



Together with Migrant Children

Securing migrant children and young people's safety,
belonging and identity.

21st February 2024

Submission to the Government Review of Civil Legal Aid – Call for Evidence

About Together with Migrant Children and its interaction with legal aid in England and Wales.

1. Together with Migrant Children is a charity (CIO) registered in England and Wales. We provide welfare support, specialist family support, social work reports for immigration matters and access to justice projects for children, young people, and their families subject to immigration control.
2. We are a national charity with a strong focus in London and the Southeast of England. Therefore, we have experience of legal aid in immigration, community care, public law and housing across England and Wales.
3. We do not provide immigration advice and do not hold a legal aid contract. Our access to justice project supports people who have immigration cases to;
 - a. Access initial immigration advice from a solicitor or OISC registered advisor.
 - b. Find a legal aid solicitor / advisor to take on cases in scope (asylum and protection).
 - c. Support children and families to access Exceptional Case Funding (ECF) by making direct applications for immigration cases out of scope of legal aid, these are primarily applications under 'family life' rules, such as the parents of British Children and children's long residence.
 - d. Once ECF has been granted, supporting families to access legal representation.
4. In our welfare work, we also engage a substantial number of community care and housing solicitors on legal aid contracts around age disputes, support under Section 17 and Section 20 Children Act 1989 and issues of asylum support that are in scope of judicial review.

Our response to this consultation

5. Our response will not address every question on the review. It will largely focus on the area of user need, based on our experience supporting children and families to access legal aid provision in immigration, housing, community care and public law. It will not address questions of fees or technology, as we do not hold a legal aid contract. However as detailed below, we endorse a number of other reports and submissions in respect of these matters.
6. Our response will draw on casework data from our service, alongside feedback obtained from service users as part of drafting our response to this consultation. It also features the views of caseworkers and volunteers in our service who interact with legal aid.

Overarching questions

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

7. The provision of legal aid is vital to ensure that vulnerable children, young people, and families have access to justice, which is in itself at the core of ensuring the constitutional right of access to justice. Access to legal aid is vital for those who do not have the resources

to access high quality legal advice. These services must be both accessible and available to those who need them. Those accessing legal aid should be able to choose who represents them.

8. Our experience within the demographic that we work with is that this is not happening. This is particularly striking within our access to justice work around immigration and asylum. This area of our practice it feels particularly important that there is strong access to legal aid, given the severe consequences of not being represented and the significant interaction between immigration and human rights legislation and children's rights and the potential for breaches of children and young people's rights in that process. There is also a significant disparity between the resources of those making claims in the UK and the department deciding them.
9. We often speak to young people and families who have tried to secure their own representation before coming to our service. This is most often those with asylum and protection claims. They report several barriers to accessing legal aid. We analysed the data of 39 in-house assessments in the year, carried out on those seeking asylum who had tried to independently access legal aid advice and found that;
 - a. All 39 report having to telephone and email multiple solicitors. The majority (75%) report needing to call over 20 firms. They remained unable to secure representation.
 - b. They told us that they found it difficult to find the information in the first place in an accessible way as to where to find legal aid solicitors, around 60% said that they ended up calling multiple solicitors who do not have a legal aid contract, who would quote them high fees for work. For a few of those (3 families), they have accepted this thinking that they do not have another choice. This has resulted in families borrowing large sums of money to pay for private representation, placing them at risk.
 - c. They told us that due to various barriers, such as language and feeling unable to get their point across, that they found these calls difficult to engage with and be able to communicate the representation that they need, at the initial stage of trying to find a solicitor. They felt that this was significant in deciding whether they could successfully secure representation.
10. In out of scope matters, such as family life applications, the picture was different with some similarities. We analysed 51 assessments of families who went on to make a family life application and found;
 - a. The majority (>95%) knew nothing about Exceptional Case Funding (ECF), or that they could access it. Of those 60% believed that they the only way they could address their immigration matter would be to pay for it privately or try and do it themselves, with the remaining 40% believing that this could be done in the charity sector.
 - b. The majority (70%) had not sought any legal advice for a variety of reasons, including bringing themselves to the attention of the Home Office, not knowing what to say or how to explain their situation or not knowing where to start in terms of sourcing an immigration representative. Community also played a large part of getting information about how to resolve their immigration matters, with 65% coming to us or finding out about other services by word of mouth.
11. The consequences of not being able to access legal aid services in a timely way to resolve matters in both asylum and protection and human rights based claims has profound

consequences on the welfare of children, young people, and families. The impact of the hostile environment means that all the children discussed above are living in conditions of destitution. On entry to our service, all the children and families discussed above bar one had a household income under £6,000 per year. Even when in receipt of statutory support, be that asylum support, or support under Section 17 Children Act 1989, this support is based on meeting only the most basic of needs. This means that children's developmental and wider welfare needs in this time are not entirely met. Ultimately, this situation is resolved by the timely resolution of their immigration matter, which enables access to work, the wider welfare provision for children in the United Kingdom and unfettered access to services that support children's wellbeing and development.

12. Taking the above and focusing on human rights based (family life) applications for leave to remain (outside of scope of legal aid), on average in 2019-2020 families waited 5 days for initial immigration advice, 10.5 days to access our ECF project, and 23 days for placement of their case with a legal aid solicitor (38.5 days waiting in total). In 2022-2023, this had risen to 7 days for initial immigration advice, 22 days to access our ECF project and 97 days for placement with a solicitor (126 days waiting in total). This excludes the time spent making the ECF application (average 10 days) and waiting for the outcome of the ECF application (average 23 days).
13. For asylum and protection (in-scope of legal aid), on average in 2022-2023 it took around 74 days to source a solicitor (compared to 37 in 2019-2020).
14. The most alarming rise is the amount of time from grant of ECF funding to placing the case with a legal aid solicitor. Our case management system tracks the referrals to legal aid solicitors throughout this time. On average in 2019-2020 we would make around 9 referrals to different providers to find someone to take on a case. This has risen to an average of 21 referrals before successful placement in 2022-2023. The most common reason we are given for not being able to take on cases is capacity within firms across asylum and protection and family life based claims.
15. There is a notable difference in human rights and family life based claims. For example, it is notably easier to place cases concerning the parent of a British child (average of 3 referrals), compared to long residence cases (average of 9 referrals) to outside the rules cases which are notoriously more complex (over 25 referrals). We believe this to be due to the time needed to conduct certain cases, fees for cases and the more limited pool able to take on the more complex end of immigration work, or those with the required specific country knowledge for example. We believe this will only get worse, as we have had an increase in more complex cases to place (23% average increase year on year) which we attribute largely to changes in immigration legislation, rules, and policy.
16. There are also notable differences in our data based on where in the country a family or young person resides. There exist numerous advice deserts across the country¹. Taking asylum and protection as an example, the Home Office dispersal policy and use of contingency accommodation has meant that there have been large numbers of those seeking protection in areas not ordinarily with large populations of those needing legal advice, with very little in the way of local capacity consideration and consultation. More families are approaching our service who are living in so called 'advice deserts'.
17. It is clear from the submissions of other individuals and organisations to the review that there is a significant crisis in civil legal aid. Our evidence from our service user base

¹ The Law Society, 'Immigration and Asylum – legal aid deserts', available at <https://www.lawsociety.org.uk/campaigns/civil-justice/legal-aid-deserts/immigration-and-asylum> (accessed 19th February 2024)

demonstrates that there is a tangible cost to children and young people's wellbeing that arises from the crisis in terms of children and young people spending longer in situations of destitution. This is, of course, a complex issue which includes factors such as the length of time the Home Office currently takes to decide applications. However, the notable increase in the amount of time it is taking to source a solicitor just goes to add to the delay.

18. We have experienced similar trends in terms of sourcing legal representation in housing legal aid, with increases in the length of time it is taking to source legal advice and representation. This is leading to children, young people and families spending longer in unsuitable conditions.
19. There are several short-term and long-term changes that the MoJ must and should make to sustain and improve access to justice through legal aid. It is not an issue that will be resolved quickly.
20. We endorse the overarching recommendations of Dr Jo Wilding more generally in respect to civil legal aid². In respect of specific immigration legal aid policy options, we endorse the submissions of the Immigration Law Practitioners Association (ILPA) to this review³. We note in both submissions' significant issues in relation to fees and administration of legal aid and the impact on providers, which whilst we feel is a major crux of the challenges facing civil legal aid, sits outside of our expertise, so we endorse their submissions on the topic.
21. In terms of both short and long term recommendations in relation to how our service users experience the civil legal aid system we make the following comments on the above submissions already made;
 - a. **Advice deserts** – Advice deserts are already well-mapped across various areas of legal aid provision, including immigration, community care and housing. Short term, immediate action must be taken to address the lack of legal aid provision in advice deserts to ensure continuity of provision across the country.
 - b. **Co-location** – We adopt the recommendation of Dr Jo Wilding of co-location of legal aid and advice services. Having submitted evidence in our submission on the impact of children and young people within civil legal aid provision, there is clear evidence both new and well-established of the welfare impacts of a lack of access to justice. Free legal advice and welfare advice should be made available in community settings, which should be properly funded to meet demand. Where advice is provided in the advice sector, there should be proper progression to legal aid providers where representation is needed, which would be made much easier with co-location and proper availability of representation.
 - c. **A well-resourced and tenable civil legal aid sector** – Our experience is that there is a higher demand than there is supply of representation, particularly salient in our access to justice work on immigration matters. It is vital both immediately and in long term planning that legal aid firms are given the right fees, time, and resources to address complex immigration matters which have significant human rights consequences.

² Dr Jo Wilding, 'A menu of civil legal aid policy options for a new government', <https://justice-together.org.uk/wp-content/uploads/2024/02/Legal-Aid-Policy-Options.pdf> (accessed 19/02/2024)

³ Immigration Law Practitioners Association, 'Response of the Immigration Law Practitioners Association', <https://ilpa.org.uk/wp-content/uploads/2024/02/2024.02.21-ILPA-Response-to-RoCLA-Call-for-Evidence.pdf> (accessed 21/02/2024).

22. Specifically, alongside the recommendations already mentioned above, we would call for the following in the short-term based on the feedback we receive and our data;

- a. **Bring back in scope immigration work under legal aid** – Drawing specifically on our data and experience of over 200 Exceptional Case Funding applications, we have not had a single application refused when considering family life applications and family reunion applications. The Exceptional Case Funding step in the process on human rights claims, we consider, acts only as a barrier to accessing justice for children and families who access our services. It is well proven that the immigration system is notoriously complicated, especially when making human rights submissions, that it is, we consider, a given that the case is of sufficient complexity. Therefore, we consider these applications being subject to the Exceptional Case Funding process an unnecessary burden that impedes access to legal advice.
- b. **Improve the accessibility of information for obtaining legal aid** – Many of our service users describe difficulties accessing legal aid representation, with many ‘not knowing where to start’ without advice and support. Resources and signposting should be improved that considers trauma, language barriers, ease of finding information for those who make not read or write or have access to online tools. It is recognised that this is a multi-department / multi-agency effort that would require engagement from many stakeholders in legal aid to improve the ease of access to legal aid provision.

23. Specifically in the long-term we endorse the recommendations already mentioned and would call for the following based on our experience of civil legal aid;

- a. **Better consultation processes to reduce advice deserts** – Advice deserts are more complicated than simply demand in area but require an approach that looks also at inequalities and demographics. It is very well evidenced that those for instance from marginalised communities or from areas of deprivation are much less likely to be able to access advice services and support. Demand should consider areas of need. This will require engagement with departments such as the Home Office in for instance the allocation of contingency and dispersal accommodation for asylum seekers. This was evidenced in the report by the Public Law Project for example, when considering advice issues in the Southwest⁴ and Northwest of England.
- b. **A better resourced and fairer legal aid system** – Drawing on the work of IPLA and Dr Jo Wilding, the Public Law Project and Red Cross, it is evident that the only way to achieve fair access to justice for all in Civil Legal Aid is addressing the issue of fees, fair reimbursement, making legal aid work pay, reducing the administrative burden and improving the relationship between providers and the Legal Aid Agency and ensuring a proper resource is available to meet need. We will not repeat in detail their submissions but endorse them.

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?

24. We remain concerned that if the current trend in civil legal aid continues there will be numerous harmful impacts for those whom the system is meant to support.

⁴ Public Law Project, ‘Access to Immigration Legal Aid in 2023, An Ocean of Unmet Need’, <https://publiclawproject.org.uk/content/uploads/2023/09/Oceans-of-unmet-need-Sep-2023.pdf> (accessed 18th February 2024).

25. Our data (see 11-13) demonstrates significant increase in delays to sourcing solicitors for children, young people and families that we work with which in the majority of cases, means children and young people experience destitution and severe poverty for significantly longer.
26. It has already been acknowledged that instruments such as the Illegal Migration Act 2023 are likely to have an impact on the demand for legal aid provision. It is well documented that in immigration specifically, the political and policy discourse surrounding it means that it is likely that there will be further legislation brought forward and changes to the rules that make an already difficult and time consuming job, more difficult. This has the potential to significantly impact an already stretched provision and mean that more people struggle to find representation. This is untenable in a space where there are such significant interactions with matters of human rights.
27. Based on our data and feedback from children and families with whom we work, delays in representation across areas of welfare legal aid means more children spend longer in situations that has the potential to harm their health and development. Taking for example in housing cases, 8 children in 2022-2023 on our caseloads had been street homeless as a result of homelessness decisions and meant that we had to step in to provide emergency support. In age dispute casework, difficulties finding legal aid representation meant 14 children on our caseload spent more than 3 weeks waiting to representation whilst in unsuitable, adult accommodation, who were later recognised as children and provided support under Section 20.
28. In short, we remain concerned that the continuing in trends that we see in civil legal aid will have a negative impact on children's welfare and development, based simply on waiting longer for access to justice.

What do you think are the possible downstream benefits of civil legal aid? The term 'downstream benefits' is used to describe the cost savings, other benefits to government and wider societal benefits when eligible individuals have access to legally aided advice and representation.

29. As mentioned in para 11-13, the majority of the children that we support are experiencing destitution and severe poverty and as a result, require services under other legislation such as Section 17 Children Act 1989. It is noted with Section 17 support for example the financial burden on local authorities in providing that support. The route to moving on from that support lies in the resolution of the immigration matter. Therefore, the quicker cases can be resolved, the sooner they can move on from support that is a) unsuitable for long term support based on the levels of support provided and b) costly to local authorities. We recognise that a significant reason for delay lies with the Home Office and the amount of time it takes to decide an application, however our data shows that currently, over 3 months are added to that delay in securing and sourcing legal representation to make the application.
30. There are also the wider social impacts. For example, there are numerous research outputs that highlight the impact on children and young people of living in conditions of poverty and destitution and the impact that this has on them into adulthood, including disproportionate levels of unemployment, poor housing, health inequalities and other social factors. These have a long term social and therefore also financial cost. It is difficult

to quantify these costs, but they will for sure far outweigh the cost of providing timely civil legal aid to address matters as soon as possible and in line with the principles of early intervention in issues impacting on children.

User needs

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

31. See para 9-10 for feedback from our service users on barriers and obstacles.

32. In summary, some of the feedback we have received the following barriers are evident;

- a. Access to accessible resources, considering issues such as language and system processes.
- b. Access to a comprehensive list of providers, considering issues such as language and system processes.
- c. Needing to call or email numerous firms and organisations, there is no way of telling who does and doesn't have capacity at any given point.
- d. Having the language and understanding to explain their situation in a way that is understood, without advocacy.
- e. Living in legal aid deserts, where advice is not readily available.
- f. Capacity in the sector remains the biggest issue that presents barriers to accessing civil legal aid. It is well evidenced that there is a lack of capacity for asylum cases⁵
- g. There is a risk, as evidenced earlier that people will resort to paying for private representation that they cannot afford. This can increase risk of exploitation and owing money to those that they cannot afford to pay back.

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?

33. At present, our experience is that there is no choice afforded to our service users when accessing a legal aid representative. In our access to justice project, we work to the next available rep, next waiting case – except for cases that require a representative with specific experience or knowledge.

⁵ Refugee Law Initiative, 'New Freedom of Information Data indicates half of asylum applicants are unable to access legal aid representation'. Available at <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 16/02/2024).

34. Our service users report that when they have tried to access a representative themselves, they have been unable to do so. The majority made repeated enquiries with firms, only to not find any representation. This again varies by complexity of case.

35. In our view the only way to address choice is to have sufficient capacity in the sector to provide choice.

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?

36. As detailed at para 10, particularly in relation to those with out of scope claims, such as those under family life, the vast majority (>95%) had no idea about availability of legal aid or the exceptional case funding process.

37. Asylum seekers were more well informed about eligibility to legal aid, but there are still a significant number (~45%) who did not know that they could access free legal advice.

38. As mentioned at para 22, we believe a short term goal and immediate action of the review should be to improve availability of resources, particularly where people have English as a second language. Promotion of access to justice should be at the core of any new strategy for civil legal aid provision. The recommendations of Dr Jo Wilding of co-location and better multi-agency responses in the advice sector will also work towards improving access and knowledge of civil legal aid and improving the way that service users access legal aid services.

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?

39. In our experience around 35% of our cases accessing legal advice are accessing legal aid across more than one matter. Most often in our cases this is an immigration matter and a community care matter. It is well evidenced in other submissions to the review that there is often multiple unmet legal needs when considering more vulnerable service users, socioeconomic deprivation and markers of multiple deprivation.

40. In our current model, our caseworker from our service will act as a coordinating point between the different solicitors and multi-agency group in a child, young person, or family's case. In our experience, having this single source of case management is incredibly useful in supporting vulnerable people to access legal services more confidently.

41. A good example lies in our age dispute casework, where the community care element of the age dispute lies with the local authority but there is a significant interface with the immigration matter. In these cases, we provide case coordination and support directly to the young person, to also help them understand and advocate for themselves. This sometimes includes our caseworkers acting as a litigation friend.

42. There are additional complexity factors in these cases also. For instance, where a pressing welfare issue is caused by the age dispute then immediate representation is necessary to secure appropriate accommodation for a putative child. However, there may be no immigration solicitor in place at this point to consider the implication of that matter and how the dispute will interact with the immigration claim that has been made. Capacity causes further issues in marrying up the timely provision of legal advice to those with complex legal issues.

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

43. This submission has already addressed a recommendation to bring back in scope human rights based, family life immigration work. It is noted that we only have experience in ECF applications in immigration, in respect of family life applications and family reunion applications. Both intersect strongly with human rights principles and legislation.

44. In many respects, the ECF scheme in this context is an unnecessary administrative burden, when the acceptance rates through our access to justice project is 100% and the issues are of sufficient complexity that ECF is bound to be granted.

45. More widely, it is recognised that the grant rate is already very high in immigration at 87.25% and the rates have been consistently high year on year. Immigration has the highest number of ECF applications and comparatively to other areas of law, had significantly higher grant rates.

46. In the context that we have described, the ECF scheme impedes access to justice in creating another, relatively complex and not user friendly step which still requires some level of legal knowledge to complete and succeed properly. This means that service users must find someone who can undertake an ECF application, to then find representation. We repeat our point that this adds further delay to the time that children and young people find themselves in conditions of destitution and severe poverty.

47. Considering other vulnerabilities and intersectional issues experienced by our service users such as language, ability to read and write in formal English, these applications create a further burden and barrier to already marginalised groups. They further put strain on projects in non profit organisations to help children, young people and families to make applications, then find solicitors to represent them following the grant of funding.

48. In our experience, firms of solicitors are very unlikely to take on cases that do not already have funding in place, for reasons that are well understood in terms of costs, fees, and the administrative burden. This has been expanded on in the submissions to the review by ILPA.

49. Therefore, our call in this area again is for immigration matters as described to be brought back in scope of legal aid and end the practice of needing to first apply for Exceptional Case Funding.

Other areas for consideration

50. We encourage the MoJ to read and consider all submissions from previous reviews and consultations and the wider evidence base which has been highlighted by those submissions.
51. We recognise that Civil Legal Aid is one part of a complex picture, however, if done right, is a cornerstone of ensuring access to justice and high quality representation for those who need it.
52. We recognise that many of the changes we have suggested will require multi-agency and cross-departmental work, in for instance addressing the lack of consultation in contingency and dispersal accommodation for asylum seekers by the Home Office into advice deserts.
53. Consideration should also be given as part of this review into the interface between different sectors with the Legal Aid sector, such as the non profit sector. Lots of work between the two remains very hidden in respect of access to justice, referral pathways, caseworkers from non-profits supporting the work of legal aid practitioners. In general, a well-funded and well-resourced legal aid sector will in turn improve the capacity and resources of other sectors.
54. There is a long term benefit to providing high quality legal aid provision in the long term when thinking about social and economic outcomes, research into multiple deprivations and impact of issues such as poor housing, poverty and other social issues on employment, attainment, and children's wellbeing.
55. We maintain in closing that the only way to improve civil legal aid is through proper resourcing and in creating a fair system for both providers and those accessing their services, which has been addressed in technical detail by numerous other submissions. It seems unlikely that the other issues will change until capacity and fair remuneration for legal aid work is achieved. As a children's charity, we would urge the review to consider the needs and welfare of children and the significance of access to justice in improving the welfare of vulnerable children.