

**ILPA BRIEFING
House of Lords – Report****March 2012****LEGAL AID, SENTENCING AND PUNISHMENT OF OFFENDERS BILL –
HL Bill 129****Onward Appeals (Immigration)
Amendment 78****Lord Phillips of Sudbury
Lord Thomas of Gresford
Lord Avebury
Lord Dholakia****78**

Page 148, line 24, at end insert –

Immigration appeals

- (1) *Civil legal services and advocacy in appeals from the Immigration and Asylum Chamber of the First-tier Tribunal to the Upper Tribunal, the Court of Appeal and the Supreme Court where the relevant court or tribunal certifies that –*
- (a) *the appeal raises a complex issue of law or of fact (in which case the certificate must identify the issue);*
 - (b) *the matter is one of significant wider public interest (in which case the certificate must identify that interest); or*
 - (c) *there is some compelling reason why the proper conduct of the appeal requires the provision of civil legal services (in which case the certificate must set out the reason).*
- (2) *Rules of procedure applicable to the relevant court or tribunal may make provision about certificates under this paragraph.*

Purpose

To preserve legal aid for onward immigration appeals – that is beyond the First-tier Tribunal (Immigration and Asylum Chamber) – but only where the court or tribunal has decided that the case is complex, raises some point of wider public significance or there is some other compelling reason relating to the proper conduct of the case for legal aid to be provided.

Briefing Note

ILPA supports this amendment. Appeals beyond the First-tier Tribunal may only be brought by permission of a judge and on points of law. They may be brought by the individual when his or her appeal has been dismissed by the First-tier Tribunal; and may be brought by the UK Border Agency when the individual's appeal has been allowed. Currently, the Bill would permit the UK Border Agency to fight an appeal against an impecunious individual on points of law before the Upper Tribunal, Court of Appeal and ultimately the Supreme Court, employing teams of lawyers on its behalf while the individual was without any representation throughout.

Such an extreme vision of inequality of arms is nonetheless likely to underestimate the degree of inequality. Unlike other areas, immigration is regulated such that those who are not solicitors, barristers or legal executives must be regulated and at the appropriate competence level to be permitted to provide immigration advice or immigration services 'in the course of a business, whether or not for profit'. The relevant regulatory scheme is run by the Immigration Services Commissioner. There are very few not-for-profit agencies within her scheme at the appropriate level to be permitted to advise or assist (still less to represent) with immigration appeals. Thus, the individual before the Upper Tribunal or higher courts is likely to be, as he or she will likely to have been for his or her appeal before the First-tier Tribunal, without any advice or assistance unless he or she can afford to pay for this.¹

Nonetheless, the amendment falls short of making provision for legal aid for all immigration appeals to the Upper Tribunal, Court of Appeal or Supreme Court; and makes no provision for any appeal before the First-tier Tribunal. Those appeals before the Upper Tribunal, Court of Appeal or Supreme Court for which provision is made are only those where the tribunal or court has identified that the case is complex, of significant wider public interest or there is a compelling reason concerning the proper conduct of the case to require legal aid.

ILPA regards such provision as a bare minimum. To fail to make provision where the tribunal or court has identified these circumstances would inevitably be incompatible with the interests of justice – whether as concerns the individual or others. The Upper Tribunal, Court of Appeal and Supreme Court set precedents for other cases; and it will damage justice if such precedents are habitually set with only one party to appeals having representation or even advice as to the relevant issues and procedures.

Further details of ILPA's concerns are available from ILPA's Briefing on Onward Appeals for Lords Committee at: <http://tinyurl.com/bm6ddof>

For further information please get in touch with:

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¹ See the briefing for the February 2012 All Party Parliamentary Group on Migration meeting at: http://www.appgmigration.org.uk/sites/default/files/APPG_Migration-Legal_Aid_BP-Feb_2012.pdf and in particular the table in that briefing (though note that a later search on the OISC website revealed one permitted advice agency within 50 miles of Newcastle).