

This factsheet is intended to assist non-lawyers to understand Legal Aid in England and Wales, in particular as it relates to asylum seekers, refugees and vulnerable migrants.

## What is Legal Aid?

Legal Aid enables people who cannot afford to pay for a lawyer to receive legal advice and representation.

A Legal Aid lawyer is paid from public funds.

To receive Legal Aid, it is necessary to show that you are eligible.

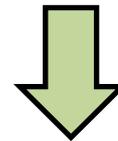
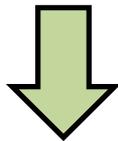
Details of Legal Aid lawyers in your area are available through the Law Society's website:

<http://solicitors.lawsociety.org.uk/>

## Eligibility

To demonstrate that an individual is entitled to receive Legal Aid they have to show that they are eligible.

They have to show that they do not have the **means** to pay for a lawyer and there must be **merit** in their case



### Means

Individuals must show that they do not have sufficient money to pay for a lawyer:

**Capital** – if they have savings or possessions worth more than £8,000 they will not normally qualify for Legal Aid.

**Income** – they must show that they have a low income. For example, if they receive asylum support (“NASS”), they will qualify for Legal Aid on the means criteria.

They have to provide evidence of how they are supported / their income to a Legal Aid lawyer.

For more information on the current income limits, please see:

<https://www.citizensadvice.org.uk/law-and-rights/legal-system/taking-legal-action/help-with-legal-costs-legal-aid/#h-who-can-provide-legal-aid-services>

### Merit

An individual's case has to be strong enough to justify Legal Aid.

For applications to the Home Office the question is: would someone who was paying themselves think it was worth spending money on advice and representation?

For appeals, the case must have at least a 50% chance of success (or the chances must be unclear).

Changes to Legal Aid in England and Wales mean that, whilst Legal Aid remains available for asylum claims, there are many areas of law affecting asylum seekers, refugees and vulnerable migrants for which Legal Aid is no longer available.

### **Legal Aid is available (in scope) for:**

**Asylum - refugee and article 3 cases** - including applications for further leave if there is still an asylum reason to stay in the UK.

**Domestic violence cases** - where a marriage/civil partnership has broken down because of domestic violence.

**Human trafficking cases** - where there has been a 'reasonable grounds' decision.

**Detention cases** – Legal Aid is available to people in detention if the lawyer has been working on a case for a significant period or if they have a detention centre contract (only specific Legal Aid lawyers have these contracts).

**Asylum support cases** - where they involve accommodation and support.

**Judicial review** - for all types of immigration cases, even if Legal Aid is not available at an earlier stage.

### **Legal Aid is not available (out of scope) for:**

Other Immigration applications, including:

- Family reunion;
- Applications made on Family and Private life grounds (Article 8 ECHR);
- Asylum support only (without accommodation); and
- Representation before the First-Tier Tribunal - Asylum Support

### **Exceptional Case Funding:**

If a case is not one of the types of cases that are 'in scope' and an individual is not entitled to Legal Aid for this reason, they can apply for Legal Aid on an exceptional basis. They will have to explain why it might breach their human rights if they were denied Legal Aid.

A Legal Aid lawyer can help prepare an application for Exceptional Case Funding.

### **Refusal / withdrawal of Legal Aid:**

If a lawyer refuses Legal Aid for an appeal, it is possible to appeal the decision of the lawyer.

The lawyer should explain the reasons they have refused Legal Aid and provide the client with a form to send to the Legal Aid Agency to challenge the lawyer's decision. The lawyer should help the client to complete and send the form to the Legal Aid Agency.

The Legal Aid Agency (LAA) will consider the appeal. If the LAA maintains the refusal and the decision of the LAA is unreasonable or unfair it may be possible to challenge them in Court.

The MLP is able to provide training on this topic, including additional material. If you require further information or would like to receive training on this topic, please contact the MLP through our website:

<https://themigrantslawproject.org/about-us/contact-us/>