



Advice NI Response to the Department of Justice Foundational Review of Civil Legal Services Call for Evidence for Civil Society

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Advice NI

Advice NI is a membership organisation and service provider that exists to provide leadership, representation, support and services for the Independent Advice Network and people in Northern Ireland. We support 65 members across NI, providing advice on benefits, debt, housing, employment and consumer related issues. Advice NI also delivers a range of advice services to the public via a Freephone helpline which includes Debt & Money, Benefits, Tax Credits & HMRC products/services, EU Settlement Scheme and Business Debt. See www.adviceni.net for more on the work of the independent advice network.

Our latest annual report¹ highlights that 1% of the work of the network (amounting to over 2,600 enquiries) relates to immigration advice, in other words the work of those members operating under the Advice NI Level 1 exemption or under their own registration. Please note this does not include EUSS enquiries. Delivery includes face-to-face, outreach and online advice services. Over 80% of member organisations have less than 15 paid workers.

This response is based on the experience of Advice NI.

Our comments are brief and don't address all questions, but we hope they will be noted.

Fees

Fees need to be increased to provide more specialisms, more choice of provider and ultimately more access to justice.

We have the experience in NI where little to no firms in NI are providing immigration advice services as it is not financially viable. Fees need to be proportionate to the work undertaken and the administration involved. The current rates are too low. This is having a detrimental effect on those needing access to justice as many are denied access often after paying extortionate amounts of money to rogue individuals purporting to be able to assist them with their immigration or asylum application.

Eligibility Criteria

Financial eligibility criteria should be such as to enable access to legal aid, advice and representation for the disadvantaged and socially excluded in the areas of law which most directly affect their everyday lives including welfare benefits, housing, immigration, child protection, domestic violence, employment and mental health. It would be interesting to know the impact of financial eligibility and the means test for civil legal aid and access to justice on specific groups, that said improving the means-test should open up access to those that need legal advice and assistance most.

¹ <https://www.adviceni.net/policy/publications>

Law Society England and Wales analysis suggests that the number of providers starting legal aid work could drop by a third by 2025, leaving many without access to a lawyer when they desperately need one.

President of the Society, Lubna Shuja said in the Law Gazette

‘For every civil legal provider that closes its doors, there is a child not getting the education they need, a family facing eviction, fighting for welfare benefits to stay afloat in these turbulent times or a vulnerable person denied access to the care they’re entitled to.’

Advice NI believe, there is not only a need for government in NI to invest in legal aid services but to resource capacity building in the legal advice services provided within the independent advice sector. The sector faces a number of challenges in trying to achieve its mission of ensuring access to justice:

- No supported Career Path – this is impacting on recruitment, retention and consistency of services. It takes an individual at least 6 months to train to generalist level and a lot longer to move to a specialist level of providing representation or dealing with regulated advice at the higher level for example Debt and Immigration;
- Under current Law Society NI policy and practice, it is difficult for organisations like Advice NI who have been operating at OISC Level 3 for 3 years to become recognised or supported. Whilst we have had correspondence over the years we are still not clear as to how we attain the recognition of the Law Society which is given to Citizens Advice England and Wales, Law Centre NI and the Children’s Law Centre;
- Bureaucratic regulations and time-consuming procedures pose significant obstacles that discourage legal professionals specialising in asylum and immigration law, from practising within the independent advice sector in NI. We have had lengthy correspondence on different occasions with the Law Society NI and Bar NI regarding the regulation continuity for fully qualified solicitors/barristers to come on board as OISC Level 3 advisers. The process is complicated and decisions slow to the point where professionally qualified individuals turn down offers of employment as Immigration Advisers. This has led to Advice NI being unable to continue to provide immigration advice at this level, to loose funding and has denied access to such much needed services in NI.

Northern Ireland is an immigration advice desert. There is a clear shortage of immigration advisers across the region with very few offering legal aid for people needing this service. From our experience it either isn’t financially viable for solicitors to take on an immigration case because the legal aid rates are too low or they don’t have the capacity to take on cases. Finding someone to take on an immigration case in NI is near impossible. For the few that provide legal aid for these types of cases burn out is a serious threat with as mentioned above the unlikelihood of someone being able to step in and fill the gap.

Advice NI know from our experience of delivering Home Office Contracts and the calls coming through our helpline that people seeking immigration advice and those

with English as a second language face language barriers when trying to access legal aid.

Improving accessibility to legal aid services requires in NI requires urgent increased and stable funding for the legal aid providers as well as the independent advice network who have the potential to bring legal advice directly to those who need it most.

Early Intervention

Access to early intervention on legal issues is an important aspect of any reform of legal aid as it is likely to reduce expenditure by local authorities and government departments in relation to for example health, criminal justice, social services, social security and housing costs.

In Scotland, a World Bank report (*A Tool for Justice: The Cost Benefit Analysis of Legal Aid* worldbank.org) found that for every £1 spent on legal aid in family cases, the state saves £5 elsewhere (through, for example, reduced court spending and fewer people relying on benefits).

Early legal advice helps people understand their legal rights and responsibilities, feel empowered and more able to make informed decisions.

It is evident from the Tribunal Service Statistics over the years that figures for social security appeals show the benefits of having legal adviser representation. Success rates for appellants represented at social security appeal tribunals are much higher for those of appellants who are unrepresented.

Demand for social security tribunal representation has increased over the last decade primarily due to the impact of welfare reform, with for example the introduction of Personal Independence Payment (PIP) and the reassessment of working age Disability Living Allowance (DLA) claims contributing to a considerable spike in demand for tribunal representation services. This demand is likely to continue into the future with significant reforms expected in relation to disability benefits stemming from the Health and Disability Green Paper.

The knowledge of where to go for help to challenge a social security decision is critical to ensuring that citizens are able to exercise their right to challenge that decision. In order for citizens to have a sense that they do have the possibility of access to justice, it is equally important that free, independent representation services are available to those who need them. The concepts of 'free' and 'independent' are particularly important.

Representation at social security tribunals in Northern Ireland is largely provided by the voluntary advice sector. There is complementarity in the current provision. Frontline advice organisations undertake first tier social security tribunal representation, supported by regional agencies. This includes expert capacity to provide representation at first tier in complex areas of social security law as well as capacity to undertake representation to the Social Security Commissioner and in cases remitted from the Commissioner.

The Advice Sector already assists people to enforce their rights outside of the courts and in some instances provide services traditionally provided by solicitors. The option of the independent advice sector or elements thereof falling within the scope

of bodies to whom public funds for legal services can be made available would enhance access to justice. We already provide regulated legal advice in certain areas as outlined above and are committed to the NI Advice Quality Standard which is approved by the Department for Communities.

Other barriers

The independent advice network supports most vulnerable individuals with complex needs and experiencing digital/social exclusion and poverty. For these people, understanding their right to a legal aid solicitor, how to find and contact a legal aid solicitor appropriate to their case, finding an internet source to use search engines and email accounts and finally being able to advocate for themselves to get their case taken on, is impossible due to lack language and digital skills.

In most cases, the individual's immigration applications that receive a refusal decision end up in debt, borrowing money from friends and family to pay high fees to private solicitors instead.

In our experience, the legal aid is practically non-existent to those needing immigration advice and support with immigration applications including human rights applications.

Issues Advice NI consider as a top priority:

Of the 26 potential opportunities for reform to enhance access to justice and value for money Advice NI rates the following (in no particular order) as being top priorities:

- **Financial Eligibility Testing:** review this and benefits passporting, to focus the provision of civil legal services on those who need them most. This could include considering areas where legal aid applications should have the means tests disregarded such as in the way they currently are for domestic abuse victims applying for non-molestation orders or in response to Article 8 (Children Order) 1995 proceedings brought against them by their abuser.
- **Integrated Support:** Explore opportunities to build a system of integrated support for people with diverse access to justice needs to provide them with a coordinated set of advice, representation, and other forms of assistance, in an accessible way. Early opportunities to test this model might include advice on housing, debt and ejection, immigration, and private family law.
- **Advisory Services** - Conduct a review of advisory services available through legal aid and elsewhere to consider how access to justice could be enhanced, and duplication avoided, through complementary and effective co-ordination between service providers in different sectors.
- **Scope** - Conduct a review of the scope of civil legal services to ensure public funding does not displace private funding and to seek opportunities to redirect resources towards any currently areas of unmet need. This could include exploring the benefits and risks of expanding the scope of civil legal

services to include representation in, for example, SENDIST, Employment and Industrial Tribunals Cases

- **Section 75, Northern Ireland Act 1998** – effective data collection on S.75 access to legal aid and justice
- **Review of Access** to Justice for people with asylum and immigration issues, domestic violence, prisoners, separating families and victims of crime.
- **Civil Remuneration Levels**

As per the consultation ask Advice NI rate the Policy Drivers as follows:

TOP PRIORITY Policy Driver 4: Prioritise maximising the range of services available through civil legal aid (scope): Increasing scope could help extend civil legal aid to areas of advice and representation not currently covered under the civil legal aid scheme. However, this could require additional resources to be moved from other areas of civil legal aid. Decreasing scope could restrict the range of areas covered by civil legal aid.

IMPORTANT Policy Driver 3: Prioritise rates of pay for solicitors and barristers. Increasing remuneration rates for solicitors and barristers could require resources to be diverted from other areas of civil legal aid reform. It may be necessary in order to support recruitment and retention of legal aid providers and could encourage more solicitors to do legal aid work.

FAIRLY IMPORTANT Policy Driver 1: Prioritise the Proportion of the population financially eligible for civil legal aid by reviewing the means testing criteria. Changing financial eligibility rules could result in more people being entitled to access legal aid. However, to do this, the Department might have to make savings in other areas of civil legal aid, such as through reducing scope, remuneration fees or increasing the contributions payable by applicants

SLIGHTLY IMPORTANT Policy Driver 2: Focus legal aid on the most impactful cases by reviewing merits testing. Changing the merits tests could help focus legal aid on people you need it most. It could also free resources and help avoid unnecessary court action to enhance justice in other ways; for example, by expanding legal aid or by finding alternative forms of dispute resolution.

LESS IMPORTANT Policy Driver 5: Prioritise the contributions paid by recipients of civil legal aid. Increasing contributions could allow for resources to be directed towards enhancing other areas of civil legal aid, such as increasing the scope of civil legal aid, increasing financial eligibility thresholds or remuneration rates payable to solicitors and barristers. However, decreasing contributions may mean savings having to be identified from other areas of civil legal aid.

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