

**ILPA note for the Home Office National Asylum Stakeholder Forum Support Sub Group, July 2017**

**Difficulties obtaining evidence of entitlement to asylum support and their impact on asylum applicants' access to legal aid**

**Summary**

Legal practitioners are experiencing increasing difficulties in obtaining recent evidence of asylum support from the Home Office on behalf of their clients, who need to provide recent evidence of their financial means for their entitlement to legal aid to be assessed.

This is causing difficulty and delay for asylum applicants in accessing legal aid for advice and representation in their protection claims. It is also leading to case management difficulties at the First-tier Tribunal (Immigration and Asylum Chamber).

This note explains the context in which Home Office confirmation of asylum support is required for legal aid purposes and the problems experienced by legal practitioners in their contact with the Home Office. It also makes some suggestions of how these can be resolved by the Home Office.

**Access to legal aid**

Under the Civil Legal Aid (Financial Resources and Payment for Services) Regulations 2013 (SI 2013/480), the Legal Aid Agency is required to determine whether a person qualifies for legal aid by undertaking an assessment of their income and capital (known as the 'means test'). This responsibility is delegated by the Legal Aid Agency to legal representatives holding legal aid contracts who must comply with Legal Aid Agency requirements for assessing the financial eligibility of clients for legal aid. Separate assessments must be conducted when legal aid is provided under Legal Help (legal advice prior to a Home Office decision) and when legal aid is provided under Controlled Legal Representation (legal advice and representation for an appeal).

People who are in receipt of support under section 4 or section 95 of the Immigration and Asylum Act 1999 are deemed to meet the eligibility criteria for legal aid. To demonstrate this, they must provide written confirmation of their asylum support from the Home Office and this written evidence must be less than six months old. If they are not able to provide this qualifying evidence, legal representatives cannot sign them up for advice and representation under their legal aid contract because they do not have the evidence necessary to satisfy the Legal Aid Agency that it should meet the costs of the case.

**Practical difficulties obtaining evidence of asylum support from the Home Office**

The Home Office used to issue letters every six months to those receiving support under section 95 or section 4 of the Immigration and Asylum Act 1999 to confirm their ongoing entitlement to this support. This practice ceased and the Home Office now only issues a letter confirming a person's support entitlement when the person is first provided with asylum support under these provisions or where there is a change of circumstances, though not necessarily a change of address. Legal practitioners now need to get in touch with the Home Office when up-to-date written evidence of a person's entitlement to asylum support is required for the legal aid financial eligibility assessment for their client to be able to access advice under legal aid.

Many ILPA members have reported that asylum applicants face difficulties and delays in obtaining letters from the Home Office providing confirmation that they are in receipt of asylum support, even when they are assisted in getting in touch with the Home Office by the legal representative or advice by organisations. This has been a problem over at least the last year.

This is a problem that has been experienced by legal practitioners and their clients across the country. ILPA has so far received reports of difficulties from members in London, Manchester, Nottingham, Leeds, South Yorkshire, North East of England and the South West. The problem is widespread. For example, Greater Manchester Immigration Aid Unit advises that it is waiting for confirmation of financial eligibility for legal aid in 144 of the 1,100 live legal aid matters it has open.

Another lawyer gives details of a small sample of their cases where evidence of means from the Home Office remains outstanding to illustrate concerns, highlighting the delays of between one and seven months and stating that “there is no one to speak to and reminder letters are ignored”:

<i>Outstanding cases</i>	<i>Date first letter was sent requesting evidence of means</i>
[references supplied]	24/10/2016
	06/12/2016
	28/02/2017
	13/03/2017
	24/03/2017
	21/05/2017
	25/05/2017

A practitioner with a busy caseload in a different area of the country reports that they have only had one response to a request for confirmation of asylum support in the last two months. Another practitioner states: ‘I have not had a case when I have not experienced this problem’.

Email requests to the asylum support casework team made via Migrant Help UK using the correct correspondence address: [ASCORespondence@migranthelpuk.org](mailto:ASCORespondence@migranthelpuk.org) frequently receive no response from the Home Office, including where follow up enquiries are made.

### Example 1

*On 06 January 2017, the legal representative gets in touch with the asylum support casework team by telephone to obtain confirmation that their client, a young torture survivor, is in receipt of asylum support so that they can advise in respect of the client’s disability and accommodation needs. As their client is supported in initial accommodation, they had no documentation that would satisfy the Legal Aid Agency for the purpose of granting legal aid. The representative is told that the Home Office cannot confirm over the telephone and that it has to prioritise matters on the telephone line because it is for destitute clients. The legal representative explains why the issue is urgent and important but is told by the Home Office caseworker that they are under clear instructions not to deal with such requests. The legal representative explains that no one has replied to the ASCORespondence email address for over a month in another case despite numerous follow up emails. The Home Office case worker confirms that the applicant has an ongoing application for asylum support and is in receipt of emergency accommodation but will not state the date when support began or whether the client has been supported for the relevant Legal Aid Agency calculation period of one month, and so the information does not assist for the purpose of legal aid. In any event, the caseworker states that the representative may not rely on what they say and must write to the address given for written confirmation.*

On the same day, 06 January 2017, the legal representative sends a letter to the address given: UK Visas and Immigration, LSE Team, Long Corridor, 14 Floor, Lunar House, 40 Wellesley Road, Croydon, CR9 2BY. They also send the letter by fax: 0870 336 9627.

On 31 January 2017, the legal representative sends a further letter by post, fax and email explaining that the inaction is having a detrimental on their ability to provide the client with urgent legal aid advice in respect of the client's disability and asking for the matter to be treated as a complaint.

The Home Office has neither responded to the request for confirmation of asylum support nor to the request that the matter be dealt with as a complaint.

### Example 2

I sent a letter by post and fax and email (to the ASCorrespondence email address) on 13 December 2016, a chaser email on 19 December 2016, another chaser by post and fax and email on 31 January 2017, but we never received any response, and this was in respect of highly vulnerable client.

### Example 3

- 24/01/2017 Legal representative gets in touch with Home Office asylum support casework team by email ([ASCorrespondence@migranthelpuk.org](mailto:ASCorrespondence@migranthelpuk.org)) for confirmation of asylum support.
- 15/02/2017 Legal representative contacts client to identify if confirmation has been received. As no response has been received, a follow-up email is sent to the Home Office.
- 14/03/2017 Legal representative sends further email to the Home Office following up request.
- 08/05/2017 NASS finally sends written confirmation of asylum support.

### Example 4

- 19/01/2017 Legal representative contacts Home Office asylum support casework team by email ([ASCorrespondence@migranthelpuk.org](mailto:ASCorrespondence@migranthelpuk.org)) requesting that confirmation of asylum support is sent to the applicant.
- 21/04/2017 No response has been received. Migrant Help advises to resend request.
- 22/04/2017 Client sends email request to the Home Office for information.
- 26/04/2017 The legal representative emails the Home Office again with a copy of the original request.
- 04/05/2017 Migrant Help provides confirmation that all correspondence on relevant dates has been forwarded to the Home Office
- 25/05/2017 No response is received. The British Red Cross telephones and emails Home Office.
- 16/06/2017 There continues to be no response from the Home Office.

### Example 5

The legal representative wrote to the Home Office via the Migrant Help email: [ASCorrespondence@migranthelpuk.org](mailto:ASCorrespondence@migranthelpuk.org) in January 2017, February 2017 and May 2017 requesting evidence of means for their client. They got no response to their three letters.

They called Migrant Help twice in June 2017 and spoke to the same supervisor each time who informed the legal representative that they have no direct contact with the Home Office except via the same email address to which representatives write. They agreed to send an email to the Home Office from Migrant Help asking them to respond directly to Migrant Help as soon as possible. Migrant Help also confirmed

*that all the letters showed up on the system. There was still no response from the Home Office. The legal representative called the Home Office but was informed that the only way to communicate with it about asylum support is via Migrant Help. They have still not been able to obtain evidence of means for this client.*

Practitioners have had similar difficulty obtaining responses when they have tried to get in touch with section 95 and section 4 casework teams directly.

One practitioner reports that they have tried the email addresses provided without success and that the only way in which they can get a response is by resending the same fax to the relevant regional asylum support team every day and even then they may not get a reply.

Other members have reported that the matters are not progressed even where they have made a formal complaint following a lack of response from the Home Office asylum support team:

*“We are having the same problem. Every so often there is a spurt of letters that arrive and then nothing for months. We have tried complaining and got nowhere so at a bit of a dead end now.”*

*“I managed to get a response to a complaint where I advised the next step if we received no response was to send all clients to their MPs in order to get help to evidence their NASS. A manager actioned and provided evidence for around 20 older cases within a week. Unfortunately this has not continued and we are now not getting any response to emails even when we are attaching complaints. We are now getting passed from one number to another, all of whom advise that we should not be ringing on that number and asking us to write in. When we advise that we have done and we have received no response we usually get the reply 'we are trying to sort people's money out and you calling is preventing that'.”*

One practitioner has been given varying reasons for the lack of response to requests at different times over the previous year:

- 1) UKVI department had moved from Leeds to Croydon;
- 2) UKVI moved from Croydon to Dover;
- 3) UKVI have not received our letters;
- 4) UKVI haven't received our faxes;
- 5) UKVI have a backlog and they are responding to clients that request them first.

Members also report that in cases where there has been significant delay in responding, the Home Office subsequently writes to seek an updated form of authority to confirm that the legal representative is still acting, delaying matters further. The Home Office could avoid delay in even those cases where it was unable to locate a form of authority, by simply sending a standard letter confirming asylum support entitlement directly to the applicant.

Whilst there have been difficulties and delays for applicants supported by NASS in obtaining confirmation of this at all stages of the asylum process, the issue becomes even more acute at the appeal stage of the asylum process. This is because of the short timescales involved in preparing for an asylum appeal hearing and because the original letter issued by the Home Office when asylum support was first granted will usually be out of date for the purposes of assessing eligibility for Controlled Legal Representation for the appeal as the letter must be less than six months old to qualify as evidence for the legal aid means assessment.

The difficulties continue even where immigration judges have issued directions at the Case Management Review Hearing to the Home Office Presenting Officer ordering the Home Office to provide the information required for legal aid to be granted so that the applicant may be represented for the appeal. The Greater Manchester Immigration Aid Unit has found in some cases that even where directions have been issued to the Home Office at multiple successive hearings and even when the immigration judge has threatened the Home Office with a wasted costs order, the Home Office has not provided the confirmation requested. This has also been experienced by other representatives. Another practitioner reports:

*We experience great difficulties with obtaining confirmation of NASS. It usually takes anywhere from 3 – 6 months to hear from NASS. In one case it was a new client who referred to us at appeal stage. We couldn't open a file without NASS confirmation. The appeal remains adjourned because of this. The Judge issued directions to Home Office to provide this information twice. We are still waiting for the Home Office to comply with the directions.*

### **Impact of Home Office delays**

Asylum applicants cannot be signed up for legal aid if they are unable to provide recent evidence from the Home Office of their asylum support. This has a damaging effect on their ability to access legal advice and representation.

It means that there are not funds) to pay for disbursements such as an interpreter to take instructions from a client, for relevant documents to be translated or for expert or medical reports to be obtained.

*I have an asylum client who we took on in late November 16. We first chased for NASS evidence with the Home Office on 2<sup>nd</sup> December 2016 and have continuously chased it but still have nothing. Our client is understandably anxious to receive advice/give instructions but we cannot incur costs with interpreters etc. because of this problem.*

*I have another client who needs help with further submissions, she is extremely vulnerable and is now facing deportation. I cannot obtain medical evidence or prepare her claim because I do not have any funding for Legal Help in place.*

Delays also mean that any legal advice or representation that a legal representative may provide to their client risk not being funded by the Legal Aid Agency, with the effect that clients may face difficulty getting lawyers able to take on their case. One practitioner reported that their firm had lost money because the Legal Aid Agency would not fund their cases following costs assessment at the end of the case as no evidence of means was on the file and they had, for example, only sent reminder letters to the Home Office twice in a seven-month period.

At the appeal stage, legal practitioners have had to ask the First-tier Tribunal to adjourn appeals where the Home Office has not provided evidence of asylum support so that legal aid may be granted and the applicant represented in their appeal. There is no guarantee, however, that an immigration judge will agree to an adjournment request, causing anxiety and distress to asylum applicants who do not know whether they will have an opportunity to put their case fully or be represented at their appeal despite being entitled to such representation. There is a risk that their hearing may go ahead without the case being funded or fully prepared, putting applicants' asylum claims in jeopardy through no fault of their own.

The issue is of further cause for concern because the Home Office is the other party to the appeal but appears to be preventing appellants from accessing legal advice and representation to present their case by failing to provide the confirmation of asylum support required for legal aid to be granted.

The difficulties and delays in obtaining confirmation from the Home Office that asylum support is being provided is leading to wasted court time where adjournments of appeal hearings need to be requested and further Case Management Review Hearings must be held to follow up judicial directions and Home Office inaction. The Home Office also risks the expense of wasted costs orders being made against it by the First-tier Tribunal.

Failure on the part of the Home Office to respond promptly to requests for confirmation of asylum support adds to the administrative demands on Migrant Help and the Home Office itself, resulting in the need to send repeated enquiries to obtain a response. Practitioners who do not receive responses need to resort to making subject access requests for the information. Responding to such requests is administratively more cumbersome for the Home Office than responding to the original enquiry.

## **Recommendations**

1. It is important that the Home Office recognises that the failure to provide timely a timely response to requests for a letter confirming an applicant's entitlement to asylum support has such damaging consequences for asylum applicants in accessing the legal advice and representation to which they are entitled as well as for the proper case management of asylum appeals.
2. The Home Office needs to be able to provide confirmation of asylum support promptly, including by return by email or facsimile where confirmation is sought by telephone in cases of particular urgency. Legal representatives may need to provide urgent advice to clients who may otherwise become street homeless, provision must be made to ensure an immediate response to requests for confirmation of asylum support in such cases.
3. Given the harmful impact of current Home Office delays in providing such confirmation, it is important that the source or sources of difficulties in providing a timely response to requests for confirmation of asylum support are identified and addressed with urgency and that the necessary processes are put in place to ensure that legal practitioners receive prompt responses to requests for written confirmation both for the future and in those cases that remain outstanding.
4. The Home Office should also consider any measures that could be taken to reduce the need for legal practitioners to contact the Home Office for letters confirming asylum support. For example, it may be more cost-effective to revert to the former position where standard letters were sent to supported applicants every six months. Whilst this would not eliminate the need for legal representatives to get in touch with the Home Office, it would reduce the need for this and thus the administrative demands on both the Home Office and legal representatives.
5. A further measure that could be considered by the Home Office to address the appeal stage would be routinely to include a statement confirming a person's entitlement to asylum support when it issues reasons for refusal letters and as part of its appeal bundles. This

statement would need to confirm that the applicant is in receipt of asylum support and give the date when that support started.

6. There also needs to be a mechanism for legal representatives to escalate concerns about failure of casework staff to respond to communications as currently the only email address provided ([ASCORespondence@migranthelpuk.org](mailto:ASCORespondence@migranthelpuk.org)) is the address at which representatives are experiencing failures to respond.

**Immigration Law Practitioners' Association**  
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