

Quality of legal services for asylum seekers

Research commissioned by the Solicitors Regulation Authority and
Legal Ombudsman

Research undertaken by MigrationWork CIC in partnership with Refugee Action
and Asylum Research Consultancy

January 2016

1. EXECUTIVE SUMMARY

The SRA commissioned a consortium, led by Migration Work CIC, to undertake research on the quality of legal advice provided to asylum seekers. Previous research had raised concerns about how regulators assess quality of immigration advice, while also identifying a lack of understanding of the market for immigration services, and an over-reliance on the Legal Aid Agency to deal with risks in this market. To address these issues, the SRA proposed a research project with the following aims:

- To profile the legal services market for asylum advice;
- To identify barriers to the effective use of legal services, including a focus on access to redress;
- To highlight aspects of asylum advice which are associated with higher risk of poor service; and
- To identify examples of good practice exhibited by solicitors

A multi-modal research approach was designed and implemented to collate data from a range of primary and secondary sources. Key stages included desk research and literature review, consultations with advice providers, local support services and asylum seekers in four geographical locations in England, and a detailed analysis of asylum application case files to identify further evidence of good and poor practices.

Profile of Legal Services Market

Numbers of asylum seekers applying for asylum in the UK peaked at 84,130 in 2003, before falling to current levels of approximately 25,000 in 2005. Since then numbers of applications have remained relatively constant. In addition to new applications, 2014 figures from the Home Office identified 22,879 cases pending, of which 18,149 were still awaiting an initial decision. What has changed have been countries of origin, with trends influenced by crises such as famine, and political and military conflict. The top ten sources of asylum applications to the UK included Eritrea, Pakistan, Syria, Iran and Albania.

Asylum advice is provided via approximately 5,250 legal representatives regulated by the Office of the Immigration Services Commissioner (OISC), SRA, Bar Standards Board (BSB) and the Chartered Institute of Legal Executives (CILEx), with OISC and SRA accounting for 88% of the total. Any advice offered by an unregulated provider is likely to be unlawful and represent a greater risk to the client due to the absence of options for appeal and redress. Solicitors and local support organisations stated that 'unregulated' advice is a feature of the market, but the nature and extent of this unregulated advice is difficult to quantify.

Regulated legal representatives offer advice through three delivery mechanisms; Legal Aid, privately funded and pro bono. Legal Aid is the principal mechanism for accessing advice, with provision managed via contractual arrangements between the Legal Aid Agency (LAA) and providers. These contractual arrangements award firms geographically determined New Matter Starts (NMS), with one NMS being opened per asylum application. Each NMS attracts a fixed fee of £413 and interviews with providers have identified differing views on the suitability of this figure and a number of business models implemented by firms to ensure profitability and the capacity to offer ongoing advice to asylum seekers. For some, Legal Aid contracts are not sufficiently profitable on their own, leading to providers leaving the market or supplementing Legal Aid work with privately funded activities.

Barriers to effective use of advice services

Having outlined the specific issues associated with Legal Aid, emphasis shifted to considering some of the other barriers that may prevent the effective operation of the asylum advice market. These barriers were discussed within the context of the asylum legal process and identified according to specific stages within this process. The main barriers identified are listed below:

Accessing legal advice/finding a provider

Asylum seekers are allocated advice providers as part of the legal process (particularly within detained fast track), limiting their ability to choose, are signposted by community groups and support organisations or identify firms through word of mouth and recommendations. This research has highlighted three associated issues that can adversely impact access to quality legal advice.

- Firstly, evidence from asylum seekers suggests that they struggle to understand the difference between provider types and the protections afforded by their regulator.
- Secondly, there were concerns raised over community referrals to poor quality or even unregulated advice, largely resulting from their lack of understanding of the process.
- Thirdly, evidence was provided of interpreters using the vulnerability of asylum seekers and their lack of knowledge of the legal process, to offer them services from particular solicitors without any provision of background/supporting information.

Understanding the legal process

The difficulties related to accessing legal advice and recognising good quality advice stem from a lack of understanding of the asylum legal process. Asylum seekers are dealing with a raft of issues associated with arriving in a new country and face additional barriers such as bereavement, mental health difficulties and understanding the language. These issues add a further level of complexity to their situation and make understanding the legal process all the more difficult. It is the role of legal representative to adequately explain the process in a way asylum seekers can understand. Asylum seekers have experienced difficulties in getting suitable explanations of the process from their legal representative.

Provision of interpreters

Asylum seekers with only a limited understanding of English, are heavily reliant on the skills and capabilities of interpreters to convey messages between parties. Asylum seeker interviews, together with evidence from other research reports, have raised concerns about the quality of interpretation, including the provision of interpreters who speak the wrong language.

Time constraints and provision of additional evidence

The legal process, particularly that pursued under detained fast track, requests additional evidence, such as medical reports and country of origin information, to be provided within a matter of days. For those with documentation to hand, short timescales are not an issue, however, for those needing information and supporting evidence from home, these timescales often result in applications being decided in the absence of such information.

Understanding redress

Although mechanisms for redress exist for those asylum seekers using solicitors and barristers, take-up of such support is low. Two contributory factors to this are a lack of awareness of the availability of redress and a misconception among asylum seekers that pursuing redress will adversely impact on the outcome of their asylum application.

Good and poor solicitor practices

Alongside the barriers discussed above, there was evidence of poor solicitor practices that served to create further barriers to the provision of quality legal advice, practices that raise regulatory concerns as to the competence of solicitors. Examples of the following poor practices were:

Lack of clarity round costs

For those asylum seekers able to access privately-funded advice, there was evidence of a lack of understanding of how costs are compiled and of solicitors overcharging or deliberately obfuscating costs, more so at the lower end of the market, where exploitation is more likely. This is an example of poor solicitor conduct and represents an issue of regulatory concern that will require further exploration and possible regulatory action.

Poor legal and case knowledge

As a minimum requirement, consumers of legal services would expect their legal representatives to have a detailed understanding of relevant law. Unlike other areas of law, legal representatives in asylum need to have sufficient levels of understanding in a number of other areas of law, including immigration and nationality law, family law and child law (particularly knowledge of the UN Convention on the Rights of the Child and how it is applied to migrant children and law surrounding Article 8). Consultations with solicitors and previous research conducted by CORAM Children's Legal Centre have identified that not all immigration and asylum advisers have the specialist knowledge required.

Insufficient experience of undertaking interviews

This specialist knowledge and experience extends to how solicitors and other legal advisers engage with asylum seekers during initial interview. During initial meetings with legal advisers, it is necessary for asylum seekers to disclose personal and often harrowing information about their situation. The ability of the asylum seeker to provide this information is largely dependent on the how adept the legal adviser is at interviewing and at asking appropriate and carefully-worded questions. Failure to elicit sufficient evidence at this stage can prove detrimental in subsequent stages of the case.

Failure to request additional evidence

The difficulty with requesting and obtaining additional evidence within the timeframes set by the legal process, have already been discussed. However, case reviews still identified a number of applications that would have been strengthened significantly had the solicitor considered requesting mental health, physical scarring or medical assessments. Some solicitors interviewed said that the content and quality of expert reports can be unpredictable and do not always yield positive information in support of a case. They have to make an assessment of the pros and cons associated with requesting an expert report and any decision should be taken in conjunction with the asylum seeker.

Limited experience of appeals

Key informants expressed concern that some solicitors lack experience of undertaking appeals and this manifests itself through poorly-constructed and evidenced appeals, with short statements, poor and inaccurate country information and no supporting evidence. Time constraints add further pressures to mounting a robust appeal. However, case file reviews identified examples of high-quality appeals in spite of this perceived barrier.

Many of the good practices identified could be classified under effective communication between legal representative and asylum seeker. These included providing more face-to-face meetings to

explain advice letters and correspondence from the Home Office, using client care letters to set out clear standards and expectations of service, texting asylum seekers for brief communications and case updates and writing letters detailing the content of meetings to ensure asylum seekers understand and have records of all conversations.

Interviews and case file reviews identified the following practices being exhibited by solicitors:

Frontloading cases

Solicitors are setting aside more resources at the beginning of an asylum application to research the case specifics and conduct in-depth interviews with asylum seekers to obtain a detailed background and understanding of the reasons for application.

Taking detailed statements prior to the initial Home Office interview

Related to the above, a number of solicitors are writing formal statements to further strengthen their case evidence. There was disagreement as to the effectiveness of this, however it was considered useful for particularly vulnerable clients and those with highly complex cases.

Letting clients check documents

Solicitors allowed asylum seekers to check and verify documents, including them more formally in the process and reducing the likelihood of discrepancies that can be detrimental to a case later.

Working with support agencies

Access to legal advice represents only one area of support needed by asylum seekers and their ability to benefit from this advice can be hampered by failing to address other unmet needs. There were numerous examples of solicitors liaising with specialists in areas such as housing, health assessment, counselling, social work and policing to ensure that asylum seekers received the full range of support services they needed

Updating knowledge of the law

Asylum advice raises a number of other related issues including gender persecution, child protection, trafficking and detention. The law in all these areas is complex and constantly changing and there were examples of solicitors displaying comprehensive and appropriate knowledge across multiple disciplines.

2. INTRODUCTION

This research was commissioned by the Solicitors Regulation Authority (SRA) and the Legal Ombudsman (LeO), to assess the quality of legal advice provided to asylum seekers by solicitors.

The decision to undertake this research was partly driven by the Legal Services Board's (LSB) consultation into the regulation of immigration advice and services¹. The resultant paper, published in 2012, identified two key issues which cast a critical eye over current regulatory approaches. Firstly, there were problems with the regulatory architecture for immigration advice and services and secondly, concerns were raised about how regulators, including the SRA, assured themselves of the quality of immigration advice and services. More specifically, the research identified a lack of understanding about the market for immigration advice and services, a lack of evidence and data to inform the regulators' approach to ensuring quality of advice, and an apparent over-reliance on the Legal Aid Agency (LAA) (formerly the Legal Services Commission) to manage the risks present in the market.

The purpose of this research is to address these related issues of understanding and knowledge and use the findings to improve our regulatory approach to ensuring quality and minimise consumer detriment.

Law firms regulated by the SRA have to operate and offer services within the legal process for asylum as determined by the Government and the Legal Aid Agency (LAA). It is important to recognise the difficulties and barriers associated with the current legal process for asylum, as they provide context to many of the quality issues raised. However, the focus of this report is on identifying good and poor practices exhibited by solicitors and providing evidence to the SRA of solicitors falling below acceptable levels of competence, as defined by the regulator's competence statement.

2.1 Consumer vulnerability

Ensuring access to, and receipt of, quality legal advice is of particular importance given the vulnerability of the client group in question. Most consumers rarely access legal services, many doing so only a handful of times in their life, making the 'knowledge gap' between provider and consumer particularly wide, and the ability of the consumer to recognise what constitutes quality legal advice all the more difficult.

However, while anyone in receipt of legal advice has the potential to be vulnerable, a survey on Legal Aid for asylum seekers² highlighted:

“For the individuals and families seeking protection, the asylum procedure may be the most important process they experience in their lifetime. Indeed, for those fleeing persecution or serious harm it may mean the difference between finding safety and security and being sent back to human rights violations or worse.”

Add to this further complexities associated with arriving in a different country, understanding a complex legal process and language barriers, and asylum seekers represent a particularly vulnerable

¹ Legal Services Board (July 2012) Regulation of immigration advice and services: Summary of responses to consultation and LSB response

² Survey on Legal Aid for asylum seekers in Europe; European Network; European Council on Refugees and Exiles (ECRE), October 2010

consumer of legal services and a group that may be more susceptible to exploitation and the receipt of poor quality advice³.

2.2 Research aims

In assessing the quality of legal advice for asylum seekers, the aims of the research, as set out in the SRA's Invitation to Tender (ITT), were to:

- Profile the legal services market for asylum advice;
- Identify barriers to effective use of legal services for this client group, to include a focus on access to redress, and demonstrate whether or not these restrict access to justice; and
- Highlight aspects of legal services for asylum seekers, which are associated with a higher risk of poor service or inadequate quality

The achievement of these aims was approached from the perspective of the consumer (ie the asylum seeker) with a detailed overview of both:

- Asylum seekers: who they are, where they are based, their needs, the types of services they require and the information they have or need to assist their decision making;
- Providers of asylum advice (specifically solicitors): the size of the market, how they manage and deliver their services within the context of the current asylum legal process and the behaviours and practices exhibited by solicitors in the provision of their advice.

As discussed in Section 3, asylum advice is provided by legal representatives who are registered and regulated by one of four regulatory bodies. Two thirds of all immigration and asylum advisers are regulated by the Office for Immigration Services Commission (OISC). However, in focusing attention on the practice and competence of solicitors, OISC regulated individuals and organisations fall outside the scope of this research. To ensure that sufficient attention was given to assessing the quality of legal advice, this research has not sought to review the effectiveness of the legal process or impacts of LASPO reforms, but has provided an overview of the Legal Aid process as context to frame the findings.

2.3 Methodology

To ensure the collation of appropriately detailed evidence to address the aims outlined above, we designed and implemented a multi-modal method which comprised elements of desk research and literature review, consultations, online surveys and case file analysis.

More specifically, the method was structured into the following interrelated stages:

Stage 1: Literature Review

We analysed a wide range of research, as well as annual reports, press releases and meeting notes from a number of organisations, including Asylum Aid, Home Office, Legal Aid Agency and the Ministry of Justice. The purpose of this review was to provide further detail on the asylum legal process, (outlined in Section 4), identify issues requiring further examination through subsequent research stages and to provide evidence in support of primary research findings.

³ The Competence Statement sets the standard for practice as a solicitor. It ties into continuing competence for practising solicitors as well as admission to the profession. It is available at: <http://www.sra.org.uk/competence/>

Stage 2: Desk Research

This stage involved the collation and analysis of statistical data, which was used to provide a detailed profile of the market for asylum advice (outlined in Section 3). Data included publically-available information from the Home Office and National Statistics, freedom of information requests and statistical clarifications from relevant organisations.

Stage 3: Supply-side consultations with advice providers

In seeking the supply-side view of the market for legal advice, and the quality of advice offered to asylum seekers, we conducted interviews with solicitors, and with local of support services to asylum seekers, including migrant and refugee community organisations and refugee projects.

In addition, an electronic survey was sent to all solicitors identified by the SRA as providing immigration or asylum advice⁴. A total of 117 responses were received (approximately 15 percent of those contacted).

Stage 4: Demand-side interviews with asylum seekers

A critical component of the research approach was to obtain perceptions of the legal process and the quality of advice provided from the asylum seekers in receipt of it. Face-to-face interviews were conducted with asylum seekers who had made an application and received asylum advice within the previous year. Participants were identified and interviewed by Refugee Action, who also provided interpreters and safe venues for the interviews.

Table 2.1 below details the breakdown of the interviews, which were conducted in London; Bristol and the South West; West and East Midlands and Greater Manchester. All these areas have significant numbers of asylum seekers and solicitors providing asylum advice.

Table 2.1: Breakdown of interviews per region

Area	Number of asylum seekers in area ⁵	Asylum seekers interviewed	Local service providers	Local solicitors
London	2,263	16	8	21
Greater Manchester	5,844 (total for North West region)	46	19	8
Bristol, South West and Wales	2,779	31	9	10
West and East Midlands	5,274	30	11	6
Totals		123	47	45

Stage 5: Case file reviews

Case file reviews were conducted by Joe Wilding, a barrister from Garden Court Chambers, to provide further evidence of both the good and poor practices of solicitors that had been identified through all the previous research stages. All asylum seekers were asked, when interviewed, for permission to access their case files. Solicitors were then contacted with a request to provide copies

⁴ The SRA provided Migration Work CIC with a list of all solicitors who had stated their involvement in delivery of immigration and asylum advice as part of their RF1 submission. In providing these contacts the SRA was unable to distinguish between those offering immigration advice and those specifically offering asylum advice.

⁵ All figures from asylum statistics Quarter 1 2014 <https://www.gov.uk/government/statistics/tables-for-immigration-statistics-january-to-march-2014>

of the files to be reviewed. This approach resulted in 35 case files being made available for review. This number was supplemented by a further 10 examples from other providers, including some that had been taken over because the client had been unhappy with the quality of previous advocacy.

2. 4 Report Structure

The report is divided into five further sections. These examine in turn:

Section 3 The Market: A detailed profile of asylum seekers, and providers of legal advice;

Section 4 Asylum Legal Process: Explains how the process works, including the role of Legal Aid, appeals and access to redress;

Section 5 Barriers to Effective Service Use: Identifies barriers and poor solicitor practices at various stages of the process and the risks that may result in poor provision.

Section 6 Quality and Good Practice: Drawing together what users and providers believe constitutes good practice and evidence from the case reviews; and

Section 7 Conclusion: these are particularly addressed to the commissioning organisations but are of general relevance to all working in this area

3. THE MARKET

Key findings

- Asylum applications increased consistently from 1987 to 2003, as part of a trend witnessed throughout Europe.
- The number of asylum applications peaked in 2003, with 84,130. By 2005 this figure had decreased considerably to 25,710;
- Since 2011, following a period of relative stability, numbers applying for asylum have slowly increased from 18,120 to 25,020 by March 2015;
- The nationality of asylum seekers changes as crises come and go across the globe. In 2014, the leading sources of asylum applicants in the UK were Eritrea, Pakistan, Syria, Iran, Albania, Sudan, Sri Lanka, Afghanistan, Nigeria and Bangladesh;
- The Legal Services Consumer Panel (LSCP)⁶ highlighted that many of the asylum seekers requiring legal advice were particularly vulnerable, with the group including people '*who are fleeing torture, imprisonment or death in their country of origin*';
- Asylum seekers are not evenly distributed across the UK. Although many might make an asylum claim in London or the south east, they are then dispersed to other parts of the country, with greatest numbers found in the North West, West Midlands and Yorkshire and the Humber;
- Providers of asylum legal advice are registered and regulated by the Office of the Immigration Services Commissioner (OISC), which accounts for over half of all advisers, the Solicitors Regulation Authority (SRA), the Bar Standards Board (BSB) and the Chartered Institute of Legal Executives (CILEx);
- Legal Aid represents the principal mechanism for delivery of legal advice to asylum seekers, however advice is also provided privately or pro bono.

This section provides a detailed profile of the market for asylum advice from both a demand and supply-side perspective. Focusing first on asylum seekers entering the UK, information is provided on numbers applying for asylum (including cases pending and backlog numbers), their countries of origin, reasons for seeking asylum in the UK and where they are dispersed following initial entry. On the supply side, data from each of the four major regulators is used to identify numbers offering asylum advice, while the various mechanisms for provision of that advice are also explored.

3.1 Profile of asylum seekers

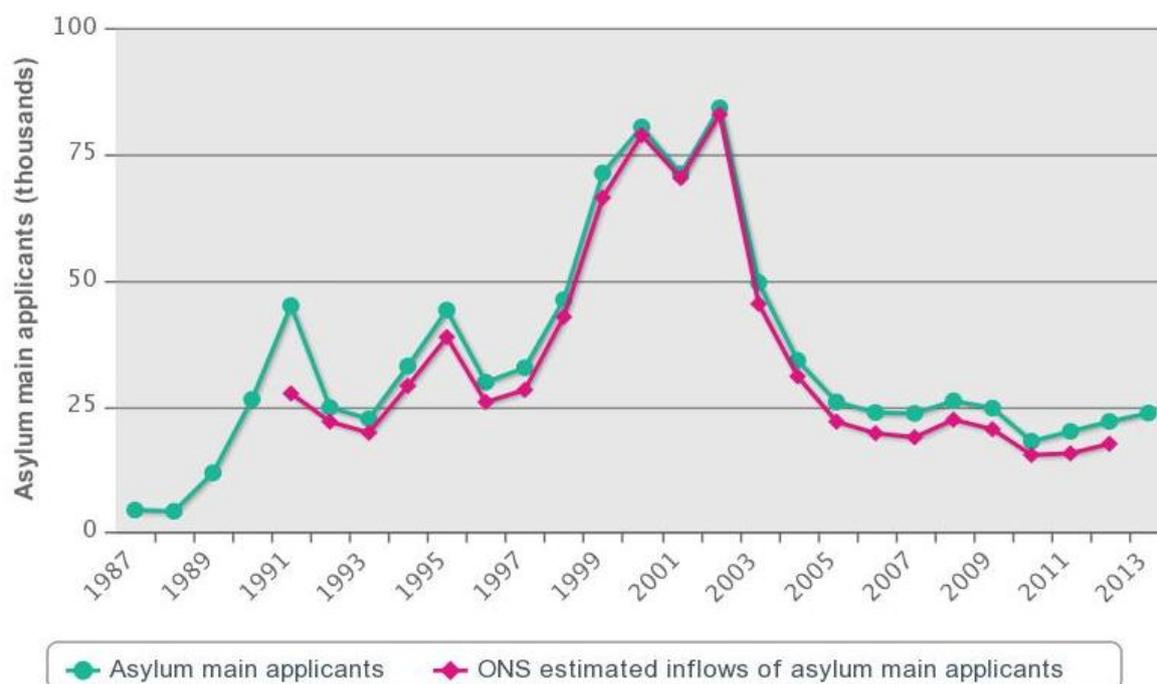
Trends in asylum seeker numbers

According to data from the Migration Observatory, asylum applications increased consistently from 1987 to 2003, as part of a trend witnessed throughout Europe. As Figure 3.1 shows, asylum applications increased from just 4,256 in 1987 to 84,130 in 2003, before falling to 25,710 in 2005. According to research undertaken by Heaven Crawley⁷, the Home Office attributed the decline '*to changes that have been made to the asylum system*'. However, there is no clear evidence of a causal relationship between changes in asylum policies and the level of asylum applications. Existing evidence on the impact of policy on asylum numbers is '*ambivalent, at best*'. Crawley argues that most of the fall in applications is consistent with a wider trend of falling applications throughout Europe.

⁶ Research Note *Immigration and Asylum Services, 2012, Legal Services Consumer Panel.*

⁷ Crawley, H, '*Chance or choice? Understanding why asylum seekers come to the UK, January 2010*

Figure 3.1: Asylum applications and estimated flows, 1987-2013



Source: Migration Observatory using Long-term International Migration (LTIM) data from the Home Office

Since 2012, numbers have risen each year and reached just over 25,000 in the 12 months to March 2015, as shown in Table 3.1 below.

Table 3.1 Numbers of asylum applications (March 2011 to March 2015)

Year Ending March	2011	2012	2013	2014	2015
Number of Asylum applications	18,120	16,382	22,592	23,731	25,020

In addition to new asylum applications, there are cases pending, appeals and fresh claims⁸. According to data from the Home Office, at the end of September 2014 there were 22,879 cases pending, of which 18,149 were still waiting for an initial decision. More than 10,000 of those waiting for an initial decision had been waiting for at least six months. The number of cases pending (case backlog) has been growing year on year and increased dramatically between September 2012, when there were 3,755 and September 2013, when there were 5,559 cases.

Countries of origin

The nationality of asylum seekers changes as crises come and go across the globe, since asylum seekers come predominantly from countries involved in political and military conflict. In 2014, the leading sources of asylum applicants in the UK were Eritrea, Pakistan, Syria, Iran, Albania, Sudan, Sri Lanka, Afghanistan, Nigeria and Bangladesh. Iraq and Somalia dropped out of the top ten having once comprised a large share of asylum applicants.

⁸ Fresh claims are when an asylum seeker has had their claim rejected, but then new evidence becomes available which was not considered in their initial claim, they may submit the new evidence to the Home Office as a fresh claim for asylum.

As recently as 2000, the UK received more than 20,000 asylum seekers from Europe, more than had come from Africa or the Middle East, including thousands from Serbia and Montenegro and thousands more from the 2004 Accession states. The resolution of crises and conflicts, together with EU enlargement seems to have reduced the number of asylum seekers in the UK, with European asylum seekers accounting for 3,025 cases in 2004 and only 2,046 in 2013.

Reasons for asylum application

The Legal Services Consumer Panel (LSCP)⁹ highlighted that many of the asylum seekers requiring legal advice were particularly vulnerable, with the group including people *'who are fleeing torture, imprisonment or death in their country of origin'*. Under the *'1951 Geneva Convention Relating to the Status of Refugees'*, asylum seekers must illustrate that they have a well-founded fear of persecution due to their race, religion, nationality, political opinion or membership of a particular social group and are unwilling or unable to seek protection from the authorities in their own countries. The definition as outlined in the Geneva Convention is forward looking, so even if an asylum seeker has suffered harm in the past, they will not obtain asylum if there is no discernable risk of anything happening to them in the future.

In addition to the issues outline above, the LSCP went on to state that:

"This group may in turn include other very vulnerable individuals such as: unaccompanied minors; those who speak/understand little English and therefore have great difficulty in understanding documents and procedures and making themselves understood; those who have serious mental health problems; those who are homeless or destitute; and those who are particularly vulnerable because of their gender or sexual orientation."

Dispersal of asylum seekers and available support

Asylum seekers are not evenly distributed across the UK. Although many might make an asylum claim in London or the South East, they are then moved on. In the majority of cases, accommodation is provided in areas of lower housing need, but those on 'subsistence only' tend to be in areas with higher settled refugee populations. They may also start their asylum seeking process in initial accommodation and then be dispersed elsewhere. A recent report reviewing access to asylum advice in London¹⁰ said that:

"The Home Office policy of dispersing those who needed accommodation to areas of low housing demand outside the South East has increased the numbers of asylum seekers outside London, and certainly shifted much of the funding and focus away from London."

While they wait, asylum seekers are not entitled to work or claim benefits but, if destitute, can be offered accommodation and support by the Home Office via a network of private contractors. In September 2014:

- 27,815 people received asylum support
- 3,249 of these were on 'subsistence only' support: staying with friends or family and offered support but not accommodation

⁹ Research Note *Immigration and Asylum Services, 2012, Legal Services Consumer Panel.*

¹⁰ Lukes. S and Hutton. C, *'Access to Asylum Advice in London: A Scoping Study, Evaluation of outreach legal service provision for asylum seekers, Online Clearing house for asylum advice'* (2006)

- a further 1,768 were in ‘initial accommodation’ (to have needs assessed before being moved on into accommodation)
- 4,885 asylum seekers and dependants were in basic ‘Section 4’ accommodation because their claim had been refused but they were unable to leave the country or had lodged some basis for reopening the claim.

Table 3.2, provides a summary of the above discussion on dispersal and details the number of asylum seekers receiving support by region and by type of support.

Table 3.2: Asylum seekers supported by region, September 2014

	Support	Subs only	Accommodation
North West	6,298	283	6,015
West Midlands	4,105	319	3,786
Yorkshire and The Humber	3,257	91	3,166
London	2,692	1,840	852
Scotland	2,605	60	2,545
North East	2,464	45	2,419
East Midlands	2,085	146	1,939
Wales	1,977	39	1,938
South West	764	64	700
East of England	519	174	345
Northern Ireland	455	5	450
South East	441	154	287
Other and Unknown	153	29	124
Total	27,815	3,249	24,566

Source: Home Office immigration statistics, July – September 2014

As can be seen from the table, the most common regions for dispersal are the North West, West Midlands and Yorkshire and the Humber. London, as the only city, is fourth on the list.

3.2 Providers of asylum advice

According to the LSCP, the immigration advice field (which includes the provision of asylum advice) comprises individuals and organisations regulated by the SRA, Bar Standards Board (BSB), and the Chartered Institute of Legal Executives (CILEx), and individuals registered with the Office of the Immigration Services Commissioner (OISC). Table 3.3 below, provides a breakdown of numbers by each of these organisations.

Table 3.3: Breakdown of advice providers by organisation

Organisation	Number of individuals	% of total
Office of the Immigration Services Commissioner (OISC)	3,375	63.8%
Solicitors Regulation Authority (SRA)	1,297	24.5%
Bar Standards Board (BSB)	590	11.2%
Chartered Institute of Legal Executives (CILEx)	27	0.5%
TOTALS:	5,289	100%

A data request to the SRA, for solicitor contact details to be used as part of the online survey (detailed in Section 2.3), yielded approximately 1,000 solicitors, broadly in line with the figure quoted above.

OISC

The OISC registers advisers subject to a test of competence at one of three levels (of which only levels 2 and 3 can provide asylum advice), assessment of continuing professional development via annual testing, continued adherence to operational standards and payment of a fee (waived for non-profit organisations providing free advice). Unregistered advisers can face enforcement action including prosecution, but there is currently no formal system of redress or ombudsman. As detailed in the introduction, the work of OISC regulated advisors falls outside the scope of this research.

Regulators (SRA, BSB and CILEx)

The professional titles of solicitor and barrister are specifically protected, meaning only those qualified can call themselves a solicitor or barrister. All three legal professional bodies share similar requirements. Those holding practicing certificates have to hold relevant qualifications, take due care, practice only in areas where they have competence, maintain that competence and have appropriate systems for handling clients' money. In addition they have statutory arrangements to deal with complaints, including use of the Legal Ombudsman for problems of poor service. While none of the three bodies have specific arrangements for those offering immigration and asylum advice, solicitors (and others) cannot get Legal Aid contracts (of which more, below) to pay for this without accreditation via a Law Society-run scheme.

Anyone offering asylum legal advice, who is not registered or authorised by one of the above organisations, is doing so illegally. One of the research questions was to identify the presence and scale of unregulated advice provision in asylum. However, it was difficult to find a realistic estimate of how many such advisers exist. Some interviewees did, however, express concern about them. Understanding the scale of unregulated advice provision would require a separate research project, and is likely to only provide anecdotal and literary evidence.

3.3 Financing asylum advice

The principal delivery mechanism for the provision of asylum advice is through Legal Aid. If asylum advice is not funded through Legal Aid, there are other funding models and options for advice.

Legal Aid

Legal Aid is the principal mechanism available to those seeking asylum in the UK. Legal Aid, which has been available in the UK for 65 years, is the provision of assistance to people otherwise unable to afford legal representation and access to the court system.

The Legal Aid Agency (LAA) manages the provision of Legal Aid in England and Wales. Under Legal Aid, asylum legal advice is delivered via contractual agreements between the LAA and firms. As part of these agreements, firms are awarded new matter starts (NMS), one for each case they take on. An NMS is the authority to take on work which is funded by Legal Aid. All those obtaining Legal Aid contracts have to be accredited to relevant levels with the Law Society Immigration and Asylum Accreditation Scheme¹¹.

¹¹ "The Immigration and Asylum Law Accreditation Scheme covers all types of immigration and asylum law work. Members will have shown, to the satisfaction of the Law Society, that they have and will maintain a high level of knowledge, skills, experience and practice in the area of immigration and asylum law" From the Law Society website checked April 2015

The last few years have seen changes in the way Legal Aid NMS are allocated, following the reforms in the Legal Aid, Sentencing and Punishment of Offenders Bill (LASPO).

The number of contracted providers increased significantly—from 226 in 2012-13 to more than 400 in 2013-14—as a result of a new contract, the first under the new provisions of LASPO¹². This contract initially offered a maximum of 100 NMS to each provider (later adjusted to provide more in some areas), with allocation dependent on previous demand and Home Office intelligence on where asylum seekers were likely to be accommodated. The results of this contractual change were mixed. Some firms, especially larger practices, opened branch offices in new locations to allow them access to more matter starts. However, some providers proved unable to fulfil the contract or opted out, with their matter starts redistributed to other firms in their region.

Some of the requirements of the Legal Aid process which may affect whether a provider takes on a case are outlined below.

Geographical location of contracts and asylum seekers

Legal Aid is provided through geographically based contracts, with NMS determined by previous demand and data held by the Home Office. However, the geographical location of asylum seekers is changing due to recent policy of relocating them to areas which can provide appropriate accommodation. This means that predictions based on previous demand may now be less accurate.

Funding and cost-effective work

Each matter start for legal advice (apart from those representing children, who are paid on an hourly basis) attracts a fixed fee, which currently stands at £413. Legal providers and the LAA have different views as to how appropriate this is as an average for the work needed, and providers must balance the quality of their work, the time it takes and their ability to run a profitable practice. What is clear, is that the current fixed fee is high enough to attract a significant number of businesses to do the work and this research will assess the quality of that work. For some firms this means subsidising their Legal Aid work with private work, for others it involves careful cost management.

Appeals and the merits test

Legal Aid is available for asylum seekers wishing to appeal against an initial refusal. However, such funding can only be accessed if a case satisfies certain conditions, one of which is whether it passes a merits test. Key performance indicators of whether providers are appropriately assessing merits are used to monitor this: providers must achieve at least a 35 percent average success rate in their asylum appeals.¹³

Privately funded advice

Privately funded advice is delivered by highly regarded providers, a number of whom no longer offer Legal Aid for cases. They provide legal advice at transparent rates, which can be paid by the applicant or by friends, relatives and even faith and local community groups. One private provider interviewed as part of this research stated their asylum legal work was paid for *'80 percent by family*

¹² In 2013-14, the LAA contracted for 28,038 NMS for legal advice in immigration and asylum, the majority of which would have been in asylum (most other areas of immigration law are out of scope for Legal Aid since LASPO). These NMS were offered to a total of 418 providers, 351 of them described as solicitors and 67 as non-profit agencies. By October 2014, there were 410 providers, with 62 non-profit agencies.

¹³ Louveaux, J, 'Asylum Appellate Project: Second Year Report', Devon Law Centre, June 2015

members, 20 percent by church, charity or other support groups'. Among those asylum seekers interviewed, who were in receipt of privately funded advice, fees ranged from £1,000 to £2,500.

Pro bono work

The term 'pro bono' comes from the latin 'pro bono publico' meaning 'for the public good'. According to the Pro Bono Protocol¹⁴, the best practice guide endorsed by the Law Society, defines pro bono work as:

'Legal advice or representation provided by lawyers in the public interest including to individuals, charities and community groups who cannot afford to pay for that advice or representation and where public funding is not available. Legal work is Pro Bono Legal Work only if it is free to the client, without payment to the lawyer or law firm (regardless of the outcome) and provided voluntarily either by the lawyer or his or her firm'¹⁵.

Pro bono advice is not a replacement for paid work, whether publicly or privately funded. As with any system, there are always gaps in provision and pro bono aims to fill those gaps. Cuts to Legal Aid have seen pro bono work increase, and according to a recent article in the Law Society Gazette¹⁶

'Research by the Law Society estimates that the total annual value of pro bono across all private practices is now £601m, equivalent to 2.8 percent of the yearly turnover of all solicitors' firms. This is up £73m, or 14 percent, on the £528m recorded in 2013'.

In terms of specialist pro bono asylum advice, solicitors and barristers have established a number of successful projects. Two examples of such projects are Liverpool Law Clinic's Free Legal Advice for Migrants and Asylum Seekers (FLAMA)¹⁷ and the Manuel Bravo Project¹⁸, operating in Leeds and London.

¹⁴ The Pro Bono Protocol was developed to promote and support consistently high standards of pro bono work. The protocol in no way replaces but rather seeks to build upon the Professional Codes of Conduct that set out the standards and requirements that all lawyers must achieve and observe.

¹⁵ *The pro bono work of solicitors PC Holder Survey 2014*, The Law Society

¹⁶ <http://www.lawgazette.co.uk/practice/pro-bono-up-as-solicitors-fill-legal-aid-void/5044779.fullarticle>

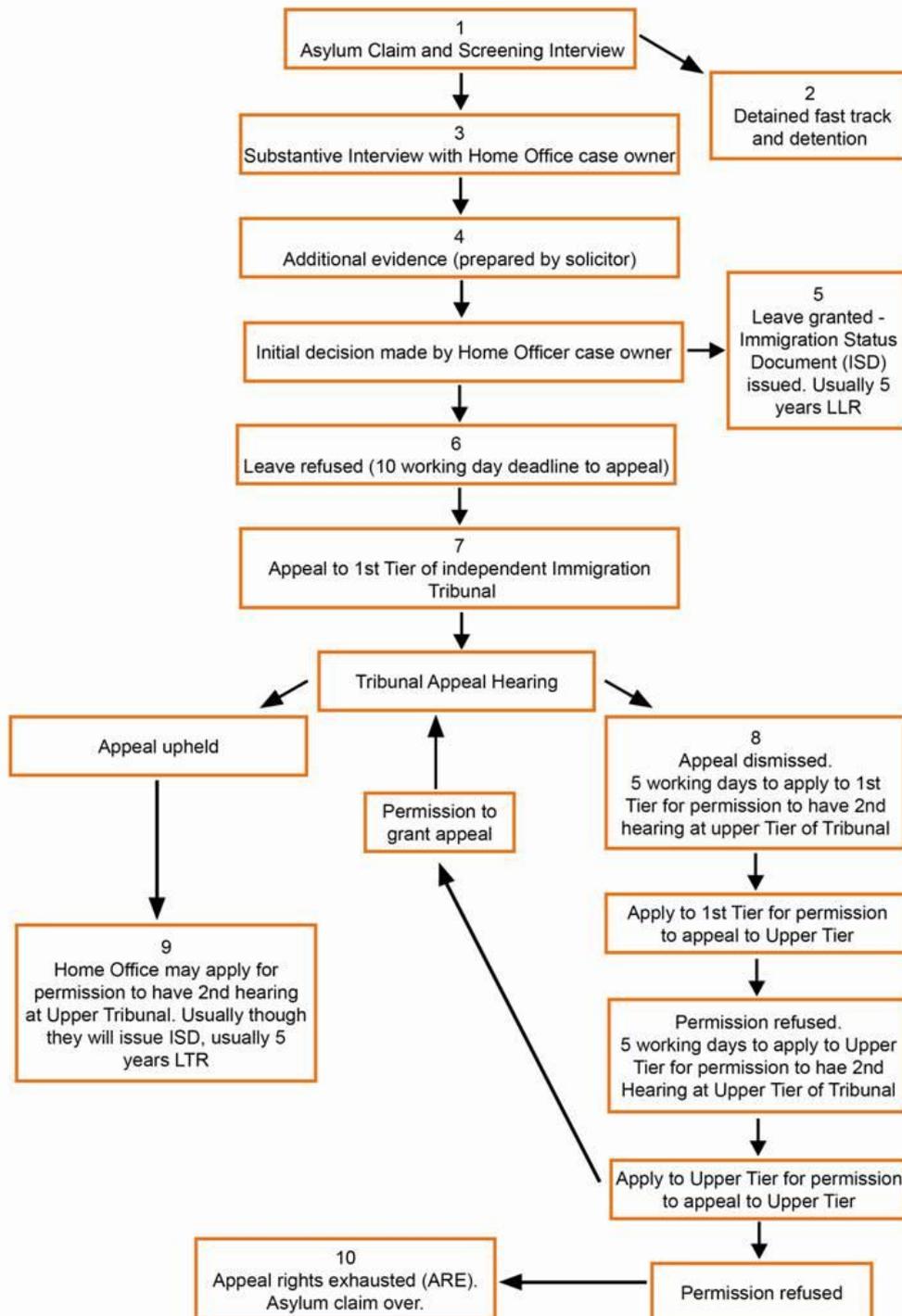
¹⁷ Liverpool Law Clinic's Free Legal Advice for Migrants and Asylum-seekers ('FLAMA'), a pro bono service in which final year undergraduate law students at the University of Liverpool's School of Law and Social Justice assist in representing immigrants and asylum-seekers, under close supervision of two in-house solicitors and an in house barrister. Liverpool Law Clinic's Statelessness Project aims to help fill this gap through its pro bono representation service while also introducing students to the statelessness issue which has (with a few notable exceptions) historically not received the attention the issue deserves- See more at: <http://www.statelessness.eu/blog/liverpool-law-clinic-launches-statelessness-project#sthash.2NdElwIE.dpuf>

¹⁸ The Manuel Bravo Project provides free legal assistance to asylum seekers with First Tier Appeals and Fresh Claim through paid and voluntary caseworkers who are regulated by the Office of the Immigration Services Commissioner (OISC), and through qualified non-immigration legal teams working pro bono under their own firm's insurance to prepare the client for their full hearing.

4. ASYLUM LEGAL PROCESS

There are several different stages in the legal process of applying for asylum. The chart below (Figure 4.1) summarises this process. This is followed by an explanation of each stage of the process.

Figure 4.1: Asylum legal process flow



Asylum claim and screening interview

Of the 25,020 people who applied for asylum in 2014, the majority applied via the Asylum Screening Unit of the Home Office in Croydon, having already arrived in the UK. The screening interview, which includes taking fingerprints and a photo, starts the asylum process and consists of basic questions about the asylum seeker's country of origin and how they arrived in the UK. Specifically, it establishes:

- the identity of the applicant;
- route taken to arrive in the UK;
- liability to return to a third country (The Dublin III Regulation¹⁹);
- eligibility for asylum support;
- liability to prosecution and detention; and
- suitability for the application to be processed under the fast track procedure.

Asylum applicants request a legal adviser before or after applying for asylum but there is no provision for those applying at port or airport. If the applicant has secured a legal adviser before the screening interview, s/he may be advised as to the purpose and content of the interview, but solicitor attendance cannot be funded through Legal Aid.

The asylum seeker will then be issued with an Asylum Registration Card (ARC), a credit card sized document issued to show that they have applied for asylum. It is also used as evidence of identity, immigration status and entitlements in the UK. The ARC holds identifying information, including fingerprints and reporting arrangements on a microchip. At this point, if the asylum seeker is destitute, s/he can apply for housing and financial support (with the assistance of Migrant Help, a voluntary organisation contracted by the Home Office to provide advice and guidance to asylum seekers) and is then housed in initial accommodation while the claim for support is considered.

Theoretically, initial accommodation is for two weeks but it can be longer. After this time the asylum seeker is dispersed to accommodation, usually outside London and the South East, provided by a private contractor commissioned by the Home Office.

Detained fast track and detention

At the screening interview, the immigration officer may decide the case can be resolved quickly and, based on the evidence, assign the asylum seeker to Detained Fast Track. Detention is in one of the ten Immigration Removal Centres (IRCs) which also house people who have breached immigration laws and ex-offenders awaiting deportation. Both the Fast Track and detention processes have shorter time limits for appeals, with only two and five days respectively to commence the appeals process.

Asylum seekers who are found to be subject to the 'safe third country' or Dublin procedure (because they have or should have applied for asylum in a country through which they passed on their way to the UK) are likely to be detained. However, for them, the next stage in the process would be to challenge the grounds for their removal.

¹⁹ The Dublin III Regulation is the third iteration of the regulation and is based on the same principles as the previous two, namely that it is the first Member State that should be responsible for examining a person's asylum application. Asylum seekers who leaves the first Member State and travels to another country will according to the legislation be transferred back to the first destination. However, there are exceptions to such transfers, e.g. if the person has family already residing in another Member State or if the person is in a particularly vulnerable situation due to e.g. a disease.

Substantive interview with Home Office case owner

The Home Office case owner conducts the substantive interview and the asylum decision is based mainly on the asylum seeker's responses to questions that test their account of events and their credibility. The asylum seeker can have a legal representative with them; however the interviews are often conducted very soon after the application making attendance by a solicitor difficult.

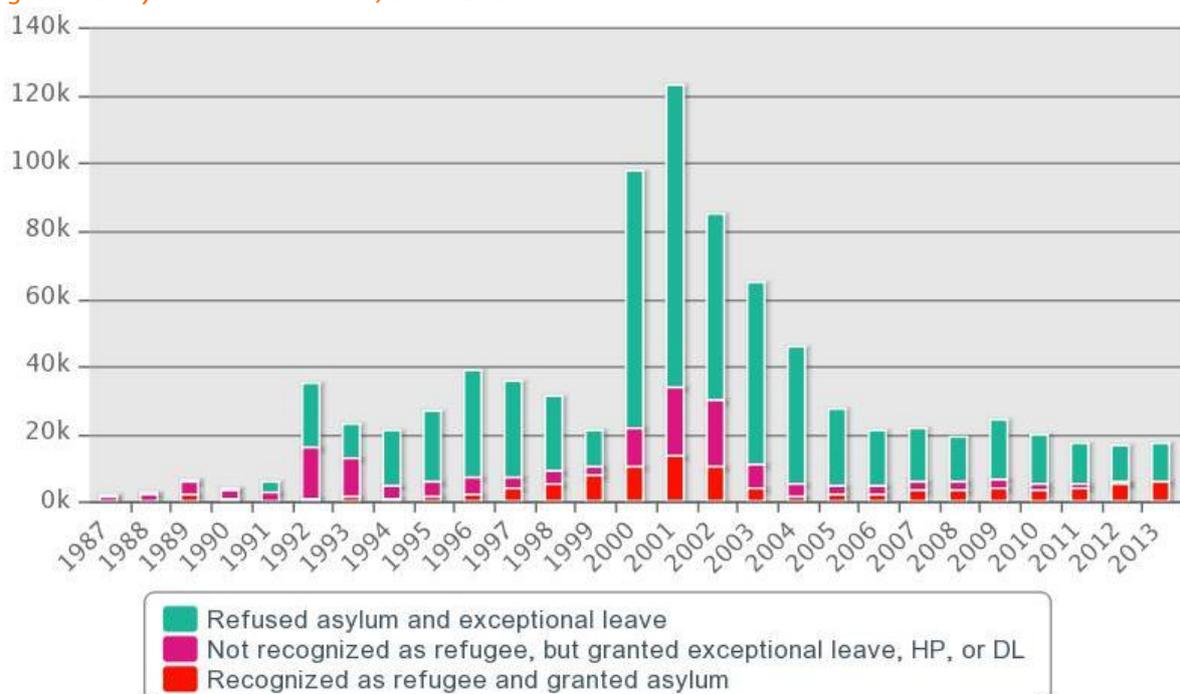
Additional evidence

After the interview, the asylum seeker may provide additional evidence, which may be requested by the case owner, or recommended by the solicitor. This information can take the form of detailed witness statements by the asylum seekers and others, records and documents (such as birth certificates), character references, country information and expert reports. In the majority of cases, the Home Office requires these documents to be produced within five days. This, however, can conflict with the competing timetables of dispersal.

Leave granted or refused

Aside from settlement in the UK, other outcomes or 'decisions', notably removals and voluntary departures, also occur. Looking at decisions by year, Figure 4.1 below shows that the majority of initial decisions were refusals in each year since 2004²⁰. In 2013, just under two thirds (64 percent) of initial decisions were refusals. These initial decisions are often appealed, with 78% of rejected applicants lodging appeals between 2004-2013. Of these, 24 percent have been successful. According to Home Office immigration statistics, in the ten years from 2000, successful appeals ranged from 19 percent to 23 percent, with 24 percent being successful in 2013.

Figure 4.1 Asylum initial decision, 1987-2013



Source: Migration Observatory using data from Home Office, Immigration Statistics

²⁰Blinder.S 'Migration to the UK: Asylum'. July 2014, The Migration Observatory at the University of Oxford.

A refusal of asylum at this stage does not usually result in loss of support. However, Legal Aid for appeals is subject to a merits test: the legal representative must believe that there is at least a 50% chance of success. If the solicitor believes that the chances of success do not meet this threshold, Legal Aid must be withdrawn at this stage.

36% of applicants in 2013 received a positive decision, usually a grant of refugee status and leave to remain in the UK for an initial period of five years. Successful applicants are then given 28 days to leave their asylum accommodation, find alternative housing, obtain employment or register for benefits. Refugees may also wish to bring immediate family members to the UK through an application for family reunion.

Appeal

As discussed briefly above, if leave is refused the legal process provides the opportunity for the asylum seeker to appeal the decision, during which time they have the right to remain in the country, within Home Office accommodation. The first appeal is made to the First Tier Tribunal and must be lodged by the asylum seekers within 10 working days following the refusal notice (five days if they are being detained and two working days if they are detained within the fast track process). The burden of proof is on the asylum seeker to produce evidence and the tribunal can refuse to hear their appeal. A failure to appeal, or to appeal in time, ends the process along with asylum support for those without children.

Appeal dismissed

The asylum seeker can appeal a negative First Tier Tribunal decision to the Upper Tribunal on a point of law, but must apply to the First Tier Tribunal to do this. If refused they can apply to the Upper Tribunal to overturn the decision and hear the appeal.

Home Office application for second hearing at Upper Tribunal

If an appeal is successful, the Home Office may apply for a second hearing by the Upper Tribunal, again on a point of law. However, it is more usual for the Tribunal decision to be accepted and the applicant given leave, usually five years leave to remain.

Appeal rights exhausted

When no further appeals are possible, the asylum process ends. Families with children continue to receive asylum support until they leave the country. If they cannot travel home immediately (because they have no documents, or have health problems) and sign up for voluntary return, they can apply for a minimal, no cash form of asylum support while they wait (called Section 4 support). This may also be available if they take judicial review proceedings, or if they can provide new evidence that is robust enough to allow them to make a “fresh claim” for asylum.

5. BARRIERS TO EFFECTIVE SERVICE USE

Key findings

We identified the following barriers to effective use of asylum services at various stages of the legal process, through interviews with asylum seekers and providers, and reviewing case files.

Finding an appropriate provider

Understanding the difference between providers

Advice can be obtained from representatives registered and regulated by four organisations. Within this complex system asylum seekers are finding it difficult to understand the difference between advisor types, the services they offer and the protection afforded by their regulatory body.

Introducer practices of providers and interpreters

Research has uncovered a concerning practice of solicitors and other advisers using interpreters to introduce asylum seekers to particular firms or individual solicitors. This is often done in return for financial remuneration and the promise of further work and restricts the opportunity for asylum seekers to research potential providers and exercise real choice in their decision making.

Poor or misinformed referrals

Asylum seekers often approach community groups, friends or other asylum seekers when deciding on a legal representative. There is concern that community referrals are often made to poorer quality or even unregulated advice;

When engaging with a provider

Difficulty understanding the asylum process

The asylum legal process is highly complex making it difficult for asylum seekers to understand. This situation is exacerbated by a number of other factors including bereavement and loss, finding accommodation and food, and language and educational barriers.

Lack of clarity around charging and how much the work will cost

Although Legal Aid represents the principal mechanism for accessing legal advice, a significant minority of asylum seekers use private providers. Interviews with some asylum seekers identified a lack of clarity round the level of fees paid for advice. At the lower end of the market, concerns were raised about value for money with potentially poor advisers overcharging for their services.

Provider lack of knowledge

Interviews with asylum seekers and solicitors, together with case reviews, identified instances of poor levels of legal knowledge and/or a lack of understanding of the case. Lack of legal knowledge manifested itself in cases involving children and in criminal cases where asylum seekers were advised to plead guilty when entering the country on false documentation in exchange for reduced sentences, when a defence existed under the Asylum and Immigration Act. Pleading guilty results in a criminal record which reduces the likelihood of asylum being granted.

Poor substantive interviews – including provision of translator

The ability of the asylum seeker to provide relevant information about complex and traumatic events is heavily dependent on the interview technique of the solicitor. As the SRA's Competence Statement highlights, solicitors need the requisite skills and experience of engaging with this

vulnerable consumer group and consultations, together with case reviews, identified examples of solicitors lacking these skills

Evidence

Lack of time or funding

The legal process often requires supporting information and evidence to be provided in a matter of days, which is often a barrier to those requesting information from friends and family in their country of origin.

Failure to request/refer for medico-legal report

In addition to the time constraints associated with requesting expert reports and supporting evidence, case reviews identified examples of failing to request documentary evidence that could aid an asylum seekers case.

Appeal

Poor advice

Among solicitors who support asylum seekers at appeal, key informants expressed concern that some lack the experience and expertise to make a robust appeal, resulting in poorly-constructed and evidenced appeals with short statements, poor country information and a lack of expert reports.

Redress if something goes wrong with a provider

Lack of awareness that they can complain

A significant proportion of the asylum seekers interviewed stated they were unaware they could complain or lacked sufficient understanding of the process for lodging a complaint. Solicitors should be making asylum seekers aware of the process for complaints and the differing roles of the SRA and LeO in that process.

Fear of repercussions

The process starts with a Tier 1 complaint to the solicitor. There is a common misconception among asylum seekers that making a complaint directly to their solicitor will adversely affect the outcome of their case. Both the SRA and LeO need to play a role in raising awareness of the complaints process and encouraging those in receipt of poor service to complain.

The previous section outlined the core stages that comprise the asylum legal process and the journey taken by an asylum seeker. This section details our findings on the issues and problems that manifest themselves at each stage and the adverse impact they have on both the quality of legal advice and the experience of asylum seekers. In identifying these issues, we have also looked at poor solicitor practices that contribute to the provision of lower quality advice.

5.1 Accessing legal advice – Finding a provider

Immediately following an application for asylum, the asylum seeker can obtain legal advice and support via a solicitor or legal adviser. Experiences of finding a provider vary significantly. Some are allocated a solicitor or adviser and their ability to choose is limited. Some are signposted to a local advice provider by community groups and asylum support organisations, and some hear about

particular firms via word of mouth and recommendations by other asylum seekers. We found that access to legal advice is driven by a number of external factors, including:

- The proximity of available services – in certain parts of the country availability of asylum legal advice is restricted;
- Whether they know other asylum seekers who have visited services and would recommend them;
- Whether there are Legal Aid services nearby with the willingness and capacity to take on the case; and
- Whether they have received help through a referral agency, which can help them to understand the system and inform their choice of provider.

Understanding the difference between providers

As detailed in Section 3.2, asylum seekers are confronted with a number of different options for the provision of legal advice. Advice and support can be obtained through OISC registered advisers, solicitors, barristers and people calling themselves lawyers. Within a complex legal system, it can be difficult for asylum seekers to understand the difference between these provider types and the type and level of support they can offer. Asylum seekers are also unaware of levels of regulatory protection afforded by each provider, and whether or not it is possible to complain and seek redress to a regulator or ombudsman. As a recent study assessing immigration client experience²¹ found,

'individuals seeking immigration advice and services tend to have little knowledge about the different roles solicitors and barristers play in the legal process'.

This lack of understanding can be addressed through improved information and guidance from Central Government, the Home Office and the advisers themselves. If asylum seekers do not understand their rights when using a provider, they may fail to obtain redress if the provider gives a poor service.

Introducer practices

Consultations with key informants, including refugee support organisations and local advice providers, have uncovered a concerning practice of interpreters being used to introduce asylum seekers to particular firms or individual solicitors, in return for mutual co-operation, financial remuneration and the promise of further work. One provider said:

'What we've found is that there are interpreters that either work for Firm A, or have done in the past, and they either get them when they first arrive at the hostel, or they hang around in the car park, waiting for people to turn up and funnel them to two solicitors'.

This introducer practices of interpreters and their relationship with firms is not new as illustrated by 2005 research report, published by the Mayor of London, which cited a refugee agency concerned about *'evidence of touting (unsolicited approaches by solicitors) in contravention of Law Society rules'*.

The concern is that some interpreters are sending asylum seekers to individuals and firms that are failing to provide a suitable standard of service to uninformed, vulnerable and confused clients.

²¹ *Immigration Client Experience Research*, April 2013, IFF Research

Signposting and referrals from community groups and statutory bodies

A significant proportion of asylum seekers are referred to solicitors and legal advisers by local community groups, friends or other asylum seekers. Over half of asylum seekers interviewed as part of this research had accessed a legal adviser from one of these sources. While these sources provide asylum seekers with an easy route to finding an adviser, there is concern that community referrals are made to poorer quality or even unregulated advice:

“We have had this particularly from within the communities ... Lot of preying on people. They build up trust. Some are regulated – but some aren’t. We find it difficult to get in touch with those who are not – we can only ascertain the people who have been exploited.”²²

Our findings here mirrored previous immigration client experience research, which found that many people *“believed a lot of misinformation was circulating within communities and that this put those needing immigration support at risk of exploitation and being exposed to poor quality advice and services.”²³*

Further concern has been raised in previous research about the quality of referrals from statutory bodies for those in care. Evidence has shown that it is rare for a child of an asylum seeker to contact a firm of solicitors directly without the assistance of a support worker, advocate, mentor or responsible adult²⁴.

Children are likely to turn to any professional or carer for advice and support and in turn these professionals have a key role to play in ensuring the child or young person understands the legal process, their part in that process, and their entitlements. However, these individuals often fail to understand what level of support is needed for a person in care and are unable to refer to providers of the required quality and levels of understanding.

Our research found mixed opinions on signposting, but what is clear is that an inappropriate referral can limit the chances of an asylum seeker getting the help they need.

5.2 Engagement with a solicitor or adviser

There is limited research that has interviewed significant numbers of asylum seekers about their experiences of obtaining legal advice. The BSB did focus on advice given to a small number of advice clients, but noted that most reported positive experiences of the process.

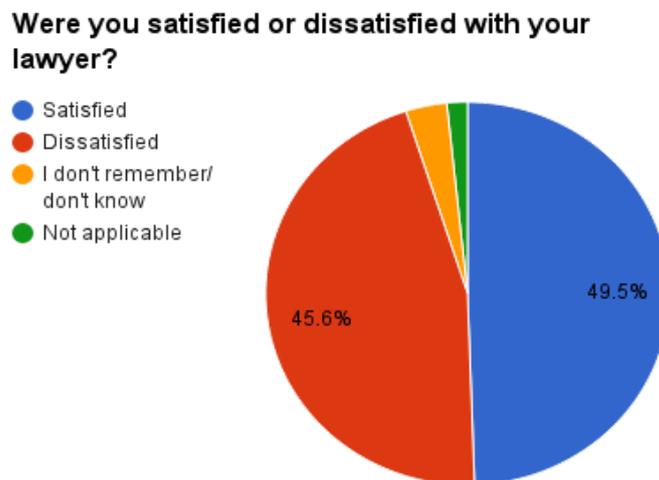
However, evidence from the 123 asylum seeker interviews identified a more mixed picture of their experiences. Figure 5.1 below illustrates that almost half (46%) of those interviewed were dissatisfied with the service they received:

²² Key informant interview

²³ *Immigration Client Experience Research*, April 2013, IFF Research

²⁴ *Navigating the System: Advice provision for young refugees and migrants*, Children's Legal Centre (CLC), May 2012

Figure 6.1: Client satisfaction with lawyer (Total = 129)



Some interviewees were quite forthright about their dissatisfaction:

"I cannot say anything good about the way I was treated by the solicitor because I have only seen him twice and very quickly"

"I am very unhappy I wish I had another solicitor"

Lack of understanding of the process

Legal services is an example of a sector where the gap in knowledge between the provider and consumer is at its most profound. This gap in knowledge makes it difficult for consumers to understand the legal process or service they are accessing, make an informed choice about legal representation, identify what constitutes a good standard of service, and to seek redress if they consider the service they received to be of poor quality.

For asylum seekers, this gap in knowledge and understanding is exacerbated by a number of other factors. At the same time as engaging with the legal process, asylum seekers are trying to find accommodation, food and acclimatise to a new country. They are likely to be coping with loss (sometimes extreme loss associated with death, war, genocide and family separation) and are further disadvantaged by language barriers, a lack of formal education and literacy difficulties. These multiple issues combine to leave asylum seekers struggling to understand the legal process and the role of key institutions and individuals.

While this, and other research, has identified the above factors as contributing to a lack of understanding of the legal process, asylum seekers and providers we spoke to also experienced difficulties in getting a suitable explanation of the process from their legal representative.

Figure 6.2 explaining the key roles in the process

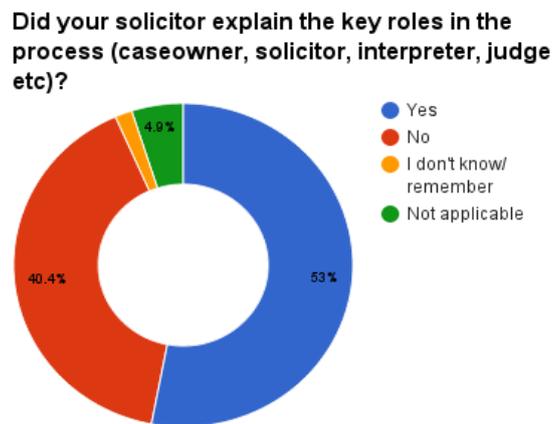
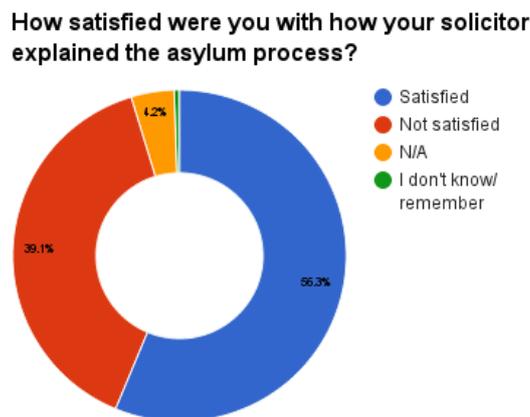


Figure 6.2 above, indicates that 40 percent respondents were not informed of the roles played by key players in the legal process, while Figure 6.3 below shows that the same proportion of asylum seekers were not satisfied with their solicitor's explanation of the legal process.

Figure 6.3 Satisfaction with solicitors' explanations of the asylum process



'My first solicitor explained to me but he did it very quickly and was giving me a lot of information at the same time and a lot of papers to sign'.²⁵

'Usually, the common complaint is that solicitors don't take the time to listen to their clients, and they are rushing'²⁶

The SRA has authored a new Competence Statement, which defines the standard that it requires from all solicitors. One of the requirements of this statement is for solicitors to *'establish and maintain effective and professional relations with clients, including...providing information in a way that clients can understand, taking into account their personal circumstances and any particular*

²⁵ Asylum seeker interview

²⁶ Key informant interview

vulnerability'. The quotes above suggests that some providers may not be meeting this requirement, as they may not be explaining the process in a way that their client can understand.

Lack of clarity around costs

Transparency around costs came up in our interviews with asylum seekers. Examples of lack of clarity from asylum seeker interviews included:

- An applicant who was asked to pay cash and then followed up for more: “[I paid] cash £1,500 (but he wanted more afterwards)”
- Another asylum seeker who was put off using a provider by a high fee he was not expecting: “I paid £40. He wanted £500 to be able to help me further so I didn’t go back”

The following extract from an interview with an asylum seeker shows some of the confusion they experience regarding fees:

Interviewer: And for (the solicitor), do you know how much you are going to have to pay?

Asylum seeker: I think for a start, I have to pay £250.

Interviewer: Beyond the £250, you are not sure yet how much more...?

Asylum seeker: Yes

Most asylum applicants cannot pay the full cost all at once, and most solicitors seem to be able to respond to this by offering some formal or informal payment in instalments.

However, we found evidence of a “lower” end of the market where providers are perceived to offer desperate people (who may have been failed for Legal Aid on merits or who are in prison) a paid for service of dubious value and sometimes what appears to be deliberately obfuscated costs:

“The issue was whether they were really advising people of the full cost of the likely work before engaging the client. I am aware of cases where they would have paid a few hundred to commence a legal process that obviously was going to have to have several further stages, particularly a judicial review process, with none of that explained, very little happened with £500, next thing happened and “I need another £1000”. That left people in serious difficulties- couldn’t afford to carry on, got lost in complicated legal process without advice.²⁷”

One important determinant of this market is that those solicitors and advisers who do not have Legal Aid contracts do not have to be accredited to provide immigration or asylum advice. The potential absence of even this basic level of quality control marks this area of the market as one of higher risk.

Those with social capital use it. Applicants get the money paid by friends, family, churches, a school and charities. However, it is not clear that these donors have any means of assessing or controlling the quality of what they are paying for.

Understanding the case – lack of case knowledge

All consumers of legal services, including asylum seekers, expect their legal representative to understand not only the specifics of their case, but also the law informing it. Indeed, the SRA's Competence Statement requires solicitors to:

²⁷ Key informant interview

'Maintain the level of competence and legal knowledge needed to practice effectively, taking into account changes in their role and/or practice context and developments in the law, including maintaining an adequate and up-to-date understanding of relevant law policy and practice'.

In addition, solicitors are expected to disclose when work is beyond their personal capability.

Interviews with both asylum seekers and advice providers identified instances of a lack of knowledge relating to the specifics of an asylum seeker's case and/or the law that underpinned it.

Looking first at knowledge of the law, poor understanding of immigration law, pertaining to children and criminal cases, was identified through our interviews and case reviews, and also in the secondary research we reviewed. *'Navigating the system'*²⁸ argued that legal representatives should have a thorough command of asylum, immigration and nationality law, including child-specific forms of persecution and the law surrounding Article 8 in respect of the rights of children. In addition, they should have an understanding of child law and the UN Convention on the Rights of the Child and how it applies to the claims of migrant children. This report went on to state that *'it is evident that not all immigration solicitors representing children have this specialist knowledge'*, a point supported by this research in relation to representation of children in care.

When we spoke to solicitors and providers of other support and advice, they raised concerns about some criminal solicitors not taking into account asylum issues when advising clients in court. Suggestions were made that asylum seekers are being advised to accept guilty pleas or sentences that may compromise their prospects for asylum. One provider commented:

'Sometimes clients have agreed to a lesser sentence, without understanding the impact on their immigration decision, as it may be a length of sentence that will trigger a deportation order'.

As well as identifying some poor practice around linking asylum and criminal cases, we also found evidence of poor practice in terms of country and client knowledge. There are asylum seekers arriving in the UK from countries that solicitors are unfamiliar with and where required research into the circumstances behind the application has not been completed.

Related to this, inadequate upfront work is being undertaken to understand the issues and drivers behind an individual's decision to apply for asylum.

Solicitors are not collating the necessary information from applicants prior to the screening or substantive interviews, which is adversely impacting on the quality of subsequent advice that can be given.

Substantive interviews

Importance of the interview

Once the initial application is made and screening has occurred, the Home Office caseworker undertakes the substantive interview, often within a matter of days. This interview is a critical stage in the process and represents the principal source of evidence upon which the Home Office will make a decision. While time constraints often prohibit the presence of a legal representative at this interview, asylum seekers have stated that, even where they have received support, the importance of the interview has not been explained and they have been inadequately prepared for the questioning from the caseworker.

²⁸ *'Navigating the System: Advice provision for young refugees and migrants'*, May 2012. CORAM Children's Legal Centre

Interview technique – taking detailed statements

To provide sufficient evidence in support of their application and to ensure the best prospects for success, it is necessary for asylum seekers to disclose difficult and personal information during initial contact with their solicitor. Asylum seekers in this, and previous research has stated the importance of being afforded sufficient time to outline their circumstances and provide evidence in support of their claim. There were examples of initial interviews, where sufficient time had not been given.

'...I do remember that I needed time to explain what had happened to me and that I was too worried, unwell and intimidated to explain clearly. Although the interview was long, they did not let me finish the points I was trying to make. When I left the interview I felt I had a huge burden on me because I had not expressed what I had gone for'²⁹

More than this, the ability of the asylum seeker to recall pertinent information, about complex and often traumatic events, and structure the information into a coherent story and evidence base is largely dependent on the interview technique of the solicitor and how questions are phrased. Solicitors need the prerequisite skills and experience of engaging with asylum seekers and vulnerable individuals, including children, people with disabilities and people with mental health issues, in order to obtain sufficient and relevant information. This viewpoint is supported by the SRA's Competence Statement, which is clear on the ability of solicitors in *'obtaining relevant information through effective use of questioning and active listening'*, and recognising when further legal research and additional information is required.

Based on evidence from our interviews, not all solicitors are meeting this competence to the same level:

"My first solicitor explained to me but he did it very quickly and was giving me a lot of information at the same time and a lot of papers to sign. My second solicitor really took time and explained things in details he did not rush and gave me time to ask questions."³⁰

Provision of interpreter

Problems were identified for those asylum seekers dependent on interpreters to communicate. Funding is not available for interpretation at the initial meeting between the asylum seeker and the solicitor, meaning applicants are reliant on friends and family, who have no previous experience of these meetings.

Where interpreters have been sourced, by solicitors, for subsequent meetings and interviews, our asylum seeker interviews provided evidence of poor quality, including interpreters who speak the wrong language.

'They will get (an) interpreter in but doesn't speak client's language – it's as basic as that'

'They had an interpreter who really struggled to speak in my language (an official language in the relevant country and one spoken by 12 million people)'

²⁹ 'Even if...The use of the Internal Protection Alternative in asylum decisions in the UK', Asylum Aid

³⁰ Asylum seeker interview

These findings have been supported through research undertaken by the Refugee Council.

“Concern was expressed at the poor quality of some interpreters working in this area both by children and young people as well as Advisers from the Refugee Council. Advisers provided numerous and alarming examples where legal representatives had either not taken steps to provide an interpreter at all, or had not provided an interpreter who matched the child’s first language. Examples were provided where languages such as Dari, Farsi and Urdu were either mixed up or treated as being interchangeable. As a consequence the interviews were unable to provide detail and clarity on the specifics of the child’s case.”³¹

5.3 Collation of additional evidence

As detailed in Section 4, following the substantive interview, the asylum seeker is given the opportunity to submit documentary evidence in support of their case. This evidence can prove critical in securing a positive decision from the Home Office.

Lack of time and funding

The Legal Aid process often requests additional information to be provided within a matter of days. While this is possible for those asylum seekers with documentary evidence to hand, our interviews with providers found that it is often a barrier to those who need to request information from their country of origin, often from friends or relatives. This results in asylum applications being decided in the absence of such information.

Failure to request/refer for medico-legal reports

While timeframes may prohibit making requests for additional documentary evidence, a number of interviews and case file reviews identified instances where solicitors had not requested evidence that could have benefited the client's case.

“Although a detailed witness statement was prepared and the representative attended the interview, there was no referral for a scarring or other medico-legal report pre-decision”³²

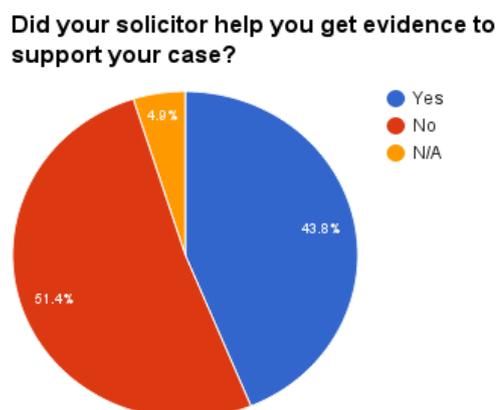
“His (legal representative) only consideration of evidence was to ask the client to obtain medical record. The client might have benefited from a medical assessment of his depression, which would have needed to be done rapidly given the timeframe.”³³

³¹ *Lives in the Balance: The quality of immigration legal advice given to separated children seeking asylum* Refugee Council, February 2011

³² Case review

³³ Case review

Figure 6.4 Solicitor helping to collect evidence



An explanation given for not requesting reports was that certain solicitors may be risk averse and the content and results of expert reports can be unpredictable.

5.4 Appeals

If the initial application to the Home Office is refused, the asylum seeker has the right to appeal through the first tier tribunal and, if this proves unsuccessful, via the upper tribunal (only on a point of law). With 78 percent of asylum seekers appealing the initial decision, awareness of their right to appeal and the process followed is high, however, a number of concerns have been raised about the competence of solicitors who provide support at appeal.

Among those solicitors who do support asylum seekers at appeal, key informants expressed concern that some lack the experience and expertise to take them on, or are worried about the work required to make a robust appeal. These issues manifest themselves through poorly-constructed and evidenced appeals with short statements, poor country information and no medical or expert reports to back them up. The following quotes and evidence from case file reviews support the assertions from key informants about the quality of appeals.

"...country guidance case is cited but the skeleton argument is of poor quality, citing basic propositions of refugee law but lacking detailed persuasion on the credibility issue. The issue on appeal was not whether a person of the client's claimed ethnic / national profile would be at risk but whether he had that profile. The skeleton argument, however, included more reference to persecution of that group than evidence of the client's membership of it."

This quote indicates a lack of required knowledge on the part of the solicitor, who clearly misinterpreted the grounds for appeal.

"...the solicitor failed to make corrections to the interview record at the appropriate time. She did so by witness statement for the appeal. This was obviously too late and was not treated as credible by the judge. The determination states that the solicitor made a statement, including a reference to problems with interpretation at the screening interview, six months after the screening interview. The solicitor had attended the interview and had not made any complaint about the interpretation at the time, nor within the five days permitted for corrections to the interview record."

This case file review identified an example of a solicitor failing to understand the asylum legal process and the requirements for the correction and submission of statements and interview records.

5.5 Redress

Despite clear evidence of poor quality advice, the number of asylum seekers complaining to the Legal Ombudsman (LeO) or the SRA is low, particularly when compared to complaint numbers in other areas of legal practice. In speaking with asylum seekers and advice providers, three key factors influence the likelihood of asylum seekers making and pursuing a complaint.

“In the last year we probably had 4 clients (out of a potential hundreds of cases) willing to make a complaint to facilitate change to new one. It was enough to trigger a new representative to take on the case but nothing has happened to old solicitor and no financial compensation or anything else.”³⁴

Most asylum seekers need help to make a complaint and some may need extra support:

“We have had cases here where close to making a complaint, and we always say it is up to them, but there are cases where we think a complaint is warranted and we do a lot of working with them and working with the solicitor to address (it)”³⁵

“We have helped a few through the LeO – so primarily where we have had success they have ordered the firm in question to pay minimal compensation. I would say never enough to change any poor practice. Not common though – in the single figures every year.”³⁶

Unfortunately, however, many agencies, like the asylum seekers they serve, have too many other pressures to be able to do this.

“But wouldn’t be down to us, e.g. if we looked at a case and thought client had been poorly advised, I don’t think our caseworkers would take it upon themselves to advise the client that they should complain to the SRA, that would be beyond our remit. We have very limited time, funds, that would take you down an avenue that we don’t have funds to deal with and our primary purpose is to look after the needs of the client and that wouldn’t necessarily be doing that.”³⁷

The specific risks and barriers relating to the redress process are explored below.

Lack of awareness

Firstly, and the most commonly cited issue, asylum seekers stated they were either unaware they could complain or did not understand the process for lodging a complaint. The chart below shows that nearly three quarters of the asylum seekers we spoke to did not know they could complain.

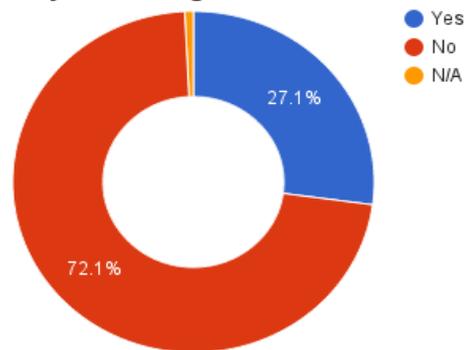
³⁴ Key informant interview

³⁵ Key informant interview

³⁶ Key informant interview

³⁷ Key informant interview

Did you know that you could complain about your solicitor if you were not satisfied with what they were doing?



While any regulated or registered adviser is required to tell their clients about complaints procedures, it is unlikely that it is seen as the most important piece of information they receive. Redress is available to any client of legal services, via the Legal Ombudsman, if the matter cannot be satisfactorily resolved by the provider.

“a client made a complaint to LeO which led to an apology from the firm for not explaining what they have or why they done it in a certain way. But that is pretty rare that client makes complaint and follows it through”³⁸.

This finding mirrors other research into consumer redress. While not specific to asylum cases, recent research conducted by LeO found that:

‘Most people become aware of LeO through their own efforts rather than being signposted by a legal services provider’³⁹

The lack of awareness and understanding of the legal process, discussed earlier in this section, extends to include the process for complaints and redress. The process starts with asylum seekers making a first tier complaint to their solicitor or legal representative. The SRA Handbook governing the conduct of solicitors makes it clear that solicitors need to inform clients of the complaints process, and requires that client complaints are dealt with promptly, fairly, openly and effectively. If the solicitor or legal representative is unable to satisfactorily address the complaint internally, a second tier complaint can be made to LeO or to the SRA.

The apparent lack of awareness of this process, identified through interviews with asylum seekers, raises a question of whether or not solicitors are providing required information. In some cases, it is another advisor who suggests that the asylum seeker go through the complaints process, to provide evidence for an appeal:

“Sometimes we encourage client to go through complaints procedure because necessary to do that to evidence that it is not the fault of client that something went wrong.”⁴⁰

Indeed, most asylum seekers need help to make a complaint and some may need extra support.

³⁸ Key informant interview

³⁹ *‘Consumer experiences of complaint handling in the legal services market - Premature complainants’* Legal Ombudsman.

⁴⁰ Key informant interview

“We have had cases here where close to making a complaint, and we always say it is up to them, but there are cases where we think a complaint is warranted and we do a lot of working with them and working with the solicitor to address (it)”⁴¹

“We have helped a few through the LeO – so primarily where we have had success they have ordered the firm in question to pay minimal compensation. I would say never enough to change any poor practice. Not common though – in the single figures every year.”⁴²

It was argued by a number key informants that more should be done to raise awareness and promote the complaints process and the roles of the firm, SRA and LeO in this process.

Fear of repercussions

In taking the decision to lodge a first tier complaint with their solicitor, asylum seekers were concerned how these complaints would impact on the quality of future support and the final outcome of their case. In support of this perception, research undertaken by IFF, on behalf of the Bar Standards Board (BSB) stated that,

“Lack of complaints not just down to awareness. Also issue of fear...In addition to lack of knowledge about the process, the perception was that it can be a complicated, intimidating and arduous procedure with no discernible positive outcome for the client. Making a complaint was also perceived by individuals to hold a risk of invoking a negative reaction from immigration authorities.”⁴³

These fears, whilst understandable, do not reflect the reality of the complaints process and point to the need for firms, LeO and the SRA to address some of the common misconceptions associated with it. Asylum seekers, along with all consumers, need to be encouraged to complain if they have been in receipt of a poor service. The importance of complaints and redress mechanisms in ensuring quality, and the need for consumers to full understand the process, is discussed in research conducted by Northumbria University for LeO:

“Confusion about redress is likely to act as a deterrent to consumer pursuit of redress. If a consumer is confused about the nature of services provided they will be unable to effectively seek redress or complain. Complaints and redress mechanisms have a role to play in securing standards of quality of services. Clementi anticipated a legal services market shaped by competition, with the consumer as an agent to shape the competitive landscape. It is therefore important to consider the extent to which confusion over effective redress inhibits consumer empowerment and has a potential impact on the consumer’s ability to shape the market as Clementi envisaged”⁴⁴

⁴¹ Key informant interview

⁴² Key informant interview

⁴³ 'Immigration Client Experience Research, April 2013, IFF Research

⁴⁴ 'Redress for Legal Services, A Report for the Legal Ombudsman, May 2013, Northumbria University School of Law

6. QUALITY & GOOD PRACTICE

Previous sections have examined how asylum legal advice works, how it interacts with other processes⁴⁵, and where and why it may not work well.

This chapter seeks to explore this drawing on insights gained from asylum seekers, solicitors and other stakeholders involved in the process, material from the literature review and the detailed case reviews which looked at how solicitors had handled 45 asylum cases.

Key findings on what constitutes good practice

- Asylum seekers identified five core behaviours they expect their legal representative to exhibit. Taking the time to explain the legal process and listen to the background to their case; Communicate clearly and frequently regarding the progress of their case; Demonstrate commitment and respect; Be honest about the prospects for their case, even if the news is not positive; and show a detailed understanding of the law surrounding their case and the specifics of their case;
- Good solicitor practices, identified via consultations and case reviews included the following:
 - Treating clients as individuals;
 - Take detailed instructions and drawing up detailed statements: Taking instructions and gathering as much evidence as possible early in the process, was considered important to the future progression of and likely success of the case. Emphasis was placed on taking detailed statements during the first meeting, particularly if the vulnerability of the asylum seeker was high;
 - Related to the above, front loading the case to obtain evidence prior to substantive interview was considered a success factor, but this practice is restricted by the fixed fee of £413 available for Legal Aid cases;
 - Allowing asylum seekers to check documentation and evidence to avoid the presence of discrepancies later in the process;
 - Working with support agencies: The ability of asylum seekers to use legal advice services can be hampered by other unmet needs. Case file reviews identified examples of solicitors engaging with medical specialists, accommodation providers, counsellors, social workers, police and criminal solicitors;

Looking first at the perspectives of asylum seekers, we got some positive examples when we asked asylum seekers to tell us what they thought constituted good practice. They consistently valued the following five core behaviours:

i. **Taking time to listen and to explain.** The importance of spending time to explain the process and listen to their full story was a common theme amongst asylum seekers.

“He really took time and explained things in details he did not rush and gave me time to ask questions”

“My lawyer was good at listening to me and explaining things to me and asking what I need.”

ii. **Communicating clearly and frequently.** Asylum seekers appreciate being given an update, particularly given the anxiety of the situation they inevitably find themselves in.

⁴⁵ Principally the asylum determination and support systems but also the Legal Aid system and some aspects of professional conduct regulation

“The solicitor always sent me an update, and every 2 weeks I got a summary of what was going in in my case. And after every appointment I got a letter summarising what we talked about.”

“If the Home Office send a letter, then she will break everything down and help me understand what they are saying and then she will advise me on what to do.”

iii. **Demonstrating commitment and respect.** A sense that the solicitor was ‘on the client’s side’ and respected them was important not only psychologically, but for reasons of establishing trust and therefore getting a fuller account of the client’s story. Commitment came in many forms and was often to do with the communication skills of listening and explaining, but also involved showing empathy for the individual’s situation and by showing they ‘care’ by putting in hard work.

“What was good with my first solicitor, was that we wrote rebuttal statements regarding the challenges from the Home Office. She was really concerned regarding my case and really put a lot of work on my case.”

“My solicitor was reassuring and non-judgmental. He talked to me as if I were a real person. He disclosed to me that he was also gay, and this helped to alleviate any shame I felt. He encouraged me to be as open as possible”

iv. **Being honest.** Clients want solicitors to speak to them honestly about their prospects, even if those prospects are poor. Those working in asylum seeker support agencies reinforced their desire for honesty in interview:

“People sometimes want to treat asylum seekers with kid gloves because of what they’ve been through. But people often tell me that what they want is a bit of honesty from their advisers.”

“They told me that fresh claim was possible but were honest about the fact that my previous application for assisted voluntary return could harm my chances”

v. **Legal expertise and knowledge including on how the process works.** Being confident and up to date on the law and processes means that asylum seekers feel more confident too.

“A resurrected my case and for a year she fought with the Home Office about my case, everything was good about her and she was a real expert in her job”

“When she took the evidence, she advised me to stick to what I have said and is written down. She told me not to break down and cry as this would cause my case to go on longer. I need to hold back my emotions, she told me.”

6.2. Quality and good practice: other evidence

Asylum seekers views on what constitutes good practice echo what others have found in the past. One important and influential study, based on work undertaken in 2009, identified five areas as key (summarizing much other work in this area and echoing the SRA competence statement).

1. The one to one relationship with the representative
2. Gathering and presenting evidence
3. Case management and conduct of the case
4. Communication

5. Access to the representative⁴⁶.

Those working in asylum seeker support agencies tended to focus on communication and behaviour, alongside some discussion of basic competence.

However, solicitors we interviewed reported a more closely defined view as to what constitutes good practice, much of which centred on the actual processes of advocacy. Several referred to ILPA best practice guides, which though excellent are now substantially out of date,⁴⁷ with the exception of more recent publications about work with children. Overall there was an emphasis on getting it right first time, thus avoiding the need to appeal. This is important for all clients but particularly so for those paying their own fees since an appeal represents a considerable extra cost.

The case reviews conducted for this research provide further evidence in relation to quality⁴⁸. Some of the files we did obtain do show examples of extremely poor practice⁴⁹. Of the 45 cases, in terms simply of the advice offered, 25 provided good and complete advice on the relevant issues, but 11 did not. Six had a mix of good and poor or absent advice and three were unclear, generally because of the absence of usable notes. On knowledge of and compliance with procedures the picture was better, 32 displayed good knowledge of procedures and complied with deadlines and three did not (but others were unclear or mixed).

6.3 Good solicitor practices

Below we have outlined the core standards which underpin quality in legal advice for asylum seekers, based on evidence from the views of asylum seekers, solicitors and others involved in the process, incorporating prior research and looking at the results of our case reviews. We have focused here on standards that are needed particularly or specifically by asylum seekers, rather than the general professional standards outlined in the Competence Statement (although the file reviews did produce some examples of excellent practice in these as well).

6.3.1 Treating clients as individuals

Solicitors and asylum seekers provide good examples of how this works well.

“My first solicitor explained to me but he did it very quickly and was giving me a lot of information at the same time and a lot of papers to sign. My second solicitor really took time and explained things in details he did not rush and gave me time to ask questions.”

“Best practice is about seeing client at each stage and making sure that you are accessible. This is the time that they put forward the most tragic thing that has happened in their life. You need to be there for them to make sure they understand what’s happening, and each step.”

⁴⁶ Information Centre about Asylum and Refugees. Review of quality issues in legal advice: measuring and costing quality in asylum work. Undertaken on behalf of Refugee and Migrant Justice, in partnership with Asylum Aid and Immigration Advisory Service, 2010. Available at: <http://www.icar.org.uk/Cost of Quality Executive Summary.pdf> [last accessed 22 April 2015]. Another piece of research, published by the Runnymede Trust. Justice at Risk: Quality and Value for Money in Asylum Legal Aid, 2012. Available at: <http://baringfoundation.org.uk/wp-content/uploads/2014/09/JusticeatRisk.pdf> [last accessed 22 April 2015] provides a similar checklist.

⁴⁷ The best practice guide to making an asylum application, for example, was published in 2002.

⁴⁸ As explained in the introduction, the case files of 45 cases and all notes kept on them by the solicitors were examined in detail. These cases were not selected as randomised or purposive samples, but they do include examples from private practice (six cases) and pro bono work (two plus three where there was a mix of pro bono and Legal Aid). We made no efforts to find cases that represented poor practice, and it is likely that where practitioners were concerned that there was poor practice they could have withheld files (and many of our requests for files went unanswered).

⁴⁹ Some of the files are incomplete records of the case so not all numbers add up

One of the cases reviewed included an excellent, clear, reassuring paragraph in the client care letter:

“However, please do not worry if you do not have any original, subjective, evidence other than that that you can talk about. As an asylum seeker, you are under no legal obligation to provide any evidence other than that which you can provide.”

While appropriate boundaries must be maintained, for asylum seekers the knowledge that they are heard and understood makes the relationship with the solicitor productive.

“My solicitor was reassuring and non-judgmental. He talked to me as if I were a real person. He disclosed to me that he was also gay, and this helped to alleviate any shame I felt. He encouraged me to be as open as possible”

“When she took the evidence, she advised me to stick to what I have said and is written down. She told me not to break down and cry as this would cause my case to go on longer. I need to hold back my emotions, she told me.”

6.3.2 Taking detailed instructions and drawing up detailed statements

Practitioners disagree about the usefulness of taking and submitting a detailed statement before the initial Home Office interview, especially where funding does not allow the solicitor to attend it, but the initial process of taking instructions is fundamental to the future good conduct of the case. This is even more important where the case has been taken on after an initial negative decision. In one case reviewed

“Attendance notes show solicitor considered the determination according to a detailed checklist, contacted the client and made an appointment for her to come in bearing in mind the appeal deadline. Application for permission to appeal done pro bono (at risk).”

A detailed witness statement may be particularly useful where the client is more vulnerable. A

“detailed and thorough (witness statement), seeming to reflect the client’s own voice despite the difficulties in taking her instructions”.⁵⁰

At this stage there should be no issue with Legal Aid funding.

“I don’t think there is an issue with budgetary constraints. Any firm worth its salt... for the initial instruction the £400 odd money should be enough to take instructions, prepare a statement, get objective evidence, talk to the Home Office, obtain any form of expert report.”⁵¹

6.3.3 Letting clients check documents etc

Getting the asylum seeker to check interview records and other documents flows from treating him/her as an individual and also allows the advice relationship to develop.

⁵⁰ Case review

⁵¹ Interview with solicitor

“There were a number of apparent discrepancies arising from the earlier asylum interview, which solicitor had to resolve using particular skill because the client sometimes became upset by her inability to remember details”⁵².

Clients appreciate the trust and involvement.

“What was good with my first solicitor, was that we wrote rebuttal statements regarding the challenges from the Home Office. She was really concerned regarding my case and really put a lot of work on my case.”

6.3.4 Attendance at interviews

Attendance at screening or substantive interviews is not funded by Legal Aid in most cases. Some projects providing additional support for more vulnerable asylum seekers may resource this, or the client may be able to pay. Where funding does not permit attendance, solicitors can ensure that the client is properly prepared, the interview is recorded, and then ensure that they make appropriate representations as quickly as possible.

“For example I take a statement from the client covering his full story prior to client attending I keep that statement on file. I prepare client on what to expect at the .. interview and once client returns with records of what was asked and his answers I can compare those with the previous statement made to me and kept on my file.”⁵³

“The solicitor acted immediately after instructed on 1 May by sending a letter on 2 May requesting tape recording of the interview, to protect client, since Legal Aid would not cover their attendance at interview.”⁵⁴

“Looking at interview record afterwards, making representations based on that, when waiting for decision follow it up regularly and, if necessary put pressure to get a timely decision”⁵⁵

6.3.5 “Front loading”

Where a solicitor is instructed before an asylum application is made or a substantive interview held, good practice is to take *“time to build a strong case before submitting it, rather than putting in application and then later on submitting supporting evidence”⁵⁶.*

Frontloading⁵⁷ is as important when the case starts with a refusal.

“Immediately have appointment with client, take full instructions so you can understand the Reasons For Refusal Letter and get views, give assurances, and indication of merits. If there is merit then for lodging the appeal, best practice is doing it immediately, not waiting until the end of the 10 days, as if you only look at the case and decide no merits right at the end, then it gives the client no chance to get a new representative: it will be too late.”

⁵² Case review

⁵³ Interview with solicitor

⁵⁴ Case review

⁵⁵ Interview with solicitor

⁵⁶ Interview with solicitor

⁵⁷ 'Frontloading' refers to the provision of increased legal services to asylum applicants during the early stages of the process.

“Frontloaded work, which you don’t get paid for. I’ve always found it to be effective once you get the initial refusal: you write back and point out the law and policy and failures in interview and you seek active participation on case management from the tribunal to make the Home Office review their decision. And if that doesn’t work, it’s pretty heavily backloaded in terms of appeal preparation.”

6.3.6 Proactive communication with client

Asylum seekers themselves gave clear accounts of how they identified this as good practice.

“If the Home Office send a letter, then she will break everything down and help me understand what they are saying and then she will advise me on what to do.” “The solicitor always sent me an update, and every 2 weeks I got a summary of what was going in my case. And after every appointment I got a letter summarising what we talked about.”

Advice letters to clients may cause some difficulty because they need to be comprehensive and detailed, but this needs to be balanced against the risk of causing confusion for the asylum seeker. A case review explains how this can work well and avoid potential disruption to the solicitor’s other work.

“[I am] particularly impressed [with the communication]. The caseworker records having given the ILPA fact sheet on fresh claims at the initial stage, then the client care letter gives a very clear but concise explanation of what can be expected of the caseworker, e.g. that she will decide whether a meeting is needed and that it may not always be possible to speak to her exactly when the client wants to, to leave a message if not available and asking the client’s understanding of this. She then wrote to the client explaining that she had found an expert and clarifying that she would need to apply for an extension to Legal Aid and the possibility of having to appeal a refusal of Legal Aid, all in clear terms so that the client could understand what the solicitor was doing and why it might take some time. The content of the report was explained at a face to face meeting and its implications were also explained in writing. The caseworker also explained that the emails about plausibility were legally privileged so they would go to any future lawyer but not to the Home Office.”

One case reviewed included a client care letter setting out standards which the client could expect and is an example of good practice in this area:

“We operate a system throughout our office of insisting our staff meet certain standards with regard to client care. Such standards include:

- a. Clients should receive copies of all substantive correspondence;*
- b. Telephone calls from clients are to be returned during the course of the same day if at all possible;*
- c. Correspondence of any sort is generally to be dealt with on the same day that it is received;*
- d. Letters to clients or other solicitors are to be written in plain succinct English;*
- e. Appointments are to be given to clients without undue delay.”*

Other firms were reported to be using text messages for brief communications (for example, to fix appointments or to remind the client to contact the office) which seems to be particularly effective, particularly where a young client, or a client with limited English, is concerned. Another firm mentioned (briefly) the complaints procedure in all correspondence with the client, not just the initial client care letter. Good communication clearly involves an element of tailoring so that the client has the maximum possible chance of being engaged and of understanding the process. A case review involving a young client notes, for example that:

“At all times the advice given in the letters and text messages or noted in phone attendances was clear and was in age appropriate language, explaining who people were and the reasons for asking him to come to appointments, for example”

“The firm used a combination of methods to communicate with the client, including telephone with interpreters, contacting support workers e.g. the Children’s Society, letter and text message – the latter seemed particularly effective as the client had a mobile phone but limited English, so the text could be read to him by someone else.”

6.3.7 Working with support agencies

Legal advice is one of the needs that an asylum seeker may have, but their ability to use legal advice well may be hampered by other unmet needs. On the other hand, good liaison with specialists and those providing support will enable the solicitor to focus on his or her areas of expertise. Sometimes, solicitors will have to find that support themselves, as in one of the cases reviewed:

“a complicated case with multiple issues. ...The solicitor displayed tenacity in getting the positive decisions along the way but also in obtaining suitable accommodation and counselling.”

Once involved, other agencies can provide evidence to support the case as well as support the client and reinforce the messages from the solicitor.

“Solicitor appears to have worked effectively with the other organisations supporting her. It appears he asked them for letters but asked her to mention it to them as well”⁵⁸

“A best practice point emerging from this file is the way in which the solicitor worked with others involved with the client’s case – she liaised with the accommodation provider’s key worker, the support workers at the Children’s Society, the police, social worker, counselling provider, criminal solicitor etc so that every useful piece of evidence and all information were available.”⁵⁹

Some services for particularly vulnerable groups may offer intermediary or wraparound services, providing triage (getting cases to Legal Aid, pro bono or paid services as appropriate and seeking solicitors with specialist knowledge as needed), counselling or therapy and practical support. This can enable better referrals to legal advice as well as further help down the line.

6.3.8 Good up to date knowledge of the law

“It appears that it was particularly important in this case that the solicitor had knowledge of trafficking and Article 8 as well as asylum and also that she was able to deal with Judicial Review as well as asylum work.”⁶⁰

Asylum legal advice is not one specialist area of work but several: it can encompass trafficking, gender persecution, child protection and detention. The law in all the relevant areas is complex and fast moving. In spite of the difficulties, many of the cases reviewed displayed comprehensive and appropriate knowledge deployed.

⁵⁸ Case review

⁵⁹ Case review

⁶⁰ Case review

“The adviser has looked into the asylum claim in detail and also considered the length of residence and effect of the children’s positions within the context of Article 8, as well as reaching a legally correct conclusion on the relevance of the client’s depression and advising her in appropriate terms.”

“The solicitor progressed the issues by making a referral for a trafficking indicators report while at the same time pursuing an age re-assessment from the local authority and seeking his release from detention.”

“The solicitors were aware not only of the relevant deadlines for appeal and judicial review but also of the need to have a positively-concluded age assessment before the client’s 18th birthday in order to ensure he benefitted from leaving care provisions. They had a clear understanding of all procedural issues on trafficking, asylum, age dispute and detention.”⁶¹

We found good examples of effective collaborative training at law firms, ensuring all relevant staff were kept up to date with developments in the sector.

6.3.9 Preparation for and attendance at court

Given the difficulties faced by asylum seekers in understanding the different roles involved in their case, tribunal or court hearings maybe the only place where they see most of them in action. Preparation for hearings must take account of the particular vulnerabilities involved, and the importance of the asylum claim to the client.

“The letter of advice in relation to appealing to the Tribunal gave a very clear statement of the merits and of the specific strengths and weaknesses of the case, so that the client was not given unrealistic expectations but would have been able to understand what obstacles she had to overcome. Also clear and appropriate advice was given when the client finally won her Tribunal appeal, explaining the possibility of a Home Office appeal.”

6.3.10 Tenacity, commitment and honesty

Asylum cases can take a long time to resolve, as one case review illustrates:

“Good outcome for client as asylum granted. Representatives instructed for 3+ years, through making fresh claim, challenging rejection, obtaining right of appeal, pursuing appeal, resisting HO appeal, then chasing issue of status documents and finally applying for family reunion, on behalf of extremely vulnerable client who was at times difficult to take clear instructions from.”

Commitment is particularly important for the more vulnerable clients whose cases might otherwise be lost.

“This is an outstanding quality file. The level of determination and persistence shown by the solicitor has made a significant difference to what began as a borderline case. Likewise the solicitor’s skill has been very important in dealing with a client who was vulnerable and easily upset”⁶².

“The solicitor’s persistence in seeking funding for a medical report and in seeking an adjournment so that the medical report could actually be obtained should be considered a best-practice point.”⁶³

⁶¹ All from case reviews

⁶² Case review

⁶³ Case review

Good practice also involves honesty with the client and directness about options when things go wrong.

“They told me that fresh claim was possible but were honest about the fact that my previous application for assisted voluntary return could harm my chances”⁶⁴

“The eventual conclusion, based on the expert report, was that a fresh claim would not have sufficient merit, and the decision on that was communicated in a sensitive way at an appointment, founded on clear advice given before the report was obtained.”⁶⁵

Some of the cases reviewed illustrate the benefits of the funding available to some providers to help particularly vulnerable clients.

“This... also demonstrates good use being made of additional funding, enabling the firm to work on the case to meet the needs of the client and obtain all useful evidence without needing to worry about the possibility of being assessed down and not reaching the escape fee.”⁶⁶

⁶⁴ Asylum seeker interview

⁶⁵ Case review

⁶⁶ Case review

7. CONCLUSION

At the outset of this research, there was a recognition, from both the SRA and LeO, of the need to better understand the market for asylum legal advice and the quality of the advice provided to asylum seekers by solicitors.

Asylum legal advice is an emotive area of practice, involving complex legal processes and vulnerable consumers seeking protection and refuge, while also dealing with other issues such as bereavement and loss, cultural and language barriers and arriving in a different country. Despite the difficulties associated with supporting and representing these individuals and their families, this research has highlighted examples of solicitors providing quality advice, while also balancing the need to remain profitable in the face of continued budgetary constraints. As with any area of legal practice, alongside identifying good solicitor behaviours and practices, the work has also uncovered issues which may require further investigation and market level awareness raising.

Key Research Questions and Findings

The main aims of this research were to understand and profile the legal services market from both the provider and asylum seeker perspective, identify the barriers constraining the effective use of legal services by asylum seekers and to identify evidence and examples of both poor and good practice. Underpinning these aims were a number of research questions which were used to frame topic guides and aid data collation and analysis. The key research questions have been detailed below, together with succinct responses based on evidence from desk research, consultations and case file reviews.

What is the profile of the asylum advice market from the demand and supply-side perspective?

Demand side: Asylum Seekers

According to data from the Home Office, asylum applications increased throughout Europe during 1987-2003, peaking in the UK at just under 85,000. Within two years, this figure decreased to approximately 26,000 and has remained relatively stable with 25,020 applying for asylum in the 12 months to March 2015.

Asylum seekers are particularly vulnerable, with many fleeing conflict, torture, imprisonment or death in their countries of origin or fearing for the wellbeing of their families. Demographic data shows that asylum applicants are predominantly male adults from conflict-ridden nations in Africa, Asia and the Middle East. In 2014, the nations contributing the largest numbers of asylum applications included Eritrea, Pakistan, Syria, Iran and Albania.

Upon arrival in the UK, many make initial asylum applications in London and the South East, before significant numbers are dispersed elsewhere, with Home Office immigration data identifying the North West, West Midlands and Yorkshire as key dispersal locations.

Supply side: Advice Providers

The provision of asylum advice is a regulated activity and it is illegal for individuals and organisations to offer advice if they are not licensed by one of four recognised regulatory bodies. This and previous

research highlighted the risk posed by unregulated advice provision, however it was not possible to identify the extent of such activity, given its 'underground' nature.

Providers of asylum advice, which total approximately 5,300, are regulated by the OISC, SRA, BSB and CiLEX. According to data from the LSCP, the SRA regulate approximately a quarter of all advisers, just under 1,300 solicitors.

Levels of protection and access to redress for asylum seekers vary according to which of the above organisations regulate their advisor's activities. The professional titles of solicitors and barristers are protected meaning only those qualified can use them. The SRA, BSB and CiLEX require all individuals to hold practicing certificates, practice only in areas where they have sufficient competence, maintain these levels of competence throughout their period of practice and have sufficient arrangements in place for handling client money. In addition, they must have statutory arrangements in place to deal with complaints, including use of LeO for examples of poor service.

Supply side: Mechanisms for accessing and delivering asylum advice

Legal Aid is the principal mechanism available to those seeking asylum advice who are not in a position to pay, and is delivered via contractual agreements between the LAA and firms. Firms are allocated a certain number of NMS, one being required for each case. The last few years has seen significant changes in the allocation of NMS, following the Legal Aid, Sentencing and Punishment of Offenders (LASPO) reforms.

The costs associated with delivering an individual NMS and Legal Aid contracts makes running a profitable practice particularly challenging. Advice providers must balance the delivery of quality legal advice and support with ensuring the ongoing viability of their business. This often results in Legal Aid work being supplemented by private clients or via offering services in other areas of law.

Private legal advice can be paid by the applicant, friends, relatives, community and faith groups. In addition to Legal Aid and privately-funded advice there are solicitors and other practitioners who provide 'pro bono' advice, a practice which the Law Society estimates has increased in all areas of private practice.

How are asylum seekers making initial decisions on representation and do they have the right information to make such decisions?

Experiences of finding an advice provider varies significantly. Some, particularly those processed through detained fast track, are allocated a solicitor or adviser and choice is limited. Others are signposted to providers by community groups and asylum support organisations or hear about particular providers via recommendations from other asylum seekers.

This research has identified three areas where a lack of knowledge or information is leading to concerns about access to quality legal advice. Firstly, asylum seekers are often unaware of the differences between the four main provider types, the type of support each offer and the level of protection afforded through different regulatory models. Secondly, consultations with informants, notably refugee support organisations, have uncovered a potentially concerning practice of solicitors using interpreters to approach asylum seekers at ports and outside detention centres in return for financial remuneration and promise of further work. These individuals are exploiting an asylum seeker's vulnerability and their lack of understanding of the asylum legal process. Thirdly, solicitors and support organisations raised concerns about community representatives and groups signposting asylum seekers to poor quality or even unregulated advice.

What are the main barriers to asylum advice and what stages of the legal process are associated with the greatest risk of poor service?

In mapping the asylum legal process (Section 4), it was possible to identify both barriers and examples of poor solicitor practice associated with particular stages.

Initial engagement

A number of barriers and poor solicitor practices were identified during initial engagement between the asylum seeker and their legal representative. This initial meeting is important in ensuring asylum seekers understand the complexities of the asylum legal process and providers obtain an understanding of the complexities and nuances of an asylum seeker's case.

Understanding the complexities of a case is made more difficult by the fact that asylum seekers are dealing with bereavement and loss, accessing accommodation and food, and education and language barriers. However, the SRA's competence statement makes it clear that solicitors must ensure clients are effectively communicated with and fully understand the legal process. Asylum seekers stated they had difficulties in obtaining a suitable explanation of the process from their legal representative, including being made aware of statutory complaints procedures and access to redress (where available).

Associated with a lack of clarity and transparency of the legal process was a similar lack of clarity round costs. There were examples, from interviews, of asylum seekers being confused about fees and ongoing costs during their case, while concerns were also raised about providers offering services to desperate people at inflated costs.

An important element of the SRAs competence statement is the requirement for solicitors to maintain a level of competence and legal knowledge needed to practice effectively, and also to recognise when a case is outside of their competence. Interviews with asylum seekers and providers identified instances of poor or outdated legal knowledge, particularly with reference to children and criminal cases. It was felt that solicitors representing children lacked specialist knowledge, a situation heightened for those in care and that criminal solicitors were not taking asylum applications into account when advising clients to offer guilty pleas.

Inadequate preparation for substantive interview

The commonly cited problem of limited time between initial application and substantive interview, which often leads to asylum seekers lacking representation or being ill-prepared for questioning, was again cited by all key stakeholder groups consulted during the research. However, further issues were identified with the interviewing skills of solicitors. It was felt, by some, that some solicitors lack the prerequisite interview skills and experience needed to sufficiently engage with asylum seekers and vulnerable clients, including children and people with disabilities or mental health difficulties. They are inexperienced in conducting interviews and may not always ask the right questions, leading to gaps in evidence presented to the Home Office.

Poor quality interpreters

In addition to highlighting the use of interpreters as introducers of solicitor services, evidence of poor quality interpretation was identified. Issues included not having access to an interpreter during the initial or substantive interviews, being provided an interpreter who spoke the wrong language

and interpreters changing the meaning of statements because of inaccurate translation. Asylum seekers are often reliant on interpreters to fully understand the process, understand questions and accurately relay their responses.

Lack of additional evidence

Time constraints associated with the legal process were identified as a key factor in limiting the availability and usage of supporting evidence, such as medical reports, mental health assessments, country information and expert reports. However, a number of interviews and case file reviews detailed instances where solicitors had failed to request additional documentary evidence which could have supported and benefited the asylum seeker's case

Appeals

78 percent of asylum seekers appeal initial decisions, illustrating a high level of awareness of the process. However, key informants stated that solicitors representing asylum seekers at appeal lack the experience and competence to piece together a strong case. The result is poorly-constructed or evidenced appeals with short statements, poor country information and no medical or expert reports to support the case. Case file reviews identified examples of solicitors misinterpreting the grounds for appeal and failing to understand requirements for the correction and submission of statements and interview records.

Redress

The number of asylum seekers complaining to LeO or the SRA is low when compared to complaint numbers in other legal practice areas. Two reasons were given to explain this trend. Firstly, a significant proportion of the asylum seekers interviewed were unaware they could complain or did not understand the complaints process. This finding raises questions as to whether solicitors are informing asylum seekers of the process. Secondly, there was a commonly-held misconception among asylum seekers that making a complaint about the legal advisor would detrimentally affect the outcome of their case.

Examples of good solicitor practices and behaviours

Despite the barriers that serve to restrict both the quantity and quality of asylum advice, this research detailed examples of good solicitor practices that result in higher quality advice and representation for asylum seekers. Many of the good practices identified could be classified under effective communication between legal representative and asylum seeker. There were numerous examples from the case file reviews of solicitors using different approaches to communicating. These included providing more face-to-face meetings to explain advice letters and correspondence from the Home Office, using client care letters to set out clear standards and expectations of service, texting asylum seekers for brief communications and case updates and writing letters detailing the content of meetings to ensure asylum seekers understood and had records of all conversations.

Interviews and case file reviews identified the following practices being exhibited by solicitors:

Frontloading cases

Solicitors are setting aside more resources at the beginning of an asylum application to research the case specifics and conduct in-depth interviews with asylum seekers to obtain a detailed background and understanding of the reasons for application.

Taking detailed statements prior to the initial Home Office interview

Related to the above, a number of solicitors are writing formal statements to further strengthen their case evidence. There was disagreement as to the effectiveness of this, however it was considered useful for particularly vulnerable clients and those with highly complex cases.

Letting clients check documents

Solicitors allowed asylum seekers to check and verify documents, including them more formally in the process, and reducing the likelihood of discrepancies that can be detrimental to a case later in the process.

Working with support agencies

Access to legal advice represents only one area of support needed by asylum seekers and their ability to benefit from this advice can be hampered by failing to address other unmet needs. There were numerous examples of solicitors liaising with specialists in areas such as housing, health assessment, counselling, social work and policing, to ensure that asylum seekers received the full range of support services they needed.

Updating knowledge of the law

Asylum advice is not a single specialist area of work but one that encompasses other specialist issues including gender persecution, child protection, trafficking and detention. The law in all these areas is complex and constantly changing and there were examples of solicitors displaying comprehensive and appropriate knowledge across multiple disciplines.