



No access to justice: legal aid and destitute asylum seekers

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PAFRAS (Positive Action for Refugees and Asylum Seekers) is an independent organisation based in Leeds. By working directly with asylum seekers and refugees it has consistently adapted to best meet and respond to the needs of some of the most marginalised people in society. Consequently, recognising the growing severity of destitution policies, in 2005 PAFRAS opened a 'drop-in' providing food parcels, hot meals, clothes, and toiletries. Simultaneously experienced case workers offer one-to-one support and give free information and assistance; primarily to destitute asylum seekers. PAFRAS works to promote social justice through a combination of direct assistance, individual case work, and research based interventions and analysis.

Below an underclass, destitute asylum seekers exist not even on the periphery of society; denied access to the world around them and forced into a life of penury. To be a destitute asylum seeker is to live a life of indefinite limbo that is largely invisible, and often ignored. It is also a life of fear; fear of detention, exploitation, and deportation.

It is from the experiences of those who are forced into destitution that PAFRAS briefing papers are drawn. All of the individual cases referred to stem from interviews or conversations with people who use the PAFRAS drop-in, and are used with their consent. As such, insight is offered into a corner of society that exists beyond the reach of mainstream provision. Drawing from these perspectives, PAFRAS briefing papers provide concise analyses of key policies and concerns relating to those who are rendered destitute through the asylum process. In doing so, the human impacts of destitution policies are emphasised.

The third of these briefing papers focuses on the provision of legal aid in relation to destitution policies. Drawing on previous research it argues that drastic reductions in legal aid, combined with changes in the way asylum cases are processed, are culminating in a system through which increasing numbers of people are being forced into destitution. Whilst in turn, for those who seek to secure legal representation if destitute, access to legal justice is severely curtailed. By focusing primarily on the provision of legal assistance what follows does not concentrate on the quality of advice, or the legal process except where relevant to the aims of the briefing paper.

Using data from interviews with people who have previously, or are, experiencing destitution it

suggests that increasing numbers of people are being locked into a peripheral existence: vulnerable to exploitation and with little recourse to legal aid.

Reductions in legal aid

In a speech to the Labour Party conference in 2003 the former Prime Minister Tony Blair announced his vision of the challenges facing 21st Century Britain. In a 'world of mass migration', he proclaimed,

*We have cut asylum applications by a half. But we must go further. We should cut back the ludicrously complicated appeal process, de-rail the gravy train of legal aid, fast-track those from democratic countries, and remove those who fail in their claims without further judicial interference.*¹

These were not empty words, and came alongside wholesale changes to the asylum legal system. In November of that year the Asylum and Immigration (Treatment of Claimants, etc.) Bill was first introduced to the House of Commons, and the legislation received royal assent on 22 July 2004. The Act introduced a number of reforms that fundamentally reshaped the framework of legal services. All were framed by a desire to curtail the level of legal assistance available to those seeking asylum.

Drastic cuts in the amount of available funding reduced the amount of time lawyers could initially spend with their clients from around forty, to just five hours in a move that was described as 'the single greatest blow to the protection of human rights and the right of asylum...'.² This was despite grave concerns – frequently from lawyers themselves – that such restrictions would not allow enough time for cases to be adequately prepared. Moreover, the rights of appeal against negative decisions were fundamentally curbed. An Asylum and Immigration Tribunal (AIT) was created that allowed only one appeal against a case being rejected. And under provisions of the Asylum and Immigration (Treatment of Claimants, etc.) Act this appeal normally has to be lodged within five working days after receipt; a time limit that has

¹ Blair, T. (2003) *Speech to the Labour Party Conference*, Daily Telegraph Online, 1 October. <http://www.telegraph.co.uk>

² Wren, M. cited in Kelly, A. (2003) 'Asylum Aid condemns move to limit legal aid', *Third Sector*, 3 September. <http://www.thirdsector.co.uk/Channels/Fundraising/login/612337/>

been described as woefully short by a variety of bodies and organisations.³

In order to limit the amount of the legal aid budget further, lawyers working on asylum appeals were subjected to a system of retrospective funding. As such, legal aid is awarded only after a case has been heard by the AIT. The case has to have a 'significant prospect of success' in order for this money to be received and, consequently, lawyers are required to make a decision before they assist an appeal. What this has created is an enforced form of 'no win, no fee' legal aid in all but name.⁴ The repercussions of which are felt by asylum seekers who are left with little time to look for further legal representation if a solicitor decides they cannot 'risk' representing them. To compound this further, many lawyers have withdrawn their contracts with the Legal Services Commission (LSC) and according to the head of one firm, which had maintained a 'success rate' of 80-90% on its cases, the legal aid system has been 'hijacked by the government'.⁵

The systematic withdrawal of legal provisions over this period ensured that justice, according to Asylum Aid and Bail for Immigration Detainees (BID), is simply 'denied' from many people seeking asylum.⁶ The introduction of a New Asylum Model (NAM) in April 2007, piloted in certain areas prior to this, has compounded this yet further. Before it was fully operational, the Home Office claimed that the NAM would build on 'progress' already made of 'reducing applications and increasing removals'.⁷ The NAM aims to ensure that all cases are dealt with at considerable pace: with a maximum target of 6 months a claim. And in order to do so, claims are segmented into a number of categories on arrival. These sections indicate the manner in

which a case will be processed, with those categorised immediately as having little chance of 'success' fast-tracked, often with the claimant held in detention. The responsibility for segmenting claims is given to an individualised case worker, who in turn represents the Border and Immigration Agency if an appeal against a negative decision is lodged. Case workers, not lawyers then, take primary responsibility for an applicants claim, and as PAFRAS has stated elsewhere:

*[C]ase workers have become gatekeepers of 'justice'; making elementary decisions on peoples lives whilst at the same time working to an agenda which specifically seeks to process cases as fast as possible.*⁸

Destitution and accessing legal aid

Whilst there are no substantiated figures, it is estimated that there are 280,000 destitute asylum seekers across the UK. Many require urgent legal assistance but there are huge restrictions on the level of legal services available, detailed above. Particularly under the auspices of the NAM, many asylum seekers who have been given a negative decision on their claim have not had time to amass relevant evidence before their case is heard. Traumatized when they arrive, often with no knowledge of the asylum process, they are forced into an adversarial system where the burden of proof is solely on the details they can present of their previous persecution.

Of the destitute asylum seekers who came to PAFRAS for assistance in 2007 77% had new evidence – or were in the process of acquiring it – with the aim of presenting this to a lawyer in order to submit a 'fresh claim'.⁹ As Table 1 (page 4) shows, this constituted by far the largest form of legal assistance required. PAFRAS staff are not lawyers, and do not provide immigration advice. Yet case workers do assist people trying to find legal representation and see first hand the difficulties people are presented with. As one destitute asylum seeker has concisely explained:

*I can't find a lawyer and so I can't show the court the danger I'm in back home. This is a legal system which you cannot get into. I am trapped in poverty, and it traps me outside the law.*¹⁰

³ See for example Council on Tribunals (2005) 'Annual Report: 2004/2005', London: Stationary Office, p. 15.

⁴ See Joint Council for the Welfare of Immigrants. (2005) *Response to the Asylum and Immigration Tribunal – The Legal Aid Arrangements for Onward Appeals Consultation Paper*, London: Joint Council for the Welfare of Immigrants.

⁵ Cited in Rohan, P. (2004) 'Top asylum firm quits legal aid', *Law Society Gazette*, 5 March. <http://www.lawgazette.co.uk/news/general/view=newsarticle.law?GAZETTENEWSID=37256>

⁶ Asylum Aid and Bail for Immigration Detainees (2005) *Justice Denied: Asylum and Immigration Legal Aid – A System in Crisis*, London: Asylum Aid and Bail for Immigration Detainees.

⁷ Home Office. (2006) *The New Asylum Model – Swifter Decisions, Faster Removals*, Home Office Press Release, 18 January. <http://press.homeoffice.gov.uk/press-releases/new-asylum-model-swifter-decisio>

⁸ PAFRAS (2007) *Submission to the Independent Asylum Commission*, Leeds: PAFRAS, Para 3.1.7.

⁹ For information on 'fresh claims' see Immigration Law Practitioners' Association (2007) *Fresh Asylum Claims*, London: Immigration Law Practitioners' Association.

¹⁰ Interview with author, January 2008.

Table 1 – legal representation and destitute asylum seekers: PAFRAS ‘service users’ 2007

Legal representation	Proportion of destitute ‘service users’ needing legal representation (%)
No legal representation - needs fresh claim	77
No legal representation - wants VARRP	1
No legal representation - other assistance needed	22

It has been argued elsewhere that destitution is being used in order to force people to leave the country if their claim is rejected.¹¹ This enforced penury, however, further has repercussions with regard to legal aid. As another destitute asylum seeker has explained *‘I have nowhere to sleep and nothing to eat. I know I need a lawyer but I have to make sure I live first’*.¹²

In this context, a significant and increasing number of people who require legal assistance are less likely to have the wherewithal to obtain such help. As such, the reduction of legal aid at every stage of the asylum process has specific repercussions when, and if, a claim for asylum reaches a negative decision. This is compounded under the NAM, wherein the core rationale is to process claims as quickly as possible and, as such, remove people from the asylum ‘system’ one way or another. For those whose claims are rejected, destitution policies intentionally deny them access to the normal provisions of society. And the restrictions on legal assistance for their asylum claims further have repercussions if other legal assistance is required. One PAFRAS ‘service-user’ for example, who had been the victim of a racist attack, did not want to pursue any legal challenge for fear that his own status would be revealed and he would be deported.¹³

Legal exploitation

Massive reductions of available legal assistance have fostered a climate in which legal exploitation is rife. Despite the implementation of a regulatory mechanism (through the Office of the Immigration Services Commissioner), unscrupulous advisers continue to profit directly from extortionate costs for

their ‘expertise’. PAFRAS is aware of numerous examples where the inherent vulnerability of destitute asylum seekers has been exploited by lawyers for substantial financial gain. These include a case where an individual was electronically tagged, after he had attempted to escape from a detention centre where he claims that he was abused by staff. A lawyer stated that he would be able to have this tag removed, but did not do so and charged over £1000 for his work. Similarly, a lawyer charged over £3000 for an application for a judicial review that consisted of little over 3 pages of A4 paper. The above are only two examples among many, yet they indicate the inherent vulnerability of those requiring urgent legal representation when their claim for asylum has been rejected. Whereas on the one hand a regulatory mechanism has been established to crack-down on exploitative legal advisors, on the other restrictions on legal aid foster the conditions in which exploitation is possible. In such situations asylum seekers may be forced to work ‘without papers’ in secretive and often dangerous conditions so as to raise the funds necessary for legal assistance – no matter what the costs.

Conclusions

Fundamental restrictions on the amount of legal assistance available, at all stages of the asylum process, have had devastating implications. Compounded by the instigation of the NAM, many asylum seekers suggest that they received inadequate legal assistance when their claims were originally processed. And the implications of this are only compounded further in a context where appeal rights have been curtailed.¹⁴ In the final analysis, for those seeking asylum, legal aid is literally a matter of life or death.

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¹¹ See PAFRAS (2007) *Submission to the Independent Asylum Commission*, Leeds: PAFRAS, Para 3.1.1 – 3.1.12.

¹² Interview with author, January 2008.

¹³ See PAFRAS (2007) *Submission to the Independent Asylum Commission*, Leeds: PAFRAS, Para 5.1.3.

¹⁴ Amnesty International found that in 2004 19% of asylum claims that were rejected went on to be ‘successful’ at appeal. If these appeals were not available it can be assumed that these people would have been returned to their death, or at least significant harm.