



The Refugee Council's submission to the Campaign Against Legal Aid Cuts (CALAC) about the impact of changes to legal aid

February 2005

Introduction

In November 2003, the Government announced a package of measures to curb expenditure on legal aid for asylum seekers. One of the measures introduced a financial threshold of five hours' work for the initial decision-making process in asylum cases. This threshold can be exceeded only with the permission of the Legal Services Commission. The five-hour threshold for the initial stage has applied to all suppliers of legal advice in England and Wales since 1 May 2004 (following a transitional period). In addition, limits are applied in relation to requests for disbursements, such as expert reports.

These measures appear to have led to a significant number of solicitors' firms withdrawing from the field of asylum work leaving many asylum seekers without legal assistance. In December 2004, the Refugee Council received 365 enquiries relating to legal advice; 18 per cent of these involved cases where people could not find a solicitor or whose solicitor refused to act any further.

This document outlines the Refugee Council's experience of legal referrals for asylum seekers presenting to our offices in London, Ipswich, Birmingham and Leeds in the period since the introduction of the legal aid changes in May 2004.

About the Refugee Council

The Refugee Council is the largest refugee organisation in the UK providing advice and assistance to asylum seekers and refugees in London, the Eastern Region, West Midlands, and Yorkshire and Humberside. Our offices provide a range of services for asylum seekers recently arrived in the UK, asylum seekers settled in the UK. We also offer advice to those who have received a decision on their asylum application. Our offices can be visited in person or advice can be given by telephone, subject to the availability of interpreters. However, we do not carry out legal advice and rely on referrals to local legal advisers to ensure that our clients' legal advice needs are met.

We welcome this opportunity to submit the evidence relating to the impact of changes to legal aid for asylum advice introduced in April 2004

The impact of legal aid changes

In December 2004, the Refugee Council received 365 enquiries relating to legal advice. Many of these related to liaison work with a current solicitor but no fewer than 65 enquiries (a total of 18 per cent) involved cases where people cannot find a solicitor, or whose solicitor is no longer acting for them and they are endeavouring to pursue their case for themselves.

Of these 65 cases, no fewer than 30 enquiries involved people who were endeavouring to pursue matters, mainly appeals, for themselves and we were involved in helping them liaise with the Immigration Appellate Authority (IAA). In 14 other cases, the solicitor refused to act any further. In a further eight cases, people simply could not find a lawyer. In three cases, our Leeds office had ended up sending people to London for legal appointments. Ipswich has at times been forced to do the same.

Case study 1

This case involves one young man aged just 18, where a previous age dispute issues had not been resolved. His lawyer stopped acting for him when he was dispersed to Bradford and he was unable to find another. The time for appeal had passed and his NASS accommodation was due to be terminated the day the Refugee Council saw him.

Case study 2

This is a similar case from our Children's Panel, where the existing solicitor could not act following dispersal and no solicitor in the new area has been willing to take the case on. The panel adviser has had to patiently assemble *pro bono* support - *pro bono* psychiatric and country reports in order to pursue his case.

The Refugee Council in Yorkshire and Humberside

The changes to legal aid have had a significant impact on asylum seekers living in the Yorkshire and Humberside region. In recent months, many asylum seekers visiting the Refugee Council One Stop Service have problems relating to these changes. To illustrate the impact of these legal aid changes, we recorded issues that came to our attention on 16th December 2004. Of a total of 43 clients seen that day, eight had problems with legal representation.

Accessing legal help

One of the eight clients was unable to access any legal advice in the area. We managed to get a solicitor in London but the client is currently not receiving any NASS support and therefore does not have money to travel to London for appointments.

Two clients said they were unable to get a legal representative in the region, but did not give details.

One client who had been dispersed from Dover had three days left to submit an appeal but had not been able to find a solicitor to take on his case.

Another client told us their asylum claim had been refused because they had not had a solicitor.

Legal representatives requesting payment

Two clients described being refused legal representation if they did not pay. In both cases, the client could not afford to pay for legal help.

Transferring legal representation

All eight clients had difficulties changing their solicitor. Two did manage to get a new solicitor – with one however being based in London.

Four of the eight clients were completely unable to find a new legal representative. Two of them said that this was the problem as soon as they received a refusal after the substantive asylum interview.

One person described solicitors saying that they would not take on cases which had been refused – without even looking into the merits of the individual case.

In another case, the solicitor lodged the appeal but did not want to continue with the case. The other solicitors then refused to take on the case because some of the time allowance had already been used.

Another client had recently been dispersed from Dover. He received a refusal after his substantive interview and his original solicitor would not proceed with his case because he was living in Leeds (too far). With only three days left to lodge the appeal, the client had approached every legal representative in this area. They were refusing to take the case because firstly, some time had already been used and secondly, they did not have an appointment available within the time limit for lodging the appeal.

Other issues

One client described that their solicitor would not lodge the appeal, but did not give the client enough time to find another solicitor before the time limit expired. The appeal was therefore not sent in time, and although an out-of-time appeal has been put forward, the adjudicator has not advised whether the appeal will be heard. As a result, the client has had no support for three months.

One client described their situation as 'terrible' because they simply could not access legal advice since being refused asylum at the first appeal stage.

One client said that most people felt like their solicitors were not interested in their cases and people felt ignored and forgotten. This client felt fortunate because he spoke English and could negotiate with the solicitor.

When faced with the types of cases listed above, workers at Refugee Council have found that solicitors will not even discuss their reasons for refusing to continue to represent clients.

A number of legal representatives who previously dealt with asylum and immigration cases in the region have now stopped doing this work. They have not been replaced, which leads to a shortage of legal representatives. The rate of dispersal to the region has not changed. Two years ago, there were 47 firms carrying out legal aid immigration work in Yorkshire and Humberside. In early 2004, the figure was 22, and currently stands at 13.

Solicitors are now saying that they will no longer take on asylum seekers who have previously had a solicitor. Many practices have closed down or withdrawn from working in immigration and asylum law. This is leaving gaps in areas such as Doncaster, Hull and Calderdale, with no local immigration solicitors available.

The Refugee Council in London

We monitored the impact of the legal aid changes over a period of four months from October 2004 until January 2005.

We found that on average three clients a day approached us because they required initial legal representation with their asylum claim (this represents about two per cent of our clients). We also saw a rise in the number of clients who had an initial refusal on their asylum case, and had been told by their advisers to find alternative representation. In November 2004, we saw 55 clients in this position; in December, this rose to 72.

The majority of our clients refused at the initial stage were told to seek legal representation elsewhere or to fund the process from this stage onwards themselves. We are told that the reasons why advisers cannot pursue the case further is because of the restrictions on public funding.

During the four months, we saw 96 clients where either the client wanted to complain about their legal adviser, or where we felt poor legal advice had been given and a complaint appropriate.

We asked clients who had legal representation, how they had found their solicitor. Approximately 40 per cent said that someone had approached them at the Home Office claiming to find them a solicitor; 55 per cent said they had found legal representation through a friend or relative.

General observations

We now refer mostly to law centres, the Immigration Advisory Service (IAS) and the Refugee Legal Centre (RLC). Law centres will normally see clients who reside in their local area. We also know that the IAS and RLC are under a lot of pressure and not always able to accept our referrals. In one case, a client waited for three weeks before she got an appointment, by which time the ten-day time limit for lodging an appeal had elapsed. Many reputable solicitors' firms that we have referred to have recently withdrawn from immigration and asylum work.

The Refugee Council in Ipswich

One of the two available solicitors in Ipswich has now moved to Peterborough full-time, so we are left with one publicly funded legal worker for the whole of East Anglia outside Peterborough. There is big demand for services in Norwich, Great Yarmouth, Ipswich, and the west of the region. Yet on average the Refugee Council office in Ipswich has 167 legal service enquiries a month. Two large firms, one in Norwich and one in Colchester, which represented nearly all the private case work provision in the region, have now withdrawn from providing publicly funded legal advice.

Refugee Council
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