

## The effect of Legal Aid cuts on people seeking asylum

The impact of the reductions in legal aid funding and the limiting of the scope of legal aid will have a significant impact on the ability of asylum seekers to argue article 8 as this is now outside the scope of legal aid and so many asylum seekers and others on low incomes will have no access to legal advice in a particularly complex area of law. Given Theresa Mays crack down on the use of Article 8 and what she feels is its abuse it seems that as the government is not prepared to go so far as to repeal the Human Rights Act and withdraw from the European Convention on Human Rights but are essentially doing this by the back door by restricting access to justice to those on low incomes where Article 8 issues are raised.

For many asylum seekers Article 8 is a vital part of their claim for many reasons and may offer a viable argument on physical and moral integrity aspects of private life where the article 3 threshold would not be met. For example a person who is HIV positive but who will not get treatment in their home country will not be able to succeed under Article 3 unless they are gravely ill and nearing the end of their life and removal will hasten that. Given modern HIV meds there will be few who will succeed here. But on return to their country they are likely to have a significantly shorter life without meds ( I think most cases I have dealt with have said that without meds life expectancy would be about 2 years). I have argued that clients who are single with small children who will see their health deteriorate rapidly and have no provision for the care of their children on their death would see a breach of their Article 8 rights on return on the basis of physical and moral integrity and family life (death inevitably separating them from their children and depriving the children of their parent) where we may not have been able to succeed under article 3. We can now also raise S55 and the best interest of the child but as this is linked to Article 8 considerations technically we cannot raise this in a legally aided case.

Also where we have clients who have seen delay in their cases at the hands of the Border Agency and want to rely on Chapter 53 of the enforcement instructions or want to rely on the seven year child rule will not be able to get legal assistance with these issues as they would constitute Article 8 matters and would therefore not be funded. This is particularly harsh where there are children involved who may have arguments in their own right which would permit them to stay in the UK.

Also the ability of lawyers to continue to run a viable business offering legal aid is seriously under threat which not only impacts on clients but on businesses and employees. IAS and RMJ have fallen victim to the cuts and changes to legal aid and no doubt many other providers will follow. There has been a further 10% cut with another 10% planned as I understand it and some other changes such as the 35% uplift for upper tribunal cases being removed. Many legal aid practitioners will simply not be able to continue to operate and even if they do it's has the potential to lead to poorly undertaken case work on asylum cases. The current fee for a CW1 matter start is £418. The kind of work needed to properly prepare a CW1 case is as follows

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Taking initial instructions and preparing client for UKBA interview - 60m

Reading back the UKBA interview with client (listening to tapes) - 120m (at least depending on transcript and length of interview)

Drafting client witness statement – 120m

Objective research on client's situation and reading considering case law – 60-120m

Drafting representations to the UKBA with amendments to interview and comments on objective evidence and case law and setting out claim and highlighting supporting evidence – 60m-120m

Considering a refusal or grant of status and advising client accordingly 30-60m

The total time is about 10 hours and that in my view is a realistic time estimate of a case that is properly handled during the asylum process. Many solicitors and reps would not be able to justify this amount of time on a case and still make a profit and this can be seen in practice as many representatives would not routinely read back a client's interview record with them and would not draft a witness statement during this stage of the case and would often not even submit detailed letter of representations all of which can severely impact a client's prospects of success. With cuts legal representatives will be doing less and less work for clients and inevitably clients will be the ones who suffer.

Sorry if it ended up being a little bit more than notes but you can condense it to impact on lack of free legal assistance to those with Article 8 claims and impact on the quality of legal advice and representation in the asylum field.

Sarah Rogers