

# Refugee & Migrant Children's Consortium

## Immigration legal advice and representation for children, young people and families – Evidence from the Refugee and Migrant Children's Consortium for the LASPO Post- Implementation Review, September 2018

Since the enactment of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO) the effects on migrant children and families has been well documented.<sup>1</sup> This submission gives an overview of these effects, draws out some specific consequences of LASPO, and presents possible solutions to the systemic inequalities that now exist as a direct result of that legislative change.

This information has been submitted on behalf of the Refugee and Migrant Children's Consortium (RMCC – [www.refugeechildrenconsortium.org.uk](http://www.refugeechildrenconsortium.org.uk)) which is a coalition of over 50 organisations working collaboratively to promote the rights of refugee and migrant children and young people across the UK. For more information please contact Kamena Dorling at Coram Children's Legal Centre ([Kamena.Dorling@coramclc.org.uk](mailto:Kamena.Dorling@coramclc.org.uk)).

### 1. Introduction

Very few non-asylum immigration cases now fall within scope for legal aid.<sup>2</sup> During the passage of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO), the government argued that if an individual's case fell within the Immigration Rules they would be able to make an application unrepresented; that immigration cases do not require legal aid because the process of making applications is straightforward and if an individual is required to go to tribunal, this is an accessible process.<sup>3</sup> This does not match the experience of Refugee and Migrant Children's Consortium (RMCC) members, nor the subsequent case law.<sup>4</sup>

<sup>1</sup> See, for example, Joint Committee on Human Rights, 'Human rights of unaccompanied migrant children and young people in the UK First Report of Session 2013–14', June 2013, at <https://publications.parliament.uk/pa/jt201314/jtselect/jtrights/9/9.pdf>; House of Commons Justice Committee, 'Impact of changes to civil legal aid under Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 Eighth Report of Session 2014–15', at <https://publications.parliament.uk/pa/cm201415/cmselect/cmjust/311/311.pdf>; Joint Commission on Human Rights, 'The UK's compliance with the UN Convention on the Rights of the Child', March 2015, section 105, at <https://publications.parliament.uk/pa/jt201415/jtselect/jtrights/144/144.pdf>; The Law Society of England and Wales, 'Access denied? LASPO four years on: a Law Society Review', June 2017, at <http://www.lawsociety.org.uk/support-services/research-trends/laspo-4-years-on/>; Amnesty International, 'Cuts that hurt: the impact of aid cuts in England on access to justice', 2016, p. 28, at [https://www.amnesty.org.uk/files/aiuk\\_legal\\_aid\\_report.pdf](https://www.amnesty.org.uk/files/aiuk_legal_aid_report.pdf) and Coram Children's Legal Centre, 'Rights without remedies: legal aid and access to justice for children, 2018, at [https://www.childrenslegalcentre.com/wp-content/uploads/2018/05/Rights-without-remedies\\_Final.pdf](https://www.childrenslegalcentre.com/wp-content/uploads/2018/05/Rights-without-remedies_Final.pdf)

<sup>2</sup> Exemptions include applications for indefinite leave to remain for victims of domestic violence and applications for residence cards under EEA regulations for victims of domestic violence; applications for leave to enter or remain for victims of trafficking if the individual has received a conclusive determination that they are a victim or have 'reasonable grounds' to believe that the person is a victim, applications to leave to enter and remain for victims of slavery, servitude or forced compulsory labour and for appeals before the Special Immigration Appeals Commission

<sup>3</sup> Coram Children's Legal Centre, Rights without remedies: legal aid and access to justice for children, February 2018 at [https://www.childrenslegalcentre.com/wp-content/uploads/2018/05/Rights-without-remedies\\_Final.pdf](https://www.childrenslegalcentre.com/wp-content/uploads/2018/05/Rights-without-remedies_Final.pdf)

<sup>4</sup> *Gudanaviciene and others v Director of Legal Aid Casework and the Lord Chancellor*, [2014] EWCA Civ 1622, 15 December 2014, at para. 72, the Court noted that the following features of immigration proceedings are relevant in determining

Immigration law is the only area of law to date which the Ministry of Justice has announced its intention to bring back in the scope of legal aid for any group.<sup>5</sup> We wholeheartedly welcome the decision to reintroduce legal aid for all non-asylum immigration matters involving unaccompanied and separated children, but note that many of the compelling reasons behind this decision apply also to migrant young people and children within families. Neither central government nor civil society are able to provide an exact number of children and young people in this position, but estimates to date suggest they are in the hundreds of thousands.<sup>6</sup>

Based on data provided to The Children's Society and JustRights at the time of LASPO, the government had estimated that each year around 8,500 cases involving 18-24 year old claimants and around 43,000 cases involving claimants over 25s would go out of scope for immigration and asylum matters.<sup>7</sup> No data was available on how many dependent children would be affected within these cases and we are not aware of any assessments that have been made by government since on the numbers of children within families and young adults affected within this cohort.

This briefing concerns this group who, out of scope for legal aid, are often unable to make their human rights cases a reality because they are blocked by laws and procedures that are profoundly complex. It also seeks to demonstrate the consequences of the removal of this support, and the role and limitations of the charity sector in meeting the acute needs that have arisen because of LASPO.

## **2. The need for legal advice**

Many of the children, young people and families that RMCC members work with have cases to remain in the UK on grounds of long residence and the right to respect for private and family life under Article 8 of the European Convention on Human Rights (ECHR). In 2012, just as the legal aid regime was changing, the Home Office drew up criteria outlining what it believed 'long residence' meant in practice. For young people between 18 and 25, this meant proving they had lived in the UK for half their life. In children's cases, these criteria set out that the child must prove not only that they have lived in the UK for seven years or more, but also that it would not be reasonable for them to return permanently to the country in which they were born. Applications can also be made outside of the Immigration Rules.

The Supreme Court has described UK immigration law as 'an impenetrable jungle of intertwined statutory provisions and judicial decisions'; this is a commonly-held view.<sup>8</sup> The Immigration Rules are further complicated by the intersection of immigration law with the UK's other legal duties such as

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eligibility for legal aid: (i) there are statutory restrictions on the supply of advice and assistance (see section 84 of the Immigration and Asylum Act 1999); (ii) individuals may well have language difficulties; and (iii) the law is complex and rapidly evolving.

<sup>5</sup> Justice Update: Written statement - HCWS853, 12 July 2018 at

<https://www.parliament.uk/business/publications/written-questions-answers-statements/written-statement/Commons/2018-07-12/HCWS853/>

<sup>6</sup> The University of Oxford estimated that there were 120,000 undocumented children in the UK, 65,000 having been born here. See N. Sigona and V. Hughes, No way out, no way in: Irregular migrant children and families in the UK, University of Oxford, 2012, at [https://www.compas.ox.ac.uk/media/PR-2012-Undocumented\\_Migrant\\_Children.pdf](https://www.compas.ox.ac.uk/media/PR-2012-Undocumented_Migrant_Children.pdf)

<sup>7</sup> This data was provided to The Children's Society and JustRights by the Ministry of Justice and was based on 2009-10 closed cases: [http://justrights.org.uk/sites/default/files/Data\\_on\\_legal\\_aid\\_and\\_CYP%202011.pdf](http://justrights.org.uk/sites/default/files/Data_on_legal_aid_and_CYP%202011.pdf)

<sup>8</sup> Patel and others (Appellants) v Secretary of State for the Home Department [2013] UKSC 72, available at:

<https://www.supremecourt.uk/cases/docs/uksc-2012-0177-judgment.pdf>; see Free Movement, 'How complex is UK immigration law and is this a problem?' at <https://www.freemovement.org.uk/how-complex-are-the-uk-immigration-rules-and-is-this-a-problem/>

our international legal obligation to safeguard and promote the best interests of children. As such, an immigration application not only needs to address the Immigration Rules but must also make clear arguments regarding the applicant's rights under Article 8 and the situation of any children involved. In order to apply for leave to remain, then, an individual would need to identify the relevant part of the Immigration rules under which they fall, or any exceptional circumstances, then complete a full application, including any additional legal arguments and supporting evidence, submitting this exactly in line with the complex procedural requirements and along with the application fee and immigration healthcare surcharge.

To support a claim that it would be in the best interests of a child to remain in the UK, it is necessary gather extensive evidence demonstrating the extent to which a child has developed a personal life and connections within the UK, as well as information on the family circumstances in both the UK and the country of origin. Expert evidence, for example from child psychologists, is often required, as might be evidence from a child's carer, teachers, therapists or medical professionals, mentors and friends. It is vital not only to understand and obtain evidence but also to present this appropriately, and this requires guidance from legal professionals to ensure that all relevant matters informing a best interests assessment are addressed. Small errors will lead to applications being returned or refused, with extremely serious consequences.

The procedures, as well as the law, are complex. For example, there are 62 different application forms on the UK Visas and Immigration website, each fulfilling a range of different purposes that are not obvious unless the applicant understands from the Immigration Rules which route to settlement they would be applying under. An application on the incorrect form is likely to be rejected and there is no right of appeal from an invalid form.

Expertise and specialist knowledge are required to consider a case, identify what evidence is needed and how it can be obtained and applied to the law. In addition, evidence gathering often costs money. The loss of legal aid encompasses a loss of assistance with fees for disbursements, including translators and expert reports, such as an independent social worker report to examine the needs of a child or a country expert report, that are frequently a key part of the evidence in an immigration case raising human rights concerns. The complexity of the law in this field means that people frequently do not have an adequate understanding of the substance of the law, how it applies to their case and how to articulate their arguments in writing or before a tribunal or court. This can be exacerbated by language barriers and difficulties with literacy and comprehension.

Many cases advised through RMCC initiatives are children, young people or families effectively blocked from accessing a legal route to regularisation and settlement. As cited by Amnesty UK:

*'It's an underclass that is trapped in limbo, who aren't going anywhere. They are desperate to regularise their stay, but can't. They want to work, but can't. For the kids they are growing up in abject poverty, they are struggling to get a proper education. It's just storing the problems up for later, a price they and society will have to pay for at a later date'.<sup>9</sup>*

In immigration cases a tribunal or court judge is not generally empowered to repair absence of evidence or lack of capacity to seek, sift and present evidence. So while a judge may (but might not)

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<sup>9</sup> Rosalind Compton, Solicitor, Migrant Children's Project, in Amnesty International, 'Cuts that hurt: the impact of aid cuts in England on access to justice', 2016, p. 28, at [https://www.amnesty.org.uk/files/aiuk\\_legal\\_aid\\_report.pdf](https://www.amnesty.org.uk/files/aiuk_legal_aid_report.pdf)

address an individual's incapacity to deal with legal complexity in their case, they cannot plug evidential gaps. Without access to legal help and representation people struggle to advocate effectively for their rights and as a result risk having their right to a family life violated. The reality of this means either deportation to another country, which often involves the separation of a parent from their child, or people remaining with insecure immigration status in the UK, leaving them destitute and potentially open to exploitation.

### **3. The Exceptional Case Funding Scheme**

As a safeguard to protect those without access to legal aid, LASPO does provide for the LAA to grant legal aid funding for so-called 'exceptional cases', where legal aid is deemed necessary to prevent a breach of human rights or an EU law right.<sup>10</sup> During the passage of LASPO, the UK government repeatedly emphasised that the availability of ECF would ensure that legal aid is available to the most vulnerable in society.

In practice, the ECF scheme is woefully inadequate and does not provide the promised safety net for vulnerable or disadvantaged people who are struggling to navigate complex legal processes and effectively advocate for their rights. Very few people are applying for exceptional case funding (ECF), and only a small minority of cases – even lower than current Ministry of Justice estimates – are coming from people who are not already supported by a solicitor. This means the system is failing the most vulnerable. Until last year, the number of applications for ECF being made has remained well under 2,000 per year,<sup>11</sup> far lower than the Ministry of Justice's own prediction of between 5,000 and 7,000 applications each year.<sup>12</sup> In 2017-18, 2,628 applications were made for immigration ECF, of which 54% were granted. Of those applications, 1,555 were for immigration cases and 68% of those were granted.<sup>13</sup>

ECF can be applied for by individuals or by legal aid providers. However, because providers are not paid for making an application if ECF is not subsequently granted, there is a disincentive for them to complete the applications. An application for ECF requires detailed information and evidence regarding the case to be put, and children may find this a particular challenge. Even practitioners making an application on a child's behalf may face difficulties in obtaining sufficient instructions and evidence. In addition, it is very difficult to explain the process to a child client. This has resulted in a low number of applications made by or on behalf of children and young people in the first place.

The ECF scheme is not easily accessible to children, young people or families.<sup>14</sup> It is difficult to explain to children, and children are likely to struggle to present the detailed information and

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<sup>10</sup> Section 10 of LASPO provides for exceptional funding where a matter is otherwise out of scope, but where failure to provide funding would breach the individual's rights under the Human Rights Act 1998 (which incorporates the European Convention on Human Rights) or enforceable rights based on EU law, or where the Director of Legal Aid Casework determines that it is appropriate to do so because of a risk of such a breach

<sup>11</sup> Legal Aid Agency, Legal Aid Statistics, January to March 2017. In its most recent quarterly legal aid statistics report, April to June 2017, the Ministry of Justice stated that the number of ECF applications in that quarter had increased to 527 applications, the most received in a single quarter since 2013

<sup>12</sup> National Audit Office, Implementing Reforms to Civil Legal Aid, 20 November 2014, page 7, outlines expected figures from the Ministry of Justice. See also Ministry of Justice, 'Legal Aid Reform: Excluded Cases Funding Process Equality Impact Assessment', 2012

<sup>13</sup> Legal aid statistics England and Wales tables January to March 2018, at <https://www.gov.uk/government/statistics/legal-aid-statistics-january-to-march-2018>

<sup>14</sup> CCLC runs an ECF pro bono project, making ECF applications on behalf of families with immigration issues. Each application takes around three to six hours to complete, with the supervision of qualified solicitor, and typically runs to 20

evidence required. Numbers of children applying for ECF are extremely low. For example, of the 2,628 applications in 2017-2018, only 116 applications (4%) were made by or on behalf of applicants aged 18 or under, 63% of which were granted.

There is also a disparity between the numbers of cases that the government estimated would go out of scope and the applications for ECF that have been made since. For example, as mentioned previously, the government estimated that around 8,500 cases involving young adult claimants (18-24yo) with immigration cases were expected to go out of scope each year following LASPO. Yet since then in the four years between 2013 and 2017, only 237 young adults applied for ECF and 146 were granted (62%). Data provided in a response to an FOI request by The Children’s Society shows the numbers of ECF applications from young adults in immigration cases broken down by year:

Financial year	ECF applications received	ECF applications granted	Percentage granted
2013-14	12	0	0%
2014-15	39	8	21%
2015-16	59	40	68%
2016-17	127	98	77%

Importantly this data highlights that increasingly a greater proportion of young people are being granted ECF when they do apply, though this safety net is only benefiting a tiny proportion of those young people who lost out since LASPO. We believe that there should be a simpler process in place, with the presumption of a grant where the case involves a child or young person.

The ECF application process is extremely complex. If applicants try to apply in another format, for example by writing a letter to the Legal Aid Agency (LAA), they will be asked to complete multiple, lengthy forms before their application will even be considered.

ECF is also not a safety net for urgent cases. The LAA’s decision-making times are slow and getting slower, and the current system in place for urgent cases does not work, leading to applicants suffering serious consequences without access to redress.

#### **4. Young people and families receiving support from local authorities**

##### **Children and families in need**

Although we very much welcome the government’s commitment to bring unaccompanied and separated children’s immigration matters into scope, the Refugee and Migrant Children’s Consortium members are concerned that many other children and young people with outstanding immigration matters – namely children with parents and young people who are over 18 – will continue to miss out on this vital support and be unable to access justice.

Section 17, section 22, section 23A, section 23B and section 23C of the Children Act 1989 give local authorities very strong safeguarding responsibilities towards children in need, looked after children,

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pages of representations. Since the Migrant Children’s Project started undertaking exception case funding applications in December 2015, the project has submitted 124 applications for ECF. Of those, 83 were successful and four were withdrawn. Of the 37 applications refused, we successful challenged 11 of the refusals, and referred seven cases for judicial review. Five of these judicial reviews were successful. CCLC is not the only charitable or pro bono project making such applications on behalf of the very vulnerable. It would therefore be wrong to assess the ECF application process as having been sufficiently simplified so as to enable individuals to apply alone – very few people are doing so.

relevant children and former relevant children.<sup>15</sup> There is no explicit provision stating that local authorities will need to step in and underwrite the cost of a child or care-leaver's legal fees if they cannot access mainstream legal aid, but local authorities will need to consider whether this will be the best way to meet a child's identified needs including where authorities are supporting the family. Where regularising their immigration status will have a major impact on a child's present and future well-being, stability and prospects, the local authority will need to take active steps to support the child in resolving their immigration case as part of their support to the family. For example, where a local authority is supporting a destitute family under section 17 of the Children Act 1989 by providing accommodation and/or subsistence they may consider that funding the legal fees for an immigration application is the best way to address the underlying needs of the child (since the family may primarily be destitute because their immigration status has not been regularised). This may include helping the family find appropriate independent legal assistance and underwriting its cost.

### **Pressures of local authority resources**

RMCC members have also been working closely with local authority partners in recent years to address the challenges facing local authorities who are having to provide financial support and accommodation under section 17 of the Children Act to families who have 'no recourse to public funds' (NRPF) due to Home Office policy. The lack of legal aid plays a crucial role within this equation because families are unable to make their immigration claims, based largely on Article 8 family rights to remain or settle in the UK or citizenship registration applications for children, thereby leaving them in legal uncertainty or without settled status and forced to rely on local authority support. There is a growing number of families who depend on support from local authorities because they are unable to make applications for leave to remain or because they have been granted leave but with an NRPF condition that they cannot get removed without legal assistance.

A recent survey conducted of directors of children's services found that 89% reported finding it increasingly challenging to fulfil their statutory duties under section 17 in the last five years<sup>16</sup> and the financial impact of providing support for families with immigration issues is a key part of this. For one local authority, the cost of providing support to NRPF families is £4 million a year and they have a dedicated team of seven child protection social workers and a manager supporting families in this situation. One local authority, which sees a high number of NRPF families requiring support, is trialling a project to pay for family immigration applications to the Home Office, as this helps to support NRPF families who do not have leave to remain to become independent.<sup>17</sup>

Our experience in supporting families with NRPF conditions shows that as well as needing immigration advice on which application they can make, support in making detailed representations on their substantive claim, gathering evidence and so on, legal representations are also often need to set out the families' financial circumstances so that the NRPF condition is not applied for the family where they have limited means or are already destitute. As there is a blanket policy to apply

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<sup>15</sup> <https://www.childrenslegalcentre.com/wp-content/uploads/2016/11/Guidance-Note-local-authorities-post-LASPO.pdf>

<sup>16</sup> All Party Parliamentary Group for Children, No Good Options: Report of the Inquiry into Children's Social Care in England (2016) <https://www.ncb.org.uk/sites/default/files/field/attachment/No%20Good%20Options.pdf>

<sup>17</sup> This information was shared at a roundtable event organised by The Children's Society in July 2017 with a group of cross-party parliamentarians and local authorities to explore the difficulties facing families with 'no recourse to public funds' and the challenges facing local authorities.

the NRPF condition on leave to remain, including where there are dependent children, families often then need legal advice and representation to appeal decisions or make 'change of circumstances' applications to ensure that they are able to access social housing, free school meals, nursery care for disadvantaged children so that parents can work and are not reliant on local authority support. The 'change of circumstances' forms constitute regulated casework under OISC and therefore require specialist support.

### **Care leavers**

Local authorities may also be under a duty to fund legal advice for care-leavers, who they have an ongoing duty to support and who may have ongoing immigration issues that affect their ability to access mainstream benefits. Central government and local authorities have a unique relationship with children and young people who are leaving care. This was re-emphasised in the recent 'Keep on Caring' strategy from July 2016:

*'This strategy calls for a revolution in the way that we think about supporting young people coming out of care. It asks local and central government to up their game as corporate parents, using the level of support that we expect a reasonable parent to provide for their child as the benchmark for how they should approach their role.'*<sup>18</sup>

No parent should willingly leave their child with unresolved legal issues and as such local authorities will need to support care leavers for whom they have responsibility as corporate parents, to obtain legal support by paying privately, unless this is provided under legal aid.

Gaps in the provision of legal aid from central government are funnelling resources away from other local authority child safeguarding activities. The cost now covered by some local authorities for immigration applications was previously covered by legal aid, before government changes to the legal aid system under LASPO.

## **5. Separating families through deportation**

The removal of legal aid for private and family life claims has worked to strip many parents of the ability to challenge their deportation. Since the 2007 UK Borders Act, foreign nationals who receive a 12 month custodial sentence are subject to automatic deportation. Parents in this situation are unable to access legal aid to challenge their deportation on the basis of article 8 considerations, including where they have children living in the UK who may have been born and raised here and who are British citizens.

We do not believe there is any other setting in the UK in which children including British children can be separated from their parents and have such little attention paid to their welfare.

The Home Office does not publish data on the detention and deportation of parents, and our experience is that Home Office decisions frequently contravene its own statutory duty to make the best interests of the child a primary consideration. With such opaque and arbitrary decision-making, it is especially important that individuals can effectively hold the Home Office to account through judicial processes.

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<sup>18</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/535899/Care-Leaver-Strategy.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/535899/Care-Leaver-Strategy.pdf)

Preparing article 8 deportation appeals is highly complex, and in order to be successful, quality legal representation and the production of expert reports are crucial. This is even more so if the case proceeds beyond the First-Tier Tribunal. ECF does not act as a sufficient remedy for the lack of legal aid. The difficulties of applying for ECF, such as awareness and understanding of the scheme, and access to evidence, help and support, are compounded by being in detention.

## **6. The role of the third sector**

Very few alternative sources of provision exist for those who cannot pay privately; some of the few organisations which do try to meet the legal needs of migrant children are represented within the Refugee and Migrant Children's Consortium.<sup>19</sup>

During the passage of LASPO it was argued that those most in need can still access free legal representation through the not-for-profit sector, which can give free legal advice and representation, and via a scheme of exceptional case funding (ECF). Many of the case studies in this briefing come from projects set up and run by charitable funding. However, our experience as a Consortium and research from our members shows that there are limits to the extent to which the voluntary sector, or pro bono provision, can fill the gap.

One example of pro bono Kids in Need of Defense UK is a collaboration between the US pro bono charity KIND and four UK legal advice charities. It trains and supervises pro bono lawyers from the corporate sector to provide children and young people with legal representation in their nationality and immigration matters, taking on 66 cases in its first year of operation. Only 4 of those cases were outside London and the cost per case was £3,000, excluding the time donated by pro bono lawyer. Kids in Need of Defense UK is currently funded by Microsoft, two charitable trusts and financial contributions from some of the law firms it works with but future funding is often uncertain and relatively short term. Furthermore, outside of London the pro bono culture is in its early stages and cannot respond to demand. Even in London, where we have a high concentration on pro bono lawyers and more experienced immigration lawyers, demand far outstrips supply; it operates a waiting list of between 3 and 5 months.

Outside of London there is a clear significant lack of provision for young people and families with immigration cases, even for those who are eligible for legal aid within asylum cases. For example, research by the University of Bedfordshire and The Children's Society in 2017 highlighted that the number of OISC-regulated immigration advice services has reduced by 46% from 2012 to 2016. The largest cut in services for those offering free legal advice was for advice at Level Three (appeals and the most complex cases), which saw a cut of 54% between 2012 to 2016. It is particularly concerning that there are very few providers in certain regions of the UK such as the South West, Wales, North East and East Midlands regions which only had one or two OISC registered providers able to give advice with appeals. This has also meant that families and young people with asylum claims, who have always been eligible for legal aid, have nevertheless been affected due to the lack of providers in their area. This was highlighted in the recent research by Refugee Action and NACCOM which

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<sup>19</sup> These include Coram Children's Legal Centre, Islington Law Centre, Central England Law Centre, Bail for Immigration Detainees, Greater Manchester Immigration Aid Unit, members of the Immigration Law Practitioners' Association and Just for Kids Law.



mapped the provision of legal aid across England Wales<sup>20</sup>. Among its findings, the research highlighted that 26 local authority areas with more than 100 people seeking asylum have no local legal aid provision, and in 46 local authority areas, the number of people seeking asylum exceeds the number of cases legal aid solicitors can provide by more than 100. Furthermore, we believe that protecting children's rights should be seen as a duty of the state, not of charity.

## **7. Recommendations**

- We would urge the government to restore legal aid to all immigration cases where children and young people are involved, either as independent young adult claimants or as dependent members of their family's claim.
- At the very least, the government must reform the Exceptional Case Funding system that it provides an effective safety net for children and young people. In the immediate term, a question should be added to the CIV ECF1 form to ask about the rights and interests of any affected children. Where the case affects a child or young person, a presumption should operate so that the young person or family could expect to have their case for civil legal aid funding granted, in line with children's rights standards. The LAA should accordingly publish guidance for its casework staff deciding ECF applications on how to handle applications affecting young people and families.
- The government should in particular consider the impact of the 'cost shift' of not providing immigration legal aid to families where children have been assessed as children in need (s17 CA) and are being supported by the local authority due to their immigration circumstances.
- Further work should be done to promote the use of the ECF to those working with young people and families, particularly within local authorities, in an effort to counter the low proportion of applications from them.
- The Legal Aid Agency should ensure that sufficient resources are allocated to allow for urgent cases to be decided within an appropriately quick time-frame. This is especially important where young people and families' status is uncertain and they are at risk of exploitation, destitution and exclusion, or where certain rights may expire as in the case of children's citizenship registration, without vital, timely support.

## **8. Case studies**

### **Case study 1: Sarah**

Having been abandoned by her British partner, Sarah was evicted from her home and on the streets with her two children (aged 7 and 2). Despite having to beg for food she was refused support from children's services because she had been unable to establish either the children's nationalities or her own immigration status in the UK. Without papers she couldn't work and support herself. After

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<sup>20</sup> Refugee Action and NACCOM (2018) 'Tipping the Scales – Access to Justice in the Asylum System': <http://www.refugee-action.org.uk/tipping-scales-access-justice-asylum-system/>

coming to an outreach session in north London, she was helped to get emergency accommodation and to access food and clothes banks. Thanks to charitable funding, one of Coram Children's Legal Centre's (CCLC) solicitors was able to support the family to resolve their immigration status issues, securing exceptional case funding and legal representation for them.

### **Case study 2: Joel**

Coram Children's Legal Centre (CCLC) applied for exceptional case funding for an undocumented young man, Joel, who was brought to the UK aged 12 by his mother. Joel was now 19 years old and needed to make an immigration application to stay in the UK based on the life he had built here and his mental health needs. When growing up, Joel's mother had entered into a relationship with a British man but the relationship was both physically and verbally abusive. The abusive partner used the immigration status of the mother and her children as a tool with which to prevent her from disclosing the abuse, even to staff at the hospital. The mother finally ended the abusive relationship after several years, but was then unable to support her children alone and the family was on the brink of becoming homeless. CCLC first encountered the family at a drop-in for destitute families. Joel had been seriously affected by his traumatic home life, ceasing to sleep or interact with others. He had attempted suicide and his mental health concerns made it implausible that he would be able to prepare and submit an application for leave without legal support. CCLC applied for ECF for Joel's immigration case, outlining the complexity of his case, and his extreme vulnerabilities. ECF was granted, and the young man's case was taken on by a solicitor who had experience of working with young people with additional support needs. Thanks to this pro bono assistance, Joel was eventually granted leave to remain.

### **Case study 3: Jonathon**

Having become destitute, Jonathon, his wife Mary and their son, who had complex medical issues including severe epilepsy were about to be evicted from their home. They were refused support from social services because they were unable to show that they had an immigration status in the UK. They also needed to make an immigration application based on the life they have built here in the UK and their son's medical needs.

After coming to an outreach session, the family were helped to secure emergency accommodation and support from their local authority. CCLC then prepared an application for ECF for the family's immigration matter. This was refused and CCLC then prepared and submitted a request that the LAA reconsider its decision. Three days later, Jonathon was detained, and notified that he would be removed from the UK.

The mother of the family, Mary spoke limited English and was caring for the couple's son, who required 24 hour care. She very clearly struggled to understand what had happened, what steps she needed to take to request his release, and how to gather the evidence required. CCLC updated the LAA immediately and requested an urgent response. Despite the obvious urgency, a decision was not received until 17 working days after the LAA had been notified of the fact the father had been detained (20 working days after the reconsideration request had been submitted). CCLC's request was successful and the family were granted ECF, 55 working days after the initial application had

been made. CCLC then secured representation for the family and an immigration application was submitted.

Had CCLC not intervened, the family would have been left to deal with a complex and traumatic experience by themselves, and it is likely that Jonathon would have been removed from the UK, away from his ill child.

#### **Case study 4: Sam**

CCLC advised Sam, a 19-year old care leaver from Jamaica, who came to the UK when he was seven with his parents. After a relationship breakdown, he was taken into care aged 15, and his leave to remain expired a year later. His social worker was aware of his immigration status, but did not do anything to resolve it before he turned 18. Aged 19 the young person's personal advisor called the Migrant Children's Project advice line to ask for help. At this point he was undocumented and had no right to work or claim benefits, and had no contact with his birth family. The local authority recognised their mistake and agreed to retrospectively pay for his legal representation. As he was no longer a looked after child and therefore no longer exempt, they also had to pay for his immigration fees, totalling £5,000.

#### **Case study 5: Anna**

Anna has been in the UK since she was 16. She received limited leave to remain (LLR) at the beginning of 2014, as did her two youngest children. Since 2012, the Family Migration rules have meant that families with children who are granted limited leave to remain get an automatic application of the 'no recourse to public funds' condition to their leave. Therefore, Anna and her children could not access most mainstream benefits. Limited leave is only for 2.5 years at a time over the 10 year route to settlement, meaning that families need to apply four times to accumulate the leave they need before they can apply to settle. Anna and her children had to reapply for a second 'round' of leave as the first was coming to an end. Her oldest son had British citizenship but her youngest son could only be registered as British once he turned 10 (based on entitlement).

As legal aid is now no longer available for non-asylum immigration cases including for parents with British children who need to apply for limited leave to remain. This means that families need to find thousands of pounds to pay for private solicitors to get advice and support to make the applications as well as thousands more for the Home Office application fees.

Anna was very stressed and on edge when she first met with The Children's Society's practitioners. She had been living with her father but had been thrown out when she was pregnant with one of her sons. She became homeless and reliant on friends for limited periods of time. At one point she was living with a friend who had children of her own. Anna was sleeping on chairs in the kitchen while her boys were sleeping in the living room. The flat was dirty with vermin and Anna could not stay at the accommodation during the day. The Children's Society supported her to access local authority support for her and her children as well as helping her to get the NRPF condition lifted.<sup>21</sup>

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<sup>21</sup> From The Children's Society, Making Life Impossible, 2016, at <https://www.childrensociety.org.uk/sites/default/files/making-life-impossible.pdf>

### **Case study 6: Duncan**

Duncan came to the UK in 2001. He lived in the UK undocumented for some time, but was granted periods of leave as a visitor and student, and later discretionary leave. He married a British woman and they had three children. He was then convicted of a drug-related offence. After he had served his sentence the Home Office placed him in immigration detention for 16 months.

During Duncan's detention, his wife Loretta struggled to cope with caring for their three children – aged eight, five and four - and social services became involved. Loretta had clinical depression and was receiving counselling. A social services report produced almost 10 months into Duncan's detention found that 'the father's absence has had a huge impact on the children's emotional health and well-being and it has now reached a point where the mother is almost at breaking point. The children appear to be blaming their mother for their father's absence; they appear to be extremely distressed and angry. There is a high risk of the family breaking down if support is not provided.'

Duncan won an appeal against his deportation. However, the Home Office challenged this decision and the case went up through the higher courts. Duncan could no longer afford to pay for legal representation. He submitted his own appeal, and the papers he sent did not include all the necessary documents. His case was refused and he was later deported, with a devastating impact on his children.<sup>22</sup>

### **Case study 7: Daniel**

Daniel is the primary carer of two British children in London. One of the children has a serious health condition and requires much support from Daniel. Notwithstanding this, the Home Office ordered that Daniel be removed from the UK and separated from his children. Although he has a meritorious Article 8 case, he couldn't afford a lawyer. He does not have an asylum claim. Daniel appealed the deportation decision unrepresented; however, he was ill equipped to do so with little understanding of the legal system. He did not submit any expert reports or witness statements, and as a result he lost the appeal. Daniel desperately needs a lawyer, and Bail for Immigration Detainees is looking into whether it take on the case. This may be unlikely due to limited capacity.

### **Case study 8: Esther**

Esther came to the UK aged 12, with her 7 year old brother and her mother. Her mother was from a small village, had no contact with her own itinerant family, and had been treated as a domestic servant by her husband's family. She did not speak English, and was not literate in her own language.

Esther's father worked in a restaurant in a small city in the UK and had been saving to bring them over for three years. When they came to the UK, the children started in local schools and did extremely well academically. After living here for five years, Esther's mother had a third child. Then, very suddenly, E's father died from a fatal heart attack.

The family became dependent on a man who had worked in the same restaurant as her father, and who lent the family small sums of money. They were living in accommodation provided by the restaurant manager but unable to pay any rent, which was the cause of growing tensions. Esther

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<sup>22</sup> From Bail for Immigration Detainees's 2015 research – 'Rough Justice - children and families affected by the 2013 legal aid cuts'

found out that she, her mother and brother had come to the UK on a 6 month visitors' visa which had expired several years ago. Her father had been trying to regularise their status through a firm of lawyers which since had been shut down by the regulators. All the family's documents had been lost by this firm, and they had no legal basis for staying in the UK but were unable to return to their country of origin.

Eventually the family were housed by the local authority under section 17 of the Children Act 1989, but Esther returned to ask the restaurant manager for money to pay a lawyer to help them regularise their immigration status. He lent the family the money, but their claim was unsuccessful. At this time, Esther's school noticed a change in her behaviour and social services became concerned that she was being groomed by the restaurant manager, but her mother would not engage with attempts to protect the girl as she maintained they needed the support of the restaurant manager to survive.

Esther was at risk. A local charity persuaded a solicitor to represent the family pro bono. The school and charity developed a support programme for the family and also arranged support in the form of: a weekly shop from the school, donations from the mosque, food bank vouchers and a small regular sum of money from the charity to ensure that the family did not need to rely on anyone else for financial support.

Two years later the family were granted leave and they are now on the 10 year route to settlement. However, Esther is disengaging from support networks and there are grave concerns that she is once again at risk of exploitation as the family have no means to secure the funds needed to re-apply for their leave.<sup>23</sup>

### **Case study 10: David**

David is a young person who came to the UK in 2006. He was taken into care in 2016, and then became a former relevant child, supported by children's services who provided him with accommodation and a personal advisor. In 2017, David received a Notice of Removal from the Home Office. He was supported by a solicitor to lodge an appeal against this decision and this was funded by the local authority. However, children's services refused to fund a legal representative to prepare his case or represent him at the hearing, and David was unable to represent himself. David and his keyworker from a charitable organisation came to an outreach session, where they met a CCLC solicitor. His keyworker explained that she and David had been given mixed information about whether David was eligible for legal aid or not. David also explained that he did not understand what legal aid meant, and both he and his key worker were concerned that he would have to represent himself at his hearing.

CCLC solicitors working with young people and families routinely have to explain what legal aid is to them, how it works and whether they are entitled to funding as an in-scope case or via the ECF scheme. CCLC made an application for ECF for David which was successful. Representation was then secured for David for his appeal hearing.

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<sup>23</sup> Case study provided by Islington Law Centre