



# **Legal Representation in the Asylum Process: problems faced by asylum seekers in Northern Ireland**

Northern Ireland Strategic Migration Partnership  
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## **Improving legal support for asylum seekers in Northern Ireland**

### **About NISMP**

The Northern Ireland Strategic Migration Partnership is a cross-party partnership working across the spheres of government and between the public, private and third sectors to ensure that Northern Ireland effectively welcomes, supports and integrates new migrants in a way which contributes to future economic growth and vibrant, cohesive communities. It provides a regional advisory and consultative function, enabling our partners and other stakeholders to develop an appropriate Northern Ireland migration policy structure.

**This paper will address questions raised by asylum seekers, refugees and support workers in relation to legal representation during the asylum process. It has been approved by representatives on the Partnership. However this does not necessarily reflect the views of partner organisations, some of whom have not been canvassed.**

## Introduction

Asylum applications in the UK reached a peak of 84,132 in 2002 before falling to 17,916 in 2010. Since then there has been a steady increase in numbers and in 2014 there were 24,914 applications for asylum made in the UK<sup>1</sup>. The Home Office does not publish disaggregated data for total numbers of asylum seekers within each region and so the numbers of asylum seekers in Northern Ireland can only be estimated.

The number of asylum seekers in Northern Ireland is relatively small in relation to the overall number of claims made in the UK, although it is a number that has been steadily increasing. From Home Office data, in the second quarter of this year, there were 497 asylum seekers in Northern Ireland who were in receipt of Section 95 National Asylum and Support Services (available for those who would otherwise be destitute), in comparison to 280 in the same time period in 2010<sup>2</sup>. However the number of those who are not eligible for NASS support, those who are awaiting a decision on their application for Section 95 support, or who are in receipt of support for refused asylum seekers are not publicly available. The three main countries of origin for asylum seekers in Northern Ireland are China, Somalia and Sudan<sup>3</sup> while for the UK as a whole the top three countries are Eritrea, Pakistan and Syria.

There are a number of possible outcomes for an asylum claim. A successful applicant may be granted asylum and recognised as a refugee, granted humanitarian protection or given discretionary leave to remain. Negative decisions can be appealed to the First-tier Tribunal (Immigration and Asylum Chamber). Further appeals are only possible on a point of law although applicants have the right to make a fresh submission if new evidence comes to light. In 2014, 59% of applicants in the UK were unsuccessful with 28% of these initial decisions overturned on appeal and a further (unknown) percentage allowed to make a fresh submission<sup>4</sup>.

An asylum seeker's legal journey begins once a formal claim for asylum has been made. In Northern Ireland a claim can either be made on arrival into the country at the border, at the Belfast offices of the Home Office or with Bryson Intercultural/ Migrant Help. At this point the asylum seeker will be assisted by Bryson Intercultural/Migrant Help, if necessary, in applying for financial support and accommodation from the National Asylum and Support Services (NASS), and in securing a solicitor. Bryson will provide a list of solicitors and, if the client wishes, will also help in making the first contact. The majority of asylum seekers will qualify for legal aid.

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<sup>1</sup> Blinder, S. (13/08/2015), *Briefing: Migration to the UK: Asylum*, The Migration Observatory, University of Oxford

<sup>2</sup> [www.gov.uk/government/statistics/immigration-statistics-april-to-june-2015](http://www.gov.uk/government/statistics/immigration-statistics-april-to-june-2015)

<sup>3</sup> Information provided by Home Office

<sup>4</sup> Blinder, S. (13/08/2015)

The legal system is complex and its negotiation presents a daunting task for anyone who lacks the relevant training and experience. For an asylum seeker this task is made worse by their unfamiliarity with local language and culture, by lack of personal support networks and by their precarious financial situation. For many it is further compounded by deteriorating physical and mental health, including post-traumatic stress disorder, considered as being 'greatly underestimated' by the Faculty of Public Health<sup>5</sup>. Asylum seekers who are also potential victims of trafficking and unaccompanied asylum seeking children also present particular vulnerabilities.

The decision-making process for asylum cases has been described as 'adversarial' and as operating within a 'culture of disbelief' by the Home Affairs Committee<sup>6</sup>. This adversarial approach to processing asylum claims, together with the vulnerabilities presented by asylum seeker clients, including the absence of a common culture or language, poses a challenge for legal representatives as well as for their clients. Weaknesses in the support provided will be magnified in their impact on the client. It is all the more imperative therefore, that, although challenging, legal representatives recognise and work to meet the distinct needs of their asylum seeker clients.

## **Methodology**

This paper was prompted by discussions in a number of networking forums (in particular the Refugee and Asylum Forum) around the experiences of some asylum seekers in relation to legal support provided during the asylum process. The Refugee and Asylum Forum comprises a number of public agencies, charities and community organisations which provide support to asylum seeker and refugee organisations.

After an initial discussion with the Law Society, NISMP agreed to source case studies to illustrate some of the legal representation issues faced by asylum seekers. This paper developed from the process of sourcing these case studies when it became clear that experiences of asylum seekers in Northern Ireland mirrored the situation in Britain where a lack of robust monitoring in relation to legal aid funding was identified as a factor underpinning some of these issues. The paper therefore also considers whether the administration of legal aid in Northern Ireland might be key to influencing the quality of legal representation for asylum seekers.

The third part of this paper, 'Experiences of Asylum Seekers in Northern Ireland', relies in part on anecdotal evidence collected from interviews with asylum seekers, where the interviewees related their understanding of the experiences of other asylum seekers in addition to their own. Similarly, the contributions of the support workers also included the

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<sup>5</sup> [www.fph.org.uk/uploads/bs\\_asylum\\_seeker\\_health.pdf](http://www.fph.org.uk/uploads/bs_asylum_seeker_health.pdf)

<sup>6</sup> [www.publications.parliament.uk/pa/cm201314/cmselect/cmhaff/71/7104.htm](http://www.publications.parliament.uk/pa/cm201314/cmselect/cmhaff/71/7104.htm)

experiences of third parties which they had deliberately sought out when preparing their input. In the main it was possible to triangulate the evidence relating to third parties by checking it with other evidence provided. It was acknowledged by all those who contributed that asylum seekers are often reluctant to complain about service received as they fear it will negatively impact upon their asylum claim. They are also often unfamiliar with legal procedures and so unclear as to the level of service they can expect.

However, in spite of the anecdotal nature of some of the evidence presented, we believe that it presents a case for a more robust consideration of the issues raised and of how the legal journey for asylum seekers can be better monitored for quality on outcome of the case as well as on expenditure of public money.

We also acknowledge that there is undoubted good practice in the area of legal representation for asylum seekers in Northern Ireland which is not reflected in this paper due to its focus on issues that have been identified by asylum seekers and support workers.

## Legal Representation of asylum seekers: issues identified in GB

There are five stages in the asylum process where legal assistance will be required:

- Preparation and submission of an asylum claim
- Preparation and assistance for an appeal, in the event of a negative decision
- Representation of the appellant at the appeal hearing
- Legal advice in the event of a negative court decision
- Legal advice regarding any expulsion decision<sup>7</sup>

Post-decision, if the asylum seeker has been granted refugee status, legal representation will again be needed if the refugee is eligible to apply for family members to join him/her in the UK. This is a legal area in which complexities related to the asylum process demands expert and experienced legal advisers<sup>8</sup>.

In Britain, immigration practitioners who carry out services under a legal aid contract must be accredited through the Immigration and Asylum Accreditation Scheme (IAAS), regulated through the Law Society.

Although the majority of asylum seekers will qualify for legal aid, a series of cuts in this area has narrowed the scope of legal support available. Legal aid has been removed for asylum interviews and a new requirement has been introduced whereby legal firms must have a success rate of 40% in appeals to qualify for public funding. The Institute of Race Relations describes the removal of legal aid for asylum interviews as causing ‘enormous harm’ to the asylum process and cautions that the 40% success rate requirement has meant that cases perceived as borderline or risky are being refused funding<sup>9</sup>.

The constraints of Legal Aid Agency contracts make it difficult therefore, for legal representatives in Britain to provide initial advice, assist in preparing statements or attend interview. They are further constrained by the system of fixed fee funding in which they are paid a fixed fee regardless of the number of hours spent on a case. In addition, this system fails to incentivise good quality work, and indeed it has been found that in 27.3% of asylum and immigration cases, legal representatives earned over twice as much through fixed fees as they would have if they had been paid at an hourly rate<sup>10</sup>.

Refugees have identified mutual respect, well-researched evidence, a proactive approach, good communication and accessibility as among the attributes of good quality legal

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<sup>7</sup> Anderson, B. & Conlan, S. (2014), *Providing Protection: Access to early legal advice for asylum seekers*, Irish Refugee Council, Asylum Aid, EPIM, COMPAS, Human Rights Centre

<sup>8</sup> Beswick, J. (2015), *Not so Straightforward: the need for qualified legal support in refugee family reunion*, British Red Cross

<sup>9</sup> [www.irr.org.uk/publications/briefing-uk/](http://www.irr.org.uk/publications/briefing-uk/)

<sup>10</sup> Gibbs, J. & Hughes Roberts, D. (2012), *Justice at Risk: quality and value for money in asylum legal aid*, Runnymede

representation<sup>11</sup>. While these are undoubtedly qualities of good legal representation in any field, they take on an even greater importance in the context of asylum claims where, in the absence of much material evidence, cases are more likely to hinge on the credibility of the claimant. Cases and evidence gathering will involve careful and thorough communication with the claimant with whom the solicitor is unlikely to share a first language or culture. However, in spite of these requirements, the quality threshold for legal aid funded services requires only that communication is 'adequate but limited' and advice and work 'adequate although it may not always be extensive'<sup>12</sup>. The impact of this on clients is evident from case studies collected by Refugee Action where asylum seekers describe the stress of negotiating an alien system when contact with their solicitor is sparse, irregular or confusing<sup>13</sup>. One private practice solicitor commented:

"When we see files we are surprised by how little work has been done... The solicitor never took instructions from client straight after the interview, did not go through it or raise issues about the interview. The representative may cause harm by not thinking about it and may not reflect on what should be passed to the Home Office or not"<sup>14</sup>.

The quality of legal representation for asylum seekers was raised as an issue of concern in a report of a Home Affairs Committee on Criticisms of the Asylum System, with some practitioners described as 'unscrupulous'. It was noted that although asylum seekers will often complain informally about the quality of legal service received, they are rarely willing to make a formal complaint<sup>15</sup>.

Asylum seekers whose claims for asylum have been rejected are often refused legal aid for controlled legal representation (CLR) at Tribunal. Legal aid will only be granted for Tribunal if the case is considered by the solicitor to have at least a 50% chance of success. However, of 44 clients who were refused CLR and whose cases were reviewed by an Independent Funding Adjudicator through Refugee Action's 'Access to Justice' project, two thirds got their CLR restored. This suggests that some solicitors refuse CLR because they do not understand the merits of the case. As a result asylum seekers, if unable to find alternative representation, may find that they have to represent themselves at tribunal. In the financial year ending 2012, in London alone, 1072 appellants attended the First-Tier Tribunal without legal representation<sup>16</sup>. Given that appellants with representation have a 53% success rate

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<sup>11</sup> Ibid.

<sup>12</sup> Legal Aid Agency (April 2013), *Independent Peer Review of Legal Advice and Work, Final Process Paper*

<sup>13</sup> Hutton, C & Lukes, S. (Oct 2013), *An interim external evaluation of Refugee Action's Access to Justice Project*, Refugee Action

<sup>14</sup> Ibid.

<sup>15</sup> [www.publications.parliament.uk/pa/cm201314/cmselect/cmhaff/71/7102.htm](http://www.publications.parliament.uk/pa/cm201314/cmselect/cmhaff/71/7102.htm)

<sup>16</sup> Hutton, C & Lukes, S. (Oct 2013), p.11

compared with just a 23% success rate for all appellants, the impact of being refused CLR is significant<sup>17</sup>.

Once an asylum seeker is appeal rights exhausted, it becomes increasingly difficult to access legal aid. As a result of poor quality representation an asylum seeker can therefore get to the end of the decision-making process without ever having had the merits of his/her case properly assessed. With few legal options remaining, no access to publicly funded legal aid, unable to work and NASS support reduced or removed, many will find themselves in destitution.

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<sup>17</sup> [www.pafra.org.uk/2010/11/79-of-asylum-seekers-are-wrongly-refused-legal-aid-at-appeal/](http://www.pafra.org.uk/2010/11/79-of-asylum-seekers-are-wrongly-refused-legal-aid-at-appeal/)

## **Experiences of Asylum Seekers in Northern Ireland**

For this briefing paper I met with the Director of the Northern Ireland Community of Refugees and Asylum Seekers (NICRAS), 3 people who had, or who were currently going through the asylum system and an asylum support worker. I also had written input from a solicitor in private practice and two support workers with two separate support organisations.

Similar to experiences of asylum seekers in GB, the problems faced by asylum seekers in Northern Ireland with regard to their legal representation can be grouped into the following categories:

- Poor communication
- Lack of support in understanding or preparing for each stage of the asylum process
- Poor quality immigration advice

### **Poor communication**

All those who contributed to this briefing paper highlighted the frustrations of asylum seekers regarding the lack of clear and regular communication from their solicitor. This was described as the ‘main complaint’ by one respondent. It was reported as being common for clients, most of whom are on an extremely limited income (Section 95 weekly payments of £36.95), not to have their phone calls returned or to make futile trips to the solicitor’s office in the hope of speaking to someone about their case. On a number of occasions they have had to seek help from a third party to help them get an appointment with their solicitor as they have had no success in doing this on their own. While language barriers are clearly an issue here, this problem of access has also been reported by asylum seekers who have good levels of English, and support organisations have also had difficulty in successfully following up on behalf of clients.

In many instances the lack of a shared language or culture demands an approach to evidence gathering and communication that is necessarily more time consuming. The Office of the Immigration Services Commissioner (OISC) which regulates immigration advisors, recognises this in their code of standards which includes that “an adviser must ensure that the client receives a full explanation, using an interpreter to explain if necessary, the implications of their position and any proposed course of action. This advice and any instructions must be confirmed in writing”<sup>18</sup>. In Northern Ireland however, there is a lack of OISC accredited advisers, particularly those accredited above a Level 1. On the other hand, solicitors in Northern Ireland are subject to a statutory and regulatory regime designed to address the range of business which their clients require<sup>19</sup>. However, interviewees for this paper believe that because asylum seekers are a relatively new and small client group –

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<sup>18</sup> [www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/322737/code\\_of\\_standards.pdf](http://www.gov.uk/government/uploads/system/uploads/attachment_data/file/322737/code_of_standards.pdf)

<sup>19</sup> [www.lawsoc-ni.org](http://www.lawsoc-ni.org)

albeit one which is growing in number year on year – their particular support needs are not always being met by their legal representatives. For example, one interviewee who has worked with a number of asylum seekers in Northern Ireland believes that advice is seldom put in writing for clients who, “clearly leave their appointments with no clue about what they have just been advised”.

Asylum seekers also reported that it was often left to them to provide their own interpreters when meeting with their solicitor, as well as provide the translation needed for documents. A complaint was also made about the quality of translation provided in courts. One asylum seeker who required interpretation from French to English did not always understand the interpreter’s French and, once she had improved enough in her own English, she realised that the translations given in court were not always accurate. In another case described by an asylum support worker, a document in Mandarin which was presented to the court, contained ‘egregious errors’.

While misunderstandings because of lack of clarity in communication are unintentional, the consequences for the asylum seeker can be significant. One interviewee described a case involving a solicitor who had failed to submit a fresh asylum claim as instructed by his client. This resulted in the client spending some months collecting evidence to support this claim before being informed by the Home Office that she was at risk of detention because she didn’t have any outstanding application. In another case, an interviewee referred to an instance in which a solicitor took thirteen days to notify his client about a Home Office information request needed to assess his eligibility to NASS support. The client was consequently left entirely destitute, accommodated by friends and living off a £10/week emergency support from the Red Cross.

In a further case, it was reported that an asylum seeker from the Horn of Africa, who had had the same solicitor for a few years, was transferred to another solicitor without his informed consent. This occurred when he signed a form presented by this second solicitor offering, what the client believed to be, free independent advice on his case. It transpired however, that this solicitor was offering to take on the case and the form signed by the asylum seeker gave formal consent for this transfer. Once the misunderstanding came to light the solicitor refused to return the client’s papers to the original solicitor. The matter had to be resolved in court which ruled that the case should be returned to the original solicitor. This occurred while a judicial review of the case was pending and added additional stress to what was already a considerably stressful situation.

Asylum seekers have identified patterns of poor practice by some individual solicitors. The solicitor of one West African asylum seeker, having agreed to attend his asylum interview, sent her brother instead, without any advance notice. In conversations with others who had used the same legal firm, he found out that this had happened previously. Although the brother may well have been a solicitor (this fact was not clear from the interview), the point made by the interviewee was that this change in circumstances was a significant one for him

and had not been communicated to him beforehand, thus adding to the stress of the asylum interview. Another asylum seeker reported that his solicitor neglected to inform him that he could appeal to the High Court until 5 days before the time limit to submit this appeal elapsed, and at the same time informed him that he would no longer be able to act as his legal representative. As a result the client lost his NASS support. Afterwards, in conversations with others who had used the same solicitor the client discovered that the same thing had happened to four other asylum seekers.

While solicitors have a right to drop asylum seeker clients before Tribunal hearings if they don't believe the case has sufficient merit, interviewees have identified an issue of this decision being communicated to the client very close to the appeal deadline. In one instance, the solicitor dropped his client the day before the appeal deadline. This client was naturally unable to find a solicitor to present his case before the deadline elapsed. As a result, when the client did find a new solicitor who believed that there were merits in proceeding, the deadline had already passed and the client had to therefore submit a fresh claim. He received his refugee status a year later. For the client the consequences of this were devastating as the delays affected the levels of his NASS support and he was effectively destitute during this year. The consequences for the public purse were that public money had not provided the appropriate and expected legal support.

There is a clear need for solicitors who have asylum seeker clients in Northern Ireland to ensure that their communication processes are effective and appropriate for this vulnerable set of clients. Although interviewees gave evidence of good practice, referring to how solicitors had proved helpful in difficult situations, e.g. in recognising the additional client care that was needed in the case of a client with mental health needs, this was inconsistent. In GB the IAAS accreditation scheme outlined above includes standards of competence relating to communication and client care, which helps ensure consistency as to how these client needs are addressed.

### **Lack of support in understanding or preparing for each stage of the asylum process**

All respondents remarked that at the beginning of their legal journey, asylum seekers will have very diverse levels of understanding of the asylum process and a generally poor grasp of the role of the solicitor within this. Some are even unaware that they will need to undergo a legal process in order to be recognised as a refugee.

Interviewees spoke of solicitors not providing any, or sufficient, explanation regarding the asylum process and asylum seekers therefore relying on community members or support organisations for this information. Interviewees also spoke of solicitors not giving any additional information to help explain letters received from the Home Office or Courts. One interviewee was aware of Tribunal hearings which took place where the client had received no briefing from their solicitor, even in cases where they were expected to give evidence.

The substantive interview is arguably the most important stage of the asylum process and as such requires intensive preparation. Legal Aid in Northern Ireland allows for legal advice prior to Tribunal, generally up to a limit of £300. In theory therefore, solicitors should be able to provide some level of preparation for the interview and even attend this with their client. However, in the experience of the interviewees for this paper, this is rarely done. It is not uncommon that, after the initial contact with the solicitor, the asylum seeker is requested not to contact them again until they have a date for their substantive interview. One asylum seeker who had to wait 18 months for his interview received no contact at all from his solicitor during this time.

Those who have been through the asylum system in Northern Ireland or who are currently going through the system stated that, prior to the asylum interview, they hadn't been given any guidance by their solicitors about evidence that might be useful in their case and how this might be obtained. They could see no evidence of preparation done by the solicitor for their interview and there was no client statement taken which would have helped identify evidence required. Where their solicitor indicated the type of evidence needed for Tribunal, it was left to the client themselves to do this research, particularly when there was a language issue. This practice of relying on clients to do their own research was described by a support worker as being particularly pervasive.

One respondent was aware of a solicitor who, in three separate cases, failed to show up at Tribunal in spite of being on record with the court as being the legal representative for each one. This clearly leaves the appellant in an extremely vulnerable position, without the knowledge, experience and often even the language to defend his/her own case.

A further complaint regarding the quality of legal support was in relation to the transfer of files between solicitors. Clients may find that they have to change solicitors if, for example, their initial solicitor feels that they are unable to represent the case at Tribunal. Asylum seekers have found that the initial solicitor will not always hand over the case files promptly to the second solicitor and some will not hand them over unless there is Legal Aid provided for the administration costs. With the tight deadlines for Tribunal appeals, any delay in developing a case can impact considerably on individuals and their families.

One interviewee described the relationship between solicitors and clients as being a 'bullying' one with clients feeling too intimidated to ask questions. However another considered that the time and work pressures within a legal firm, together with differences in language and culture, could well result in asylum seekers feeling poorly supported, although these consequences were certainly unintended.

### **Poor quality immigration advice**

There was a belief on the part of some interviewees that with rising numbers of asylum seekers and of people needing immigration advice, more legal firms are beginning to move into this area of law. However, they may lack the experience and understanding that is needed to support often very vulnerable people in matters which “involve some of the most complex issues of law imaginable”.

In some instances solicitors have been unaware of the statutory defence for refugees who have entered the UK on false papers and have consequently advised clients to plead guilty. This resulted in devastating consequences for two asylum seekers/refugees interviewed for this paper who ended up in prison due to this failure on the part of their solicitor to advise appropriately. These asylum seekers had engaged, separately, the same solicitor who provided the same advice in each case. This same solicitor also advised each of these asylum seekers that they had no rights to appeal the initial refusal of asylum from the Home Office. As a result, for one of these asylum seekers it has taken years to gain her refugee status and the other is still in the asylum system. In these instances public funds were wasted, not just on the initial legal aid to the solicitor to provide advice, but also on prosecution costs and additional court hearings related to these cases. The criminal convictions which resulted from this poor legal advice will continue to have consequences for the individuals involved by, for example, making it more difficult for them to secure employment or to attain citizenship.

In a separate incident, a destitute asylum seeker who was hospitalised because of his mental health received no support from his solicitor who could have helped him to apply for NASS support and thus be allocated accommodation and basic financial assistance. Again, consequences for the client were acute and distressing and public money could have been used more efficiently. The attitude of this solicitor contrasts markedly with a similar case in which a client with acute mental health needs was able to retain his accommodation after his solicitor successfully managed to block an eviction order.

### **Successful Initiatives to Improve Legal Representation for Asylum Seekers**

Good quality and timely legal advice is key to an efficient and effective asylum system. When there is confidence in the legal representation that is provided it is less likely that cases will be protracted with associated costs to the public purse. There is also evidence that it may, in the case of unsuccessful claims, increase uptake of Assisted Voluntary Return programmes<sup>20</sup>.

- The Early Legal Advice Project (ELAP) which was piloted in the Midlands, aimed to frontload legal support at the early stages of the asylum process. This support included the solicitor working with the client to produce a witness statement prior to the asylum

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<sup>20</sup> Anderson, B. & Conlan, S. (2014)

interview and attending the interview together with the client. In these pilot cases, legal representatives were paid at an hourly rate rather than by fixed fee. An evaluation of this pilot in 2013 by the Home Office found that although ELAP increases the time to make a decision, it also increased the overall grant rate. It also concluded that the ELAP process offered the most benefit to more complex cases<sup>21</sup>.

- The European Commission recognises that asylum seekers must be properly informed of asylum procedures within the country in which s/he is seeking asylum in order to better ensure compliance with international and legal obligations. It recommends that “Member States should therefore have the possibility to use the most appropriate means to provide such information, such as through non-governmental organisations or professionals from government authorities or specialised services of the State”<sup>22</sup>. The Northern Ireland Community of Refugees and Asylum Seekers (NICRAS) has also recognised that asylum seekers are often left confused and frustrated by the asylum system partly because they are largely in the dark about each stage of the process and rely on each other for information and advice. While this is important it can also easily lead to some commonly held misunderstandings. NICRAS has therefore set up an information and orientation clinic which takes asylum seekers through each stage of the process. This initiative has been well received by asylum seekers. One client from Sudan, after attending this clinic had a better understanding of what would constitute evidence in his case and was therefore able to source this for his lawyer. Other clients felt more confident when attending their asylum interview as they better understood their rights within this process.
- In England, Refugee Action’s ‘Access to Justice’ project and the Manuel Bravo project support asylum seekers whose solicitors have withdrawn their services at appeal. Both projects seek to independently establish the merits of a case and, if successful will refer it back to a legal aid lawyer<sup>23</sup>.

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<sup>21</sup> [www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/199962/horr70.pdf](http://www.gov.uk/government/uploads/system/uploads/attachment_data/file/199962/horr70.pdf)

<sup>22</sup> <http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex:32013L0032>

<sup>23</sup> Hughes-Roberts, D. (Jan 2013), *Rethinking asylum legal representation: promoting quality and innovation at a time of austerity*, Asylum Aid

## Conclusions and Suggested Ways Forward

It is internationally recognised that those who have suffered persecution in their home country and cannot rely on that country's government for protection, have a right to claim asylum outside that country. This is as much a legal journey as it is a physical one and the role of the legal representative for the asylum seeker is central to the fair determination of each individual's case.

In 2014, 59% of asylum applicants in the UK were unsuccessful although 28% of these initial decisions were overturned on appeal<sup>24</sup>. A further – unknown – percentage of those who have their appeals dismissed are permitted to apply for judicial review or submit a fresh claim. This protracted judicial process has obvious implications for the asylum seeker who will remain in limbo, unable to work or integrate meaningfully into the local community, while their case remains undetermined. It also has implications for the public purse through the additional demands that a prolonged process puts on the legal aid budget, and it raises questions about the integrity of a system in which an asylum seeker can find themselves appeal rights exhausted without ever feeling that their case was adequately presented.

There are undoubted challenges for solicitors representing asylum seekers: the laws and processes governing asylum are complex and it is difficult, if not impossible to source documentation or witnesses. By its nature therefore, cases may hinge on the credibility of the client and demand a quality of relationship with the client not required in other areas of law. Language barriers, cultural differences and a client group which suffers disproportionately from poor mental health and the affects of trauma, will further complicate the task of effective representation.

In England it has been suggested that the issue of inconsistent quality in legal representation for asylum seekers is linked to the system of fixed fees and low quality thresholds for legal aid funding. Concerns around legal representation for asylum seekers have been raised at a number of professional fora in Northern Ireland, in particular at the Refugee and Asylum Forum, the Immigration Subgroup of the Racial Equality Strategy and by NICRAS. Those who work with asylum seekers in Northern Ireland believe that there are a number of reasons why asylum seekers are unwilling to formally complain about the service they have received from their solicitors. In some instances they may be unaware of the complaint process, suspicious of public institutions or fearful that a complaint will affect the outcome of their case. For others, poor mental health or a significant language barrier may prevent them from coming forward.

As the number of asylum applications in Northern Ireland continues to rise, so the number of solicitors beginning to practice in this area of law has also increased. It is therefore of mounting importance that the quality of legal representation is effectively monitored and

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<sup>24</sup> Blinder, S. (13/08/2015)

regulated in order that there is fair access to justice for asylum seekers and that public expenditure in this area is efficient and effective.

**Suggested ways forward**

- That the Law Society meets with affected stakeholders (NICRAS members, support organisations) to discuss the findings of this report and possible ways forward.
- That the Law Society considers how to promote the complaints procedure to the asylum and refugee community.
- That the Legal Services Agency monitors the quality of immigration and asylum advice and services provided through legal aid contracts and works to incentivise good practice.
- That the DoJ supports the expansion of information and orientation clinics, along the lines of the NICRAS model, which provide information on the asylum process and the quality of service that should be expected from legal advisors.
- That the DoJ facilitates the OISC accreditation of voluntary and not for profit organisations, by arranging for OISC exams to be held in Northern Ireland.