

## Legal Advice

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If you think that you should not be deported but the Home Office is pursuing deportation then you should seek legal advice on your options. Deportation is a complex area of law and it is important that you are clear about what choices are available to you.

Previously, it was possible for some people to get free legal advice and assistance under a scheme known as legal aid. There have recently been many big changes to the legal aid scheme and many more changes are planned very soon. The effect of these changes is that very few people can now get legal aid for immigration matters.

Currently, in order to be eligible for legal aid three criteria must be fulfilled;

1. The subject of advice must be 'within scope' of legal aid, meaning that it must be a subject matter which the law allows someone to get legally aided advice for.

At present, legal aid is only available for the following immigration matters:

- Asylum applications or applications made under s3 of the Human Rights Act
- Cases involving trafficking
- Cases involving domestic violence, in some limited circumstances
- Immigration detention and immigration bail cases
- Theoretically, an application can be made for 'Exceptional Funding' for some complex cases which would otherwise be outside of the scope of legal aid, but to date there have been no successful applications for such funding for immigration issues

AND

2. You must be on a low income and unable to pay for legal advice. If you are in prison and have savings of under £8,000 then you are likely to meet the low income requirement.

AND

3. Your legal adviser must believe that your chance has a reasonable chance of being successful. This is called the 'merits test'.

If all of these three conditions are fulfilled then you will probably be eligible for legal aid.

While this information is correct at the time of writing (Sept 2014), there may be changes in future which further restrict who can get legal aid and for what areas of law legal aid is available.

Even if your case is one for which legal aid might be available it can be very difficult to find solicitors who are able to take on legal aid work.

If your case is not eligible for legal aid then your options are either to pay for legal assistance or to seek any charity or voluntary organisations who may be able to assist. It is rare for charities to be able to represent people in immigration matters although they may be able to give immigration advice and, in some cases, assist with completing some immigration documents.

It is a criminal offence for any person to provide immigration advice unless they are either regulated by the Solicitors Regulation Authority (SRA), or accredited by the Office of the Immigration Services Commissioner (OISC). If they are regulated by the SRA then they should have passed tests with the Law Society to show their immigration expertise. An adviser will usually display either an OISC logo or a Law Society specialist logo on their stationary. The logos are shown below:



Regardless of whether you are paying for advice or getting legally aided advice you should expect certain things from your adviser

### **What to expect from your adviser**

At your first appointment an adviser should explain if you may be eligible for legal aid and go through certain forms with you, or, if you are paying for advice, explain how much your appointment will cost and how much they would expect your case to cost going forwards.

If you are seeing a legally aided adviser it may not be possible to go much further than this in a first appointment if an interpreter is needed. This is because the solicitor cannot arrange for an interpreter until the legal aid application has been submitted.

Your adviser should ask you about your circumstances and your immigration issues. When they have taken that information they should advise you on

- what options are available to you;
- what the requirements of those options are;
- what are the potential benefits or difficulties of the options available;
- what evidence could support an application;
- whether there is a Home Office fee for the application and how much it is (legal aid does not cover Home Office fees);
- time scale and any deadline in the application process;
- what the possible outcomes of any application might be.

After your first appointment with your adviser you should receive a letter which sets out what you told your adviser, what advice they gave to you and what action was agreed (sometimes called your 'instructions' to the adviser) and give you the name and contact details of the person who is dealing with your case. If you are paying for advice the letter should give you an indication of the fees. You should receive this letter within two weeks of your appointment.

Your adviser should provide you with copies of everything that they send to the Home Office on your behalf and copies of any correspondence received from the Home Office. If you do not understand any of these letters you should ask your adviser to explain them to you. It is the duty of your adviser to make sure that you know what is going on with your case. If you are having difficulties understanding English then they should arrange an interpreter to assist you.

If at any point you change your instructions to your adviser then again they should send out a letter confirming this in writing. This makes sure that no misunderstandings or errors occur.

Your adviser should keep you informed of what is happening with your case. They should tell you when they have submitted your application and if they receive any letters from the Home Office. It is often the case that after submitting your application there is a long period of time where there is no response from the Home Office. Even if there is no news in your case it is good practice for an adviser to write to you at least every three months.

If, for any reason, your adviser cannot continue to act for you they should tell you the reasons why in writing. They should give you reasonable notice of this, particularly if you have a deadline or hearing approaching.

## **What your adviser will expect from you**

It is important that you are completely honest with your adviser about your circumstances. If you do not tell the truth to your adviser then it is difficult for them to effectively represent you and if they then discover that you have not been telling the truth then they may be unable to continue to advise you.

You can help your adviser by listening carefully to what they say and by doing your best to complete any actions that you agree to take, for example trying to gather evidence to support your case.

Keep copies of all relevant paperwork safely and in good order so that you are able to find documents when you need them.

## **Professional Conduct**

Any immigration adviser whether paid or unpaid should abide by certain professional standards. These include:

- a duty to keep your matters confidential;
- a duty to act with integrity and professionalism in their dealing with you;
- a duty to ensure that they remain independent;
- a duty to act in your best interests;
- a duty to ensure that you are given all the relevant information in a timely manner;
- a duty to ensure that they provide you with a good standard of service.

## **Complaints**

If you are unhappy with your adviser and wish to make a complaint, in the first instance you should make a complaint to the adviser's firm or organisation. You should ask them what their complaints policy is and put your complaint in writing. You must give your adviser time to respond to your complaint.

Please be aware that if you have a legally aided adviser it can be very difficult if not impossible to find a new adviser to take on a case under legal aid. This is because there is a limit on how much money can come from legal aid for any one case and if some of that amount has already been used by one adviser then it can be almost impossible for another adviser to claim any legal aid funding for their time. As such, it is sensible to work with your solicitor to try to resolve any problems.

If you cannot resolve the issue to your satisfaction or if you have had no response eight weeks after making your complaint then you can make a complaint to the Legal Ombudsman. You should make your complaint as soon as possible after receipt of the unsatisfactory response or after the eight week no response window. You have up to six months after a complaint to bring your matter to the Legal Ombudsman.

In your letter to the Legal Ombudsman you should provide:

- the name and address of the adviser and firm or organisation involved;
- the date you first complained to them;
- the details of any response received from them.

If you are able to enclose copies of your complaint and any response that would be very helpful. DO NOT send any original documents to the Legal Ombudsman as they will be destroyed.

You can contact the Ombudsman at:

Legal Ombudsman

PO Box 6806,

Wolverhampton,

WV1 9WJ

Telephone: 0300 555 0333 between 8.30am and 5.30pm on weekdays

Minicom: 0300 555 1777

If you are calling from overseas, telephone: +44 121 245 3050

If you need information about making a complaint to the Legal Ombudsman in another language or in large print, Braille or on audio CD, telephone 0121 245 3071 or write to the address above.

## How to find an adviser

The following organisations can help you to find an immigration adviser:

**Civil Legal Advice helpline** – provides details of advisers who take on legal aid cases.

Telephone: 0845 345 4345

Minicom: 0845 609 6677

Monday to Friday, 9am to 8pm

Saturday, 9am to 12:30pm

**Office of the Immigration Services Commissioner's helpline** – provides details of OISC registered advisers.

Telephone: 0845 000 0046

**Bail for Immigration Detainees** , in addition to providing advice on immigration detention also provide advice on deportation and in particular on how to prepare your own case against deprtation.

Telephone: 020 7426 0335 Helpline open Monday to Thursday between 10am and 12 midday

Joint Council for the Welfare of Immigrants (JCWI) is a charity which can give legal advice on immigration to foreign national prisoners.

Telephone: 020 7553 7468 between 10am and 11am on Wednesdays

Or fax a letter to: 020 7251 8707

Or write to: JCWI, 115 Old Street, London EC1V 9RT

You should also check if the prison in which you are being held receives services from any organisation who might be able to assist you to find an adviser.

If you are being held in an Immigration Removal Centre then the Centre will usually be visited regularly by advisers providing services to immigration detainees. You should check with welfare services or the library when the advisers attend and how to get an appointment to see them. For further advice on assistance in immigration detention please go to the section on Immigration detention.