Response to OISC consultation on fee structure

June 2024

This response is submitted on behalf of Rights of Women, Southall Black Sisters, Ashiana Network, Kiran Support Services and the Latin American Women's Rights Service (LAWRS). We are organisations working in the Violence against Women and Girls sector (VAWG) sector and are funded through charitable grants and donations to undertake a range of work including the provision of legal advice and services in the field of immigration law.

We are confining our response to OISC's 2nd proposal to introduce charging to the 'not for profit' (NFP) sector.

About

Rights of Women (RoW)

Rights of Women is a legal rights organisation which specialises in supporting women who are experiencing – or at risk of experiencing – all forms of Violence Against Women and Girls (VAWG), including domestic and sexual violence. In our approach, we recognise the additional barriers posed by the intersection of gender-based abuse, racism, structural inequality and other forms of discrimination and oppression that impact on women's vulnerability, exclusion and marginalisation.

By offering a range of services – including specialist telephone legal advice lines, legal information and training for professionals – we aim to increase women's understanding of their legal rights and improve their access to justice. We empower women to make informed choices where they come into contact with the criminal, family, employment or immigration and asylum legal systems so they can live free from violence.

Rights of Women is regulated by the OISC and its individual immigration advisers are all solicitors and regulated by the Solicitors Regulation Authority (SRA). Our solicitors have extensive experience of working in both the legal aid sector, private practice and the 'not for profit' sector (NFP).

Rights of Women is a registered charity 1147913 and Company Limited by Guarantee.

Southall Black Sisters (SBS)

Southall Black Sisters (SBS) is a specialist organisation founded in 1979, dedicated to supporting Black, minoritised and migrant women. SBS operates a resource centre offering information, advice, advocacy, counselling, and support, particularly for those escaping domestic and gender-based abuse. SBS's advocacy team, experienced in domestic abuse and fluent in several Asian languages, provides holistic support and participates in Multi-Agency Risk Assessment Conferences (MARACs) to protect high-risk abuse victims. SBS assists statutory and non-statutory organisations with expert advice, reports, and training on Black, minoritised and migrant women's needs, influencing family, criminal, and immigration cases.

A significant part of SBS's work involves immigration support, particularly concerning transnational marriage abandonment, and SBS has been pivotal in getting this abandonment recognised as a form of domestic abuse, ensuring these women can access justice and legal redress. Around 60% of SBS's service users have

the No Recourse to Public Funds (NRPF) condition attached to their immigration status.

Overall, SBS's comprehensive advocacy service includes risk assessment, safety planning, legal advice on family and immigration matters, and securing support from key services, aiming to empower women to make informed decisions and minimise repeat victimisation.

SBS is regulated by the OISC and is able to support victim-survivors in relation to this. SBS is a registered charity 1204937 and Company Limited by Guarantee.

Ashiana Network

Ashiana is a specialist organisation providing services for women and girls predominantly from South Asian, Turkish and Middle Eastern communities who have experienced or are at risk of Violence against Women and Girls (VAWG).

Ashiana runs four refuges with a total of 21 bed-spaces; two specifically for women aged 16-35 fleeing harmful practices. Ashiana designates a number of bedspaces for women with No Recourse to Public Funds (NRPF) across these refuges and provide a legal immigration advice service for women with NRPF.

Ashiana also offers specialist assertive advocacy, advice, support and counselling services for women and girls experiencing VAWG, enabling them to make informed decisions and exit violent relationships. Ashiana delivers a range of awareness raising workshops for people in the community and training on domestic violence for professionals in the voluntary and statutory sector.

Ashiana has over 30 years' experience of developing and delivering a holistic package of long-term trauma-informed wrap-around support to South Asian, Turkish and Middle Eastern women/girls which is focused on longer term safety, sustained recovery, and improvements in women's health and wellbeing.

Ashiana Network is a registered charity 1042440 and Company Limited by Guarantee. Ashiana is OISC accredited at level 2.

Ashiana is working towards level 3 regulation with OISC. They currently employ an immigration adviser who is an experienced immigration solicitor regulated by the SRA. They are currently undergoing a recruitment exercise for immigration advisers.

Kiran Support Services

Kiran Support Services was set up June 1990 under the name of Kiran Asian Women's Aid. Kiran Support Services provides wrap around services to Asian and Middle Eastern women. They provide a free and confidential immigration advice service to only Asian women who have suffered domestic abuse. Their immigration advice services have been delivered across multiple South Asian languages, namely Hindi, Urdu, Punjabi, Bangla and English, in a trauma informed manner across various cultural contexts.

Kiran Support Services is a charity organisation regulated by the OISC at Level 2. Their immigration adviser is also regulated at level 2 of the immigration category.

Latin American Women's Rights Service (LAWRS)

Latin American Women's Rights Service (LAWRS) is a human rights, feminist organisation 'by and for' Latin American migrant women living in the UK. They support 2,000 women every year who are exposed to violations of their fundamental human rights, facing violence against women and girls, exploitation in low-paid sectors, trafficking, or enduring severe poverty and deprivation.

LAWRS's direct support includes casework for women experiencing gender-based buse, counselling and emotional support, advice and casework on employment rights and exploitation, family law and immigration, among others.

They also actively advocate for women's rights, migrant's rights and the rights of ethnic minorities, working with sister organisations in ending violence against women and girls (VAWG), migrant and anti-slavery and anti-trafficking sectors.

The organisation and its advisers are regulated at level 2 with OISC, in the immigration category. LAWRS also organises a regular immigration advice surgery for their vulnerable clients, which is operated by external lawyers on a pro-bono basis. Their advice surgery is highly valued by their vulnerable clients without which many women would not have access to free advice.

Our Submissions

1. Our submissions relate to paragraph 42 of OISC's/Home Office's consultation document which proposes organisation and individual charges to be introduced to non-fee charging organisations to account for the cost of regulation. The proposed charges are capped at 50% of charges for 'not for profit' (NFP) organisations and will be introduced in stages over a 3 year period.

2. By year 3, NFPs will be expected to pay £519 for registration and £101 for continued registration for each adviser, at levels 2/3. The proposed charges for initial registration for the organisation and new advisers are £538 and £520 respectively, which is considerably more than the continued registration fees. A NFP organisation operating at level 2/3 with 4 existing advisers will be expected to pay £931.00 annually, with fees increasing for each new adviser joining the organisation.

3. Firstly, we would like to seek clarification from OISC/Home Office as to whether they are proposing double regulation i.e. the regulation of individuals who are already regulated by other professional bodies such as the Solicitors Regulation Authority (SRA) or the Bar Standards Board (BSB). The consultation document is unclear on this point. If this is what is proposed then we would strongly object on the grounds that it is unfair, unnecessary and excessive and will place a significant and disproportionate financial burden on NFPs providing vital services that fill gaps in national provision and put their services at risk. It would certainly impact on Rights of Women and Ashiana Network, and other NFP VAWG organisations employing solicitors or barristers, especially the smaller organisations who are already struggling financially. These circumstances would, in our view, justify a fee exemption.

4. We would also be interested to learn what other specified reasons an exemption would be granted as stated in paragraph 47 of the consultation document and would like to be afforded the opportunity to comment on the proposed 'specified' reasons.

5. We acknowledge that OISC performs a vital public sector function in ensuring that only those organisations and individuals that are fit and competent to provide immigration services are able to register with OISC and in ensuring that sanctions are imposed for those advisers operating illegally outside the scheme.

6. We are also pleased that OISC/Home Office acknowledge that the NFP advice sector provides an invaluable service to those seeking immigration advice and this is particularly relevant as demand for good quality immigration advice has continued to grow.

7. However, we are at a loss as to understand why fee structure changes are being proposed now and in particular *Proposal 2: introducing charges to the non-fee charging sector* in such a difficult economic climate when there are many adverse risks attached to the proposals.

8. The cost-of-living crisis has already adversely impacted our organisations with running costs increasing in the past year by up to 10%, including those costs associated with the giving of advice and advice infrastructure such as insurance, interpreting and translation, case management systems and associated IT costs. Rights of Women and Ashiana Network are already paying the SRA annually to renew practising certificates of individuals solicitors.

9. Moreover, all our organisations are contributing towards the cost of professional development of each regulated adviser, as this is a requirement for both OISC regulated and SRA regulated advisers, which ensures that advisers stay abreast of all legal developments in the complex field of immigration law.

10. Successive reports have shown that systematic underfunding of 'by and for' services (1) has risked reducing resources to unsafe levels. As of 2021, the 'by and for' sector was operating at a funding shortfall of 39% with a £97 million shortfall (2). It has also been noted that 'by and for' organisations are 6 times less likely to receive Government funding, which is an alarming statistic despite the incredible value that these services provide. As Black, minoritised and migrant women's organisations are significantly underfunded compared to their white counterparts, and the bulk of the support is provided to victim-survivors from minoritised backgrounds, these proposals seem counter-intuitive and likely to increase racial disparities through a disproportionate impact on these groups.

11. These new fees will place an additional load on our already strained and underfunded services and we may be forced into re-evaluating our services, including the financial viability of our organisations continuing to provide immigration advice and services to vulnerable migrant clients. The last resort would be for any of our organisations to close our doors to vulnerable migrant women who need to access immigration advice after exiting an abusive relationship.

12. The proposals will indirectly impact on vulnerable victim-survivors of abuse as they will find it increasingly more difficult to access free legal advice and representation. The Government should give consideration to how this lost advice provision will be replaced.

(1) investing-in-safety-report-final.pdf (southallblacksisters.org.uk)

(2) WEC So-Called Honour-Based Abuse

Wider implications of OISC/Home Office proposals outside the VAWG Sector

13. We understand that OISC is unable to recover the costs of regulation with the current fee structure, hence the OISC/Home Office's proposals to radically change the fee structure. However, we are of the view that penalising NFPs in this way is counterproductive and would urge OISC/Home Office to explore alternative sources of revenue to support OISC in being able to meet the cost of regulation.

14. We do not agree that charging NFPs is the solution to OISC's financial issues. OISC/Home office has failed to take into account that the immigration advice landscape has changed significantly over the last 5 years. One solution that should seriously be considered is an increase in the subsidy paid to OISC by the government. We cannot see any reason why this cannot be increased to meet the cost of regulation. It is well-evidenced that the increase in demand for free advice from NFPs is partially due to the lack of investment in legal aid since the introduction of the Legal Aid Sentencing and Punishment of Offenders Act (LASPO) in 2012.

15. The legal aid system is at the point of collapse as evidenced by the fact that not even those individuals in scope of legal aid are always able to access it due to reduced capacity in the sector. The barriers to accessing legal aid and access to legal aid were addressed in Right of Women's response to the MOJ's review into civil legal aid.3

16. The resultant effect is that organisations such as ours are seeing an increase in demand for immigration advice from vulnerable individuals in desperate need in areas that are in scope for legal aid. An asylum seeker that is unable to secure legal aid is unlikely to have funds to pay for immigration advice and would be looking for sources of free advice.

17. Rights of Women have seen an increase in asylum queries to our service from 11% to 25% over the last 4 years. The reduction in services nationally due to cuts and other pressures on legal advice services has created a dangerous and precarious advice landscape and we anticipate that this trend is likely to continue in the foreseeable future.

18. Recent changes to immigration law and policy have presented further challenges to migrant women victims of domestic abuse regularising their immigration status as the options available to them are not at all straightforward ie the creation of a cliff edge for some victim survivors applying under the new Migrant Victims of Domestic

(3) Rights-of-Women-Evidence-to-Civil-Legal-Aid-Review.pdf (rightsofwomen.org.uk)

Abuse Concession (MVDAC). The MVDAC which replaced the Domestic Abuse Concession (DDVC) is wider in scope than the DDVC as partners of students and workers are now able to benefit from the concession but this new cohort of applicants are not able to apply for indefinite leave under Appendix Victims of Domestic Abuse (VDA). Early advice in such cases will be crucial to ensure that the immigration options of the client and any children are considered and advice is given on the best options that meet each family member's needs.

19. Kiran Support Services has seen demand for their services increase by 80% over the last year. In general, specialist services have witnessed the detrimental impact of the cost-of-living crisis on migrant women who will continue to remain in abusive relationships if they cannot access advice and services, risking their lives in the process. The increased cost of essential specialist services has resulted in less women being supported. It is a serious cause of concern that we are having to turn away some of the most vulnerable and marginalised women due to lack of funding.

20. The inability of some women to access appropriate support from specialist organisations has a domino effect i.e. women being unable to access financial support and accommodation and legal advice to regularise their immigration status.

21. None of our organisations can replace legal aid providers who are able to provide the best possible service for vulnerable clients by obtaining medico legal and country expert reports, without which many of our clients would have little prospect of success. The phrase that legal aid is available in theory but not in reality has never rang so true. Migrant survivors are also at a risk of returning to an abusive relationship as a result of the lack of legal support.

22. The system is in urgent need of reform to avert a crisis, rather than attempts to prop up an ailing system with ill-advised and ineffective interventions such as the introduction of charging fees to NFPs.

23. Women survivors of abuse who are not in scope for legal aid have become heavily reliant on our organisations for legal advice and representation over the last few years. The indirect impact of these proposals will be to deny some migrant victim-survivors of abuse access to legal advice and representation. It's not contentious to state that access to justice is a fundamental basic human right and a denial of this right could be perceived as discriminatory.

24. It is also important to note that many NFP charities have specialisms in supporting particular groups of vulnerable individuals such as victims-survivors of gender-based violence (GBV), those fleeing torture, oppression, war and conflict and those with severe mental health or cognitive impairment issues, victims of modern slavery and children.

25. Many charities that run mainly advice services and/or utilise volunteers to deliver immigration advice and services will be severely financially impacted by these proposals. We are concerned that many of these excellent advice charities will not be able to sustain their level of services which would mean that less vulnerable individuals are supported.

26. In summary, we would urge OISC to reconsider its proposals and consider alternative methods of funding rather than penalising NFPs who are providing a valuable service for their desperate clients who would otherwise not receive any support. We are of the view that the value of this support is not comparable to 'for profit' immigration advice services that provide immigration advice and services to individuals who are vulnerable solely because they are subject to immigration control intending to apply for further permission to remain in work, business or the student categories of the immigration rules.

27. The experience of the migrant advice sector, including VAWG 'by and for' organisations, in taking a trauma-informed approach to their clients and service delivery cannot be underestimated and is crucial to enable migrant communities to come forward and seek immigration advice and services from reputable advice agencies.

28. It is inevitable that the OISC/Home Office proposals will have a devastating impact on some migrant advice charities who may be forced to close their doors for financial reasons. As stated above, 'by and for' organisations are severely underfunded and are already operating at capacity. The OISC/Home Office proposal would force these organisations to limit their provisions further. These proposals will create another barrier in an already hostile environment.

29. We hear from women that utilise our services that they have received advice from individuals working in the statutory sector to make an asylum claim to reduce financial pressure on local services. In most cases, this unregulated advice has not been correct and has led to our immigration advisers advising on emergency corrective measures such as varying their applications or withdrawing them.

30. A common scenario would be advising a woman who has wrongly applied for asylum to switch into the MVDAC. A person subject to immigration control who has an application pending with the Home Office is able to vary/change their application before a decision is made on their pending application. Ironically, the lengthy processing times for asylum has facilitated this process as migrant victim-survivors of abuse are able to apply for the MVDAC when their asylum claim is pending.

31. Without legal representation, an applicant who has a history of multiple applications is likely to be perceived as disingenuous by Home Office decisionmakers resulting in negative credibility findings against them. A reputable immigration adviser is able to pre-empt this and make effective representations dealing with the multiple application issue, therefore minimising any credibility points being raised by the Home Office.

32. It is a serious cause of concern that a reduction in reputable NFPs could lead to a proliferation of unregulated immigration advisers providing poor services to the most vulnerable migrants in society instead of achieving OISC's/Home Office's desired outcome of protecting advice seekers from poor quality advisers.

33. In the circumstances, we would urge OISC/Home Office to reconsider this proposal as the direct and indirect costs of these proposals far outweigh the benefits.

Date: 5th June 2024

Please contact the following for further information:

- Jas Bhatoa - Rights of Women jas@row.org.uk
- Shakila Taranum Maan - Southall Black Sisters shakila@southallblacksisters.co.uk
- Lubana Kayani - Ashiana Network Lubana@ashiana.org.uk
- Amtal Rana - Kiran Support Services amtal@kiranss.org.uk
- Maria Alvarez Gomez - Latin American Women's Rights Service mariapolicy@lawrs.org.uk