

## ILPA BRIEFING House of Lords – Report

March 2012

### LEGAL AID, SENTENCING AND PUNISHMENT OF OFFENDERS BILL – HL Bill 129

#### ILPA General Briefing

##### Overview:

The general exclusion of immigration from legal aid provision will cause particular injustice because of two aggravating features, which do not apply to other areas from which legal aid is being withdrawn:

- Immigration is subject to regulation such that general advice by non-legal professionals (e.g. solicitors) is prohibited unless an advice agency is within the Immigration Services Commissioner's scheme;
- The Government has made explicit its view that no immigration case can qualify for exceptional funding (under clause 9)<sup>1</sup>.

Of those not-for-profit agencies within the Immigration Services Commissioner's scheme, very few are permitted to undertake work on family reunion, the cases of illegal entrants or overstayers, removals or deportation, applications outside the rules, Article 8 (private and family life) cases or appeals. None are permitted to undertake judicial review work. In some parts of the country, none are permitted to do so<sup>2</sup>. This is the situation now. Since a substantial proportion of those few permitted to do this work are dependent on legal aid funding (and given other funding, such as local authority funding, is under threat), the prospect is that in future there will be even fewer such agencies available<sup>3</sup>.

The Government has generally suggested that the withdrawal of legal aid may be ameliorated by access to general advice, e.g. from the not-for-profit sector<sup>4</sup>. It has added that, where there is real need in a particular case to avoid injustice, exceptional funding will be available<sup>5</sup>. It is not for ILPA to say whether these suggested ameliorations can be effective in other areas. However, the two aggravating features referred to above show they cannot be so in relation to immigration.

ILPA makes clear that it does not favour removing regulation in this area. Regulation was introduced by the Immigration and Asylum Act 1999, with cross party support, after years of growing calls for it to be introduced in view of the considerable harm

<sup>1</sup> Lord Wallace of Tankerness in Lords' Committee – *Hansard* HL, 18 Jan 2012 : Column 668

<sup>2</sup> Further information on the dearth of such services is available from the February 2012 All Party Parliamentary Group on Migration meeting at: [http://www.appmigration.org.uk/sites/default/files/APPG\\_Migration-Legal\\_Aid\\_BP-Feb\\_2012.pdf](http://www.appmigration.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).

<sup>3</sup> See e.g. report at: <http://www.lawgazette.co.uk/news/law-centres-warn-legal-aid-cuts>

<sup>4</sup> See e.g. *Hansard* HC, Public Bill Committee, 19 Jul 2011 : Column 246 (*per* Jonathan Djanogly)

<sup>5</sup> See e.g. *Hansard* HC, Report, 31 Oct 2011 : Column 648 (*per* Jonathan Djanogly)

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caused to unwitting migrants seeking advice from unscrupulous charlatans and well-meaning incompetents holding themselves out to offer immigration advice. As many Members of Parliament attested to at Second Reading of that Bill<sup>6</sup>, the harm caused can be considerable and in some instances irretrievable. ILPA has no wish to return to a situation where those in need of immigration advice are so exposed to exploitation and harm by reason of the absence of regulation.

### **Amendments on the Marshalled List as at 1 March 2012:**

ILPA is generally supportive of amendments to the early clauses which seek to embed principles of access to justice within the Bill. ILPA is particularly supportive of:

**Amendments 8\*, 9 & 10** each of which seek to provide power to the Lord Chancellor to bring into or back into scope matters that the Bill would exclude from scope for legal aid. ILPA has endorsed the briefing available at: <http://tinyurl.com/6np4dyq>

**Amendments 23 & 46** each of which seek to retain legal aid for a range of cases concerning children, including “*immigration and asylum*” cases where either the child is the relevant party to proceedings or the relevant party is a person with a dependent child. The Refugee Children’s Consortium briefing is available at: <http://tinyurl.com/7rwrxx5>

**Amendment 69** which seeks to retain legal aid for victims of trafficking, though ILPA is disappointed to see this amendment only retains legal aid in relation to compensation or damages claims; and would not provide legal aid in relation to immigration cases of victims of trafficking. Such immigration cases are not always brought as asylum claims, and victims of trafficking may have good grounds for entitlement to remain in the UK without having a good claim for asylum. In such circumstances, a victim of trafficking would be left to fend for himself or herself with complex immigration proceedings, which ILPA considers to be intolerable.

**Amendment 74\*** which seeks to retain legal aid for immigration. The impact of regulation in this area and the Government’s position on exceptional funding provides clear reason for retaining legal aid.

**Amendment 78** which seeks to retain legal aid for onward immigration appeals – i.e. those appeals, brought on points of law and by permission only, from the First-tier Tribunal (Immigration and Asylum Chamber) before the Upper Tribunal, Court of Appeal and Supreme Court. A briefing is available at: <http://tinyurl.com/6q4tlby>

### **Government Amendments on the Marshalled List as at 1 March 2012:**

ILPA has produced briefings on:

**Amendments 49, 50, 51, 52, 53, 54, 55 & 57** which concern immigration judicial review. A briefing is available at: <http://tinyurl.com/83uenjy>

**Amendment 73** which concerns migrant victims of domestic violence. A briefing is available at: <http://tinyurl.com/7npbjpk>

### **For further information please get in touch with:**

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<sup>6</sup> *Hansard* HC, 22 Feb 1999 : Column 37 *et seq*