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North East Strategic Migration Partnership Briefing Note¹

Reform of Legal Aid in England and Wales and the likely impacts on Public Services and the Voluntary Sector

1. Purpose

- 1.1 This briefing paper identifies a number of key concerns that are likely to impact on public services and voluntary agencies in relation to how proposed changes to legal aid will affect immigration cases in the future.
- 1.2 NESMP recognises the rationale behind the proposed changes and the need to review legal aid in the light of the economic climate. However, concerns remain about potential displacements costs and the likelihood of local authorities and other public services incurring additional costs. Overall there is concern that in some cases there are likely impacts which would actually result in a greater cost to the public purse.

2. Introduction

- 2.1 The Legal Aid, Sentencing and Punishment of Offenders Bill, currently being passed through Parliament, include reforms to reduce the legal aid budget by £350 million. The Bill is expected to complete its passage by May 2012.
- 2.2 Under this bill, the vast majority of immigration cases that are not asylum related will be ineligible for Legal Aid funding, as will be other areas of law such as employment, housing and family law.

3. Background

- 3.1 In November 2010 the Ministry of Justice announced proposed changes to legal aid in England and Wales. A consultation was conducted which closed in February 2011.
- 3.2 The Government received over 5,000 responses to the consultation, the majority of which did not support the Government's proposals for reform.²

¹ For information about NESMP please visit www.nesmp.org.uk

3.3 On 21st June 2011 the Government issued its response to the legal aid consultation alongside the Legal Aid, Sentencing and Punishment of Offenders Bill. In their response the Government acknowledged where valid concerns had been raised and made some modifications to their initial proposals including, for example, ensuring that:-

- victims of domestic violence receive legal aid for private family cases;
- legal aid is available for children at risk of abuse or abduction;
- legal aid funding is available for Special Educational Needs matters.

3.4 The principle driver cited by the Ministry of Justice for reforming the legal aid scheme is financial. The Government would like to contribute to reducing the fiscal deficit with savings estimated to be £350 million in 2014-15 (total Legal Aid costs currently stand at over £2bn per year). Furthermore, the government also considers that legal aid to be too wide leading to a rise in expensive legal solutions instead of alternative solutions being explored in the first instance.

3.5 There are 4 key proposals:

- i) **Reducing eligibility:** Fewer people will be entitled to full funding and eligibility criteria are tightened. Eligibility criteria will tighten so those on low incomes pay more toward their costs and there will be an end to “passporting” for people on certain benefits. The bill also removes the automatic right to legal aid for advice in the police station.
- ii) **Reductions in Advice areas covered by legal aid:** Immigration advice (except asylum) will be removed alongside other areas of advice including: Welfare benefits, Debt (except where a home is immediately at risk, amended to include when someone is facing an order for sale of their home), Education (except special educational needs), Employment (except discrimination), family (except domestic violence and forced marriage or child abuse/abduction), and housing law (except when there is a risk of homelessness or serious health threatening disrepair).
- iii) **Reducing payments to providers, counsel and experts:** 10% fee cut from October 2011
- iv) **Introducing a centralized telephone helpline:** the mandatory Telephone Advice Gateway will initially be introduced in four areas of law (debt work, community care, discrimination and Special Educational Needs), with exceptions where, for example, the case is an emergency, or the client is a child or in detention.

2 Ministry of Justice June 2011: Reform of Legal Aid in England and Wales: the Government Response: <http://www.justice.gov.uk/downloads/consultations/legal-aid-reform-government-response.pdf>

4 How the changes to the scope of legal aid funding affect immigration related matters

- 4.1 Legal aid funding will be removed from all immigration cases with the exception of protection claims (namely asylum, breach of Article 3 ECHR³), challenges to immigration detention (e.g. bail applications) and cases before the Special Immigration Appeals Commission.
- 4.2 A concession was made to maintain legal aid for applications for asylum support under sections 4⁴ and 95⁵ of the Immigration and Asylum Act 1999. These applications relate to the accommodation for otherwise destitute asylum seekers and their dependents, or refused asylum seekers and their dependents. Legal aid for subsistence only support is excluded from scope.
- 4.3 Areas no longer covered by legal aid include:-
- family reunion⁶
 - deportation (non asylum related)
 - Article 8 ECHR⁷ claims on the basis of family and private life
 - leave to remain outside the rules
 - visa applications
 - European law cases
 - trafficking and domestic violence⁸
 - Legal Aid will also be removed from certain immigration judicial reviews, for example where someone wishes to bring a claim within a year of their appeal.

³ **Article 3** of the European Convention on Human Rights prohibits torture and "inhuman or degrading treatment or punishment". The ECHR has further held that this provision prohibits the extradition of a person to a foreign state if they are likely to be subjected there to torture or inhuman or degrading treatment or punishment.

⁴ If all rights to appeal have been exhausted, the Government requires that the asylum seeker leaves the country. If the government accepts that it is currently not possible for them to leave the country then they may still be entitled to limited support (accommodation and vouchers) under **Section 4** of the Immigration and Asylum Act 1999.

⁵ **Section 95** of the Immigration and Asylum Act 1999 is by the UK Borders Agency to fund accommodation and/or subsistence payments while it considers a person's asylum claim.

⁶ The Government considers that applications to join family members are immigration cases, and as such will not be covered by legal aid.

⁷ **Article 8** of the European Convention on Human Rights provides a right to respect for one's "private and family life, his home and his correspondence", subject to certain restrictions that are "in accordance with law" and "necessary in a democratic society".

⁸ Under the Immigration Rules, someone on a spousal visa, which is valid for a limited period of time, and who finds themselves in an abusive relationship, can apply for indefinite leave to remain under the 'domestic violence immigration rule'. Under the new bill such cases will be removed from scope. Legal aid will continue to be available for those seeking a civil injunction to prevent domestic violence irrespective of their nationality or immigration status.

5. Likely impacts on Public Services

- 5.1 The Partnership team in general is concerned that the proposed changes may result in additional pressures on public services, in particular Local Authorities, as people struggle to regularise their immigration status.
- 5.2 It is widely acknowledged that people with irregular immigration status are among the most financially excluded and therefore highly likely to seek local authority support.⁹
- 5.3 The likely impacts in particular on local authorities are summarised as follows:
- i) A likely rise in the number of households from abroad with unresolved immigration situations who therefore have no right to work and No Recourse to Public Funds (NRPF) presenting to the local authority for accommodation and support.
 - ii) For those families and vulnerable adults being supported by local authorities, delays and additional expense might arise as the inability to access independent legal advice makes it more difficult to achieve resolution on their immigration cases and their discharge from local authority care.
 - iii) Increased pressures (and costs) on social workers and legal departments in local authorities to unpick the complex immigration cases of households for which they have a duty – potentially requiring the local authority to seek, at a cost, immigration legal advice in order to resolve these situations.
 - iv) Local Authorities will be obliged to make complex legal and financial decisions on whether to obtain advice in order to resolve NRPF cases that may otherwise remain in limbo.
 - v) Unaccompanied Asylum Seeking Children (UASC) and care leavers making applications for further leave on Article 8 grounds will be excluded from assistance to Legal Aid. The local authorities' obligations to this group may therefore have to expand to include the responsibility for ensuring legal advice and representation.
 - vi) There will be a safeguarding impact, especially for UASC, as the proposed changes would make both children and adults increasingly vulnerable, requiring an inter-agency response which could have been prevented. This would increase costs to provider organisations.

⁹ South East Strategic Partnership for Migration Memorandum August 2011

- vii) Without access to specialist advisors, those with insecure immigration status may be less likely to approach the authorities for support. The inability of families to submit Article 8 applications may result in Human Rights Act assessments which conclude that families have no grounds for support and are offered assistance in returning to their countries of origin instead.
- viii) There are likely to be additional pressures on poorer migrant communities to accommodate and support people with outstanding immigration applications (particularly with shared country of origin) for longer periods, including asylum seekers who experience problems and delays in receiving support. It is demonstrated that this often leads to overcrowding and potentially dangerous living conditions, including the spread of notifiable communicable diseases such as TB.
- ix) The removal of refugee family reunion from the scope of legal aid may reduce the capacity of refugees to integrate as well as their ability to rebuild their lives. It may also encourage the illegal entry of family members resulting in similar problems as set out in the point above.
- x) There may be a negative impact, in terms of activity in the informal economy and areas of crime such as trafficking, related to people being unable to regularise their immigration status.
- xi) Advice for asylum support matters will be limited to cases involving accommodation, meaning that people who require subsistence only support will not be able to access advice.

5.4 The cumulative impact of the points summarised in paragraph 4.3 will have hidden pressures on the settled minority communities as well as our new and emerging communities. These could include:

- i) Overcrowding and increased poverty as those who are destitute and/or have an unresolved immigration situation have to be supported by other community members, who are likely to be themselves on low incomes and in insecure housing.
- ii) Families who feel they have to remain hidden from the authorities
- iii) More complex needs assessments recognising the additional pressures on some migrant populations and also in commissioning services for them
- iv) A great deal of trust and confidence will need to be built up by local authorities amongst their local migrant populations in order to discover the true extent of the problems facing the community- especially if they involve community members whose legal status in the UK is unclear.

5. Conclusion

This paper outlines what we, the partnership team, see as the likely impact on public services of the proposed reforms to legal aid. This includes displacing costs onto and increasing the pressures on the resources, services and delivery of public services in the local area. It also provides a snapshot of the pressures likely to be placed on our settled minority communities. There is also the risk that the proposed changes will leave those who are already in a precarious situation at more risk of, and vulnerable to, various forms of exploitation and criminal activity.

We recommend that public and voluntary sector agencies seek legal guidance on how these proposed reforms will affect them.