



August 2003

Response of the Refugee Council to the Consultation Paper *Proposed changes to publicly funded immigration and asylum work.*

1. Introduction

- 1.1 The Refugee Council is the largest organisation in the United Kingdom working with asylum seekers and refugees. We not only give help and support to asylum seekers and refugees, we also work with them to ensure their needs and concerns are addressed by decision-makers. We therefore welcome the opportunity to respond to this Consultation on the provision of legal aid.
- 1.2 We have had experience through our Legal Referrals Team of seeing clients who have been struggling to find good legal advice and who have often been the victims of poor advice. We are also conscious of the length of time advising clients can take and the amount of time that can be consumed, often rectifying errors not of the client's making.

2 Summary of response:

- 2.1 There has clearly been a longstanding difficulty of quality of advice and representation provided by some immigration practitioners. We are aware of this through the impact it has on the refugee community organisations that make up our membership. It is a constant source of concern. We welcome any measures that seek to address this problem as it is in no-one's interests to have asylum claims poorly represented.
- 2.2 However the Refugee Council is extremely concerned about the implications of some aspects of these proposed changes to deal with this issue and does not accept that overall they are an appropriate response to the problems identified by the government.
- 2.3 We believe that the most effective way to control overall expenditure is to ensure that that people benefit from high quality advice and representation throughout the process. If cases are fully and clearly presented from the outset they are far more likely to be expeditiously dealt with and far less likely to become the subject of lengthy and expensive appeals.
- 2.4 Whilst we welcome the determination to grasp the nettle of quality through a system of compulsory accreditation – a measure in our view long overdue - we do not accept that it should be linked in any way to the proposed, apparently arbitrary, limitations on the time available for legal aid. Indeed this is perversely likely to have the reverse effect of driving out high quality

practitioners and allowing the poorer quality practitioners to continue largely unaffected.

- 2.5 The main measure with which we are concerned is the immediate, across the board restriction on allowable expenditure before any real inroads have been made on the quality issue. This seems to be tackling the problem the wrong way round.
- 2.6 The time restrictions proposed fall well below what is necessary for the adequate preparation of asylum cases. The Legal Services Commission's (LSC) own current standards allow considerably longer times for the work required.
- 2.7 Furthermore the time limits make no allowance for the use of interpreters – which effectively halves the amount of time available - nor the impact of dispersal which has automatically built in factors of travel and communication which eat into a representative's time.
- 2.8 We have two principle concerns: firstly that cases will be inadequately prepared and secondly that increasingly practitioners will simply refuse to take cases on as they regard the restrictions as inconsistent with delivery of a proper quality of service.
- 2.9 What will happen at the end of five hours for even the most reputable of representatives? Will they be expected ethically to complete their work unpaid or will they, most reasonably, stop and be accused of unprofessional behaviour?
- 2.10 The result, perversely, will be that it is precisely the least effective, least conscientious practitioners that will remain holding the field. It is regrettably commonplace that some solicitors are accused of "going through the motions" by failing to fully explore and represent their clients' cases. It is precisely such practitioners who will thrive under these proposed arrangements.
- 2.11 Compulsory accreditation is proposed as the answer to the quality issue. We welcome this and look forward in principle to its earliest implementation. We are however concerned as to how it will relate to existing schemes – in particular that of the Office of the Immigration Services Commissioner - and the extent to which the proposed scheme might impact on existing organisations.
- 2.12 It is however illogical to relate the issue of accreditation to restrictions on the amount of time. It is precisely the more experienced and scrupulous advisers that are likely to need and take more time. It would indeed make more sense to allow more advanced practitioners more time rather than a higher rate of pay.
- 2.13 A final point we would like to make is in relation to the race relations implications of these changes. Clearly, the provision of public funding for legal advice is a relevant function for the purposes of the public duty under Section 71(1) of the 1976 Race Relations Act as amended. The DCA ought to

have had regard to the duty when formulating the current proposals. Since this proposal will inevitably impact disproportionately on minority ethnic groups, the DCA ought to have carried out a race impact assessment - namely an assessment of the likely impact of these proposals on the promotion of racial equality, particularly equality of opportunity and access to justice for such racial groups.

3. We will now turn to the specific questions you have asked:

1. What impact will focusing advice and representation through the maximum limits have on clients and particular client groups?

- i) We believe that these changes will be extremely detrimental to individuals seeking legal representation relating to their claims. The supply of high quality representation is likely to be curtailed in the short term (some practitioners of high repute have already announced their intention to withdraw from this area of practice) and the terms of proposed contracts are unlikely to attract high quality replacements.
- ii) We believe equally that those that do remain in practice will be subject to wholly unrealistic limitations in terms of the time available to adequately present their client's case.

2. Are there any other ways in which unnecessary expenditure can be reduced?

- i) As mentioned above we believe that the most effective way to control overall expenditure is to ensure that that people benefit from high quality advice and representation throughout the process.
- ii) Much of the expenditure within the overall process is caused not by asylum seekers, or their representatives, but by the inefficiencies, delays and mistakes of the Home Office. System failures include refusal letters that refer to the wrong country to Home Office Presenting Officers that do not attend appeal hearings. Much of a representative's time is already spent responding to the problems this creates and the limitation of allowable time can only have a detrimental impact on the fairness of the system.

3. Do you believe that concentrating funding on the preparation of a statement of case at the initial stage is the most appropriate use of limited funds?

- i) This is a disingenuous question. It contains the assumption that it is appropriate to limit the allowable time or money and asks whether this should be at the beginning of the process. It is clearly in the interests of both the asylum seeker and the government to have a case fully explored and presented at the earliest opportunity. It is however wrong to then place artificial restrictions on the amount of time that can be spent on this in what is necessarily a difficult and complex area. The limits set are wholly unrealistic

and to be precluded from further action beyond them cannot lead to a just or fair system.

- ii) We equally do not accept that attendance at interviews is unnecessary. This is increasingly true in an environment of accelerated procedures and non-suspensive appeals. If the role of representatives has become restricted and ineffective it is the result of pressures from the Home Office to limit and restrict such interventions.

4. Are there specific aspects of appeal work which are not covered in the above proposals?

- i) Legal help should be available for Asylum Support Appeals. The Chief Adjudicator has herself expressed concern about the poor quality of cases presented and the lack of representation. The opportunity should be taken to include all aspects of NASS within the legal help scheme.

5. Is there a need to include other exceptions to the maximum limits?

- i) We do not believe that maximum limits should be applied to anybody, especially at the wholly unrealistic levels proposed.
- ii) In particular we believe that it will become necessary to allow exceptions for vulnerable clients such as the victims of torture, or rape, or domestic violence.
- iii) It is wholly unrealistic to apply these limits to children's cases.

6. What impact will the proposals for maximum limits have on businesses, charities and the voluntary sector?

- i) The implications for the voluntary sector, in particular refugee community organisations (RCOs), are extremely worrying. If the fears expressed in our earlier responses are realised then people will no longer have access to advice and representation at the time that they need it. In that situation they will inevitably turn to RCOs for help.
- ii) It is likely however that RCOs will not be a position to respond. They will often lack the necessary resources and expertise. Indeed it will often be a criminal offence to become involved in areas of advice for which they are not appropriately regulated. So often they will be unable to help even though they may wish to do so whilst they see increasing numbers of their community denied the support they need.

7. Do you believe a separate system of accreditation is appropriate for immigration/asylum work?

- i) It has been common knowledge for many years that the standards of a significant number of practitioners of immigration law have been woefully short of requirements. It is hence an area that has been crying out for tighter regulation and this is to be wholly welcomed.

- ii) It is wrong for such draconian limitations on expenditure to be introduced as an excuse when what is required is an effective and inclusive compulsory system of accreditation.

8. What impact will the proposed accreditation scheme have on clients and particular client groups?

- i) Accreditation can in the long run only be advantageous to asylum seekers whose cases have been all too often jeopardised by poor quality representation. Above all it should reduce the element of uncertainty in the process and assure clients that they are in receipt of a standardised product. The work of our Legal Referrals Team provided considerable anecdotal evidence of the extent to which these vulnerable clients have been preyed upon by the more exploitative representatives which more rigorous regulation should go some way to allay.
- ii) However as suggested above this may be at the expense of severely reducing the number of accredited individuals to which people have access.

9. What impact will the proposed accreditation scheme have on businesses, charities and the voluntary sector?

- i) Provided it is dovetailed to existing regulation, in particular that of the OISC then accreditation is a welcome tool in tackling problems of quality.
- ii) The main area of concern is that it can easily become inflexible and restrictive. This in turn can mean that areas of work and advice that representatives are currently engaged in cease to be practicable. These may then fall on a voluntary sector neither qualified nor resourced to fill this gap.

10. Are four levels of accreditation necessary? If not, how many, and what should they be?

- i) As mentioned above it does not seem logical to pay a higher amount for the same hours to the Advanced level – it would make more sense to allow more time for complex cases.
- ii) We are also unclear as to the distinction between a Supervisor (presumably someone with “special expertise and experience”) and the Advanced category.

11. What work do you believe those at each level should be considered competent to perform?

- i) We would expect the levels set to dovetail with comparable standards set by the OISC.

12. How should competence be assessed and by whom?

- i) It is difficult to say as the LSC, the Law Society, the Office for the Supervision of Solicitors and the Office of the Immigration Services Commissioner have all between them been trying to address this issue.
- ii) Logic would suggest that an accreditation scheme should build upon the existing Law Society scheme but in close consultation with the OISC to ensure that comparable standards are being applied.

13. How soon do you believe accreditation can become compulsory?

- i) This is a matter for those implementing the new system – a lead in time of a year is probably about right. We would however repeat that we do not believe that there should be any limitations on time and certainly that to impose sweeping across the board cuts in allowable costs before bringing such a scheme on line is indefensible.

14. Are there other ways in which quality can be ensured?

- i) This document has not established a link between the problems identified, the measures proposed and the overall objectives.
- ii) In particular there is no agreement on the nature of the problem – experienced and reputable immigration lawyers will say that the real problem with poor quality is that such practitioners do not spend enough time on cases – not that they spend too much time. The solution lies not in curtailing all to the lowest of standards but in addressing those known to be falling short. There is no evidence that the proposed limitations on time will do anything to mitigate the problem of quality.
- iii) If indeed “the problem is so widespread that (previous) measures will not improve quickly enough the service to the clients” then surely the need is to work actively on a system of accreditation as a priority and to target this as the worst and known offenders. For example we understand about a third of the London immigration contractors have been identified as “Category 3” firms where expenditure is beyond allowable limits and has to be clawed back. Surely there is a case for restricting the firms known to be falling short on existing measures?

4 Other areas of concern:

- 4.1.1 We can see little logic in proposing to pay a higher rate per hour for “advanced practitioners”. If this is to reward experience and knowledge, and the ability to deal with more complex cases, then this would imply almost by definition that what would be required would be more hours, not a higher rate for the same hours.
- 4.1.2 Whilst there is a clear argument in the introduction of a Unique File Number there are attendant difficulties. In particular it does not seem right or

practical to link this to their Home Office number. Firstly this would seem to compromise the independence of the advice being given and secondly it seems an area ripe for confusion.

- 4.1.3 In addition, we believe it is wrong to link the ability for a new contractor to go beyond the minimum allowable expenditure to only where a formal complaint about a previous contractor has been made. It is not at all clear who would be making any complaint. If it were to be the clients themselves then they would find this extremely problematic to do unaided. If it were the new contractor they presumably would have to conduct a full interview to assess whether appropriate advice had been given. It seems simply unworkable.

The Refugee Council
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