



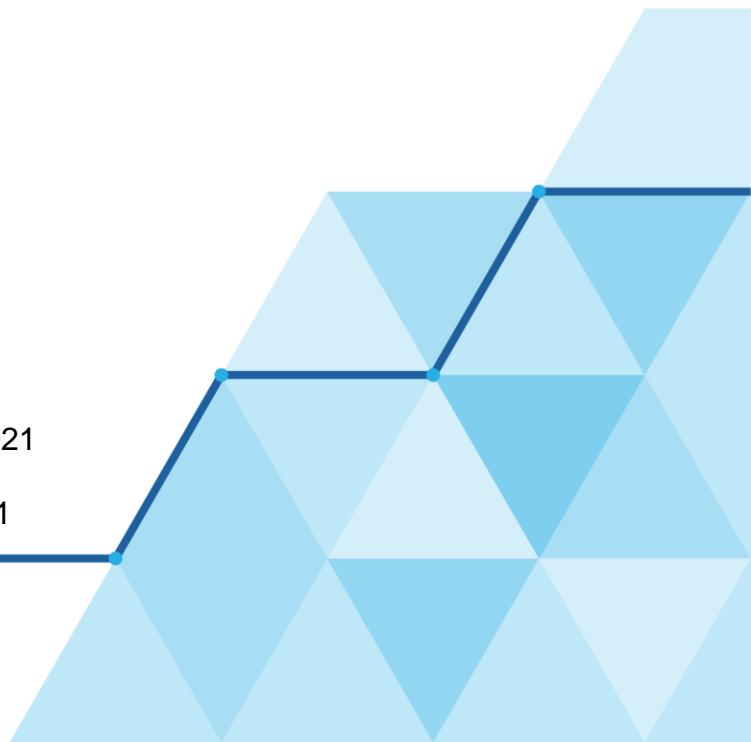
Ministry
of Justice

Immigration legal aid fees and the online system

Call for Evidence

This Call for Evidence begins on 4 November 2021

This Call for Evidence ends on 2 December 2021





Ministry
of Justice

Immigration legal aid fees and the online system

Call for Evidence

2021

A call for evidence produced by the Ministry of Justice. It is also available at <https://consult.justice.gov.uk/>

About this call for evidence

- To:** This call for evidence is aimed at anyone with an interest in the provision of civil legal services in respect of immigration and asylum appeals to the First-tier Tribunal (Immigration and Asylum Chamber) within England and Wales. This will include, but is not limited to, members of the legal profession and their professional representative bodies, members of the judiciary, the Home Office, and legal services regulators.
- Duration:** From 04/11/2021 to 02/12/2021
- Enquiries to:** Email: civil.legalaid@justice.gov.uk
Where possible, we would prefer enquiries via email.
Civil and Family Legal Aid team
Ministry of Justice
102 Petty France
London
SW1H 9AJ
- How to respond:** Please send your response by 02/12/2021 via the survey or by email to civil.legalaid@justice.gov.uk
Civil and Family Legal Aid team
Ministry of Justice
102 Petty France
London
SW1H 9AJ
- Response paper:** A summary of responses to this Call for Evidence will be included as part of the forthcoming consultation paper on this topic.

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Introduction

1. This Call for Evidence is seeking evidence from all interested parties on the impact that the online system that has been rolled out for asylum and immigration appeals in the First-tier Tribunal (Immigration and Asylum Chamber) has had on legal aid fees. The questions within this call for evidence ask for evidence on the role and features of the online system in order to inform future policy on legal aid fees.
2. Copies of this Call for Evidence are being sent via email to:
 - The Law Society of England and Wales
 - The Bar Council
 - Legal Aid Practitioners' Group
 - Immigration Law Practitioners' Association
 - Law Centres Network
 - Advice Services Alliance
 - Young Legal Aid Lawyers
 - The Home Office
 - Members of the judiciary in the First-tier Tribunal (Immigration and Asylum Chamber)
3. This list is not exhaustive or exclusive, and responses are welcomed from anyone with an interest in this Call for Evidence.
4. Alongside this public Call for Evidence, we are also conducting a survey of legal aid providers who have undertaken a reasonable quantity of cases using the online system.
5. Evidence gathered as part of this Call for Evidence, as well as the survey of legal aid providers, is intended to be used to form policy proposals for a forthcoming consultation on new legal aid fees for asylum and immigration appeals. These fees are intended to reflect the changes in tribunal process resulting from the introduction of the online system and ensure that legal aid practitioners are adequately remunerated for their work in representing some of the most vulnerable people in our society.

Terminology

6. For the purposes of this Call for Evidence, the online system refers to the reform online system, accessed through 'myHMCTS'. The phrase "online system" will be used throughout for simplicity.

Background to this Call for Evidence

7. Since January 2019, HM Courts and Tribunals Service (HMCTS) have been introducing an online system for lodging and progressing appeals in the First-tier Tribunal (Immigration and Asylum Chamber) (FtTIAC). The online system intends to simplify a paper-heavy process and reduce unnecessary delays or adjournments during an appeal and introduced new ways of working for both parties and the Tribunal.
8. During the private testing phase of the online system, concerns were raised by those firms taking part about remuneration using legal aid fees. The key concern raised was that aspects of the online system were not catered for within the existing legal aid fees, thereby legal aid providers were being unremunerated for some aspects of their work.
9. In March 2020, the Covid-19 pandemic caused unprecedented changes to our ways of working and ways of life. In response to the need to keep the FtTIAC functioning during this period, the President of the FtTIAC issued a Practice Statement which required legal representatives to use the online system unless not reasonably practicable.
10. The issuing of the Practice Statement was supported by the Civil Legal Aid (Remuneration) (Amendment) (Coronavirus) Regulations 2020¹ (“the 2020 Regulations”) which introduced new fixed fees for appeals using the online system, representing an increase on fees in response to the concerns already raised by legal aid providers. The fees within the 2020 Regulations were subject to judicial review, and they were later revoked.²
11. Since the revocation of the 2020 Regulations in October 2020, immigration and asylum appeals using the online system have been payable by hourly rates³, with advocacy services remunerated by the online system advocacy services standard fees⁴.

¹ [The Civil Legal Aid \(Remuneration\) \(Amendment\) \(Coronavirus\) Regulations 2020 \(revoked\) \(legislation.gov.uk\)](https://www.legislation.gov.uk)

² [The Civil Legal Aid \(Remuneration\) \(Amendment\) \(No. 2\) \(Coronavirus\) Regulations 2020 \(legislation.gov.uk\)](https://www.legislation.gov.uk)

³ Table 8(ca) of the Civil Legal Aid (Remuneration) Regulations 2013.

⁴ Table 4(ca) of the Civil Legal Aid (Remuneration) Regulations 2013.

Questions

1. DIFFERENCES BETWEEN THE ONLINE SYSTEM AND THE PROCESS PRIOR TO THE ONLINE SYSTEM

An understanding of how the online system differs from the paper-based process that was in place before the introduction of the online system. Anecdotal evidence suggests that it is the differing features of the online system that have had the biggest impact on the work of legal aid providers.

1. What do you consider to be the key differences between the online system and the paper-based process in place prior to the introduction of the online system?
2. For each of the differences identified in answer to question 1, what do you consider to be the impact of those differences on your work?
3. Please explain how case management review hearings were used prior to the online system, and how they are being used as part of the online system.

2. THE APPEAL SKELETON ARGUMENT

We are specifically interested in the requirement for an appeal skeleton argument to be produced as part of the online system. Anecdotal evidence has described this requirement both as 'new work' but also as 'pulled forward work' and we are keen to get a wide range of views on what impact this requirement has had.

4. Please explain whether, and if so, at what stage, appeal skeleton arguments were used prior to the introduction of the online system.
5. What do you consider the role of the appeal skeleton argument to be under the online system?
6. Do you have evidence of any instances under the online system in which an appeal skeleton argument was not required or was not produced? If yes, please summarise your experiences and explain why an appeal skeleton argument was not required or produced.
7. Can you describe whether, and if so, how, an appeal skeleton argument under the online system differs between asylum and non-asylum immigration cases?
8. How long (in hours) does an appeal skeleton argument take in asylum and non-asylum cases? Do you have any examples/evidence to support this?
9. Anecdotally we understand that the requirement for an appeal skeleton argument may have resulted in Counsel being more routinely instructed in appeal cases. What are your views on this understanding?
10. Can you describe whether, and if so, how, an appeal skeleton argument under the online system differs between cases that result in a substantive hearing and cases that do not? Please also comment on whether this differs between asylum and non-asylum cases that result in a substantive tribunal hearing.

3. TRIBUNAL HEARINGS

We are interested in whether the introduction of the online system has impacted on substantive tribunal hearings, including on the work required to prepare for a hearing. As above, we are specifically interested in understanding any 'new work' or 'pulled forward' work as a result of the introduction of the online system.

11. Do you consider that the introduction of the online system has had an impact on the work necessary to prepare for a substantive hearing? If so, please explain how and why.
12. Do you consider that the introduction of the online system has had an impact on what happens on the day of the substantive hearing itself? If so, please explain how and why.

4. IMMIGRATION LEGAL AID FEES

We are aware that there are a range of views as to what type of work is covered by the different fees claimable for immigration appeal work.

Currently all immigration appeals are remunerated by hourly rates, rather than the previous stage 2a or stage 2b fees. Stage 2a and stage 2b fees were payable based on whether the case went to a hearing.

13. Please provide evidence as to whether the previous controlled legal representation fee structure of stage 2a and stage 2b payments based on whether a case went to a hearing, would be suitable for asylum and immigration appeals using the online system?⁵
14. Please describe what type of work you consider to be remunerable under the 'additional payments for advocacy services: substantive hearing' and 'additional day substantive hearing' fees.⁶

⁵ Please see table 4(a) of the Civil Legal Aid (Remuneration) Regulations 2013.

⁶ Please see table 4(c) of the Civil Legal Aid (Remuneration) Regulations 2013.

5. PUBLIC SECTOR EQUALITY DUTY

We are required to consider the need to eliminate discrimination, advance equality of opportunity and foster good relations between different people in shaping policy, delivering services and in relation to our own employees.

15. Please provide evidence on the protected characteristics and socio-demographic differences of individuals who are using the online system, both legal aid clients and legal aid providers, including instructed Counsel?

6. ADDITIONAL EVIDENCE

Please share any additional views, with supporting evidence, in relation to the online system that are not covered by the questions above but that you would like to be considered as part of this Call for Evidence.

Thank you for participating in this exercise.

About you

Please use this section to tell us about yourself.

Full name	
Job title or capacity in which you are responding to this call for evidence exercise (e.g. member of the public)	
Date	
Company name/organisation (if applicable):	
Address	
Postcode	

Representative groups

Representative groups are asked to give a summary of the people and organisations they represent when they respond. **If you are a representative of a group**, please tell us the name of the group and give a summary of the people or organisations that you represent.

Please confirm if you are happy to be contacted for follow-up discussion:

YES NO

Contact details and how to respond

Please send your response by 02/12/2021 via the survey or via email to civil.legalaid@justice.gov.uk

Complaints or comments

If you have any complaints or comments about this Call for Evidence process you should contact the Civil and Family Legal Aid team.

Email: civil.legalaid@justice.gov.uk

Where possible, we would prefer complaints or comments via email.

Ministry of Justice
102 Petty France
London
SW1H 9AJ

Publication of response

We will include a summary of responses to this Call for Evidence in the forthcoming consultation on this topic. The summary will be anonymised and will not contain any identifying information of respondents to this Call for Evidence.

Consultation principles

The principles that Government departments and other public bodies should adopt for engaging stakeholders when developing policy and legislation are set out in the Cabinet Office Consultation Principles 2018 that can be found here:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/691383/Consultation_Principles__1__.pdf

Confidentiality and Data Protection

Information provided in response to this Call for Evidence, including personal information, may be subject to publication or release to other parties or to disclosure in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004).

If you want information, including personal data that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information, we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.

The Government considers it important in the interests of transparency that the public can see who has responded to Government consultations and what their views are. Further, the Department may choose not to remove your name/details from your response at a later date, for example, if you change your mind or seek to be 'forgotten' under data protection legislation, if the Department considers that it remains in the public interest for those details to be publicly available. If you do not wish your name/corporate identity to be made public in this way then you are advised to provide a response in an anonymous fashion (for example 'service provider', 'member of public'). Alternatively, you may choose not to respond.



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