

Research Briefing

March 2011



Asylum seekers' views on the legal processes involved in the application for asylum

Background

The Scottish Legal Aid Board (the Board) wanted to more fully understand the experiences of asylum seekers in accessing legal aid and legal advice. This research forms part of a wider stakeholder engagement programme that seeks views from applicants of legal aid. In particular the Board was interested in exploring and understanding asylum seekers' expectations and interactions with solicitors who provide work under legal aid, identify any concerns they may have and any perceived or real barriers to accessing legal advice and representation.

Aims and objectives

This research with the asylum seeking community focuses upon the initial applications for asylum, up to the point at which asylum seekers have been told the outcome of the UK Borders Agency (UKBA) Substantive Interview and this decision has been reviewed by their solicitor.

Specifically the research was designed to help:

- understand asylum seekers' perceptions and experiences of accessing legal advice
- explore asylum seekers awareness of the legal aid
- identify potential barriers to accessing services

Method

The Board commissioned Progressive Partnership to carry out and report the research.

Semi-structured interviews were carried out between March and June 2010. A total of 33 people agreed to speak about their experiences accessing legal advice and their preparation prior to their UKBA interview.

Recruitment for the research relied on the support and partnership of staff at the Scottish Induction Service (SIS) run by the Scottish Refugee Council. All potential participants were informed of the purpose of the research via an information leaflet (published in 10 languages). This was presented after core briefings by SIS staff. The core briefing provides overview on all stages of asylum process and covers, but does not focus on, legal aspects. SIS staff also provide list of legal practitioners.

Among the 33 people interviewed after their SIS core briefing, 14 people agreed to speak again following the outcome of their UKBA interview. An incentive was offered for the completion of the second interview, travel costs and child care were offered and interpretation and translation needs were catered for.

Among the 33 people interviewed there was a mix of gender and country of origin. Almost half (16 people) had already had their UKBA substantive interview by the time the research interview was undertaken (i.e. within one week of their arrival at the SIS), with 14 still to have their interviews. There were also three people who were in the process of long term applications for asylum but had been relocated to the SIS due to a change in their circumstances.

Summary of findings

Understanding of the application process

While it was difficult to assess precisely the level of understanding in terms of the process it was clear that the level of awareness varied. Typically knowledge of the detail of the application process was low or incomplete at the time of interviewing - even for some of those that had undertaken their interviews, had instructed, or had a meeting with, their solicitor and even for some

respondents during their second research interviews.

Accessing legal assistance from a solicitor

All those interviewed said that they had received a list of solicitors from the Scottish Induction Service. Many found it reassuring and helpful that this list was provided. However, some respondents had already chosen their solicitor in advance of receiving this information from the SIS (i.e. before they had received the list at the briefing). These choices were made on the basis of advice from fellow asylum seekers or residents in their accommodation or through maintaining contact with a solicitor that they had used elsewhere in the UK or a solicitor from a different location who spoke their native language.

Given the limited time to choose solicitors some people felt pressure to choose quickly and felt they did not have the time to consider their decision.

Contact with solicitors

For the majority, contact with their solicitors was felt to be positive supportive and reassuring. However not all described the same level of advice from their solicitors. It is important to note that people may have different expectations of the legal advice that they will receive. Further given the time constraints in place around the asylum application, solicitors may not have been able to spend a lot of time with some applicants.

Discussions with solicitors undertaken in advance of the UKBA interview typically focused on the importance of the interview, preparing for this in terms of discussing the types of questions that would be asked, duration, and encouraging them to tell the truth. Most, but not all, mentioned that they had discussed the possible later stages of the application including that there would be a right to appeal.

Most of those spoken to said that the level of contact they had with their solicitors was broadly in line with that described in the scoping interviews with solicitors i.e. approximately four meetings up to and including a debrief of the initial asylum decision.

Perhaps unsurprisingly, of the respondents who undertook a second round interview, those who were successful in their applications for asylum were typically more positive about the advice from their solicitors than those who were not granted asylum. However, it is important to note that we cannot draw any conclusions on the extent to which the perceived quality and

frequency of legal advice provided, affected the outcome of their claims.

Awareness of legal aid

Most respondents were not aware of the legal aid system or the Board, but all were aware that they would likely not have to pay for their legal advice. For many, paying for legal assistance was not a key concern or issue as it was understood that the 'the government' was paying for their application. Most had been told by their solicitors that they need not pay for help.

Although many people mentioned signing forms in their solicitors' offices, not all were aware, or could recall, that these related to applying for legal aid. For one or two people it was evident that there was a lack of knowledge about the limitations of legal aid, specifically in their understanding that it does not normally cover payment for the solicitor to attend the UKBA interview.

Awareness of rights and complaints procedures

For those that required an interpreter, almost all were aware of their right to have an interpreter for their interview and at meetings with their solicitors and some mentioned that they had the right to change the interpreter if they wished. However fewer people said that they knew about the complaints procedures relating to their solicitors or the interview. Although it could arguably be predicted that a fear of authority based on their experiences or culture in their own country and general anxiety about the impact complaints could have on their claim would have prevented them undertaking such action.

Post UKBA decision

The second round interviews were scheduled to occur at a point in time when asylum seekers were to have had their UKBA decision reviewed by their solicitor and a decision to appeal to be made (if relevant). However due to the short time period between arrival at the SIS and the UKBA interview almost half of the first round respondents had completed their interview the time of the first research interview and were able to discuss the Home Office interview and the level of legal advice offered by their solicitors.

A key finding was that respondents were, despite their experiences and opportunities to learn since the first research interview, typically still unable to describe in detail the next steps in the process. They could describe what had happened in terms of meeting with solicitors, but many highlighted that they were not sure of the details of what had

happened, about the next steps or on the details what was currently happening. The speed at which the initial application typically occurs may be a factor in the different levels of understanding about the system. Even when the asylum application had been granted some people confused and worried about the next steps in the process

Conclusions and next steps

The research has provided useful context for learning about the application for asylum. The short time period between engaging with the asylum system and participating in their UKBA interview presents a small window for a person seeking asylum to find out about the process they are undertaking, select and meet with their solicitors in advance. In terms of the asylum seekers that were part of this research this timescale meant that many respondents had had their UKBA interviews before they had received both of their briefings (core and dispersal) from the SIS.

Respondents' knowledge of the asylum claim process was, typically, imperfect. There was a lack of clear knowledge about the key legal steps of their application, a limited amount of time to access this from their solicitors and limited other sources from which to seek advice.

The variation in experience and misconceptions about the level of and expectation around legal advice that can be offered through the legal aid system highlights the importance of clear information on this to asylum seekers. We will discuss the findings with partners such as the Law Society Scotland, UKBA and Scottish Refugee Council. We will discuss with them what needs to be done to ensure that people are informed about accessing legal advice for their asylum application and in particular what can be expected in terms of what solicitors can and cannot do in relation to advising applicants, when this can be done, and the constraints on advice.

The research findings will also be considered as part of the Board's Best Value Review of Immigration and Asylum. More information on this Review can be found on our website.

Further information

This research briefing and the full Progressive Partnership report of the research are available on our website at:

http://www.slab.org.uk/about_us/research/Stakeholderengagement.htm

If you would like further information about this research please contact Clare Duffy, Research Unit, Tel. 0131 240 1888 or email duffycl@slab.org.uk.



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