THE LAW SOCIETY ACCESS TO JUSTICE REVIEW

Consultation Response by the Immigration Law Practitioners' Association (ILPA)

Introduction – ILPA

The Immigration Law Practitioners' Association (ILPA) is a professional association with some 900 members (individuals and organisations), the majority of whom are barristers, solicitors and advocates practising in all aspects of immigration, asylum and nationality law. Academics, non-governmental organisations and individuals with an interest in the law are also members. Established over 25 years ago, ILPA exists to promote and improve advice and representation in immigration, asylum and nationality law, through an extensive programme of training and disseminating information and by providing evidence-based research and opinion. ILPA is represented on numerous Government, including UK Border Agency and other 'stakeholder' and advisory groups.

Introduction – ILPA's response

ILPA has read with interest the Law Society's 'Access to Justice – Defending Rights' consultation document. Some of the clients represented by our members – in particular asylum seekers and those seeking leave to remain for non-asylum human rights related reasons - are amongst the most vulnerable of all clients represented by Legal Aid lawyers. Our client group has particular features which of course inform the consultation questions to which we have responded and the nature of our responses. We have not responded to questions which we consider to be beyond our expertise and/or of no or limited relevance to our client group. The particular features and vulnerabilities of our client group which we consider to be most relevant in the context of this response are as follows:

- Some are resident overseas at the point at which initial instructions are taken, and throughout the majority of the case;
- Some are resident in the UK at the point at which initial instructions are taken, but are removed or deported from the UK during the case (e.g. deportation cases where the client is only entitled to appeal against their deportation from outside the UK);
- In cases where the client is resident overseas, means of communication with the client are often poor and intermittent;
- Asylum seekers and others seeking leave to enter/remain in the UK on non-asylum human rights grounds very often do not speak English at all;
- Asylum seekers and others seeking leave to enter/remain in the UK on non-asylum human rights grounds very often have no personal identity documents whatsoever;
- Asylum seekers and others seeking leave to enter/remain in the UK on non-asylum human rights grounds are very often outside their own countries and arriving in the UK for the first time in their lives, and may not have any personal contacts in this country whatsoever;

- Asylum seekers and others seeking leave to enter/remain in the UK on non-asylum human rights grounds have very often fled highly traumatic general and/or personal situations in their own country;
- Asylum seekers and others seeking leave to enter/remain in the UK on non-asylum human rights grounds have very often endured long, dangerous and stressful journeys to the UK;.
- Asylum seekers and others seeking leave to enter/remain in the UK on non-asylum human rights grounds are sometimes controlled and exploited by criminals – e.g. those who are victims of human trafficking;
- Asylum seekers and others seeking leave to enter/remain in the UK on non-asylum human rights grounds, as well as other immigrants, often have no concept of the existence of publicly funded legal advice and representation, coming from countries where there is no state legal aid provision. Historically there has been a real problem of our client group being diverted towards representatives who do not provide publicly funded advice and representation, and whose standards of work have often been found to be of dubious quality.

We mention these features to underscore the acute need for such a vulnerable client group to have access to quality legal advice and representation. The procedures by which such advice and representation can be accessed must be as straightforward as possible for a client group with the disadvantages identified above (not speaking English, arriving in the UK for the first time, lacking personal contacts in this country, often suffering considerable trauma). It should also be borne in mind that the time limits in which steps in immigration and particularly asylum cases need to be taken are very tight indeed. An asylum applicant can in theory expect to be interviewed about their application within 2 days of making their application for asylum. An applicant who has received an adverse decision from the UK Border Agency ('UKBA') has only 10 working days in which to consider the decision and lodge notice and grounds of appeal (reduced to 5 days if the applicant is detained). In these circumstances it is imperative that there should be no practical obstacles to access to publicly funded legal advice.

Before addressing the consultation questions we should also like to make clear that in ILPA's view the Law Society should be slow to accept and adopt the mantra of there being 'no new money for Legal Aid'. We take this stance being of course fully aware of the current climate with regard to public spending generally. But as Michael Mansfield pointed out just a few weeks ago in accepting his 'Outstanding Achievement' Legal Aid Lawyer of the Year award, Legal Aid is the third pillar of the welfare state. This bears remembering, and reminding others of. The fact that we spend more per head on Legal Aid than anywhere else in the EU is either indicative of relative demand, and/or a matter of which we ought rightly to be proud, i.e. that there is a measurable and significant commitment in this country to ensuring that the most disenfranchised members of society in fact have a means by which they can access appropriate assistance to enforce their rights. The service provided is already incredibly good value for money. How else could a system be described in which many rates of remuneration have not increased in a decade, and where other modes of delivery have been tried (e.g. the Public Defender Service) they have proved to be far more costly?

ILPA well understands that the Law Society would do no service at all to its constituents by taking an ostrich approach to the new political ideas regarding Legal Aid funding which have already been mooted by the new Government. However we suggest that any proposed new system of funding must be capable of demonstrating that it can achieve the money-saving imperatives of Government in the short term, without damaging

access to justice. It may well prove to be that the current system is the best mode of delivery available and if the evidence supports this view then this is the stance the Law Society should take in its negotiations with the Government over the coming months.

Chapter 2 questions

1. **Do you agree with our definition of the main characteristics of access to justice?**

Yes.

2. **Is our assessment of the costs drivers complete? Are there other drivers?**

Largely, yes. In the asylum context it should not be overlooked that foreign policy has a fundamental role to play in seeking to address problems in other countries which may ultimately give rise to significant numbers of people fleeing those countries to seek asylum. Foreign policy has in the recent past significantly contributed to creating conditions prompting fairly large-scale flight from a particular country, namely Iraq.

3. **Are our proposals for improved impact assessment process practical? Will they address the concerns? AND**
4. **Do you agree that there should be some form of Access to Justice test as part of the legislative process? If so, what form should such a test take?**

We see no reason why there should not be a combined Legal Aid/Access to Justice impact assessment at the point of new legislation being proposed. These are in any event two sides of the same coin. We offer no detailed proposals on what form such an impact assessment should take, beyond the obvious points of assessing what new rights or responsibilities the legislation seeks to create, which sectors of the population are most likely to be affected by the creation of these new rights and responsibilities and the extent to which they will require expert advice to enforce their rights and / or to abide by their responsibilities. Certainly where new criminal offences are proposed there must be a thorough-going assessment of the number of prosecutions expected to be brought and the concomitant Legal Aid costs.

5. **Given the government's announcement that it intends to convert the LSC into an Executive Agency of the Ministry of Justice, how can an independent assessment of cases and funding mechanisms can be assured?**

No ILPA response.

6. **Do you agree with our assessment of the problems? Are there others that we have missed?**

No ILPA response.

Chapter 3 questions / notes

1. **Are there other ways of amending the provisions governing eligibility and scope to enable a more sophisticated approach to funding decisions in legally aided cases?**

We do not see significant potential for change to the current arrangements in the immigration category. There is already a rigorous means test and perfectly adequate merits tests for all levels of advice and representation, which encompass a costs/benefits analysis and require a provider to consider whether a privately paying client of moderate means would pay for advice and representation having regard to the prospects of success in all the circumstances.

2. **Do you agree that contact cases should not automatically be granted legal aid but other options explored instead?**

No ILPA response.

3. **Should legal aid continue to be offered for the whole range of work as at present, or should some areas of work be removed from scope, if so which and why?**

We make no other comment than that asylum and human rights cases must remain within scope in order that the UK meets its domestic and international legal obligations. There are non-asylum immigration cases which could be specified as being automatically outwith scope, but for those categories of applications it would always be obvious that the applicant would be ineligible on means in any event (e.g. applications under the Immigration Rules which require the applicant to have a particular level of savings/earnings) so there is nothing really to be gained by designating them in advance as out of scope.

4. **Are there other ways in which the eligibility rules could be amended to produce savings or a more targeted approach?**

See response to question 9.

Chapter 4 questions

5. **What are the advantages and disadvantages of a loan scheme to fund actions?**

Whilst there may be no reason in principle why this could not apply to asylum seekers and other immigrants, we believe there would need to be some mechanism for grading what percentage of the loan would be re-fundable once a certain level of income has been achieved, in order to recognise that members of our client group, if successful in their applications to remain in the UK, will often be literally starting from scratch (with accommodation etc and all the start-up costs that entails), unlike many of those in the settled population.

Also with regard to our particular client group, as the consultation document recognises, if the case were unsuccessful there would be almost no prospect of recovering the costs. We would certainly not wish to see it become a condition of any future application to re-enter the UK that the loan would be repaid in advance and we can well imagine that this is a proposal Government might make. Such an applicant should be subject to the same

rules as any other recipient of a loan, i.e. if/when the applicant obtained leave to enter, s/he should only have to re-pay the loan if and when s/he achieved a certain level of income.

As noted in our introduction, asylum seekers and others seeking leave to remain on non-asylum human rights grounds often have no personal identification documents whatsoever and this may pose practical problems for the administration of a loan scheme.

Overall we believe there would need to be very clear evidence that the collection costs would be proportionate to the money likely to be collected, especially bearing in mind that the actual value of the loan sum may decrease quite significantly by the time the borrower were in a position to repay it.

We also believe that detailed research would be needed to assess whether a loan scheme would be likely to have a deterrent effect. This would be of particular importance where the potential opponent is the state; this goes to the principle of equality of arms. The conditions under which the loan would become repayable, and the timescale for repayment would need to be very lenient in order to ensure there was no deterrent effect.

It should also be borne in mind that an increase in litigants in person as a consequence of people being deterred from seeking Legal Aid in the form of a loan would have a knock-on adverse effect of the resources of the Courts and Tribunals.

Moreover if people try to take their own cases, matters could become far more complex and problematic for them. The cost of a lawyer then having to put things right would increase (and so therefore would the charge to the 'loan fund'), requiring the litigant to contemplate taking an even bigger loan, potentially exacerbating the deterrent effect, such that the effect would become a real vicious circle.

6. **To what extent should litigants be required to pay towards their legal costs? AND**

7. **Would a legal aid levy be practical?**

A flat contribution would have no place in asylum and human rights cases. The current system of means testing is rigorous and certainly results in those who can afford to pay (and arguably many who really can't, or who can only just) so doing. But asylum seekers are as a client group in the overwhelming majority of cases impecunious. They should be excluded as a category from any requirement to pay a flat contribution. In most cases within the immigration category the litigant's opponent is the state or other public authority. In principle we consider that it is wrong to require litigants who have been wronged by the state to have to pay towards the costs of setting that right. The imbalance between the position and status of the opposing parties is already hugely in favour of the state and will only be more so if there is a financial penalty on the individual as well. As a matter of principle it would sit very ill to require those seeking safety in the UK to contribute towards the associated legal costs in circumstances where the British Government may be in part responsible for them having to flee to safety in the first place (see Iraq).

Non-asylum immigration is a very broad category, encompassing a range of cases from those applying for student visas (who may often not come within scope under the current system anyway) to foreign women fleeing domestic violence from their British husbands (who often would come within scope under the current system and who in many cases are struggling to find a roof over their heads; such women are highly unlikely

to be able to access funds to pay a flat contribution). The poor standard of decision making by the UK Border Agency and Entry Clearance Officers means those compelled to appeal against an initial decision may have had no proper consideration of their case and may eventually succeed in overturning the original decision-making. They should not be penalised financially for the state's initial inadequacies.

Overall, consideration would need to be given to the question of the level at which any flat contribution would be set, the categories of law in which it would be appropriate to require it, the stage of proceedings at which the fee would fall due, and the proportionality of the costs of collecting the fee in relation to the money which would be saved.

8. **Do you consider that the Jackson report and other issues justify looking again at a CLAF? What issues should be explored?**

A Conditional Legal Aid Fund would have very limited relevance in the immigration field as damages are in issue only in a very small proportion of cases (principally unlawful detention and assault).

We consider that in principle justice is not best served by a system that means that the wronged party is still left out of pocket by bringing litigation. The cost should be borne by the wrongdoer and be seen to be so borne. We do not object to a reinvestigation of a CLAF to cover damages claims subject to that guiding principle.

9. **What would the effects be of imposing greater requirements on BTE legal expenses insurance? Is it practical to extend it?**

Before the Event Legal Expenses Insurance is never going to be able to cover immigration. For those already resident in the UK the only immigration issues they are likely to have would be:-

- Sponsorship of entry for a family member or friend (therefore a "voluntary" act not a response to a wrong being done to them – so insurance would be inappropriate) or;
- Proposed loss of status (revocation of leave to enter / remain), most likely through deportation following criminal conviction (so the prohibition relating to criminal matters would also be likely to apply).

Those outside the UK before the event could not be compelled to insure.

10. **What would be required of insurers to provide appropriate protection for litigants?**

Not relevant – see above.

11. **Should there be tax incentives to encourage people to take out legal expenses insurance?**

No ILPA response.

12. **Do you agree that it is likely to be impractical for legal expenses insurance to be compulsory and to form the basis of a legal aid system?**

A legal aid scheme funded from general taxation is likely to be the most efficient and effective way of achieving the effect of a compulsory insurance scheme, much as a National Health Service is more efficient and effective (for the same spend) than compulsory health insurance.

13. **Do you agree that it will be impractical to fund a legal aid system through interest on client accounts?**

We consider that this is impractical for all the reasons you have given. Many firms have found that interest on client accounts has fallen away dramatically with the recession and the fall in the housing market. This is an unpredictable and unsustainable way to fund legal aid especially in a recession.

14. **Should prosecutors and other authorities account for the legal aid used for their actions? What would the impacts be?**

We have long pressed for public bodies such as the UK Border Agency to be accountable for the legal aid costs of their actions by highlighting and pursuing the lack of any or any proper legal aid impact assessment in legislative proposals (for example over the introduction of new general grounds for refusal of immigration applications in the Immigration Rules in HC321 in February 2008, where no impact assessment was made in advance of sweeping and draconian changes).

We consider that public bodies such as the UK Border Agency should have a direct incentive for making correct and sustainable decisions at the earliest point. We have not identified any potential negative impact, apart from the possibility that the UK Border Agency may be so hard hit financially by such a proposal and be so resistant to improving its performance that it would seek to resort to increasing application fees.

15. **Are there other ways in which those who cause people to go to court can be deterred from causing costs to the legal aid fund?**

Legal Aid impact assessments must be taken seriously by government and scrutinised properly by Parliament and funds must follow from them.

In the immigration category we suggest that the conduct of the UK Border Agency in proceedings before the Immigration and Asylum Chamber of the First Tier Tribunal causes significant charges to the legal aid fund. Firstly, it has consistently been the case over a number of years that the UK Border Agency / Entry Clearance Officers at overseas posts have between 22 – 25% of their initial decisions overturned on initial appeal to the Tribunal. Thus at least between 22 – 25% of cases before the Tribunal should never come before the Tribunal in the first place.

The UK Border Agency incurs what we believe are likely to be considerable charges to the legal aid fund through its poor preparation for and conduct of appeals before the Tribunal. This includes not preparing at all before the day of the hearing, and so seeking an adjournment to allow time for preparation and departing from instructions (i.e. changing / adding to the content of the decision refusing the application) on the day of the hearing thereby leaving the Appellant no choice but to seek an adjournment in order to have time properly to consider new case against them. One way of dealing with such behaviour, although we emphasize that this proposal would need further detailed

consideration and consultation, would be to have a system for the award of costs in the Tribunal. So long as adequate preparation time were allowed, a system for awarding costs could have the effect of ensuring that both parties were properly prepared, knowing that inadequate preparation would entail costs penalties.

Chapter 5 questions

16. **Do you agree with our suggested criteria for successful delivery of legal services?**

Yes. We would add that cutting corners on the provision of accessible, quality advice and representation saves no-one money in the longer term. People's legal problems do not just 'go away' and tend to get worse over time if left unresolved. Access to local, effective, expert, regulated advice and representation at the earliest stage possible must be the most cost effective way for legal services to be delivered.

However in the immigration category it is important not to be over-prescriptive about location at the cost of choice, as the Legal Services Commission has inclined to be. There always needs to be scope for providers to take on clients who may live or be detained some distance away from where the provider is located. Taking on clients located some distance away, provided always there is good reason for this, entails the need for the system of funding to pay the full costs of the client's travel to the office or the practitioner's travel to the client (e.g. in whichever prison or detention centre she may be in).

Choice will be compromised where advice deserts have been allowed to come into existence.

Quality has to be paid for. As the report points out, legal aid lawyers are often dealing with matters of fundamental importance to people, such as their lives, liberty and future safety. In asylum it is obvious (and less obvious, but often none the less true in non-asylum immigration work) that such fundamental issues are the very substance of the work lawyers undertake, yet the remuneration rates for such work do not presently reflect this.

17. **Do you agree that unregulated advisers should be regulated?**

Yes. There is no place for unregulated advice in such a complex area as asylum and immigration. This much has been recognised and sought to be addressed by the creation of the Office of the Immigration Services Commissioner to regulate non-lawyer advice and representation in the immigration category.

18. **Is it appropriate that publicly funded advice given by non-lawyers should be supervised by lawyers?**

Yes. The nature and degree of supervision which will be required will depend on the nature of the work being undertaken by the non-lawyer, but access to supervision regarding, for example, matters of professional ethical conduct should always be available to those giving publicly funded legal advice without a lawyer's training.

19. **How far can new technology be used in delivering legal services without**

compromising confidentiality or the client/adviser relationship?

In asylum work particularly, but also in much non-asylum immigration work, the ability quickly to build a relationship of trust with the client is absolutely crucial. Asylum lawyers regularly deal with people of are victims of torture, domestic violence, persecution on political, religious or racial / ethnic grounds, traumatised by conflict and bereavement and utterly terrified of being returned to a situation of danger. More often than not these people do not speak English as a first language or at all. Very often there are socio-cultural barriers to be overcome in establishing a relationship of trust, particularly where the client has suffered gender-related violence. We believe that it can never be appropriate that clients such as these should be reduced to receiving only telephone or e-mail advice, nor is it appropriate that they should only ever be able to speak to their lawyer by video-link. There is no way in which justice can be done to their cases by these means.

Whilst the initial attendance on the client should in most circumstances be in person (there may be an exception to this where for example the client/adviser relationship already exists), in the right circumstances and the right cases video link certainly has a role to play in the efficient and cost effective delivery of legal aid advice. This depends on many factors:

- Video link equipment needs to be properly maintained at courts, prisons and detention centres;
- There needs to be ready access to the video link (i.e. sufficient video link rooms with sufficient slots each day to meet demand);
- Facilities need to be appropriate to ensure confidentiality;
- Use of video link only in the right kinds of cases, in the right circumstances. An example of where it may be appropriate to use video link after the initial attendance – an EU deportation case in which the offence was minor, the client is long established in the UK and the test for deportation under Community law is clearly not met, though UKBA are seeking to deport anyway. An example of a case in which video link would not be appropriate would be any case involving a minor – there can be no substitute for face-to-face advice in cases involving children.

20. **Do you agree with our assessment of the advantages and disadvantages of the existing business models?**

Yes.

21. **Are there other models that should be considered?**

No ILPA response.

22. **Do you agree with our assessment that legally aided work should be provided by the private sector?**

Yes, supplemented as at present by Law Centres and the not-for-profit sector.

23. **Are there ways in which a 'triage' system could be made to work effectively and at low cost?**

It is quite difficult to see how triage could have an effective and cost effective role to play in asylum and immigration. In these areas, expertise is needed very much at the front end. An expert may, for example, be able to identify a simple immigration solution to a case which initially presents as a far more complex asylum problem. Greater skill still is needed to identify cases in which there may be significant asylum / human rights issues around the client's present and future status, but which initially present as immigration cases. Such expertise would have to be paid for, and so we doubt there are any real savings to be made through the use of triage.

Another problem with triage is that it is likely to build in to the system what in the immigration category may often prove to be highly prejudicial delay. As noted above, timescales and deadlines in the immigration category are short and often non-negotiable. Missing a deadline for applying for an extension of leave to remain from within the UK means that the applicant will be left without any means of support during what is often the considerable period of time for which an application is under consideration at the UK Border Agency. Some clients have poor understanding and appreciation of such matters and sometimes leave it very late to seek advice. The same goes for clients who have made an initial application to the UK Border Agency without the benefit of legal advice and receive a refusal. As noted above, such clients have 10 working days to consider the decision and lodge notice and grounds of appeal (reduced to 5 days if the client is detained). The time limits for lodging an appeal will only be extended by the Tribunal if there is good reason for the late notice. We believe that clients faced with such deadlines, and the consequences of missing the deadline, should not be delayed by being compelled to pass through a system of triage.

24. **Do you agree with our assessment about the issues surrounding contracts with large firms?**

To some extent. The starting point must be that the size of a firm does not have any automatic consequence for the quality or otherwise of the service it provides, but the larger the firm the more rigorous supervision requirements may need to be in order to ensure that quality standards are consistently maintained throughout the firm.

We have heard in the past from the Legal Services Commission that it may achieve administrative savings through contracting with fewer, bigger firms, though we have yet to see any properly evidenced projections about the magnitude of savings the Commission anticipates may be available through having fewer, bigger contracts.

25. **Do the Dutch or the Law Shop models provide alternative systems which could be used in England and Wales? If so, how?**

We believe that the Dutch Legal Services Counter model, as was described and explained by Jan Albert Waal (Director of the Dutch Legal Services Counters) at the Law Society's Access to Justice seminar on 19th May 2010 would be of limited assistance in the immigration category. One very obvious shortcoming is that there is no provision of interpreter/translator services at the Legal Services Counter. Although in our own system the Legal Services Commission pays well below market rates for interpreter services it accepts that it must provide access to such services in the immigration category as part of the funding arrangements. It is a completely basic proposition that clients in this category must have access to appropriate, quality, independent interpreters. In the Dutch model those requiring interpreter services are expected to bring an interpreter with them. For someone who has no means to access and pay an independent interpreter this will mean at best bringing a family member or friend, whose command of Dutch may be limited

too. But the most important and obvious point is that asylum seekers need to be able to give in complete confidence details of the reasons for which they are seeking asylum. A woman who has been raped, an elder dependent relative who is being exploited by her own family or a traumatised child for example may not feel able to speak about their experiences in the presence of family members or friends.

It appears to us that the Dutch model does in fact operate as a form of triage, and whilst it appears undoubtedly to have had some success in assisting clients, largely in areas such as contract/consumer, employment/labour, family and social welfare, and whilst 25% of users in 2008 were immigrants, only 4% of the Legal Services Counters' case work in 2008 was in immigration. To the extent that the Dutch model acts as a form of triage, it would be of very limited assistance (see our comments on triage at question 29). Both the Dutch model and the Bristol Law Shop model could help with providing a service to those of limited means who are currently ineligible on scope (e.g. those cases which are excluded on the basis of being 'simple form filling') but even here caution should be exercised and relevant expertise would be required at least to be able to identify and refer on cases which present as 'simple form filling' but which turn out to have more complex matters of law involved.

26. **Are there ways in which ABS could provide improved publicly funded services?**

No ILPA response.

Chapter 6 questions

27. **Would you support the development of a pay review body to ensure fair pay for legal aid work?**

This would seem a potentially constructive way forward, though the criteria for assessing what constitutes fair pay would need detailed consideration and consultation.

28. **How can the rules be simplified in a way that will still ensure legal aid is focussed on the right cases?**

No ILPA response.

29. **Should payment be for inputs, outputs or outcomes? How do the arguments vary in different fields of law or different types of case?**

In the immigration category we would wish to see a return to payment for inputs, i.e. a return to payment at hourly rates. We do not believe that this automatically means that clients with more straightforward cases would go unrepresented. Providers will take on a mix of cases, reflecting the range of experience amongst their employees. Hourly rates cases could still be subject to a 'soft cap', i.e. an initial upper cost limit beyond which providers would need to apply for an extension of funding. The objection that this is too labour intensive for the Legal Services Commission could be met by setting more realistic upper costs limits and thereby reducing the number of extension applications that would need to be submitted. We also suggest that the costs of dealing with extension applications should be compared with the cost of assessing those cases now submitted for assessment as 'exceptional' (i.e. submitted as having incurred more than three times the fixed fee) under the graduated fixed fee scheme in the immigration category.

We do not agree that an hourly rates system incentivizes solicitors to undertake unnecessary work. This is a quality issue - the skill of the solicitor is to identify what work is reasonably necessary and to undertake that work within the appropriate time frame – and as such it is an issue which would be subject to quality control audits and ultimately sanctions where there was evidence of abuse.

If the system of payment by outputs is to be maintained then the graduated fixed fees must be set at a realistic (i.e. higher) level, and the exceptionality threshold should be reduced to a realistic (i.e. lower) level. Only then would the much vaunted principle of 'swings and roundabouts' have a hope of working so as to retain a viable provider base.

30. **The LSC is overseeing a £2 billion service, made up of over 2 million separate acts of assistance. What decisions on individual acts of assistance should the LSC take, and what should be left to the discretion of the adviser?**

In the immigration category, decisions about which individual cases are funded should as now be left to providers, who have the relevant expertise to apply the sufficient benefit / merits test for controlled work (Legal Help, Controlled Legal Representation) cases and for licensed work (full certificate) cases. In the case of licensed work the Legal Services Commission could, as now, retain oversight of the decisions.

31. **What terms do organisations need by way of length of contract, amendment provisions and price in order to be able to operate effectively in business terms?**

We have no detailed response to make and observe only that a balance needs to be struck between the requirements of business certainty on the one hand, and allowing for new entrants to the market on the other.

32. **What are the pros and cons of a system under which clients apply direct to the legal aid authority for funding for their case? AND**

33. **What can be done to mitigate the possible disadvantages of this approach?**

For clients in the immigration category we believe there would be significant disadvantages. We have explained earlier in this response that the timescales / deadlines with which our client group has to comply are short and non-negotiable. In removal cases a detained client may be given a maximum of 72 hours notice of removal, and in some cases no notice at all. Anything which introduces delay (and perhaps further complexity) in the ability to access advice in a timely manner is therefore potentially highly prejudicial.

Applications direct to a legal aid authority would require those employed by that authority to have the relevant expertise to conduct merits assessments, where there is a merits assessment to be made as part of the funding criteria.

There would need to be a straightforward, accessible and independent body to which clients could appeal refusals of funding by the legal aid authority.

These are not necessarily objections in principle to the idea of applying direct to a legal aid authority, but we would need to be convinced that there would be no significant delay as a consequence, and no compromise on the standards of merits assessment. We would therefore need much greater detail on how this would work.

As a general point we would query what would be the anticipated start up costs of a system whereby clients apply directly to a legal aid authority, and what real savings could be achieved over what time period.

34. **What advantages and disadvantages do you see from a system in which any firm that met basic standards was permitted to provide civil legal aid services? Would you prefer a system that issued a limited number of contracts? If so, on what basis should the numbers be limited?**

No ILPA response.

Sophie Barrett-Brown

Chair

ILPA

30 June 2010