

ILPA response to Inquiry into Asylum Support for Children and Young People

Annexe 1 – Caselist

The cases below are drawn from ILPA's February 2010 response evidence to the Ministry of Justice consultation on legal aid.

C (from Asylum Support Appeals Project)

C is a single mother. Her 17 year-old son suffers from epilepsy and has regular seizures. They are both failed asylum seekers. They applied for section 4 support on the grounds that he would be unable to leave the UK because of his medical condition. She provided letters from her son's doctors in support of their application. The UK Border Agency refused them support because the medical evidence had not been submitted in the form of the UK Border Agency's own medical declaration. They sought advice from a firm of solicitors, who advised them to appeal the decision.

Their solicitors assisted in preparing additional medical evidence and legal submissions to the effect that there is no formal requirement that evidence be submitted in the form of a medical declaration. They also referred his case to the Asylum Support Appeals Project for representation on the day of the hearing (there is no legal aid for representation at asylum support appeals. They won their appeal. Without legal aid, Mrs C and her son would have had great difficulty preparing their medical evidence for the hearing and they could have ended up homeless.

Case of N

N was seven months pregnant and had been street homeless and sleeping inside a church and on a park bench for two months. She was an asylum seeker, waiting for the UK Border Agency's decision on her fresh claim for asylum. She had become street homeless after the person with whom she had been living had asked her to leave. A voluntary sector organisation had assisted her to apply for section 4 support. At the time when she saw legal aid lawyers, the application had been outstanding for 14 days, during which time N continued to be sleeping in the church and outside. The UK Border Agency refused to say when a decision would be made and therefore the voluntary sector organisation referred her to legal aid lawyers. The lawyers assisted N under the Legal Help Scheme and sent the UK Border Agency a letter before claim threatening judicial review due to the delay in making a decision on N's section 4 application. She was provided with section 4 accommodation that day. The lawyers also ensured she was provided with accommodation in London in accordance with the asylum support policy bulletin on dispersal and pregnancy, a matter which the voluntary sector organisation had not identified in the original application. This work was carried out under the Legal Help Scheme.

Case of D

With the help of a voluntary sector organisation, D had applied for section 4 support as he, his wife and his children (aged three, four, and seven) had been told to leave their relative's accommodation and they had nowhere else to go. The UK Border Agency refused this application as D was not treated as having made a fresh claim for asylum as he had not submitted this in person at the Liverpool, as the Agency's policy now requires people to do. D had not done so because he could not afford to pay for himself and his family (who are required to attend) to travel to Liverpool. A duty barrister from the Asylum Support Appeals Project, acting pro bono, represented D at his appeal to the First-tier Tribunal (Asylum Support), but the appeal was refused, although it was accepted that D was destitute. D was referred to legal aid lawyers for advice about challenging those decisions (there is no appeal from the First-tier Tribunal (Asylum Support) to the Upper Tribunal) and they assisted him under the Legal Help Scheme. D's immigration background was unusual and complicated, and we advised that rather than challenge the section 4 decisions, under which support is provided to persons whose claims for asylum have failed, he should instead apply for section 95 support, which is paid to persons who have an outstanding, unresolved claim for asylum. D was provided with emergency accommodation (available in these circumstances but not in cases of section 4 support) within two days and subsequently went on to receive section 95 support.

Case of A

This case involved ensuring that a mother and her three British citizen children were not left without support in an interregnum between a local authority providing support under the Children Act 1989 and responsibility for support being assumed by the UK Border Agency. Support cases involving British citizen children and partners are often of considerable legal complexity.

A had been provided with accommodation and financial support under the Children Act 1989, from the local authority. The local authority had given A notice that this support was going to be withdrawn. A applied for section 4 support from the UK Border Agency but they told her they would not be able to assess her application before the local authority support was due to end. A's case was complicated because her three children had British citizenship and she wanted to be accommodated in London so that they could continue to have contact with their father, from whom she was separated. Legal aid lawyers were instructed under the Legal Help Scheme. A significant amount of negotiation with the UK Border Agency took place regarding A's section 4 application, as they considered that section 4 support could not be provided in respect of British children. The lawyers also had to negotiate with the local authority to get them to agree to extend A's support pending the UK Border Agency's decision, which they agreed to do. Before they decided the application for section 4 support, the UK Border Agency granted A indefinite leave to remain in the UK.

Case of G

G's asylum claim had been refused because she did not reply to the UK Border Agency's request for further information. However, as this request had been sent to an incorrect address she had asked for this decision to be withdrawn and was waiting for a decision from the UK Border Agency. She had also made a fresh asylum

claim. G had recently given birth and because she did not have any accommodation the local authority agreed to provide temporary support. She was receiving a total of £18 per week for her and her baby. However, this was being withdrawn. A voluntary sector organisation had assisted G to apply for section 4 support but this was refused as the UK Border Agency considered that she was eligible for section 95 support. The UK Border Agency then changed its mind and told G to reapply for section 4 support. She went back to the voluntary organisation and spent all day in their offices but they were too busy to help her. Legal aid lawyers were instructed under the Legal Help Scheme. They negotiated with the UK Border Agency and were able to obtain section 4 accommodation for G the following day, preventing her and her baby from becoming homeless.

Case of L

L had been separated from her children in her country of origin. The children had entered the UK as unaccompanied minors and had subsequently been granted leave to remain in the UK. They were accommodated by social services.

L claimed asylum on arrival. Social Services reunited L with her children and agreed that L could live with her children; however they had no basis on which to provide support to L. L had no financial support and the accommodation that has been provided to L's children and L was soon to cease as the landlord of the property was not willing to renew the lease with Social Services department.

L's asylum claim was refused with no in-country right of appeal. She had sought permission for judicial review of that decision and a consent order had been agreed between her representatives and the Home Office that the Home Office would reconsider its decision to deny her an in-country right of appeal.

L applied for support but this was refused. A voluntary sector agency assisted her to enquire as to the reason for this and the response was that there was no record of an outstanding claim for asylum. Further documentation was provided by L including a letter from social services. The application was reconsidered, but with the same result.

Legal aid lawyers assisted L to prepare an appeal to the Asylum Support Tribunal to challenge the refusal, supplying in evidence a Court consent order demonstrating that L's asylum application is being reconsidered by the Home Office. The lawyers argued that L should be accommodated with her children and further that this should be near where her children had been living so that their education was not disrupted. They made detailed submissions on the relevant Home Office policy.

L's appeal was successful and the family were provided with support, all together and in a location where the children were able to continue their education.

Case of M

M had originally come to the UK as a visitor with two children. She had overstayed following giving birth to a son with sickle cell anaemia and consequent severe medical problems. An application on the basis of Article 3 of the European Convention on Human Rights had been refused as his condition was not considered

by the UK Border Agency to be sufficiently serious. No enforcement action was taken and some six years later, after her son's condition deteriorated she made another application for leave to remain. The child requires regular medical attention by a specialist team at the hospital near where he lives.

M had been living with a friend but the friend was finding it increasingly difficult to assist her and asked her to leave. M was extremely distressed and did not know to whom to turn.

Legal aid lawyers requested that M be given emergency accommodation. The UK Border Agency argued that she was not eligible for this but were persuaded by further representations from the lawyers. M was given temporary accommodation. The legal aid lawyers then assisted her to present the case for her to be accommodated near the hospital that was treating her son. The lawyers also sought to speed up the process of getting the family into permanent accommodation. The UK Border Agency continued to require further information about the son's medical condition. The Agency then said that it did not have proof of the son's birth although this had been provided to the Agency. The representatives produced a further copy of the birth certificate.

During this period M's son's condition deteriorated, necessitating hospitalisation. The lawyers commenced the judicial review pre-action protocol, at which point the Agency provided accommodation for M and her children near the hospital.

Case of I

I arrived in the UK when he was 15, with his brother who was a year younger. They claimed asylum and were accommodated by social services as unaccompanied minors. Aged sixteen, I was abducted by a criminal gang and taken to another city in the UK. Approximately one year later he managed to escape. He went back to social services and reported what had happened to him to the police. Social services accommodated him again, near but not with his brother, and he was given a year's leave to remain. He failed to apply to extend this before it expired. He had been refused section 95 support under section 55 of the Nationality, Immigration and Asylum Act 2002, as the UK Border Agency considered that he had not claimed asylum as soon as reasonably practicable.

In 2007 I submitted an application for indefinite leave to remain. It is still pending. When I turned 21, social services indicated that they would no longer support him as he is no longer eligible for leaving care support. Legal aid lawyers applied for section 4 support. The UK Border Agency refused the application because they were not satisfied that I was destitute. Legal aid lawyers assisted him to prepare his appeal, providing grounds of appeal, witness statements, and legal pleadings as well as explaining the procedure at appeal to him. His appeal was successful.

Case of C

C sought asylum as an unaccompanied child in the UK having fled rape and torture inflicted during the civil war in her country. Her application for asylum was refused but she was granted discretionary leave to age 18. When this was coming to an end

she applied to extend it but this was refused and her appeal dismissed. C had no legal representative at the time and was unaware that her application had been refused.

C has multiple health problems, both mental and physical, as a result of the treatment she has suffered. Legal aid lawyers have assisted her to make a fresh application for asylum which included evidence from the Medical Foundation for the Care of Victims of Torture. C was held not to satisfy the test for social services support as she was found not to be in need of care and attention within the meaning of the definition. She was refused asylum support. Legal aid lawyers assisted her to appeal the refusal. Following receipt of the appeal against refusal of support, the UK Border Agency granted C exceptional leave to remain in the UK.

Further cases

Case of B

B is a 16 year old male who arrived in the UK and applied for asylum in 2007. B's age was disputed, the age assessment was arguably not '*Merton*' compliant. B's fingerprints were matched on EURODAC database and his case refused in 2007 under third country provisions but B was not notified. He had various legal representative who made complaints to the UK Border Agency about failure to consider the asylum claim over a period of four years. B was refused section 95 support on the basis that case was refused in 2007. In 2011, the legal representative was advised that case has been 'filed' and cannot be located. A further nine months passed before the case was located and B offered an interview.

Case of P

A woman seeking asylum with a young child born mid- 2012 made an application for section 95 support on the basis that she had never had a decision in her asylum claim and had been served an eviction notice on her rented room. The application refused on the basis that her asylum case was refused although she had not been notified.

Case of C

The client was a 31-year-old man living in Birmingham. He had diabetes and a pain in his leg and foot. His representatives tried on numerous occasions to arrange an appointment to submit further representations in Liverpool. The Further Submissions Unit refused to give an appointment, saying he was a New Asylum Model client but when he tried to submit further submissions at his reporting centre, he was told that he had to make an appointment with the Further Submissions Unit. The further submissions were eventually accepted after judicial review proceedings had been issued. (July 2011).

Case of D

The client was a homeless man living in London. His partner was pregnant with his child and had recently been granted leave to remain. His solicitors prepared further representations under Article 8. He raised the funds to travel to Liverpool by bus, but the officials at the Further Submissions Unit refused to allow him to submit the

further representations, telling him that he needed to provide proof that he was living with his partner. At the time he was homeless and was not living with his partner, because her landlord would not allow him to stay there. (July 2012).