

**Legal Aid, Sentencing and Punishment of Offenders Bill: domestic violence in
immigration cases and related matters
ILPA briefing for Commons Report 24 October 2011**

Introduction

The Immigration Law Practitioners' Association is a professional association, the majority of whose members are barristers, solicitors and advocates practising in immigration, asylum and nationality law. Academics and non-Government organisations are also members. Established over 25 years ago, ILPA exists to promote and improve advice and representation in immigration, asylum and nationality law. ILPA is represented on numerous Government, including Legal Services Commission and UK Border Agency, consultative and advisory groups.

The Bill excludes all immigration cases from Legal Aid except for asylum cases, challenges to immigration detention (such as bail applications) and cases before the Special Immigration Appeals Commission¹. Asylum Support cases are excluded, save for those where the person is seeking both accommodation and support: these will be funded at the initial stage but, as now, not for appeals. During committee stage on 17 July 2011 the Minister gave an undertaking to bring forward an amendment in respect of domestic violence:

*"There is a real risk that, without legal aid, people will stay trapped in abusive relationships out of fear of jeopardising their immigration status. The type of trauma that they might have suffered will often make it difficult to cope with such applications. We also appreciate that people apply under great pressure of time, and access to a properly designated immigration adviser is a factor. We intend to table a Government amendment to bring such cases into scope at a later stage."*²

ILPA along with others such as Southall Black Sisters,³ Rights of Women⁴ and Al-Hasaniya Moroccan Women's Project⁵ have advocated that the amendment should encompass not only those who came to the UK as spouses and, at the time when the relationship breaks down because of domestic violence have limited ('probationary') leave to remain as spouses, but also other victims of domestic violence, overstayers, spouses of refugees, unmarried partners and others on a route to settlement. ILPA argued the point in detail in our 14 February submissions to the Ministry of Justice and in briefings to the Bill.⁶

¹ Paragraphs 21-25, Part 1, Schedule 1, paragraphs 21-25; paragraph 26 re asylum support.

² See <http://www.publications.parliament.uk/pa/cm201011/cmpublic/legaid/110719/pm/110719s01.htm>

³ <http://www.publications.parliament.uk/pa/cm201011/cmpublic/legaid/memo/la18.htm>

⁴ See <http://www.publications.parliament.uk/pa/cm201011/cmpublic/legaid/110714/am/110714s01.htm>

⁵ See <http://www.publications.parliament.uk/pa/cm201011/cmpublic/legaid/memo/la69.htm>

⁶ See <http://www.ilpa.org.uk/pages/legal-aid-sentencing-and-punishment-of-offenders-bill-2011.html>

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In immigration cases, there is no mediation or other dispute resolution option (save insofar as constituency MPs may intervene). Neither an ombuds nor complaints process can address the question of a person's entitlement to continue to reside in the UK. Nor are there generally alternative sources of funding or advice for those who qualify for Legal Aid. Immigration is peculiar in that advice and representation in this area are regulated (under pain of criminal sanction).⁷ Charities and other advice organisations, if unable or unwilling to meet the requirements of the regulatory scheme, are thus prohibited from filling any gap that may be left by the removal of Legal Aid, as described in Al-Hasaniya's submission to the public bill committee. For those without leave to be in the UK (including those whose leave has been taken away), working will generally be illegal. Accordingly, individuals will be unable to raise funds themselves, save by exposing themselves to the risk of exploitation. While sometimes friends or family may be able to collect funds for legal advice or representation, MPs immigration caseloads will be aware that this can also leave individuals open to exploitation.

The risks to victims of domestic violence are exacerbated in immigration cases for reasons that affect other cases as well, viz.:

- The Bill would permit Government departments to pursue onward appeals all the way to the Supreme Court, with expert representation, while leaving an appellant who had succeeded at first instance alone and unaided to address the questions of law to which any onward appeal must necessarily be restricted. A more striking example of inequality of arms is difficult to imagine and such inequality of arms does not assist the courts in developing the law.
- The Government generally accepts that judicial review should remain in scope for Legal Aid and the Green Paper contains a robust defence of judicial review.⁸ However, the Bill introduces exclusions in immigration. The Bill excludes all immigration judicial review cases save where the UK Border Agency has not acted within 12 months of a final decision of a court or tribunal, regardless of merit. The exclusions apply where there have been previous court or tribunal proceedings (on the same or a similar issue), even when the individual succeeded in those proceedings. Thus, if the UK Border Agency fails to act on the decision of a court or tribunal (or acts in disregard of that decision), the individual will be excluded from Legal Aid in seeking to hold the state to account. The immigration judicial review cases, which the Bill excludes from Legal Aid, are also excluded from Legal Aid for appeals⁹.

For further information, briefings to amendments or assistance with please get in touch with: Steve Symonds, Legal Officer, (020-7490 1553) steve.symonds@ilpa.org.uk; or Alison Harvey, General Secretary (020-7251 8383) alison.harvey@ilpa.org.uk. See the Briefings section of the ILPA website, www.ilpa.org.uk for further briefings and submissions relevant to this bill, especially:

<http://www.ilpa.org.uk/pages/legal-aid-sentencing-and-punishment-of-offenders-bill-2011.html>

⁷ Immigration and Asylum Act 1999, Part V: the Office of the Immigration Services Commissioner.

⁸ *Proposals for the Reform of Legal Aid: Consultation*, paragraphs 4.16 and 4.95ff.

⁹ Bill, Part 1, Schedule 1, paragraph 25.