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21/02/2024

Response to the MOJ's review of Civil Legal Aid call for evidence

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Background

I write on behalf of Manuel Bravo Project. We are a Leeds based OISC registered charity that provides free representation to asylum seekers not eligible for legal aid. We exist to ensure representation for those whose case is deemed by providers exercising delegated functions to have a lower than 50% chance of success and so would not be eligible for CLR funding.

Our work includes full representation for asylum appeals and asylum fresh claims. We additionally operate an outreach service offering initial immigration advice across a full range of issues. We work closely with local legal aid providers to refer cases that have merit back into the system and to pick up those who are not longer eligible for assistance.

We as an organisation have tendered for a legal aid contract in response to the high levels of demand in our local area, but remain unconvinced by the recent fee review that this work is sustainable and so continue to assess if this is a sensible direction as we come up to the verification deadline.

Our response is unfortunately incomplete due to time constraints but if we can offer further assistance beyond this call for evidence, please do not hesitate to contact myself.

Overarching

- 1. Do you have any suggestions of changes that could improve civil legal aid – both short-term and longer-term changes?**

- 1.1. Do you have any suggestions of changes – both short-term and longer term**

My sector of interest is Immigration and Asylum. The sector requires the following:

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- an immediate and substantial increase to fees chargeable for legally aided work, including:
 - o Fixed/hourly rates for claimable work
 - o Fixed costs for disbursements
 - o Counsel fees
- Up front or earlier payments on account to cover disbursement costs
- Re-introduce the ability for probationary and level 1 IAAS advisors to hold conduct of files
- Subsidisation of accreditation costs and consideration of cross transfer between OISC and IAAS levels or a single standard accreditation scheme.
- Change in LAA approach to clawing back funds spent on work done
- Change to requirements of evidence of means for clients supported by the Home Office in acknowledgement of the difficulties obtaining evidence of means from Migrant Help – for example the creation of a searchable database based on asylum support reference numbers.
- Increase the scope of legal aid to address wider issues that frequently require ECF such as family reunion, children’s citizenship, etc.

2. What are the civil legal aid issues that are specific to your local area? Please provide any specific evidence or data you have that supports your response.

As a charity our focus has traditionally been on cases deemed to have low merit and so not eligible for legal aid. We have seen over the past 5 years a collapse in the provision of reliable legal aid providers in the West Yorkshire area, and our work has changed from focusing on those with low merit to helping those who simply cannot find legal aid lawyers willing to take on their case. A significant proportion of our work has become lodging out of time but high merit appeals that have slipped through the gaps, often for clients with specific vulnerabilities and/or minors who one would be expect to easily find legal aid but have never been able to find a rep or have been abandoned at CLR stage because the provider has handed back their contract.

In response to this demand we have felt compelled to bid for a contract in the most recent tender. However we remain unconvinced that this is a viable or sensible business decision by the underwhelming contract changes and fee reviews that have taken place. At this time we are still undecided whether or not we will proceed to begin work under a legal aid contract and may withdraw in the run up to the contract verification deadline if our forecast continues to tell us that it remains financially unviable.

On a personal basis, I (the author of this response), previously worked as an IAAS level 2 accredited senior immigration caseworker for Ison Harrison Solicitors, a firm of solicitors who have last year ended their immigration legal aid contract. Myself and my colleagues left the firm in response to a mixture of reasons not least including poor pay as a result of low fees, vicarious trauma, burnout, poor career progression, legal aid bureaucracy, Home Office and Tribunal bureaucracy and persistent attacks from Government and media to our profession. Without lawyers to do this work the firm could no longer maintain a contract. I understand anecdotally that my colleagues were not the only individuals to leave the sector for similar reasons.

This exodus of lawyers has had knock on effects. At Manuel Bravo Project to meet demand we have sought to recruit Level 3 OISC/Level 2 IAAS/Solicitor candidates to deal with appeal work. Our salary offer is above the average sector salary, and offers flexible working conditions. Despite this, in March 2023 we had only three suitable applicants. In this last month, February 2024 we have had only one applicant who is only able to do part time work. As a result of the collapse of legal aid providers and halt to the flow of new advisors being trained there are no senior Caseworkers left, demand is such that we need senior Caseworkers to deal with appeals and do not have the resource to train new advisors because our existing staff are busy meeting the appeal demand.

3. **What do you think are the changes in the administration of civil legal aid that would be most beneficial to providers? Please provide any specific evidence or data you have that supports your response.**

4. **What potential risks and opportunities do you foresee in the future for civil legal aid: i) in general; and ii) if no changes are made to the current system? Please provide any specific evidence or data you have that supports your response.**

Immigration legal aid is already at crisis point.

We are currently turning away approximately 5-10 asylum appeal referrals a week and have no capacity for fresh claim work. Our organisation is a last resort for appeal referrals, meaning if we cannot take it then it can be presumed the Appellant will have to lodge the appeal themselves and attend the Tribunal unrepresented.

The immigration and asylum sector is rapidly changing and has been described by the higher courts as “byzantine in its complexity.” It engages the most significant of human rights, Article 2 against deprivation of life and Article 3 against torture, inhumane and degrading treatment. This makes it an area that necessitates legal representation and offers the most severe of consequences if it is not provided.

The lack of interest in our recent recruitment window has demonstrated that the exodus of experienced lawyers has left few lawyers in the sector able/willing to do this work. This is a result of the deterioration of working conditions since the introduction of LASPO and the changes to fee earning capabilities of lower accredited lawyers which disincentivised providers to train new lawyers.

It should also be noted that that Home Office have begun to make a higher volume of decisions to address their backlog, without addressing the resource of the courts or the legal sector to manage the appeals following from these decisions. Anecdotally the quality of decisions has dropped. The result is a higher volume of poor and challengeable decisions that are not being appealed. This will be leading to mass miscarriages of justice with very real and dangerous consequences to the life and liberty of the individuals involved.

5. **What do you think are the possible downstream benefits of civil legal aid? The term ‘downstream benefits’ is used to describe the cost savings, other benefits to government and wider societal benefits when eligible individuals have access to legally aided advice and representation. Please provide any specific evidence or data you have that supports your response.**

Clients without access to legal aid will fall out of the system. Their cases will be unjustly refused or they will simply be withdrawn from the system. At our outreach service we have seen a number of individuals whose cases have been deemed withdrawn by the Home Office for a variety of reasons such as missing a reporting session or not attending an interview, where no invite was received or it was sent to an old address. These clients and those whose cases are erroneously refused are left destitute and unable to find representatives to assist them with getting back into the system. Destitution leads to health issues, crime and higher hurdles to resolution of the immigration issue that started the problem in the first place. This has a knock on effect to the local authority/social services, the NHS, and the wider legal aid system as these clients continue to need advice and representation.

A client who is able to resolve their immigration status is able to work and/or able to claim support. They are also able to move on with their life. It is common occurrence to see mental health issues arise as a result of the stasis/limbo currently imposed by the lengthy asylum process, exacerbated by delays in clients being unable to find representatives to assist.

Whilst perhaps outside of the scope of this review, a fairer immigration system with simpler rules, fewer focus points to drop out of the system (such as the unnecessarily long 10 year route to settlement) and easier access to advice by increasing the scope of immigration issues eligible for legal aid will all contribute to reducing destitution and the knock on effect this has.

We take instructions from hospitals referring homeless individuals for immigration advice and social services supporting children with ongoing or refused claims because they cannot find legal aid. If the most vulnerable individuals supported by support workers, social services etc. cannot find representatives with the support and connections to legal aid firms that come with that support, what hope does someone without that help have? If these supported individuals can't access representatives, how do they comply with their safeguarding duties? How much extra is charged to the public purse from social services supporting an individual instead of simply succeeding in their case and giving them the right to work?

Fees

6. What are your views on the incentives created by the structure of the current fee system?

At present there is no incentive. Fees are too low and it has driven away significant levels of experience from the sector.

The average private immigration solicitor salary is £50-75k. The average legal aid immigration lawyer is around £22-30k. That is nearly half the salary just within immigration. The gap is worse when compared to other areas of law such as conveyancing which is significantly less complex or demanding, but much higher paying.

This is a complex and demanding area of law that takes a significant emotional and mental toll on the practitioner trying to navigate it. Not just the vicarious trauma as a result of dealing with highly vulnerable and traumatised individuals at the pace required to make money under legal aid rates, but then the bureaucratic nightmare of fighting the legal aid agency to get paid for the work done. When a practitioner has to fight against Home Office bureaucracy, fight against the Tribunal's processes, navigate complex LAA requirements, fight with their own firm for resource because hourly rates were too low, and fighting against clients being angry and upset for delays and lack of resource to adequately see to their complex needs, it is no surprise the sector is not drawing in new talent.

I left immigration legal aid because I could not fight on all of these fronts and ultimately burned out. I could not get my salary above £30k no matter how efficient I was, how many hours worked or how high my billing levels got. I saw over the years the resource provided to our team gradually removed because immigration legal aid worked at a loss, making the day to day harder. Disbursement costs crippled our team and we could not find interpreters willing to work at legal aid rates further slowing down our workloads. Counsel rates began to eat into our own paltry share of the minimal fees, disincentivising instructions, creating more work for us and driving away legal aid barristers from the sector.

We would carry the burden of our clients and yet could not justify a salary that would keep up with rising costs of living. When choosing between obtaining a mortgage, starting a family and funding therapeutic support to help manage the stresses of this sector, or simply deciding it was not worth it, the latter was the more appealing option for many who have requalified into other areas. This message has come clearly from a number of practitioners who I have discussed with after leaving the sector. If you want people to take on the significant burdens that come with working in asylum, you need to adequately compensate them for it.

6.1. Do you think these support the effective resolution of problems at the earliest point?

No, at the moment the fixed fee structure incentivises doing as little work as possible to maximise the profit from the reduced fee.

Many firms will not prepare witness statements for initial claims because it is a fixed fee, and more attractive fees can be found at the appeal stage. This creates knock on work for both the Home Office and Tribunal and does not benefit the client.

Prior to accepting cases that should have legal aid but now cannot find it, when our remit was strictly merited out appeals, our organisation had a 60-75% success rate. This is for cases deemed to have low merit under delegated functions. Our experience is that a slow trauma aware approach to client care generates engagement that improves outcomes. The legal aid system needs to reflect that our user base is often deeply traumatised and being rattled through the process with as few contact points as possible to maximise profit does not create a suitable environment for detailed disclosure.

6.2. How could the system be structured better?

Rates must be improved by a substantial margin and committed to increasing with inflation.

Hourly rates should be adopted for all matters so that practitioners are paid for the work done, and can provide the required level of time for vulnerable clients at an earlier stage.

Greater trust must be provided to providers that hourly rates are being used effectively, a full audit to the penny of every escape case creates significant administrative burdens that further disincentivise this approach.

Up front payments must be made for disbursements so that firms are not working at a loss to obtain the interpretation, expert reports and counsel engagement from the start of the case. The process for claiming disbursements must be simplified, predicting profit costs on a CW3 is an exercise in futility which is not a good use of a practitioners time.

Career development and diversity

7. **7. Is there anything in particular in civil legal aid that prevents practitioners with protected characteristics from starting and continuing their careers? If yes, how could this be addressed? Please provide any specific evidence or data you have that supports your response.**
8. **How can the diversity of the profession be increased in legal aid practice, including ethnicity, disability, sex, age and socio-economic background? Please provide any specific evidence or data you have that supports your response.**

User needs

9. **What barriers/obstacles do you think individuals encounter when attempting to access civil legal aid? Please provide any specific evidence or data you have that supports your response.**

Finding a representative in the first place is incredibly difficult without a support organisation doing the work for you.

Case study:

A charity in London put out a call for help on an immigration practitioner's forum about a client of theirs who they could not find a representative for. The client was bed bound following a stroke and unable to approach firms directly. Her case engaged Article 3 ECHR but had additional elements of Article 8 that required exceptional case funding. No one in London was able to assist and the client had an appeal deadline to meet.

We agreed to take the matter on remotely from Leeds with a view to helping assist the client to obtain ECF and a local legal aid representative. The Tribunal granted an adjournment and we assisted to set up an appointment with a psychiatrist to address previously unaddressed issues of psychosis.

We successfully obtained ECF and a preliminary opinion from a psychiatrist. We then sought to obtain a local legal aid representative to take over the case but this was not possible. We phoned 23 different legal aid providers both inside and outside of London all of whom declined to take the referral and were unwilling to discuss timescales for assistance in the future.

Eventually a firm was found to take the case in Yorkshire, this was only possible through our existing working relationship with the firm. The client had to continue with a representative working remotely as they could not find one they were able to engage with locally. The client went on to succeed in their case.

This case highlights a number of issues:

- Firms unwilling to take cases on that require ECF because of the work involved and low pay for that element of work.
- Firms unwilling to take cases on for clients with complex needs without the provisional work done – it is our experience that we need to obtain provisional free opinions from MLR providers and country experts to get a legal aid lawyer to consider a referral.
- A client unable to find a local provider, even with ECF and a positive preliminary opinion and ourselves actively working to find a provider for them.

Ultimately, a vulnerable person whose appeal had strong merit and went on to succeed very nearly did not because without a very fortunate chain of events they would have been unrepresented. This is not representative of a fair or accessible justice system.

There are further issues of accessing representatives, even when one is found, because of evidence of means. Most clients do not have a letter from Migrant Help dated within the last 2 years, particularly at appeal stage where Home Office delays mean their case will have gone

on longer than this. Firms are unwilling to take cases on without in date proof and unable to do the work to obtain this for clients as they have been disincentivised by overzealous audits. Migrant Help takes at least 4 weeks to respond, if they respond at all, during which time capacity is lost and the client goes back to having to find a representative. This is an unnecessary barrier to access when the proof of support is tied to a Government provided reference number.

- 10. What could be done to improve client choice such that it is easier for clients to find civil legal aid providers and make informed decisions about which one best meets their needs? Please provide any specific evidence or data you have that supports your response.**
- 11. Do you think that some people who are eligible for civil legal aid may not know that it is available and/or how to access it? If so, how do you suggest that this is addressed? Please provide any specific evidence or data you have that supports your response.**
- 12. How do you think that people receiving civil legal aid can be supported in cases where they have multiple or 'clustered' legal issues and some of these are outside of the scope of civil legal aid? Please provide any specific evidence or data you have that supports your response.**
- 13. How do you think that the Exceptional Case Funding scheme is currently working, and are there any ways in which it could be improved? Please provide any specific evidence or data you have that supports your response.**