

**16 June 2010**

### **Refugee and Migrant Justice administration briefing**

The Trustees of Refugee and Migrant Justice (RMJ) yesterday signed papers to place the charity into administration as a result of a cash flow problem created by late payment of legal aid by the Legal Services Commission. A meeting is being held today between the administrators and the LSC and the papers for administration are expected to be filed after that. Administration can be reversed if the Government changes its mind about the late payment system and we hope that our supporters will continue to campaign on our behalf.

### **Ministry of Justice statement and counter arguments**

On June 16 the Ministry of Justice provided the following press statement in response to a media enquiry:

“It is important asylum seekers have fair access to legal advice. We fully appreciate the value that organisations like Refugee and Migrant Justice bring in providing this service to particularly vulnerable clients. We have worked closely with Refugee and Migrant Justice for the last few years, for precisely this reason, and as a result they have received substantial support to help them transfer to the current payment system.

“However, it is also crucial that the Government achieves value for public money. The fixed fee system introduced three years ago is already being successfully used by the vast majority of Not for Profit organisations in this area of law. As other organisations have successfully made this transition, it is only reasonable to expect Refugee and Migrant Justice to do the same.

“We are confident there is widespread provision of legal advice in this area, with more than 250 offices nationally providing this type of service. Providers are also currently bidding to handle more than double the amount of cases currently available.”

In response, RMJ would like to make the following points:

The Ministry of Justice is confusing two separate issues. The income we receive per client has fallen by over 40% over a two year period and the LSC did give us support in the period prior to this to help with the transition. We successfully managed this transition, in particular by reducing our costs per case by 40%. We expect to receive sufficient income to cover our costs this year. The reason we are facing administration is different. It is because of a new payment system in which we only get paid on completion of case stages. If a

representative does a proper job, it can take months and sometimes years to complete an asylum case. No charity can afford to wait so long for payment.

The MOJ is rightly concerned about achieving value for money. However, we have learnt through a Freedom of Information request that 30% of providers are in breach of an LSC target designed to prevent exploitation of the system. They make massive profits by closing cases having done little work to advance their clients' interests. They earn the whole fixed fee and they minimise their work in progress. Providers like RMJ that try to do a proper job earn far less and then have to wait years for payment.

Figures showing over supply which are based on such a system are not reliable. There is also a major difference between bidding and being able to deliver.

The MOJ is also categorically wrong to imply RMJ is the only provider to be suffering. The Law Centres Federation and many others, including the Law Society, have all publicly stated the payment system is not sustainable, and if our working capital problems are just passed on to others it will only make things worse.

### **UK Border Agency**

We have also heard that in Solihull the UK Border Agency is refusing to grant extensions to give our clients time to find a new representative. They are saying our clients can raise any issue they have with such a refusal on appeal. This is terrible for our clients and is very poor value for money, as appeals are expensive.

RMJ wrote to the Minister for Civil Society asking for an interest free loan for RMJ and other charities being paid late by the Government but has received no response to date. It may be worth pursuing this.

### **Flight to Iraq**

Yesterday, RMJ obtained an injunction to prevent a client being removed to Iraq, today. We are continuing to advise another client another client threatened with removal to Iraq. It is unclear how long we will be able to continue doing so.

A Westminster Hall debate on alternatives to detention for children is taking place on Thursday 17 June 2010. The debate will examine access to legal representation and is an opportunity to raise RMJ's closure. Caroline Lucas has also tabled an EDM (191) to support RMJ. The charity is also asking parliamentarians who are members of the Home Affairs, Justice, Public Accounts and Human Rights committees may also wish to raise RMJ's closure and broader issues about legal aid in these committees.

For further information please contact Jill Rutter, Head of Policy and Communications on 07823 334253 or jrutter@rmj.org.uk.

### **Background Notes**

This situation has been caused by late payment, not inefficiency or even lack of income. Late payment has an unequal impact on charities because they cannot get bank loans to finance

the cash gap. The crisis comes as the new coalition government has committed to speeding up the asylum system and reviewing the legal aid system.

The decision to go into administration follows a public campaign in which leading figures, including the Archbishop of Canterbury, Shami Chakrabarti, Director of Liberty and Ken Loach, the film director, called on the Government to save the charity. Major charities, such as Amnesty International, MIND and Barnardo's, also joined the campaign and wrote to Ministers on RMJ's behalf. In an open letter to the Justice and Home Secretaries they warned: "It would be a tragedy if RMJ were allowed to go under."

Major concerns have been raised by refugee experts about the effect of RMJ having to close. Roland Schilling, the United Nations Refugee Agency's UK representative said:

"The UN Refugee Agency has raised its deep concern to the Government if legal aid to the persons in need of protection is not anymore provided by specialised and highly professional organisations like RMJ. A discontinuation of these services would severely damage the effectiveness and fairness of the asylum system in the country."

The legal representation of more than 10,000 vulnerable asylum seekers and victims of trafficking, including nearly 900 separated children, is now at risk. In the absence of any last minute intervention by the Government RMJ's priority now is to ensure maximum protection of our clients, who include many of the most vulnerable people in the country. It urges the Legal Services Commission immediately to discuss with the administrators how best to minimise the distress and disruption to clients during what will inevitably be a difficult transition process. It is inevitable that some of RMJ's clients will find it impossible to access legal representation and it is likely that many will turn to MPs surgeries to find help.

RMJ needs to be paid £1.8m over six months to keep operating, yet the cost of closure to the taxpayer would be in excess of £2m.

### **An inefficient legal aid system**

RMJ's cash crisis has been caused by a growing proportion of its legal aid work now being paid upon completion – leaving it with a lack of funds. The problem has not been caused by spending cuts, but changes made to legal aid payments by the previous Government. Under these changes, payment for most legal work is being made once decisions are made on legal cases by the Home Office or Tribunals, resulting in a delay of up to two years before costs are reimbursed. The Law Society, Immigration Law Practitioners Association and the Law Centres Federation have all warned the Government that the late payment system is putting intolerable strain on legal aid providers generally.

RMJ's problems again highlight the structural problems of the legal aid system. The Government has committed to review the legal aid system, but has declined to change the payment system at this point. A recent Freedom of Information request submitted to the Legal Services Commission has revealed around 29 per of asylum providers, doing the minimum possible to advance their clients' cases, are making massive profits. While this has gone unchecked, quality representatives such as RMJ who spend time with their clients to complete cases are being starved of cash. Those quality providers who see the job through have to wait for an asylum decision that can take years before they are paid.

Under the fixed fee system, introduced under the last government, a provider can charge the full fixed fee for an asylum case of £459 even if they spend little time on the case. An hour of advice, for example, will earn some **nine times** more under the fixed fee system than it would earn the old hourly rate system. However, such work is unlikely to resolve a case and this means that another representative will be paid the full fixed fee again to do a proper job. Quality work will take many hours yet receives the same payment of £459.

To prevent abuse of the system and stop public money being wasted, the LSC has a '20 per cent fixed fee margin' key performance indicator (KPI). This is designed to prevent a provider from earning on average more than 20 per cent on fixed fee cases compared to fees under an hourly rate. The aim is to ensure that providers who just give short units of advice – or who unscrupulously cut cases short - do not unduly benefit. Under the contract, if this limit is breached, further investigations by the LSC ought to be triggered. New contracts due to be let from October will make this KPI a contract provision.

FOI data obtained by RMJ shows that almost one third of suppliers of asylum advice (29 per cent) are breaching this provision and the LSC appears neither to have been monitoring it on an annual basis, nor to be undertaking critical due diligence checks in the run up to letting new contracts. In January 2010, the Legal Services Commission was heavily criticised by Parliament's Public Accounts Committee for failing to have a grip on financial matters.

By simply getting cases right first time and paying properly for one thorough, quality piece of work, the Government could save millions of pounds each year. It could also afford to pay providers promptly for work, rather than leaving them out of pocket.

For further background, see *Justice at Risk: quality and value for money in asylum legal aid* was undertaken by ICAR and City University on behalf of RMJ, in partnership with the Immigration Advisory Service and Asylum Aid, with funding from the Baring Foundation. This shows that other quality providers are experiencing financial strain.

**To download the report click here: <http://refugee-migrant-justice.org.uk/downloads/Justice%20at%20Risk.pdf>**

## **About RMJ**

Refugee and Migrant Justice is the largest specialist national provider of legal representation to asylum seekers and other vulnerable migrants. RMJ employs 334 staff in 13 locations and outreach surgeries across England and in parts of Wales.

Since opening as the Refugee Legal Centre in 1992, RMJ has helped 110,000 vulnerable people seeking asylum or human rights protection. Before that, RMJ was part of the UK Immigration Advisory Service and was set up by the Government in 1992 as a charity to help asylum seekers and migrants. RMJ was awarded the Liberty/Justice Human Rights Award in 2005, in particular for its litigation work with Zimbabwean asylum seekers.

RMJ is extremely cost efficient. Over the last two years, the income received per client has dropped by 46 per cent and costs per client have fallen by 41 per cent. The hourly rate for this specialist legal work is around £50 and has not been updated for inflation since 2001.

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