

A Huge Gulf:

Demand and Supply
for Immigration Legal
Advice in London



Jo Wilding
Maureen Mguni
Travis Van Isacker

June 2021

 JUSTICE
TOGETHER

Table of Contents

Executive Summary	4
Supply and Demand	4
The London context	6
Routes into and through the advice network	6
Funding models	7
Recruitment, training and supervision	8
Impact of Covid	9

Summary of Recommendations	10
Recruitment, Training, Retention and Supervision	10
Increasing casework capacity	10
Outreach, partnerships and networks	10
Community legal literacy	11
Funding	11
Structural change and influencing points	12
Home Office:	12
Legal Aid Agency:	12
Broader sector:	12

Glossary and acronyms	13
------------------------------------	-----------

About the Authors	14
--------------------------------	-----------

Acknowledgements	14
-------------------------------	-----------

Introduction	15
Methodology	17

Scale and characteristics of supply	19
Legal Aid Matter Starts and Certificates	19
Non-legal aid free capacity	20
OISC Level 3	20
OISC Level 2	21
OISC Level 1 and EUSS	21
Geographical distribution of free advice	22
Private advisers	26
Members of Parliament	26

Scale and nature of demand	28
A brief note on legal aid eligibility	28
First-time asylum applicants	29
Measures of demand	29
Others in the asylum system	30
Unaccompanied children	31
Settlement and travel documents after asylum	32

Refugee Family Reunion.....	32
Trafficking.....	33
Fresh asylum claims.....	35
Case study: Making a fresh claim	37
Undocumented people.....	38
Renewals on the ten-year route.....	40
No recourse to public funds.....	42
Case study: No recourse to public funds	43
Citizenship.....	44
Domestic violence-based applications.....	44
Case study: Domestic violence and leave to remain	46
Immigration detention.....	47
Deportation and access to advice in prisons.....	48
Case study: Deportation	52
European Union nationals.....	53
Exceptional Case Funding.....	55
Data gaps.....	56
Other advice needs: Clustered problems and the fragmentation of advice networks.....	57
Costs and consequences of hostile policies.....	58
<hr/>	
The London context	61
Demand for London-based services from outside the capital.....	63
<hr/>	
Routes into and through the advice network	63
Case study: Navigating the advice network	64
Entry points.....	65
Referral routes and pathways to casework.....	66
Partnership models and embedding advice.....	69
Bottlenecks and partially-met demand.....	71
An 'extra' referral layer.....	73
Access restrictions, rationing and triage.....	75
Community legal literacy.....	78
<hr/>	
Funding models	80
OISC Level 1.....	80
OISC Levels 2 and 3.....	80
Legal aid providers.....	81
Commercial pro bono.....	82
Learning for funders.....	83
Learning for local authorities.....	84
Funding chargeable applications.....	85
<hr/>	
The profession: recruitment, training, supervision and registration	88
<hr/>	
The impact of Covid	90
<hr/>	
Conclusions	92
<hr/>	
Appendices	95
Appendix 1: Research Questions.....	95
Appendix 2: Distribution by Borough.....	98
<hr/>	

Executive Summary

- 1 This research project was commissioned to provide evidence about the scale and characteristics of demand for and supply of immigration legal advice in London. We were asked to examine the different types of providers, their capacity, their distribution across the city, funding models and approaches, and the entry points and referral routes through advice networks in London. We were asked to develop an estimate of the scale of different types of demand, both met and unmet, and of the gaps in provision. We were asked to explore the experiences of people who have sought or received immigration advice in London. Finally, we were asked to comment on the impact of Covid on need and provision in the capital.
- 2 It is a criminal offence to provide immigration advice unless the adviser is either accredited by the Office of the Immigration Services Commissioner (OISC) or exempt by way of a professional legal qualification. This means advice and representation should only be provided by solicitors, barristers, legal executives and OISC-accredited advisers. Most non-asylum immigration work was removed from the scope of legal aid in England and Wales by the Legal Aid, Sentencing and Punishment of Offenders (LASPO) Act 2012. This and other legal aid changes, particularly since 2000, have reduced the availability of legal aid assistance, while Not-for-profit advice services have been reduced by austerity and consequent local authority funding cuts. At the same time, immigration laws have become more complex, with provisions in the Immigration Acts of 2014 and 2016 increasing the importance of being able to prove immigration status. These changes have transformed the landscape of both demand for and supply of immigration advice, and this research set out to provide a detailed understanding of the current situation in London
- 3 Data collection was from a combination of publicly available information, Freedom of Information requests, semi-structured interviews with 16 Key Informants from support organisations, 23 advice provider organisations and 64 advice users, complemented by a survey of advice providers which received 50 responses and information from six London MPs.

Supply and Demand

- 4 London has 40 per cent of the offices holding legal aid contracts in England and Wales, and more than half of the offices which are registered with the Office of the Immigration Services Commissioner to offer non-fee charging services at the highest level of advice and casework.
 - 5 Despite this, demand far outstrips supply. For legal aid work, this research concludes that there is capacity for just over 10,000 immigration and asylum 'matters' per year, including applications and tribunal appeals within the scope of legal aid (but note that one client may account for more than one matter), and 700 higher court matters, including judicial review applications and appeals to the Court of Appeal or higher.
-

- 6 For OISC Level 3 work (the highest level of casework) which is outside the scope of legal aid, total capacity is estimated at around 2,000-2,500 pieces of casework per year. At OISC Level 2, capacity is estimated at no more than 2,000 pieces of non-charging casework per year. The total capacity for casework in London therefore appears to be no more than 4,000-4,500 pieces. This compares with demand estimates in the hundreds of thousands, including approximately:¹
- 4,300 first-time adult asylum applicants per year;
 - 1,235 unaccompanied children seeking asylum per year;
 - 800 recognised refugees in need of settlement and travel documents per year;
 - hundreds of people eligible to apply for refugee family reunion (RFR) per year;
 - 2,276 victims of trafficking or modern slavery in need of some immigration advice or casework per year;
 - 397,000 people who are undocumented, of whom at least 238,000 are likely to be eligible to make an application to regularise their status, including children and people making fresh asylum applications;
 - 23,000 individuals in around 18,500 households needing to extend their leave in the year from 1 July 2021, many of whom will also need a fee waiver application and/or an application to remove a restriction on access to public funds;
 - 600 people per year needing to apply under the domestic violence provisions, which usually involve two separate applications (the first for access to support and refuges, and the second for leave to remain), plus an unknown number of people who should benefit from these provisions but never access advice and casework;
 - up to 1,702 people at any given time in immigration detention in the detention centres in and around London;
 - 1,777 non-UK nationals in prison in London, as at December 2020, and an unknown number of people who are neither in prison nor detention but continue to face deportation proceedings;
 - an unknown number of EU nationals who have not yet applied under the EU Settlement Scheme (EUSS), which has a deadline of 30 June 2021, and a proportion of the 774,000 people in London who have been given pre-settled status and need support to upgrade to settled status in due course. At least 282 looked-after children and care leavers in the London boroughs have been identified as eligible to apply to the scheme but are yet to apply, while 31–79 children in that position have pre-settled status and are likely to need support to upgrade. These figures are likely to be an underestimate of those in care who could apply under the scheme, particularly those who are EU family members rather than EU nationals in their own right.

1. See main report for the sources, methods and working assumptions on which these supply and demand estimates are based.

- 7 It is easier to obtain advice than casework. Many organisations offer advice sessions at which a person can explain their situation and receive advice on whether and how they may be able to regularise their status, extend their leave or apply for a family member to join them in the UK. Far fewer offer casework to assist directly with making an application or gathering supporting evidence. This creates a bottleneck between advice and casework, and means that some demand is only partially met. The bottleneck appears to be particularly severe for clients who need access to legal aid casework.

The London context

- 8 London appears to accommodate a larger undocumented population than other parts of the UK, largely because of community or family networks based in the capital. This may make it easier to disappear into communities there than elsewhere. This results in high demand from people whose cases are complex and those entering the advice network at crisis point.
- 9 London also has a larger and more complex advice network than other parts of the country because of the number of different organisations operating there. This is largely positive but means that some organisations get 'lost' in the network and do not have effective referral pathways, while users face a bewildering array of organisations and little guidance as to which will be able to help them.
- 10 Users and organisations in the surrounding advice desert areas also depend on the London network, but it has no spare capacity. Indeed, some London-based users with more complex cases are referred outside the capital when support organisations are unable to find casework capacity for them within the city.

Routes into and through the advice network

- 11 Many people enter the advice network as a result of some kind of crisis, often around health, homelessness, violence or job loss. When they are unable to access or engage with the advice they need, some return to exploitative or dangerous situations. It is therefore important to increase the crisis capacity.
 - 12 Equally, it is important to understand how to address underlying issues before crises happen, and to make early advice more available, which should also lessen the complexity of cases. This requires creative and collaborative models of outreach, drop in, embedding advice in other services, and community legal education which improves knowledge of when and where to seek good-quality advice and how to avoid harmful, exploitative and incorrect immigration advice.
 - 13 Referral pathways, partnerships and networks are an important part of this. Community and Level 1 organisations typically have the trust of users but not the specialist expertise, while users may not trust provider organisations or understand that they are separate from state authorities. Pairing or networking trust-holders with advice specialists is an effective way of reaching those in need.
-

- 14 Organisations which are well-networked are able to effectively triage users' needs to make efficient referrals to their partners, following training and support in doing so. The converse of this is that some organisations are not well-networked and struggle to refer their users for advice or casework, depending heavily on any personal connections they can cultivate.
- 15 Networks are an essential part of ensuring effective referral pathways, not a luxury, but they do not 'just happen'. They require funding and support to create and maintain them. As other funding cuts reduce the caseworker hours within organisations, participation increasingly depends on adequate resources. Interviewees provided examples of networks which had had positive effects on overall capacity and referral effectiveness, yet were unable to continue once funding was lost.
- 16 All of the providers at OISC Levels 2 and 3 who participated in the research have some specific access criteria limiting who can use their services. This is partly a consequence of rationing limited supply but also commonly relates to funding streams. It creates difficulties in placing clients with advisers or projects and it would be useful to expand the open access capacity of Level 2 and 3 services.
- 17 Triage plays a vital role in making best use of limited capacity. There may be scope for exploring whether it can work at a regional or supra-organisational level so that access to specialists and casework is less dependent on where someone enters the advice network. However, triaging uses a lot of organisational resources and needs to be adequately funded to work properly.
- 18 Language is a significant barrier to accessing the advice network, with users paying for non-specialist advice in their own language when they are unable to find free specialist advice either in their own language or via an interpreter. Non-legal aid organisations rarely have funds for interpretation. The development of partnerships between specialist advisers and community organisations, and an increase in community legal education, would help to overcome this barrier.

Funding models

- 19 Most of the organisations which took part in the research manage multiple income streams, including grants and contracts. Although these are crucial to the organisations' survival, they also cause administrative difficulties. In particular, these include different reporting requirements, the need to re-apply for each piece of funding, the need to fit each client to an appropriate funding stream and management of staff whose posts are funded by different grants and contracts, often with different end dates. More sustainable funding would be for longer periods of time and with reduced or streamlined reporting requirements.
 - 20 Organisations also struggle with funders' changing criteria and the common requirement to innovate instead of continuing projects which work and for which there is still a need. Some services and initiatives are closing because their funding has ended and they could not secure new funding.
-

- 21 Legal aid funding has long been paid in arrears, on closure of cases, which causes cash flow difficulties for providers, who are not in control of the duration of cases. Some changes to this were made as of October 2020. Legal aid providers which do not have grant income rely increasingly on private work and on winning costs (usually from the Home Office) in successful judicial review work, which is paid at rates closer to the private market rate instead of the legal aid rate. This means some are shifting more of their capacity into private and judicial review work, and away from legal aid applications and appeals work. It is not yet clear what, if any, the review of administrative law will have on this.
- 22 Non-legal aid services are able to work efficiently because they do not have the administrative burden of legal aid bureaucracy, but they cannot access funding for disbursements for expert evidence and reports, interpreters or barristers. All of these funding models are therefore an important part of the provider base and it would be useful to consider the most effective ways of supporting partnerships between them.

Recruitment, training and supervision

- 23 There is a recruitment crisis for qualified caseworkers at all levels of provision, including legal aid, across England and Wales, including in London. Organisations struggle to recruit caseworkers with the required level of accreditation and to afford the costs of training, to the extent that new funding for one organisation often results in a shifting of capacity out of another organisation rather than an overall increase in capacity. This crisis has developed in the years since the closure of the large national providers Refugee and Migrant Justice and Immigration Advisory Service, both of which used to train large numbers of new caseworkers.
 - 24 Part-time work and fixed-term contracts are typical of and cause instability in the sector. Many of the caseworkers interviewed in this research were working in two or even three organisations, and managers described the difficulty of retaining staff when future funding of their posts was uncertain.
 - 25 One of the difficulties with recruitment arises because funding or contracts often require fully-qualified staff in post from the outset, rather than enabling training and capacity building by allowing (and resourcing) for new staff to train on the job, including through buying in supervision capacity from other organisations.
 - 26 Given the expense to organisations of training new staff, who then become valuable to others in the sector, it is important to consider ways of training new people into the sector as shared resources. This needs to be done both through the structuring of individual grants of funding and through infrastructural investment which create and support training routes.
-

Impact of Covid

- 27 It is too early to begin to understand the lasting impacts of the Covid pandemic on either demand or provision. However, the Everyone In programme for accommodating rough sleepers has brought some individuals into the advice network whose status has been irregular for many years. Equally, the closure of drop-in sessions and social activities has meant some people have been unable to access advice and support.
 - 28 Organisations expect to maintain some capacity for remote advice, but with the caveat that remote working makes it more difficult to create a rapport with clients or for clients to gain trust. Remote advice excludes those experiencing data poverty, lack of equipment, low digital skills or lack of a suitable place to receive remote advice.
 - 29 Procedural adaptations made during the pandemic have been positive, including greater email communication from the Home Office and Tribunal, and the lifting of the requirement for people to travel to Liverpool to submit fresh applications for asylum. These are pragmatic and positive changes which make the system more functional and should be retained after the pandemic.
 - 30 While some organisations have received additional funding to respond to Covid, others, especially legal aid providers, face serious financial difficulties as a result of the slowdown in asylum decision-making. Until October 2020, legal aid work was paid in arrears on the closure of a case and providers could not bill while the Home Office and Tribunals were not concluding cases. Changes to payment rules were made by the Civil Legal Aid (Remuneration) (Amendment) (No. 2) (Coronavirus) Regulations 2020 but it is not yet known whether the new payment regime will be permanent. Legal aid contracts have been extended for an additional year, but it remains to be seen how the pandemic will affect the legal aid provider base.
-

Summary of Recommendations

Recruitment, Training, Retention and Supervision

The recruitment crisis in the immigration advice sector is the single biggest obstacle to increasing capacity, both in London and throughout England and Wales.

Strategic action is needed to re-grow the sector, both through the structuring of grants to organisations and a wider infrastructural focus on training and supervision. This needs to replace the loss of major provider organisations which used to train large numbers of caseworkers, and to remove the cost of training from individual organisations. It should:

- **create and build on sector-wide training and supervision initiatives;**
- **consider whether all grants can include resources and time for training and accreditation of new caseworkers;**
- **consider shared and bought-in supervision arrangements to spread supervision capacity to more organisations.**

Increasing casework capacity

There is a very large gap between need and capacity in London, despite the capital having the largest number of legal aid and OISC providers. In particular, the severe bottleneck between advice and casework, particularly legal aid casework, leaves people unable to access support with applications.

- **Funding needs to increase the capacity of casework, including legal aid casework, so that those who have accessed advice are also able to receive casework support if needed;**
- **Consider whether funding can allow for open access rather than imposing access requirements.**

Outreach, partnerships and networks

Effective approaches include embedding advice in other services, outreach, partnerships between community and specialist organisations, and referral networks. This helps ensure clients can move between advice and casework levels as needed and builds capacity in the sector for effective triaging of needs to make the most effective use of capacity.

- **A range of entry points is needed, including both drop-in and outreach;**
 - **Better networking among organisations is needed in order to build more effective referral pathways, but funding is needed for the building and maintenance of these networks.**
 - **Strategic sharing and networking of data is needed to support strategic thinking and action in the sector, but this too needs proper resourcing, as well as careful planning to prevent data being used against the client group.**
-

Community legal literacy

Community legal education has an important role in ensuring that people know when, where and how to access advice, and to protect them from exploitative or poor-quality advice.

- **Delivering community legal education depends on building trust and relationships in communities, and recognising that people look to their own communities because there is a relationship of trust which may not exist with lawyers and caseworkers;**
- **Careful planning is needed to avoid abuse and the risk of facilitating or encouraging unregulated advice.**

Funding

Funding needs to be sustainable. Short-term funding awards create difficulties with offering sustainable employment. Immigration casework tends to be long term and is rarely accommodated within a framework of months. The resulting tendency of organisations to focus on one-off advice rather than casework worsens the bottleneck between the two types of work.

- **Funders should consider building funding for training into grants and contracts, rather than asking organisations to recruit fully-qualified staff from the outset. This is particularly important given the recruitment crisis for caseworkers and lawyers above OISC Level 1. It would contribute to the sustainability of the sector and aid retention of caseworkers in organisations other than the funding recipient.**
- **A greater proportion of open access funding would help organisations, which either turn away some clients or expend administrative resources allocating clients to funding streams on the basis of specific eligibility criteria.**
- **As obtaining, managing and renewing funding takes up considerable management and administrative resources, funders are urged to consider how this can be minimised or mitigated.**
- **Funding should focus on what works. Organisations which participated in the research had a strong perception that funders preferred innovation over continuing funding for existing projects. Some well-used projects had ended or were about to end because funding priorities had changed, despite the fact that need remained high.**
- **It would be useful for funders to consider whether they could provide funding for expert reports, medical evidence and interpreters in appropriate cases where legal aid would not be available in any event, or would only be available subject to such evidence being obtained first. This may form part of an influencing case for certain matters to be brought back within the scope of legal aid.**
- **All of these recommendations may be facilitated through collaborations like the Justice Together Initiative and similar projects which enable a more strategic approach to be taken than any funder could undertake alone.**

Structural change and influencing points

Structural change is needed both around the immigration system and legal aid. While expanding the capacity of the sector is a priority, there are limits to this. A strategic approach to meeting demand therefore needs to encompass strategic litigation and influencing/campaigning initiatives to reduce need. Such a strategic approach might include:

Home Office

- **Reducing the demands of the ten-year route to settlement. Either reduce it to a five-year route or grant five-year periods of leave (or both) to reduce the demands on applicants, the advice sector and the Home Office itself.**
- **Extending the fee waiver scheme to applications for indefinite leave to remain and to citizenship applications for children and people seeking protection (i.e. on the grounds of asylum, trafficking / modern slavery, domestic violence or human rights).**
- **EU Settled Status, and the upgrade from Pre-Settled to Settled Status, should be made purely declaratory (i.e. automatic, without the need for an application). Physical, not merely digital, evidence of status should be available on request in the form of a certificate or confirmatory letter. The deadline for applying should be extended.**
- **Abandoning the hostile environment policies, which drive up demand with little or no identified public benefit.**

Legal Aid Agency

- **Reducing the transaction costs for providers doing legal aid work while considering ways of both facilitating good-quality work and attracting more providers into the network.**

Broader sector

- **Promoting better understanding of the barriers to regularisation of immigration status, and that many people become undocumented because of application fees, barriers to accessing advice, and the complexity of the system.**
-

Glossary and acronyms

CABx	Citizens Advice Bureaux: generalist advice centres throughout the UK whose advisers are all permitted to give advice at the lowest level. Some have also trained and registered to give higher levels of advice.
DDA	Detention Duty Advice scheme: the system for providing legal advice in immigration detention centres.
ECF	Exceptional Case Funding: a type of legal aid funding for cases which are outside the scope of legal aid, but where the recipient's human rights or EU law rights would be breached if they did not have access to a lawyer.
EUSS	EU Settlement Scheme: a scheme for registering the status of EU nationals present in the UK before free movement rights came to an end.
ILR	Indefinite leave to remain
LAA	Legal Aid Agency: the body responsible for administering legal aid funding in England and Wales.
LASPO	The Legal Aid, Sentencing and Punishment of Offenders Act 2012: sets out the current statutory framework for legal aid and removed many matters from the scope of legal aid when it came into force in 2013.
NRM	National Referral Mechanism: the decision-making system for human trafficking and modern slavery cases. These decisions are made by the UK Human Trafficking Centre, for UK nationals, and by the Home Office for non-UK nationals.
NRPF	No Recourse to Public Funds: a condition commonly attached to grants of leave to remain in the UK which prevents the holder from accessing any welfare benefits.
OISC	Office of the Immigration Services Commissioner: the regulatory body for immigration advice other than from solicitors, barristers and legal executives who are exempt by professional qualification.

About the Authors

Jo Wilding is an ESRC postdoctoral research fellow. Her work focuses on legal aid and access to legal advice, particularly for immigration and asylum. She tweets about these topics on @JoWilding1.

Maureen Mguni is a Senior Social Worker in mental health, a Technical Instructor in Social Work Education and a Female Genital Mutilation (FGM) Expert Consultant. She is completing her doctoral research at the University of Brighton: *Exploring FGM in the South East U.K.: An Analysis of Affectees' Lived Experiences and their Engagement with Social Work Practice*. Maureen is also the founder and director of Langa Solutions, an organisation specialising in training, therapeutic intervention and awareness raising around HIV, FGM, gender-based violence and mental health in the United Kingdom and Zimbabwe. She has also worked as an immigration adviser, with refugees and asylum seekers in particular, and has vast experience working with women and girls affected by gender-based violence.

Travis Van Isacker is a London-based researcher of border security and migrant rights in the UK and Europe. He recently completed a PHD on evictions in Calais, France and regularly contributes to reports for grassroots human rights monitors and migrant advocacy NGOs.

Acknowledgements

Thank you to Paul Hamlyn Foundation, the Justice Together Initiative and the Greater London Authority (GLA) for genuinely well-thought-out funding and support for this research. We are further grateful to the GLA for the prompt and helpful responses to requests for data. Thanks in particular to Sioned Churchill, Rupinder Parhar, Laura Redman, Jonathan Price, Kirsty Gillan-Thomas and Alex Sutton.

Thank you to all the members of the advisory group for their thoughtful comments, technical expertise and support: Anita Hurrell, Bethan Lant, Duduzile Moyo, Jean Demars, Kaweh Beheshtizadeh and Sonia Lenegan.

We are enormously grateful to all of the organisations and practitioners for taking the time to participate in the interviews and survey, and for facilitating interviews with advice users.

Thanks, most of all, to all of the people who have sought immigration advice in London who shared their experiences with us.

Introduction

This research was commissioned to provide detailed, timely intelligence and insight to support the development of a long-term strategy for sustainable funding of immigration, nationality and asylum advice in London, and to support the work of organisations in making the case for appropriate funding of such advice. The research questions are set out in full in Appendix 1.

Immigration and asylum advice has been significantly changed by the Legal Aid, Sentencing and Punishment of Offenders (LASPO) Act 2012, which removed most non-asylum immigration work from the scope of legal aid in England and Wales.² This followed other legal aid changes, including a shift from hourly rates to fixed fees in 2007 and compulsory franchising from 2000, which limited who could do legal aid work. Not-for-profit advice services across the board have also been impacted by austerity and the consequent local authority funding cuts.

At the same time, the legal framework for migration to the UK, and for people who migrate to the UK, has been transformed by a series of immigration and asylum-related Acts of Parliament, Regulations, changes to the Immigration Rules, EU accessions and, most recently, the UK's withdrawal from the EU. The series of hostile environment policies declared against migrants by the then Home Secretary as of 2012 expanded the reach of immigration control into numerous spheres of life, including housing, health care, bank accounts, marriage registration, and so on, weaving an ever-more-complex relationship between immigration status – or the ability to prove one's immigration status – and access to an expanding range of other services and necessities.

To inform this research, data were needed from a wide range of advice users, advice provider organisations and support groups, as well as making Freedom of Information requests for numerical data, to form a much clearer picture of immigration advice need and provision in London than has previously been available. This expressly geographical approach allows us to overlay the national and local context, then begin to understand the interactions between national factors (legal aid cuts, immigration law and the regulation of immigration advice) and local factors (the capital's population, governance structure and highest density advice network in the country).

'Advice' is used here in a general sense to encompass the entire process of receiving help with an immigration-related legal issue, but it is also necessary to distinguish between advice and casework. Advice, in the sense of a one-off session of information exchange, is much more readily available than casework, which refers to work being done by a caseworker to assist with evidence gathering, completing or submitting an application, or challenging a decision.

After detailing the methodology for the research, the report first discusses supply, by exploring the scale, characteristics and geographical distribution of provision in London, and attempting to understand how much advice and casework is available within the legal aid and non-legal aid spheres. It then sets out the data on demand and need, breaking this down into different types of demand and coming to a numerical best estimate of need, where possible.

2. Non-asylum work remains within scope of legal aid in Scotland and Northern Ireland, which have devolved powers in respect of their justice systems.

It is clear that there is insufficient supply even for matters within the scope of legal aid and that there is a very large gap between capacity and need for matters outside its scope, despite London having more legal aid and OISC-accredited provider organisations than any other part of the country. This report then briefly touches on the question of whether and how London differs in context from the rest of the UK, in terms of both need and provision. This is necessarily fairly superficial, as the comparative research on the rest of the country has not yet been undertaken, but it enables some reflection on what is distinctive about London.

The focus then moves to four key issues:

- The advice network, and routes into and through it: the entry points, referral pathways and bottlenecks which affect those seeking advice;
- Funding models and some of the issues arising from the management of multiple income streams which nearly all of the providers in the research rely on;
- Human resources: the issues around recruitment, training, retention and supervision of caseworkers and lawyers, and the recruitment crisis which has emerged at all levels of casework, constituting perhaps the most urgent issue for the sector, both in London and nationally;
- The impact of Covid and lockdown on users' needs and providers' ways of working.

Throughout the report, we have integrated the accounts of the advice users who shared their experiences with us. It is a marker of the extreme complexity of the immigration system that many did not fully understand what had happened in their own cases. Frequently they did not understand why one organisation could not help them, or could no longer help them as it had previously. Some did not know where or how to access advice in the future, even after receiving some advice or casework, thus indicating that there is much more work to be done in terms of increasing the capacity of the organisations providing advice and casework. Many interviewees were in debt because of the costs of maintaining immigration status, and were trapped in a vicious cycle of poverty as a result.

Although the complexities of the sector and the size of the gap between need and supply appear daunting, this is an exciting and dynamic area to support. There is an extremely committed, creative and collaborative base of organisations and practitioners which already combine service delivery, campaigning and empowerment in ways which genuinely change people's lives. Several of our advice user interviewees described how an organisation or a caseworker had transformed their situation; one was suicidal before the intervention of the organisations which supported her, and now had secured leave to remain with her young child. Thoughtful and strategic funding of the immigration advice sector has the potential to build on that committed base, change a great many lives for the better and transform the debates around both immigration and advice.

This report is current to the date of publication or the dates given for statistics cited, but the figures and policy details, though perhaps not the context, are likely to change

rapidly. The 'New Plan for Immigration' was announced shortly before the report was due for publication, showing the government's intent (including making the asylum process more difficult). As yet it is not clear how the legal framework will change, though it is very likely that people without permanent immigration status in the UK will need advice on how it affects them. The report therefore addresses the position as at April 2021.

Methodology

The research questions are shown in Appendix 1. A variety of data collection methods were used, including Freedom of Information requests for data on demand and supply; collating publicly available information about OISC-registered providers and legal aid contract holders; reviewing existing literature and reports; two specially designed surveys; and semi-structured interviews. Quantitative data were also shared by the Greater London Authority (GLA).

Interviews were conducted with 16 'Key Informants' who were individuals or organisations with expert knowledge of immigration advice need and provision in London. These were mainly involved in supporting refugees and people seeking or who had sought asylum, had migrated or are undocumented. Interviews were also conducted with 23 organisations which provide immigration advice at different levels. These comprised six legal aid providers, ten organisations OISC-registered at Level 3, one at Level 2 and five at Level 1, as well as one doing only immigration-related public law work and one private-only provider.

These were supplemented with a survey of providers at all levels launched in early November 2020. It was emailed to all legal aid providers and all OISC-registered non-fee charging providers at levels one to three registered as doing non-fee charging work in London. It was not sent separately to all Citizens Advice Bureaux (CABx) doing Level 1 work. Two follow-up emails were sent to each recipient. The survey was also promoted online and on Twitter by the Immigration Law Practitioners Association and Free Movement. The survey generated 50 responses.

In total, the research was based on survey or interview data from 22 out of 90 legal aid provider organisations; 15 out of 24 Level 3 providers; 5 out of 14 Level 2 providers; 10 out of 56 Level 1 (excluding CABx); and 14 private providers.

A separate survey was sent by email to all 73 London MPs to seek information about the proportion of their constituency enquiries and casework involving immigration issues. This received only six responses. Even after promotion through the All-Party Parliamentary Group for legal aid and the House of Commons Library, there were no further responses.

We carried out a total of 64 semi-structured interviews with advice users. In the research planning stage, we envisaged a mix of one-to-one interviews and small group discussions. In practice, however, escalating Covid-19 restrictions made it impossible to hold any small-group discussions, so all interviews were carried out remotely. Where needed, remote interpreters were used, and mobile data was provided to interviewees where

necessary to enable them to participate. Advice user interviewees were given a reward of £15 for their time, in cash or a voucher for a supermarket or other shop of their choice.

The interviewees included 31 men and 33 women aged 22–72. The majority were aged under 50, with 45 per cent (29 people) in their 30s. The interviewees were of 37 nationalities, including seven dual nationals, while two had problems around statelessness or loss of nationality. We did not collect racial or ethnic group data. Interviewees' years of arrival ranged from the 1960s to 2020, but just over half (33) had arrived in the decade since 2010, with another 23 more in the previous decade. Of the eight who had arrived earlier, three were seeking advice on behalf of a spouse / other person, but five were still dealing with insecure status after more than 20 years, including one with Windrush-related issues. Eight had arrived in the UK as children, and six of those people were seeking advice to regularise their own statuses, rather than to bring someone else to the UK.

The advice users exemplified a wide range of advice needs, including EU Settlement Scheme (EUSS), asylum, trafficking / modern slavery, statelessness, refugee family reunion, domestic violence, deportation, overstayers on student or visit visas applying to remain on Article 8 or long residence grounds, spouse visas, renewals on the ten-year route, No Recourse to Public Funds (NRPF) and Windrush-related problems. They ranged from relatively simple to extremely complex.

Recruitment of advice user interviewees was via a range of organisations, including the key informant organisations, the interpreters' networks, the interviewers' own networks, church groups and a Facebook group, snowballing from previous interviewees, and one who self-referred having seen the provider survey promoted on the Free Movement blog. This range of recruitment sources meant that the researchers were not just hearing the same experiences that had already been reported to our key informant organisations by their users. That gave us confidence that our data represented a wide range of views and experiences from both the 'demand' and the 'supply' sides of immigration advice.

Scale and characteristics of supply

It is a criminal offence to offer immigration legal advice unless either accredited with the Office of the Immigration Services Commissioner (OISC) or exempt by virtue of a professional legal qualification, i.e. solicitors, barristers and chartered legal executives. OISC accreditation has three levels, each of which is split into 'immigration' and 'asylum and protection', meaning an accredited individual or organisation may only be able to work in one of the two categories. Level 1 is the most basic, whereas Level 3 enables a caseworker to undertake all work up to tribunal appeals. Both the adviser and the organisation must be regulated. We can therefore identify all provider organisations by examining the Legal Aid Agency (LAA) list of contract holders and the OISC register.

Legal Aid Matter Starts and Certificates

To do legal aid work, a provider organisation must hold a contract for immigration work with the LAA. The organisation must be accredited at OISC Level 3, be a solicitors' firm or a regulated Alternative Business Structure.³ They can only do work of a type which is expressly included in the scope of legal aid; this includes asylum and related matters, immigration bail, domestic violence, trafficking or modern slavery cases after a positive first-stage decision or when linked to an asylum matter, judicial review work and 'exceptional cases' (which are explained in more detail later).

Such approved providers are allocated a maximum number of **New Matter Starts** which they may open in a year. Solicitor firms and those with additional licences can also do judicial review work in the High Court and appeals to the higher courts (Court of Appeal and Supreme Court). They apply for a **public funding certificate** for this work. We can reach a reasonable estimate of the amount of legal aid work done by looking at the number of matter starts opened and certificates issued in an area within a year.⁴

In November 2020, London had 90 firms and organisations listed as holding legal aid authorisations, with **110 offices** between them across 25 London boroughs. That represents roughly 40% of the legal aid provider offices for the whole of England and Wales.

In the contract year September 2019–August 2020, a total of **10,139 matter starts were opened** in London's legal aid offices.⁵ That number is fairly consistent with the 10,412 matter starts reported in the previous contract year (September 2018–August 2019),⁶ taking into account the loss of six provider offices over the year (from 116 to 110). These figures exclude detention centre work, which is counted separately by the LAA.

That is an average of 92 matter starts per provider, but the range is broad, from a specialist project opening two or three immigration matter starts per year to larger teams opening 650 legal aid matter starts a year. Those who kept such data reported turning away up to five times as many prospective clients as they took on. Even the largest multi-office firms had more demand than capacity. This is important, as these firms are often perceived as likely to have capacity for unlimited new clients.

3. Barristers do not undertake legal aid work directly for clients, but only when instructed by a solicitor or caseworker. As such, they are not discussed in any detail in this report.

4. A single client may have more than one matter start, or may have a matter start and a separate public funding certificate; equally a matter start may relate to a whole family, not just one individual.

5. Freedom of Information response 201012019 from Ministry of Justice to Jo Wilding dated 26 November 2020.

6. Freedom of Information response 191001016 from Ministry of Justice to Jo Wilding dated 29 October 2019.

In addition, **582 public funding certificates** for immigration and asylum work were issued in the ten months from September 2019 to June 2020. This was more than half of the total number for England and Wales. These certificates were issued to providers in 23 boroughs, but ranged from one certificate (Enfield, Lambeth and Waltham Forest) to 132 (Harrow). That means one large provider alone accounts for nearly one in eight of all the certificates issued in England and Wales for the first ten months of the contract year, thus raising doubts about the capacity of other providers to undertake this important work.

The organisations doing legal aid work vary in size but, of the 22 organisations which participated in the research, only two firms had more than 12 solicitors and caseworkers in total, including trainees. The average organisation size, excluding the two large firms, is 5.3 legal workers with a median of three to four. This size is typical when compared with other London legal aid providers' entries on the Law Society website. The two large firms average 34 legal workers per branch.

Non-legal aid free capacity

OISC Level 3

The OISC Adviser register lists 55 offices across London which are registered to offer non-fee charging OISC Level 3 advice.⁷ Of these, 17 also do legal aid work. Four of the non-legal aid organisations are second offices of the same organisation and at least four offices do not in fact offer advice. Notably, there are only 102 OISC Level 3 offices registered as doing non-fee charging advice in the entire UK, meaning London has over half of the total number.⁸ The Level 3 organisations in London include two CABx, the new University of London Refugee Law Clinic, and a range of refugee and migrant support organisations, as well as organisations with specific remits such as Maternity Action, Rights of Women, UK Lesbian and Gay Immigration Group, Prisoners Advice Service and Bail for Immigration Detainees (BID).

Although they are registered at OISC Level 3, not all of these organisations in fact routinely offer advice at this level. For example, Refugee Action generally only offers Level 1 advice in London. Part of the reason why London appears to have so many Level 3 offices, compared with the rest of the country, is that many organisations have a head office in London which is technically accredited to offer Level 3 advice but which does not include frontline advice in its main activities within the city.

Many of the organisations are very small or offer a limited advice service. For example, Unity Project has Level 3 advice for two hours a week and Level 1 advice a further two days a week. At the other end of the scale, RAMFEL, with 16 advisers in total across all projects, is by far the largest in this category, having expanded by about 100 per cent since the start of the pandemic. Several organisations have access to a lawyer one day a week or one day a fortnight. Some other organisations are not registered as OISC advisers, but they have external lawyers who provide advice at OISC Level 3 on their own certificates and insurance. Migrants Organise was in that category until March 2021, when it obtained independent Level 3 accreditation.

7. As some organisations provide both free and fee-charging services, they are missed when searching the register only for non-fee charging organisations. Such organisations have been added to our count of non-fee charging providers where identified. This includes RAMFEL, one of the largest Level 3 organisations in London in terms of caseworker numbers. It is possible that a small number of organisations with a mix of free and fee charging capacity have been missed.

8. This compares with almost 200 OISC Level 3 organisations registered for fee-charging work in London, out of around 360 nationally.

As the capacity for one-off advice is vastly greater than the capacity for casework, some need is only partially met, as discussed in more detail later in the report (in the 'Bottlenecks and partially-met demand' section). Capacity records vary by organisation, with some recording one-off advice sessions separately from ongoing casework, while others do not. Some, but not all, organisations separate their data by casework level. Typically, an organisation might have recorded "250 one-offs and 30 ongoing casework", "Advice 141, casework 60", "Advice 600–700; casework 30", or "Advice – several hundred; applications two to three per week". The largest organisation had recorded 743 pieces of casework (across all levels). Excluding this outlier, the average for the remaining eight respondents is 70 pieces of casework, with a range of 30–150 and a median of 50, though not all these pieces of casework are themselves Level 3.

Even if all 53 organisations averaged 70 pieces of Level 3 casework a year, total Level 3 casework capacity in London for work outside the scope of legal aid would be around 3,640 pieces per year. However, that is an overestimate since, as above, not all operate at Level 3, not all offer advice to individuals and some use their capacity in legal aid work. The real capacity appears to be **around 2,000–2,500 pieces of Level 3 casework per year.**

This is all subject to frequent change as funding fluctuates. For example, Waltham Forest CAB lost funding for its immigration advice service and ran down both its free advice caseload and its low-cost service for those outside the borough before reverting to Level 1.

OISC Level 2

London has 33 offices (of 20 organisations) registered at OISC Level 2 for non-fee charging work, one of which also does legal aid work. This is out of a UK total of 111 offices, meaning the capital's share is just under 30 per cent of the national total. These include The Connection at St Martins, which focuses on destitution (two offices), the British Red Cross (two offices), Barnardo's (two offices), the Refugee Council (five offices), and Citizens Advice Merton and Lambeth (three offices). Migrant Help, which has three offices, holds the Home Office contract to provide services and information on rights and entitlements to people seeking asylum, but it does not offer legal advice or representation.

In London, at least, the Level 2 accreditation appears to be used mainly to enable organisations with a very specialist focus to do more in that specific area than could be achieved with only Level 1. The Refugee Council offers only limited legal advice in London. The other organisations which responded appear to offer quite specific services: one does NRPf change of conditions applications, EUSS support, and Windrush cases; another only deals with refugee family reunion. On this basis, capacity appears to be a maximum of 2000 pieces of Level 2 casework per year.

OISC Level 1 and EUSS

The register shows 99 offices, representing 61 organisations, offering non-fee charging OISC Level 1 advice.⁹ Of these 99, 11 offices are limited to giving advice on the EUSS

9. Out of 669 such organisations across the UK.

only. Another 23 are CABx. All CABx advisers across the UK are exempted at Level 1, by agreement with the OISC. That means that all CABx which do not have a higher level of registration appear at Level 1. However, CABx advisers are not routinely trained to give immigration advice, even at Level 1, so, although they are legally permitted to do so, in practice this is likely to be limited.

Moving from Level 1 to Level 2 brings increased requirements for supervision of caseworkers and submission to auditing. Given the resulting increased demands on management, not all organisations want to move up a level, as Level 1 accreditation is adequate for the information and advice giving they want (or are resourced) to undertake.

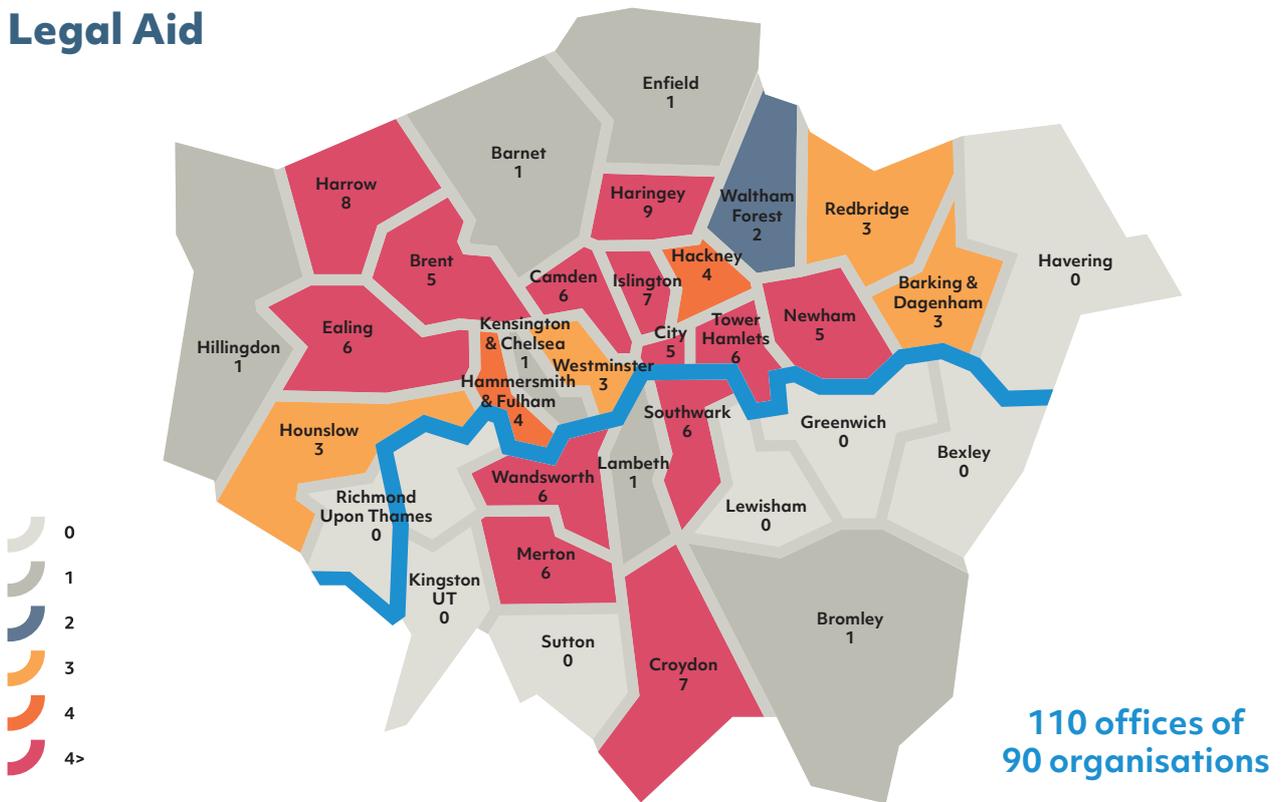
Organisations remaining at Level 1 tend to fall into three main types: 1) generalist advice centres which include basic immigration advice as one of many areas covered, such as the CABx and church-based advice centres; 2) refugee and migrant support organisations which include basic legal advice as one of several services, such as Southwark Day Centre for Asylum Seekers, Barnet Refugee Service; 3) organisations which serve a particular group or community, like South London Tamil Welfare Group, Latin American Women's Rights Service (LAWRS), Somali Welfare Centre, or non-nationality focused interest groups like Glass Door Homeless Charity and Terence Higgins Trust HIV Support Organisation.

Generally, with the exception of the CABx and EUSS-only providers, the advice arms of these organisations are small, with one or two advisers, though some are able to advise quite a large number of people (one respondent reported 500 people per year advised by two advisers), because they do not do any casework. Often, however, this results in partially-met demand where the client, having received advice, still needs casework or other support to be able to address their issue.

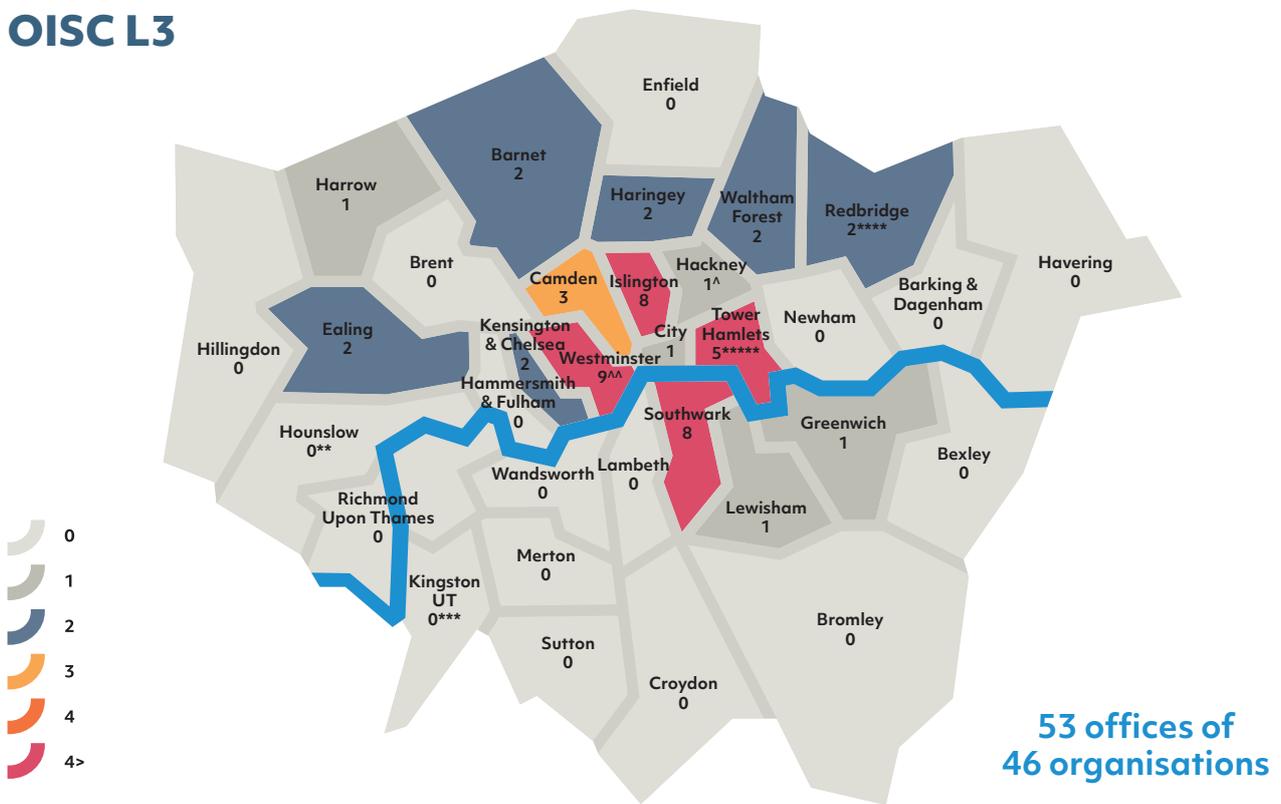
Geographical distribution of free advice

By borough, the organisations are distributed as follows (see data table at Appendix 2):

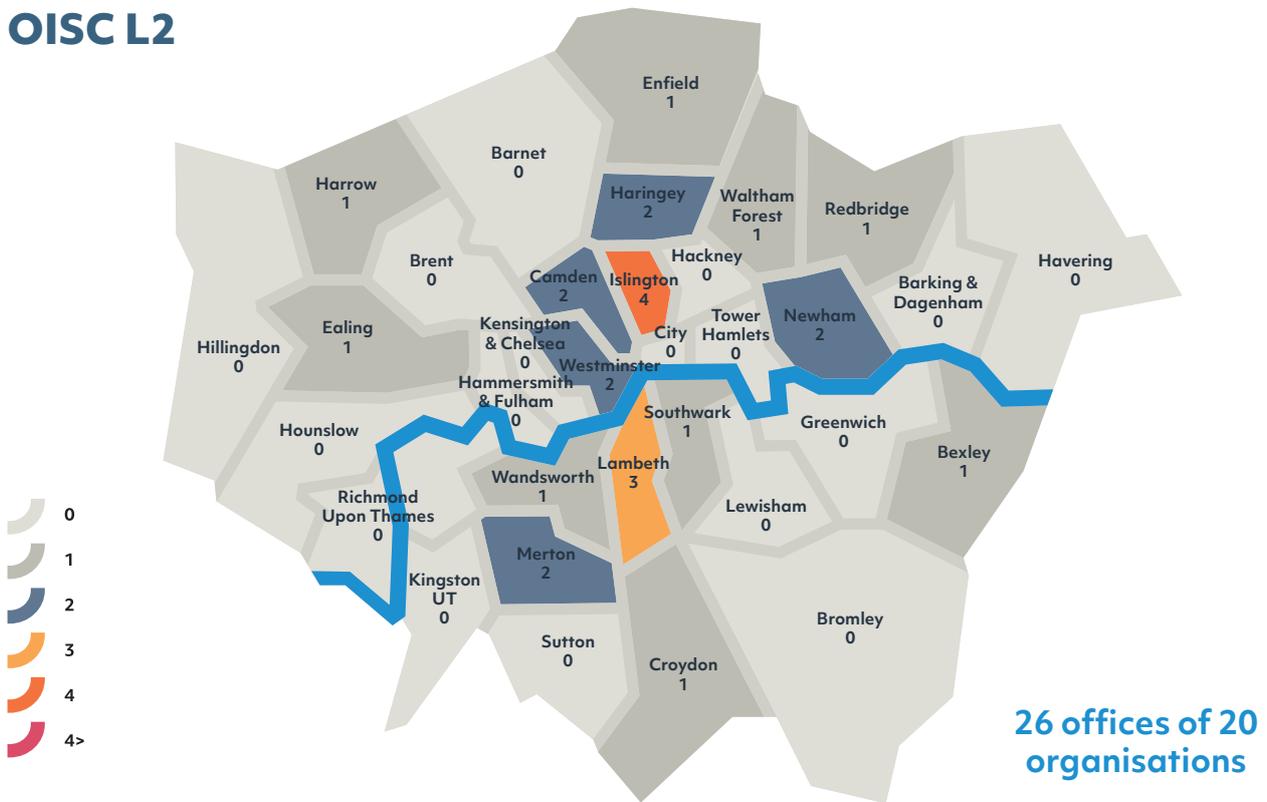
Legal Aid



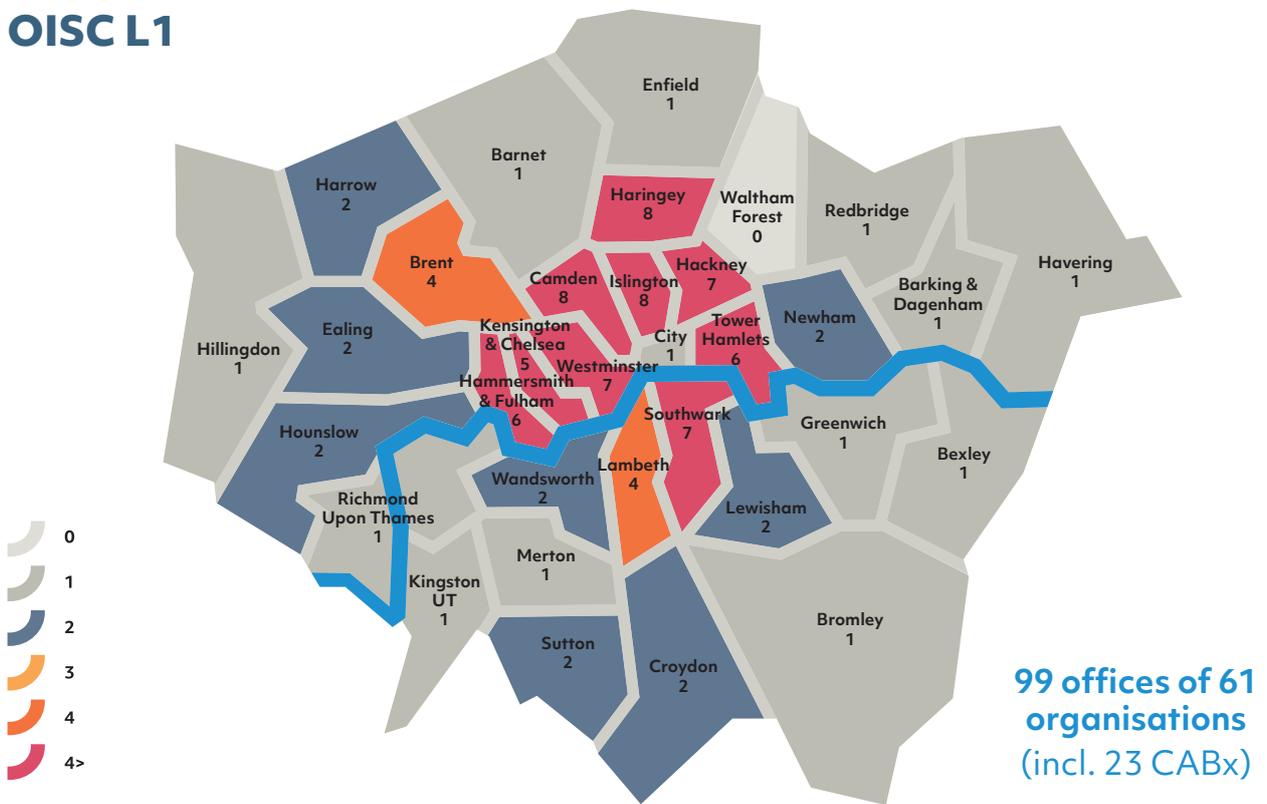
OISC L3



OISC L2



OISC L1



As can be seen, some boroughs have so little advice that they should be considered as ‘desert boroughs’. This is similar to the concept of ‘advice deserts’ discussed for legal aid work: geographical areas in which there is only one or no provider for a particular category of law.¹⁰ Four boroughs (Havering, Kingston, Richmond and Sutton) have no free advice above Level 1. A further five boroughs have only one provider of advice above Level 1 (Bexley, Bromley, Greenwich, Hillingdon, and Lewisham). Two have only two providers above Level 1, each including one legal aid and one other provider (Kensington and Chelsea, and Enfield). This means there are eleven boroughs which can be considered advice deserts. These are important because there are population movements from Inner London into some of these desert boroughs, so demand is likely to increase.

Given the limited scope of legal aid, however, all boroughs¹¹ without Level 2 or 3 advice should also be considered drought boroughs within which individuals are likely to struggle to access free advice. These are Brent, Hammersmith and Fulham, and Hounslow. However, since all services at Level 2 and above have some access restrictions, in practice many boroughs may be effectively desert boroughs for a person in need of advice. For example, in Camden there are three Level 3 organisations, but one works only with prisoners, one with children and one with fresh asylum claims. Islington has eight organisations on the register but, of these, one does almost only Change of Conditions applications, one is a highly specialised public law provider, one supports torture victims, three work with women only, including one which focuses on maternity issues, while another is for children only. The demand for any open access project is immense.

How important is geography, given that advice users can of course cross a borough boundary? Two difficulties appear to arise from lack of local advice. First, if advice is geographically distant, the time or cost of travel can be a barrier. An advice user described being limited to services that he could cycle to. Another explained that many services offered her an appointment, but each one took over two hours of travel and cost money she could not afford. An organisational interviewee said there is absolutely nobody to refer anyone to. Another explained that,



Many organisations that are OISC-qualified are based in Westminster or south London – it’s a bit too far for a person in Hillingdon or Barnet – so even if there are some organisations, they’re central or based too far away for accessibility for clients and maybe they don’t send information for people to know they’re there.

Secondly, there are residence-based access restrictions on some services, particularly those funded by a local authority. These are discussed later in this report, in the section on routes through the advice network, but it is important to recognise that physical access to a service may not equate to eligibility for that service.

10. Jo Wilding, 2019. *Droughts and Deserts: A Report on the Immigration Legal Aid Market* (University of Brighton). Available at: https://www.researchgate.net/publication/333718995_Droughts_and_Deserts_A_report_on_the_immigration_legal_aid_market
See also: National Association of Citizens Advice Bureaux, 2004. *Geography of Advice: An Overview of the Challenges Facing the Community Legal Service* (Citizens Advice).

11. Advice droughts are areas in which advice appears, on paper, to be available but where it is not accessible to clients in reality, either because of a shortage of capacity or because it is available only for a limited range of case types.

Private advisers

The private sector is important because of the capacity constraints on free advice services. It is beyond the scope of this research to capture data on private providers which is representative of the whole sector, but the survey received 13 responses from private-only firms. One private-only practitioner with long experience of legal aid work, offering private services on a sliding scale based on what the clients could afford, and a representative from a large commercial firm with a dedicated pro bono section carrying out immigration advice and casework through various partnerships.

By way of comparison, the OISC register of fee-charging / for-profit organisations included around 260 accredited at Level 1, 56 accredited at Level 2, and 186 accredited at Level 3 with London postcodes, in May 2020. With the exception of this commercial firm, those which responded and those on the register are small. None of the respondents and few on the register have more than four advisers. On the register, both the mode and the median number of registered advisers per organisation is one. The solicitor firms which responded ranged from sole practitioners to four solicitors. Capacity ranged from 250 cases a year for the four-person organisations to a single individual doing 30. Only two respondents volunteered that they accepted flexible payment of fees, by instalments or a sliding scale based on what clients could afford, or both. This was not a question on the survey, however. Some organisations were operating a fee-charging service alongside their free service at far below market rates, either at cost recovery level or subsidised. These low-cost services, however, appear to be as vulnerable as the free service to loss of funding and closure (Waltham Forest CAB, for example).

Several of our advice user interviewees had paid privately for advice in circumstances which indicated that they should have been eligible for legal aid either automatically or with Exceptional Case Funding (ECF). This not only drives a relationship between immigration status, debt and poverty, but also exposes many people to exploitation by paying advisers to submit applications which are in fact spurious or hopeless. This is discussed in the section on routes into and through the advice network.

Members of Parliament

London has 73 MPs. Although neither they nor their caseworkers are accredited to give immigration legal advice, MPs are an important part of the advice framework, mainly as a last resort for unmet legal needs. Research by Hogan Lovells in 2016 involving constituency surveys of 21 London MPs found that 89 per cent of constituents visiting MPs' surgeries had a legal issue of some kind, of which 23 per cent were immigration issues, second only to housing.¹² Problems over leave to remain represented 32 per cent of these issues, followed by family reunion, asylum and leave to enter, with a small number of enquiries about passport applications, removal and a condition prohibiting recourse to public funds. They found that MPs were more likely to assist with delays than substantive legal issues.

Four of the 64 advice users interviewed said they had been to their MP for help at some point in their advice-seeking process. Of these, one had a problem with deprivation

12. Hogan Lovells, 2017. *Mind the Gap: An Assessment of Unmet Legal Need in London*. Available at: <https://www.hoganlovells.com/en/publications/mind-the-gap-an-assessment-of-unmet-legal-need-in-london>

of a non-UK nationality; one went for help after overstaying their visa and paying privately for a solicitor who appears to have either made hopeless applications or charged for applications which were never made; two received help with delays to an asylum decision or receipt of a visa after a successful appeal. Of these, only the two who had problems with delays found the MP's involvement to be helpful.

All of the (six) MPs and their caseworkers who responded to the survey gave Home Office delays as one of the most common problems, with one noting that the balance had shifted from substantive help with applications to the pursuit of a response from the Home Office. One said immigration made up 10 per cent of their enquiries; another said it was 60 per cent; a third estimated 15–20 per cent of surgery enquiries. Another described weekly calls with the Home Office, with about 15 cases on average to discuss each week. Half said they did not understand which cases were eligible for legal aid and one said they had 'moderate' understanding. The other two did not answer that question. Only one of the six had employed an accredited immigration caseworker. Of the others, their main referral pathways were to generalist advice organisations or to migration-specific support organisations, with one citing links with their local law centre.

This is of obvious public importance because significant proportions of their publicly funded resources (MP time, caseworker time) are taken up with this unmet legal need. It is one of many examples where legal aid cuts have shifted costs onto other support structures which are less well equipped to address the needs. Generally, it appears MPs can resolve the need which arises from Home Office delays (arguably spending a lot of time addressing demand caused by poor administration). They are unable to resolve or adequately address much of the substantive need resulting from lack of access to advice, because they do not have the accreditation, skills or remit to do so.

Scale and nature of demand

The headline conclusion is that demand far exceeds supply of immigration advice, casework and representation at the legal aid, OISC 3 and OISC 2 levels, despite London having 40 per cent of the legal aid provider offices in the whole of England and Wales.

We can build a reasonably clear picture of the nature of demand for legal advice and representation in the capital. The combination of user, provider and key informant responses offers a rich and detailed picture of the kinds of need which are met and unmet. For a non-specialist, the different categories or types of demand may seem bewildering, so we have attempted to break them down and explain them as clearly as possible.

There are, however, real difficulties in estimating the scale of demand, for several reasons:

- Regional population data do not exist to do so with precision, so all estimates are a composite of proxy measures;
- Services rarely have the resources to count how many potential clients they turn away;
- People in need of advice may not approach services because they do not know where to get it, do not realise they need it (particularly around the EUSS), cannot access it because of language, distance, child care, disability, a situation of exploitation, or are fearful of approaching advice services.

It is also difficult to measure demand meaningfully where people are ineligible. How can we 'count' demand for services to help regularise immigration status when many people are ineligible for any such status under the immigration rules? How can we count demand for an advice or casework service (including a legal aid one) when many people are ineligible for the service? Do we count only 'eligible demand'? This report attempts to distinguish as clearly as possible between eligible and ineligible demand, and between 'presenting demand' from those who do approach a service, and 'hidden demand' from those who do not.

A brief note on legal aid eligibility

Since the 2012 LASPO Act was implemented, the scope of legal aid has been limited. Essentially, it covers 'protection' cases, which include asylum and Article 3 (risk of inhuman or degrading treatment), some types of trafficking work and domestic violence-based applications. It also covers settlement applications for a person who has completed five years' leave as a refugee or with humanitarian protection. It also covers detention cases, for example an application for bail or a claim that detention is unlawful, but it does not necessarily cover the person's claim to remain in the UK.

Legal aid does not automatically cover deportation claims, refugee family reunion cases or applications for leave to remain on the basis of family life with a partner or child in the UK. ECF is available, on application, where there is a risk of a breach of the person's protected human rights if legal aid is not made available. This sometimes

covers cases engaging Article 8 of the European Convention on Human Rights (the right to respect for private and family life). Applications for ECF are discussed in more detail below.

All other immigration and nationality (or citizenship) cases are excluded from the scope of legal aid. It does not cover a claim that a person is stateless (i.e. has no nationality at all). It is also means tested, with the threshold for eligibility being so low that even a person in very low-paid work may not qualify.¹³

First-time asylum applicants

An asylum application is a request for protection from persecution or serious harm on the basis of a person's race, religion, nationality, actual or presumed political opinion, or membership of a particular social group which is at risk in their home country. If they are refused refugee status but are nevertheless at risk of serious harm, they may receive humanitarian protection. It is not possible to apply for asylum from abroad, and the routes for refugee resettlement are extremely restricted, so the applicant has to reach the UK first.

Asylum cases vary in their legal, factual and evidential complexity, depending on the nationality of the applicant and the nature of the case. At the very least, the asylum process requires the person to explain their history and their fears of harm in detail, via a Pre-Interview Questionnaire and an interview. The vast majority of applicants need legal advice and representation. It is not yet clear how the government's intended changes to the asylum system will affect demand for legal assistance, but it seems likely that a power to declare asylum cases inadmissible will give rise to more need for advice and challenges.

Measures of demand

The UK has a system of 'dispersing' people seeking asylum around the country, on a no-choice basis. They are first placed in initial accommodation and supported under Section 98 of the Immigration and Asylum Act 1999. After a needs assessment, those who qualify (which is nearly all) are accommodated and supported under Section 95 of the same Act. At this point they are often moved to another part of mainland Britain (not to Northern Ireland).

There is no data available on how many people claim asylum while living in London. There are two measures of adult demand which we can draw on to estimate demand in a region: the total number of asylum applications in the UK, and the number of people supported under Sections 95 or 98 in any given region. There are some caveats: 1) Some applicants are supported by family or friends, without support under the above mentioned provisions; 2) The figures offer a snapshot of how many people are supported at any given time, not the total number receiving support in a year;¹⁴ 3) Some applicants seek a lawyer while in initial accommodation, and others do not do so until they are dispersed; 4) The number of people on asylum support exceeds the number of asylum applications by main applicants, because the former figure includes dependents, whereas the latter treats an entire family as a single application, unless they apply separately.

13. There are a number of other issues with the legal aid scheme which mean it is often difficult for people to access legally aided advice even when they are eligible. Some of these are discussed in this report but, for more detail on immigration legal aid issues, see Jo Wilding, 2019. *Droughts and Deserts: A Report on the Immigration Legal Aid Market* (University of Brighton). Available at: https://www.researchgate.net/publication/333718995_Droughts_and_Deserts_A_report_on_the_immigration_legal_aid_market

14. Freedom of Information response 61897 from Home Office to Jo Wilding dated 19 January 2021.

As a snapshot figure, there were 6,632 people in receipt of Section 95 support across the London boroughs on 30 June 2020 and 6,956 on 30 September.¹⁵ Between 14.5 per cent (in June 2020) and 15 per cent (in September 2020) of all asylum applicants on Section 95 support in the UK were living in London. One estimation method is to extrapolate that percentage to the total number of asylum applications: there were 32,423 in the year to 30 June 2020. Deducting around 10 per cent which were from unaccompanied children (counted separately), there would have been around 4,300 asylum applications by adult main applicants accommodated in London. An alternative estimation method is that since there are about four main applicants for every dependant countrywide, four fifths of the total number of support recipients would be main applicants, giving an estimate of around 5,300 asylum applications by adult main applicants accommodated in London, with a central estimate of **around 4,800 asylum applications by adult main applicants accommodated in London.**

In addition, London has both initial accommodation and dispersal accommodation, meaning that a larger number of people are in London *at some point* in their asylum procedure than appear in the Section 95 support figures. Some, but not all, will obtain a legal representative while in initial accommodation in London and remain with that representative when dispersed elsewhere. That means the demand for London-based legal aid asylum representation is higher than the number of people receiving Section 95 support in London. The use of hotels as contingency accommodation and the closure of providers' offices during the pandemic has added to the difficulty of finding representation for people who speak limited English and have restricted access to the usual asylum support organisations.

Others in the asylum system

The other relevant form of accommodation and subsistence support is that provided under Section 4 of the Immigration and Asylum Act 1999 for a very limited category of people whose asylum claims have been refused and who are destitute but cannot currently be removed from the UK. Some, though not all, recipients will be in the process of making a fresh claim for asylum, for which they are likely to receive advice and representation at some level, since a fresh claim would be difficult to make without legal representation.

The published statistics are not broken down by region. There were 6,074 people receiving this form of support across the UK on 30 Sept 2020. London accommodates 14.5–15 per cent of the national total in Section 95 support, and a similar percentage would mean around 900 people in Section 4 support in London at a time. An alternative estimate is that, as a rule of thumb, there are around 10 per cent again as many people in Section 4 support as there are in Section 95 support, which would give an estimate of just under 700 people. People generally need advice and casework before they can access this support, so the number of people receiving support indicates only the available supply, not the level of demand or need.

Asylum cases tend to be long-running. Some of these individuals will remain in an organisation's caseload for more than a year. They are only counted once in terms of legal aid matter starts, but they will factor in the organisation's capacity for new cases over a longer period.

15. UK Government, 2021. Home Office Asylum Support Statistical Release. Available at: <https://www.gov.uk/government/statistical-data-sets/asylum-and-resettlement-datasets>

Of the advice user interviewees, 25 had sought or received advice on an asylum application at some point in their advice processes. It was not always the basis on which they had first arrived: some had entered as visitors, workers or students. The interaction between asylum and other categories likely reflects both the barriers to entering the UK as an asylum seeker (meaning people use other means if they can) and the narrowing of other routes to leave to remain (meaning people are compelled to use the asylum route), as well as circumstances changing in the country of origin. Interviewees did not always appear to understand what had happened in their cases or on what basis their applications had been made, granted or refused. Several had paid privately for advice, either because free advice was not available or because they did not know how to access it. Geographical boundaries are porous: several of the advice user interviewees had been dispersed out of London but continued using a representative in London. Two had been referred to solicitors in Oxford because they could not find a legal aid lawyer with capacity within London.

We have not counted asylum accommodation and financial support advice needs in this report, as they tend to be addressed separately since they are not OISC-regulated. However, the complexity of the asylum support system means many non-OISC registered organisations are unwilling to deal with this work so it also often relies on the capacity of OISC-registered organisations. All asylum support appeals take place in London, and the Asylum Support Appeals Project (ASAP) assists with as many hearings as it can.

Unaccompanied children

In addition, there are 1,740 unaccompanied children in the care of London boroughs.¹⁶ Of these, around one third are in Inner London boroughs and two thirds in Outer London boroughs. Some of these will have completed their asylum claim and will not have current advice needs. At any given time, London boroughs are looking after around 33–43 per cent of the unaccompanied children seeking asylum in the UK, with the highest numbers being in Croydon and Hillingdon.¹⁷

This may, however, underestimate the total number accommodated in London, since some children are accommodated in London despite being legally in the care of a non-London local authority. There were 3,651 asylum applications in the UK from children in 2019.¹⁸ That was a five-year high – more typical averages would be around 3,250, in which case London would receive **between 1,070–1,400 new unaccompanied children seeking asylum** per year (the average of those two figures is 1,235).

Working with unaccompanied children is paid at hourly rates (up to an extendable limit) rather than on a fixed fee, because it is recognised that it should take longer to take detailed instructions from a child, and because the child's representative should attend the Home Office interview with them. This means working with unaccompanied children is financially more viable than fixed fee work, but those who specialise in working with children can take on fewer cases.

16. UK Government, 2019. Children Looked After in England Including Adoption 2018-2019, Table LAA4. Available at: <https://www.gov.uk/government/statistics/children-looked-after-in-england-including-adoption-2018-to-2019>

17. This is consistent with research based on Freedom of Information requests to all local authorities in 2015. See Jo Wilding and Marie-Bénédicte Dembour, 2015. *Whose Best Interests? Exploring Unaccompanied Minors' Rights through the Lens of Migration and Asylum Processes (MinAs)*: The UK National Report (University of Brighton). Available at: https://www.brighton.ac.uk/_pdf/research/crome/14-oct-15-final-minas-full-report.pdf

18. UK Government, 2019. *Asylum Applications, Decisions and Resettlement*, Table Asy-D01. Available at: <https://www.gov.uk/government/statistical-data-sets/asylum-and-resettlement-datasets> (Unaccompanied children are referred to as 'UASC').

Settlement and travel documents after asylum

When a person receives asylum, humanitarian protection or leave as a stateless person, they are given a five-year period of leave. After that, they can apply for indefinite leave to remain (ILR) or settlement. They can also apply at any time for travel documents, in recognition that they cannot hold a passport from a home country. Applications for these are generally far less complex than an initial asylum application, but applicants generally need advice or assistance to apply, especially for settlement, where they must show a continuing need for protection. They may also be able to apply for refugee family reunion, which, as discussed below, is more complex work requiring legal advice in nearly all cases.

The UK offered protection – in the form of asylum, humanitarian protection, alternative forms of leave and resettlement – to 16,952 people in the year ending June 2020. That was 17 per cent higher than the previous year and similar to levels seen in 2003.¹⁹ This cohort will be able to apply for settlement in 2024–2025, but they can apply at any time for travel documents.

The cohort who obtained asylum in 2016 becomes eligible for settlement in 2021. For the whole country, 8,466 people were granted asylum in 2016 at initial decision and another 5,016 on appeal (41 per cent of 12,235 appeals).²⁰ Therefore, approximately 13,482 people obtained asylum in the UK in 2016 and will become eligible for settlement in 2021. We do not know what percentage of these are in London, nor what proportion migrate to London once granted status. In addition, 5,212 refugees were resettled in the UK from abroad in 2016 (as opposed to applying once they arrived in the UK),²¹ mostly through the Syrian Vulnerable Persons Resettlement Scheme, which made up the majority (4,369) of resettled refugees. Regional statistics exist only for the Syrian scheme: 208 were accommodated in London boroughs.

Even if only 5% of people granted asylum in-country are in London (fewer than the 14.5 per cent currently accommodated in London), around 674 of the 2016 cohort, plus 208 resettled refugees (including dependants), will become eligible for settlement in 2021. These applications are within the scope of legal aid (subject to the means test) and receive the same fixed fee as asylum applications. For that reason, this group should find it reasonably easy to find representation, but they will account for some of the legal aid matter starts available in a year.²²

Refugee Family Reunion

People recognised as refugees are eligible to apply for family reunion, but only a very narrow range of family members are permitted within the immigration rules. The immigration rules do not allow for unaccompanied children to apply for parents or siblings to join them, though they (and other refugees) can apply ‘outside the rules’ if they can find legal support to do so.

It is very difficult to quantify the actual demand for this category of advice. Some of the people recognised as refugees in any given year will not have eligible family members under the rules. Refugees may make contact with family members some years after receiving status. The grant statistics give an indication of the *minimum* level of demand

19. UK Government, 2020. *How Many People Do We Grant Asylum or Protection To?* Available at:

<https://www.gov.uk/government/publications/immigration-statistics-year-ending-june-2020/how-many-people-do-we-grant-asylum-or-protection-to>

20. UK Government, 2017. *Asylum*. Available at:

<https://www.gov.uk/government/publications/immigration-statistics-october-to-december-2016/asylum>

21. UK Government, 2018. *How Many People Do We Grant Asylum or Protection To? Resettlement*. Available at:

<https://www.gov.uk/government/publications/immigration-statistics-october-to-december-2017/how-many-people-do-we-grant-asylum-or-protection-to#resettlement>

22. It appears there is some confusion among providers about whether or not these applications qualify for legal aid, but they undoubtedly do.

across the whole of the UK: 2,006 family reunion visas were granted in Q1 of 2020, before the pandemic took effect, and just over 2,300 in the previous quarter, equating to 8,000–9,000 for a full year. Those two quarters saw the highest numbers recorded since 2010, but it is impossible to know whether they reflect increased demand, better meeting of demand or a higher success rate.

Since legal aid is not automatically available for refugee family reunion applications in England and Wales,²³ applicants must rely on ECF, private representation or projects offering free representation. The cost of DNA evidence to prove a relationship is often a barrier to applying without legal aid, but projects report difficulty in referring clients to legal aid providers even once ECF has been granted. It is particularly difficult to find representation for family reunion applications outside the (very limited) rules, for example where the refugee is a child, but even 'straightforward' applications within the rules are described as really difficult for people to make unaided. Pro bono projects report having had to slow their rate of applications for ECF because they cannot refer their clients into legal aid provision once funding has been obtained. It is clear that demand outstrips supply, but it is difficult to give a meaningful estimate of demand in London beyond the number of grants of asylum per year, as discussed above.

Trafficking

The definition of trafficking / modern slavery comes from the Palermo Protocol.²⁴ It includes various acts such as recruitment, transportation and harbouring of persons for the purpose of exploiting them. Examples of exploitation include forced criminality, sexual exploitation, benefit fraud, organ harvesting and so on. For children, one of these acts, for the purpose of exploitation, is enough. For adults, the act must be achieved by one of the listed means, such as force, coercion, deception or abuse of a person in a position of vulnerability. Trafficking need not be across a border, so it can take place entirely within the victim's home country. That means the statistics for trafficking include UK, EU and all other nationals.

A decision about whether someone is a victim of trafficking is made through the National Referral Mechanism (NRM). Decisions on UK nationals are made by the UK Human Trafficking Centre, with those on non-UK nationals made by the Home Office. There is no right of appeal, so decisions can only be challenged through judicial review proceedings. A decision that someone is a victim of trafficking would normally trigger a grant of limited leave to remain in the UK for a year and a day, with no long-term immigration status. The trafficking might, however, be relevant to an application for asylum or humanitarian protection, or to an appeal against deportation.

Freedom of Information data received from the Home Office shows that in 2019 there were 2,820 non-UK nationals referred into the NRM who were in London at the time of referral.²⁵ For 2020, until 30 September, 1,707 London-based non-UK nationals were referred into the NRM, so we can estimate **a total of 2,276 for the full year**. Many (perhaps all, post-Brexit) will need immigration advice and casework, some of which will overlap with asylum work. Some will need concurrent or freestanding representation up to the judicial review stage to challenge negative decisions.

23. Except for applications outside the rules on behalf of unaccompanied children; immigration-related work for separated children was brought back within the scope of legal aid in October 2019 after the Ministry of Justice conceded a judicial review application by the Children's Society the previous year.

24. United Nations, 2000. *Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime*. Available at: <https://www.ohchr.org/en/professionalinterest/pages/protocoltraffickinginpersons.aspx>

25. Freedom of Information response 61337 from Home Office to Jo Wilding dated 7 December 2020.

As an indication of where these referrals come from, for Q1 of 2020, London boroughs made 212 referrals into the NRM and the Metropolitan Police made a further 945 referrals. Consistent with previous full-year totals, these are just over one third of the national total referrals from local authorities and police forces. These referral figures do not distinguish between UK and non-UK nationals, but the Home Office's 2019 end-of-year summary records that 27 per cent were UK nationals. Nationally, the 2019 total number of referrals was 10,627, which was a 52 per cent increase over the previous year, thus indicating either an increase in trafficking or increased identification (or both). In 2019, half of all referrals were children and one third were female, with Albanian and Vietnamese being the most common non-UK nationalities. Interviewees suggest that the pandemic resulted in victims of trafficking being 'dumped' out of no-longer viable situations of exploitation such as car washes and restaurants.

Many interviewees note that there is insufficient awareness of the indicators of trafficking, so people can go unidentified and unreferral for many years. It is now clear that some Home Office screening interviews have been curtailed to exclude the questions most likely to elicit information about trafficking and exploitation en route to the UK, and that Home Office caseworkers are sometimes unaware of the relevant indicators.²⁶ The significance of having travelled through Libya is often missed. Numerous adviser and support group interviewees gave examples of cases where someone had been through the entire asylum process without anyone identifying that they were a victim of trafficking, even when they were represented, possibly because lawyers are overstretched so *"it's harder to build the relationship you would need to get someone to disclose trafficking"*.

This included children who had been in the care of social services: in one example from a solicitor interviewee, the Vietnamese child had run away twice and been found, on the first occasion, in *"a restaurant [with] a cannabis farm in the back"*. These are strong indicators of trafficking (the child's nationality, running away and links to cannabis cultivation), but neither police nor social services had identified him as a victim. Interviewees noted that there is huge variation in the skills of police officers, social workers, medical professionals, those in the homelessness sector, Home Office personnel and legal professionals – even those doing asylum work – in identifying indicators of trafficking.

For one support organisation, the NRM is difficult to access, because they are not a designated First Responder organisation and therefore cannot refer their clients directly. They serve a population which has particular vulnerabilities and therefore they are often the first organisation which sees a person who has been trafficked, but they must try to refer them on to other organisations which do have First Responder status but are themselves overstretched.

Five of our advice user interviewees had experienced trafficking. Two were referred promptly to legal representatives but, of these, one had a male solicitor whom she felt uncomfortable talking to because she had been forced into sex work; the other felt the solicitor *"didn't want to help me"*, in part because the solicitor would not accompany her to the asylum interview. However, legal aid would not have paid the solicitor anything to attend the interview, which was likely to take up a full working day. Instead, her support

26. *DA & Ors v Secretary of State for the Home Department* [2020] EWHC 3080 (Admin). Available at: <https://www.bailii.org/ew/cases/EWHC/Admin/2020/3080.html>

worker *put pressure* on the lawyer to take certain actions, but the interviewee gave up on the possibility of pursuing a compensation claim afterwards.

A third was detained and received advice in detention. She found the solicitor to be very helpful; in particular, having recognised that the client had been "*told what to say*" by other detainees, the solicitor encouraged and supported her to be "*honest with her about everything*". The other two interviewees did not get prompt legal advice. One, even after being helped by the police out of her first exploitative situation, became homeless, sleeping on night buses, and suffered further exploitation. The other was destitute until she overheard another woman talking about Women For Refugee Women and entered the advice network via them before eventually being referred to a legal aid solicitor.

There does appear to be a clear need for better awareness of indicators of trafficking, throughout the relevant professions and the community in general, and for greater capacity in organisations doing specialist trafficking work.

Fresh asylum claims

A fresh asylum application can be made when a person has exhausted their appeal rights, but they have new evidence which is significantly different from what has already been submitted and, when taken together with the previous material, gives rise to a realistic prospect of success on appeal to an immigration judge. When a fresh application is submitted and actually accepted by the Home Office as such, it will appear within the figures for the number of asylum applications made within a year. Much of the demand, however, does not appear in those statistics, because the Home Office refuses to treat the submission as a fresh application.

Fresh claims work is relatively complex because it requires identification and collating of new evidence capable of overcoming any previous adverse findings, often including expert reports as to country conditions, medical conditions, scarring or the authenticity of documents. Providers explain that it frequently demands time-consuming work to discover what has previously happened in the person's case, then obtaining their files from the Home Office and previous representatives. Advisers say the work is often made more complicated by poor quality work by an earlier representative who either made the wrong application or failed to obtain evidence which should have been available at the time of the original asylum application or appeal.

The new University of London Law Clinic carried out scoping work before setting up and found that fresh claims, together with family reunion and other Article 8 work, were the main areas in which it was difficult to find advice, casework and representation. A support organisation interviewee explained that,



Although we have established these partnerships with a few solicitors, it's still very complex to refer to them and they are just a few. All the others have not really shown an interest and every time we try to refer, it's either a no, we don't have capacity, or not even an answer.

Fresh claims appear to be one of the most problematic areas in terms of moving from advice into casework. Advice user interviewees described being able to access advice about what they needed to do, but unable to access casework to help them do it. This interviewee expressed frustration that the groups which advised her were unable to prepare and submit her fresh claim:

“

I didn't need advice actually, but just someone to help me refresh my claim. Because I couldn't do it, it's not my language and I just needed a lawyer or solicitor to help me do it. It took a very long time. When [organisation] helped me it didn't take a long time but what took a long time was for the Home Office to process the claim. What I needed to begin with was just for the first groups to just send my claim to the Home Office. It needed to be a lawyer and I just needed them to do that. It was not complicated, I just needed them to send in a bunch of evidence to the Home Office. It was really simple and they couldn't do it.

A solicitor who regularly advises at drop-in sessions echoed the frustration, noting that they could offer a half-hour advice slot, and identify that follow-up work was necessary before a fresh claim would be viable: *“There's certainly enough there for you to open a legal help file to investigate and develop the evidence”*. Yet the solicitor's own firm rarely had capacity to take on a fresh claim, nor were they able to refer drop-in clients elsewhere for casework. This issue is all the more acute because those who need fresh claims are frequently destitute, homeless and suffering from health issues, both mental and physical. They often encounter advice through rough sleeping or other crisis services and, as a result,

“

...have more and more complex medical, psychological, psychiatric, behavioural, mental health and substance abuse issues that for many of them would be at least ameliorated with decent accommodation and access to health services, but it's chicken and egg, that's not going to happen until you resolve their immigration status. They're people with very complex needs that impact on their ability to engage with legal advice.

These problems and complex needs tend to make a person difficult to work with and this is incompatible with the rates of pay and time limits applicable to legal aid work. Yet the need for expert evidence makes many of these cases 'disbursement heavy' and therefore impossible for a non-legal aid provider to take on in full. That means fresh claims are an area which particularly demands partnership working between support organisations, non-legal aid advice providers and legal providers combining their skills and resources. Capacity for this is currently limited.

Case study: Making a fresh claim

L arrived in the UK in 2012 and claimed asylum. His claim was refused and he has been seeking to make a fresh claim since 2013. In late 2016, a friend referred him to Migrants Organise, which helped him find a lawyer who prepared a fresh claim. This was submitted in 2018 but refused with no right of appeal in 2019. The lawyer did not think there was sufficient merit to apply for judicial review of the refusal.

He returned to Migrants Organise, which referred him to Room to Heal, which **"offers therapy and connects you with law firms"**. They helped him find another lawyer who did apply for judicial review and succeeded, so that he now has a right of appeal. The hearing is pending. He also uses the Red Cross for washing and food to supplement his asylum support.

“

I have been isolated for long time and did not have connections with other asylum seekers. But when I've been moving around asylum houses, I found that many people are lacking information about how to get legal advice or information about what they need to do, or even to find a law firm to represent them. I tried to help them by sharing what I know through my experience, as I was in the same struggle as them. Sometimes we succeeded to connect them with a charity but mostly we did not, as there were few charities able to help due to their capacity, or their profession. Like some are only helping women and some only helping with providing temporary housing for homeless asylum seekers or access to food banks, but not much to help with legal advice. For me it took three years to find one and to start a new fresh asylum claim, and that was good luck for me.

L found Migrants Organise helpful because it: 1) connected him to a lawyer, 2) gave him travel expenses, 3) communicates by phone. Otherwise, he is limited to organisations he can reach by bike. Lack of interpreting is often a problem, as his circumstances have not helped with learning English. At many services,

“

It was confusing because these organisations have a lot of clients. So there was always a lot of rush and I wasn't understanding what I needed to do. They also did a lot of things for me on my behalf without explaining to me what they were doing.

Undocumented people

This is a broad category covering, in effect, anyone who does not have any current immigration status or does not have the documents to prove entitlement to such status. It does not mean the person is not *entitled* to any such status: they may be eligible under the immigration rules but unable to access legal advice or to afford application fees. The category will include people who arrived with a visa and overstayed, those who have been refused asylum but not removed from the UK, and children who were born in the UK to parents without status.

I have used the GLA and University of Wolverhampton's recent estimate of 397,000 undocumented individuals in London, including 107,000 children and 26,000 young people, but excluding the UK-born children of people who are undocumented, many of whom will also have insecure or irregular immigration status.²⁷ This is the lowest of several such estimates published since 2010,²⁸ but it is the most specific to London. A majority of this group are likely to need immigration advice, while a smaller proportion will be eligible for regularisation and are likely to need related casework support. In 2009, it was estimated that 67 per cent of the undocumented population were eligible for regularisation.²⁹ The rules have changed since then, such that a slightly smaller proportion of people would likely be eligible for regularisation, but with a constantly shifting population of children reaching the seven- or ten-year thresholds for long residence or citizenship applications.

It is here that we begin to see the size of the gulf between advice and casework needs and the available provision. Although the figures are necessarily very approximate, even if they are significant overestimates (though they are equally likely to be underestimates), the estimates of demand far exceed the available provision, so a large number of people in London are living with the damaging consequences of insecure immigration status when they are actually eligible to regularise.



27. Andrew Jolly, Siân Thomas and James Stanyer, 2020. *London's Children and Young People Who Are Not British Citizens: A Profile* (Greater London Authority).

28. Peter William Walsh, 2020. *Irregular Migration in the UK* (Migration Observatory). Available at:

<https://migrationobservatory.ox.ac.uk/resources/briefings/irregular-migration-in-the-uk/>

Peter William Walsh and Madeleine Sumption, 2020. *Recent Estimates of the UK's Irregular Migrant Population* (Migration Observatory). Available at:

<https://migrationobservatory.ox.ac.uk/resources/commentaries/recent-estimates-of-the-uks-irregular-migrant-population/>

29. Ian Gordon, Kathleen Scanlon, Tony Travers and Christine Whitehead, 2009. *Economic Impact on the London and UK Economy of an Earned Regularisation of Irregular Migrants to the UK* (LSE). Available at:

https://www.london.gov.uk/sites/default/files/gla_migrate_files_destination/irregular-migrants-report.pdf

Within the context of very limited advice and casework capacity, part of the problem is that "a lot of people who frankly are not going anywhere, not going to be removed" nevertheless do not fit neatly into the narrow scope of the immigration rules. The tendency to present with a cluster of problems, many of which are outside the scope of funding, exacerbates the difficulties. Possible applications to resolve status could be based on asylum, long residence, family life, nationality, statelessness and trafficking. All of which typically need significant amounts of work, even if funding can be obtained, thus creating a challenge to capacity.

This was an issue for several of the advice users who had struggled to get anything beyond basic advice when their cases did not fit within the rules. This was often the point at which they had paid for advice and had spurious applications made on their behalf. One of the advice user interviewees had a Windrush-type case, whereby people who arrived in the UK as children did not need any proof of status at that time, then later ensnared in hostile environment policies whereby they could not access services or were threatened with removal from the UK because they could not prove their status. She said,

“

I did the rounds of about 11 organisations. I would go to see them and then they either wouldn't have a clue about what I should do, or they kept giving me conflicting advice. Nobody knew what they were doing and nobody could explain to me what to do about this. Even what application I would have to make. So it was all a mess really.

She said that both the lack of Home Office transparency and the fact that firms did not know what to do meant it took about three years to resolve her case, and she spent about £2,000 on advice. She now has ILR but has decided not to apply for citizenship (to which she is entitled) because "I am tired now". She feels that getting advice is "pot luck".

Two of the advice user interviewees had problems around statelessness. One was taken by Praxis to the statelessness clinic at Liverpool University, then eventually obtained leave on the ten-year route to settlement as a parent of a child settled in the UK. The other had an outstanding asylum fresh claim and had not received any advice on the statelessness issue itself. A solicitor said,

“

Generally, there's probably a lack of consideration of some of the options for children around citizenship and statelessness, by legal practitioners and non-practitioners, so it's not always considered whether that is an option.

The evidence about demand in this category, together with the experiences of our advice user interviewees, suggests four points which need to be addressed in the system:

- 1 Better community and professional education around statelessness, emerging legal issues like Windrush and trafficking so that people in these positions are more likely to access the right advice in good time.**
- 2 Effective outreach and embedding of advice with other services which people in need of advice use (discussed in more detail in later sections).**
- 3 Increase casework capacity.**
- 4 As the casework capacity is unlikely ever to meet current levels of need, campaigning and lobbying for changes to reduce the hostility and complexity of the immigration system.**

Renewals on the ten-year route

If they succeed in regularising their status, many people will be given 30 months' leave to remain, on a ten-year route to settlement. That means they must renew their leave every 2.5 years, totalling three renewal applications once leave has been granted, and a final application for ILR or settlement after ten years. If they fail to make an application in time, their leave lapses and the ten-year 'clock' restarts. Renewal applications are generally less complex than an initial application for leave, but many applicants struggle to make the applications alone.

Many will also need a fee waiver application as a prerequisite to the renewal application, since the fees (currently £1,033 per person) and Immigrant Health Surcharge (currently £624 per person per year of leave applied for) add up to a very significant amount of money. Some will also need to apply for a CoC to remove the restriction on access to public funds (see below), so each of the three renewals is effectively a triple application – for fee waiver, renewal and CoC – and an ECF application if legal aid is available. The complexity of this depends on the individual financial situation, but every bank statement has to be comprehensively annotated for income and spending, and the applicant must account for why they cannot pay the fee. There are no fee waivers for ILR applications, meaning that those who cannot get the money together have to continue making 30-month renewal applications with a fee waiver.

The numbers of people granted 'extensions' on the ten-year family settlement route (as a parent or partner) for the whole of the UK since 2012 are:³⁰

30. UK Government, 2019. *Managed Migration Datasets: Extensions*. Available at: <https://www.gov.uk/government/statistical-data-sets/managed-migration-datasets#extensions>

	Granted	Refused	Total	Main applicant only
2012	2,680	263	2,943	2,405
2013	17,973	11,070	29,043	21,292
2014	17,341	12,345	29,686	22,337
2015	19,450	11,969	31,419	25,282
2016	24,486	7,679	32,165	26,746
2017	32,478	4,628	37,106	31,449
2018	51,347	5,411	56,758	45,237
2019	66,997	2,718	69,715	55,509
2020	44,458	1,104	45,562	35,766

These are referred to as ‘extensions of leave’, and it is not clear whether they include grants of leave to those who were previously undocumented or where a person is in the ten-year process of accruing the right to settlement. The ‘Total’ column includes dependants, while the furthest-right column excludes them, thus representing the number of households or family units involved. The number should continue to increase annually until 2022, when the first people should reach the end of the ten-year route (which began in 2012). The data are not disaggregated by region. However, what we can deduce is that the 66,997 individuals granted leave in 2019, somewhere in the UK, will need to extend their leave between July 2021 and June 2022, possibly accompanied by a fee waiver application.

The GLA and Wolverhampton research concluded that about one third of the foreign-born population of the UK lived in London at the end of 2017,³¹ meaning that **around 23,000 individuals in around 18,500 households will need to extend their leave** in that period. That is an underestimate, as other categories of leave also feed into the ten-year route to settlement.

It appears to be particularly difficult to get casework beyond advice for people needing to renew, because resources are understandably focused on those with no leave to remain. A caseworker explained the dilemma when resources are scarce:



We get a lot of returning clients. In a way those are less desperate than those with no leave but if they lose that leave because they don't make the application... you're starting the clock again [for the ten-year route to settlement], they lose the right to benefits, etc. That also creates extra work for the Home Office and demand for advice.

The bottleneck between advice and casework is discussed in more detail below, but it is apparent that renewals on the ten-year route are a very significant driver of demand, for which legal aid is generally unavailable (only via ECF) and free advice capacity is limited.

No recourse to public funds

NRPF is a condition attached to many grants of leave to remain in the UK which restricts access to most welfare benefits and housing-related support. The condition was introduced as part of the changes to the immigration rules in 2012. As of 2017, it has been applied to 92% of grants of limited leave to remain, and re-applied at each successive renewal of leave, even if the NRPF restriction had previously been removed following a CoC application. The CoC application can be made at any time during a period of leave. It is regulated at OISC Level 1, so some organisations cannot assist their members or users with it. Interviewees explain that some people are able to make the application themselves with advice only, but there remains a demand for casework as well.

Given the facts that 1) not all recipients of leave will need to claim welfare benefits, nor be eligible to remove the NRPF restriction (a CoC), and 2) some will be able to make the applications themselves with advice, we are unable to give a meaningful estimate of need in this category.

However, CoC casework was identified by several key informant interviewees and survey respondents as facing shortages, with few organisations assisting with applications, despite these being "*only OISC Level 1*". Of the advice user interviewees, six had NRPF conditions or had recently had them removed. The condition had been removed for three of them, with the help of the Unity Project or the LAWRS, while a fourth was receiving help from Praxis. One of them had previously tried unsuccessfully to get the condition removed herself. Another was seeking help to get the condition removed because the local authority wanted to end its support for her and her child. The sixth was destitute and had been accommodated by the local authority during the first lockdown, but he feared either being evicted because he had no move-on options or that he would be forced to move out of London if Section 4 support was secured after his fresh asylum claim.

Three factors appear to have made removal of the condition easier: additional casework capacity to resolve applications made available by the Home Office during the pandemic; the greater generosity of benefits administration generally during the pandemic; and a High Court decision that some parts of the NRPF policy were unlawful,³² which resulted in some shifts in Home Office practices. Interviewees said applications for CoC are more likely to succeed and are being granted more quickly than before, in two to four weeks. Nevertheless, the No Recourse condition apparently continues to be imposed on most grants of leave and it remains to be seen how this will develop after the pandemic.

32. (*W, A Child By His Litigation Friend J*) v *Secretary of State for the Home Department & Anor* [2020] EWHC 1299. Available at: <https://www.bailii.org/ew/cases/EWHC/Admin/2020/1299.html>

Case study: No recourse to public funds

T arrived in 2009 with a student visa valid for two years. She then overstayed by a further two years before giving birth. She regularised her immigration status and has renewed her visa twice since then, but she has NRPF. She paid privately for renewal each time and was not told about the possibility of changing the conditions. She said she was “discouraged” from applying for a fee waiver when she last renewed her visa, though it is not clear whether she would have been eligible.

She sought advice from the CABx and was told the adviser could only take simple cases. She looked online and paid around £200 for a phone call and email advice (Yahoo Answers or similar) which did not address her problem (unclear whether the person who answered had the right accreditation or not). She tried Rights of Women and Solace Women's Aid but didn't get through. Toynbee Hall advice was too general to meet her needs. This process of seeking advice was time-consuming as she went more than once to various advice centres, where she had to attend early in the morning and

“

would only be done by about 2pm

but she said that not going in person means

“

you don't know if you ever get a reply

Finally, she found the Unity Project via an online article about NRPF in the pandemic, got in touch with them and they got the condition removed.

She had paid for advice in the past because she

“

was not confident enough to do it

herself and feared it would be rejected or take longer if she did. Even after four applications, she does not know where to go for advice for her next application, which will be for ILR after the ten years.

Citizenship

A range of people may need help with citizenship applications, but those of particular interest would include children born in the UK to non-settled parents, children who arrived in the UK who have a discretionary application for British citizenship, children in care, recognised refugees, and people with Windrush-type cases who entered the UK from Commonwealth countries as children before 1973 or were born to a parent in that situation. Due to these multiple categories, it is difficult to estimate need numerically. A number of clinics provide support for Windrush-related issues, including compensation claims, but the difficulty with such cases is likely to be finding evidence of the length of residence, rather than accessing advice.

Kind UK and the Project for Registration of Children as British Citizens (PRCBC) have been working on children's applications for some time. The Court of Appeal recently concluded that the high application fee is unlawful, so the fee is likely to be reduced considerably.³³ It would be useful if funding were made available to support caseworkers to make child citizenship applications as promptly as possible and, if necessary, contribute to the new fees, both for registrations as of right and for discretionary applications.

Domestic violence-based applications

A person with leave to remain as a spouse who is experiencing domestic abuse may apply for indefinite leave to remain (ILR) on the basis that the relationship has broken down as a result of domestic violence. This is intended to enable people experiencing domestic violence to escape the abusive situation without having to breach their visa conditions or leave the UK. Those facing domestic abuse can apply for the Destitution Domestic Violence Concession (DDVC) for short-term access to public funds and refuges if they are destitute, thus curtailing the spouse visa and enabling the person to access material support. They can then apply within three months of the DDVC for ILR under the domestic violence (DV) rule (DVILR). There is no requirement for a DDVC to be made at all if the person is not destitute. The work is not necessarily legally complex but working with survivors of abuse requires time and care, and obtaining the evidence required to meet the rules can be particularly difficult.

The Home Office only holds data on these application types at the national level, not for London separately.³⁴ The numbers overlap in that all DDVC recipients would be expected to then apply for DVILR. The figures for the past three years are as follows (the lower number of DVILR grants for 2020 likely reflects applications still in progress).

33. *R (Project for the Registration of Children as British Citizens & Anor) v Secretary of State for the Home Department* [2021] EWCA Civ 193. Available at: <https://www.bailii.org/ew/cases/EWCA/Civ/2021/193.html>

34. Freedom of Information response 61418 from Home Office to Jo Wilding dated 9 December 2020.

Year Applied	DDVC/DVILR Case Type	Number of Applications Received	Number of Applications Granted
2018	DDVC	1,650	1,340
2018	DVILR	1,745	1,480
2019	DDVC	2,275	1,925
2019	DVILR	2,320	1,770
2020	DDVC	1,840	1,555
2020	DVILR	1,880	805

The GLA / Wolverhampton report noted that around one third of the foreign-born population of the UK lived in London at the end of 2017.³⁵ If domestic abuse is roughly evenly spread throughout the UK, that suggests that around 600 DDVC and 600 DVILR applications might have been made in London in 2020. However, it is likely that the real need, from people eligible to make these applications, is much higher. We have been given specific case example from different parts of England, including London, where a woman was unable to leave a violent relationship because she could not get legal advice either to make the DDVC application or to make the DVILR application once the DDVC had been granted. Difficulties in accessing the DDV Concession and DVILR also arise where a person has leave outside the immigration rules because they could not meet the minimum income requirement for a spouse, but their leave nevertheless depends on the relationship with their spouse or partner, and they will be destitute if they leave the abusive relationship. These barriers subvert the intended protective effects of the rules.

35. Andrew Jolly, Siân Thomas and James Stanyer, 2020. *London's Children and Young People Who Are Not British Citizens: A Profile* (Greater London Authority). Available at: https://www.london.gov.uk/sites/default/files/final_londons_children_and_young_people_who_are_not_british_citizens.pdf

Case study: Domestic violence and leave to remain

F arrived on a visit visa in 2008 and overstayed, working cash in hand. She applied for a visa in 2013 because her partner was in hospital, but she is unsure exactly what that application was. In 2016, she was instructed by the Home Office to start reporting at Baker House. She was experiencing violence from her partner and said,

“

That time was very hard for me because I had a two-and-a-half-year-old child. It was hard for me to go back to [home country] at that time and I don't have a good partner. I asked my friend to help me look for a solicitor. I didn't have any experience, I was just worried for my daughter and my friend said this solicitor was good. I got a private solicitor in Brixton to apply for a visa.

I found out about Praxis from Social Services because my husband hit me and wasn't supporting me. I was suffering a lot at that time. My daughter was a baby and we didn't have money to eat or anything. I had to put water in the milk for my daughter. I was fighting with Social Services because weekly they were giving me £30, but I had to pay £17 to travel to go to them, so I was only getting £13. So, they saw my case and then they told me to go to a Praxis house, and I stayed there for about three years from April 2017.

I got the refusal from the Home Office in 2018, and then my solicitor tried to scare me and make me panic, saying we need to go to court and it will cost a lot of money. So I tried to commit suicide because I was scared. Then I went to a psychologist and doctor, and Praxis said don't worry we will try and help. They try to help and tell the truth, and they said we try to do something. It was lifesaving at that time. I just told social services I would do suicide. I didn't want my daughter to go with her dad or back to [home country]. I thought maybe if she was with me, she would be deported. But if I wasn't in this world she would stay here, so that's why I wanted to do suicide. Then after my rejection, Praxis took my case and helped me find a legal aid solicitor.

I got a leave to remain visa from the court. I really got a visa to stay in this country with my daughter. When I heard, I couldn't believe it. I thought someone was joking. It was a shock. It took me three months to believe that. I had made up my mind I was going to do suicide and so my body didn't realise it.

Legal aid is extremely good, fantastic, I don't have the words to tell you. Legal aid solicitors fight, they really fight for you. But many people are still scared because private solicitors tell them that after the first case you need to pay double money back to the legal aid solicitor.

Immigration detention

The Immigration Act 1971 gives the Home Secretary extensive powers to detain any person who is not a UK national and does not have ILR, as well as those who have completed a prison sentence where deportation action is being considered. Legal aid is available for bail applications and other matters to do with detention itself, and for asylum, trafficking and judicial review matters. It is also available for cases to which ECF applies, so long as the individual is financially eligible, but not all detainees will qualify for legal aid for their substantive immigration claim.

Demand in the immigration removal centres fluctuates. The overall numbers of people in detention were on a downward trend before the pandemic, and several detention centres had been closed. **In the year to March 2020, 23,075 people entered detention.** As a snapshot, there were **1,637 people in detention at the end of December 2019.** This dropped at the start of the pandemic, though the Home Office continued to refuse bail to almost 900 people, many of whom succeeded in getting bail from the First-Tier Tribunal. The remaining detention capacity is heavily concentrated in and around London.³⁶

Free legal advice is provided through the Detention Duty Advice (DDA) rota. Providers have to hold a contract for detention work and are allocated slots on the rota. Providers can only take on cases after these advice slots which are eligible for legal aid, i.e. bail (or unlawful detention) cases, asylum, other protection cases, and cases which qualify for ECF. Until September 2018, there were only two to four providers contracted to each centre, with each taking a week on the rota and offering up to ten slots a day for four or five days. The September 2018 contracts include far more providers, but detainees still do not have any meaningful choice over which one they go to.

The providers initially worked a weekly rota system, with each having three or four weeks a year on the rota. As some of the providers were very small, with clearly insufficient capacity to do a full week on the rota and take on eligible cases, the rota has been switched to a daily system. The change in September 2018 also meant a lot of detention advice providers had no experience of detention work, which is very different from other immigration and asylum work, thus raising serious concerns about quality.³⁷



We're still seeing people not getting the level of advice needed. Since 2018, although maybe more people have a legal rep than before, the quality has reduced. There are a lot of different things we're seeing – solicitors not knowing about bail, saying you can apply without sureties, not taking on cases even when there's merit, trying to take cases on privately when they could explore legal aid. It's also reflected in HM Inspectorate of Prisons' reports that people are giving everyone five-minute appointments and having the whole thing done in an hour or two.

36. Brook and Tinsley House, beside Gatwick Airport, and Harmondsworth and Colnbrook, near Heathrow Airport, with a combined capacity of 1,702 spaces, as well as Yarl's Wood, in Bedfordshire, which mainly detains women, with a capacity of 400.

37. *Bail for Immigration Detainees, 2019. Legal Advice Survey: Spring 2019.* Available at: <https://www.biduk.org/pages/106-bid-legal-advice-surveys>

It also appears that detainees may not always be informed that they are entitled to legal advice or how to sign up for advice slots. As one (well-regarded) provider explained, no clients signed up for their most recent rota slot, despite there being people in that detention centre who needed advice. This has a number of consequences: apart from people potentially being removed without advice, it generates further demand for advice either when people are released into the community with unresolved status or at the last minute when they are facing removal.

“

Yesterday's [charter flight] was an example of having to do things at the last minute, and then the Home Office make a big deal publicly about last-minute applications. We had at least three referrals who had [received] duty advice in the last few days and were told they couldn't do anything. One had a very strong trafficking claim; one had a very strong family life claim ... and his family life hadn't really been considered because the last decision was a few years ago, really obvious... But those basic alarm bells, a DDA solicitor didn't pick up.

On release, detainees may leave the London area but remain with a solicitor they signed up with while detained, so they continue to draw on London-based capacity. London is very much the epicentre of demand for detention and post-detention casework.

Deportation and access to advice in prisons

The term 'deportation' is often used in a general sense to refer to all enforced removals or returns from the UK. Its technical meaning, however, is enforced removal under a deportation order, with a ban on re-entry, usually resulting from a prison sentence of at least 12 months, though it can be imposed without actually receiving a criminal conviction.

Foreign nationals may be held in any prison in the UK, though some hold a greater proportion than others. They may be held under immigration powers after the end of their criminal sentence, or transferred into an immigration detention centre. Less commonly, they may be released into the community with conditions. There is no systematic provision of immigration legal advice in prisons. Legal aid is not routinely available for appeals against deportation so, unless the appeal involves asylum, a person would need to qualify for ECF or pay privately.

In the eight London prisons and Young Offender Institutions, the number of foreign nationals is as follows:³⁸

38. Freedom of Information response 201021027 from Ministry of Justice to Jo Wilding dated November 2020.

Prison establishment	EEA national	Non-EEA national	Total
Total	902	875	1,777
Belmarsh	51	116	167
Brixton	24	47	71
Feltham	32	30	62
Isis	19	47	66
Pentonville	101	118	219
Thameside	101	114	215
Wandsworth	438	222	660
Wormwood Scrubs	136	181	317

A further 133 people were held in prisons in London under immigration powers only. The **1,777 foreign nationals** make up 23% of the total capacity of 7,598 in London prisons in December 2020,³⁹ compared with their 11% representation in the overall UK prison population.⁴⁰ The data does not show the proportion of these whose sentences are long enough to trigger deportation action.

The data on deportation is not completely clear. In 2018/19, 5,322 'foreign national offenders' left the UK in 2019, mainly as enforced returns.⁴¹ These figures are not disaggregated by region and it is not clear how many had a deportation order. There is no way of knowing how many might have had a case for resisting removal. Others with criminal convictions will have been threatened with deportation action and, following legal advice, either successfully persuaded the Home Office that they should not be deported, or succeeded with a tribunal appeal.

Home Office statistics since 2016 do not disaggregate deportation appeals from other human rights appeals, but Free Movement reported in 2021 that the Home Office 'win rate' rose from a steady two-thirds (2010–2018) to three quarters while case law was strongly in favour of deportation.⁴² It seems likely that all those in prison and all those threatened with deportation would benefit from immigration legal advice. There is, of course, an overlap with those in prison and detention: counting only those currently in prison or immigration detention provides an underestimate, but there is no meaningful way to gauge separately demand for deportation advice in the community.

Legal aid providers face very significant barriers to going into prisons, since they are unable to even assess whether a person will qualify for ECF without travelling to the prison to take instructions on the facts of the person's case and their financial means,

39. UK Government, 2020. *Prison Population Statistics: 2020*. Available at: <https://www.gov.uk/government/statistics/prison-population-figures-2020>

40. Georgina Sturge, 2020. *UK Prison Population Statistics: Briefing Paper CBP-04334, July 2020* (House of Commons Library).

41. UK Government, 2019. *List of Tables: Returns*. Available at: <https://www.gov.uk/government/statistics/immigration-statistics-year-ending-june-2019/list-of-tables#returns>

42. C.J. McKinney, 2021. *Rare Statistics Show Rise in Number of Deportation Orders Upheld on Appeal (Free Movement)*. Available at: <https://www.freemovement.org.uk/rare-statistics-show-rise-in-number-of-deportation-orders-upheld-on-appeal/>

as well as that of their family members or partners outside the prison. That work may well take up an entire day and would be completely unpaid unless legal aid is eventually secured.

The LAA has argued that anyone in prison will have accessed legal advice for their criminal matter and therefore know how to do it.⁴³ This ignores the fact that, when arrested, there is access to a criminal solicitor via the duty scheme. No such scheme exists for immigration in prisons. It has also been argued that the prison magazine *Inside Time* sometimes features advertisements for immigration lawyers. As the charity BID point out, however, this assumes a person will pick up a copy of an edition which has such an advert, be able to read English and get the phone number added to their account, then have an opportunity to call them during opening hours and get through to the right person, at a time when that person still has capacity to take them on and is willing to do so on legal aid.

As a support group interviewee explained,

“

It's literally life changing – people are being deported because they've not had advice, only a few manage to get referred. Priti Patel was crowing today about having deported 28 foreign criminals and most of those will be long-term residents and have a family and no representation.

It means people in prison are particularly vulnerable to misinformation. A solicitor interviewee described how a young man, who had arrived in the UK aged two-and-a-half, was convicted around the time of his eighteenth birthday. He saw an immigration officer on three occasions in the prison and said that she told him there was no point in fighting deportation. He was never told he could get legal advice and instead accepted early release with deportation, but he is now unable to visit his family in the UK. This young person would have had a strong application for discretionary registration as a British citizen when he was still a minor prior to his conviction, and he would likely have won his deportation appeal, had he received legal advice. There does not appear to have been any effort on the part of the state to ensure that EU nationals in prison receive advice about the EUSS.

Even once a person is out of prison, it can be difficult to access representation for deportation cases. A non-legal aid advice organisation explained that it “*can take 40 hours easily to take instructions*” and they would need to make a Subject Access Request, then review the often-voluminous file of the client's records from the Home Office and prison. This meant that “*in the eyes of funders, the return in terms of numbers of clients represented is much lower*” than for other kinds of case. A solicitor without a legal aid contract described finding it impossible to refer a deportation client whose family had been paying privately to a legal aid lawyer, even once funding had been secured and the client had permission to appeal in the Court of Appeal, so that payment was no longer at risk. As the solicitor put it, “*It's a bit depressing, isn't it?*”

43. In its evidence to the High Court in *SM v Lord Chancellor* [2021] EWHC 418 (Admin). Available at: <https://www.baillii.org/ew/cases/EWHC/Admin/2021/418.html>

Three of the advice user interviewees, all of whom arrived as children, were facing deportation proceedings. One has what appears to be a relatively complex case because their country of origin is not one of those with a high asylum grant rate, they arrived in the UK fairly late in childhood, and the case includes both asylum and Article 8 aspects. However, the Article 8 aspects are outside the scope of mainstream legal aid, so it would be financially unviable for a legal aid lawyer without other income sources to take on.

Another, however, had arrived in the UK aged two, and their criminal conviction was linked to very serious mental health problems. All the rest of their family have immigration status in the UK. This interviewee has a support worker who found a legal aid lawyer and takes them to their appointments with the lawyer. The support worker said it was hard to find someone to take on the case, but the interviewee did not know how long it had taken. The appeal against deportation was successful, but the Home Office have appealed, with a decision on permission to appeal still awaited at the time of the interview. Having arrived at the age of two, with serious mental health problems and their immediate family all in the UK, it seems extremely unlikely that a deportation order would be upheld. That raises the wider problem of demand, expense and stress being generated unnecessarily as a result of policy.

Case study: Deportation

A arrived in the UK on a visit visa and later tried to claim asylum. He said, *I asked eight solicitors who refused to help me saying I would have to go back to [country].* When he did find a solicitor after five months, paying privately, he seems to have received inaccurate information:

“

My solicitor at that time told me it was not possible to apply for refugee status but for human rights protection. He told me it would take six years.

A said he was told humanitarian protection was only available for people who have been here for ten years. This is completely wrong, but it is not clear whether A had correctly recalled what the solicitor said or whether he had misunderstood about another category, such as long residence.

A was then arrested for illegal working and spent seven months on remand before apparently being convicted and sentenced to time served. The human rights application was refused and,

“

Because of the criminal conviction the solicitor asked me for another £6,000 to continue with the process for the human rights protection after my first application was rejected. I didn't have money, so I stopped with that process in 2013.

He was detained in January 2020 and claimed asylum, again using a private solicitor found for him by his friends. He was released because of the pandemic and has an appeal pending in 2021, but he cannot afford to pay the solicitor. A says he needs free legal representation, but he does not know where to look for it.

European Union nationals

EU nationals who were exercising treaty rights in the UK before 31 December 2020 can apply for status in the UK through the EUSS scheme. They can receive settled status if they have been in the UK for five years, and pre-settled status if they have less than five years' qualifying residence.

By the end of December 2020, 1.72 million people in London had applied for EUSS, of which 130,000 were still outstanding. Of the concluded applications, 52 per cent received settled status, and 45 per cent received pre-settled status (2.8 per cent had other outcomes, such as withdrawal or refusal). The largest proportions of London applicants were Romanians (290,200), Italians (219,700), Polish (173,500), Portuguese (144,400) and Spanish (139,800).⁴⁴

What is impossible to distil with any clarity is the number of people who have not applied. The headline figure nationally, as at 31 January 2021, was that 5.06 million applications had been made to the scheme;⁴⁵ significantly more than the estimated 3.4 million non-Irish EU citizens who were thought to live in the UK in 2019.⁴⁶ Likewise, the figures for London indicate that more than 100 per cent of the EU citizen population has applied.

The Migration Observatory points out some possible explanations for the discrepancy:⁴⁷

- The population data include only private addresses, not student halls of residence, care homes, employer-provided accommodation on farms, etc;
- People apply for/obtain settled status and may then leave the country, while new arrivals also need to apply for status, so there may be more applicants in total than are resident in the country at any one time;
- There is some double counting in the application data, because people who first obtained pre-settled status must later apply for settled status, and some applications were withdrawn and resubmitted.

In effect, however, there is no data for people who have not applied. Particular risk groups include children whose parents wrongly believe they are British;⁴⁸ people in prison; and EEA national family members. EEA family member cases can be complex, but they have been excluded from the list of those who can access Home Office-funded support to apply for settled status. Children in the care of the local authority are another risk group.⁴⁹ Home Office data from February 2021 indicates that applications had been made for fewer than half of the looked-after children and care leavers in the UK by 26 November 2020, with 1,660 eligible children and young people yet to apply.⁵⁰ Of those given status, 14 per cent have pre-settled status and will need to make a

44. Greater London Authority, 2021. *EU Settlement Scheme Statistics: Quarterly Statistics, December 2020*. Available at: <https://www.gov.uk/government/statistics/eu-settlement-scheme-quarterly-statistics-december-2020/eu-settlement-scheme-quarterly-statistics-december-2020>.

45. UK Government, 2019. *EU Settlement Scheme Statistics*. Available at: <https://www.gov.uk/government/collections/eu-settlement-scheme-statistics>.

46. Carlos Vargas-Silva and Peter William Walsh, 2020. *EU Migration to and from the UK* (Migration Observatory). Available at: <https://www.baillii.org/ew/cases/EWHC/Admin/2021/418.html>

47. Madeleine Sumption, 2020. *Not Settled Yet? Understanding the EU Settlement Scheme Using the Available Data*. Migration Observatory. Available at: <https://migrationobservatory.ox.ac.uk/resources/reports/not-settled-yet-understanding-the-eu-settlement-scheme-using-the-available-data/>

48. Madeleine Sumption and Zovanga Kone, 2018. *Unsettled Status? Which EU Citizens Are at Risk of Failing to Secure Their Rights after Brexit?* (Migration Observatory). Available at: https://migrationobservatory.ox.ac.uk/wp-content/uploads/2018/04/Report-Unsettled_Status_3.pdf

49. The Children's Society, 2020. *Looked After Children and the EU Settlement Scheme: An Update for Local Authorities*. Available at: https://www.childrensociety.org.uk/sites/default/files/2021-03/Looked_After_Children_and_the_EU_Settlement_Scheme.pdf

50. UK Government, 2021. *EU Settlement Scheme: Home Office Looked-After Children and Care Leavers Survey 2020*. Available at: <https://www.gov.uk/government/publications/eu-settlement-scheme-home-office-looked-after-children-and-care-leavers-survey-2020/eu-settlement-scheme-home-office-looked-after-children-and-care-leavers-survey-2020>

further application in due course. The London boroughs have identified 712 eligible children and young people, of whom at least 282 are yet to apply, though the Children's Society believes this is an underestimate. At least 15 have pre-settled status and will need to make another application, but a further 16 authorities did not give data on the basis that the number was between one and four. Accordingly, there are 31–79 looked-after children and care leavers in the London boroughs with pre-settled status.

Specific problems arise for those from certain countries who need replacement ID documents, since it can take months even to get an appointment with their home country's embassy. Other notable risk groups are:

Homeless people – It is estimated that a third of London's homeless population are EU nationals, some of whom are likely to have been missed, despite outreach efforts. That is particularly problematic given that the Home Office intends that rough sleeping should be grounds for removal from the UK. Funding ended in September 2020 for a consortium of eight specialist organisations which was working with rough sleepers to support EUSS applications. Those remaining are likely to be the most complex and to require the most outreach, but members of the consortium explained that the terms of the Home Office tender for continued funding made it impossible for them to apply.

Roma – Research by the Roma Support Group (RSG) found that fewer than 5 per cent of the Roma Community that engages with their services were able to manage the EUSS application on their own. Many had difficulties in obtaining identity documents from their countries of origin, because the processes are cumbersome and it is difficult to get appointments at the relevant embassies, especially during the pandemic. There is no accurate data on how many Roma people are living in the UK, or where they live beyond three main population centres in London, Sheffield and Peterborough, so there is no way of knowing how many Roma people may not have applied or may need support to upgrade from pre-settled to settled status. The RSG's research suggests that two thirds of those they work with received pre-settled status and 11 per cent believe they have received the wrong status. Many have limited digital access, limited English and, in some cases, low literacy, do not know how to access their digital status, and do not know how to upgrade to settled status when required. Some of those who arrived as children of Roma asylum seekers, prior to their countries of origin joining the EU, *"have complex immigration histories because of the pre-2004 legacy, and ... are in a difficult position that's almost unique to the Roma community"*.

Non-EU nationals with 'derived rights' – There are different ways in which these derived rights arise, often referred to by the name of the case which established the existence of such a right. These include being a parent or carer whose rights are derived from their relationship to a child who is an EU national. Such people are commonly known as *Zambrano* carers. The latest statistics from the GLA indicate that 65 per cent of concluded *Zambrano* applications across the country have been refused. That may increase demand for assistance with applications on the ten-year route to settlement as a parent of a child settled in the UK.

Pensioners – Interviewees believe a significant proportion of EU nationals over 65 years old are at risk of becoming undocumented, since application figures are low for this age group.

People with pre-settled status – In London, 774,000 people (45 per cent of 1.72 million) have been given pre-settled status and must apply to upgrade to settled status in due course. This is higher than the 42 per cent in the rest of the UK. The percentage receiving pre-settled status increased in the last two quarters of 2020, perhaps indicating newer arrivals seeking to secure their status. It is impossible to give a meaningful estimate of how many will need advice or casework to upgrade to settled status when eligible, but the consequences of falling out of status is substantive (loss of status), not merely administrative (i.e. lacking proof of status). Even if this only applied to 1 per cent of the total population of EU nationals with pre-settled status in London, that would affect over 7,740 people.

Frustratingly, much of the risk would be averted if the EUSS as a whole, and the upgrade from pre-settled to settled status, were treated as merely declaratory of statuses which accrue automatically, instead of status itself being granted as the result of an application. Interviewees predict this as one of the key drivers of demand after June 2021.

Exceptional Case Funding

ECF is a stream of legal aid funding and, as such, would not normally fit into a section on types of demand. However, the need to make a prior application for funding, and the practical difficulties in doing so, have turned ECF applications into a distinct stream of work, including for charities which do not do legal aid work themselves but attempt to secure funding for clients, then refer them to legal aid providers. They are the only legal aid applications that can be made by a client or other non-legal aid provider.

Immigration accounts for about two thirds of around 3,500 applications each year across England and Wales. These form part of the legal aid supply figures discussed above. Immigration was driving an increase in applications before the pandemic, but applications dropped from 983 in the first quarter of 2020 to 691 in the second.⁵¹ It also accounts for the vast majority of grants made directly, i.e. to the client in person or an organisation, rather than to the legal aid provider: in 2020–21, immigration accounted for 133 of the 142 direct applications granted; in the previous year it was 343 out of 368, with family law accounting for most of the others.⁵²

It appears that ECF applications can work well in partnership arrangements, where a non-legal aid organisation applies for ECF, then refers to a legal aid provider. Five of the advice user interviewees had received ECF and, in at least three of those cases, the funding was obtained by a charity or other organisation before referral to a legal aid lawyer. These partnerships include a wide variety of organisations such as large commercial firms, university law clinics and charities. Even then, it can be hard to refer clients once ECF has been granted:



Lots of us are running ECF clinics this year. We do the applications and they're usually granted, but there are not enough providers to take them on.

51. Emma Marshall, 2020. *Improving Exceptional Case Funding (Public Law Project)*. Available at: <https://publiclawproject.org.uk/resources/improving-exceptional-case-funding-covid/>

52. For statistics shared with Civil Contracts Consultative Group as a subset of published legal aid statistics on ECF grants, see UK Government, 2013. *Legal Aid Statistics*. Available at: <https://www.gov.uk/government/collections/legal-aid-statistics>

This receives support in the direct grants statistical subset, which shows the number of grants which were 'not in use': 38 out of 276 (nearly 14%) in 2018–19; 40 out of 343 (11.7%) in 2019–20. This is partly down to capacity but also because the payment is too low and, although that means some cases get to the escape fee, the high escape threshold (three times the fixed fee) is a barrier:



When I've spoken to legal aid providers, they're not willing to work up to three times over [the fixed fee] and get to the escape fee because they've been knocked back so many times that they'd rather not run the risk. And I think it's managers in their ears saying you can't lose any more money.

Yet these are cases in which the LAA has explicitly accepted, by granting funding, that there is a risk of a breach of human rights or EU rights if the person does not have access to a lawyer, that it is not reasonable for them to undertake the case without a lawyer, that the case has sufficient merit *and* that they cannot afford a lawyer.

Interviewees also felt that some legal aid providers stopped applying for ECF because of their early experience that it was a waste of time to apply, because of the very high refusal rate when the scheme started. Even among those who do ECF work, provider interviewees said it is sometimes easier to use grant funding, unless they need disbursements. A legal aid provider without grant funding said they sometimes do RFR work pro bono rather than apply for ECF because the application for funding (which is unpaid) takes as long as the substantive application – but there are inherent limits on the number of cases which can be done in that way.

Data gaps

It is clear that demand vastly outstrips supply of advice and casework in London. An NGO advice centre manager described routinely having a queue of 25 people outside the centre before it opened and *"you know realistically you're probably not going to see all of them"*. The majority of organisations which took part in the research have no way of counting those who are turned away, or whose advice needs are only partially met.

Apart from some estimates of EU national children in care,⁵³ there is a data gap around children with immigration or citizenship needs beyond asylum in the care of local authorities. A solicitor interviewee noted that social services do not always *"meet their immigration needs early enough"*. This causes problems later when they are undocumented adults, especially if they get criminal convictions and face deportation action. Both the data gap and the substantive issue could be addressed through partnerships between legal advice organisations and local authorities, with regular proactive reviews and internal capacity building. However, children in families face similar problems with knowing that they need help and where to find it.

53. The Children's Society, 2020. *Looked After Children and the EU Settlement Scheme: An Update for Local Authorities*. Available at: https://www.childrenssociety.org.uk/sites/default/files/2021-03/Looked_After_Children_and_the_EU_Settlement_Scheme.pdf

These data gaps could be partly addressed through specialist hubs, such as the EU Hub set up by the GLA, which could offer the basis for a strategic approach to data collection, community and professional awareness raising, advice delivery, specialist training and campaigning, as well as providing funders with information on needs.

Other advice needs: Clustered problems and the fragmentation of advice networks

Advisers and support groups emphasised that people tend to arrive at services with a cluster of problems, not simply an immigration issue. Researchers have identified this in the past,⁵⁴ and it has been exacerbated by the hostile environment for those whose immigration status affects access to other social welfare protections or services.

The LASPO Act (2012) removed many social welfare matters from the scope of legal aid, thus delaying access for many other matters until crisis point. This forced services to move away from holistic advice and, together with other legal aid cuts, caused the closure of several law centres and many of the more holistic advice organisations. That means users are increasingly unlikely to be able to solve all their legal problems in one place. Indeed, they may not be able to get advice on all aspects at all. Even in a law centre, an adviser explained,

“

It's not being able to refer people out for stuff which is linked to the [immigration] issues they come with... so there's nowhere to refer them for welfare benefits advice or housing issues when they might be living somewhere that they're not entitled to and I find that quite frustrating that you can't actually give them a whole service or know that they can get complete advice.

Similarly, when people present at other services, problems arise when an understanding of the immigration system and its consequences is not sufficiently embedded within those services. For rough sleepers, for example,

“

There needs to be more recognition and understanding that... as opposed to starting to work on whether they can apply for Universal Credit and housing, it's ultimately immigration advice that has to be the priority, and it is just training people so they can identify what people's needs are without just looking at it through a rough-sleeping lens.

Yet the immigration issue might be outside the scope of legal aid, or dependent on an ECF application, or there might be no one with capacity to take on the case. Where a person enters the advice system at crisis point, but they cannot access the right advice or casework quickly, interviewees say they commonly fall out of the advice network

54. For example, Pascoe Pleasence, Nigel J. Balmer, Alexy Buck, Aoife O'Grady and Hazel Genn, 2004. 'Multiple Justiciable Problems: Common Clusters and Their Social and Demographic Indicators'. *Journal of Empirical Legal Studies*, 1(2), 301-329. Luke Clements, 2020. *Clustered Injustice and the Level Green* (Legal Action Group).

again once the immediate crisis is over. The same applies when clients with mental health problems need support to be able to engage with services for the length of time it takes to resolve an immigration issue.

This lack of embedded or easily accessible knowledge can have catastrophic consequences, as in one case of a young person who was threatened with deportation after a prison sentence:

“

Just an awful case, in care from the age of 11 and nothing done about the immigration status. I had to have a Teams meeting with probation and social services, and it came out by chance that the client might be British but social services were unaware of the significance.

This fragmentation of the advice network reinforces relationships between immigration status and poverty, exploitation, and mental and physical health problems. Solutions would include restoring and facilitating holistic advice services, either through sustainable funding for holistic services or through support for advice networks and partnerships, so that people can receive help with their whole problem. Apart from offering a better service to clients, that also offers much better value for money than repeatedly addressing, at crisis point, single aspects of a problem. There is also an urgent need to find ways of embedding immigration advice and knowledge within other services.

Costs and consequences of hostile policies

Elements of policy are generating and escalating demand for immigration advice and, in some cases, also driving negative consequences (or ‘externalities’) for society. These are not specific to London but, given London’s significant migrant population, they appear to have a particular impact there. These include changes introduced for family migration in 2012, as well as the provisions of the Immigration Acts 2014 and 2016. Within the context of the constrained capacity discussed in the Supply section above, a law centre lawyer explained:

“

Even when it’s going ‘right’, when it’s functioning... the amount of work just for them to be able to access their human rights, [with] fee exemptions and so on, it’s a minimum 12-month process and the same with these leave renewals. Even when everything’s going right and the Home Office make the decision well, ... we’re kept very busy with that churn, and that’s the system working as it’s meant to work... [It] means there isn’t capacity to deal with the bigger cases that really need assistance, and a lot of that has come from legal aid imploding, and people not being automatically eligible for legal aid and not being able to make that application unassisted. The Home Office says a layperson should be able to navigate the immigration system but it’s not true... Which is a really important argument because it’s designed to fail and they’re forcing people to fall off the route and to lose status again.

The NRPF condition is one example of immigration policy causing negative consequences for wider society and the individual affected. It causes destitution and creates costs for local authorities where a single parent may be destitute because they cannot access support for childcare costs to enable them to work. The CoC application is described as “a waste of time for the Home Office... and reapplying every two years creates more work for everyone”.

The minimum income requirement for spouses separates families and was causing problems for some of the advice user interviewees. Some were on the ten-year partner route to settlement, with four further applications to make, instead of a five-year route on a spouse visa, with two further applications. Thus, the ability to meet the minimum income threshold,

“

...determines to a large extent the length of your route to settlement – it's a long route if you're poor, but it also makes you more materially deprived because you pay twice as much for your leave and that affects other family members outside the UK.

The narrowness of the rules means that some people are simply unable to regularise their status. This might include those who have spent more than a decade in the UK but have no children or serious mental health issues. The extension of the period before a person could obtain leave on the grounds of long residence, from 14 years to 20, in 2012, significantly increased the length of the route to regularisation and leaves people vulnerable for an additional six years, for no apparent public benefit. The inability to regularise means that a person is more likely to become a rough sleeper or to live in overcrowded housing, to work illegally and to delay seeking health care until a problem becomes urgent, all of which is catastrophic for the individual, but it can also be seen as hostile policies creating negative externalities for society as a whole.

Sleeping rough is a particularly significant issue in London: 52% of rough sleepers encountered in 2019–20 were non-UK nationals,⁵⁵ often in difficult situations because of the hostile environment, yet not willing to leave the UK voluntarily, often because of a continuing fear of returning to their country of origin. Within the homelessness sector, this creates difficulties, as people may ‘choose’ another three years of sleeping rough to reach the 20-year threshold for long residence rather than return. Workers supporting non-UK and non-EU nationals sleeping rough explained that it is difficult to secure emergency accommodation for their client group because there are no ‘move-on options’, given the restriction on accessing public funds. That means people continue sleeping rough, their physical and mental health declines, and some die on the streets.

Organisations identified ways in which policies integral to the hostile environment and the wider aim of restricting migration make it difficult for people within their communities to access protections which are supposed to be available to them. Domestic violence is one example:

55. Greater London Authority, n.d. *Rough Sleeping in London (CHAIN Reports)*, Greater London bulletin 2019/20. Available at: <https://data.london.gov.uk/dataset/chain-reports>
The previous year's figure was 51%.

“

So, with the whole hostile environment around migrants, over time we started to get a lot of people suffering from this whole horrible immigration process. Our visa is tied to employers or to a family, so these are all tied visas... Many of the women who then ended up in violent relationships also can't afford immigration advice. If they have a partner who's violent to them, the partner... will not pay money to get their immigration processes through because they control the women through that.

Charging for NHS treatment offers another example. A support worker described how a woman was charged for NHS treatment because she agreed to voluntary admission instead of sectioning after she attempted suicide. There would be no charge if she had been sectioned, but the charge for the voluntary treatment was £4,000. Despite the intervention of doctors, the bill was repeatedly reissued, thus creating a barrier to regularisation of her status.

The hostility also carries through to procedural matters, including the fees themselves and the process of applying for a waiver. Organisations explain that the process of obtaining a person's file from the Home Office has become slower and more difficult as, instead of sending the full file on request, the Home Office default is to send a partial disclosure which then has to be challenged. Small errors by unrepresented applicants can be catastrophic:

“

It's so adversarial that you become an overstayer if you just make a mistake on the form or get something a tiny bit late, it's about catching people out. It should be more collaborative. In other countries, they call and tell you what information is missing. In the UK, they take the money, refuse the application and you're an overstayer.

Reports from the National Audit Office,⁵⁶ the Windrush Lessons Learned Review,⁵⁷ and the Independent Chief Inspector of Borders and Immigration⁵⁸ have criticised the Home Office for its lack of understanding of the effects and impacts of the hostile environment policies. Within London, this research suggests it is creating negative impacts not only for individuals but also for society as a whole. It also escalates costs for the voluntary sector, in advising the people directly affected; for the public sector in, for example, pursuing hopeless bills and addressing the consequences of involuntary family separation; and for the Home Office itself in processing multiple applications for renewal, fee waiver, CoC and so on.

For these reasons, it is important that a funding strategy takes a three-pronged approach encompassing sustainable service delivery, data collection to fill the knowledge gaps, and pressuring for change to the entire immigration and legal aid frameworks, because it is unlikely that any amount of service delivery funding will meet the demand generated by hostile immigration policy and the gaps left by LASPO.

56. National Audit Office, 2020. *Immigration Enforcement*. Available at: <https://www.nao.org.uk/report/immigration-enforcement/>

57. UK Government, 2018. *Windrush Lessons Learned Review* by Wendy Williams. Available at: <https://www.gov.uk/government/publications/windrush-lessons-learned-review>

58. UK Government, 2016. *Inspection Report of Hostile Environment Measures*, October 2016. Available at: <https://www.gov.uk/government/publications/inspection-report-of-hostile-environment-measures-october-2016>

The London context

London has about 40 per cent of all legal aid provider offices in England and Wales, and more than half of the OISC Level 3 organisations in the UK. As discussed in the 'Demand' section, it also has a very large population in need of advice, and the supply cannot meet all of this demand. Aside from the size of demand and supply, however, it is useful to understand whether these are different in nature in London from elsewhere.

All provider and key informant interviewees considered London to be qualitatively different from the rest of the country. Some had worked in other places previously, or continued to work in a non-London organisation part-time, while others worked in organisations which operate throughout the country. On the supply side, despite the problems with capacity, quality was said to be often better in London because of the presence of numerous good-quality providers, relatively easy availability of free training and other peer support, and the role played by highly-competent NGOs.

The disadvantage of this wealth of organisations, however, is that some are lost in the crowd because they are not well-networked with other organisations offering different levels of advice. In some cities or counties there are three or four charities supporting people who have migrated, perhaps with Level 1 or 2 accreditation, and one to three legal aid providers. Those organisations tend to know one another and know who can support a client, even if there are capacity problems. In London, some support organisations have no partnerships or referral pathways for users who need advice, while one provider reflected on the effect of London's huge number of NGOs:

“

With the NGOs I worked with a lot in [county], I'd look at everything they sent me. It was just a couple of NGOs, and we all met in the pub socially, and we talked about these things. The drawback in London is.... you have these protective barriers up. You don't want to take on a case.

On the demand side, London appears to accommodate a different population from other parts of the country. A representative of a community organising group which operates nationally explained that, in a survey of their members,

“

Mental health was the top issue – this was during the pandemic – but in London immigration status came second and it wasn't even on the list anywhere else. It's not that no one else has those problems, but in London, every church, every mosque, every school has it as a primary issue. It's more important than housing, low wages, youth safety, and that was a distinction between London and everywhere else. The only slightly comparable place is Birmingham, but still not as much. It felt like London was on a different scale from anywhere else.

This was attributed to the fact that it is a huge city in which it is easier than elsewhere to live underground within national, religious, ethnic or other communities and find cash in hand work, however exploitative that might be, until some form of crisis, often around housing or health, forced them to seek advice. As one interviewee described it,

“

It's definitely more in London than elsewhere, I think people can live years bouncing from house to house, temporary situation to temporary situation, and while they're mentally and physically well, they can eke out an existence through car washing, cleaning houses, but the moment that gets too much and you're no longer able to cope physically or mentally, or developing other coping strategies, that then becomes really difficult... so people then become very invisible within the system, or become visible for short periods of time and just bounce in and out of services. And it becomes very difficult for legal advisers to be able to regularise because of that.

This length of unlawful residence, illicit work, insecure housing and lack of access to services makes both client needs and casework more complex. Typically, the need is for family-related or long residence applications, or those based on mental health issues. The presenting problem is frequently not immigration itself but an issue around access to housing, welfare benefits, health care, education or some other service which has at its root an unresolved immigration status. Interviewees emphasised, however, that it is often difficult for a person to focus on resolving their immigration status while they are homeless, unwell, hungry or in an unsafe situation.

A provider described how this clustering of problems, and particularly the mental health issues, seemed more extreme in London than in other places they had worked, noting that, *"I'd had one client [with mental health issues] that severe in [previous city], and all of a sudden it was 30 per cent of clients. [It's] a completely different client base in London from anywhere else".*

This emphasises the importance for London of: i) having advisers embedded in, or well-networked with, other services which people are likely to use when in crisis, and ii) maintaining sufficient specialist capacity that crisis entrants to the advice network do not simply 'bounce out' again without being able to resolve their status or, if resolution is not possible within immigration law, at least to understand their situation, rights and options.

Some interviewees also emphasised the variation between boroughs, including the availability of social housing, access to immigration advice and other services, and also the main ethnic groupings. Thus, the resource and organisational implications differ between advising in a borough whose largest foreign population is Nigerians, who speak English as a first language, and in other boroughs where the main ethnic minority communities are non-native English speakers. There is also a difference in that London consists of 32 boroughs plus the City of London. Although all regions consist of multiple local authorities, there are 23 local authorities in the North West of England,

19 in the South East, 12 in the North East and 22 in the whole of Wales. This means London is potentially administratively more complex than other regions and faces challenges in taking a strategic approach to this issue.

Demand for London-based services from outside the capital

Given the shortages of advice in many areas outside London, there is an inevitable inward pressure of demand from elsewhere. There is only one small legal aid provider doing immigration work for the whole of Sussex and Surrey. It used 134 matter starts in the year to August 2020. Support organisations in Sussex report trying to refer clients to advisers in Croydon or elsewhere in London. There are no legal aid providers doing immigration work in Essex, Suffolk or Norfolk, all of which accommodate dispersed people seeking asylum. Only 308 matter starts were opened in Kent in the year to August 2020, and 227 in Hampshire, meaning there is certainly more demand than supply in those areas surrounding London. However, as discussed above, there is far less 'spare' capacity in London than might be assumed and what there is tends to be absorbed by providers' closest referral partners.

Beyond legal aid, the Level 2 and 3 providers often rely heavily on physical attendance at drop ins, so they are less accessible to people outside London. Some organisations report receiving enquiries from as far afield as Hartlepool, in the North East, since they began offering remote advice, or clients taking overnight buses from Wales to attend a drop in for advice. At Level 1, the generalist advice organisations tend to operate very locally, whereas the special interest groups deal with enquiries from all over the UK and beyond. Despite the relative wealth of supply in London compared with surrounding areas, the evidence suggests it is not the oasis of spare capacity that it is sometimes assumed to be.

Routes into and through the advice network

This report refers to the 'advice network'. By this we mean all of the organisations which provide immigration advice at different levels, and also support organisations which do not provide advice but play a significant role in signposting or referring people for advice. One important issue, however, is that not all organisations are well connected within this network. Some have many pathways and links to other organisations which can offer different services, while others have few or no such connections.

Case study: Navigating the advice network

Z is an EEA national. She tried to obtain permanent residence but was advised that an application was unlikely to succeed, because she had not known she needed comprehensive sickness insurance when she was first in the UK as a student and did not have five years of continuous employment since then. When settled status was introduced, she obtained that instead, but she was trying to understand how to go about applying for citizenship. She had also sought advice about housing, and received advice and support from a charity, as she lost her job and did not know if she was eligible for housing benefit. She spent some time living in a hostel before being helped into housing.

She first sought advice from the CAB, who she said tried to help, but they were only able to refer her to the government website. She then sought private advice, and spoke to a lawyer in Milton Keynes, but it was too far for her to travel. She paid for advice from a lawyer in London but could not afford further fees for the casework and was in any event advised that there was a low chance of success. She went to a Somali community organisation,



but the knowledge there is not great because they are not lawyers. They're just community support and not legal aid. But this was a dead end because I didn't have the money the lawyers needed, and the community support group didn't have the in-depth knowledge to help me.

I have been looking for an answer for this online, from the Somali Community and CABx, but they all refer you to the government website. But you need someone to tell you what that really means. Because the Somali Community told me that the law centres they would usually refer me to have closed because of lack of funds. The organisations that don't charge, they can help you, but they can't go as far as professional legal aid. The good thing is that lawyers do know, but you have to self-fund.

I had to spend a lot of time doing the research to find out where I could go. That was really a lot of time and that could be stressful when I really desperately needed to find information. Then when you find some you find too many! And then you have to start phoning them and many would say they can't help, then others say let's make an appointment. Then those appointments cost £4.50 [to get to] on the bus. I live in North London and Somali Communities is in South London, so that would be like one hour, one hour and a half. The back journey is the same. It's a good three hours that journey, then you just come back with disappointment because they didn't answer the question. [It would be easier] if there was one law centre that dealt with those issues and had the right knowledge. You can dedicate one day and just go to the appointment and get the answers you need.

Entry points

Across all types of interview in this research, it is typically some kind of crisis that most often brings a person into contact with immigration advice. Particularly for solicitors and legal aid organisations, this might be the 'obvious' kind of crisis such as needing to seek asylum, being trafficked, being detained, or being threatened with deportation and removal. Advice user interviewees described losing the job which was the basis for their visa – in one case because of pregnancy, or loss of a job due to being unable to prove the right to work (Windrush case), a university's failure to renew student visas in time, or losing its sponsor licence, or being subjected to domestic violence by a partner. This adviser's account is typical:

“

There's a whole population of people that are operating just under the radar who are existing, probably up to age 45–50, before health conditions become acute and who are somehow existing in the underground economy, ...and they're only emerging into accessing formalised advice services at the point they're reaching crisis, so something terrible has happened. Either they're not able to access that housing any more or they're in the health system or they've got children, those sorts of additional vulnerabilities which mean that now they recognise or are supported to deal with that regularisation.

This seems to have increased with the dislocations of the pandemic and the availability of crisis-related outreach support. The closure of restaurants at the beginning of the first lockdown, for example, left people destitute who had *“been working under the radar for ages”*. It is frequently a non-immigration need that brings people to services, such as homelessness, destitution, or the need for local authority support, but the other need cannot be resolved without resolving the immigration status

However, it is also clear that 'crisis' is not always a one-off event. A support worker explained that if people do not receive the help they need, either because of a shortage of advice and casework capacity or because there is no viable application they can make,

“

There'll be a couple of bumps against the system where they'll go to poorly skilled or disreputable advice providers and they'll lose money, they'll lose faith and they'll go back into their exploitative situation, and then something else will happen and they'll come back again.

This was vividly described by an advice user who had been refused asylum and subsisted underground until he was eligible for a 20-year long residence application, which was initially refused for lack of evidence, before a charity obtained ECF and successfully represented him:



I have been to so many firms and organisations. In my situation, I was powerless as I could not even complain because I have no papers and I feel like they exploited that. They knew that they could charge any amount of money and I would pay as I was desperate. Over 30 years I have been here and I have got so much bad advice. [I spent] over £20,000 since I have been here trying to get my papers. Family, friends and people you meet at the mosque: everyone knows someone who is a lawyer and who can definitely get you your papers.

Most interviewees found their first service via word of mouth. Pre-Covid, often a friend brought someone new to a service – support group meetings, drop ins, meals and other activities – or passed on the direct contact number for their caseworker; this was more effective than cold-calling the main reception, according to both advisers and advice users. They might then be referred to other services, including more specialist advice provision. Some only understood that they needed advice after a friend went through a similar problem.

This evidence suggests two important issues which a funding strategy could consider: first, whether some action can be taken before crisis point arises, including through increasing community legal literacy, outreach and embedded provision which reaches those who would not present at advice centres; second, how best to maintain crisis capacity so that crisis entrants do not leave the advice network without at least an understanding of their rights and options, and where to go if they need advice in future. In part, the latter approach might include sustainable funding for effective projects, especially open access projects, so that people are still eligible to access projects, and those projects are still operating, when they are ready to re-enter the advice network.

Referral routes and pathways to casework

Frequently, a person needs advice, casework or representation that cannot be provided by the first organisation that they come into contact with. This might be because they need more specialist expertise, because they are ineligible for that service or because they need advice on an issue related to their immigration status, such as housing, employment or family law, which is outside the scope of the initial service point of contact.

Some organisations are clearly very well networked, with multiple connections into and out of their services (although capacity may still be an issue), while others are poorly connected. An interviewee described the referral network as *“not very systematic. It’s informal, based on connections via who people know”*. For example, one Level 1 adviser said they did not make referrals but merely tried to clarify things for users, while another said they had a good network of law centres, legal aid providers, charities doing Level 2 or 3 work, and solicitors willing to do pro bono work where needed. Another explained that, merely to know what all the different projects could help with, *“you sort of need to know one person in each organisation”*.

Several support organisation interviewees emphasised the importance of personal connections within this fragmented advice network. One said they could only get clients taken on if they had a personal relationship with someone in the firm and could phone them directly, rather than through a main reception. They concluded that, *“It’s impossible to get in without that”*. Another had become a trustee in an advice-giving organisation and explained,

“

I try to make an arrangement that we can refer some people to them but they’re also overstretched so have refused some of our referrals. I’m almost at the end of my social capital there. It’s like that, isn’t it? You try to have good relationships with organisations so that they can support you.

On the other hand, more formalised networks could be highly effective. One described the benefits of membership of the borough’s advice forum, which is supported by Advice UK.

“

[It] enables us to refer to the Law Centre and other solicitors. Historically, we were part of other networks that are now gone, so we’re relying more on individual contacts, depending on the issue. There was funding from London Councils and that had a network, a standing committee and then about ten years ago the funding for that went. There was BAN, the Black and Ethnic Minority Advice Network – that’s coming to a halt, but we are in a network with five other west London BME advice organisations – it’s like a mini BAN. It gives us links and networks, and we work with various law centres and solicitors. It works quite seamlessly.

Importantly, however, these networks do not ‘just happen’ without funding to cover the investment of time needed to develop and maintain them, and they atrophy when funding disappears. One adviser explained how a training session run by another organisation had made her *“more efficient in making referrals now I have more knowledge about who and how to refer”*. Another commented that it *“would be useful to have a database [of services], or advisers who will be doing open outreach that you can book”*.

These two issues – the need for direct partnerships or sub-networks and the need for a formalised and accessible database through which advisers can refer – emerged strongly throughout all interview types. A good example of this is the tool developed by a social technology organisation, CAST, and the Cardinal Hume Centre to improve and facilitate referrals. This was specifically for the existing partner organisations, enabling them to see how many referral spaces they had left for the month and

refer directly through the tool. It also ensures that the organisations include all the required information and improves clarity around the referral criteria, so that the Cardinal Hume Centre could spend less time on triaging and more on the resulting casework. Importantly, the evaluation of the project concluded that technology alone is not the solution, but it appeared to be improving outcomes. Although still a work in progress, this is a promising development towards a support structure to build on once partnerships have been developed.

The fragmentation of legal advice services, so that even legal aid organisations tend to offer a limited range of services, is problematic. Advisers found it difficult to refer clients for welfare benefits or housing issues, so clients could not get “*complete advice*” or “*a whole service*”. This can be so time-consuming that it interferes with organisations’ ability to carry out their core work:

“

We’ve just taken on during the pandemic a support worker, because we found ourselves spending so much time dealing with referrals to other law firms for different areas of law so she... helps facilitate those referrals to family solicitors, housing solicitors. It’s a difficult one, because we can only do so much and if we’re spending more time and resources doing that rather than helping existing clients, things don’t equate.

Even for a well-networked organisation, however, the process of taking on new clients can be slow. One noted that although they had succeeded in referring all but one client, it had taken one to five months for most cases to be taken on, with two cases taking seven months before a solicitor could be found. These delays drive some clients to pay for advice which is often poor quality.

Worse, these difficulties in referring seem to have an adverse effect on the effectiveness of systems and rules which should be protective. A support organisation which regularly sees trafficking victims explained that they were not classified as a ‘first responder’ and could not themselves refer clients into the Home Office’s trafficking decision-making mechanism. This meant they had to refer clients to other organisations which have first responder status. They found these organisations were “*overwhelmed and overloaded with cases, so sometimes they have to reject some of our referrals to them, they can’t accept any more*”.

Likewise, the domestic violence provisions of the immigration rules are intended to protect people from remaining trapped in violent relationships which are the basis of their immigration status. The same support worker explained that a client had called the police because of her husband’s violence, and the police had referred her to the Home Office’s domestic violence unit. The Home Office curtailed her visa, which had been valid for more than another year, and gave her three months to apply for ILR. Since she had no money for advice and no visa, she returned to the abusive husband, who had been “*bugging her*” to come back. This meant she no longer met the rules

for ILR as a victim of violence, but the support organisation had been unable to find immigration advice for her and the three-month period would expire in two weeks. The Home Office said the removal of the previous spouse visa could not be reversed. The support worker said,

“

If she doesn't put in her application, she'll be undocumented. ... She's very distressed and getting mental health problems because of this situation she finds herself in and back with the partner, hoping not to experience any more violence.

The difficulty of accessing advice through existing advice networks is, in effect, rationing access to rights and protections which are theoretically in place for victims of violence and exploitation.

Partnership models and embedding advice

Advice appears to be particularly effective when it is embedded, either within other services provided by the same organisation, or in another organisation which has the trust of its members. Advice user interviewees said advice was easiest to access when it was offered through a day centre, a community centre where they already attended other activities or went for food and support, or as an add-on after English classes. For example, Polish rough sleepers whose passports had been retained by the police were unable to apply for settled status and unaware that they needed to do so, until an adviser spoke to them at a day centre they attended. The adviser got their identity documents returned and helped them obtain settled status without them ever proactively having to seek advice. They had also been unable to access other services without their identity documents, so this advice and casework also helped to support them out of sleeping rough. Similarly, another advice user attended a Zoom workshop with a Spanish-speaking lawyer organised by Casa Latina, via the LAWRS, where she was already attending activities. She then made the application in a single afternoon with the help of the LAWRS, which she describes as "*phenomenal*".

These partnerships operate in different ways. Some consist of a direct referral pathway, whereby the referring organisation triages cases and can refer a certain number of cases per week or month. Some organisations work directly with homelessness outreach services or local authorities to take on all referrals of rough sleepers or families who are supported by social services but need resolution of their immigration status. In others, the partnership may be capacity building: one organisation pays another for supervision, thus enabling the paying organisation to undertake casework it could not otherwise do. Others offer second tier advice to health professionals, social workers or those supporting women, or support in the form of training.

A number of organisations were named as doing effective work by directly embedding advice in other organisations and services. Informants explain that this does more than merely provide access at the point of need:

“

They have done good proactive work in communities... around the need for early access to immigration advice and they've got their own in-house advisers now. I think that model of advice and information embedded in the community has to be seen as part of the solution, [which] will reduce some of that pressure at the back end.

A good example of this is a pilot project placing immigration lawyers in schools. Family support workers already employed in the schools are a crucial part of the project, because they tend to have the trust of families at the schools and a knowledge of the particular community. Primary schools are significant because every year they have new cohorts of children reaching the threshold for a long residence application or registration as a citizen, as well as parents who may be undocumented or have NRPF, or families who are unaware that they need to apply for settled status under the EUSS. They may also be accessible to single parents in a way that a drop-in session, where they have to queue from 5am, may not.

When reflecting on their experiences of delivering advice through schools, one organisation suggested that the success of this kind of embedding or outreach depended heavily on having buy-in from the schools, and the schools having knowledge of their families' backgrounds and proactively communicating with them about planned workshop sessions, including talking to them at pick up or drop off times, rather than simply sending an email or letter. This largely determined whether families attended the workshops. Where school staff had little knowledge of the EUSS and did not have the language skills to communicate with the parents who might need it, sessions were very poorly attended. In contrast, *"With the backing of the schools, all the sessions were really successful, with up to 80 parents showing up and we managed to do [EUSS] applications"*.

Other examples involved pairing or networking community organisations that serve a national, religious, ethnic or other group with specialist advice providers so that community groups have referral pathways into specialist advice, and advice providers can tap into the trust already developed with the client group. Religious institutions can be an appropriate venue, with certain caveats:

“

In one Ugandan church, we said bring all your papers, and there were 24 people with the same cut and paste representations from the same Ugandan lawyers. It was that level of malpractice but it would be hard to spot, and it was only because we did this level of triaging in the church. And people were getting asylum cases refused as a result.

The language barrier means that people sometimes get *"ripped off by people in their own communities"* to the extent that one (non-London) law centre found its awareness-raising work was being actively sabotaged by a pastor telling people, in their own language, not to contact the law centre because a network was exploiting them. It follows that care and expert knowledge are required in setting up the partnerships:

“

Some churches would be perfect for it and others would be dreadful, and you have to work out which ones can be trusted, and not the ones that are funded and controlled by a particular family and one of them is a lawyer and is ripping people off.

Language emerges as a very significant barrier, particularly in the advice user interviews, where a number of people described being unable to find or use advice services because of poor English and a lack of information in their own languages. Consequently, many had paid for non-specialist advice in their own language, which often failed to meet their needs. Referral pathways between community groups and advice sub-networks are an important part of the solution, as is the provision of information in different languages and the promotion of community legal literacy.

Bottlenecks and partially-met demand

Many organisations offer one-off advice, with far fewer offering casework such as completion of application forms, writing representations and evidence gathering. Although there is a shortfall in availability of advice, the situation becomes even more acute for casework. In some cases, one-off advice is sufficient to enable a person to address the problem themselves, but in other cases, *"people access advice and then can't follow it up with the application part, which is the very difficult bit"*. This is a capacity issue: as one adviser put it, *"If I filled in the form as well as advising I'd have a one-and-a-half-year backlog"*. The bottleneck arises not only when an advising organisation needs to refer a client onward to a caseworking one, but also within organisations: *"Through the phone line we're still giving what advice we can, but we can't take on any more casework, so that's limiting the assistance"*.

This also arises with applications for ECF where an NGO obtains funding but meets *"another bottleneck"* when it needs to refer the case on to a legal aid provider. One worker explained that,

“

We offer one-off detailed initial advice, then we used to apply for ECF and some people wait for a long time to even have the ECF application sent off. Then they wait even longer to be placed with a provider once ECF is in place. People may be drifting off the advice network because of the long wait.

Fresh claims seem to be particularly susceptible to this problem, since a half-hour initial advice appointment is long enough to establish that there might be a fresh asylum claim to be made, but there is no capacity for an adviser at the appropriate level, or a legal aid provider, to take the client on and further investigate the merits of making a fresh claim. In another example, as a result of outreach in mosques and churches,



People had the advice and knew what they needed to do, but they didn't have the money to go to a solicitor, so in a way they felt even more trapped because they had the information but no money to get casework.

We refer to this as 'partially-met demand', since the demand for advice is met but the demand for resolution of status is not. It is impossible to gauge what proportion of *supply of advice is also unmet demand for casework*. The 'generalist model' of offering advice without casework is cheaper and enables organisations to reach more people, but it means "you get people going round in circles because the case is never resolved in a long-term way". In addition, due to the length of time it takes to resolve immigration cases, six- or twelve-month tranches of funding are not compatible with doing casework.

Due to such problems, some extremely promising capacity-building and partnership work has not been able to reach its full potential. Some legal organisations have worked on raising awareness and building capacity with non-legal organisations so that they can send Pre-Action Protocol letters threatening judicial review proceedings (the PAP Project) or apply for ECF so that they can refer cases on to lawyers with funding in place, but then being frustrated at the next barrier, which is supply. In other words, the capacity of the network of organisations is increased, but this is not matched by capacity at the more specialist end of the work.

Home Office policies and practices feed into this problem of partially-met demand. At present, a person who has no other form of leave may apply as the parent of a child who is British or has leave to remain, or as the partner of a person with leave to remain. If successful, they receive 30 months' leave to remain, on a ten-year route to settlement (or ILR). That means that they make the initial application, then three renewal applications, then an ILR application. People usually need legal assistance to make the initial application, but they also frequently need support to make renewal applications.

These applications also attract large fees: £1,033 per person for the application, plus £624 per person per year for the Immigration Health Surcharge. The ILR application costs £2,039. There is a system of fee waivers for all but the ILR application. However, applying for a fee waiver requires a forensic process of annotating all bank statements and explaining every transaction of more than £30 to demonstrate that the applicant cannot afford the fee. Grants of leave are usually automatically subject to an NRPF condition, so another application has to be made to lift that condition if the person needs access to public funds.

Some organisations prioritise making applications for people who are undocumented, or have no leave to remain, they provide both advice and casework for that stage. Far fewer offer casework for the renewals, so people can often only access advice, then they have to make their own application:



It's not seen as a priority, it's not desperate, people might have accommodation, they might be working, albeit not very well paid – it's not always seen as being as important as someone who has no leave, but it's only a tiny step beyond that. They're unseen at that point. It's not as easy to make a case for it.

This means that some people "*fall off the route to settlement*" and go back to having no leave to remain because they cannot make the renewal application themselves or do not know about the availability of fee waivers. Others get into debt paying the fees and legal costs. For that reason, one organisation has committed to doing renewal applications (including fee waiver applications) for all clients for whom it obtained initial leave, on the basis that it saves repeating the much greater amount of work needed to get leave for those who become undocumented. That, however, is a significant drain on its capacity for representing new clients.

One implication is that it would be useful to increase casework capacity and to improve the pathways to casework via referral networks from those organisations which are currently less well connected. However, given the size of the gulf between demand and supply, there is also a need to try to influence policy to reduce the demands inherent in making renewal applications. For example, granting five years' leave instead of 30 months and/or a five-year route to settlement instead of ten would reduce the number of rounds of applications (potentially including ECF, fee waiver, the renewal itself and lifting the NRPF condition) from five to three or two. As there are currently no fee waivers for ILR applications, those who cannot afford the £2,039 are trapped in an unending cycle of applying every 30 months for further periods of limited leave because they qualify for a fee waiver.

These are forms of leave granted because of a long-term connection to the UK, such as a long-term relationship or parenthood of a child who is British or has leave to remain on the grounds of long residence. Those who 'fall off' the route are likely to receive a new grant of leave, but they return to the start of the ten-year route. The system was described as "*punishing people for the way they arrived*" – something which the government intends to make explicit in the proposed new asylum rules.

An 'extra' referral layer

The traditional model of the legal profession is that solicitors (or other accredited advisers) are client-facing and take work directly from the public, whereas barristers take work by referral from solicitors. The interviews with providers and support organisations indicate that there is now an additional entry layer of referral

organisations without whose intervention or support people have little chance of getting taken on by a legal aid provider. Due to capacity and funding constraints on legal aid lawyers, the referring organisation is often required to do some of the evidence gathering and preparatory work before a case is likely to be taken on.

Support organisations felt that this was the case even for first-time asylum applications, but it is all the more so for fresh claims:

“

When we are referring cases for people who are Appeal Rights Exhausted, we have to do a lot of work to prepare those cases for solicitors, to do the heavy lifting for them, because obviously they have to meet the merits test and it's not so straightforward. With those cases, sometimes lawyers work on them for two years because they're complicated, especially when someone has a history of refusals of their further submissions, then it's really difficult, so we try to help prepare those cases, and with first-time asylum cases it is easier because you don't have all this complex history and previous refusals.

This might include chasing the most basic paperwork for the client, a time-consuming task made more difficult by Home Office practice, but without which there is little prospect of convincing a lawyer to take the case:

“

While they're destitute for years, living on buses and rough sleeping, they have hardly any documents and they often develop serious mental health problems and poor memory, so we make the Subject Access Request to the Home Office, and it's really difficult to do it because the Home Office, even though you ask for full disclosure of documents, you usually don't get it and there are huge delays, so we liaise with lawyers.

Support organisations also play an important role in explaining the process to the client in a way they can understand, because the legal aid providers' resources are so stretched. All of this creates a burden on the resources of the referring organisation:

“

When we're trying to find reps, they need to have had an initial assessment, an initial merits assessment otherwise I can't really sell the case... having an immigration solicitor explore the case in a bit more detail enables us to persuade a solicitor that there are merits to the case... It's a legitimate use of capacity, but it is just another layer of hoops to go through just to do standard stuff.

This particularly applies for clients with mental health difficulties or chaotic lives, who often need the support of a third party to remain engaged with their legal aid provider. The limited capacity in legal aid organisations and the fixed fee model makes it difficult for providers to continue working with clients who *"might not keep appointments"*, whose mental health and ability to engage with the process fluctuate, who struggle to trust a lawyer, whose behaviour is antisocial as a result of trauma or mental health issues, and who might otherwise *"fall out of the advice process"*.

Access restrictions, rationing and triage

All the providers at Levels 2 and 3 who responded have some specific access criteria limiting who can use their services, either because of funding restrictions or the boundaries of their charitable or organisational objectives. Those restrictions include: only families; only those under a certain age; only destitute failed asylum seekers; only those who live, work or study in a particular borough or sector of London; a two-year time limit on using the service; or certain case types only, such as EUSS; unaccompanied children; CoC; or only the initial application for leave, but no renewal applications. Across the UK, more organisations work with refugees and asylum seekers than with other groups of people who have migrated,⁵⁹ possibly because asylum dispersal created obvious bodies of need, though organisational interviewees also note that the OISC qualification for Asylum and Protection Level 1 is easier to pass than the equivalent for Immigration Level 1.

Fewer of the legal aid providers have such restrictions, though some have committed most of their capacity to specific referral pathways. An interviewee explained how this plays out:



Our capacity has grown, but often through particular referral routes. We've got funding from [borough], so we've increased capacity, but often for a very specific group of people. We could do with increasing capacity for the open access side – we struggle to assist people through that. Our waiting list got so much longer, so we had to close it. Through the phone line we're still giving what advice we can, but we can't take on any more casework, so that's limiting the assistance.

Rationing of services was a common theme, with several interviewees saying that they have had to operate a waiting list and others saying they sometimes have to close their waiting lists. This includes a project which applies for ECF on clients' behalf and then refers them on to legal aid providers: it had a six-month waiting list for ECF applications, but then *"had to slow down [making applications] as they can't get the cases taken on"*.

Several organisations allocate supply via a triage system. One organisation accepted referrals into its legal project only via its own destitution team, so other organisations could only refer people via the destitution service to avoid the provider being

59. Migration Exchange, 2020. *Taking Stock and Facing the Future: The Infrastructure and Resources of the UK Migration and Refugee Sector*. Available at: <https://global-dialogue.org/wp-content/uploads/2020/06/MEXJ8179-Full-report-200518-V2.pdf>

overwhelmed. Even so, they could only meet “*about half*” of the demand. Others triage through a combination of their own rationing – by opening their phone line for only two hours per week – and giving their referral partners “*a quota of cases they can refer to us per month*”. One of the referring organisations explained that they use their quota to refer their most complex cases to this specialist provider and “*spread less complex ones among other solicitors*”.

Another organisation, which relies heavily on volunteers, allocates its advice slots as follows:

“

The needs assessments are carried out by our trained, experienced advocacy and casework volunteers, who will complete an online database questionnaire, essentially, with people who come to us. Then [one day a week] there’s a Zoom call that we have open all day, and our volunteers jump in and out of that all day, relaying the situations that people are facing and the advice people require. Then we arrange appointments with immigration advisers, then our advisers write up the case notes and send them back to us, and we forward those to the people they’re giving advice to, and [name] will act on them.

Such triaging clearly plays a vital role in making the best use of limited capacity. There may be scope for exploring whether it can work at a regional or supra-organisational level so that access to specialists and casework is less dependent on where someone enters the advice network. It is equally clear that triaging uses a lot of organisational resources and that it needs to be adequately funded to work properly.

Aside from capacity limits, geographical barriers, and access criteria, particular barriers include language, accessibility of drop ins and digital exclusion. Language is a very significant barrier, cited throughout the advice user, key informant and provider interviews. Language limits access for all organisations except legal aid providers (when interpreters are available) and community groups working with particular language groups. Advice user interviewees described paying for generalist advice from someone who spoke their own language, because they could not access specialist advice. In some cases, a combined lack of language competency, literacy and digital skills means that there is a risk of people not even understanding that they need advice. This further emphasises the importance of outreach partnerships and embedding advice in the community, as an adviser explained:

“

It’s an added level of complexity, unless there’s someone who can intermediate in both language and trust. It works when an immigration adviser goes to the premises of a community organisation and supports people there, in the community space.

The research also supports the need for a range of entry points into the advice network. Drop ins are important (pandemic permitting), both for urgent cases, to ensure the client can be seen in time, and for those who "wouldn't call someone for an appointment, but they would go with a friend to a drop in". However, some advice users explained that they struggled to access drop-in support. As one said,

“

I didn't see anyone because to go to this organisation you have to go there very early in the morning, but I couldn't because I have a young child. So, it was easier for me to do it myself on the internet. So, I call someone who helps translate information from the website but who doesn't give advice. I've never been able to get legal advice over the phone because I don't speak English.

An advice provider made a similar point:

“

We used to open our doors at 10am and start our advice service, but the queue to get in was always full before 7am, so people were queueing overnight occasionally. We had mums with tiny children queueing from 4 or 5am to make sure they were seen.

These barriers make it all the more difficult to estimate unmet demand. One organisation explained that they used to count the number of people who were turned away from their drop in and signposted elsewhere, but they had no way to quantify the number of people who did not come at all due to being unable to join a queue in the early hours of the morning. Similarly, some organisational interviewees note that women in particular do not always show up in the CHAIN statistics on rough sleepers,⁶⁰ as they are more likely to be precariously housed or in an exploitative situation, and to be unseen within homelessness services.

Digital exclusion creates another barrier, which is exacerbated by the pandemic but will not end with it, as more functions move online, and EUSS entitlement is only confirmed digitally. Several organisations emphasised the particular vulnerability of Roma communities to exclusion from their own digital status. Many have neither an email address nor a device or connection on which to access their digital status, do not understand that they will need to upgrade from pre-settled status and do not know how to do so. Some community organisations are working to help their members with digital skills and creating email addresses. Even those with good digital skills may be excluded because of data poverty – the inability to afford mobile data or broadband. The problems are said to be particularly acute also for asylum applicants who have their phones confiscated on arrival and who cannot access the internet in temporary asylum

60. A multi-agency database recording information about people sleeping rough in London, commissioned and funded by the Mayor of London.

accommodation or in the disused military barracks in which they are housed. That said, digital processes also create opportunities, with the potential to reduce geographical disadvantage, to cut travel costs, increase access to interpreters, and improve referral and triaging through the development of software tools or shared dashboards.

The evidence emphasises the importance of open access advice and casework projects, and of creating a range of entry points and routes.

Community legal literacy

The vital importance of community legal literacy cannot be overstated. Misinformation or lack of information prevent people from seeking advice or lead to them into making damaging decisions. One interviewee referred to the *“immigration underground”*, through which people *“hear that this lawyer will get you refugee status, you just have to pay them”*. Another explained that people *“will often trust someone from their own community more than they trust their lawyers”*, so misinformation could spread quickly, even when well-intentioned.

Engagement with community leaders and organisations is important, both *“so they understand those problems around quality of advice, around capacity”* and in order to create partnerships which pair up organisations holding community trust and those holding specialist expertise. Specialist organisations need to develop relationships with organisations that will identify needs as they arise – churches, mosques, health visitors, homelessness agencies and community groups – and develop trust to prevent poor referrals that lead to failure demand. They need to be resourced to do this by funders taking a strategic view that this is important preventative work, while being cognisant that it takes time to develop such relationships.

Organisational interviewees emphasised the importance of reaching people with good quality advice before they *“end up at the mercy of people who take thousands of pounds”*. The biggest risk appears to arise for matters which are outside the scope of legal aid:



In non-asylum stuff, we just see the biggest nightmares ever, through our outreach, of people going to OISC firms within their own communities, doing some of the most shoddy jobs you can imagine, like advising people to make applications they absolutely couldn't succeed in. Recently, I've been working with a family who... have made an EEA application, two human rights applications that couldn't possibly succeed and even a Windrush application, even though none of them are the right age or arrived at the right time. And then you also see people who are encouraged to bring judicial review proceedings [to the High Court] and then they acquire litigation debt, which is then an obstacle to them getting leave to remain ever, until they clear that debt.

Although there are excellent and principled private solicitors and advisers within the sector, interviewees across the advice user, support and provider groups gave examples of advisers exploiting clients' desperation or lack of knowledge. Clients may use private solicitors for various reasons: first, they may be ineligible on the means test, even with very low earnings, and be unable to find a free service with capacity. Second, clients sometimes "*presume that any advice you get free is substandard, so will go for a more expensive but significantly worse solicitor*". Third, people are often referred to an adviser within their own community, be that a church or other religious community, a national or ethnic community, and many interviewees noted that these are often (though, of course, not always) poor quality advisers, and sometimes unregulated and illegal. As one advice user interviewee said, "*Everyone knows someone who is a lawyer and who can definitely get you your papers*". Fourth, clients may receive accurate but unwelcome advice that there is no viable application they can make and may simply continue seeking advice until they meet someone who promises the impossible:



The people who promised too much were seen as good lawyers, at least until the person didn't get what they needed, compared with those who were more realistic.

With the exception of the first point above, all of these could at least be partially addressed through enhancing community legal literacy, improving understanding of the legal aid system, the advice NGO sector, sources of advice and how the immigration legal system works, and clarifying the risks inherent in making the wrong application.

Some organisations are trying to formalise this by, for example, training parents to support other parents at primary schools, training volunteers who have been through the asylum process to support other people through it, or running information workshops with particular groups or on particular issues, such as the EUSS or rights around access to housing and education. An important part of that is to understand, as an interviewee put it, "*where are people before that crisis hits?*" and whether they can be reached with early advice before a problem escalates.

It is important to link specialist advice and casework capacity with community organisations and settings where trust is established. This might involve information drop-in services and workshops which would also "*manage and triage the demand*", and partnerships through which to gain understanding of unseen groups and finding ways to "*more proactively give information rather than wait for them to land at our door*". Specialist hubs like the EU Hub set up by the GLA could be a model for this kind of strategic approach, by offering both direct information to the public and umbrella support for professionals working with the groups in question.

Funding models

As might be expected from the number and range of organisations, a variety of funding models are in use in London.

OISC Level 1

Level 1 services are overwhelmingly funded through grants and donations which are not primarily focused on legal advice, with the exception of EUSS-only advisers. For example, one community centre, which focuses on a particular national group, relies on grant funding, with no specific funding for the legal part of its work. Advice at this level is an add-on, with typically one or two part-time advisers in a community centre or, within a generalist advice centre, one or more advisers holding basic OISC-accreditation to cover immigration queries. In several cases, the advisers are volunteers. Only one out of 11 respondent organisations expressed interest in having accreditation at a higher level or had caseworkers seeking to move up to Level 2. One explained that it would be more efficient either to have funding to buy in advice for their users from a more specialist organisation or to have effective referral networks in place for housing, immigration or welfare benefits law, for example, rather than seek to have all specialisms in-house.

OISC Levels 2 and 3

For the most part, Level 2 and 3 organisations operate on multiple funding streams, as do the not-for-profit organisations doing legal aid work. They typically listed at least three different grants or funding bodies which had either contributed to core funding or funded specific projects. These ranged from the Lottery and large grant-making trusts to very small charitable grants, contractual arrangements with local authorities or other statutory bodies, and even *"a group of nuns who sold their building and use the money for good causes"*. Several organisations highlight the difficulties in managing these streams:



Even in [Borough], we've got five contracts, [including] with social services, rough sleepers, homelessness and the hospital, and they all require slightly different reporting. The contracts often oblige us to get involved in a whole new raft of meetings. We have the sector-wide meetings, which you want to go to anyway, but, for example, if [Borough 1] have a meeting on rough sleepers, we have to be there, and then if [Borough 2] have a meeting on strategy for migrants, we have to be there too, and if [Borough 3] is targeting something else, so providing more services and more contracts obliges us to go to more meetings.

Level 3 organisations without legal aid contracts emphasise that a lot can be achieved if disbursements like expert reports and interpreters are not needed, because the work could be done much more efficiently without the administrative demands of a legal aid contract.

Funding that allowed organisations to circumvent legal aid would not solve every client's case, but it would allow for time-effective work. This could also include funding for interpreters and expert evidence in cases which would not in any event qualify for legal aid.⁶¹

Legal aid providers

For legal aid providers, the private firms rely on a mix of legal aid and private income, but some also have some level of local authority funding. Winning costs against the Home Office in successful judicial review cases is a vitally important income source for most of the private and legal aid providers who responded, since these are paid at a higher rate than legal aid. The consequence is that some providers are shifting ever more of their capacity into immigration-related public law work such as unlawful detention, preventing removals and policy challenges, thus leaving even less capacity for fixed fee asylum cases and others eligible for immigration legal aid.

However, that capacity shift also drives a new gap in salaries. In private firms, a caseworker's salary is generally linked to their billing. Despite the financial risk inherent in a lot of their work, those doing public law work bring in a higher rate of income to the firm and can therefore be paid a higher salary. A solicitor explained that, although pay might not be a main motivating factor for aspiring lawyers in this field, it is much easier to live on the higher pay for a public law caseworker. Public law caseworkers also tend to be supervised to work on a more senior lawyer's case, whereas even newly-qualified immigration caseworkers tend to be left to conduct fixed fee cases alone, because the fee simply will not cover a similar (or adequate) level of supervision, thus creating a threat to quality in immigration and asylum work.

All those issues appear to be exacerbated by the increasing practice of having solicitors operate as consultants so that, like barristers, they earn only what they have billed themselves, less a percentage which goes to the firm. This means *more than getting told off for missing a [billing] target, you don't get any food on the table*. That fee structure means that the financial pressures on a firm become very sharply focused at the individual level.

A small number of the not-for-profit organisations also offer low-cost private services, in addition to their legal aid work. These are rarely self-sufficient and grant funding is required to supplement the income. Several of the lawyers who do private work explained that they tend to do only, or primarily, lower cost private work or to offer instalment payments. One said they could not think of a time a client has paid more than £2,000 in total, including for complex case preparation. Grant-funded supplements for a low-cost fee-paying service could also be considered for the most reputable private firms, since there is insufficient capacity for those who narrowly miss out on legal aid because of their income level or are outside the scope of such support.

61. At the time of writing, the government is considering making changes to judicial review, including procedure and cost recovery, but it is not yet clear what changes will be made.

Cash flow is an important element of legal aid funding. Until October 2020, all casework was paid for in arrears, after case closure, but asylum and complex immigration cases may last for years. This has caused problems countrywide for legal aid providers, as cash flow, more than the low fees, has caused many providers to close. Cash flow inhibits the opening of new offices, or even the creation of new caseworker posts, because the break-even time is so long. As a response to most asylum cases being halted by the pandemic, providers have been permitted to claim payment more promptly, but it is not clear whether the change is intended to be permanent. Stakeholders should consider campaigning for the change to be permanent. If, however, the system reverts to payment on case closure, it is necessary to consider frontloading any grant-funding for a new legal aid caseworker, office or organisation. As one respondent put it, based on their own experience,

“

That is the only sustainable way to do this, if funders are interested. The way we've got funding for the caseworkers is that the funder pays the full salary cost for year one and then it tapers down over three or four years, so that it gives time for that person to be able to generate legal aid income that stops [us] having to go into the red, so we've done that on a pilot basis to see how it works. I can't see how else you would do it. It helps a little to deal with the issue that funders only ever want to fund you for three years, but your clients need that service forever. No one gets ILR or citizenship in three years from being undocumented, unless they were a child born here who has reached ten, but all of those children have got families who are as undocumented as they are, so resolving one out of a family of five or six is neither here nor there in terms of getting them access to services.

Commercial pro bono

One other funding model that requires discussion is commercial pro bono, where a private firm commits to projects such as partnerships with Law Centres, universities or the Kids In Need of legal Defence (KIND) collaboration to undertake often quite specific work, such as registration of children as British citizens, applying for ECF before referral to a legal aid provider or undertaking research for fresh claims.⁶² As a pro bono lawyer from a large private firm explained,

“

We are a cost to the business [but] pro bono makes business sense, it attracts candidates, clients like it, but it also really increases lawyer retention at the firm – people want to specialise in pro bono.

62. For more detail on this model, see Ceri Hutton and Jane Harris, 2020. *Methods of Increasing the Capacity of Immigration Advice Provision* (Paul Hamlyn Foundation and Trust for London). Available at: <https://www.phf.org.uk/publications/methods-of-increasing-the-capacity-of-immigration-advice-provision/>

It is unlikely that these private firms themselves would require grant funding, but there may be situations where other organisations require funding to explore creating partnerships which would potentially expand casework capacity.

Learning for funders

The key themes around funding are that both obtaining and managing grants demands considerable management resources, and that the stop-start nature of funding creates problems, to the extent of sometimes causing the closure of effective projects.

One organisation was expecting to stop providing both its free casework and its low-cost private service because it had lost its funding and failed to find a replacement source, so would revert to Level 1 work only. Another "eventually had to start charging because of the loss of funding". The uncertainty of future funding causes management difficulties:



I have six or seven funding streams all ending in March and other long-term ones. [One of them] may become longer term, and we have other streams we're developing, and some of them we ask a partner to bid for rather than us. I've done I think 37 funding applications in eight months, with a 50 per cent success rate. It is a lot of different grants... And I need to retain staff, because the funding ends in March, and by the time I talk to [the funders] in December, going into January, when are they going to tell us? I still have to issue statutory redundancy notices to my staff, even if their contract was only for six months.

Where projects are aimed at co-ordination or networking, the impact of a loss of funding can be wider than just the organisation or community itself. Multiple organisations had contributed to a model on trafficking that "potentially could get rolled out nationally, around collaboration but the coordinator's funding was ending, which another organisation described as a tragedy".

Since some funding streams are limited to specific beneficiary categories, allocating clients to projects within the organisation, while avoiding any double funding, takes up management resources. For contracts, organisations also suggested that consolidation of multiple contracts would help. They also believed that it would be useful to receive funding for longer periods of time, and to be able to obtain funding for *what works* rather than changing successful projects for the sake of innovation. Streamlining or standardising grantees' reporting requirements would support the sector and it would be useful for organisations to be able to obtain funding for something relatively *unglamorous* like an administrator post.⁶³

We recognise, however, that making longer-term grants ties up a significant proportion of funders' resources for longer periods of time, thus making it more difficult to respond

63. As suggested in Ceri Hutton and Jane Harris, 2020. *Methods of Increasing the Capacity of Immigration Advice Provision* (Paul Hamlyn Foundation and Trust for London). Available at: <https://www.phf.org.uk/publications/methods-of-increasing-the-capacity-of-immigration-advice-provision/>

to emerging needs, and that funders would want to balance these issues. Collaborative schemes like the Justice Together Initiative, KIND UK and the Strategic Litigation Fund offer opportunities to address both the duration of grants and the streamlining of reporting requirements, while also taking a strategic approach to meeting need. We recommend therefore that funders consider participating in and developing these collaborations.

None of the organisational interviewees mentioned working capital loans or social investment funding, or said they would consider applying for any form of loan. In general, organisations at all levels of advice did not see loans as an option and did not feel that they could afford to incur any debt, particularly given the uncertainty of future income. Funders who offer, or are considering offering, such loans may benefit from working closely with organisations to explore the possibilities around social investment funding and understand what support organisations would need in order to use it.

Learning for local authorities

Several of the organisations which participated have (or have had) funding from borough councils, either alone or in consortia with other groups. Examples include funding to identify and support people sleeping rough who have immigration problems, a general immigration advice line or drop in for residents and workers within a particular borough, funding for a community centre or similar resource which includes immigration advice within its services, or funding for a local advice network.

For local authorities, funding immigration advice creates a referral pathway so that there are routes into advice for residents of the borough who may originally present with a housing, financial or health need that is immigration-related at its root. Place-based networks are important to this, as they link community groups and other services with specialist immigration advice providers, but these networks need funding, especially if they are to include smaller or less well-funded community organisations, or legal aid providers with tight financial margins. Having such referral pathways would help local authorities to address the problem of exploitation by unregulated immigration advisers, who can exacerbate people's immigration problems and result in poverty, debt and other needs.

Funding immigration advice can often have financial advantages. In one example, a solicitor described how the local authority was paying them privately to represent a young person who had grown up in that borough's care and was facing deportation proceedings because the borough had not taken action to regularise his status when he was a child. There are, however, recent examples of (non-local authority) funding for immigration lawyers to review the situations of children in care to identify those who might need immigration casework. This proactive approach is likely to be far less costly and cause less distress than the remedial approach needed when a borough omits to regularise the status of a child in its care.

A financial case can also be made for funding immigration advice for a CoC or regularisation of status application where people have NRPf and have to rely on

local authority support under Section 17 of the Children Act (1989) or when the local authority has to fund refuge places. As one organisational interviewee put it, *"If they're giving a lot of people Section 17 support, it would be better to pay for immigration advice instead of keeping bouncing people out to different sources of free advice"*.

Funding immigration advice enables local authorities to take a strategic approach to understanding and meeting the need within their borough. It is very clear that, especially since the cuts to legal aid in 2012, the market will not meet demand, and the costs (both human and financial) of unmet demand will often be shifted onto local government. We understand that the London Borough of Southwark has appointed a cabinet lead for undocumented people, in response to the relatively high number of undocumented people resident within the borough. Emerging evidence from the rest of the UK indicates that such need-driven strategic approaches within a geographical area are an effective (and cost effective) way of supporting people in need.

Local authorities are encouraged to consider consortium funding in two ways: first, having identified a need within the borough, it may be that a consortium of organisations, rather than a single organisation, is best placed to meet that demand in a holistic way. Second, it is likely to be most effective to share some services with neighbouring boroughs. Rather than each borough having perhaps multiple contracts with advice organisations, it may be useful to consider joint funding of services, either with neighbouring boroughs or with other funders. In some cases, one organisation has multiple contracts with different departments in a single local authority, and these could potentially be consolidated to reduce the transaction costs for both parties and streamline the organisation's reporting obligations, with the additional benefit of making services more holistic. Likewise, when multiple authorities jointly fund a service, the reporting requirements can be streamlined.

Joint funding with other funders may enable place-based provision to be combined with open access provision; a model which several boroughs have invested in, to good effect. Through these arrangements, local authorities can include provision for training their own staff to better understand how to make referrals, or who to signpost, into the service, thus avoiding wasted effort on all sides dealing with ineffective referrals. These approaches appear to offer genuine gains in capacity and the creation of holistic and co-located services.

Funding chargeable applications

The research team was asked to explore how chargeable applications are being funded. A number of the advice user interviewees had benefited from fee waivers obtained for them by organisations. One said her church had paid the fee for one of her applications, but that she could not ask them to pay the next. Several had borrowed money to pay application fees, some more than once, and support organisations and providers gave examples of clients who were still paying off debts from their previous renewal when they needed to do the next one.

The providers and organisations interviewed were largely making fee waiver applications for those they worked with, or advising them how to make fee waiver applications. Advisers said that clients were often able to do the applications

themselves once given advice, though this is not always the case. One advice user interviewee said she had been given advice on how to apply for a fee waiver, but she had *panicked* about managing to do it herself in the time available and, as free casework was not available, had gone back to a private solicitor who had helped her before and who accepted payment of the legal fees in instalments. Advice users sometimes said they had not been told about fee waivers or, in one case, had been *discouraged* from applying, but it was not clear whether these individuals could have qualified for fee waivers or not. Like applications for a CoC, fee waiver applications were said to have become easier since the pandemic and a judicial review challenge in May 2020.⁶⁴

Until March 2021, fee waivers only applied to certain applications. There are no fee waivers for applications for ILR, so some people stay in the 30-month cycle for far more than ten years. One advice user interviewee could not qualify for a waiver because the application had to be made from outside the UK, so they borrowed money from a family friend to pay the fee. They subsequently joined the successful litigation which challenged that exclusion. Similarly, fee waivers did not apply (at the time of the fieldwork) to visa applications from outside the UK⁶⁵ or to applications to register a child as British,⁶⁶ yet the overwhelming importance of making the application means parents often get into debt to make the application, as a solicitor described:

“

The number of women with kids who are now coming up to ten, working stupid hours for stupid pay in care work or cleaning in hospitals and expected to pay huge amounts. They'll pay more for that application than they'll get paid in a few months' work, including the Immigration Health Surcharge for a two-and-a-half-year extension, and then a huge whack for settlement. People who clean the hospitals... still have to pay the surcharge because they're not classed as NHS.

Despite years of campaigning on these issues, in each case it was a judicial review application which brought about change, thus emphasising the great importance of strategic litigation alongside data collection and lobbying.

Even when they are available, applying for fee waivers can be time-consuming, depending on the client's situation. One caseworker explained that fee waivers effectively doubled his workload, because each individual renewal of leave generated two applications. The fee waiver application demands:

“

going through bank statements, highlighting, annotating all transactions over £30 on the bank account, taking instructions about what they've been spending their money on, accounting for every little bit of money coming in.

64. *R (Dzineku-Liggison) v Secretary of State for the Home Department* [2020] UKUT 222 (IAC). Available at: <https://www.bailii.org/uk/cases/UKUT/IAC/2020/222.html>

65. The Home Office conceded a challenge by JCWI in March 2021 on this issue and will amend its guidance: see <https://www.freemovement.org.uk/policy-on-fee-waivers-for-entry-clearance-is-unlawful-home-office-concedes/>

66. *R (Project for the Registration of Children As British Citizens & Anor) v Secretary of State for the Home Department* [2021] EWCA Civ 193. Available at: <https://www.bailii.org/ew/cases/EWCA/Civ/2021/193.html>

When the client is a single parent receiving social services support and without bank accounts, an adviser said they can complete an application in an hour. Where the client is a family, perhaps with *"multiple accounts, savings accounts, credit cards, post office account, child savings and everything, receiving benefits, working part time or on a zero-hour contract, it could take up to ten hours on some, easily"*.

Some organisations were offering a low-fee service where they would apply for both the fee waiver and renewal, charging £325 for both. Set against Home Office fees of more than £10,000 for a couple with two or three children, many working families could afford the organisation's charges but not the Home Office fees. Another, however, had paid £1,200 to a private solicitor to make the fee waiver application. A solicitor explained that, if the client qualified for ECF, making the fee waiver application increased the chance that the overall case would reach the threshold (triple the fixed fee) to escape the fixed fee and be paid at hourly rates. In that way, renewal applications could be financially viable, but that placed heavy demands on capacity.

“

I have done it in a number of cases because the fixed fee there [on ECF] is £234, so it's still not easy, but when you're completing an application for one lead applicant and five dependents, trust me, it takes the whole day.

However, like ECF, it may be that the early high rate of refusals for an onerous application process has created an expectation among many in the sector that there is no point in making fee waiver applications. As one adviser described it,

“

It used to be almost an exercise in futility – you could have the most exceptional circumstances imaginable, and it would take months to deal with them, but they'd still come back with a “no”.

This may therefore be an area ripe for an information campaign to let advisers know that the landscape has changed, or for encouraging partnerships between legal aid, private and voluntary sector organisations. Community legal education and literacy campaigns could also increase applicants' knowledge about fee waivers and perhaps help them to apply; this is vital, because it might prevent some people 'falling off' the route to settlement. An interest-free loan scheme might also support some people to escape the 30-month cycle and obtain ILR when they are entitled to it but cannot afford the application.

The profession: recruitment, training, supervision and registration

The current recruitment crisis in the immigration legal profession appears to be country-wide and at all levels, from solicitors and supervising caseworkers to Level 2. The only exception is for new graduates at entry level. This had already been identified in areas of advice desert, but it was a surprise to learn the extent of it in London. With 40 per cent of the legal aid provider offices in England and Wales, and 42 per cent of all the OISC Level 3 providers in mainland Britain, it might be expected that the capital would have numerous qualified and experienced caseworkers and lawyers available for recruitment. Yet a majority of respondents who have tried to recruit at OISC Level 2 or above (apart from the private-only firms) have found it difficult to recruit qualified staff. This amounts to a serious threat in the sector.

One legal aid provider said their firm was "*haemorrhaging staff*" it could not replace; another said it had been *trying for years* but could not find a solicitor of good enough quality, concluding that this may have been because they were in an outer London borough. It is easier to recruit graduates and train them, if the organisation is large enough to do so, than to find qualified staff, but most felt this was unaffordable. Even a very highly regarded NGO described recruitment of qualified staff as "*painful*". At legal aid and Levels 2 and 3, some organisations speculated that the low salaries they could offer might be a factor in the difficulties recruiting in London, with part-time roles said to be especially difficult to fill. As one explained,

“

I have to say in June it was surprisingly easy to recruit, probably because a lot of people were furloughed or out of a job during that time, so there were a lot of great candidates that applied. Now we're recruiting three more people and it's been really, really difficult. We want ideally OISC 3, but 2 at least, and very few have applied.

Five of the 23 provider interviewees said they personally were working part-time jobs in at least one other organisation; this included one person doing legal aid work. Two were in the process of leaving one or even two part-time jobs to go full-time in one of their existing jobs, as a result of new funding, and at least one of these organisations was struggling to recruit a replacement. Two other organisations had begun employing people who had previously been volunteers, representing a genuine increase in capacity, and others had been able to increase the number of days a person could work. Nevertheless, this raises the problem that, without strategic intervention in training and supervision, new grant making only shuffles the existing capacity around, without actually increasing it in the sector as a whole.

It follows that training and supervision must be a core part of any strategic efforts to support the sector. The recruitment and training crisis arose after the closure

of Refugee and Migrant Justice (formerly the Refugee Legal Centre (RLC)) and Immigration Advisory Service (IAS), whose training programmes amounted to a sector-wide service, the loss of which is significant: A lot of them started in IAS or RLC, and it was the sort of place, an incubator and there are no incubators anymore. The training included supervision for new recruits after they had passed their accreditation exams by working within a peer group of new and more experienced staff. This was a significant cost to those organisations, particularly given that, once trained, many staff moved to other organisations, so it operated as a resource for the entire sector.

A further problem is that organisations find that funders or local authorities often want them to have fully qualified staff in post from the start of a project or contract rather than, for example, one experienced person and two less experienced workers who will train through the project. In that way, funding adversely affects their ability to train and develop new workers into the sector.

Several organisations cited Refugee Action's Frontline Immigration Advice Project (FIAP) as a successful initiative helping organisations to set up an in-house advice service at Level 1 or 2 (as does the Hutton and Harris typology). FIAP offers training, support with registration, and ongoing peer group support. Interviewees noted that the process of registering an organisation at OISC Level 1 is not particularly onerous for those which already have an advice quality mark, but it may be more so for new entrants to the overall advice sector. Another much-praised training, supervision and capacity-building initiative is Deighton Pierce Glynn's PAP Project,⁶⁷ which offers frontline workers training and support to write Pre-Action Protocol letters challenging a range of unlawful decisions by public authorities, including several immigration-related issues. Deighton Pierce Glynn's solicitors supervise and check all pre-action letters to ensure they are legally correct before they are sent out, and those which achieve the required response do not then need legal aid capacity.

Organisations are wary of incurring the costs of training people who might then leave, meaning there is a need to shift the costs of training away from individual organisations and to create a shared infrastructure for getting individuals trained, accredited and supervised as a resource for the sector. Importantly, however, this does not mean moving all organisations up to a higher level. It may be helpful to distinguish between horizontal and vertical capacity building, where the latter means increasing the OISC level of an organisation, while horizontal capacity building refers to equipping the organisation or the sector as a whole to do more of the same.

Supervision capacity is limited, but it is impossible to replenish the profession without it. Funders and advisers therefore need to think about creative ways of deploying and increasing supervision capacity through, for example, sharing or seconding supervisors, grants to pay for supervision from another organisation, grants to top up salary offers in order to recruit supervisors or self-supervising solicitors who would then be in a position to supervise trainees.

Consideration should be given to means of creating a sector-wide training and supervision infrastructure; something like a College of Migration Law. This depopulation of the sector is the most urgent issue on the supply side.

67. PAP Project, n.d. *Home page*. Available at: <https://pollyglynn1.wixsite.com/paps>

The impact of Covid

The Covid-19 pandemic and successive lockdowns have had a range of effects on both users' needs (demand) and providers' ability to meet them (supply). Positive procedural changes include the lifting of certain barriers: applicants no longer need to go to Liverpool in person to submit a fresh protection claim, but they can submit the claim by email instead; likewise, the Home Office now sends decision letters by email instead of post, while other documents can now be emailed instead of faxing them to the Home Office or Tribunal. Applications to lift NRPF conditions were said to have been granted much more promptly, though the need was also more urgent. Lines of communication have been more open, with the Home Office having "set up email addresses" and its caseworkers emailing representatives to ask for further information when needed. Provider interviewees felt that both the Home Office and Tribunal had "become a bit more personal, using email more". These pragmatic improvements should be maintained, since they appear to make the system more functional.

Demand has been reshaped by the use of hotels for newly arrived asylum applicants receiving asylum accommodation and the Everyone In scheme for street homeless people. The latter has brought a number of people into the advice network who may have been outside it for a long time or have never sought advice. Lack of immigration status or access to public funds restricts the options for moving someone on from emergency accommodation. A number of organisations have received new funding for outreach work in partnership with local authorities or other organisations to meet this need. There has been greater demand for food banks, mental health support and other welfare needs which migrant support and advice organisations were addressing before the pandemic, but which are harder to deliver during the pandemic.

However, while some services have received new funding, the Home Office's pause in asylum interviewing caused particular problems for some legal aid providers before the October 2020 amendments to the payment regime:



Recently they have made three people redundant here, because... if there are no decisions, you can't bill the file. You can have 200 asylum cases pending and they're all in your home waiting for a decision. Since March, I've received probably five decisions, six decisions. And that's all I can bill. It doesn't matter how many I take on. Just one appeal hearing I've had and that was on 1 December. Since February, just one appeal hearing.

This applies throughout the UK, not only in London, and it has made legal aid provision more precarious. Uncertainty over how long the amendment to the fee regime will last means legal aid providers cannot plan ahead.

Perhaps the most significant development is remote working. This has the potential advantage of making geography less important and making outreach into advice

desert areas easier. However, it has caused difficulties for organisations whose model revolves around people physically attending for other activities and accessing advice in person or coming via drop ins. Advisers also said it is difficult to work with some clients remotely. One gave an example of the difficulties of *"trying to build trust over the phone"*.

“

One client, we spoke to him for an assessment, then he spoke to the barrister, so there were two quite long calls, and it looked like there was not really much in terms of an application. And then we went in person to see him and it was a completely different conversation and now we're referring him into the NRM. It takes time, you need trust, for disclosure, especially if someone is a victim of trafficking and they don't disclose or self-identify.

Several described the adverse impact of telephone advice on rapport with the client, their concentration, the effectiveness of communication through body language and the time it took to deal with issues. Remote interpretation was more difficult, though it saved money on interpreter travel. Advisers generally agreed that, only after a first meeting, and for fairly self-contained issues, a remote conversation would be adequate, but many organisations relied on clients attending regularly for other services, after which the caseworker could spend some time with them. Remote working is less appropriate for initial asylum or trafficking cases, or for traumatised clients, and inappropriate for children. As one provider interviewee said,

“

I think telephone advice is the worst – people are in difficult situations and having to expose their souls over the phone and tell their story like that is awful. I need to be in a room with them and they need to feel supported. I don't think it's appropriate to do it remotely.

On the other hand, it could be effective for fresh asylum claims where clients have been in the UK for longer and where provision is scarce.

It is too early to tell what the long-term effects of the pandemic will be. The best responses are likely to be: 1) actions to preserve services and organisations whose survival is threatened, which is likely to include many legal aid providers; 2) actions to support the development of innovations which were driven by the pandemic and have the potential to improve provision; 3) maintaining funding which was initially given as a Covid emergency response, where this enables organisations to retain caseworkers they took on and trained during the pandemic; 4) seeking to influence the Home Office, Tribunals Service and the LAA to retain adaptations which made the system more functional during the pandemic.

Conclusions

The overall impression from all the data is that the right *kinds* of advice exist within London, and to a much greater extent than elsewhere in England and Wales, but that there is “*an overwhelming gap*” between need and capacity or supply. Certain types of case experience a greater capacity gap than others, including fresh asylum claims, refugee family reunion, Article 8 cases and deportation. Equally, certain groups of people face greater barriers in accessing the advice that is available, including due to trust, language, literacy, digital literacy, and physical or geographical accessibility of services issues. It is a consistent theme that accessibility needs strategic attention as much as demand and supply: it is necessary to increase supply but, at the same time, to take a proactive approach to widening accessibility of advice.

There is not enough capacity for advice, with even greater shortages in capacity for casework or representation, and there is not enough mental health support, housing support, and so on, to help those in need to find legal support and to remain engaged with it. There needs to be a focus on expanding casework capacity, including legal aid capacity, to ease the bottleneck between advice and casework. These capacity gaps cannot be filled by “*a few extra caseworkers*” but only through strategic infrastructural change on the supply side, and policy reforms to reduce the levels of demand and need. Unfortunately, the UK government’s current proposals for immigration and asylum reforms appear to be aimed in the opposite direction, towards making the system more dysfunctional and creating more need for legal advice, while seeking to diminish access to judicial review. Perhaps that is because of some of the important defeats of its unlawful practices discussed in the body of this report.

On the supply side, **there is a recruitment and retention crisis** for workers at all levels above OISC Level 1, so new funding does not always increase capacity in the sector, but merely shifts it from one organisation to another. This is exacerbated by funding or contracts which require organisations to have fully-qualified staff in post from the outset, rather than building in time and money for training. Training has financial, time and supervision costs, and many organisations consider it unaffordable, particularly given that these staff, once trained, become so valuable to the rest of the sector.

Action needs to be taken urgently to repopulate the sector, including through funding in a way which means new staff are trained into the sector, at the sector’s expense, rather than into an organisation, at the organisation’s expense. Much more intervention is needed to replace the training programmes lost to the sector when Refugee and Migrant Justice and Immigration Advisory Service closed, and it is increasingly clear that it will not ‘just happen’ without investment. There is a need for strategic intervention in the infrastructure of recruitment, training, retention and supervision which explores ways of sharing scarce supervisory resources and creating peer groups.

Advice is effective when specialist expertise is embedded in other settings which have the trust of specific communities. This might be through outreach, for example where lawyers provide workshops, advice, and application support in schools in collaboration with family support workers or others in the school who have the trust

of the community. Outreach has also worked well where caseworkers proactively approached clients in homelessness shelters, or specialist advice was made available within the context of social activities. The advice user interviews emphasise the importance of having a wide variety of entry points, including both drop in and outreach.

Networks and partnerships also emerged as effective ways of providing advice, so that a Level 1 adviser in a community centre, for example, had pathways through which to refer those who needed more specialist advice. There are examples of this working well, pairing community trust with specialist expertise, but other examples show advice services being effectively a "dead end", because they had nowhere to refer their clients. Such networks depend on effective triage, so the referring organisation knows which clients to refer to which specialist partner to make best use of casework capacity. The partnership model facilitates the development of the knowledge and skills needed for effective triage.

However, networks and partnerships do not arise by themselves. **Investment is needed to build and maintain the network**, and develop the knowledge and capacity to make them work. One successful network had effectively stopped operating because its funding had stopped, and funding losses within organisations meant some no longer had the capacity to participate in local networks.

Related to networks and partnerships, community legal literacy has an important part to play in ensuring people understand when they need to seek immigration advice, where to obtain reputable advice, what is available for free, and how to avoid advisers, whether well-meaning or exploitative, who might cause harm.

A truly strategic intervention in the sector will need to combine **service delivery, infrastructural reinforcement, data collection** and **policy influencing**. As has been argued throughout, the gap between need and supply is so large that merely funding service delivery will not suffice. In both the immigration system and in legal aid, policy changes should be considered that would reduce the overall need by cutting the number of applications people have to make and by making submission process easier, within a less hostile environment.

The 'Demand' section demonstrates that there are gaps in the data, particularly around unmet demand, yet the report has made clear that organisations do not have the capacity to collect that data without separate resources. The organisations working on service delivery may or may not be the best placed to collect such data, and creative solutions should be explored. Data collection should be resourced in such a way as to avoid creating another managerial burden on organisations and used to inform policy influencing work.

On the issue of funding, although grants and contracts are the lifeblood of organisations, funding causes a number of difficulties. Managing multiple grants, all with different reporting requirements and different end dates, creates an enormous burden on managers and administrators. The short duration of some funding means constant instability, with service delivery staff uncertain of how long their posts will last and management spending inordinate time on non-core functions, such as fundraising, dealing with redundancy notices and implementing project closures. The access

restrictions on some projects also create an administrative burden around fitting clients to funding, unlike where funding is unrestricted or open access. Both provider and advice user interviewees were frustrated by the closure of projects, or changes in their criteria, which meant they could no longer help with the same kinds of cases as previously. **There is a need for sustainable funding of projects that work**, without the requirement for constant innovation where needs have not changed.

Finally, there are pervasive systemic issues around race and class. Clearly, our 64 advice user interviews do not amount to a representative sample of all those in need of immigration advice in London, and we cannot draw robust conclusions about the characteristics of all those who need such advice there. However, it is abundantly clear (and perhaps also intuitive) that **the greatest impact is on the poorest, both from the shortage of free advice and from the high fees demanded for immigration and nationality applications**. Poverty forces them into irregular status or longer and more expensive routes to settlement, or keeps families separated because they cannot meet the minimum income requirement for spouse visas. These consequences of poverty further exacerbate poverty. Other research shows that women, especially single mothers, and children are disproportionately affected by some of these provisions, especially NRP conditions.⁶⁸

It should also be uncontroversial to state that racial discrimination underpins the immigration system and has done so since the Commonwealth Immigrants Acts 1962 and 1968 introduced provisions which restricted Black and Asian migration while protecting White migration.⁶⁹ More recently, algorithms used in immigration control perpetuate the conscious and unconscious biases of human decision makers. Hostile environment policies, having outsourced immigration control to members of the public, have been found to cause discrimination where it would not otherwise have occurred,⁷⁰ and triggered what became known as the Windrush scandal, where long-term residents were treated as illegal immigrants.⁷¹ Although European nationals featured among our advice user interviewees, the majority of those were dual nationals who also held a non-EU nationality of an African or South American country. Much more needs to be done to remove racial and class-based discrimination from the UK immigration system and to stop the immigration system from operating as a driver of poverty among already racialised and minoritised people.

68. Jonathan Price and Sarah Spencer, 2015. *Safeguarding Children from Destitution: Local Authority Responses to Families with 'No Recourse to Public Funds'* (COMPAS). Available at: https://www.nuffieldfoundation.org/sites/default/files/files/PR-2015-No_Recourse_Public_Funds_LAs.pdf

69. For further reading see: Colin Yeo, 2020. *Welcome to Britain: Fixing Our Broken Immigration System* (Biteback Publishing); Bridget Anderson, 2013. *Us and Them: The Dangerous Politics of Immigration Control* (Oxford University Press); Frances Webber, 2012. *Borderline Justice: The Fight for Refugee and Migrant Rights* (Pluto Press).

70. R (Joint Council for the Welfare of Immigrants) v Secretary of State for the Home Department [2020] EWCA Civ 542. Available at: <https://www.bailii.org/ew/cases/EWCA/Civ/2020/542.html>.

71. UK Government, 2018. *Windrush Lessons Learned Review by Wendy Williams*. Available at: <https://www.gov.uk/government/publications/windrush-lessons-learned-review>

Appendices

Appendix 1: Research Questions

- 1) **What is the scale of immigration and asylum advice provision in London at OISC Levels 1, 2 and 3, and provided by legal aid providers?**
 - a. How is this distributed across the city?
 - b. What is the number of providers (organisations and individuals within these) and the scale of provision (e.g. the number of matter starts)?
 - c. To what extent are providers working remotely to both support people within and outside London, and what proportion of cases does that represent?
 - d. To what extent has the scale of provision changed, or is likely to change in the future, as a result of the coronavirus pandemic or other contextual issues?
 - e. What is the scale of immigration and asylum advice provision to meet different types of need within London?

 - 2) **What are the characteristics of the identified immigration and asylum advice providers in London (focusing on legal aid providers and those providing advice at OISC Levels 2 and 3) and their relationships with their funders, clients and peers?**
 - a. What is the profile of organisations that are providing immigration and asylum advice (e.g. MPs' offices, private practice, university law clinics)?
 - b. What type of immigration and asylum advice is provided, e.g. asylum, human rights claims and/or specialisms such as trafficking or domestic violence rule?
 - c. What are the different methods of delivering immigration and asylum advice, drawing on the typology developed by On The Tin Ltd?
 - d. To what extent is the advice provided free of charge, at subsidised cost and full cost?
 - e. To what extent are providers applying for and securing exceptional case funding for immigration cases? Where providers are choosing not to apply for exceptional case funding, what are the reasons for this?
 - f. How are the providers funded?
 - g. What is the impact of the level of Legal Aid funding on the quality of work providers are able to deliver in eligible cases?
 - h. To what extent are providers also providing advice on other legal issues, and how do these areas of service relate to the provision of immigration and asylum advice?
 - i. What are the key referral routes within and between organisations?
 - j. What networks and wider relationships do these organisations hold that facilitate the effective provision of immigration advice (e.g. communities of practice)?
-

-
- 3) What are the experiences of different funding models for immigration and asylum advice providers, and what insights can be gleaned from these to inform the funder strategy?**
 - a. What are the key challenges in the funding models and what are the impacts of these challenges on the organisations, and for their clients?
 - b. What approaches are believed to, or are evidenced to, be most effective for boosting the scale of provision of advice or using the level of provision as efficiently as possible?
 - c. What funding approaches can best support equitable access to immigration advice for people with a range of characteristics and circumstances?

 - 4) What are the entry points, referral routes into and between immigration and asylum advice providers in London?**
 - a. What patterns are observable in terms of entry points to accessing advice?
 - b. How does access to immigration and asylum advice relate to other legal support needs and access to other forms of advice?

 - 5) What is the scale and nature of identified demand for immigration and asylum advice among people living in London?**
 - a. What types of advice are required and by whom?
 - b. How is this distributed across the city?
 - c. What are the characteristics of people who require and are accessing immigration and asylum advice (e.g. age, gender, nationality, race, ethnicity)?
 - d. Which individuals or groups are best or least able to access the immigration and asylum advice that they require?
 - e. What factors influence the demand for and ability to access immigration and asylum advice for different people or communities?
 - f. What approaches are most effective for supporting more equitable access to immigration advice?

 - 6) How are chargeable immigration applications being funded (including via fee waivers)?**

 - 7) What approaches can be used to assess the scale and nature of unmet need for immigration and asylum advice for people living in London?**
 - a. Based on these approaches, what are the best estimates of the scale and nature of need for immigration and asylum advice in London?
-

8) How do people who are seeking or have experience of receiving immigration and asylum advice feel about their experiences of doing so?

- a. What aspects of their experience have proved most challenging or most helpful?
 - b. What are their views on the ways that the systems or the experience could be improved?
-

Appendix 2: Distribution by Borough

Borough	Legal aid	OISC L3*	OISC L2	OISC L1
Barking and Dagenham	3	0	0	1
Barnet	1	2	0	1
Bexley	0	0	1	1
Brent	5	0	0	4
Bromley	1	0	0	1
Camden	6	3	2	8
City of London	5	1	0	1
Croydon	7	0	1	2
Ealing	6	2	1	2
Enfield	1	0	1	1
Greenwich	0	1	0	1
Hackney	4	1 [^]	0	7
Hammersmith and Fulham	4	0	0	6
Haringey	9	2	2	8
Harrow	8	1	1	2
Havering	0	0	0	1
Hillingdon	1	0	0	1
Hounslow	3	0 ^{**}	0	2
Islington	7	8	4	8
Kensington and Chelsea	1	2	0	5
Kingston UT	0	0 ^{***}	0	1
Lambeth	1	0	3	4
Lewisham	0	1	0	2
Merton	6	0	2	1
Newham	5	0	2	2
Redbridge	3	2 ^{****}	1	1
Richmond UT	0	0	0	1
Southwark	6	8	1	7
Sutton	0	0	0	2
Tower Hamlets	6	5 ^{*****}	0	6
Waltham Forest	2	2	1	0
Wandsworth	6	0	1	2
Westminster	3	9 ^{^^}	2	7
Totals	110 offices of 90 organisations	53 offices of 46 organisations	26 offices of 20 organisations	99 offices of 61 organisations (incl. 23 CABx)

-
- * Includes 17 offices which also do legal aid work.
 - ** The International Organisation for Migration Heathrow office does not offer advice or casework on an individual basis.
 - *** Although it is registered at Level 3, Refugee Action Kingston does not offer casework or advice at any of its London offices.
 - **** One of these is RAMFEL, which does not appear on the register of non-fee charging services because it offers a mix of free and fee-charging work.
 - ***** The register includes University House Legal Advice Clinic, which no longer offers immigration advice. Tower Hamlets also has Safe Passage, which offers a highly specialised service to a very small number of people.
 - ^ BID is based in Hackney, but its services are in detention centres rather than the local area. However, Hackney Migrant Centre, which does not appear on the register in its own right, offers a range of advice and casework services on its premises at Levels 1–3 through partnerships.
 - ^^ This includes three organisations which do not provide immigration advice.
-

A Huge Gulf:

Demand and Supply
for Immigration Legal
Advice in London

Jo Wilding
Maureen Mguni
Travis Van Isacker

June 2021

Research commissioned by
Paul Hamlyn Foundation



SUPPORTED BY
MAYOR OF LONDON