

Written Evidence by the Islington Law Centre, Migrants Organise, Southwark Law Centre (ASU0088)

This submission is limited to responding to question 6 and whether the provision of legal aid is compliant with the UK's human rights obligations.

This is a **joint group of organisations response by 47 different organisations across the sector**, including front line charities and legal aid providers as listed below.¹ We have come together to take action against the increasingly urgent issue of the legal aid crisis facing the immigration sector

We believe that the current provision of legal aid is not compliant with the UK's human rights obligations.

Legal Aid as a Human Right

While the Convention right to civil legal aid under Article 6 ECHR does not apply to deportation, asylum and nationality cases², a Convention right to civil legal aid arises under Article 8 ECHR, which gives rise to procedural obligations.

In *Gudanaviciene and Ors v Director of Legal Aid Casework and the Lord Chancellor* [2014] EWHC 1840 (Admin) [2014] EWCA Civ 1622, it was determined that the procedural obligations arising under Article 8 ECHR can require the provision of legal aid in immigration.

It is also arguable that there is an indirect obligation under ECHR Articles 2 and 3³. This is on the basis that access (or lack of access) to legal advice directly affects the ability of individuals to advance claims for protection as a refugee, or that a person should not be removed from the United Kingdom by reason of a serious risk of treatment contrary to these Convention rights.

Legal Aid Crisis

The legal aid immigration sector has been failing for years and is only getting worse.

The causes of this crisis are complex and interconnected and cannot be explained thoroughly in this submission. Directly contributing factors include, but are not limited to:

1. Significant cuts to legal aid arising from the Legal Aid, Sentencing, Punishment of Offenders Act 2012;
2. Legal Aid rates which have not increased since 2008 (in fact they decreased in 2011)⁴;

¹ The submission system does not allow for more than 10 organisations' details.

² E.g. see *P v UK* (1987) 54 211

³ E.g. see *SM, R (On the Application Of) v Bail for Immigration Detainees* [2021] EWHC 418 (Admin)

3. Increasing bureaucracy in the Legal Aid Agency's (LAA) processes;
4. Home Office delays and backlog. According to the government's statistics, at the end of September 2022, there were **almost three times more applications (143,377 people)** awaiting an initial decision than at the end of 2019;⁵
5. Increasing complexity of the immigration system which has become '*overly complex and unworkable*'.⁶ This includes the recent introduction of the Nationality and Borders Act 2022 (NABA), which we believe will create an even more byzantine immigration system.

The long delays in processing asylum applications have severe consequences for legal aid providers: payment for the work carried out and disbursements incurred only takes place at the conclusion of a case. The LAA has allowed for 'stage-billing' at more points in a case, which in theory means that providers could obtain some of the funding before the conclusion of a case.

In practice, the LAA's complex system and the low rates of remuneration mean that very few benefited from these changes. Firms often are not able to bill files until they conclude a case and, given the current backlog levels this could be several years after the opening of a case. This means that they will not have the money, cashflow or the capacity to take on new cases. They also don't have the funds for other essential costs such as rent, lighting, heating or recruiting and training caseworkers to take cases and staff to assist with the LAA's complex billing procedures.

The inability to receive regular payment for their work, combined with the complexity and bureaucratic burden the LAA places on providers, and the extremely low rates mean that many providers simply cannot afford to continue work on a legal aid basis. This also contributes to the exit of individual practitioners and providers from the sector.

The consequences are clear. Half of individuals seeking asylum and other vulnerable migrants (including minors and victims of trafficking and modern slavery) are now unable to access legal aid to ensure protection of their human rights.⁷

The current lack of capacity in the legal aid immigration sector can only be described as a crisis, with demand far outstripping supply.

This issue has been researched and robustly documented by Dr Jo Wilding in several publications in recent years.⁸ Her research finds an increasing deficit in legal aid

⁴ See [Public Law Project and Immigration Law Practitioners Association's response to the Ministry of Justice Immigration Legal Aid Consultation on New for New Services](#) (10 August 2022), at page 5-6,

⁵ [How many people do we grant protection to? - GOV.UK \(www.gov.uk\)](#)

⁶ See the Law Commission's report on the [Simplification of the Immigration Rules, 2020](#)

⁷ Jo Wilding, 'New Freedom of Information Data Indicates Half of Asylum Applicants are Unable to Access Legal Aid Representation' (Refugee Law Initiative, 4 November 2022)

<https://rli.blogs.sas.ac.uk/2022/11/04/new-freedom-of-information-data-indicates-half-of-asylum-applicants-are-unable-to-access-legal-aid-representation/> accessed 15 December 2022

representation for individuals seeking asylum on the basis of analysing the number of new asylum applications and the number of new immigration and asylum legal aid matters opened. **Her estimates are that in 2020-2021, the deficit was at least 6,000;⁹ in 2021-22, this figure rose to 25,000.**

Likewise, a recent report by the Anti Trafficking and Labour Exploitation Unit (ATLEU), surveyed 86 front-line trafficking support workers,¹⁰ and found that 90% of the respondents struggled to find a legal aid immigration lawyer for a victim of trafficking and modern slavery in the recent year.¹¹

Impact of the Crisis

Access to justice is a fundamental tenet of the rule of law. Without it, people's voices remain unheard, rights become unenforceable, and decision-makers cannot be held accountable.

Our organisations have worked with many individuals seeking asylum whose cases have failed because they were unrepresented and did not receive the necessary assistance required to navigate the complex asylum system. The system becomes even more complex for victims of trafficking as navigating the National Referral Mechanism requires additional expertise and support.

Our group is currently collecting more data to evidence this crisis, but anecdotal experience from all of our organisations supports the above, as illustrated by this anonymised case study:

MB is an asylum seeker who escaped after being arrested for attending an anti-government protest. He is a first-time asylum seeker who has completed his screening interview. He claimed asylum but did not receive any support and became street homeless and destitute. He was picked up by a homeless outreach support team during COVID and was referred to a specialist charity. He obtained clear positive advice on his asylum claim by a specialist immigration barrister. Since January 2022, his case has been referred **62 times to 23 different providers** without success. He recently found a private solicitor who he is paying by borrowing money from his friend.

⁸ *The Legal aid Market* (forthcoming March 2023)

No access to justice: how legal advice deserts fail refugees, migrants and our communities (May 2022);

A Huge Gulf: Demand and Supply for Immigration Legal Advice in London (June 2021);

Droughts and Deserts – A report on the immigration legal aid market (June 2019).

⁹ This figure is based on 37,562 asylum applications by main applicants (excluding dependants) of which around 4,000 were accommodated in Scotland, which has a separate legal aid system. That compared with 27,317 new legal aid matters opened in the year. Dr Wilding explains that the deficit of 6,000 is an underestimation "because a) one person might have more than one legal aid 'matter' over the course of a year and b) not every matter start relates to an asylum application or appeal. Some are, for example, settlement applications at the end of a period of refugee leave. Of course, some people will also choose (and have the financial means) to access private legal representation." For further analysis of this date, please also refer to op cit. Wilding, 2022.

¹⁰ 79% of whom were Modern Slavery Victim Care Contract contractors or subcontractors

¹¹ ATLEU *'It Has Destroyed Me'* (October 2022).

MB is just one example of thousands who are not able to access legal aid to ensure protection of their human rights. Below is an example from a single region of the UK:

In Cumbria, there is a complete desert of immigration advice. There are over 250 individuals seeking asylum living in Home Office hotels in Carlisle. Around 40% of these individuals do not have a legal aid representative, while the other 60% have legal aid lawyers who are hours away to reach. North East Law Centre is the nearest legal aid provider, being based in Newcastle and it has only one legal aid caseworker.

The lack of access to legal advice puts individuals seeking asylum at risk of exploitation. We are aware of individuals like MB who have had to resort to finding private representation by borrowing money even when they are unable to afford this. Many find unscrupulous and/or negligent representatives.¹²

Based on our experience, lack of access to legal aid can have extensive impact on the wellbeing and welfare of individuals seeking asylum, including:

1. **Destitution and homelessness** – individuals seeking asylum who do not have access to legal advice often also do not know about their rights and entitlements in relation to housing and subsistence support.
2. **Mental health problems** - including stress, anxiety, and depression, which might exacerbate other underlying health conditions
3. **Risk of (re)trafficking** – we work with many individuals seeking asylum who are trafficked when they are in the UK due to their precarious legal status.

Conclusion

We, and many other organisations, have had serious concerns regarding capacity in the legal aid sector for years. The legal aid immigration sector is already beyond capacity and unable to deal with current demands.

The enactment of NABA 2022 has already, and will continue to lead to additional complexities and numerous additional steps/challenges required per case. Once all parts of the Act have been enacted, the changes made by the Act to the legislative framework of the asylum system is beyond the capacity of the legal aid sector in its current shape.

Systematic change is needed across the board.

We need improved legal aid rates so that providers can afford to continue this crucial work and young professionals can build sustainable careers. We need a reform of the legal aid

¹² E.g. see OpenDemocracy Authors, ‘Rogue Solicitors Offering Fake Advice to Scam Migrants Out of Life Savings’ (Open Democracy, 10 August 2022) <<https://www.opendemocracy.net/en/immigration-solicitors-and-advisers-cheating-vulnerable-migrants/>> accessed 15 December 2022

bureaucracy so that providers are not limited by complex administrative procedures. We need more providers across the country so that there are no longer 'legal aid deserts' and existing providers can share the workload. We need the Home Office to significantly improve their decision-making, both in quantity and quality (we need better decisions at a faster rate). We need an end to the wider hostile environment policies.

Unless significant changes are driven at all levels, the legal aid system will continue to fail, vulnerable individuals will not have access to justice and the United Kingdom will continue to not be compliant with its human rights obligations.

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