

Justice Denied

Asylum and Immigration Legal Aid – a System in Crisis

April 2005



BiD Bail for
immigration
Detainees

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Evidence from the front line

Compiled by Bail for Immigration Detainees (BiD) and Asylum Aid

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Foreword by Sir Bill Morris



Photograph by Mel Stone

If a true mark of a civilised society is the way it treats people fleeing persecution or human rights abuses abroad, then the evidence presented in this dossier suggests the UK is a far less civilised place than it professes to be.

If a true mark of a country committed to social justice and the rule of law is that anyone subject to executive decision making and judicial process is entitled to the legal representation necessary to present their case in their own words, then, again, the evidence in this dossier undermines confidence in the fairness of the UK legal system as it impacts on asylum seekers.

When the cuts in legal aid for asylum work were proposed in Autumn 2003, many people and organisations – including Asylum Aid and Bail for Immigration Detainees – opposed them vigorously on the grounds that they would deny asylum seekers the help they need to negotiate the legal minefield of the UK asylum process.

These concerns were ignored at the time, but have since proved to be all too accurate. The cuts were imposed in April 2004, since when the claims and appeals of many asylum seekers have been rejected without ever having their stories heard, let alone properly considered and assessed. Simultaneously, the asylum legal sector has haemorrhaged able and experienced lawyers and caseworkers, no longer prepared to work under the restrictions and constraints imposed by the Government.

Critically, the presumption that all asylum claims are fundamentally abusive – based on the fact that, partly as a result of the cuts, fewer and fewer people are being granted protection in the UK – continues to poison the public debate about asylum in the UK.

The evidence in this report paints a grim picture of justice denied, systematically and consistently. But it also provides the ammunition with which to argue the case for a major overhaul of the rules governing legal aid for asylum cases.

If we are to uphold both the spirit and the letter of our international and moral obligations to protect refugees and promote human rights, then we must begin by demanding that the denial of justice described by the evidence in this dossier becomes a thing of the past.

Sir Bill Morris

Introduction

This dossier presents evidence of the impact of cuts to asylum and immigration legal aid, introduced in April 2004. The evidence totals 78 submissions from those on the front line - asylum seekers, concerned individuals, non-governmental organisations and legal practitioners. The evidence was gathered by Asylum Aid and Bail for Immigration Detainees (BID) between the 1st October 2004 and the 11th February 2005.

This evidence is a powerful illustration of the human cost of placing administrative and financial obstacles in the way of justice.

With this publication Asylum Aid and BID aim to highlight some of the impacts of the current funding regime, and put on record the experience of some of those individuals and organisations who are dealing with the consequences.

We hope that the dossier will be a tool for the campaign to reinstate access to justice for people seeking protection in the United Kingdom. We urge those responsible for, and concerned about, this denial of justice to take action to tackle the real issues and find just solutions.

Sarah Cutler
Bail for Immigration Detainees

Maurice Wren
Asylum Aid

Background

The right to claim political asylum from persecution is a fundamental human right. Yet the system of determining who is entitled to remain in the United Kingdom, either as a refugee under the 1951 Geneva Convention or with protection under the European Convention on Human Rights, is complex, adversarial and politically charged.

In April 2004, the Legal Services Commission (LSC) introduced new funding arrangements for legal work on asylum and immigration issues, with the overall aim of reducing spending. The Department for Constitutional Affairs (DCA) set out the rationale for the cuts, arguing that the system was an increasingly expensive 'grave train' for legal aid lawyers to carry out low quality and unnecessary work on the cases of people who were not going to win a right to remain in the UK.

Asylum seekers, migrants, human rights and refugee organisations, campaigners, civil society and the legal profession opposed the cuts. We argued they would combine with other draconian changes to the asylum process to undermine a vital human right by denying individuals a fair hearing before an independent judiciary assisted by effective legal representation.

People who are seeking asylum in the United Kingdom are entitled to publicly funded legal advice and representation to pursue their claim, if they do not have the means to pay. In order to ensure that asylum seekers can access justice in their cases, and be protected from return to possible torture and even death, they need prompt access to good quality legal advice and representation.

In August 2003, over 120 groups formed the Coalition Against the Legal Aid Cuts (CALAC). CALAC argued that the reduced financial thresholds would be a charter for discrimination, allowing poor quality suppliers to thrive whilst driving out quality, and exacerbating difficulties already faced by asylum seekers trying to find a good lawyer to help fight their case. Furthermore, the cuts would compound other negative policy and legislative changes that have eroded the right to seek and enjoy asylum, including five punitive Acts of Parliament in a decade, an increase in the use of immigration detention and a reduction in opportunities to appeal a refusal of asylum.¹

At a CALAC public meeting in parliament in December 2003, the Lord Chancellor, Lord Falconer QC, stated that those with 'genuine' cases would still be able to access funding and that the new arrangements would discourage representatives from pursuing weak cases, thus ensuring public money is targeted on those genuinely in need. The DCA say the cuts are expected to reduce spending by £30m a year (from £204m in 2003-4).²

In April 2004, despite fears that the legal aid cuts were motivated by a desire to be seen to be tough on asylum seekers, rather than by an evidence-based analysis of the most effective way to provide legal aid and combat poor quality legal representatives, the cuts went ahead.

1) "The Asylum and Immigration Tribunal replaces the two tier Immigration Appellate Authority by merging the Immigration Adjudicators and the Immigration Appeal Tribunal. Under the new structure, changes have been introduced to the appeals processes, judicial structure, and rights of access to the higher courts...Changes are also being introduced for legal aid funding for challenges to AIT appeal determinations. Under the new arrangements funding will be awarded retrospectively at the end of the process." Department for Constitutional Affairs, Press release; New Asylum and Immigration Tribunal, Monday 4 April 2005

2) Department for Constitutional Affairs, letter to Asylum Aid, 15 February 2005

The main changes made to legal aid in 2004

Since 2000, publicly funded legal advice and representation on asylum and immigration cases - up to and including the first appeal stage - has been provided by legal practitioners (ie solicitors and/or caseworkers in the private and public sectors) under contract to the Legal Services Commission (LSC).

In autumn 2003, the Department of Constitutional Affairs and the LSC issued a new contract specification for asylum and immigration cases, which came into force in April 2004.

The new contract introduced six key changes:

1. Withdrawal of the devolved power to self-authorise legal aid – subject to periodic LSC audit – from all but the largest practitioners
2. Cost and/or time ‘thresholds’ designed to limit the amount of work permissible under the contract without prior LSC authorisation³;
3. The requirement that practitioners seek, in writing, LSC authorisation for work on individual cases over and above the relevant threshold;
4. Case thresholds apply to individual asylum seekers or immigrants and not to practitioners;
5. The withdrawal of funding for attendance and representation at Home Office interviews, except in limited, defined circumstances;
6. The requirement that, in the period leading up to April 2005, all practitioners undertaking publicly funded legal work must achieve ‘accreditation’ by passing a two written examinations and a videotaped skills assessment;

3) Up to 5 hours Legal Help for advice on preparation of initial applications; Up to 10 hours Controlled Legal Representation (CLR) for advice on, preparation of and representation at appeal hearings.

Why is good legal aid provision important?

Legal aid is essential to protect the most vulnerable and ensure access to fairness and justice, but adequate provision of legal aid also benefits the decision-making process and society more broadly.

Good legal representation

- Can be the difference between life and death for an asylum seeker
- Provides asylum seekers and migrants with objective, informed advice on the merits of their cases and the chances of applications or appeals succeeding
- Reduces the likelihood of unfounded and inappropriate claims
- Helps asylum seekers to gather the information and evidence necessary to support and substantiate their cases
- Provides efficient guidance through the procedural and evidential minefield of the UK asylum process
- Brings specialist knowledge and experience to bear in this complex area of law, to the benefit of the courts and decision-makers
- Results in asylum applications that are well-prepared, clearly argued and corroborated
- Makes refusals on the basis of credibility or the perceived lack of it increasingly less likely
- Reduces the likelihood of social exclusion, destitution and desperation

The impact of the cuts to legal aid and collecting the evidence

The impact of the cuts to legal aid

A year on, it is the experience of those working with asylum seekers that the cuts have seriously diminished the availability of specialist legal assistance for some of the most vulnerable in our society. Many law firms have pulled out of asylum and immigration work altogether, or have significantly reduced the amount of work they are able to take on. Many not-for-profit organisations are at risk and unable to meet the demand for help from desperate people. As a result, growing numbers of people who are seeking asylum, or needing to sort out their immigration problems, are left with little or no legal help. In the experience of those on the front line, the knock-on effects are injustice, destitution, illegal working, frustration, a loss of faith in the justice system, desperation and exploitation.

Collecting the evidence

Concerned that there was no formal process established to assess the impact of the changes, but aware that there was a wealth of anecdotal information in circulation, Bail for Immigration Detainees (BID) and Asylum Aid, two charities working with people directly affected by the cuts, decided to collect evidence about the situation. We wanted to start to document the impact of the changes, to make the case for improving legal aid provision and to provide a campaigning tool designed to underpin and strengthen calls for a fair and just asylum process.

In October 2004, we invited people and organisations in the asylum and refugee sector, via websites and email networks, to send information and evidence about their experiences of the impacts of the cuts by email. We did not issue a formal questionnaire, as we had neither the resources nor the time to conduct a formal research study.

Legal aid in Scotland is administered under a separate system so was not included in this exercise.

Who submitted evidence

We were sent written evidence by a total of 64 organisations and individuals from around England and Wales:

- 6 individual asylum seekers in the UK from Iraq, Angola and Zimbabwe
- 3 children and young peoples' charities in London and Newcastle-under-Lyme
- 3 women's organisations and organisations supporting trafficking victims in London
- 1 organisation working with torture survivors; the Medical Foundation for the Care of Victims of Torture
- 3 HIV support and advice/representation organisations in London and the North-West
- 5 immigration detainee support and advice organisations working solely with detainees, in particular regarding Immigration Removal Centres at Campsfield House in Oxford, Tinsley House near Gatwick, Colnbrook and Harmondsworth near Heathrow and Lindholme near Doncaster.
- 1 college in Peterborough
- 2 housing associations and homeless projects in Plymouth and London
- 9 local or regional refugee support organisations and asylum seekers support campaigns (Redbridge, Leeds (2), Oxford, Devon and Cornwall, Wolverhampton, Kent, Luton and Swindon)
- 3 concerned individuals from Middlesborough, Hull and Cambridge

- 4 church representatives in Birmingham, north London, Leeds and from the Methodist Church adviser in Doncaster
- 2 national refugee charities - Refugee Action and the Refugee Council
- 2 Citizens Advice Bureaux in Stoke-on-Trent and Hull
- 7 law centres and non-profit advice and representation organisations in London, Battersea, Bury, Avon and Bristol, North Kensington, Coventry, and Greater Manchester.
- 7 solicitors in private practice in Cardiff, London (3), Essex, Croydon and Sunderland
- 2 barristers in London and Bradford
- 3 freelance country and medical experts

Two volunteers also carried out telephone interviews with a further 14 organisations or individuals who had expressed an interest in sharing their experiences, but did not have time to make a written submission:

- 6 asylum seekers
- 2 Refugee Community Organisations – the Zairean Community Association, London and Afghan Residents in the UK, London
- 1 support organisation for settled refugees – the Refugee Assessment and Guidance Unit at London Metropolitan University
- 1 organisation advising immigration detainees – Detention Advice Service, London
- 1 organisation working with homeless families – Finsbury Park Homeless Families Project, London
- 1 senior caseworker, Asylum Team, Norwich
- 2 solicitors in private practice, London

KEY IMPACTS

The evidence highlighted the following key impacts

Many asylum seekers are unable to access legal representation

- Unaccompanied children, immigration detainees, people with mental health needs, torture survivors and trafficked women are increasingly unable to access adequate legal representation
- Women who have experienced sexual violence are unable to build up relationships of trust with their legal representatives in the limited time allowed by the new funding rules, and are therefore less likely to disclose vital information at the crucial early stages of the asylum process
- Asylum seekers are experiencing poor quality or negligent representation, and as a result are facing rejection and, critically, removal from the country, without key facts in their cases being considered by the Home Office or the courts
- Asylum seekers in immigration detention are unable to exercise their right to challenge their detention through the courts, and some are resorting to representing themselves in bail applications
- Some asylum applications are refused on the basis of 'non-compliance' with legal procedures because the applicants were not represented or were not adequately represented (for example, they may be forced to wait for a long time for an appointment for advice and therefore miss the deadline for lodging an appeal)
- Many unaccompanied young people (aged over 18) are terrified of attending asylum interviews alone, but are unable to have a legal representative accompany them due to lack of funding
- Asylum seekers, their supporters and people with whom they come into contact in the medical, education and social welfare sectors are spending many fruitless hours searching for legal representation
- Clients of firms who have ceased to carry out legal aid work are unable to find alternative representation
- Asylum seekers are forced to attend judicial appeal hearings alone, without any representation
- Asylum seekers without English language skills, and/or traumatised by their experiences, are unable to negotiate the legal process
- Asylum seekers are disempowered and disorientated by the lack of communication and continuity in their asylum claim
- There is a high level of frustration and a loss of trust and confidence in the justice system
- Asylum seekers and migrants without access to legal advice are more likely to be socially excluded and destitute
- Many asylum seekers, who have reached the 'end of the line' as far as the legal process goes, are living off the goodwill of friends, family, and in some cases, members of their ethnic communities, charities, churches and mosques

We are one of those hit by these legal cuts so that we are unable to get legal representation to help us ... it will cost us £8000 on legal fees if we go private, money we don't have.

Chinedum,
Angolan asylum seeker

- Asylum seekers who struggle to keep in contact with their original solicitor following dispersal are unable to find a new representative in the dispersal area, often because the time limit for work has already been reached
- Asylum seekers are less able to present expert medical or country evidence in their applications and subsequent appeals, due to applications for 'disbursements' being refused or delayed by the Legal Services Commission (LSC)
- Asylum seekers are forced to rely on legal aid because they are prohibited from working
- Destitute asylum seekers are being asked to pay for further work on their cases by solicitors either because they have given up legal aid work or because the initial five hours worth of work has been carried out
- Asylum seekers are being forced to work illegally to raise funds to pay for legal work on their cases, and so are at risk of exploitation, mistreatment and abuse
- Asylum seekers or their friends are borrowing money to pay for representation, only to be exploited by disreputable legal representatives, as some privately funded representatives mislead clients about their prospects of success, thereby leading to the lodging of expensive, unmeritorious appeals
- Asylum seekers are forced to remain with incompetent or negligent solicitors as they are unable to secure alternative representation
- Victims of poor quality representation are unlikely to complain as they believe they have no choice but to remain with the existing representative
- Asylum seekers are forced to travel long distances with no funds to seek or meet with legal representatives – for example from Leeds to London, and from Peterborough to Colchester
- Those recognised as refugees and allowed to remain in the UK are less able to access advice about immigration and nationality matters for which they have a continuing need, for example, applications for British citizenship and family resettlement
- Those granted temporary, time-limited protection (including unaccompanied children, and those granted Humanitarian Protection or Discretionary Leave) are unable to access advice about their status before this protection expires

Legal representation is restricted by bureaucracy and quality is being driven down

I am not interested in a career involving substandard work for vulnerable people.

Accredited case worker who decided not to continue and qualify as a solicitor.⁵

- Firms of solicitors are ceasing to carry out publicly funded work, or significantly reducing the number of cases undertaken
- Remaining practitioners have reduced capacity to take on urgent or complicated cases
- High quality, experienced practitioners (in both the private and non-profit sectors) are leaving the field of asylum and immigration work altogether, often because the changes make it impossible to carry out the standard of work required in the time allowed
- In some areas of the country, including those with significant numbers of asylum seekers, legal aid practitioners have been reduced to one or two firms
- Committed practitioners are being obliged to carry out significant amounts of work for free in order to uphold good practice and act in the best interest of their clients
- Practitioners are carrying out work at considerable financial risk, unsure whether legal aid funding will be granted
- There is little time and inadequate funding for vital case research, most of which has to be done in the practitioner's own time and at their own expense
- There are fewer experienced and senior practitioners in the field to train new and less experienced practitioners
- Asylum seekers often have related legal problems such as housing and welfare benefits issues, but legal representatives are now less able to do work 'around the margins' of their core work, to the detriment of clients
- Firms that are 'slapdash and unresponsive' are largely unaffected by the cuts as they rarely used the time available to do good work for clients under the previous system
- Many asylum seekers do not speak English and their legal representatives need to use interpreters – five hours does not go very far in this situation
- Under such severe constraints, practitioners are more likely to take on cases that are less complex, and not necessarily the cases of the most needy or vulnerable (for example, those with serious health problems, those whose cases require detailed research or where the relevant area of law is unclear or changing)
- Despite the considerable support within the legal sector for rigorous measures to assure quality and tackle abuse, there is substantial concern that the existing measures are not being allowed to work before more punitive ones are being enforced
- The added burden of accreditation is further increasing the exodus of practitioners from legal aid work

⁵ An accredited case worker who is deciding not to continue and qualify as a solicitor, quoted in Ev. 7, Legal aid: asylum appeals, House of Commons, Constitutional Affairs Committee, Volume II, HC 276-I, 23 March 2005, <http://www.publications.parliament.uk/pa/cm200405/cmselect/cmconst/276/276ii.pdf>

The Legal Services Commission (LSC) are now “gatekeepers of justice”⁶

The way in which the LSC... process our funding applications and make decisions on them following the April 2004 changes is a source of constant anxiety and frustration for our advisers, and a well of confusion, uncertainty and worry for our clients.

Greater Manchester Immigration Aid Unit

- There is considerable frustration and disillusionment amongst practitioners because of the poor quality of sections of the LSC dealing with funding requests and applications, as these frequently undermine best practice by imposing arbitrary limits on casework time
- The LSC is perceived to lack independence from Government and, increasingly, to be determining issues that should be a matter for an independent adjudicator at an appeal hearing

- The issue of poor-quality Home Office decision-making is now mirrored by the LSC endorsing poor Home Office decisions, for example by reciting arguments used in the Home Office reasons for refusal letter when explaining refusals to grant funding
- Poor quality administration and communication in some parts of the LSC is resulting in long periods waiting for responses to urgent matters
- Practitioners without devolved powers are spending many hours negotiating with the LSC to try to secure extensions to carry out more work on cases – meaning more time is spent on administration and bureaucracy and less time for clients
- The LSC are awarding extensions of less time than requested, leaving practitioners forced to spend further hours negotiating for more time (there is an allowance of 30 minutes pay for applying for an extension but these applications routinely take far longer due to the level of detailed information required)
- Practitioners are winning cases but requests for retrospective funding are being ignored

6) Submission to BID/Asylum Aid from the Greater Manchester Immigration Aid Unit

Voluntary organisations and charities cannot absorb the consequences

- Non-profit suppliers of legally-aided advice and representation are faced with impossible levels of demand, and in cases that have been poorly presented are left to persuade the LSC that the case merits further work
- Law Centres report an increase in desperate cases; the restrictions on legal help and the threat of dispersal means that people don't know where to turn
- Ill-equipped charities and, on occasion, unqualified individuals are left to pick up the pieces following the abandonment or poor representation of asylum seekers by unscrupulous practitioners
- Refugee agencies and community organisations are diverted from their core work by having to spend valuable time trying to refer clients to competent legal representatives, often without success
- Voluntary organisations, medical practitioners, education and training providers, social workers, neighbours and many others who come into contact with asylum seekers are unable to refer clients to legal representatives and struggle to deal with the knock-on effects for the individuals affected
- Many not-for-profit organisations are trying to train staff to provide legal advice, including registering with the Office for the Immigration Services Commissioner (OISC), however, they are not able to carry out this process quickly enough to meet the need in their local area
- There is a high likelihood that well-intentioned community and faith groups are providing incomplete or erroneous advice, in the absence of other alternative sources of advice
- Voluntary agencies are finding it very difficult to fundraise for advice and casework as there is, in theory, statutory provision of legal advice and representation though the legal aid system
- The combined pressures of destitution, being forced to pay for advice and illegal working is resulting in communities being criminalised for supporting rejected asylum seekers
- There is anger that poor quality and exploitative practitioners are still able to abuse their clients and the public purse and that the recent changes have exacerbated, not tackled this problem.

Increasingly callers to the Terrence Higgins Trust (THT) Direct Helpline find it very difficult to get any advice or representation because of solicitors firms' lack of capacity. The Terrence Higgins Trust's solicitors are inundated with requests that they are unable to meet because of limited staff numbers...we have received calls from people who have had to represent themselves alone in the front of the adjudicator because they have been unable to instruct a solicitor due to the lack of legal funding.

Advice supervisor at the Terrence Higgins Trust

A national problem

Evidence was submitted from around England and Wales, which in our view suggests that the severe shortage of competent legally-aided provision is a national problem.

Groups working with immigration detainees identified a severe shortage of legal representation available to all nine Immigration Removal Centres and criminal prisons detaining asylum seekers under Immigration Act powers.

We understand that the Legal Services Commission wishes to ensure that asylum seekers have access to legal representation wherever they may be located in the country. The asylum seekers we see tell us that this is not the case, both for initial asylum applications and especially for appeals.

Refugee Action

Submissions were received from

Bedford
Birmingham
Bournemouth
Bristol
Bury
Cambridge
Canterbury
Cardiff
Coventry
Crawley
Hull
Ilford
Leeds
London
Luton
Manchester
Middlesborough
Newcastle-under-Lyme
Newcastle-upon-Tyne
Oxfordshire
Peterborough
Plymouth
Portsmouth
Redbridge
Stoke-on-Trent
Swindon
Winchester
Wolverhampton

THE EVIDENCE

Frontline experience of the impact of the legal aid cuts

'Deprived of life, liberty and legal representation'⁷ – Case studies from evidence submitted



I still have hope in the future, during this period of time (4 years) I have learned a new language, I enrolled on a course...I have not committed any criminal offences and I have been following the rules and trying to survive. Wishing to work and contribute to the economy of this country but the system has paralysed me. How on earth I am going to manage myself if my status is deleted? By this I mean, that I cannot work legally, I cannot receive any benefit for example NASS which has been cut, I cannot return back because this government know Iraq is unsafe and doesn't return any Iraq national...If I had the correct advice at the correct time maybe my current situation would be different.

Amir, Iraqi asylum seeker, South London



Six companies contacted on behalf of [the 19 year old Afghan in our case study] asked for sums of money varying from £1000 to £2500...another Afghan client's relatives paid a firm £900. He was in detention, facing deportation. The [representatives] applied for bail and then withdrew the application leaving the client, who was very traumatised, to go to court on his own. Although the Medical Foundation for the Care of Victims of Torture indicated willingness to accept a referral the company failed to refer him.

Kent Campaign to Defend Asylum Seekers (Kent CDAS)



P from Congo. When I met him he had just been refused his application and was told to give more evidence... He managed to get a death certificate of his wife and his solicitor made an application for an appeal which was then refused 12 months later because immigration officials could not be sure the certificate was genuine ... Two and a half months before his refusal he had NASS housing and allowance stopped and it is our charity which housed him and gave him the bare minimum for food ...

Winchester Visitors Group



An asylum seeker from Turkey who ... was under 18 years of age but the Home Office did not believe his documents were valid. His evidence included an official identification card issued in Turkey and also the "family book", commonly used there. Social Services then agreed to examine him medically and determined that he was, in fact, a minor. By this time, the five hours allowed by the Legal Services Commission contract for asylum cases was finished, so the solicitor filed for a 2.5 hour extension. She was granted a one-hour extension, which was not sufficient to complete the case. She filed for an additional hour, which is yet to be approved by the Home Office.

Law Centres Federation survey



A young person...had put in an extension for Leave to Remain with her previous solicitors, who have now told her that they no longer have a legal aid contract and so cannot carry on with her case... I gave her a list of 8 solicitors our project has worked with in the past...she had no joy with any of them. She was then given the name of a solicitor from a friend...[they] said they would take on her case, providing that there was enough legal aid left from the other solicitors. The young person is still waiting to hear from the new solicitor whether or not there is enough funding to pursue her case.

The Children's Society, Young Refugees Project Worker

Two detained clients from Western Sudan are facing removal...despite clear issues that need to be brought to the attention of the UK Immigration Service. Despite calling a total of 8 specialists in Oxfordshire, Berkshire, Buckinghamshire and Greater London, no firm was able to consider contacting these clients because of lack of capacity to take on new work.

Asylum Welcome, Oxford



A Congolese man with severe mental health problems and a serious heart condition claimed asylum in November 2001. His asylum claim was refused and 2 appeals were dismissed. He was detained in November 2003, but released on Temporary admission due to the intervention of medical practitioners ... His solicitor lodged a fresh claim for asylum. In September 2004 the detainee was told he has to leave his NASS accommodation as he has no appeal outstanding. BID South contacted his solicitor who said she was no longer doing LSC work as the LSC criteria have made it impossible for her to represent clients as she would want to and she was therefore becoming ill ... We tried to find another solicitor for this person but as yet have been unable to do so. This person therefore remains homeless, unable to work and unrepresented, despite the fact that he is due to have a second heart operation in January 2005 and he has a medical report stating his mental state is so bad ...

Bail for Immigration Detainees (South)

⁷ Submission to BID/Asylum Aid from the Bury Law Centre



EA is originally from Togo and has an 8 year old son from the Lebanon where she was for 13 years. What she thought was going to be a wonderful opportunity turned out to be sexual violence and slavery in domestic service with no money and no chance of escape...I persuaded the Immigration Advisory Service (IAS) to take a look and they managed to find a way to take her on [in Glasgow where she had lived for 3 years]. However, she was then bailed to her brother's address in Croydon and has now been told they can't help her any more and is unable to find another solicitors. She is heavily pregnant and recently had to attend court without any representation.

Detainee befriender, Cambridge



'A' is 23. She has been granted Indefinite Leave to Remain but the Home Office appealed against the decision made in her favour...In the meantime, her solicitor has discontinued work in asylum cases ... A continues to study in further education. She does not have permission to work. She had made extremely good progress at college and could study at degree level but will have to put everything on hold as she waits for a decision. She finds it very hard to continue to be motivated and not lose hope.

Student Welfare Officer, Peterborough Regional College



We advised and represented an Iranian man in connection with his asylum and human rights appeal. He had been detained in prison in Iran and was traumatised by his experience. Further, he had been subject to violent racist attacks in the UK. During the time we represented him his mental health noticeably deteriorated... Our first application to the LSC for CLR to represent our client at his appeal was refused on the basis of our client's credibility. Our review of this decision was unsuccessful. We made a fresh application for CLR having obtained a pro-bono "short opinion" of a country expert in an attempt to challenge the Home Office and LSC's assertions that our client's account was incredible. This application failed and the review was unsuccessful. We made a third application for CLR having obtained medical evidence relating to our client's mental health, highlighting his vulnerability and inability to represent himself at his appeal hearing. This application also failed and our review was again unsuccessful. Despite our persistence with the LSC and our client's special vulnerability we were forced to withdraw from representing our client at his appeal. Our decision was heavily criticised by the health and social-care professionals who were involved with our client. We were forced to explain to them the LSC restrictions on our work.

The adviser who was responsible for our client's appeal regretted our decision and felt very uncomfortable about withdrawing. She had repeat attendances on our client trying to explain the circumstances to him; he was tearful, agitated and suicidal. None of the time she spent with him was covered by public-funding. GMIAU arranged for a student social worker on placement to attend the IAA with our client on the day of his appeal hearing as a

"friend". The night before the hearing our client had taken an overdose and he appeared at court with the plaster from his drip still on his arm.

Greater Manchester Immigration Aid Unit

We have evidence of cases where women still in their trafficking situation have sought legal advice and been told they will not receive legal aid. In one case we are aware of, this led to a woman being forced to continue being exploited in the sex industry in order to pay for her asylum claim. Obviously, this jeopardised her claim...since she was still in contact with her pimps/traffickers.

Counter-Trafficking Development Officer,
The Poppy Project

Front line experiences of the legal aid cuts - the evidence submitted to BID and Asylum Aid

The words of those who took the time to respond are powerful and their experiences depressingly similar; the range and breadth of evidence showing a system in crisis across England and Wales.

The impacts described are grave and complex and in many of the submissions, many of the key themes emerge. As such, we have presented the evidence from organisations according to the type of work they do, rather than thematically.

The evidence is anecdotal and certain areas of the country are not represented. We did not seek to methodically assess provision in all areas of the country – we are not equipped to do so.

Presented here are some of the most powerful extracts from the submissions we received. However, compelling evidence had to be left out of the printed document due to space constraints. Where possible, the submissions received electronically are reproduced in full on our websites at www.biduk.org and www.asylumaid.org.uk

Asylum seekers experiences



Thandie

In my case as an asylum seeker I have been so affected by the decisions to refuse to meet my legal costs. I am a disabled young lady with a traumatised background. I don't believe I entered the country illegally, but that is besides my point.

When my case was refused by the Home Office I then had the option to take it to the court of law. To defend myself and also to dispute the Home Offices decision, my solicitor and I applied for legal aid but were turned down much to the surprise of my solicitor as he thought I was a deserving case. I was so heart-broken and dismayed to learn through the legal offices that I shouldn't have been represented at all by the firm seeing my case.

Surely I am now made to believe that disabled asylum seekers are not worthy to be attended to no matter their backgrounds and reason to seek asylum in this country. I wonder why the government thinks about us as burdens to the society? No! We are humans too with rights and needs like everybody else. I do believe I could contribute in a positive way to society once given the chance but as my matters stand at this juncture, I have no hope for a future in this country or where I originally come from.



Chinedum, Angola

We are one of those hit by this legal cuts that we are unable to get legal representation to help us with a Statutory Review of our case because it will cost us £8000 on legal fees if we go private, money we don't have ... Apart from us there are Angolans we know of who in these same position.



Farzad, Iraq

... I decided to try [to appeal to the] tribunal but my solicitor rejected me because [of] cuts in legal aid...I had no choice so I tried to do it my self with my friend & fortunately [the application to the] tribunal was accepted.

During that time I was looking for a new solicitor to write my statement, however I tried, anywhere I went I got rejected by solicitors, and I had such a short time (five days); finally by Refugee Council helping I got a solicitor... But that solicitor is so busy that even after three months still I have NOT finished my statement.



Gabby, wife of asylum seeker from Iran

My husband came to this country as an asylum seeker... He had been sentenced to death for adultery in Iran...At the time I knew little about immigration and asylum and had no idea of the huge difference between a well prepared case and the bare minimum, which is what [our] solicitor did... I could not get any advice from any voluntary sector agency as we were already signed up with a solicitor (albeit a useless one)...Once we had no solicitor our case was deemed pretty hopeless and nobody would touch us... My husband's case was funded by legal aid but I feel that it was a complete waste of money as the solicitor would not present a proper case for lack of funding.

Children and young peoples' charities



Amir, Iraq

On various occasions the authorities arrested me, suffering torture to the point that I almost lost my life. For this reason I had to flee my home town. I arrived in the United Kingdom at the end of December 2000. Immediately I claimed asylum to the Home Office. They gave me a SEF [a form that must be completed by the applicant]... all the documents were in English...they gave me 17 days to complete the form. During this time I was meant to find a solicitor to enable me to fill the document. But unfortunately it was Christmas holidays and no solicitor took my case. Therefore I completed the form with a friend, which I met through the Home Office accommodation. We with our lack of English tried to complete the form to reach the deadline...

[By 2003 at the time of the appeal] one adviser to the next kept passing his case on and the final one wrote to me saying he no longer wanted to represent me ... leaving my case just with 5 days before the hearing ... Leaving me no option but to represent myself...which was unsuccessful...



My full appeal hearing is to be held soon but I don't have anybody to represent me in court...This affects me a lot, and I really don't know what will happen. I have my son with me who is six years old now, and I'm a single mum, if anything happens to me who is going to look after my son?

Musa, Zimbabwe

The Children's Society – Newham Refugee and Homelessness Team

[In the case of one child] evidence such as medical reports had not been submitted. As the child was clearly unhappy with the service she decided to change solicitors. In total seven solicitors were approached and all refused to take up the case arguing limited capacity or no longer taking on legal aid cases. As a result, the young person felt she had no choice but to remain with her original solicitors. After the child's claim was refused, her solicitor informed her that she would need to pay £200 for the court's determination to be seen by a barrister. The child was unable to pay as she was supported by social services. Five more solicitors were contacted before one finally agreed to take on the case. [The child was left] feeling very frustrated, distrusting all solicitors and having no confidence in the legal system.

The Bridge/b-art project for young refugees, Newcastle under Lyme

In Newcastle-under-Lyme, the one firm which was representing members of the Bridge recently closed its immigration department...A great number of legal firms across the country have told members of the Bridge and its workers that before a case could be taken any further...a fee would have to be paid. The amount has varied from several thousand [pounds] to some hundreds. When the money had not been forthcoming, no further work has been done on the case by the legal firms in question.

Women's organisations and organisations supporting trafficking victims

The Poppy Project, Eaves Housing for Women, London

The women the Poppy Project works with frequently have extremely complex cases... It is our experience that women need time to build a relationship with their legal representative before they are able to disclose the full extent of sexual violence they have survived. Legal cuts effect this process because when women do not have that time initially, it is extremely common that their initial statement later requires additions to be made. The cuts in legal aid may also affect the time/funding available to obtain medical reports confirming that women are traumatised, and as a result they may experience difficulties... We also know of cases where women were refused further representation because they failed the merit test, often compounded because of the complex nature of their cases. This has led to women being forced to pay for legal representation elsewhere, effectively ending their right to representation.

Newham Asian Women's Project, London

A lot of the solicitor firms in the area (East London) have stopped doing legal aid work in the recent past. This has had an impact on the existing clients, who have been told to instruct new solicitors mid-way through the matter. Also, owing to closing down of immigration departments in the firms, we are finding it very difficult to refer new clients to firms who would do legal aid work....Two of the solicitors whom we knew as experts in the field have closed down immigration practice and in our experience, we seem to notice that since it is not financially viable for the firms to continue to operate legal aid in immigration...

Refugee Women's Resource Project, Asylum Aid

Women's claims may be more complex than men's and therefore legal representatives need more time to compile their representations. This is because the Refugee Convention is based on male experiences. Women's political activities often take a different form from men's, perhaps giving shelter or food to those in hiding or refusing to abide by restrictions such as dress codes. It is likely to be harder to obtain evidence for their involvement in such political activity, as it will not be so public. Women are also persecuted because of their relationship with men who are politically active and again this may be harder to provide evidence for...

Asylum claims often rely on evidence from people's country of origin to support their assertions of human rights abuses. We are aware that it is much harder to access such information in relation to human rights abuses against women. This is for a number of reasons. The producers of information about human rights abuses tend to focus on those affecting men and this is then reflected in the Home Office CIPU reports. The websites which host country of origin information have limited information about gender persecution and the routes to this information are harder to access. This means that legal representatives need more time to obtain the sort of detailed information that is needed to support women's asylum claims.

Clearly the scarcity of legal representatives will also have a disproportionate effect on women for the same reasons.

We know of a woman who was told by a solicitor that she would have to pay to claim asylum but she could not afford to do this. It was only through RWRP's outreach work with Positively Women, that she discovered that she could claim asylum without paying. She was granted asylum immediately after her initial Home Office interview...

A request was put to the LSC for £700 funding for a psychiatric report – it was essential as it formed the basis of a woman's claim ... When the request was put from a private practice, the LSC refused saying it was excessive but refused to clarify this. When the same request was put from Asylum Aid, the LSC offered £400 and then increased this to £700 when asked to.

Torture survivors

Medical Foundation for the Care of Victims of Torture

The Medical Foundation remains extremely concerned about the steadily growing shortage of competent legal advice and representation.

From time to time it becomes necessary for the Medical Foundation to find a competent representative for one of our patients...It has never been particularly easy to find a representative whom we can trust at short notice to take over a complex torture case. It has never been harder to place these cases than it is today...now even the prospect of strong facts and allegations of torture does not create interest; good lawyer simply do not have the capacity.

... the Home Office take very seriously indeed evidence provided by the Medical Foundation but too often (and increasingly) we are not instructed by a competent representative early enough for such evidence to be presented to the Home Office. We are more often instructed at the stage when cases are being prepared for an appeal. Often we are aware that the representative at that stage is not the representative who first had conduct of the matter. We are often then given little or no time within which to prepare a high quality report. Sometimes this is due to circumstances beyond the control of the representative but often it is the representative who is responsible for the situation. Too often simple best practice is not being followed. We have also noticed an increase in the number of cases referred to us for treatment and for reports at the end of the process. These can be perfectly creditable cases which have simply been badly handled by other representatives at earlier stages.

HIV support and advice/representation organisations

Terrence Higgins Trust

In the months after April 2004, we received calls from clients whose solicitors firms were pulling out of immigration work ... The clients rang us desperate to be signposted to alternative firms...Increasingly callers to THT Direct Helpline find it very difficult to get any advice or representation because of solicitors firms' lack of capacity. The Terrence Higgins Trust's solicitors are inundated with requests that they are unable to meet because of limited staff numbers...we have received calls from people who have had to self represent alone in the front of the adjudicator because they have been unable to instruct a solicitor because of lack of legal funding.

The George House Trust

(a regional HIV organisation working with people across the North West infected and affected by HIV)


We are already seeing many people for whom the legal cuts are having a negative effect, about a dozen people who have lawyers in the not for profit sector have been told the lawyer cannot ... pursue their case to a higher level (i.e. tribunal), this is also happening in some of the law centres. This means that someone still within the legal process no longer has the automatic right to legal representation, obviously it is harder / impossible for people to correctly present their own cases.

Immigration detainee support and advice organisations (working solely with detainees in Immigration Removal Centres (IRCs) and prisons)

Bail for Immigration Detainees

The legal aid cuts are having a particularly severe impact on vulnerable detainees such as torture survivors, those with serious mental and physical health problems and disputed minors...

...there is a lack of access to legal representation, in particular to challenge detention in the courts. BID does not receive public funding for our work, but through our contact with detainees, we are acutely aware that access to publicly funded advice and representation is extremely limited; our existence is evidence that effective, good-quality immigration representation is not adequately accessible from detention centres.

 A 26-year-old asylum seeker from Sierra Leone who arrived in the UK in December 1999 and claimed on arrival was unable to find representation for his appeal in May 2003...this man made his own application seeking leave to appeal which was refused. His NASS support was therefore terminated...He was arrested in June 2004 when he was selling flowers in a nightclub in Portsmouth in an effort to support himself...while in detention he made a serious suicide attempt ... he was transferred from immigration detention to a criminal prison ... The escorts said they would not remove him as his psychiatric problems rendered him unfit for travel...he tried to find a solicitor to make representations on his behalf that he should not be returned to Sierra Leone ... again unable to find legal representation...another suicide attempt ... He remains detained, on two psychiatric drugs, hearing voices directing him to harm himself.



A 62 year old Nigerian man finished a criminal sentence in July 2000 [and was placed in immigration detention] In 2001 he had a bail hearing which was refused. In 2002 he had a heart attack while in detention, during which he fell and broke his leg. In 2004 his solicitor said he wouldn't make an application for bail, because of the merits test. We then tried to find a solicitor [but] we were unable to... despite the fact that this person has been detained for four years under immigration legislation.



An Angolan man, with a British wife, a child and 2 step children, unable to get a solicitor to take his case to European Court of Human Rights, despite an appeal having been submitted and despite its being considered, as LSC state that there are no further funds available for his case.



A family have been detained for 40 days. They have been visited 3 times by the Medical Foundation for the Care of Victims of Torture, providing 3 separate reports. The family were told by their solicitor that he could make an application for bail if they paid for it.

Winchester Visitors Group



M from Algeria had her case for asylum refused and as she visited her solicitor in Bournemouth (she is housed in Southampton) he assured her he was applying for an appeal on her behalf. Several months later she learnt that he never sent for an appeal and it was too late for another solicitor to do so... The good reliable solicitors in Southampton could only take her case privately for £500.

Visitor to Lindholme Immigration Removal Centre

Throughout November and December we were not able to get a solicitor for any detainee...Through November and December there would be between 90 and 112 in the centre. I knew two who had possible family claims. One was a straight forward [claim under the amnesty for families].

Gatwick Detainee Welfare Group

(working with detainees at Tinsley House IRC)

When we are trying to find someone a solicitor, we select from a list of firms that are generally known to be good and also are prepared to take on detained cases at Gatwick. In December 2001, our list had 26 companies on it. By the end of 2004, our list was down to 13. Of the 13 that are no longer on our list: 6 have given up legal aid work, 1 firm has closed down, the others are too busy with clients in the community to take on detained cases...There is only one firm in the Crawley area and they currently have one part-time fee earner...We therefore have to rely on representatives from the London area. There is of course a major disincentive for solicitors to travel such distances to visit clients in detention.

From October 15th 2004 – January 15th 2005 we conducted a snapshot survey of GDWG clients who were either unrepresented or unable to access legal advice prior to removal. During this three month period 155 detainees contacted us from Tinsley House, 57 (37%) of whom were either unrepresented or unable to access legal advice prior to removal...

The need for good quality advice has increased, whilst provision has decreased. For example, in the first six months of 2003, 131 detainees contacted us stating that problems accessing legal advice was one of their main concerns...This had risen to 216 in the first six months of 2004.

London Detainee Support Group

(working with detainees at Colnbrook and Harmondsworth IRCs)

In the year ending March 2004, we made 46 successful referrals to immigration solicitors for legal aid cases. Between April 2004 and January 2005 we have been able to make only 2 such referrals.

Examples of cases we were unable to refer include:



'A' was a lieutenant in the army, who had been accused of treason. He had been tortured for 2 months in prison in his country of origin, including electric shocks to his genitals. He was facing a court marshal and likely execution; he had already been subjected to a mock execution. His Fast Track duty solicitor had not referred him to the [Medical Foundation]. We attempted referrals to 15 reputable solicitors with legal aid franchises, but were unable to refer him. He was removed.



F was told by his solicitor that he could only continue representing him on a private basis and that he would require an initial payment of £800. He was not able to find alternative representation. Consequently he represented himself before the IAA and was refused and removed.

The Bail Circle

(Churches Commission for Racial Justice)

In the Christmas 2004/5 period...faced with removal... detained Zimbabweans were all found to be without lawyers. We found [poor] quality... initial legal representation. They had been very badly or superficially represented in the first instance, or...dropped before their appeal on the basis of a 'no merit' test... Those making 'no merit' assessments and dropping clients were also those [representatives] clearly not interested or skilled in investigation or client direction. Such practitioners assessments often had been made on a very superficial basis.

Clients were not directed to obtain evidence fairly easily available... Clients were not referred for trauma expert reports, though the asylum account clearly indicated the need. At best a brief GP note was appended, despite the fact that often courts require authoritative medical reports for client's credibility to survive its scrutiny. A Zimbabwean had suffered among other assaults, repeated genital electrocution which had left clearly discernible scars. It had been mentioned in interview and in discussions with the solicitor. Yet it was not followed up, and was omitted from appeal documentation.

Colleges

Peterborough Regional College



L ... received a letter the day before her first hearing and 2 weeks to her final hearing telling her that they could no longer represent her ...She did not appear to have had an interpreter at any of her interviews with them...she attended her first hearing unrepresented. The Adjudicator at her first hearing advised that he felt she should have adequate legal representation and that he would adjourn the full hearing for at least a further 4 weeks in order for legal help to be found...



H sought help as the firm representing her had closed their local office. This was her second [or] third solicitor. Her previous solicitor had discontinued asylum and immigration cases. H [who arrived in the UK as an unaccompanied asylum seeking child from Kosovo] has now been introduced to a solicitor ... who will act for a fee ...[H] clearly cannot afford fees but is prepared to pay weekly. She will have to rely on borrowing money ... she could be vulnerable to exploitation.

Peterborough has no Law Centre. It does have not for profit organisations which due to cuts in legal aid have reduced capacity. Apart from the Immigration Advisory Service (IAS) there are currently no solicitors in Peterborough (there were originally only 3 firms) who could offer immigration and asylum advice or representation...I know of students who also travel to Birmingham, Bradford, Leicester or Colchester to see their solicitor. This can be very costly...

Housing associations and homeless projects

Stonham Housing Association, Plymouth

One of the residents at our project has been living in this country for the last two years after claiming asylum from Afghanistan. His recent application for legal aid was turned down. Consequently, there was no-one to represent him at the appeal hearing he had. At the hearing he was expected to defend himself against a government solicitor armed with piles of government documents many of which he had never seen before... The refusal of legal aid came just 10 days before the hearing so there was no time to approach another solicitor and/or try and apply again for legal aid...our local free legal advice centre confirmed that the timescale was too small.

Local or regional refugee support organisations and asylum seekers support campaigns

Redbridge Refugee Forum

I work with asylum seekers and refugees aged 14-25. I only work 28 hours a week and am supposed to divide my time between casework, social policy and project development, but since the legal aid cuts I am spending increasingly more time on immigration casework. ... I currently work with a young Kosovan man, aged 18 who has been refused further leave since his ELR expired on his 18th birthday a couple of weeks ago. He has been in the UK for a number of years and was fostered as an unaccompanied minor. I have sent him to various solicitors who all refuse to help him because they cannot get the funding.

Solicitors can no longer get funding to attend Home Office interviews (unless the individual is under 18 years of age), so I see many 18 year olds attending such interviews with no legal representation, meaning that they may be intimidated and may not have access to all of their rights... I do not have the resources to attend the interviews with these young people and they are terrified of attending them alone.

There are still solicitors around who are asking my young clients for payment, but as asylum seekers have also had their right to work revoked, they are hardly in a position to be able to pay a solicitor hundreds of pounds.

I feel I am not assisting other young people enough – those with issues around homelessness, financial support issues etc. because I am spending almost all of my time on immigration work that we used to be able to refer to solicitors.

Refugee Council One Stop Service, Leeds

The changes to the Legal Aid for asylum applicants have had a significant impact on asylum seekers living in the Yorkshire and Humberside region. In recent months, many of the client visiting the Refugee Council One Stop Service have problems relating to these changes.

In one day we saw 8 clients who were experiencing problems with legal representation. All 8 clients had difficulties changing their solicitor [following dispersal]. Two did manage to get new solicitors, although one of these was in London. Another client had recently been dispersed from Dover. He received a refusal after his substantive interview and his original solicitor would not proceed with the case because he was living in Leeds...With only 3 days left to lodge the appeal, the client had approached every legal representative in this area. They were refusing to take the case, firstly because some time had already been used and second they didn't have an appointment available within the time limit for lodging the appeal.

A number of legal representatives who previously dealt with asylum and immigration in the region have now stopped doing this work. They have not been replaced which leads to a shortage of solicitors for the clients.

Asylum Welcome, Oxford

In our area we have seen the departure of one out of a total of three local immigration specialists doing publicly funded work. This was on the grounds that the profitability of the work could no longer sustain an immigration department... firms that we know to be committed, thorough and dedicated to their clients have had to do their work in less time and with less money. Firms that are slapdash, unresponsive and uncaring have not been affected by the cuts in the same way because they never used the time or resources available under the previous system.

A client move[d] to Oxford from elsewhere in the UK to stay with relatives, receiving NASS subsistence only support. Her previous representative says that they cannot act on her behalf any longer because of the distance involved. She [went] to a local legal representative – they cannot take her case because money available to take forward her case has been exhausted.

A clients... legal representative, a well-respected and experienced solicitor believes that their case should go to statutory review. However, the public funding certificate was not granted, and the only option is to ask the client to find money to take the case forward on a private basis. The client does not have permission to take employment, in common with the vast majority of asylum seekers.

Wolverhampton Asylum Seeker & Refugee Services (WARS)

When an Iraqi asylum seeker moved from Dover to Wolverhampton, the refugee centre that was representing him sent all the information to the wrong address and he could not find

another solicitor to represent him. His hearing was rejected without him present and he only knew of the decision when NASS discontinued his support. He could not find legal representation to appeal. He is now destitute.

The policy is making people destitute as there is no way for these people to lodge an appeal without a solicitor they could not even find. Their NASS support is terminated... We have identified 58 of our clients affected by these cuts ... 34 are destitute after NASS discontinued their support as they had no ongoing claim.

We have noted the closure of three immigration departments of solicitors, in particular Fawcett and Patini, Nathaniel & Co and Clive Shepherd & Co. We are aware of around 130 service users who have received negative decisions after initial consideration or an appeal, on the grounds of non-compliance with legal practice due to lack of representation...we know of no asylum seeker that has been successful in their application without a solicitor.

Luton Accommodation and Move-on Project

We are at present experiencing horrendous problems in this area because of solicitors in this area ceasing to deal with legal help clients. It has been difficult to get them transferred when the initial solicitor has almost used all the allowances. This lack of continuity and communication adds to the problems and I have to ask how these young people can be expected to know and understand the procedures with assistance and support.

Without legal representation people will not have detailed statements, bundles of objective evidence to support their cases or medical reports, nor are they likely to know the importance of attending court or court procedure...exacerbated by language barriers making it extremely difficult for clients to represent themselves effectively.

Positive Action for Refugees
Leeds

Devon and Cornwall Refugee Support Council

The legal aid cuts have had a knock on effect on us all. The solicitors become over anxious to keep the deadlines and curtail the time they offer client's to talk, review, advise and clarify issues that can make a difference to their decision. The clients then come [to us] for understanding and we are not... qualified to help in some cases. It breeds a lack of confidence in the justice system. [One] practice was squeezed by the restrictions until they had to stop offering immigration legal advice. As they were one of four in the area who represented clients in Plymouth...we were suddenly in a city where the other practices became... over burdened by this loss.

Harbour Project for Swindon Refugees and Asylum Seekers

We're currently finding it difficult to get lawyers for clients in our area. There was an increase in immigration legal representation in Swindon last year by outreach from Phillips & Co in Bath/Salisbury, contracted by LSC, but they seem to be up to capacity now, though still seeing clients for initial interviews

Positive Action for Refugees, Leeds

The result of [the legal aid changes] meant that the majority of reputable private law firms felt that they could no longer provide effective representation for clients in the short amount of time allowed and that the delays were having an impact on the client's case. In addition to this it was no longer financially viable for them to hold an LSC contract and so several private firms in the area have closed their immigration and asylum departments, key examples of this being Henry Hyams in Leeds and James & Co in Bradford. Henry Hyams had approximately a thousand clients who they have written to saying that they will no longer be representing them and that they should seek alternative representation. Unfortunately, there is very little alternative representation.

Kent Campaign to Defend Asylum Seekers (KCDAS)

A 19 year-old Afghan was in detention... over a 3-day period we rang approximately 35 firms of solicitors. Firms who were undertaking legal aid work were over subscribed and could not take on new cases. Eventually his case was taken. We are increasingly relying on the good will of reputable firms and law centres who may do something on a pro bono basis. However, these organisations are very over subscribed. The situation is quite desperate and the result is a significant reduction in rights for people claiming asylum because they cannot access due process.

Six companies contacted on behalf of [the 19 year old Afghan] asked for sums of money varying from £1000 to £2500.

Concerned individuals supporting destitute asylum seekers

Refugee befriender, Cambridge

Of the 8 families/individuals I have befriended 7 have had real difficulties...Most of their problems are focussed on their difficulty getting a solicitor...There is no immigration solicitor at all in Ipswich [where one was dispersed to] ...They are ... terrified of being sent back ... and this does not put them in a very good frame of mind to cope with an overwhelmingly difficult situation where they have to learn a lot of complicated stuff very quickly.

The ultimate effects
[of the introduction of new
funding arrangements] are that
asylum seekers in our city are now
homeless and destitute and dependent
on charity organisations for shelter,
clothing and food...Hull unfortunately has
not in the past been noted for its
welcoming attitude towards asylum
seekers, and being ejected on to our
streets then makes the asylum
seekers even more
vulnerable.
Anne, Hull

Churches

Birmingham church refugee network

[I] interview[ed] some of the legal aid immigration solicitors in Birmingham. The overall sense I received was one of frustration and demoralisation among the majority of the advisers I interviewed.

Mr B commented that with increasing cutbacks, less and less firms are doing legal aid work. Their firm is just about hanging in there... They are now having to be selective about the cases they take on because of money constraints. It is becoming increasingly difficult to fund legal aid cases. (The firm are in fact subsidising these cases from their private work) Most other legal aid solicitors are reducing the number of legal aid cases they are taking on...Those who remain in the field of legal aid are able to do less and less work around the margins. There are now not enough advisers left in the field. It is therefore becoming more and more difficult to find good representation for asylum seekers... The LSC continues to cut the time solicitors can have to prepare cases, which has its spin off on the quality of representation.

North Leeds Vineyard Church

An Afghan man was detained for deportation, but the solicitor believed [he] had not had justice. The solicitor then did the work for bail despite not having legal aid. After that, [the asylum seeker] had to prepare his own case for the High Court hearing, and represent himself at the High Court.

An Afghan man... has walked the streets of Leeds to find a solicitor doing legal aid work. Three he was recommended have ceased doing legal aid, and the others were full.

National refugee charities

Refugee Action

Refugee Action does not give legal advice but refers clients to immigration solicitors where appropriate. The organisation sees approximately 650 clients a week across 7 One Stop Shops. In November 2004, 223 of our advice sessions were related to accessing legal advice. We believe that many asylum seekers are unable to find solicitors who can accurately represent them within the time constraints imposed by the legal aid cuts.

Refugee Action has noticed an increase since April 2004 in the number of clients who tell us they are unable to access legal representation, both for initial asylum applications and, more frequently, in relation to appeals. In every area in which we work, we are aware of a large number of specialist immigration solicitors or barristers who have felt they have been forced to reduce capacity or close as a direct result of the legal aid restrictions...In the Plymouth area, 3 out of 5 firms decided to close...There are 6 firms in Leicester. However, one is not taking on new clients and a second is ceasing immigration work in 2005. Approximately 20 clients a week tell our Leicester team that they are having difficulty accessing legal representation. There are only 5 immigration solicitor firms in Nottingham. In October [2004] none were taking on new clients...

Closure or reduced capacity of immigration solicitors firms also leaves large numbers of clients with no choice of alternative representation if they believe that their solicitor is not acting in their best interests.

In Plymouth, as with most of the regions in which we work, most asylum seekers have been dispersed to the area. In our experience it is rare that a client is able to stay in contact with their original solicitor after being dispersed. It is equally rare that a client is able to find a new solicitor in the dispersal area who is prepared to take their case, since the limit of legal funding has often already been reached by a solicitor in the area from which they were dispersed.

10 asylum seekers in Nottingham and many more in Plymouth, Manchester and Leicester have been asked by their legal representatives to pay in some cases as much as £600, without which the solicitor would not take on or continue with their case. The majority of clients we see are not aware of the amount of legal representation they are entitled to free of charge and so are not in a position to challenge such demands if appropriate. Since most asylum seekers have no source of income and are not permitted to work, most cannot afford these sums.

Other applicants were unable to access representation and so lodged their own appeals. Without a solicitor to follow up an application the Home Office took a very long time to respond to many ... during which time the clients were destitute.

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 & Humberside... 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. In the month of December 2004 we received 365 enquiries relating to legal advice...no less than 65 involve cases where the people cannot find solicitors or whose solicitor is no longer acting for them and they are endeavouring to pursue their case for themselves. This is 18% of the total.

A young man's lawyer stopped acting for him when he was dispersed to Bradford and he was unable to find another solicitor. The time for appeal had passed and his NASS accommodation was due to be terminated the day we saw him.

Refugee Council

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 Ipswich - with one of the solicitors moving full time to Peterborough we were 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 and Ipswich... Two large firms one in Norwich and one in Colchester which represented nearly all private provision in the region have withdrawn from providing publicly funded legal advice. The changes to the Legal Aid for asylum applicants have had a significant impact on asylum seekers living in the Yorkshire and Humberside region. In London...reputable solicitors that we used to refer our clients to have now withdrawn from immigration and asylum work or closed down due to restriction in legal funding and as a result has exposed our clients to unscrupulous advisers.

CABx

Stoke-on-Trent CAB



E, a single man from Afghanistan, originally came to the bureau in June 2004. He had received notification of his first interview with the Home Office from his solicitor.

Enclosed with this letter was another letter from his solicitor [which] stated that due to changes in the funding of the Legal Services Commission they could no longer represent him and this also meant that he would not have any representation as his forthcoming interview with the Home Office. The letter did state that E could receive representation from his solicitor if he paid them privately. Obviously because E is seeking asylum, he is not in a position to pay for a solicitor privately. E returned to the bureau for advice in September 2004. He had received dates for his first and full immigration hearings and had still not found a solicitor.

Leo Schultz Project- Hull CAB

The Leo Schultz Project (LSP) was established in 2002 to provide a general help level service to asylum seekers and refugees. The project is part of Hull Citizens Advice Bureau... At the inception of the LSP project Hull was serviced by the following: Humberside Law Centre ... They are now closed...Alison McDonald solicitors ... closed their immigration department after the April 2004 changes ... Bridge McFarland were based in Grimsby but held a surgery on day a week in Hull. They also closed their immigration department in Hull due to the April changes. Young solicitors were the first to close due to the April changes. This has left Hull without any immigration solicitors. The nearest firm are Wilkin Chapman in Cleethorpes ... They are currently full to capacity.

We have had contact with clients who have not the good & timely legal advice that is widely accepted as vital in ensuring access to justice and to protect human rights, to save the client time and stress and to save the Government money and the Court Service time.

Law centres and non-profit advice and representation organisations

Law Centre Federation – London Unit

The time restrictions make it more difficult to adequately represent clients ...a persistent need for time extensions [creates] an additional burden. The new restrictions have compounded the time consuming aspects of assisting vulnerable and impoverished clients e.g. people with language difficulties, low levels of literacy or mental health problems.

There have been difficulties obtaining disbursements; particularly for medical/expert reports (e.g. Doctors, psychiatric or DNA reports) for fresh claims and clients are restricted to staying with existing advisers, regardless of their performance.

As the ability for Law Centres to assist asylum seekers has been eroded, there is evidence that ... desperate asylum seekers are being forced to turn for help to either unscrupulous non-OISC registered advisers or well meaning but untrained community organisations

The changes have had an adverse impact on the mental and physical well being of asylum seekers ... [they] are also resorting to illegal work – sometimes for as little as £1 per hour – and are subject to mistreatment and abuse by employers.

Even successful asylum claims are very often uneconomic for the Law Centre because the amount recoverable in legal aid does not fully reflect the cost of the work (which for asylum seekers often also involves related legal problems such as housing and welfare benefits issues)

Bury Law Centre

People are dispersed around the country. They often lose support not only from the communities ..., in London, but they lose their initial solicitors. This means that when they seek legal advice ... there is an initial problem of getting hold of their papers from their first solicitor.

These LSC contracts ... expect far more work to be carried out than can be claimed for (as contract hours). They limit the amount of time that can be spent providing legal help (a limit that may have been largely occupied by the person's initial solicitors, leaving little time for the local adviser to carry out any useful work) and then they require further applications for funding to be submitted before legal representation can be provided. The LSC routinely turns these applications down (on the same grounds as they anticipate the courts will reject the asylum claims) and the reasons that they give have been sharply criticised by practitioners as not being accurate or relevant to the cases concerned.

The Government has also insisted that no one can give legal help or representation unless they are 'accredited'. This feels an insult to people who have been practising, day-to-day, front line, for many years ... In fact, the introduction of the accreditation scheme is resulting in people leaving immigration law work altogether and in reducing the number of advisers who people seeking asylum can go to for help...What should be understood is that this level of regulation is unprecedented and does not apply to any other area of law.

Since the legal aid cuts we have noticed a few things. Firstly we have seen an increase in the number of clients who have reported requests of payments from solicitors. Most of them cannot afford to pay so they find themselves without a representative.
Coventry Refugee Centre
(Immigration solicitor)

Avon and Bristol Law Centre

We have been keeping a record of our time, both claimable and non claimable, spent on cases since April 2004 and these records show that we have to do the same amount, and on some files, twice the amount of unchargeable work than chargeable work in order to continue to prepare cases fully and to a high quality.

Many people have been coming to us having been told by their previous advisor that they are not eligible for [funding] This happens on receipt of a negative decision where there are very short time limits to appeal. When we have capacity we have been submitting appeals for such clients but we are not able to charge for this work as there has been no time to apply for [funding]...you can apply for [funding] to be granted retrospectively however it has not been granted to this effect when we have asked.

Battersea Law Centre

I made an application for an extension for 4 hours. [The LSC] granted 2 hours. The irony is that I spent these 2 hours trying to get another extension of 2 hours. At the end, they gave me the extra 2 hours but the initial 2 hours granted were used up, not on immigration work but in making long representations to the LSC.

North Kensington Law Centre

The LSC contract does not allow at all for the reality of representing clients with difficult health needs. For example, we see clients with undiagnosed mental health needs who are not even registered with GPs and completely outside any support network. In practical terms, obtaining legal advice is also a means for such people to be linked in with other necessary services – medical and otherwise. Without resolving their immigration status, these client's circumstances will remain unchanged and are likely to deteriorate. However, attempting to take instructions and obtain evidence from such clients is very time consuming. Furthermore, these cases take time to resolve and seeing them through to completion is very demanding on time. We believe the standardised LSC approach is totally unrealistic and will leave the most vulnerable without advice and assistance and unsupported with no status within the community.

We have so far attempted to continue to see such clients but have lost time in doing so. Given our LSC contractual targets, and the threat to our immigration unit if we fail to meet these targets, it is difficult to see how in the long term we will be able to continue to assist such clients. To administer the immigration specification ultimately has meant less time for our clients. Completing lengthy CLR applications and extension applications, photocopying, chasing up, requesting reviews, appealing, asking for retrospective funding has to be done within the same working hours. It means less time for clients. Add to this the restriction on time allowed ... and it is clear why many immigration solicitors feel that they cannot maintain a service.

Country and medical experts

Greater Manchester Immigration Aid Unit

At drop-in we normally have about 6 minutes to assess a person's case and to make a decision on whether we can help them or not. We now have to consider whether: there is substantive work which needs to be done to take their matter forward, whether that work carries sufficient benefit for it to be publicly-funded, whether it is likely that the LSC will grant an extension of the casework time limit to do the work, and finally whether the amount of work that needs to be done justifies the unpaid administrative work which the adviser would have to undertake to obtain the case file and to apply to the LSC for an extension. Frankly, even though GMIAU is a not for profit organisation, the new administrative burden of taking on matters from previous representatives makes it highly unattractive work.

The LSC is critical of the quality of advice and representation provided by immigration practitioners as highlighted in the introduction of the compulsory accreditation scheme, yet they themselves consistently undermine best practice by imposing their own limits on casework time. Seldom is an application for an extension of Legal Help or Controlled Legal Representation granted in full, even though a thorough break-down of the time requested is required.

We are constantly frustrated by the LSC Immigration Team's poor administration in dealing with our applications for time-extensions on Legal Help and Controlled Legal Representation matters, and new Controlled Legal Representation applications. Their poor administration impairs our ability to give detailed and timely advice to clients, and to carry out the necessary work in a thorough and timely manner.

Freelance country expert

Where there is no funding available, ... potentially successful appeals are unlikely to be heard nor requests for an expert report ever reach myself and other experts. Such is tantamount to depriving the asylum seeker of a fair opportunity to claim asylum in this country. A lack of funding simply means a lack of access to justice for asylum seekers.

Freelance country expert

There are several cases, that I am aware, have strong grounds for appeal, but they have no funding. I feel that the asylum seekers are driven to "cash-for-justice" which must never be the case. Same as many other colleagues, I am seriously considering leaving the field, which would be a great loss, as I am one of the native experts from the region and I have a deep understanding of aspects of life in the areas that I provide expertise, which otherwise would not be provided.

Before the restrictions came to an effect, I provided the report after the funding approved. Now I have to help with the case before the funding in order funds to be approved. This is a time consuming exercise for which I do not receive remuneration.

Freelance medical doctor

I have noticed a substantial reduction in the number of reports I have been asked to do since April 2004. My reports are thorough and often involve photographs of torture scars. The cost .. is paid by the solicitor – through legal aid. I do not advertise but accept referrals...I believe this reduction in report writing is directly related to the reduced legal aid funding.

Solicitors in private practice and barristers

Richard Payne and Co., Cardiff

I have decided to drop publicly funded work altogether as a result of the cuts, and the massive amount of bureaucracy...not only are there going to be fewer providers now, but the effect of this in the future is that there will be fewer experienced solicitors/advisers available to train new staff coming through. Everyone knows that it is not healthy to have just one or two providers in given locations because that narrows choice, expertise and creates the sort of conditions for abuse and complacency.

The firm's experience in seeking CLR and extensions of the same from the LSC in London recently fully bears out my decision [to stop providing publicly funded work]... demanding ridiculous amounts of information regarding work done and requiring full breakdowns of everything...how exasperating it can be dealing with people with little grasp of the practicalities ... it appears ... that the LSC are actively trying to force people out of this work.

...complicated cases are referred to me that I am unfortunately unable to take as it is impossible for me to provide a conveyor belt service...disputed minors need to be referred to experts, and often we have to liaise with social service, panel advisors, foster carers ... the LSC will only grant those cases which reach a certain stage.

Arona Sarwar and Co.,
Walthamstow, London

Avocets Solicitors (closed down)

I closed my practice because of the changes to Legal Aid. I was working as a sole practitioner at Avocets Solicitors and we decided to close because we felt that the changes made it impossible for us to prepare our cases to the standards we wanted to. We felt that the hours restriction would make it difficult for us to present our cases...I feel that my decision to close ... was the right decision but it did leave many clients without representation.

We also felt that we would not be able to charge clients privately as most of our clients were not working or were working illegally. We did not want to put our clients in a position where they had to work illegally to pay our fees.

Glazer Delmar solicitors, London

Since the changes were first announced we have had 4 experienced immigration and asylum solicitors ... and one experienced asylum caseworker, decide to give up doing publicly funded work. Three of them gave up immigration altogether...That loss of expertise and experience to this area of law is not easily replaced and can ill be afforded given the difficulties we know many people have in securing adequate representation.

We try not to let the changes damage our clients and the way we work for them on their cases. But that is not to say they are unaffected. At the very least our capacity to take on new cases particularly those that are urgent or complicated had been dented.

Wilson and Co., London

We have seven solicitors who have passed the supervisors accreditation exam – we have the ability and capacity to recruit, train and properly supervise more fee-earners, but the LSC offers no incentives to do so and the dangers of cost audit recoupment, the low hourly rate... the cost of accreditation etc. make it a risky business proposition.

[When] the capping proposals were published... we were very concerned that if they were implemented there would be no future in legal aid...During this period (June 2003 – June 2004) morale was low. One caseworker left to go into another area of law. Two in-house advocates left...We did not replace any of these people because of the insecurity of doing legal aid work.

Ben Hoare Bell Solicitors, Sunderland

Since the cuts in April our costs have plummeted and with the stress and cost of Accreditation it is very likely we will give up, even if we do pass the exams...I understand that other reputable firms in the North East feel the same.

As counsel regularly instructed in Human Rights and Asylum matters, I have frequently come across the practice of having my fees “capped” by solicitors; this is caused by funding constraints placed upon them by the LSC. This translates into a severe limitation upon the amount of work that can be realistically undertaken on a given case. Often, you are compelled not to charge for the full time undertaken to prepare the case in the knowledge that to do so would infringe the capped fee imposed.

Barrister, London

Former solicitor, Croydon

The situation with legal aid was already fairly difficult ...There was a period of time where we were able to take no further asylum cases at all and could not grant controlled legal representation for existing clients to appeal asylum cases. We therefore had to turn some clients away even before the legal aid costs limits changed...

In February 2004 we were notified of the new terms and conditions for the legal aid contract for April 2004 to April 2005. It made fairly grim reading...In the light of these changes both supervisors left the firm...

The implementation of the changes in the legal aid system was an absolute bureaucratic nightmare. It was simply not possible to juggle the three conflicting interests: doing a good job for the client; making money for the firm; and complying with the costs limits and bureaucracy of the LSC. I would routinely find myself doing six hours work on a case to prepare for a hearing but only being able to claim 54 minutes chargeable time on the file because of LSC constraints and then being horribly aware that my firm would only see that I had done less than an hours work. The limits were so low for Legal Help that you would frequently use all the funding for a first appointment and advice letter, meaning that an extension had to be sought before any substantive work could take place.

Sometimes the thought of spending 2 hours completing an extension form where only limited work was required meant that you would just carry out work without claiming it. It quickly

became impossible to bill the amount of costs and hours required by the firm to make the department profitable, and we were put under considerable pressure not to take on any more legal aid clients and to focus on building up private work only, even though we were still legal aid franchised. We therefore had to turn away even more legal aid clients...

With regard to detention work, whereas we had been expanding into working with detainees this was curtailed after the legal aid contract changed. It was difficult enough to carry out straightforward cases where a client was at liberty, and we did not have the capacity to start taking on cases where we would have to travel to a detention centre and then try to get legal aid approved following this, meaning that we were at risk of not recovering the costs. We continued to work for any of our clients who were detained during the course of their cases, but other than that ceased to take any new detention cases...

From what I understand, my former firm will be dropping their legal aid contract in April 2005, and I imagine many other firms will do the same...

Evidence from other sources

To our knowledge, to date there has been no published national analysis by the Department for Constitutional Affairs or the Legal Services Commission of the provision and quality of publicly funded asylum and immigration advice and representation.

There have been several research studies and surveys published recently on the issue of asylum and immigration legal aid by non-governmental bodies.

'Into the Labyrinth: legal advice for asylum seekers in London' by the Greater London Authority, published in March 2005, presents comprehensive qualitative research into the provision of legal advice to asylum seekers in London.⁸ The report is critical of the current provision of legal advice in London and highlights the social consequences of the exclusion of a vulnerable group who often face "formidable barriers in exercising basic rights under UK and international law."

Building on existing research that indicates poor quality Home Office decision-making can result in asylum applications being wrongly refused, [this research] finds that whilst there are some excellent legal practitioners working in this field, poor advice remains a problem. Inability to access competent advice can result in asylum seekers having their claims refused, in increased destitution in London and in the risk that people will be returned to countries where they are at risk of persecution. Recent changes to legal aid have placed additional pressure on the refugee support and legal advice sector.⁹

⁸) The report can be downloaded at <http://www.london.gov.uk/gla/publications/refugees.jsp>
⁹) Into the Labyrinth: Legal advice for asylum seekers in London, Greater London Authority, February 2005, p1

The Law Centres Federation and Citizens Advice have carried out surveys on the impact of the legal aid cuts on their clients and the service they can provide. *'Consultation on the effects of restrictions on immigration advice for asylum seekers,'* published by the Law Centres Federation in February 2005 explores the experiences of just over half the 41 Law Centres in the UK who have contracts with the Legal Services Commission to provide immigration advice. The Law Centres Federation first commissioned a consultation in October 2004 to examine the effects of changes to legal assistance on London Law Centres, then conducted an in-house survey in November of Law Centres outside London. 22 law centres participated. The key finding was that the time restrictions make it more difficult to adequately represent clients and that Law Centres carry out more unpaid work because the restrictions mean that they are not able to carry out all the necessary work for their clients under the contract. The Law Centres report a persistent need for time extensions which created an additional burden. The new restrictions have compounded the time consuming aspects of assisting vulnerable and impoverished clients, for example people with language difficulties, low levels of literacy, or mental health problems. One solicitor found that none of her cases could be concluded satisfactorily in less than five hours because of language difficulties and the multifaceted issues that asylum cases present.¹⁰

'Passport to Nowhere: the new immigration contract' by Citizens Advice, published in January 2005, focuses on the issues raised by the twenty three Citizens Advice Bureaux which provide immigration and asylum advice under LSC contracts. In July 2004, Citizens Advice facilitated a meeting of these bureaux to discuss their experiences of operating under the new Immigration Specification. This report summarises the key points arising out of that meeting. The report concludes that

Immigration caseworkers in bureaux recognise that the LSC had to make some changes to end poor practice where it occurred and also to protect vulnerable clients. However many of the changes put in place in April 2004 affect both poor and good quality advisers indiscriminately. They only serve to undermine the quality of service bureaux offer clients and penalise the conscientious adviser attempting to do a decent job for frightened and vulnerable people.¹¹

¹⁰) *'Consultation on the effects of restrictions on immigration advice for asylum seekers,'* the Law Centres Federation, February 2005, p2

¹¹) *'Passport to nowhere: the new immigration contract'* National Development Team, Citizens Advice Bureau, January 2005, p11

April 2005 – more restrictions on legal aid and a further threat to justice

On 4 April 2005, further contentious changes to legal aid funding came into force effecting asylum and immigration appeals, with serious implications for asylum seekers.

New powers¹² require decisions to be made retrospectively on whether legal aid should be granted for appeals against rulings of the new Asylum and Immigration Tribunal.¹³ The stated intention of the scheme is to limit 'unworthy and unmeritorious appeals' by restricting the availability of legal aid. However, there is widespread concern that these changes to legal aid funding processes will result in blocking access to the courts for [genuine *not that word*] cases.

During the passage of the 2004 Asylum and Immigration (Treatment of Claimants etc.) Act, the Government was forced to withdraw a proposed 'ouster clause', which would have taken from applicants the right to ask the superior courts to review any deportation or removal decision. The climb down on this policy followed intensive lobbying and harsh criticism by the House of Lords, and the Lord Chief Justice described the measures as "fundamentally in conflict with the rule of law", adding "What areas of government decision-making would be next to be removed from the scrutiny of the courts? What is the use of courts if you cannot access them?"¹⁴

So, although the Government withdrew the ouster provision, they instead introduced a provision into the Act to govern legal aid for the applications, resulting in the same negative impact for asylum seekers. The Bar Council have stated that

*...to deny publicly funded representation for High Court proceedings under the 2004 Act is effectively to shut out asylum seekers' and immigrants' access to the courts. It is to do by the back door what the Government failed to do by the front door during the passage of the 2004 Act through Parliament.*¹⁵

The parliamentary Constitutional Affairs Committee was sharply critical of the proposals in a report published on 23 March 2005.¹⁶ They recommended that the government reconsider the proposals and concluded that:

*Retrospective funding is only being proposed in asylum and immigration cases. Its introduction is likely to have a negative impact on appellants and lawyers, since the uncertainty involved will mean that even good quality suppliers may have to make a commercial assessment of the level of risk they are taking and may well refuse to represent some clients who have reasonable cases.*¹⁷

And the Law Society has condemned the Government for introducing a 'legal aid lottery'.

12) The new legal aid scheme applies to review and reconsideration of appeals under section 103A of the Nationality, Immigration and Asylum Act 2002, as inserted by section 26 (6) of the AITC Act 2004 (an enabling power in respect of legal aid amending the Nationality, Asylum and Immigration Act 2002.)

13) The Asylum and Immigration Tribunal was created by the 2004 Asylum and Immigration Act

14) The Times, 4 March 2004

15) Bar Council, response to CAC, Ev. 29, Legal aid: asylum appeals, House of Commons, Constitutional Affairs Committee, Volume II, HC 276-1, 23 March 2005.

16) Legal aid: asylum appeals, House of Commons, Constitutional Affairs Committee, Volume I, HC 276-1, 23 March 2005.

http://www.publications.parliament.uk/pa/cm200405/cmselect/cmconst/276/276ii.pdf

17) Ibid, p 9

These cases could determine the difference between life and death. It is wrong that the government is enforcing a legal aid lottery on these serious cases... From April, all asylum solicitors must pass tough new assessments before they can do publicly funded work. The Government should also wait to assess the impact of the new Asylum and Immigration Tribunal. If the quality of its decision making is better, we can expect to see fewer appeals. Under the new system a High Court judge will scrutinise every case to decide if it merits reconsideration by the Tribunal. We believe this judicial scrutiny, together with the new controls on solicitors doing publicly funded work, provide robust safeguards that will ensure unjustified appeals are not taken forward.

*Asylum solicitors are already among the lowest paid in the profession. I fear many of them will stop doing this work if there is a risk they might not get paid. The scales of justice will then be tipped firmly against the asylum applicant.*¹⁸

In response to the consultation conducted by the Department for Constitutional Affairs (DCA) about the new legal aid arrangements for appeals¹⁹, the Immigration Law Practitioners Association (ILPA) write of the negative impact on clients of the 'double whammy' of restricted legal aid and the new funding arrangements for onward appeals.

Competent publicly funded immigration practitioners are already in short supply, a problem that has been exacerbated during the past year. The stringent funding regime introduced on 1/4/04 may have been aimed at the unscrupulous and incompetent, but the margins of profitability have become so tight that a number of

highly regarded firms have bowed out of the work, while others are protecting their businesses by restricting the amount of publicly funded work they take on. The funding uncertainty built into the present proposals will discourage them still further. Publicly funded immigration law properly practiced is simply not profitable enough to allow us to absorb these potential losses.

*We fear not only that appellants will be abandoned by their representatives at onward appeal stage, but also that they will find it even more difficult than now to find legal representation in appeals from the outset. This is partly because of the generally discouraging effect of the proposals on practitioners who may already be struggling financially, but also because conscientious practitioners may be unwilling to take on cases knowing that they will not be able to afford to see them through in the event of an unfavourable initial AIT determination. The less conscientious will have no such scruples, and in some cases presumably will also not scruple to use the proposed scheme as an alibi for refusing legal aid and exploiting appellants to raise funds they cannot afford to fund their onward appeals privately - precisely the kind of conduct that ILPA deplors and understood the government also wished to stamp out. That will be better done by keeping the funding of these appeals within the current regime, especially in the light of the current and future developments in the LSC's regulatory powers and practices.*²⁰

18) Politicians join Law Society in condemning Government's new asylum policy, Law Society press release, Wednesday 23 March 2005.

http://www.lawsociety.org.uk/newsandevents/pressreleases/view=newsarticle.law?NEWSID=228299

19) "In November 2004, the Government launched a 6 week consultation entitled *The Asylum and Immigration Tribunal—The Legal Aid Arrangements for Onward Appeals*. The consultation paper sought views on the proposed draft *Community Legal Service (Asylum and Immigration) Regulations 2005*.

Those new draft regulations set the framework for the legal aid arrangements in England and Wales for the review and reconsideration of appeal decisions made by the new Asylum and Immigration Tribunal (AIT), which is to be launched on 4 April 2005." *Constitutional Affairs Committee*, *Ibid*, p3

20) ILPA response to the proposals for the 'retrospective public funding' of onward appeals from the single tier Asylum & Immigration Tribunal from 1/4/05, 24 January 2005, <http://www.ilpa.org.uk>

Conclusions

People seeking refuge in the UK from persecution, violence or human rights abuses abroad need specialist advice and representation if their applications are to be properly and fairly considered, and their procedural and legal rights upheld. If the UK is serious about offering protection to refugees in line with the Geneva Convention and human rights obligations, everyone applying for asylum must be afforded good quality legal assistance at all stages in the process.

The current Government have repeatedly made the argument that the changes to public funding, to the appeals structure and asylum process as a whole, are not only in the interests of the taxpayer, but of the 'genuine asylum seeker'. This argument grossly oversimplifies the nature of the asylum process, as though an asylum seeker is either genuine or seeking to exploit the system. In reality, refugee status and forms of human rights protection are hard-won. Many of those who have eventually been granted status have experienced a long and tortuous process, often including time spent in detention, and several threats or attempts to remove them from the UK. It is misleading to present the asylum process as a benign and impartial exercise by Home Office decision-makers, a fact evidenced by the significant number of initial decisions by the Home Office that are over-turned on appeal; while nine out of ten asylum applications are initially refused, 20 percent of cases that go to appeal are successful.²¹

The numbers of people claiming asylum in the UK are falling, yet there is no justification for stepping back from the provision of advice or the robust regulation of advice providers. The LSC have stated that they intend to carry out 'a major national review of future demand for asylum legal aid services, based on estimates from the Home Office as to the likely numbers of people seeking asylum.'²² This review must be based on a full and fair assessment of need and quality, and should take into account the impact of the measures already taken

21) Tell it like it is: The truth about asylum, a guide for the General Election, Refugee Council et al., March 2005

22) Department for Constitutional Affairs, letter to Asylum Aid, 15 February 2005

Action

The purpose of this dossier is to describe and illustrate the negative impacts of the cuts and changes to legal aid provision for asylum and immigration cases, highlighting both their scale and their wide geographical spread. The picture painted is of a system in crisis, consistently failing a vulnerable group of people by denying them the chance of a fair hearing.

We intend that the evidence contained in the submissions should be used to challenge the apparent lack of awareness within the Legal Services Commission, the Department of Constitutional Affairs and the Home Office, of the barriers to justice that the cuts have created, and to provide the impetus for a thorough overhaul of the legal aid system in relation to asylum and immigration cases.

The changes needed to rectify the damage being done – to individual asylum seekers, to the asylum legal sector and to the credibility of the UK asylum process - range from short term procedural improvements that the LSC could effect immediately, to longer term changes in legislation. Some are strategic, others are operational; some deal with matters of procedure and some with matters of principle.

This aim of this dossier is neither to provide a blueprint for a fair and equitable asylum legal aid system, nor a campaign guide for organisations and individuals pressing for change. However, there are a number of key actions that we would urge Government and campaigners to adopt, as an effective means of ensuring that pressure for change is maintained and that the systematic denial of justice to asylum seekers and immigrants in the UK is brought to a swift end.

Let me
be the last person
to be treated so
unfairly by both the
government and legal
society of Great Britain.

Thandie, asylum seeker

Actions for Government and the Legal Services Commission

- Conduct a thorough, independent, national impact assessment of the legal aid cuts and audit of the demand for and provision of quality assured legal services;
- Bring forward legislation guaranteeing all asylum applicants and appellants access to quality assured specialist legal advice and representation;
- Establish an accurate, on-line, signposting service designed and resourced to provide up-to-date information about spare legal service capacity;
- Relieve the bureaucratic restrictions on legal practitioners and to provide greater financial incentives to encourage new suppliers in both the private and not-for-profit sectors;
- Provide the necessary funding to build the capacity within the asylum and immigration legal sector to recruit and train new legal representatives;

Actions for campaigners

Is there a problem in your area?

Are you or your organisation encountering problems finding legal advice or representation as a result of the current legal aid system?

Register your protest with those responsible

- Write your own letter, in particular raising recent examples or cases. You can download some points to be included in your letter at www.biduk.org or www.asylumaid.org.uk
- Send the letter to your Member of Parliament and ask her/him to write on your behalf with the relevant Minister in the Department for Constitutional Affairs (currently the Parliamentary Under-Secretary of State). See <http://www.faxyourmp.co.uk/> or telephone the House of Commons Information Line 020 7219 4272 for details.
- Copy your letter to the Legal Services Commission at:

Immigration Services
Legal Services Commission
Head Office
85 Gray's Inn Road,
London
WC1X 8TX



If you are writing about a particular case and need a response, you may prefer to raise the issue with the relevant Regional Office. Details are at <http://www.legalservices.gov.uk/aboutus/regions/regions.asp>

- Ask your MP to sign up to the Early Day Motion (EDM) on this issue (see: <http://edm.ais.co.uk/weblink/html/search.html> for a list of EDMs). (The EDM will be tabled after the General Election during the next parliamentary session – further details will be available on BID and Asylum Aid's websites).
- Use this publication to raise awareness of the legal aid crisis – send copies to key figures in your community. Copies can be downloaded from our websites or hard copies can be ordered from BID or Asylum Aid.

Please copy your letters to

dossier@asylumaid.org.uk

Bail for Immigration Detainees (BID) is an independent charity that exists to challenge the use of immigration detention in the UK. We provide free advice and assistance to asylum seekers and migrants in removal centres and prisons.

Asylum Aid is an independent, national charity working to secure protection for people seeking refuge in the UK from persecution and human rights abuses abroad

www.biduk.org
www.asylumaid.org.uk