

Legal representatives for children and young people

This fact sheet provides information on legal representatives for children and families in England and Wales. This includes finding a representative, what to expect from a representative, what different representatives do and what to do if something goes wrong.

If you have any questions about legal aid or relating to a refugee or migrant child, young person or family, you can call our Migrant Children's Project advice line on 0207 636 8505 or email mcp@coramclc.org.uk.

Legal representatives in immigration and asylum matters

Immigration legal advice is highly regulated and anyone who gives immigration advice must be qualified to do so. [1]

Anyone providing immigration and asylum legal services to clients under a legal aid contract from the Legal Aid Agency must additionally be accredited within a scheme called the Immigration and Asylum Accreditation Scheme, which is operated by the Law Society. Those providing legal aid services to unaccompanied asylum-seeking children must be accredited as a level 2 senior caseworker. [2]

Most immigration and nationality matters, including applications for leave to remain on the basis of family or private life, are no longer covered by legal aid. Asylum and protection issues remain covered by legal aid. For further information about what matters are still covered, please see our fact sheet on legal aid, at www.coramchildrenslegalcentre.com/resources.

What makes a good solicitor?

What follows is a general list of things that the legal representative of a child should undertake to do, know or be. However, this list is not exhaustive, and there are professionals seeking to identify good practice in the law should aim to build up their own

knowledge of the standards of solicitor firms in their local area.

Have knowledge and expertise

- have a thorough knowledge of national and international asylum law and policy, as well as immigration and nationality law
- understand the special rules, procedures and policies that apply to children
- be aware of local authorities' duties to separated children
- recognise the limits of their experience and expertise and seek advice from other specialists and experts as appropriate

Treat children with respect and sensitivity

- be able to assess the young person's understanding of the legal process, their maturity and capacity to provide accurate information, and be able to give instructions and act appropriately based on that assessment
- act promptly, keep appointments and respond to the young person's phone calls as soon as they can

Communicate well

- have skills in communicating with and interviewing children and young people and uses an interpreter when appropriate
- work in partnership with other agencies supporting the young person, and in particular their responsible adult, their social worker, if different, and their adviser at the Refugee Council if they have one (while also maintaining their duty of confidentiality with the child)
- explain carefully to the child or young person in a language they understand, using an

interpreter if necessary, the following:

- o the role of the legal representative
- o the young person's role in the asylum or immigration application process
- o how the asylum and immigration application and appeals process works (including answering any questions a young person may have on procedures)
- o the strengths and weaknesses of their claim, based on an accurate assessment of their case

The legal representative should carry out the following tasks on behalf of the young person:

- take down a comprehensive statement about the child or young person's case (unless the maturity of the child makes it inappropriate to do so) and find supporting documentation about the situation in the child's country of origin
- verify the statement with the child at each stage with an interpreter and give the child a copy of the statement
- not rush the child and communicate with the child at a pace that the child is able to cope with, being sensitive and with an awareness of language barriers
- commission expert reports, including medical reports, and other additional information as necessary to support the young person's application
- ensure that a child has a responsible adult with them during a screening interview and a substantive asylum interview with the Home Office
- arrange for an independent interpreter, if an interpreter is required, to attend a substantive asylum interview at the Home Office
- ensure the young person has the correct immigration papers and residence permit (including correct spelling of name, age and

other information) and ensure that they are kept safely

- keep up to date with the progress of an asylum or immigration application or appeal, keep the young person informed and, if the young person gives consent, keep the responsible adult, social worker and adviser from the Refugee Council up to date with the progress of the young person's application
- if required, help the child to challenge a refusal of an asylum claim or grant of a form of temporary status that does not recognise the child as a refugee (in particular, if leave as an unaccompanied asylum-seeking child is given as this will be a refusal of the child's asylum claim)
- make sure any appeal is submitted in time
- help the young person to apply for an extension to their temporary leave, within the timeframe specified
- deal professionally with any anxiety the young person has regarding the process
- confirm in writing any action plan and any advice given to the young person
- if the asylum process in the child's case is going to slow or fast for the child because, for example, they have mental health concerns or there are concerns over fitness for interview, liaise with the Home Office to agree an acceptable timeframe and extension of the asylum process timeframe, if necessary.

Payments and complaints

Lawyers have a code of conduct they should always adhere to. The codes are different for solicitors and barristers because of their differing roles in the legal process. However, you can always expect that a lawyer will:

- Provide a client care letter after a first appointment which is detailed and clear. It should set out what was discussed at the appointment and the next steps. It should

include a time-frame for the case.

- If you are paying for legal services, then the first letter should include an estimate of the costs and an immigration solicitor or legal adviser should provide you with information about the fee structure.
- The lawyer should also provide you with information regarding the terms and conditions of the service they provide, even if it is free or being funded through legal aid.

Finding legal representation

It is very important that children and young people are assisted to obtain legal advice and representation if this is needed. Sometimes this can be difficult, as it is not always known that the child has an immigration issue or requires advice, or there may be a lack of appropriate legal representatives in the area the child is living in.

With the child or young person's consent, you should call the firm and ask whether they can take the case on, providing clear information about the case. It is important to explain the stage at which the case is: for example if the child or young person is appeal rights exhausted and requires advice on making a fresh asylum or human rights claim, for example. It is also important to have information about any previous legal representatives who have worked on the case and the reasons why they are no longer doing so.

Legal aid

Unfortunately, depending on the area the child resides, there may not be an appropriate legal representative nearby. For legal aid firms, there are designated geographical areas in which they operate. Funding is not available for costs that arise because the solicitor is far from the client if it would have been reasonable for the client to instruct a closer provider. However, if the client is unable to find a local legal aid provider able to take on the case, a further away firm may be able to take on the case.

Useful resources

If you are searching for a legal representative, the following may be useful:

- The Law Society has a directory of all solicitors, which can be searched by area of law. This search will also tell you if the law firm has any accreditations and the names of qualified solicitors at the company. [3]
- Alternatively, the Ministry of Justice provide a search engine to find legal aid representatives. [4] This list only includes firms or organisations that hold contracts for legal aid work with the Legal Aid Agency. Most firms that conduct legal aid work will also provide legal services for a fee where there is no legal aid available.
- The Law Centres Network has information about local law centres and the services they provide. In general, law centres will only be able to give advice and representation to local residents. [5]
- The Immigration Law Practitioners' Association also has a directory of members and search engine to find nearby immigration advisers. [6]

Asylum, immigration and nationality representatives

Unaccompanied asylum-seeking children (UASC)

An unaccompanied child seeking asylum will need a legal representative to assist them to make their case for asylum to the Home Office. Under the UK Immigration Rules the Home Office is required to ensure that a child has legal representation and it is recommended that this be done before applying for asylum. [7] If the child does not have suitable legal representation, the Home Office must notify the Refugee Children's Panel, who will try to find representation for the child. [8]

A legal representative supporting separated children should, along with having a thorough knowledge of asylum law and policy, have a special understanding of policies and procedures applying to separated children, and skills in communicating with children and young people.

Once a legal representative has been appointed, he or she will apply for legal aid to cover the costs of the asylum application up to the decision on the claim. The legal representative will prepare the application on behalf of the separated child, take down the child's instructions by filling in the SEF and, in almost all cases, prepare with a child a separate statement to support the application. A legal representative will be funded to attend the welfare and substantive interviews with a child.

Children in Care

There are a number of ways in which children come into the care of the local authority. They may be an unaccompanied asylum seeking child (see above) or taken into care due to child protection issues.

Some children and young people will have cases that are partially covered by legal aid (for example asylum based arguments in a further leave to remain application) and are partially out of the scope of legal aid (for example an argument that removal from the UK would breach their right to respect for private and family life under Article 8 of the European Convention on Human Rights).

Immigration and nationality applications are not covered by legal aid. This can be problematic for separated children who do not have an asylum claim. Many children taken into care do not have secure immigration status or were dependent on a family member's limited form of status. They should get advice from an immigration adviser to regularise their status by making an immigration application.

The only option for getting legal aid for an immigration application is to apply to the Legal Aid Agency for what is called Exceptional Case Funding (ECF). Getting Exceptional Case Funding will depend on showing that, even though the case is in an area of law for which there is normally no legal aid, the particular circumstances of the case mean legal aid should be granted because the child or young person can show that they cannot represent themselves and it would breach their human rights. For further information on ECF, see our legal aid fact sheet at www.coramchildrenslegalcentre.com/resources.

If a child is looked after and accommodated and they cannot get legal aid, the local authority would be

expected to pay a legal adviser to represent the child and make an application. As well as legal costs, this may include meeting the cost of any application fees, particularly in the case of nationality applications. Most immigration applications made by looked after and/or accommodated children are fee exempt.

Local authorities owe duties to children and young people in their care and these extend to ensuring they have access to appropriate legal advice and representation where they require it, including in immigration matters. The local authority is under a duty to ensure their functions are discharged having regard to the need to safeguard and promote the welfare of children, [9] and a key part of a local authority care plan is the development of a 'long term plan' for the child's future ('the plan for permanence'). [10] The regularisation of a child's immigration status will be a key aspect of planning for their future and is always likely to be in the child's best interests. It is vital that a child receives timely legal advice which will inform any further action that might need to be taken

Securing legal representation for children and care leavers with immigration claims is not secondary or optional for local authorities: it is critically important to promoting the welfare of the child or young person and forms part of their duties. If the local authority is refusing to fund such advice and representation, a complaint or challenge, with the assistance of a community care solicitor, should be considered.

Children living with family

If a child is living with their family in the UK and claiming asylum (either as the primary applicant or as a dependant) they will normally be in receipt of asylum support and will be able to obtain legal aid for advice and representation in their asylum claim (subject to the means and merits test).

For children in families who are not claiming or raising asylum, protection, trafficking or domestic violence issues (for example in relation to applications based on family life, private life or long residence), there will be no legal aid available unless ECF is successfully applied for (see above).

Legal representatives should be alive to issues related to the child in any advice or representations regarding

the family. The best interests of the child will often be a central argument in representations relating to immigration applications and it is important that the views of the child are explored and set out in an application.

Community care advisers

Legal advice in relation to community care law may be funded through legal aid. Community care law is used to challenge local authority decisions which relate to support for a child, including where a child is age disputed, to challenge the educational provision for a separated child, or if services are changed or terminated (such as when a young person is leaving care). It is important that children are informed about their right to challenge decisions which affect them and that the child is assisted to obtain representation from a community care lawyer.

Criminal advisers

Where a child is charged with a criminal offence, they should be supported to find a criminal defence lawyer to assist. Children are entitled to legal aid for criminal advice automatically where they are under 16, or are under 18 and in full-time education. They should have representation at the earliest possible opportunity, including for a police interview. [11]

A good criminal solicitor for separated children will:

- have experience in representing children and attending the youth courts
- have additional training in representing children and in handling vulnerable witnesses
- understand that a criminal record can seriously impact a child's immigration status
- not put a child under pressure to accept a police caution or to plead guilty.

For more information, contact the Youth Justice Legal Centre (www.yjlc.org.uk).

Education advisers

There is legal aid available to challenge a decision on special educational needs (SEN) and for education

judicial reviews. This legal aid can only be accessed through a telephone gateway, which is available on 0345 345 4 345. You can also find information about education law through the Child Law Advice Service: www.childlawadvice.org.uk. This service is operated by Coram Children's Legal Centre.

Complaints

Where a child is not satisfied with the service that has been provided to them, there are steps that can be taken to resolve this with the legal adviser. A child should be given information on how to complain by their legal adviser following the first appointment. The firm will have a complaints procedure that should be clear and accessible. A complaint should first be made to the representative unless there is a clear reason not to do so (for example assault). The representative will then inform the complaints partner in the organisation. The law firm or organisation deals with the complaint in the first instance, and they should respond within two working days to acknowledge the complaint.

If the complaint cannot be resolved satisfactorily, then a further complaint can be made to the Legal Ombudsman, an independent scheme that resolves complaints about lawyers, or to the Office of the Immigration Services Commissioner (OISC) in relation to immigration advice. The complaint should contain as much detail as possible, including the main issues involved and what steps were taken to resolve these issues. The time limit to make a complaint to the Legal Ombudsman is six months from the final response by the legal adviser, and 12 months to make a complaint to OISC.

Changing advisers

If the child or young person wishes to transfer to a new firm, they should be able to instruct another solicitor.

Legal aid

However, legal aid firms have to follow certain guidelines relating to taking on clients who have instructed another legal aid firm within the last six months. In general, legal aid can only be transferred where:

- the client has reasonable cause to be dissatisfied with the service they received
- the client has moved a distance away from the first firm and communication is difficult
- the first firm can no longer act for the client because of a breakdown of the relationship or a conflict of interest.

The new legal aid adviser should, with the client's consent, contact the first firm to confirm the reasons for the client moving firms and to request a copy of the client's file. The new adviser may not be able to start working on the case until they have received the file and decided whether there is justification for the change.

Despite these allowances, it can be hard in practice to change to a different solicitor or law firm within a six-month period. Furthermore, the process of transferring legal aid can be slow, and it is very likely that evidence will be needed to show that the child continues to be looked after and accommodated. A transfer should be done in good time before any deadlines or appeal dates as this can cause serious delay or issues for the child. If there is an issue with transfer where there is a deadline or appeal date, this should be dealt with within the timeframes to ensure that the child is not prejudiced – an extension will sometimes need to be requested.

General

If the client is paying privately and instructing an immigration adviser, they are normally able to change solicitors at any time and for any reason. A legal adviser may only end the relationship with the client if there is a good reason and after giving reasonable notice. Examples of good reasons include where there is a breakdown in confidence with the client, and where they are unable to obtain proper instructions.

When a legal adviser ceases acting for a client, the individual should be able to obtain their paperwork promptly on request, subject to any unresolved issues regarding outstanding costs. The Solicitors Regulation Authority rules state that undertakings to secure costs should be used as an alternative to the exercise of a lien (a legal right to keep possession until a debt is paid) if possible. The rules also state that there may

be circumstances where it is unreasonable to exercise a lien - for example, where the amount of the outstanding costs is small and the value or importance of the matter is very great. [12]

NOTES

[1] For further information on the OISC, SRA and levels of accreditation, please see the OISC & SRA websites

<https://www.gov.uk/government/organisations/office-of-the-immigration-services-commissioner> &

<https://www.sra.org.uk/home/home.page>

[2] Law Society, What is the Immigration and Asylum Law Accreditation? <http://www.lawsociety.org.uk/support-services/accreditation/immigration-asylum/>

[3] Law Society website

<http://solicitors.lawsociety.org.uk/>

[4] Gov.uk website – Find a legal aid adviser

<http://find-legal-advice.justice.gov.uk/>

[5] Law Centres Network

www.lawcentres.org.uk

[6] ILPA website

<http://www.ilpa.org.uk/search-directory.php>

[7] Immigration Rules para 352ZA

[8] Refugee Council website – Children's Panel

http://www.refugeecouncil.org.uk/what_we_do/childrens_services/the_childrens_panel_-_advice_service

[9] Section 11, Children Act 2004

<http://www.legislation.gov.uk/ukpga/2004/31/contents>

[10] Part 2, 5(a)(i), Children and Young Persons, England, The Care Planning, Placement and Case Review (England) Regulations 2010

[11] <https://www.gov.uk/legal-aid/eligibility>

[12] For further information, please see the SRA website:

<https://www.sra.org.uk/solicitors/handbook/code/part2/rule1/content.page>

This fact sheet should not be used to give legal advice and is for information and guidance only. For advice on individual cases, assistance should be sought from an independent regulated legal adviser.

For further assistance contact our advice line. Call 0207 636 8505 or email mcp@coramclc.org.uk