

Bob Marley, copyright and contracts



Experienced Specialists in Solicitors Professional Indemnity Insurance

- Join our group
- Follow us
- Like our page

Home > Law

Legal aid guidance unlawful, High Court rules

13 June 2014 | By Catherine Baksi

Topics: Criminal justice, Immigration, Legal aid and access to justice

Print Email Share Comments (6) Save

Elements of the lord chancellor's guidance for granting legal aid in exceptional circumstances for immigration cases are 'unlawful', the High Court ruled today.

Giving judgment in six linked cases - *Gudanaviciene & Others v director of legal aid casework and the lord chancellor [2014] EWHC 1840 (Admin)* - Mr Justice Collins said the guidance issued by the lord chancellor is in 'certain respects unlawful' in that it is 'too restrictive' and 'not in accordance with the law'.

Tweet 58

Like 21

Share 4

1



Advertisement

First Title Insurance plc.
Commercial and residential property insurance services.

Endorsed by The Law Society

FirstTitle
www.firsttitle.eu

Collins ruled that the guidance misstates the test for the circumstances in which legal aid should be granted: in order to comply with Articles 6 and 47 of the European Convention on Human Rights; the circumstances in which Article 8 requires legal aid to be granted; and the circumstances under Section 10 (3) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 in which legal aid should be made available.

MORE FROM THIS SECTION

Battle lines drawn at CoA for Mitchell triple-header



Ban lawyers giving tax advice, Tory MP urges

Big fines to 'criminalise motorists', says Mr Loophole



Premier job >>

QBE
Assistant Claims Manager
Leeds

Search jobs by keyword **FIND** >>

> Browse over **3,000** law jobs

Sign up for email news alerts

Daily Update. Keep abreast of the latest developments that affect the profession

Enter email address **SIGN** >>

Collins said the guidance 'sets too high a threshold' and 'produces unfairness' by denying publicly funded legal advice to applicants in 'exceptional cases'.

He said it was 'a fundamental principle that anyone in the UK is subject to its laws and is entitled to their protection'.

'Thus there must be a fair and effective hearing available and the guidance, as the facts of some of the cases I have dealt with show, produce unfairness,' he said.

Collins quashed all six decisions made by the director of casework at the Legal Aid Agency to refuse legal aid.

He said that in some of the six cases legal aid ought to be granted and in others the decision to refuse legal aid should be reconsidered.

He said it was not necessary to make any formal declaration of relief and said it would be 'wrong' to quash the guidance, as it was only part of it that he found to be unlawful.

The cases concern the circumstances in which legal aid should be granted in those cases not normally eligible, but where a refusal to grant public funding would lead to a breach of the claimant's convention or EU rights.

Two of the claimants, Teresa Gudaviciene and Cleon Reis, are EU nationals appealing against the decision to deport them following convictions for criminal offences. A third claimant, S, is a Nigerian citizen and the victim of trafficking and argues he has the right to legal assistance to establish that he is such a victim.

IS is a 59-year-old Nigerian who is blind and has a mental condition and is unable to say when he entered the UK. The Official Solicitor has acted as his litigation friend.

He was evicted from his private rented accommodation and has had to bring community care proceedings against his local authority.

B is an Iranian national who arrived in the UK in March 2013. She claimed asylum fearing persecution for her political activities. She was granted refugees status and given five years leave to remain. She made an application for family reunion to enable her husband and son to join her in the UK.

Jacqueline Elizabeth Edgehill is a Jamaican national admitted to the UK in September 1998 as a visitor. She was granted leave to remain as a student and then applied for leave to remain on the ground of ancestry, asserting that she had been born in the UK but sent to Jamaica where she was brought up.

The application was refused and Edgehill became an overstayer. She applied for a certificate that she was entitled to remain here, which was refused and has sought leave to take the case to the Court of Appeal.

The ground-breaking decision will be seen by many as a blow to the government's flagship LASPO legislation, introduced to reform the legal aid system in order to cut the legal aid bill by £350m a year by 2015.

The act made wide-ranging changes to the provision and scope of legal aid, including for immigration cases, and most of the reforms came into force on April 1 2013.

Law Society head of legal aid Richard Miller said: 'The Law Society is delighted that in a case we supported to challenge the exceptional funding test under LASPO, the court has ruled that the lord chancellor's guidance is unlawful because it is too restrictive.'

'This vindicates our view that the LAA has been applying an unreasonably narrow interpretation to the test, and we hope this case will lead to a more reasonable approach.'

A Ministry of Justice spokesman said the ministry is 'disappointed' with the judgment and is pursuing an appeal. He said: 'Legal aid is a vital part of our justice system but resources are not limitless and must be targeted at the cases that need it most. The system must be fair for those who use it and the taxpayers who pay for it.'

'This government brought forward legislation to remove legal aid for most immigration cases, except asylum claims, but agreed an exceptional funding scheme to make sure we also meet our international obligations.'

Most read [Most Commented](#)

- [Jet2 flight delay ruling 'opens floodgates' to claims](#)
- [PI lawyers 'making too much money' from process](#)
- [New hourly rates to hit firms using paralegals](#)
- [Legal aid 'impasse' forces top family judge to adjourn](#)
- [Employment claims on 'downward spiral'](#)
- [Tax policy confusion 'hugely damaging', say City lawyers](#)

Browse the magazine

The Gazette offers you up-to-the-minute national and international news, opinion, features, in-depth articles plus a jobs and appointments section.

Please click the link below for a digital edition



[Latest issue >>](#)

Readers' comments (6)

Anonymous | 13 June 2014 04:42 pm

MoJ spokesman: "This government brought forward legislation to remove legal aid for most immigration cases, except asylum claims, but agreed an exceptional funding scheme to make sure we also meet our international obligations."

Yes, MoJ spokesman, but the Court has just ruled that you are failing to meet your international obligations. That is why they ruled the guidance unlawful and quashed the LAA's decisions. So it is hardly a legitimate response to a ruling that you are in practice failing to meet your obligations to say that you designed the law to meet them.

Unsuitable or offensive? [Report this comment](#)

Frank Waters | 13 June 2014 05:42 pm

Sometimes I wonder what it must be like to be a MOJ spokesperson, forever talking double speak, never named, always ridiculed.

Then I realise it doesn't matter, because they never hear the mockery, or any kind of response. They drift off, in a kind of a bubble, into the sky. Accountability is for mere mortals.

Unsuitable or offensive? [Report this comment](#)

paul nicholls | 13 June 2014 06:39 pm

What? The advice given by the (entirely without any legal qualification) Lord Chancellor is wrong?

Unsuitable or offensive? [Report this comment](#)

Arthur Michael Robinson | 14 June 2014 01:15 am

I've said before TLG should state when MoJ spokesperson speaks "usual bollocks from MoJ" rather than print the usual bollocks the spokesperson utters.

Unsuitable or offensive? [Report this comment](#)

Anonymous | 14 June 2014 12:54 pm

I've heard on good authority that the 'MoJ Spokesperson' was actually a victim of Grayling's cuts and has been replaced by a free app called 'Bollocks Generator'

Unsuitable or offensive? [Report this comment](#)

Anonymous | 14 June 2014 04:56 pm

Should rename it MoB - Ministry of Bollocks.

Unsuitable or offensive? [Report this comment](#)

Have your say

You must sign in to make a comment

S I G N I N

R E G I S T E R

More from the Gazette



> Les misérables



> My legal life: Susie Labinjoh



Big fines to 'criminalise

> Nick clutches at speed loophole



motorists', says Mr Loophole



Print Email Share Comments (6) Save



Wills and Inheritance Quality Scheme

The Wills and Inheritance Quality Scheme (WIQS) promotes the importance of solicitors through a recognised quality standard for wills, probate and estate administration practices.



[Further information >>](#)



Lexcel

The Law Society's international practice management standard that can give your practice the framework to enhance your business and provide your clients with a recognisable assurance of quality.



[Further information >>](#)



Law Society Consulting

Law Society Consulting can help your business to develop and succeed. We offer expert, confidential support to help you navigate through regulatory, legislative, market and economic changes.



[Further information >>](#)

[Site map](#) | [Recent issues](#) | [RSS Feeds](#) | [Submit a move](#) | [Site terms](#) | [Contact us](#) | [Advertise with us](#) | [Print subscription](#) | [App](#)



The Law Society of England and Wales

The Law Society represents solicitors in England and Wales. From negotiating with and lobbying the profession's regulators, government and others, to offering training and advice, we're here to help, protect and promote solicitors across England and Wales.



CPD Centre

CPD Centre helps you to complete your annual CPD requirements quickly and easily.



Events

We run CPD training seminars, conferences and networking events for our members.



Bookshop

Law Society Publishing titles, e-books and selected key works from other legal publishers.



Helplines

We can help you with advice on aspects of legal practice, client care and complaints-handling, pastoral care and PII.