

# ILPA information sheet

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## Legal Aid Bill 5 - Children

2<sup>nd</sup> November 2011

On 2 November 2011, the Legal Aid, Sentencing and Punishment of Offenders Bill completed its passage through the House of Commons. It will now move on to the House of Lords. So far, there have been very few improvements made to the Legal Aid provisions in this Bill. This information sheet provides an update on what has been said by the Government in relation to Legal Aid and children involved in immigration proceedings.

### **Background information**

The August 2011 “Legal Aid Bill 4 – Children” information sheet gives information on how the Bill will affect these children. That information sheet listed (and provided links to) some of the evidence submitted to the House of Commons’ Public Bill Committee concerning these children. More evidence has been provided since then, including:

- Refugee Youth’s evidence to the Committee is available at:  
<http://www.publications.parliament.uk/pa/cm201011/cmpublic/legalaid/memo/la110.htm>
- The Children’s Society’s evidence to the Committee is available at:  
<http://www.publications.parliament.uk/pa/cm201011/cmpublic/legalaid/memo/la74.htm>
- The Children’s Legal Centre’s evidence to the Committee is available at:  
<http://www.publications.parliament.uk/pa/cm201011/cmpublic/legalaid/memo/la51.htm>

### **Information provided to ILPA**

While the Bill has been discussed in Parliament, the Minister for Immigration, Damian Green MP, provided the following information about the Government’s intentions in a letter of 18 October 2011 to ILPA:

*“As with other immigration applications, the majority of applications from children will be straightforward and the child’s parents or guardians will be able to assist them to make an application. I am also confident that the majority of complex and serious cases will be asylum applications, for which legal aid will continue to be available. I accept that there may be a small number of children who are in the care of a Local Authority who need to make an immigration (as opposed to an asylum) application. I have therefore asked my officials to work with the Office of the Immigration Services Commissioner to ensure that Local Authorities are able to assist children in their care with straightforward immigration applications. This can be done without primary legislation. I accept that not all cases will be straightforward so, as with all cases outside the scope of legal aid, exceptional funding will be available, if required by the Human Rights Act 1998 or EU law, which means that there will be no requirement for Local Authorities to fund access to legal advice.”*

There are several problems with what the Minister says. Firstly, while not all immigration applications are complex, the immigration system is often complex (as several judges have commented). If an application is refused, the law governing whether and when an appeal can be made is especially complicated (it is something that the UK Border Agency and even judges continue to sometimes get wrong). Secondly, many immigration applications, and often those made by children, are complex in terms of the evidence that needs to be collected (e.g. witness statements, social work reports, specialist child psychiatric or psychological reports, DNA testing). Thirdly, it is doubtful whether Local Authorities have the expertise or resources to deal with these applications and appeals. Finally, it is not at all clear (and other statements by the Government suggest that it is not intended) that the test for exceptional funding will capture complex cases. The current situation, therefore, appears to be that many children (such as those in situations described in the “Legal Aid Bill 4 – Children” information sheet) will either need the Local Authority to fund their legal advice and representation so as to avoid children having to fend for themselves in complicated legal proceedings and without the evidence necessary for their cases to be properly considered.

### **Information given to Parliament**

On 31 October 2011, the Minister for Legal Aid, Jonathan Djanogly MP, told Members of Parliament when debating the Bill:

*“In most immigration cases, a child’s interests are represented by their parent or guardian. Most cases in which a child is unaccompanied involve an asylum claim, and legal aid will remain for those cases as at present. Unaccompanied children with an asylum or immigration issue would have a social worker assigned to them, whose role would include helping the child to gain access to the same advice and support as a child who was permanently settled in the UK. They could also offer assistance with filling in forms and explaining terms, and give emotional support. Legal support in such immigration cases may be found, if needed, from law centres and from pro bono legal representation. The Refugee Council provides services for separated children, which can include litigation friends.”*  
(Hansard HC, Report, 31 October 2011 : Column 690)

This response is similar to that given by the Immigration Minister. However, the Legal Aid Minister now suggests that Law Centres, *pro bono* lawyers (that is lawyers doing work for free) and the Refugee Council can fill the gap to be left by the withdrawal of Legal Aid for these children. But who are these Law Centres and *pro bono* lawyers, if they are not the very same Law Centres and lawyers who currently undertake Legal Aid work? Many of these do much *pro bono* work now, and it is extraordinary to suggest that they just do more. What will happen to these children if and when they do not or cannot? As for the Refugee Council, the Government seems to forget it has just cut their funding (as it has cut funding for others).

### **Further thoughts**

The Bill will shortly move on to the House of Lords. It is to be hoped that Ministers in the House of Lords are made to address these concerns. It is simply no good Government suggesting that children, who the Bill intends will lose Legal Aid, can turn to others, Local Government and other agencies, when those others are themselves also having their funding reduced or withdrawn. These suggestions are all the more unacceptable when the Government has declared that it will not seek to make savings to Legal Aid and other costs to the justice system by requiring other Central Government departments (and agencies, such as the UK Border Agency) to pay towards the costs of the system which those departments and agencies cause (e.g. by their bad decisions, conduct of litigation and repeated changes to law and practice). The Government refuses to do this because it says it is not willing to simply shift the cost of the justice system from one Government department to another. This is to ignore the need to provide incentives to other Government departments to stop causing the costs of justice to rise. The result is that while refusing to act to provide a strong incentive to other Government departments to help reduce the cost of the justice system, the Government is saying that it will shift the cost of this system – from the Ministry of Justice to, among others, Law Centres and Local Government.