

Asylum Support Partnership Impact Report



Access to legal advice for dispersed asylum seekers

July 2008

Kate Smart

Policy and development advisor

About the Asylum Support Partnership

The Asylum Support Partnership consists of five lead agencies: Refugee Council, Refugee Action, Migrant Helpline, Scottish Refugee Council and Welsh Refugee Council, plus the North of England Refugee Service which is a sub-contractor of the Refugee Council. These agencies deliver services to asylum seekers across the U.K. as contracted by the UK Border Agency. The Partnership advises asylum seekers on making applications to UKBA for asylum support payments and accommodation, and provides advice to refused asylum seekers who require assistance.

Presentation of this paper

In August 2008 this paper was submitted to UK Border Agency, the Legal Services Commission, the Justice Department of the Scottish Government and the Scottish Legal Aid Board. In September 2008 the National Asylum Stakeholder Forum conducted a themed discussion on legal representation for asylum seekers. This paper was presented at that meeting, alongside papers from Refugee Action and ILPA. Several other agencies contributed information to the discussion. UKBA, LSC and others are considering their responses to the paper, its recommendations, and other points raised at the meeting. It is expected that these responses will be shared at the NASF meeting in November 2008.

Access to legal advice for dispersed asylum seekers

Background

Representatives of the Asylum Support Partnership attended the UKBA workshop on early access to legal advice which was held on May 15th. This discussed the proposal to provide legal advice as part of the screening process. We do not comment on that proposal in this paper. At the workshop the insufficient supply of asylum lawyers in the dispersal areas was also discussed and it was agreed that we should send the Legal Services Commission and UKBA further details of our experience. The information is also relevant to the Scottish Legal Aid Board and the Justice Directorate of the Scottish Government as the Legal Services Commission does not have responsibility for legal advice in Scotland.

The Asylum Support Partnership often sees asylum seekers who have difficulty accessing legal advice. In our role as reception assistants, our responsibilities include helping to ensure that asylum seekers understand the asylum process and are able to access legal advice: essential components of an asylum system that is fair. Most of our caseworkers are qualified to give advice to OISC Level 1 and while some have OISC Level 2 and additional legal qualifications our agencies always refer clients to independent legal representatives for the specialised legal advice that they require. Given this role, our frontline services are well placed to comment on difficulties in accessing legal advice for asylum seekers.

This paper provides anecdotal information from service managers from the Asylum Support Partnership based on their experiences of accessing legal advice for dispersed asylum seekers throughout the U.K.

Evidence of concerns

The supply of solicitors

The North of England Refugee Service notes that although there are solicitors in Middlesbrough and Newcastle that can take on clients: 'the problem is that they have so many clients that they cannot spend much time with them'. There is only one firm in Sunderland and 'for clients dispersed to Hartlepool and Darlington, it is a 13 and 16 mile bus journey to see a solicitor – those on Section 4 support really struggle as there are no immigration lawyers in those towns.'

The Welsh Refugee Council's One Stop Service in Wrexham describes how the situation is even more difficult in North Wales:

'In Wrexham (including North Wales generally) there was only one firm providing immigration advice and representation. Unfortunately as of the 1st May this year they closed their immigration department which has left many clients without legal representation and North Wales generally greatly lacking in asylum specialists. Immigration Advisory Service Liverpool run a Drop in at the WRC office in Wrexham twice monthly and also in Llandudno. WRC Wrexham is currently also referring clients to firms in Liverpool however all the Liverpool firms are very stretched capacity-wise; it is impossible to arrange a fixed appointment for a client and we can only signpost them to a Drop-In where they may or may not be seen.'

Access to legal advice in the initial stages of an asylum application

From the feedback received, it seems that it is easier to access legal advice for initial asylum claims, than at later stages, although difficulties arise in meeting specific needs at all stages. For example the Scottish Refugee Council says that in Glasgow there is only one firm providing a gender-specific service and this firm has been unable to take on new clients for some time, raising concerns regarding provision of gender-sensitive advice for female clients.

The speed of the asylum process since the introduction of the New Asylum Model means that even if asylum seekers can access legal advice for their initial claim, it can be difficult to get legal advice before the substantive interview.

The Refugee Council in Yorkshire and Humberside states:

'This is definitely a problem now. Substantive interviews are happening a week after claiming asylum, which means there are not enough solicitors to see clients before interviews. Solicitors have told us there is not enough capacity.'

The Welsh Refugee Council also says that many clients complain that they do not have enough time to discuss their case with the legal representative before the substantive interview.

One practice which can increase this problem is re-dispersal. For example, asylum seekers may be dispersed to *Initial Accommodation* in one city, only to be re-dispersed to other accommodation a few weeks later. If the *Dispersal Accommodation* is in a location some distance from the *Initial Accommodation* then the asylum seeker has a dilemma: either they must engage a lawyer at the earliest opportunity and risk being re-dispersed some distance from their lawyer, or they must wait to be re-dispersed before getting a lawyer and risk being called for their substantive interview before receiving legal advice.

Access to legal advice in the later stages

Accessing legal advice at a later stage of the asylum process is more difficult. For example, Scottish Refugee Council reports that: 'Appeals are more fraught and if a client's initial legal representative drops them at this stage it can be difficult to get anyone to review that decision and/ or represent.'

The Partnership is concerned that this is partly due to the need for solicitors to apply the 'merit test' before taking up an appeal and to show that they have been successful in 40% of cases in order to retain legal aid funding. Both these requirements lead solicitors to exercise a high level of caution when agreeing to take on a case.

The Refugee Council in Yorkshire and Humberside explains the impact: 'When you ask the One Stops Service caseworkers they say the situation is very desperate. The general impression is that if your solicitor has dropped you at appeal stage, you will not be able to get a new solicitor, as they will assume that if you have failed the merit test once you will fail again. Therefore again there are an awful lot of clients who get their appeals completed at KRAFT (a local charitable organisation) through a drop-in solicitor, who does not necessarily take their case on but helps them to fill out the appeal papers.'

The results of the first year of the Asylum Appellate Project show that through charitable funding for legal advice 17 of 22 clients that were refused legal advice to submit an appeal successfully challenged this. 8 have submitted an appeal and 5 have been granted asylum as a result. Further information about this project is given in the Refugee Action paper: *Long term impact of the 2004 Asylum Legal Aid Reforms on access to legal aid*, which is described below.

For refused asylum seekers wishing to submit further representations or fresh claims, lengthy delays occur because of the lack of solicitors able or willing to take on this work. In Yorkshire and Humberside solicitors have told the Refugee Council that this is because they get so many requests, it is time consuming to look through a file and decide whether it is appropriate to submit a fresh claim, it is a long process to conclude such cases and there is a high refusal rate.

Refused asylum seekers who are destitute are entitled to Section 4 support if they submit further representations and those who submit fresh claims are entitled to Section 95 support. It is the experience of the Partnership's One Stop Services that delays in accessing legal advice to submit further representations and fresh claims can in turn cause delays in accessing Section 4 and Section 95 support and thereby prolong destitution among our clients.

The quality of legal advice

We asked our frontline services to give an assessment of whether their clients are accessing adequate and high quality advice. Migrant Helpline said that they are aware of at least one firm in their region 'whose standard of advice may be slightly questionable' and Scottish Refugee Council said that they had seen poor letters of advice written by solicitors. Similarly the North of England Refugee Service felt that the quality of legal advice in their region is not consistently good. Examples of the variations between firms are that they do not all give clients their advice in writing, and do not all prepare a written statement with the client. The agencies would be happy to provide evidence of legal advice quality in their regions.

Further information

Refugee Action has recently produced a paper entitled: *Long term impact of the 2004 Asylum Legal Aid Reforms on access to legal aid*. This updates the information on their experiences which has previously been published in the paper: *Legal Aid cuts for asylum and immigration work 2004*. It finds that although most asylum seekers seen by Refugee Action can find a solicitor to represent them until their initial refusal, many solicitors close their files at this stage due to capacity constraints, and there are difficulties in finding a solicitor to represent clients through the appeal stage or post-appeal.

The paper explains that in the Plymouth area, for example, Refugee Action still refers many asylum seekers to solicitors in London as they cannot find a solicitor to take them on locally. Refugee Action reports that Gloucester, Portsmouth and Leicester have only one firm apiece taking on asylum cases. In Nottingham new asylum applicants report waiting on average 2 weeks for an appointment with a solicitor and in Liverpool waiting times are at least 2 weeks. Copies of this paper are available from: info@refugee-action.org.uk

Recommendations

On the basis of this experience, the Asylum Support Partnership's 5 recommendations are as follows:

1. The response from the One Stop Services in England Wales and Scotland indicates that there are problems accessing appropriate legal advice. We recommend that, to follow up on the sketchy and anecdotal information presented here, LSC and SLAB should conduct a mapping exercise to show where there are gaps in the supply of solicitors and to assess solicitors' capacity to take on new cases at all stages of the asylum process. This should include monitoring their capacity to meet special needs and to meet basic standards of good practice such as putting their advice in writing.

2. We are particularly concerned that asylum seekers are attending their substantive interview without the opportunity to see a lawyer, and we recommend that UKBA should amend procedures so that substantive interviews do not take place before 10 days after a person has claimed asylum and do not take place before a person has had the opportunity to discuss their case in full with a legal representative.

3. UKBA, LSC, SLAB and the Scottish Government should work together to ensure that the impact of re-dispersal on the ability to access legal advice is limited. In general, asylum seekers should not be re-dispersed to locations distant from their lawyers. Where this is unavoidable, they should be offered the choice of travel assistance to visit their lawyer or access to an alternative lawyer close to where they are accommodated.

4. UKBA, LSC, SLAB and the Scottish Government should explore what measures can be taken to increase the number of solicitors that are prepared to continue to represent their clients through appeals, further representations and fresh claims, since the lack of provision in the later stages of the process is acute. In England and Wales, it is important that this includes a review of the merits test and the required success rate, as these discourage solicitors from taking on cases which, as the Asylum Appellate Project shows, have strong grounds for appeal.

5. UKBA, LSC, SLAB and the Scottish Government should work together to promote high standards of legal advice, for example through quality mark schemes, and involve the Asylum Support Partnership and other refugee-assisting agencies in developing these for legal advice to asylum seekers and refugees.