

LEGAL AID AND ACCESS TO JUSTICE FOR PEOPLE SEEKING SANCTUARY

This document is a response by the Churches Refugee Network (CRN) to the consultation announced by the Government on its Green Paper '*Proposals for the Reform of Legal Aid in England and Wales*'.

- ❖ Although the Proposals will affect Immigration but not Asylum, there are many points at which the two are deeply connected and there are implications which affect those seeking Sanctuary or granted Refugee status.
- ❖ This CRN response also shows many points at which improvements to the Justice and Immigration system in respect of those seeking sanctuary in the UK would result in considerable savings not only to the Ministry of Justice and the Home Office, but indirectly also to other spending departments such as Health and the DWP.
- ❖ We argue therefore that Government measures to reduce the UK budget deficit should view the costs of the various Government departments on an overall basis, rather than bluntly impacting on individual departments as entirely separate entities.

The Churches Refugee Network is a specialized network linking some 450 churches and individuals throughout the UK who are involved in supporting sanctuary seekers' needs materially and spiritually in a wide range of circumstances and measures. These include drop-in centres, referral for local or national medical care and trauma support, access to legal care, accommodation both on a private and community trust basis, and frequently complementary assistance with material needs especially travel/phone calls.

Through that network CRN has detailed knowledge of the cases of hundreds, even thousands, of people who have sought sanctuary in this country.

Aim of this document: to draw the attention of the Justice Secretary, together with the Home Secretary and other relevant Ministers, to the inadequacies of the UK justice system as it impacts upon great numbers of those seeking sanctuary in the UK.

Ministers will know the conclusion of the Rt.Hon. Iain Duncan Smith writing a foreword to a report by the Centre for Social Justice (CSJ)'s Asylum and Destitution Working Group, '*Asylum Matters - Restoring Trust in the UK Asylum System*' in December 2008:

"The evidence gathered for this report shows that the welcome offered today falls far short of our traditional standards. When asylum seekers arrive in the UK they are all too often met by a bureaucracy that fails to assess their claims fairly; more than 20% of refusals are overturned on appeal. If asylum is refused, asylum seekers are often left without support and usually without permission to support themselves through work....It also appears that a British government is using forced destitution as a means of encouraging people to leave voluntarily. It is a failed policy: only one in five leaves voluntarily.....By contrast [with other countries] UK policy is still being driven by the thesis, clearly falsified, that we can encourage people to leave by being nasty.....It is left to the voluntary sector to pick up the pieces of these shattered lives. With little support from the Government or the general public, these groups, on very limited budgets, do an heroic job stabilising asylum seekers' lives, helping them through the asylum process and assisting them to return home or integrate into the UK if they gain refugee status".

The Centre for Social Justice report, like many others, showed in great detail the ways in which UK justice has fallen far below the standards on which this country has traditionally prided itself. In 2009 an overall

rate of 28% of initial decisions were overturned on appeal. Success rates in certain nationality groups were even greater: 47% of Somali applications, 43% of Zimbabwean applications, 39% of Eritrean applications. In addition, 50% of the applications made by women were successful.

THE CHURCHES' STARTING POINT

The over-riding claims of human rights.

Human rights have deep roots in Hebrew and Christian Scriptures and their teaching about care for foreigners and strangers. Medieval Papal social teaching, still upheld, states that foreigners have citizens' rights, equal with nationals. All people are created equal in dignity, made in the image of God. Each has worth. Each has human rights. Sanctuary has long been regarded as a right for those who flee their country of origin because of persecution or a well-founded fear of persecution. This right became defined in the 1951 Geneva Convention and its 1967 Protocol. Churches hold that international HR protection law, in intention AND in operation, must override narrower national interests and conform to national citizens' rights. When we cease to regard others as human beings like ourselves, we open the door to all manner of injustice and inhumane practice. An obsession with counting the numbers of those who can be regarded as different, and setting targets for removal, is the first step to not counting them as human in the way that we are, entitled to the same rights and justice.

The Christian tradition has also for a long period thought of the foundations of social, political and legal life as a matter not so much of rights but of duties - duties of rulers to the ruled, of citizens to one another, of the rich and secure to the poor and vulnerable. While governments have a primary responsibility for their own citizens, international law gives them no right to evade basic human rights or to return innocent people to possible torture and death, without recourse to transparent justice. British Governments frequently acknowledge their commitment to this; its operations more often than not fail to reflect it.

The particular vulnerability of those seeking sanctuary

Those who seek sanctuary are in a qualitatively different position from the generality of poor people who will suffer from reductions of access to legal aid and therefore to justice. Not only are those genuinely seeking sanctuary highly vulnerable people, most of them are people who have already suffered, sometimes with deep trauma: if justice in the UK is denied them, so that they are returned to their country of origin, they are at great risk of repeated suffering. In common with many poor people, but more so, sanctuary seekers are often inarticulate before our legal system, and further disadvantaged because the language of forms, notices and tribunals is foreign to them; this is often not much ameliorated by the provision of interpreters unfamiliar with particular accents, cultural variation, and the significance of individual circumstances.

Various professional and voluntary bodies have provided detailed analyses of the impact of recent and proposed changes in the justice system, from which we quote. So far, little notice appears to have been taken of such reports, suggesting that ministers are bent on pursuing a doctrinaire course impervious to argument. We would welcome the SSHD's arguments which show that this assumption of ours is incorrect.

SPECIFIC MATTERS....particularly related to reducing costs.

- **Investing more in legal advice at the initial stage would produce justice at lower cost.**
- **The fixed fees of the LSC Graduated Fee Scheme cost more in the long term.**
- **Firms which strive for high quality service are currently penalised, by adding unpaid overtime.**
- **'Value for money' should take into account wider social outcomes.**

- Transferring costs from the LSC to legal representatives is wasting skilled people...and resulting in firms employing less-skilled clerks solely to tick LSC claim form boxes.
- Insistence on end-stage payments only penalises firms which take on more complex cases.
- Refusal of periodic billing causes cash-flow problems for legal providers, particularly those in the not-for-profit sector.
- Stress arising from inadequate justice causes long-term costs to the UK health and benefit systems.
- Agencies seeking legal aid funding for advice centres should be assessed on their contribution to 'Big Society' community values, stated explicitly.
- Sufficient time is critical for legal representatives to do high quality work.
- People should not be put in detention far from lawyers working on their cases.
- A continuous one-to-one relationship between advice workers and clients is productive in cost-benefit terms for the Big Society.
- When justice is not properly done at onset of procedure, the likelihood of prolonged and costly appeals increases exponentially. Regulatory blocking of access to higher appeals is no solution either.
- The likelihood of costly higher instance appeals and subsequent compensation disbursements increases.

1. In 2009¹ around 73 per cent of claims for asylum were rejected at "first instance" (i.e. the decision made by the Home Office). These are often on ill argued, distorted and stereotyped grounds. 18% were accepted as refugees, and a further 8% granted Humanitarian or Discretionary Leave. Of these refusals, 70% appealed to the Independent Asylum and Immigration Tribunal, where 23 per cent of such appeals (to the AIT), (or a further 16% of the total of asylum decisions) were successful. The appeals process takes many months, often years, incurring costs to the public purse steeply escalating at each level of judicial procedure. A range of highly qualified professional bodies² have analysed and recommended more investment in legal advice and discussion at the initial stage. Whilst proper quality rolling out of the Solihull Pilot NAM would be initially more complex and costly, yet it would shorten the overall time in procedure in asylum cases and lead to **greater justice at far lower costs**, as reported by the ICAR study (see footnote and next para). This would especially be true if all asylum seekers were given access to independent, accredited legal representatives before the initial decision-making interview with the Home Office case-owner.
2. A study by ICAR (the Information Centre about Asylum and Refugees) in June 2010 showed that **poor quality work costs much more in the longer term** both to the public purse and in human terms to individual asylum applicants. The Legal Services Commission's (LSC's) Graduated Fee Scheme pay for legal aid operates through a series of fixed fees. The evidence suggests that these fixed fees, combined with the low threshold level of quality at which legal aid Legal Advice providers can enter and operate in the UK market for asylum advice may be designed to incentivise efficiency but in fact are likely to cost more in the long term. The inability of OISC-accredited advisers to take higher level appeals adds to costs because legal client-care continuity is impaired, hard-won information not transferred, and client trust broken. The quality of legal representation is of paramount importance to asylum seekers whose cases routinely raise issues of life and liberty. The same report, part of a research project looking at the costs of providing quality legal representation, outlined new findings that show the present legal aid system acts to disincentivise quality.

¹ House of Commons Public Accounts Committee-200802009; Management of Asylum Applications

² A study by ICAR (the Information Centre about Asylum and Refugees) in June 2010. In July 2010 Citizen's Advice published a detailed study as evidence for the Legal Services Research Centre's review of local legal advice

3. The ICAR study also showed **the effect on Law firms**. Spending sufficient time to exercise knowledge and expertise and building a good relationship with the client is an essential ingredient to quality. It also pointed very clearly to evidence that quality work is more likely to achieve early resolution of the case, saving money in the long term. A preliminary analysis of the file reviews conducted as part of that research shows a correlation between cost and quality and between quality and successful outcomes. Interviews with legal representatives, Home Office and judicial stakeholders suggest that quality appears to be suffering: for example, critical witness statements in adult cases have now become a rarity: it appears that only representatives committed to high quality work continue to prepare them. Others ask clients to write their own, and may not even correct them. All providers who reach a minimum level of quality are currently paid an identical fee under the Graduated Fee Scheme, reducing the incentive to strive for high quality, in effect penalising those firms that do, and forcing the choice between financial survival and responsibility to their clients.
4. Changes to the funding for legal aid should be seen against a backdrop of wider public service reforms which have sought to increase value for money by driving down costs and introducing greater competition. Since the late 1980s there has been an increased focus on the management of public services, and continual reforms, characterised by:
 - The opening up of public service provision to competition between agencies and not for profit bodies.
 - Introduction of purchaser and provider distinction.
 - Costs being attributed to outputs with outputs being measured by quantitative, but (inexplicably) not qualitative, performance indicators.

The New Economics Foundation has criticised this model, claiming that it does not necessarily offer value for money or efficiency in the long-term, particularly where the outputs rewarded are not related to outcomes of wider social value (NEF, 2009b). Short-term financial gains may translate into long-term financial loss when the ‘**value**’ in ‘*value for money*’ is assessed in relation to future unreported, hence hidden, problems for society and the individual service user.

5. The LSC’s approach to the funding of legal representation under the **Graduated Fee Scheme** can be seen in this same broad context with its focus on numerical and bureaucratic efficiency and outputs as a means of securing value for money. The Graduated Fee Scheme was introduced in October 2007. It aimed to:
 - Ensure the budget for community legal advice could be controlled more effectively
 - Create better value for money by rewarding ‘outputs’ (measured as cases closed) rather than inputs (measured as hours spent on efficient file preparation)
 - Reward efficient providers and force inefficient providers either to change working practices or to exit the market
 - Create an incentive to get to the heart of a case and resolve it quickly, rather than allowing cases to remain open for extended periods (Ministry of Justice, 2009). Please note that both the Ministry of Justice and the LSC continue to ignore, let alone cost, the widely reported ‘contribution’ by inefficient UKBA practices to such delays. **We recommend that future delays caused by UKBA decision tempo be charged to the Home Office budget.** The following paragraph explains the result of transferring bureaucratic costs to practitioner. Courts already have discretion to assign costs for procedural errors, and now have a tariff for some delays, such as the belated issue of status documents.....viz. RMJ.

It transformed the existing funding arrangement under which legal representatives were paid an hourly rate for all work. For most cases the same fee is now given for a unit of advice or representation, regardless of its length or quality. A client may receive advice only, which may take an hour, and will not resolve their case, whilst the same fee will be paid for the time-consuming work needed to prepare evidence, including taking a good quality witness statement, - an essential piece of evidence needed for a sustainable decision in asylum cases.

Commentators have also suggested that the Graduated Fee Scheme has enabled the LSC to reduce costs by transferring bureaucracy to representatives who are left with the increasingly complex task of managing a financially viable case mix. We have many complaints from very able practitioners about this as a waste of skilled staff resources. Some large contracted firms of disputed legal quality employ more LSC-admin clerks than quality case-workers.....clearly not the LSC's intention!

The trend for the LSC to pass on its costs to representatives has seen the LSC impose a system on the not-for-profit sector in which case stages are paid on completion. Previously payments were made on account. This brought the not-for-profit sector in line with the private sector. Both sectors have argued forcefully against payment on completion, particularly in asylum and immigration work because stages can take months and sometimes years to complete often due to delays in UK Border Agency decision-making. Such arguments have been ignored by the LSC, and no attention is paid to the price paid in legal quality. Many now believe that the insistence on end-stage payments is part of the cross-party political wish to shrink Immigration Legal Aid capacity and thereby reduce the number of successfully statused refugees.

It is clear to all concerned bar, it seems, the LSC and Ministers, that except in the case of short units of advice, the closure of stages is therefore outside the control of legal representatives. This measure therefore clearly does not reward efficiency but penalises providers who take on more complex cases that may take longer to resolve. We strongly criticise that the LSC has declined to introduce a system of periodic billing to alleviate this problem because this would place *"a heavy burden on the LSC's and MOJ's cashflow"*.

The result has been to transfer the cash-flow problem to legal representatives, driving once again many practitioners of repute and quality into refusing LSC contracts, or to drop out of the market altogether. This affects not-for-profit representatives particularly badly as they do not have large reserves or the ability to get bank loans to finance working capital. It may also threaten smaller specialist legal aid representatives less able to secure loans against a backdrop of reduced income.

4 Case examples:

1) Legal quality 'deserts':

a) Manchester : the welfare/housing NGO The Boaz Trust in Manchester has reported the serious impact on the Greater Manchester Immigration Aid Unit, much respected for its work in the field. GMIAU is currently fundraising to replace a massive LSC reduction of contract. The South Manchester Immigration Aid Unit suffered similar contract reductions and prepared to challenge the LSC decision in the High Court. They have a known performance record on winning 'Public Interest' cases.

b) Liverpool: In Liverpool the quality of remaining known legal firms has deteriorated so much since fixed fee introduction, that church support workers are now paying for 'bussing' clients to good firms in the West Midlands still with some capacity: that includes 2 serious Domestic Violence cases.

2) London: The well known South London firm Glazer Delmar refused an LSC offer as rendering them financially not viable.

3) West London firm Sutovic & Hartigan has several years of widely respected expertise in handling Detained Fast Track cases, torture/trauma victims, and faith conversion cases. It has a strong reputation amongst advocacy NGO's and asylum seekers. During 2009-2010 they had handled 350 'matter starts' (new claims) for asylum, including many difficult detention cases. Their 2011 'New Matter Starts' offer by the LSC dropped their detention work, and assigned them a mere 96 asylum cases and 59 immigration cases. This will make their economic viability dubious. They have had to back down from challenging the LSC in the High Court after careful counsel's advice, as the risk of costs against them is too high.....So far, negotiations with LSC have not been constructive.....

4) Bradford: under impending cuts proposals, in Bradford the local CAB is losing funding for an extremely effective and much needed women-asylum seekers legal advice team serving many Domestic Violence and youthful trafficking cases.

6. A number of recent reports have reviewed the LSC's procurement of legal services. The **Justice Select Committee's 8th Report** (2009) dealt with family legal aid reform. The Committee found that:

"The Commission is proceeding at speed with inconsistent data, a weak evidence base and a poor understanding of the shape, the cost drivers, other motivating factors, and the structure of its supplier market." (Justice Select Committee, 2009: Para 67)

The National Audit Office has criticised the LSC's procurement of criminal legal aid. In a report published in November 2009, it concluded that the LSC:

"Should do more to understand the market for criminal legal aid to help it make fully informed decisions. In particular, it lacks a firm grasp of the cost structures and profit margins of different types of legal aid firm and how these vary geographically. While it holds good information locally about its suppliers....it does not bring this information together centrally." [National Audit Office, 2009: 5]

Such reports do not lead to confidence about the LSC's actions in relation to legal aid for those seeking sanctuary.

7. **The Ministry of Justice review**, chaired by Lord Bach, in June 2009, on the impact of changes to the funding of civil legal advice (Ministry of Justice, 2009), found that the Graduated Fee Scheme created perverse incentives, namely that representatives may be less willing to assist asylum seekers with more complex cases, and that it might disincentivise niche providers with a particular specialism in complex and, therefore, more time-consuming and unprofitable work. It also acknowledged concerns that the funding structure may lead to the inappropriate para-legalisation of legally aided work in order to save money, affecting the quality of representation, and it recommended that monitoring systems be put in place to examine this. We have received a number of reports from regional sanctuary supporters of cases where this occurred., and reopening such a prematurely closed case proved very difficult. This includes cases of nationals from very high risk countries such as Egypt, Sudan, Iran, Pakistan etc. where serious gender- and faith-risks often complicate the issues at stake. The Churches have many detailed reports showing failure both at initial interview and at tribunal level to understand the religious complexities which lie behind many cases of persecution.

8. **The Immigration Law Practitioners' Association (ILPA)**, responding to HM Inspectorate of Prisons consultation on potential topics for thematic report, stated the concerns voiced repeatedly by members and by other organisations about the difficulties those in prison and in immigration detention centres have in getting legal representation or indeed in obtaining information about their

case from the UK Immigration Service. There are consistent reports that detainees have not heard about the surgeries in certain immigration removal centres funded by the LSC. Concerns about legal advice have been received by ILPA from foreign national prisoner officers in prisons, and from welfare officers in immigration removal centres: even when Refugee & Migrant Justice was undertaking surgeries, they did not always have the capacity to take all the cases they thought needed representation, and sometimes had considerable difficulty in finding other lawyers to whom cases could be referred.

9. A good outcome is often a sustainable and timely decision. **High quality legal representation is an essential ingredient** for the delivery of justice in asylum cases because it helps the decision-maker to arrive at a sustainable decision. Poor quality representation which does not establish the full evidential basis of the case will often result in injustice and delay in any decision-making process. This is particularly true of asylum cases where late disclosure of evidence is frequently used as a reason for a negative decision. However, the quality of legal representation is not the only influence on justice. **The broader determination process, which includes the skills of the decision-makers, is also important.**
10. In July 2010 **Citizen's Advice Bureaux** published a detailed study as evidence for the Legal Services Research Centre's review of local legal advice, showing the potential savings which Civil Legal Aid brings to the State in the various fields such as homelessness prevented, poor health outcomes averted, work productivity and client financial gains. There are further benefits to the public purse, to the wider community, to the economy and to individuals. Similar gains can be demonstrated from adequate and effective provision of legal aid to those seeking sanctuary in the UK. In addition to the short-circuiting of higher appeals costs by pre-decision GOOD legal advice (strongly suggested by, but not put as a cost-benefit analysis, in the Solihull pilot evaluation), access to justice restricted or denied is likely to cause high levels of mental stress, physical ill-health and often even self-harm, to those seeking sanctuary who have undergone trauma in their country of origin and who have deep fears of being returned there. Ill-health in such circumstances adds to the State's (future and hidden) costs in the NHS, in civil legal processes and in housing and benefit support of those seeking sanctuary. Government efforts to reduce the national deficit have impacted not only on statutory services and local government but also on many voluntary and specialist support services, and this will inevitably lead to even further stress upon those waiting for their asylum claims to be determined. **Proper legal aid is therefore all the more important to them.**

Wilkinson and Pickett³ have shown how frequent and/or prolonged stress influences many physiological systems in the body, including the immune and cardiovascular systems. Confirmed in many well-controlled studies, they show that the most powerful sources of stress affecting health seem to fall into three intensely social categories: low social status, lack of friends, and stress in early life. Many people seeking sanctuary clearly come within each of these three categories, and hence are particularly vulnerable to being severely damaged by inadequate justice confirming their marginal/ low social status and rejection.

Clients themselves often state, and their clinicians show us, in objective and subjective clinical evidence, that to have been disbelieved in addition by the statutory authorities has severely damaged their mental health. A statused and destitute refugee challenging an 'unlawful detention', stated clearly she was not interested in the financial reward but in '*being heard and being believed...*'. In the case of Odogo (2008), early dysfunctional legal representation led to irremediable and lasting mental health damage, judicially recognised in a large compensation settlement. These cases are but some of many, illustrating that if such an ill-managed claim for leave to remain in the UK is subsequently recognised, there is a probability that they will be at

³. 'The Spirit Level' [Penguin, 2009,2010], Wilkinson and Pickett, p.39.

much greater but invisible long-term cost to the UK health and benefit systems than if they had received proper justice from the outset.

The Refugee Council stated in a letter to Damian Green MP, dated 18th June 2010: “*Our experience of working with individuals going through the asylum process is that those who are provided with early information and support which continues through the asylum process, and whose cases are progressed quickly and fairly, are more likely to integrate successfully if granted protection, and return voluntarily if not*”.

11. The Cabinet Office’s report on *Measuring Social Value* considered **Social Return on Investment (SROI)** as a framework for measuring social value, or what in today’s language we might call a contribution to the “big society”. The report concludes that for every £1 invested in a law centre, a further £15 of “social value” is generated. This method of cost-benefit analysis (CBA) is in rudimentary development at this stage, but increasingly there is discussion about how social value can be better captured in the way legal aid is procured and delivered. Social value indicators may have potential to be used within a commissioning framework.

In its submission to the *Local Legal Advice review*, Citizen’s Advice recommended that agencies seeking legal aid funding for advice services should be assessed not only on what they can deliver in terms of efficient and quality advice, and price, but what they can also deliver in the form of a community premium – i.e. **added value**. Citizen’s Advice identified a range of factors which should be fully taken into account in the competitive process, amongst them improving partnership working, enabling clients to take greater responsibility for themselves, and benefiting the fabric of the community.

12. Statistics indicate that those receiving first-rate legal assistance from competent solicitors and barristers are more likely to have their claim for asylum upheld by the AIT. We assume, reasonably, that that is no argument for limiting the extent to which they may receive legal assistance. Rather, it is an indication that **there are more cases of genuine need where the UK has a duty**, under international law and natural justice, to grant sanctuary than it currently admits.
13. This again raises the operational question of **discontinuity of legal advice between OISC accredited advisers and ‘proper’ solicitors**: This arises because many OISC advisers have no rights of higher audition, and the client, usually only told this AFTER the question arises, does not know where to find at short notice a solicitor who has.....and so misses tight appeal deadlines.
14. The ICAR review (see 2 & 3 above) reported that **the most consistent theme** arising from their project literature review is that **sufficient time** is critical to the ability of representatives to carry out high quality work. This view is shared by practitioners, their representative bodies, academics, parliamentarians, and not-for-profit organisations. It is also a critical factor emerging from research on client expectations by the Council on Social Action and, most recently, by ICAR as part of this Cost of Quality research.

This is reflected in the project definition of high quality in the statement that there will be time for “*thorough evidence gathering; exploring every legal avenue; effective communication with client.*”

This is consistent with the views ICAR obtained from refugees as stakeholders, one of whom illustrated the following practice by one solicitor:

“*Time was too short. I had one and a half to two hours to make the statement without having the chance to make any correction. The solicitor said I was taking a lot of her time because my story was very long. I didn’t have time to tell the whole story. She told me to give a summary, not the whole story.*” Our own CRN contacts confirm this; we have numerous examples of

firms where drafting the crucial client statement lasted less than one hour, and was not properly edited with the client, and submitted without client perusal. Others asked the client to draft their own statement and did not discuss or correct it. Yet others preselected evidence in complex cases, and prevented the client from using other strong evidence, using only the simple evidential material without assembling a comprehensive picture.

Case history: Muslim client who converted to Christianity, and was also a victim of domestic violence. Solicitor's caseworker (in large firm) took the conversion evidence but refused to admit UK medical/police evidence of domestic violence and of high professional profile of both marriage partners in COI. It was deemed 'too complicated' and 'would not be paid for'.

It is also consistent with the views of UKBA case-owners interviewed. ICAR reported in their study: *“Interviews with UK Border Agency case owners highlighted professionalism and expertise as the most important characteristics of a good quality representative. Where quality was high, they valued the role of the representative in the fact-finding process. Case owners and Immigration Judges suggested that the preparation and submission of a detailed witness statement by the representative, saves their time leading to a more efficient decision making process and better decisions. However, all those interviewed said that witness statements are now a rarity in adult cases and they thought that this was due to time-pressures on the representative's side.*

“I used to get, when I first started, I used to get a lot more witness statements, now time scales have moved on and I don't think the reps get a chance to get a witness statement”.

Immigration Judges have commented similarly that taking detailed instructions as to the factual basis of a claim and preparing a comprehensive witness statement were key to quality representation. Where no statement is prepared, or where it is of poor quality, the appeal hearing is made more difficult and time consuming; *“If you have got a very poor, very brief statement then effectively what happens is that the hearing becomes a substitute for these sessions, for drafting a statement that didn't happen and there isn't enough time and some judges will be concerned enough to want to identify a good claim that appears to be a bad claim ... and some won't and so the risk of injustice is considerable”.*

A legal representative commented: *“I am a huge loss maker. If I was in a firm that was entirely reliant on the Graduated Fee Scheme, I wouldn't be working like this and I would actually not do the job, because I think it's impossible to do a decent job...At some point the demands of the business will probably say, 'no more', it's too expensive.”* As with other legal representatives interviewed by ICAR, this was someone from a well-known firm reputed to provide good quality advice and representation. ICAR found throughout their research a powerful body of evidence that the Graduated Fee Scheme benefits legal representatives who spend less time on each case. Such representatives have no incentive to improve their success rates by spending more time on a case because this will simply reduce their financial reward. The GFS has the effect of penalizing representatives who wish to achieve good results for their clients by compelling them to work more hours than will be recompensed, unless the case takes sufficiently long to attract an hourly rate.

15. The practice of taking people to Detention or Immigration Removal Centres **far from where they are living** should cease. Either it puts them so far from their legal advisers that travel and other costs are inevitably much increased in securing a continuity of advice and case-handling, or it necessitates their engaging new legal advisers with the additional costs of explaining their claim once again., often with significant loss not only of information but of hard won trust. There are the

further points that where people have suffered great trauma in their country of origin, it is often both difficult and harrowing for them to have to tell their story yet again to a new stranger; and that difficulty is increased if they either have to do so in English as an unfamiliar tongue or through an interpreter who is then one more stranger to whom they have to recount their harrowing story. As we have observed previously in this submission, not all interpreters are at ease with the particular accents and cultural understandings with which the claimants speak, and this is then a cause of further distress.

16. In addition, a report by the Council on Social Action (COSA) [*Time well-spent: The importance of the one-to-one relationship between advice workers and their clients*] has shown the **importance of the one-to-one relationship** between advice workers and their clients for improving clients capacity to handle future problems on their own, reducing anxiety and increasing their confidence: the one-to-one relationship with legal advisers is equally important for claimants, whether their claim is accepted so that they are helped in settling into this country, or whether their claim is likely to fail and they need to be helped to face the prospect of return to the country they fear. In either of these circumstances, there is a cost-benefit to the UK government in providing a continuity of good legal advice.
17. In addition to the serious concerns about inadequate access to justice, and the lack of logic in limiting cost-benefit assessments to very narrow matters without assessing the wider cost-benefits in the UK economy and society as a whole, there **are numerous issues about the practical administration of justice** which make it more likely that those seeking sanctuary will appeal against refusals they receive. Many of those issues have been raised previously, not least in the Centre for Social Justice report to which we referred at the outset, and also in the three reports produced by the Independent Asylum Commission⁴.
18. **The belief that justice has not been properly done**, and that their claims have not been correctly heard, reinforces the reluctance of many of those seeking sanctuary to comply with the Government's encouragement to them to seek voluntary return when their cases are apparently at an end. Those who genuinely believe that return to their country of origin will expose them to the persecution, and possibly torture, from which they have fled understandably means that they will seek every available means to have the decisions against them overturned. Inadequate justice therefore increases the costs to the UK rather than diminishing them. And, as we have shown above, those increased costs run across a wide field of public life.
19. **Removing legal aid or limiting it will seriously affect those who are extremely poor, and particularly poor migrants and refugees**, who already face so many hurdles simply to survive. This is even more difficult when they are waiting in limbo for protracted periods before their cases are finally determined. It is not yet clear whether immigration cases involving domestic violence will be funded, and yet there are rules giving essential protection to ensure that people do not have to stay in abusive relationships because they fear that otherwise they will face removal.
20. There is particular concern for **the situation of children**. Where a child is given discretionary leave to remain in the UK until the age of 17.5 years or for 3 years (whichever is shorter), s/he may apply for further leave to stay in the UK. If this is refused, the child may have the right of appeal. Under current proposals, Legal Aid would not be available for dealing with an application for further leave or any appeal that did not include a claim for asylum, despite the complex legal and evidential issues regarding the child's private and family life.

⁴ Summer 2008: three reports by the Independent Asylum Commission: *Saving Sanctuary*; *Safe Return*; *Deserving Dignity*. www.independentasylumcommission.org.uk

Other children also are affected by the proposal that Legal Aid be removed from immigration cases: some will have grown up in the UK despite the time in which they are permitted to be here with a relative having expired; others will have spent the greatest part of their lives here without any awareness that there is a problem of entitlement to stay. Although, again, legal issues are complex, no Legal Aid will be available.

Where UKBA decides that a parent is not entitled to remain in the UK, **some children face the prospect of permanent separation** from one or other of their parents. The child may be born in the UK and is often a British citizen. The issues are complex but there is no Legal Aid. Likewise where there is a proposal that the child also leave the UK - even though the child may be a British citizen, born in the UK - that child is separated from family and has to go to a country where culture and language are entirely unfamiliar.

Proposals that Legal Aid be removed from asylum support affect children whose parents have claimed asylum. Without proper legal advice it is possible for people in this situation (including families with children) to become **homeless and destitute**. Because they are not permitted to support themselves in work, they run risks of increasing vulnerability to exploitation.

People in these situations may also be disproportionately affected by proposals to remove Legal Aid from other areas, notably employment and housing. When persons are granted asylum in the UK, they are not entitled to asylum support. Yet they may need help to understand their entitlements; without that help, sometimes necessitating legal advice, they may well become destitute and homeless. **There is mounting concern that removing Legal Aid from other areas may deny those given refugee status the help they need to integrate into the UK.**

21. Adequate legal aid is vital protection for poor people: it is right that they should be enabled to challenge powerful Government departments where decisions have been made which are improperly detrimental to them. It has become customary for many people to be granted Indefinite Leave to Remain instead of Refugee status; there is a right within fourteen days from the grant of ILR to ask that instead the claim for Refugee status, which gives greater rights (for instance, for Family Re-union), should still be pursued. It is important that those who are poor should not lose their right to legal aid if they continue to seek the option of Refugee status.

SIGNED ON BEHALF OF THE CHURCHES' REFUGEE NETWORK

(sgd)

ROSEMARY KIDD

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Date: 3rd February 2011.