

What to expect from an Immigration Adviser

By Southwark Legal Advice

Funding your case – legal aid

Legal aid is always available for immigration cases that involve:

- asylum (protection from serious harm, including medical cases);
- detention;
- judicial review;
- domestic violence related cases where the victim was granted leave to enter or remain as the partner of a settled person (British citizen or person with indefinite stay), or has ceased to be a family member of an EEA national on the termination of a marriage or civil partnership which broke down due to domestic violence; and
- applications for leave to enter or remain where a competent authority (government-designated body) has decided that there are reasonable grounds for believing that the applicant is a victim of trafficking and there has been no decision that the person is not conclusively a victim of trafficking.

You can also apply to the Legal Aid Agency (LAA) for Exceptional Case Funding for other immigration cases, where the issues are sufficiently important (EG human rights private and/or family life cases) and the applicant could not realistically deal with the case themselves (EG because s/he is a child, an adult who lacks capacity, there is a language barrier, or simply that the issues are too factually and/or legally complex).

Legal aid will be brought back into scope for unaccompanied children, including those with no asylum case. We are currently waiting for legislation to pass which will make these changes. In the meantime, the government has advised those representing children in these circumstances to apply for exceptional case funding, on the understanding that these applications should be granted with little evidence needed.

Legal aid is always subject to means-testing and can only be provided where the merits of the case and the potential advantages of succeeding in the case are such as to justify funding. Your legal status in the UK does not presently affect your eligibility for legal aid

at all.

If you are being assisted under legal aid, then your adviser must usually continue to assist you until your case is concluded, unless these criteria cease to be met. If your application has been refused and there is a right to appeal but your adviser considers that legal aid funding must stop because your case has poor prospects of success, you **MUST** be advised of this decision and provided with a form to enable you to apply for a review of that decision to the LAA (this is called the CW4 form).

If you are being assisted under legal aid, your adviser should not request any money from you unless a particular Home Office application requires a fee to be paid by you. Legal aid should however cover other expenses such as for interpreters' and experts' fees, again subject to the funding being justified in the circumstances of the case. In judicial review and higher courts appeals the LAA can request a contribution towards your legal costs if your means assessment justifies that.

Funding your case – paying privately and other funding

If you are paying privately, your adviser will obviously be entitled to stop helping you if you have not paid or are unable to pay for her/his services. However, the adviser must give you realistic estimates as to the costs of each stage of your case.

If you feel that you have been treated unreasonably with regard to fees, e.g. if the fees charged are unreasonably high for the work that has been done, then you should complain to the adviser as soon as possible and, if that does not resolve the issue, consider a complaint to the relevant regulatory authority (see overleaf).

There is some limited advice and assistance available free of charge outside of the legal aid scheme, provided by Law Centres, Citizens Advice Bureaux and other not-for-profit organizations such as those listed in this leaflet, although these are targeted to people with certain characteristics, e.g. being resident in a particular area, and are often oversubscribed. If you are able to access these services, the adviser should clearly explain to you any limits on what they are able to do for you with the funding available.

What your adviser should do for you

At your first appointment your adviser should take your detailed instructions (with the assistance of an interpreter, if necessary) about your current circumstances and your immigration issues and advise you on:

- what options are available to you;
- the requirements of any potential application;
- whether your application is likely to succeed and/or what the potential difficulties with your application may be;
- whether the application should be made at all and if so, what evidence could assist/ support your application;
- whether there is a Home Office fee to pay and how much that fee currently is;
- details of the process for making the application;
- any deadline for making the application;
- details of how long the application is likely to take; and
- details of the possible outcomes including possible ways in which to challenge the decision if the outcome is negative.

Following your initial appointment with your adviser you should receive an initial advice letter confirming the details of your instructions to your adviser and the advice that you were given in your first appointment, you should usually receive this within two weeks of your initial appointment.

Your adviser should provide you with a copy of any written submissions and application forms that are sent to the Home Office on your behalf, and you should check these for errors. They should also provide you with a copy of any response that they receive from the Home Office. If you do not understand what any of these letters mean you should ask your adviser to explain them to you. Your adviser must make sure that you understand what is happening on your case and if you cannot understand their explanation in English they should arrange an appointment with an appropriate interpreter so that this can be explained to you in your own language.

Your adviser should also confirm the details of any important new instructions or advice that you are given and this should be done in writing.

Your adviser must keep you informed of any developments in your case. Even if nothing

is happening on your case, for example if everything has been submitted to the Home Office and you are now waiting for a decision, your adviser should still remain in regular contact with you. You should expect to receive a letter from them at least every three months. You should make sure that your adviser has your current contact details at all times because there may be a need to contact you urgently about your case.

Asylum Cases

If you have an asylum case then the adviser should usually draft a statement for approval and consider what background information might support the case. You should, as soon as possible, show your adviser all letters and documents that are given to you by the Home Office.

Your adviser should take the full details of your case and:

- explain the elements of the refugee definition, as contained in the Refugee Convention, and explain the requirements for being recognised as a refugee;
- explain what you should expect throughout the asylum process;
- assess the merits in your case and discuss the strengths and weaknesses of your claim with you;
- advise you as to what additional evidence would support your claim and discuss ways in which this evidence could be obtained; for example, if you have physical or mental signs of having been harmed, it could be crucial to your case to have a report by an independent medical expert; and
- inform you of the deadlines for sending any evidence or forms to the Home Office and tell you what steps they will be taking to ensure that the Home Office has all of the information that they need to consider your application before a decision is made on your claim.

The LAA only provides funding for an adviser to attend an asylum interview if the applicant is an unaccompanied child or if the applicant is particularly vulnerable, for example if they suffer from severe mental ill-health.

If you do not fall within these exceptions then your adviser will not get funding to attend your asylum interview with you. A request can be made 24 hours in advance of your interview for the interview to be tape recorded, if your adviser will not be

attending the interview then they should request that the interview be tape recorded. At the end of the interview, the Home Office caseworker should give you a copy of the tapes and they should be given to your adviser, along with a copy of the written interview record, as soon as possible.

Your adviser should read through the written interview record and advise you regarding any difficulties that arise as a consequence of the interview and take instructions on these.

If your case is refused

If your case is refused then your adviser should:

- explain to you why your application was refused;
- take instructions on the reasons for refusal, to obtain your response to the particular reasons why the Home Office has refused your application;
- explain any right to appeal or alternative method of challenging the decision (such as judicial review) if there is no right to appeal and the applicable time limits; and
- assess and advise you on the merits of any appeal.

If your application has been refused and there is a right to appeal but your adviser considers that legal aid funding must stop because your case has poor prospects of success, you **MUST** be advised of this decision and provided with a form to enable you to apply for a review of that decision to the LAA.

Appeals

If your adviser is assisting you in an appeal then they should:

- usually draft an appeal statement for you and for any other witnesses, which should be read back in a language that the person making the statement can understand;
- advise you further as to any additional evidence including expert evidence

which could strengthen your appeal and also consider any evidence that you provide to them;

- source any helpful background country evidence, if appropriate;
- send these documents to the Tribunal and the Home Office; and
- advise you as to what to expect at the Tribunal and the possible outcomes.

You should be told the outcome of your appeal promptly and in writing. If the appeal, or part of the appeal, is dismissed your adviser should also tell you the deadline for applying for permission to appeal against the Tribunal's decision.

It is possible for you to apply for permission to appeal the Tribunal's decision if it is decided against you and the Home Office can do the same if the appeal is decided in your favour. If your appeal is unsuccessful your adviser should assess and advise you as to the merits in applying for permission to appeal and, if funding is available, should assist you with this application.

If the appeal is unsuccessful and there are insufficient grounds for an application for permission to appeal against the decision, you should be advised of this in good time so that you can seek alternative advice (although in practice this may be difficult to do as the time limit is very short, although it may be possible to obtain a short extension if you have made every effort to apply as soon as possible).

Again, if your adviser considers that legal aid funding must stop because your case has poor prospects of success, you **MUST** be advised of this decision and provided with a form to enable you to apply for a review of that decision to the LAA.

Your adviser should promptly inform you of the outcome of any application for permission to appeal and if negative, advise you as to any further appeal rights. In addition, they should advise you as to the merits and procedure of lodging such an appeal and also confirm the deadline for doing so.

Judicial review and higher appeals

Judicial review is an alternative method of challenging immigration law decisions that do not carry the right to appeal. It is important to note that not all legal advisers are permitted to conduct judicial review or higher appeals work (appeals to the Court of Appeal or to the Supreme Court): OISC-regulated advisers (see overleaf) may not be

permitted to do so, depending on their level of regulation, but they should be aware of the circumstances in which judicial review might be available and the relevant time limit (a judicial review must be started promptly and not later than three months after the grounds for the review first arose).

The outcome of your case

If your case is ultimately unsuccessful then you should be advised as to any alternative application that could be made, the procedure for doing so, the merits of making such an application and the potential difficulties of such an application.

You should also be advised of the potential consequences for you if you choose to remain in the UK in spite of your case being unsuccessful.

You should, at least if you request this, also be advised about ways that you could leave the UK voluntarily, with or without financial assistance from the UK Government, and the consequences of choosing any of the options available. In certain circumstances you may be subject to a re-entry ban (meaning that you cannot return to the UK for a certain period). The length of this ban will depend on your circumstances and the circumstances surrounding your departure. Your adviser should provide you with this information.

If your case is successful, then you should be advised as to:

- the documentation that will be received;
- the practical effects of your status including eligibility for any travel document, entitlement to welfare benefits, entitlement to work and if appropriate family reunion;
- what application, if any, to make at the expiry of the leave; and
- any steps that may need to be taken before the expiry of the leave in order for you to be eligible to apply for an extension or indefinite leave, as appropriate.

Professional Conduct

To be an immigration adviser a person must be regulated either by the Solicitors

Regulatory Authority, Bar Council, Institute of Legal Executives and/or the Office of the Immigration Services Commissioner (OISC). It can be a criminal offence to offer immigration advice and assistance otherwise.

Your adviser is therefore a professional who has various professional duties including:

- a duty of confidentiality;
- a duty to always act with integrity and professionalism in their dealings with you and with others;
- a duty to ensure that her/his independence is not compromised;
- a duty to always act in your best interests;
- a duty to ensure that you are given key information at relevant times throughout your case, including realistic estimates of any fees to be charged; and
- a duty to ensure that they provide you with a good standard of service.

Complaints

If for any reason you are unhappy with the service that you are receiving from your adviser you should inform them of this as soon as possible; they will not be able to fix the problem if they are not aware of it.

If the problem continues, or if you feel that it would be more appropriate to do so, then you can make a formal complaint. Your adviser will, and must, have a formal complaints procedure and should inform you of this procedure at the start of your case; ordinarily this information should be included in the client care letter that you get at the beginning of your case. If you are unaware of their complaints procedure you should feel free to ask for this information, you can do so at any stage in your case. If you do not wish to make the complaint directly to your adviser, their supervisor or their organisation/firm directly then you can make the complaint directly to:

The Office of the Immigration Service Commissioner Complaints Team

5th floor

Counting House

53 Tooley Street

LONDON SE1 2QN

Telephone: 0845 000 0046

The information contained in this leaflet is correct at the time of printing in December 2019. Southwark Legal Advice Network cannot accept responsibility for any subsequent changes.

Southwark Legal Advice Network does not take any responsibility for advice received. In case of complaint about the advice received, please ask the advice provider for details of their complaints procedure. In the event that services are not available as advertised by the advice provider, or to order further copies of the leaflet, please contact on:

Southwark Legal Advice

Network Bermondsey CAB

8 Market Place Southwark Park Road

SE16 3UQ