

By cutting legal aid in immigration cases the government is forcing vulnerable individuals to go to court on their own to argue complex cases when it otherwise only allows authorised legal advisers to do so, says
Fiona Bawdon

The contradictory cuts to immigration legal aid

cases. Legal aid for non-asylum immigration cases (with a few hard won concessions) is also being scrapped, a loss which is causing particular alarm among campaigners. Asylum cases remain in scope.

Although the LASPO bill faced relatively little opposition during its passage through the House of Commons, it had a considerably bumpier ride in the Lords, suffering a record 14 defeats. Along the way, the bill succeeded in creating some unlikely alliances and even unlikely legal aid champions. A key concession (retaining legal aid in clinical negligence cases for babies up to eight weeks old) came largely thanks to the intervention of Norman (now Lord) Tebbit – which is probably the first time the ‘Chingford skinhead’ and legal aid lawyers have found themselves on the same side. The spirited campaign against the bill’s most draconian provisions was led by Justice for All, which succeeded in galvanising public, professional and parliamentary support for legal aid as never before. Although the campaign was instrumental in winning important changes – such as retaining funding for immigration domestic violence cases – the legislation’s key provisions remained substantially unchanged. Justice for All described the end result as “much improved but still devastating”.

Not form filling

John Holmstrom, assistant chief executive and director at Brighton Housing Trust, says the loss of immigration is “the most terrifying” legal aid cut of all. “I believe this is the one where our country most fails the test of being a civilised society governed by the rule of and equality before the law.”

The government’s own equality impact assessment concedes that 92 per cent of those affected by the removal of legal aid for immigration cases will be from ethnic minorities. It predicts that there will be 53,000 fewer publicly funded immigration cases next year. From 2013, these people will

be expected to present their own cases, with a bit of guidance and help from an interpreter, if necessary.

Whereas government ministers have defended the removal of legal aid by characterising immigration cases as mere ‘form-filling’, those with first hand knowledge of this area beg to differ. BHT’s John Holmstrom says immigration law is highly complex, particularly so for those whose first language is not English. He predicts that the inability to access expert advice “will mean many families pulled apart and a knock-on impact for community cohesion. We will see a heavy price paid in individual hardship and pressure on public services as families are unable to operate as an effective economic unit.” He adds that it may take a while for the full impact of leaving people to muddle through on their own to become obvious (other than to those most directly affected), by which time much irreparable damage to families and communities will have been done.

Holmstrom’s concerns are widely shared. Others point to what they see as an inherent contradiction in the government’s position. The complexity of immigration law has previously been well recognised, not least by the fact that those giving advice in this field have to be accredited by the Office of

the Immigration Services Commissioner (or a professional body), and that giving advice (as opposed to just information) without accreditation is a criminal offence. Thus, government is removing legal aid on the basis that, in an area of law where professionals must be specially trained and regulated before they can advise, it is fine for unqualified clients to go it alone.

Practitioners warn that, as a result of being denied expert legal advice, clients – some of them vulnerable; some of them who have lived in this country most or all of their lives but never regularised their immigration status – will end up being deported. People with clear grounds for appeal will end up being deported, for want of proper advice.

Fewer test cases

As well as the impact on individual clients, another concern is that with legal aid gone, immigration law will simply cease evolving, as there will be fewer cases brought.

Alison Stanley, head of immigration at civil liberties firm Bindmans, says in future the difficulty will not just be in finding funding for test cases, but finding suitable cases in the first place. Even if charitable or other funding is available in theory, other problems will remain. “Part of finding test cases is throughput,” says Stanley. If firms do continue doing immigration work – either pro bono, or with clients paying a fixed fee – the number of cases done on this basis is likely to be well down. Stanley fears that this will only reduce the chances of the right case coming across the desk of a suitably committed and energetic lawyer who can spot a potential test case when they see one.

With just six months until the changes come into force, lawyers are steeling themselves to make hard decisions about whether and how they can continue to provide a service to immigration clients who currently qualify for legal aid.

What makes this area particularly difficult when it comes to finding alternative models of funding is that immigration clients often have very limited means, and cases generally involve high levels of disbursements. Even if firms are prepared to do the work for free, they still have to find a way of covering the cost of interpreters and medical reports, along with the UK Border Agency’s hefty application fees.

Options being considered by some firms include giving free ‘first aid’ advice delivered

at community centres, but with no follow up handling of cases; offering a pared down service for a rock bottom fee for clients who can scrape some money together; taking on a limited number of carefully selected cases pro bono.

Firms which currently pride themselves on doing a thorough job for clients (and on their high success rates) face a real dilemma, over whether they should consider offering

is already turning away a large number of clients. “On an average week, we have calls from about 10 to 20 deportation cases, of which we probably take on one, every two weeks,” he says. “There are an awful lot more calls at the moment, even while legal aid exists, than we are able to handle.”

How is Luqmani Thompson gearing up for life post April 2013 and the potential loss of a third of its workload?

“Firms which currently pride themselves on doing a thorough job for clients face a real dilemma over whether they should consider offering a ‘light touch’ but affordable service”

a ‘light touch’ but affordable service, when they know from experience that the chances of getting a favourable UKBA decision are greatly increased by front-loading work on applications. “It goes against the grain,” says one solicitor. The issue firms have to resolve is whether some limited but high quality advice is better than nothing at all.

Alison Stanley fears that another consequence of the loss of legal aid may be to tempt unscrupulous providers into the sector who will exploit vulnerable and desperate clients. Her concerns are shared by Jawaid Luqmani of Luqmani Thompson in north London, who recently came across a client who had been charged a whopping £32,000 “for a bog standard deportation appeal”. “If you remove regulation, but there are still exploitation opportunities, then firms can move into that and say, ‘Well, fine, we’ll make a killing’,” he says.

At legal aid rates, the deportation case would have attracted around £600; at commercial rates, the fee might have been £2,000, adds Luqmani.

Painful choices

Around 30 per cent of Luqmani’s firm’s work is immigration (the rest is asylum), and it

“We’ve been looking for efficiencies. We can’t find any,” he says drily. Instead, the plan is to expand its corporate immigration work (currently up to 95 per cent of its income is from legal aid); and also areas like unlawful detention (which can be funded on conditional fee).

No law firm worth its salt will lightly turn its back on important and winnable cases (whatever the funding difficulties) and Luqmani Thompson is no exception. Luqmani says, as well as looking at staged fixed fees for immigration work, they may introduce a policy where each fee-earner can take on one ‘pet’ pro bono case, say, every quarter.

“Sometimes cases are just too interesting or important and they need to be litigated, and there will continue to be those cases,” he says. However, there will inevitably be limits on what the firm can commit to, however interesting the case, and clients in far flung places are likely to miss out.

“If it would mean a five-hour trip to Exeter prison, taking an interpreter with me, which is going to cost me £200 to £300, which I can never recover – well, that would be painful,” says Luqmani.



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