



NEW LEGAL AID RULES WILL REDUCE ACCESS TO JUSTICE FOR ASYLUM SEEKERS AND MIGRANTS

What is the issue? The [Civil Legal Aid \(Remuneration\) \(Amendment\) \(Coronavirus\) Regulations 2020](#), laid before Parliament on 18th May 2020 by negative resolution, will come into force on 8th June 2020 and last for one year. The regulations set a new legal aid fee for asylum and immigration appeals lodged online through the court's new "Core Case Data" (CCD) platform. These fees have been brought in before a full consultation has taken place, and a full impact assessment has not been carried out. This will be the norm during the pandemic and perhaps afterwards. The standard fixed fee for a case lodged through CCD will be £627 for an asylum case, or £527 for a non-asylum case. The changes will make legally aided asylum and immigration work financially unviable and harm access to justice.

Why are the regulations unfair? The legal aid sector is at breaking point. Research by [Refugee Action](#) shows that there has been a 56% drop in the number of asylum and immigration legal aid providers since 2005. At present, lawyers doing this work can only charge for actual time spent at an hourly rate where their work exceeds three times the value of the fixed fee in the whole life of a case. The fixed fee is currently £227. The new proposed fixed fees mean that in asylum cases £1,881 (3 x £627) of work must be undertaken before an hourly rate would be available. Legal aid lawyers are effectively being asked to work for free if they do high quality and time-consuming work, that can easily fall short of the increased escape fee threshold.

Now, barristers are paid £302 to prepare and represent an asylum seeker at an appeal. With the CCD platform, skeleton arguments (documents usually prepared by the barrister) are required at an earlier stage. As such a hearing is less likely to result if a barrister can persuade the Home Office that it was wrong. The Immigration Law Practitioners' Association (ILPA) estimates that even in complex cases, under this new scheme, a barrister might be expected to produce a skeleton argument for as little as £60. This will create the perverse situation that the more effective a barrister's skeleton argument is, the less likely they are to be paid fairly for work that is about life or death.

What is the impact? Access to justice will be denied for those most in need of representation.

The new legal aid rates will make it financially impossible for lawyers to take on complex immigration and asylum cases. The immigration Bar is united in refusing to accept instructions under this new fee model as the changes pose an existential threat to the profession.

Firms will be less likely to do legally aided immigration cases, particularly those which are complex and demand more time, for people with complicated histories and vulnerabilities. There is too great

a risk that they will not be paid for hours of time. The alternative would be to do the bare minimum on a case, for the firm to pay its bills and survive.

The changes will also have a serious impact on social mobility and diversity in the legal aid sector. If this sector takes any further financial hits, firms are less likely to be taking on new lawyers at all, and if they do, rates of pay will remain low. People without independent financial support will no longer be able to practise as legal aid lawyers. That means disadvantaged clients will no longer have lawyers that look and sound like them. That is a real threat to access to justice in the short and long term.

A CASE STUDY OF JUSTICE DENIED BY THE FIXED FEES

Mia is a 21-year-old from Albania. When she was 16, she was trafficked to London by an Albanian gang and forced to do sex work for no pay. She managed to escape but has suffered significant trauma and abuse. Mia desperately needs immigration advice to regularise her status so she can access mainstream support. She has nowhere she can live in Albania, no support there for her mental health, and is fearful of the trafficking gang. However, her support worker in the UK cannot find a solicitor to take on her case. One solicitor said he wishes he could help, but his legal aid firm doesn't have the cashflow. Mia's case is very complicated. The solicitor knows these cases are hard to win. He thinks he would need to get a medical report, information from the police and supporting evidence from other agencies. The firm can't take the risk of only being paid the new fixed fee, which wouldn't cover this time, in the event the work wouldn't hit the new escape limit. Mia feels like she has no options, and no hope. If she goes back to sex work, she can pay for a lawyer with the money she earns. She is not allowed to work legally and feels she has no other choice.

What action is needed? Legal aid lawyers deserve to be paid fairly. [We call on all MPs to support the prayer against the SI tabled by the Opposition \(EDM 559\)](#). This could result in the SI being struck down.

We also encourage the Lord Chancellor and Legal Aid Minister to commit to paying legal aid lawyers a fair wage for the work they do. This is about ensuring access to justice for the most disadvantaged in society.

This briefing was put together by Young Legal Aid Lawyers, a group of aspiring and junior legal aid lawyers from across England & Wales. Please email ylainfo@gmail.com for more information. It is up to date as of 5th June 2020. We also recommend reading the statement of the [Immigration Law Practitioners' Association](#).

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