

BID's response to the Ministry of Justice consultation on legal aid fees in the Illegal Migration Bill, July 2023

1. Do you agree with our proposal to pay higher fees for IMB Work? (Please answer yes, no, maybe. Please state your reasons)

Yes, BID does agree with the proposal to pay higher fees for IMB work however we do not believe that 15% is anywhere near enough of an uplift to ensure that everyone who is issued with a removal notice under the Illegal Migration Act is able to secure legal representation within the truncated timeframes of the Act. BID as an organisation exists because the Legal Aid sector cannot meet demand. Structural problems caused by years of underinvestment mean that the system simply will not be able to cope. In 2022 some 45,755 people arrived on a small boat and it is safe to assume that numbers will remain broadly similar after the implementation of the Act. We believe that there is a risk that the unrealistic demands put upon providers by this Act risks providers relinquishing their legal aid contracts. indeed, more than 30% of immigration and asylum legal aid providers who were given contracts in September 2019 had stopped delivering legal aid work by March 2023. Unless there is a structural change within the sector, this trend is likely to increase. (Source: The Conversation: The legal aid sector is collapsing and millions more may soon be without access to justice – new data. June 2023)

2. We are evaluating the possibility of increasing fees for IMB Work by up to 15% compared to the current immigration legal aid fees. Within the range of up to 15%, what percentage increase do you believe would be appropriate?

The proposal to raise hourly rate for legal aid work by 15% or less for legal aid work delivered under the Illegal Migration Act is insufficient in addressing the increase in demand for legal aid services generated by the Act.

Fees for legal aid work have not risen since 1996, and were in fact reduced in 2011. The hourly rate for a London based legal aid solicitor set in 2011 is £52.62. Had rates risen in line with inflation the figure would be £78. We consider £78 per hour to be a minimum however when taking into account the complexity, demand and rapid pace of the work which will have to be undertaken under the Illegal Migration Act, we would recommend a 50% uplift for IMB work. Legal aid providers must have a

sustainable infrastructure and receive adequate remuneration if they are to be able to deliver this service and the fact that 30% of providers stopped delivering legal aid work is clear evidence that it is not sustainable.

3. Do you have any views on further measures that would help build capacity of the profession to complete IMB Work?

In order to build capacity, BID recommends the restoration of hourly rates for all legal aid work.

People who are facing removal under the Act are only given eight days in which to challenge their removal. Legal Aid providers will be required to act urgently and prioritise this over all other areas of work. They will need to recruit and train significant numbers of staff and ensure they are accredited under the Immigration and asylum Accreditation Scheme (IAAS) Accreditation is a contractual requirement for delivering work under a legal aid contract and whilst it represents an important measure of quality, the costs should be borne by the MoJ.

Additionally, disbursements including interpreters' fees should be paid at the going rate. Interpreter fees are an essential component of immigration and asylum work, enabling clients to speak with their advisor however fees have also not increased in line with inflation since 2011 and are capped to £25 an hour. It is very difficult to find services in line with this cap and therefore BID recommends that interpreter fees to be recalculated in line with inflation.

Finally, the wellbeing of the people delivering this service should be reflected in the fees in order to build and maintain capacity and to minimise employee attrition. This includes decent wages and working conditions. Research by the Public Law Project has found that 'the majority of legal aid practitioners (73%) experience vicarious trauma or 'burnout' and most felt they were always at or beyond their capacity. More than half (51%) expected to take on more work in the next five years. Nearly a quarter (19%) planned to leave the sector entirely.' (Public Law Project: Overstretched & Unsustainable: a case study of the immigration and asylum legal aid sector. Uncovering a sector in crisis)

4. Do you agree with our proposal to conduct the first post-implementation review of fees for IMB Work within two years of its implementation? (Please answer yes, no, maybe. Please state your reasons)



Yes, we agree with the proposal to conduct a post implementation review of fees for IMB work but would advocate for this to be done within 6 – 12 months. We believe that the system is already close to collapse and the increase in demand coupled with the structural deficiencies outlined earlier necessitates that this is effectively monitored and reviewed from the get go.