

Institutional accommodation and the provision of remote legal advice

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The Helen Bamber Foundation (HBF) is a specialist clinical and human rights charity that works with survivors of trafficking, torture and other forms of extreme human cruelty and believes that all survivors should have safety, freedom and power. Our multidisciplinary and clinical team provides a bespoke Model of Integrated Care for survivors which includes medico-legal documentation of physical and psychological injuries; specialist programmes of therapeutic care; a medical advisory service; a counter-trafficking programme; housing and welfare advice; legal protection advice; and community integration activities and services. Asylum Aid, part of the Helen Bamber Foundation group, provides high quality legal representation to some of the most vulnerable people seeking asylum in the UK, including but not limited to: children, survivors of trafficking, and stateless people.

Introduction

In the Spring of 2022, a 'working group' including representative from the Home Office, Asylum Aid, Helen Bamber Foundation, Jesuit Refugee Service, Humans for Rights Network and the Immigration Law Practitioners' Association began to meet regularly to discuss how to ensure residents of Napier barracks had access to expert legal advice, and to apply any learning from the situation in Napier to the proposed development of large-scale institutional accommodation in other parts of the country. A key issue for both accommodation centres is the availability of quality legal advice funded by legal aid for people's asylum claims and the Home Office has been in discussion with the Legal Aid Agency about how this might be ensured in light of the remote location of Napier and the likely remote locations of other accommodation centres (such as the one proposed for Linton-on-Ouse). One option is to use legal providers from across the UK but this relies on advice being provided remotely and raises important questions about the need for face to face advice. This briefing provides a short overview of existing research on the challenges and the experience of legal aid providers in providing remote advice.

The challenges of remote advice for people seeking asylum

A recently published report commissioned by the Paul Hamlyn Foundation, *'How the remote delivery of immigration advice evolved during Covid: The digital and capacity implications of this change'*,¹ looks at the remote working methods being used by immigration advice providers, and summarises the benefits and challenges resulting from an increasingly digitised approach to client-facing work. It finds that “recent technological advances have enabled remote working and a transition away from face-to-face advice” and that this “has brought benefits in terms of expanded reach, with some projects being able to extend their offer to people across a much wider geographical area”. However, crucially the report highlights that:

“In the longer term, remote working methods were shown to be unsuitable for people where their situation and vulnerability meant that lack of in-person support and contact could expose them to even more risk”.

The report identifies client groups for whom remote advice and casework are particularly challenging and this includes those seeking asylum and people with multiple vulnerabilities. Practical barriers to accessing advice safely include access to any private, safe line for communication but even where immediate practical barriers are not present, the report highlights the need to gain the trust of such clients as well as ensuring that safeguarding measures are in place in order to get the information necessary to progress the case. Doing this online “can be extremely challenging for providers and clients alike”.

This echoes the findings in Refugee Action’s recently published report *'No Access to Justice'*² which reviews and maps provision and demand for free and low-cost immigration legal advice throughout the whole UK, and concludes “remote advice is only a small part of the solution”. The report found that:

- Providers find it takes longer to advise remotely, meaning they face greater financial losses.
- It is difficult to create the rapport with the client needed to enable them to disclose traumatic information remotely.
- Remote advice is more suitable for follow-up appointments than as the sole form of provision.
- Remote advice also places a burden on support organisations which have to provide a private space, a device, an internet connection or data, sorting and

¹ [How the remote delivery of immigration advice evolved during Covid The digital and capacity implications of this change](#)

² Refugee Action, No Access to Justice: How legal advice deserts fail refugees, migrants and our communities, May 2022

scanning of documents, and the psychological support to access an adviser remotely, which few are resourced to provide.

There is little additional research on the use and effectiveness of remote legal advice and representation but existing research on the impact of remote hearings in immigration tribunals has highlighted that clients disclose less information; are more likely to become disengaged; and cultural differences in non-verbal communication are exacerbated.³ Communication problems between a client and their interpreter are more difficult to notice and rectify. There can be a negative effect on lawyer/client relationships and it can be much harder to build trust.⁴

In Asylum Aid's experience, while remote advice can work well if a rapport has already been built with the client, it is rarely the most appropriate option for the first meeting. It can be extremely difficult to take a detailed history and instruction remotely – there is a real difficulty in unpicking complex factual information that may be affected by trauma, distress or avoidance and when you are unable to pick up on physical cues.

Examples of legal processes and tasks which may be inappropriate to conduct remotely include:

- Completing a mental health screening form
- Assessing re-traumatisation or distress when taking instructions or in other appointments
- Spotting interpreting errors or issues a client might have with an interpreter
- Checking maps
- Taking detailed witness statements, reading back and checking the client understands and agrees with the account
- Reading back medio-legal assessments including psychiatric assessments
- Taking evidence of sensitive issues e.g. sexual or gender-based violence, sexual orientation, religious conversion

Visual communication methods can also play an important role in advice provision. For example, Asylum Aid lawyers will often get clients to draw maps or write down words for interpreters to read back which is not possible to do remotely. They might also look up certain towns on Google images and get clients to look at them to try and prompt their memories, and again this is not possible to do remotely.

The Home Office has committed to ensuring that more vulnerable people seeking asylum are not placed in accommodation centre (with Napier the Home Office stated that people would be “only allocated accommodation at the site if there are no indicators of

³ [Legal Action Group | Remote hearings in the immigration tribunal \(lag.org.uk\)](https://www.lag.org.uk/legal-action-group-remote-hearings-in-the-immigration-tribunal/)

⁴ [Legal Action Group | Remote hearings in the immigration tribunal \(lag.org.uk\)](https://www.lag.org.uk/legal-action-group-remote-hearings-in-the-immigration-tribunal/)

vulnerability, modern slavery or exploitation in their case history”).⁵ The underlying problem with this approach is that asylum seeking and refugee populations are an inherently vulnerable group. Due to the particular nature of trauma symptoms and their effect on day-to-day life (including avoidance, and consequences of minimisation and distrust), many people seeking asylum will be unable or understandably unwilling to articulate how and why they are ‘vulnerable’ in a timely way. This is particularly the case in the context of such a complex administrative process and/or where there has not been time to develop a trusting relationship with a professional who is working in a trauma-informed way. The most severely disabled people will often be the quietest and least able to speak up. Furthermore, personal and cultural attitudes and understandings of mental illness may make people unwilling to self-identify as having ‘mental health issues’ on arrival to the UK. Asylum seekers may also have a limited and inaccurate understanding of the asylum process and fear adverse consequences if they declare themselves as suffering from mental health issues.

Notwithstanding the above, the experience of Napier barracks has been that those with multiple vulnerabilities have been placed there, including survivors of torture and trafficking and those with significant mental health issues.⁶ The Independent Chief Inspector of Borders and Immigration’s recent second inspection of Napier recommends that the Home Office “review the policy and application of the suitability criteria for residents living at Napier”.⁷

In this context, we believe that every effort should be made to ensure that all people seeking asylum are able to access face to face advice, at least for their first contact with a lawyer, if not for the duration of their claim where they are part of a vulnerable group as set out above. Some people seeking asylum may prefer receiving advice remotely – for those who would prefer to see someone face to face they should be able to request this. In short, anyone needing legal advice should have a choice as to whether that advice is provided in person or remotely.

The need for external scrutiny

The Law Society has already highlighted that for those who are living in “institutionalised settings”, face to face advice is particularly important. People in these settings are reliant on others to facilitate access to legal representatives. With physical visits prevented and inspections either paused or replaced with shorter, often remote, inspections during Covid-19, there was great concern that the inability to access lawyers “removed an essential element of external scrutiny of conditions in institutions at a time where these have

⁵ ‘Contingency Asylum Accommodation: Ministry of Defence Sites Factsheet’, Home Office, October 2020

⁶ [Submission to the APPG on Immigration Detention Inquiry into ‘Quasi-Detention’ | Helen Bamber](#)

⁷ [ICIBI – A re-inspection of Napier Barracks – March 2022 \(publishing.service.gov.uk\)](#)

become markedly more adverse.”⁸ The UN Committee against Torture, the Human Rights Committee and regional mechanisms have recommended a number of procedural safeguards for those in detention that could also apply to people in accommodation centres, including stating that “access to a lawyer should include the right to contact and be visited by a lawyer.”⁹

Lack of providers

While we appreciate that the Home Office perceives remote advice to be an answer to the shortage of legal aid providers, it is important to note the stark conclusion in the ‘No Access to Justice’ report that “*remote advice is not a viable solution to the severe shortage of advice in particular regions or sub-regions in England and Wales, because there is no significant surplus capacity to be redeployed remotely to other regions*”. Provision in England, Wales and in Northern Ireland may not even be adequate for first-time adult asylum applications (even allowing for some applicants having the resources to pay privately), let alone other matters for clients who are eligible for legal aid. Remote advice at best offers geographical equality of (impoverished) access, not adequacy of provision.¹⁰

Recommendations

- The Legal Aid Agency should ensure adequate remuneration of providers for their costs and time in travelling to accommodation centres and relax the guidance on circumstances in which providers are able to travel to see the client and/or make clear that travel costs (for the client to visit the provider, or the provider to visit the accommodation centre) will be met where the client is in an accommodation centre.
- The Legal Aid Agency should make clear the circumstances in which legal aid forms can be completed remotely where remote advice is being provided to clients in accommodation centres.
- The Home Office should ensure that there are suitable facilities to host advice sessions both remote and face-to-face, including private spaces, in Napier and any future accommodation centre.
- An advice rota/duty representatives should be facilitated on site in any accommodation centre, similar to the provision in Immigration Removal Centres. Initial advice sessions should not be limited to 30 minutes. In light of continuously raised issues regarding the quality of advice on the Detained Duty Advice Scheme, the Legal Aid Agency should put in place better mechanisms to monitor and ensure

⁸ The Law Society, [Law under lockdown: The impact of COVID-19 measures on access to justice and vulnerable people](#), September 2022

⁹ [Torture Prevention Guide.pdf \(ohchr.org\)](#)

¹⁰ [628f50a1917c740a7f1539c1_No_access_to_justice-how_legal_advice_deserts_fail_refugees_migrants_and_our_communities.pdf \(website-files.com\)](#)

that representatives are providing quality legal advice and standards of service at accommodation centres.

- The Home Office should explore other options for ensuring that people can access face to face advice, such as taking residents off-site for face-to-face appointments.
- Where advice is provided remotely, it is essential that:
 - Individuals are able to access spaces where they can confidentially discuss matters with their legal representatives. Even where appointments are pre-arranged, Asylum Aid lawyers have still yet to have a remote appointment with someone in detention/barracks accommodation where they are in allocated space away from others.
 - Individuals are able to contact their legal representatives when they need to and vice versa – this requires access to both phone and internet for email/WhatsApp and a confidential device capable of accessing these communication methods.
 - Individuals are able to confidentially share documents with their legal advisers. Asylum Aid has experienced cases in both detention and Napier where clients have been unable to share documents and are reliant on staff for access to faxes and emails, which raises concerns regarding confidentiality.

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