PAFRAS

Where now for Justice?
Legal Aid in West Yorkshire

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Laurie Ray
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PAFRAS Briefing Papers

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 this most marginalised of groups in our 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 beyond 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 so doing, the human impacts of destitution policies are emphasised.

Number Crunching

£6 billion
The amount of tax HMRC this year allowed Vodafone not to pay for its takeover of German firm Mannesmann in 2000.

£2.24 billion
The legal aid budget for 2009-10

23 July 2010
The date on which the HMRC—Vodafone deal was announced.

23 June 2010
The date on which not for profit asylum and immigration law firm Refugee & Migrant Justice was finally forced to accept defeat and go into administration.

£800,000
The amount RMJ say they were owed by the Legal Services Commission for work done.

Background

Established in 1949 as one pillar of the welfare state by the post-war Labour government, Legal Aid initially offered free legal advice (and representation) on a narrow range of legal problems focusing largely on family law and divorce cases in particular until the 1970s. That decade saw the increase in legal aid spending in social law categories; driven in part, argues Steve Hynes of the Legal Action Group, by the establishment of a rights-based culture in the UK (Hynes 2008: 2).[1]

In 1997 the legal aid budget stood at £1.5 billion (up from £560 million in 1982) Today the legal aid budget is £2.24 billion (2009-10). However, while the Coalition Government is keen to stress that this is the highest spend on any legal aid system in the developed world, around half of all money spent (£1.12 billion in 2009-10 (NAO 2010: para.13), is spent on legal aid for criminal cases. The National Audit Office, in a 2009 report on the subject, noted that criminal legal aid spending is so high "partly because of a higher level of prosecutions [in the UK] than in many other countries" (NAO 2009: 4).

Government policy and legislation are significant, but infrequently cited, drivers of the increasing cost of legal aid. As Hynes observes, the Children Act (1989) was an important factor in the £170 million increase in the cost of the public law childcare cases under the last government. Equally the 40% increase in police funding implemented by New Labour has had a significant impact on the criminal legal aid budget (Hynes 2008: 2, 5).

In the field of asylum and immigration, between 1999 and 2009 the Home Office introduced six new pieces of primary legislation. The impact of this kind of legislative upheaval on the legal aid bill is routinely ignored by government when talking about rising costs (Op.cit).

1 These are housing, employment, community care, mental health, benefits, debt and public law (Hynes 2008: 2).

Legal Aid Reforms

All this not-with-standing, the second half of the New Labour era saw significant reforms of Legal Aid as the government sought to make good on Tony Blair's 2003 promise to "de-rail" the putative "gravy train of legal aid" (Blair, 2003). Perhaps most significant was the 2007 introduction of a 'Graduated Fees System' for legally aided asylum and immigration advice, which occurred within the framework of a more far reaching reform of legal aid procurement; heralding the future introduction of competitive tendering for legal aid provision.

In July 2006 the Carter Commission, established to pave the way for reform, proposed the marketisation of legal aid procurement and the introduction of 'best value' tendering for contracts to deliver legally aid advice.

Implementation of the Carter Commission's proposals began in 2007 with the introduction of a *Unified Civil Contract* for legal aid provision under which providers bid to deliver set numbers of matter starts (best described as units of advice) over the contract's three-years lifespan.[2] At the same time the GFS was introduced for immigration and asylum cases with the stated intention of:

- enabling more effective control of the budget for community legal advice,
- creating better value for money by "rewarding outputs (cases closed) rather than inputs (hours spent)",
- rewarding efficient providers while "forcing inefficient providers either to change their working practices or to exit the market" and,
- creating an "incentive to get to the heart of a case and resolve it quickly, rather than allowing cases to remain open for extended periods." (MoJ 2009: 38)

The introduction of GFS established three set rates at which cases were to be paid, depending on the stage to which they progressed. The fee payable for each of these stages remains the same regardless of the complexity of the case, and (aside from 'exceptional cases') the amount of time required spending on it to ensure a satisfactory outcome for the client.

In a 2009 review the reforms the Department of Constitutional Affairs (now Ministry of Justice) noted that respondents in the sector identified three central flaws with the Graduated Fees System, arguing that it:

- created a perverse incentives for representatives to cherry pick easier cases and be less willing to assist asylum seekers with more complex cases,
- disincentivised specialisation in complex, more time-consuming and (under the GFS) less profitable work,
- encouraged the inappropriate 'paralegalisation' of casework as more junior and less experienced and knowledgeable staff being used to save money. (Trude & Gibbs 2010: 7; MoJ 2009: 49-51)

In a 2010 report published by the Information Centre about Asylum and Refugees (ICAR) Trude and Gibbs observe that: "the minimum level [of the GSF] is set below the level for high quality work" (2010: 1). This can be explained by the fact that, in asylum and immigration alone amongst all areas of civil legal aid, the LSC set fee levels without reference to reliable data as to what they should be. Indeed, according to

"The problem comes in where the need to do a higher volume of work under the GFS impacts on the quality of work done. I've seen a steady reduction in the quality of files transferred to me from other firms."

- London-based asylum solicitor

Legal Help

Defined as advice and assistance on immigration, nationality, asylum, deportation and terms of entry to stay in the UK excluding issuing and conducting proceeding in a court or tribunal.

Controlled Legal Representation

The preparation for and advocacy of proceedings before the Asylum and Immigration Tribunal (AIT). CLR includes presenting the case at the hearing and any onward appeals or representations before the High Court.

CLR A is paid for cases that proceed to a hearing, ***CLR B*** is paid for those that are determined without going before an immigration judge (i.e. if the defendant or appellant withdraw their case). *(ICAR, 2010: 18)*

2 The Unified Civil Contract was originally intended to run from 1 April 2007 to 1 April 2010, it was later extended to run until 14 November 2010.

the LSC itself, the rationale behind this was wholly expedient. Writing in response to a Freedom of Information request made by the Immigration Law Practitioners Association the they said:

> "The fees have not been predominantly based on historical case costs as per other schemes. Due to changes to legal aid in 2004/05 and again in 2005/06 we do not have reliable and complete historical average costs and in any event changes in processing mean that historical case costs are largely irrelevant…" (quoted in ILPA 2006: 10-11).

Exceptional Cases

A case can be claimed as exceptional when the time taken to complete it means that, if charged at the hourly rate, the work would cost three or more times the fixed fee. Exceptional cases are paid at the hourly rate. (Source: ILPA 2007b)

Similarly, when looking at the level at which to set the exceptional case threshold (which allows providers to recover additional costs for justifiably long cases (see box) the LSC admitted that, "the modelling was primarily undertaken for TFF [tailored fixed fee] providers, and *does not include immigration and asylum cases*" (quoted in ILPA 2006: 56, emphasis added). In a 2006 submission to the LSC on Legal Aid reform, ILPA pleaded that the LSC conduct a one year long exercise to determine the appropriate levels for fees. They were ignored and the LSC introduced its first three year contract regardless.

The LSC has always argued that by taking on a proper mix of 'simple' and more complex cases providers can ensure that on average they will reap a fair reward for the work they do. The reliability of this assessment can be questioned for firms who are granted a small number matter starts to average their income out over, something we will return to later. It becomes meaningless in a situation where a realistic fee level was not established in the first instance.

David Gilmore, a former LSC employee who now runs a consultancy advising firms bidding for Legal Aid contracts, has suggested that some providers 'have taken care to ensure that the time they spend on cases does not exceed the amount of time that they are being paid for.' (Gilmore 2010: 3) The result of this is that cases are closed earlier than they ought to have been, with adverse consequences for the client.

"Fair pay for providing legal aid services is critical in ensuring access to justice. If the pay system is not fair, then the end product that clients receive will not represent true access to justice."
- David Gilmore

Gilmore suggests that this behaviour is actually encouraged by the LSC as both the 2007-10 Unified Civil Contract and the new Standard Civil Contract expressly allow providers to "reduce the amount of time that they spend on cases by up to 20% compared to what they would have spent had they been paid on a hourly rate basis" (Op.cit). Encouraging this behaviour short-circuits the crucial feedback mechanism by which providers record the time spent actually spent on cases so that, in review of all of this data, fee levels can be adjusted to reflect the time actually required to undertake cases.

Thus the while the level at which the GFS was set put providers under a great deal of pressure to reduce the amount of time spent on cases, the LSC also offered them with a get-out clause, allowing them to do so because the alternative was to increae the fee.

For private law firms another alternative to reducing the time spent on cases exists in reducing the numbers of asylum cases they take on. Losses can then be offset by doing more profitable (private) work (exiting the legal aid market altogether also remained an option). For not-for-profit (NfP) providers with no or very few private clients (such as Law Centres or Refugee & Migrant Justice) offsetting has not been an option, one explanation of why they have been forced to fold (see below).

For less committed or scrupulous representatives, or indeed those with a keener survival instinct, the GFS establishes a situation in which they will profit from looking to their own financial interest before the interests of their clients and are rewarded for doing so. Thus, Trude and Gibbs argue that the overall effect of the introduction of GFS has been to distribute funds towards providers who spend less time on cases and away from those representatives who achieve the best results (Trude & Gibbs 2010).

The relatively low priority given to quality control in implementation of the Carter reforms serves to reinforce this view. While the Carter recommendations for the implementation of GFS and other elements of marketisation were enthusiastically taken-up, the LSC has proved less zealous in delivering those recommendations con-

cerned with ensuring the quality of advice provided. This is perhaps due to the obvious tension between quality and keeping costs down.

Central amongst Lord Carter's recommendations was the national roll-out of *peer review* from July 2007 as part of the transition to best value tendering, and a proposed 'strict quality threshold', measured by that process, that would have to be met *before* firms were able to tender for legal aid contracts (Lord Carter 2006: 56). Peer review had been established initially as a means of assessing quality of on-going work amongst contracted providers. It allows an experienced case worker from one firm to assess a sample of files from another supplier, quality is measured on a scale of 1 to 5, with one being the highest score. Having initially taken up the idea, in June 2009 the LSC announced that the roll out would be scrapped: no firm would have to pass peer review prior to bidding (Trude & Gibbs 2010: 8). As we shall see later this has had implications for the results of the most recent tender.

The Impact of Reform

The summer of 2010 saw the bankruptcy of Refugee & Migrant Justice (RMJ) a widely respected legal charity representing some 10,000 vulnerable asylum seekers and immigrants, including 900 unaccompanied minors. RMJ attributed its situation to a legal aid payments structure that only paid it at the end of often lengthy complicated cases; they were owed £800,000 in unpaid fees at the time, but unable to pay its bills.

At the time the Secretary of State for Justice Ken Clarke brushed this aside, stating to the House of Commons that "Refugee and Migrant Justice has received substantial support—over and above the support given to not-for-profit and other organisations—to help it transfer to the current payment system", and that RMJ "was paid what was due" but failed to make sufficient 'efficiency' savings. He cited an increase in the number of firms applying to 'do the work' as proof that RMJ was to blame for its demise, and not the system. (Hansard, 2010 cc.1023-4)

Others however have questioned Clarke's confidence in the continued appeal of legal aid work to quality legal practitioners and the accuracy of his assertion that RMJ was the only organisation to face difficulties from the government's reform of legal aid payments. Writing at the time of RMJ's demise, Jon Robins of the legal research company *Jures* noted that almost 20% of Law Centres are under imminent threat of closure while nearly half were in 'serious debt' (Robins, 2010a).

Research conducted in 2009 by the New Economic Foundation also shows that, under the new payments system Law Centres had used up, on average, 70% of their cash reserves to finance their cash flows (Op.cit). In the same period the Law Centres had *reduced* the average amount of time spent on asylum cases. Law Centres up and down the country have been quietly folding, frequently citing problems with their LSC contract as the reason. In 2008 six closed (Pemben 2009), while in 2010 Devon Law Centre and Saltley & Nechells Law Centre in Birmingham both closed.

Confirming the findings of the NEF, and the accusations of RMJ, Nick Woolf, of Saltley and Nechells Law Centre told the Legal Action Group that: "We tried hard to keep the Law Centre going, but without local authority support, we were heavily over-dependent on our LSC contract. The extreme contract culture of the LSC, the impact of fixed fees and payment only on completion of cases stripped us of our limited cash reserves" (LAG 2010).

Freedom of Information?

In our Freedom of Information Request of 22 October (Ray 2010b) we asked the LSC to also provide details of the time recorded for Legal Help and Controlled Legal Representation matters, broken down by provider, for the years 2007-10. We asked for average data per provider but acknowledged that they may what to anonymise the data.

In their response the LSC sent us several hundred pages of computer printouts detailing individual case times. The data is not arranged by provider but it *is* anonymous. Additionally, being in hard copy rather than an electronic format it is completely impossible to analyse in any way without first spending hundreds of hours transcribing it.

Due to this we have been unable to make any useful analysis of how much time providers spend on cases and determine, for example, whether individual providers routinely spend more or less time on cases on average.

The 2010 'Standard Civil Contract'

November 15 marked the beginning of a new three-year Standard Civil Contract for Legal Aid provision in England and Wales. The tender process for this contract, which closed on 28 January 2010, has been plagued by controversy around the Legal Services Commission's declared intention of greatly reducing the number of providers delivering legal aid work and by critical flaws in the selection criteria used. This latter controversy recently culminated in a High Court victory for the Law Society, when the court ruled the family-law tendering process had been unlawful, cancelled its result and ordered the LSC pay £300,000 in costs (Baski 2010b).

On November 8, a similar case brought by South Manchester Law Centre won the right to proceed with a Judicial Review against the tendering process for asylum and immigration. The Judicial Review will be heard in January 2011.

Nine organisations tendered a bid for immigration and asylum work in the Greater Manchester area of which eight scored an equal 53 points for selection criteria. The ninth, the Immigration Advisory Service (IAS), scored *one more point* because it had a caseworker who had *applied* for level three accreditation. On the basis of this one point advantage the LSC awarded them 75% of the matter starts available while the remaining 25% was shared out between the eight other bidders, leaving at least two complaining that the contract they were offered was not viable.

"on the face of it the difference between the Immigration Advisory Service's tender and the Law Centre's tender... is at first blush disproportionate in its impact in terms of the distribution of work...

"I do not see how the mere making of an application for level 3 accreditation demonstrates any level of expertise at all."

- Mr Justice Keith

Mr Justice Keith found two elements of the tendering process to be potentially unlawful. Firstly that the time frame in which bidders could have had their workers accredited to level three was too short to realistically allow them to do so. Secondly he found that *merely applying* for accreditation to level three could not be a valid criterion for assessing the quality of service provision by an organisation. Therefore he ruled that it was potentially irrational that an application for accreditation to level three should give an advantage to one organisation over another in the process. This latter point was considered especially relevant given the entirely disproportionate impact of the criterion on the outcome of the process. Mr Justice Keith further noted that in general the criterion disproportionately benefited larger and national organisations as they could win the point(s) by having a lawyer in any one of the offices that had applied for or achieved level three accreditation, *regardless of where in the country that lawyer was based*[3] (Keith 2010).

According to South Manchester Law Centre's Barrister, the LSC was unwilling "before, during and after the hearing" to consider any settlement outside of court and stated that it was "impossible to redistribute matter starts from successful bidders." (Nicholson 2010) This is noteworthy for two reasons. Firstly many successful bidders are widely understood to have substantially over-bid a theme to which we return later. Secondly, the LSC have stated that no matter starts have been held back for distribution amongst any successful appellants against the tender outcome (LSC 2010c: 4); implying that no contingency plans had been made by the LSC at all. This is quite in keeping with other reports of the LSC's approach. One solicitor said "at [a] meeting with LSC today, the issue of JRs to the immigration tender was raised [and the] LSC appeared to have no contingency plan in place in case they lose" (interview with the author). The LSC's poor relationship with many legal aid providers is a feature deemed worthy of note by the National Audit Office which, in 2009, said that "tensions in the relationship between the Commission and the legal professions [...] have on occasion threatened the delivery of legal aid" (NAO 2009: 6).

PAFRAS has been approached by and lent its support to a number of law firms who are lobbing the Law Society to become in involved in South Manchester Law Centre's Judicial Review. Judicial Reviews can cost a considerable amount of money (witness the £300,000 costs awarded to the Law Society for its JR). Added to this

3 To contextualise this: when the LSC first disclosed the importance of level-three accreditation to winning a new contract there were only 7 level three accredited solicitors in England. After the tender was announced twenty-seven individuals made applications for accreditation.

interveners in Judicial Review hearings (parties that join the case after it has been brought to the court) are normally required to pay their costs *even if they win*. Thus small firms are concerned about the huge risk involved in intervening, the Law Society has so far decline to intervene in South Manchester Law Centre's proceedings or support them in any other practical way.

In the analysis of David Gilmore the LSC may well rue the day it chose to drop the peer review roll-out. Gilmore cites the LSC's abandonment of the peer-review prerequisite as one reason for their needing to devise a 'complex controversial selection criteria in the recent civil tendering exercise' (Gilmore 2010: 2). It was precisely these selection criteria of the family law tender that the Law Society successful challenged in the High Court in September while South Manchester Law Centre's pending judicial review relates to the selection criteria in the immigration and asylum tender. In reply to a freedom of information request made by PAFRAS the LSC confirmed that in all 70 organisation have appealed its decisions, though they do not state how many of the appeals relate to selection criteria and how many to the (less controversial) essential criteria (LSC 2010c: 2).

A combination of the selection criteria used and the LSC's abandonment of the peer review roll-out has also led to a bizarre situation in which top-scoring firms who previously have held legal aid contracts have lost out to newcomers with no peer-reviewed record at all. In October PAFRAS spoke to a Bradford-based immigration caseworker, employed by a firm with offices across Yorkshire. He complained that despite having scored the highest possible score in their most recent peer review they'd failed to win a contract to deliver any legal aid at all while "a small firm around the corner from us have won matter starts for the first time" despite having no proven record (Interview with the author). This reflects what appears to be a wider pattern. Gilmore told the BBC's *Face the Facts* programme that of 14 firms he's advised the one that received the number of matter starts it had bid for was a company who'd had no previous experience of immigration and asylum work (quoted in BBC, 2010).

In the longer term, by removing the peer review quality criteria the LSC may have signalled that is does not value investment in staff and systems development by established suppliers. This in turn can undermine the prospect of future investments by newcomers who may see cutting corners, rather than investing in quality, as the most financially sustainable way to meet LSC targets.

As has been said previously, when originally announcing the tender, the LSC indicated that it was keen to reduce the number of providers in all law areas. According to Catherine Baksi of the Law Gazette approximately 27% of firms that bid in the immigration and asylum category were refused contracts although many organisations have complained of having contracts so small as to make them unsustainable (Baksi 2010a). This has been borne out in the results in West Yorkshire (see below). At the same time, as mentioned above, industry insiders have reported that speculative bidding for contracts in the most recent tender was common place. Indeed, in his ruling on South Manchester Law Centre's JR application Mr Justice Keith noted that:

> "many firms bid for very large numbers of new matter starts, so that if they came first, or first equal, in terms of the number of marks they scored, they would be allocated the number of new matter starts closest to the number they had sought."

A lot of very, very good providers will have to, unfortunately, make staff redundant. So the firms that have invested over the years in quality, in training their staff, in developing excellent systems haven't been rewarded.

- David Gilmore

One reason cited by South Manchester Law Centre for their legal challenge was that the Immigration Advisory Service over bid by 100% on the number of Matter Starts they could actually deliver (Nicholson 2010). In doing so the IAS appears to have been responding to the tender in the way that the LSC wanted bidders to do, and trying to protect its chances of success by aiming for a large market-share. However, as we shall see this has led to a massive concentration of supply in the hands of a very small number of firms.

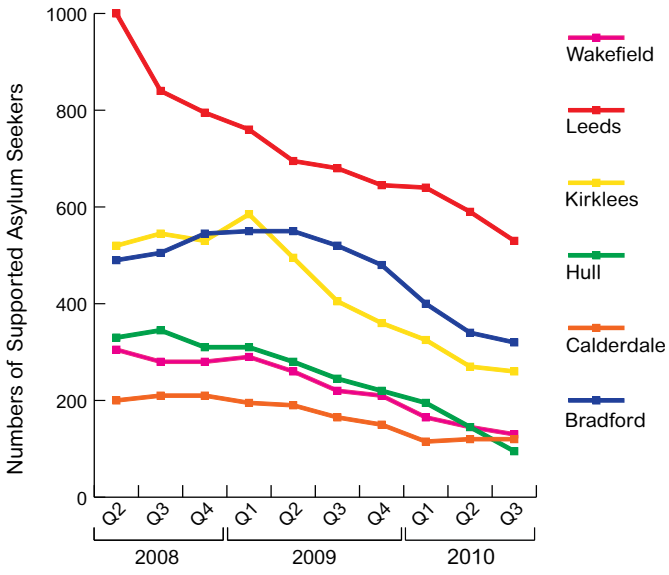
So, who is providing Legal Aid in West Yorkshire?

A little over one month after the start of the Standard Civil Contact the LSC finally released data showing what who provides legally aided asylum and immigration advice and the numbers of matter starts initially allocated to each provider, the table below summaries the situation in West Yorkshire for the coming year.

Provider	Town/city	Matter Starts	% of total allocation
Immigration Advisory Service	Bradford	1,599	34.1%
Chambers Solicitors	Bradford	673	14.3%
Bradford Law Centre	Bradford	35	0.7%
Barry Clark Solicitors	Bradford	112	2.4%
Kirklees Law Centre	Kirklees	90	1.9%
Immigration Advisory Service	Leeds	1,730	36.9%
Harehills & Chapeltown Law Centre	Leeds	52	1.1%
Halliday Reeves Law Firm	Wakefield	403	8.6%
	Total	**4,694**	**100.0%**

The published data shows two important changes. Firstly the number of matter starts available has shrunk by 28% and secondly the number of providers in the area has decreased sharply from 13 in 2009-10 to only eight under the new contract. This reduction has been sharpest in Leeds with the number of providers slashed from six to only two (one of which has only 52 matter starts).

Home Office figures show that Leeds has consistently hosted more asylum seekers with Section 95 Support than any other city in the area. On average over the last ten quarters 35.6% of all Section 95 supported asylum seekers have been housed in Leeds (39% for the most recent quarter for which data are available). While the proportion of matter starts within the area given to Leeds-based firms is roughly equivalent to the proportion of section 95 supported asylum seekers dispersed to Leeds in comparison to other towns and cities in the region no account is taken of gravitational effect which Leeds has for large numbers of unsupported (destitute) asylum seekers who tend to come here after refusal so as to access better developed support networks amounts their communities and local voluntary organisations (Lewis 2009: 21).[4]



While the tender result clearly surpasses the LSC's target of having three or more providers per access point (LSC 2009: 4) such a standard was always of questionable appropriateness in West Yorkshire which has a number of different centres to which asylum seekers are dispersed. Furthermore, with the Immigration Advisory Service's Leeds and Bradford offices holding 71% of all matter starts in the AP between them,[5] from the client's perspective, the majority of all new matter starts have been concentrated in the hands of a single provider. In Leeds the IAS has 97.1% of all matter starts making it, to all intents and purposes the *only* supplier of legally aided asylum advice in the city.

4 A study conducted for the Joseph Rowntree Charitable Trust in 2007 estimated some 3,500 destitute asylum seekers living in the city, no comparative study has been conducted in other cities and towns in West Yorkshire (Lewis 2007).

5 The number of matter starts allocated to the IAS has increased by 83% compared to 2009-10.

Having a choice of providers is a matter of importance for a number of reasons; the most important amongst which was highlighted by research conducted by Devon Law Centre, the results of which were discussed in PAFRAS's newsletter number 19. The central finding of this research was that around 80% of all asylum seekers are wrongly refused legal aid for their appeal by the provider who previously represented them.[6] In such circumstances the existence of alternative suppliers is vital.

Conclusion

Since their implementation Legal Aid reforms have placed pressure on providers to reduce their costs at the expense of the quality of work they do. The impact of this has been felt disproportionately by smaller and not-for-profit providers who are less able or unable to diversity the work they take on. The LSC's argument that a proper mix of simple and complex cases must be taken on by providers in order for them to break even has been undermined by both by the setting of the fixed fee at an inappropriately low level and by its apparent insistence on concentrating the bulk of the available work in the hands of fewer and fewer organisations in the most recent tender round.

The dropping of a strict quality standard to be met as a condition of tendering for Legal Aid work in asylum and immigration has resulted in experienced firms that have invested in their work forces and have a good record of work not being granted new contracts. For new providers to make these investments will have significant impact on the profitability of providing legally aided advice, placing more pressure on the time they can afford to spend advising clients.

The reduction in the overall number of matter starts in part reflects the decrease in overall numbers of asylum claims made in the UK over the last several quarters.[7] While therefore it *may* not in itself not reduce access to justice the situation will certainly require close monitoring.

The sharp reduction in the number law firms and NfP organisations delivering legally aided advice in West Yorkshire, most pronounced in Leeds itself does however have grave implications for asylum seekers' access to justice. These implication are no less grave for the fact that they will be very difficult to monitor. Added to this the non-renewal of the contracts of reputable and highly experiences firms such as Harrison Bundey in Leeds or Switalkis in Bradford and the emergence of new, untested firms is a cause for great concern. All the more so given the long-term signals from the LSC that investment in quality and scoring highly at peer review will not necessarily secure future work.

At the time of writing all of this remains in the balance and may change radically if South Manchester Law Centre's legal challenge succeeds. Given the results of the previous challenge made by the Law Society we know that this is not impossible. One should not, however, over estimate the chances of the Judges over-turning the asylum and immigration tender results and, even if they were to do so the disruption already caused to the sector will have been considerable.

Around 80% of all asylum seekers are wrongly refused legal aid for their appeal by the provider who previously represented them. In such circumstances the existence of alternative suppliers is vital.

6 That study found that 79% of refusals of legal aid for CLR were over-turned by the independent adjudicator when the case against refusal was made by the project's solicitor. Of those cases granted legal aid by the adjudicator 35% went on to succeed at appeal (Louveaux 2010).

7 This decrease owes its existence to a number of factors, not least among them the government's concerted efforts to stop refugees fleeing persecution from ever reaching the UK and therefore from being able to claim asylum.

References

Baski, C. (2010a) *A third of 'trusted' immigration practices face closure*, The Law Gazette, 7 July 2010.

Baski, C. (2010b) *Law Society wins family tender challenge*, The Law Gazette, 30 September 2010.

Hansard (2010) *Commons cc1023-1024* 17 June 2010, London: Hansard

Lewis, H. (2009) *Still Destitute: A worsening problem for refused asylum seekers,* York: Joseph Rowntree Charitable Trust.

Louveaux (2010), *Asylum Appellate Project: Final Report*, **Online**: Law Centres Foundation.

Legal Services Commission (LSC) (2009), *National Immigration Procurement Plan, Version: 26 November 2009*, **Online**: LSC.

LSC (2010a), *Invitation To Tender To Deliver Publicly Funded Immigration Services In England And Wales: Information for Applicants*, **Online**: LSC.

LSC (2010b), *FOI-10/4683*, 18 October 2010 **Online**: PAFRAS.

LSC (2010c), *FOI-10/4784*, 22 November 2010 **Online**: PAFRAS.

LSC (2010h), *Legal services for clients detained at Immigration Removal Centres (IRCs)* **Webpage**: LSC.

Blair, T (2003) *Speech to the Labour Party Conference*, Daily Telegraph Online, 1 October 2003.

Hynes, Steve (2008) *Speech to the College of Law – May 2008: Priorities for the legal aid system*, **Online**: ILPA

Trude, A & Gibbs, J. (2010) *Review of Quality Issues in Legal Advice*, London: ICAR

Immigration Legal Practitioners Association (ILPA) (2007a) *Legal Aid Info Sheet 1: General,* **Online**: ILPA.

ILPA (2007b) *Legal Aid Info Sheet 2: Fix Fees*, **Online**: ILPA.

ILPA (2007c) *Legal Aid Info Sheet 3: Exception from the Fixed Fee,* **Online**: ILPA.

ILPA (2010) *The Law Society's Access to Justice Review: Consultation Response by ILPA*, **Online**: ILPA.

Gilmore, D. (2010) *Improving access to justice for those in receipt of legal aid*, **Online**: Law Centres Federation.

Keith (2010) *R (South Manchester Law Centre) v LSC* Neutral Citation Number: [2010] EWHC 3131 (Admin) Crown Copyright.

Legal Action Group (LAG) (2010) *Two more Law Centres forced to close*, **Online**: LAG.

Lewis, H. (2007) *Destitution in Leeds: The experiences of people seeking asylum and supporting agencies*, York: Joseph Rowntree Charitable Trust.

Lewis, H. (2009) *Still Destitute: A worsening problem for destitute asylum seekers*, York: Joseph Rowntree Charitable Trust.

Lord Carter (2006) *Legal Aid: A market-based approach to reform*, London: House of Lords.

National Audit Office (NAO) (2009) *The Procurement of Criminal Legal Aid in England and Wales by the Legal Services Commission*, **Online:** NAO.

NAO (2010) *Community Legal Service Fund and Criminal Defence Service Accounts 2009-10*, **Online**: NAO.

Nicholson, J. (2010) *What is the Point of Giving a Point for Simply Applying?* **Online**: Kenworthy's Chambers.

Pamben D (2009) *More law centres face closure as funding fears increase*, The Law Gazette.

Private Eye (2010) *Going Dutch*, **Online**: Private Eye.

Ray, L. (2010a) *Freedom of Information Request 10/4683*, **Online**: PAFRAS.

Ray, L. (2010b) *Freedom of Information Request 10/4784* , **Online**: PAFRAS.

Ray, L. (2010c) *Request for Review: Freedom of Information Requests 10/4683, 10/4784*, **Online**: PAFRAS.

Robins, J (ed.) (2010a) *Closing the Justice Gap*, **Online**: Solicitors' Journal.

Robins, J. (2010b) *The deficiencies of the legal aid payments regime*, The Law Gazette.

0113 262 2163 • info@pafras.org.uk • www.pafras.org.uk
Units 13-14, Chapeltown Enterprise Centre, 231-235 Chapeltown Road, Leeds, LS7 2DX

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