



M R C F
Migrant and Refugee
Communities Forum

Response to the consultation 'Proposals for the Reform of Legal Aid in England and Wales'

February 2011

Introduction

Migrant and Refugee Communities Forum (MRCF) is a user-led community empowerment alliance of 40 organizations, with 17 years experience of supporting refugee and migrant communities in London. Our work practically addresses the social exclusion of migrant and refugee residents and strengthens their voice and civic participation, with the overall aim of achieving equality for disadvantaged individuals and communities.

We work on a daily basis assisting refugee and migrant community organizations in their work to empower and integrate their communities. MRCF also provides support to individual migrants and refugees through provision of advice, ESOL, employment and digital inclusion training and mentoring support for those with mental health problems. In addition MRCF produces research and policy responses to give voice to excluded communities and positively influence change.

This response has been produced as a result of a collaboration between the Migrant and Refugee Communities Forum (www.mrcf.org.uk) and the Migrants' Rights Network (www.migrantsrights.org.uk). It also draws on MRCF's long experience in providing support and advice and perspectives given in a joint meeting held by MRN and MRCF in February 2011, which brought together migrant and refugee community support and advice organisations in London, to discuss the issues raised by the government's proposals for reforming legal aid.

Summary of response

In summary, MRCF is extremely concerned about the proposed changes to legal aid funded advice in the UK, which we believe would make it substantially more difficult for migrants and refugees to access justice in the UK. We are concerned that they would disadvantage settled BME communities as well as newly arrived immigrants. By reducing access to proper legal advice, these proposals would reduce the capacity of some of the most vulnerable communities in the UK to get justice. For many of those that we are in contact with, legal aid support is often the only way of overturning the erroneous decisions by various providers of services which affect their lives.

We outline within this response why we think that immigration matters should not be taken out of the scope of legal aid – these cases are often of paramount importance to those concerned, and are linked to a host of complex issues such as housing, employment, debt-related matters and education which vulnerable people cannot be expected to resolve without expert help. Stopping access to free and good legal advice would particularly affect many migrants and refugees who are more likely to lack social support, language skills or

familiarity with the relevant systems and, in the initial stage of their settlement, sufficient funds to pay for good advice.

The wider context of these proposed cuts to legal aid is that of a severe reduction in the provision of reliable, free advice in general for migrants and refugees and other vulnerable groups to help them resolve problems early on. This reduction is due to cuts brought in over the last decade as well as recent public sector funding cuts. Refugee and Migrant Community Organisations (MRCOs) are already providing support and advice to migrants and refugees and are often doing it on a voluntary basis. They have already surpassed their capacity to meet the increased demand from these cuts. These organisations are reliant on legal aid support as their last resort, referring clients to legal aid funded advice only when all alternative options have been exhausted. It is also unrealistic to expect that many of these clients could be effectively and fairly dealt with via a telephone helpline. Their immigration experience may involve trauma and they often lack English language skills, and are socially isolated, which in combination, puts them at a great disadvantage when arguing their own case.

Consultation questions

Question 1: Do you agree with the proposals to retain the types of case and proceedings listed in paragraphs 4.37 to 4.144 of the consultation documented within the scope of the civil and family legal aid scheme? Please give reasons.

Yes. We think that the types of case and proceedings listed in these paragraphs should be retained within the civil and family legal aid scheme.

Question 3: Do you agree with the proposals to exclude the types of case and proceedings listed in paragraphs 4.148 to 4.425 from the scope of the civil and family legal aid scheme? Please give reasons.

No.

Taking into account the factors that the consultation document lists in its consideration of what types of issues should be taken out of scope – i.e. the importance of the issue, the litigant’s ability to present their own case, the availability of alternative sources of funding and the availability of other routes of resolution – we do not agree with the proposals to exclude the listed types of cases and proceedings.

Firstly, we believe that the importance of immigration advice has not been properly recognised in the government’s consultation. Although the government describes virtually all immigration matters as issues related to ‘free and personal choice’ and also that there is no ‘immediate risk as a consequence of the decision’ in these cases this is an inadequate reflection of the situation for many migrants seeking legal assistance in the UK.

We think that immigration advice should be kept in scope because it relates to a wide range of cases with impacts on clients’ well-being and livelihoods. Legal aid in this area enables people to apply for entry and extension of stay in the UK, or to bring their family members

to the UK – issues which, as mentioned in the consultation document, often relate to their rights laid out under the European Convention on Human Rights.

Legal Aid support also often enables people to overturn erroneous decision-making by the UK Border Agency – particularly critical in the context of rapidly changing rules, the ongoing ‘flexibility’ of the requirements for entry and stay in the UK under the Points Based System, and dwindling access to appeal mechanisms (including appeals before the Asylum and Immigration Tribunal) for refused applicants. Immigration procedures can have serious consequences if not followed properly or if subject to poor decision making by the authorities, resulting in refusal of entry clearance in the future, removal from the country or immigration detention. In this context, attaining adequate support for immigration cases carries significant implications for the person’s well-being.

Moreover, the situation for some of the most vulnerable migrants in the UK would be worsened by reducing the scope for immigration cases to be supported by legal aid. These include the following:

- Detention cases – although detention will be kept within scope, people will not be supported to resolve their underlying immigration problems – this means that for some, these issues will not be resolved at all.
- Domestic violence – immigration cases with a domestic violence component will not be kept within scope. These cases are likely to involve vulnerable women who will have no access to justice without legal aid – as a result this will create a culture of impunity for abusive partners and increase suffering of the victim in immigration cases.

In addition, we oppose the wider removal of welfare, debt, employment, education and housing issues from the scope of legal aid funding. This change would affect many migrants and refugees, as part of the wider population who would find it more difficult to access advice on these issues. Members of migrant communities, however, may be more likely to present particularly complex cases involving a range of different factors, or to find that language and cultural barriers mean that it is more difficult for them to resolve cases without legal aid support. Issues where particular concern has been raised by migrant and refugee community organisations include:

- Divorce cases
- Instances of family violence, including domestic violence
- Difficulties involving private landlords
- Debt related issues – such instances are already on the increase involving people who lost their jobs in recent cuts and are unable to pay bills and rent.
- Employment issues relating to migrant domestic workers
- Discrimination in the context of employment, housing and education, where it may not be picked up on as a discrimination issue and thereby fail to secure legal aid.

The consultation document states that litigants in cases which fall outside the scope of legal aid should seek to represent themselves. It is therefore vital that those presenting in court have good knowledge of the procedures and rules in order that they can effectively challenge poor decisions; our experience indicates that many migrants and refugees, like

many other vulnerable groups, rely on expert advice for this. Moreover, immigration cases are likely to involve people for whom English is not the first language and who may be accustomed to different judiciary systems – we often see that migrants attempting to represent themselves are intimidated by the courtroom setting, thus negatively affecting the quality and complexity of their claims and therefore reducing their chances of winning. As a result of these factors, we do not believe it is realistic or fair to expect that many individuals will have the ability to successfully present their own cases at court.

In terms of alternative paths to resolution, there is a real difficulty in identifying viable alternative sources of advice and methods which can help migrants and refugees to resolve cases without recourse to legal channels. MRCF provides initial signposting and generalist advice for migrants and refugees which focuses on early intervention in order to prevent issues from reaching a stage where legal support is necessary. The funding for this work is under threat. The reason why MRCF had to set up this service is because CABs and Law Centres did not have the capacity to help users with language issues. Last year we provided advice to 250 individuals and we had difficulty in referring them to specialist advisers as they are already oversubscribed.

The most difficulty we had in making referrals for clients was in the field of immigration advice. Because it is regulated by the OISC most voluntary sector providers of advice are not accredited to provide advice on immigration matters and those who do have legal aid contracts are oversubscribed. Furthermore, immigration appeals are not amenable to alternative routes to resolution as they are resolved in the asylum and immigration tribunal.

MRCOs who came to our consultation meeting agreed that there is very little spare capacity to provide advice in the sector if the number of people seeking advice from them increases. Demand already outstrips the capacity for advice at present and many services are under threat from funding cuts, so the sector would find it challenging to serve a larger number of clients.

MRCOs will therefore be unable to assist their clients with complex cases unless they have the financial capability to pay for the advice. For this sector, voluntary organisations are therefore not an alternative to legal aid funded advice. and without access to legal aid the vast majority of migrants would be left without representation. This would result not only in increased injustice and misery in individual cases, but also in the overall poorer quality of UK institutions and regulations due to the loss of opportunity to refine the law and improve institutional performance. We believe that these effects may have a negative impact on all British society not just migrants and refugees.

Question 6: We would welcome views or evidence on the potential impact of the proposed reforms to the scope of legal aid on litigants in person and the conduct of proceedings.

We anticipate that there will be substantial impacts on many litigants from migrant and refugee backgrounds as a result of the proposed reforms, including difficulty in identifying whether an issue falls within the scope of legal aid or not. In cases where more than one area is affected and particularly in cases involving a dimension of discrimination, many

litigants will have difficulty identifying whether they could take a case forward with legal aid support.

In terms of the conduct of proceedings, although the consultation document states that litigants can represent themselves in person before the First-tier and Upper Tribunals for immigration and asylum, this is not supported by our experience. It is in fact likely that many appellants, due to unfamiliarity with the system, frequent mental health problems caused by trauma and low English level skills will find it challenging to represent themselves and, even if they have good grounds for appeal, will find their case undermined as a result.

We can expect that those people who find they cannot get legal aid funded advice will either turn to unregulated sources of immigration advice, or will attempt to avoid the legal system altogether by slipping beneath the radar. They would therefore risk exploitation, destitution and homelessness, exclusions from schools and other social problems as a result of increased disenfranchisement from formal channels of legal advice.

We urge that the impacts of the proposed reforms on community support organisations are also considered in this consultation. Currently, many community support organisations – many of which are staffed by community members operating in a voluntary capacity – are the first point of contact for migrants and refugees looking for advice and support. This in effect acts as a form of early intervention, enabling minor cases to be picked up and directed through non-legal routes before reaching the stage of litigation. It appears that the government views voluntary organisations such as these as capable of ‘filling in the gaps’ when formal legal advice is restricted.

However, the current financial pressure and rising demand on many community support organisations means that it is increasingly difficult to provide advice services and wider support. To solely rely on community organisations and volunteers to give advice on social welfare and other rights is not an option as they lack skills and the turnover of volunteers is high. Demand already outstrips the capacity for advice at present and many services are under threat from funding cuts, so the sector would find it challenging to serve a larger number of clients.

Question 7. Do you agree that the Community Legal Advice helpline should be established as the single gateway to access civil legal aid advice? Please give reasons.

No.

We recognise that a legal advice helpline is a useful and convenient way of accessing advice in many cases if it exists alongside other options for access to advice. However, we strongly oppose the idea of a helpline as the *single gateway* to access legal aid advice.

Caseworkers and members of MRCOs that we work with are deeply sceptical that eligibility for legal aid can be correctly assessed in all cases over the telephone. There are several factors that could put migrants and refugees at risk of not getting a correct assessment of eligibility for legal aid via telephone, especially at the first Operator Service stage. MRCOs

present at our consultation event are concerned about clients' willingness to discuss serious and often difficult personal issues over the telephone.

Even when willing to present their case over the telephone, there is a concern about the ability of clients to present the exact details of their cases. The view of several MRCOs is that face-to-face contact and questioning is essential to determine the exact nature of a case, which can seem straightforward prima facie but which may have more complex issues involved.

A further issue is the importance of documents in carrying out an initial assessment. Several participants mentioned that being able to go through clients' documents is often essential to understand the nature of a case. In some cases, clients have poor English reading skills and are therefore not able to communicate the content of letters or other documents on the telephone.

Another issue identified was the different ramifications of a case. For example, an employment case which in the proposals is out of scope could have an element of discrimination, which remains in scope. This element of a case could be overlooked by a telephone operator. We are concerned that in not having all the details of a case readily available, operators would risk dismissing cases that remain within the scope of legal aid.

Even though the CLA helpline offers a call-back option, MRCOs attending our consultation expressed concern that clients may be put off from using the helpline for fear of the cost of using a telephone service. Some MRCOs are also concerned that clients will want to access the helpline from their own premises placing further pressure on MRCO infrastructure and resources.

Question 8: Do you agree that specialist advice should be offered through the Community Legal Advice helpline in all categories of law and that, in some categories, the majority of civil Legal Help clients and cases can be dealt with through this channel? Please give reasons.

No.

MRCF cannot comment on whether *all* categories of law are suitable for specialist advice via a telephone call.

However, we do not agree that the majority of legal help clients and cases can be dealt with through this channel. There is an undisputable value of face-to-face contact, particularly for many migrants and refugees, including for the following reasons:

- Personal capacity – Some migrants may have been traumatised by the circumstances of their migration to UK and may therefore experience emotional distress when talking about their cases. Many lack English language skills, as it is not their first language, and will therefore find it difficult to satisfactorily resolve their case without face-to-face contact.
- Documentation – we would be concerned that clients attempting to resolve a case over the phone will find it difficult to identify the correct documentation or necessary information within their files without face-to-face contact.

- Complexity of cases – many cases experienced by migrants and refugees are complex, involving multiple areas of law. They require high level of skills and time to resolve. It is unrealistic to expect this to be possible over the phone.

Question 9: What factors should be taken into account when devising the criteria for determining when face to face advice will be required?

MRCF believes that face to face advice should always be an option available to clients who fall within the scope and eligibility for legal aid. The single criteria for determining that face to face advice is required should be the expression of this preference from the client.

Caseworkers in migrant and refugee community and advice organisations have told us that through their casework they often know when a client is not fit to receive advice on the telephone. We believe that the judgement of MRCOs on the need for face to face advice should be taken into account when determining how legal aid advice should be provided. Because they will have already carried out work on a one to one basis with the client, often for a prolonged period, they are best placed, certainly better placed than a telephone operator, to determine whether the client would be best served by telephone or face to face advice.

We urge the government to consider these cuts to Legal Aid in context of other cuts to services. The pace of change as a result of other government austerity measures should be taken into consideration when assessing the accessibility of legal aid for vulnerable people, in particular we are concerned with changes to welfare state entitlements and the adversarial culture of some of the benefits agencies. Many of our clients end up in need of specialist advice due to mistakes made by government departments, or sometimes even due to computer errors. Not all migrants and refugees are vulnerable or poor, but those who are experience multiple disadvantages regardless of how long they have been in the UK. Many of our users have been in the UK for many years and are now British citizens, but their economic and social integration has been slow and often hindered by discrimination and inability to understand and negotiate complex rules and services. Access to legal aid has been a life line for many vulnerable individuals and has over the years helped to improve institutions and reform systems to be more inclusive and fair.

MRCF fully understands the brutal reality of the economic crisis and the need to make savings. However, we are concerned that the long term cost of the proposed measures to restrict access to legal aid would be much higher in monetary and social terms.