

Hibiscus Initiatives' Submission to The Review of Civil Legal Aid – Call for Evidence

21st February 2024

About Hibiscus Initiatives

[Hibiscus Initiatives](#) ('Hibiscus') is a voluntary sector organisation with a track record of delivering high-impact support and advocacy services to Black and minoritised migrant women in contact with the criminal justice system and immigration system. We have been active in this field for over thirty years. In the past seven years alone, we have worked with over 12,000 migrant people from over 100 different countries. The information in this response is drawn from our own caseload, discussions with our Community Team frontline practitioners, and the women we support. Frontline practitioners each support between 15 and 30 women at any one time.

Hibiscus has distinct expertise in working with Black and minoritised migrant women in prison, in the community, and in immigration removal centres. We are making this submission in response to this call for evidence as we believe that we can offer insight into the effects that the current legal aid regime has on the women we support, and the changes that are needed to ensure all have fair access to legal advice and representation. Many of the women we support, in all contexts, need advice on matters of critical importance to them, such as immigration, housing, and community care matters. Due to their financial circumstances, the vast majority need this to be funded by legal aid.

It is clear from our frontline experience that the current legal aid regime is not fit for purpose. It creates barriers to those attempting to access legal aid advice by, in effect, limiting the number of legal aid providers and their individual capacity, and making legal aid practice a financially unsustainable for many practitioners. This has the further effect of making it difficult for those in receipt of legal aid, but unhappy with their quality of service, to change to another provider.

Article 6 of the European Convention on Human Rights states that everyone has the right to a fair trial. This necessitates access to legally aided advice and representation for all in need of it. The practical limitations imposed by the current legal aid regime on accessing legal aid enforce a "two-tiered" justice system in which only those who can afford to pay for legal advice can easily enforce their rights. This is enforced both by the now limited scope of work eligible for legal aid funding, and by the practical difficulties that many face when attempting to access legal aid.

Human and legal rights are empty promises without the possibility of challenging breaches and enforcing remedies. For many of the women we support, access to justice is contingent on access to legal aid. Without it, they have no means of accessing the justice to which they should be entitled.

Response to Questions

We have focused on providing evidence to answer questions 9, 10 and 11. Pseudonyms have been used for our clients, to protect their anonymity.

QUESTION 9

What barriers/obstacles do you think individuals encounter when attempting to access civil legal aid?

When discussing this question, all of our project workers agreed that the often, or very often, have difficulty referring their clients for legal advice under the legal aid regime. Most said that this has affected more than half of their clients.

Housing Specialist – Project Worker

The biggest barrier is that so many firms have limited or no capacity for legal aid immigration work, which means we can go months trying to find representation for someone. The fact that it is so difficult to find representation means that there are clients who go long periods without accessing immigration advice and having legal representation for their cases, which is detrimental in the long run. Immigration has a massive capacity problem at the moment.

When we are unable to refer our clients to solicitors who can represent them under the legal aid regime, this often leaves them with no options available to access legal advice and representation. In this situation, we can try to refer the client to specialist charities or to community organisations that may be able to provide some free advice. However, it is rare that we will be able to find clients full legal representation in this way.

Our clients are migrant women, many of whom have had contact with the criminal justice system and many of whom are destitute, often because they have No Recourse to Public Funds and no right to work due to their immigration status. As such, they often have complex legal matters concerning issues such as their right to remain in the country, their right to access housing and support, criminal appeals, and family matters. These issues are of critical and fundamental importance to our clients. Not having access to legal aid can, for example, mean that a client is unable to challenge the refusal of an asylum application, which may in turn lead to their detention and unjust deportation, when, on the contrary, should have been protected and supported.

Sasha (client)

Sasha is an EU national. She lives in the UK with her husband and 3-year-old daughter, having first arrived in 2017 to work. Her husband is unable to work due to his disability, and the family have very little money. Sasha began shoplifting as she was not able to afford everything that they needed. She has now been convicted of shoplifting three times and has spent time in prison. Following her most recent release from prison, Sasha has been told that she no longer has the right to work and has no recourse to public funds. Sasha is scared that her family will become destitute and wants to challenge the Home Office's decision not to allow her to work. Referrals were made to 10 firms, however none were able to advise her.

Our clients often describe feeling “anxious”, “scared”, “upset” and “hopeless” when we have difficulty referring them for legal advice. As their legal matters are of critical importance to them, this adds to

what is already an extremely stressful situation. Where their legal issues relate to their accommodation and support, being unable to address them can mean that our clients remain in circumstances in which they find it difficult to engage with us. For example, a client who was street homeless (due to what we believed to be a challengeable decision) and unable to access legal advice experienced a significant deterioration in their mental health due to their experiences whilst living on the streets. This also made it far harder for her to access the mental health support that she needed. What would otherwise have been a manageable legal issue became insurmountable and life consuming.

Project Worker – Community Team

I have had multiple clients with whom it has taken many months before finding a legal aid solicitor. This takes an incredible toll on the clients' mental health as there is really no way to progress their circumstances without support, for example, with their immigration application. I currently have a client who still does not have a legal aid solicitor after six months of searching. In her case, I have made more than 60 attempts to contact firms, with no success.

When referrals for legal advice are successful, it can take a matter of weeks or months to find a solicitor. This means that our project workers spend a significant amount of time identifying suitable advisors, making detailed referrals, and chasing the referrals when no response is received. It also means that our clients risk missing deadlines, or have to spend even longer in the circumstances they want to challenge. Most of our project workers stated that the availability of solicitors under the current legal aid regime has affected the ability of their clients to access legal advice. All agree that the difficulties that they have had in relation to legal aid have had a broader impact on their clients' lives, such as their ability to access support dependent and their wellbeing.

Project Worker – Community Team

I have a client for whom I have been trying to find an immigration solicitor since August 2023. Her case is complex, but it is proving to be impossible to find a solicitor. She has no leave to remain in the UK, no pending immigration application, and has a deportation order. This makes the situation even more stressful for her as she remains liable for detention and deportation.

Over the past 6 months, I have attempted to refer this client to 25 different firms, all of whom have legal aid contracts for immigration and asylum work. In doing so, I have provided detailed case summaries, as well as any further information requested. I have also chased all of the firms I have submitted referrals to. So far, none have been able to take this client on. She therefore remains without representation, without immigration status, and at risk of detention and deportation.

A minority of our clients are able to refer themselves for legal advice and therefore access it independently. However, many of our clients have barriers to doing so. For example, they may not speak English, or may not be able to explain their legal issues in detail. Some also do not have access to the internet or email, so would struggle to find suitable firms to contact, and would be unable to contact them online as many request. As such, it would not be reasonable to expect these clients to refer themselves for legal advice. In addition to this, some of our clients have mental health problems that present further barriers to them carrying out even basic tasks. If they were not supported by us, we believe many would be unable to refer themselves to legal aid solicitors. The

significant amount of time that our project workers spend trying to access legal advice for our clients could be spent providing other support to them, or supporting more women.

From the perspective of our organisation, the key issue is the availability of solicitors accepting legal aid clients. This is particularly acute in the immigration sector. The total capacity needs to be increased significantly. This could be done by increasing the number of legal aid contracts available and, concurrently, by increasing the compensation received by solicitors undertaking legal aid work.

Under the current legal aid regime, work funded by legal aid is not reasonably compensated. Legal aid fees have not been increased since 1996, 28 years ago. Furthermore, in 2011 they were reduced by 10%. This equates to a real-terms cut of approximately 50%. This disincentivises solicitors from undertaking it, which in turn decreases the total capacity available. We believe that the hourly fees paid to solicitors need to be significantly increased.

Solicitors are often particularly reluctant to take on complex immigration cases as they are unlikely to be fairly compensated for the work needed due to fixed fees paid. We believe that removing fixed fees and allowing solicitors to claim compensation for all of the work done on cases would help to alleviate this issue.

QUESTION 10

What could be done to improve client choice such that it is easier for clients to find civil legal aid providers and make informed decisions about which one best meets their needs?

It our experience it is rare that we would be able to find more than one firm willing to advise a client on any given matter. Without a significant increase in the availability of legal aid, it is implausible that this can change.

Housing Specialist – Project Worker

In my experience, there is very little ‘client choice’ and ability to make informed decisions about which firm might be best equipped to suit their needs. Once we find one solicitor who has capacity for legal aid cases (particularly immigration), I tend to just advise the client to go with that firm as the chance we would find another with capacity is very low.

It can be very difficult for clients when they have a solicitor representing them under legal aid who is not progressing their case or otherwise does not appear to be competent. As it is difficult to refer clients for legal advice, they can be left with a choice between potentially bad advice, or no advice at all. As our clients’ legal issues can be of such critical importance to them, this can put them in precarious situations.

Project Worker – Community Team

On one occasion, I found a legal aid solicitor for a client who has since made many mistakes and some distasteful comments. However, due to the difficulty in finding legal aid solicitors, the client and I are in agreement that having a solicitor is better than nothing. Searching for legal aid solicitors is probably one of the most tiresome and stressful elements of my job due to the endless searching, constant rejections/no-replies, and the well-founded worry and disheartenment of my clients.

At present, there is no guarantee that a client will be able to access legal aid advice. If there could be a guarantee of representation under legal aid for all people who are eligible, this would provide some security for those receiving inadequate representation.

Karla (client)

Karla is a Bulgarian national. She had previously made an asylum application without representation and had been refused. She did not understand what had happened or why her claim had been refused. She had an immigration solicitor representing her under legal aid, however after several months they stopped contacting her. Several weeks later they informed us that they were no longer representing Karla as they had too much difficulty communicating with her, even with an interpreter. We attempted to refer Karla to alternative immigration solicitors, but have so far been unable to find one willing to advise her.

As above, the only way that we believe this problem can realistically be resolved is by significantly increasing the total capacity of legal aid solicitors. Good solicitors need to be incentivised to carry out legal aid work. Further to this, we recommend that a duty be imposed on the Legal Aid Agency to ensure that all legal aid providers are carrying out their leg

QUESTION 11

Do you think that some people who are eligible for civil legal aid may not know that it is available and/or how to access it? If so, how do you suggest that this is addressed?

Our clients are not always aware that they are eligible for legal aid. This can mean that they end up paying for advice that should be funded by legal aid, despite having very limited means. Our frontline practitioners are often the first to explain to them that they may be eligible for legal aid.

Nadia (client)

Nadia had made an asylum claim with representation from a solicitor. She was destitute and eligible for legal aid, however her solicitor had charged her several thousand pounds to represent her in the application. She had paid this by taking loans from members of her family, but did not know how she was going to pay them back. She had not heard of legal aid before and was unaware that she could have received it for her application.

The situation faced by Nadia could be mitigated by placing a duty on solicitors to advise clients if they are eligible for legal aid prior to engagement. In addition, information about legal aid could be provided at key the points of contact with public bodies, for example, when a person first claims asylum or when a person's housing application is refused.

It is relevant that this impact is felt by people such as our clients who are already marginalised due to their immigration status, as well as factors such as race, ethnicity, financial means, and mental health. They are arguably some of the most in need of good legally aided advice and representation. However, under the current legal aid regime, they are often unable to access it.

For further information contact: Olivia Burgess, Anti-Trafficking Policy Officer:
olivia@hibiscus.org.uk

Hibiscus Initiatives

Resource for London

356 Holloway Road

London

N7 6PA