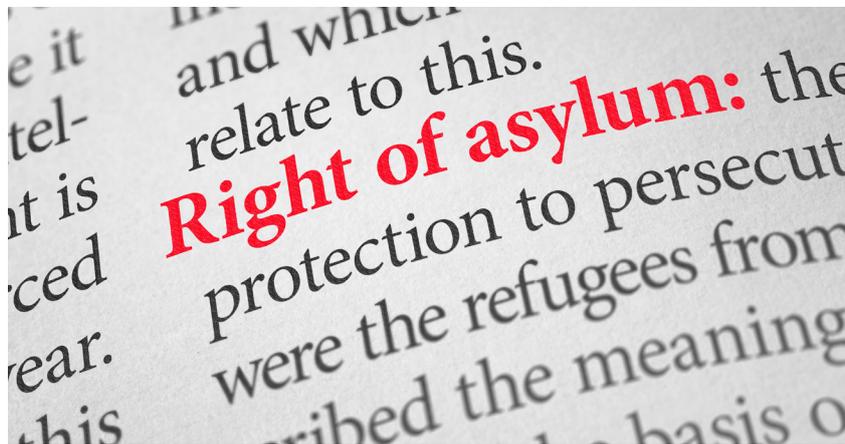


Risk Management: Quality of Legal Services for Asylum Seekers



Introduction

In 2015 alongside the Legal Ombudsman and Unbound Philanthropy, the Solicitors Regulation Authority (SRA) commissioned Migration Work CIC, in partnership with Refugee Action and Asylum Research Consultancy, to look into legal support for asylum seekers. The research carried out included a literature review, an analysis of statistical data, interviews with providers, interviews with asylum seekers and case file reviews. In January 2016 the report was published.

The key messages that came out of the report

CILEx Immigration Practitioners and CILEx Authorised Entities should consider the following:

Lack of awareness and understanding

- Asylum seekers, community groups, and representative bodies do not sufficiently understand the asylum legal process.
- The complexity of the asylum legal process makes it difficult for asylum seekers to recognise the difference between the different types of legal adviser and what protections they have through the legal regulators.
- Community groups and representative bodies sometimes signpost asylum seekers to poor quality or unregulated advice.

Issues of regulatory concern arising from the conduct, competence and behaviour of solicitors

- Questions were raised about how clients are introduced to solicitor firms and solicitors' association with interpreters.
- Asylum seekers and solicitors identified instances of a lack of knowledge relating to the specifics of an asylum seeker's case and the law underpinning it.
- Concerns were expressed about the competence of solicitors undertaking appeals.
- Solicitors sometimes lack the skills to obtain and record sufficient and relevant information from asylum seekers.

Barriers to effective use of advice services

The main barrier identified in the report is finding an appropriate provider. Asylum seekers are:

- Allocated advice providers as part of the legal process (particularly within detained fast track), limiting their ability to choose.
- Signposted by community groups and support organisations.
- Identifying firms through word of mouth and recommendations.

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The research 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 about 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.

Action you can take

So, in responding to these issues, you should explain clearly the different advisor types to the asylum seeker, the services you can offer and the protection afforded by your regulatory body.

You should ensure that your relationship with interpreters complies with the standards expected by you under the CILEx Code of Conduct.

Lastly, by promoting the services you offer within community groups, friends or other asylum seekers, you can help ensure that an asylum seeker benefits from high quality and regulated advice. That also helps position your firm within the local community.

Understanding the legal 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.

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.

Time constraints and provision of additional evidence

The legal process, particularly which 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. The timescales for accessing documentation can 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.

Action you can take

You should ensure that there is a high quality of interpretation, making sure the interpreter speaks the correct language.

Gather as much information as possible at the outset and know what information is needed.

Ensure that the asylum seeker is aware of the redress process and that making use of this will have no impact on their application.

Good Practice to Adopt

Much of the good practice can be seen as effective communication between the legal representative and the asylum seeker. This includes:

- Face-to-face meetings: provide more meetings to explain advice letters and correspondence from the Home Office.
- Client care letters: must always set out clear standards and expectations of service.
- Text messaging: can be used to provide asylum seekers brief communications and case updates.
- Make sure they understand: write letters detailing the content of meetings to ensure asylum seekers understand and have records of all conversations.
- Clarity on costs: ensure they clearly understand the costs.

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- Interpreter's skills: check the interpreter has the necessary skills.
- Frontloading cases: set 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.
- Detailed statements prior to the initial Home Office interview: can be beneficial particularly for vulnerable clients and those with highly complex cases.
- Letting clients check documents: allow 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. Liaising with specialists in areas such as housing, health assessment, counselling, social work and policing can ensure that asylum seekers receive the full range of support services they need.
- 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.

Bad Practice to Avoid

The report covered examples that would raise regulatory concerns as to the competence of the legal professionals. These included:

- Lack of clarity around costs: evidence of a lack of understanding by asylum seekers of how costs are compiled and overcharging or deliberately obfuscating costs.
- Poor legal and case knowledge: legal representatives in asylum need to have sufficient levels of understanding in a number of differing 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).
- Insufficient experience of undertaking interviews: 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 how adept the legal adviser is at interviewing and 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: notwithstanding the issue of timescales, some applications can be strengthened significantly by requesting details regarding mental health, physical scarring or medical assessments. This is not always considered but any decision should be taken in conjunction with the asylum seeker.
- Limited experience of appeals: lack of experience of undertaking appeals, demonstrated 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.

Further support

The full report can be found on the Solicitors Regulation Authority (SRA) website: [Asylum Report](#).

CILEx Regulation Limited

Kempston Manor, Kempston, Bedford MK42 7AB

T +44 (0)1234 845770 | F +44 (0)1234 840989

E info@cilexregulation.org.uk | www.cilexregulation.org.uk | [@CILExRegulation](https://twitter.com/CILExRegulation)

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