



Llywodraeth Cymru  
Welsh Government

PUBLICATION

# The adequacy and availability of immigration legal advice for forced migrants in Wales: executive summary

Executive summary to the report on research of legal advice services available for forced migrants living in Wales.

**First published:** 19 January 2023

**Last updated:** 19 January 2023

This document was downloaded from GOV.WALES and may not be the latest version.

Go to <https://www.gov.wales/adequacy-and-availability-immigration-legal-advice-forced-migrants-wales-executive-summary-html> for the latest version.

Get [information on copyright](#).

# Contents

[Research aims and methodology](#)

[Main findings](#)

[Conclusions](#)

[Recommendations](#)

[About this report](#)

[Alternative languages](#)

**This document was downloaded from GOV.WALES and may not be the latest version.**

Go to <https://www.gov.wales/adequacy-and-availability-immigration-legal-advice-forced-migrants-wales-executive-summary-html> for the latest version.

Get [information on copyright](#).

# Research aims and methodology

The aim of the research was to provide a detailed overview of current immigration legal advice services provided to forced migrants living in Wales and to propose viable, evidence informed recommendations for future policy development which could improve the immigration legal advice services provided to forced migrants living in Wales and address the gaps identified in this review.

The data collection included:

- 21 semi-structured interviews and two small group discussions with representatives of 1) legal aid providers, barristers, and practitioner organisations; 2) non-legal aid organisations accredited to provide immigration advice; 3) refugee and migrant support organisations which do not give advice but regularly work with, signpost or refer advice users; 4) local authorities and the Wales Strategic Migration Partnership; 5) MPs' caseworkers
- collection of 4 weeks' detailed data from 3 legal advice providers in Wales recording all new enquiries for their services
- 18 semi-structured interviews with advice users in Wales
- a 40-day sample of the case lists for Newport hearing centre of the First Tier Tribunal (Immigration and Asylum Chamber) to understand the nature and volume of cases being heard in Wales, and the extent of unrepresentation
- freedom of Information requests, alongside a review of published statistics and other reports and literature

## Main findings

It is not necessarily useful to distinguish between 'forced' and other migrants in

this context. The distinctions are not as clear cut as might be expected, especially as people move between categories, with risks of exploitation arising because of people's immigration status. The report therefore recommends that the Welsh Government should aim to provide a strategic lead in ensuring access to advice for all migrants who find themselves in a position of constrained choice, and with inadequate means to secure privately funded immigration legal advice.

## Deficit between demand and provision

Based on indicators such as asylum support figures, the need for immigration and asylum advice which is clearly within the scope of legal aid in Wales in 2021 (i.e. without an application for Exceptional Case Funding) was 3,646 people.

Legal aid provision, measured as the average number of immigration and asylum legal aid cases opened per year over the past three contract years (2018 to 2021), was 1,380.

Subtracting need from provision gives a Primary Legal Aid Deficit of approximately 2,266 new cases per year.

Need for free and low-cost immigration legal advice and representation outside the scope of legal aid is numerically much greater than the need for legal aid advice. Indicators of need include an estimated 9,000 undocumented people living in Wales, including 3,500 children (as of 2020), of whom around 60% may be eligible for some form of leave to remain. In addition, Wales has 34,640 people who were given pre-settled status under the EU Settlement Scheme, and 4,100 people who received 'other outcomes' from applications to the scheme (as of 30 June 2021). Some of these fall within the broad definition of 'forced migrants' and many (especially with 'other outcomes') may become vulnerable to exploitation as a result of their immigration status.

## Legal aid provision in Wales

There are 12 legal aid provider offices of 9 separate organisations in Wales, all but one of which are in south Wales, with 5 in Cardiff, 3 in Newport, 2 in Swansea, and one each in Barry and Wrexham. These offices had, at the time of the research, a combined total of 31 accredited individuals working full or part-time.

Cardiff and Newport have previously been comparatively well-served with legal aid providers but, at the time of the research, this position was changing, with a serious decline in provision underway in south Wales.

This decline is caused by what legal aid providers described as a financial crisis, caused by both a collapse in new case referrals and Home Office delays in asylum cases causing a lack of cash flow. Consequently, one firm had no legal aid income at all for a month, and others were surviving by moving all of their lawyers out of Wales, laying off staff, taking referrals remotely from England, or moving their capacity into other areas of law. This has serious implications for access to legal aid advice in Wales.

There is also a shortage of public law provision in Wales, meaning that public law remedies may be underused and systemic problems may be going unaddressed. In addition, where Welsh law differs from English, there may be a lack of judicial interpretation because there are too few Welsh lawyers practising public law. The law and guidance on age assessment of unaccompanied children is an example.

## Other free or low-cost non-legal aid provision in Wales

There is only one organisation in Wales accredited at Level 3 (the highest level) of the framework of the Office of the Immigration Services Commissioner (OISC)

and providing free advice. There is also one organisation accredited at Level 2 offering a combination of free and fee-paying services. Both of these are in Cardiff.

## Immigration barristers in Wales

The Welsh immigration Bar is very small, with only seven barristers having a primary practising address in Wales and immigration as a main practice area, as of March 2022. All of these are in Cardiff. Welsh providers therefore have to rely additionally on barristers travelling from England, despite legal aid not covering the travel time and expenses. There are 21 barristers with public law as a main area of practice and a primary practising address in Wales, almost all in the south.

## Representation in the Tribunal

There were 33 protection appeals heard in the Newport Tribunal hearing centre in the 40-day sample from January to April 2022, of which:

- 8 were unrepresented (24%)
- 14 were represented by firms with a legal aid contract (42%)
- 3 were represented by private-only firms (9%)
- 8 were represented by Asylum Justice (24%)

The latter figure is noteworthy because Asylum Justice provides free legal representation outside legal aid, and all of these appeals are, on the face of it, eligible for legal aid. Some interviewees expressed a concern that certain legal aid providers 'drop' complex appeals on the basis that they have insufficient prospects of success, in the expectation that Asylum Justice will pick them up. Asylum Justice has approximately 70% success rate on these appeals, indicating that the majority did have sufficient prospects of success. It is unclear

whether this is specific to Wales or not.

This represents a significant drop in rates of representation from an earlier 20-day sample of the Newport case lists in 2016, when 73% were represented by an organisation which had a legal aid contract, 9% were unrepresented, 17% were represented by a private-only firm, and 1% had a pro bono representative.

## Consequences of the shortages

The lack of advice in Wales to meet that need has consequences including that people remain in irregular status, without access to many services and entitlements, potentially suffering extreme poverty, destitution and homelessness and are at risk of exploitation. This is clearly contrary to the public interest, regardless of the mode of entry to the UK, and avenues for provision of legal advice to this cohort should be explored.

This shortage is illustrated by the new enquiries data recorded by advice providers for this research, with one recording 27 new enquiries despite having closed to new referrals. Only 5 could be allocated a lawyer, while 3 were given advice only and 4 were referred out. The other 15 were added to the waiting list, with expected waiting times of 1 to 6 months.

At the same time, legal aid providers in south Wales were surviving by taking on cases remotely from around England: of 52 new enquiries to one provider, only 5 (all privately funded) lived in Wales. This supports providers' accounts of a collapse in referrals of asylum cases from within the main dispersal areas in south Wales.

Demand for MPs' casework is very high. It formed eight percent of one MP's total caseload, largely driven by Home Office delays and the inability to access free or low-cost advice outside the scope of legal aid.

## Geographical shortages and remote access

There is a severe shortage of advice and representation in all parts of Wales apart from the area around Cardiff, Newport and Swansea. Although remote advice has become more available during the coronavirus (COVID-19) pandemic, it is not an adequate solution because i) it is often unsuitable, especially for children and the most vulnerable or traumatised people; ii) it places a significant burden on support organisations to facilitate access; iii) legal aid rules, now re-imposed, limit the number of cases which a provider can conduct wholly remotely; and iv) there is a deficit in legal aid and non-legal aid advice capacity across England and Wales as a whole.

Geographical patterns of need in Wales are changing. Since the start of this research, Welsh local authorities have taken in around 40 new unaccompanied children via the National Transfer Scheme, and all Welsh local authorities now have responsibility for unaccompanied children, which is a significant change. Alongside the EU Settlement Scheme and the resettlement of refugees throughout Wales, there are new needs for immigration and asylum legal advice in parts of Wales which have not previously experienced this, and the 'market' is not capable of expanding (quantitatively or geographically) to meet this need.

## Case-type shortages

Certain groups face particular difficulties accessing immigration legal advice, including domestic violence survivors, people with no recourse to public funds, those needing to make fresh asylum applications, and people in prisons in Wales. The first two are likely to disproportionately affect women.

Beyond this, there were no indications of systemic additional difficulties for those with protected characteristics, although there were some difficulties with physical access to premises for disabled people, and accounts of poor-quality



representation in some sexual orientation-based applications.

## Quality of representation

There are a number of quality issues, particularly around client care and solicitors dropping clients after a Home Office refusal, purportedly on the basis that the case has insufficient 'merit', or prospect of success, yet many of these cases go on to succeed when represented outside the legal aid scheme by Asylum Justice. Peer review data for Wales suggests that quality in legal aid is similar to that in England, however. Quality issues were also raised in respect of privately paying advice, including overcharging, rudeness and poor-quality work.

## The importance of legal literacy

Lack of legal literacy is an obstacle for both advice users and people working in support organisations. This leads to inaccurate information spreading by word of mouth, people accepting outcomes which were not in their best interests, and possible unregulated advice going undetected, despite being a criminal offence.

## User views

Users raised a range of issues including difficulties finding a representative; the standard of client care; long journeys to access advice; obstacles to accessing legal aid when a woman had moved in with a new partner, leaving her feeling dependent; barriers to making complaints; the importance of support organisations; and incurring debt to pay for advice or application fees. Home Office delays were a very serious problem for the advice users interviewed and, in the context of long waits for interviews and decisions, the lack of a right to work caused significant distress.

## Conclusions

The research concludes that there are severe shortages of advice in all parts of Wales apart from the area around Cardiff, Newport and Swansea, and for certain types of advice and casework. This has become more relevant as local authorities throughout Wales have taken in resettled refugees under the Syrian, Afghan and most recently the Ukrainian schemes, as well as EU nationals or their family members beginning to encounter immigration legal problems. The advice deficit is larger still for non-asylum advice and representation.

This is becoming increasingly urgent as many of the legal aid providers in Wales face difficulties in maintaining their services, with several withdrawing or reducing the legal aid service they can offer.

The recommendations suggest a number of actions around funding, commissioning and capacity building of immigration advice; addressing geographical and case-type gaps; and improving information, support and legal literacy for migrants themselves and for support groups and local authorities. They also include recommendations for other bodies; the Home Office, Legal Aid Agency, Ministry of Justice and Lord Chancellor; which could be adopted as lobbying points for the Welsh Government, whose overarching policy to become a Nation of Sanctuary is to some extent frustrated by the UK Government's hostile environment policies.

## Recommendations

An aim of this research is to propose viable, evidence informed actions and recommendations for future policy development which could improve the immigration legal advice services provided to forced migrants living in Wales and address the gaps identified in this review. The recommendations include a

**This document was downloaded from GOV.WALES and may not be the latest version.**

Go to <https://www.gov.wales/adequacy-and-availability-immigration-legal-advice-forced-migrants-wales-executive-summary.html> for the latest version.

Get [information on copyright](#).

number of proposals for the Welsh Government and local authorities to consider, all of which have costs attached and some of which would require consideration of rules on fair procurement. There are also recommendations for other bodies including the Home Office and Legal Aid Agency on matters which are outside the devolved powers of the Welsh Government. These are matters on which the Welsh Government could consider lobbying the relevant bodies, which would either reduce the need for immigration legal advice or help to increase provision in Wales.

[Square brackets indicate the section of the report to which the recommendation relates.]

## **Funding, commissioning, and building capacity of immigration legal advice**

### **Recommendation 1**

Consider employing a shared in-house immigration solicitor for Welsh local authorities. This could be on a similar model to that in the East Midlands Councils, where eight authorities share an in-house solicitor based in the region's Strategic Migration Partnership, who advises social workers and others on immigration legal issues. This could cover identification of children in care with an immigration or nationality issue, advising on age assessment procedures, providing information on the authorities' powers and duties in respect of people with No Recourse to Public Funds conditions, employment rights, rights of access to domestic violence refuges, and so on. This could build on Newport Council's model of employing an immigration caseworker, who cannot advise clients directly, because the council as an entity is not regulated to give advice, but can advise the council, and identify and signpost people with immigration issues. This is likely to be particularly useful for smaller local authorities outside the main dispersal areas which do not have the resources to

develop their own expertise, as immigration advice need grows in new areas.

## **Recommendation 2**

Commission legal advice for matters which fall outside the scope of legal aid, especially around people who have No Recourse to Public Funds, need the Domestic Violence Concession, are homeless, are looked-after children, or have no leave to remain. The Nation of Sanctuary Plan mentions the risk of exploitation for people with NRPF but does not mention the role of legal advice in helping prevent this. [Specific groups; Legal aid provision]

## **Recommendation 3**

Consider supporting existing legal aid providers to prevent further provider loss. This could include grants to providers with peer review scores of two (or higher) to protect the highest quality provision by cushioning financial losses from legal aid work, or 'client care grants' to support additional communications with clients which are unfunded on the legal aid fixed fee scheme. [Legal aid provision; Size and nature of the immigration legal profession in Wales]

## **Recommendation 4**

Fund trainees, both in legal aid providers and non-legal aid organisations. The costs of training include trainees' salaries, supervision, courses and exams. Good quality, effective supervision is expensive for organisations funded by grants or legal aid. The Scottish government recently offered funding for legal aid trainees in private firms and not-for-profits and may have learning to share. [Size and nature of the immigration legal profession in Wales]

# Addressing geographical gaps

## Recommendation 5

Support provision in north Wales, which is particularly poorly served. There is currently a single immigration legal aid caseworker in the whole of north Wales, operating without even administrative support. There is also a project to set up a North Wales Law Centre, which at the time of writing has funding to recruit a development manager and intends to provide immigration advice from different locations. Options for securing provision in the north include funding administrative or other support for the sole legal aid provider and supporting the new Law Centre's ability to recruit an immigration lawyer, perhaps to do work outside the scope of legal aid. [Geographical accessibility of legal advice]

This might be achievable by requesting the Lord Chancellor / Minister of Justice to exercise the power in section 2 of the Legal Aid, Sentencing and Punishment of Offenders (LASPO) Act 2012 to make grants and other special arrangements for different parts of England and Wales and different areas of law, in order to fulfil the duty to secure the availability of legal aid in accordance with the Act. This power has never been used and there is no formal procedure for requesting its use. However, such a request should be approached in consultation with experts in public law, with a view to challenging any refusal or non-response. [Geographical accessibility of legal advice]

## Recommendation 6

Minimise recourse to remote advice, which is not an adequate solution to the geographical shortages, nor is it good trauma-informed practice. This can be achieved by ensuring adequate provision of face-to-face advice. [Geographical accessibility of legal advice]

## Addressing case-type gaps

### Recommendation 7

Treat domestic abuse survivors as a priority category for improving access to legal advice within or alongside forced migrants, regardless of their status or mode of arrival, because i) they have specific immigration advice needs which are not always met through legal aid (the DV Concession application and those who are just over the means threshold); and ii) they do not have the immediate access to accommodation and subsistence support that asylum applicants do.

In respect of legal advice, this might include underwriting refuge spaces for a period of time to enable survivors to access legal advice and the DV Concession, and seeking funding from a range of sources including the Police and Crime Commissioner, Levelling Up funds and other 'pots' to fund legal advice.

As with other issues, this could be implemented as a pilot on the basis of already-available information, while collecting data during that pilot to evidence the benefits and financial savings. [Specific groups: Domestic abuse survivors]

## Information, support and legal literacy

Note that all of these proposed actions will require regular review and updating.

### Recommendation 8

Work with support groups to build legal literacy resources both for migrants and for professionals working in the support sector. Both groups expressed a lack of

understanding of the asylum and immigration systems, rights and entitlements to legal advice and other services, the standards and scope of work which could be expected from legal aid and other lawyers, and the consequences of making complaints. The in-house solicitor/immigration advisor (see recommendation 1 above) should also have a stakeholder engagement role via Wales asylum and migration forum, to support increased awareness around legal advice and literacy. [The importance of legal literacy]

## **Recommendation 9**

Legal literacy work should include work with schools, health settings and other public services to support families and individuals with an immigration status problem to understand how to access support (before crisis point), to overcome some of the problems with exploitation and people receiving inaccurate advice and information through their communities. A variety of approaches and methods should be explored to maximise accessibility, recognising that translation of written information will still exclude some people. [The importance of legal literacy]

## **Recommendation 10**

Provide an up to date list of legal aid providers on the Sanctuary website, indicating which ones can do judicial review work. A number of support organisations do not know where to find comprehensive information about legal aid provision in Wales and this would be a simple action. [The importance of legal literacy]

## **Recommendation 11**

Provide easily understandable information about unregulated advisers on the

Sanctuary website, including a toolkit showing how to check whether an adviser is regulated, and 'red flags' that indicate they might not be. This could be part of a wider set of legal literacy materials around what to expect from a legal aid representative or other adviser and what is outside their remit. [The importance of legal literacy]

## **Recommendation 12**

Make available independent information about people's right to complain about legal representatives where needed, the appropriate standards of service to expect, and the consequences of complaining; and consider possible sources of funding to cover support with complaints. [Quality]

## **Recommendation 13**

Ensure wide dissemination of the WSMP's Asylum Dispersal Toolkit to ensure local authorities entering into dispersal understand the importance of access to legal advice. Similarly, other toolkits which already exist or are prepared in the future should be made available in a single repository where local authorities can easily access resources and information. This may be a role for the Wales Strategic Migration Partnership (WSMP), the Welsh Government, the Wales Sanctuary Seeker Support Service, and/or others.

## **Recommendation 14**

If not already in progress, urgently ensure that support and information are available for local authorities which are now responsible for unaccompanied children for the first time, including how and when to access high-quality legal representation for the children in respect of their asylum applications and any age disputes.



## **Recommendation 15**

Create a toolkit for identifying potential public law challenges to unlawful decisions by public bodies, and sources of advice, information and representation to pursue these. [The importance of legal literacy]

## **Recommendation 16**

At the same time, there is a need for wider learning in response to any public law challenges which are received, particularly where these are conceded by the defendant public body. Rather than simply conceding the individual case, it is important that there are consequent changes in the way that policies are applied, to avoid repetition of the same errors. [Public law in Wales]

## **Recommendation 17**

Consider joining Refugee Action's Asylum Guides programme, either with the Welsh Government co-ordinating or commissioning an organisation to do so. This is a mentoring programme in which those with lived experience are trained and then matched to a person going through the system. This could be extended to non-asylum matters as well. [The importance of legal literacy]

## **Recommendation 18**

Consider creating a guardianship scheme that includes all unaccompanied and separated children, similar to that currently in place for trafficked children in Wales and for all unaccompanied children in Scotland. [Specific groups: Unaccompanied children]

## Recommendations for other bodies

As well as direct recommendations to these bodies, these should be seen as campaigning and lobbying points for the Welsh Government.

### Home Office

#### Recommendation 19

Reduce the delays in the asylum system, to ease the demand for legal aid providers' work. This should include effective triaging to identify cases which can be quickly granted (in a non-detained setting), where applicants come from a country with a very high grant rate.

#### Recommendation 20

Reduce the costs of applications for initial leave to remain, further leave to remain and citizenship, to help reduce irregularity, destitution and debt for people resident in Wales, and reduce the need for legal casework on fee waivers, which is unsustainable given the very limited availability of legal advice in Wales.

#### Recommendation 21

Work with local authorities and the WSMP to understand the evolving geographies of advice need driven by the Widening Dispersal plans and National Transfer Scheme, and fund independent advice in parts of the country where it is not currently available. [Geographical accessibility of advice; Legal

aid provision]

## **Recommendation 22**

Improve public communications so that it is easier for users and legal advisers to contact the Home Office, track progress on cases and find out whether any further evidence or actions are needed, to reduce demand for work by legal professionals and MPs' caseworkers, and to alleviate the need for schemes such as the Navigator pilot.

## **Legal Aid Agency, Ministry of Justice and Lord Chancellor**

## **Recommendation 23**

Implement a scheme for making additional payments to cover client care and communications during periods of delay by the Home Office, in recognition of the problem that all financial risk caused by these delays (caused by a government body) is placed on legal aid providers rather than other government bodies.

## **Recommendation 24**

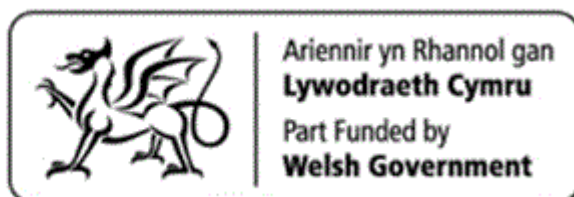
Reduce the unpaid administrative burdens on legal aid providers in order to maintain the current provider base, and increase legal aid funding at least in line with inflation.

## **Recommendation 25**

Exercise the power in section 2 of the LASPO Act to make grants and other

alternative arrangements to secure the availability of legal aid in areas of extreme advice shortage, such as mid and north Wales.

## About this report



The Migrant Integration project is part-funded through the European Union Asylum Migration Integration Fund.

Views expressed in this report are those of the researchers and not necessarily those of the Welsh Government.

Author: Wilding, J (2022).

## Alternative languages

View content in other languages by using [automatic translation from Google Translate](#).

Google Translate is provided to help users, however the Welsh Government is not responsible for the content or accuracy of external websites.

This document was downloaded from GOV.WALES and may not be the latest version.

Go to <https://www.gov.wales/adequacy-and-availability-immigration-legal-advice-forced-migrants-wales-executive-summary-html> for the latest version.

Get [information on copyright](#).

**This document may not be fully accessible.**

For more information refer to our [accessibility statement](#).

**This document was downloaded from GOV.WALES and may not be the latest version.**

Go to <https://www.gov.wales/adequacy-and-availability-immigration-legal-advice-forced-migrants-wales-executive-summary-html> for the latest version.

Get [information on copyright](#).