



Adrift: An Explainer for Navigating the Immigration Legal Aid Framework

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Table of Contents

Introduction	3
What is Immigration legal aid available for (at least in theory)?	4
Matters 'in-scope' for legal aid funding	4
'Out-of-scope' matters for which legal aid funding is still available	5
The role of government in providing immigration legal aid services	5
How services are provided	6
'Legal help' and 'legal representation'	6
Contracting with providers	8
Procurement	8
Contracts	8
Location of services	8
'Matter starts'	9
Contract Extensions	9
Accreditation and supervision requirements for providers	11
Remuneration of work under the contract	12
Fixed fees	12
Hourly rates of payment (controlled work)	13
Hourly rates of payment (licensed work)	13
Other Costs	13
Recent revision of immigration fixed fees	14
Fixed fees currently payable in immigration and asylum matters	15
Submitting claims for payment, timing of payments, and cash-flow issues	16
Work on billing and disputing LAA assessments is unremunerated	16
LAA Oversight of Legal Aid Providers	19
Compliance activity	19
Lack of effective mechanisms to monitor quality of advice	19
Lack of effective mechanisms to monitor provider capacity	20
The Review of Civil Legal Aid (RoCLA)	22
Conclusions	24

Introduction

Immigration legal aid services can help ordinary people escape persecution, destitution or abuse and give them the freedom to build new lives. To provide those services, immigration lawyers must navigate a complex and bureaucratic legal aid scheme, piecing together and interpreting information from multiple sources. Those include the primary legislation underpinning the scheme, regulations, several forms of guidance, contractual obligations, and the quirks of government IT systems.

This explainer describes that labyrinthine scheme. It was produced to accompany Public Law Project ('PLP') and Haringey Migrant Support Centre's ('HMSC') joint report: *Access to Immigration Legal Aid in 2023: An ocean of unmet need* (available here), which summarises the experiences of over-stretched immigration legal aid providers and of the organisations who attempt to help people access those services.

This explainer will outline what immigration legal aid services are available for, and the role government plays in providing them. It explains the contractual relationship that the Legal Aid Agency has with providers, and the complicated way delivery of services is paid for. It sets out the administrative burdens that providers must navigate to help their clients, as well as the financial risks that they bear as a result.

The accompanying report summarises the experiences of organisations attempting to help people access immigration legal aid advice and the experiences of over-stretched legal aid providers who are unable to meet the demand in their areas, as well as those who have given up on legal aid as a sustainable area of legal practice. It attempts to provide a snapshot of access to immigration legal aid in 2023, in each of the geographic 'procurement areas' in which legal aid is delivered.

This explainer shows how administrative burdens and financial risk to providers result from the design of the scheme itself. The accompanying report examines the result of that administrative design, when combined with low rates or remuneration and changes in Home Office practice. Ultimately providers are left struggling to remain afloat financially, while individuals in need of legal aid find themselves adrift in an ocean of unmet need.

What is immigration legal aid available for (at least in theory)?

The current legal aid scheme was established under the Legal Aid, Sentencing and Punishment of Offender's Act 2012 ('the Act' or 'LASPO'), which came into force on 1 April 2013. The Act represented a marked change in how legal aid was awarded and administered. Before it came into force, legal aid was available for any legal problem unless it was one specifically excluded by the Access to Justice Act 1999. LASPO reversed this position and limited where legal aid was available to a prescribed list of problems. The Act also provided a safeguard mechanism: 'Exceptional Case Funding' ('ECF') which would enable individuals to access legal aid where a failure to grant it would risk a breach of their fundamental rights. In the decade following LASPO's coming into force, the volume of immigration legal aid work started each year has fallen by 31%.¹ This is partly attributable to LASPO's restriction of the types of immigration legal services which are available under legal aid.²

Matters 'in-scope' for legal aid funding:

The Act sets out a list of civil services that are expressly included within its scope (s.9 and Part 1 of Schedule 1). Paras 24-32 relate to immigration and drastically cut the list of 'in-scope' issues compared to the previous scheme and broadly restrict legal aid to asylum, detention, proceedings before the Special Immigration Appeals Commission, domestic violence, and trafficking issues, with the notable exclusion of applications relating to an individual's rights to private and family life under Article 8 of the European Convention of Human Rights ('ECHR').

This is arguably inconsistent with legislators' and policy makers' attempts to ensure that individuals

¹ In the financial year 2012-13, there were 52,204 legal help matters and 2,887 civil representation matters in immigration started and in 2022-23, there were 37,129 legal help matters and 621 civil representation matters in immigration started – Ministry of Justice, [Legal Aid Statistics January to March 2023](#).

² However, the sector capacity of private and charitable immigration legal aid has declined considerably in this period. The effect of providers exiting the sector should not be overlooked when considering how the volume of immigration legal aid work has decreased. The causes and extent of this decline, particularly for providers of civil representation services, is explored in the accompanying report 'Access to Immigration Legal Aid in 2023: An ocean of unmet need' PLP and HMSC (2023).

raise all grounds for remaining in the United Kingdom at an early stage.³ Providers often find themselves in a position where an individual with an in-scope application (i.e. asylum) also has a strong family life in the United Kingdom (such as where family members fled persecution before them and have now settled here) but the provider will not be able to claim payment for advancing these without a successful application for ECF (see further [below](#)) or a private arrangement (which is unaffordable for most asylum seekers).

The list of 'in-scope' services was updated in 2019 to include additional services in relation to Unaccompanied Asylum-Seeking Children.⁴

'Out-of-scope' matters for which legal aid funding is still available:

The Act also provides as a safeguard, for other civil legal services that are not listed in Part 1 of Schedule 1 ('out-of-scope' services) to be provided where a determination is made by the Director that the case is eligible for ECF (s.10). ECF is available where the Director is satisfied that there is a breach (or risk of a breach) of the applicant's Convention rights (such as Article 8 ECHR) or retained enforceable EU rights.

The accessibility of ECF increased dramatically following litigation by individuals who had been refused ECF (one of whom was represented by PLP)⁵ which resulted in revised statutory guidance.⁶ There were four grants from 234 immigration ECF applications in the 2013/14 financial year, compared with 2275 grants from 2611 immigration ECF applications in 2021/22 (87%).⁷

However, research by PLP and others indicates that many providers consider ECF work not to be

³ For example, s.120 of the Nationality, Immigration and Asylum Act 2002, under which 'one stop' notices are served following initial contact with UKVI, requiring an individual to raise all their reasons for remaining in the UK at the outset, under threat of being prohibited from raising them at later stage.

⁴ Between January and March 2023, provisional figures show that immigration made up 521 of 881 applications (59%), with a grant rate of 88 % (451) - <https://www.gov.uk/government/statistics/legal-aid-statistics-january-to-march-2023>.

⁵ [R \(oao Gudaviciene & Ors\) v The Director of Legal Aid Casework and Lord Chancellor \[2014\] EWCA Civ 1622](#)

⁶ Lord Chancellor's Exceptional Funding Guidance (Non-inquests) - <https://www.gov.uk/government/publications/legal-aid-exceptional-case-funding-form-and-guidance>

⁷ <https://www.gov.uk/government/statistics/legal-aid-statistics-quarterly-april-to-june-2022/legal-aid-statistics-england-and-wales-bulletin-apr-to-jun-2022#civil-legal-aid>

economically viable as it introduces significant additional risk and overheads.⁸ The Ocean of Unmet Need Report that accompanies this explainer sets out the experiences of individuals who obtain ECF, but experience long delays in accessing a provider to obtain services under that grant (or cannot ultimately access a provider under ECF).

Immigration applications based on Article 8 ECHR rights make up the highest proportion of applications and are overwhelmingly successful. This has led PLP to argue that there is a strong case for bringing these matters back 'in-scope' given that there is an administrative cost to processing them, having to apply represents an unnecessary bureaucratic hurdle, and they are overwhelmingly granted (rendering those costs disproportionate).⁹

The role of government in providing immigration legal aid.

The Act establishes that the Lord Chancellor has a duty to 'secure that legal aid is made available' (s.1). It defines 'legal aid' in the context of the duty as the lists of civil and criminal legal services specified in the Act.

The Lord Chancellor is empowered by s.2 of the Act to make 'such arrangements' as he considers appropriate for carrying out his functions. These arrangements include making grants or loans to persons to provide services, making grants or loans to individuals to enable them to obtain services and establishing and maintaining a body to provide services (s.2.2(a)-(c)).

The Lord Chancellor has exercised his power under s.2(2)(c) of the Act by establishing the Legal Aid Agency ('LAA'), an executive agency of the Ministry of Justice. As of January 2020, the Lord Chancellor had never exercised his powers under s.2(2)(a) to provide grants or loans to organisations to provide services or facilitate access.¹⁰ PLP are not aware of any individuals having obtained grants or loans under s.2(2)(b) and consider it likely that power has also never been exercised.

Individual funding decisions ('determinations') are taken by the Director of Legal Aid Casework ('the Director'), a senior civil servant, in accordance with regulations¹¹ made by the Lord Chancellor. The

⁸ <https://publiclawproject.org.uk/content/uploads/2020/01/Improving-Exceptional-Case-Funding-Website-Publication-Version-docx.docx.pdf>

⁹ Public Law Project, '[Legal aid for immigration – bring it back](#)' (April 2021).

¹⁰ FOIA request by a lawyer associated with Devon and Cornwall Refugee Support.

¹¹ The main regulations are linked on the LAA website, though care should be taken as some, such as the Means Regulations have been amended by subsequent regulations which are not listed here and the originals do not reflect all the amendments - <https://www.gov.uk/guidance/civil-legal-aid-civil-regulations-civil-contracts-and-guidance>.

same individual presently serves as the Director and Chief Executive of the Legal Aid Agency (though these roles could be held by separate people). The Director must have regard to Statutory Guidance¹² issued by the Lord Chancellor (s.4), which may not relate to individual cases. Under s.5 of the Act, various functions of the Lord Chancellor and Director may be delegated further. In practice, many decisions are delegated to LAA caseworkers and legal aid providers.

How services are provided

In the case of civil legal services, the Lord Chancellor's duty under s.1 does not include duties to secure that services are made available by the means or provider selected by the individual (s.27). Rather, they can be provided by telephone or other means. However, a 'mandatory telephone gateway' introduced at inception, in respect of certain civil legal services, did not extend to immigration matters and has since been phased out.¹³

'Legal help' and 'legal representation'

Regulations¹⁴ set out the types of legal services providers can deliver to their clients. In immigration and asylum, legal aid is available as 'legal help' or 'legal representation'. Legal help is defined negatively, so that it covers preliminary steps (such as initial advice) but excludes steps that providers would have to take once it is necessary to go to a Court or Tribunal. Legal representation covers providing legal services in relation to particular proceedings before a Court or Tribunal¹⁵ and so includes those steps that legal help excludes (e.g. issuing proceedings or instructing an advocate).

¹² See further Legal Aid Guidance: Lord Chancellor's Guidance, available at <https://www.gov.uk/guidance/funding-and-costs-assessment-for-civil-and-crime-matters>

¹³ <https://www.gov.uk/government/news/civil-news-mandatory-telephone-gateway-phased-out>

¹⁴ The Civil Legal Aid (procedure) Regulations 2012, regulations 3 to 10.

¹⁵ An additional form of representation, investigative representation, covers steps related to investigating the strength of contemplated proceedings.

Contracting with providers

Procurement

The LAA periodically carries out procurement processes for the delivery of civil legal aid services. Tender rounds were undertaken for face-to-face services in 2013, 2018 and 2023. Separate tenders are periodically undertaken for duty advice and telephone advice schemes. In immigration, these are the Detained Duty Advice Scheme (DDAS), Detained Asylum Casework Scheme (DACs) and Immigration Telephone Advice Services Contract (ITASC).

Contracts

Providers of face-to-face advice sign the '[Standard Civil Contract](#)', which is made up of the '[Standard terms](#)', '[Specification \(general rules\)](#)' and '[Category specific rules \(immigration and asylum\)](#)'. An [individualised schedule](#) issued annually confirms the categories of law in which the provider can act, the location they provide services from and the number of controlled work 'matter starts' they can open during the schedule period. These terms are explained further below.

The current iteration of the contract documents in force is the 'Standard Civil Contract 2018' ([the 'Contract'](#)). DDAS and DCAS services are also provided under the Contract – providers who were successful in the additional tender for these services are given an 'exclusive authorisation' to conduct this work in their schedule and placed on the appropriate rotas. The ITASC is a separate contract.

The forms of civil legal services (legal help or legal representation, see [above](#)) can be provided to clients as either 'controlled work' or 'licensed work'. Whether a matter falls to be provided as 'controlled work' or 'licensed work' is set out in the Category Specific rules (para 8.70 'Boundary with Licensed Work'). Services related to initial applications and appeals in the First Tier Tribunal (Immigration and Asylum Chamber) are provided as 'controlled work'. Services in relation to the Upper Tribunal (Immigration and Asylum Chamber), High Court, Court of Appeal or Supreme Court are undertaken as 'licensed work'.

In immigration controlled work, most decisions are delegated to providers who assess a client's financial eligibility for legal aid and the merits of their case. In immigration licensed work, the provider helps the client to apply to the Director, using the LAA's Client and Cost Management System ('CCMS') for a 'certificate'. Decisions are in practice taken by LAA caseworkers and standard cost and scope limits are imposed. These limits dictate the amount of work a provider can undertake, and stage of the case that they can work up until. Providers help their clients to apply for higher scope and costs limits if the case progresses.

Location of services

Legal aid tendering is based on 'procurement areas' and, in immigration and asylum, smaller 'access points'. A provider's schedule authorisation will state the procurement area or access point in which they are required to maintain an office presence. There is no direct bar to opening files for clients who are based outside of the procurement area. However, there are indirect barriers in that providers can only open 50% of their matter starts by post (3.15 of the Specification, unless justified by Equality Act Reasons). Where client travel is paid for, providers risk this not being recouped if it is seen by the LAA as unreasonable at a later point.

'Matter starts'

What constitutes a separate matter start is set out in 8.25 of the Category Specific Rules.¹⁶ An initial application and a subsequent appeal will generally constitute two separate 'matter starts.' The type of work that can be conducted under each category of law is set out in the separate '[Category Definitions 2018](#)'.

The provider's schedule will set out the number of matter starts the provider may open each year. In immigration and asylum, the minimum number is 150 and providers may self-grant up to a further 50% if they run out (which then becomes their allocation the following year). Although the specification allows the LAA to set a minimum number of matter starts that must be used each year, in practice it does not do so in Immigration and Asylum. Providers are not therefore penalised for opening few or no matter starts.

Contract extensions

The 'Standard Civil Contract 2018' began on 1 September 2018, was due to last until 30 August 2021 and could be extended by the Legal Aid Agency up to 31 August 2023. Two one-year extensions were notified by the LAA under the contract. In October 2022, the LAA announced that providers would [be offered a further extension](#) until 30 August 2024 (an offer to vary the contract). The justification given was 'to allow us time to consider findings from the planned Ministry of Justice Civil Legal Aid Review'.¹⁷ Providers had to respond to the extension offer by 28

¹⁶ The Standard Civil Contract Specification includes Category Specific Rules for each area of law. The Category Specific Rules for Immigration and Asylum are available at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1147860/2018_Civil_Contract_Category_Specific_Rules_Asylum_and_Immigration_April_2023_.pdf

¹⁷ <https://www.gov.uk/government/news/civil-news-extension-of-civil-contracts-until-31-august-2024>

April 2023.

The LAA has since indicated that that a further contract tender will be issued without any substantive changes to remuneration. In May 2023, the LAA began an 'engagement exercise' on potential changes to the 2024 Standard Civil Contract. The exercise will engage Legal Aid Practitioners' Group, the Law Society, the Bar Council, and Advice Service Alliance on the full range of contract documents and other specialist practitioner groups on the category specifications.

The LAA advised the contract consultee bodies that it will not consider significant amendments to the contract at this stage as they are awaiting the recommendations of the Review of Civil Legal Aid. The LAA is currently considering changes to supervision requirements and supervisor qualifications (see [below](#)) and the current draft documents also incorporate changes to data security requirements and guidance.

The LAA's current proposal is therefore a one-year contract with the possibility to extend for a further 12-month period up to four times. The LAA anticipates that the tender process for this contract will begin this autumn and the contracts themselves will begin on 1 September 2024 when the current contracts come to an end.

[A further procurement process](#) was also undertaken in March 2023 to enable new providers to enter the civil legal aid market. The deadline for submission of tenders was 31 March 2023, with outcomes notifications released on 28 April 2023 and the contracts due to start on 1 September 2023 (but lasting only one year, so they are harmonised with 2018 contract holders who accepted the offer to extend). New entrants to the market face considerable uncertainty in payments for the first two years, significant set up costs and administrative burdens (including the tendering process and the requirement to obtain one of two 'Quality Mark' Standards).¹⁸

¹⁸ <https://lapg.co.uk/the-fragility-of-civil-legal-aid-by-matthew-howgate-2/>

Accreditation and supervision requirements for immigration legal aid providers

All caseworkers undertaking legal aid work must be accredited under the Law Society's Immigration and Asylum Scheme ('IAAS'): para 8.18 of the [Category Specific Rules](#). There are different levels of accreditation. A 'Senior Caseworker' is required to have conduct of a controlled work matter under the Contract but can delegate tasks to caseworkers with a lower accreditation.

Accreditation is expensive. For example, IAAS Senior Caseworkers must pay:

Initial accreditation		Re-accreditation (every three years)	
Optional training	£275 + VAT	Mandatory training and online exam	£275 + VAT
Approved textbook	£59.95	Registration fee	£355 + VAT
Exam fee	£525 + VAT		
Registration fee	£355 + VAT		

The Contract also imposes supervision requirements. These can be difficult to meet, even for experienced practitioners. In addition to obtaining a separate, higher level of IAAS accreditation (with associated costs of £125 + VAT for [training](#) and £471 + VAT for an [exam](#)) the supervisor must demonstrate casework involvement of 350+ hours in each of the past three years on a continuous basis. This standard can be lost through career breaks or focusing on other areas of practice.

The [Specification](#) (at para 2.26) and [Category Specific Rules](#) (at para 8.15) impose ratios of Supervisors to (Senior) Caseworkers (1:4), as well as Senior Caseworkers to staff with lower levels of accreditation (1:2). Recruitment and retention issues can therefore increase overheads (if new staff need to gain accreditation) or jeopardise compliance with the Contract.

Remuneration for work under the contract

Remuneration for civil legal aid services is set by the Lord Chancellor through the [Civil Legal Aid Remuneration Regulations 2013 \(SI 2013/422\)](#). The remuneration regulations, combined with the procedure regulations and the Standard Civil Contract 2018, create a complicated payment structure. The use of fixed fees, subject to an 'escape threshold' which converts the matter to payment at hourly rates, introduces complexity when calculating how much providers will be paid for a particular case. The hourly rates used have not increased since 1996 and were in fact reduced by 10% in 2011¹⁹ (resulting in a significant inflationary cut over several decades).

The level at which the fixed fee is set has knock on effects. Increases in the fixed fee have the potential to decrease the amount that an individual provider is paid in practice. This is because it can make it harder to reach the escape threshold, set at the number of hours of work needed to reach a multiple of the standard fee. Only if providers reach the escape threshold are they paid for all the work completed, at the applicable hourly rate. An increase to the fixed fee would represent an increase in payment on a simple matter, where the hours recorded are low, but a significant cut in payment for a more complex matter which narrowly 'escaped' the threshold (which would now be below an increased threshold and paid at the fixed fee).

Fixed fees

Controlled work is, in most cases, remunerated through fixed fees. Providers can also claim for other costs as disbursements, subject to standard limits which providers must apply to extend and excluding counsel's fees²⁰ (£400 at the Legal Help Stage, £1200 for immigration and £1800 for asylum at the CLR Stage). Exceeding these limits requires 'prior authority', creating delays, admin burdens and financial risk (if a provider decides to proceed without awaiting the outcome in urgent cases). Some providers are eligible to join a scheme where they 'self-grant' these extensions (8.118 of the Category Specific Rules). Additional 'bolt on' fees may be claimed in certain circumstances (for example if advice is needed about the National Referral Mechanism ('NRM'), which is the decision-making framework used to identify victims of modern slavery when they apply for asylum).

¹⁹ The predecessor rates can be found in the Community Legal Service (Funding) Order 2007 - <https://www.legislation.gov.uk/ukxi/2007/2441/made>.

²⁰ 8.110-8.112 of the Category Specific Rules

The fixed fees have been subject to consultation, review, and amendment on several occasions recently, as a result of the introduction of an online appeals process and following the passage of the Nationality, Immigration and Borders Act 2022. Fixed fees for immigration and asylum work (including for appeals which predate the new online system) are specified in the tables in [§3 of Part 1 of Schedule 1](#) of the Remuneration Regulations.

Hourly rates of payment (controlled work)

Where hours recorded on a controlled work matter exceed a threshold, it can ‘escape’ the fixed fee scheme and become payable at hourly rates. There are also limited cases where controlled work is remunerated through hourly rates, without the need to reach an escape threshold (such as asylum claims for unaccompanied children), they are subject to standard costs limits which providers must apply to extend before exceeding. The hourly rates for controlled work are between £47.30 and £57.83, depending on the type of work, and whether the provider is based in London or outside of it. The full rates are set out in [Part 2](#) of Schedule 1 of the Remuneration Regulations.

Hourly rates of payment (licensed work)

Other kinds of legal aid work, such as appeals to the Upper Tribunal or Court of Appeal, as well as judicial review cases, are ‘licensed work,’ which differs from controlled work in that it is remunerated at higher hourly rates (£67.50/£71.55 depending on if the provider is based in London or outside of it), subject to standard costs and scope limits that are reviewed on application throughout the course of the case. For more information about the differences between controlled and licensed work, see contracts section, above. The full hourly rates for licensed work are set out in [Part 3 of Schedule 1 of the Remuneration Regulations](#).

Disbursements form part of the costs limit and will be approved if justified on assessment, though prior authority can be sought to reduce the risk of a subsequent reduction. Where the ‘threshold test’ for exceptional competence, speed or complexity is met, providers can seek enhancement of up to 100% on the hourly rate (§6.12 of the Specification) (up to £143.10/£135 depending on whether the Provider is based in London or outside of it).

Other Costs

The types of expense that may be paid as a disbursement to providers are set out in the Remuneration Regulations. The Contract and LAA guidance (the ‘[Costs Assessment Guidance](#)’ and ‘[Escape Cases Electronic Handbook](#)’) impose further conditions that providers must meet to recover disbursements.

In fixed fee cases, counsel’s fees are not claimable as a disbursement and must be paid out of the

fixed fee, unless the case ‘escapes’ the fixed fee regime and becomes payable at hourly rates ([§3.58 of the Specification](#)).

Recent revision of immigration fixed fees

On 8 June 2020, the Ministry of Justice (MoJ) introduced²¹ revised immigration and asylum fees for controlled legal representation (‘CLR’) work.²² This broadly relates to appeals before the First Tier Tribunal (Immigration and Asylum Chamber). The revised fees were introduced as a result of changes in how the Tribunal deals with appeals, which are now lodged and managed through a new online system called Core Case Data.²³ This procedure imposed new demands upon applicants’ legal representatives through front loading of work, in particular the submission of Appeal Skeleton Arguments (ASAs) early in the proceedings.

An Appeal Skeleton Argument is intended to set out the legal arguments and evidence that will be relied upon at the substantive hearing. Their preparation has been mandated by the Tribunal in the hope that it will lead to the Home Office reviewing matters before appeal and conceding strong cases. It is viewed by many practitioners as properly the role of the instructed advocate (usually a barrister) to complete, given that they will present the arguments to the Tribunal. However, providers and representative bodies argued that this ‘front loaded’ work was not adequately remunerated by the revised fixed fees.²⁴

Revised fees increased the amount of work that had to be billed to reach the escape claim fee threshold and be paid at hourly rates. The escape claim fee threshold was set at three times the fixed fee. So, when in asylum appeals the fixed fee rose from £227 to £627, the threshold rose from £681 to £1,881. There was no change in the hourly rates used to calculate when the threshold is reached, and much CLR work would fall between £681 and £1,881 if remunerated at

²¹ The Civil Legal Aid (Remuneration) (Amendment) (Coronavirus) Regulations 2020.

²² Or ‘stage 2 work’ – a category of controlled work which covers representation in tribunal proceedings. Different fees apply based upon whether the matter proceeds to a substantive hearing.

²³ Appeals are lodged using the online form - <https://www.gov.uk/government/publications/myhmcts-how-to-use-online-immigration-and-asylum-appeal-services/make-an-immigration-and-asylum-appeal-using-myhmcts> - an evaluation commissioned by the Ministry of Justice, which sets out processes and feedback from users can be found here - https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1109001/First-tier_Tribunal_Immigration_and_Asylum_Chamber_Reform_interim_evaluation_final_report.pdf.

²⁴ Ibid.

an hourly rate. Therefore, the revised fees increased the risk of not reaching the escape threshold and, in practice, the risk that providers and counsel would not be adequately remunerated. If circumstances changed during the appeal, the ASA would need to be updated (again without adequate remuneration).

On the 15th of September 2020, the revised fees were withdrawn in response to [a judicial review challenge by Duncan Lewis Solicitors](#) the MoJ undertaking to consult further. Hourly rates were temporarily introduced.²⁵ [A new consultation](#) was launched on 14 June 2022. The consultation included additional 'bolt on' fees relating to work created by the Nationality and Borders Act 2022 ('NBA 2002'). One outcome of the consultation was the introduction of the proposed new fees. This time, however, the escape claim fee threshold was lowered to twice (rather than three times) the amount of the new fixed fee. Also following the consultation, the fees for work short of representation in tribunal proceedings and the fees for CLR work are 'decoupled' so that the escape fee threshold is applied separately to each 'Stage' (see further [below](#)) and a 'bolt on' fee for NRM work was increased from £75 to £150.

ILPA and PLP published a joint statement indicating that the changes did not do enough to combat the sustainability issues, heavily criticising the continued use of fixed fees. Established firms have begun to stop offering representation in immigration/asylum appeals following the outcome of an initial application.²⁶

Fixed fees payable in immigration and asylum matters

Immigration and asylum matters pass through one or more 'stages' before reaching a conclusion. 'Legal help' work, short of representation in tribunal proceedings, is Stage 1. Stage 2 covers CLR in tribunal proceedings, but different fees apply based upon whether the matter proceeds to a substantive hearing. So, if a matter progresses to appeal, a provider may claim a Stage 1 fee, the Stage 2 fee which applies and any additional 'bolt on' fees that apply.

Following the introduction of one set of revised fees, temporary hourly rates, and then another set of revised fees, different fees now apply depending upon when the matter was started and whether the online procedure was used. Different fees also apply depending on whether the matter is asylum or non-asylum. A Stage 1 fee can be claimed for work on the initial application. If the

²⁵ By the Civil Legal Aid (Remuneration) (Amendment) (No.2) (Coronavirus) Regulations 2020.

²⁶ Dr. Jo Wilding, [RLI Blog on Refugee Law and Forced Migration – November 4th 2022](#).

matter proceeds to appeal, a Stage 2 fee is payable in addition. The fees payable are as follows:²⁷

	Cases started before April 2023		Cases started after April 2023		
	Asylum	Non-asylum	Asylum	Non-asylum	
Legal Help work	£413	£234	£413	£234	Additional 'bolt on' fees available. ²⁸
CLR work – concludes before hearing <i>or</i> CLR work – concludes after hearing	£227 ²⁹	£227	£669	£628	Additional advocacy 'bolt on' fees available. ³⁰
	£567	£454	£1,009	£855	

Table 4(d) also sets out fixed fees payable for immigration removal centre³¹ work in advice surgeries, which can only be claimed by firms who hold the exclusive schedule authorisation (for which there is a separate tender).

Submitting claims for payment, timing of payments and cash flow issues

Providers can submit claims for payment of disbursements before a stage has concluded. Matters must be reported for payment within six months of conclusion of the stage by submitting a

²⁷ Tables 4(a), (aa), (b), (ba), (c) and (ca) of para 3, Schedule 1 to the Remuneration Regulations.

²⁸ Available for attendance at an immigration interview (£266 - only permitted in certain circumstances, predominantly UAS children cases) or NRM advice (£150).

²⁹ These figures relate to CLR work where the online procedure was not used. Cases started before April 2023 differ from those started after because different rates are available if the online procedure was used (Stage 2(c) rates or hourly rates, as determined by the provider). After April 2023, all cases use the online procedure/there is no difference in rate.

³⁰ Available for advocacy at oral case management review hearing ('CMRH') (£166) or telephone CMRH (£90), initial substantive hearing day (Asylum - £302/non-asylum - £237) and additional substantive hearing days (£161 in both types of work).

³¹ Somebody can be detained in an immigration removal centre if they are subject to an immigration control (which is defined by s.115(9) of the Immigration and Asylum Act 1999), for example somebody who requires leave to enter the UK but does not have it.

'Controlled Work Claim'. This involves reporting client details and outcomes through the LAA Online Portal.³² If a matter falls within the Standard Fee, the file is not examined by the LAA at that time (but may be subject to review during later compliance activity).

However, when the provider considers the matter has reached the escape fee threshold, they must prepare an 'escape fee claim'. This is onerous and involves preparing a narrative, itemised summary of work undertaken, checking that there is evidence on file for each item of work claimed and submission of the full file to the LAA. It is common for the LAA to dispute the bill on a line-by-line basis. The provider may then dispute the LAA assessment through an internal review followed by an appeal to an Independent Costs Assessor.

Following a recent change, providers can also submit a claim for payment of the Stage 1 fixed fee before conclusion if the client has been interviewed and all submissions lodged. This change was made in response to concerns raised by representative bodies that long delays in initial asylum decision-making were causing cash flow problems for providers.

Providers cannot submit an escape claim before Stage 1 has concluded (see further [above](#)), nor not possible for providers to bill for Stage 2 before the matter has concluded (or claim a payment on account). This measure cannot therefore fully mitigate the cash flow issues faced by providers due to delays in Home Office decision making. It also potentially increases administration overall (as the provider may submit a claim firstly for the fixed fee, followed by a later escape claim once the file has concluded).

Work on billing and disputing LAA assessments is unremunerated.

Providers can opt to receive Variable Monthly Payments (VMP) or Standard Monthly Payments (SMP). Where a provider is paid by VMP, their income each month will fluctuate based on the claims they have submitted. Where a provider is paid by SMP, there will be a need for regular reconciliation. The LAA approach to reconciliation can cause significant cash flow problems for providers.

If there is a sudden decline in claims (for example, during the Covid pandemic when asylum interviews were suspended and decisions were delayed) providers might be overpaid (see for example the South West Law case study in the Ocean of Unmet Need report). When this is discovered, the LAA will recoup the overpayment by applying all new claims toward it, rather than recovering the debt more gradually. This issue applies to overpayments discovered during

³² The Client and Cost Management Service: an online system for providers of civil legal aid to carry out work on their cases such as submitting legal aid applications.

compliance activity and also affects barristers in independent practice.³³

Some work that providers must do is not remunerated adequately or at all. Providers are required under the contract to keep careful records of their work. Billing of legal aid work is broadly determined in accordance with principles of inter partes costs' recovery. That represents lower recovery than a solicitor in private practice might charge to their client, who would accept that costs reasonably incurred may not be fully recoverable from the opponent on an IP basis.

Providers may additionally recover 'legal aid only costs' specified in 6.50 of the Specification (work requested by the LAA to assist it in making determinations, completion of legal aid forms, work the LAA has approved through its 'prior authority' process, costs of making Equality Act reasonable adjustments).

However, work needed to comply with the obligations of the Legal Aid Contract, appealing LAA decisions on concluded controlled work files or demands of the LAA during compliance activity is expressly *not* remunerated.

³³ See further 'Barristers' Perspectives' in the accompanying report 'Access to Immigration Legal Aid in 2023: An ocean of unmet need.'

LAA oversight of legal aid providers

Compliance activity

The LAA undertakes significant 'compliance activity' comprising at a minimum an annual contract management visit which will review all 'escape case' files and a sample of other files. These visits focus on compliance with the contract (including whether files have been properly opened, properly billed and client means evidenced) rather than the quality of advice. There are 10 types of other audit listed which providers can be subjected to at short notice.³⁴

This activity can result in the most complex files being subjected to scrutiny multiple times. It creates significant risk for providers and significant unremunerated demands on their time. A bad visit or audit can result in being forced to 'self-review' historic files for further issues, an 'audit spiral' where providers are subjected to more and more scrutiny as more and more issues are discovered, or substantial recoupments dating back years, for example, recoupment of 10% of fees on controlled work where there are issues with 10% of a reviewed sample.

The case study of South West Law, a former legal aid provider, in the accompanying '*Access to Immigration Legal Aid in 2023: An ocean of unmet need*' report, demonstrates how even highly technical contract breaches can result in providers facing substantial losses. Providers reported that mixing 'reporting codes' when billing or missing contractual 'KPIs' (§2.52 - 2.72, Specification) resulted in them being pulled up by the LAA. Dr Jo Wilding has set these issues out in more detail in her report '*Droughts and Deserts: A Report on the Immigration Legal Aid Market*.'³⁵

Lack of effective mechanisms to monitor quality of advice

The mechanism for assessing quality of advice delivered under the Contract is 'peer review', which providers generally consider the best method.³⁶ This process involves review of a sample of files by independent experienced legal practitioners against Peer Review Criteria and Guidance set by the LAA. When peer reviewed, a higher proportion of immigration providers received the lowest scores than did providers of other types of civil legal aid.³⁷ However, the data is insufficient to support a

³⁴ Legal Aid Agency: <https://www.gov.uk/guidance/legal-aid-agency-audits>

³⁵ (2019), at p.31.

³⁶ Ibid, p.34.

³⁷ Ibid, p.35.

generalised conclusion. There are two reasons for this. Firstly, the LAA has not published data from after the 2017/18 financial year (despite having committed to doing so). Secondly, peer reviews are carried out infrequently due to the cost and low supply of peer reviewers, who are experienced practitioners which the sector struggles to retain.³⁸ Therefore, despite having cause for concern about the amount of low-quality advice being offered in the sector, whether that concern is well-founded (or getting worse) cannot be effectively monitored.

Lack of effective mechanisms to monitor provider capacity

The LAA does not have a mandate or resources to monitor the levels of unmet need in England and Wales. Remedying this was a recommendation of both the [Westminster Commission](#)³⁹ and [Justice Select Committee](#).⁴⁰ Where third parties (such as NGOs and local authorities) contact the LAA to express concern, they are generally told to contact other providers further afield or assured that as there are unused matter starts in a procurement area, there must also be capacity. However, matter starts cannot be said to be an effective proxy for provider capacity as they only represent the number of cases a provider is allowed to take on.⁴¹

The [response to the immigration fees consultation](#) indicates (at the response to Q8) that the Home Office and LAA liaise regarding dispersal patterns. A list compiled by the LAA for providers in the South West of providers willing to take on cases remotely was ineffective.⁴² PLP was also contacted in September 2021 regarding a ‘capacity monitoring exercise’. The LAA states the following in its annual report for 2022-23:

³⁸ See further the accompanying report ‘Access to Immigration Legal Aid in 2023: An ocean of unmet need’.

³⁹ The Westminster Commission on Legal Aid ‘Inquiry into the Sustainability and Recovery of the Legal Aid Sector’ (2021) at page 79: recommendation G – “conduct further research into how to increase the capacity of providers in areas that are currently in scope” and recommendation H – develop robust research mechanisms for measuring legal need, and link the commissioning of services to that research.

⁴⁰ House of Commons Justice Select Committee, ‘The Future of Legal Aid’ HC 70 (2021) at page 54 – “the Government should collect and publish more detailed data on the providers of civil legal aid, in particular, it should capture how much publicly funded work each provider is doing each year.”

⁴¹ See further, Dr. Jo Wilding ‘Droughts and Deserts: A Report on the Immigration Legal Aid Market’ (2019) and Refugee Action ‘No Access to Justice: How Legal Advice Deserts Fail Refugees, Migrants, and Our Communities’ (2022).

⁴² See the evidence of Devon and Cornwall Refugee Support in the accompanying report ‘Access to Immigration Legal Aid in 2023: An ocean of unmet need.’

'The capacity of the provider-base has continued to be managed actively by the LAA and the risks posed by existing or potential gaps in provision have received corporate-level oversight throughout the year. Engaging with MOJ Policy colleagues and ministers to outline challenges, agree options, and operational approaches to service provision issues has been a priority over the last year and will continue to be so into 2023-24. As a result of our regular market capacity reviews, we have run several additional tender exercises during the year to address gaps in provision.'

PLP has attempted to obtain further information about the activities set out above through Freedom of Information requests. At time of writing these have been refused on the basis complying would exceed the cost limit under the Act (£600). PLP is considering a revised request and will continue to update the request published on [whatdotheyknow.com](https://www.whatdotheyknow.com).⁴³

⁴³ https://www.whatdotheyknow.com/request/information_referenced_in_the_le

The Review of Civil Legal Aid (RoCLA)

In January 2023, the MoJ announced a review to ‘explore options for improving the long-term sustainability of the civil legal aid system’. The MoJ did not publish the overall terms of reference (ToR) until 12 June 2023, following widespread concerns about delay from providers and civil society.⁴⁴

The ToR defines ‘long-term sustainability’ as the ability of the provision of civil legal aid to retain providers who can provide effective legal and representation to meet user demand. In particular, the review will look at whether resources are being used optimally; whether work done is paid at a fair rate and whether publicly funded legal advice is accessible where necessary. The Review includes four workstreams identified in the ToR:

- (i) ‘Economic Analysis’ of current market function and proposed structural changes (external contract).
- (ii) ‘International Comparator’ of six countries which will be identified through preliminary research.
- (iii) ‘Data Publication’ of information about the provision of civil legal aid services, with a focus on changes over time.
- (iv) ‘User Journey Social Research’ identifying issues from a user perspective of people who have previously received civil legal aid.

The overall timetable to reach implemented reforms is unclear. Following the completion of all workstreams by 31 March 2024 (in the form of a policy report), policy development will continue ahead of a public consultation on proposed options. Without interim measures, therefore, reforms are unlikely to be implemented before the next tendering round after contracts expire on 31 August 2024 (the LAA has indicated to practitioner groups that the tendering process will begin autumn 2023).

Previous commitments to review areas of civil legal aid policy have faced repeated delay. The Post-Implementation Review of LASPO was not forthcoming until 2019. The review of the means test promised within the resulting ‘action plan’ was delayed until 2022 and the MoJ did not respond to its own consultation on the resulting proposals until 2023. Changes are being implemented in

⁴⁴ <https://www.lawgazette.co.uk/news/civil-legal-aid-review-to-report-in-2024/5114708.article>

several phases and will take until 2025 to be implemented⁴⁵. There will be no post-implementation review until 3-5 years later,⁴⁶ 2028 at the earliest, despite this being an era of 10% annual inflation.

PLP, the Law Society, Bar Council and others have argued repeatedly that interim measures are needed to sustain civil legal aid before the outcome of RoCLA.⁴⁷ PLP is also concerned that the review should focus on all civil legal aid (not just certain categories of it); that the MoJ must pay mind to concerns about the inadequacy of the ECF mechanism; and that both the fixed fee structure and the level of individual fees must be considered.

Plans to rely heavily on providers to gather information for the purposes of the review are concerning in that the MoJ does not appear to plan to improve its own mechanisms for gathering comprehensive data on unmet need (as recommended by previous Parliamentary inquiries) and does not plan to pay overstretched providers to do this work for it. Although providers and stakeholders have a long history of engagement with the LAA there will be limitations to the resources they can commit and the information they can access. For example, it is difficult for provider to comment on impacts on individuals in need who never reach their doors.

The approach taken in civil legal aid can be contrasted with that in criminal legal aid, which resulted in independent recommendations (though the MoJ did not ultimately fully implement them in any event). The approach can also be contrasted with [the separate consultation](#) on fees for new categories of work created by the Illegal Migration Act 2023, which passed into law in July 2023.⁴⁸ The consultation was originally open for 6 weeks ahead of the passage of the Act itself and at a time when substantive changes were still being proposed to the text of the Act. In comparison to the RoCLA, the MoJ's proposed timescale was extraordinarily fast.

⁴⁵ <https://questions-statements.parliament.uk/written-statements/detail/2023-05-25/hcws809>

⁴⁶ <https://www.gov.uk/government/consultations/legal-aid-means-test-review/outcome/government-response-to-legal-aid-means-test-review--3#chapter-8-implementation-and-review-of-the-new-legal-aid-means-tests>

⁴⁷ Ibid, 49. See also PLP's response to the National Audit Office's call for evidence at §44: <https://publiclawproject.org.uk/content/uploads/2023/07/Public-Law-Projects-response-to-the-National-Audit-Office-consultation-on-legal-aid.pdf>

⁴⁸ PLP has published our response to the consultation here: https://publiclawproject.org.uk/content/uploads/2023/07/IMB-Legal-Aid-Fees-Consultation_As-Submitted.pdf

Conclusions

The legal aid framework exists to help ordinary people solve complex problems which carry with them significant emotional and practical burdens. Immigration legal services, at their best, give people the freedom to build new lives, and can, in doing so, help them escape persecution, destitution, or abuse.

This explainer has described a bureaucratic and complex system. It has shown how immigration lawyers must bear a heavy administrative burden (such as applying for ECF) or take on financial risks (such as the risk of not being paid for a disbursement) to provide services. Inevitable disputes with the LAA create unremunerated administrative work and required accreditation increases the costs of training and retaining staff.

Changes in immigration legislation, policy and practice also represent a risk to the viability of providers' businesses. They can raise training and development needs, regardless of whether they are ever implemented⁴⁹ or are eventually withdrawn⁵⁰. Delays can cause cash flow issues for providers, preventing them from claiming full payment.

These features all threaten providers' ability to maintain a sustainable business model. The accompanying report demonstrates that these risks are existential for providers. They have and do lead to providers withdrawing from legal aid work, with no one left to assist the communities that they served.

While there remain dedicated providers, delivering high quality and life-changing work under this framework, its flaws contribute to the existential threat to the delivery of immigration legal aid in England & Wales. The work is no longer financially viable and must be subsidised (for example through grant funding, or more lucrative work).

That problem, and the effect it is having on the people who need to access justice can be explored in more detail by reading the report this explainer accompanies: *'Access to Immigration Legal Aid in 2023: An ocean of unmet need.'*

⁴⁹ For example, s.2 of the Illegal Migration Act 2023 which imposes a duty on the Home Secretary to remove most asylum seekers to a 'safe third country', which are on hold pending the outcome of legal challenges to the use of Rwanda as such a country.

⁵⁰ For example, the differentiation procedure introduced by the Nationality and Borders Act 2022, granted different types of status with different associated rights, based on their mode of entry into the United Kingdom. This process began, but has since been paused indefinitely - <https://questions-statements.parliament.uk/written-statements/detail/2023-06-08/hcws837>.