

LEGAL ADVOCACY:

EARLY LEGAL ADVICE AND REPRESENTATION

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THE LEGAL ISSUE:

THE CORE ISSUE & THE ORGANISATION'S INVOLVEMENT

Ireland's asylum system has a number of serious shortcomings and has historically been characterised by low success rates by asylum applicants and lengthy delays at all stages of the process. Furthermore, the Refugee Legal Service (RLS) – the State provider of legal aid for asylum seekers – is under-resourced and focuses on supporting appeals, resulting in significant unmet legal need for people in the early stages of an application for protection. In light of the damaging effects that this protracted and inefficient process can have on asylum seekers, the Law Centre of the Irish Refugee Council (IRC) has developed a different model for the delivery of legal services to people seeking protection. This short report focuses on its use of the law through the provision of early legal advice and strategic casework, as a tool to secure systematic change.

(Note: Between 2004 and 2014, The Atlantic Philanthropies provided funding to organisations in the Republic of Ireland and Northern Ireland to use the law to secure social change. To read a summary report about the lessons Atlantic grantees learned in doing this work, [click here.](#))

THE APPROACHES USED:

WHY THEY WERE ADOPTED, WHAT THEY INVOLVED, CHOICES MADE

As part of its Early Legal Advice and Representation Project, the approach employed by the IRC Law Centre is to provide direct, free legal support to asylum claimants at the first stage of their application for protection. This model was adopted with the aim of demonstrating that there is an alternative way of working within the existing legal framework, which reflects international best practice. Ultimately, it is grounded in the belief that the development of an asylum system that properly identifies and supports people in need of protection is in the interests of both asylum seekers and the State.

In relation to the specific features of this model, a range of legal services is provided directly to asylum seekers to increase their chances of achieving refugee status in the first instance. Taking into consideration organisational capacity, a person who has claimed, or is contemplating making an application for asylum, can obtain a two-hour advice appointment to discuss the details of their case with a solicitor. Subsequently, if it is clear that the person will benefit from full representation, the IRC Law Centre will come on record for the client and provide further legal support. As part of this provision of legal representation, clients receive practical assistance in preparing the relevant documentation and, where necessary, are accompanied to interviews. For instance, they are supported to prepare a Personal Statement, setting out their individual circumstances and their need for international protection. This Statement is then submitted to the Office of the Refugee Applications Commissioner (ORAC), the first instance decision-maker on asylum in Ireland,

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² Irish Refugee Council, GRS Template: G23432 - "Interim Support" (January 2014 – December 2014) at p. 1.

in advance of the client's initial interview. In appropriate cases, the Law Centre also has the capacity to provide ORAC with its own submission in advance of a decision being issued. This assistance is of specific importance for vulnerable asylum seekers who have difficulty enunciating their personal circumstances, particularly within the context of a formal interview setting.³

This direct work with asylum seekers is complemented and supported by an array of approaches focused on ensuring that the early legal advice and representation service are recognised as a best-practice model. In order to promote the implementation of this model, in whole or in part, by the RLS and other legal practitioners, a number of capacity-building measures have been undertaken. Training has been provided to the staff of the Legal Aid Board and private practitioners on the specific application of early legal advice and representation techniques to Ireland's asylum system.

The importance of this approach has also been promoted through presentations to law students at university level and the provision of master classes on refugee, protection and human rights law to practitioners from a wide range of backgrounds.⁴ Through collaboration with the Public Interest Law Alliance in the Republic of Ireland, a pro bono scheme with a leading law firm has been developed. To date, this scheme has involved the delivery of bespoke training to a group of lawyers on the Law Centre's model of service delivery and their provision of legal representation to a number of asylum applicants at first instance.⁵ Existing fora, online networks and databases have also been utilised to share information on this model amongst domestic and international practitioners, including the Refugee and Immigration Practitioner's Network (RIPN), the European Legal Network of Asylum Lawyers (ELENA), the Asylum Information Database project (AIDA) and the European Database of Asylum Law (EDAL).⁶

Furthermore, advocacy strategies are employed to ensure the smooth running of the early legal advice and representation service and to promote its value. For instance, the IRC Law Centre has built strategic relationships with ORAC, the Irish Nationalisation and Immigration Service, the Garda National Immigration Bureau, the Refugee Appeals Tribunal and the Department of Justice.⁷ A constructive and professional manner is adopted when engaging with such agencies and officials, thereby encouraging open conversations about the issues raised. Finally, in order to inform and develop its advocacy approaches and direct service delivery, the Law Centre is currently engaging in research with partner organisations from other jurisdictions. This research is funded by the European Programme on Integration and Migration (EPIM) and focuses on the provision of early legal advice to asylum seekers at both a domestic and European Union (EU) level.⁸

³ Irish Refugee Council, Annual Report 2013 (Dublin: Irish Refugee Council, 2013) at p. 7.

⁴ Ibid. at p. 8.

⁵ Ibid. at p. 9.

⁶ For further information on these networks and databases, see Irish Refugee Council, Annual Report 2012 (Dublin: Irish Refugee Council, 2012).

⁷ Irish Refugee Council, *supra* note 2 at p. 9.

⁸ Ibid. at p. 8.

THE OUTCOMES:

THE DIRECT & INDIRECT SUCCESSES OF THE INTERVENTION

Through their shared focus on the development and promotion of an early legal advice and representation service, these strategic interventions have had a significant impact on the asylum system in Ireland. Firstly, the recognition rate of asylum seekers as refugees has steadily improved over recent years. From January to March of 2013, the Refugee Applications Commissioner made a total of 26 positive decisions, 11 of which were in favour of the Law Centre's clients. This represents a recognition rate of 15.29%, compared with a rate of 1.3% in 2010.⁹ Although it is difficult to quantify the precise impact of the new service on this development, significant evidence supports the conclusion that the provision of early legal advice and representation has played a pivotal role in progressing change. Indeed, over 50% of the Law Centre's clients are consistently granted refugee status at the first instance stage (before ORAC). This success rate is leading to the respect and interest of the authorities in this new model of service delivery and, as the recognition rate comes more into line with the EU average, public confidence in the asylum system has been improved.

By improving the quality of legal representation that asylum seekers receive, there is a reduced ability for decision-makers within the protection process to make or defend decisions that are not in compliance with international obligations and best practice. Furthermore, as decision-makers are being provided with more relevant details about the individual circumstances of asylum seekers, their capacity to make informed decisions has increased. This production of better decisions at an earlier stage in the process is having a positive effect on the overall efficiency of the asylum system. Ultimately, it reduces the need for contentious litigation that results in asylum seekers being delayed in the process for many years and the need for the State to defend appeals at enormous cost. Finally, through the adoption of capacity-building and advocacy strategies, the knowledge and practical skills of those working within the asylum system has been developed. This has facilitated their understanding of the value of early legal advice and representation and their application of this approach to their own work. It is significant that one of the most reputable law firms in Ireland is adopting the model of service delivery developed by the IRC Law Centre, thereby paving the way for other private practitioners and the RLS to follow suit in the coming years.

THE LESSONS LEARNED:

REFLECTIONS TO BE SHARED WITH OTHER ORGANISATIONS & FUNDERS

This report highlights how the use of a wide range of integrated and complementary strategies, all underpinned by the core objective of developing an early legal advice and representation service, is capable of creating broad change within the asylum system. Thus, it demonstrates that the adoption of a specific objective at the outset of a project can enable an organisation to use its limited capacity and resources to maximum effect.

⁹ Irish Refugee Council, *supra* note 1.

In relation to the strategies employed, a number of key lessons can be shared. First, while high-level strategic litigation is likely to attract significant media and political attention, representing individual clients in a more complete way can meet legal need and their cases can collectively create procedural change. This approach is resource intensive, thereby restricting the number of people who can be provided with direct legal supports and making it difficult to replicate in legal aid services and private law firms. However, the strategy adopted by the IRC Law Centre demonstrates that this challenge can be overcome by promoting specific elements of the approach that can be adopted by other legal practitioners with more limited resources. Furthermore, it is useful for an organisation to develop its strategies in line with developments at an international level. For instance, the Law Centre's model of service delivery ties in with the growing recognition at an EU level that the provision of full legal support at first instance is in the best interests of asylum seekers. This places the organisation in a strong position to obtain international funding and to engage in cross-jurisdictional research. Finally, this report showcases the importance of networks and relationship-building strategies, in disseminating best-practice models and reducing the adversarial nature of communications between the key stakeholders in a sector.