

Rethinking Asylum Legal Representation

Promoting quality and innovation at a time of austerity

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The Baring Foundation

INTRODUCTION

The project had two main aims. The first was to find ways of sustaining good quality legal representation in the face of ongoing legal aid cuts. The second was to support engagement with Government officials to improve the legal aid funding system through influencing the roll out of the Early Legal Advice Project (ELAP) and better commissioning of legal aid representation.

Asylum Aid commissioned Caroline Slocock and Deri Hughes-Roberts to assist in the project. Recommendations were developed through wide ranging discussions with over 25 organisations working with refugees. Preliminary findings were presented to a project seminar in March 2012, attended by representative bodies, welfare and support charities, not-for-profit organisations and projects with experience in delivering legal representation in innovative ways.

This report records key findings from this work and outlines a strategy for future charitable support:

- Supporting and developing a number of new models of service provision, including specialist hubs, partnership working, pro bono models and work with non-legal professionals.
- Examining new ways to raise income and other support for quality representation.
- Taking forward suggestions for further critical policy and influencing work to help make the case for higher quality standards, to be reflected in the commissioning of legal aid representation.

Support for greater collaboration, co-ordination, networking and capacity building, and to strengthen the sector's collective policy voice, should run through all aspects of this strategy.

In the first section of this report, we set out the context in which asylum legal aid representatives operate, the impact of funding cuts on the supply of quality representation and the prognosis for the sector beyond the next major bid round for legal aid representation in 2015. In the second section, we describe some of the key features of not-for-profit (NFP) work, which makes the sector's contribution particularly important to asylum seekers, but which also puts it at particular risk from the legal aid funding system. The third section briefly summarises some of the main models of representation we have looked at. Finally, in the fourth section, we discuss options for a funding strategy.

SECTION 1: CONTEXT

1.1 Sustainability of quality representation

This is a critical moment for quality asylum legal representation. There is the crisis in provision, which has been long in the making but is now coming to a head. As a result of the freeze in legal aid rates since 2002 and the introduction of fixed fees, combined with inadequate quality standards, quality representation is being driven out of the market. The number and capacity of practitioners committed to quality has been steadily declining. The collapse in 2010 and 2011 of two leading NFP providers, Refugee and Migrant Justice and the Immigration Advisory Service, and the loss of a number of well-regarded solicitors firms, are all attributable to the difficulty of sustaining a commitment to quality if reliant on legal aid alone.

Organisations supporting asylum seekers report a dearth of competent and trustworthy legal representation across the country. This is the most intractable problem their service users face. Without an able legal representative the chances of securing international protection are low, given the abiding poor quality of much UK Border Agency (UKBA) decision-making.

Last year's 10% cut in legal aid fees and removal of most immigration work from the scope of legal aid, which will take effect in April 2013, will accelerate this effect.

Already, quality representation is unsustainable. Many quality representatives may not survive beyond the next bid round in 2015, under the existing funding arrangements. This bid round could see the introduction of best value tendering. As we show in Section 1.2 below, it is difficult to see how any quality representation could survive price competition based on the current low quality threshold.

1.2 Justice at Risk¹

Justice at Risk shows that the fixed fee funding system penalises representatives who take the time to prepare a case properly, while incentivising poor quality work, because the less time spent, the greater the profit.

Justice at Risk also describes how the low quality threshold for legal aid work exacerbates this perverse incentive. Peer review is generally held to be the most accurate and fair way to assess quality. Once reviewed, firms are given a competence rating. Level 1 is the highest rating and Level 5 the lowest. Level 3 is the minimum standard required for retaining a legal aid contract. The Level 3 minimum threshold does not require the comprehensive, appropriate and efficient evidence gathering needed in asylum cases. This is only required at Level 2 and yet representatives who take the time

¹ Gibbs and Hughes-Roberts (2012) 'Justice at Risk, cost and quality in asylum legal aid'. Runnymede Trust, London

to achieve this higher standard earn less money from their fixed fee cases, than representatives who work to the lower minimum quality threshold.

The research confirms concerns highlighted in a Ministry of Justice review instigated by Lord Bach over possible abuse of the fixed fee system, including “cherry picking” of easier cases by some providers and the provision of short units of advice². It provides evidence that many representatives are cutting corners with their work and that completion of core tasks, such as the preparation of witness statements, has become a rarity.

Statistics obtained as part of the *Justice at Risk* research provide an indication of the extent to which quality representation has been eroded under fixed fee funding. For example, in 2009/10, 29% of providers were in breach of a Key Performance Indicator – designed to prevent abuse of the fixed fee scheme – by spending little time on their cases on average, but collecting the full fee. The research also found that 73% of providers earned more money on their fixed fee cases than they would if those cases were funded at an hourly rate.

The picture emerging is one of a downward spiral of quality standards. Asylum seekers may have to seek advice from a number of representatives to complete their case, or launch otherwise unnecessary appeals, or ‘fresh claims’. Individual units of advice funded by legal aid appear to be less expensive but the overall costs for the taxpayer are driven up, as individual cases take longer to resolve.

Many asylum seekers cannot access justice at all. Already, the majority in the decision-making process have inadequate representation, which can actively harm a case, or no representation at all. Many asylum seekers, however, are outside the decision-making process, effectively excluded from legal aid. They have come to its conclusion, their appeal rights exhausted, without proper consideration of their protection needs. They join the backlog of over 300,000 unresolved immigration cases, highlighted in a recent report by the Home Affairs Select Committee³.

A related problem arises from the requirement for a representative to refuse to grant legal aid for representation at appeal where a case lacks merit. Research undertaken by Devon Law Centre found that representatives had wrongly refused to grant legal aid in almost 80% of cases it examined⁴. This suggests that huge numbers of appellants are effectively excluded from the legal aid system, with little hope of being brought back into it⁵.

However, there is evidence that the downward spiral in quality could be reversed by proper investment in legal advice. The research suggests

2 Ministry of Justice (2009) ‘Study of Legal Aid at a Local Level’, Ministry of Justice, London

3 <http://www.publications.parliament.uk/pa/cm201213/cmselect/cmhaff/603/60302.htm>

4 Devon Law Centre (2010), ‘Asylum Appellate Project’, Devon Law Centre. This research is now being taken forward in Refugee Action’s Access to Justice Project

5 It is difficult to persuade a new representative to take time to review a case which may not be legally aidable.

that frontloading quality representation at the outset of the process can save significant downstream costs. Evidence in support of frontloading includes the evaluation of the ELAP pilot in Solihull.

The ELAP pilot was a cross-departmental project involving both the Ministry of Justice and the UKBA. This reflected the fact higher legal aid investment by the Ministry Justice, at the start of the decision making process, was intended to produce downstream savings which would largely benefit another government department, the Home Office.

One of the main aims of the ELAP pilot was to ensure the full factual and evidential basis of a case was put before a decision maker at the earliest opportunity, in the form of a witness statement and supporting evidence. The expectation implicit in the process was that providers should work to a higher standard than the low quality threshold at peer review Level 3. To facilitate this, cases were paid at an hourly rate rather than by fixed fee.

The evaluation of the pilot found it produced better, higher quality and more sustainable decisions and identified the potential of the process to deliver substantial overall costs savings⁶. *Justice at Risk* suggested that this potential could best be realised if the ELAP process was underpinned by a higher quality threshold.

Following its evaluation, the pilot was rolled out for further testing to a whole UKBA decision-making region, although the quality threshold for representation was not raised. A final report on ELAP will be made to the Minister in 2013.

Despite extensive lobbying by Maurice Wren as part of this project, it is now clear that if ELAP were adopted as the mainstream process for determining asylum claims, this would take some time to implement.

1.3 The 2012 tender

The LSC has tendered for contracts in all civil law categories for the next three years to 2016, based on the current fixed fee system. Providers are due to be notified of the outcome of the tender in January 2013, with new contracts commencing in April 2013.

Asylum work was included in this tender. There is considerable risk in locking quality providers into an unsustainable fixed fee system, especially when the final ELAP evaluation may show that funding work at an hourly rate would provide better value for money.

The tender will implement the removal of immigration law from the scope of legal aid under the Legal Aid, Sentencing and Punishment of Offenders Act 2012. The LSC appeared to be mindful that the demand

⁶ Aspden (2008) 'Evaluation of the Solihull Pilot for the UK Border Agency and Legal Services Commission'. The Stationary Office, London.
http://www.asylumaid.org.uk/data/files/publications/137/Solihull_Pilot.pdf

for asylum cases would far outstrip the volume of work on offer in the tender, as providers, losing their immigration work, would seek to remain viable by replacing it with asylum work. However, measures to ameliorate the problem will merely 'spread the pain' between providers depending on the size of their bid, regardless of the quality of their work.

Providers most at risk from the inevitable and substantial reduction in contract awards are those whose viability is already precarious, in particular, those already paying the price of trying to maintain quality under the fixed fee system.

1.4 Quality in legal aid commissioning

Quality criteria did not figure highly in 2012 tender. The only significant quality provision was to exclude those providers who had failed to achieve the minimum quality threshold at peer review. No criteria sought to distinguish and favour providers working to the two higher peer review levels above the low minimum quality threshold.

The problem here is that not all providers are peer reviewed. Peer review is targeted at two groups: representatives selected randomly and those selected because of concerns raised in quality profiling (for example, those with low success rates). The system is skewed. It seeks to identify poor providers, but not good ones. As a result, a legal aid tender cannot fairly favour representatives operating to a higher standard because only some of them can be objectively identified and only then through a random process.

As a result, quality providers can have no collective identity. Until this problem is solved, it is difficult to see how commissioning can favour high quality work.

1.5 The 2015 tender

As we have seen, the 2012 tender risks locking providers into a fixed fee system which, combined with the low quality threshold, risks causing irreparable damage to essential advice infrastructure.

Looking ahead, the LSC may introduce best value competition in the next bid round in 2015. Typically, best value contracts are awarded to the cheapest bidders that meet the required quality threshold. Unless the current quality threshold for asylum work is raised, or price is differentiated to incentivise higher quality work, price competition is likely to drive any remaining quality provision out of the market.

2012 tender	September to October 2012
New contracts awarded	January 2013
Contraction in supply of representation	January to March 2013
ELAP evaluation completed	April/May 2013
New contracts commence/immigration removed from scope	April 2013
Progressive roll out of ELAP	From 2014?
Possible consultation on future of legal aid - best value tendering?	2014
Commencement of best value tender?	Summer 2015
New three year contracts commence	April 2016

1.6 The way forward

As we note above, this is a critical moment for quality asylum legal representation. It will come under unprecedented pressure in the next three years.

There is little hope that new quality supply can be attracted to the market in the present funding environment. Asylum Aid has had various discussions with the larger support NGOs about the possibility of them providing legal services. They decided not to bid for contracts. They were concerned with the regulatory burden and financial insecurity of legal aid work and the difficulty of providing representation of sufficient quality with the level of funding available.

In the long run, only a national roll out of ELAP coupled with a proper recognition of quality in the commissioning of legal services can save quality representation and the particular contribution it makes to cost effective decision making.

The NFP sector has a particularly important part to play, as we show in this report, because it has a campaigning role which can help highlight the need for that change. However, as we also show below, it is clear that the funding system does not support the special features of the NFP sector. There is tremendous pressure on the sector to roll back on its mission to protect the most vulnerable through quality work.

The implications of this are stark. Over the next three years, some additional support from charitable trusts and others will be essential to bolster the sector, build its capacity to respond to the challenges ahead and to explore innovative ways, so far as possible, to preserve quality.

An immediate priority for any future funding from charitable trusts must be to seek to preserve the quality that still exists. Given the dearth of quality representation, and limited charitable funds, it makes little sense to support a representative merely to assist the client 'at the other side of the desk'. The work of supported specialists needs to be re-purposed to have strategic impact well beyond the clients actually seen. In particular,

support should be focused on assisting asylum seekers without quality representation, or with no representation at all.

At the same time, it must be recognised that funding from charitable trusts is limited and is not a sustainable solution. So the focus must also be on deploying every opportunity to influence government to change the system for the better, for example, to influence the roll out of ELAP and to ensure that it is underpinned by a higher quality standard. It will be important to develop proposals on how value should be defined in best value commissioning.

There may well be a major consultation, most likely in 2014, on the future of legal aid. The best time to influence a consultation is before its proposals are signed off by a Minister and so 2013 is likely to be the most critical year. These ideas are explored in further detail in Section 4 of this report.

SECTION 2: THE IMPORTANCE OF NOT-FOR-PROFIT PROVIDERS

2.1 Typical features of NFP work

In this section, we explore the mission-based approach and core values typical of NFP legal advice providers.

Three noteworthy points arise from this exercise. First, it shows that values of the NFP legal advice sector extend beyond the narrow, but important issue of quality. While quality is crucial, it comprises just part of what makes the work of the sector so important. Secondly, it emphasises the importance of the independence of the NFP advice sector. Independence is crucial to its role in civil society and ability to challenge government and champion the rights of the most disadvantaged. Thirdly, it illustrates how NFP advice will struggle in a contracting regime designed specifically for the for-profit model.

NFP providers can also be distinguished by governance structures that ensure they are accountable for achieving the best for their clients. Similarly, accountability to charitable funders imposes crosscutting obligations and expectations and buttresses the emphasis on outcomes rather than outputs.

A commitment to mission-based values does not ensure that an NFP organisation will always adhere to them, or that it will operate an efficient business model. As we shall see below, such organisations will inevitably struggle in a legal aid system that provides a disincentive to their special contribution to effective asylum decision making.

The features described in this section, in particular the commitment to quality, are not unique to NFP providers. It is clear from *Justice at Risk* that the work of quality solicitor firms is not sustainable. As we note elsewhere in this report, quality solicitor firms play an important role in supporting pro bono work. They are crucial to the maintenance of a critical mass of expertise in the legal aid sector. They also provide a critical mass for the argument for quality to be incentivised, by ensuring, at least for now, a sufficient supply of representatives still able to deliver it.

Social Justice Mission

NFP providers in the legal advice sector are typically driven by a strong social justice mission. They regard human rights and equality before the law as the cornerstone of a fair and just society. Their role is integral to achieving such a society.

However, NFP providers are not simply an alternative service delivery model, but represent an entirely different, non-market-based, mission-led, client-focused approach to service provision.

While both NFP and for-profit representatives have financial drivers, the former tend to remain mission driven even in the face of legal aid cuts. As a result, they will look first to raise alternative sources of funding before rolling back on mission-led activity and will argue for change in the legal aid system itself.

A number of values will flow from the social justice mission. It will inform an organisation's culture and commitment to its clients and will also feed into how it should go about its work, including which activities and clients it should prioritise.

Quality

NFP providers tend to be committed to pursuing cases until a just outcome is achieved. Their commitment to achieving the right outcome in a case is underpinned by a commitment to quality. The standard NFP business model includes an integral pro bono 'quality subsidy' that characterises its work⁷.

An important feature of quality is recognition of the importance of the one-to-one relationship between lawyer and client. Creating an environment of trust ensures a client understands their rights and can be engaged in any legal process that concerns them. This, together with the skill, knowledge and expertise of the lawyer contributes to just, cost-effective outcomes for government.

While the drive for quality is positive, it does not follow that all NFP organisations deliver it in practice. It can also detract from business efficiency and cut across other values. For example, pursuing individual cases too far can limit access to representation by reducing the number of clients that can be assisted.

Access and specialism

NFP providers recognise the specific circumstances and needs of individual groups and tailor their services accordingly. They typically prioritise need, focusing services on the most disadvantaged and marginalised clients. Organisations often seek to improve access to services by taking advice to the community, for example, through outreach services.

Specialism, frequently related to the prioritisation of client need, is an emerging feature of the asylum work of NFP providers. Client interests are pursued as a class as well as individually, often through policy as well as legal initiatives.

Innovation

Innovation, aimed at improving client experience and outcomes, is a feature of the NFP sector, with its emphasis on networking, partnerships and wrap-around services. Innovation results in a diversity of activity, not only different ways of undertaking legal work, but extra-legal activities.

⁷ There is a related 'goodwill' aspect to work where non-chargeable time is spent, which benefits the client, for example, liaising with health professionals on access to relevant care.

Deploying a range of problem solving approaches including policy and influencing work

In pursuing its commitment to social change, an NFP provider may apply a range of approaches, such as prevention, training, early intervention, test case litigation, policy and campaign work. NFP providers will usually subscribe to a 'theory of change' that promotes holistic problem-solving and puts a premium on enabling client voices to be heard. The need to link work done with individuals and the articulation of the need for systemic reform – the virtuous circle – is woven into the NFP cultural fabric.

2.2 Impact of funding reform on the NFP values

In general, government recognises the special value of the NFP model. Before 2007, this value was recognised by the LSC. NFP legal aid providers were contracted on substantially different terms, ones that reflected its value-led ethos better.

The introduction of the Unified Contract in 2007 put NFP and for-profit providers on the same terms. The intention was to treat all providers equally. Arguably, it did not achieve equality. Rather than 'unify' contracts, the NFP contract was abolished and providers transferred to the pre-existing 'for-profit' terms, modified to reflect the new fixed fee system.

'Shoe-horning' NFP providers into for-profit contract terms did not just ignore their different aims, constitution and approach to advice work. It ignored that NFPs are treated differently by other parts of government, by banks, and by regulators. For example, although NFP providers are required to compete for legal aid business on the same terms as solicitors in the for-profit sector, they are prohibited by the Solicitors Regulation Authority from competing for potentially more profitable fee paying work, in their own right.

One significant consequence of the move to the Unified Contract was the introduction, for the first time in the NFP sector, of retrospective payment for work. This factor, which hits the sector particularly hard given its limited ability to raise working capital from the commercial banking sector, led to the collapse of RMJ and, in part, the collapse of IAS.

There are other problems with the structure of legal aid contracts that obstruct typical NFP value-added activity, or make it less profitable, for example:

- NFP providers often target more vulnerable and disadvantaged client groups. Their cases tend to be more complex, take longer and are therefore less profitable under fixed fee funding.
- Legal aid does not adequately support alternative approaches such as prevention, early intervention, and policy work with government.
- Contract terms prohibit, or provide a disincentive to, much outreach work
- Contract terms create barriers to effective partnership working.

SECTION 3: REVIEW OF INNOVATIVE REPRESENTATION MODELS

This section describes the main models encountered in the project.

3.1 Specialist strategic litigation and policy units

This is a model of representation in which lawyers undertake specialist legal and policy work for a particular client group. It seeks the best way to advance the interests of its client group through effective deployment of a range of influencing options, only some of which are funded by legal aid. It seeks to:

- Influence law and policy through strategic litigation and associated policy initiatives.
- Disseminate learning through the provision of support, training, information etc, to the legal community as a whole, other professionals, NGOs, RCOs and community networks.
- Use legal expertise to help grass roots groups resolve issues with government through effective, well-informed negotiation

Three examples of this model – the Refugee Children’s Rights Project, the Protect project for undocumented young people, and the Migrant Law Project – work from Islington Law Centre⁸. They have a strong focus on strategic litigation and associated policy work. Asylum Aid is a larger more diverse organisation with a number of specialist projects and a greater focus and particular expertise in policy, influencing and campaign work.

The model requires good lawyers who excel in their area of expertise, are strategically aware and possess very good policy and influencing skills, or work effectively with good policy people. It should be noted that there is range of understanding of what is meant by strategic litigation, from opportunistic test cases, to something which is genuinely strategic and where strategy is developed from the ground up, in consultation with front line advisers (in the broadest sense) and their clients. Litigation strategy should be an integral part of an overall policy and influencing strategy, rather than be distinct from it.

The model is not sustainable. Much of its activity is unfunded or poorly funded by legal aid. But it is often this activity that gives its work strategic direction and such a high impact.

There are various approaches to charitable support for the model and the treatment of legal aid income. Each of the Islington Law Centre projects treats legal aid income differently, although in each, it is ring fenced to the particular project to contribute to the future sustainability of work.

⁸ The Refugee Children’s Rights Project is a partnership with the Coram Children’s Legal Centre

3.2 Strategic Legal Fund (SLF)

We have not examined this model in any detail, but think it is useful to mention the ways in which it would appear to contrast with strategic litigation/policy unit model. Funded by The Diana, Princess of Wales Memorial Fund, the SLF was a one-year pilot to fund third party interventions and pre-litigation research for cases involving children and young people seeking asylum. It did not fund associated policy work, or the networking, support, training and education of other professionals.

The Fund was open to applications from both the NFP and for-profit sector. Of the fifteen grants to July 2012, two involved a for-profit provider, as well as partnerships involving two of the most progressive legal aid firms, Elder Rahimi and Deighton Pierce Glynn, with the Howard League and the Children's Society, respectively.

The approach contrasts with the strategic litigation/policy model where lawyers can deploy the best combination of a range of options, of which litigation is only one, for addressing a problem. At a more fundamental level, the approach supports cases, rather than lawyers. It relies on, but does not contribute to, the survival of quality representation. Nonetheless, the SLF has clearly played a valuable role in supporting litigation that otherwise might not happen, or not be undertaken as effectively. The transfer of the SLF to the Trust for London is therefore a welcome move.

<http://www.strategiclegalfund.org.uk>

3.3 Partnership models

Legal aid provisions do not encourage partnership working. The 2012 tender rules out consortia bids. Partnerships are problematic where potential partners operate in different LSC procurement areas. More generally it can be difficult to persuade the LSC to consider outreach work in an area where it considers there to be sufficient supply. It does not matter that the demand for outreach among local support agencies can arise from a lack of confidence in the quality of available representation.

Where the impetus for partnership working comes from the NFP support sector, there might be a tendency for projects merely to seek to plug gaps in local provision of representation. However, there may also be scope to include a strong influencing dimension. These partnerships have the potential to unify and strengthen the voice of different parts of the asylum sector, if the partners can use project experience to undertake joint strategic litigation/policy work, information-giving, training etc.

We considered a number of partnership models involving lawyers and support NGOs, which are described below.

Outreach

Outreach aims to assist marginalised clients, but is poorly paid under the legal aid scheme, or not paid at all. Asylum Aid has charitable funding to do outreach work with Red Cross and Notre Dame in London. In this project, there is a pre-consultation referral process in which case papers are sent to Asylum Aid in advance. Advice work mainly concerns establishing merits for a grant of legal aid for asylum seekers at the end of the line. Where there are merits, Asylum Aid will take the case on, or if it lacks capacity to do so, refer the client to another legal aid representative. The project therefore occupies similar ground to the Manual Bravo model described below.

<http://www.redcross.org.uk>

<http://www.notredamerc.org.uk>

Bulk purchase of advice

The bulk purchase model involves a partnership between an NGO and a legal representative. The representative takes on fee-paying substantive work. Fees are paid by the client at a discounted level below the market rate, negotiated by the NGO. In return for ‘holding the client’s hand’ through the process and helping them gather evidence for their case, the NGO takes a percentage of the fee.

Projects considering this model need to assure themselves that arrangements do not breach the relevant regulatory framework (for example OISC provisions on referral fees). Clearly, if an arrangement were said to offer below market rate fees, then this would need to be substantiated. This would be of critical importance where the organisation negotiating the discounted fee takes a percentage of it.

At a more fundamental level, the model raises similar issues to best value tendering. Bulk purchase requires careful consideration of the relationship between volume, price and quality.

Clearly, the model is not appropriate for asylum seekers who qualify for legal aid.

A supported referral model

This is an untested model, which Asylum Aid has been considering, in which an NGO would have a guaranteed referral link with a specialist solicitor. The model is suited to client groups whose cases tend to be more complex, requiring greater specialism and which can be harder to refer. Funding would be needed to ensure the availability of the representative, but also perhaps, to provide a ‘quality subsidy’ for legal work, given that it is likely to be unprofitable under fixed fee funding.

Embedding advisers

In this model, legal representatives are embedded in a support NGO. The benefits of a “one stop service” to the client are self-evident and the ability to sift cases and support wider needs at the same time helps ensure that the best possible use is made of the limited time available for legal representation. The model should allow for savings to be made through the sharing of resources.

While attractive in principle, however, there are contracting hurdles if the partners do not operate in the same LSC procurement area. There are also regulatory and logistical problems around supervision making it difficult for a legal aid provider to scale the model up, for example, where the support NGO has a multi-site structure.

Research and evidence gathering

Some support NGOs help gather evidence for the legal representative. For example, Merton and Wandsworth Asylum Welcome help young people gather ‘life in the UK’ evidence to support Article 8 applications. This saves time for the legal representative and makes fixed fee funding go further.

Asylum Research Project

Islington Law Centre has been working closely with four leading commercial law firms to create a high quality web-based research tool for litigation cases. A leading IT specialist has donated a high-end knowledge management database and collaborative working system to ILC, one which would otherwise have been far beyond its resources. Discussions are ongoing for the commercial law firms to work with ILC to (i) provide pro bono research, research reports and bundles of evidence for key strategic litigation cases, (ii) populate the knowledge management database with targeted country of origin evidence, (iii) tag the evidence so that it can be interrogated thematically, and (iv) collate evidence relating to historical policy/legal positions in relevant areas. Ultimately, it is intended that the project will be opened up for other law centres and then for the NFP sector nationally.

The project illustrates a good example of how the NFP sector can lever the support and knowledge management expertise of commercial firms. It plays to the strengths of the latter. There is considerable scope for the project to be scaled up and, once established, it might be possible for it to be self-funding.

<http://islingtonlaw.org.uk>

3.4 Pro bono work

The biggest challenge facing pro bono projects is how non-specialists can deliver work of sufficient quality given the issues at stake and the complexity of asylum work. They must also overcome related difficulties associated with the high turnover of volunteers, training and supervision,

the speed of the asylum decision-making process and regulatory hurdles, particularly for non-lawyer volunteers.

Law School initiatives, in particular, can suffer through high turnover of volunteers who may only be available for a limited time. A lack of supervisors may restrict the number of clients that can be taken on. This can lead to a number of volunteers ‘sharing’ a case through just part of its life. Pro bono work can make a significant contribution to legal education, but this must always be balanced carefully with the interests of the client.

To overcome the difficulties associated with pro bono work, some projects leverage pro bono supervision support from the quality ‘for-profit’ asylum advice sector, a model which can be cost effective, but which is vulnerable to ongoing legal aid cuts.

In addition, other projects mitigate these difficulties by focusing on discrete less complex aspects of work, avoiding representation on the substantive claim. They focus, for example, on bail, asylum support and research.

We did not encounter any pro bono project providing representation from the start of the asylum decision-making process. This is no doubt a consequence of the difficulties mentioned at the start of this sub-section.

Given the nature of pro bono work and the range of difficulties it faces, it is difficult to see how any project could work to Level 2 of the peer review scheme, the higher quality standard recommended in *Justice at Risk* for asylum legal aid providers. Nonetheless, pro bono representation is an important response to the poor quality of much representation and the declining supply of quality legal representation.

The Manuel Bravo model

We were particularly interested in the Manuel Bravo model, as the only one we encountered providing substantive representation, albeit as a safety net to asylum seekers at the back end of the process. There was strong support for the model in the project seminar. The projects we looked at were impressive examples of community activism, doing good work on shoe-string budgets.

Manuel Bravo projects assist asylum seekers who have been failed by the system and effectively find themselves without access to representation. They assist asylum appellants where representation has been withdrawn at appeal, often due to a poor assessment of the merits of a case. They also assist asylum seekers who have reached the end of the decision-making process and whose protection needs may not have been recognised.

Typically, projects use non-specialist volunteers, supervised pro bono, by immigration lawyers to take a witness statement, and gather sufficient other evidence to overturn a negative merits test decision, or to establish grounds for a fresh claim. If they can establish merits, they will seek to refer the case to a legal aid lawyer, thus bringing it back into the legal aid system.

But for the availability of pro bono assistance to establish merits, these asylum seekers would have no realistic opportunity of obtaining legally-aided representation.

The model offers tangible benefits even where the only representative to whom to refer the client is poor. For example:

- The witness statement and supporting evidence prepared pro bono is likely to be the best and most comprehensive statement of the specific case and can be used by the representative.
- The client may become entitled to welfare support as a result of the pro bono work.
- Asylum seekers in this situation no longer remain excluded from the system, hidden from policy makers. Forcing asylum seekers back into the system makes it more likely that policy makers will address the root causes of the problem.

With additional resources, Manuel Bravo projects could make an important contribution to policy work. They operate at the fault line of an unsafe process, dealing with the consequences of fixed fee funding, poor asylum decision-making, the low quality threshold for representation and poor merits test decisions. There is significant scope for using the experience of these projects to highlight failings in the decision-making and legal aid systems.

Manuel Bravo is just one of the projects highlighted here which is supported by the Future Advice Providers Fund, held by the Baring Foundation to manage funds on behalf of other progressive funders and which helps keep advice organisations on a sustainable footing.

<http://www.networkleeds.com/group/group.aspx?id=40837>
<http://www.baringfoundation.org.uk/program.htm>

BID and ASAP

BID and ASAP are two examples of pro bono work focusing on a discrete aspect of representation, bail and asylum support respectively. Their work and excellent reputation is well known and so not described here.

It is interesting, however, to note how the two organisations have grown over the years. They show how other pro bono projects could develop, given sufficient support. BID and ASAP are largely self-sufficient in terms of training and supervision. And both organisations have developed a strong influential policy focus, including engagement in some strategic litigation work, in partnership with quality solicitors firms. They have therefore taken on some of the characteristics of the strategic litigation and policy units described above, increasing the impact of their work for the benefit of their client group generally.

<http://www.biduk.org>
<http://asaproject.org/web/index.php>

Self-help models

With the notable exception of BID's work in relation to bail, there has been little consideration in the sector of self-help models. This is not surprising, given the complexity of the law.

In the future, self-help might have a role to play in an initial decision-making process, in which there was no effective access to quality legal representation. Unrepresented asylum seekers might benefit from self-help packs, supplemented, perhaps, with guidance about how to make a statement provided in a one-off pro bono advice sessions.

Although more limited in scope than BID's work, Citizens UK is doing interesting work training community sign-posters to help asylum seekers access representation and navigate their way through the system. This includes training to raise awareness of what the community should expect from a competent representative.

Complaint projects

There may be scope for improving the accountability of representatives and their regulatory bodies for quality work through complaints to the OISC/SRA. Pro bono complaints projects, such as Citizens UK's work with students from University College London, may have a role in helping to raise quality standards. But to make a significant impact they would perhaps require higher volumes of complaint and greater co-ordination of work across different complaints projects. The recommendation in Section 4.3 for work to develop a quality pledge would provide a good framework for the co-ordination of complaints work.

3.5 Innovation and risk

By its nature innovation carries risk both to the innovator and to the funder and this needs to be managed effectively. Most projects we have looked at have been well thought through. However, there are exceptions. There is a potential risk to clients' cases and of reputational damage to projects and their funders. There may be circumstances in which projects in the design stage would benefit from expert advice.

SECTION 4: THE QUALITY DEFICIT - A STRATEGIC RESPONSE

In this section we suggest a strategy for charitable trusts, legal representatives and others over the next three years to help respond to the quality deficit, whilst recognising this is a problem that cannot be solved simply by charitable funding.

The strategy acknowledges that quality representation is unsustainable under the current legal aid system, while taking into account the significant influencing opportunity of ELAP. It looks forward to another legal aid bid round in 2015 and reflects the urgent need to develop thinking on how quality can be incentivised in the legal aid system. The strategy also looks forward to the future introduction of best value tendering, which would be likely to price remaining supply of quality representation out of the market, unless the quality threshold were to be raised.

The key elements are:

1. Supporting and developing new service delivery/policy and influencing models:

- **Specialist representation and policy units** which can assist asylum seekers as a class, including those without representation, and help promote quality more widely.
- **Partnership models** which can develop new ways of working and help forge new casework-informed policy and influencing partnerships.
- **Pro bono work** which can act as a safety net until ELAP is in place, but also, potentially, as a key representation model, post 2015, if there is no longer a significant supply of quality representation.
- Other initiatives to assist those **without access to effective representation**, including training for lawyers and non-legal professionals, and 'self help' initiatives.

2. Examining new ways to raise income and other support for quality representation:

- Further **exploration and development** of ways of bringing in new resources through increased support from City firms and partnership with the large support NGOs.

3. Supporting critical policy and influencing work on the commissioning of quality early legal intervention, including:

- Supporting a concerted **campaign of policy and influencing work** on the value of quality representation and need for new quality standards.
- Developing quality initiatives, such as a **voluntary peer review scheme**, to enable the work of quality representatives to be incentivised by the legal aid system.

Support for greater collaboration, co-ordination, networking and capacity building, and to strengthen the sector's collective policy voice, should run through all aspects of this strategy.

The majority of recommendations focus on activity characteristic of the NFP sector. It should be stressed, however, that the survival of quality of representation in the 'for-profit' sector is vital to the ecology of the legal aid sector more generally. Quality solicitors firms play an important role in supervising pro bono work. They contribute to an ongoing critical mass of expertise in asylum law. They also provide a potential critical mass for influencing work on quality and how it might be reflected in the commissioning of legal aid services – our recommendations in Section 4.3 suggest ways in which this potential might be realised.

In the remainder of this report, we deal with each element of the strategy in further detail.

4.1 Supporting and developing new service delivery/ policy and influencing models

Specialist legal/policy units

Support should be provided to develop hubs of litigation and policy expertise in particular priority subject areas, building on models that already exist, for example, in relation to children and young people at Islington Law Centre. Other specialisms for which the model would be suited include work with victims of torture, trafficking, domestic violence, and foreign national prisoners.

We think the model should be supported as a flagship for NFP values and the most effective way to support quality representation. It is not a model which can be adopted generally for sustainability. But it is one that ensures the survival of some quality representatives in a way which is cost-effective and, because of the wider impact of the work, will benefit large numbers of asylum seekers, focusing on the more vulnerable.

The model would also provide a seed corn from which to help grow expertise in the event of a more favourable funding environment, for example if ELAP were to be rolled out nationally.

Particular emphasis should be placed not just on strategic litigation and associated policy work but on the provision of targeted information, advice, support and training to decision-makers, other professionals and community groups – not just lawyers – dealing with the client group. The provision of support to community groups seeking to negotiate change with government would be particularly useful. Within appropriate constraints, all professionals should be empowered to assist the client group, particularly clients without competent representation.

The model has particular scope as a means of providing support and professional leadership to other projects receiving charitable support, including pro bono projects.

Funding would be required to provide start-up costs for a project, including working capital, and to support substantial time spent on non-chargeable activity. Funding for 100% of the costs of a project in the first year and 50% thereafter would not be unrealistic. It could be a condition of funding that any legal aid surplus should be ring fenced to the project, to contribute to future sustainability.

Partnership working

Support should be given to develop casework and influencing partnerships between representatives and some of the larger support NGOs. Such partnerships can exploit the potential to unify and strengthen the voice of different parts of the asylum sector, particularly if casework experience is used to undertake joint litigation/policy work, training, information giving, etc.

It would be useful to support two models in particular:

- A pilot of the ‘supported referral model’, described in Section 3.3. The model is untested, but represents an entirely new approach to the funding of quality representation, by leveraging funding support from the NGO partners. Financial support may be by direct subsidy from the NGO, or may come through use of the NGO’s fundraising expertise. The model tests the concept of the ‘quality premium’ in which the subsidy tops up the fixed fee to fund the additional time required to deliver quality work. This model would particularly suit further support for joint strategic litigation and policy work, providing a stripped-down alternative to the strategic litigation/policy unit model.
- We would also recommend funding for partnership projects which promote access to representation for those excluded from legal aid support. Asylum Aid’s work with Notre Dame and the Red Cross are good examples. This examines a way of supporting largely unfunded areas of ‘fresh claim’ work. It would also be useful as a means of enabling specialists to develop and maintain expertise in this area of work. They would then be better placed to provide ongoing legal and policy support to the Manuel Bravo projects which operate in the same legal terrain.

As with specialist policy/litigation units, pilots of these partnership models would require start-up costs including working capital. They would require less ongoing subsidy reflecting the higher volume of chargeable time in the model. The level of subsidy would depend largely on the nature of the work and client group, reflecting the amount of unfunded casework activity involved, any necessary quality supplement, and the amount of associated policy work. As we note above, it might be possible for projects to lever funding support from partner organisations to contribute to future sustainability.

Pro bono models as a safety net and, potentially, as a key delivery model post 2016

We have focused on the need to support and develop pro bono work in the *substantive* asylum decision-making process, in particular the Manuel Bravo model of representation. This flows from the objectives of this project, the need to address the quality gap, the strategic importance of this work both now and post-2015 and the precarious viability of the projects we have looked at, which all operate on a shoe-string budget. This is not to underestimate the critical work of organisations such as BID and ASAP which we believe should continue to be supported.

Three key points arose from our review of pro bono models:

- It is essential for projects to put adequate supervision arrangements in place. The utmost caution is required when considering any project to use non-specialist volunteers to provide substantive representation at the outset of the process.
- The need for intensive supervision can, regardless of the number of volunteers, limit the throughput of work. This can reduce the cost effectiveness of a project, where there is a danger that funders can support a lot of activity, benefitting relatively few clients.
- Projects which seek to promote the longer term retention of volunteers and which seek to grow supervision expertise internally are likely to be more durable and provide better quality work.

Each of the four Manuel Bravo pro bono projects we talked to expressed different funding needs: funding for better IT support, volunteer coordinators, full time caseworkers, and for supervisors. In part, this reflects differences in the way each project works and the absence of a standard model. Given scarce resources, we believe one of the best uses of money may be to help projects co-ordinate their work and invest in some central thinking about how to make these models more sustainable.

We recommend support for pro bono community advice and support projects, particularly those developing the Manuel Bravo model of provision to:

- Help them co-ordinate their work, share resources, learning and expertise among themselves, but also with others who are interested in establishing new projects. There would be particular value in funding to document the model, the regulatory and other challenges involved, and developing best practice within the constraints in which it operates.
- Help projects consider how the model might respond to the ongoing erosion of quality representation. Projects are reliant on the existence of quality representatives for supervision and to refer cases to. Projects are therefore vulnerable to further legal aid cuts and may not survive the advent of best value tendering, the point at which they would most be needed. It is important that the movement considers ways to overcome this reliance, such as building the capacity to supervise itself. There is a critical question here about the extent to which these pro bono

models might be able to become a key representation model in a sector otherwise devoid of quality representation.

- Use their considerable experience of the consequences systemic failings in the decision-making process and legal aid system on individual clients, to support policy and influencing work.

NGOs such as the Red Cross could be an ideal host for the Manuel Bravo model of pro bono representation for destitute asylum seekers. It may be possible to assist them to use their offices, throughout the country to expand the Manuel Bravo model.

There are also significant potential synergies between these pro bono grass roots models and specialist litigation/policy models where, through closer working relationships, the former could be developed as part of the latter's 'outreach arm' in the community. Together projects will better be able to diagnose and prioritise the issues facing their clients to facilitate the 'ground up' development of more coherent and relevant strategic responses.

A number of commercial firms are interested in pro bono representation, although they are reluctant to engage in complex work where the stakes are so high. Although these concerns are justified, the Manuel Bravo Project has shown they are not insurmountable. It provides an example of how non-specialist solicitors can be used to undertake asylum work.

The Islington Law Centre research project also provides an interesting example of how the strengths of a commercial firm can be exploited, in this case where expertise in knowledge management can be passed to the legal aid sector. There may be other analogous areas of expertise that can be deployed to the benefit of the sector.

Other initiatives to assist those without access to effective representation

As we note above, there is a need to preserve quality representation where it still exists, but also re-purpose its work so that it has impact beyond the clients actually assisted, an impact benefitting asylum seekers with poor representation or no representation at all. We have described the role specialist litigation/policy units could play.

In the future, self-help might have a role to play in an initial decision-making process, in which there was no effective access to quality legal representation. Unrepresented asylum seekers may benefit from self-help packs, supplemented, perhaps, with guidance about how to make a statement provided in a one-off pro bono advice sessions.

For now, the development of self-help projects in the initial decision-making process would cut across the case for quality early legal intervention. It might be useful, however, to support some initial thinking on self help for cases at the end of the decision-making process. Self help could be built into and help extend the reach of the Manuel Bravo model.

It might also be useful for the legal aid sector to reflect on the training it provides to its lawyers. We haven't considered training in any detail as it is outside the scope of this project. All lawyers are required to attend on-going training. Clearly, training has an important role in raising quality standards. Its effectiveness might be limited if it is pitched mainly at the diminishing minority whose standard of work is high, and not on the needs of the majority.

4.2 Examining new ways to raise income and other support for quality legal representation

A number of commercial firms provide support-in-kind to the NFP sector, including finance and back office support. Support for developing IT infrastructure including case management software has been particularly useful, we understand, for Law Centres. As an aside, RMJ showed the value of case management IT in collating data for use in policy and influencing work. If there is a move towards the use of common case management software, then this point should be considered in its design, so that common statistical data could be produced across different providers.

Similarly, IT and case management software was identified as a need for the Manuel Bravo projects. They are sharing software, but it was indicated to us that it might benefit from an injection of resources.

As suggested at the project seminar, we need to be cautious when considering the extent of assistance which commercial firms might be able to offer. There is already competition for this resource.

There may be more radical initiatives. Is it inconceivable, for example, that a commercial law firm could employ asylum law expertise, host one of the models discussed in this report, and grow expertise internally to overcome some of the barriers to it providing bono assistance?

There may be various opportunities to obtain funding from other sources, for example, for training and information provision to non-legal practitioner professionals (linking in with the section above) who deal with asylum seekers:

- UK Border Agency decision-makers
- Immigration Judges
- Local authority staff, such as social workers, teachers etc
- Police offices
- The Prison Service (public and private sector)
- Health Service workers

Specialist legal/policy units could be given a specific brief to seek to develop programmes which lever such sources of funding.

We should perhaps mention a point here, made to us a number of times by smaller organisations, that diversification of funding can place significant strain on management time, particularly where individual funding streams are relatively small and of short duration.

4.3 Supporting critical policy and influencing work on quality early legal intervention

Influencing priorities

Charitable funders should consider the need to support a concerted campaign of policy and influencing work over the next three years, highlighting:

- ELAP and the importance of early quality intervention.
- The potential for a joint LSC/UK Border Agency asylum determination budget to overcome some of the current structural problems in funding
- The need to raise the quality threshold across the sector and to persuade government of the importance of quality in achieving best value in the commissioning of legal services.
- As a minimum, the importance of distinguishing higher quality work so that it can be recognised in the commissioning process.
- The need for legal aid contracting to incentivise the value added aspects of NFP providers' work.

ELAP

ELAP provides the most significant opportunity for persuading government to transform legal aid funding, initially for asylum work, but potentially well beyond that.

The Home Office has more to gain, financially and otherwise, from greater Ministry of Justice investment in early quality legal interventions. The introduction of a cross-departmental MOJ/Home Office legal aid budget should promote more effective use of resources. The arrangement would need to preserve the independence of the LSC on legal aid decisions for specific cases. Also, it should not be a return to the past when legal representation was funded by the Home Office through a grant. Instead it would be a way of creating effective incentives for government to resolve cases early and achieve value for money.

There has already been some progress in behind the scenes discussion with Home Office officials, undertaken as part of the Rethinking Asylum Legal Representation project. Most significantly, Maurice Wren has secured a joint LSC and UKBA commitment for high-level engagement on the lessons from ELAP.

Beyond these initial considerations, the priority is to influence the exact form of a roll out, since one option Ministers are likely to consider would to roll out the process with modification.

Influencing on ELAP will be critical in 2013 when Ministers and officials will be considering the outcome of its evaluation. If the outcome is a decision to roll out ELAP in its present form, there will still be a need to influence

the future of legal aid, including how ELAP representation might be commissioned through best value tendering.

Commissioning quality representation

Whether or not ELAP is rolled out, if quality representation is to survive, it is essential for quality to be built into the commissioning process. Justice at Risk recommends all providers should be peer reviewed and required to meet the higher quality threshold at Level 2 of the peer review scheme. Such a move would enable existing quality representatives to compete on an even footing with other providers in any future bid round, particularly one based on price competition.

A staging post to this recommendation would be for the commissioning process to distinguish high quality from adequate representation and pay the former more. Differential payment based on quality could be built into the current commissioning system and one based on best price competition. It would help preserve existing quality representation, pending more radical change.

However, as we have noted in Section 1.4, only a minority of providers are peer reviewed and it is focused largely on those who are suspected of providing poor quality. There is therefore no effective objective way of distinguishing providers working above the threshold standard of representation in the terms of any tender.

Finding a way to objectively identify high quality representatives, from the NFP and 'for-profit' sectors, will give them a locus as a group to argue for change. It will provide a means for them to argue for financial incentives for their work.

The recent publication of *Justice at Risk* provides a platform on which to build future influencing work. It will be important to implement change prior to the next round of commissioning in 2015, so there is considerable urgency in this work. We have identified three options:

- Quality mark

An idea arising from the project seminar was that we should consider the value of an independent quality mark. However, there is a danger that such a scheme might duplicate and add to the existing burden of regulation and be costly to run. It might also suffer from the pitfalls associated with this approach to quality control, such as the tendency to focus on form and process, rather than the actual quality of advice given.

- Developing a quality pledge

It might be better, initially at least, to build momentum on the issue of quality through the development of a quality pledge. Providers would commit to, say, five key commitments distilled from the *Justice*

at Risk quality definition, for example, to prepare a comprehensive witness statement. The pledge could also include elements of good NFP practice, for example, a commitment to promote access to the most vulnerable. A key feature of work on the pledge would be to seek to persuade the OISC and SRA to endorse it.

Funding would be required initially for a project to engage with providers in scoping, drafting and piloting a quality pledge scheme, with a view to rolling it out further if successful.

A collateral benefit of the pledge would be to provide a tool by which complaints projects could frame and categorise complaints using a standard reporting template, so that common data could be collected from different projects to be used for influencing work.

Although development of a quality pledge might help build momentum on the need for quality, it might be difficult to translate it into a proposal to the LSC to differentiate and incentivise higher quality work⁹.

- Voluntary peer review scheme

A voluntary peer review scheme might offer the best way to influence the LSC to differentiate quality in future bid rounds, since peer review is already used by the LSC to exclude poor providers from legal aid work¹⁰.

Providers considering their work to be of high quality would volunteer for peer review. Disincentives would be built in to ensure lower quality providers did not apply speculatively under the scheme¹¹. Peer reviews for all volunteer providers would need to be completed well before the next bid round in 2015.

The scheme would require a relatively high initial investment over a three-year period, perhaps involving the employment of one or two peer reviewers working full time.

After the initial three-year period, it might be possible for the LSC to offset ongoing costs of the scheme, by re-balancing the way it selects representatives for peer review.

A voluntary peer review scheme would involve greater upfront costs than the above two options. We would recommend funding to consider the feasibility such a scheme.

9 This would require the development of an audit process to ensure providers comply with the pledge.

10 As we note in Section 1.4, peer review is designed primarily to identify poor providers.

11 For example, if they only achieved threshold competence, they might have to pay back part of the cost of the peer review; and if they did not meet threshold competence, they would be treated in the same way as other providers failing peer review.

Incentivising other aspects of NFP work

In addition to incentivising quality, there is a need to influence the LSC as regards other NFP value added activity. We noted some of the barriers to innovative models of representation in Section 2.2 of this report. The LSC may be persuaded to ensure existing provisions and processes are at least sympathetic to, and do not inadvertently exclude, more efficient and effective models of advice provision.

Further work is needed among those with an interest in seeking solutions to these barriers. Follow-up discussions might be needed with the LSC, and also the OISC, to discuss unnecessary regulatory hurdles.

4.4 Strengthen the sector's collective policy voice and support greater collaboration, co-ordination, networking and capacity building.

Underlying these recommended activities, is a more fundamental need to support greater collaboration, co-ordination, networking and capacity building, and to strengthen the sector's collective policy voice.

In part, this is about building these needs into specific projects. We have identified where this could be considered:

- Developing quality initiatives, such as a voluntary peer review scheme, to give quality representatives a locus and collective voice to argue for change in the commissioning process.
- Specialist legal/policy units having a key role in providing support and professional leadership to other projects receiving charitable support, particularly those working in the community.
- Giving specialist litigation/policy units a role to provide support and information to other professionals and community groups dealing with the client group.
- Developing potential synergies between grass roots pro bono models and specialist strategic litigation/policy units where, through closer working relationships, projects will be better able to diagnose and prioritise the issues facing their clients to facilitate 'ground up' development of coherent and relevant strategic responses.
- Using the partnership models to unify and strengthen the voice of different parts of the sector, for example through joint strategic litigation/policy work, information-giving, training, etc. Influencing partnerships can introduce other voices, not just those of lawyers, into the debate on quality, voices whose interest cannot be dismissed as being self-serving.
- Exploiting the casework experience of the Manuel Bravo projects to articulate the need for early quality legal interventions.
- Help the Manuel Bravo projects share resources, learning and expertise among themselves, but also to others considering undertaking similar work. More generally, we have noted that these

projects need to start considering now how they might work in a post 2015 environment where there are no quality representatives to support them or refer cases to.

Beyond building collaborative work into specific project proposals, we suggest there is a need to fund some further strategic interventions to support co-ordination, networking and capacity building work, and policy co-ordination to help give the NFP sector a collective voice.

No organisation has a capacity-building function for the asylum sector, in the way that the Refugee Council assists RCOs. We have identified the need to provide better support for the Manuel Bravo projects. More broadly, funders may get better value from the various funded projects, if there is some centralised resource of expertise to help them work together effectively.

As regards policy work, other organisations, such as ILPA and Advice UK, exist to promote policy solutions and to influence Government policy. There is no value in setting up activities to duplicate their work. However, ILPA represents both for-profit and NFP providers. As discussed earlier in this paper, there are specific interests and concerns of the NFP sector that could be more sharply articulated.

To be clear, we are not proposing the creation of any new organisation at this point, which would be costly. Co-ordinating activities could be built into the work of an existing organisation, with the most obvious location being Asylum Aid itself given its knowledge and expertise in this area demonstrated by this project.

CONCLUSION: STRENGTHENING THE ASYLUM LEGAL ADVICE SECTOR

The next three years are critical to the survival of the NFP sector and quality representation more generally. We have identified a number of areas which require funding, if the sector is to make the best response to the challenges that lie ahead.

- Supporting new models of service provision

We have identified the need to create more specialist litigation/policy units, re-orientating the work of lawyers, so that it has the maximum impact. This model is relevant both now and in the post 2015 environment in which there may be no surviving unsupported quality legal aid representation. Similarly, we recommend support for casework and policy partnerships; and support for the work of pro bono initiatives to continue to act as a safety net for the next three years, but also to help them develop to meet the challenges ahead.

- Examining new ways to raise income and other support for quality representation

There needs to be further consideration of how best to exploit the goodwill of not just commercial firms but also some of the larger NGOs assisting asylum seekers, both in terms of income and also support in kind. We have also referred to the scope to raise income from other professionals

- Supporting critical policy and influencing work on quality early legal interventions

We have noted the importance of policy and influencing work over the next three years and the urgent need to develop ways of objectively identifying high quality representatives, so that their work may be incentivised by the legal aid system.

Running through these priorities is the need to support greater collaboration, co-ordination and capacity building in the sector and to give it a collective policy voice. In part these considerations should be built into specific projects, but we have also identified the need from more strategic interventions to be considered.

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