is an unnecessary inaccessible extra hoop; in practice, we find

that ECFs are nearly always granted. Considering the high grant rates of ECF applications made, expanding the scope of legal aid to include these areas (e.g. Article 8 applications) would make sense and the process should be simplified.

Use of technology

25 What do you think are the barriers with regards to using technology, for both providers and users of civil legal aid?

We support migrants across London with housing, immigration and welfare advice. Many of our visitors have vulnerabilities which make accessing remote advice or relying on technology for legal aid challenging. Some are not at all familiar with or comfortable using technology, don't have an email address and might not be literate or speak English well. Some may have disabilities, mental health or capacity issues which make accessing technology more challenging. There ought to be an inclusive alternative which takes these challenges into account and is accessible for those without access to the internet or technology. The most vulnerable people who require legal aid advice ought to be able to access it. While technology and remote advice can supplement a functioning legal aid sector, it does not fill the current ocean of unmet need in legal aid provision.

27 Do you think there are any categories of law where the use of technology would be particularly challenging?

As discussed in question 25, immigration and asylum law is an area in which it might be more difficult to use technology. From the perspective of our migrant support organisation, having the option of supporting digital applications and sharing documents digitally is certainly useful. But using technology for the provision of legal aid needs to take into account people who are more vulnerable and might have no access to the internet, a computer or technology to engage with legal aid in this way. They will need extra support to navigate digital legal aid, which must not become a burden that falls on small charities.

As well as the digital exclusion and internet access issues discussed in question 25, there is the additional challenge of language barrier and trauma safeguarding which is specific to asylum and immigration legal aid. Face-to-face meetings are important in creating a safe space to explore sensitive and traumatic experiences such as exploitation and persecution which will support someone's asylum claim. The immigration system is complex; communicating someone's rights and the merits of their case in a language that is foreign to them is easier in person.