

Your Legal Case

Even if you have a lawyer, it's important to understand your own legal case – this is your case and your life and you need to keep track of what is happening and whether the lawyer is doing the things they should be.

Know your rights at different stages of the system, and know what the options are for the stage you are at. Knowing what could come next will help you prepare.

Take an active role in your legal case. Don't passively accept the decisions of the Home Office and the courts if you think they are wrong.

Terminology - what is a lawyer?

In the UK, the term **lawyer** can be used for anyone qualified to give legal advice, which could include a caseworker, solicitor or barrister.

Your lawyer may be a **caseworker**. They will not necessarily have qualified as a solicitor, but will have qualified as an immigration caseworker under the OISC regulations (that regulate immigration legal advice) and so are permitted to give legal advice on asylum, immigration and relevant areas of human rights law.

A **solicitor** is a lawyer who traditionally deals with any legal matter including conducting proceedings in court. In immigration/asylum cases, it is normally a barrister who will take a case to the higher courts or who will represent you in court in the case of a judicial review.

Barristers are specialist legal advisers and court room advocates. In England and Wales, you may be represented by a barrister at the immigration tribunal, and if your case goes to the higher courts, it will usually be a barrister speaking in court in support of your case. In Scotland, the lawyer who represents you at higher courts is called an **advocate**.

Legal aid

Legal aid helps people with no or little income, pay for the cost of getting legal advice. The government allocates funds for this purpose, and the legal aid fees are paid directly to the legal advice provider.

In the UK, legal aid is available for asylum claims, but is no longer available in England and Wales for legal advice or representation in non-asylum immigration matters. In terms of legal aid, an "asylum claim" also includes humanitarian protection claims (on the basis of a real risk of serious harm/indiscriminate violence) and claims based on Articles 2 and 3 of the European Convention on Human Rights (the right to life; and the right not to be

subject to inhuman, degrading treatment/torture).

Legal aid is still available for non-asylum immigration cases in Scotland and Northern Ireland.

This means that if your immigration case is not an asylum case and you are in England or Wales, you cannot get legal aid advice or representation. You can no longer get legal aid, for example, for family migration cases, including family reunification applications under the Refugee Convention; matters around student visas; or visitor visas. If you are facing deportation, you cannot get legal aid if your case does not have an asylum/Article 3 element. You cannot get legal aid for Article 8 cases - the right to family and private life.

Exceptions in England and Wales

There are some non-asylum immigration cases that may still get legal aid: certain cases where there has been domestic violence; cases involving Special Immigration Appeals Commission (SIAC) proceedings; and certain immigration applications for leave to enter or remain in the UK made by victims of trafficking.

You can also apply for exceptional legal aid funding if you believe your human rights or European Union rights would be breached if you do not have legal aid. The Public Law Project provides information and assistance in some cases

<http://www.publiclawproject.org.uk/exceptional-funding-project> and have produced a guide to applying for exceptional funding without the help of a lawyer:

<http://www.publiclawproject.org.uk/data/resources/254/Applying-for-ECF-without-a-rep-2.pdf>

Legal aid for detention matters

There is still legal aid available for challenging immigration detention - for bail, temporary release/temporary admission (including challenges to conditions applied on release) and challenging unlawful detention. People in detention in England and Wales cannot get legal aid, however, for their substantive immigration cases (non-asylum) if they are being represented by a lawyer based in England or Wales.

Legal aid for asylum support

In asylum support cases, legal aid for challenging a refusal of support is only available in cases where both accommodation and subsistence (money or pre-paid cards) are applied for. If you apply for asylum support and do not apply for accommodation (because you can live with someone else and do not want to be forced to move anywhere in the UK under their 'no choice' policy), you will not get legal aid to challenge a refusal to give you support. You will also not get legal aid for representation at the First-tier Tribunal for asylum support appeals.

Legal aid for judicial review

Recent cuts mean it is now much more difficult to get legal aid for a judicial review.

If you have had an appeal hearing or determination on the same, or substantially the same, issue within 12 months and you lost the appeal, legal aid for a judicial review will not be available.

The government has brought in measures in England and Wales that mean, in general, legal aid lawyers only get funding for working on a judicial review if permission to proceed with that judicial review is granted. The Legal Aid Agency *can* allow legal aid for work done before permission is granted for a judicial review, but this is very hard to get. If you want to find out more, read this Legal Aid Handbook summary:

<http://legalaidhandbook.com/2015/03/26/moj-re-imposes-conditional-payments-for-judicial-review/>

This means that legal aid lawyers taking on a judicial review are taking a risk, and are only likely to do this if they feel you have a strong case. The lawyer can receive the legal aid funding for the work done pre-permission stage if permission is subsequently granted, but if permission is refused that work will remain unpaid.

Moving from Scotland/N Ireland to England/Wales

While the legal aid changes currently only apply to England and Wales, if you are detained in Scotland or Northern Ireland you are likely to be moved to a detention centre in England prior to removal/deportation, with greatly reduced - and more restricted - legal aid provision.

Legal aid: time-limited and merits tested

Even if legal aid is available for your case, the amount of time the lawyer can spend on your case is limited. There are lots of things that, ideally, a legal aid lawyer would do on your case but legal aid funding doesn't cover it. This includes attending your asylum interview if you are an adult, or legal research if a case is likely to be seen as straightforward.

Legal aid lawyers also have to conduct a "merits test" on your case (as well as finding out whether you are financially eligible, i.e. that you no or very little income). At the start of the asylum process, the merits test is low. A lawyer is only likely to say an asylum case, at the pre-decision stage, fails a merits tests if it is "clearly hopeless" or would be "an abuse of process". After a refusal of an asylum claim, the merits test threshold is higher. In order to determine whether a legal aid lawyer can take a case on for appeal, they have to consider that it would have over 50% chance of succeeding. The agency which manages the provision of legal aid conducts audits on whether lawyers are making appropriate judgments on merits tests (including how many of the cases that the lawyer judged likely to succeed, did succeed).

Law firms that have legal aid contracts are also limited in the number of “matter starts” they are given - they cannot take on unlimited clients, or unlimited issues in clients' cases.

Alternatives to legal aid

If you cannot get a legal aid lawyer, you are likely to be able to find a private lawyer to take on your case. The problem will be whether you can afford to pay their legal fees.

Private lawyer

Some private law firms have “fixed fees” arrangements - they tell you a fixed amount that working on your case (or more usually, one aspect of your case, such as a fresh claim or an appeal) will cost. With a fixed-fee arrangement, if the lawyer has to do very little work or if they have to do a lot of work, the cost remains the same and you are not hit with mounting costs as the case goes on. This is helpful if your supporters/community are fundraising to meet these costs.

Some law firms, whether using fixed fee or not, allow you to pay the costs in instalments and this may mean you are able to save/fundraise the money over a longer period of time.

When using a private lawyer, make sure you know what you are paying for, and how much you are paying.

Pro bono

Another option may be finding a lawyer who will take on your case pro bono. The term pro bono refers to legal work that is performed voluntarily and free of charge. The lawyer does not seek any payment for the work.

Because of the legal aid cuts, more and more work is being done pro bono, so it may not be easy to find a lawyer who is able to do this. The stronger and more compelling your case is, the more likely it is a lawyer will take it on. Think about how you can explain why your case is strong. Friends and supporters finding evidence to back up your case may help with this.

Your local law centre, or the law department at your local university, may have pro bono clinics. You can also try contacting the Pro Bono Unit: <http://www.barprobono.org.uk/do-you-need-help.html>

McKenzie friend

You may be able to get a McKenzie friend to assist you in a court hearing if you do not have a lawyer. This will usually be an English-speaking friend, relative or volunteer who is not qualified to give legal advice, but may have experience of the legal system. They are not usually able to represent you but can assist you in gathering evidence to support your case, preparing witness statements and/or written legal arguments.

If you have a McKenzie friend to support you at a court hearing, they cannot answer questions for you but can assist you in making notes of what happens at the hearing, and in some cases can also give you assistance in making submissions to the court.

If you are using a McKenzie friend, you should tell the clerk at the Tribunal/hearing centre that you have someone with you to assist you. You should also ask the judge at the start of the hearing for permission to have assistance from your McKenzie friend. The judge may ask what relevant experience (if any) the person concerned has, whether he or she has any interest in the case and that he or she understands the role and the duty of confidentiality that arises if consent is given.

Communicating with your lawyer

Legal aid lawyers are so busy that they can find it hard to respond to you quickly.

ACTION SECTION

- If you are struggling to get a legal aid lawyer to take on your case, it may help to go through your case with a knowledgeable friend/supporter and think about how to present it to a lawyer in the strongest possible way. Getting evidence to back up your story may help with this.
- Similarly, friends/supporters may be able to help you think about how to explain your case to a lawyer you are asking to take on your case pro bono.
- If you cannot get a legal aid lawyer, supporters/your community could fundraise to pay for private legal fees.

Remember that they need time to work on your case, and constantly ringing them will not allow them to do this. But if your lawyer is very slow in getting back to you, or doesn't explain themselves properly, you should try to get your questions answered (and find someone to help ask the questions if necessary).

It's ok to ask your lawyer questions: they are there to help you.

For example, if you have a question about going to report or missing a reporting event at the Home Office, speak to your lawyer. You shouldn't miss reporting events unless you have to, and you must provide evidence of why you will miss/did miss the reporting. If you know in advance you will be missing your next reporting, your lawyer can let the Reporting Centre know and give you reasons/evidence.

If it is difficult to speak to your lawyer on the phone, then an easier way to speak to them might be to arrange an appointment.

Alternatively, you can send a letter or email. Often lawyers will find it easier to reply to emails than phone calls.

If you do not want to speak to your lawyer, because you are feeling too stressed, upset, or another reason, you can ask a friend/supporter to speak to them for you but they must provide written and signed consent to do this.

At times, a busy lawyer may find it easier to quickly speak to or reply by email to a friend/supporter who has knowledge of the legal system, but they should explain to you directly when there is important information or questions they need answering.

- You should always have a copy of your documents, and anything your lawyer has submitted to the Home Office. Keep all your paperwork together in one organised file.
- You should always know the last action your lawyer took: what they did, when, and when they expect a response.
- Your lawyer should speak to you before and after each stage in the process of applying for leave to remain (e.g. your Home Office interviews, the decisions on your case).
- Make sure your lawyer knows your contact details. If you change address or phone number, let your lawyer know as soon as possible.
- Contact your lawyer any time you receive a letter from the Home Office or from the Courts and Tribunals service.
- Contact your lawyer prior to any appointments with the Home Office (other than routine reporting/signing events).

People commonly say that they have had a certain lawyer for a long time and nothing is being done on their case. Find out why. Is your lawyer waiting for you to gather evidence? Has your lawyer done all they can and they are now waiting for a response from the Home Office? Has your lawyer actually said they can't do anything further on your case? This is a common problem with fresh claims: you might approach a lawyer to help you with this, but they will need evidence to submit before they can do it. You may think they are working on the fresh claim, but they are very unlikely to be doing anything on the fresh claim if you have not provided them with new evidence.

It's vital to know whether or not you have a current application with the Home Office. If you have no leave to remain and no outstanding applications, you are at high risk of detention and removal/deportation.

Finding a lawyer

You can look for an immigration advisor using these directories:

righttoremain.org.uk/resources/lawyers.html

The Law Society has a database on their website you can search:

solicitors.lawsociety.org.uk

Choose “immigration and changing countries” under Legal Issue, then put in your location. When the search results come up, you can then refine the search results to show those that have legal aid services (“accepts legal aid”) and for the type of case you have (asylum, immigration etc).

If you are in Scotland, you can search for a lawyer on their website here. Choose “immigration” as the area of law: lawscot.org.uk/find-a-solicitor

A complaint against your lawyer

Many people seeking the right to remain do not make a complaint about their lawyer even if they wish to do so. If errors have been made in your case by your lawyer, and you are later trying to explain that to the Home Office, it may be helpful to have a written record of a complaint.

You can make a complaint if:

- you receive poor advice or service
- you are charged unreasonable fees
- an adviser claims you'll be successful
- an adviser charges you for work not done
- an adviser misses deadlines or fails to appear in court

You can ask to speak to your lawyer's supervisor for information on how to complain, or go to the OISC website: oisc.homeoffice.gov.uk/complaints_about_immigration_advice

You can also complain to the Legal Ombudsman: legalombudsman.org.uk

Legal support (not legal advice)

There is no replacement for specialised legal advice, but because of legal aid cuts, more people seeking the right to remain in the UK are now forced to represent themselves. It has become essential for individuals seeking the right to remain and their supporters and communities to have a better understanding of the system, and provide legal support where appropriate.

If you are not a 'qualified person', it is **illegal** to give immigration advice/legal advice as defined in section 82v of the Immigration and Asylum Act 1999. A 'qualified person' in this context is someone registered or exempted by the Office of the Immigration Services

Commissioner (OISC), or another regulatory body (such as if you are a solicitor or barrister), or someone who is working under the supervision of someone who is a qualified person.

This section explains what legal advice is, and how communities and support groups can provide essential legal support (even when someone has a lawyer), but making sure they do not give legal advice.

What is legal advice?

Legal advice can be defined as the application of legal rules and principles to a specific set of facts that proposes a course of action.

The Immigration and Asylum Act 1999 definition includes immigration advice and services “provided in the course of business, whether or not done for profit. This includes occasional help offered to members of a community”. This means that community groups and support groups cannot give legal advice unless they are doing so as a regulated body.

If you are not qualified to give legal advice, you can still give legal information. Legal information is factual, generic, and does not address any one particular cause of action.

Providing legal information in the asylum and immigration context could be explaining how the asylum and immigration system works, what the country guidance case on The Gambia is, or what an “injunction” is. This is not providing legal advice.

Why you shouldn't give legal advice if you are not a qualified adviser

1. it's against the law
2. if you are not a full-time legal professional, it is very unlikely you will have the necessary up-to-date knowledge to provide the correct advice. Wrong advice is far worse than no advice.

Even if the advice you are giving does not fall into the category of “legal advice”, remember that the person seeking the right to remain should be making all the decisions. Even if they ask for your advice, try not to be directive but instead give information about their options. You can give information about the benefits and risks of the various options, and then support them in making the decision themselves.

PROVIDING LEGAL SUPPORT

There are many things that community/support groups can do to provide legal support without giving legal advice. You can:

- provide general legal information (you can use this Toolkit to do this)
- before somebody applies for asylum or immigration status, or while they are going through the process, sit down and go through the different stages and what can

happen at each stage. You may want to use our Toolkit, materials available online; or your own personal/professional experience.

- research evidence on a country of origin or particular situation of the person you are supporting
- use your contacts to ask an expert to write a report to support the legal case
- help gather useful letters for the case – this might be from a school, Social Services, medical or mental health professionals, community groups
- read someone's Reasons for Refusal Letter or court determination and point out which parts of their testimony are being doubted
- find other case law or guidelines that these documents may refer to
- explain the meaning of technical terms in legal documents
- type up what someone wants to say in response to a Reasons for Refusal Letter, or other negative decision, especially if they find written English difficult
- help someone talk to their lawyer, if they are not comfortable doing this themselves
- help someone prepare for an asylum interview, asylum/human rights appeal, or judicial review hearing. This may be by providing emotional support, practical information about where they have to go and how to get there, explaining the layout and personnel of the court, or listening to someone give their testimony so that the first time they do this is not in a hostile setting.
- help someone prepare in case they are detained, and agree a plan of action for if they are detained.
- visit someone if they are detained

You will find more information about all of these actions as you go through the Toolkit.

Next section: *Entering the UK*