



Developing a cost-free legal advice service for asylum seekers and migrants in Brighton and Hove

UNIVERSITY OF SUSSEX MIGRATION LAW CLINIC
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ACRONYMS

ECHR European Convention on Human Rights (1950)
ILPA Immigration Law Practitioners' Association
JCWI Joint Council for the Welfare of Immigrants
LAA Legal Aid Agency
LASPO Legal Aid, Sentencing and Punishment of Offenders Act (2012)
MLC Migration Law Clinic of the University of Sussex
NASS National Asylum Support Service
OISC Office of the Immigration Services Commissioner
PTSD Post-traumatic stress disorder

TABLE OF CONTENTS

EXECUTIVE SUMMARY	2
Main findings of the Pilot Study	3
Establishing the Migration Law Clinic	4
Main recommendations	4
Recommendations for further development of the MLC	5
Recommendations to government for structural changes at the national level	5
1 INTRODUCTION	6
2 METHODOLOGY OF THE PILOT STUDY	9
3 THE LEGAL FRAMEWORK GOVERNING LEGAL AID FOR IMMIGRATION AND ASYLUM LAW WORK	10
3.1 The development and subsequent contraction of public funding for immigration and asylum law work	10
3.2 The current scope of legal aid for immigration and asylum law matters	11
3.3 The Standard Fixed-fee Scheme	12
4 ANALYSIS OF FIELDWORK	14
4.1 Costs	14
4.1.1 The cost of hiring a legal representative	14
4.1.2 Application fees	14
4.1.3 Travel costs	15
4.2 Difficulties posed by the application process	15
4.3 Barriers faced by providers (and potential providers)	16
4.3.1 OISC Registration	16
4.3.2 The financial (in)viability of legal aid asylum work: the inadequacy of the standard fixed fee for asylum cases	17
5 THE MIGRATION LAW CLINIC AND THE SCOPE OF ITS SERVICE	18
5.1 The nature and extent of the Clinic's service	18
5.2 Case studies	19
5.3 Limitations of the Clinic	21
6. REFLECTIONS AND RECOMMENDATIONS	22
6.1 Recommendations	23
6.1.1 Recommendations for further development of the MLC	23
6.1.2 Recommendations to government for structural changes at the national level	23
6.2 A note on setting up the MLC (for prospective university immigration law clinics)	24

EXECUTIVE SUMMARY

In 2018, a team of University of Sussex undergraduate law students working under the supervision of academic staff, conducted the Migration Law Clinic Pilot Study. This was in response to growing and grave concerns about the lack of availability of legal support and services for those seeking asylum and other forms of leave to remain in the UK. These concerns have only heightened in the intervening period: most recently, in response to the government's publication of a draft Bill of Rights to repeal and replace the Human Rights Act 1998, which would make it much more difficult for potential deportees to rely on Article 8 of the European Convention on Human Rights (ECHR) to prevent removal and might have a wider impact on the rights and status of vulnerable groups of migrants in the UK; and, among other initiatives, the government's intention to involuntarily relocate asylum seekers to Rwanda, which will then be responsible for processing the asylum claim and for providing asylum in successful cases.

The purposes of the study were:

- i) To better understand some of the challenges faced by asylum seekers and vulnerable migrants living in Brighton and Hove when applying for asylum, and other forms of leave to remain and leave to enter.
- ii) To identify the extent and reasons for any shortfall in cost-free immigration and asylum law advice and representation in Brighton and Hove.
- iii) To gauge whether there was demand for additional free legal advice in the form of a university law clinic, specialising in immigration and asylum law.

The team undertook a review of the legal framework that governs the provision of legal aid for immigration and asylum law matters and of relevant academic commentary on its impact. The team also gathered new empirical data based on interviews with a range of local stakeholders. This report sets out the team's findings, describes how it informed the development of the clinic, and makes recommendations both for the further development of the Clinic and for changes to the provision of legal aid. Finally, it offers advice to other universities contemplating setting up their own clinic in this area.

MAIN FINDINGS OF THE PILOT STUDY

- As in other parts of England and Wales, there is a shortfall in cost-free immigration and asylum law advice and representation in Brighton and Hove, which has grown significantly following the introduction of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO 2012).
- There is evidence of an immigration and asylum legal services 'drought' in Brighton and Hove, whereby legal advice may appear to be available, but is, in fact, practically inaccessible:
 - There is only one legal aid provider of immigration and asylum law advice and representation, which at the time of the research was restricted to work concerning unaccompanied asylum-seeking children and domestic violence cases;
 - The geographically nearest firms offering legal aid-funded advice and representation for immigration and asylum matters are based in Croydon or London. Travelling costs are a significant barrier.
 - The shortage of cost-free immigration and asylum law services is particularly concerning given that Brighton and Hove is now an asylum dispersal area. Given that this development occurred as recently as 2021, the full impact of dispersing asylum seekers to an area with such a shortage of cost-free immigration advice and representation is yet to be seen.
- Research participants recounted several challenges when attempting to make applications to the Home Office. These included:
 - Issues with language and cultural barriers in dealing with the Home Office.
 - Difficulties securing evidence and completing application forms.
 - Prohibitively high costs for making applications.

- The difficulties that people face when making applications by themselves (and the high stakes involved) create a genuine need for professional legal assistance. However, the high application fees make the prospect of paying privately for legal assistance even less attainable. These issues greatly heighten the need for accessible, cost-free legal services.
- Individuals and organisations who wish to provide immigration and asylum law advice and representation are often prevented from doing so by difficulties in obtaining a legal aid contract or registration with the OISC.
- There were Brighton based solicitors who had previously provided legal aid immigration and asylum law advice and representation but have ceased to do so due to the fixed fee scheme, which in their view rendered legal aid asylum work financially unviable.
- Due to these factors, there was a clear demand for additional free legal advice in the form of a university law clinic specialising in immigration and asylum law.

ESTABLISHING THE MIGRATION LAW CLINIC

Since the underpinning research was conducted, the University of Sussex has set up its Migration Law Clinic. The Clinic is operated by final year undergraduate law students and supervised by a member of academic staff who is also a qualified barrister. It has been providing cost-free advice on applications for asylum, family life-based immigration and citizenship. To date, it has offered substantive legal advice to 57 members of the public.

The range of issues has varied widely and has included particularly serious cases, for example, cases involving very young refugees who have experienced traumatic events and who now seek to bring family members to join them in the UK through family refugee reunion. In some cases, the family members have themselves been in very difficult and dangerous circumstances in their home country. The Clinic has been able to help its clients to make successful applications for leave to remain on human rights grounds, secure visas for family members to enter the UK, and, in a number of, cases to obtain

citizenship. For these clients, the Law Clinic is often the only source of cost-free legal services to which they have been able to gain access.

The Clinic's service is subject to a number of limitations:

- As a student operated service, it only delivers a full service during university term times, while the students are present.
- The students cannot advise clients directly, as they are not OISC registered advisors in their own right. Consequently, all advice and regulated work must ultimately be completed and delivered by the supervising lawyer, which limits the Clinic's capacity.
- While the MLC provides cost-free legal advice, its members cannot themselves provide legal representation to members of the public. This shortcoming has been partially addressed by instructing legal representatives from local law firms to act for our clients in appropriate cases. However, the number of cases in which the Clinic can do so remains small.

MAIN RECOMMENDATIONS

RECOMMENDATIONS FOR FURTHER DEVELOPMENT OF THE MLC

1. **Expand Clinic's services to include full legal representation.** While the provision of cost-free advice has been very helpful to a significant number of people and has assisted people in making successful applications, many migrants, especially those who are more vulnerable and more in need, require a legal representative and ongoing casework, which the MLC is not currently able to provide directly. The MLC has sought to address this shortcoming by raising funds to hire legal representatives to act for our clients in a small number of cases. With the support of the University and the School of Law, the Clinic should expand this scheme to enable Clinic's clients to access full legal representation in a greater number of cases. As well as helping meet a local legal need, this would help deliver the University's strategic objectives for community and public engagement and its commitment as a 'University of Sanctuary'.

2. **Collaborate with external partners.** The MLC has collaborated with the Lewes Organisation in Support of Refugees and Asylum Seekers (LOSRRAS) to provide immigration and asylum law advice to foreign national detainees at Lewes Prison. This has enabled the Clinic to access people with an especially acute need for legal assistance and who may otherwise face difficulties in obtaining help. The MLC should explore other collaborations to ensure that it reaches those who would most benefit from its services.

RECOMMENDATIONS TO GOVERNMENT FOR STRUCTURAL CHANGES AT THE NATIONAL LEVEL

It is unrealistic to expect a university law clinic to fill the gap in legal services created by LASPO. Consequently, this report makes the following recommendations to government for wider structural changes:

1. **Reinstate legal aid for immigration cases.** At the very least, legal aid should be reinstated for refugee family reunion cases and cases concerning parents with children who are settled in the UK. Such cases involve exceptionally high stakes for the families involved and are often legally and evidentially complex, requiring professional expertise.
2. **Amend the Immigration Rules on refugee family reunion to permit all those with refugee status to bring their parents, siblings and children to the UK (regardless of age).** The UK should provide safe passage to the UK for all immediate family members of recognised refugees in the UK.
3. **Reduce the number of times that people must renew limited leave to remain before being able to apply for settlement.** Currently, those on the ten-year route to settlement must apply for further leave to remain every 30 months until they have completed ten years, meaning that they must make a total of five applications for leave to remain in order to obtain settlement (and potentially more, if they also need to apply for fee waivers). This greatly increases the demand for legal services and the costs for applicants, who have already been granted leave and placed on a route to settlement.
4. **Amend the payment system for legal aid solicitors and barristers.** Remove the fixed fee scheme and return to hourly rates (as is the norm in other areas of civil legal aid work). This would incentivise more providers to enter the market, helping to address the phenomenon of advice droughts and deserts, while simultaneously improving the quality of immigration and asylum law advice and representation that people will receive.
5. **Provide training and support for people who wish to register with the OISC as immigration advisors.** In the UK, it is a criminal offence for anyone to provide immigration advice or representation without being approved to do so by the OISC (or another designated qualifying regulator, including the Solicitors Regulatory Authority (SRA) and the Bar Standards Board (BSB)). It is crucial to increase legal advice capacity through public-funded training programmes made available to those interested in becoming OISC accredited.

INTRODUCTION

The Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO 2012) significantly reduced the scope of legal aid for immigration matters in England and Wales.¹ In the wake of this new legislation, local stakeholders have identified a ‘legal advice drought’ in Brighton and Hove. A legal advice drought – an expression coined and defined by Dr Jo Wilding² – describes a geographic area in which legal advice may appear to be available, but is, in fact, inaccessible. In an attempt to understand the sources of the drought, as well as the impact of the drought at local and individual levels, a team of undergraduate student researchers at the University of Sussex undertook the Migration Law Clinic Pilot Study. This study consisted of an analysis of the legal framework governing legal aid and new qualitative data on its impact, gathered by the students through their empirical research consisting of a series of interviews with local service users, providers and other stakeholders. The purposes of the study were as follows:

- i. To better understand some of the challenges faced by asylum seekers and vulnerable migrants living in Brighton and Hove when applying for asylum, and other forms of leave to remain and leave to enter;
- ii. To identify the extent and reasons for any shortfall in cost-free immigration and asylum law advice and representation in Brighton and Hove;
- iii. To gauge whether there was demand for additional free legal advice in the form of a university law clinic, specialising in immigration and asylum law.

This report sets out the team’s findings, describes how it informed the development of a new cost-free immigration and asylum law advice service (the Migration Law Clinic, MLC), and makes recommendations both for the further development of the Clinic and for changes to the provision of legal aid. While there have already been significant analyses of the impact of LASPO 2012, this report adds to that work by exploring the first-hand experiences of migrants and legal professionals navigating immigration and asylum legal services and support. The combination of desk-based and empirical research offers insights into the challenges faced by those seeking to navigate the immigration and asylum system, as well as the perspectives of other stakeholders (legal firms, migrant charities, etc.) on the current availability of local immigration and asylum related legal services.

The pilot study informed the establishment of the MLC at the Sussex Law School. The MLC project was a response to the problems identified by local and regional organisations, to provide some additional support in the context of the ‘legal advice drought’. The MLC, which was established in February 2019 following the research pilot study, operates under the supervision of a qualified barrister.³ Through the MLC, final year undergraduate law students draft immigration and asylum law advice, which is then amended and finalised by a registered barrister before being provided to the MLC’s clients on a cost-free basis.

The pilot study focused on the Brighton and Hove area, geographically local to the University of Sussex. Although the city has a wide range of services and support groups available to the migrant community,⁴ including in the legal field, our fieldwork confirmed the drought in immigration and asylum legal advice and representation.

1 See, for example, Frances Meyler and Sarah Woodhouse, ‘Changing the immigration rules and withdrawing the “currency” of legal aid: The impact of LASPO 2012 on migrants and their families’, 2013 *Journal of Social Welfare and Family Law* 35(1), 55-78.

2 Jo Wilding, ‘Droughts and Deserts: A report on the immigration legal aid market’, University of Brighton / The Joseph Rowntree Charitable Trust, 2019, available at https://www.researchgate.net/publication/333718995_Droughts_and_Deserts_A_report_on_the_immigration_legal_aid_market, accessed on 14 July 2022.

3 For more information, see <http://www.sussex.ac.uk/law/clinical-legal-education/mlc>, accessed on 14 July 2022.

4 Sanctuary on Sea, ‘Local resources: Refugees, Asylum Seekers and Migrants Directory’, <https://brighton-and-hove.cityofsanctuary.org/local-resources>, updated on 1 February 2022, accessed on 14 July 2022.

The qualitative data was mainly collected by University of Sussex undergraduate law students through semi-structured interviews with local migrants, legal professionals, and NGO representatives.⁵ This data complements the valuable work that has been carried out by the Brighton and Hove City Council in the field of migrant support, particularly through its 'International Migrants in Brighton and Hove' report.⁶ The subsequent Covid-19 pandemic has undoubtedly put further pressure on an already stretched legal aid system and other legal support services. While this report does not address these pressures in any detail, it is worth noting further anecdotal evidence of increasing anxiety about legal cases and applications, and issues around 'remote' justice.⁷

Section 2 explains the methodology of the research in more detail, providing a review of the ethical risks of the project and the protective steps taken. The relevant policy background is explored in Section 3, which explains the intent, purpose, approach and outcomes, thus far, of LASPO 2012. Following this, Section 4 offers an analysis of the themes that emerged from the data collected and provides insights into the grassroots experiences under the new legal aid framework. Section 5 then focuses on the establishment of the Migration Law Clinic at the Sussex Law School, and its activities and impact to date. This is followed by Section 6, which includes insights into future developments in the field, the intended impact of this report, some final reflections, and, finally, offers brief advice to other universities considering setting up their own immigration and asylum legal clinic service.

Though the collection of the empirical data that informs this report was conducted in 2018, the observed shortfall in immigration and asylum law services continues, locally and nationally. This is all the more concerning now, given the increased use of Brighton and Hove as an asylum dispersal area, and the added insecurity introduced by the UK-Rwanda plan, according to which the government intends to involuntarily relocate asylum seekers to Rwanda, whose authorities will then be responsible for processing the asylum claim and for providing asylum in successful cases. Additionally, proposals to repeal the Human Rights Act 1998 would make it much more difficult for potential deportees to rely on Article 8 ECHR to prevent removal and might have a wider impact on the rights and status of vulnerable groups of migrants in the UK.

⁵ This research was approved by the University of Sussex Social Sciences & Arts Research Ethics Committee (application no. ER/NF213/1).

⁶ Brighton & Hove City Council, *International Migrants in Brighton and Hove: Part of the Joint Strategic Needs Assessment programme*, January 2018, <http://www.bhconnected.org.uk/sites/bhconnected/files/180123%20IMNA%20full%20report%20-%20final.pdf>, accessed on 14 July 2022.

⁷ See, for example, Jo Hynes, 'Remote hearings in the immigration tribunal', September 2020, <https://www.lag.org.uk/article/209006/remotedhearingsintheimmigrationtribunal>, accessed on 14 July 2022.

2 METHODOLOGY OF THE PILOT STUDY

The Migration Law Clinic Pilot Study acted as a preliminary assessment and exploratory study of the legal service needs in the field of immigration and asylum in Brighton and Hove. The data for this study were gathered using a mixed-method approach, with a combination of documentary analysis, semi-structured interviews, and focus groups.⁸ The documentary analysis included a range of legislative texts, academic literature, and civil society and charity reports exploring our subject matter. Participants were all above 18 years of age and were selected with the aim of producing a broadly representative sample of the migrant community in Brighton and Hove, although no claims of representativeness can be made. The participants were recruited through calls included in newsletters, email lists, social media, and a provisional MLC website. Six participants were interviewed individually, including three legal advisors from local NGOs, one local NGO representative, and two legal practitioners (solicitors). Eight migrants participated in one focus group session.⁹

Of specific concern were ethical issues concerning the vulnerability of the migrant participants. In discussing their experiences navigating migration to the UK and accessing immigration and asylum legal services, migrants were likely to discuss difficult and traumatic life experiences that could trigger or worsen psychological conditions (PTSD, anxiety, etc.). Moreover, refugees, asylum seekers, and migrants with complex legal situations are considered vulnerable participants for research purposes, and confidentiality is a high priority. In response to this vulnerability and need for confidentiality, those conducting the interviews with migrant participants received training on the basic framework of conducting fieldwork and specifically conducting this (ethically) high-risk project. Moreover, all (focus group and individual, semi-structured) interviews were supervised by a project leader to ensure a high ethical and academic standard was met. In combination with the ethical and academic quality and standard control, the research team conducting the interviews were prepared to inform participants who revealed signs of trauma and stress during the interviews about available support services.

Participants were given clear information about the project in terms of its aims, purpose of data collection, methods, data storage, and how to withdraw from the project. Consent was then obtained and recorded by researchers, with specific focus on anonymisation preferences. In order to properly communicate this information and ensure that participants were providing informed consent, information about the project and anonymisation preferences were provided in their preferred language, whenever possible. Anonymisation of participants' identities was ensured either by using chosen pseudonyms or creating pseudonyms for participants. Moreover, all personal identifiers were removed from primary data (name, country of origin, age, etc.). The provision of information and collection of consent were followed by a reminder to all participants that they could withdraw their consent at any time and request the destruction of any data relating to them.

During the semi-structured interviews with legal practitioners and local NGOs, interviewers enquired about the participants' professional background in the field of migration, what services they provided for migrants, and for information and views about the availability and quality of migration legal advice in Brighton and Hove. During the focus group with migrant participants, the research interviewers enquired about the participants' experiences accessing legal advice in Brighton and Hove. Questions specifically enquired about who provided the legal advice, difficulties obtaining advice/support, language barriers, access to legal aid funding, quality of legal advice, appeals, etc. The participants were asked how they thought immigration and asylum law advice and representation in the United Kingdom, and more specifically Brighton and Hove, could be improved.

The audio-recordings of the semi-structured interviews and the focus group were transcribed and coded using an applied thematic analysis through the software NVivo. The research, data collection and subsequent thematic analysis were exploratory in nature. The textual data (interview audio files and transcripts) were read and reread to identify and categorise trends, themes and ideas, and coded to represent themes that were then linked to raw data (excerpts). These themes should be considered against the existing legal framework for the provision of legal aid, to which we now turn.

⁸ Fieldwork also included an online questionnaire, delivered through SurveyMonkey (<https://www.surveymonkey.co.uk/>), targeting migrants in Brighton and Hove. The questionnaire included open and closed questions, specifically enquiring about migrants' experiences accessing migration legal advice. However, the questionnaire attracted only thirteen respondents, thus results were of very limited interest, of no statistical relevance, and eventually excluded from the thematic analysis.

⁹ The interviews and the focus group took place between April and July 2018, and were conducted in various locations in Brighton and Hove mutually convenient to the participants and researchers involved.

3 THE LEGAL FRAMEWORK GOVERNING LEGAL AID FOR IMMIGRATION AND ASYLUM LAW WORK

A shortfall in cost-free immigration and asylum law advice and representation in Brighton and Hove is part of a nationwide problem, which has grown significantly following the introduction of LASPO in 2012. However, reductions in spending on immigration and asylum law cases began prior to this. This section will provide a brief overview of the history of public funding for immigration and asylum law cases in England and Wales, and the broad national trends that have emerged as a result of reductions in public spending.

3.1 THE DEVELOPMENT AND SUBSEQUENT CONTRACTION OF PUBLIC FUNDING FOR IMMIGRATION AND ASYLUM LAW WORK

The modern legal aid scheme was founded shortly after the Second World War, in parallel to the establishment of the welfare state.¹⁰ Its precise form was based largely on the 1945 Rushcliffe Committee report, which concluded that:

‘[T]here appears to be a consensus of opinion that the great increase in legislation and the growing complexity of modern life have created a situation in which increasing numbers of people must have recourse to professional legal assistance. It follows that a service which was at best somewhat patchy has become totally inadequate and that this condition will become worse. If all members of the community are to secure the legal assistance they require, barristers and solicitors cannot be expected in future to provide that assistance to a considerable section as a voluntary service.’¹¹

The previous scheme relied in large part on solicitors waiving their fees for those of limited means. However, the reluctance of solicitors to work on such terms had caused a shortage in legal services.¹² The Committee proposed that civil legal aid should be made available to all those who could not afford it and that ‘Barristers and Solicitors should receive adequate remuneration for their services’.¹³ These recommendations were first implemented through the Legal Aid and Advice Act 1949, which provided that legal aid would be free to those who could not afford to pay at all, and that those of modest means would pay a contribution.¹⁴

Publicly funded immigration and asylum work first emerged as a significant area of legal practice in the 1960s and 1970s. This was largely due to the controversial decision in 1962 to restrict the previous legal rights of Commonwealth citizens to enter the UK, and to the introduction of The Immigration Appeals Act 1969 and the Immigration Act 1971, which granted rights of appeal to Commonwealth citizens and, subsequently, all migrants.¹⁵ Within the next two decades, organisations such as the Immigration Law Practitioners’ Association (ILPA) and the Joint Council for the Welfare of Immigrants (JCWI) were established, and a significant number of legal aid practitioners specialising in immigration and asylum law emerged.¹⁶

During this time, the legal aid scheme in England and Wales covered nearly all immigration and asylum cases, provided that the client passed a ‘means test’ and that the case had sufficient merit. However, the early 2000s brought about the first wave of reductions to public funding for work on immigration and asylum law cases.

¹⁰ Ole Hansen, ‘A Future for Legal Aid’ 1992 *Journal of Law and Society*, 19(1), 85-100, p. 85; Tamara Goriely, ‘Rushcliffe Fifty Years On: The Changing Role of Civil Legal Aid within the Welfare State’ 1994 *Journal of Law and Society* 21(4) 545-566.

¹¹ Theobald Mathew, ‘Legal aid and legal advice in England and Wales: The Rushcliffe Committee Report’, 1945 *Howard Journal*, 7(1), 39-44, p.39.

¹² House of Lords, ‘Legal Aid and Advice Act 1949: 70th Anniversary’ 2019, p. 2, <https://lordslibrary.parliament.uk/research-briefings/lln-2019-0099/>, accessed on 14 July 2022.

¹³ Mathew, note 11, pp. 39-40.

¹⁴ Legal Aid and Advice Act 1949, ss 1 and 2.

¹⁵ Meyler and Woodhouse, note 1, p. 56.

¹⁶ *Ibid*, p. 56.

The initial cost limits on immigration and asylum cases that had previously been increased were now being decreased¹⁷ and funding for representation at asylum interviews was removed in most cases. While this was significant, Meyler and Woodhouse assert that the implementation of LASPO ‘marks a new departure for immigration legal aid’, as it denies many important immigration cases from receiving legal aid at all.¹⁸

The stated aims of LASPO were, as detailed in a green paper published by the Ministry of Justice in 2010, to reduce spending and to ‘move towards a simpler justice system’ while ensuring that legal aid is ‘targeted to those who need it most, for the most serious cases in which legal advice or representation is justified’.¹⁹ In pursuing these aims, LASPO has moved England and Wales away from the ideals embodied in the Legal Aid and Advice Act 1949. With the implementation of LASPO, a new model has emerged that only allocates legal aid for what are deemed to be priority cases. In this vein, Kenneth Clarke – in his capacity as Lord Chancellor and Secretary of State for Justice at the time – stated that he wanted to ‘reserve taxpayer funding of legal advice and representation for serious issues which have sufficient priority to justify the use of public funds, subject to people’s means and the merits of the case.’²⁰ While maintaining that access to justice is a ‘hallmark of a civilised society’,²¹ the government concluded that certain areas of law are either not ‘serious’ enough to justify public spending or not sufficiently complex to require legal expertise and consequently should not be eligible for legal aid.²² This has been the fate of most areas of immigration law, which due to LASPO are now outside the scope of legal aid.

3.2 THE CURRENT SCOPE OF LEGAL AID FOR IMMIGRATION AND ASYLUM LAW MATTERS

The only types of immigration and asylum law matters that remain in scope for legal aid are as follows:

- Asylum/protection claims and appeals;²³
- Challenges to immigration detention and applications for bail;²⁴
- Applications for leave to remain as a victim of domestic violence;²⁵
- Applications by victims of trafficking for leave to enter or remain in the UK;²⁶
- Proceedings before the Special Immigration Appeals Commission;²⁷
- Applications for asylum support where the application includes an application for accommodation;²⁸
- Cases involving unaccompanied minors;²⁹
- Applications for Judicial Review, subject to the restrictions set out under LASPO 2012, Sch 1, Part 1, para 19.³⁰

¹⁷ Ibid, p. 56.

¹⁸ Ibid, p. 57.

¹⁹ Ministry of Justice, ‘Proposals for the Reform of Legal Aid in England and Wales’, Consultation Paper, CP12/10, November 2010, p. 5.

²⁰ Ibid, p. 3.

²¹ Ibid, p. 15.

²² Ibid, p. 16, para. 2.7-2.11.

²³ LASPO 2012, Sch 1, Part 1, para 30.

²⁴ Ibid, para 25.

²⁵ Ibid, para 28.

²⁶ Ibid, para 32, provided that there has been a positive reasonable grounds decision and no negative conclusive grounds decision.

²⁷ Ibid, para 24.

²⁸ Ibid, para 31.

²⁹ See: <https://www.gov.uk/government/publications/separated-migrant-children-transitional-guidance>, last updated 3 December 2019, accessed on 14 July 2022.

³⁰ LASPO 2012, Sch 1, Part 1, para 19.

One of the most significant gaps in this list is applications for leave to remain or leave to enter the UK on the basis of family life. Such cases would include, for example, cases where a parent is applying for leave to enter or remain in the UK on the basis that they have children who are settled in the UK, who they wish to raise. Such cases would also include applications for refugee family reunion, where a recognised refugee has immediate family members who are still in the country of origin and who are at risk of persecution or other forms of serious harm. As Meyler and Woodhouse have commented, it is unclear how the omission of family life claims from the scope of legal aid is compatible with the government's promise to continue funding the most 'serious' cases.³¹ In an application for leave to remain on the basis of family life, the stakes are often extremely high. If the application is unsuccessful, then a parent may be removed from their children, or the children themselves (even if they are British citizens) may be required to leave the UK to live in a country to which they have never been and with which they have little connection. In refugee family reunion cases, not only will the integrity of the family unit be at stake, but those members of the family who remain in the home country may still be in extremely difficult and potentially life-threatening circumstances.

Meyler and Woodhouse highlight that the stakes in cases where a parent might be removed from the UK are very close to those in Public Family Law cases, where a child may be separated from their parents by the state, and for which legal aid is available. Therefore, if Public Family Law cases are 'serious' enough to attract legal aid, then the denial of legal aid for family life-based immigration cases cannot be justified on grounds that they are not sufficiently serious.³² Nor can it be said that the law on family life claims is less complex, so as to obviate the need for professional legal expertise. The Court of Appeal has described the Immigration Rules on family life claims as 'labyrinthine'³³ and the relevant case law on family life claims is also notoriously complex. Looking at the government's own criteria on which cases should remain eligible for legal aid and which should not,³⁴ it is difficult

to see how family life immigration claims could have been removed from the scope of legal aid altogether. Yet, that has been the effect of LASPO.

3.3 THE STANDARD FIXED-FEE SCHEME

In 2007, a fixed fee system was introduced to remunerate solicitors and barristers for their work on publicly funded immigration and asylum law cases. Commentators have reported that the fixed fee scheme has negatively impacted both on the quality and availability of publicly funded immigration and asylum law services, for the reasons set out below.

The fixed fees have been heavily criticised for not adequately remunerating the number of hours of work that such cases require, especially in complex asylum cases (which many asylum cases are).³⁵ This puts practitioners in a position where they must either perform a significant number of unpaid hours work for asylum cases or alternatively allow the quality of their work to drop below an appropriate standard.³⁶ Even where the practitioner is willing to put in the additional unpaid hours, it may not be financially feasible to do so as a regular part of their practice. The danger this creates is that some practitioners may be either unable or unwilling to spend the amount of time that is required to provide a good level of service, without being properly remunerated for their time. Consequently, there is a significant risk that legitimate claims may be refused on the basis that the applications have not been properly prepared and presented.³⁷

For those who do spend extra time to provide quality representation, they can only take on a small number of Legal Aid Agency (LAA) cases each year due to financial constraints. While it may appear that there are practitioners in a certain area providing LAA cases, they are unable to accept too many cases. There may appear to be an abundance of 'matter starts' in one area, which refers to the number of LAA cases a practitioner can take on; however, they often will not be taken on.³⁸

³¹ Meyler and Woodhouse, note 1, pp. 63-67.

³² *Ibid.*, p. 66.

³³ *Hoque & Ors v SSHD* [2020] EWCA Civ 1357.

³⁴ Ministry of Justice, Post-Implementation Review of Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO)', February 2019, para 266.

³⁵ Wilding, note 2, pp. 26 and 37.

³⁶ *Ibid.*, p. 15.

³⁷ *Ibid.*, pp. 25-30.

³⁸ *Ibid.*, p. 39.

Further, many practitioners have stated that the funding cuts have made them reluctant to take on legally aided clients because it is not financially viable³⁹ and many have simply ceased to do so. The result of the funding cuts has been a proliferation of ‘legal aid droughts and deserts’ across the country. Wilding uses the term legal advice desert to describe an area in which no legal representation can be found at all, whereas a drought refers to areas in which legal advice may appear to be available, but it is not, in reality, accessible due to the existing providers limited functional capacity.⁴⁰ Consequently, there has not only been a reduction in the availability of legal advice, but an accompanying reduction in the quality of advice being given to migrants.⁴¹ Therefore, both those who do and those who do not qualify for legal aid face difficulties finding representation.

The concern with accessibility does not only lie within the number of providers and funding, but also concerns whether migrants are able to physically reach these providers. Most providers tend to be in city centres, leaving clients who live outside these areas with long journeys and potentially prohibitive transport costs, given that many will have no choice but to rely on the meagre subsistence support available under asylum support.⁴² The government responded to this issue simply by stating that it is satisfied with the regional variation of providers.⁴³

Despite the well-documented, negative impact that LASPO has had, it looks unlikely that the law will be reversed in the near future. In 2019, the government released a report analysing the effects of LASPO. The report considered two main objectives: 1) reducing spending on legal aid; and 2) ensuring priority groups have continued access to legal aid.⁴⁴ The government concluded that LASPO was successfully meeting both aims. It anticipated a reduction of £1m in spending on civil cases. However, the reduction was closer to £7m, which the government attributes to the natural decrease of cases.⁴⁵ While the report

treated this as a success, it is concerning that there was a much higher reduction in spending and cases than anticipated. It bolsters concerns that LASPO has reduced the accessibility of legal aid in ways that the government has not wholly anticipated or understood, and that LASPO has achieved the goal of reducing spending at the expense of access to justice. However, despite many immigrants being denied legal aid for their cases, the government released a statement saying it is satisfied that legal aid is still being provided to those who need it the most.⁴⁶ The report concluded that no changes to LASPO were required, other than one amendment to provide legal aid for cases involving unaccompanied minors. It is highly likely, then, that the advice droughts and deserts identified by Wilding will remain. Our fieldwork confirmed this fear.

39 Ministry of Justice, note 34, para 296.

40 Wilding, note 2, p. 39.

41 *Ibid.*, p. 16.

42 Ministry of Justice, note 34, para 288.

43 *Ibid.*, para 291.

44 *Ibid.*, para 1138.

45 Electronic Immigration Network, ‘Ministry of Justice publishes long-awaited review into legal aid, proposes no significant changes for immigration’, 11 February 2019, available at <https://www.ein.org.uk/news/ministry-justice-publishes-long-awaited-review-legal-aid-proposes-no-significant-changes>, accessed 14 July 2022.

46 *Ibid.*

4 ANALYSIS OF FIELDWORK

The qualitative research we conducted has provided insights into the challenges faced by asylum seekers and vulnerable migrants living in Brighton and Hove when applying for asylum, and other forms of leave to remain and leave to enter; and indicated some of the reasons for a shortfall in cost-free immigration and asylum law advice and representation in Brighton and Hove.

Interviews with solicitors and legal advisors identified that there were three legal providers in town at the time of the interviews, but only one provided cost-free legal services under the legal aid framework, and this was restricted to work concerning unaccompanied asylum-seeking children and domestic violence cases. All but one of these legal professionals agreed that there was not enough support in the Brighton and Hove area. The geographically closest solicitors' firms offering legal aid funded immigration services are located in Croydon.

Participants referred to several local organisations that provided differing types of legal advice, assistance, and/or support to migrants, such as Brighton Housing Trust,⁴⁷ Voices in Exile,⁴⁸ Citizens Advice,⁴⁹ and the Sussex Syrian Community Group.⁵⁰ The nature and extent of the services offered varied, however.

In navigating the immigration system, migrants in Brighton and Hove often access legal services offered through one of the three existing legal providers and/or one of the many local organisations offering legal advice/support. Their experiences, shared in the focus group interview, evidence a variety of challenges when attempting to navigate the immigration and asylum system in the UK. Many discussed difficult applications, language barriers, and high costs. Service providers interviewed discussed the financial burden of legal aid contracts on firms, barriers to Office of the Immigration Services Commissioner (OISC) registration⁵¹ and unmanageable caseloads, as issues dominating legal services in the field of immigration and asylum in Brighton and Hove.

4.1 COSTS

The costs involved in applications for leave to remain were one of the key issues raised by participants. The three main costs were:

- The cost of hiring a legal representative;
- The application fee that must be paid to the Home Office for certain types of application for leave to remain or leave to enter the UK;
- Travel costs, where legal services were not available locally.

These will be discussed in turn.

4.1.1 THE COST OF HIRING A LEGAL REPRESENTATIVE

As discussed above, under the restricted scope of legal aid, those seeking leave to remain on the basis of their right to family or private life (as protected by Article 8 ECHR) will not receive legal aid funding.⁵² As discussed above, the Court of Appeal has described the Immigration Rules on family life claims as 'labyrinthine'⁵³ and the relevant case law is also notoriously complex. Several participants discussed the high costs involved in paying privately. In many cases, this cost will simply be unaffordable. The additional financial pressures outlined below, make it even less likely that applicants will be able to pay privately for a legal representative.

4.1.2 APPLICATION FEES

For most family or private life-based applications for leave to remain or leave to enter the UK, the applicant must pay an application fee to the Home Office to process their application and a health surcharge in order to access the NHS. Even where a claim is successful, the applicant will only initially receive 30 months leave to remain. They will be assigned either to the five-year route or the ten-year

48 <https://www.voicesinexile.org/>, accessed 14 July 2022.

49 <https://www.citizensadvice.org.uk/>, accessed 14 July 2022.

50 <https://sussexsyriancommunity.org/>, accessed 14 July 2022.

51 OISC is the regulatory agency of immigration legal advice in the UK: <https://www.gov.uk/government/organisations/office-of-the-immigration-services-commissioner>, accessed on 14 July 2022.

52 LASPO 2012, Schedule 1.

53 note 33.

route and will need to apply for leave to remain again every two and a half years until they have completed that number of years before being eligible to apply for indefinite leave. A participant pointed out that the cost of each application, at the time of the interview, was more than £2,000.⁵⁴ While this may seem financially viable for some, many of the legal professionals interviewed emphasised that this application must be submitted, and the same fees paid, for each dependant the parent has, which is often several. Moreover, if this is a single parent, with several dependent children, they are unlikely to work full time or in a high-paying position. Thus, this application and status-seeking process is generally not financially viable for single parents with several dependent children. One participant, a legal professional from a local NGO in Brighton and Hove, explained that:

‘a lot of people in that situation, although they have perfectly valid claims to be in the UK, fall foul of the rules purely because they can’t afford to regularise before their leave to remain expires’.

While it is possible to apply for a fee waiver, the application will only be granted in relation to specified human rights applications ‘where to require payment of the fee would be incompatible with a person’s rights under the European Convention on Human Rights (ECHR)’.⁵⁵ Furthermore, the applicant must be aware that they can apply, must know how to do so and must be able to prove to the Home Office that they have insufficient funds at their disposal, after meeting their essential needs, to pay the fee.⁵⁶ Fee waivers are not available for applications for settlement. Consequently, those who cannot afford to pay the fee (currently £1,523) must instead continue applying for further limited leave to remain every 30 months.

4.1.3 TRAVEL COSTS

Beyond the costs involved with fees for legal applications, participants also pointed out other costs. For example, a member of an NGO described how there were more pro-bono services and firms with legal aid contracts in London, but the associated costs of travel were not affordable for families from the Brighton and Hove area. Nonetheless, the lack of solicitors in Brighton and Hove means that, despite the costs involved, migrants are travelling to London for legal services. While the COVID-19 pandemic has led to more remote working practices, it is unclear whether this has facilitated the provision of remote immigration and asylum legal advice. It should also be stressed that, even in London, there is very little generalist legal help, and some immigration and asylum law providers only assist people living in specific London boroughs.

4.2 DIFFICULTIES POSED BY THE APPLICATION PROCESS

In addition to the costs involved, participants were keen to highlight the practical as well as legal difficulties posed by the application process. One key service many migrants look for is assistance with completing applications for asylum and other forms of leave and for NASS support. Several migrants in the focus group and several local NGO representatives described the difficulty of the applications that clients are required to complete and submit in order to apply for status, support, etc. Often professional legal assistance is required for applicants to retrieve the correct documents, as they are quite specific and difficult to locate. A representative from a local organisation who assists with these applications asserted that not all types of applications were difficult, but they did require all information to be presented accurately, which was challenging for applicants:

‘[i]t’s not necessarily that they’re very difficult, it’s just that you have to get everything right – and that’s what’s difficult for people’.⁵⁷

⁵⁴ The current application fee for most family and private life claims is £1,033: <https://www.gov.uk/government/publications/visa-regulations-revised-table/home-office-immigration-and-nationality-fees-11-october-2021>, 11 October 2021, accessed on 14 July 2022. The applicant must also pay a health surcharge, currently £624 per year: <https://www.gov.uk/healthcare-immigration-application/how-much-pay>, accessed on 14 July 2022.

⁵⁵ Home Office, ‘Fee waiver: Human Rights-based and other specified applications’ available at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1067553/Fee_waiver_Human_Rights-Based_and_other_specified_applications.pdf, p. 6, accessed on 14 July 2022.

⁵⁶ *Ibid.*, pp. 11-14.

⁵⁷ In this instance, it is not clear which types of cases were being referred to. In the experience of one of the authors who practises in this area, applications for family reunion and asylum can be very complex.

The financial cost of the applications combined with rejection on the basis of small mistakes can be devastating for migrants. Small mistakes are not uncommon, as a participant discussed the experience of having their name changed/anglicised in the process of migration and often accidentally misspelled on forms. This can entail the rejection of an application and thus resubmission (if the individual can afford this).

Migrants also suffer the consequences of unrealistic time frames. A legal professional discussed the experience of several migrants to whom the Home Office demanded the submission within a very short period of time of supporting documents for an application, after being in possession of the application for several months. Letters from the Home Office addressed to applicants may demand the submission of a document within two weeks of the date of the letter, although letters may have taken five days to reach the applicant, thus leaving nine days to retrieve and return a document. These unrealistic expectations can lead to failed applications.

Language and cultural barriers are also present. Besides the anglicisation or misspelling of names that complicates applications, participants reported other language and cultural issues, specifically during interviews with the Home Office. One participant discussed the use of an interpreter from a different national tribe from their country of origin during an interview with the Home Office. The participant described how they believed that an interpreter said things that went against our participant's interests, based on political bias and prejudice against our participant due to their tribal affiliation. This highlights the importance of having a well-resourced legal system that ensures the interpreters that it uses are of high quality.

4.3 BARRIERS FACED BY PROVIDERS (AND POTENTIAL PROVIDERS)

In addition to the challenges faced by asylum seekers and other migrants, the fieldwork also confirmed the existence of barriers faced by providers (and would be providers) of immigration and asylum law services, which exacerbate the shortage of accessible immigration advice and representation. The key barriers were:

- i) The requirement for immigration advisors to obtain OISC registration (unless they are solicitors or barristers);
- ii) The inadequacy of the standard fixed fee for asylum cases.

4.3.1 OISC REGISTRATION

In the UK, it is a criminal offence for anyone to provide immigration advice or representation without being approved to do so by the OISC (or by another designated qualifying regulator,⁵⁸ which would include the Solicitors Regulatory Authority (SRA) and the Bar Standards Board (BSB)). Many of the service providers interviewed for the pilot study identified the requirement for OISC registration as an additional cause for the low level of immigration advice available in the local area.⁵⁹ Although OISC accreditation appears to act as a barrier to migrants receiving advice and assistance, one legal professional had a more positive view of the OISC accreditation scheme and saw it as an attempt by the government to regulate an environment where migrants, as a vulnerable population, were at risk of receiving harmful, unqualified and unreliable advice. The difficulty is the shortage of opportunities for competent and committed individuals who would like to provide immigration advice to complete the necessary training to demonstrate their competency in order to become an OISC registered advisor at OISC level 2 or 3.

⁵⁸ Immigration and Asylum Act 1999, s. 84.

⁵⁹ OISC, 'Guidance: How to become a regulated immigration adviser', updated 15 December 2021, <https://www.gov.uk/government/publications/how-to-become-a-regulated-immigration-adviser/how-to-become-a-regulated-immigration-adviser>, accessed on 14 July 2022.

While some local migration organisations and solicitors offer qualified legal assistance, specifically for application assistance, the demand for this type of assistance extends beyond what these organisations can support. In the absence of official advice, individuals may turn to informal sources of support, and qualified providers are concerned about the reliability of such assistance. On the other hand, those offering informal help may be able to draw on first-hand experiences of navigating migration and citizenship processes, even in the absence of formal legal qualification. One participant described how drawing on this first-hand experience had helped a community group identify effective procedures for filing/correcting applications and navigating other common administrative barriers/issues (while not offering formal advice as such).

However, community organisations must be careful about the extent of help they offer. The OISC accreditation scheme bars knowledgeable individuals and groups, many of whom have successfully navigated the immigration system themselves, from providing advice and assistance to individuals seeking help, unless they have formal accreditation. The accreditation process is expensive and can be lengthy. Depending on the level of accreditation the advisor or organisation has, accreditation can operate as a limit to the services that can be provided. So, a client may receive advice and services up to a critical point in their immigration process, such as an appeal, but then be without any assistance from that point onwards.

4.3.2 THE FINANCIAL (IN)VIABILITY OF LEGAL AID ASYLUM WORK: THE INADEQUACY OF THE STANDARD FIXED FEE FOR ASYLUM CASES

Even for those who are authorized to provide legal aid asylum law advice and representation, there are significant financial barriers which have led to many providers leaving the market or significantly reducing the number of legal aid cases that they take. When asked why they thought there was a lack of immigration specialist solicitors in

Brighton and Hove, many of the professionals interviewed stated that it was likely to do with the financial burden a legal aid contract has on a solicitor or firm (as outlined in Section 3 of this report). Two legal professionals spoke about the inadequate compensation solicitors receive for their work on a legal aid case. One solicitor stated that in order 'to make money from it, to run a business, let alone a profitable business, you have to do the bare minimum work, which is not in our ethos'.

The payment solicitors receive under a legal aid contract is based on a graduated fees scheme, rather than an hourly rate fee, as previously.⁶⁰ The graduated fees scheme entitles solicitors to compensation for output (advice, representation, etc.), thus meaning compensation is not based on the number of hours dedicated to a task, but rather the task (if completed). The hours a solicitor dedicates to a task can vary greatly, but most legal professionals interviewed agreed that solicitors working under legal aid were receiving payments that underestimated – and thus did not adequately compensate – the hours dedicated to the task. Under this payment scheme, solicitors often dedicate a substantial amount of time to clients and cases for which they are poorly compensated, only taking away time and resources from independently paying clients.

One solicitor told us that the Brighton based law firm that he worked for had made the decision to stop doing legal aid immigration and asylum work altogether, for the reasons stated above, confirming the trend discussed in section 3.3 above. Following this decision, there were no solicitors' firms left in Brighton doing legal aid immigration and asylum law work, leaving two not-for-profit organizations as the only remaining providers of cost-free immigration and asylum law advice and representation.

It was this combination of challenges, faced by those attempting to navigate the immigration and asylum law system, that prompted members of the University of Sussex to introduce a Migration Law Clinic to provide a cost-free legal advice service, to help those who could not access legal advice elsewhere.

60 Amendment to the Civil Legal Aid (Remuneration) Regulations 2013, Sch 1, in Part 1 (Civil Standard and Graduated Fees), in Table 4(a).

5 THE MIGRATION LAW CLINIC AND THE SCOPE OF ITS SERVICE

As outlined in the previous sections, the Migration Law Clinic Pilot Study identified a significant need for additional cost-free immigration and asylum law services in Brighton and Hove. The study concluded that a university law clinic, specializing in immigration and asylum law could therefore provide a useful service to the local community. In response, the University of Sussex established the Migration Law Clinic (MLC), a cost-free legal advice service for asylum seekers and other migrants in Brighton and Hove, operated by a team of final year undergraduate law students, supervised by two practicing immigration and asylum law barristers.

One of the Clinic's supervising barristers is employed full time at the University of Sussex, as a law lecturer and barrister, having previously practiced as an immigration and asylum law barrister at Garden Court North Chambers. The Clinic is also supported by an external barrister who remains in full-time practice at One Pump Court Chambers and provides his time on a voluntary basis. The Clinic is registered to provide immigration and asylum law advice at OISC level 3 (the highest level).

5.1 THE NATURE AND EXTENT OF THE CLINIC'S SERVICE

The MLC was envisaged as a service that could benefit the local migrant community by providing cost free legal advice on immigration and asylum law cases, while simultaneously providing a valuable learning experience for the University's law students, by providing them with the opportunity to work on real cases. The University of Sussex, at that time, had already established four separate law clinics. These were:

- the Criminal Justice Clinic;
- the Housing Clinic;
- the Employment Law Clinic;
- the Family Law Clinic.

By the time of writing, three additional law clinics had been added: the Mediation Law Clinic, the Performing Arts Clinic, and the Environmental Law Clinic.

The core service delivered by each of the University of Sussex's clinics is the provision of free legal advice, which is provided in writing. The advice is initially drafted by the clinic students and is then amended as necessary by the supervising lawyer, before being delivered to the clients, so as to ensure that the advice is full, accurate and of a professional standard.

The stages of the service are as follows: 1) the clinic receives enquiries from members of the public or relevant organisations via telephone, email or the online enquiry form; 2) if the enquiry concerns a legal issue that is in scope for one of the clinics and there are no conflicts of interest, then an appointment is set up at which the client will meet with two of the clinic students and the supervising lawyer; 3) the meeting is used as an opportunity for the client to explain their issues, the relevant facts, what specific legal questions they may have and what outcome they wish to pursue; 4) the students then conduct any necessary legal research before producing a draft letter of legal advice; 5) the draft is checked by the supervising lawyer and returned to the students with feedback and suggested amendments; 6) the students act on this feedback to produce a final draft; 7) the supervising lawyer checks the final draft and makes the necessary final amendments; 8) the letter of advice is then sent to the client within two weeks of the appointment.

The MLC was initially set up according to this model and started operating in February 2019. Since then, the MLC has been providing free legal advice on the following issues:

- Initial asylum claims, asylum appeals and fresh claims;
- Claims for leave to remain based on family or private life (Article 8 ECHR);
- Refugee family reunion (and non-refugee applications for leave to enter the UK to join family);
- Claims for leave to remain as the victim of domestic violence;
- Nationality/citizenship.

The students receive training in these areas of law by means of an assessed academic module on immigration and asylum law, which all MLC students are required to take.

At the time of writing, the MLC has provided substantive legal advice to 57 members of the public. The range of issues has varied widely and has involved particularly serious cases, including: family reunion applications for young refugees who have experienced traumatic events and whose family remain in difficult and potentially dangerous circumstances in their country of origin; people who have been refused asylum and are now destitute due to their immigration status; parents at risk of being removed from the UK and separated from their children and victims of domestic violence who have lost their spousal visas after fleeing the abusive relationship. For the Clinic students, it is often shocking to discover that the MLC is the only source of cost-free legal services to which their clients have been able to gain access. The fact that so many members of the public have turned to a student law clinic with cases of such gravity demonstrates the shortage in cost-free immigration and asylum law services. In 2021, the MLC formed a collaboration with the Lewes Organisation in Support of Refugees and Asylum Seekers (LOSAS), a Lewes based charity who provide support for foreign nationals who are detained in Lewes Prison. As part of this collaboration, the MLC provides legal advice to people who are detained in Lewes Prison and are in need of advice on resisting deportation or other immigration and asylum related matters.

What the MLC is able to offer its clients is detailed, professional legal advice. Depending on the nature of the legal problem, the advice seeks to identify any viable grounds on which they, or their family, could secure leave to enter or to remain in the UK, advice on how to make the relevant application and what points to make and evidence they should include to make their application as strong as possible. For clients who have been refused asylum, the MLC can analyse the previous Home Office reasons for refusal letters and any tribunal judgments to identify any potential grounds to appeal or to make a fresh claim. For those who wish to make a family life-based immigration claim but do not satisfy the Immigration Rules, the Clinic can help to identify any exceptional circumstances

that could be used to make an application outside the Immigration Rules relying on Article 8 ECHR or any other viable grounds. Given that it is not possible for the Clinic students to advise clients directly themselves (as they are not OISC registered in their own right), all legal advice is ultimately completed and provided to the clients by a registered barrister. If paid for privately, a written advice from a practicing barrister would cost several hundred pounds.

While the MLC is not able to provide legal representation itself, it is able to hire external legal representatives, on a private basis, for a small number of our clients each year, and in some other cases it has been able to find legal aid solicitors in Croydon or London willing to take on the case.

5.2 CASE STUDIES

The Clinic's advice has had a life-changing impact in a number of cases. In one case, the Clinic worked with a man who came to the UK in the early 2000s to claim asylum. The Home Office refused his asylum claim, but he did not return to his home country out of fear for his safety there. He remained in the UK, where he and his partner had children. While his children had subsequently acquired British citizenship, his own immigration status remained precarious and as a result he became destitute due to being unable to work lawfully or claim benefits. Before coming to the MLC, he had made several applications for leave to remain on the basis of his family life, so that he could lawfully remain in the UK to raise his children. However, each of his previous applications had been refused. He came to the MLC for assistance with a further application for leave to remain.

His case was challenging, as he did not satisfy the eligibility requirements for leave to remain as a parent set out under the relevant section of the Immigration Rules.⁶¹ This meant that it was necessary to make an application relying on his rights under Article 8 ECHR. In such cases, the argument is essentially that, even though the applicant does not satisfy the ordinary eligibility requirements set out under the Immigration Rules, it would be a breach of their human right to family life to remove them from the UK, due to some exceptional circumstances. The MLC's

61 The Immigration Rules, Appendix FM, Section R-LTRPT: Requirements for limited leave to remain as a parent.

advice explained these points of law to our client and also identified grounds on which he could argue that his case was indeed exceptional. The Clinic advised on what evidence to provide in his application, and also helped him and his family members to compose witness statements to support the application. On the basis of this application, the Home Office accepted that, due to the exceptional nature of his case, it would breach Article 8 ECHR to deny him leave to remain. His application was granted, meaning that he now has the right to remain in the UK to be with his family, without fear of being detained or removed.

The Clinic also helped him to submit a successful fee waiver application. At the time of his application, the application fee to the Home Office would ordinarily have been £1,033 plus a £1,000 health surcharge to cover a 30-month period of leave to remain, which would have been prohibitively expensive (at the time of writing the health surcharge would now be £1560, to cover a 30-month period of leave to remain).

In another case, the Clinic provided urgent advice on a last-minute application for leave to remain as a victim of domestic violence, which was subsequently granted by the Home Office. Where a person has previously had leave to remain as the partner of a person settled in the UK, but that relationship has broken down due to domestic abuse, they can claim leave to remain as the victim of domestic violence, the rationale being that no one should have to choose between remaining in an abusive relationship to retain their right to live in the UK, or leaving the relationship and losing their right to remain as a consequence. Such claims are technically within the scope of legal aid. However, the client had been unable to find a solicitor willing to take her case on a legal aid basis, presumably for the reasons discussed earlier in this report – an example of the ‘legal advice drought’. The Clinic was able to advise her on the evidence that she should include in her application and the submissions that she should make in support of her claim. Following this advice, she received a positive decision from the Home Office less than two months from the date of submission. It is likely that without the Clinic’s advice, her claim would have been refused.

The MLC’s advice has also helped people to secure family visas for their relatives to enter the UK from Afghanistan and Ukraine and, in other cases, to obtain British citizenship. In some cases, unfortunately, our advice is that the client is ineligible or unlikely to succeed in the claim that they want to make. However, helping people to understand their legal position is itself a valuable legal service, even if the advice is disappointing.

The most challenging type of cases that come to the Clinic have included refugee family reunion applications for young refugees who are seeking to have their parents or siblings join them in the UK. The legal difficulty with such cases is that, under the Immigration Rules, recognised refugees are only eligible to bring their partner or any of their own children who are still under the age of 18.⁶² However, when a child or young adult has been granted refugee status, the immediate family with whom they will want to be reunited will most likely include parents and or siblings, who are not eligible for refugee family reunion under the Immigration Rules. Consequently, the young person will need to make an application ‘outside the Immigration Rules’ relying on human rights law. Such applications are very complex and yet they are outside the scope of legal aid. There are also significant practical difficulties, including gathering evidence from the country of origin, completing DNA tests to prove the relationship and attending a Visa Application centre in the country of origin or a neighbouring country. Given the high stakes and legal and practical difficulties involved in such cases, it is shocking that they are not covered by a legal aid system that purports to focus on the most serious cases for which the need for legal assistance is greatest.

62 The Immigration Rules, Part 11: Asylum, paras 352A and 352B.

5.3 LIMITATIONS OF THE CLINIC

While the MLC offers a beneficial service, it would be unrealistic to suggest that it comes anywhere close to filling the gap in immigration and asylum law services in the local area that have resulted from the cuts to legal aid. The service provided by the MLC is subject to the following limitations:

Firstly, as a student law clinic, the MLC only operates a full service during the University's term time, while the Clinic students are present and not engaged in an assessment period. This amounts to 22 weeks of the year.

Furthermore, as mentioned above, the Clinic students are not able to advise clients directly. All advice must ultimately be provided by the supervising barristers who supervise the Clinic alongside, respectively, the ordinary teaching and scholarship duties of a lecturer, and a full-time practice at the self-employed bar. This significantly limits the number of clients that the Clinic can see, even during term time, when it is operating at full capacity.

The most significant limitation is that, while the MLC is able to provide legal *advice*, it cannot provide legal *representation* or ongoing casework because of insurance, capacity and regulatory factors. Consequently, the MLC is unable to complete and submit applications to the Home Office on its clients' behalf nor represent them in any court or tribunal. While the provision of cost-free legal advice is beneficial in a significant number of cases, many people will struggle to act on that advice by themselves. Even with the clearest and most helpful advice on what steps need to be taken to progress their case, the prospect of taking these steps themselves is often overwhelming. What they need is a legal representative who is able to act on their behalf and ongoing casework, which the current model of the MLC is unable to deliver itself. In recognition of this shortcoming, the MLC has begun hiring legal representatives in a small number of cases per year where the Clinic has identified a viable application or grounds of appeal. At present, however, the Clinic can only do so in a limited number of cases.

A final limitation is that the areas of law on which the Clinic advises on are limited to those listed in section 5.1 above. The Clinic students are at a very early stage of their legal training and in the time available with each cohort, competency can only realistically be developed in a small range of core areas. The Clinic therefore focusses specifically on the legal side of securing leave to remain or leave to enter, on asylum or human rights grounds, rather than offering a more holistic form of casework and support that might focus on a wider range of migrants' needs.

6 REFLECTIONS AND RECOMMENDATIONS

The fieldwork undertaken by undergraduate students, supervised by academic staff, as part of the Migration Law Clinic Pilot, identified a significant need for additional cost-free immigration and asylum law services in Brighton and Hove, in the context of a national scale 'desert and drought' for immigration legal services. Since that fieldwork was concluded, this need has not subsided. While the MLC's advice service has benefitted a significant number of clients who would otherwise not have been able to access free and reliable legal advice, there is a critical gap in the provision of casework and representation. Brighton Housing Trust remains the only provider of legal aid-funded representation for immigration and asylum cases in the whole of East and West Sussex. Its capacity is limited. The only solicitors' firm providing legal aid immigration and asylum work in the area ceased taking on legal aid work following legal aid reforms in 2012, stating that legal aid work was no longer financially viable.

The geographically nearest firms taking on legal aid immigration work are in Croydon. However, even when people are willing to travel to Croydon or London, they are still often unable to find a legal representative who is able or willing to represent them out of their geographic area. This problem is exacerbated by the fact that Brighton and Hove is increasingly being used as a dispersal area for new asylum seekers. While their claims are technically in scope for legal aid, many struggle to find a legal representative for the reasons set out above.

Beyond asylum claims, most areas of immigration law are not even in scope for legal aid. The application fee and health surcharge required for most immigration applications are often prohibitively expensive by themselves. Paying private solicitor fees on top of that is impossible for many applicants, leaving people with no option but to self-represent. Family life-based claims fall into this latter category. As such, there is no legal aid in cases where, for example, someone who has been recognised as a refugee wants to apply for refugee

family reunion so that their family can join them here in the UK, or in cases where parents living in the UK are at risk of being separated from their children due to their immigration status. These are legally complex cases with very high stakes. The relevant Immigration Rules have been described as labyrinthine by legal professionals, who have English as a first language. For lay applicants, who in this area of law disproportionately face additional language barriers, self-representing is often an overwhelming prospect.

Furthermore, the legal advice and representation need in this area looks likely to increase, in the face of current policy developments that could potentially weaken existing legal protections. As mentioned at the beginning of this report, there are new and heightened concerns for immigration and asylum protection and rights in the UK. At the time of finalising this report, two main areas of concern are the government's proposed repeal and replacement of the Human Rights Act 1998 with a draft Bill of Rights, and its proposal to remove migrants who have arrived by irregular routes to Rwanda, as part of a new and controversial asylum scheme (subject to ongoing legal challenge in the domestic and European courts).

Since its formation in 2019, the MLC has provided valuable legal advice that has had a life-changing impact in a number of cases. However, it is clear that there are many clients who need significantly more than an advice-only service. They need legal representation and ongoing casework that the current model of the MLC is unable to deliver. The MLC has sought to address this shortcoming by raising funds which have been used to hire legal representatives to act for our clients in a small number of cases. However, the number of cases for which this has been possible has so far been small. In order to deepen its impact, the next phase of the MLC's activity will involve applying for additional funds to increase the number of clients for whom we can provide full representation.

6.1 RECOMMENDATIONS

On the basis of the findings of this report, we propose a series of recommendations, both for the further development of our own Clinic service at the University of Sussex and for national legal policymakers.

6.1.1 RECOMMENDATION FOR FURTHER DEVELOPMENT OF THE MLC

1. **Expand Clinic's services to include full legal representation.** While the provision of cost-free advice has been very helpful to a significant number of people and has assisted people in making successful applications, many migrants, especially those who are more vulnerable and more in need, require a legal representative and ongoing casework, which the MLC is not currently able to provide directly. Therefore, an advice-only service does not fully meet their needs. The MLC has sought to address this shortcoming by raising funds to hire legal representatives to act for our clients in a small number of cases. With the support of the University and the School of Law, the Clinic should expand this scheme to enable Clinic clients to access full legal representation in a greater number of cases. As well as helping meet a local legal need, this would help deliver the University's strategic objectives for community and public engagement and its commitment as a 'University of Sanctuary'.⁶³
2. **Collaborate with external partners.** The MLC has collaborated with LOSRAS to provide immigration and asylum law advice to foreign national detainees at Lewes Prison. This has enabled the Clinic to access people with an especially acute need for legal assistance and who may otherwise face difficulties in obtaining help. The MLC should explore other collaborations to ensure that it reaches those who would most benefit from its services.

6.1.2 RECOMMENDATIONS TO GOVERNMENT FOR STRUCTURAL CHANGES AT THE NATIONAL LEVEL

It would however be unrealistic to expect a student law clinic to fill the gap in legal services caused by the cuts to legal aid. This report would be incomplete without making the following recommendations to central government, for wider structural change:

1. **Reinstate legal aid for immigration cases.** At the very least, legal aid should be reinstated for refugee family reunion cases and cases concerning parents with children who are settled in the UK. Such cases involve exceptionally high stakes for the families involved and are often legally and evidentially complex, requiring professional expertise.
2. **Amend the Immigration Rules on refugee family reunion to permit all those with refugee status to bring their parents, siblings and children to the UK (regardless of age).** Under the current Immigration Rules, refugees are only permitted to bring their partner or children younger than 18 to the UK (unless their family are Ukrainian, in which case all immediate family and some extended family would be eligible). This means that (unless they are Ukrainian) young refugees who want to bring their parents or siblings to the UK must attempt to make legally and evidentially complex applications 'outside the Immigration Rules' relying on international human rights law, with no access to legal aid. Non-Ukrainian refugee parents will be in the same difficulty when applying for their children, if they have passed the age of 18. This is an objectionable and discriminatory situation. Furthermore, it incentivises exactly the type of dangerous, unauthorised journeys and reliance on people smugglers that the government has pledged to prevent. If the government is sincere about preventing people smuggling and perilous journeys, then it should provide safe passage to the UK for all immediate family members of recognised refugees in the UK.

⁶³ The University of Sussex was recognised as a 'University of Sanctuary' in 2020: <https://www.sussex.ac.uk/about/university-of-sanctuary>, accessed 14 July 2022.

3. **Amend the payment system for legal aid solicitors and barristers.** Remove the fixed fee scheme and return to hourly rates (as is the norm in other areas of civil legal aid work). This would incentivise more providers to enter the market, helping to address the phenomenon of advice droughts and deserts, while simultaneously improving the quality of immigration and asylum law advice and representation that people will receive. This will ultimately lead to better, fairer and smoother decision making in relation to immigration claims and appeals.
4. **Provide training and support for people who wish to register with the OISC as immigration advisors.** In the UK, it is a criminal offence for anyone to provide immigration advice or representation without being approved to do so by the OISC (or another designated qualifying regulator, including the Solicitors Regulatory Authority (SRA) and the Bar Standards Board (BSB)). It is thus essential that the government actively supports the training of those who wish to become OISC accredited, through funding and other means.

6.2 A NOTE ON SETTING UP THE MLC (FOR PROSPECTIVE UNIVERSITY IMMIGRATION LAW CLINICS)

There is anecdotal evidence that university law clinics have tended to shy away from immigration and asylum law, given the additional barriers involved for providers in this area of law. It may be encouraging to hear that the process of setting up the MLC was relatively straightforward. However, as described above, the provision of immigration advice is subject to specific laws and regulations. Consequently, there are a number of points that should be considered when establishing an immigration law clinic.

Firstly, it is a criminal offence for anyone to provide immigration advice unless they are a 'qualified person' as defined by section 84 of the Immigration and Asylum Act 1999, i.e., a practicing solicitor, barrister or OISC registered immigration advisor. The University of Sussex met this requirement by employing a practicing immigration and asylum law barrister on a full-time contract to act as the MLC's supervisor and advisor. The role was initially established as a teaching fellowship, with the clinic duties

running alongside the ordinary teaching and scholarship duties of a teaching fellow.

The OISC advised that the MLC itself should become OISC registered as an entity. The MLC applied for OISC registration and received it in December 2018. The process was straightforward. The application can be made online and involved completing an application form, providing a competence statement for each advisor, evidence of appropriate insurance and a template client care letter, client closure letter and complaints procedure. A benefit of being OISC registered is that the MLC is displayed in the OISC's online public access list of immigration advisors, through which some of our clients find us.

A final, and crucial, point to consider is the gravity of the cases in this area of law. While the perception may be that members of the public are generally only prepared to bring relatively minor legal issues to student law clinics, the extent of need in immigration and asylum law is such that once an institution offers free legal advice in this area, it is likely to receive a significant number of requests for help with extremely serious issues. More so than in other areas of law, people who rely on immigration law clinics are prone to suffer from trauma, language barriers and societal alienation. Consequently, the level of need is great. Any university that is considering establishing an immigration law clinic should therefore ensure that they provide sufficient resources (including supervision hours) to ensure that it can honour this responsibility.



- Freeman
- Seminar F22 ↑
 - Seminar F39 ↑
 - Seminar F40 ↑
 - Video Conferencing Room ↑
 - Rooms F01 - F59 ↑
 - PhD Workspaces ↑
 - Head of School ↑

The **University of Sussex Migration Law Clinic** is situated in the University of Sussex Law School. Under the supervision of a registered solicitor or barrister, our final year law students offer immigration and asylum legal advice on a pro bono (cost-free) basis to members of the public who require advice in this area of law. We assist individuals with no other means to access legal advice. This Clinic also offers Sussex Law School students hands-on experience of complex legal issues in an important area of legal practice, thereby increasing their employability and providing a valuable set of transferable skills.

We are authorised by the Office of the Immigration Services Commissioner (OISC) to provide immigration and asylum law advice up to OISC level 3 (Registration number N201800026). We are currently focused on asylum and human rights claims, including claims relating to human trafficking and applications for entry clearance or leave to remain based on family life in the UK under Article 8 ECHR. We are also able to provide advice on applications for leave to remain as the victim of domestic violence and on issues relating to citizenship.

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