

**Written evidence submitted by Ayesha Riaz
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Introduction

1) The author responding to this call for evidence is currently pursuing a PhD at Queen Mary University of London where she is researching the relationship between the British State and solicitors that assist asylum seekers in England. The author previously worked within the field of publicly funded immigration and asylum law for approximately seven and a half years, so she will be using her theoretical and practical knowledge to address how the Legal Aid, Sentencing and Punishment of Offenders Act (LASPO) 2012 has impacted on publicly funded immigration and asylum solicitors/caseworkers and asylum seekers.

Effectiveness of LASPO 2012 and Access to Justice: The Publicly Funded Immigration and Asylum Sector

a) Low Fees

2) As a result of LASPO 2012, there was a 10 per cent reduction (£279 million) from the civil legal aid fund.¹ Funding for the immigration and asylum sector decreased by £20 million.² A review from 2021 showed that there was an 85 per cent reduction in non-asylum immigration matters, and a 62 per cent reduction in full representation (following the implementation of LASPO 2012).³

¹ Terry McGuinness (2016) *Changes to Criminal Legal Aid, House of Commons Briefing Paper*, No. 6628, 11.

² Legal Action Group, *Reduction in Legal Aid Cases*, LAG News Blog <http://legalactiongroupnews.blogspot.com/>.

³ BID, 'Legal Advice in Immigration Detention: A 10-Year Review' (2021), 4, Available at: chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/http://hubble-live-assets.s3.amazonaws.com/biduk/redactor2_assets/files/1293/10_Years_of_Legal_Advice_Survey.pdf.

3) The fees paid to legal representatives is very low; as a consequence, this area has a very high turnover rate, and many new graduates are reluctant to specialise in this area.⁴ There are also other reasons that explain why many lawyers are abandoning the publicly funded immigration and asylum sector, which include but are not limited to increased bureaucracy, surveillance/micro-management of providers, the passing of administrative costs to the providers and the cuts implemented as a result of LASPO 2012, which made those costs difficult to manage.⁵

b) Exclusion of Much of Immigration Law

4) Following the implementation of LASPO 2012, it is noteworthy that asylum remained in scope of the legal aid system; however, most other immigration work was excluded from it.⁶ A limited exception was made in order to prevent violation of the UK's obligations under the European Convention on Human Rights (ECHR) procedural requirements and European Union law, which led to the inclusion of 'exceptional case funding' caveat.⁷

c) Judicial Review Funding: 'At Risk'

5) A further consequence of LASPO 2012 is that funding for judicial review work has been placed at risk.⁸ Therefore, solicitors are remunerated only if they are granted permission from the courts/tribunals, and therefore any work done prior to the permission stage is done so 'at risk'. Solicitors refrain from lodging judicial reviews because they may not be remunerated for the work they conducted.

⁴ Jon Robins, 'Dark Days for Legal Aid' (New Law Journal, 23 March 2018) www.newlawjournal.co.uk/content/dark-days-legal-aid.

⁵ Richard Moorhead (2004), 'Legal Aid and the Decline of Private Practice: Blue Murder or Toxic Job', 11 (3), International Journal of the Legal Profession, 159-190, 186.

⁶ Saira Grant, 'An Overview of Immigration Advice Services and England and Wales' (March 2020, Paul Hamlyn Foundation) 22.

⁷ LASPO 2012, s.10.

⁸ The Civil Legal Aid (Remuneration) (Amendment) (No.3) Regulations 2014 No. 607-Judicial review involves lodging an application to the High Court to review the lawfulness of decisions made by public authorities such as the Home Office when there is no right of appeal or when the avenues of appeal have been exhausted. Only solicitors can do judicial review work.

d) *Matter Starts*

6) Since 2010, most legal aid providers were allocated 100 ‘matter starts’ on a yearly basis.⁹ As a result, the smaller providers of legal aid were placed in a very precarious situation.¹⁰ Some clients were unable to receive the services of their preferred provider.¹¹ Consequently, the less popular providers’ were kept afloat as clients/asylum seekers could not receive the services of their preferred provider.¹²

7) Bids were highly oversubscribed for providers in London and Manchester in April 2013.¹³ Quality of work was an ongoing issue and providers that conducted good-quality work were popular, so their ‘matter starts’ were used quickly.¹⁴ However, they were not granted extra ‘matter starts’ because according to the Legal Aid Agency,¹⁵ asylum seekers could receive services from the other providers.

8) To deal with these problems, the Legal Aid awarded an increased number of ‘matter starts’ to providers in September 2018.¹⁶ Even in September 2023, the Legal Aid Agency allowed newer providers to bid for contracts before the main retendering round in September 2024.¹⁷ However, notwithstanding these changes, many providers have abandoned this sector, and

⁹ A ‘matter start’ is the process that triggers a solicitor providing legal help for a client. The solicitor is later paid for work done under each matter start, if it is approved by the LAA. See, The Law Society, ‘Legal Aid Restrictions for Clients with Multiple Problems-We Intervene’, 3 October 2023, Available at: <https://www.lawsociety.org.uk/topics/legal-aid/law-society-intervenes-on-legal-aid-restrictions>.

¹⁰ Jo Wilding (2021), ‘The Legal Aid Market: Challenges for Publicly Funded Immigration and Asylum Legal Representation’ (UK, Polity Press) 22.

¹¹ Jackson, P. & Price, C, ‘Privatisation and Regulation: A Review of the Issues’, (1994) Addison- Wesley Longman, 126.

¹² Jo Wilding (2021), ‘The Legal Aid Market: Challenges for Publicly Funded Immigration and Asylum Legal Representation’ (UK, Polity Press) 22.

¹³ Sheona York, *The End of Legal Aid in Immigration: A Barrier to Access to Justice for Migrants and a Decline in the Rule of Law* (2013), 27 (2), JIANL, 122.

¹⁴ Ibid.

¹⁵ An arm of the Ministry of Justice that administers legal aid under LASPO 2012, s.4(2).

¹⁶ Jo Wilding, (2019), ‘*Droughts and Deserts: A Report on the Immigration Legal Aid Market*’, 40 <http://www.jowilding.org/assets/files/Droughts%20and%20Deserts%20final%20report.pdf>.

¹⁷ Jo Wilding, ‘Over Half of the People Seeking Asylum are now Unable to Access a Legal Aid Lawyer’ (Free Movement, 23 October 2023) Available at: <https://freemovement.org.uk/over-half-the-people-seeking-asylum-are-now-unable-to-access-a-legal-aid-lawyer/#:~:text=At%20least%2051%25%20of%20of%20asylum%20applicants%20in%20England,and%20the%20number%20of%20new%20applications%20for%20asylum>.

therefore, an increased number of asylum seekers remain unrepresented throughout their asylum case.¹⁸

e) *Advice Deserts and Droughts*

9) Legal aid was subjected to *ad hoc* and profound changes over the years, which has led to the emergence of ‘advice deserts’ and ‘advice droughts’.¹⁹ ‘Advice deserts’ refers to areas of the UK where legal aid is not available in practice.²⁰ ‘Advice droughts’ refers to areas where legal aid is available as a result of unused ‘matter starts’, however, providers are unable accept new cases owing to a lack of capacity.²¹ According to research conducted by Refugee Action in 2018, 76 per cent of referral agencies found it ‘very difficult’ to refer cases to legal aid providers.²² It was noteworthy that 15 to 16 per cent of referral agencies found representation for asylum seekers that wanted to lodge appeals against the refusal of their asylum case at that time.²³

10) Statistics from March 2018 revealed that more than one person claimed asylum within 26 local authorities, yet there were no legal aid providers.²⁴ By 2020, 279 providers were authorised to conduct publicly funded immigration/asylum work, and by July 2022, this figure dropped to 243.²⁵ Statistics from 23 October 2023 paint a grim picture. Over half of the asylum seekers that claimed asylum were unable to access legal advice.²⁶

¹⁸ Ibid.

¹⁹ Ellie Palmer, Tom Cornford, Audrey Guinchard and Yseult Marique, (2016), ‘*Access to Justice: Beyond the Policies and Politics of Austerity*’, Oxford, Hart Publishing, 114.

²⁰ Jo Wilding, (2019), ‘*Droughts and Deserts: A Report on the Immigration Legal Aid Market*’, 39-40 <http://www.jowilding.org/assets/files/Droughts%20and%20Deserts%20final%20report.pdf>.

²¹ Ibid.

²² Refugee Action, ‘*Tipping the Scales: Access to Justice in the Asylum System*’, (2018), 2, <https://www.refugee-action.org.uk/wp-content/uploads/2018/07/Access-to-Justice-July-18-1.pdf>.

²³ Ibid.

²⁴ Ibid 10.

²⁵ Legal Aid Agency, ‘Directory of Providers’ (July 2022), <https://www.gov.uk/government/publications/directory-of-legal-aid-providers>.

²⁶ Jo Wilding, ‘Over Half of the People Seeking Asylum are now Unable to Access a Legal Aid Lawyer’ (Free Movement, 23 October 2023) Available at: <https://freemovement.org.uk/over-half-the-people-seeking-asylum-are-now-unable-to-access-a-legal-aid-lawyer/#:~:text=At%20least%2051%25%20of%20asylum%20applicants%20in%20England,and%20the%20number%20of%20new%20applications%20for%20asylum>.

Conclusion

11) Access to justice has diminished considerably for asylum seekers since the implementation of LASPO 2012. Thus, these are my recommendations to the Public Accounts Committee:

- Increase the remuneration rates of those that conduct publicly funded immigration and asylum work.
- Abandon the use of the ‘matter start’ system. The Lord Chancellor can rectify this matter as he has a wide range of powers under section 2 of LASPO 2012 to enable him to fulfil the duty specified in section 1 of LASPO 2012 to secure the availability of legal aid.
- Decrease the administrative burden of those that specialise in this area of law.
- Reinstate the pre-LASPO 2012 position so that more immigration work is covered under legal aid.
- Judicial review work should not be conducted ‘at risk’.

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