

NOTE: This version was updated on 19 December 2023
There may be an updated version on the website at righttoremain.org.uk/toolkit

Lawyers (solicitors) and Legal Advice

Illegal Migration Act 2023

A new law called *The Illegal Migration Act 2023* has recently come into force. The Act has brought about significant changes to the UK asylum and immigration system for people who arrive in the UK on or after 20 July 2023. We are in the process of updating the Toolkit to reflect these developments. For now, please be aware that some of the information in the Toolkit may be out-of-date for people who arrived in the UK after that date. To stay up to date with any changes to the Toolkit, please sign up to our newsletter.

On this page, you will find the following information:

What is a lawyer?

Finding a lawyer

Communicating with a lawyer

Third party consent

Actions you can take

Meeting with your lawyer

Making a complaint against your lawyer

Changing your lawyer

Legal Aid, including:

Is Legal Aid available for your case?

Priority Removal Notices (PRNs)

The merits and means test

Legal Aid for detention

Legal Aid for asylum support

Legal Aid for judicial review

If you cannot get a free lawyer

Who can give legal advice?

This page will help you to see if you need a lawyer for your case, whether you can have a free lawyer (through Legal Aid), and what legal advice is.

Even if you have a lawyer, it's important to understand your own legal case – this is your case and your life and you need to keep track of what is happening and whether your lawyer is doing the things they should be.

You need to know your rights at different stages of the system, and know what the options are for the stage you are at. Knowing what could come next will help you prepare. You need to take an active role in your legal case.

You should read the different pages of this Toolkit, especially the yellow ACTION SECTION boxes on each page, to find out how to do this.

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What is a lawyer?

You may hear your asylum or immigration lawyer being called different things. You may hear the term ‘legal representative’, ‘immigration advisor’, ‘lawyer’, ‘solicitor’, ‘caseworker’ or ‘barrister’. This page explains the difference between these words.

Do I need a lawyer for my asylum or immigration case?

The process for making a visa application, an asylum claim or other kind of immigration or human rights application is very complicated. It is best to get expert advice on your application or legal case from a lawyer if you can. It is important to know that you should only get expert immigration advice from someone who is qualified to by the Office of the Immigration Services Commissioner (‘OISC’).

In Northern Ireland, this is slightly different. The Law Society publishes a list of lawyers in Northern Ireland who have confirmed to the Law Society that they provide advice in relation to Immigration and Asylum Law. The Law Society does not endorse or guarantee the quality of their services. You can access the list on the online version of this page.

If you do not have money to pay for a lawyer, you may be able to get legal advice and representation for free. Read more about this under the ‘Legal Aid’ section below.

The lawyer you will have most contact with may be a caseworker who has qualified under the body that regulates immigration legal advice; or a lawyer who has formally qualified as a ‘solicitor’.

Many people use the word ‘solicitor’ to refer to any kind of lawyer, even if they are not formally qualified as such. In immigration or asylum cases, it is normally a different kind of lawyer called a ‘barrister’ who will represent you in court. Barristers are also called ‘counsel’. In Scotland, barristers are called ‘advocates’.

Finding a lawyer

Remember, for many reasons, it can now be difficult to find a legal representative to help you with your case. This is due to the fact that most Legal Aid lawyers have many clients and do not have the capacity to take on any more. Also, the Home Office has created big delays in giving people a decision on their asylum claim – this means that lawyers are representing clients for a longer time than they would have before.

It is a good idea to familiarise yourself with the asylum and immigration system using our Toolkit guide, in case you must wait a long time for a lawyer or take action on your case for yourself.

However, local asylum and migrant support groups can often provide information about local lawyers/solicitors. If you are not already in touch with a support group, search on Google for “asylum support group” or “migrant support group” plus the name of where you are living (e.g., ‘Glasgow’, ‘Essex’, ‘Lewisham’).

If you are in England or Wales, you can contact Civil Legal Advice by telephone. An advisor can assess whether you are eligible for legal aid (free legal advice) and then find local

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asylum/immigration lawyers near you. You can contact them on 0345 345 4 345 between 09:00 and 20:00 Monday to Friday; and 09:00 and 12:30 on Saturdays.

The Law Society also has a database on their website that you can search. Choose “immigration and changing countries” under “Your Legal Issue”, then put in your location. When the search results come up, you can then refine (this means narrow down) the search results to show those that have Legal Aid services (“accepts legal aid”) and for the type of case you have (asylum, immigration, etc). If you are in Scotland, you can search for a lawyer on the Law Society of Scotland website here. Choose “immigration” as the area of law.

The Home Office also has a search tool to find a Legal Aid adviser in England and Wales which you can access here. You can use the tool to check if the law firm has a Legal Aid contract by putting in the post code and firm name.

You can use the directories linked in the online version of this Toolkit. to search for legal help in your area. Click on the links and follow the instructions about filling in your geographic location, the area of law you need help with, and other details. If you want a Legal Aid lawyer, then make sure that that you tick the ‘Legal Aid’ box and that the firm website specifies if they have a Legal Aid contract or not.

Communicating with your lawyer

Legal aid (see explanation below) lawyers are very busy and they can find it hard to respond to you quickly. Remember that they need time to work on your case, and ringing them a lot will not allow them to do this. But if your lawyer is very slow in getting back to you, or doesn’t explain themselves properly, you should try to get your questions answered. You can ask someone to help ask the questions if necessary.

It’s ok to ask your lawyer questions: they are there to help you.

If it is difficult to speak to your lawyer on the phone, then an easier way to speak to them might be to arrange an appointment at their office (or by video call).

Alternatively, you can send them a letter or email. Often lawyers will find it easier to reply to emails than phone calls.

Third party consent

If you do not want to speak to your lawyer, because you are feeling too stressed, upset, or another reason, you can ask a friend/supporter to speak to them for you but you must provide written and signed consent (this means giving permission) to do this. To give your friend, family member or supporter permission to do this, you must ask your lawyer for a ‘Third Party Consent’ form which you must fill out with your information and information about your supporter. Then you sign the form and send it (by post or scan) to your lawyer. Your lawyer must be satisfied that you have capacity (this means being able to make your own choices) to hand over this permission to your supporter.

At times, a busy lawyer may find it easier to quickly speak to or reply by email to a friend/supporter who has knowledge of the legal system, but they should explain to you

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directly when there is important information or questions they need answering. You are their client; they work for you!

ACTION SECTION

You should always have a copy of your documents, and anything your lawyer has submitted to the Home Office or the court. Keep all your paperwork together in one organised file. You should keep your documents in chronological order (this means in order, with the oldest documents first and newest documents last).

You should always know the last action your lawyer took: what they did, when, and when they expect a response. If you do not know, contact them to find out and then make a note of it for yourself.

Your lawyer should speak to you before and after each stage in your application. If they are not doing this, contact them to let them know that you want updates.

Make sure your lawyer knows your contact details. If you change address or phone number, let your lawyer know as soon as possible. This is very important.

Contact your lawyer any time you receive a letter from the Home Office or from the Courts and Tribunals service.

Contact your lawyer before any appointments with the Home Office, other than routine reporting/signing events.

People sometimes say that they have had a certain lawyer for a long time and nothing is being done for their case. Find out why. Is your lawyer waiting for you to gather evidence? Has your lawyer done all they can and they are now waiting for a response from the Home Office? Has your lawyer actually said they can't do anything further on your case?

It's very important to know whether or not you have a current application with the Home Office. If you have no leave to remain and no outstanding applications, you are at high risk of detention and removal/deportation.

Meeting with your lawyer

ACTION SECTION

Before you go to see your lawyer for an appointment, think about what you need to tell your lawyer, and what you need to find out from them, at the meeting.

You may want to make some notes to use as a reminder in the meeting. Or, you could ask a friend to make a list of things you want to talk about that you can give to your lawyer in the meeting.

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Think about language beforehand. In your meeting/appointment, can you use English (or another language that you share with the lawyer) to say what you need to say, and to understand anything you need to find out? Or do you need an interpreter's help? If you need an interpreter, make sure that your lawyer's office knows in advance and ask them if they can provide one.

Bring all your relevant documents with you to the meeting, including any Home Office letters or decisions. These contain information that it is important for your lawyer to know about. Ask your lawyer to explain anything that you do not understand.

It is very important that you are open with your lawyer and tell them everything that might be relevant to your case. They can help you best if you have given them all the relevant information. Remember that what you say to your lawyer is kept confidential, and that interpreters must also respect confidentiality.

In the meeting, listen carefully to your lawyer. If you find it hard to understand them, do not be afraid to ask your lawyer to speak more slowly, or to explain something, or to say something again. It is your lawyer's job to make sure that you understand their advice.

If it helps you, you can ask your lawyer to write down important words or key points. You can also make notes yourself, if you want – this is not rude.

It is important to say if you do not understand something. Your lawyer may think that you understand them if you stay silent.

If the meeting lasts for a long time, and you get tired or start to lose concentration, you can ask for a break. When we are tired, we all find it more difficult to communicate well.

Where an interpreter is involved in the meeting, the interpreter should introduce herself/himself and check that you both understand each other. If you cannot understand each other, you have the right to ask for a different interpreter who speaks your language or dialect.

Try to speak using short sentences, and pause regularly to allow the interpreter to translate your words.

If the interpreter and the lawyer have a conversation with each other in English, you can ask the interpreter to tell you what they were talking about. You have the right to know what they said. In the same way, if you have a conversation with the interpreter in your language, the lawyer can ask the interpreter to explain what you talked about.

If you feel uncomfortable or unhappy with the interpreter for any reason, you should tell the lawyer how you feel and ask for a different interpreter. This might happen if you think they are not translating what you or the lawyer says properly, or if you do not feel able to talk about a particular topic or event in front of them, or for another reason. It is important that you can trust your interpreter and talk freely in front of him or her.

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Before you leave the meeting, make sure that you have given your lawyer all the information you have, and all of your questions have been answered. Use the notes or list that you brought with you, if you have one. Make sure that you know what the next step in your case is, and who will be taking action (you, your lawyer, the Home Office, someone else?). If you have to do something, make sure that you have all the information you need to be able to do it.

After the meeting, your lawyer may send you a letter with a summary of what you talked about in the meeting. If you cannot read English well, tell your lawyer and ask them to write any letters in simple language.

Making a complaint against your lawyer

You can make a complaint if:

- you receive poor advice or service
- you are charged unreasonable fees
- your lawyer claims you'll be successful
- your lawyer charges you for work not done
- your lawyer misses deadlines or fails to appear in court

If errors have been made in your case by your lawyer, and you are later trying to explain that to the Home Office, it may be helpful to have a written record of a complaint. This means that if you make a complaint, make sure to keep a copy of it.

A complaint may also be necessary if you wish to change your legal aid lawyer, and the new lawyer will be working on the same legal issue as your previous lawyer (unless more than six months has passed, or you have moved a long way from where your lawyer is based).

You can ask to speak to your lawyer's supervisor for information on how to complain, or go to the OISC website.

You can also complain to the Legal Ombudsman.

Changing your lawyer

If you are paying for a private lawyer (see section below), you can change to a different lawyer when you want to. Remember though that changing your lawyer in the middle of a particular action or part of your case may lead to confusion and delays. Think carefully about whether this is the right thing to do.

If you are not paying for your lawyer (you have a Legal Aid lawyer – see below), there are more limitations to when you can change your lawyer.

You can change your lawyer if you have moved or been moved to somewhere a long way from your current lawyer. If you want a new lawyer to work on the same issue (for example, an asylum appeal or judicial review) as your current lawyer, they will probably not be able to get legal aid until six months have passed or there are very significant changes to your

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circumstances. If you have had serious problems with your lawyer and have made a formal complaint, you may be able to change your lawyer more quickly. See the section above on Complaints.

Legal aid – if you cannot afford to pay for a lawyer

Legal aid helps people with no or little income to pay for the cost of getting legal advice. The government allocates funds for this purpose, and the legal aid fees are paid directly to the legal advice provider. A legal aid lawyer does not work for the Home Office.

Sometimes people think that because they are not paying for a lawyer, that means they won't be as good as a private (paid for) lawyer. In our experience, many of the best lawyers working in asylum, immigration and human rights are those working under legal aid. The quality of legal representation can vary a lot – both for legal aid lawyers, and for private lawyers. It's important to understand the legal process as much as possible so that you can keep track of whether your lawyer is doing a good job.

Law firms that have legal aid contracts are limited in the work that they can do. For example, they cannot take on unlimited clients, or unlimited issues in clients' cases.

Is legal aid available for your case?

From 25 October 2019, legal aid was reinstated for separated children's immigration and citizenship cases.

Legal aid is still available for non-asylum immigration cases in Scotland and Northern Ireland.

In the UK, legal aid is still available for asylum claims, but is typically no longer available in England and Wales for legal advice or representation in non-asylum immigration matters.

There are some non-asylum immigration cases that may still be eligible for legal aid: certain cases where there has been domestic violence; cases involving the Special Immigration Appeals Commission (SIAC); and certain immigration applications made by victims of trafficking.

You can also apply for exceptional legal aid funding if you believe your human rights would be breached if you do not have legal aid. The Public Law Project provides information and assistance in some cases.

In terms of legal aid, an "asylum claim" also includes humanitarian protection claims (on the basis of a real risk of serious harm/indiscriminate violence) and claims based on Article 2 and Article 3 of the European Convention on Human Rights. Rights under the European Convention on Human Rights have not been affected by Brexit.

So, if your immigration case is not an asylum case and you are in England or Wales, you generally cannot get legal aid advice or representation.

You can no longer get legal aid for:

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- family migration cases, including family reunification applications under the Refugee Convention
- advice about student visas
- advice about visitor visas
- challenging a deportation, if your case does not have an asylum or Article 3 (of the European Convention on Human Rights) element
- Article 8 cases – the right to family and private life.

Even if legal aid is available for your case, the amount of time the lawyer can spend on your case is limited. There are lots of things that, ideally, a legal aid lawyer could do on your case but that legal aid funding does not cover. This includes things like attending your asylum interview with you if you are an adult.

Legal Aid – merits and means tests

Legal aid lawyers must conduct a “merits test” and a “means test” before agreeing to represent you for free.

The merits test will assess the strengths and weaknesses of your asylum claim. At the application stage of an asylum claim, the merits test is easy to pass. A merits test will only fail if the asylum application is “clearly hopeless” or would be “an abuse of process”. It is very unusual for an asylum application to fail a merits test.

After the refusal of an asylum claim, the merits test is harder to pass. The appeal must have a 50% chance of success for legal aid to be granted. If your lawyer does not think that your appeal has a 50% chance of succeeding, they will refuse to represent you for free. Your lawyer must give their reasons for this to you in writing, and you will have the right to have their decision reviewed.

The means test will look at your financial circumstances. If you are receiving section 95 or section 4 support (also known as Asylum Support), you will automatically pass the means test. You will need to provide your lawyer with a letter from the Home Office confirming receipt of asylum support. The letter must be less than 6 months old. It is important that you keep letters like this safe, and do not throw them away or lose them.

Many people seeking asylum are provided with a type of asylum support called “section 98” while they wait for a decision on their application for section 95 support. If you receive section 98 support, or if you don’t receive any support from the Home Office, your lawyer will need to conduct a detailed assessment of your financial circumstances before agreeing to represent you under legal aid. This will involve reviewing recent bank statements (if you have a bank account) and requesting letters from friends or charities who may be supporting you financially. If your only income is your section 98 support and you have no savings or assets (items of value), you will pass the means test.

Legal aid for detention issues

However, there is still legal aid available for challenging immigration detention – for bail (including challenges to conditions applied on release) and challenging unlawful detention.

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People in detention in England and Wales cannot usually get legal aid, however, for their (non-asylum) substantive immigration cases if they are being represented by a lawyer based in England or Wales.

If you are detained in Scotland or Northern Ireland, you are likely to be moved to a detention centre in England prior to removal/deportation, with greatly reduced – and more restricted – legal aid provision, because the way in which legal aid is provided in England is different to Scotland and Northern Ireland.

Legal aid for asylum support

In asylum support cases, legal aid for challenging a refusal of support is only available in cases where both accommodation and subsistence are applied for. If you apply for asylum support and do not apply for accommodation (because you can live with someone else and do not want to be forced to move anywhere in the UK under their “no choice” policy), you will not get legal aid to challenge a refusal to give you support.

Legal aid for judicial review

Cuts in legal aid funding mean it is now much more difficult to get legal aid for a judicial review.

If a court or tribunal has considered the same – or substantially the same – issue within the last 12 months, and you lost the case, legal aid for a judicial review will not usually be available.

The government has brought in measures in England and Wales that mean, in general, legal aid lawyers only get funding for working on a judicial review if permission to proceed with that judicial review is granted. The Legal Aid Agency can allow legal aid for work done before permission is granted for a judicial review, but this is very hard to get. If you want to find out more, you can read the Legal Aid Handbook summary linked in the online version of this guide.

This means that legal aid lawyers taking on a judicial review are taking a risk, and are only likely to do this if they feel you have a strong case. The lawyer can receive legal aid funding for the work done pre-permission stage if permission is subsequently granted, but if permission is refused that work will remain unpaid.

If you cannot get a free lawyer

Private lawyer

If you cannot get a legal aid lawyer, you are likely to be able to find a private lawyer to take on your case, but you will need to be able to pay their legal fees.

Some private law firms have “fixed-fee” arrangements – they charge you a fixed amount for working on an aspect of your case, (such as a fresh claim or an appeal). With a fixed-fee arrangement, if the lawyer has to spend a lot of time on your case, or very little, the cost remains the same. Or you could “cap your costs”: instruct your lawyer of the maximum

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amount you will spend. These approaches can be helpful if your supporters or community are fundraising to meet these costs.

Some lawyers offer “Conditional Fee Agreements”, also known as “No Win No Fee” agreements. This means that they do not get paid until or unless you win your claim. This may be helpful, but make sure you are clear what the fees will be if you do win.

Some law firms, whether using fixed-fees or not, allow you to pay the costs in instalments and this may mean you are able to save/fundraise the money over a longer period of time.

When using a private lawyer, make sure you know what you are paying for, and how much you are paying. If you do not agree with the bill you receive, you can challenge it. The first letter you received from your lawyer should have information about how to do this.

Pro bono

Another option may be finding a lawyer who will take on your case pro bono. Pro bono means legal work done voluntarily and free of charge. The lawyer does not seek any payment for the work.

Because of the legal aid cuts, more and more work is being done pro bono, so it may not be easy to find a lawyer who is able to do this. The stronger and more compelling your case is, the more likely it is a lawyer will take it on. Think about how you can explain why your case is strong. Friends and supporters can help by finding evidence to support your case. Your local law centre, or the law department at your local university, may have pro bono clinics. You can also ask a service provider or your MP to contact the pro bono charity Advocate.

ACTION SECTION

If you are struggling to get a legal aid lawyer to take on your case, it may help to go through your case with a knowledgeable friend or someone helping you and think about how to present it to a lawyer in the strongest possible way. Getting evidence to support your story may help with this.

Similarly, a friend or helper may be able to help you think about how to explain your case to a lawyer you are asking to take on your case pro bono.

If you cannot get a legal aid lawyer, your friends and community could fundraise to pay for private legal fees.

Who can give legal advice

It is illegal for anyone who isn't accredited with OISC or another regulatory body to give legal advice in asylum or immigration cases. See the What is a Lawyer? section above.

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Legal advice can be defined as the application of legal rules and principles to a specific set of facts that proposes a course of action. Legal advice is specific, direct, and proposes a course of action.

If you are not qualified to give legal advice, you can still give legal information. Legal information is factual, generic and does not address any one particular cause of action.

If you are supporting someone with their legal case, read our page about providing legal support without giving legal advice.