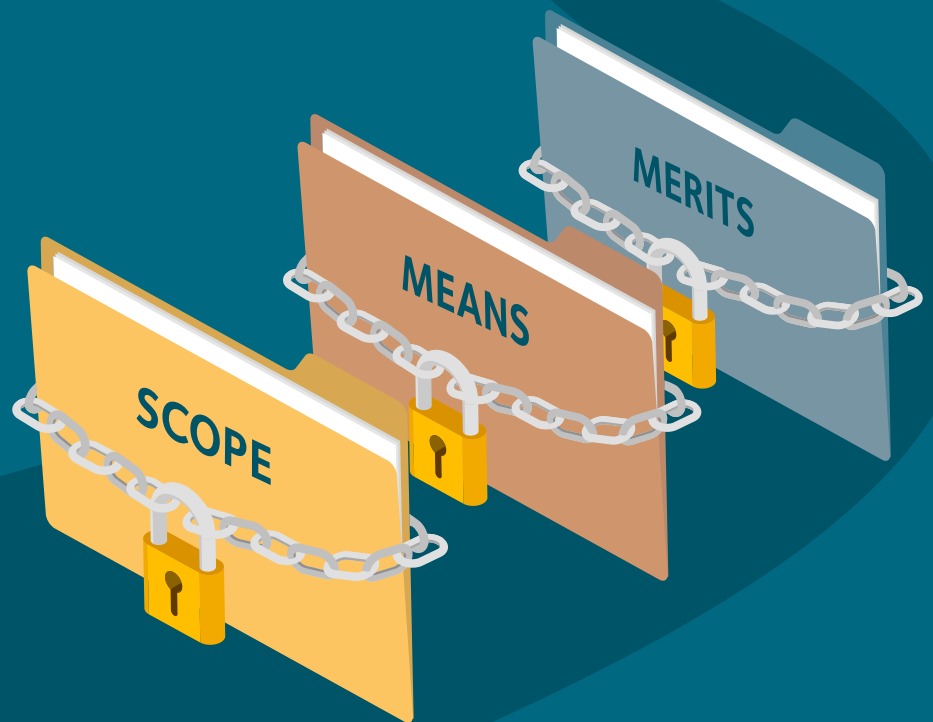




Assessing Eligibility for Immigration Legal Aid: Why Some Cases are Harder to Take On

'Misaligned Incentives in the Immigration Legal Aid Scheme – Report 2'



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Introduction

Being eligible for immigration legal aid does not mean that someone will actually get it. There is an Ocean of Unmet Need¹ for immigration and asylum legal services – so, the eligible population, in effect, has to compete for limited provider capacity. This report argues that some among the eligible population will find it harder to access legal aid because certain types of case and certain types of client are more administratively burdensome or financially risky for providers to take on.²

This report follows ‘How Immigration Legal Aid is Paid: Fixed Fees and the Incentive to Do Less’ (Report 1). That report examined the fee scheme applicable to immigration legal aid and argued that it rewards providers for taking on the quickest and simplest cases. Here, the focus is on how that incentive operates through the main eligibility criteria. Specifically, this report examines how the Immigration Contract³ distributes administrative burdens and non-payment risk across eligible work, making some cases easier for providers to take on than others.

It begins by outlining the legal aid eligibility criteria in Section 1. Then, the report examines each of the criteria in detail: first, scope and exceptional case funding (Section 2), second, the means criteria (Section 3), and, third, merits criteria (Section 4).

As with the first report, this report is not an account of how providers actually behave. It aims to show that providers can obtain a greater financial reward for taking on certain types of cases. Although it would be unrealistic to suggest that providers are purely profit-driven (indeed many work not-for-profit), they are nevertheless under intense commercial pressure. The incentives described in this report may therefore influence the kinds of case they are most willing to take on.

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1. Rourke, D., Cripwell, E., Summers J. and Hynes, J. (2023) ‘Accessing Immigration Legal Aid in 2023: An Ocean of Unmet Need’, Public Law Project.
 2. There are other factors which make it harder for some among the eligible population to access immigration legal aid. For example, there is an existing body of evidence showing that it is harder to access legal aid in some parts of the country than it is in others – see, for example, Wilding, J. and Emberson, C. (2026) ‘[A geography of access to justice: mapping social welfare legal aid need and provision in England and Wales](#)’ *Journal of Law and Society*, 53(2), 187–210; and National Audit Office (2024) ‘[Government’s management of legal aid](#)’ HC 514.
 3. i.e. the LAA Standard Civil Contract 2024 (Standard Terms, Specification (general provisions) and Category Definitions) and associated Immigration and Asylum Category Specific Rules.

Executive Summary

Scope:

- Providers are disincentivised from taking on cases through exceptional case funding: the test is complex, work is performed at risk of not being paid, and providers cannot make exceptional case funding decisions themselves under delegated functions.
- Where a client has multiple, connected legal problems, providers may lack the financial incentive to coordinate support across different categories of law.

Recommendations:

- Government should simplify the exceptional case funding process. It should also bring matters which are routinely funded through exceptional case funding back into scope for legal aid (such as Article 8 immigration cases).
- Government should improve providers' incentives to co-ordinate support across different categories of law: providers should be remunerated for identifying connected legal needs, making supported referrals to appropriately specialised providers and communicating with those providers where necessary.

Means:

- Although most asylum-seekers are financially eligible for legal aid, they can face practical barriers in evidencing their eligibility. Some types of asylum support can be taken as evidence of someone's financial eligibility in place of standard financial evidence.
- Standard means assessment:
 - Capital limits for immigration appeals work are lower than for any other area of law.
 - Individuals with trapped overseas capital may face a practical barrier in showing that it is trapped.
- Asylum support means assessment:
 - Providers are incentivised to operate a 'section 95s only'⁴ rule for their services. Providers are disincentivised from offering early advice before a prospective client's asylum support application has been determined.

Recommendations:

- Government should implement the Means Test Review and raise the capital limit for immigration 'Legal Representation'.⁵
- Government should remunerate reasonable work undertaken to help a prospective client obtain evidence of their financial eligibility, including where that evidence, although reasonable to obtain, ultimately establishes that the client is ineligible.
- Government should provide a reliable digital mechanism through which providers can verify whether a prospective client is receiving a qualifying form of asylum support.
- Government should consider whether section 98 support, while ongoing, should be taken as evidence of someone's financial eligibility for legal aid.

4. i.e. the main type of qualifying asylum support.

5. i.e. representing someone or investigating the strength of their case in proceedings/contemplated proceedings – Regulation 9, Part 1, Civil Legal Aid (Procedure) Regulations 2012.

Merits:

- Providers need to give much more consideration to merits at the Controlled Legal Representation Stage than at the Legal Help stage – which can result in people suddenly losing representation when they need it most.
- This interacts with cashflow problems providers are likely to encounter if they take on First Tier Tribunal work – which can be paid much later than Legal Help work.

Recommendation:

Government should explore early payment options to ease the cashflow problems providers experience for Controlled Legal Representation work.

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- South Yorkshire Refugee Law and Justice

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The views expressed in the report are those of Public Law Project, and not necessarily those of anyone named above.

Method

1. Analysis of the Contract

This report presents an analysis of the contractual and regulatory framework for immigration and asylum legal aid. It focuses on the ‘three gateways’ which a matter must pass through before a provider can take it on under legal aid: scope, means and merits.

The report considers what providers must do to establish eligibility under each gateway. It identifies how the framework assigns different levels of administrative burden, requires providers to conduct work at risk of non-payment, and is slower to pay certain kinds of work. It draws on the payment model described in ‘How Immigration Legal Aid is Paid: Fixed Fees and the Incentive to Do Less’, which concluded providers are rewarded for taking on the quickest and simplest cases, to consider which eligible cases are easier or harder to take on.

The analysis is primarily of ‘the Immigration Contract’ or [Standard Civil Contract 2024](#), made up of: [the Specification \(general provisions\)](#); [the Immigration and Asylum Category Specific Rules](#); [the Standard Terms](#); and [the Category Definitions](#).⁶ It also considers relevant parts of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (‘LASPO’)’s regulatory scheme. The main regulations are listed [here](#).

Limitations:

This analysis does not aim to produce an empirical account of providers’ behaviour under the Immigration Contract, nor does it assume that providers are purely profit-driven. Its purpose is to identify how different services are more or less profitable under the Immigration Contract and to consider whether this is aligned with service users’ needs.

2. Case-studies

The report uses case-studies to illustrate its analysis of the immigration legal aid framework. Case-studies were produced through semi-structured interviews with people who had sought access to immigration and asylum legal aid.

Participant recruitment was through refugee support organisations (listed in the acknowledgements section). By working in partnership with support organisations, Public Law Project could be assured that participants were supported: their relationships were ongoing, and interview outlines were provided to participants through their support organisation in advance.

Interviews were held over Microsoft Teams through interpreters. Participant names and identifiable information have been changed or removed.

6. In practice, providers are also issued an individual schedule which confirms the categories of law, location and number of Controlled Work Matters they can act in – but these do not feature in the below analysis.

Limitations:

The case-studies are illustrative. They show how the difficulties identified by the contractual analysis might be experienced by individuals, but they are not intended to be representative of all different experiences of immigration and asylum legal aid.

1. The Three Gateways

When is someone eligible for immigration legal aid?

Legal aid is state funding provided to eligible individuals to enable them to access private legal services.⁷ Through LASPO, government aimed to reduce spending on the benefit by “*targeting legal aid to those who need it most.*”⁸ In practice, this meant narrowing the legal aid eligibility criteria:

- (i) for types of cases that government did not regard as “*the highest priority*” (scope);⁹
- (ii) to anyone who is not in the greatest financial need (means); and
- (iii) for ‘unnecessary’ litigation with insufficient prospects of success (merits).

Accordingly, if providers are to be paid for their work,¹⁰ they need to be sure that any matter they take on passes through (i)–(iii) – the three gateways for legal aid. Whether a matter can pass through the three gateways can be a complex question. As we will see, the Immigration Contract doesn’t treat all eligible matters equally.

Providers face an Ocean of Unmet Need¹¹ for their services – far more than they can realistically take on. To the extent that providers can decide how they regulate access to their services, they perform a kind of social rationing.¹² The model of provision explained in Report 1 suggested that the Immigration Contract incentivises providers to prioritise taking on matters that can be billed quickly. Therefore, the Immigration Contract’s model provider will exercise any discretion over the gateways so as to favour administrative convenience – and not necessarily in favour of those who most need legal aid.

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- 7. Private in the sense of not being administered by government. Legal aid services are sometimes called public services to emphasise the public benefits that they deliver (see e.g. Law Society (2025) ‘[Reframing Justice](#)’)
 - 8. Ministry of Justice (2019) ‘[Post-Implementation Review of Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012](#)’ CP 37 – paragraph 110.
 - 9. Government’s priority cases were determined by taking into account: the importance of the issue; the litigant’s ability to present their own case; the availability of alternative sources of funding; the availability of alternative routes to resolving the issues; and domestic, European and international legal obligations. Ministry of Justice (2010) ‘[Proposals for the Reform of Legal Aid in England and Wales – Consultation paper](#)’ CP12/10 – Chapter 4.
 - 10. Even if a provider would in theory work on a case for free, they might still seek to obtain legal aid for fear that without it, the client could be on the hook for the other side’s costs if they lose – but this is of limited relevance in asylum cases.
 - 11. Rourke, R., Cripwell, E., Summers J. and Hynes, J. (2023) ‘[Assessing Immigration Legal Aid in 2023: An Ocean of Unmet Need](#)’, Public Law Project.
 - 12. This has long been the case – see, for example, Bevan, G. (1996) ‘Has there been supplier-induced demand for legal aid?’ *Civil Justice Quarterly*, 15(Apr), 98–114 – who attributes the observation to Frank Stephen.

2. The First Gateway: Scope

2.1. What work can be carried out under the Immigration Contract?

The legal aid scheme only covers the kinds of case that government has categorised as “*the highest priority*”.¹³ Even where someone’s legal issue is in-scope for legal aid, not all providers will be authorised to take it on. Where someone’s case involves multiple distinct legal issues (as is often the case), they might need different providers for each – even though, from the client’s perspective, the issues might not appear distinct.

A provider can only work on a matter if:

- (a) The matter is:
 - (i) In-scope as a civil legal service described in Part 1 of Schedule 1 LASPO;¹⁴ or
 - (ii) Not described in Part 1 of Schedule 1 LASPO, but is funded as an exceptional case.¹⁵

And:

- (b) The provider has authorisation to provide that category of civil legal service.¹⁶

As set out further below, the Immigration Contract disincentivises providers from passing eligible cases through the scope gateway in two ways. First, under (a), providers are disincentivised from taking on exceptional cases. Second, under (b), where a client also needs the help of differently authorised providers (such as housing or public law specialists), their immigration provider may lack the incentive to spend time identifying and co-ordinating with those specialists.

2.2. Providers are disincentivised from taking on exceptional cases.

a. What matters are in-scope?

In-scope immigration and asylum services are listed in paragraphs 24–32A, Part 1 of Schedule 1, LASPO.¹⁷

Broadly, services can be provided in respect of applications for international protection under the Refugee Convention, Articles 2 or 3 of the ECHR, or the Qualification Directive; issues connected to asylum applications, such as accommodation or residence restrictions; immigration detention; Special Immigration Appeals Commission proceedings; applications for leave to remain on the basis of domestic abuse (under Appendix VDA of the Immigration Rules); and trafficking or modern slavery claims.

Also relevant are paragraphs 19 and 20 which put judicial review claims (subject to immigration exceptions) and applications for a writ of habeas corpus (which can be used to challenge unlawful detention) in-scope.

13. Section 10 and Part 1, Schedule 1, LASPO.

14. Section 9(1)(a), LASPO.

15. Section 10, LASPO.

16. Standard Civil Contract 2024, Specification (general provisions) – paragraph 2.4(b).

17. Per section 9 LASPO.

b. When should Exceptional Case Funding ('ECF') be granted?

A matter not described in Part 1 of Schedule 1 LASPO can only be funded as an exceptional case where LAA determines that:¹⁸

- (a) Failing to provide funding would breach the individual's Convention rights¹⁹ or their enforceable assimilated EU rights;
- or
- (b) It is appropriate to provide funding in the particular circumstances of the case, having regard to any risk that failure to do so would be such a breach.

Whether LAA will make an exceptional case determination can be difficult to predict. It requires an assessment of multiple factors and is highly case-sensitive. When a provider makes an ECF application, they do so at risk of not being paid unless LAA grants it. So, to take an ECF case, the provider must assess (i) the potential breach and (ii) whether it meets either requirement (a) or (b) – neither of which is straightforward.

(i) Assessing whether there's been a potential breach of Convention Rights:

The first question requires a provider to apply the Court of Appeal's guidance in *Gudanaviciene*.²⁰ There, the Court of Appeal directed LAA as to how it should approach this question after the Court was asked to consider two ways that failing to grant legal aid could result in a breach.

The first was by breaching someone's right to a fair trial for the determination of their civil rights or obligations.²¹ In some circumstances, this right can require the granting of legal aid.²² But the concept of 'civil right or obligation' does not include immigration decisions.²³ So this kind of breach is not relevant to immigration ECF.

The second was by breaching someone's right to respect for private and family life,²⁴ which includes a procedural right to be adequately involved in related decision-making processes.²⁵ This procedural right is distinct from the right to a fair trial.²⁶ The right to respect for private and family life is frequently engaged in immigration decisions – for example where deportation would separate mother and child.²⁷ Legal aid can be necessary for individuals to be capable of being involved in such decisions.²⁸

18. Sections 10(3)(a) and (b), LASPO.

19. i.e. rights under the European Convention on Human Rights as given effect by the Human Rights Act 1998.

20. *R (Gudanaviciene) v Director of Legal Aid Casework* [2014] EWCA Civ 1622

21. i.e. under Article 6 European Convention on Human Rights.

22. *Steel and Morris v UK* (2005) 41 EHRR 22; see also Summers, J. (2024) '[Realising the Renewed Promise of Human Rights](#)', Legal Action Group.

23. *R (Gudanaviciene) v Director of Legal Aid Casework* [2014] EWCA Civ 1622 at [60] and [69]; *Maaouia v France* (2001) 33 EHRR 42.

24. i.e. under Article 8 European Convention on Human Rights.

25. *R (S) v Plymouth City Council* [2002] 1 WLR 583 at [48].

26. *R (Gudanaviciene) v Director of Legal Aid Casework* [2014] EWCA Civ 1622 at [69].

27. See Public Law Project (2018) '[How to get Exceptional Case Funding for immigration cases](#)', for case studies in Article 8 immigration cases.

28. *R (Gudanaviciene) v Director of Legal Aid Casework* [2014] EWCA Civ 1622 at [69].

The Court went on to say that although there is a conceptual difference between the two procedural rights, the standards are effectively the same²⁹ – so LAA should adopt the same approach when determining whether failing to grant legal aid would risk breaching either right. To determine whether refusal risks a breach, LAA must assess whether the applicant would be able to present their case “effectively and without obvious unfairness.”³⁰ This includes considering:³¹

- the importance of the issues at stake;
- the level of procedural, legal or evidential complexity; and
- the capacity of the applicant to effectively present their case without legal aid.

The Court went on to say that in the immigration context, LAA should keep in mind that there are statutory restrictions on the supply of advice and assistance; that individuals might not speak English fluently; and that the law is complex and rapidly evolving.³²

As a result, assessing a potential breach of Convention Rights is not straightforward: it involves making multi-factoral, fact-sensitive judgements about whether someone is able to present their case fairly and effectively.

(ii) Assessing whether an application meets either limb (a) or (b) of the ECF test:

Assessing whether an application meets either limb of the ECF test can also be difficult – particularly because of ambiguity in the ‘appropriateness’ standard contained in limb (b).

The first limb, (a), requires that there “*would be*” a breach. The Courts have declined to elaborate on what this means – holding that the words are sufficiently clear.³³ It does not involve an assessment of risk: if LAA cannot decide whether there would be a breach, they are not obliged to make a determination under the first limb. Instead, they must go on to consider whether it is appropriate for them to make a determination under the second limb.³⁴

The second limb, (b), is less clear cut. Whether LAA will consider ECF appropriate will depend on all the circumstances of the case. LAA will assess the risk of a breach and the greater it is, the more likely it is that LAA will consider ECF appropriate.³⁵ The designation ‘exceptional’ case funding does not imply that positive determinations will be rare.³⁶

c. Disincentives from carrying out work under ECF.

Public Law Project has long worked to improve the accessibility of the ECF scheme.³⁷ Public Law Project’s past ECF research supports the below account of contractual disincentives with empirical evidence of providers’ behaviour.³⁸

29. R (Gudanaviciene) v Director of Legal Aid Casework [2014] EWCA Civ 1622 at [70].

30. Ibid at [56].

31. Ibid at [72].

32. Ibid at [72].

33. Ibid at [31].

34. Ibid at [32].

35. Ministry of Justice (2025) ‘[Lord Chancellor’s Exceptional Case Funding Guidance \(Non-inquests\)](#)’ – paragraph 2.6

36. R (Gudanaviciene) v Director of Legal Aid Casework [2014] EWCA Civ 1622 at [29].

37. Notably by acting in Gudanaviciene; see also the ‘Exceptional Case Funding’ page on Public Law Project’s website.

38. Tomlinson, J. and Marshall, E. (2020) ‘[Improving Exceptional Case Funding: Providers’ Perspectives](#)’ Public Law Project.

(i) The test is complex

As is set out above, LAA ECF determinations are not straightforward. LAA must determine whether procedural Convention rights are engaged; make judgement calls about the importance of issues, level of complexity and capacity of the applicant to present their case effectively; decide whether there is a breach, including by assessing whether any interference is proportionate; and (if applicable) decide whether any risk of breach meets the ambiguous ‘appropriateness’ standard in limb (b).

This complexity disincentivises providers from carrying out work under ECF in two ways.

First, and most significantly, they cannot reliably predict whether ECF applications will succeed. So, providers cannot be sure that they will be paid either for work they’ve done to prepare the application, or on the substantive case. Especially risky will be cases requiring urgent work before LAA decides whether ECF should be granted (see further below).

Second, ECF applications are administratively burdensome to complete. This has a direct impact on providers who support the application at risk of non-payment. It also means that ECF applications take longer for LAA to process.³⁹ Long processing times compound the financial risk of taking on ECF work because substantive work is more likely to be needed prior to LAA’s decision.

(ii) Providers cannot self-grant ECF.

‘Controlled Work’ matters:⁴⁰ Providers can normally decide for themselves whether Controlled Work matters are eligible for legal aid⁴¹ (subject to LAA reviewing a sample of their claims).⁴² But, if it requires ECF, they cannot and must apply to LAA.⁴³ As a result, ECF Controlled Work carries a greater costs-risk than other Controlled Work: providers must wait for LAA to determine whether it is eligible – which, per (i) above, can carry uncertainty.

Urgent ‘Licensed Work’ matters:⁴⁴ Providers can sometimes make their own determination on eligibility for⁴⁵ emergency ‘Legal Representation’ where work is required before LAA’s determination.⁴⁶ ECF work is specifically excluded from the normal procedure for obtaining urgent/emergency representation.⁴⁷ This means that ECF matters are unique in requiring providers to perform urgent representation at risk of not being paid. The High Court has been critical of this distinction.⁴⁸

39. In 2025, (before the introduction of data breach contingency measures) the average processing time of civil applications has varied between 7 and 14 days, whereas ECF applications consistently took an average of 18 days to process – Legal Aid Agency, ‘[Civil Processing Times](#)’ – old figures are archived [here](#).

40. Controlled Work includes ‘Legal Help’ work (i.e. work that does not involve court or tribunal hearings) and Legal Representation (i.e. representing someone or investigating the strength of their case in proceedings/contemplated proceedings) in in the Immigration and Asylum Chamber of the First-tier Tribunal – Regulations 9 and 21, Civil Legal Aid (Procedure) Regulations 2012.

41. Standard Civil Contract 2024, Specification (general provisions) – paragraph 3.2

42. Standard Civil Contract 2024, Specification (general provisions) – paragraph 4.47; see further Summers, J. (2026) ‘How Immigration Legal Aid is Paid: Fixed fees and the Incentive to Do Less’, Public Law Project – Section 2.3.

43. Section 10(2)(b), LASPO.

44. Licensed Work is ‘Legal Representation’ that is not Controlled Work (see fn 41) – Regulation 29(2)(b), Civil Legal Aid (Procedure) Regulations 2012.

45. See Ministry of Justice (2026) ‘[Table of Delegated Functions – Procedure Regulations](#)’

46. Legal Representation is defined as representing someone or investigating the strength of their case in proceedings/ contemplated proceedings – Regulation 9, Civil Legal Aid (Procedure) Regulations 2012.

47. Regulation 66(3)(c), Civil Legal Aid (Procedure) Regulations 2012.

48. *IS v Director of Legal Aid Casework* [2015] EWHC 1965 (Admin) at [78].

Following that criticism, LAA has since implemented some measures for urgently obtaining ECF:⁴⁹ if, on request, LAA determines that the application is urgent, then it will prioritise it over non-urgent applications and process it within 10 days. What is expressly not guaranteed, however, is that the application will be processed before the urgent work needs to be done – so it is difficult for a provider to know whether they will have to carry out work at risk.

2.3. Providers may lack the incentive to coordinate support across different categories of law

Different kinds of legal problems properly require support from different specialist providers. But individual clients may experience those problems as a single ‘cluster’.⁵⁰ It may be unrealistic to expect immigration providers to solve all of a client’s legal problems – but, when a client needs support from a different specialism as well as immigration, immigration providers can still perform an important role in identifying that need, supporting the client to access an appropriately specialised provider, and co-ordinating with them. Under the Immigration Contract, however, they might lack sufficient incentive to do so.

a. Category Definitions: How does the Immigration Contract define immigration and asylum work?

The Immigration Contract authorises providers to conduct work which is defined as immigration and asylum work in the Category Definitions.⁵¹ This includes (but is not limited to): asylum applications, appeals, and fresh claims;⁵² applications for leave relating to domestic abuse⁵³ or trafficking;⁵⁴ and services relating to immigration detention⁵⁵ (although some such services require separate authorisation).⁵⁶

To perform this work, providers must have specialist expertise in the law governing immigration status and asylum claims and the procedural rules for Home Office decisions and related tribunal proceedings. The Immigration Contract attempts to ensure that contracted providers have this specialist skillset by requiring them to hold accreditation under the Law Society Immigration and Asylum Accreditation Scheme.⁵⁷

In theory, therefore, someone who manages to get an appointment with an immigration and asylum provider should be able to expect that the provider is sufficiently specialist to help them with their immigration or asylum problem.⁵⁸ That is – the problem as it fits within the Immigration and Asylum Category Definition. Of course, such a person may also be experiencing connected legal issues which their provider is not specialist in.

49. Exceptional Cases Funding – Provider Pack – part 6.

50. A phenomenon notably explained in Genn, H. (1999) ‘Paths to justice: what people do and think about going to law’, Hart.

51. The Immigration Contract covers in-scope work which is within the Immigration and Asylum Category of Law (Standard Civil Contract 2024, Category Specific Rules: Immigration and Asylum – paragraph 8.3), which has the meaning given by the Category Definitions (Standard Civil Contract 2024, Category Specific Rules: Immigration and Asylum – paragraph 8.1).

52. i.e. the services covered by paragraph 30 of Schedule 1, Part 1 LASPO.

53. i.e. the services covered by paragraphs 28 and 29 of Schedule 1, Part 1 LASPO.

54. i.e. the services covered by paragraph 32 of Schedule 1, Part 1 §32 LASPO.

55. i.e. the services covered by paragraphs 25, 26 and 27 of Schedule 1, Part 1 §32 LASPO.

56. i.e. services provided under the Detained Duty Advice Scheme or the Detained Asylum Casework Scheme – Standard Civil Contract 2024, Category Specific Rules: Immigration and Asylum – paragraph 8.5.

57. Standard Civil Contract 2024, Category Specific Rules: Immigration and Asylum – paragraph 8.13

58. In practice, standards may vary – see further Migrants Organise (2025) ‘Threadbare: The Quality of Immigration Legal Aid’.

b. What other legal problems might immigration/asylum clients experience?

Services which immigration/asylum clients might need, but which do not fall within the Immigration and Asylum Category Definition include:

- services relating to asylum accommodation;⁵⁹
- in-scope immigration/asylum judicial reviews;⁶⁰
- writ of habeas corpus applications;⁶¹
- citizenship and non-asylum immigration applications and appeals for under 18-year-olds who are not in the care of a parent, guardian or legal authority;⁶²
- claims by victims of trafficking under employment law and/or for related damages;⁶³ and
- claims by victims of slavery, servitude or forced or compulsory labour under employment law and/or for related damages.⁶⁴

These services' non-inclusion in the Category Definition does not necessarily mean that immigration and asylum providers are not authorised to perform them: (i) the Immigration Contract authorises providers to offer many of these services; and (ii) some providers hold contracts in multiple areas of law.

(i) Work that may be performed under the Immigration Contract, despite not being included in the Immigration and Asylum Category Definition.

Public law matters: In-scope judicial reviews and writ of habeas corpus applications are categorised as public law matters.⁶⁵ But, where the underlying substance relates to an immigration or asylum matter, then they can be provided under the Immigration Contract.⁶⁶ So, these services can be performed by both immigration/asylum and public law practitioners.

Many immigration and asylum providers conduct public law matters under the Immigration Contract, although LAA do not publish data showing how commonly they do so. Immigration and asylum providers are particularly well-placed to bring public law challenges that arise from existing immigration or asylum matters – such as challenges to fresh claim refusals or asylum claims which have been certified.

Miscellaneous matters: Private law claims by victims of trafficking, slavery, servitude or forced or compulsory labour and citizenship and non-asylum immigration applications and appeals for separated children can be provided as miscellaneous matters.⁶⁷ Miscellaneous work is not subject to exclusive authorisation by category of law.⁶⁸ This means that, in theory, any provider with a civil contract can carry out this kind of work.⁶⁹

59. i.e. services provided under paragraph 31, Part 1, Schedule 1 LASPO.

60. Including, for example, judicial reviews of negative asylum decision where there is no right to appeal to the First Tier Tribunal.

61. Which may be used where someone is detained unlawfully, such as in the immigration detention context.

62. i.e. services provided under paragraph 31A Part 1, Schedule 1 LASPO.

63. i.e. services provided under paragraphs 32(2) and (3) Part 1, Schedule 1 LASPO.

64. i.e. services provided under paragraph 32A(2) and (3) Part 1, Schedule 1 LASPO.

65. Standard Civil Contract 2024, Category Definitions 2024 (May 2025) – paragraphs 45(a) and (b).

66. Standard Civil Contract 2024, Category Definitions 2024 (May 2025) – paragraph 11(a).

67. Private law claims by victims of trafficking, slavery, servitude or forced or compulsory labour are expressly categorised as miscellaneous (Standard Civil Contract 2024, Category Definitions 2024 (May 2025) – paragraph 58). Citizenship and non-asylum immigration applications and appeals for separated children are miscellaneous matters by virtue of not being included in any category definition (Standard Civil Contract 2024, Category Definitions 2024 (May 2025) – paragraph 50).

68. Standard Civil Contract 2024, Specification (general provisions) – paragraph 2.29.

69. That is, provided they have been granted enough miscellaneous 'matter starts' (which function as Category-specific limits on the number of number of legal matters a provider can perform under their contract) – Standard Civil Contract 2024, Specification (general provisions) – paragraph 2.30.

Although immigration and asylum providers might be authorised to carry out these kinds of work, in practice, they might not always be well placed or willing to do so. This is particularly true for private law matters, but may also be true for public law work which is not closely connected to typical immigration and asylum matters – such as challenges concerning trafficking decisions.

First, immigration and asylum providers might not have the knowledge or experience that they would need to provide these services. Practitioners cannot be expert in everything. It may be unrealistic to expect experts in immigration and asylum law and procedure to also maintain an expertise in the legal and procedural rules applicable in distinct areas. Private law claims, for example, often require the parties to meet formal disclosure obligations – which have no direct equivalent in asylum appeals.

Second, providers have a financial disincentive from taking on cases that involve a degree of ‘learning on the job’. LAA generally do not permit providers to claim for time spent on legal research – they assume that fee earners have sufficient expertise in the relevant area (although they may allow them for time spent researching novel points of law).⁷⁰ And, in any case, providers’ profits are maximised where they minimise the time they spend on each individual case⁷¹ – by sticking to what they know.

So even where an immigration/asylum provider is authorised to support a client with a problem that is connected to, but distinct from, their immigration/asylum issue, they may lack the expertise or financial incentive to do so.

(ii) Work that cannot be performed under the Immigration Contract

Asylum support matters:⁷² Services relating to asylum accommodation are in the housing category⁷³ and cannot be provided under the Immigration Contract. In some circumstances,⁷⁴ asylum support decisions must be challenged through judicial review. In which case, providers holding a Public Law Contract⁷⁵ will be authorised to conduct the work.⁷⁶

Some providers hold contracts in more than one area of law. In the financial year 2024–25, of the 203 providers who held an Immigration Contract:

- 49 also held a Housing Contract (24%)
- 41 also held a Public Law Contract (20%)
- 130 held neither a Housing Contract, nor a Public Law Contract (64%)⁷⁷

Even if their provider holds contracts in more than one area of law, the client is still likely to need multiple lawyers.

70. Legal Aid Agency (2024) [‘Costs Assessment Guidance: for use with the 2024 Standard Civil Contracts’](#) – paragraphs 2.4 and 2.5.

71. See further Summers, J. (2026) ‘How Immigration Legal Aid is Paid: Fixed fees and the Incentive to Do Less’, Public Law Project.

72. i.e. services provided under paragraph 31, Part 1, Schedule 1 LASPO.

73. Standard Civil Contract 2024, Category Definitions 2024 (May 2025) – paragraph 37(h).

74. i.e. where an asylum accommodation decision is not appealable to the Asylum Support Tribunal, such as a dispersal decision, they might be challengeable by judicial review.

75. i.e. authorisation to carry out work under Standard Civil Contract 2024, Category Specific Rules: Public Law.

76. The Immigration Contract only authorises providers to carry out public law challenges “relat[ing] to the underlying substance of the case as referenced by the widest Category Definition” – if the underlying decision falls under the Housing Category, they are not authorised (Standard Civil Contract 2024, Category Definitions 2024 (May 2025) – paragraph 11).

77. Analysis of Legal Aid Agency (2026) [‘Legal Aid Statistics: Tables’](#).

First, as with the matters described above, immigration and asylum practitioners' specialist skillset may be different from that which is needed to act in asylum accommodation matters. Such matters engage a distinct regime. Knowing whether an asylum accommodation decision carries a right of appeal to the First-tier Tribunal (Asylum Support), or needs to be challenged through urgent judicial review, for example, might require experience closer to that of a housing or public law practitioner than that of someone whose main practice is advising on asylum applications.

Second, the Immigration Contract's supervision requirements make it more likely that an individual practitioner would specialise within one Category. All work performed under the Immigration Contract must be overseen by an Immigration Supervisor.⁷⁸ Supervisors need to meet specific accreditation requirements (including by passing an exam which tests whether they are up-to-date on immigration and asylum law);⁷⁹ and have a minimum of 350 hours of relevant experience in each of the last three years (including a minimum of 235 hours of direct personal casework, of which no more than 120 hours may be supervision).⁸⁰ This (understandably) encourages Immigration Supervisors to specialise in the Immigration Category and not any other. Further, until recently, Immigration Supervisors were generally not permitted to be Supervisors in other Categories⁸¹ – so, although this changed in 2024, providers holding contracts in more than one Category have long been encouraged to operate those contracts separately.

c. Where a client has multiple, connected legal problems, providers may lack the financial incentive to support them to find an appropriately specialised provider and to co-ordinate support.

The Immigration Contract requires providers to take some steps when a client needs support with an in-scope issue that is outside of their expertise. Generally,⁸² these steps are relatively light-touch – the requirement is to refer or signpost the client to another provider.⁸³ 'Signposting' is not defined, so might only amount in practice to providing the contact details of another provider. Where a provider makes a referral, they assume some additional obligations – including making sure (so far as practicable) that they are making the referral to a provider who is authorised to conduct work in the relevant Category.⁸⁴

Beyond that, the Immigration Contract does not incentivise providers to support such clients to find an appropriately specialised provider and to co-ordinate their different cases.

78. Standard Civil Contract 2024, Specification (general provisions) – paragraph 2.18

79. Standard Civil Contract 2024, Category Specific Rules: Immigration and Asylum – paragraph 8.16

80. Standard Civil Contract 2024, Specification (general provisions) – paragraph 2.14

81. The Standard Civil Contract 2024 amended the Supervisor Standard (in paragraph 2.10) to omit the words "working in that category" after "have at least one full time (or full time equivalent) Supervisor". This had the effect of permitting supervisors to supervise in more than one Category (Standard Civil Contract 2024, Specification (general provisions) – paragraph 2.10(a); confirmed in Legal Aid Agency (2023) '[Civil News: tender opens for 2024 standard civil contract](#)').

82. Stronger requirements are imposed in respect of unaccompanied asylum-seeking child seeking support for an issue related to local authority support under the Children Act 1989 (8.9 and 8.10).

83. Standard Civil Contract 2024, Specification (general provisions) – paragraphs 2.41 and 2.42.

84. Standard Civil Contract 2024, Specification (general provisions) – paragraph 2.44.

First, successfully referring clients can take up a significant amount of time. Public Law Project's research has shown both that successfully referring someone to an immigration provider can take, on average, 16 attempts.⁸⁵ And it has also shown that even where such referrals are initially successful, providers may eventually decide not to take the client on⁸⁶ – for example, where their capacity changes. It is well-documented that providers in other Category face similarly overwhelming demand for their services.⁸⁷

Second, the circumstances where providers can be paid for co-ordinating with their clients' other representatives are narrow. Although providers can claim for communicating with providers in other Categories, they can only do so if it is reasonable to support the provider's own funded matter.⁸⁸ So, providers may not be able claim for work that is solely done to progress the other provider's matter.

In both situations, even where the work is claimable, if the provider is being paid a fixed fee the additional work will ordinarily attract no additional payment – and divert their efforts from work that does. Providers are under an incentive to do less.⁸⁹ As a result, different providers acting for the same client may end up siloed from one-another.

Case study: Hanan

Hanan fled her Kurdish-Iraqi family after she was sexually abused.

When she arrived in the UK, the Home Office put Hanan in a hotel. But its location triggered her PTSD – and *"[she] only stayed one night there, [she] told them that [she] cannot stay here."*

Hanan found a Kurdish family to stay with, where *"[she] was sleeping in the kitchen."*

After staying for a while, Hanan realised that this wasn't the family home she'd thought it was. *"The family, they're not there any longer. [...] They moved out. I still live in this place and [...] Sometimes like three people or four, even two, they come and go [...] I didn't ask a lot of questions, so I don't know why the situation was like that."*

Hanan found a support organisation able to offer her asylum advice. She told them where she was living but they couldn't help. They didn't employ the right kind of lawyers. *"One volunteer [...] he's not a lawyer, but [Hanan] asked him that, you know, to help [her] me to find a lawyer [...] wrote a supporting letter and send it to the Home Office."* But it seemed to be of little effect – Hanan slept on the kitchen floor for 9 months.

85. Rourke, R., Cripwell, E., Summers J. and Hynes, J. (2023) '[Accessing Immigration Legal Aid in 2023: An Ocean of Unmet Need](#)', Public Law Project.

86. Hynes, J. and Summers, J. (2025) '[Access to immigration legal aid in south-west England, 2024: New depths of an ocean of unmet need?](#)', Public Law Project.

87. Ministry of Justice (2025) '[Review of Civil Legal Aid: Summary Report](#)' – Part 1.3.

88. Legal Aid Agency (2024) '[Costs Assessment Guidance: for use with the 2024 Standard Civil Contracts](#)' – paragraph 2.38, read with paragraph 1.3.

89. Summers, J. (2026) 'How Immigration Legal Aid is Paid: Fixed fees and the Incentive to Do Less', Public Law Project.

2.4. Conclusion: the contract establishes a hierarchy of eligible work.

Passing the first gateway is not as simple as having an in-scope legal problem. Some problems are more in-scope than others.

First, there are those matters which can only be provided through ECF. Providers are disincentivised from using the ECF scheme because it is administratively burdensome and often requires work to be done at risk of non-payment. As a result, providers have a financial incentive only to take the kinds of work that government has prioritised – and the ECF scheme is at risk of being an ineffective and illusory guarantee of fundamental rights.

Second, there are those matters which may be experienced alongside immigration or asylum problems but which are not best dealt with by immigration and asylum lawyers. The Immigration Contract does not provide a financial incentive for immigration providers to identify that need, support the client to access an appropriately specialised provider, and co-ordinate with them.

This hierarchy incentivises providers to work according to government's priorities, rather than their clients'. If somebody's problem forms the wrong kind of cluster, providers might lack the ability or incentive to see that they receive holistic support. Instead, the Immigration Contract rewards providers for offering discrete, pre-packaged services – rather than for tailoring their services to meet clients' needs.

Case study: Naledi (P9)

Naledi grew up in Botswana. As a young woman, she was abducted and sexually exploited. Eventually, she managed to escape. Naledi went to the police – *“but, typical of police back home, they were not helpful.”* Without their help, she was terrified that the men who abused her would find her and make good on their threats to punish her if she ever went to the police.

Naledi fled to Manchester, where a friend of hers lived. She had another friend in Manchester. Although she was terrified that he too might exploit her, Naledi had no option but to go to him. Once there, she dared not go outside for fear that the men might find her. *“I just wanted to feel safe, then claim asylum [...] but I had so much fear, it took a lot of my time.”*

Naledi’s friend told her that she could stay for as long as she needed. But it was also clear that *“[Naledi] couldn’t stay there forever”*: he had a young family and not enough beds to go around. After she presented to the Home Office, they told Naledi to stay with her friend for the time being but gave her contact information for if she needed accommodation. *“But nobody ever responded. [...] That’s what early September, then October, then November.”*

In the meantime, Naledi had managed to find an asylum lawyer. When she told her about her living situation, the lawyer asked a colleague to help Naledi get asylum accommodation. Suddenly, *“[after] like half a day [...] 2:00 o’clock a call came, an e-mail came ‘we sorted out a taxi. Your accommodation will be provided. Your text will come at this time around.’ It was more like a relief.”*

They sent her to a hotel in a different city, far away from the support network she’d been building. But it was clearly communicated to Naledi that *“accommodation is on a no choice basis.”* Once she moved, Naledi’s lawyer referred her to another provider who took over her case.

Naledi’s hotel was mostly occupied by young women in small rooms. *“I remember back home most of the abuse happened in hotels set up like this.”* It made her depressed. Her therapist and her GP told her that she needed to get out. But she didn’t think she had any option.

Naledi tried to raise the issue with her new lawyer. But that wasn’t his job, he said. *“His attention [was] being focused on getting the courts what they need.”* And she could not find a housing lawyer with capacity to take her case.

3. The Second Gateway: Means

A provider cannot start work for a new client until they have confirmed that the client is financially eligible for legal aid.⁹⁰ It is not enough for a prospective client simply to be financially eligible (as most asylum-seekers are). They need to be able to prove it.⁹¹ For many asylum-seekers, that is more easily said than done.

3.1. The second gateway: means

To pass the second gateway, someone seeking legal aid needs to prove that they are financially eligible for it. Authority for assessing applicants' financial need lies with the Director of Legal Aid Casework ('the Director').⁹² The Director assesses eligibility in accordance with regulations made by the Lord Chancellor.⁹³ For Controlled Work, the Director's assessment can be delegated to providers.⁹⁴

Providers are given this power for the benefit of their prospective clients. It enables providers to start work on eligible cases as soon as the client provides financial evidence. There is no need, as in the alternative, to wait for a decision by LAA. However, this benefit is not provided without difficulty. When assessing someone's financial eligibility, a provider is acting on behalf of government – and they do so before agreeing to take the client on. So, when faced with a poorly evidenced would-be client and an ocean of well evidenced others,⁹⁵ providers may lack the incentive to spend their time supporting a would-be client to obtain the evidence they need (which may ultimately be unpaid if the client is ineligible).

90. Standard Civil Contract 2024, Specification (general provisions) – paragraphs 3.9(a) (Controlled Work) and 5.1(c) (Licensed Work) read with Regulation 37, Civil Legal Aid (Procedure) Regulations 2012 and section 11(1)(a), LASPO.

91. Satisfactory evidence of a prospective client's means must be gathered before a provider assesses their financial eligibility for Controlled Work (Standard Civil Contract 2024, Specification (general provisions) – paragraph 3.23), subject to some exceptions (Standard Civil Contract 2024, Specification (general provisions) – paragraphs 3.24 and 3.25).

92. Section 4, LASPO.

93. Sections 11(a) and 21(2), LASPO; the Civil Legal Aid (Financial Resources and Payment for Services) Regulations 2013.

94. Individual providers can be authorised in their Contract Schedule (i.e. the part of the contract which is specific to them) – section 5(2), LASPO.

95. Some applicants will have been supported by volunteers to prepare their financial documents in advance of meeting a provider to maximise their chances of being taken on – Rourke, R., Cripwell, E., Summers J. and Hynes, J. (2023) '[Assessing Immigration Legal Aid in 2023: An Ocean of Unmet Need](#)', Public Law Project.

3.2. Asylum-seekers will normally have a low enough income to qualify for legal aid

A person's income⁹⁶ must not exceed:⁹⁷

- (i) A **gross income limit** of £2,657 per month⁹⁸ that:
 - Excludes certain benefits and types of compensation (as prescribed by regulation),⁹⁹ which are generally unlikely to arise in the immigration/asylum context if an applicant has no recourse to public funds.
 - Includes a partner's income (unless they have a contrary interest in the dispute).¹⁰⁰
 - Rises by £222 per month for each of an applicant's fifth and any subsequent dependent children.¹⁰¹
- (ii) A **disposable income limit** of £733 per month.¹⁰² Disposable income is calculated by subtracting certain costs (as prescribed by regulation) from an applicant's gross income.¹⁰³
- (iii) Alternatively, where someone in receipt of asylum support under section 95 or section 4 Immigration and Asylum Act 1999, must be assessed as financially eligible for legal aid in respect of immigration and asylum Controlled Matters and Legal Representation in immigration and asylum Upper Tribunal appeals ('qualifying asylum support').

Typically, an asylum-seeker will have an income that is low enough for them to qualify for legal aid because they are prevented from earning money by working.¹⁰⁴ The calculation of their disposable income is also likely to be straightforward because most of the deductions are employment related.¹⁰⁵

3.3. The capital assessment disincentivises providers from taking on certain types of eligible individual:

Where someone has not provided satisfactory evidence that they receive qualifying asylum support, the value of all capital (i.e. including overseas capital) belonging to the applicant must not exceed:¹⁰⁶

- (i) £3,000 if the applicant seeks Legal Representation in an immigration matter before the First-tier or Upper Tribunal (Immigration and Asylum Chamber); or
- (ii) £8,000 otherwise.

96. Defined as a person's earnings, entitlements and any other sum they have received or are likely to receive – Regulation 21 of the Civil Legal Aid (Financial Resources and Payment for Services) Regulations 2013.

97. See also Legal Aid Agency (2026) '[Keycard 62](#)' which summarises the means tests.

98. Regulation 7, Civil Legal Aid (Financial Resources and Payment for Services) Regulations 2013.

99. Regulation 24, Civil Legal Aid (Financial Resources and Payment for Services) Regulations 2013.

100. Regulation 16, Civil Legal Aid (Financial Resources and Payment for Services) Regulations 2013.

101. In respect of whom the applicant receives child benefit – Regulation 7, Civil Legal Aid (Financial Resources and Payment for Services) Regulations 2013.

102. Regulation 8, Civil Legal Aid (Financial Resources and Payment for Services) Regulations 2013.

103. These are: income tax and national insurance (Regulation 23); Child maintenance payments (Regulation 26); employment or study-related expenses such as childcare (Regulation 27); accommodation costs where the applicant is a householder (Regulation 28); and Criminal Legal Aid Contribution Orders (Regulation 29) – Civil Legal Aid (Financial Resources and Payment for Services) Regulations 2013.

104. At least in the first year after making an asylum application – paragraph 360, Immigration Rules part 11B.

105. And accommodation costs will often not arise because many asylum-seekers are provided with accommodation directly.

106. Regulation 8, Civil Legal Aid (Financial Resources and Payment for Services) Regulations 2013.

a. Individuals seeking Legal Representation in an immigration matter:

First, the capital limit for immigration Legal Representation is lower than for any other service offered under legal aid (even outside of the Immigration Contract). As a result, clients seeking immigration Legal Representation might present a riskier prospect for providers than clients seeking asylum Legal Representation – where the limit is higher. The difference appears to be largely a hangover from when the limits were introduced. From 2007, capital limits were standardised across all areas of law.¹⁰⁷ Thereafter, eligible applicants would be categorised as falling in one of two bands: applicants with capital below £3,000 were eligible to receive legal aid without having to pay any of it back; whereas applicants with capital above £3,000 but below £8,000 were eligible to receive legal aid, but were expected to make a contribution from their available capital for any Legal Representation they received.

It was intended that these new capital limits would apply to immigration cases as well.¹⁰⁸ But, following consultation, government held off introducing contributions for immigration matters. Contributions would have been payable to the assessing authority.¹⁰⁹ Immigration cases were unusual in that Legal Representation could be provided as Controlled Work.¹¹⁰ As a result, providers (acting as the assessing authority under delegated functions) were concerned that they would be obliged to collect their clients' contributions. Some providers were barred from doing so by their constitutions.¹¹¹ So government announced that it would *temporarily*¹¹² hold off equalising immigration capital limits. But this has never happened.

At time of writing, the lower capital limit still applies whether Legal Representation is sought for Controlled Work or Licensed Work;¹¹³ however, following the Legal Aid Means Test Review, government has proposed to equalise immigration capital limits.¹¹⁴ Although the Review was completed and consulted on in 2023, the previous government only committed to bringing the changes forward in 2026.¹¹⁵ Since LAA digital systems were taken down following a cyber-attack, government has not given an update on the timeline for implementation.¹¹⁶

b. Individuals with overseas capital that they cannot access:

Second, applicants with overseas capital that they cannot access might face a practical barrier in proving their financial eligibility for legal aid. Non-financial capital must be assessed at the value it would sell for unless LAA determines that a different assessment is equitable.¹¹⁷ As a result, individuals might be assessed as having enough capital to pay privately for Legal Representation even if, in practice, they cannot access it.

107. Community Legal Service (Financial) (Amendment) Regulations 2007.

108. Paragraphs 7.1–7.3, Explanatory Memorandum to the Community Legal Service (Financial) (Amendment) Regulations 2007.

109. Regulation 38, Community Legal Service (Financial) Regulations 2000.

110. See Section 1.2.1. above.

111. Ministry of Justice (2022) '[Legal Aid Means Test Review](#)' CP 646 – paragraph 298.

112. Legal Services Commission (2007) '[Focus – The service provider newsletter of the Legal Services Commission #53](#)' – page 14.

113. Regulation 8, Civil Legal Aid (Financial Resources and Payment for Services) Regulations 2013.

114. Ministry of Justice (2023) '[Government Response to Legal Aid Means Test Review](#)' – paragraphs 225 and 382.

115. Fouzder, M. (2024) '[Law Society's fury at legal aid means test reform delay](#)' Law Society Gazette

116. Slaughter, A. (2025) Question for Ministry of Justice on Legal Aid Agency: Hacking, UIN 67852.

117. Regulation 31(a), Civil Legal Aid (Financial Resources and Payment for Services) Regulations 2013.

This feature of the legal aid scheme is not unique to the immigration and asylum context. It has been particularly problematic for survivors of domestic abuse seeking access to justice.¹¹⁸ One survivor, GR, successfully challenged LAA's approach to 'trapped capital' in court.¹¹⁹ Her case confirmed that the Regulations afford LAA a discretion¹²⁰ to assess the value of trapped capital as zero.¹²¹

Applicants seeking to avail themselves of this discretion might find, however, that providers prefer applicants who qualify under the bright-line rule.¹²²

In Controlled Work cases, taking on a client whose financial eligibility is at the Director's discretion could be a significant risk for providers. The means assessment is delegated to them, and is usually only checked by LAA after the fact.¹²³ If the case is reviewed and LAA disagree with how the provider has exercised this discretion, LAA (assessing only a sample of a provider's Controlled Work claims) might adjust all of the provider's claims to reflect the adverse finding.¹²⁴

In Licensed Work cases, it might be quicker and simpler to make a legal aid application for a client that straightforwardly falls below the capital limit. A trapped capital application ought to explain why LAA should exercise its discretion, which can take time to prepare. It is also not uncommon for this kind of application to go back-and-forth between the provider and LAA (with providers making multiple applications or appealing LAA's decision), which takes more time. All of this work is taken on at risk of not being paid if the application is ultimately unsuccessful. As a result, some providers may simply prefer to err on the side of caution and take a conservative approach when advising this kind of client as to whether or not they qualify for legal aid.

118. Rourke, D. and Marshall, E. (2020) "[Trapped capital' and financial eligibility for legal aid'](#)", Public Law Project

119. R (GR) v DLAC [2020] EWHC 3140 (Admin)

120. Under Regulation 31(b), Civil Legal Aid (Financial Resources and Payment for Services) Regulations 2013.

121. Strictly speaking, R (GR) v DLAC [2020] EWHC 3140 (Admin) decided that the discretion under 31(b) extends to the asset valuations prescribed in Regulations 32-27 (at [77]). But the LAA did not deny that this applied in other cases.

122. While this report stops short of making an empirical claim to this effect, a previous Public Law Project report did so in the context of domestic abuse – Rourke, D. and Marshall, E. (2020) "[Trapped capital' and financial eligibility for legal aid'](#)", Public Law Project.

123. i.e. after the provider claims under paragraph 3.64 of the Standard Civil Contract 2024, Specification (general provisions).

124. Standard Civil Contract 2024, Specification (general provisions) – paragraph 4.47.

Case study: Amine

Amine used to work for a powerful general in his home country. The general was caught up in a corruption scandal and tried to scapegoat Amine. He fled to the UK before he could be arrested. His plan was to go ahead of his family, claim political asylum, and then send for them once he had security.

When he first arrived in the UK, Amine could still access some of his money – although much of it had been caught up in the corruption inquiry. His family stayed with family in their home country while Amine was taken in by a friend. Amine didn't know whether he was eligible for asylum support – and, having been repeatedly told that he'd need an asylum support entitlement letter to access legal aid, he *"started to accept the fact that [he would] have to look for a solicitor on a private basis."*

"So as I was dealing on my own with the whole process, I didn't get the chance to have the solicitor organisation or solicitor advice or legal advice so you can you could just count on your understanding of what is available on some sources, like the right to remain."

Some lawyers offered Amine one-off, privately paying advice appointments. He knew that he needed advice before his main asylum interview – so spent the money he could access on it. Amine told me that his appointment was *"just an opportunity to sell a service"* and offered him little meaningful help.

After this, Amine turned to voluntary organisations. They helped him apply for asylum support. His financial situation had not changed – but he now had the right kind of evidence to prove it. He was a safer prospect for legal aid providers – and, eventually, he found one.

3.4. Providers are disincentivised from take on eligible individuals whose financial eligibility cannot be readily established through qualifying asylum support.

a. Why are some forms of asylum support taken as evidence of financial eligibility?

For most asylum-seekers, the legal aid means assessment will not be the first official assessment of their financial need. Asylum-seekers are prevented from working,¹²⁵ so many asylum-seekers rely on government support to subsist.

There are three types of asylum support relevant to the means assessment:

- (i) **Section 95 support:** provided to asylum-seekers or their dependants when they are destitute or likely to become destitute in a prescribed period,¹²⁶ normally of 14 days.¹²⁷
- (ii) **Section 98 support:** provided temporarily to asylum-seekers or their dependants who may be destitute while they wait for their eligibility for section 95 support to be determined.¹²⁸
- (iii) **Section 4 support:** provided to individuals whose asylum application is rejected¹²⁹ and who appear destitute.¹³⁰

Many, but not all, asylum-seekers receive one of (i)–(iii).¹³¹ Asylum-seekers who receive section 95 or section 4 support have been assessed as being destitute or as being likely to become destitute within 14 days. Destitution is assessed differently to legal aid eligibility. Someone is destitute if:¹³²

- (i) they do not have adequate accommodation or any means of obtaining it; or
- (ii) they cannot meet their other essential living needs.

So, unlike legal aid, asylum support is not assessed on an explicitly financial threshold. But, if someone meets the destitution test, then they will usually meet the legal aid eligibility test too. The legal aid means criteria are supposedly set at a level which selects individuals who do not have the ability to pay or contribute towards their costs in civil litigation.¹³³ If someone is unable to pay for their accommodation or other essential living needs, then they probably cannot afford to contribute to litigation costs either. It is for this reason that someone's receipt of section 95 or section 4 support is taken as evidence of financial eligibility for immigration and asylum Controlled Matters and Legal Representation in immigration and asylum Upper Tribunal appeals.¹³⁴

125. At least in the first year after making an asylum application – paragraph 360, Immigration Rules part 11B.

126. Section 95(1), Immigration and Asylum Act 1999.

127. Regulation 7(a), Asylum Support Regulations 2000.

128. Section 98(1) and (2), Immigration and Asylum Act 1999.

129. And do not have an asylum claim outstanding (section 4(2) Immigration and Asylum Act 1999).

130. Regulation 3(1)(a), Immigration and Asylum (Provision of Accommodation to Failed Asylum-Seekers) Regulations 2005.

131. The latest data available for the total number of cases is from June 2024, at which time there were 224,700 cases (Kirk-Wade, E. (2026) [‘Research Briefing: Asylum statistics’](#), House of Commons Library (version June 2026)) and 112,187 people in receipt of Home Office asylum support (Home Office (2026) [‘Asylum Summary Tables’](#) – table Asy_09a).

132. Section 95(3), Immigration and Asylum Act 1999.

133. Ministry of Justice (2010) [‘Proposals for the Reform of Legal Aid in England and Wales’](#) CP12/10 – paragraph 5.6.

134. Regulation 6, Civil Legal Aid (Financial Resources and Payment for Services) Regulations 2013.

This form of assessment does not, however, apply where the applicant:

- (i) is in receipt of section 98 support;
- (ii) seeks legal aid for Licensed Work other than an Upper Tribunal appeal;¹³⁵ or
- (iii) seeks legal aid for Controlled Work that is not provided under the immigration and asylum category definition.

b. Providers are disincentivised from offering early legal advice:

Section 98 support is provided temporarily while someone awaits section 95 support.¹³⁶ It has a lower eligibility threshold than other forms of asylum support. While recipients of section 98 support 'may' be destitute, they are yet to be determined as such. The fact that the benefit does not qualify as evidence of means reflects this.

As a result, someone who receives section 98 support needs to prove that they are financially eligible in order to qualify for legal aid. So, in order to take them on, providers need to obtain alternative evidence of any income and capital they have, and then assess whether they are financially eligible for legal aid. This can take a long time – and is done at risk of non-payment where the prospective client is non-eligible. As a result, providers are incentivised to only take clients who can easily prove their eligibility. It is in their financial interest to wait until the Home Office has determined that a prospective client meets the destitution threshold, despite the fact that the Home Office will have already determined that the prospective client 'may' meet it.

Case Study: Hari

Hari lives with his elderly mum. They are Sikh and have come to live in the UK due to fear of religious persecution in Afghanistan.

Hari told me that when he and his mum had arrived here, the Home Office didn't believe that they were Afghan. Officials thought that, as Sikhs, they more likely came from India.

"They said if you don't accept that you are an Indian nationality, then we won't be accepting your asylum case. I said I can't accept it – I am not an Indian. So I refused to accept that I am an Indian, then they threw me out."

Hari hadn't been offered asylum support. Fortunately, *"there is a Sikh temple in [near to where Hari presented]. [He] went there and asked for help."* The people he met there told him that he needed to find a lawyer. And, for that, he'd need to get asylum support. With the temple's support, *"[Hari] got approved of section 95 – but [he] didn't get [his letter]. For that reason [he] wasn't able to get a solicitor."*

Hari was somebody who was homeless and living day-to-day off free food from the temple. Plainly, he was financially eligible for legal aid. And yet, Hari could not access legal aid for lack of the right kind of evidence. Having a section 95 letter was not an official requirement for legal aid – but, because it provides an administrative convenience, it had become one.

In the end, Hari waited five months for his section 95 letter. It was only then that they found a lawyer – who helped them get official recognition of their status as a refugee.

135. Specifically, proceedings in the Immigration and Asylum Chamber of the Upper Tribunal in relation to an appeal or review from the Immigration and Asylum Chamber of the First-tier Tribunal.

136. Section 98(2) Immigration and Asylum Act 1999.

c. Providers are disincentivised to offer Legal Representation other than for Upper Tribunal appeals.

The fact that asylum support evidence is not always enough to prove financial eligibility for legal aid (i.e. in situations (ii) and (iii)) implies that there are circumstances where someone can be destitute but not financially eligible for legal aid.

This is theoretically possible where someone meets the destitution test for a short period of time. Capital is disregarded from the destitution assessment where it is not reasonably available to the applicant in the relevant period.¹³⁷ Whereas capital that the applicant cannot access is taken into account by the legal aid means test – it is assessed at the value it would realise if sold (unless LAA determines that a different assessment is equitable).¹³⁸

LAA's hypothetical problem case: Someone is assessed as being destitute, although they have overseas assets that they cannot access or liquidate within 14 days.¹³⁹ They apply for legal aid – and are taken as being financially eligible because they're in receipt of qualifying asylum support. However, had their capital been assessed, LAA might have determined that they are ineligible if their assets had a sale value in excess of £8,000 and could be sold in the medium term.

In practice, such cases are likely to be rare. But it does provide an explanation for why it is that these forms of asylum support are not taken to evidence someone's financial eligibility for Licensed Work other than Upper Tribunal appeals (which were only designated as Licensed Work in 2018).¹⁴⁰ Cases like this present a risk to LAA that they forgo capital contributions which could otherwise be recovered.

In other categories of law, those who receive Legal Representation can be required to pay towards the cost of their legal aid.¹⁴¹ They can (separately) be asked to make contributions from their income¹⁴² or their capital.¹⁴³

Contributions are not required where someone receives legal aid for Licensed immigration and asylum matters. The regulations expressly exempt Asylum Upper Tribunal cases.¹⁴⁴ Immigration Upper Tribunal cases are exempted by implication. Capital contributions can only be collected where someone has capital in excess of £3,000¹⁴⁵ – which would make an applicant ineligible to receive legal aid for immigration matters.¹⁴⁶

So, where asylum support can be taken as evidence of someone's financial eligibility, there is no risk that they would have owed a capital contribution had their capital been assessed.

For other Licensed Work, however, the risk would exist if applicants with capital between £3,000 and £8,000 were taken as being financially eligible because they receive qualifying asylum support. So, qualifying asylum support is not taken as proving a prospective client's eligibility.

137. Regulation 6(4)(b), Asylum Support Regulations 2000.

138. Regulation 31(a), Civil Legal Aid (Financial Resources and Payment for Services) Regulations 2013.

139. Where this is the relevant period, see Home Office (2023) '[Assessing Destitution \(Guidance\)](#)' – example 1 (on page 14).

140. Regulation 2(4), Civil Legal Aid (Procedure, Remuneration and Statutory Charge) (Amendment) Regulations 2018.

141. Regulation 44, Civil Legal Aid (Financial Resources and Payment for Services) Regulations 2013.

142. Regulation 44(2), Civil Legal Aid (Financial Resources and Payment for Services) Regulations 2013.

143. Regulation 44(3), Civil Legal Aid (Financial Resources and Payment for Services) Regulations 2013.

144. Regulation 44(3)(a)(i), Civil Legal Aid (Financial Resources and Payment for Services) Regulations 2013.

145. Regulation 44(3)(b), Civil Legal Aid (Financial Resources and Payment for Services) Regulations 2013.

146. Regulation 8, Civil Legal Aid (Financial Resources and Payment for Services) Regulations 2013.

This risk is unlikely to be at all prevalent. Such applicants have, by definition, been assessed as not being able to access their capital. And yet, if they are to access contributory forms of legal aid, LAA will need to make an assessment of its own – disincentivising providers from taking on these types of work.

3.5 Conclusion: the contract disincentivises providers from supporting asylum-seekers to prove their financial eligibility for legal aid

Ultimately, it is for those seeking access to legal aid to prove that they are financially eligible for it. Providers' obligation to determine whether an individual financially qualifies for legal aid¹⁴⁷ is not an obligation to investigate. The contract places the burden on clients to provide satisfactory evidence of their means before a provider makes a delegated determination.¹⁴⁸

This presents a fresh difficulty for asylum-seekers. Many will arrive in the UK without formal documentation and might struggle to navigate the administrative processes associated with obtaining financial evidence.

Even where someone receives qualifying asylum support, they might still struggle to prove their eligibility without assistance. Asylum support applicants will be notified of the Home Office's decision in writing after their application is determined.¹⁴⁹ But LAA only accepts written evidence that is dated within six months¹⁵⁰ – and many asylum-seekers will have to wait longer than this before they can access legal aid. Asylum seekers might have to wait more than six months for their substantive interview¹⁵¹ and are likely to for an initial decision.¹⁵²

LAA does permit providers to confirm the client's receipt of qualifying asylum support over the phone.¹⁵³ These phone-lines, however, are notoriously over-subscribed. Providers risk losing an appointment to a phone call which only shows them that the would-be client is not eligible. As a result, providers are incentivised to require prospective clients to attend with valid written evidence.

When conducting the fieldwork for 'New Depths',¹⁵⁴ Public Law Project made hundreds of phone enquiries to 36 immigration providers over six months. It was commonplace to be told that any new client would need to bring qualifying asylum support evidence with them to the first appointment.

If a provider allows them to operate, the effect of the incentives described in this section is significant. They subvert the relationship that ought to exist between an asylum-seeker and their lawyer. Legal aid lawyers may react to the financial pressures of legal aid by deciding that they simply cannot afford to run the risk of trying and failing to secure someone's entitlement to legal aid.

147. Section 11, LASPO.

148. Standard Civil Contract 2024, Specification (general provisions) – paragraph 3.23.

149. UK Visas and Immigration (2025) '[Asylum support application: help and guidance](#)'

150. Legal Aid Agency (2025) '[Lord Chancellor's guidance on determining financial eligibility for Controlled Work and Family Mediation](#)' – paragraph 12.2.4.

151. Although there are no official statistics which confirm the exact proportion – Harman, H. (2023) Question to the Secretary of State for the Home Department on asylum applications UIN [182763](#).

152. Home Office (2025) '[How many cases are in the UK asylum system?](#)' – Figure 3.

153. Legal Aid Agency (2025) '[Lord Chancellor's guidance on determining financial eligibility for Controlled Work and Family Mediation](#)' – paragraph 12.2.4.

154. Hynes, J. and Summers, J. (2025) '[Access to immigration legal aid in south-west England, 2024: New depths of an ocean of unmet need?](#)', Public Law Project.

4. The Third Gateway: Merits

Eligible clients with in-scope problems can only obtain legal aid if there is sufficient merit in a prospective clients' case. This gateway differs from the others in that it can provide a benefit to clients as well as LAA: if a claim is hopeless, it is helpful for the claimant to know that. In private practice, clients rely on their lawyer's view on merits to decide whether it's worth paying for legal services.

LAA, acting as a purchaser of legal services, simulates this decision through its merits tests. Unlike privately paying clients, however, LAA can delegate the decision to providers – who are accordingly tasked not just to advise on the merits of a case, but to decide whether its cost can be justified. These considerations, although linked, are distinct from one another. The following section will show how over-concentration on the latter can be to clients' detriment.

4.1. The merits tests.

A different merits tests applies at the Legal Help stage and the Legal Representation stage.

1. Legal Help – **the sufficient benefit test is met:**¹⁵⁵ there is likely to be sufficient benefit to the individual, having regard to all the circumstances of the case, including the circumstances of the individual, to justify the cost of provision of Legal Help.
2. Legal Representation – both the applicable costs-benefit and prospects test is met.¹⁵⁶
 - a. Cost-benefit tests:¹⁵⁷

Either:

 - (i) **The proportionality test:** if the case is of significant wider public interest, the likely benefits justify the likely costs.¹⁵⁸

Or

 - (ii) **The reasonable private paying individual test:** if the case is not of significant wider public interest, the potential benefit is such that a reasonable private paying individual would be prepared to start or continue the proceedings.¹⁵⁹

155. It must also be reasonable to provide with legal help, having regard to any other potential sources of funding – Regulation 32, Civil Legal Aid (Merits Criteria) Regulations 2013.

156. These tests only apply to the types of work listed in Regulation 60(1) – which includes most, but not all, immigration and asylum related services. Different tests apply, for example, to immigration/asylum public law work – Regulation 60, Civil Legal Aid (Merits Criteria) Regulations 2013.

157. Both are assessed having regard to the prospects of success and all the other circumstances of the case – Regulation 60(2), Civil Legal Aid (Merits Criteria) Regulations 2013.

158. Regulation 8, Civil Legal Aid (Merits Criteria) Regulations 2013.

159. Regulation 7, Civil Legal Aid (Merits Criteria) Regulations 2013.

b. **The prospects test.**¹⁶⁰

Either:

- (i) It is more likely than not that the applicant will succeed at trial/final hearing.¹⁶¹

Or both:

- (ii) The case has significant wider public interest, overwhelming personal importance to the applicant, or relates to a breach of Convention rights;

And

- (iii) The applicant's likelihood of succeeding at trial/final hearing is at least 45%,¹⁶² or is impossible to determine without identifiable further investigations,¹⁶³ or because of disputed law, fact or expert evidence.¹⁶⁴

The Director is responsible for applying the appropriate test but can delegate the decision to providers.¹⁶⁵ In practice, providers are responsible for applying the tests for Legal Help and Controlled Legal Representation cases – but not for Licensed Work cases.¹⁶⁶

4.2. The Legal Help merits test involves only minimal consideration of a case's prospects.

Whereas the merits tests for Legal Representation requires assessment both of a case's cost-benefit and prospects, the Legal Help test only requires a cost-benefit assessment.

The distinction between a case's cost-benefit and its prospects is not neat. Assessing cost-benefit requires at least some consideration of the case's prospects.¹⁶⁷ A case's prospects give the likelihood of securing the benefits of succeeding at trial or final hearing. So, the Legal Help test, if properly applied, does require some consideration of a case's prospects.

But not all benefits result from success at trial or final hearing. As the Lord Chancellor's guidance points out "*it may well be considered worthwhile for an individual to pay for initial advice, including the advice that the case is not worth pursuing further.*"¹⁶⁸ In fact, given the personal significance of asylum applications, it is arguable that any applicant would derive a benefit from Legal Help sufficient to justify its cost.

The availability of this broad-brush justification means that providers may only need to give minimal consideration to a case's prospects before waving it through the Legal Help merits test. The profit model set out in Report 1 suggests that providers are incentivised to do so because it saves them time.

160. Regulation 60(3), Civil Legal Aid (Merits Criteria) Regulations 2013.

161. i.e. chances are moderate or higher, per Regulation 60(3)(a) – meaning above 50%, per Regulation 4 and 5(1)(c), the Civil Legal Aid (Merits Criteria) Regulations 2013.

162. i.e. marginal per Regulation 5(1)(da), Civil Legal Aid (Merits Criteria) Regulations 2013.

163. i.e. unclear per Regulation 5(2), Civil Legal Aid (Merits Criteria) Regulations 2013.

164. i.e. borderline per Regulation 5(1)(d), Civil Legal Aid (Merits Criteria) Regulations 2013.

165. Regulation 3, Civil Legal Aid (Merits Criteria) Regulations 2013.

166. Standard Civil Contract 2024, Specification (general provisions) – paragraph 3.2; see also Legal Aid Agency, Ministry of Justice (2025) '[Table of Delegated Functions – Merits Criteria](#)'.

167. Ministry of Justice (2025) '[Lord Chancellor's Guidance Under Section 4 LASPO](#)' – paragraph 4.1.16 (which per 4.1.24 is relevant to the substantial benefit test).

168. Ibid – paragraph 4.1.25

In principle, providers' cost-benefit assessment should be ongoing as they continue to act for someone.¹⁶⁹ But given the enormous potential upside of immigration and asylum services, in all but the most hopeless cases it will be arguable that services provide sufficient benefit to justify their cost. Even a small increase in the likelihood of someone being granted asylum could be, for example, the difference that helps them escape persecution.

Generally, this incentive operates in clients' favour. It makes it more likely that they will pass the third gateway and access legal aid. But it is not in clients' interests for providers only to give minimal consideration to cases' prospects of success when they are offering advice – being told their chances of success can, among other things, give asylum-seekers more certainty while waiting for a decision. So, it would be a mistake for providers to interpret the merits test as being the full extent of their obligation to consider a case's merits.

4.3. Providers are incentivised to be risk averse when applying the Controlled Legal Representation merits tests.

Providers need to pay greater mind to a case's merits when determining if someone is eligible for Controlled Legal Representation.

The Controlled Legal Representation tests only permit providers to carry out work where they consider the client's prospects to be above a minimum threshold – either 50% or 45%. These thresholds are high: providers need either to be able to evidence that it more likely than not that the client will win at final hearing, or that the case could realistically go either way.

When applying to start Controlled Legal Representation for a client, providers need only provide summary information about the case. But after the matter has concluded, LAA can review the case file to assess whether it contains sufficient evidence that the relevant merits test has been met. Providers therefore need to be able to show that they have paid proper mind to the more stringent merits tests that apply to Controlled Legal Representation.

The risk here is not so much that LAA will refuse to pay for work because they disagree with the provider's merits assessment. LAA affords them a significant degree of deference in this respect. LAA can only depart from the provider's view where it is "*manifestly unreasonable*".¹⁷⁰

The risk is that providers, having been incentivised to give only minimal consideration to merits up until the Controlled Legal Representation stage, will (from the client's perspective) suddenly take an adverse view. On its own, the risk of this merits cliff-edge is also unlikely to be very significant: a competent lawyer's merits assessment is ongoing. They should continually keep the client informed of their view on the case's prospects. But, in practice, its significance may be heightened because providers are already incentivised to avoid taking on Controlled Legal Representation work.

169. Ibid – paragraph 4.1.25.

170. Legal Aid Agency (2024) '[Costs Assessment Guidance: for use with the 2024 Standard Civil Contracts](#)' – paragraph 6.3.

Controlled Legal Representation work can be commercially unattractive:

Legal aid is paid in arrears. So, providers have to complete any work before they can bill it. This means that although providers need to meet the costs of performing work quickly (wages, rental costs, bills etc.), there tends to a lag between when work is performed and when it generates income. However, for the reasons set out below, that lag can be much bigger for Controlled Legal Representation work than for Legal Help work.

For the most part, both Controlled Legal Representation and Legal Help can be claimed in the same circumstances.¹⁷¹ That is, with one notable exception. The Immigration Contract provides that asylum Legal Help Matters can sometimes be claimed early – where the client has been awaiting an asylum decision for more than six months and the file valued at hourly rates is worth more than the applicable fixed fee.¹⁷² For asylum appeals (the relevant form of Controlled Legal Representation work), in contrast, there is no equivalent provision for early payment where the wait for a hearing is long.

The average wait time for an asylum appeal hearing is more than a year¹⁷³ – and can be highly variable. Further, different fees apply depending on whether an appeal proceeds to a substantive hearing or not. So, when a provider takes on asylum Controlled Legal Representation work, they do so not knowing when or how much they will be paid for it (with a considerable amount to do at the outset). As a result, providers are under a significant disincentive not to undertake asylum Controlled Legal Representation at all. Indeed, a monitoring exercise by Public Law Project found that only half the providers we contacted who were prepared to take on legal aid work would take on appeals.¹⁷⁴

How this interacts with the merits assessment:

At the same time providers need to conduct a new and more thorough merits assessment, they simultaneously have to weigh up whether to take on a commercially unattractive type of work. There is a risk that, as a result, providers are incentivised to be risk averse when applying the Controlled Legal Representation merits tests.

It should also be noted that to need Controlled Legal Representation, an asylum claim will necessarily have been rejected by the Home Office. Up until that point, the provider has only been incentivised to assess the claim's merits on a cost-benefit basis (in a context where the potential upsides of advice are enormous). But after the rejection (which may, on some level, colour their view of the case), the provider is required to engage with a case's prospects in more depth – to determine whether they should conduct work which will be paid an uncertain amount at a time unknown in the future.

The potential for such risk aversion is heightened because a case's merits may be affected by whether the provider is prepared to undertake further work. If a provider is prepared to do more work on a matter, it may be more likely to succeed. This is particularly so in immigration and asylum cases where providers may need to build trust and rapport with vulnerable clients before the client is able to properly articulate their case. It would therefore be a mistake to treat a case's merits as necessarily being fixed before legal work is undertaken.

171. i.e. those listed in Standard Civil Contract 2024, Specification (general provisions) – paragraph 3.64 (for example, where the matter is completed or the client decides not to proceed).

172. Standard Civil Contract 2024, Category Specific Rules: Immigration and Asylum – paragraph 8.75.

173. 67 weeks – Ministry of Justice (2026) '[Tribunal Statistics Quarterly: January to March 2026](#)'

174. Hynes, J. and Summers, J. (2025) '[Access to immigration legal aid in south-west England, 2024: New depths of an ocean of unmet need?](#)', Public Law Project – Figure 4.

Case study: Jean

Jean first found a lawyer at an asylum advice drop-in run by a local church. After giving him some initial advice, Jean felt that his lawyer was rushing his case. *"The firm has other clients and probably, they had more priority cases than mine."*

Jean found out that his application had been refused when his lawyer sent him two letters: one was a copy of the Home Office's decision, and the other was from them.

"They sent me a letter that they wouldn't support me any more for further things. The legal aid is finished. [...] Legal aid is not gonna permit them to be funded to help me with these cases or further cases, so I need to do this and that and that and that. They didn't think there was enough merit."

"Imagine that, [...] from that point onward, I did everything myself... I started writing to the judge. To reply to them. My handwriting... pages and pages!"

Eventually, Jean found a group of volunteers who were willing to help. They explained to him that he could try to find another lawyer. And he did – and she was the first to notice that Jean's claim had been made on the wrong legal basis altogether.

5. Conclusion

The Immigration Contract establishes a hierarchy of eligible work. Certain types of client and certain types of case are more administratively burdensome, slower to be paid for, or more exposed to the risk of non-payment.

This is likely to influence how legal aid is distributed among the eligible population, for two reasons. First, demand for immigration and asylum legal aid services far outstrips supply.¹⁷⁵ So, the providers of those services are being asked to perform a kind of social rationing: they are simply unable to help all their prospective clients secure the funding they are entitled to. Second, immigration and asylum legal aid providers are under intense commercial pressure. The reality for many is that they simply cannot afford to ignore financial incentives. So, when performing this social rationing – and determining who gets access to legal aid – priority may be given to those cases and those clients who are least burdensome and least risky.¹⁷⁶

This report follows ‘How Immigration Legal Aid is Paid: Fixed Fees and the Incentive to Do Less’, which argued that the immigration legal aid payment scheme rewards providers for taking on the quickest and simplest cases. It has shown how the eligibility rules help determine which cases those are.

Each of the three gateways contributes to that hierarchy. At the scope gateway, ECF is complex to apply for and may require providers to work at risk of non-payment; and providers do not have a financial incentive to identify when a client needs help from a differently specialised provider, support the client to access that provider, and coordinate their services when necessary.

The means test is less a question of need and more a question of whether a client has an administratively convenient way of evidencing it. Providers are not incentivised to help prospective clients prove their financial eligibility for legal aid and may risk non-payment where their means evidence is ambiguous.

Finally, providers need to give much more consideration to merits at the Controlled Legal Representation Stage than at the Legal Help stage. Providers must conduct the more thorough Legal Representation merits test at the same time as they weigh up whether to take on commercially unattractive appeals work, for which payment might take years.

But it doesn't need to be this way. The Immigration Contract could be designed so as to reward providers for determining access based on need: to seriously consider whether an unusual case might be in-scope; to support prospective clients to demonstrate their financial need; and to be properly insulated from commercial pressures when assessing a case's prospects. For immigration and asylum legal aid to truly serve the public, providers' commercial interests should be aligned with their clients' needs. But what this report has suggested is that, too often, they are not.

175. See further Rourke, R., Cripwell, E., Summers J. and Hynes, J. (2023) '[Accessing Immigration Legal Aid in 2023: An Ocean of Unmet Need](#)', Public Law Project.

176. Summers, J. (2026) 'How Immigration Legal Aid is Paid: Fixed fees and the Incentive to Do Less', Public Law Project.

Public Law Project (PLP) is a legal and social justice charity working in England and Wales. We advance fairness in society through public law — the rules that shape how the state makes everyday decisions that affect our lives, from immigration to welfare benefits and more.

We work with those marginalised by the state or abandoned through systemic neglect, uniting experts by lived experience with legal experts to challenge social injustice at both an individual and a systemic level. For over 35 years, our collaborative approach has secured major victories — from challenging the Rwanda deportation policy to opposing unlawful cuts to disability benefits.

Our vision is a fair and inclusive society secured by a just and confident state.

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