



BiD Bail for Immigration Detainees

Exceptional Funding

Applying for Legal Aid in Deportation Cases

A Guide for Individuals

July 2017

Bail for Immigration Detainees (BID) is a national charity that provides legal advice and representation to individuals held under immigration powers to secure their release from detention. We also provide legal advice and representation to detainees facing deportation. BID works with detainees in all removal centres in the UK, and with immigration detainees held in prison at the end of their sentence.

- We provide free legal advice, information and support to immigration detainees to help them exercise their right to liberty and access to justice, and to help them challenge their deportation.
- We prepare and present (free of charge) applications for release on bail or temporary admission.
- We carry out research and use evidence from our legal casework to influence decision-makers, including civil servants, parliamentarians, and regulatory bodies through policy advocacy.

Disclaimer

Although every effort is made to ensure the information in this factsheet is accurate and up to date, it should not be treated as a complete and authoritative statement of the law. BID cannot be held liable for any inaccuracies and their consequences. The information in this factsheet is not legal advice. If you have a legal problem you should talk to a lawyer or legal adviser before making a decision about what to do.

Please check that this factsheet is up to date before using it. Please also check whether BID has written other factsheets or leaflets that might be relevant to you. All BID factsheets and leaflets can be found at www.biduk.org

The Article 8 Deportation Advice project (ADAP) is a project run by Bail for Immigration Detainees (BID) in collaboration with the University of Law (ULaw).

The project provides free legal advice and representation to individuals challenging deportation on the grounds of their long residence in the UK and/or their family life in the UK.

The right to respect for family and private life is protected by Article 8 of the European Convention on Human Rights.

Who is this leaflet for?

This leaflet is for people who are challenging deportation from the UK on the grounds of:

- their family life in the UK with a partner or children or
- the length of time that they have lived in the UK; and
- who need a solicitor but cannot afford to pay.

As legal aid is not available, except under 'Exceptional Funding' provisions, this leaflet provides a step-by-step guide to making your own application for Exceptional Funding legal aid so that you can get a solicitor to represent you.

You can make the application yourself. You do not need a solicitor.

How to use this leaflet

The leaflet explains what Exceptional Funding is and how to make an application.

Attached to this leaflet there are the documents listed below:

DOCUMENT A	COVERING LETTER TO THE LEGAL AID AGENCY FOR THE APPLICATION
DOCUMENT B	GUIDANCE FOR COMPLETION OF DOCUMENT C
DOCUMENT C	SAMPLE GROUNDS FOR EXCEPTIONAL FUNDING
DOCUMENT D	FINAL CHECKLIST
DOCUMENT E	EXAMPLE OF A LETTER TO THE IMMIGRATION AND ASYLUM CHAMBER TO REQUEST AN ADJOURNMENT OF YOUR CASE TO ALLOW THE APPLICATION FOR EXCEPTIONAL FUNDING TO BE DECIDED.

Make sure that you attach a copy of the application (Your completed Documents A and C) with the application.

If you are applying to the Immigration and Asylum chamber for an adjournment of your appeal using Document E, you should also send a copy of the adjournment request to the Home Office Presenting Officers' Unit dealing with your appeal if you have their contact details.

Documents A and C can be taken out of the leaflet and sent directly to the Legal Aid Agency once you have added your personal information to them.

Document E can be taken out of the leaflet and sent directly to the Court once you have added your personal information to it.

Glossary of key terms in this leaflet

Civ ECF1	The application form for Exceptional Case Funding
Exceptional Case Funding	Legal aid for cases that would not normally be allowed legal aid
Grounds	The 'reasons' why you should be given Exceptional Case Funding
Immigration & Asylum Chamber	The court that decides immigration appeals that includes the First-tier Tribunal and the Upper Tribunal
LASPO	The Legal Aid, Sentencing and Punishment of Offenders Act 2012. Exceptional Funding is covered by s.10 of LASPO
Legal Aid Agency	The organisation that will decide the application for Exceptional Case Funding and that provides legal aid.
Preliminary decision	The initial decision given by the Legal Aid Agency to individuals who apply directly to them for Exceptional Case Funding rather than through a lawyer.
Provider	The term used in the Civ ECF1 for the legal aid immigration lawyer.
Means test	The financial test to qualify for Legal aid.
Merits test	The test of the strength of your case and prospects of success.
Human rights test	The test of whether a grant of Exceptional Case Funding is necessary to prevent a breach of human rights or EU law rights.

FREQUENTLY ASKED QUESTIONS ON APPLYING FOR EXCEPTIONAL FUNDING WITHOUT A LAWYER

Q. What is 'Exceptional Funding'?

A. Since April 2013 when LASPO (Legal Aid, Sentencing and Punishment of Offenders Act 2012) became law, Article 8 claims (that are based on a person's family life or a private life) have not been allowed legal aid, except under the 'Exceptional Case Funding' scheme. An application for Exceptional Case Funding to obtain legal representation can be made directly to the Legal Aid Agency (LAA).

Q. How do I qualify for exceptional case funding?

A. You will have to meet three 'tests', a **financial 'means' test**, a **'merits' test** and a **'human rights' test** (whether a grant of funding is necessary to prevent a breach or risk of a breach of human rights or European Union Law rights).

The means test will check whether your income is low enough to qualify for legal aid.

The merits test will look at the strength of your case and why a grant of legal aid is important to ensure that you have a fair chance to put your case to the Home Office or the Immigration and Asylum Chamber.

These are explained in more detail below.

Q. Do I need a solicitor to make an Exceptional Case Funding application?

A. No. You can make the application yourself.

Q. Do I have to fill in an application form?

A. No, you do not have to use a form if you are applying yourself to the Legal Aid Agency.

Q. If I do not use the application form, how should I apply?

A. You can just write down the reasons why you need exceptional funding. You must write down the **key points** stating why your **case is strong** and why you could not have a **fair chance to put your case to the Home Office or the court** without legal aid to pay for a solicitor. These are called your 'grounds' for the application.

Q. What information do I need to provide in my letter of application?

A. You must provide the following information:

- The main facts of your case
- The outcome sought from the application
- Why you cannot represent yourself

Q. Are there examples of 'grounds' that I can use for my application?

A. Yes. Although each case will have different circumstances, you can use the sample grounds in **Document B** that is to be found at the end of this leaflet. *Document B is a Guide to completing Document C.*

You can use the Document C 'Grounds' in this leaflet and tick the boxes that you think apply to your case. You can give more information about each box in the space underneath the box 'Give More Details here'

Remember: You must provide as much information in each of the sections below as you can, and provide supporting documents if you have them.

Q. What supporting documents should I send with my application?

A. You should provide any documents that you think will help the Legal Aid Agency make a decision on your case. However, you must attach the following documents:

- A copy of the decision you wish to challenge, e.g. Home Office Notice of Decision to Deport and Deportation Order or a decision of the First-tier Tribunal refusing your appeal.
- A copy of the Notice of Hearing at the Immigration Tribunal if you have one.
- Basic information on your financial situation.

You can use the **Final Checklist (Document D at the end of this leaflet)** to check that you have attached all the information that is needed before you send off the application.

You must **sign and date** the form or the application letter. A sample **covering letter** that you can send with the application is attached at **Document A**. You can use this Document and send it with your application to the Legal Aid Agency. Remember to fill in the blank sections with your personal details.

Q. What is the 'means' test and means form?

A. If your disposable income is less than £733 per month and your savings less than £3000, you should satisfy the means test. However, if you have a partner, their income and savings can be taken into account.

A means form is used by lawyers to assess your income.

If your case is at appeal the form you can use is called **CW2**.

If you have not yet had a decision from the Home Office to deport you and there is therefore no appeal, the form you can use is **CW1**.

Q. Do I have to complete the 'means form' if I am applying myself?

A. No, you can just provide the basic information about your income.

It may also be that you are in prison or in an immigration removal centre and so have no income and no means of providing evidence of your bank accounts or of your partner's income and savings. You can explain this in your covering letter.

Q. Can I get any advice on making my application?

A. You can get advice from the Exceptional Funding Team at the Legal Aid Agency on **020 3334 6060**.

You may also be able to get advice from the Public Law Project Exceptional Funding Project at **exceptionalfunding@publiclawproject.org.uk**

Q. Where do I send my application?

A. You can post your application to:

Exceptional Funding Case Team,

8.51, 8th Floor,

102 Petty France,

London, SW1H 9AJ.

You can also email it to **contactECC@legalaid.gsi.gov.uk**

Q. When can I expect to hear back from the Legal Aid Agency?

A. The Legal Aid Agency will make a decision within 20 working days. If the case is urgent - for example, if you have an appeal hearing date, you should hear back within 5 working days. If you have a hearing date, you **MUST** explain this and provide a copy of the Notice of Hearing.

Q. What should I do if I receive a positive decision on my application?

A. If you receive a positive decision and the application is granted, you will need to find a legal aid immigration lawyer to represent you. You will need to explain that you have been granted Exceptional Funding and give them a copy of the decision letter of the Legal Aid Agency.

If you are being held at an Immigration Removal Centre (IRC) you should take your preliminary decision letter to one of the legal aid lawyers who staff the Centre's legal advice surgery.

You can search for a legal aid lawyer near you on the Law Society 'Find a Solicitor' website at **<http://solicitors.lawsociety.org.uk/>**

Q. If I have a court hearing date for my appeal, can I ask the court for more time so that my Exceptional Funding application can be decided?

A. If you have a hearing date for your appeal but have applied for Exceptional Funding, you can write to the Immigration and Asylum Chamber to ask for an adjournment of your case to allow time for the Exceptional Funding application to be decided. A sample letter to the court to ask for an adjournment is attached as **Document E at the end of this leaflet.**

You can use Document E to send directly to the Court.

Remember: You must fill in your personal details in the blank spaces in Document E before you send it to the Court.

Q. What should I do if my application is refused?

A. You can write to the Legal Aid Agency to ask for an **internal review** of the decision. You must state why you disagree with each of the reasons given for refusing the application and provide any supporting evidence. If the review is refused, the only way of challenging this is by applying for **judicial review**.

Q. Is there anywhere I can go for help with a judicial review?

A. You can contact a solicitor for advice on judicial review of the decision of the Legal Aid Agency to refuse to grant Exceptional Funding. You will need a solicitor with a **public law contract**. Legal aid may be available. You can ask the solicitor about whether you qualify for legal aid for a judicial review.

Useful Websites

Legal Aid Agency

<https://www.gov.uk/guidance/legal-aid-apply-for-exceptional-case-funding>

Public Law Project

<http://www.publiclawproject.org.uk/exceptional-funding-project>

Document A –Application covering letter

STRICTLY PRIVATE AND CONFIDENTIAL

Exceptional Case Funding Team (ECF)
Legal Aid Agency (6.42)
102 Petty France
London SW1H 9AJ

Date: //

Dear Madam/Sir

Exceptional Case Funding request direct from individual

Name:

Contact Address:

Please find enclosed an application for Exceptional Case Funding under s.10(2) Legal Aid Sentencing and Punishment of Offenders Act 2012. Full grounds for the case are enclosed.

I am making the application direct myself. I have not used the application form Civ ECF1.

The **Legal Aid Agency Guidance** 'How to apply - for the public' states that it is not necessary to use the application form. It states:

"How to apply - for the public

You can apply directly to the Exceptional Case Funding team at the Legal Aid Agency. You don't have to name a solicitor in the application.

How to apply

The forms are designed to help you provide the right information in your legal aid application, but you don't have to use them. You must sign your application, whatever format you have made it in.

As a minimum, send the following to us in writing:

- 1. Background to your case, including all the main facts.*
- 2. Why you need legal advice on or what court proceedings you need representation in. Explain why you cannot represent yourself.*
- 3. What outcome you wish to achieve.*
- 4. Information that will support your application e.g. court applications and orders, expert and medical reports, copies of any decisions you wish to challenge.*
- 5. Information on your financial situation."*

In **Document C** I have provided the necessary information on my case and explained in the grounds, why I need Exceptional Funding.

For the reasons that I have stated in my grounds, I believe that legal representation will produce a chance of success which without representation will not exist.

Tick as appropriate

- I am in prison/immigration detention and I do not have any money

- I do not have any savings

- I am not able to provide evidence of my bank accounts at present

- I am not able to provide evidence of my partner's income/savings at the moment

- Other

Urgent case (if applicable also write 'URGENT' at the top of this letter)

My case is urgent because I have a hearing on **(date/...../.....)** and the case needs substantial preparation before that date.

A copy of the Notice of Hearing is enclosed.

Yours faithfully,

Signed.....

Dated.....

Document B – Guidance for completion of Document C

Grounds for Exceptional Funding

Document B provides guidance on how to complete Document C. It explains what each of the headings and tick boxes mean. You should read this guidance carefully before you complete Document C.

1. The main facts of my case

In this section, you need to set out the basic facts of your case covering the points outlined in i-iii. If you are an EEA National, also complete iv.

2. Outcome sought

This section is for you to explain why you need Exceptional Funding. What type of legal help you need will depend on what is happening on your case at the moment.

Note: You can tick as many boxes as apply to you

- I need Exceptional Funding so that I can obtain legal assistance with making submissions to the Home Office about why I should not be deported.**

This box applies to you if you have **not yet received a Notice of Decision to Deport and Deport Order**, but the Home Office has written to you to tell you that they are considering deporting you, and you will **need legal help with making written representations to the Home Office** stating why you believe you should not be deported from the UK.

- I need Exceptional Funding so that I can obtain representation for my appeal at the First-tier Tribunal/ Upper-tier Tribunal.**

This box applies to you if you have lodged an appeal to the Immigration & Asylum Chamber, and you will need representation in preparing your case for court and representation at the Tribunal.

- I am likely to need expert evidence from an Independent Social Worker and I cannot pay for it**

- I am likely to need expert comment from a health professional and I cannot pay for it**

- Other expert evidence that I cannot pay for (please give basic details of the type of expert evidence needed)**

Such expert evidence could be decisive in my case.

This box applies to you if you need expert evidence in your case. Expert reports are very expensive but legal aid can pay for them if they are essential for your case.

For example:

If you have children you may need an Independent Social Worker report to provide expert comment on your relationship with your children and the impact on their wellbeing if you are deported.

If you, your partner or your child has a significant mental health or physical disability condition, you may need expert comment from a health professional on the impact of your deportation on mental health or that of the family member.

3. Why you cannot represent yourself

The importance of the issues at stake

- The issues at stake are extremely important to me. I am facing deportation from the UK and long term separation from my family.**
- Deportation is a complex area of law and I do not have any legal training or experience. It requires the completion of forms attendance at court, gathering and presenting information in a focused way.**
- The well-being of my children is at stake. *(if applicable)***

This is the most important point because it is the reason why you need legal aid to ensure that you have a fair chance to put your case as strongly as you can to the Home Office or the Tribunal. The points listed above are the sort of issues that the Legal Aid Agency will take into account when deciding whether to grant you legal aid.

Boxes one and two are likely to apply to all deportation cases. Box three will only apply if you have children in the UK.

Some of the points in section 4 below will also apply here.

4. I am unable to effectively participate in the legal process

- Mental ill-health**
- Physical ill-health**
- Educational development issues**
- Language barriers**
- Very significant emotional involvement in the outcome**
- Complex parallel family proceedings**

This may apply to you if you have on-going legal proceedings in the Family Court regarding contact or custody of your children. It is unlikely that the deportation matter can be fairly considered without taking into account the decisions of the Family Court.

- S.94B/Reg. 33 out of country appeal**

This will apply to you if the decision to deport you has been 'certified' under Section 94B for non-EEA nationals or Regulation 33 for EEA nationals and their family members, which means that you can only bring or continue your appeal once you have been removed to your home country.

If you are removed while you appeal you may need a lawyer in the UK to prepare your case and represent you at the appeal in the Immigration and Asylum Chamber.

- Other reasons why I need legal aid for my deportation case**

If there are any reasons which have not already been explained as to why you need legal aid for your deportation case, you should explain them here.

Document C- Grounds for Exceptional Funding Application

STRICTLY PRIVATE AND CONFIDENTIAL

1. The main facts of my case

i. Background to my case

Give details here:

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ii. Family life in the UK

Give details here:

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iii. Private life in the UK [This is the length of time lived in the UK and how the time has been spent (for example work/study etc.)]

Give details here:

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iv. EEA National - time spent living and working in the UK

Give details here:

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2. Outcome sought

Note: You can tick as many boxes as apply to you

- I need Exceptional Funding so that I can obtain legal assistance with making submissions to the Home Office about why I should not be deported.
- I need Exceptional Funding so that I can obtain representation for my appeal at the First-tier Tribunal/Upper-tier Tribunal.
- I am likely to need expert evidence from an Independent Social Worker and I cannot pay for it
- I am likely to need expert comment from a health professional and I cannot pay for it
- Other expert evidence that I cannot pay for (please give basic details of the type of expert evidence needed)

Notes:

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Such expert evidence could be decisive in my case.

3. Why I cannot represent myself

I am not able to represent myself in my deportation case. I will not be able to:

- Identify the key issues at stake;
- Gather the necessary evidence in a focused way;
- Make appropriate submissions to the Home Office or Tribunal on those key material issues and evidence;

for the following reasons:

Note: You can tick as many boxes as apply to you

The importance of the issues at stake

- The issues at stake are extremely important to me. I am facing deportation from the UK and long term separation from my family.

The complexity of the procedural, legal and evidential issues:

- Deportation is a complex area of law and I do not have any legal training or experience. It requires the completion of forms attendance at court, gathering and presenting information in a focused way.
- The well-being of my children is at stake. *(if applicable)*

4. I am unable to effectively participate in the legal process

- Mental ill-health**

Give details here:

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- Physical ill-health**

Give details here:

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- Educational development issues**

Give details here:

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- Language barriers**

Give details here:

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- Very significant emotional involvement in the outcome**

Give details here:

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- Complex parallel family proceedings**

Give details here:

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- S.94B/Reg. 33 out of country appeal [This applies if you will be removed from the UK while you appeal and you need legal assistance from a lawyer in the UK to prepare your case and represent you at the appeal].**

Give details here:

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I have also been issued with a certificate that my appeal must be heard from outside the country. I need advice about whether or not I can challenge this certificate and if so, on what grounds.

- Any other for why I need legal aid for my deportation case :**

Give details here:

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For the reasons that I have stated in my grounds, I believe that legal representation will produce a chance of success which without representation will not exist.

Tick as appropriate

- I am in prison/immigration detention and I do not have any money**
- I do not have any savings**
- I am not able to provide evidence of my bank accounts at present**
- I am not able to provide evidence of my partner's income/savings at the moment**
- Other**

Urgent case (if applicable also write 'URGENT' at the top of this letter)

My case is urgent because I have a hearing on **(date / /)** and the case needs substantial preparation before that date.

A copy of the Notice of Hearing is enclosed.

Yours faithfully,

DOCUMENT D- Final Checklist

- Have you ticked the boxes that apply to you in your grounds for Exceptional funding (Document C)?

- Have you given more information in the 'Give more details here' section under the tick box?

- Have you attached a copy of the Home Office or court decision that you need legal aid to help to challenge?

- Have you attached a copy of the Notice of Hearing (if applicable)?

- Have you provided supporting evidence that applies to your case?

- Have you provided basic information about your financial circumstances?

- Have you signed and dated the covering letter (Document A)?

- Have you kept a copy of the application?

Document E

**Letter to the Immigration and Asylum Chamber requesting an adjournment while the
Exceptional Funding Application is considered by the Legal Aid Agency**

Immigration & Asylum Chamber

Address of IAC dealing with my appeal:

Date: / /

Appeal Reference Number:

[This will be on your letter from the Court]

Home Office Reference Number:

Date of Appeal Hearing: / /

Dear Sir/Madam

**Re: Request for an adjournment of appeal hearing pending Legal Aid Agency decision on Exceptional Funding
Application**

Name:

Contact Address:

I write to request an adjournment of my deportation appeal listed for **(Date: / /.....)** because I am awaiting a decision from the Legal Aid Agency on my application for Exceptional Funding to enable me to obtain legal representation in my appeal.

I made the application for Exceptional Funding myself using a self-help leaflet issued by Bail for Immigration Detainees because I do not have lawyer. A copy of my application for Exceptional Funding is enclosed.

For the reasons that I have explained in my application for Exceptional Funding, I am not able to represent myself at my appeal. I am not able to gather the evidence needed or to prepare the arguments to support my appeal without a lawyer. It is in the interests of justice for my appeal to be adjourned because it cannot be 'justly determined' if it is heard on the date set.

I sent my application to the Legal Aid Agency on **(Date: / /.....)** . I informed the Legal Aid Agency that I had a hearing date so I should receive a decision on my application within 5 working days of sending the application to them.

If I receive a positive indication decision from the Legal Aid Agency, I will need time to find a legal aid lawyer to take on my case. The lawyer will then need time to prepare my case.

I therefore ask for my appeal to be adjourned for 6 weeks from the date of hearing.

Yours faithfully,

Signed.....

Dated.....

How to contact BID

By post:

Freepost RTSU-ZJCB-XCSX
Bail for Immigration Detainees (BID)
1b Finsbury Park Road
London
N4 2LA

Fax: 020 3745 5226

General enquiries: enquiries@biduk.org

Casework enquiries: casework@biduk.org

Advice Line: 020 7456 9750
(Mon-Thurs, 10am - 12 midday)

BiD Bail for
Immigration
Detainees

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