

We are all in this together:

Common themes from Justice Together Initiative immigration sector national consultation

Summary

Before setting out on its mission, the Justice Together Initiative undertook a comprehensive consultation across the United Kingdom to better understand the needs, challenges and opportunities concerning access to justice in the UK immigration system. From this in-depth consultation, certain themes emerged, both of the challenges present in relation to access to justice and the opportunities to address them. These were then incorporated into Justice Together's strategy launched in December 2020. This article provides a more detailed reflection of what we heard and the themes that emerged during our consultation.

The themes discussed are summarised here:

ADVICE CHALLENGES

- Deserts and droughts, provision centered around urban areas
- Capacity at specialist levels including supervision
 - Recruitment and retention
 - Lack of early intervention
- Impending problems caused by end of EU Settlement Scheme
- Capacity to engage with influencing, strategic litigation and campaigning
 - Poor quality advice
 - Lack of empathy

ADVICE OPPORTUNITIES

- Collaboration and coordination (within sector, beyond immigration sector, formal partnerships, holistic approach)
 - Strengthen OISC Level 2 and 3 supervision and support
- Build leadership amongst people with lived experience
- Share learning and best practices amongst regions
- Feed into influencing and policy work

INFLUENCING THEMES

- Collaboration and community and movement lawyering models
- Tackling racism in the immigration system
 - Fair Borders Bill
- High cost of citizenship fees and immigration fees in general
- Challenges to judicial review and the Human Rights Act
- Windrush Review recommendations
- Reduced scrutiny and accountability for Home Office policies and actions
- Digitalization of justice and the use of online tools and algorithms
- Brexit and the approaching EU Settlement Scheme deadline

Introduction

Most people within the sector, and even outside, are aware that the Legal Aid, Sentencing & Punishment of Offenders Act 2012 (LASPO), drove dramatic cuts in legal aid funding decimating the advice and legal support available for people who need to engage with the UK immigration system. Since LASPO there has been a 70% drop in the number of new immigration cases which are publicly funded and the number of immigration legal aid providers has dropped by more than a third (from 249 to 178).¹ Adding in the austerity-driven cuts to central and local funding has caused further damage - the number of not-for-profit immigration advice providers has halved since LASPO.² Similarly, most people are aware of the dramatic rise in need based on Brexit, changes in immigration rules and global challenges including the global pandemic. Yet the details of what is really happening across the country for people who must interact with the immigration system and the ideas those on the ground have to address these challenges is not as readily known.

Before setting out on its mission to bring together people and organisations to build a strong movement to transform the immigration system and connect lived experience, front-line advice and influencing strategies to create lasting change, the Justice Together Initiative performed an extensive and comprehensive consultation across the United Kingdom to better understand the needs, challenges and opportunities concerning access to justice in the UK immigration system. This consultation included direct conversations with people with lived experience of the immigration system and included people from across the migration sector, beyond the asylum and refugee community. From this in-depth consultation, certain themes emerged, both of the challenges present in relation to access to justice and the opportunities to address them. We held 15 virtual³ roundtables and focus groups in the devolved nations and regions of England with 153 people attending in total; of those 46 people had lived experience of the immigration system. These roundtables brought together people providing holistic support, immigration legal advice and undertaking policy, advocacy and campaigning around the immigration system. There were additional focus groups with people who have lived experience of the immigration system, gathering their views on access to justice and how the system needs to change. Along with the roundtable meetings, we carried out 33 individual calls with key people working in the sector and beyond to explore needs and opportunities in relation to the political and economic context, specific areas of immigration and broader influencing and capacity building opportunities.

Challenges Identified

Unsurprisingly, with the decimation of legal aid provision after LASPO and the extensive regulations surrounding the provision of immigration advice, with each passing year access to justice has become more and more difficult across the country. Desert areas have limited or no specialist immigration

¹ Grant, Saia, *An overview of immigration advice services in England and Wales*, March 2020 at p. 23 (Tables 4 and 5).

² *Id.* at p. 25.

³ Because of COVID-19 restrictions, these roundtables were held 'virtually' by Zoom. There were roundtables focused on each region in England, each devolved nation, one focusing on UK-wide policy threats and opportunities, and focus groups with three groups of people with lived experience of different parts of the immigration system. See Annex C for a full list of organisations that attended our roundtables and focus groups, along with a list of stakeholder contacts for individual calls.

advice provision⁴ and people in need of advice face significant barriers in accessing this advice, especially if they are unable to travel. Further, and often less discussed, are other areas considered advice droughts where there appears to be provision, but in practice there is none because providers have no (or limited) capacity to open new cases.⁵

Throughout the country roundtable attendees noted that where there is provision, it is focused in urban cities, even though the Home Office is now placing people in accommodation far from city centres. For those in accommodation, provision must come to them, which is unfortunately rare as capacity does not allow, and for those living in the community they must travel long distances to seek advice or representation. Further, there are more services exclusively focused on people seeking asylum or for refugees rather than across the migration system, although capacity recently increased for EU citizens.

Frequently mentioned was that even where advice and representation is available it is limited in scope. In every roundtable, we heard about the lack of capacity at specialist levels, or OISC Level 2 and above specifically. When digging a bit deeper as to why, a few themes emerged. First, even where an organisation may have someone already certified at the higher OISC levels the organisation does not have the time and capacity to do the supervision necessary for work to maintain at the level to meet need. Further, as people are stretched very thin, many people do not have the time to do the training and support needed for people to qualify at the higher OISC levels. In trying to address the current lack of capacity, many organisations noted the intense challenges regarding recruitment and retention of people at OISC Level 2 and above, particularly when trying to prioritise people who have lived experience of the immigration system and for locations outside of major metropolitan centres, where need is growing. We also heard of challenges surrounding recruitment and retention even within major cities, including London and directly outside. When asked for reasons, common trends around salary levels and sustainability of funding emerged; however, it was also noted that fewer people in education are being directed or excited about entering the immigration field because of its challenges, the low pay, and the subject is not taught as regularly as it once was in universities and law schools. Programs such as the Justice First Fellowship have helped new lawyers enter the social justice, but more is needed.

Challenges that arise even once an individual is able to access advice and representation also emerged from our consultations, particularly from those who have direct lived experience of the UK immigration system. First and foremost, across the country there is a concern about the poor quality of advice and representation. The current regulation system does not always monitor or address this concern and the legal aid fee structure also does not help to allow lawyers to spend the time necessary with a case. As a result, many peoples' immigration cases are made more difficult by bad advice and incorrect arguments. There also exists a large population of people offering advice that are not regulated to do so, or charging extreme amounts for little support.

⁴ See Wilding, Jo, *Droughts and Deserts: A report on the immigration legal aid market*, April 2019 at p. 8. "Legal services in immigration and asylum are not 'reserved' to solicitors, barristers and legal executives, but it is a criminal offence to give immigration advice unless either exempt, by virtue of one of these professional qualifications, or registered with the Office of the Immigration Services Commissioner (OISC). An OISC-registered caseworker need not have a professional legal qualification, but is registered at level one (the entry level) to three (the most skilled) which determines the types of work they can undertake.¹³ For legal aid purposes, solicitors and OISC-registered caseworkers mainly work in private law firms or not-for-profits such as law centres and other charities, and provide advice directly to clients under contract to the LAA."

⁵ *Id.* at pp. 39-40.

“Often advisors have no interest in speeding up your case and there is a lack of accountability”

-Focus group participant, September 2020.

A theme that repeated throughout our focus groups of people with direct and recent experience of the immigration system was the lack of empathy from people giving advice, and specifically solicitors. Many attendees made reference to the challenges experienced from the people helping them from the outset at a drop in session, continuing to the person who took their case. Only when the lawyer or advisor approached their case with empathy and passion did they feel they were getting the best advice and that their cases would end up positively. Several attendees complimented lawyers who kept fighting for them and approached them in the beginning with dignity and integrity.

“Good advice has been when I have been kept informed, this makes you feel like you are part of the process”

– Focus group participant, September 2020.

The timeframe for the availability of advice was regularly mentioned as a challenge, with there being very little advice and information at beginning stages of case. The importance of, but lack of, early intervention in terms of actual representation but also of education on ones’ rights and potential pathways was mentioned in nearly every part of the country. The reasoning mentioned by most attendees was capacity and lack of legal aid and other funding to cover a person’s journey from beginning to end.

In terms of populations and increasing need, a general theme mentioned throughout the country was the looming deadline regarding the EU Settlement Scheme and the implications for those not registered who will become undocumented, as well as for those registered. Attendees mentioned concerns over an increase in the risk of exploitation and modern slavery as people find themselves without status, as well as the need for specialist advisors to help people who received pre-settled status move into settled status and the collateral implications on people’s lives through the no recourse to public funds placed upon them.

Finally, several organisations mentioned their lack of capacity to engage with influencing, strategic litigation and campaigning because all of their resources and person-power is oriented towards providing advice and addressing the immense need, much of which still went unmet. Several organisations expressed interest in being able to connect with influencing strategies and work more closely with their client populations and communities with lived experience, but that they are unable to in their current state.

Opportunities Available

Across the country, in every roundtable we held, participants listed improving collaboration and coordination as an opportunity and tool to help address the above challenges. Some regions have already begun developing partnerships through communities of practice or other established networks, but even within those regions the appetite for more or expanded partnerships was great.

“Increasing the co-ordination of existing legal advice across the area would be more effective than funding for another legal advisor.”

-Roundtable participant, September 2020.

When discussing the concept of collaboration and what was envisioned, or had been piloted, many diverse ideas emerged. First and foremost, participants expressed a need for more collaboration

within the sector itself – amongst advice providing organisations and between advice workers and lawyers, creating referral pathways. One participant referenced how at present although she often can eventually place her cases, in order to do so she must make dozens and dozens of individual phone calls and an established network referral pathway would not only be advantageous to placement, but would free her time to help additional people. Further, much was mentioned of the opportunity to collaborate beyond the sector with organisations and people providing holistic support. This collaboration opportunity was viewed as a two way street that would provide more comprehensive support for individuals. Additionally, in several regions formal partnerships with universities, law firms providing pro bono support, and other institutions, was held up as an opportunity, although other areas raised scepticism that this provides enough continuous support to be helpful or in the end, actually requires additional supervision that is already lacking.

Fundamentally, participants saw collaboration as an opportunity to create knowledge hubs or coalitions that could not only create pathways, but could identify gaps in the process and develop systems, which then also could be fed into influencing work. An example given was the lack of early intervention which could be improved through partnership work.

In general, participants recognized the desire for opportunities to incorporate more holistic approaches to their work as well and to develop leadership amongst people with lived experience of the UK immigration system and local grassroots community groups.

“It’s really important to include the human element in legal campaigning and ensure that the communities are involved from the beginning and leading on issues”

- Roundtable participant September 2020

At the centre, participants discussed the importance of collaboration not just for workflow and referrals, but also a positive opportunity to share learning and best practices amongst regions and across the country in addition to involving people with lived experience. Several participants mentioned that they knew other organisations throughout the region and country were trying new ways of working and thus, would appreciate the opportunity to have a space to discuss ideas, what has worked, what has not worked, and how they might improve together. These spaces could also operate as a mechanism to share data gathered from casework and engagement with frontline and community-based services to feed into improvements and impact on access to justice and the immigration system as a whole. If funding was available, most groups expressed a keen interest in developing networks and having these discussions.

In response to the need addressed above, participants in every region discussed the opportunity to strengthen OISC Level 2 and 3 supervision and support as a way to address the immense need and improve access to justice. Additionally Level 2 and 3 support would help streamline pathways for people by getting cases ready to referral onto qualified and specialist solicitors. There was creative discussion about where the specialist supervision could come from such as law firms or universities as a way of harnessing resources outside of the overworked organisations.

Finally, with regard to devolved nations, participants from each nation mentioned the opportunities available to develop strategies to influence devolved national government and work together with sympathetic stakeholders to improve funding and access to justice. Participants from Wales and Scotland specifically stated that they thought now was a moment to harness interest in support for access to justice in the immigration system because of lack of support in Westminster.

Influencing Themes

Amongst those we consulted regarding influencing and policy, several similar themes concerning opportunities emerged around collaboration and the need to centre people with lived experience of the immigration system. There was a great interest in pursuing new ways of working, such as community and movement lawyering, and connecting the grassroots and frontline evidence to influencing campaigns and tools, including strategic litigation, communications, and direct primary legislation advocacy as examples. Further, policy stakeholders discussed the need to strategically tackle systemic racism in the immigration system. Several contacts recommended that because caseworkers understand racism, sometimes more so than individuals, it suggested the opportunity that all grantees could receive training on what racism is and then be supported to record racism happening in order to build a body of evidence for influencing.

“Need to reach into the existence of intelligence and data from casework to make lasting change.”

-Stakeholder, October 2020

With regard to areas of focus, without going into detail, the general themes that emerged across the country included the Fair Borders Bill, high cost of citizenship fees and immigration fees in general, challenges to judicial review and the Human Rights Act, the need to adopt recommendations from the Windrush Review, reduced scrutiny and accountability for Home Office policies and actions, digitalization of justice and the use on online tools and algorithms, and major concerns post-Brexit and the approaching EU Settlement Scheme deadline resulting in hundreds of thousands of people being undocumented, without recourse to public funds, increased risk of exploitation, and challenges with paper documentation and need for identification.

Conclusion

The challenges and needs that emerged across the country during our consultation were vast. But the opportunities discussed were also considerable and common amongst participants. As a team, at Justice Together we reflected on these themes, as well as research into capacity and provision and methods to increase legal capacity when developing our strategy, which was launched in December 2020. Our vision is that people who use the UK immigration system can access justice fairly and equally, enabling them to get on with their lives. In developing our grant criteria and choosing grant partners, we have been and will be informed by the themes set forth here. We hope that through collaboration and bringing people together we can bring about the most impactful change.