



## Legal Aid 3 – Exemption from Fixed Fees & Exclusive Contracts

18<sup>th</sup> October 2007

This month has seen very significant changes to the way legal aid is provided in immigration and asylum cases in England and Wales. Although similar changes have been made in other areas of law, this information sheet is specifically about legal aid for immigration and asylum cases.

### Background

The “Legal Aid 2 – Fixed Fees” information sheet gives some background to legal aid changes. That background is not repeated here.

### Cases exempted from fixed fees

The changes this month introduce fixed fees for immigration and asylum cases. More information on fixed fees is provided by the “Legal Aid 2 – Fixed Fees” information sheet. The new fixed fees, however, do not apply to the following cases:

- where an asylum claim has been made before 1 October, and the ongoing work relates to that claim
- where a fresh asylum claim is made on or after 1 October, if the original asylum claim was made before 1 October
- non-asylum cases where the legal adviser started work on the case (as a legal aid case) before 1 October
- advice on the merits of making an application for reconsideration of a decision of the Asylum and Immigration Tribunal (AIT)
- reconsideration applications and any further work on the appeal before the AIT if the reconsideration application is granted
- bail applications
- where the legal adviser does no more than advise an individual about filling in forms – however, ordinarily legal aid is not available for such advice (legal aid may be available if completing the form raises a legal question)
- advice and applications for a Public Funded Certificate before the certificate is granted (this relates to certificated work – for a short explanation of what this is, see the “Legal Aid 1 – General” information sheet)
- initial advice about an asylum claim given by a legal adviser, who is no longer instructed when the asylum-seeker attends the Asylum Screening Unit (ASU)
- advice and representation for separated children seeking asylum (often referred to as unaccompanied asylum-seeking children)
- exceptional cases (see below)

Legal aid for these cases will be paid at hourly rates. Those hourly rates are the same as have applied since April 2001.

### Exceptional cases

These are cases to which the fixed fees would normally apply, but where the legal adviser has been required to spend so much time on the case that, if paid at the hourly rate, the adviser would be paid more than three times what would be paid under fixed fees.

### **ILPA information service**

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[www.ilpa.org.uk/infoservice.html](http://www.ilpa.org.uk/infoservice.html)

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In these circumstances, the legal adviser will be paid at the hourly rate rather than the fixed fee. However, if the time taken on the case paid at the hourly rate would be three times the fixed fee (or less), then the fee will be no more than the fixed fee.

### **Exclusive Contracts**

There are certain types of work, for which a legal adviser can ordinarily only do the work under legal aid if the adviser has a specific contract with the LSC to do that work. This is called an exclusive contract.

Exclusive contracts currently apply to:

- asylum cases in the ongoing asylum pilot at Solihull
- all asylum cases in the detained fast track processes operating at Oakington, Harmondsworth and Yarl's Wood
- the pilot of immigration advice by telephone for individuals held in police custody

The LSC has indicated that exclusive contracts may also be introduced for:

- providing information, advice and representation at the Asylum Screening Units (ASU)
- advice and representation for those detained for immigration reasons
- advice and representation for separated children (often called unaccompanied asylum-seeking children)

Exclusive contracts are expected in April 2008 for detained cases and cases of separated children.

There are limited circumstances where a legal adviser can do work to which exclusive contracts apply even though the adviser does not have one of these contracts. Those circumstances are:

- where the legal adviser was doing legal aid work on the specific case before that type of work became subject to exclusive contracts
- where another legal adviser, who does have one of these contracts, refers the case to the adviser (this may happen where that other legal adviser has insufficient capacity to deal with the particular case)
- where the individual is a close family member of an existing client of the legal adviser, and knowledge of the family member's case is relevant to the individual's case
- where the legal adviser has already done at least 5 hours legal aid work on the case (excluding time spent on travel and waiting)