

ILPA information sheet

Information sheets provide general information only, accurate as at the date of the information sheet. Law, policy and practice may change over time.

ILPA members listed in the directory at www.ilpa.org.uk provide legal advice on individual cases. ILPA does not do so.

The ILPA information service is funded by the Joseph Rowntree Charitable Trust.

An archive of information sheets is available at www.ilpa.org.uk/infoservice.html

Steve Symonds ILPA Legal Officer 020-7490 1553 steve.symonds@ilpa.org.uk

Immigration Law Practitioners' Association www.ilpa.org.uk 020-7251 8383 (t) 020-7251 8384 (f)

Legal Aid 10 – Consultation: Legal Advice Telephone Helpline

6th January 2011

This information sheet should be read with the “Legal Aid 8 – Consultation” information sheet. It provides information and ideas that may be useful for those intending to respond to the Legal Aid consultation. It is specifically concerned with the questions 7 to 11 of the consultation, which are concerned with “the Community Legal Advice Telephone Helpline”. It is helpful to include real examples when responding to the consultation.

Questions 7-11 – Community Legal Advice Telephone Helpline:

These five questions are generally concerned with whether the Government’s proposals to expand the use of telephone advice services in preference to face to face advice services should be adopted. In simple terms – should Legal Aid advice be provided over the telephone or should Legal Aid remain available by seeing an adviser at a face to face meeting?

The consultation document gives a short explanation of the Government’s proposals about the use of telephone advice – see paragraphs 4.270-4.283 (pages 82-84). The basic proposal is that anyone needing Legal Aid advice and assistance must look to obtain this by a telephone helpline. (This would involve a substantial expansion of the current limited Community Legal Advice telephone helpline.) This helpline would be the ‘single gateway’ to all civil (i.e. non-criminal law) Legal Aid. A caller to the helpline would speak to an operator. The operator would assess what legal problems the caller had and whether he or she was eligible for Legal Aid. The operator would discuss ways of getting further help. If the operator was satisfied the caller was qualified for Legal Aid and that the caller’s problems required specialist legal advice, the operator would transfer the call to a specialist adviser. The caller would then receive specialist advice from an adviser over the telephone. Only if the caller’s problems are assessed as sufficiently complex would a referral be made to allow the caller to receive face to face Legal Aid advice.

The Government explains the reasons for these proposals as being about providing a better and more cost-effective service for those who need legal advice, and specifically those who qualify for Legal Aid. The Government points out that seeking legal advice can be stressful, inconvenient and time consuming. It says that telephone advice is better because it can be accessed more easily, more quickly and at a time convenient to the person who needs the advice. There are several problems with the Government’s reasoning:

- Seeking legal advice can be stressful. However, this will often be because the problem for which the person needs legal advice is stressful. In these circumstances, people need access to an adviser whom they can be satisfied understands their concerns and can advise them well. That is more likely to be achieved at a face to face meeting.

- A major difficulty for callers and advisers is that in a telephone conversation it is often very difficult for one person to know whether the other person has properly understood them or they have understood the other person. Legal advice tends to be a relatively complex matter even in more straightforward cases – partly because the person who needs legal advice is usually not a lawyer and so may not know what is or is not relevant to tell the adviser.
- In many cases (certainly in many immigration cases), a face to face meeting is essential because it allows the person seeking advice to show the adviser the relevant papers. Often, it is by seeing these that the adviser is able to understand the nature of the problem, what are the relevant questions that he or she needs to ask and what the person seeking advice means by his or her answers (because these can be considered in the context of the papers).
- In many cases (including many asylum and immigration cases) a caller might be unwilling or unable to discuss sensitive and critical information over the telephone. A history of sexual abuse or torture, a physical condition such as AIDS/HIV or being gay are examples of things someone may not be prepared to talk about over the telephone. Other callers may be unable to make a call in private. However, it may seem to the adviser on a telephone call that the caller is free to talk about whatever they need to because the adviser cannot see that the caller is not alone or is not calling from a private place.
- In many asylum and some immigration cases an interpreter is needed. Telephone interpreting can be particularly expensive. Also, if the caller, the interpreter and the adviser are all talking to each other by telephone line, there is a much greater possibility that nobody will spot that the caller has not really understood what is being said to him or her. Many of the problems that cause people not to say things over the telephone that they might be able to say face to face are made worse if a telephone interpreter is also needed.
- A major problem is the risk of incorrect assessment by the operator or adviser of entitlement to Legal Aid or problems. This would mean that some people who are entitled to Legal Aid do not receive it; and others who are not entitled to it and do not need it having their time wasted (and at Legal Aid expense) by being referred unnecessarily. Of course, these are problems that face any gateway system. However, this means emphasises the importance that any gateway needs to avoid the sort of problems outlined above.

There is, therefore, a real risk that a telephone service simply prevents people from getting the legal advice and assistance which they need and to which they are entitled. That is not cost-effective, and in some cases may lead to people's problems becoming far more complicated, lasting much longer and ultimately becoming much more expensive to sort out.

Further information about two of these five questions is set out below.

Questions 7 & 8:

Question 7 asks whether you agree that the telephone helpline should be the single gateway to access civil (i.e. non-criminal law) Legal Aid advice and assistance.

Question 8 asks whether you agree that specialist advice for all areas of civil law, for which Legal Aid continues to be available (see the "Legal Aid 7" and "Legal Aid 8" information sheets), should be made available by the telephone helpline. It also asks whether you agree that, in some areas of civil law (it does not specify which), legal advice can be adequately provided by telephone.

This information sheet sets out several reasons why restricting people (at least initially) to seeking legal advice by telephone may exclude some people from the legal advice and assistance they need and to which they are entitled. Many people may not get past a single telephone gateway because they have difficulties communicating by telephone or the operator or adviser to whom they speak has too little information to properly understand the problems they have, including in cases where operators or advisers do not realise that they do not have enough information.