

Submission to the Stakeholder Consultation on the Review of the Civil Legal Aid Scheme

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Nasc
Migrant & Refugee Rights

Stakeholder Consultation on the Review of the Civil Legal Aid Scheme

Nasc, the Migrant and Refugee Rights Centre is a non-governmental organisation based in Cork City, Ireland. Nasc, the Irish word for 'link', empowers migrants to realise and fulfil their rights. Nasc works with international protection applicants, migrants and refugees to advocate and lead for change within Ireland's immigration and protection systems, to ensure fairness, access to justice and the protection of human rights. We do this through the provision of frontline services and via our various projects.

Nasc, founded in May 2000, has over two decades of experience supporting refugees, asylum seekers and ethnic minority communities in Ireland. Nasc provides information, advice and support to over 1,300 people annually, through our various projects including our Advocacy and Information Service, Young Persons' Project and Women's Project. Nasc also provides support in the form of referrals and training to mainstream services working with migrant and ethnic minority communities.

This submission is directly informed by our day-to-day experiences working with migrants, refugees, asylum seekers and ethnic minorities living in Ireland. It aims to identify issues disproportionately impacting Ireland's migrant, asylum seeking and ethnic minority communities.

Early Legal Advice for International Protection Applicants

1. Nasc believes that the Legal Aid Board (LAB) should be sufficiently staffed and resourced to support the increased number of persons seeking international protection in the State.
2. In line with the recommendations of the Advisory Group on the Provision of Support including Accommodation to Persons in the International Protection Process¹, Nasc believes that the Legal Aid Board should be resourced to handle all international protection cases in-house, while retaining a smaller legal panel (subject to receiving the resources necessary to deal with such an increase in case load). As noted in the Advisory Group report, this would help to ensure consistent quality standards, retention of expertise and help to process appeals within a fixed time limit. In line with the recommendations of the report, an allocation of around 20 hours per case up to first instance decision should be considered. In addition, as recommended, the LAB should also be given resources to maintain a small external legal panel if needed. This should include supporting applicants who get permission to request judicial review of their cases. In addition, in line with the recommendations of the Advisory Group, Nasc believes that consideration should be given to introducing an alternative dispute resolution system, via legislation, which would authorise the use of mediation type techniques to help resolve disputes on issues such as accommodation and reception conditions.²
3. Nasc is extremely concerned by the recent changes to procedures at the International Protection Office (IPO), in particular, the requirement that applicants complete their questionnaire (IPO2) in English on the day of their application.³ The questionnaire is a crucial document, which forms the main basis for the substantive s.35 interview, and remains on the applicant's file throughout the process. We understand that cultural mediators and interpreters are onsite at the IPO, to assist applicants in the completion of questionnaires,

¹ Report of the Advisory Group on the Provision of Support including Accommodation to Persons in the International Protection Process, September 2020, at p.47, available at: <https://www.gov.ie/en/publication/634ad-report-of-the-advisory-group-on-the-provision-of-support-including-accommodation-to-persons-in-the-international-protection-process/>

²Ibid.

³ See IPO website in this regard: <http://www.ipo.gov.ie/en/ipo/pages/whatsnew>

however, we respectfully submit that this is not a substitute for legal advice prior to the completion of questionnaires. We respectfully submit that the Legal Aid Board ought to have a presence onsite at the IPO to provide legal advice to applicants prior to the completion of their questionnaires. At an absolute minimum, there should be provision for early legal advice onsite for vulnerable applicants.

4. Nasc is also concerned that accelerated procedures may mean that applicants from deemed safe countries may not have access to legal advice and assistance prior to their substantive interview, which it is intended will happen “in a matter of weeks” following the applicant’s application for protection.⁴ We respectfully submit that this procedure risks being unfair and contrary to natural justice. We submit that legal advice is crucial to ensure that applicants can fully engage with the procedure, and to ensure that their protection claim is fully articulated. We respectfully submit that the Legal Aid Board ought to be properly resourced to ensure that it can deal with applicants who are subject to accelerated procedures, given the very tight timeframes involved.
5. Nasc understands that members of the Private Practitioners’ Panel who are funded by the Legal Aid Board to provide legal representation to applicants are not funded to attend the substantive s.35 interview. We respectfully submit that it is important for applicants to have their legal representative present at their substantive interview, if at all possible. Firstly, applicants for protection are not given a copy of the interview record, therefore if any issues arise which need to be addressed via post interview submissions, the onus would be on the applicant to pick up on these and to bring that information to their solicitor; this would be unsatisfactory as it causes delay and the IPO will only consider submissions which it receives within a short window post interview. In addition, attending at the interview allows the legal representative to act as a moral support to the applicant and ensures that the interview is carried out correctly. The funding of legal representatives to attend s.35 interviews would be a very welcome change.
6. Nasc understands that since the enactment of the Reception Conditions Regulations, transposing the Reception Conditions Directive, the Legal Aid Board has responsibility for providing legal assistance to international protection applicants in relation to reception conditions (such as appeals on decisions made in relation to withdrawal or restriction of reception conditions, or refusal of a work permit, etc.) We understand that the Legal Aid Board guidance states that it is generally open to solicitors to “provide legal advice in relation to a matter covered by the Regulations, and in line with the further guidance provided below in relation to specific matters. Unless an application is received from an applicant who is not an existing client of the Board, it is not to be regarded as a separate matter and should be dealt with as part of the international protection file.”⁵ It is not fully clear how this operates in practice, however we respectfully submit that consideration should be given to providing an additional fee for this type of work if required, as it may be time consuming and it is important that these issues are fully addressed. Nasc has come across anecdotal reports where applicants represented by members of the private practitioner’s panel have not received assistance in relation to these matters, reportedly due to the time involved.
7. Nasc understands that all asylum applicants can register with the Legal Aid Board as soon as they have made their application to the IPO. Nasc is concerned that the guidance issued by

⁴ Ibid.

⁵ Legal Aid Board Circular on Legal Services European Communities (Reception Conditions) Regulations 2018, available at: <https://bit.ly/2NBxu7w>.

the Legal Aid Board to solicitors on its private practitioner's panel appears to indicate that legal advice is only available once the applicant has been admitted into the single procedure.⁶ Nasc respectfully submits that resources and procedures should be in place to ensure that persons who find themselves in the admissibility procedure are able to avail of legal advice and representation via the Legal Aid Board.

8. Nasc is also concerned that persons refused leave to land in the State may not have access to legal advice. Indeed, our own research has raised serious concerns in relation to practices at the border.⁷ It is noted that the issue of legal advice for persons refused leave to land was raised in the Concluding Observations of the UN Committee against Torture in 2017, which specifically called on the Irish State to ensure that all persons refused leave to land are provided with legal advice informing them of their right to seek international protection, in a language they can understand.⁸ We respectfully submit that resources and procedures should be put in place to ensure that this can occur, given the risk of refoulement.
9. Nasc submits that resources should be put in place to ensure that applicants for international protection can access medico-legal reports, if appropriate and required, whether they are represented in-house at the Legal Aid Board or via the private practitioner's panel. We note that the vast majority of applicants would be unable to cover the fee of €492 for an MLR,⁹ which could be important evidence in support of their application for international protection.

Civil legal aid for cases under the Equal Status Acts & Employment Equality Acts before the WRC

10. Nasc notes that legal aid is not currently available for cases under the Equal Status Acts 2000-2018 and Employment Equality Act 1998 to 2011, before the Workplace Relations Commission (WRC). Persons impacted by discrimination, who do not have the means to pay for private legal representation, may have to go without, which creates an access to justice issue. It is noted that the Irish Human Rights & Equality Commission (IHREC) does provide legal assistance in a limited number of cases,¹⁰ subject to its capacity and its own Guidelines on the provision of legal assistance, however this does not address an unmet legal need in this area.

Civil legal aid for immigration-related applications, including for victims of domestic violence

11. Nasc believes that civil legal aid should be made available for immigration-related applications. Although immigration matters are not excluded from the scope of the Civil Legal Aid Act 1995, in practice legal aid is not provided for immigration-related applications. Immigration-related applications often raise complex issues of constitutional law, legislation, EU law and rights under the European Convention on Human Rights. Our experience is that applicants who are unable to access an NGO with specialist knowledge and who do not have the means to pay for a private practitioner, may have to prepare and submit complex applications without any advice or assistance. Poor quality applications can have very significant negative and long-term consequences for applicants, particularly given the limited appeal mechanisms should an application be unsuccessful. The consequences of a refusal of an immigration-related application can be grave, including the separation of applicants from

⁶ Legal Aid Board, *Best Practice Guidelines, Information Note for Private Practitioners*, February 2017, available at: <https://bit.ly/2ZVaxTW>.

⁷ Immigration Detention & Border Control in Ireland, Revisiting Irish Law, Policy and Practice, 2018, available at: <https://nascireland.org/publications/immigration-detention-and-border-control-ireland-2018>

⁸ UN Committee against Torture, *Concluding Observations on the Second Periodic Report of Ireland*, August 2017, available at: <http://bit.ly/2hPIVem>, para 12(e).

⁹ See MLR Guidance note (SPIRASI website), available at <https://spirasi.ie/what-we-do/medico-legal-report/>

¹⁰ See IHREC website in this regard: <https://www.ihrec.ie/category/legal-assistance/>

their family members, or the commencement of 'intention to deport' proceedings, for example. In this context, there is a clear need for legal advice and representation to ensure that applicants can vindicate their rights.

12. Nasc believes that access to civil legal aid should be put in place for applicants who are victims of domestic violence who hold an immigration residency permission which is dependent on their partner or spouse, such as a residency permission based on being the spouse of an Irish citizen. These types of situations can leave migrants, usually women, very vulnerable to exploitation from abusive partners or spouses who 'sponsor' their residency status. Nasc's experience has been that migrants who experience domestic violence are able to access civil legal aid to apply for orders under the Domestic Violence Act 2018, however they can be at risk of becoming undocumented if an application for independent residency is not made on their behalf. This creates a significant unmet legal need. Nasc has worked with migrants who have experienced grave difficulties when representing themselves. Nasc submits that civil legal aid should be made available for these applications as a priority.