

Empowering immigrants to make informed family decisions that benefit their children and themselves

Access to Justice: Legal Aid and service for immigrants in the family justice system

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Our study is among the first to provide unique insights into how the migration experience impacts access to resources during parental separation, including public, private, financial and logistic support.

A key finding is the importance of competent legal advice to empower immigrants to make family decisions that benefit their children and themselves, to assist in transitioning to a stable migration status that facilitates a secure housing and financial position, allowing the establishment of child arrangements, and in ensuring that separating parents achieve the outcomes they are entitled to in both family and immigration law. Legal aid solicitors make a critical difference, particularly in the ability of immigrants on temporary or dependent visas to understand their rights, resist immigration abuse, and achieve just outcomes for themselves and their children. Our study also provides evidence on the importance of civil society in providing immediate support for separating immigrant families, but also their limitations in terms of providing the legal advice that so many immigrant families need.

Key findings

Our study's key initial findings are as follows:

In general, the immigration experience complicates family separation, making immigrant families vulnerable during parental separation and in particular need of legal advice due to:

- Lower awareness of British family law
- Weaker local social networks which prevent immigrant families from drawing on private, financial and logistic support from family and friends
- Lower trust and awareness of public support available
- When one or both parents are on temporary or dependent visas, ineligibility for public support due to no recourse to public funds (NRPF)

1 There is generally low awareness among immigrants of relevant family and immigration law, in particular:

- British definitions of domestic abuse, especially financial abuse and coercive control
- Rules and principles on financial provision, especially that

negotiations around these begin from a 50/50 basis (the sharing principle), and that various maintenance orders can be pursued across borders

- Child arrangements and that the child's welfare interests, rather than parental immigration statuses, are of paramount concern
- Enforcement of child arrangement orders, and that contact with children cannot be refused without reason
- The availability of family life visas that enable immigrants on temporary or dependent visas to transition to indefinite leave to remain, which makes them eligible for public funds
- The availability of relevant immigration protections (such as indefinite leave to remain or enter) related to relationship breakdown due to domestic abuse

2 This lack of awareness can be weaponised prior to and during separation, making immigrant parents particularly vulnerable to domestic abuse:

- Many immigrants believe they will lose their visa status, or have their children taken away, if they separate from partners. Because of this they stay in abusive relationships
- Many immigrants suffering coercive control and financial and immigration abuse are unaware that these are forms of domestic abuse
- Many immigrants on dependent or temporary visas are aware that they have no recourse to public funds, but are unaware of other sources of support or that they can transition to other statuses through family life, or as victims of domestic abuse. This exacerbates their vulnerability to financial abuse

3 Family separation in immigrant families can be particularly complex, and there is a widespread need for legal advice from professionals competent in both immigration and family law. Solicitors and third sector organisations report:

- Difficulties sharing information from Family Courts for immigration purposes
- Lack of awareness among family lawyers and recognition in Family Court of the needs of immigrant clients. Especially critical

is the competence to help clients transition to a more secure visa status

- Delayed progress in family law cases due to the need to stabilise migration status first

4 Legal advice at the onset of the separation process is invaluable for immigrant families:

- Lowers the risk of continued exposure to coercion, financial and immigration abuse
- Provides confidence to pursue separation and child arrangements that benefit parents and children
- Facilitates the transition to indefinite leave to remain where eligible, stabilising immigrant parents and providing access to public support
- Encourages formal arrangements that lowers the risk of conflict and withholding of child contact in the future, and encourages the establishment of child maintenance
- Helps equalise imbalances of power arising from inequalities between partners in language ability, visa status, and social and financial resources

5 In the absence of access to legal advice, immigrant families are vulnerable to:

- Fraudulent immigration and family law advisors that prey on vulnerable families, especially those with language barriers
- Obtaining incorrect advice from non-specialists on chat forums, Facebook groups, and similar

6 Immigrant/ethnic third sector organisations are critical to signpost immigrant families

- Provide general information on rights and the separation process, and signpost support in many languages
- Occasionally provide OISC certified advice in client languages
- Help immigrants identify culturally competent solicitors, and solicitors willing to work for reduced fees/on payment schedule

7 However third sector organisations do not have capacity to support the most complex cases:

- Extreme shortage of legal aid solicitors to refer clients to
- Difficulty supporting staff to obtain higher levels of OISC certification required for immigration legal advice
- Higher demand for services than capacity to supply

Policy recommendations

A trusted online entry point for those with legal need as suggested by the Law Society:

- Immigrant parents nearly all seek information online, but many look in the wrong places
- We echo [the recommendation of the Law Society](#) that the UK government should create a single, trusted website to help people understand and navigate their legal options
- However our research emphasises the need to make this accessible in many languages and especially to offer signposting to solicitors with language skills and who are experienced on the intersection of family and immigration law

Increase financial support for legal aid, increasing payment in line with inflation, so that solicitors can afford to provide support via the scheme, increasing supply:

- We further recommend the Government target solicitors with requisite language skills and cross-jurisdictional competency to participate in Legal Aid

Increase eligibility for family legal aid, beyond cases of known domestic abuse, acknowledging the particular vulnerability of immigrant families:

- Widespread misinformation about the rights of immigrant parents, especially those without indefinite leave to remain, creates vulnerability to domestic abuse and to exploitation by fraudulent advisors
- Immigrants are less likely to recognise domestic abuse, and to be aware that this qualifies them for legal aid
- The complex interactions of immigration and family law in England require specialist advice to support immigrant parents and their children undergoing parental separation in England

Increase eligibility for immigration legal aid. It is critical that immigrants transition to secure legal status, and obtain recourse to public funds, to achieve fair child and financial arrangements during separation. To do this they first need access to legal advice from immigration solicitors.

Increase awareness of immigration abuse as part of domestic abuse, and join existing calls for improved protection and protocols in order to improve the recognition and protection of victims and their children:

- Immigration abuse functions as a significant barrier to victims in accessing the protection and support they are eligible for both in the family justice system as well as in immigration law
- As the Domestic Abuse Commissioner's [Safety Before Status](#) report points out, some of the dedicated protections available to migrant victims of domestic abuse are narrowly tailored, insufficient and underutilised (in particular the Destitution Domestic Violence Concession, which provides a narrow window of three months protection and is limited to those on a spousal visa)
- Further hindering victims' protections is the fear of [data gathering and sharing](#) between public services and immigration authorities, potentially for purposes of immigration enforcement. These concerns were highlighted by advocates during the consultation process on the Domestic Abuse Bill as well as reiterated by the Domestic Abuse Commissioner, but sufficient safeguards were not put in place during the passage of the Domestic Abuse Act 2021

Summary of expertise

- [Professor Renee Luthra](#) is Professor in Sociology at the University of Essex
- [Dr Edit Frenyo](#) is Lecturer in Child and Family Law at the University of Stirling

The team leads the Nuffield-funded research project [Immigrant families in the family justice system](#), drawing on interviews with immigrant parents, lawyers, and third sector professionals to investigate how the immigration experience influences parental separation in immigrant families. They have also spent over a decade studying the factors influencing inequalities in work, education and access to justice for the foreign born and their children in the UK.

About this study

We are interviewing 25 third sector professionals and family and immigration solicitors who support immigrant families undergoing parental separation. We are also interviewing 50 parents in immigrant families that have separated or are currently undergoing parental separation in England. We define immigrant families as biological parents and their children under the age of 16, where at least one parent immigrated to the UK as an adult. Our interviews cover the unique challenges of parents with no recourse to public funds, who have indefinite leave to remain, as well as those who have naturalised. We also cover parents who sought professional help and those who negotiated the separation process independently, and in families where both parents immigrated from the same country, where parents both immigrated from different countries, and families where one parent is British born and the other immigrated as an adult.