ILPA IMMIGRATION LAW PRACTITIONERS' ASSOCIATION
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ILPA Briefing for the 11 July House of Lords debate Effect of cuts in legal aid funding on the justice system in England and Wales – Baroness Deech/Lord McNally

We should take great care in any approach to reduce access to judicial review. It is a small price to pay for a democratic and just society. Lord Neuberger, Judges and Policy: A delicate balance, Institute for Government, 18 June 2013

This briefing is divided into two parts: the effects of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 and the Transforming Legal Aid proposals.

THE LEGAL AID, SENTENCING AND PUNISHMENT OF OFFENDERS ACT 2012

Only six exceptional funding applications granted

On 1 July 2013 ILPA was represented at a meeting with the Legal Aid Agency about exceptional funding. This is the system whereby a case outside the scope of legal aid can receive funding on an exceptional basis. There we learned that:

- Between 1 April and 1 July 2013, six (6) applications for exceptional funding had been granted. The majority were family cases. One was an immigration case.
- During that period, 270 applications had been made.
- No applications by persons without legal representatives assisting had been granted.
- No children have been granted exceptional funding.

Not all applications made had been decided. The Agency said that it was turning around all cases within its target of 20 days (perhaps unsurprising given the low volumes) but when questioned by those who were surprised to hear this, acknowledged that it had asked for further information in a number of cases and that when it did this, the clock reset to zero.

We were repeatedly told before the meeting that we should not expect to be allowed to discuss individual cases at it. However, attendees did put forward examples of cases that have been refused funding. These included a case in which the applicant lacked capacity in the technical sense: they were not capable of sufficient understanding of what was happening to give instructions to a legal representative. There was no one to instruct the litigation friend. The official solicitor had given instructions for an application for exceptional funding to be made. This was refused. The refusal of funding suggested the applicant (and by implication the official solicitor) read the exceptional funding guidance with care. In another case the applicant was blind and suffering from dementia, at imminent risk of street homelessness. Funding was refused.

In addition to these, to ILPA's knowledge funding has been refused in the case of detained schizophrenic fighting deportation. It has been made for more than one trafficked person where the no decision had yet been made (after considerable delays) under the National Referral Mechanism as to whether they had been trafficked, that being the threshold for legal aid.

Cases refused include cases where 20 pages of detailed grounds were drafted by counsel and cases where counsel's advice on the refusal was that there were very strong grounds for judicial review. Many refusals have been received saying that the merits are not made out. Some of these appear to be importing the merits test for controlled legal representation into the assessment of applications for help at the initial "legal help" stage. A detailed assessment of merits is the job of the legal representative who deals with the case when exceptional funding is granted.

Six applications would extrapolate to 24 over the course of a year. Two hundred and seventy applications would extrapolate to 1080 over the course of a year, a figure far short of the 7,000 predicted by the Government in the impact assessments prepared during the passage of the Legal Aid, Sentencing and Punishment of Offenders Act 2012.

An application for exceptional funding involves filling out a standard legal aid means form (some 21 pages – see http://www.justice.gov.uk/forms/legal-aid-agency/civil-forms/eligibility-and-means-assessment# and a form dealing with the merits (some 14 pages – see http://www.justice.gov.uk/downloads/forms/legal-aid/civil-forms/civapp1-version-15-april-2013.pdf) as well as the Exceptional funding form – a further 14 pages – see http://www.justice.gov.uk/downloads/forms/legal-aid/civil-forms/ecf1.pdf)

We are in danger of a vicious downward spiral, insofar as it is possible to spiral downward from six granted applications. The more it is perceived that applications will not be granted, the more difficult it will become to find those willing to take the time to fill in over 60 pages of forms, often, given the nature of these cases, with clients unable to work quickly and who are distressed and not easy to work with, with no hope of remuneration if the applications, and no hope of anything on top of the ordinary fixed fee for doing the case if it succeeds.

Numerous times during the debates on the Legal Aid, Sentencing and Punishment of Offenders Act 2012 it was suggested that the solution to particular problem posed was that it would receive exceptional funding. That has not happened. Those who voted for provisions of the Bill only on the basis that they would be tempered by grants of exceptional funding, did so in error. That error is now manifest. Any such person should now be urging the Lord Chancellor to exercise his powers under section 9(2) of the Act to bring cases back within scope.

The scope of legal aid

We have seen restrictive interpretations applied to the scope of legal aid. It took the threat of a judicial review to change the decision that challenges to removal of a person seeking asylum to a "safe third country" were within the scope of legal aid. Such cases have in the past included the case of *MA, BT ,DA v UK* Case C-648/11, decided by the UK Courts and subsequently by the Court of Justice of the European Union on 6 June 2013, which concerned the unlawful transfer of a child to Italy, a country in which she had been street prostitution. Numerous third country cases have been about the question of whether a person returned to another State would be at risk of onward *refoulement* back to the country of origin.

There has been similar confusion as to whether judicial review of the Tribunal remains in scope. There are fears that the most restrictive interpretation is the one to be preferred.

Practitioner behaviour

In the immigration (asylum) category a far greater number of contracts were awarded following the 2013 tender than was the case following the 2010 tender. This was because of the system introduced in the 2013 tender of bidding in lots for the number of controlled work case starts each provider would be awarded[1]. As was anticipated, by representative bodies such as ILPA if not by the erstwhile Legal Services Commission, a large number of providers ended up each with

[1] Case starts, or 'matter starts' in the Legal Aid Agency terminology, are the fixed number of initial application and Tribunal appeal cases a legal aid provider is entitled to start in each contract year. These cases represent a minimum guaranteed income, though providers are not always paid for all the work they so on these cases. Since the introduction of fixed fees, providers are not paid for all the time they spend working on these cases unless their 'profit costs' amount to more than three times the fixed fee and the Legal Aid Agency assesses that all time working on the case was in its view justified. On appeals to the Upper Tribunal, as explained in the consultation paper, the providers' costs are at risk until permission is granted.

relatively small contracts, a small allocation of controlled work case starts. In London and Manchester for example all providers were limited to 100 matter starts for non-detained cases, regardless of their capacity. While bail and trafficking cases remain nominally in scope, as do cases involving survivors of domestic violence and exceptional cases under section 10 of the Legal Aid, Sentencing and Punishment of Offenders Act 2013, it is difficult to envisage a provider trying to eke out 100 matter starts preferring those cases paid on a fixed fee basis to an asylum case so large and so complex that it will reach the 'escape' threshold (where the work done is three times that nominally represented by the fixed fee) and be remunerated at an hourly rate.

Separated children

During the passage of the Legal Aid, Sentencing and Punishment of Offenders Bill, the then Minister, Mr Djanogly, suggested that social workers could be exempt from regulation by the Office of the Immigration Services Commissioner and could then give advice to the children. ILPA was among those protesting at this notion. Representatives of ILPA, of the Local Government Association, of the Office of the Immigration Services Commissioner and of other NGOs met Ministry of Justice and Home Office officials to discuss Mr Djanogly MP's suggestion that social workers could assist these children on 1 October 2012. The agreed note of the meeting, produced by the Home Office, records the Association of Local Government as saying:

> *… These are complex matters and involve very difficult legal concepts but they are only one component, one strand of what is going on in a child's life. This is why social workers ask experts to come in and to provide legal advice. …giving legal advice is not what social workers do. …Social workers are not qualified to complete that form. Conflicts of interest arise. …There is a question of the independence of the social worker, of the need to act in the best interests of the child. Legal advice is needed and that is not the role of the social worker, there are practice issues. There is also a risk that local authorities will face legal challenges if poor advice is given."*

The Office of the Immigration Services Commissioner said in its 15 October 2012 letter subsequent to the meeting

> *Whether the social workers become covered by the OISC regulatory scheme via Ministerial Order or direct regulation, please note that under Sch. 5 paragraph 3 (3) of the Act, they will still have to comply with the Commissioner's Code of Standards. The requirements of the Code include:*
>
> - *Professional Indemnity Insurance*
> - *Continuous Professional Development*
> - *Acting the Best Interests of the Client*
> - *Not acting where there is a potential conflict of interests*
>
> *The Commissioner will be required to take regulatory action against those social work advisers that are found to be failing. This may include seeking to have individuals excluded from continuing to give immigration advice and services.*

Subsequently the notion of social workers giving advice was, unsurprisingly, dropped. At the All Party Parliamentary Group on Legal Aid in 22 January 2013 ILPA urged Lord McNally to bring these children back within the scope of legal aid. This, by a letter of 12 February 2013***, he declined to do. Thus local authorities are being left to foot the bill. Section 22(3) of the Children Act 1989 imposes an obligation to ensure that the child receives legal advice and representation:

> *"22…(3) It shall be the duty of a local authority looking after any child—*
>
> *(a) to safeguard and promote his welfare; and*
>
> *(b)to make such use of services available for children cared for by their own parents as appears to the authority reasonable in his case. "*

The obligation to meet costs in its turn gives rise to conflicts of interest, while a failure to discharge the obligation may lead to an action in negligence.. Local authorities pay private rates, which are higher than legal aid rates, and receive no additional funds to meet these costs although at the time of the passage of the Act it was not envisaged that they should have to meet them. These children should speedily be brought back within the scope of legal aid, not least to ensure that overall expenditure is reduced.

Summary of existing changes

In the immigration and asylum field, those whose cases were removed from the scope of legal aid by the Legal Aid, Sentencing and Punishment of Offenders Act 2012 and indeed some who remain within scope are being denied access to justice.

TRANSFORMING LEGAL AID

Nine days after the legal aid provisions of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 came into force on April Fool's Day, the *Transforming Legal Aid* consultation was published. It proposes cuts to both civil and criminal legal aid including in areas that Government expressly preserved within scope under the Act such as challenges to detention and bail and that will affect persons for whom parliament fought to retain legal aid (and won) – such as the trafficked, and survivors of domestic violence. Proposed cuts to civil legal aid have been the subject of criticism from barristers who act on behalf of the Government, from judges, from local authorities from the Church of England and others[2] because the results of the proposed changes would be that persons who have a good case with excellent prospects of success will be

- unable to bring that case because they cannot pay
- unable to find a legal aid lawyer to bring the case even if they are eligible for legal aid.

The main proposals which would further limit access to justice are:

- a residence test for civil legal aid claimants;
- changes to the scope of prison law funded by legal aid;
- amending the civil merits test excluding cases with less than a 50% chance of success
- changes to the way lawyers are paid that will reduce the chances of being able to find a legal aid lawyer to bring certain types of case, especially for judicial review.

This is not an immigration problem or even a legal aid problem. It is a problem of access to justice, of equality of arms, of holding the State to account.

The residence test

It is proposed that no one get civil legal aid, in any area of law, unless they are "lawfully resident" in the UK (etc.) at the date of the application for civil legal aid; and are or have been "lawfully resident" in the UK (etc.) continuously for 12 months at any time before that date. Legal aid lawyers will have to check eligibility when a person asks for their help. Those who will be excluded from legal aid under the proposals will include:

- all babies under 12 months old including victims of child abuse or neglect;
- parents involved in care proceedings who do not have 12 months lawful residence;
- British citizens who cannot prove their status within the time frame in which they need help (e.g. because they have no passport, or their papers are in the house with a violent partner);

[2] For all their, and a selection of other, responses see http://www.ilpa.org.uk/resource/18078/other-organisations-responses-to-transforming-legal-aid-june-2013

- persons brought to the UK as children, some of whom are still children, some of whom are in their 50s or 60s and unaware that their country of origin's independence from the British empire has affected their immigration status;
- anyone outside the UK, including those challenging the UK for unlawful killing, torture etc.
- those facing removal or deportation whose challenges are based on rights to private and family life, rather than asylum claims, including trafficked persons and separated children. Some in this category will be domestic slaves because the Refugee Convention looks only to future risk;
- survivors of domestic violence;
- detainees including the mentally ill;
- those whose claims for asylum have failed, but who cannot be removed.

Matters which are likely to arise on which persons would not receive assistance:

- immigration cases
- family law cases including care proceedings;
- housing and community care cases: homelessness, support for trafficked persons, for those whose claims for asylum have failed but who cannot be removed and community care cases about support for children and families. Often in such cases the very issue to be decided is whether the person has an immigration status that renders them eligible for assistance.
- challenges to detention: applications for bail, judicial reviews of unlawful detention, habeas corpus applications; applications for damages for unlawful detention. Contrast the approach in the consultation to prison law cases where it is stated that cases going to questions of liberty or the unlawfulness of detention should continue to be funded;
- claims for damages for false imprisonment;
- national security cases before the Special Immigration Appeals Commission, including those of British citizens deprived of citizenship whilst outside the UK and excluded from re-entry;
- Age dispute cases;
- public law cases;
- actions against the police;
- actions against the Home Office for misfeasance in public office, etc.

These are areas where persons, isolated and at risk, are particularly vulnerable to the State acting in excess or abuse of its powers. In these areas the rule of law is always under pressure.

Andrei

Andrei is from Lithuania. He came to the UK to find work after Lithuania joined the EU. A man offered him labouring work. He accepted the job, and provided his passport to prove he was eligible to work. It was taken. He was forced to live in a shed with several other men, with no electricity or plumbing, and was taken once a week to a motorway service station to shower. He was not paid and was told that he owed his captors money for rent and food. If he complained, he was slapped and hit. Eventually Andrei escaped and got help from the police, but he had no place to stay. The police told him to see a solicitor who could help him get homelessness assistance from the local authority, but the local authority did not consider that they were under any obligation to help. Andrei got assistance from housing solicitors and the local authority found him a place to stay. Andrei did not have identification and could not prove where he was from or when he entered the UK.

Na

Na came to the UK on a visitor's visa. She and her British husband were settled in Thailand with their three year old British son. They came to the UK for a visit in 2011 but while in the UK their son was diagnosed with severe learning difficulties and autism. They decided they should remain for his welfare. Na did not want to leave her son as she is his main carer and he needs constant attention. Her husband is physically disabled and could not take on the role of primary carer. Na submitted an application in 2012 for leave to remain as a spouse on a discretionary basis. She had no permission to work or claim benefits. Her husband

was on disability benefits. The couple could not afford to pay the application fee of £550. The application was rejected twice for non-payment of a fee. There was no right of appeal against this decision, so Na's solicitor issued a claim for judicial review. Treasury solicitors said they were waiting instructions from the Home Office and so needed more time. Two months after issue of proceedings they responded, arguing that claim should await the outcome in another pending case about fees. Over a month later a judge granted permission for judicial review saying there was no doubt permission should be granted, and a stay was not justified by speculating on the outcome of an appeal, of which Secretary of State had given "scant details". He urged the Secretary of State to reconsider the case "to save costs and human anguish". He said the fee structure needed to recognise exceptional cases and "if ever there was a worthy case - this is it". The Home Office did not settle the case until two weeks before a full hearing. They agreed to reconsider Na's application without requiring a fee, and the claim for judicial review was withdrawn.

Na was forced into making a claim as she had no other remedy. She had to wait for over a year to get a decision on the case. In that time her father died and she was unable to go to his funeral. Na had not had 12 months lawful leave and indeed when her application was rejected twice she no longer had lawful leave to remain. The Home Office delayed the case throughout. The months up to the point of permission involved correspondence with the court and Treasury solicitors, advice to Na and a response to the Home Office defence, as well as the work undertaken issuing the claim. Na and her husband had no means to pay for advice privately. The Home Office has now made a decision to grant Na leave to remain and will pay Na's legal costs, reimbursing the legal aid fund.

Case of P

P came to the UK in 1971 as a child to join his mother, when his country was still a British colony. He has lived in the UK for 41 years. His elderly mother and sisters are still in the UK, and he has British-born adult children, and grandchildren, with whom he is close touch. Sentenced to a year in prison he has been held under immigration act powers following completion of his sentence pending consideration of his deportation. It will fall to his family to evidence residence so that a bail application can be made.

Case of A

A had been in the UK for 13 years. She has severe learning disabilities and is dependent on her sister, a British citizen. When she had the opportunity, A's sister tried to resolve A's immigration status but the case was very badly handled and A was left without leave to remain. Access to healthcare was being denied on the basis of her immigration status. This was unlawful because A was pregnant and requires antenatal care, which is seen as immediately necessary treatment. Legal aid paid for a challenge to the unlawful denial of treatment ensuring that the baby was not delivered at home with no medical support, that A received the medical treatment to which she was entitled & that her health & that of her baby were not put at risk.

Asylum-seeker exception

It is proposed that asylum-seekers be exempt from the residence test. An asylum-seeker whose claim is rejected who has no further rights of appeal will cease to qualify for legal aid and funding will cease. Only where a fresh claim for asylum has been 'made' would they (again) benefit from the exception. There is no clarity as to whether they qualify for legal aid to make that fresh claim.

On grant of leave to remain although on-going civil legal aid funding will continue, the exception will no longer apply. The 12-month lawful residence test will apply to any new application for funding. This violates Article 16 of the Refugee Convention which requires refugees have access to the courts, including access to free legal assistance, on the same terms as nationals.

The checks will present difficulties for those legal representatives who are not immigration specialists. The Home Office guidance for employers on preventing illegal working, which is concerned with verifying immigration status, runs to 89 pages and still employers rely on lawyers to help them interpret it. Does anyone but an immigration lawyer, when told a person's father was born on a ship on the high seas of the Pacific Ocean just south of India in 1943 ask where the ship registered and whether the parents were married and then pronounce on their nationality at

birth? Does anyone but an immigration lawyer go on to ask whether they have subsequently lost that nationality? The risks of British citizens being turned away by lawyers not confident of pronouncing on their nationality, and of discrimination, are high.

***OOO & ors* [2011] EWHC 1246 (QB)**
This case which identified and addressed the duty on the police, under Article 4 of the European Convention on Human Rights, to investigate credible allegations of trafficking into domestic servitude. The claimants succeeded in establishing that the police had violated their Article 4 (freedom from slavery and forced labour) rights by failing to investigate their allegations. At the time of the proceedings the *OOO & ors* claimants were a mixture of those who were still seeking asylum 'OOO' herself who had status by the time she applied for funding but who had had it for less than a year. Thus all of these claimants, other than OOO would have been eligible for funding. 'OOO' would have been excluded[3].

Case of Linda
Linda is a Zimbabwean national. She was a student in the UK. Her studies finished but because of the situation in Zimbabwe in 2008 and her activities in the UK, she claimed asylum. Her asylum application was refused, as was her appeal, the immigration judge finding that she had only got involved in opposition groups to 'manufacture' an asylum claim and also not to be at risk because of her low profile. Because she was still fearful for her life in Zimbabwe, Linda did not return voluntarily to Zimbabwe. The Home Office was not forcibly removing failed asylum applicants to Zimbabwe. Linda remained involved in politics.. In mid-2012, the Supreme Court gave judgment in *RT (Zimbabwe)* [2012] UKSC 38 which looked at the meaning of the freedom to hold and express political opinion and found that asylum applicants returned to Zimbabwe would be asked to demonstrate their loyalty to Zanu-PF; on pain of torture and death. Linda obtained advice funded by legal aid as to the strength of a fresh asylum claim and was represented to make such a claim. It was accepted as a fresh claim. In 2012 Linda was recognised as a refugee. She now has a place at university to study social work and continues all her political involvement.

Cuts to legal aid for prisoners

Legal aid for prisoners is now part of criminal legal aid. The proposal to reduce to 400 (large) national providers of criminal legal aid would knock out specialist prison law firms. The proposed cuts to the scope of prison legal aid, to narrow such legal aid to cases going directly to liberty or the lawfulness of detention, will affect foreign national prisoners and ex-offenders held in prison at the end of their criminal sentence under immigration act powers including those with mental health problems. The Government has some four times in the last two years been found guilty of breaches of Article 3 of the European Convention on Human Rights (the prohibition on torture, inhuman or degrading treatment or punishment) for its treatment of foreign national ex-offenders with mental health problems[4], although the worse problems have consistently occurred in immigration removal centres rather than with the prison estate. Those with a history of torture and ill treatment or otherwise in need of medical care and those whose treatment in prison is affected by a limited command of English will also be affected. Detention under immigration act powers is as a result of an administrative, not a judicial decision, is without limit of time, without any oversight of the courts; the detainee only appears before a court or tribunal if s/he instigates this and is not infrequently held for years. Access to rehabilitation programmes and/or planning for release is affected by presumptions that the person will be removed at the end of the sentence, however strong the case against this may be and however unlikely it is in any event that a decision on return will rapidly be resolved. Concerns about the risk of absconding affect prison categorisation. The ability to challenge all these will be lost.

[3] OOO confirmed that she is happy to be used as an example. A court order remains in place to protect her identity.
[4] See e.g. *R (BA) v Secretary of State for Home Department* [2011] EWHC 2748 (Admin) and *R (S) v Secretary of State for the Home Department* [2011] EWHC 2748 (Admin).

The then Chief Inspector of Prisons, Dame Anne Owers, said in her foreword to her Inspectorate's 2006 report Foreign National Prisoners: A thematic review:

> *The third essential building block of provision is to ensure that all foreign nationals are prepared for their eventual removal or release. All of them need to know, as early as possible in sentence, whether or not it is proposed to deport or remove them. They need to have access to appropriate regimes: not only to reduce the risk of reoffending… but also because safety, security and decency within prisons depend upon prisoners having access to purposeful activity.*

Safety, security and decency are prime concerns for any prison governor. There is no indication anywhere in the consultation paper that the implications of the proposals for the safety, security and decency of prisons have been taken into account.

Is it all about the money?

What of cuts in payment to lawyers? In the civil field, this is not about what lawyers take home at the end of the day. Lawyers will get out of legal aid, partly or wholly, either into private work or into a different job (the technicalities of why the proposed funding will not retain lawyers are addressed in our response to the consultation). What is at stake is not those lawyers, but an area of legal work. The clients cannot get out. Immigration is (for good reason) a restricted area, where those giving immigration advice in the course of a business, whether or not for profit, commit a criminal offence unless they are solicitors, barristers, legal executives and those regulated by the Office of the Immigration Services Commissioner. So aside MPs' caseworkers, who are not treated as giving advice in the course of a business, there will be few sources of free help. As to paying for lawyers, persons with no entitlement to work and no benefits or very low wages have few options and the risk of them and their family members being exploited are high.

Judicial review

We highlight the proposal that applications for judicial review will be at the lawyers' risk, so that the lawyer only gets paid if permission for judicial review is given. We have come a very long way from the Ministry of Justice's statement in its 2011 consultation paper *Proposals for the reform of legal aid in England and Wales*

> *"4.16 In our view, proceedings where the litigant is seeking to hold the state to account by judicial review are important, because these cases are the means by which individual citizens can seek to check the exercise of executive power by appeal to the judiciary. These proceedings therefore represent a crucial way of ensuring that state power is exercised responsibly."*

The consultation paper acknowledges that cases settle in circumstances where the applicant achieves all that would have been achieved had a judicial review been successful. The conclusion that this is not reason enough to abandon the proposal does not flow logically from the arguments set out in the consultation paper. See case studies in the annexe.

The approach puts all the power in the hands of the Home Office or other Government department. They will have no incentive to concede a point in the consultation paper's 1799 (4074-2275) cases that ended before an application for permission for judicial review had been made, if they consider that lawyers are likely to be reluctant to apply for permission because of fears over costs. It will undermine the use of pre-action protocols to sort matters out before they progress to court (and/or, now, the Upper Tribunal).

The proposed changes would lead to perverse, costly consequences:

- Claimants being in a hurry to get before a judge and get permission, rather than negotiating and application for permission having to be determined by a judge rather than the parties sorting matters out between themselves;

- Hearings before a judge concerned solely with awards of costs on a discretionary basis. It is not an efficient use of public money to have the court (or Tribunal) determine costs, rather than a staff member of the Legal Aid Agency.

The result is less likely to be saving than increased expenditure both as the result of increased bad behaviour by Government departments and because of the costs of administration.

Case of B

B was homeless and had spent several nights sleeping on the street. He suffered from mental health problems and attended the Medical Foundation for the Care of Victims of Torture for specialist counselling. A voluntary sector organisation assisted him to apply for section 4 support. That organisation, and the Medical Foundation, made repeated requests to the UK Border Agency for B's application to be treated as urgent because of their concerns about his health. However, he had been waiting for over six weeks for the application to be processed and the UK Border Agency refused to say when this would happen. Legal aid lawyers were instructed. They got in touch with the UK Border Agency and explained that they were instructed to commence judicial review proceedings. Before the day was out the UK Border Agency got in touch with the lawyers to advise that they had now granted B section 4 support.

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 waiting for the UK Border Agency's decision on whether it would accept 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 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.

Borderline cases

It is proposed not to fund cases where prospects of success are assessed as borderline. The cases funded under this head are identified as cases of particular importance which are likely to involve substantial injustice or suffering[5]. They include cases of significant wider public interest/overwhelming importance to the individual and cases involving a breach of human rights.

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[5] *Civil Legal Aid (Merits Criteria) Regulations 2013, SI 2013/104.*