# ANNUAL REVIEW REPORT 2016 / 17

TWAN

# தமிழர் நலன்புரி சங்கம் (ரியூஹாம்) இ.ரா.

# TAMIL WELFARE ASSOCIATION (NEWHAM) UK

# வாழ்த்துப்பா

மூ பத்து வருடத்தோடு இரண்டினைந்து
காலச் சக்கரத்தில் பல நல்ல வலுமிகு
சேவை தனை தொடர் ஆற்றி
அல்லுறும் நம் தமிழர் பலர் வாழ்வில் ஒளியூட்டி
உனை நாடி வந்தோரை வாழ வைத்து
சேவை பல புரியும் தமிழர் நலன்புரிச் சங்கமே நீ நீடுவாழி!

வேண்டி வருவோர்க்கு வீரும்பி வழிகாட்டி
சட்டநல் ஆலோசனை பல வழங்கி, வதிவிட அனுமதி
குடியுரிமை, வாழ்வாதார மானியம், வீட்டு வசதியோடு
வேலை திட்டம் பலவற்றை நிறைவேற்றும்
தமிழர் நலன்புரிச் சங்கமே உன் சேவை நீடு வாழி!

விளம்பி வருடத்தை வீழா எடுத்து வரவேற்று
இயம்பி நல் தமிழ் கூறும் உலகு உய்ய
கலை கலாச்சாரம் மொழிவளம் பெருக
எடுத்திடும் முயற்சிகள் வெற்றி பெற
எமது அகமகிழ்ந்த வாழ்த்துக்கள்!

என்றும் எம் நலன் காக்கும்
உன் நலன் எங்கும் ஓங்க
விளம்பியில் உயர்ந்து விளங்கிட
நீ வாழி!...வாழியவே!!...

சுபம்!

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# Annual Review Report - 2016/17

## தமிழர் நலன்புரி சங்கம் (நியூஹாம்) ஐ. ரா.

## TAMIL WELFARE ASSOCIATION (NEWHAM) UK.

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**THE RT. HON. STEPHEN TIMMS MP**
**House of Commons**
**London SW1A 0AA**
**Tel: 020 7219 4000**
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***Labour Member of Parliament for East Ham***

Tamil Welfare Association (Newham) UK
602 Romford Road
Manor Park
London
E12 5AF

11 April 2016

Dear Friends,

Thank you very much for inviting me to the Tamil New Year and Cultural Night 2016 celebration. I look forward to attending once again on 7 May.

I am honoured by the invitation you have extended to me. I have always enjoyed the Tamil culture and language events I have attended, and I see the community playing an important and growing role in the life of East London. I am delighted that Tamil culture and heritage are being celebrated in the Town Hall so enthusiastically again this year. I also welcome the chance to put on record once again my support for the vital work which TWAN undertakes in our community.

I pass on my best wishes to all those who will be taking part, and to the Bharatanatyam and Bollywood dancers, musicians and other performers who will be making this a very special occasion.

With all best wishes,

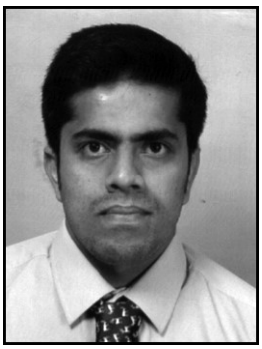
Yours sincerely,

Stephen Timms

STEPHEN TIMMS MP

*Electronic mail: stephen@stephentimms.org.uk* *Web: http://www.stephentimms.org.uk/*

# Message from the Chairman



அன்புசார் தமிழ் வாழ் நெஞ்சங்களே!
அனைவருக்கும் எனது மனமார்ந்த வணக்கம்.

மலரும் விளம்பி தமிழ் புதுவருடத்தை வரவேற்பதோடு அனைவருக்கும் எனது இனிய புதுவருட வாழ்த்துக்களை தெரிவிப்பதில் மகிழ்ச்சி அடைகிறேன்.

மீண்டும் ஓர் இனிய புத்தாண்டில் நமது தமிழர் நலன்புரி சங்கத்தின் சார்பாக சில தகவல்களை பகிர்ந்து கொள்வதில் மட்டற்ற மகிழ்ச்சி அடைகிறேன்.

பிரித்தானியா வாழ் தமிழ் நெஞ்சங்களின் வரலாற்றில் ஒளிவிளக்காய் திகழும் தமிழர் நலன்புரி சங்கம், 30 வருடங்களுக்கு மேலாக தனது சேவையை பூர்த்தி செய்து, அதனது வெற்றிப் பாதையை நோக்கி அடுத்த வருடத்துக்கு முன்னேறி செல்கிறது என்பதை அறியத் தருவதில் பெருமையடைகிறேன்

தமிழர் நலன்புரி சங்கம் தமிழர்களுக்காக பல்வேறு சேவைகளை செய்து வருவது யாவரும் அறிந்த ஒன்றே! திக்கற்றவனுக்கு தெய்வமே துணை என்ற ரீதியில் காலத்தின் மாறுதலோடு, புது புது வழிவகைகளை கையாண்டு புதிய சட்ட விதிகளையும் கைகொண்டு சவால்களையும் வெற்றி கொண்டு அளப்பெரிய சேவையை ஆற்றி வருகிறது.

கடந்த சில வருடங்களில் நமது தமிழர் நலன்புரி சங்கமானது, அரசாங்க நிதி நிறுவனங்களில் இருந்து கிடைக்கப்பெற்ற நிதியானது போதியளவு கிடைக்க பெறாத காலங்களிலும், சிறந்த முகாமைத்துவ கட்டமைப்பின் மூலம் தனது சேவைகளை சிறப்பாக மேற்கொண்டு முன்னேற்ற பாதைக்கு கொண்டு சென்று இன்றும் வெற்றி நடை போடுகிறது.

எமது சங்கத்தின் வளர்ச்சிக்கு உறுதுணையாய் இருக்கும் நிர்வாக சபை உறுப்பினர்கள், அங்கத்தவர்கள் மற்றும் பணியாளர்கள் அனைவருக்கும் இத்தருணத்தில் நன்றியை தெரிவித்து கொள்வதோடு வருங்காலத்திலும் உங்கள் சேவையை வழங்கி இச்சங்கத்தின் வளர்ச்சிக்காக உறுதுணையாக நிற்குமாறு கேட்டுக் கொள்கிறேன்

எமது நலன்புரி சங்கத்தினால் தமிழ் மக்களுக்கு வழங்கப்படும் சேவை எவ்வித குறையும் இன்றி தமிழ் மக்களுக்கு சென்றடைய நாமும் உறுதுணையாக பாடுபடுவோமாக!

நன்றி!

Mr. T.Kamalaraj
Chairman - Tamil Welfare Association (Newham) UK.

# TRUSTEE'S REPORT 2016/17

Governing responsibility

The organisation is a registered charity (No: 1047487) and, is registered as a company limited by guarantee (No: 2962857). The organisation was formed in 1986 to serve the Tamil community in the UK with the main aims: to relieve persons from poverty; the settlement of Tamil refugees; bridging the gap between the service providers and the community, and addressing the common issues of the community. The organisation is governed by the constitution (Memorandum of Association) - the set of rules and procedures which was approved by the members of the organisation and endorsed by the Companies House and Charity Commission during the registration process. This organisation is managed by a ten-member board of directors (BoD). They are answerable to the members of the organisation and the regulatory bodies like the charity commission and company house. To ensure success of the organisation, the board meets on the last Wednesday of each month to discuss the progress of the tasks and financial dealings. Staff and volunteer participation are the main issues discussed at the meeting generally. The Executive director will liaise with board members over the month on day-to-day issues and obtain directors approval for the key issues to be faced in the near future. Where necessary directors will review the practice policies and procedures to ensure effective service delivery by making new or reviewed decisions. It is the executive director's responsibility to implement the board decision effectively. Also directors will report to its members during the annual general meeting (AGM) and, if required, they will call an extraordinary general meeting (EGM). The treasurer will be responsible for all financial dealings of the organisation and the finance records are audited by the qualified accountant. It will be approved by the BoD before it is submitted to the charity commission and company house with annual returns which are required by law by the respective bodies. The BoD has to find alternative approaches when required in terms of the available resources. Identifying the needs of the community and finding solutions to meet those needs, securing relevant resources and drafting the service delivery plan are the other key issues the BoD has to engage effectively while they are governing the organisation. As a secretary of the organisation I am delighted to confirm the organisation is observing its governing responsibility and working collectively to make the organisation purposeful.

Business plan

The organisation's practice is to draft a 3-year business plan at regular intervals which contains major changes to previous plans which will be included in the present one, an analysis of the organisation, updated assessed needs of the Tamil community, funding opportunities and, the financial objectives and budget for the next 5-year period. Nonetheless, regular reviews of the business plan are done as seen fit. When we reviewed in 2014, we were forced to make many changes from the previous plan because of unexpected funding cuts pinpointed. The whole service delivery plan had to be restructured with new strategy. Also we were urgently seeking new funders for survival. During the time we identified key tasks to complete for success: we needed to

- restructure our service delivery to make it more relevant to the community
- Secure new and adequate funding for the foreseeable future (min 3 years)
- Establish an income generating/capital investment project for the charity
- Find key partners for the organisation and key personnel to work with

After two years of implementation, we are glad to see our revised strategy worked very well and the existence of the organisation and service delivery saved from closure. We managed to serve the users uninterruptedly during the past two years. Now the organisation position is strengthened and we are looking forward to build it further.

Part of the strategy is to identify and explore the possibility to generate additional income from other sources rather than depending on grounds or trust funding. Also it was identified if possible to increase the fixed assets which will help to secure other sources of funding. The service delivery not made any significant changes but number of paid staff hours reduced to balance the cashbook while more volunteers recruited and trained to cope with the existing work load to existing staff. This business plan was drafted after wider consultation with users of the organisation and members and this strategic plan took us through last two years of financially difficult period. And end of year 2016 financial position is in healthier position with other developments taking place.

## Barriers we overcome

The organisation faced uncertainty in the previous two years that barrier was overturned with the help of funders like Lloyds and TSB foundation, Trust for London, London legal TRUST and City Bridge Trust. Also we found a way to run the legal aid contract related project in a profitable manner and we were able to deal with the immigration casework with other Trust funders help. The shortage of staff was supplemented by volunteer participation. These changes stabilised the service delivery and enabled the charity to deliver the service in quality. We managed to sustain two solicitors service to the organisation (1 part-time and 1 fulltime). The commitment of the existing staff and enthusiasm by the volunteers drove us through to cater for users needs. As a community organisation we are using our strength to maximise the benefits to the community which will further improve the trust and reputation among the members of the community and users. Over the last 10 years other three Tamil organisations who delivered similar services to the Tamil community were unable to survive. This has created huge responsibility to our organisation. Currently, there is no other Tamil community organisation in the UK serving the community in specialist level. The BoD was in the position to maintain the quality while increasing the number of users seeking for help from the organisation. Around 25-30 persons per day generally visit the office. Two fulltime staff and two part-time staff and volunteers serve them on a daily basis. Our drop-in sessions are weekdays between 09.00-13.00 hours. Afternoon works related to on-going cases with appointment system. Telephone advice is available on Tuesday & Thursday 2-4pm only. Lack of office space, table and storage are other key issues affecting the organisation but we are working to solve these issues. In the legal casework side, extension of the visa becomes more difficult and some of the cases are refused without appeal rights. Bringing their spouse or children to British citizenship becomes more difficult, while entry visit visa application are refused more than 50%. European Community Law is now under question because of Brexit. A good number of our users who seek advice on this EU law to become British citizens through the naturalisation process are facing problems because HO approach is to refuse many applications under the "good character" test category. In the benefits category employment support allowance was stopped pre-maturely for many recipients without any prior notice or even without notifying the recipient. Due to this practice by the benefit agency, the recipients' housing benefit was also stopped and on some occasion, paid housing benefit was recouped by the local authority. This created homelessness in the community. These are the few examples of what the organisation deals with on a day-to-day basis. With limited resources the services are prioritised according to individual circumstances which will see some of the users turned away even though they came to the office in time.

## Service delivery and organisational chart

The main nature of service delivery is providing one-to-one legal advice during the drop-in sessions held Mondays to Fridays from 9am to 1pm. This advice is provided in the area of immigration law, welfare benefits, homelessness & housing, primary health care, employment and education, consumer, family law. When required we may take up cases as our casework and open the file to provide continuing service for that user until it is solved. The ongoing cases are handled through appointments which are held mainly between 1pm-5pm daily. Users are also served by telephone on Tues & Thurs between 2-4pm. Apart from this service, we occasionally will do outreach service where necessary. The services are delivered by the appropriate paid staff with volunteers support. The casework manager is responsible for identifying the priority and allocating the work to the relevant staff or volunteer. The caseworker or solicitor will deal with the ongoing cases at the Court or tribunals. When the case has reached appropriate level then it may be taken over by the

other senior staff. When users attending the office they have to record their name and address in the visitors book and the person who is seeing the client will complete the user statistics form. The details of the case will be evaluated to determine whether the case will be taken on. If so, a file will be opened for the client and the client will be given a case number. During this process matters such as data protection and conflict of interest will be considered. When the case is concluded, files are closed and kept in storage. Other office based services are doing interpretation, making representation on behalf of the Tamil community, organisational development and community development. The other nature of the work we do. Furthermore we will run projects outside the office premises like day centres for senior citizens, fine arts classes for disadvantaged school aged children, supplementary education and other projects we hire the other venues and run these projects. Cultural programmes, social family outings, year-end party gathering and AGM are the other events we engage with members of the community widely. When opportunity arises, addressing our view on behalf of the community with the media is also part of our work.

## ORGANISATIONAL CHART

## Audited accounts and financial issues

The organisation presents here an examined financial report by the independent qualified accountants. These accounts are prepared to comply with the Charity Commission requirements and Company House requirements. The Treasurer of the organisation will record the financial dealings on behalf of the committee and relevant records are kept at the office. Once a year, the financial auditor visits the office with their assistants to carry out financial auditing. Our organisation account is closed on 31 December each year. After this date, the audit will take place. During the audit, the accountant will go through the incomes and expenses and reconcile the bank statements and also examine the record-keeping. After the satisfactory examination, the auditor will produce the Income & Expenditure Statement and Balance Sheet with other relevant details. Drafted accounts will be reviewed by the Board and approved. The signed document will be circulated to members at the AGM and submitted to CH and CC and other relevant organisations.

The last audited report was produced in December 2016 and it shows a total income received of £211,224 for 2016, an increase of £33,552 from the previous year 2015. Expenses for 2016 amounted to £173,117 which is almost the same as for *2015*. The increased income resulted in a net surplus in 2016 of £38,107 *(2015=£ 4,525)*. This surplus comprised £17,945 of the restricted funds (which will be carried forward to 2017) and £20,162 of unrestricted funds of which £17,055 was transferred to the Building Fund and the balance to accumulated reserves.

The main income for the organisation during 2016 came from received grants and this amounted to over 80% of the income of the organisation. Donations and membership fees and other income-generating activities accounted for the rest. Our largest funder this year was the Legal Aid Agency from whom we received half of the total grants. Trust for London, London Legal Support Trust, AB Charitable Trust, BBC children and Access to Justice Foundation were the other generous funders.

The fixed assets of the organisation consist of the ground floor office space as well as fixtures and fittings. The value of the building remains unchanged from 2015 at £168,521. There was however some addition to fixtures and fittings which saw a minor overall increase of year-end value after depreciation. The organisation however acquired the upper floor of the building in 2017 for £180,000. This increase in fixed assets will be reflected in the audited report for 2017.

Current assets are mainly cash in bank and debtors & prepayments. The debtors of the organisation are mostly funders who are yet to release funds to the organisation for legal work already completed. The organisation also has a loan which is the mortgage for the office. Other creditors refer to monies that are paid in advance by funders for approved cases which are not yet completed.

With regard to expenditures, salaries & wages continue to be a main expense for the organisation along with client disbursements which covers the cost of hiring legal professionals like barristers for client cases. There is a slight increase over last year's expenses of £856 under the restricted funds and a reduction in expenses under the unrestricted funds.

The records for 2016 shows that the organisation has made a turnaround in its finances and has secured enough funding to continue operations for the foreseeable future. The Board of Directors is grateful for the support of its committed funders.

## Reserve policy

The organisation has as policy to keep an operational cost reserve to cover 4 months in order to survive any crisis. The treasurer closely monitors and controls the financial records and situation. The board of directors meet once a month and will review the financial situation and service delivery plan. Where necessary they will make changes on service delivery and spending.

## Aim of the organisation and where we are

After 30 years of existence, the organisation's aims remain the same:

- relieve persons from poverty
- resettlement of refugees
- bridging the gap between service providers and hard to reach members in the community
- swift integration and a contributing community to the UK

To do this the organisation sets itself tasks to complete in order to move more towards its objectives. In addition to the tasks mentioned earlier in the report, the organisation decided to restart terminated projects and prevent such terminations in the future; prioritise the needs of the community and plan services accordingly; to find alternate funding and successfully apply to bring stability to the organisation; to start a capital investment project in order to generate income for the charity; create awareness about employment opportunities; be active with and influence policy makers to pass policies which have a positive effect on the community; to organise activities that promote and preserve Tamil culture; to teach the community to better understand the legal system and adapt to the lifestyle of the UK; disseminate relevant information of importance to the community.

Twenty-five years of civil war in Sri Lanka ended 8 years ago in 2009. Unfortunately minority Tamil people still need to flee from their country because the human rights abuses by the security forces remain high and the SL government has failed to address this inequality and seek a political solution for the Tamils problem. Due to the ongoing atrocity people still seek asylum in other countries to escape persecution in their native land. The Tamil community living in the UK is a 30-35 year old migrant community and still finds it hard to settle in this country for many reasons - lifestyle change, language barriers, not understanding the new culture, social/family set-up, children from war camps not having been to school and thus missing out on early years education, trauma from being displaced, inability to transfer labour skills etc.

Our community organisation services require them to live as law-abiding citizens in this country and our responsibility is to educate them to fulfil their potential in the civic world set-up

## Common goals and partnership working

The organisation is always working with an open mind to work with other similar charities or organisations not only solving our community related issues, to share our information will help other organisations also get relevant information. When we are tackling common problems in the community we always join with other groups to fight for our clients rights and improve their quality of life. This has formed various networking connections among the Tamil community groups, ethnic minority groups, and migrant groups.

There is the need to present a united front when it comes to dealing with issues in the community that requires change. Each migrant or community organisation may have issues particular to it but there are matters that concern all migrants and for this reason, TWAN has forged good relations with other groups to be effective in making representations and challenging the authorities where necessary.

Groups that TWAN had cooperated with and works closely with include

- Newham Children's Services- LBN (seeking help for children at risk)
- National Probation Service (helping minor offenders re-integrate)
- Thames Reach Charity(helping find accommodation for homeless Tamils)
- Heathrow travel-care (helping find accommodation for homeless Tamils)
- Sanctuary Care (care home for homeless alcoholics etc)
- NHS Trust - NE Care Pathway Lead (Refugee & Veteran Psychology)
- Refugee and Migrant Forum of Essex & London (RAMFEL)
- The Refugee Council-UK
- Lewisham Refugee and Migrant Network
- The Forum for Health & Wellbeing
- Tamil Information Centre
- Immigration Law Practitioners' Association (ILPA)
- Black & minority ethnic Advice Network (BAN)
- Joint Council for the Welfare of Immigrants (JCWI)
- Various barristers and solicitors

Three key organisations for TWAN are ILPA, BAN and JCWI. ILPA assists with representation test cases on immigration issues. With BAN, TWAN is part of a group of about 42 organisations working together, attending meetings, info gatherings etc. JCWI are an organisation with whom TWAN could discuss further regarding working together for test cases in court

## Needs for the foreseeable period

The organisation does the consultation with users and members of the community each year and the

findings are discussed at the AGM with members. The community needs and services for the next 5-years are prioritised to identify the resources and draft the service delivery plan with this time limit. The organisation has identified that the current service level has to be continued for at least the next three years and that the needs remain the same for the community. This includes providing asylum seeker related services and other immigration related services, to enable the migrants to settle in this country and to enable their family members to join them. It is also identified that welfare benefits needs are going to increase within the next three years because of the new government plan to restructure the welfare benefit system by universal credit. The experts suggest that many people's benefits are going to be reduced and that families may struggle to budget their expenses with the available benefits. Some families may be forced to move north of the country to cope with this new universal credit benefit system.

Furthermore, many benefit systems are heavily relying on online application systems but our office is not equipped to deal with this. The DWP is also not yet equipped to handle this transition to the universal credit system. As a knock-on effect, homelessness and debt with poverty can be expected to rise. The immigration visa system is also causing concern for the primary health care needs. In our experience, GPs are reluctant to register new migrants as patients and some of our users have received hospital bills for treatment received amounting to thousands of pounds which should be paid because they are not entitled to free treatment any more as per NHS policy. Also some of the clients received penalty notices from NHS because the patients purchased medicine on free prescription which, it is claimed, they were not entitled to. We expect similar problems to be on the increase over the next three years and we may have to find the resources to cope with this type of demand.

To maintain our current level of services, we may need around £125,000 per annum. Around 50% of this money could come through legal aid contract if this is extended beyond Aug 2018 for the next three years. And, as usual, we may need to rely on other trust funding to balance the books for the remaining 50% as a grant. The organisation is also taking some initiative to get at least 10% of required money from other sources which could be increased in future and if this works, then our dependability on the grant system can be reduced.

## Regulatory bodies and auditing

The organisation is registered as a company limited by guarantee. This registration took place in 1992. According to the Companies House (CH) requirements, we file audited accounts with annual returns to CH each year. Similarly the organisation has obligation to serve annual returns with any change of circumstances to the charity commission because the organisation is registered as a charity as well. Apart from these two regulatory bodies, the organisation is exempted by the OISC to provide legal advice and casework on immigration and asylum category on all levels. To comply with OISC requirements, we have to provide service according to OISC policies and procedures with code of conduct. The OISC will do the premises auditing to examine the service delivery and quality by checking the records, interviewing the workers and reviewing the files. This kind of exercise is time consuming as OISC requires detailed recording and documentation of every step followed and a file must be opened for every immigration client no matter how trivial the request. As we obtain civil legal aid contract to serve asylum seekers from the legal aid authority, we have to comply with their requirements as well. This is also including auditing on a regular interval, peer reviews, file reviews and other admin duties. Apart from these officials, we will have the auditing by Specialist Quality Mark (SQM) delivery partnership to maintain our SQM status because of our specialised legal work. In addition we have to be audited by the Advice Quality Standard because of the independent advisory services we offer. Other regulatory bodies are OFSTED (for our children's work) and FCA (financial advice). The organisation is also answerable to its members and we will satisfy members' queries at AGM and other occasions when asked.

## Future challenges and targets

The organisation is in a position to maintain current level of services for the next 5 years and the organisation has to raise at least £150,000 per year to continue this service level. There is no funding available for the longer term but each year, the organisation manages to raise the required level of funds. This experience shows the organisation will progress with similar strategy and progress

further. However the organisation is trying to get at least 15-20%of funding requirement from other sources rather heavily relying on grant funding. This initiative is reasonably successful at present and we hope to continue this fund-raising system further and further. We had reasonably settled staff and committed volunteers to deliver the service in quality and existing office system and management will enable us to run the organisation smoothly for the foreseeable future.

## Appreciation

The Board of Directors appreciate the contribution made by the directors, members, staff and team of volunteers to deliver the service to our users. Also we take this opportunity to acknowledge the funding aid contributed by the Legal Aid Agency, Trust for London, City Bridge Trust, London Legal Support Trust, BBC Children in Need, City of London, AB Charitable Trust, Access to Justice Foundation and others who give grant aid to fund this organisation and help us achieve our aim. Also we are grateful to the other supportive organisations like Advice UK, ILPA, JCWI, BAN and other similar organisations to support us. The unflagging support of the Honourable MP of Newham and the Councillors cannot go unmentioned. We hope to continue working closely with all of you to achieve our goals for the future.

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**TAMIL WELFARE ASSOCIATION (NEWHAM) UK**

**COMPANY NO: 2962857**

**CHARITY NO: 1047487**

# FINANCIAL STATEMENTS
# FOR THE YEAR ENDED
# 31ST DECEMBER 2017

**ADVANCED ACCOUNTING PRACTICE**
Certified Accountants
23 Langmead Drive
Bushey Heath, Herts
WD23 4GD

**DIRECTOR/TRUSTEES**

M Balasingham (Mrs)
P Chandradas Esq
T Janaka (Mrs)
K Thiyagarajah Esq
R Rajanavanathan Esq
S Muthucumarasamy Esq
K.Senathirajah Esq
P Vigneswaran Esq
K Kumarasamy Esq
Mrs T Thayaparan

**SECRETARY**

P Chandradas Esq

**REGISTERED OFFICE & BUSINESS ADDRESS**

602 Romford Road
Manor Park
London
E12 5AF

**AUDITORS**

Advanced Accounting Practice
Certified Accountants
23 Langmead Drive
Bushey Heath
Herts
WD23 4GD

**SOLICITORS**

Jeya & Co
322 High Street North
Manor Park
London
E12 6SA

**PRINCIPAL BANKERS**

Barclays Bank Plc
Newham Busines Centre
737 Barking Road
Plaistow
London E13 9PL

**TAMIL WELFARE ASSOCIATION (NEWHAM) U.K**

**REPORT OF THE DIRECTORS/TRUSTEES**

The directors present their report and financial statements for the year ended 31st December 2017.

**PRINCIPAL ACTIVITIES AND BUSINESS REVIEW**

The Association is a registered charity and the company is limited by guarantee and not having a share capital.

The Association's principal activity is to provide advisory, legal casework and representative services for the Tamil speaking community in the United Kingdom, to foster and promote good race relations between such persons of all groups within the area of benefit.

**FUNDS**

The directors do not recommend any funds be transferred from the Unrestricted funds to the Designated fund account due to the need for the Association to retain funds for the effective running of their offices.

The company is a registered charity and hence no dividends are payable.

**DIRECTORS AND THEIR INTERESTS**

The directors do not have any interests in the capital or reseves of the company.

**TRUSTEES/DIRECTORS' RESPONSIBILITIES**

The trustees (who are also directors of Tamil Welfare Association Newham UK for the purposes of company law) are responsible for preparing the Trustees' Report and the financial statements in accordance with applicable law and United Kingdom Accouting Standards (United Kingdom Generally Acceptable Accounting Practice).

Company law requires the trustees to prepare financial statements for each financial year which give a true and fair view of the state of affairs of the charity and of the incoming resources and application of resources, including the income and expenditure, of the charitable company for the year. In preparing these financial statements, the trustees are required to:

- select suitable accounting policies and then apply them consistently;
- make judgements and estimates that are reasonable and prudent;
- prepare the financial statements on the going concern basis unless it is inappropriate to presume that the charitable company will continue in operation.
- state whether applicable UK Accounting Standards have been followed, subject to any material departures disclosed and explained in the financial statements.

The trustees are responsible for keeping proper accounting records which disclose with reasonable accuracy at any time the financial position of the company and to enable them to ensure that the financial statements comply with the Companies Act 2006. They are also responsible for safeguarding the assets of the charitable company and hence taking reasonable steps for the prevention and detection of fraud and other irregularities.

TAMIL WELFARE ASSOCIATION (NEWHAM) U.K

REPORT OF THE DIRECTORS/TRUSTEES

**CLOSE COMPANY**

The company is a close company as defined by the Income and Corporation Taxes Act 1988.

**INDEPENDENT EXAMINERS**

Advanced Accounting Practice, are willing to be reappointed as independent examiners.

By Order of the Board

P Chandradas Esq
Secretary

Date: 27th March 2018

## AGM Meeting

**TAMIL WELFARE ASSOCIATION (NEWHAM) U.K**

**INDEPENDENT EXAMINER'S REPORT TO THE TRUSTEES OF TAMIL WELFARE ASSOCIATION (NEWHAM) U.K**

I report on the accounts of the company for the year ended 31st December 2017 which are set out on pages 6 to 10.

**Respective responsibilities of the trustees and examiner**

The trustees (who are also the directors of the company for the purposes of company law) are responsible for the preparation of the accounts. The trustees consider that an audit is not required for this year under section 43(2) of the Charities Act 1993 (the 1993 Act) and that an independent examination is needed.

Having satisfied myself that the charity is not subject to an audit under company law is eligible for independent examination, it is my responsibility to:

- examine the accounts under section 43 of the 1993 Act.
- follow the procedures laid down in the general directions given by the Charity Commission (under section 43(7) of the Act, as ammended); and
- state whether particular matters have come to my attention.

**Basis of independent examiner's statement**

My examination was carried out in accordance with general directions given by the Charity Commission. An examination includes a review of the accounting records kept by the charity and a comparison of the accounts presented with those records. It also includes consideration of any unusual items of disclosures in the account, and seeking explanations from you as trustees concerning any such matters. The procedures undertaken do not provide all the evidence that would be required in an audit, and consequently no opinion is given to whether the accounts present a 'true and fair view'and the report is limited to those matters set out in the statement below.

**Independent examiner's statement**

In connection with my examination, no matter has come to my attention:
1. which gives me reasonable cause to believe that, in any material respect, the requirements:
a) to keep accounting records in accordance with section 386 of the Companies Act 2006; and
b) To prepare accounts which accord with the accounting records, comply with the accounting requirements of section 396 of the Companies Act 2006 and with the methods and principles of the Statement of Recommended Practice: Accounting and Reporting by Charities.
have not been met: or
2. to which, in my opinion, attention should be drawn in order to enable a proper understanding of the accounts to be reached.

**ADVANCED ACCOUNTING PRACTICE**
**Certified Accountants**
**Registered Auditors**

**23 Langmead Drive**
**Bushey Heath**
**Herts**
**WD23 4GD**

**Date: 27th March 2018**

TAMIL WELFARE ASSOCIATION (NEWHAM) U.K

STATEMENT OF FINANCIAL ACTIVITIES FOR THE YEAR ENDED 31ST DECEMBER 2015

| | Notes | Restricted Funds GBP | Unrestricted Funds GBP | Total 2017 GBP | 2016 GBP |
|---|---|---|---|---|---|
| **INCOMING RESOURCES FROM GENERATED FUNDS** | | | | | |
| Voluntary Income | | | | | |
| Grants | 2 | 188,468 | - | 188,468 | 185,074 |
| Donations | | | 21,123 | 21,123 | 21,630 |
| Membership subscriptions | | - | 1,760 | 1,760 | 1,565 |
| Income from generating funds | | - | 2,801 | 2,801 | 2,929 |
| Interest receivable | 4 | - | 15 | 15 | 26 |
| **Total Incoming Resources** | | 188,468 | 25,699 | 214,167 | 211,224 |
| **RESOURCES USED** | | | | | |
| Direct Charitable Expenditure | | 142,716 | - | 142,716 | 143,438 |
| Governance costs | | 35,821 | 3,706 | 39,527 | 29,679 |
| | | 178,537 | 3,706 | 182,243 | 173,117 |
| **NET INCOMING RESOURCES BEFORE TRANSFERS** | (3) | 9,931 | 21,993 | 31,924 | 38,107 |
| Transfer from Unrestricted Funds | | - | - | - | - |
| Transfer to Building Fund | | (9,931) | (15,069) | (25,000) | (35,000) |
| Balance brought forward | | - | 15,068 | 15,068 | 11,961 |
| Balances carried forward | | - | 21,992 | 21,992 | 15,068 |

The notes on pages 6 to 10 form part of these financial statements.

TAMIL WELFARE ASSOCIATION (NEWHAM) U.K

## BALANCE SHEET AT 31ST DECEMBER 2017

| | Notes | 2017 GBP | 2017 GBP | 2016 GBP | 2016 GBP |
|---|---|---|---|---|---|
| **FIXED ASSETS** | | | | | |
| Tangible assets | 7 | | 361,476 | | 174,469 |
| **CURRENT ASSETS** | | | | | |
| Debtors | 8 | 17,341 | | 34,868 | |
| Cash at bank and in hand | | 40,806 | | 37,391 | |
| | | 58,147 | | 72,259 | |
| **CREDITORS:** Amounts falling due within one year | 9 | (15,179) | | (18,701) | |
| **NET CURRENT ASSETS** | | | 42,968 | | 53,558 |
| **TOTAL ASSETS LESS CURRENT LIABILITIES** | | | 404,444 | | 228,027 |
| **CREDITORS:** Amounts falling due after more than one year | 10 | | (153,931) | | (9,438) |
| | | | 250,513 | | 218,589 |
| **FUNDS AND RESERVES** | | | | | |
| Designated Funds | | | 228,521 | | 203,521 |
| Unrestricted Funds | 12 | | 21,992 | | 15,068 |
| | | | 250,513 | | 218,588 |

For the year ending 31st December 2017 the company was entitled to exemption from audit under section 477 of the Companies Act 2006 relating to small companies.

Director's responsibilities:

i) The members have not required the company to obtain an audit of its accounts for the year in question in accordance with section 476.

ii) The directors acknowledge thier responsibilities for complying with the requirements of the Act with respect to accounting records and the preparation of accounts.

The financial statements were approved by the board on 27th March 2018 and signed on its behalf by

S Muthucumarasamy Esq Director

The notes on pages 6 to 10 form part of these financial statements.

TAMIL WELFARE ASSOCIATION (NEWHAM) U.K

NOTES TO THE FINANCIAL STATEMENTS FOR THE YEAR ENDED 31ST DECEMBER 2017

## 1. ACCOUNTING POLICIES

### 1.1 BASIS OF ACCOUNTING

The financial statements have been prepared under the historical cost convention and are in accordance with applicable accounting standards.

### 1.2 INCOMING RESOURCES

This includes grants received, membership fees, bank interest, donations received and rental income from subletting of tenanted premises.

### 1.3 DEPRECIATION

Depreciation is provided using the following rates and bases to reduce by annual instalments the cost, less estimated residual value, of the tangible assets over their estimated useful lives:-

| | | |
|---|---|---|
| Fixtures and fittings | 15% | Reducing balance |

No depreciation is provided on freehold buildings as it is the company's policy to maintain these so as to extend their useful lives.

### 1.4 DEFERRED TAXATION

Deferred taxation is provided where there is a reasonable probability of the amount becoming payable in the foreseeable future.

### 1.5 LEASING AND HIRE PURCHASE

Rentals payable under operating leases are taken to the profit and loss account on a straight line basis over the lease term.

AGM Meeting

NOTES TO THE FINANCIAL STATEMENTS FOR THE YEAR ENDED 31ST DECEMBER 2017

**2. GRANTS RECEIVED**

| | 2017 GBP | 2016 GBP |
|---|---|---|
| Analysis by:- | | |
| Legal Aid Agency re: Legal work | 71,030 | 97,454 |
| Legal Aid Agency re: Certificated work | - | 5,120 |
| Trust for London | 6,250 | 25,000 |
| BBC for Children | - | 9,500 |
| London Legal Support Trust | - | 16,000 |
| Government Lega Dept | 77,188 | - |
| City of London | 34,000 | 17,000 |
| The A B Charitable Trust | - | 10,000 |
| The Access to Justice Foundation | - | 5,000 |
| | 188,468 | 185,074 |

The grant recieved from LTSB and Trust for London has been used for general advisory and legal representation. Grant received from Legal Aid Agency has been used for specialist and case work on aslyum matters.

Where grants were provided for a specific purpose the Association has always used them solely for those purposes.

**3. NET INCOMING RESOURCES**

| | 2017 GBP | 2016 GBP |
|---|---|---|
| The net incoming resources is stated after charging: | | |
| Depreciation | 892 | 1,051 |
| Operating lease rentals: | | |
| Land and buildings | - | 8,040 |

**4. INTEREST RECEIVABLE**

| | 2017 GBP | 2016 GBP |
|---|---|---|
| Bank and other interest receivable | 15 | 26 |
| | 15 | 26 |

NOTES TO THE FINANCIAL STATEMENTS FOR THE YEAR ENDED 31ST DECEMBER 2017

## 5. INTEREST PAYABLE

| | 2017 GBP | 2016 GBP |
|---|---|---|
| On bank loans and overdrafts | 7,445 | 790 |
| | 7,445 | 790 |

## 6. DIRECTORS AND EMPLOYEES

| | 2017 GBP | 2016 GBP |
|---|---|---|
| Staff costs: | | |
| Wages and salaries | 47,595 | 47,073 |
| Social security costs | - | 1,818 |
| | 47,595 | 48,891 |

## 7. TANGIBLE ASSETS

| | Land & buildings GBP | Fixtures & fittings GBP | Total GBP |
|---|---|---|---|
| Cost | | | |
| At 1st January 2017 | 168,521 | 45,208 | 213,729 |
| Additions | 187,899 | - | 187,899 |
| At 31st December 2017 | 356,420 | 45,208 | 401,628 |
| Depreciation | | | |
| At 1st January 2017 | - | 39,260 | 39,260 |
| Charge for year | - | 892 | 892 |
| At 31st December 2017 | - | 40,152 | 40,152 |
| Net book value at 31st December 2017 | 356,420 | 5,056 | 361,476 |
| Net book value at 31st December 2016 | 168,521 | 5,948 | 174,469 |

| | 2017 GBP | 2016 GBP |
|---|---|---|
| Analysis of net book value of land and buildings: | | |
| Freehold | 356,420 | 168,521 |

NOTES TO THE FINANCIAL STATEMENTS FOR THE YEAR ENDED 31ST DECEMBER 2017

**8. DEBTORS**

| | 2017 GBP | 2016 GBP |
|---|---|---|
| Other debtors | 6,986 | 13,924 |
| Prepayments and accrued grant income | 10,355 | 20,944 |
| | 17,341 | 34,868 |

**9. CREDITORS: AMOUNTS FALLING DUE WITHIN ONE YEAR**

| | 2017 GBP | 2016 GBP |
|---|---|---|
| Bank loans and overdrafts | 11,910 | 5,756 |
| Taxes and social security costs | - | 726 |
| Accruals and grants recieved in advance | 3,269 | 12,219 |
| | 15,179 | 18,701 |

**10. CREDITORS: AMOUNTS FALLING DUE AFTER MORE THAN ONE YEAR**

| | 2017 GBP | 2016 GBP |
|---|---|---|
| Loans | 153,931 | 9,438 |
| | 153,931 | 9,438 |

**11. BORROWINGS**

| | 2017 GBP | 2016 GBP |
|---|---|---|
| The company's borrowings are repayable as follows: | | |
| In one year, or less or on demand | 11,910 | 5,756 |
| Between one and two years | 23,820 | 9,438 |
| Between two and five years | 130,111 | - |
| | 165,841 | 15,194 |

Details of security:

The bank loan is secured by way of a legal charge over the company's freehold property.

NOTES TO THE FINANCIAL STATEMENTS FOR THE YEAR ENDED 31ST DECEMBER 2017

## 12. PROFIT AND LOSS ACCOUNT

| | Restricted Funds GBP | Unrestricted Funds GBP |
|---|---|---|
| Accumalated Reserves brought forward | - | 15,068 |
| Net incoming resources before transfers | 9,932 | 21,992 |
| Transfer to Designated funds | (9,932) | (15,068) |
| Accumulated Reserves carried forward | - | 21,992 |

## 13. REVENUE COMMITMENTS

The amounts payable in the next year in respect of operating leases are shown below, analysed according to the expiry date of the leases.

| | Land and buildings | | Other | |
|---|---|---|---|---|
| | 2017 GBP | 2016 GBP | 2017 GBP | 2016 GBP |
| Expiry date: | | | | |
| Within one year | - | 8,040 | - | - |
| Between one and five years | - | 32,160 | - | - |

## AGM Meeting

**MANAGEMENT INFORMATION**

**FOR THE YEAR ENDED 31ST DECEMBER 2017**

**TAMIL WELFARE ASSOCIATION (NEWHAM) U.K**

**DETAILED INCOME & EXPENDITURE ACCOUNT**
**FOR THE YEAR ENDED 31ST DECEMBER 2017**

| | | 2017 | | 2016 | |
|---|---|---|---|---|---|
| | | GBP | GBP | GBP | GBP |
| Income | | | | | |
| Restricted Funds | | | | | |
| Grant received | (Sch 1) | | 188,468 | | 185,074 |
| Less: Expenditure | | | | | |
| Direct Charitable expenditure | | | | | |
| Client disbursements | | 55,103 | | 49,802 | |
| Childrens' project | | 350 | | 5,457 | |
| Education project | | 2,764 | | 4,066 | |
| Age Concern project | | 3,535 | | 3,092 | |
| Salaries and wages (incl N.I) | | 47,595 | | 48,891 | |
| Professional fees | (Sch 2) | 8,488 | | 6,427 | |
| Volunteers and sessional workers | | 16,240 | | 10,731 | |
| Staff recruitment and training | | 772 | | 3,464 | |
| Rent,rates and insurance | | 7,869 | | 11,508 | |
| | | 142,716 | | 143,438 | |
| Governance Costs | | | | | |
| Light and heat | | 2,276 | | 2,871 | |
| Telephone and fax | | 4,630 | | 3,941 | |
| Printing, postage and stationery | | 4,498 | | 7,008 | |
| Office maintenance | | 4,499 | | 902 | |
| Organisation & Development | | 5,000 | | 900 | |
| Accountancy | | 3,080 | | 2,638 | |
| Security costs | | 608 | | 625 | |
| Travelling | | 2,813 | | 2,667 | |
| Bank charges | | 972 | | 1,349 | |
| | | 28,376 | | 22,901 | |
| | | | 171,092 | | 166,339 |
| Net surplus/deficiency | | | 17,376 | | 18,735 |

**TAMIL WELFARE ASSOCIATION (NEWHAM) U.K**

**DETAILED INCOME & EXPENDITURE ACCOUNT FOR THE YEAR ENDED 31ST DECEMBER 2017**

| Unrestricted Funds | | 2017 GBP | | 2016 GBP |
|---|---|---|---|---|
| Income | | | | |
| Cultural activities collections | | 2,666 | | 2,852 |
| Membership fees received | | 1,760 | | 1,565 |
| Donations and other income | | 21,123 | | 21,630 |
| Family outing | | 135 | | 77 |
| | | 25,684 | | 26,124 |
| Less: Expenditure | | | | |
| Cultural activities | 2,119 | | 2,570 | |
| Sundry expenses | 296 | | 294 | |
| Membership and subscriptions | 399 | | 2,073 | |
| Depreciation | 892 | | 1,051 | |
| | | 3,706 | | 5,988 |
| Net Surplus | | 21,978 | | 20,136 |
| Gross Incoming Resources before Interest and other income | | 39,354 | | 38,871 |
| **OTHER INCOME AND EXPENSES** | | | | |
| Interest receivable: | | | | |
| Bank deposit interest | 15 | | 26 | |
| | | 15 | | 26 |
| Interest payable: | | | | |
| Bank interest | 7,445 | | 790 | |
| | | (7,445) | | (790) |
| **NET INCOMING RESOURCES** | | 31,924 | | 38,107 |

**TAMIL WELFARE ASSOCIATION (NEWHAM) U.K**

**DETAILED INCOME & EXPENDITURE ACCOUNT**

**FOR THE YEAR ENDED 31ST DECEMBER 2017**

Schedule 1 - Grants received

| | 2017 GBP | 2016 GBP |
|---|---|---|
| Legal Aid Agency re: Legal work | 71,030 | 97,454 |
| Legal aid Agency re: Certificated work | - | 5,120 |
| Trust for London | 6,250 | 25,000 |
| BBC for Children | - | 9,500 |
| London Legal Support Trust | - | 12,000 |
| London Legal Support Trust | - | 4,000 |
| Government Legal Dept | 77,188 | - |
| City for London | 34,000 | 17,000 |
| The A B Charitable Trust | - | 10,000 |
| The Access to Justice Foundation | - | 500 |
| | 188,468 | 180,574 |

Schedule 2 - Professional Fees

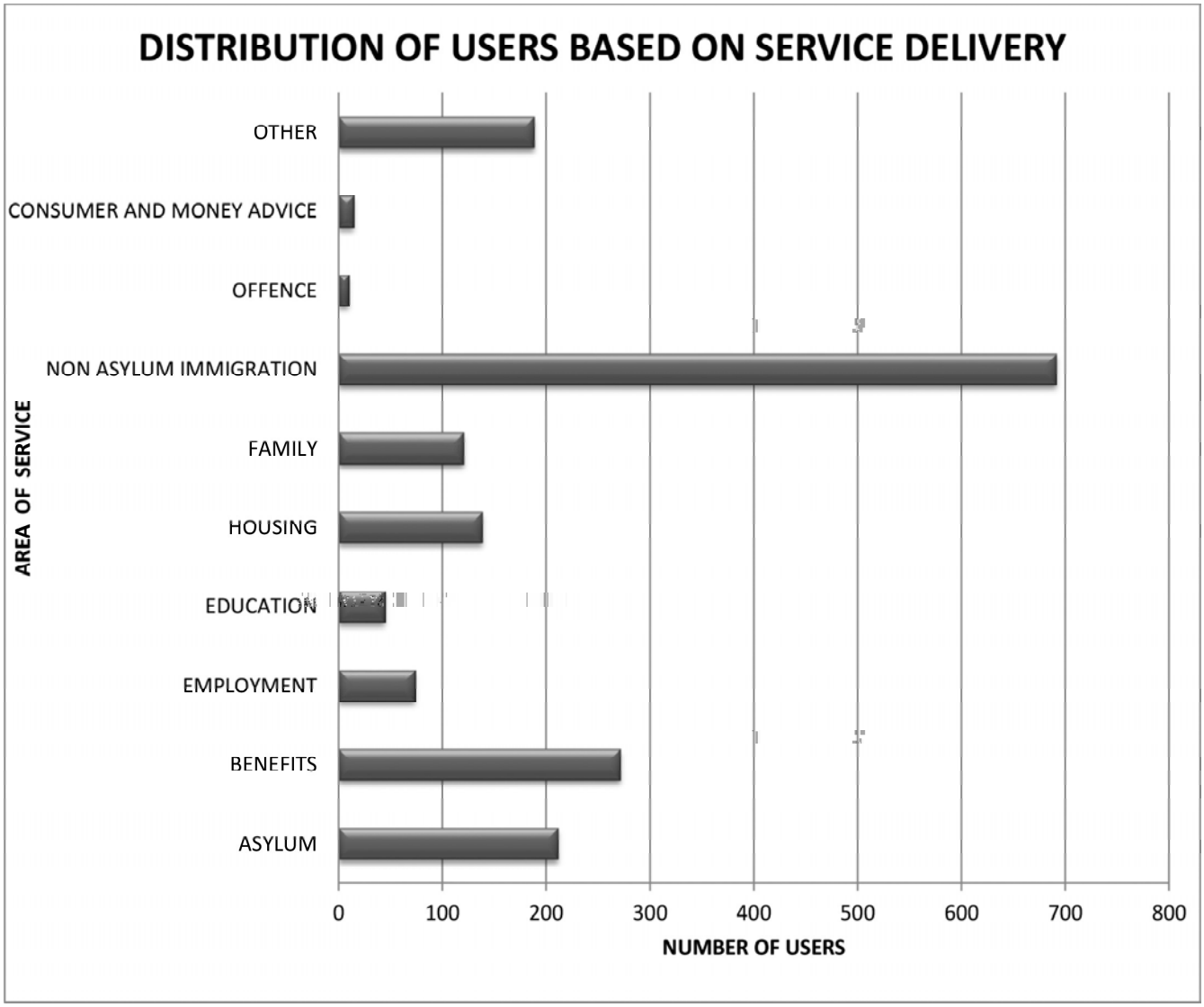
This includes payments to self employed case worker of 8,632

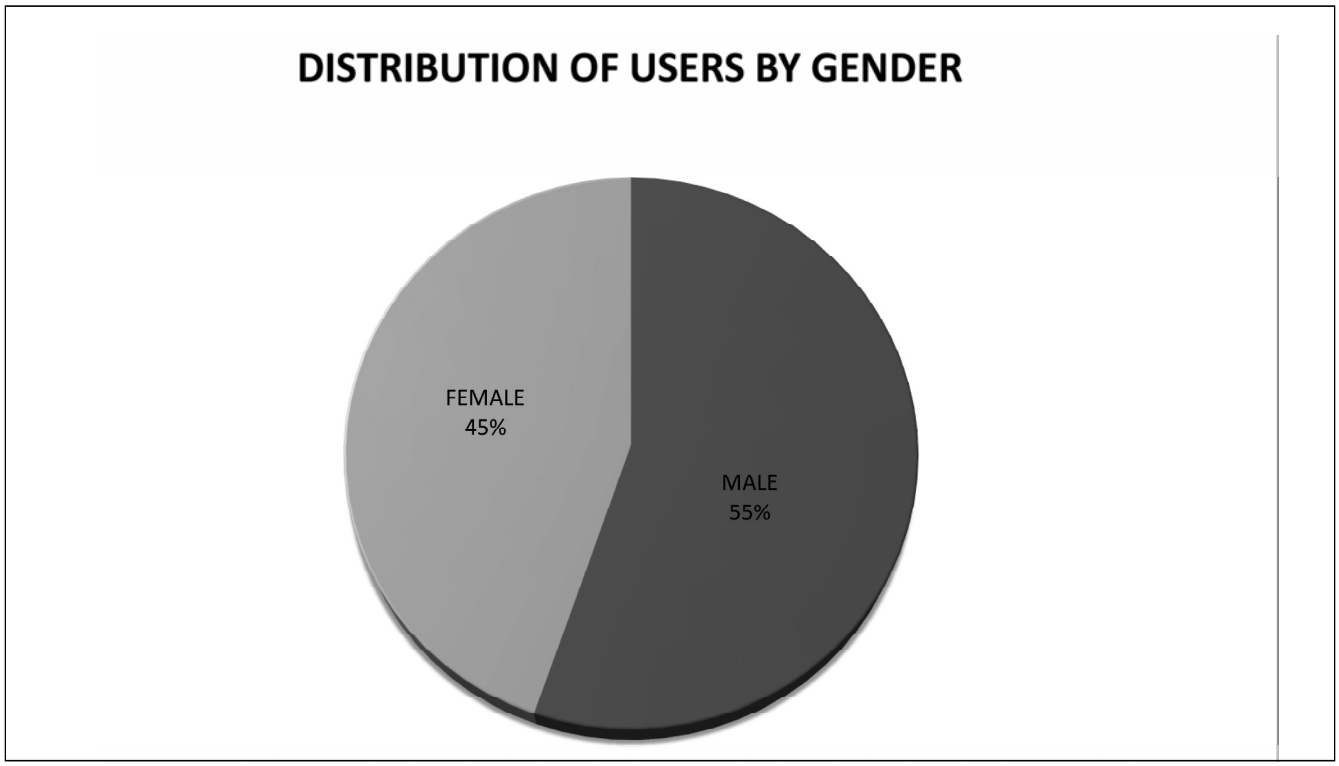
## Cultural Evening 2017

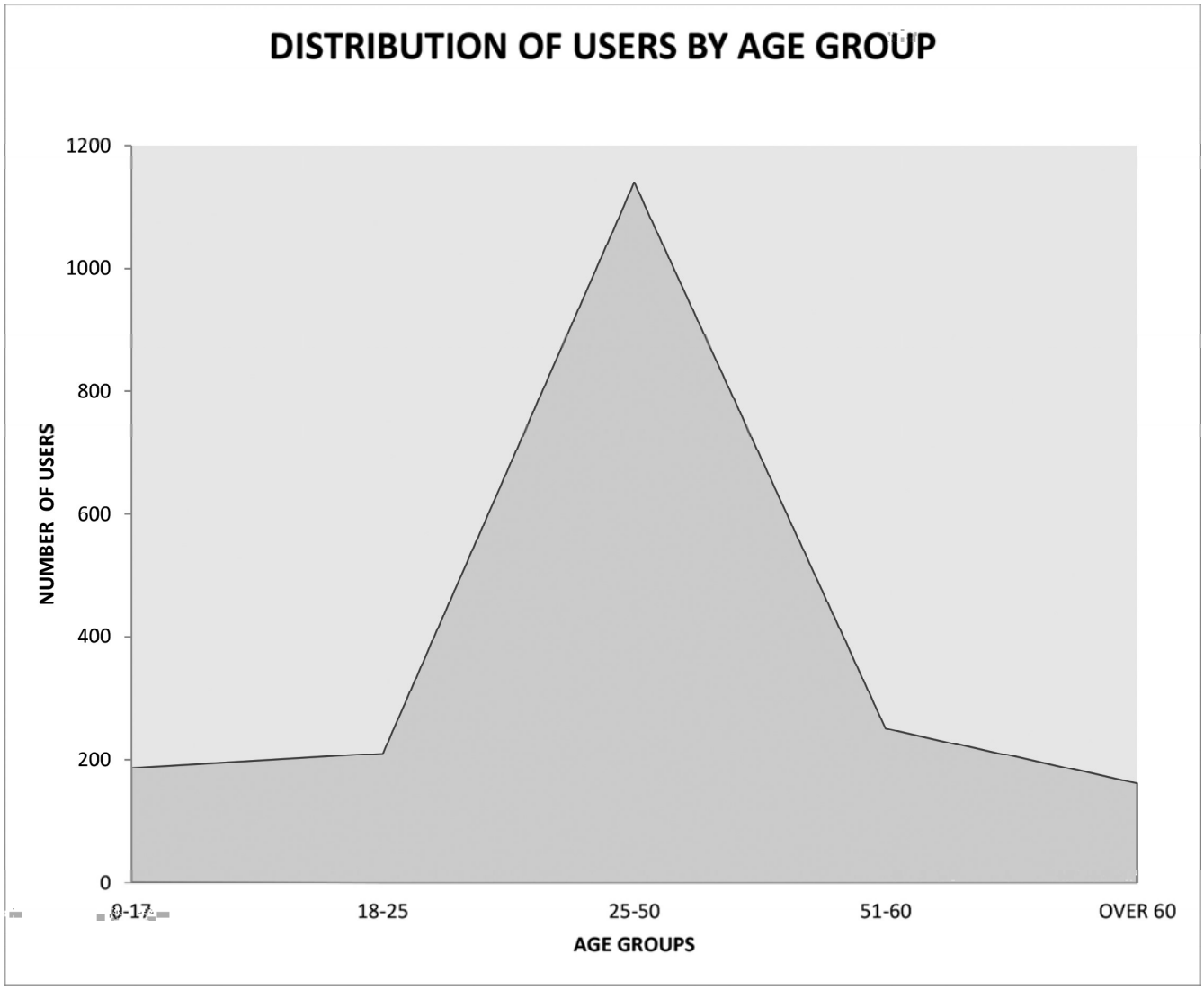
# DISTRIBUTION OF USERS BY BOROUGH


N.B

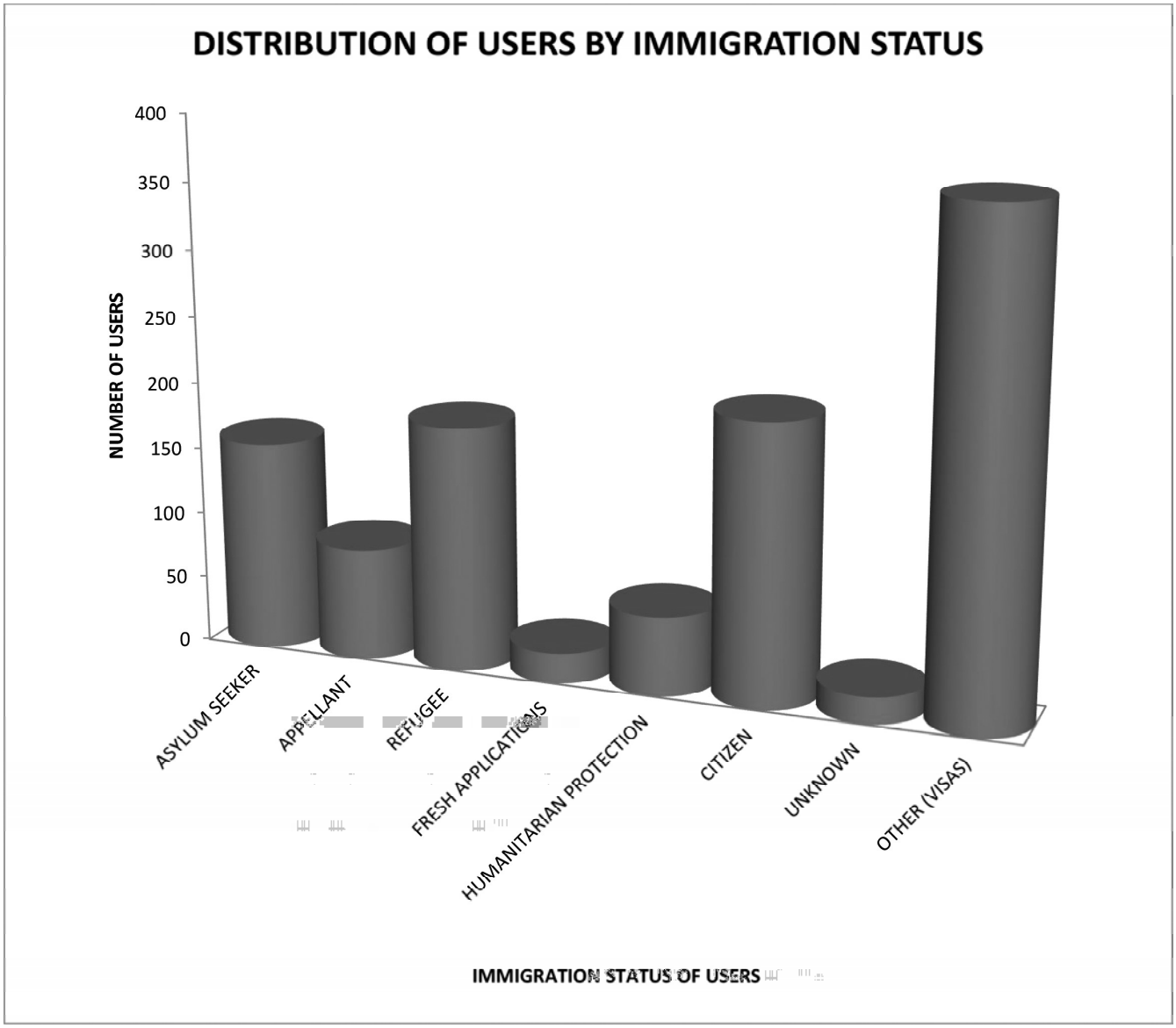
- 73% of users are from East London
- 15% from North, North-West and West London
- 6% from South East London
- 5% from South-West and Central London
- 1% from outside London


DISTRIBUTION OF USERS BASED ON SERVICE DELIVERY
OTHER
CONSUMER AND MONEY ADVICE
OFFENCE
NON ASYLUM IMMIGRATION
FAMILY
HOUSING
EDUCATION
EMPLOYMENT
BENEFITS
ASYLUM
AREA OF SERVICE
0
100
200
300
400
500
600
700
800
NUMBER OF USERS


DISTRIBUTION OF USERS BY GENDER
FEMALE
45%
MALE
55%


DISTRIBUTION OF USERS BY AGE GROUP
1200
1000
800
600
400
200
0
NUMBER OF USERS
0-17
18-25
25-50
51-60
OVER 60
AGE GROUPS


Cultural Evening 2017


DISTRIBUTION OF USERS BY IMMIGRATION STATUS
NUMBER OF USERS
400
350
300
250
200
150
100
50
0
ASYLUM SEEKER
APPELLANT
REFUGEE
FRESH APPLICATIONS
HUMANITARIAN PROTECTION
CITIZEN
UNKNOWN
OTHER (VISAS)
IMMIGRATION STATUS OF USERS


**Introduction of Advice and Information Service**

This organisation has been providing legal advice and information to the Tamil community since its formation in 1985. It was initially formed by a group of Tamil migrant refugees to the UK in 1985 who shared their experiences to help each other with their settlement and their welfare needs. This initiative subsequently led them to form an organisation in September 1986. Even though the organisation was officially formed in 1986, the organisation itself remained self-financed by its members until 1989. The 33a Station Road, Manor Park, one bedroom flat was converted into an office. The organisation started to provide services to the members- giving advice and information- and sharing the fundamental service strategy of the organisation.

The Tamil community has developed as a migrant community within the last 30 years and many of our services are in high demand. When we started to receive assistance from trust funders and local authorities, we began providing advice and information service in a more structured and effective manner. The demand remains the same even after 29 years of service. We currently provide this service with funding assistance from Lloyds TSB foundation and Trust for London funding. An average of 30 persons per day visit our office to get our service and help. Two-thirds of these users come to receive advice in the field of immigration. Others come for advice on welfare benefits, employment, housing, health care, family dispute, consumer and debt advice as well as other areas of law affecting the people.

## WELFARE BENEFITS

Welfare benefits are provided to individuals who are either unable to work due to health issues or who have reached pension age or those who are not within work. There are various reasons why an individual may be entitled to obtain certain benefits. Even so, many people are not aware of

such services available to them nor are they aware of how to get this. Therefore it is one of our duties to ensure that any member of the community who approaches us for advice is properly attended to by providing accurate information on how to get the benefits that is most suited for the individual requirements. There have been many situations in which we have had individuals seeking our advice in relation to benefits that were stopped. This is a clear indication of the difficulty many face in understanding how the system works. We attempt to break down this barrier by providing the necessary guidance and advice as well as support throughout the process until the individual gains the rightful benefit that they are entitled to.

## JOBSEEKERS ALLOWANCE

This is one benefit where people struggle to cope with the requirements of the Benefit Agency. Many clients approach us who are entitled to this benefit yet they are denied it for short periods or from the beginning of their claim for the wrong reasons. They need the help of our organisation or an advice agency. We intervene to prevent these people from losing their benefits. Those who are unable to qualify for the benefit are supported and guided to get back into the job market sooner rather than later. During this period we help to reduce their stress caused by adverse decisions by speaking on their behalf to the benefit office to remove all obstacles. If we are unsuccessful in this area, then their housing benefit entitlement, if applicable, will also be affected which can subsequently create the risk for homelessness. We handle two to three cases per week on jobseekers allowance-related problems.

Jobseekers allowance is a monetary benefit which is provided to those who are above the age of 18 and out of full time education and are either unemployed or are working for less than 16 hours a week. However the individual must be able to participate in active work and be actively seeking work. An individual applying for jobseekers allowance must prove that their partner works less than 24 hours a week in order to qualify for the benefit. Individuals who are of the ages between 18 to 19 are unable to claim such benefits if they are within full time education and/or have parents receiving child benefits. Those who are on a part-time educational course are able to claim jobseekers allowance only if they are actively seeking work and accept opportunities presented to them.

There are two forms of jobseekers allowance which can be claimed- contribution based or income based jobseekers allowance. In some cases both can be claimed.

**Contribution based** is where the individual must demonstrate that they have paid Class 1 National Insurance on their relevant earnings (within the two taxable years prior to the jobseekers allowance claim being made) in order to apply. The lower earnings limit is as follows for: 2012/ 2013 = £107 per week; 2013/2014 = £109 per week; 2014 / 2015 = £111 per week and 2015/2016= £112 per week. Once the National Insurance contributions have been adequately established, jobseekers allowances is payable in the amounts of £57.90 per week for those who are aged 16-24, and £73.10 per week for those who are 25 or over.

**Income based** allowance is based on your income and savings. You may get this if you have not paid enough National Insurance contributions (NICs) or you've only paid contributions for self-employment and you're on a low income. The person applying must be over 18 years but below the state pension age, and hold £16,000 or less in savings. They must not work 16 hours or more each week, and their partner (if applicable) must not work more than 24 hours per week. As with contribution based, the individual must not be within full time education. Income based jobseekers allowance is given based on amounts stated in the law that is the minimum an individual can live on per week.

If entitled, an individual is able to claim jobseekers allowance from their jobcentre plus but have to apply online. The jobcentre plus will schedule an interview with the individual which they must attend otherwise jobseekers allowance will not be obtainable.

Payments may be stopped if the individual does not complete the requirements agreed on prior to obtaining the allowance. The agency is very strict and

1. failing to attend work and/or complete mandatory work
2. failing to accept job offers when presented
3. if the individual fails to look for work
4. failure to attend an interview within the jobcentre when requested

will result in penalties being imposed. For failing to attend work or accept an offer, the sanction is 13 weeks suspension of pay on first failure and 26 weeks suspension on second failure if this occurs within 52 weeks after the first suspension. If the individual fails to look for work, benefits can be lost for 4 weeks and, if the offence is committed twice within a 52 week period from the first sanction, a further 13 weeks benefit will be lost. Failure to attend an interview within the jobcentre when requested, can result in 4 weeks suspension with a further 13 weeks if the offence is committed twice.

If there are grounds that the individual has good cause for breaching the requirements, an appeal can be made and if successful, the individual can claim hardship payment.

**Case study 1**

Mrs BJ came to this country as an asylum seeker and she was granted refugee status in June 2015. Her asylum support was discontinued at the end of June 2015 as she was advised by the asylum support team to make the jobseekers allowance (JSA) application on 30th June 2015. After 3 weeks her JSA claim was refused because she did not have a national insurance number and therefore was not entitled to jobseekers allowance. This client approached us and we wrote a letter to the Benefit Agency explaining her situation and asked the Benefit Agency to consider making necessary arrangements and communicate with her. We contacted the Work& Pension Department, who are responsible for issuing NI numbers, and asked them to review her benefit entitlement. Our request was refused and we were informed that our client should make a new JSA application after she obtained the NI number. When we approached the National Insurance section they gave an appointment date and after 2 months she managed to obtain a NI number. During this time we lodged an appeal against the initial JSA refusal letter. Three months later the benefit agency reversed their decision at the Benefit tribunal hearing and back-dated her entitlement three months. The JSA benefit enabled her to obtain her housing benefit entitlement as well.

**Case study 2**

Mr VC became jobless and claimed jobseekers allowance. The benefit agency commenced payment of his entitlement. Two months later, however, they stopped his JSA benefit entitlement stating that their computer records showed the claimant was not actively seeking work. The appli cant approached us for help. We examined this matter and made representation to the benefit agency by providing all the study evidence on computer printout which confirmed he was actively seeking work at a number of places he approached during the two weeks period. The benefit agency refused to accept the evidence and did not reverse their decision. Our client exercised his appeal rights and the benefit tribunal heard his case. The appeal was allowed by the Social Security tribunal. Subsequently the benefit agency paid few weeks of our clients benefit entitlement but denied the rest of the period whilst the appeal awaited hearing. The benefit agency claimed the applicant failed to attend their appointments to check the progress of his job hunting. We made further application by stating that the benefit agency was not following the tribunal decision since they had started to pay his benefit entitle ments according to that decision. We further stated that while the appeal was under consideration that our client complied with the necessary require ments by signing at the local job centre and searching for jobs and retaining the evidence. All these matters were considered by the tribunal who allowed the appeal fully. The benefit agency held on to their argument, however, and denied our client entitlement. We subsequently asked the tribunal to reopen this case in order to clarify the benefit agency's standing. A month later the ben efit agency reversed their decision and agreed to pay all our client's benefit entitlement during his appeal period.

## INCOME SUPPORT

The users who approach us for income support benefit claims are either single mothers with young children or refugees who have been granted refugee status recently and are learning English language for their future. Some are carers who are caring for their sick family members. This benefit is relatively straight forward if the applicant is guided at their initial stage correctly. It must be noted, however, that when a single parent's last child attains age 5, the claimants will lose their income support and subsequently their housing benefits. We therefore have to advise single mothers in advance to make child care arrangement and seek suitable part time jobs

before their income support entitlement runs out. We deal with at least one case per week on average of this type of matter.

This support is provided for those who are under minimum wage income. Minimum payment of income support is £57.90 per week and it varies according to their family status.
The requirements for eligibility includes:

**1) If you assume responsibility for a child:**

A. You are a lone parent either under 18 or caring for an infant under the age of 5;

B. You are responsible for the care of a 16 year old who has been adopted or fostered under your care, and/or your partner is currently abroad;

C. Or you are looking after a child whose parents are either sick or unwell to assume responsibility.

**2) If you are pregnant**

A. If you are pregnant and expected to have your baby within the following 11 weeks or have already had your baby in the past 15 weeks, you would be eligible for payment;

B. Either parent on unpaid paternal leave.

**3) If you are a carer**

A. If you are looking after a family member who is currently unwell;

B. If you care for someone and at the same time receive Carers Allowance;

C. The person you are looking after receives either Personal Independence Payment, Attendance Allowance, Attendance allowance or is awaiting a decision approval;

D. If you have no longer been a carer in the last 8 weeks.

**4) Other exceptions**

A. You are required to attend court as either a juror, witness, defendant or Claimant;

B. Aged between 16 to 24 and within full time education where you are either an

i. Orphan with no one claiming parental responsibilities;

ii. Looking after a dependent;

iii. Eligible for disability premium;

iv. If a refugee learning English for employment purposes

Once the individual determines their position for eligibility, he must meet further requirements to confirm the eligibility of income support. Such further requirements are that they are over 16 and below the age of pension; they have a maximum of £16,000 in savings and both partners are not working more than 16 hours a week and, where applicable, one partner works a maximum of 24 hours a week. Generally individuals who are within full time compulsory education are not eligible for income support, except in the exceptional circumstances mentioned above.

The entitlement for each individual differs depending on the group they fall in. The minimum payment receivable consists of £57.90. Singles and lone parents between the age of 16 to 24 are entitled to £57.90 while singles and lone parents over 24 are entitled to £73.10. Couples under 18 are entitled to £57.90, couples with one of them between 18 to 24 are entitled to £57.90 while some couples with one being over 25 are entitled to £73.10. Couples where both are over 18 are entitled to £114.85. Payments are made every two weeks into the individuals account.

## CHILD BENEFIT

Child benefit is additional monetary support provided to those who are responsible for looking after a child generally under the age of 16 but in most cases can be up to the age of 20, if they continue their full-time education. Such full-time education related courses include A level or NVQ level 2 Scottish qualifications as well as some vocational courses.

If a child is to qualify as dependant, they must fall within certain requirements. This includes that the individual must be under 16, or 20 (if in full time education) and dependent on their parents financially. If the child has reached the age of 16 or 17, they may still be able to qualify depending on whether they have recently left education or

have registered for work or training. A child who has reached the age of 19 would still be entitled to child benefits only if they have enrolled onto a full time education course before they turned 19.
Child benefits can stop on 31st August once the child will be or has turned 19 unless they continue full time education. If a child continues or stops their full time education it is important for the parent to inform the Child Benefit Office so that necessary actions can be taken.

Claims cannot be made where:

i. The child has been in prison for 8 weeks;

ii. Has been in local authority care;

iii. Married, cohabiting or in a civil partnership (unless their partner is within full time education);

iv. The child obtains other forms of benefits such as jobseekers allowance.

## EMPLOYMENT AND SUPPORT ALLOWANCE

Over the past year, we dealt with a significant number of cases regarding welfare issues for most clients. This was mainly due to poor handling by the benefit agency at the initial stage of the application. During initial assessment, jobseekers allowance officers routinely ask the question "do you have any health problems?". Obviously it is natural most people over 30 will have some form of health problems. When the applicant answers 'yes' immediately JSA officials advise that this applicant should apply for employment support allowance instead of jobseekers allowance (we believe that the Benefit Agency has as target to keep the jobseekers number down). This has resulted in them misdirecting the clients to claim employment support allowance (ESA), which is much harder to obtain, instead of jobseekers or another more suitable allowance.

For ESA, applicants have to make their application and wait three to four months for it to be processed. They have to produce medical records which the agency will use to evaluate whether they are fit enough to work. During the period of waiting and evaluation, there is no entitlement to benefit. The other issue is that the applicant also relies on their housing benefits eligibility for this benefit. An inappropriate advice on allowances can create more financial hardship to the applicant and they have to spend further time appealing without enough merits to succeed at the tribunal, therefore it is very crucial to get advice from independent advisory people on how to apply for benefits entitlement appropriately.
In all this is the most time-consuming benefit advice representation we give our users. In our experience when a person is not in employment their first point of contact is visiting a local job centre to register with them. If during this first visit, they are misdirected, it can pose untold problems for the applicant. The benefit agency's explanation is that usually the applicants are not fit to work "on their own admission".

To apply for ESA, the application forms must now be obtained from the Government website. Those who have no access to a computer or internet must request for a hard copy of the forms- which can take over a week to arrive. They may also be asked to "simply" make the application over the telephone. Unfortunately, for those with minimal knowledge of English it is difficult to answer questions properly over the phone. This increases the burden on the advisory sector.

After making the ESA application the client has to produce a GP note or other medical evidence that they are unfit to work. Once all the evidence is submitted by the applicant, it will take at least three months to get a reply from the employment support allowance benefit section. In most cases, the applicants phone application or medical information are not generally accepted by the employment support officers and they will refuse the benefit entitlement or they will ask the client to go through the medical examination by the appointed benefit office doctor.

The capability assessment takes time and if the applicant can score enough points (15 or more) then the person may be recognised as unfit to work and will be considered as eligible for employment support allowance benefit. If an applicant fails the test they have to appeal and wait for a few months and they have to convince the appeal tribunal that the benefit office doctor's assessment was wrong and they are unfit to work and qualify for this benefit. If they are successful they will get the ESA benefit. Failing to get the benefit can cause hardship. Clients have had to obtain loans from family and friends to survive. The applicant could also lose their eligibility to receive housing and council tax benefits, which could make them homeless.

All this can be avoided and the users will be betterff if the Job centre allows them to register for jobseeker allowance. Job centres are no longer providing advisory role to their clients, and again responsibility is shifted to community or other advisory agencies to fill the gap. We handle around four clients per week of this nature.

Employment and support allowance can be claimed if the individual is limited in their capabilities to perform the tasks that would be expected from an able-bodied person. There are tests carried out which determine the work capability of the individual and therefore determining the individuals possibility for gaining employment support allowance. The first 13 weeks of the individuals claim is regarded as the assessment phase in which period various forms of physical and mental exercises are carried out. It is known as Work Capability Assessment .

There are two processes which are carried out known as the limited capability for work assessment and limited capability for work related activity assessment. Depending on which one the individual passes will determine whether they are placed in the support group or the work related activity group. This will affect the amount of support the individual is entitled to obtain.

**Limited capability for work assessment** is the first stage which is used to determine the individuals eligibility for the benefit through analysing the individuals physical and mental capabilities to perform work related tasks. To qualify for this benefit, 15 points must be obtained from the assessment, which indicates the capability is limited for the individual to carry out certain tasks. If the individual is regarded as having limited capability, they will be placed in the support group. If the individual is regarded as not falling within the incapacity-to-work category, they may be entitled to claim jobseekers allowance as an alternative support.

**Limited capability for work related activity assessment** is the second assessment which takes part in week 14 onwards. It assesses the individual's ability to carry out work-related duties. If the individual is regarded as having limited capacity for work related activities, they will be placed in the work-related activity group.

In order for the individual to qualify to apply for employment and support allowance, they must first fulfil certain requirements. They must be above 16 but below pensions age;have savings of no more than £16,000; and not be in work, unless it is voluntary and unpaid or permitted work where the individual earns up to £20 a week; the individuals partner, if applicable, must not exceed 24 hours of work per week.

There are open-ended sanctions put in place to stop benefits to those individuals within the work-related activity group who cease to engage in work-related activities. Such sanctions will only be lifted when the individual re-engages their responsibilities fully once more. Even so, there is a time period within which they must not re-offend otherwise their benefits will be removed for a certain period of time depending on the number of prior offences committed.

**Case study 3**

Mr MV had a medical condition which caused pain within his abdomen causing him distress when trying to carry out normal work related activities. Further to this, he had to take various forms of medication to manage the situation. As a result his case was successful in his claim for ESA in which he was able to claim support and was therefore recognised as unfit for work.

**Case study 4**

Mr SK who suffers from Parkinson's disease was not able to perform most of the basic day to day tasks on his own such as eating or drinking without his hands shaking and therefore resulting in most of the content of his meals being spilt. As a result of this he required the assistance of his wife who would aid him with these activities. In addition to this, he was unable to remain on his own for long periods of time due to his regular dizzy episodes. His application for ESA was successful as a result.

**Case study 5**

Ms PD suffers from arthritis in her knee and as a result she is not able to walk for long periods of time, climb stairs without having to pause to ease the pain and she cannot stand for too long without pain in her leg. As a result she has had to take medication to ease her pain. Further to this, she was also diagnosed with diabetes which she controls with insulin tablets. Even so, her application for ESA was not successful as it was held that she was not limited in her capability to work. Her appeal against this decision was also unsuccessful.

**Case study 6**

Mr IS made his ESA claim from April 2013 and he had been given ESA benefit until the end of 2014. His claim was refused by stating that he was fit enough to work and for this reason he was not entitled for ESA benefit. We lodged the appeal against the decision because of this ongoing health problem and treatment. The appeal was heard at the benefit tribunal in November 2015 and it was allowed by the benefit tribunal because the applicant scored enough points to qualify for this employment support allowance based on his medical records, witness statement and other evidence before the tribunal.

## IMMIGRATION CONTROLS

Immigrations controls imposed restrictions on individuals who do not have permission to enter and remain in the UK. Immigration control is not applicable to people who are British citizens, a national of a member state of the European Union, a refugee, exercising their provided humanitarian protection or have leave to remain. Individuals who seek either permission for leave to remain or enter, may have restrictions imposed on them such as the duration of their stay and restriction of access to public funds such as benefits. Such imposed restrictions are most commonly noted within the individuals passport or residence card.

EEA nationals will be required to carry out presence and habitual residence test if they intend to claim certain forms of means tested benefits once they have entered into the UK.

This test would initially require that the individual has a right to reside within the UK at the time of their claim, and that their main address is within the UK indicating an intention to remain in the UK. Individuals who are nationals of a member state within the EU do not have restrictions on their entry if they meet the requirements set out in the Directive 2004/38 which sets out what conditions an individual must fulfil to be able to move from one member state to another. This consists of persons who are jobseekers or workers, self employed or self sufficient in which the individual is able to fund their own stay. IF an EU national has been in the UK for more than 5 years, they are able to apply for citizenship for permanent right of residence under Article 16 of Directive 2004/38. The habitual residence test applies to the following types of benefits:

- income based JSA
- ncome related ESA
- income support
- council tax reduction
- housing benefit
- pension credit
- universal credit

Even if the individual fulfils the habitual residence test, they would still be required to have passed the requirements under the appropriate benefit they wish to seek.

Habitual Residence Test does not apply to those who are given refugee leave.

Immigration control effects an individual if they require leave to remain or leave to enter where the individual requires permission in order to cross into the UK. Even with such permission, there may be limitations placed on the individual as to what they can do during their stay within the UK. Such restrictions normally consist of the inability to work in some cases as well as limiting access to public funds.

**Case study 7**

Mr AS who was an EEA national came to the UK in 2001 with his family from France. He exercised his treaty rights in UK by working in different places for a number of years. By the end of 2014 he become unfit to work and he claimed employment support allowance. His employment support allowance claim was refused in February 2015 by stating that you are not habitually resident in UK therefore you are not entitled for ESA benefit. The applicant came to this country in 2001 therefore he made the claim under the transitional protection arrangement, however that claim was turned down. In result, we lodged the appeal on behalf of the client because of his history of work in UK and the contribution he made to the work and pension department which will see him pass the habitual residency test, however this appeal was also unsuccessful because he had not paid enough tax and he was deemed not economically active enough to receive this benefit. The applicant also failed to obtain a residency certificate on application for the benefit despite the fact that his wife who is a British Citizen, had worked in the UK from 2002 to 2009 and applied for ESA. His application was refused on the basis that he had not fulfilled the right to reside despite having lived in the UK as an EEA national.

## HOUSING BENEFIT

Such benefit aims to support those who are unable to support rent payments as a result of their low income. The amount of benefit in relation to the rent reductions will depend on the circumstance of the accommodation. For example private and council rented homes.
In order to be eligible for rent reductions, the required conditions are to be met. This includes; the individual does not have savings which exceed £16,000, and that either the individual or their partner pays rent.

Housing benefit is not available if:

- the individual is a student within full time education,
- holds a lease for over 21 years,
- the landlord whom receives the rent is a family me mber,
- the property has been owned for more than 5 years

Those living in council housing have their housing benefits calculated through the amount of rent that they pay. This does not include the charges for water facilities and estate maintenance costs. For those who rent privately, a local housing allowance rate is used to calculate the housing benefit entitlement which considers location and number of bedrooms up to a maximum of four that may be required. Such rates are calculated yearly and therefore may change. If the rent is lower than the housing rate, the rent figure would be used instead for the calculations. To calculate the quantity of bedrooms entitled to for the purpose of assessing the local housing allowance rate, the amount of rooms entitlement will be determined by the circumstances in which an additional room would be entitled to the individual. Only a maximum of four additional rooms can be claimed. There is entitlement to one bedroom in each of the following cases:

- it is required for the individual and their partner
- a 16 year old or over lives in the accommodation
- two minors under 16 of same sex such as siblings
- two minors under the age of 10
- disabled persons who shares accommodation

Further to this, there is a separate rate known as the shared accommodation rate which is designed for those who share their accommodation with another person such as a communal kitchen and bathroom. This rate applies to those who live within shared accommodation and are either single or a couple with no dependents.

## COUNCIL TAX REDUCTIONS

Such reductions are aimed at helping those who currently pay council tax but are on low income and may have difficulties in paying their council tax as a result. Councils decide how they calculate someone's eligibility, but in most cases their methods would resemble that for calculating housing benefits as mentioned above.

## CARER'S ALLOWANCE

This benefit is entitled to those who care for a person (at least 35 hours per week) who claims either disability allowance or attendance allowance. The carer must be over the age of 16 and not studying for more than 21 hours a week. The amount which would be payable to the carer amounts to £62.10 per week. Such allowance however does not get paid to the carer if they have regular gaps in care provided during a 26 week period where the carer may have gone on holiday. Payments however will still be made where at least of the 26 weeks, 22 weeks were spent caring for a person. Where the person being cared for has their allowance stopped, so does the carer's allowance.

## ATTENDANCE ALLOWANCE

This is an allowance provided to those who have reached 65 or over and, who need aid in care such as monitoring the individual to prevent personal injury. This allowance is not intended for individuals who have difficulty with mobility; but can be claimed by those who are suffering from an illness.

In order to qualify for this allowance, the individual must require regular assistance with general activities such as getting dressed, eating, using bathroom facilities and the like. Further the individual may also need care to avoid the risk of personal harm. Such requirements must be present during both day and night. The claimable allowance would be £83.10 per week if the requirements are met for both day and night. If the requirements

are met for **either** day or night, the allowance is £55.10 per week.

**UNIVERSAL CREDIT**

This form of benefit can be obtained by individuals who have low income. In order to be entitled for universal credit there are some set conditions which must be met first. This includes that the individual must be over the age of 18 and not in full time education;must have signed a claimant commitment agreeing to expectations of finding work and must have less than £16,000 of savings. Depending on the type of group the individual is assigned to and based on their ability to work, there will be different requirements which need to be fulfilled. The groups which individuals may be assigned to include:

**No-work related activity**
This is where individuals are not required to carry out any work as they have an infant child or have adopted or fostered a child, reached pension age, care for a disabled person and have been a victim of domestic abuse.

**Work focused interview**
This group would require the individual to have attended at least one interview and where their circumstances are that they have a child younger than five, or have even fostered a child with or without special requirements.

**Work focused interviews and work preparations**
This group would require the individual to carry out procedures which would allow them to increase their chances of finding work.

**All work related activities**
This would classify the individual as fit and capable to engage fully in work activities. It would also be stated in the claimant commitment signed which also makes reference to the amount of hours that should be worked with minimum availability of 35 hours.

Failure to comply with the requirements set out in the group assigned would result in sanctions applied and the individual may have their benefits cut or stopped.

**CHILD AND WORKING TAX CREDIT**

This is where support is given to an individual over 16 years of age who is responsible for looking after a dependent child and is on low income. Even so there is no requirement to be working. Child tax credit is no longer given once the child has reached their 16th birthday. To classify for the benefit there must be a clear indication that the individual is on a low income. As a result, there have been guidelines set out for what would be considered full time work. These include a single parent working 16 hours per week and a couple with children working a combined 24 hours per week with at least one of them working 16 hours per week.

**BEREAVEMENT BENEFITS[1]**

Bereavement payment is a tax free benefit of £2,000 given to someone whose spouse has recently died but not of industrial or disease related causes. The amount will depend on the NI contributions of the spouse who has died. The individual is able to obtain such benefits if at death of spouse the individual was under the pension age. In order to be able to claim the benefit, there must be a claim made within a year.

A bereavement allowance is also given of £133.70[2] to those who are aged 55 or over. Persons aged 45 to 54 receive reduced payments. This allowance is only payable for up to 52 weeks after the spouse/ partner's death.

There is also a widowed parents' allowance, for those who had a dependent child or are pregnant at the time of being widowed. It also counts as income for universal credit. The weekly amount payable is £113.70[3]. If the individual remarries then the widowed parent allowance will no longer be available.

**PENSION CREDIT**

This is given to those who have reached the state pension age. There are two elements to the pension credit.
The first part consists of **guarantee credit** which is the stated minimum amount that anyone can live

[1] these allowances are discontinued in 2017 and replaced by the Bereavement Support payment
[2] amount receivable in 2017 for those whose payment started before April 2017
[3]amount receivable in 2017 for those whose payment started before April 2017

on consisting of £159.35 for a single person and £243.25 for couples. The amount will increase if the individual qualifies for disability.

Secondly, the **savings credit** is given to those over pension age who hold reasonable savings higher than a given level. Savings credit which is available consists of £14.82 weekly for a single person with £17.43 for couples.

**Asylum Support**

As an organisation formed by the Tamil asylum seekers who arrived 30 years ago, the nature of our work over the years has been consolidated by asylum seeker and immigrant related issues. Part of our service that we provide includes legal advice; practical support and case work to asylum seekers whose claims are under consideration by the Home Office or tribunal. Catering for the welfare needs of the asylum seekers is not straight forward. The Home Offices purposed changes to the asylum support claiming system, which is seen as an attempt to avoid the asylum seekers entitlements by giving false reasons.

Most asylum seekers lacked English language knowledge, thus through the asylum support recurrent processes, they struggle to cope with day to day life in English.

According to the asylum support procedure, "deport" applicants are entitled to claim their entitlements under section 95 but this is not automatic as someone needs to make the application on their behalf or make referrals to relevant people to get their entitlements. When support applicants are facing homelessness, there are not many shelters or homeless projects which are able to cope with the demand of sheltering them. Where applicants are not eligible to get the subsistence (cash) voucher support but are destitute then they may be entitled to accommodation and cash support only if they are prepared to accept the Home Office's provided accommodation in the disparate areas.

Normally asylum seekers are reluctant to go to the North of England or other isolated areas as there they not only face language or community barriers but also other forms of barriers as well. If they refuse the asylum support accommodation it is very unlikely for them to get a second chance from the asylum support service. This creates problems to the community. In our observation a majority of the Tamil asylum seekers are looked after by the Tamil community. Only port applicants will get subsistence benefit. The rest of the asylum seekers living costs are met by the community.

We encounter at least three cases per week on asylum seekers related welfare matters; this includes making asylum support application; chasing officials to get their entitlements; making appeals to protect their rights and also representing them at the asylum support tribunal with the view to safeguard the asylum seekers (and overturn the Home Office decision). Moreover we do referrals to the Migrant Helpline Refugee Council and Red Cross and work closely with them in the interest of the asylum seeker. In many cases the asylum seekers are also represented by other legal representatives who also come to us for this kind of service. We continue to support the asylum seekers until they are granted asylum/refugee status/ leave to remain or are deported from the country.

The National Asylum Support Service (NASS) provides help for those who are in the process of claiming asylum status in the country. During this period asylum seekers are not allowed to work so the Home Office will advise them to get help from NASS. Depending on the circumstances NASS provides financial and housing support to the asylum seekers. Support includes either monetary support or housing assistance and both support can be claimed if the individual wishes to do so.

**SECTION 4 SUPPORT**

Section 4 of the Immigration and Asylum Act 1999 allows NASS to provide full-board accommodation outside London for destitute asylum seekers who have exhausted all their appeal rights but are unable to return home.

(Individuals can claim support as provided in the Immigration and Asylum Act 1999. Section 95 (1) entitles the asylum seeker and dependents to have support provided for them. Further to this in order to qualify for either housing or monetary support it is required under section 95 (3) to meet certain conditions.)

Destitution is a huge problem amongst asylum seekers, one that pushes them to the brink of our society. Asylum seekers have to wait months or years for the outcome of their asylum claim, during which they are prohibited from working and only receive minimal or no financial support. They are

entitled to just £35 a week of cash or card support, that is £5 a day. This has to cover everything - food, toiletries, clothes etc. - as well as travel costs to get to crucial legal appointments or asylum meetings. As a result, asylum seekers are reliant on charities and their limited social network to make ends meet.

The majority of asylum seekers who come to the Refugee Council have no recourse to asylum support, due to administrative faults or because their asylum claims have been refused (this does not necessarily mean they can go back to their home countries). They are severely marginalised in our society, often sleeping rough and living an isolated life without knowing who to turn to.

They also face significant barriers to accessing healthcare, activities and social networks. It is important that destitute asylum seekers are afforded the same respect and care as anyone else in our society.

In order to meet the requirements of destitution, Section 95(3) requires the following to be met:

- The person in consideration does not have adequate housing, nor does he have any way of obtaining it irrelevant if the person can meet living needs;
- Housing needs are met but the individual is unable to meet other personal living needs.

Only when such requirements have been met will the individual be entitled to proceed with a claim for asylum support.

With regards to housing, the individual would be able to gain support for housing and they will be provided accommodation during the period of their asylum application. They may choose their location, but the chances of gaining their preference may not always be successful especially if their choice is London as there are many applicants who may apply for similar areas and not enough housing opportunities may become available at that time. Forms of housing can consist of a flat, house, or hotels providing bed and breakfast.

With regards to monetary support, the amount of £36.95 would be provided for each person within the household which can be collected from a post office and is available weekly. The intentions of such monetary assistance are to provide the necessities for the individual and their families such as food and clothing.

There is extra support given to those who are mothers looking after young children under 3 years and those who are pregnant. Such support given equates up to £3 extra for pregnant women and mothers with a child between 1 to 3 years equalling £39.95 a week including the standard weekly support. £5 extra is given to those who have a child under the age of 1 year which equals to £41.95 per week including the standard weekly support. In addition to this, a single maternity payment of £300 is payable to the mother if she is expecting birth within 8 weeks or is already looking after a child under 6 weeks, while a mother in the same condition but who has been refused asylum can only get £250. In order to qualify for a maternity payment, it is necessary to have an application filled out by the doctor. Maternity support can be claimed at any point during the asylum application even if pregnancy occurs during the application process.

Further to this, free health care is also provided under the National Health Service (NHS) which allows access to:

- Medical treatment and prescriptions;
- Dental and eye care.

In addition children of those applying for asylum support will be entitled to access education if they are between the ages of 5 to 17 as this is a legal requirement. State schools are free and therefore payment is not required. Free school meals are also available for those claiming support under section 95 of the Immigration and Asylum Act 1999. If an individual has been refused asylum and remains homeless and is struggling to afford the necessities after this period and has a legitimate reason why they are unable to leave the UK; the individual may be entitled to such support under section 4 of the Immigration and Asylum Act 1999. Housing accommodation will be provided until they are able to return to their country of origin. Only once housing has been established would the individual be granted a NASS payment card, by which they will be able to purchase necessities such as food and clothing. The card is pre-topped with a monetary sum for the individual based on the individual's category of need. The NASS card is also restricted for use within certain stores which the Home Office will notify the individual of. Even so such use of the NASS card can be restricted by the Home Office if they believe the individual is no longer entitled to any support provided.

**Case study 8**

Mr VS a 63 year old came to this country as an asylum seeker in 2001. His application was refused in December 2001 and his appeal rights were exhausted in November 2002. However the client was unable to return to his native country and subsequently he gathered new evidence and his solicitors made a fresh asylum claim in June 2010. Initially our client received NASS support under section 95 until his appeal rights was exhausted. After he made the fresh claim, he made the section 4 NASS support claim and he received support until June 2015 when it was determined that he did not satisfy the requirements to get his NASS support after this period. As a result, he became homeless and subsequently he fell ill and was admitted to the hospital by the emergency service in an unconscious state. He received treatment at King George Hospital then he was released into a care home in Redbridge. After a few months stay at the care home, the care home administration referred this client to us (he no longer needed to stay in a care home but on release he would have no accommodation) and asked us to find him accommodation. When we took instruction from the client we found out he was an asylum seeker and his appeal rights was exhausted and also his fresh claim was refused by the Home Office, therefore making it hard for him to get asylum support. We took up his case to make the new fresh claim with new evidence and under article 3 of the ECHR while making the section 4 asylum support application to the Home Office. While it was in consideration the care home threatened to evict him and we released him to another firm of solicitors to challenge his eviction. Following this we fast-tracked our client's section 4 application through Red Cross and it was refused as he was unable to demonstrate under Regulation 3(2)(e) of the Immigration and Asylum Regulations 2005, his fulfilment of the required criteria. We re-submitted the section 4 asylum support claim through Red Cross with evidence for outstanding fresh claim. On this occasion the asylum support accepted his application and the applicant moved to the East Midland Area.

**Case study 9**

Ms SJ came to this country with her two children with a visa in May 2010 and later she claimed asylum at the asylum screening unit in Croydon Home Office in December 2011. Her asylum claim was represented by another firm of solicitors. Our client's family had a strong political involvement with LTTE and her father had disappeared in May 2009 in Sri Lanka. She feared persecution by authorities and left the country with the support of her travel agent. Despite her claim and evidence, Home Office refused her asylum claim and her previous solicitors lodged the appeal against the Home Office. The appeal was heard at the end of 2012 by the Asylum and Immigration tribunal. It was partly allowed by the immigration judge and she waited for the response from Home Office which she never received until after a year. In addition her solicitors were unable to proceed with her asylum claim due to changes in the legal aid system. She approached us at the end of 2013 and TWAN took her asylum appeal case. We advised her of her entitlements under section 95 of Asylum Support. We made the application for asylum support in March 2014 and her benefit application was approved in July 2014 and she was entitled to the sum of £96.90 per week. Six months later, however, her asylum support claim was refused again without any reason. We lodged an appeal to the asylum support adjudicator and, a day before the hearing, the Home Office withdrew their asylum support decision and re-instated her asylum support. The asylum appeal made was successful in June 2015 and the immigration judge allowed the appeal. She was granted refugee status with her two children and they received a Biometric Residence Permit card which is proof of her ability to remain in the UK. She will be able to apply for further leave a month before the expiry of her current leave.

**Case study 10**

Mr KN came to this country in March 2012 and claimed asylum at the Heathrow airport. He was initially detained for removal but was later released with temporary admission. He approached us to get advice and representation on his asylum claim for which we opened the file and took his case under the legal aid funding. We also assessed his welfare needs and advised him of his entitlement for asylum support under section 95 as he is an applicant. His NASS support was approved and he started to get 32.62 per week as he was over the age of 18 and single. However, his claim was regularly interrupted. It became difficult for him to obtain the money from the NASS card for various reasons. At least 3 or 4 times per year he found it difficult to get the money or was refused payment by the Post Office when he went to receive this allowance. With the post office receipt

code we contacted the asylum support team and removed the obstacle to obtain his benefit support. In July 2015 his asylum support was refused by the Home Office and therefore his support ended in August 2015. We lodged the appeal against the asylum support decision by stating that our client exercised his rights of appeal and lodged the valid appeal to asylum and immigration tribunal. The asylum support adjudicator heard his case and accepted our representation and allowed the client's asylum support appeal. Our client asylum support was reinstated.

**Consumer Credit Act**

Service delivered under the Consumer Credit Act (CCA) changed in the year 2015 when the CCA was put under the control of the Finance Conduct Authority and service providers had to register with them in order to be able to deliver this service to the public. TWAN also made the application and completed registration with the FCA. In the past the organisation had obtained a practicing certificate for this purpose to give advice in the UK.

Our service is much needed in our community because users have little knowledge about the Consumer Credit Act and financial dealings. Most of them have migrated and are settling in the UK which has a totally different financial culture to Sri Lanka- credit is easily obtained and payments can be spread over a long period of time. Some people are unable to handle this and can get into the trap of borrowing money indiscriminately and end up being unable to pay off their debts. They take out loans and acquire credit cards and are able to spend beyond their means and later have to struggle with repayments. Some individuals take out loans to pay off existing ones and their debts spiral out of control.

This not only affects their credit score but their overall lifestyle due to the financial burden it puts on the families. In some cases addiction resulting from easy credit is also a case of concern in our community: Individuals become addicted either to alcohol and gambling as a result of the easy money to spend which will eventually put them financially in a poor position which may lead to homelessness, mental health problem and other adverse situations.

TWAN is available to counsel clients who run into financial difficulties. We sit with clients to determine debt repayment plans and how they can realise additional income to help them pay off their debts. Our services guide the individual to prevent them from facing financial hardship or carrying huge debt under their name.

Another issue is debt relating to housing/rental payments. There are findings which show the local authority recoupment of housing benefit and the inefficiency of the housing benefit office of the local authority causing many people to face debts and even cause homelessness. The housing benefit office's inability to deal with housing benefit entitlement in the short period and reviewing the individuals benefit entitlement is the main reason why many of our members carry huge debts. We provide this service without recognised funding assistance and around three people per week approach us for this kind of service.

The Consumer Credit Act's main purpose is to protect individuals who may provide purchases using their credit card and who enter into a loan or hire agreement.

The Act consists of 12 parts and each part covers a certain topic matter in relation to consumer credit. **Part I**: deals with the Office of Fair Trading (OFT) which covers their functions as well as other responsibilities which they perform.

**Part II**: deals with the various forms of credit agreements and hire agreements which are covered by the Act as well as their definitions.

**Part III**: deals with the process of licensing credit for businesses, the various licenses charges and the processes for their renewal, suspension and revocation as well as the additional powers of the OFT to regulate licenses.

**Part IV**: deals with the various forms of promotions for businesses from advertising to canvassing

**Part V**: this deals with the processes of entering into a credit or hire agreement through looking at the requirements before the agreement as well as requirements during and cases of withdrawing the application.

**Part VI**: this deals with issues where breaches of the agreement may occur and which clarifies liability and steps needed to be taken to provide relevant information to appropriate persons.

**Part VII**: deals with default notices which clarify requirements that must be satisfied by a creditor in advance of proceedings. It also covers remedies for default notices and the ability of the debtor to be able to make payments in advance of the agreements arranged. It further deals with the ability to terminate an agreement through providing the required information such as notice of termination.

**Part VIII**: deals with securities and pledges. It deals also with the requirements of providing information to relevant personnel through the form of the different forms of agreements. It also further specifies the requirement to provide pawn receipts and issues of loss of pawn receipts or refusals for it to be handed over. In addition it also covers penalties where a failure to provide copies of certain agreements occur.

**Part IX**: deals with judicial control whereby the judiciary are able to regulate breaches of the requirements as well as enforcement orders in situations where there has been an infringement or death of the agreement provider. This section further deals with time orders requiring payment by either the debtor or the creditor. Further to this the section also covers issues in which it may be believed that the credit bargain may have been one that is not fair to the creditor whereby the credit bargain was unreasonable towards the creditor with unfair interest rates being placed.

**Part X**: deals with issues of credit businesses and provides the types of businesses which fall into this category such as credit brokers.

**Part XI**: deals with the bodies which have the ability to enforce the Act through definition of what their powers are and the forms of penalties which are available to be given and what defences are able to be used.

**Part XII**: deals with other various issues with the main part of this section consisting of the definitions of various terminologies used throughout the Act. There are four schedules. The most relevant to credit matters are schedules one and two:

**Schedule 1**: deals with the various forms of offences against the Act and provides the form of punishment which would be provided depending on the type of criminal act committed.

**Schedule 2**: provides terminology used within the Act

**Schedule 3**: deals with the commencement of the various sections within the Act

**Schedule 4**: deals with amendments made to various sections within the Act

The Consumer Credit Act provides a range of protections for the consumer to protect them from unfair arrangements which would significantly disadvantage the consumer. It was due to the regularity of such events occurring in the past which resulted in the Act being developed. Prior to this, if consumers were unjustly treated, it was beyond the powers of the court to be able to provide a remedy, and therefore injustice was perpetuated.

The Consumer Credit Act requires that businesses that provides either goods or services in exchange for credit or provide loans must be licensed and approved by the Financial Conduct Authority (FCA). The definition of credit is provided by the Consumer Credit Act 1974 within section 9.

**CREDITWORTHINESS**

For credit to be given, all businesses providing credit would be required to carry out a credit check (provided in section 55B(1))of the individual in order to be able to ensure that the credit on loan would be repayable by the individual with minimal problems posing as a threat such as previous difficulties to pay credit back. Therefore they will obtain information from credit reference agencies, who carry out the checks to verify the likelihood of the individuals to pay back the credit. Such information is gathered by asking the individual to provide certain information or from the credit agency as stated under section 55B(3). It is therefore essential that the information provided is correct as wrongful information could lead to complications later on during the agreement where the individual may be liable if an agreement has already been made.

**PRE-CONTRACT REQUIREMENTS**

In addition to this, there is a requirement under section 55A(1)(a) that the individual is provided information which may affect the agreement and allow the debtor to assess the agreement and consider whether to proceed with it in its current

condition or to alter various sections. The information which should be provided is mentioned in section 55A(2) and includes:

- the content of the agreement
- the expected repayments to be made including its frequency
- any factors of the agreement which may affect the debtor in the unforeseeable future
- any consequences which are likely to arise as a result of the debtors inability to make necessary repayments and the possible legal proceedings which the creditor may take as a result
- the ability of the debtor to withdraw from the agreement and when such rights can be exercised

Under section 55C(1) it is required that a copy of the agreement is given to the debtor if it has been requested before it becomes an executed agreement.

**UPON ACCEPTANCE OF THE AGREEMENT**

Once the agreement has been accepted by both parties and signed; under section 63(2) it is required that the creditor provides a copy of the executed agreement to the debtor within seven days unless the agreement had been sent for signature and, as stated under section 62(1) concerning unexecuted agreements and 63(1) concerning executed agreements that upon the signing of the agreement, a copy is provided then and there.

**RIGHT TO EARLY REPAYMENT**

The debtor is entitled to an early repayment if he so wishes as indicated within section 94(1). Further to this section 94(4) sets out what procedures the debtor must take in order to be entitled to complete payments. These include:

- notifying the creditor;
- having paid the creditor part of the money owed before the fixed period of the agreement;
- the debtor pays within 28 days of notifying the creditor or;
- on the date specified in the notice to the creditor or before

**CANCELLATION OF CONSUMER CREDIT AGREEMENT**

If the debtor so wishes to cancel the agreement, he can do so within 14 days, as stated in section 66A(2), according to what the Act considers as the 'relevant day' which can be found under section 66A(3) which includes the day of the agreement, when the agreement has been sent, when the creditor has informed the debtor of the credit limit. On cancelling an agreement it is essential that if it is verbally provided, section 66A(4) requires that it is done so as required by the agreement. If the cancellation of the agreement is to be done in writing, it is required under section 66A(6)(a) that the letter is sent to the specified address as set out in the agreement. If the cancellation is to be sent electronically, section 66A(5)(a) states that it must be sent to the electronic address as set out in the agreement.

Even so there are some exceptions where the agreement cannot be cancelled as stated within section 66A(14) and these include:

- for credit over £60,260
- where land is a security to the agreement

**COOLING OFF PERIODS**

There are cooling off periods after you have entered into an agreement that does not take place within the business office as stated under section 67. Within that time, the individual is allowed to cancel their agreement. For this to take effect, it is required that such cooling off period is specified within the agreement.

Under section 68 the debtor is able to cancel an unexecuted agreement between the period of signing and the period end of five days from receiving a copy of the agreement or seven days after the agreement has been made.

There are situations in which cancellation of the agreement will not be possible. This includes situations where:

- section 67(a) the agreement is on land as a security and;
- section67(b) where the agreement has not taken effect yet and the agreement had been signed within premises where any business being carried out is in anyway related to the purpose of the agreement.

Furthermore, this section will not apply if section 66A applies instead as section 67 requires the agreement to be carried out outside of normal premises.

**UPON CANCELLATION**

Upon cancellation of any agreement, there is a requirement of any credit which remains outstanding to be paid back either in part or in full as required in section 71(2).

Where the cancellation concerns goods; section 72(1) sets out the requirement that goods are to be returned to the owner if the goods had a restricted use. Further to this, during the cancellation, the individual who currently holds possession of such goods are, under section 72(3), required to take care of the goods and maintain possession until they are collected.

**JUDICIAL CONTROLS**

Section 127(2) of the CCA allows for judicial controls whereby courts can reduce the amount payable by the debtor as a form of compensation for the unjust caused if there is a breach of the content of the Act as set out in section 127(1).

**Case study 11**

Mr VJ had purchased a coach ticket but the coach never arrived and he therefore had to find alternative transport to reach the Airport. As a result of the non arrival of the coach, he was unable to board his flight and therefore resulted in loss of hotel accommodation and flights as well as loss of wages for that period. The matter was taken to court but the coach company could not be traced. In order for special arrangements for delivery to be made, additional court fees were chargeable. Our client decided to drop the case as it was not worth pursuing further.

**Case study 12**

Ms SS started university in London and she applied for a student loan to cover her tuition fees, accommodation and other relevant costs. She rented a flat via the university letting agent and paid a deposit of £3000. After 2 months she realised that the course she was taking was not suitable decided to change universities. The previous university had made the accommodation arrangements through a letting agent. When she changed university she informed the letting agent she no longer required the accommodation from January onwards and asked them to terminate the tenancy but the letting agents refused to terminate the tenancy demanding around £1500 per quarter rent for that accommodation. We made the representation explaining the student's situation and also communicated with the university who refused to take responsibility despite making arrangements for her with this agent. We found out the agent failed to insure for loss of rental income and demanded our client to make the payment of £3000 despite not having used the accommodation and not being in a position to meet the cost. The agent refused to refund her deposit and used that to pay off her outstanding rent because they claim she had signed the rental agreement and was therefore liable to pay the rent.

**Case study 13**

Miss TS took out a phone on a 24 month contract which came to its expiry. She wrote to the phone company that she wanted the contract cancelled. On two occasions in June and August she wrote with recorded delivery to the company requesting cancellation of the contract. They cancelled in August. During June, July and August she was charged £804.99 and £563.63 in total for the use of the phone though she had not used the phone and had already asked for its cancelation and in addition, her contract had been a fixed amount for unlimited minutes and texts. We were able to terminate the contract without any additional cost to our client.

**Crime and Offences**

Ten years ago within our community there were gang fights and violent behaviour on the streets in certain areas of London. Initially our community silently suffered the aftermath of this act, but local media wrongly interpreted in their headlines that the whole Tamil community was involved in this matter. Therefore our involvement as an organisation was requested since it was a community related issue. The burden was placed on our organisation but we had very little resources. We tried to address these issues and we attempted to seek additional funds for this specific task which was not successful. We slowly progressed by communicating with victims of the community. We identified the culprits and began to work with the local police. Later, we formed a community forum known as "Newham Police and community

forum" which started to work with the police and the community to calm the tension. We addressed this matter with the media and worked with witnesses and victims to make a successful prosecution.
Since we were heavily involved and jointly and independently worked with police to resolve this matter, the community interpreted that we are taking tough action against those who are involved in gang fights. We acted neutrally for the benefit and dignity of our Tamil community. Some young members were actually involved in this gang culture. Through our existing network within the community we identified some of the gang members and began negotiation with them. Our negotiation persuaded a few of them to move to safe areas and give up violence. We helped arrange accommodation for them. Some gang members suffered uncertainty about their future & felt frustration due to their immigration status. We therefore began to deal with this matter also. We provided a forum for youngsters to engage with elder members in the community and began to give guidance. We oversaw individual development. Our efforts began to pay off and later the London Metropolitan Police wished to form a Tamil community group to address the issues. As a result the TAMIL Independent Advisory which comprised police representation and Tamil community groups was formed to advise on Tamil-related gang culture. Meetings were held at the Territorial Police headquarters. The Assistant Commissioner of territorial police chaired the group and after four years of work we were able to reduce the gang culture and violence successfully within our community.

We also worked closely with the probation officer when a gang member was due to be sentenced. As a result we were able to advise the probation office to release convicted gang members to different areas for their safety and to prevent gang involvement after release.

We helped them to relocate, rehabilitate and to bring former gang members back into the community as good citizens slowly. Victim support was crucial to our work, and we continued to support the victims in the best manner.

Offences varied from small to serious. Serious offence could result in imprisonment. For example a parking offence is a major problem in London areas. Parking tickets were issued without justification. There were many people who did not know how to display a ticket or pass on the dashboard of a car. Even when they displayed a valid pass they were issued with Penalty notices because the pass is not clearly displayed. An example of this was where a client parked the car within a disabled parking bay and displayed his disability badge but the enforcement officer issued a penalty notice because the badge was not clearly visible. We hear of so many different reports from our community of parking tickets that were issued unnecessarily. Some people had to go to courts to get justification.

Other matters of crime and offence include issues of Police action where a person is arrested for an offence/non offence and the police does not release them immediately when there is no charge, but keeps them in custody until several other unnecessary background information is cleared. Thus individuals became frightened due to this action of the police and would never come forward to testify in instances of actual crimes witnessed. In some cases the witness could get into more trouble than the alleged offender. Because of police practice to probe into witnesses immigration history during questioning, the minority community is reluctant to go forward as witnesses in order to avoid unwanted trouble. Due to this police behaviour, the offender has opportunity to get released without sentence. We also have several other examples of police arrest and unlawful detention, even where the matter could have been dealt with easily without unlawful detention and reimbursement of cost. Upon request of the individual we get involved in these sort of situations and so help to protect the individual's common law rights.

We treat these issues as crucially important for the benefit of our community. In such incidents, it is common for our clients to make a complaint to the relevant body who deals with such issues in hope that the issue will be dealt with without need for legal action. In most cases problems are resolved using the complaints procedure.

**POLICE COMPLAINTS PROCEDURE**

With regards to situations where injuries are sustained as a result of police brutality, the client is usually in need of instant medical attention. From cases involving clients, there appears to be a general theme: when stopped by police, the client believes that they have done nothing wrong which results in an argument; the police attempt to make

an arrest and the client refuses arrest declaring innocence (physical contact may be made with police); the client is arrested for assaulting a police officer.

In a case we encountered, a worker in a warehouse was unloading goods from a truck, when two civil dressed policemen came, caught and handcuffed him. He was also beaten by the police for no apparent reason. The worker had to undergo medical treatment.

Another situation involved the client fleeing as soon as he saw the police coming. The police gave chase and it resulted in the police using force to apprehend the "suspect". *The man was innocent*. It has been observed that regardless of whether the client has committed an offence or not, the outcome of the incident usually turns into the client becoming victim of police brutality and which requires the person to have medical attention.

Clients therefore sought advice on the possible legal procedures to be followed in such situations in order to deal with it effectively as they fear it could happen again. The general procedure is to make a formal complaint to the relevant body who deals with issues of improper use of police statutory powers. Generally, complaints are made to the Metropolitan Complaints Commission who deals with such incidents. During this procedure an investigation into the individual police officer involved is carried out and their conduct of behaviour is assessed in relation to the client's incident. During this process, all communications and complaints by the client is kept confidential and the client is allowed to request to be informed of the process of the investigation.

(The body which deals specifically with complaints about police officers in the jurisdiction of England and Wales is known as the Independent Police Complaints Commission (IPCC). The IPCC deals with complaints related to the conduct of police officer or those who hold similar statutory powers such as border controls in which they have portrayed themselves in such a way as to cause offence through verbal or physical actions.)

The process of making a complaint requires that the relevant body at the Metropolitan police is contacted in relation to the incident such as the Police and Crime Commissioner for police related matters or Home Office if it relates to border/ immigration issues.

Making a complaint does not have any time limit. The relevant body may, however, refuse to consider a complaint if it is made over a year from the date of incident. **In such circumstances, the requirement is that the complainant needs to justify the reason for the late complaint- E.g. time used in collecting evidence; inability to make complaint due to illness; any other acceptable reason which justifies why the complaint took such a long time to reach the complaints procedure.** The relevant body would then consider the argument and make a decision whether to consider the complaint. In exceptional circumstances, the issue may be referred to the IPCC if it relates to the death of a person as a result of misconduct of an officer; assault causing significant injury to the person; or sexual offences - these are very serious issues which require further scrutiny when dealing with them.

The relevant body will look into the complaint and make a decision as to its nature and if such complaint would need to be recorded. It takes 15 working days for them to make a decision and the individual would be informed if the complaint has been recorded or not, providing reasons for their decision. If the victim is not satisfied with the results of the investigation, they have the right to appeal against the decision.

Appeals are allowed on the following basis:

- If the investigation was not carried out effectively as the victim was not properly informed of the decision, or the victim does not believe the conclusion is the right one;
- The complaint was not recorded or that a decision to record was not given;
- The complaint was not considered and therefore no investigation was carried out to enable the victim agree or not agree with the decision.

On appeal the victim will receive a letter from the IPCC acknowledging the request for appeal. Letters for such request must be sent and received within 29 days of the confirmation letter. In most cases it may take up to 8 weeks for the appeal to be considered.

The IPCC does not look over the complaint again, instead they consider how the relevant body had dealt with the initial complaint and if they believe that it was not completed in an appropriate

manner, they will provide instructions to the relevant body of what steps they must carry out.

**TRAFFIC ENFORCEMENT ISSUES**

There are also situations regarding traffic enforcement where clients received parking tickets though they had parked within the correct parking zones and provided necessary permits such as disabled permits. Clients were left having to pay the fine and, in most cases were confused as to how such situation could occur. There are many cases concerning an absence of designated traffic signs such as 'No parking' in certain areas and the client later finds out that they received a penalty. There are circumstances when an individual may want to appeal against the parking ticket. These may include issues such as the vehicle was no longer in your possession or the vehicle was stolen. Most commonly the individual had not broken the rules which they are accused of breaching such as parking without the correct parking ticket or disabled permit, or parking in an area that is on record as a restricted area but which had no notice of parking prohibition. These are the common problems that our clients face and they come to us to help them to resolve the situation.

There are two processes which can be taken to make an appeal. These are known as the formal and informal process.

**The informal process** consists of a written letter sent to the authority which issued the penalty ticket. This must be done within a time frame of 28 days from the date of the ticket being issued. If the appeal is made within a 14 day time period, the individual may only pay half of the penalty even if their appeal is rejected. If the appeal is made after 14 days, the full amount is payable if the appeal is rejected.

**The formal process** consists of appealing to a notice given to the owner when the informal appeal has been rejected. This process has up to 28 days from the date of the ticket to pay the penalty in full. In this process it is essential that any evidence to prove that the penalty should be dropped must be provided when the penalty is being considered. The council will consider any appeal within 56 days of registering the appeal. There is also the possibility to appeal against the decision with independent adjudicators who ensure that the council will come to an appropriate decision.

## VICTIM SUPPORT AND REHABILITATION

This consists of a range of personal related issues. The most common problem is domestic abuse. Clients seek advice and help in relation to the dispute between his/her spouse or partner. There are a wide range of domestic abuse which can occur. Our clients seek advice for physical and emotional abuse. In such situations, there is a burden on the individual to prove verbal and physical abuse caused to him/her. Most people do not want to report these forms of abuse as they fear the consequences imposed by their partner or do not know what procedures should be taken. In addition, they are afraid to share such information with other people whom they do not know.

For those who seek help and advice, in the first instance we create security for the individual and make them feel safer. There is a risk of losing their housing and other benefits as well as loss of income if they were financially dependent on their partner. We provide assistance for them to get the help they need from housing to welfare.

There is also court orders which can be obtained to provide greater benefit to the victim of domestic abuse. Such court orders include non molestation orders and occupation orders.

**Non molestation** orders are intended to prevent and restrict the individual causing harm from being able to continue to do so. As a result the court would primarily require evidence of the abuse and its extent so that they may consider how best to protect the victim through the court order.

**Occupation orders** are intended to prevent or restrict someone from access to the home in which injunctions determine the length of time that such restriction applies. The length of time an injunction runs will depend on the seriousness of the abuse.

## EMPLOYMENT

**INTRODUCTION**

Our community has had to adapt or change their life style and transform their skills according to the requirements of the country when settling in the UK. Employment is the area most in demand. Many of our clients approach us to find out their employment

rights in the UK, entitlements, solving disputes with their employer, getting the first job in the UK or to prepare them to get the first job in the UK. These are the key services we deliver on a day-to-day basis. Around 6-7 persons per day approach us for this type of service. With limited funding resources we are only able to provide basic level of services on employment related issues. Only a few cases (around 6-8 cases per year) are taken up as case work to determine employment rights. In 2016 our employment cases were very successful. Four cases were heard by the employment tribunal. Two of them were allowed by the employment tribunal with cost and damage awards of around £15,000 and £20,000 respectively for the clients. The third one was an out-of-court settlement. We provide voluntary work placement in our office for adults and school-age children. Where possible we help find a prospective employer for our clients and get them onto the employment ladder. In some cases we place people on to the right employment who are in rehabilitation from drugs, alcohol addiction, depression and mental health.

**Commitment to Employment Rights**

Our community is a 30 year old migrant community which settled into this country swiftly and we are proud to see our contribution in the settlement process over the years. We made significant contribution to guide and enable our community members get employment (thus contributing to the wider UK community). These gains were attained through our number of services. One of our main task was to transform employability skills to enter the UK job market. We helped through a number of ways including motivating them to find employment as soon as possible once they became entitled to work and increase their employability through specific training. Where possible, we connected prospective job employers and jobseekers of our community by providing bilingual introduction and essential communication. We also tried to identify pre-operative employers who were willing to employ staff from our community. We helped remove obstacles for individuals who are facing their first job interview by discussing with prospective employers about their visa and work entitlement in order to facilitate getting their National Insurance number from the Department for Work and Pension. We organised workshops to cover interview techniques, CV writing and how to access the National Careers website whilst seeking employment. We provided training or volunteering opportunities; theopportunity for a second employment in the household to increase household income; provide guidance to keep them away from poverty; negotiate with employers on behalf of the employee to keep them in employment where there is a dispute; educate members in the community about employment rights and entitlements where required; lodge appeal against the employers upon dismissal and any other necessary activity for the community. Our service also involved providing volunteer work placements facilities for school leavers and university students to gain practical experience.

Five years ago, this service was funded by the Home Office and others, which allowed us to deliver a full range of services in this area successfully. With this funding initially, we were able to register our client, get their NI number and help them to start a small business or provide them with essential advice to become a sole trader.

However, in the last couple of years we did not receive any funding for this specific project , so we were unable to fulfil the demands. Due to this financial setback in the year 2013 we further reduced our services in this area.

**Removing Obstacles to Employment**

Clients seek our help to obtain their national insurance number because employers request an NI number when they recruit them. The Department for Work and Pensions which issues the NI number request the applicant to produce either employers detail or benefit related correspondence in order to find out the necessity to issue the NI number. Further, when an NI number application is made and if the applicant's passport or BRP documents is held by the home office that may cause some delay or result in cancellation of the application. In such circumstances we intervene to explain the situation to the NI number issuing officials so that the process will not be delayed.

**<u>NI number applicatiom</u>**

When a person's residency visa expires whilst they are employed, employers may sometimes take advantage of this to remove the employee from the work place even where the employee has

already applied for a visa extension. The Home office guideline clearly states that employers must contact their special section to find out the validity of the particular employee's immigration status or employability entitlement. In some cases employers have tried to force the employee to produce their passport within a specified time or face dismissal at the time when the employees passport is with the Home Office. There are certain reported instances when valid applications were being processed by the home office yet the relevant department at the home office informed the employers that the person is not entitled to work. This kind of practice is wrong and against the policy of Home Office. We are then forced to take action against the Home office decision to deny a particular person's employment rights. Employers can fail to communicate with the home office and then decide to expel the employee from work. We therefore practiced negotiating in advance with employers to inform them that if the employee is expelled from work we would have to lodge an appeal to the Employment tribunal seeking justice.

**Case Study 14**

Mr. DA came to the UK with his mother and was granted dependant visa because of his father. The applicant worked at KFC whilst he was studying at Bexley College. When updating their database KFC identified that the client was working illegally as his visa status had been expired. He was asked to prove his legal status to work & to provide them with the work permit. His employers KFC stopped him working for them. The client therefore contacted us for help. We sent a letter to the employer with a copy of the cover letter & postal reference stating that his valid visa extension application is under consideration with the Home Office. During this period our client is entitled to continue to be employed. If the employers have any concern they should contact the relevant section of the Home Office to find out his eligibility to work. If the home office denied his eligibility to continue the work, then we may have to take action against the Home Office's practice. If the employer fails to follow the procedure and terminated the client's employment contract, we will take appropriate action against the employer for unfair dismissal. In this situation KFC allowed him to continue to work and asked that as soon as received, the employee should produce his legal right-to-work document.

Meanwhile the employer also checked with the UKBA through the Employer checking service to affirm his work status. The UKBA failed to confirm the clients' right to work. We challenged both the employer and the Home office through JR and wrote a letter to the local MP to review the home office policy. We won the appeal and Mr. DA's visa was extended with "Work permitted" and he continues to work with KFC.

**Developing Employability Skills**

As already mentioned, our users are members of the Tamil migrant community who seek our assistance to find jobs and employers in an effective way. We have provided tips and guidance on jobs and suitable training providers to improve their employment skills or brush up their knowledge of the UK job market. As an organization we have helped new migrants by holding workshops on CV writing and job interview techniques to increase their knowledge and boost their confidence to approach the employers. We also set up certain job fairs where new immigrants could learn about the job market and jobs that are available to them. We also create networking events where members could meet the prospective employers to interact build a relationship to secure employment opportunities.

**Case study 15**

Mr. MS came to this country as an asylum seeker in 2010 and one year later was granted refugee status. He initially received NASS support which was subsequently terminated as he was no longer an asylum seeker and therefore not entitled to it any more. He was asked to find work but he had no work experience or NI number. TWAN advised him of the procedures to obtain work. We made an appointment for NI number application with the DWP and whilst waiting for this, we registered him on the British Refugees Council's work entitlement programme which enabled him gain some English language knowledge and brush up his skills for the labour market. Whilst attending the programme, we helped him prepare a CV and introduced him to some local employers. Within two months one of the employers contacted us and offered him a job in the packing section. We also helped him comply with other requirements like opening a bank account and obtaining a health clearance letter so as to secure this job in time.

**Permission to work granted an Asylum Seeker**

The law affirms that after 12 months of waiting for an asylum claim to be determined the main applicant has the right to work provided that the delay in determination of the claim was not the client's fault even if the application is at the appeal stage.

Failed asylum seekers who have made further submission on asylum grounds and who have not yet received a decision can apply for permission to work. The permission could be ended when the claim is determined and if a negative decision is made, a further submission can be filed by the failed asylum seeker.

Home office does not take any responsibility for checking the credibility of the client's qualifications. It is the employee's responsibility to prove his skills properly to the prospective employer. The Home Office also does not check whether an individual falls under the Shortage Occupation list.

The Shortage Occupation list is a list recognised by the Immigration department. Recent changes in the legislation allows the asylum seeker to take such work which falls under the list that includes high profile technical work which were unlikely to be held by an asylum seeker. An asylum seeker is restricted from being self-employed or to start a new business. They are also restricted from doing work outside the Shortage Occupation list criteria, and for less than the minimum remuneration mentioned in the criteria.

**Case Study 16**

Mrs. SD came to UK with her husband Mr. AD as a student. They were restricted to work. Following their torturous experience back in Sri Lanka, the couple decided to seek asylum in the UK. In accordance to the law she could work until the claim was determined by the home office. Mrs. SD worked at Co-Operative Food, and the employer requested the Home Office to verify her work status. The application registration card (ARC) illustrated that she was a student so she was refused work. We appealed stating that she was waiting for her refugee status to be determined. It was delayed due to the process of medical examination. Our appeal was successful and she was allowed to continue working.

**Case Study 17**

The client Mrs. JP came to the UK in June 1999 and claimed asylum on the same day. Her asylum claim was refused in 2000 and later her appeal rights were exhausted. Subsequently our client made a fresh asylum claim with new evidence and further representation in October 2011. Based on this application she was granted discretionary leave (DL). But it was erroneously stated in her biometric card that the applicant was granted DL until May 2012 instead of 2015. Her standard acknowledgement letter however clearly stated that her DL is valid until May 2015. She approached us in 2015 to extend her DL. Accordingly we made the FLR- DL application. While this application was under consideration her employer CO-OP asked her for a valid visa otherwise she would be terminated. We challenged the employers and advised CO-OP to check with the Home Office. They did and found that the application was in process. The CO-OP then allowed her to resume work with them. The client got her DL extension in May 2015.

**Dismissal and Redundancy**

The statutory definition is laid under Employment Rights Act 1996, a worker may be unfairly dismissed if:
An employer terminates an employment contract unlawfully. This is also known as unfair dismissal. The Employment Rights Act 1996 sets out the five fair reasons that an employer must provide as evidence and tribunal would decide:

a) Relating to the employee's capability or qualification to do the work
b) Relating to the employee's conduct
c) Worker is redundant
d) Contravention of duty or restriction imposed under an enactment
e) Other substantial issues such as refusal to sign a restrictive covenant of 12 months.

The Employment Tribunal has to consider certain points when they make their decisions to ensure that the dismissal is fair:

a) An employer's reason for dismissal
b) Did he base his decision on the facts known at the time?
c) Has the employer shown a potentially fair reason for dismissal?
d) The employer acted reasonably in viewing the grounds for dismissal

Therefore to make a claim for Unfair Dismissal an employee who commenced work after 06 April 2012 needs 2 years' continuous service. Employees who started before that date only require 1 year of continuous service to bring the claim.

**Constructive Dismissal**

This occurs where an employee has been treated in such a way that s/he has no other option but to resign. The employer's action must have caused a substantial and fundamental breach of employment contract. An employee should state under what circumstances the employer breached the contract before resigning. Under this act, fundamental breach includes:

a) Reduction in Payment
b) Change in employee's status or job Role
c) Changes in work / pay
d) Failure to take care of employee's health and safety at the work place.

**Redundancy**

This is a form of fair dismissal: The right to a redundancy payment was introduced by the Redundancy Payment Act 1965. The three main redundancy situations are:

- closure of business as a whole
- closure of particular section/department where the worker was employed
- reduction in size of the workforce because there is diminishing need for employees to do available work.

This was defined in the legislation of Employment Rights Act 1996. The test for redundancy is whether the employer requires fewer workers to do a particular kind and not just whether the work has ceased or diminished. The law requires the employee to have two years continuous service to qualify for a redundancy payment. If the claimant successfully claims he would receive compensation as an employee who loses the job and if the dismissal was unfair then it is treated as unfair dismissal. A redundancy can be also unfair in these situations:

a) No genuine situation for redundancy
b) Employer failed to consult or consider other options such as volunteering, early retirement etc.
c) Unfair selection
d) Failure to offer alternative employment.

**Case Study 18**

Mr. EP our client worked for Tesco as a customer service assistant. Due to an emergency situation at home when his daughter fell ill, he had to be absent from work. He tried to contact the store manager but could not reach him. He was however able to contact his duty manager and explain the situation to him. He later notified the store manager that he is available to work the following day but he was not mentally or physically well to resume his shift. Therefore he didn't go to work. The store manager dismissed him without any procedure. The client came to TWAN for help to be reinstated in his employment. We took action by writing a letter to the store manger stating the facts and the employee's legal rights. We challenged the employer to put the client back in his normal shift. The client also received compensation.

**Case Study 19**

The client Mr. AB who worked for a particular company was unfairly dismissed because the client was ill for a long time between December 2013 and December 2014 due to stress at work. The client contacted the workplace to report his absence but they did not acknowledge him. Eventually, the client was dismissed without any procedure. The client came to us and we lodged an appeal to the employers. They reinstated the client back in his job stating that it was due to some administration error.

**Case Study 20**

This client- Mr. PT- worked at a petrol station where he was dismissed because of abusive behaviour between two clients. The client argued that this was a false accusation about him and that it was not true. He was dismissed without any notice or warnings. There was a hearing conducted at the office but it was not carried out under proper supervision. The client came to us to try to negotiate with the employer. Before we lodged a complaint at the employment tribunal, we contacted ACAS for early conciliation services. On review of the facts of the case and the seriousness thereof, they directed us to lodge an appeal for an employment tribunal. After the review the client received his compensation and he resumed his job.

**Case study 21**

Mr. DV worked in a restaurant in Nottingham as a kitchen assistant. The client had a tier 2 visa to stay in the UK. The client was promised weekly pay, with free housing accommodation by the employer. There was no written employment agreement between the parties when the employment started. The client made a visa extension in December 2011. When his visa extension was under consideration in February 2012, the employer asked Mr. DV to leave the job. Mr. DV then obtained a letter from the Honorable MP confirming that he could continue working whilst his visa was being processed. The employer then told the client that the business had encountered some financial difficulties. He did not pay the client for several months. The employer eventually sold the business to another person. The client approached us for help. We lodged an appeal with the Employment Tribunal against the unfair dismissal. The case was initially heard at Nottingham court, on Wednesday 8 May 2013. We represented him and on the day of hearing he was represented by the counsel of Bar Pro bono and the case was allowed. The employer lodged an appeal against the decision and the appeal was heard in London by the Upper Tribunal in Nov 2014. The Judge remitted back to the full hearing held at Nottingham court in Oct 2014. A few months later the full hearing took place with a counsel of Bar Pro bono we arranged to represent him at the hearing. The appeal was allowed. The judge awarded compensation of £18,000 for our client, but the employer did not pay this compensation as ordered by the tribunal. We therefore lodged again an appeal to get the money from the employer by the provision of writs of control.

*Once the tribunal has successfully awarded damages, the tribunal cannot force the employer or the company to make the payment due to the client. To secure such long term outstanding payment the client could use the civil court system to recover the client's money. In such circumstances ACAS or the Tribunal would rely on the High Court Enforcement Officer through a legal writ, namely writ of control. Writ of Control is a high court equivalent warrant which provides a command to take control and sell debtors goods to the value of the judgment debt plus 8% per annum interest and cost. There is a fee of £60 payable for use of such service used by the ACAS or the Employment Tribunal. If the client is receiving income benefits they have to fill in a form of EX160A for a fee remission. It is then up to the discretion of the court to calculate the amount that the client would receive to date. If the awarded amount does not meet the satisfactory requirement of the client or does not match up with the compensations , then we can take the case up to the court claiming for full award.*

**Discrimination in employment**

The Equality Act 2010 harmonizes and consolidates the previous discriminatory law prior to October 2010. The main aim of the law is to protect certain groups of people with respect to their age, sex, religion, disability or race etc. Thisact has made a significant impact on employment law. In the work place a client could face different forms of discrimination which includes;

a. Direct Discrimination: -when one person is treated less favorably than the other person because of perspective discrimination (where their rights are protected according to their contract) and associative discrimination where discrimination is due to their association with another person. The protected characteristics include age, religion and sex, etc.

b. Indirect Discrimination: -where discrimination occurs when a policy or even a practice that applies to everyone, directly disadvantaged people who share protected characteristics

c. Harassment: -is an unwanted conduct related to relevant protected characteristics which has the effect of violating an individual's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for that individual.

Third Party Harassment used to apply to sex but the Equality Act extended it to cover age, disability, gender reassignment, race, religion/belief and sexual orientation. The employer is liable for third party harassment too. Conditions are that it should have happened on at least two previous occasions and that the employer was aware of it.

Victimisation occurs when an employee is treated badly because they have made or supported a complaint or raised a grievance under the equality act, or because they are suspected of doing so. An employee is not protected from victimisation if they have maliciously made or supported an untrue complaint. There is no longer a need to compare treatment of a complainant with that of a person

who has not made or supported a complaint under the act.

Discrimination can occur due to age, disability, gender reassignment, marriage, civil partnership, pregnancy and maternity, race, religion or belief.

- the Age act protects people of all ages. Age is the only protected characteristic that allows employers to justify direct discrimination.
- the Disability Act has made it easier for persons to show that they are disabled and protected from disability discrimination. The act puts a duty on the employer to make reasonable adjustments for their staff to help them overcome disadvantage resulting from an impairment. Indirect discrimination now covers disabled people. This means that a job applicant or employee could claim that a particular rule or requirement that is in place disadvantages people with a disability. Unless the employer can justify this, it would be unlawful. The act also includes a new provision which makes it unlawful, except in certain circumstances, for employers to ask about a candidate's health before procedures would be covered.
-Gender reassignment: the act provides protection for transsexual people.
- Marriage & civil Partnership: the act protects employees who are married or in a civil partnership against discrimination. Single people are not protected.
- Pregnancy & maternity: A woman is protected against discrimination on the grounds of pregnancy and maternity during the period of her pregnancy and any statutory maternity leave to which she is entitled. During this period, pregnancy and maternity discrimination cannot be treated as sex discrimination.
- Race: for the purpose of the Act 'race' includes colour, nationality and ethnic or national origins.
- Sex: Both men and woman are protected under the Act.
- Sexual orientation: The act protects bisexual, gay, heterosexual and lesbian people.

**Disciplinary and Grievance procedures.**

It is important that any disputes are settled within the earliest possible time (before opinions or positions become too firmly entrenched) and certainly before the matter has to be taken out of the workplace to a court or tribunal. The usual means of doing this in the workplace is through the disciplinary and grievance procedure.

The employment rights (Disputes Resolution) Act 1998 introduced the need for an employee to reduce or mitigate potential losses by using the internal appeals procedure before taking a case to a tribunal. The employment act 2002 took this a stage further by making dismissal and disciplinary procedures and grievance procedures a statutory requirement. However the Government decided to repeal the statutory procedures under the employment Act 2008 and instead replaced them with an ACAS Code of practice on Discipline and Grievance. The change came into effect on 6th April 2009.

*(The Employment act 2008 repealed the statutory Dispute Resolution Procedures which were in force from 1 October 2004 to 6 April 2009. However they must still be followed for all disputes instigated before 06 April 2009 when the new ACAS statutory code of practice on discipline and grievance came into force).*

ACAS Statutory code of practice in discipline and Grievance is in force from 6 April 2009. The code provides practical guidance and sets out the principles for handling disciplinary and grievance situations. It does not apply to dismissals or redundancy or the non-renewal of fixed term contracts on their expiry.

The intention is that disciplinary and grievance issues should be resolved by informal discussion where possible, although this is not part of the code.

Where the informal approach fails the code sets out the key principles of a fair and transparent procedure such as promptness, consistency, the importance of investigations, informing employees of the problem, allowing employees to put their case and be accompanied at a hearing and giving the right of appeal.

A failure to follow the code will not in itself be unlawful but employment Tribunals will take the code into account when considering relevant cases. Tribunals will also be able to vary any awards (of compensation) made by up to 25% for an unreasonable failure to comply with any provision of the code.

The code can be found at:
http://www.acas.org.uk index.aspx?articleid=2174

**Employment Tribunal and Legal Representation**

If an employee has extinguished all the rights on negotiation with an employer and the grievance procedure has been followed, then the employee can move forward to the employment tribunal. This allows the employee to appeal in order to challenge the employer's practices legally. A tribunal consists of a qualified chairperson and two lay members where one represents the employer and other the employee. The case is heard by a judge in the jurisdiction to hear claims of unfair dismissal, trade union rights redundancy, minimum pay, working time claims, equality, pay, race, sex and disability or discrimination. The tribunals has the discretion to award compensations and in certain cases reinstatement. TWAN will help the clients to find a counsel to make a representation at the tribunal for the hearing. TWAN will assist both client and the counsel to draft statements and prepare bundles with evidences.

**Case study 22**

Our client worked with a laboratory firm in London which eventually moved to York. She was persuaded to move with the company to York but because of family ties in London she had to travel regularly to London at weekends to be with her husband and family. For various reasons, she was on three occasions late for work and encountered serious harassment at her work place which also seemed to be racially motivated. She was given warning and dismissed after the third warning. She filed for unfair dismissal and came to us to help her case. We wrote a letter to the employer to initiate an investigation about the incident and asked to grant her compensation. The client then received an apology letter from the workplace but she did not wish to return to her old place of work. She found a new job. She also received compensation of around £16000.

**Employment Sustainability**

Our goal in doing such a service to the community is to prevent individuals becoming inactive and suffer from poverty. We negotiate with the employees in solving disputes to keep them in their job, educating individuals about their rights in legal issues concerning their employment, guiding them to challenge the obstacles that they face during disciplinary proceedings or suspension from their employment and where they require, provide a representation on legal matters.

If the client faces a suspension or threat from the employer due to his or her immigration status, we immediately intervene and take steps to sort out and check with the employer, the employment rights of the client.

**Employment Initiative**

Basically, when a new migrant arrives, they may find it difficult to get a job in this competitive market. We support such clients to get a job by overcoming the barriers and developing the individual's qualities through skills training and language proficiency courses. We promote unemployed migrants, by introducing them to prospective employers. This helps them to build confidence and create a network which helps them to increase their chances of getting a job.

In addition, some vulnerable groups such as single mothers, homeless people and mentally ill individuals require very much our services. We attempt to make them more active and enable them to contribute more to the larger society and not be a burden. Our goal is not just to relieve from poverty, but to add value in the community. We help to book appointments to obtain NI number, provide relevant references and to help complete any required documents. We do not only train on CV writing and interview skills, we also offer this services to the clients who need them.

**Employment Difficulties of Individuals with limited leave to remain**

We often encounter clients who come with problems while continuing their jobs when their application for visa extension is under consideration. Legally, an applicant has the right to work without any hindrance until when a negative decision is placed on the application. However, most employers that we come across are unwilling to allow the employees with visa applications in-progress to continue working. They also fail to accept any letter that is received from the Home Office. These employers are not keen to write to Home Office to recognize the client's right to work. We, unfortunately, encounter problems on the side of Government regulators too. On certain occasions we have written to the Home Office to verify a client's eligibility to work, they have failed to give correct information about the status of the employment. This has been misused

by the employers who, in response, tactfully force the employees to leave the job, by giving an option of resignation and re-employment.

## Family legal advice

In Tamil culture if a family has a dispute, a close friend or a respectable family member will get involved to try and resolve the dispute and help them return to their normal family life. Family values and tradition are an important aspect within our community. Although individual families may live in separate accommodation they are still very much attached to their wider family members - sisters, brothers, parents, grand-parents, uncles and aunties etc. Everybody is unique in their own way. Family life can get very complicated sometimes because of financial crisis. Each person thinks and talks about things in a different way, and each person has different ideas, feelings, worries and strengths. Some changes can make family life more stressful, such as an illness, unemployment, moving home, new family members, getting older, divorce, death and trauma. Some families are able to manage these changes, and other families find it much harder, for all kinds of reasons.

We understand that different people have different ideas about what 'family' means. In this context, 'family' is used to describe any group of people who care about each other, are related to each other and call themselves a family. It may also include cousins, friends, carers, and other professionals. They try to include whoever is important to the family. We respect the importance of each person's beliefs, culture, and life experiences.

As an organisation, we can only provide a basic level of service. When the cases become complex and need legal representation, we refer to other service providers and work together with them until the case is resolved. We are quite involved during the process of a case assisting the legal practitioners, court, police, social service and centres in the interest of the client; providing interpretation, translation and other practical support that are not available with other existing providers.

When people in the Tamil community encounter family problems, they seek advice from elderly members of the family in order to find an amicable solution. Our organisation supports this sort of approach rather than initially taking a matter to the social services or police. From experience, intervention by the Social services usually bring about separation in the family- children are removed from their parents and parents can be penalised and/or taken into police custody and imprisoned. Contact between parents and children can be restricted or forbidden and this has adversely affected some parents and children- leading to mental illness, depression and, in a few cases, suicide.

In family disputes we encourage the couple to discuss their problem in order to have mutual understanding of each other and get back into a peaceful family life. (Some people- for a small matter - call the police and report their family problem and make each other criminals). Due to this behaviour marriages can end up in divorce , create single parenthood etc, which is tough for the children.

These days, an increasingly common option chosen by couples in need is family therapy. This sort of therapy provides a safe environment in which couples can discuss their issues in the presence of a third party. Family therapy can be used to address issues between children and parents, broken family structures and any other matters between family members**.** For example, step-children issues are the subject of many a family therapy. In situations where one partner is keen for family therapy and the other is resisting,we get involved and discuss alternative approaches to encourage the other party and suggest possible options if that does not work.

Family Therapy or Family and Systemic Psychotherapy helps people in a close relationship help each other. It is useful for families and relationships that are facing all kinds of difficulties and experiences: • Families and couples who want to build closer and happier relationships. • Families facing special challenges like alcoholism, mental illness, physical illness, bereavement, eating disorders, ageing, family conflicts, cultural adjustments, trauma, etc. • Families who are worried about their children's behaviour. • Families who are fostering or adopting children. • Parents who want to divorce or separate in a way that focuses on their children's happiness and needs. • Any family who would like someone to help them talk about difficult things together in a way that's safe, open, creative and useful.

Family therapy will enable family members, couples and others who care about each other to express and explore difficult thoughts and emotions safely, to understand each other's experiences and views, appreciate each other's needs, build on strengths and make useful changes in their relationships and their lives. Individuals can find family therapy helpful, as an opportunity to reflect on important relationships and find ways forward.

Research shows that family therapy is useful for children, young people and adults experiencing a very wide range of difficulties and experiences. Depending on the situation and circumstance of the case we refer to family therapists.

The therapist mediating works impartially and does not assert their opinion on the scenario; instead, she/he works to encourage, share understanding and to help the couple see each other's side of the story. They are present to keep anger or disputes from bubbling up, and to encourage partners to see ways of moving forward in their relationship.

Through such processes, the value of family life is reaffirmed and therefore ensures that children do not suffer as a result of a dispute which may have led to further unnecessary disputes. Our way of life differs from one country to the next. When families migrate to the UK they are automatically expected to understand and adapt to the ways of UK family workings, traditions, customs and laws which they may not fully understand and it could take years before they are fully integrated into society. Children who are born in the UK may become uncertain of social expectations as they are exposed to a different way of life outside the home than they are shown inside the home. As a result traditional values are lost where when tension in the family arises the first reaction taken is to call the police.

As a community organisation we try to fulfil the needs of the individuals of our community through advice and guidance with a hope of reaffirming the bond between the family members and maintaining the balance between social expectations in the UK and Tamil traditional family values.

As with our other services, it is difficult to focus and deal with these types of matters without any funding aid. We therefore intend to secure some form of funding for this purpose. We have to meet the criteria to secure funding. And, when we do receive funding, if the mandatory requirements are not maintained and/or it does not serve the community, such grant could be withdrawn at any time.

This could create difficulty in delivering a high quality service. Three years ago we had a family legal aid contract provided by the Legal Aid Agency but we discontinued the contract in June 2013 as the contract criteria stated that we were only able to serve domestic violence related issues by criminalising any one of the partners. This was not our aim. We aim to provide our service in a way which both satisfies the requirements of the law and the needs of our community. We achieve these goals when dealing with clients by trying to accommodate the needs of the family according to our traditional family values. In such cases we may contact a friend of the family to communicate with them. The friend would normally communicate with the husband and discuss with them the problems and barriers that they both have to overcome to settle again as a man and wife in the family considering the family's personal interests.

We prevent domestic disputes escalating to the high degree where the police may need to be involved. Police involvement sometimes severely damages the family structure and affect the children emotionally. In the circumstances where we fear extreme violent behaviour from the husband towards the wife and children, then we have no option but to notify the police.

If all situations were to be dealt with directly by the police, it is likely that family unrest will occur, deteriorating the family bond even more. Clients do not want police, social service or any other authority to get involved and split the family. Our intentions are pure and simple; to deliver a service which satisfies the requirements of the law without damaging the family structure by respecting their wishes. To maintain such balance we educate the community with this countries lifestyle requirements, law and system.

Often the welfare benefit system also creates problems and helps divide the families further because once the police have become involved, in order for such benefit to be given there is a requirement that the husband and wife resolve the situation through a divorce. As these families

hold strong traditional beliefs they find it difficult to accept such proposals and therefore the wife is unable to claim such benefit, resulting in a struggle to feed her children. If the police believe that the husband should not remain in the home, and the wife out of sympathy allows the husband to re-enter the house, this results in immediate arrest of the husband for not complying with the order give by court. In these situations the person can be imprisoned.

Many other situations may affect the family negatively such as low income, addiction to alcohol or drugs and mental health related issues. When we are dealing with family matters, in many cases we are not dealing with only one issue. Therefore it is essential we find the root cause of the problems and resolve that or find alternative solutions to minimise problems that place the family life at risk.

When we cannot resolve the problem we may have to direct the family to a specific service provider. For example if it is mental health problem, we may have to work with other health professionals to deal with the matter to keep family together. If it is immigration related issue, we deal with the issue personally.

In half of the family related cases we handle, we are usually contacted after the family members have called the police.

The culprit individual can face prosecution which may lead to homelessness and other adverse outcomes. Police do not have enough time to consider the root cause of the dispute or argument. When the family approaches us, we care for them according to their wishes. We seek out the root cause of the problem and try to resolve the dispute or problem. When anyone of the family life is at risk we will consider to find another accommodation for that person until we solve their mental health/addiction or other issues causing that family member to become aggressive towards others in the family.

## DIVORCE PROCESS

Divorce is the legal dissolution of a marriage by a court or other competent body. You can get a divorce if you have been married at least a year and your relationship has permanently broken down. You must have a marriage that is legally recognised in the UK, and have a permanent home in England or Wales.

Situations can occur where there is a break down in the relationship between the spouses beyond repair. There are various reasons that can result in a divorce including:

a) Your husband or wife commits adultery and you can no longer bear to live with them.
b) Your husband or wife behaved so badly that you can no longer bear to live with them. This could include:

- physical violence
- verbal abuse, e.g. insults or threats
- drunkenness or drug-taking
- refusing to pay for housekeeping
- If a partner abandoned the family without any legitimate cause to do so, or where the partners have separated for more than two years.

c) Your husband or wife has left you:

- without your agreement
- without a good reason
- to end your relationship
- for more than 2 years in the past 2.5 years

**Where you have lived apart for more than 2 years**

You can get a divorce if you've lived apart for more than 2 years and both agree to the divorce.

The husband or wife must agree in writing.

**Where you have lived apart for more than 5 years**

Living apart for more than 5 years is usually enough to get a divorce, even if your husband or wife disagrees with the divorce.

**For divorces, the court fees are £550.**

The process of applying for a divorce firstly consists of a petition being created, which includes the individuals general information such as a copy of the marriage certificate and a list of children who have been born in the marriage. The party who has not initiated the divorce will receive relevant documents informing them that the divorce process is taking place. They must be asked to fill in the relevant sections to either confirm that they agree to the proceeding, or disagree which must be returned in 8 days. If the party does not agree to the divorce they will have to fill an 'answer to a divorce petition' which would incur a fee of £245. The divorce proceedings will take place in court where both parties are required to be present.

You can apply for a decree nisi if your husband or wife doesn't defend your divorce petition. A decree nisi is a document that says that the court doesn't see any reason why you can't divorce.

If your husband or wife doesn't agree to the divorce, you can still apply for a decree nisi. However, you'll have to go to a hearing at the court to discuss the case, where a judge will decide whether to grant you a decree nisi.

If the judge agrees, the court will send you and your husband or wife

- a certificate of entitlement to a decree
- a decree nisi

After 6 weeks you can apply for a 'decree absolute' to end the marriage.

**DOMESTIC VIOLENCE SUPPORT**

Domestic Violence Support is available for those who have been a victim of domestic abuse and who may have suffered mental and physical abuse. In such situations they may no longer wish to remain with the individual who has caused them such harm. They can apply to the court for either;

- A **non molestation order** which the court provides to prevent the abuser from coming in contact with the victim to cause further harm or;
- An **occupation order** which restricts the abuser from gaining access to the home where the victim resides.

**Case study 23**

Mrs SK had been living in East London with two children and husband for two years. Their family life became disturbed by arguments and misunderstandings. When she approached us, we started to work with her and her husband on a one to one basis and suggested to them certain conditions to follow to help them solve their disputes. One of the disputes concerned financial difficulties. Mrs SK was not earning any income so we encouraged her to find work and earn extra money- to keep her occupied and reduce the family's dependence on her husband's income alone. We used our community work link and found employment for her to work during the day time. This also helped the husband to sleep peacefully in the day time after the night shift. These changes improved their relationship. We also encouraged their children to attend our Sunday children activities. We were therefore able to have direct contact with the children and they had an opportunity to discuss the issues which affected their social life or education. Initially when Mrs K approached us, it was to request help to divorce from her husband and in our initial conversation with the husband, he wanted to get a divorce too. When we spoke to the children and they too mentioned that they hate their mother and father due to the disputes. We had close contact with them for nearly two years and during that time, the majority of their disputes were resolved . They are now leading a happy married life and come to our office together.

**Case study 24**

Mrs VR wanted to get divorced from her husband and approached us for assistance. We advised on the divorce proceedings and financial settlement issues. We started to communicate with her husband and advised him to get a legal representative to deal with his legal matter at the court. However when both parties felt it was expensive we tried to negotiate with them to remove the obstacles to get their divorce without many hearings or solicitors involvement. Moreover, we explained the financial entitlements and suggested a proposal which was accepted by both parties which will help them resolve the financial dispute through the divorce. Furthermore we made the referral to a family mediator services to act on this matter to bring an out of court settlement which has worked well and both parties now have a divorce consisting of one hearing as a formality. Since the divorce both have approached us to resolve their remaining unresolved matters which we were happy to assist with.

**Case study 25**

Mr KS was arrested at his home when his wife called police when she became scared of her husband. The police saw the husband shouting as he was drunk and proceeded to arrest him. He tried to resist going with the police but was handcuffed and taken into custody for a few hours. At 2am the next morning the police released him with a

condition that he should not try to enter his house. Mr KS wandered the streets for a few hours then, unable to find anywhere to go at that time, he approached his family home and his wife opened the door for him. He thus entered the house and went to sleep. Next morning at 9am, the police visited the home and found Mr SK was at home. The police then arrested him again saying that he had breached the condition of release. His wife argued with the police stating that she had opened the door for him and that he was not troublesome anymore, so there was no need to arrest him. The police threatened Mrs K that if she does not cooperate with the arrest then they will inform social services to take her children away as the children were not safe with their father at home. The police then arrested the man. Following the arrest Mrs K came to our office for help. We tried to provide practical assistance and found an address for him a few miles away from the family home in order for him to be released by the court. After his release, we negotiated with police and other officials. We dealt directly with both the husband and wife on a one-to-one basis and encouraged Mr SK to attend alcohol addiction clinic. At his next hearing we produced his report and also advised his wife to be silent during the hearing since the police requested her to attend the court to give evidence against her husband to prove his violent behaviour which could result in his imprisonment. At the hearing the Crown Prosecution Service dropped the case and he was cleared by the court without charges. After the proceedings we worked closely with the family for six months and made sure that he would not get into alcohol addiction again.

**Case study 26**

Mrs JS was married to Mr SS and had one child. She claimed that her husband had been violent towards both her and their son on many occasions and that he beat them regularly. After she gave birth to her son and when he started nursery, she claimed Mr SS would beat her child for no apparent reason and if she (Mrs JS) complained, he would beat her as well. An incident was witnessed by her parents whilst she was having a Skype conversation with them. She had gone to get a drink for her son and whilst away from the room (the Skype was on but Mr. SS was not aware of this) he had smacked the child and put him on the bed. Her parents witnessed this. When she returned and complained, she got beat as well. On another occasion, a staff member at their child's school became alarmed when they saw signs of physical abuse and notified the police and social services. She was then taken with her son and moved to a safe place. Her husband contacted TWAN to help in the situation. Mrs. JS was persuaded to come back home and we tried to give counsel to help them resolve their marital problems. Mrs JS insisted she and her son had been abused; Mr SS denied any wrongdoing. Mrs JS also made several complaints to the police which was recorded, but Mr SS denied such events occurring. The son got on well with the father and had no signs of having been abused. Our attempts at a reconciliation was futile. The couple divorced and shared custody of the child.

**Case study 27**

Mrs SR came to see us to help her arrange for her three children who wanted to meet their father from whom they had been separated by court order due to a family dispute. The father also wished to see his children and we started to communicate with the family. We found out he had no contact order to see his children. We referred to the solicitors to apply for a contact order for him and worked with the firm to obtain this order. The father, however, could not enter the family home, so we took responsibility to communicate with the parents to make contact arrangements and, if required, we were ready to negotiate and solve any difficulties. Our office was used as the address for the father to pick up the children and drop them off. We agreed to call the mother to come and collect the children as soon they were dropped off. Also we helped the mother and children through the child support agency to obtain financial entitlement from the father and additionally, when the father wished to give more financial support we collected the money and paid to the mother.

## HEALTH CARE

The organisation delivers health care related assistance to its users regularly. We work with other health officials and statutory bodies to connect a gap between the health professionals and disadvantaged or vulnerable individuals in the community. These individual groups includes: newly arrived migrants, refugees , mentally ill and

people with limited leave to remain in this country or those who are living in the country with temporary admission.

The new migrants and refugees arriving in UK often do not know the health care system and they are unaware of the process to acquire medical help . We provide them with the knowledge about how to approach GPs and provide a list of GP's addresses in their catchment area for registration purposes. These individuals may face problems mainly during the registration process. This is because of their immigration status or documents which they may not be able to produce.
If an emergency treatment is required we refer the clients to the organisations such as "Project London" which delivers services to members who find it hard to get treatment through other means. We then later assist them to register with the GP. Organisations like" Helen Bambar Foundation " and " Freedom for Torture" help refugee victims to get necessary treatment and report on their condition. These reports are very important evidence in their cases and help the parties involved get a good understanding of the health condition of the client.

Other aspect of health care that are not available due to the funding cuts is mental health counselling. Most of the asylum seekers are either both mentally or physically tortured under extreme conditions . With the resources we currently have, we are able to provide help for physical ailments, but we often fail to provide adequate solutions for their mental health problems. We do not have many Tamil speaking counsellors (and the few available are quite expensive for our clients. There is a need for trained Tamil speaking mental health workers as we have identified the adverse effects of untreated mental problems in day to day life which has often led to family conflicts, unemployment and reduced quality of life. We are unable to hire the right personnel to meet this need due to lack of funding, and we encourage the local authority and sponsors to consider ways to support us in tackling this problem.

**Visit Visa Health Care .**

Normally, a person who stays in United Kingdom for more than six months shall receive free NHS treatment. Patients who have status of limited stay in the UK for certain period of time, have to pay for certain health services but not for emergency cases or life threatening medical assistance.

Since April 2015, the government has introduced a new condition that all Non-European nationals who come to live in the UK for longer than six months are required to pay health surcharge. This means the people who are coming to the UK for a short visit or enter as a student have to pay around £500 for Health surcharge. This payment can be made during the visa application process. By making payment of the health surcharge they will have access to a wide range of free health care service provided by the NHS. Even for the elderly people there are some private medical insurance companies that offer medical insurance for their stay in the UK. These can be accessed from their home country which will allow them to pay for the treatments in the UK.

Under this new law, asylum seekers, refugees or people who have humanitarian status are exempted from these charges. Non-EU nationals coming to UK for the purpose of work, study or to join with their family receive free medical treatment under NHS in the same way as permanent residence.

Elderly people who are visiting UK for short period of time, should have a medical insurance cover which is provided by the home state or any private insurance company. But according to the new set of rules they can access free treatment which has been authorised by the GP but they may have to pay for prescriptions or any administration cost.

**Case study 28**

Ms. KJ is a Sri Lankan citizen, who sought asylum in UK due to after effects of the war. She was previously a refugee in India who returned to Sri Lanka after the war. She got married in SL and after their marriage her husband was arrested by the security forces. They persecuted the couple a few times and she planned to seek international protection. In July 2015 she came to the UK and she was pregnant. She called the Home office to claim asylum but as she was not in perfect health due to her pregnancy, the Home Office advised her to access medical care first and then make a screening appointment for asylum claim. As instructed, she then registered with a GP Surgery and the doctor referred her to Barking University Hospital because her medical condition required serious attention. Once the baby was born she received an invoice of £3700. KJ then made an appointment to Screening Unit in Croydon and

she was granted refugee status. The fee was then reduced to £550 pounds for her medical care.

According to new health care rules from April 2015, if a person who has migrant status as overseas citizen or has a refugee status , they are exempt from paying medical charges.

The hospital health authorities claimed that she was not recorded as an asylum seeker in the Home office documents. The Home office claimed that UKBA did not record her arrival in the UK.

Our client had evidence that she had contacted the UKBA in July 2015 and had relied on their instructions and assumed that UKBA had notified the Home Office. The GP registered the client as an asylum seeker in their documents and waived a fee remission as she was exempted by new regulation. Therefore, it seemed that the health authorities and the Home office failed to assist the client in her matters.

The client approached us requesting help to challenge the decision and help her to waive the fee for the treatment. In this case, the court identified the claimant was an asylum seeker and asked the health authorities to review their policy on health charging at hospital.

**Home Office & Health Surcharge**

From 6 April 2015, all nationals from outside the European Economic Area (EEA) coming to the UK for longer than six months will be required to pay a 'health surcharge' as part of their visa application.

Those who have paid the surcharge or are not required to do so because they are exempt will be able to access the National Health Service (NHS) in the same way as a permanent UK resident.

The surcharge will ensure that those coming to work, study and join family in the UK make an appropriate financial contribution to the cost of the health services they may use whilst in the UK.

The health surcharge will be £200 per year and £150 per year for students and will be paid online for the total period of their UK visa. Dependants will generally pay the same amount as the main applicant.

The surcharge does not apply to anyone applying for a visitor visa. However, non EEA visitors will continue to be fully liable for the costs of any NHS treatment at the point they receive it. The surcharge will apply to relevant visa applications submitted and paid for from 00:01 (UK time) on 6 April 2015.

Certain groups will be exempt from the surcharge and will continue to receive free NHS care. These include Australian and New Zealand nationals and visa applications for Tier 2 Intra-Company Transfer. Tier 2 intra-company transfers, Australian and New Zealand nationals must still complete the process on the surcharge web site. They will be informed the payment is nil and receive a unique surcharge reference number. This reference is needed for their immigration application to confirm their exemption from the surcharge.

**Dental cost**

Dental charges depend on the treatment you need to keep your mouth, teeth and gums healthy. You will only ever be asked to pay one charge for each complete course of treatment, even if you need to visit your dentist more than once to finish it. If you are referred to another dentist for another, separate course of treatment, you can expect a second charge. Some minor treatments are free.

**NHS cost/ Prescriptions**

People with certain medical conditions can get free NHS prescriptions if they hold a valid medical exemption certificate. You can get all your NHS prescriptions free if you have a valid medical exemption certificate because you have:

- a permanent fistula (for example, caecostomy, colostomy, laryngos-tomy or ileostomy) which needs continuous surgical dressing or an appliance;
- a form of hypoadrenalism (for example, Addison's Disease) for which specific substitution therapy is essential;
- diabetes insipidus and other forms of hypopituitarism;
- diabetes mellitus, except where treatment is by diet alone;
- hypoparathyroidism;
- myasthenia gravis;
- myxoedema (that is, hypothyroidism which needs thyroid hormone replacement);
- epilepsy which needs continuous anticonvulsive therapy;

- a continuing physical disability which means you cannot go out without the help of another person; or
- cancer and are undergoing treatment for: cancer/ the effects of cancer/or the effects of cancer treatment.

You can only get a certificate if you have a condition on the list. If you are not sure about the name of your condition, check with your doctor. Doctors may advise you about free prescriptions. However, it is up to you to find out if you are entitled to an exemption certificate.

If a HC2/ HC3 certificate has expired or is about to expire, and you still need help with your health costs, you'll need to complete another HC1 application form to re-apply.

**NHS dental charges**

**Band 1 course of treatment – £18.80**

This covers an examination, diagnosis (eg X-rays), advice on how to prevent future problems, a scale and polish if needed, and application of fluoride varnish or fissure sealant. If you require urgent care, even if your urgent treatment needs more than one appointment to complete, you will only need to pay one Band 1 charge.

**Band 2 course of treatment – £51.30**

This covers everything listed in Band 1 above, plus any further treatment such as fillings, root canal work or if your dentist needs to take out one or more of your teeth.

**Paying contributions towards the cost of your NHS care**

Patients are required to make a co-payment towards the cost of their:

- prescriptions
- dental care
- eye care
- wigs and fabric supports

Some patients do not have to pay these costs. If this is the case for you, the NHS will ask to see proof of your entitlement. This could be a Prescription Pre-Payment Certificate (PPC), benefit award notice or an exemption certificate. Find out if you are entitled to help with health costs.

Dishonestly claiming that you are exempt from charges is unlawful and unfair to the NHS. The NHS carries out checks to make sure people do not claim dishonestly.

Patients found to have wrongly claimed to be exempt from charges may be prosecuted for an offence that can lead to a criminal record. They would have to pay the charge due, plus a penalty charge of up to £100.

**What you should do before making a claim**

1. You must check that you are entitled to claim an exemption from an NHS charge. For more information, read our pages on getting help with health costs. If you are entitled, make sure that any declarations you make are correct before you sign any of the NHS forms.
2. If you are not sure about your entitlement to an exemption from an NHS charge, you should pay the charge first. Once you are sure about your entitlement, you can claim a refund, which is quick and easy. Relevant form can be obtained from Google.
3. If you are on a low income and find it difficult to pay the charge, you can apply to the NHS Low Income Scheme.
4. If you pay a prescription charge and think you might want to claim a refund, you must ask for the refund form at the time you pay the charge, as the form is not available later.

**Eye-care entitlements**

Some groups of patients are entitled to free NHS sight tests and optical vouchers to help with the cost of glasses or contact lenses.
Patients who are not eligible for NHS sight tests will pay privately for a sight test.
The section below will explain if you are entitled to a free NHS sight test or NHS optical voucher and how to claim them.

**Free NHS sight test**

You qualify for a free NHS funded sight test if you are:

- aged under 16, or aged under 19 and in full-time education
- aged 60 or over
- registered blind or partially sighted
- diagnosed with diabetes or glaucoma
- aged 40 or over and you are the parent, brother, sister, son or daughter of a person diagnosed with glaucoma, or you have

been advised by an ophthalmologist that you are at risk of glaucoma
- eligible for an NHS complex lens voucher
- a prisoner on leave from prison

You are also entitled to a free NHS sight test if:
- you receive Income Support or Income-based Jobseeker's Allowance (not contribution based)
- you receive Pension Credit Guarantee Credit
- you receive Income-based Employment and Support Allowance
- you receive Universal Credit and meet the criteria
- you are entitled to, or named on, a valid NHS tax credit exemption certificate
- you are named on a valid NHS certificate for full help with health costs (HC2)

**NHS funded mobile sight tests.**

An NHS-funded mobile sight test is where an optometrist comes to visit you in your own home or at a day centre.
If you are eligible for an NHS-funded sight test you may also be entitled to a mobile sight test. If you meet one of the criteria listed below then you may have your sight test at

- **home**
  If you are unable to leave home unaccompanied because of physical or mental illness or disability

- **a residential or care home**

  If you are a resident and you are unable to leave the home unaccompanied because of physical or mental illness or disability

- **a day centre**

  If you cannot get a sight test at an optician's practice because of physical or mental illness, disability or because of difficulties in communicating your health needs unaided.

**NHS voucher values**

These vouchers are available to those who qualify under the scheme. There are currently ten voucher values. The value of a voucher can range from £38.70 to £213.40, depending on the strength of the lenses you need.

## HOMELESSNESS AND HOUSING

We deal with 100 persons a year regarding homeless related issues and help around 10 to 20 rough sleepers per year to try and find suitable accommodation. This work was carried out with the funding support of the London Council, but this funding aid is no longer available since April 2013. We are no longer able to take referrals or deal with the homeless issue in depth. We are part of the 42-group and Ban consortium, who also closely work with the London Council and an organisation called The Shelter and other relevant agencies to help reduce homelessness.

Organisations that work around the same field often concentrate only on matters of housing, but fail to recognise the root cause of the matter. Immigration issues can be a major problem for this crisis. In such situations, we focus and deal with clients to try to solve the fundamental problem. We help resolve our clients problems smoothly by communicating and negotiating with the local council and the landlord.

As an organisation we aim to achieve good results and are very keen to follow up these matters. We do not get stuck with just rules and regulations but think of alternative solutions to help the client to the maximum extent possible.

One of the main reasons that users very much rely on us is that we provide an approachable or dependable service. The clients feel safe seeking our services. We also provide a personal touch integrated with professionalism to eliminate and provide effective solutions for our clients.

The Local Economic Assessment done for 2007 to 2017 outlines that Newham is one of the most deprived areas in the country and its residents suffer multiple deprivations. Therefore, among this disadvantaged group, migrant and refugee communities are hard hit by unemployment and poverty.

We are therefore aware of the demand on housing and expect a further increase in homelessness within the community. As the economy recovers from financial crisis, clients who have rent arrears may become homeless. We are considering this matter seriously and seeking appropriate funds to run the housing project successfully.

**PRIVATE RENTED SECTOR HOUSING**

Private sector housing accommodation is owned by private landlords and rented to individuals or families. There are laws that regulates the contract agreements, rent charges, state of repair, and safety of people living in them.

1.1 Finding a Private Rented Sector

Before the tenant can apply for private sector housing, it is important to find out how much rent the tenant can pay or does he/she require housing benefit to assist to pay the rent.

a) single people under 25 can only claim the shared room rate of the Local Housing Allowance

b) This rule changed on 1st January 2012, so that shared room rate will apply to all single people under the age of 35.

1.2 Support for New Tenants

If a tenant finds it difficult to manage and maintain the new tenancy, it may be possible to access the floating support from relevant local authority. This will offer them help getting services connected: claiming benefits, budgeting, negotiating with landlords etc.

**1.3 Deposits**

Any deposit paid to the landlord by the tenant for an assured short-hold tenancy is protected by the law. Within 14 days of receiving the deposit, the landlord must place it into a deposit scheme approved by the government. The landlord should state to the tenant how to apply and how they can get the deposit back. In addition, they have to provide essential details, including methods to solve disputes between the landlords and tenants.

**1.4 Tenancy**

A tenancy can be created either fixed term (six month) and periodically weekly or monthly). In an agreement there should be a 'breaking clause' which allows the tenant and landlord the right to terminate by giving notice. Most tenancies give the right to the tenant to stay till the landlord gives an eviction notice.

After February 1997, there were changes to the most common type of tenancy in the rental private sector known as the Assured Short-hold Tenancy. This contract can be for any period. Prior to this, rental contracts were required to be for a minimum of six months. Under the 1997 regulations, contracts can be for any period. This allows the landlord to evict the tenant within 6 months if he follows the stated procedures. This type of tenancy also provide certain rights:

a) Terms of the tenancy includes: the start date, period or term , and rent figures , landlord's rights to vary the rent.
b) Notice of seeking possession legal form
c) Proper process to seek possession via courts

If the tenancy is for a fixed term, unless the contract includes a break clause, the landlord can only evict the tenant during the fixed term after giving two month's notice in writing. Once the fixed term has ended the landlord may serve the notice and end the tenancy at any time.

The landlord can take the tenant to court. Once they get the court eviction notice the tenant has to vacate the house and pay any rent that is owed to the client. If the tenant has not taken any reasonable steps, the landlord could take possession to recover the money owed.

**LOCAL HOUSING AUTHORITY (LHA)**

The LHA is an independent sector. It is a not-for-profit organisation that provides new homes for rent. It is also the country's major provider of new homes for rent. Many of the housing associations have shared ownership schemes for the people who cannot afford to buy their own home. Its main role is to provide homes for people who receive low income

**2.1 Eligibility for Local Housing Authority**

An applicant may be ineligible for an allocation of accommodation under s160 (2) or (4) 1996 Housing Act. The authorities are advised to consider the applicants' eligibility at the time of the initial application and again when considering making an allocation to them, particularly where a substantial amount of time has elapsed since the original application.

2.2 Joint Tenancies

Joint tenants usually all have the same rights and responsibilities in their rented home and are all responsible for paying the rent.
Under s160(1)b 1996 Housing act, a housing authority must not grant a joint tenancy if two or more people apply and any one of them is from abroad and is ineligible. If one or more people apply and one of them is eligible, the authority

may grant the tenancy to the person who is eligible. In addition , while ineligible, though family members must not be granted a tenancy, they may be taken into account in determining the size of accommodation which is to be allocated.

2.3 Existing Tenants

Section 160 A(6),(1996 HA) provides that none of the provisions relating to the eligibility of the tenants with respect to their immigration status will affect the eligibility of an applicant who is already a secure or introductory tenant of an assured housing authority .

2.4 Persons from aboard

If a person is subjected to immigration control, he/she is not eligible for an allocation of accommodation unless he or she comes within the class prescribed in regulations made by Secretary of State.

If there is an uncertainty about an applicant's immigration status, housing authorities are recommended to contact the UK Border Agency and obtain confirmation of the immigration status of an applicant from aboard (non-asylum seekers).

However, for those persons who are EEA nationals, who are in the UK as a worker or self-employed or a person who is treated as a worker, a person related as a family member to the EEA worker or self employed are eligible for the application. A person who is in UK as a result of his deportation, expulsion or other removal by compulsion of law from another country to the UK is not eligible for housing allocation. They will have to rely on their resources.

2.5 Determining priorities between households with similar level of need.

The authorities may frame their allocations scheme to take into account factors in determining relative priorities between applicants in reasonable or additional preference categories as stated in the s 166 (A) 1996 HA : the factors which are determined in the legislation are: financial resources, behaviour and local connection.

2.6 Applying for Council and Housing Association Rented Housing

In London, if anyone wants to apply for housing accommodation they must go through the council's waiting list and satisfy the eligibility criteria. In some cases sheltered accommodation (for older people usually 55+) is available through direct application. Every housing authority has a scheme in which they allocate their clients. Sometimes the eligibility criteria is determined by the immigration status and habitual residence. The authorities also give more priority to those who live in poor conditions or people with needy social or medical conditions. These may be categorised under the points based system. The home is allocated to the highest bidder with the highest number of points. The council works with other council agencies to provide accommodation.
Some councils refuse to put eligible applicants on the housing register. This may be due to their immigration status. If the client thinks that he is eligible then they can raise this matter on the grounds of discrimination.

2.7 Challenging Discrimination in Housing

In some cases it has been evident that some applications might be refused by the council housing or housing association. If the client thinks that they are refused on the grounds of discrimination they can appeal against this through the courts. Most of the discrimination cases are refusals due to the race or nationality of the applicant. However there are some exceptions:

- Council officers may refuse a tenancy to someone whose humanitarian protection is to end because of lack of knowledge in the criteria
- a homeless person unit refusing an application from a EU worker because they have not read the regulations on the eligibility.

**Case Study 29**

Mr SG, a 63 year old man, was admitted in the King George hospital in Essex where he received treatment for a fracture in the upper part of his neck. After the treatment he was released to community care hospital via the Social work team in Redbridge. A few weeks later, Mr SG was told he is no longer eligible for community care and that he must leave the home. He was referred to TWAN. Meanwhile the social work team tried to evict him from their care home. We took instruction from him and we found out he is a failed asylum seeker and his fresh application was under consideration by the home office. He was therefore entitled to section 4 asylum support by

the home office. He was also entitled to receive continuous care and shelter by the social service team of local authority. He challenged the attempted eviction from the care home and remained there for a while whilst we sorted out his section 4 NASS (National Asylum Support Service). It however took more time than expected. Our client was referred to solicitors who took injunction against his eviction from the home by the social service team. Mr SG did not become homeless. We worked with Red Cross Service to find him accommodation under Sec 4. In Feb 2015 his sec. 4 application was approved and he was offered sec 4 accommodation by the home office in Coventry whilst we processed his asylum (fresh) claim.

**Case Study 30**

Mrs NV, a 29 year old British citizen with 2 children, lived in Swindon with her husband. In September 2015 she left the house because of the domestic violence and she was given shelter by her friend in Eastham. Two days later she came to our office to seek alternative accommodation for her and the two children because her friend who had offered emergency accommodation could not continue to do so due to overcrowding and other difficulties. We contacted the children section of Social service to find accommodation but they were not helpful and could not give accommodation immediately. We negotiated with our client's friend to ask to house them for a few more days until we found new accommodation; We arranged with her husband to collect their clothing and other essential items from the house. We made the arrangement for the children to attend school locally. Furthermore we offered the children fine arts classes. Finally we referred them to Solace women Aid and worked with them to find suitable accommodation for her and the two children.

**Case Study 31-** (Intentionally Homeless)

Mr RS lived in Manor Park East London for many years in rented accommodation with his wife and child. The rental cost was £ 1100 per month for their 2 bed room house. As he is in receipt of low income, he received £ 450 per month as housing benefit. In February he became unemployed but failed to register with local job centre for job seekers allowance due to his lack of knowledge about the benefit system and language. Few months later housing benefit was stopped because he was no longer working and he was not in receipt of the job seekers allowance either. Therefore he no longer qualified for housing benefit. Housing benefit reclaimed the payments made to him whilst unemployed. At this stage the estate agent evicted him because of the unpaid rent, he approached us as a homeless person. We negotiated with local authority homeless person unit and secured accommodation under the children' act for him and his family. A few weeks later, however, the homeless person's unit reassessed his emergency accommodation needs and they informed him under sec.202 of the housing act 1996 he had become intentionally homeless. They were therefore no longer eligible for council housing for failure to register with job centre when he became unemployed and failure to inform housing benefit office about the change of circumstances. He was given 21 days to vacate the emergency accommodation.

Though TWAN appealed given the reason of the mental health of his wife and small child, Council would not reconsider but advised that the matter be taken to county court if they were not happy with the decision. Mr RS did not want to take this matter to court but needed an accommodation immediately. As there was no eviction order against Mr RS, TWAN was able to get alternative accommodation via an estate agent.

**Immigration Casework 2016**

**VISA EXTENSIONS**

The nature of the work we carry out has increased with immigration casework. It includes people who entered the UK and want to extend their visa until they settle. Visa extensions enable the applicant to extend their visa and thus remain in the UK for a longer period of time.

The most common visa extensions occur in the category of tourist, settlement and student visas. However, we assist with all types of visa extension within the UK.

Throughout the process, our involvement and advice is high. In particular, last year alone, we opened around 5 – 6 cases per week for visa extensions. There are various categories of people who seek this (i) individuals who came to the UK as a spouse or dependant family member of a settled person; (ii) people who have stayed in this country for many years and are seeking settlement through their long stay or on human rights basis;

(iii) refugees who came and were granted refugee status and who wish to extend their refugee status and obtain travel documents (this includes the family members who have entered in the UK under the Refugee Convention) and (iv) individuals who came as a worker or a student who now wish to extend their visa. Since April 2013, however, legal aid is no longer available for immigration cases for this kind of casework. As a result, this area of work suffered during the year 2015 due to financial difficulties. However, funding from Lloyds and TSB foundation, Trust for London and London Legal Trusts helped us to serve the clients' needs with quality work.
Individuals who entered the UK through border or entry clearance and other routes, require an application to extend their stay in this country. This can be leave to remain for few years or for an indefinite period. There are various applications that are tailored to the needs of the applicant based on the category that applies.

Visa refusals have risen by some 18%. That's one application in six. It is vital an application meets all the requirements needed by the Home Office or it will be refused.

We cover a wide range of visa categories including, but not limited to UK child visas, long residence in the UK, Visit Visas, Work and Business Visas, Sponsor licences and many more.

Whilst making these applications, the applicants are obliged to fulfil the key requirement such as English language proficiency, financial sufficiency, number of years of stay and various other requirements.

The visa extension process is one of the key areas that we are committed to. We help our applicants to extend their stay based on their circumstances. This includes application for people who are in jeopardy such as elders, single parents and victims of domestic violence. In April 2014, the access to legal aid for immigration cases was removed. This was rather unexpected. At such short notice, we were unable to find alternative funders and we struggled to meet the demand of our clients.

In addition, the Home Office frequently introduces new versions of application forms. Not only are the size of the forms increased, the content and language of the forms are very technical/colloquial so that new questions are not easily understood by the person who has only a basic knowledge of English.

There are cases under Human Rights where the Home Office has refused an extension of stay in this country. The worst part for the applicant is that usually in most of these cases the refusal is sent with no grounds to appeal.

**1 FLR(M) -** ***FUTHER LEAVE TO REMAIN FOR PARTNERS***

FLR (M) forms are for applicants who are dependants of a British national or a person settled in UK and who require permission to extend their stay. Applicants or dependent children who are under the age of 18 years must be in UK for this application. This form is applicable to family members of the above criteria.

1.1 **Application Process**

The application can be done:-

- In person where they have to attend the UK Visas and Immigration public enquiry.
- By post. Postal application can take around 6 months. These are dated from the day the application is received

Application for a spouse or partner for FLR visa can only be made within the UK. If they wish to or have to travel abroad, they must ensure that they return to the UK to apply before their visa expires.

There are two main routes the applicant can use to apply ;-

1. Five year: this is suitable for the majority of applicants and requirements are specified below.
2. Ten year :- this is suitable for applicants who fail the requirement eligibility but have special conditions

*If applicants fail to meet the requirements, they will not be awarded a visa and refund on fees are not given.*

1.2 **Eligibility Requirements**

**Stay :-**Individuals who apply under this category should not possess a visitor visa or any short term visa less than 6 months. An exception is if they are in this country as a fiancé or a proposed civil partner. N.B ;- if there is a breach in immigration rules i.e. they are able to prove there is flaw in conduct , the person shall not beallowed to apply

for further leave to remain. The candidate has to ensure the current stay is a legal one; so the candidates must not have overstayed already.

**Relationship:-**Applicants must prove that they are in genuine relationship and that they have intention to live permanently in the UK. The postulant who is married to a British national should also prove that there is no marital alliance with certain close relatives. For those who had arranged marriage, it is required that two partners know each other.

If applicants are not married/ civil partnership they must provide proof of being in a relationship equivalent to marriage.

**Language Proficiency:-**The party who is applying for this particular form should satisfy the English language proficiency test at the A1 English Language Certificate level under a provider approved by the Home Office. If the applicant acquired an academic qualification recognised by UK, NARIC shouldverify its equivalent to a Undergraduate or Post graduate degree in the UK. This must taught in English.

*Exemption*:- applicants who are above 65 or have a physical or mental condition which prevents them from meeting the requirement or there are exceptional circumstance hindering them from accomplishing it.

**1.3 Financial Requirements**

To proceed with the application the applicant has to provide evidence of sponsor income. The following documents are crucial for the processes of the application.

- Wage Slip
- Tenancy Agreement or Land Registry document with mortgage payment and bank statement.
- Benefits details including :- Tax credit, Child benefit and Housing benefit
- Application Fee : £ 601
- Proof of address including Utility Bills
- Evidence of possible NI contributions
- TWAN administration fee - £50

**1.4 Issuing of Biometric Residence Permit**

Once the application is received a letter will be sent to the applicant. If there are any documentation error or any invalidity, the applicant shall be notified within 10 working days. If the application is successful , the home office will issue a Biometric Residence permit which holds the identification details such as :-

- Holders name
- Immigrations status
- Date of Birth
- Address
- Entitlement to remain and work in the UK

Since 2008 the Biometric Residence Permit card has replaced the visa label/ photo in the applicant's passport.

**1.5 Case Study Reports**

**Case study 32**

Mrs MB, the client entered the UK on entry visa which had been granted on 2012 as a spouse to Mr KB who is a resident in the country. Her visa was to expire on 2014. The client spouse was working in a cash and carry unit, earning a monthly salary. The couple have proof of residence address in UK. The client also had a minor (baby boy) who was born in 2013. During the 2 year probationary period, the client met the language requirements, when she passed the ESOL A1 from City and Guilds, which is a recognised exam by the Home Office. She completed her 2 year probationary period since her arrival in UK, meeting the specified requirements as described above. The client asked to process the application for FLR(M) to extend her stay with her family, on the grounds of Article 8 (Right to private and family life) of the European Convention of Human Rights.

**Case study 33**

Our client, Mrs R, first came to the United Kingdom in Sep 2010 with a student visa. She met her husband Mr R in Feb 2012. She was granted leave to remain in the United Kingdom and was issued a resident permit that was to expire Jul 2015. Our client applied to extend her visa and remain with her husband in the United Kingdom. Both our client and her husband were employed by Tesco earning more than £2200 per month jointly. We applied for the permission to stay in the United Kingdom on behalf of our client where it was held that our client needed to have her biometric information taken. This was then granted by the Home Office. After this, the Home Office accepted the FLR (M) application so our client was able to reside in the United Kingdom.

**Tamil Welfare Association (Newham) UK Presents**
**'Vilambi' Tamil new year**
## Cultural Night - 6th May 2018

***PROGRAMME***

**1. Welcome Speech** by Chairperson Mr. T. Kamalraj

**2. Vocal - (Group1)** - Students of TWAN fine arts academy
**Presented by Smt. Suganthi Srinesa**
Aswini Vigneswaramoorthy, Thivishaa Arumugam, Ushaaney Uththyran, Uththaka Uththyran, Janany Jayanesan, Arthire Sivakumar, Somiya Rameshbabu, Abilaash Rameshbabu, Loukya Sujeevan, Shraiya Sujeevan.

**3. Miruthangam -** Students of TWAN Fine Arts academy
**Presented by Sri, Harish Thayaparan**
**Group 1:** Charan Kokulakumar, Janush Thayaparan, Aravinth Thushyanthan, Manoshan Vigaeswanan, Mithran Raviendran.
**Group-2:** Praveen Sritharan, Prasanna Sritharan, Kirutigan Kalatharan, Vaishahan Pirapakaran, Pirashan Pirapakaran.

**4. Violin -** Students of TWAN fine arts academy
**Presented by Sri. Aatharan Seveal**
Aarthy Murugavel, Swathi Sugumar, Praveen Sritharan, Prasanna Sritharan, Karthik Raman, Araphy Nirmaleswaran, Arjun Thasarathakumar
**Keyboard** Ashvinie Thasarathakumar- Violin & keyboard

**5. Tabla -** Students of TWAN fine arts academy
**Presented by Sri. I. Thayalakumar**
Sanmooga Seerungum, Suriya Raviendran, Alessandro Das, Kishan Jeyanayagam.

**6. "Patham" Bharathanatiyam -** Students of TWAN Fine Arts academy
**Presented by Smt. Ratnalakshmi Somasundharam**
**Group-1:** Divija Mishra, Sajitha Kirupagaran, Amirthaa Kesavan, Kishanthy Sivalokanathan, Surudiha Inpakumar, Pooja Udayakumar, Arshia Chaini.

**7. Barathanatiyam**

***Special Guest speech and certificate Distribution***

**8. Cinematic Songs- Lakkia Thayamanitheepan**

**9. Veena-** Students of TWAN fine arts academy
**Presented by Smt. Seimani Sritharan**
Shivaani Sathiyalingam, Shivaabairavi Sritharan, Ayanee Jayanthan, Nevane Elancheliyan, Prasath Chandraseharan
**Accompanying Vocal artists:**
Nithyasree Ganesh, Sangethram Kiritharan,Nerane Elancheliyan, Abhirami Atputhananthan
**Miruthangam-** Bharathieneyan Sritharan

**10. "Noothana Kummi"-** by TWAN Day Centre
**Choreography by Mrs Karuna Seenathirajah**
Mrs. Krishnaveni-Sankaralingam, Mrs. Lukshmy Rajeswaran, Mrs. Sandramalar Sivanesachelvar, Mrs.Thanaluksmy Kumarvel,

**11. "Keerthanam" Bharathanatiyam-** Students of TWAN Fine Arts academy
**Presented by Smt. Ratnalakshmi Somasundharam**
**Group- 2:** Abera Srinaguleswaran, Thamira Srinaguleswaran, Sankavi Thaneswaran, Ashwini Vakeesan, Vashini Vakeesan, Ajetta Sivanarul.

**12. Semi classic dance- Miss Nithiksha Puvanendiran**

**13. Bollywood dance -**TWAN Fine Arts

***Special Guest speech and certificate Distribution***

**14. Cinematic Songs - Gayathiri Rajendra**

**15. Guitar -** Students of TWAN fine arts academy
**Presented by Sri, I. Thayalakumar**
Guru Nitheeshkumar Amirthalingam, Hemdev Nitheeshkumar Amirthalingam, Risith Rajakumaran, Thivisan Vasanthakumaran, Arunn Kandaswamy, Ninshagini Kandeepan, Reshov Tatukder, Bhahavesh Raghupatruni, Dhruv Yadev, Sanjith Sivashankar, Deon Prathees, Arnav Popat.

**16. Vocal -** Students of TWAN fine arts academy
**Presented by Smt. Suganthi Srinesa**
**Group-2:** Gowthamy Yogesavaran, Luxmi Muruganandha, Sharuja Muruganandha, Charanee Paraneetharan, Suraby Pushpaharan, Manoja Sathiyaseelan, Evona Kalaimaran.

**Accompany Artist:**
**Mruthangam-** Dinesh Srinesh, **Gadam-** Kaianthan Paskarathasan,
**Violin-** Harsan Ravichandran, **Guitar-** Atharan Seveal.

**18. Enouncement of Raffle winners**

***Special Guest speech and certificate Distribution***

19. Cinematic Songs- Sabrina Kunanathan

**20. Drums -** Students of TWAN fine arts academy
**Presented by Sri. I. Thayalan**
Thilakshan Srivarathan, Danoosh Nanthakumaran, Gildas Sridaran, Risitha Rajakumaran, Thivisan Vasanthakumaran, Anshjeet Singh, Sithaarth Kumarasamy, Pahalavan Ambikaipahan, Sagithini Pahalavan, Paravasan Pahalavan, Issac Gunananth, Lagaan Mahadevan, Lakshan Mahadevan, Harshayan Manoranjan, Fabian Camilton Joy, Ronith Varatharaj, Kayalavan Kanapathipillai, Branan Kathirgamarajah

**21. Cinematic Songs: Akshaya Vijayakumar**

**22. "Patham" Bharathanatiyam** - Students of TWAN Fine Arts academy
**Presented by Smt. Ratnalakshmi Somasundharam**
**Group -3:** Shauena Regi, Meveshana Regi, Apinaya Jeyarajah, Bavisja Mahadevan, Lakshana Nanthagiri, Bavisha Thayalen, Thenuka Kamalanathan, Shivani Sathiyalingam, Sathana Inpakumar.

**23. Solo Drama: Presented by Minnal Pugal Bala**

**24. Bollywood dance –** Students of TWAN fine arts academy
**Choreography: Sri. Sampathkumar &Jeya Raveendran**
Satangini Pahalavan, Thashani Pahalavan, Delac Sripraba, Aravinth Thushyanthan, Varnuya Satheeswaran.

Our client married her husband, at the Registry, in Sep 2008. Her husband possessed a Refugee Leave to Remain. Subsequently, our client arrived in the United Kingdom with a spouse visa that was to expire in May 2014. She got a job working as a sales adviser at Roc UK Ltd earning roughly £755.97 per month. He was not working as he was studying full time and had obtained Student Finance. They also had a daughter together, born in Mar 2013. Our client had already passed the ESOL exam. She was however unable to pass the Life in the United Kingdom Test.

We submitted an application for FLR (M) for our client so that she could reside with her husband. The application was refused as the applicant had overstayed in the United Kingdom by more than 28 days and she also failed to provide a valid English Language Test certificate- she had done the ESOL but what was required was the ESOL international certificate. She failed to qualify for leave by virtue of Paragraph 284 of Immigration Rules.

We appealed and our client was granted 30 months leave to remain -until Dec 2017.

**2 SET(M) - *SETTLEMENT OF PARTNER***

The application using this form is for those who are applying for indefinite leave to remain in one of the following categories:-

a) spouse or civil partners of the person who is present and settled in the UK
b) unmarried or same sex partner of person settled in UK

**2.1 Eligibility requirements -**

Applicants must have completed two years of limited leave to enter or remain in this country as a spouse or partner of the person named in the application. The two year time period runs from the date on which the applicant entered the UK with a visa in the relevant category or alternatively, the date on which the applicant was first granted leave to remain in this category.

**2.2 Qualification -** Applicants must also pass the Life in the UK test AND have either:

- A successful completion of a degree that is taught in English,
- A level B1 or higher language qualification which is approved by the Home Office
- Or the applicant must be a national of an English speaking country.

**2.3 Applicants: -**The applicant and the dependent children who are under the age of 18 should apply before the end of permitted stayed in UK – i.e. before nearing the completion of the 2-year qualifying period required by the Immigration rules. Applicants are advised not to apply more than 28 day before their permit to stay in the UK expires otherwise it is likely to be refused and fees cannot be refunded. Children who are over the age of 18 must apply individually.

**2.4 Fee:-**

To process this application, the main applicant has to pay an amount of £1,337 and an additional £ 687 for each child included with the main applicants. If the applicant would like their application to be considered on the same day, they have the option of booking an appointment wijth the Premium Service Centre which will cost them more.

**2.5 Case study Reports:**

**Case study 35**

Mrs V is a citizen of Sri Lanka and is married to Mr A, who is a British citizen. This case also concerned two further appellants, namely, Miss A and Miss T , both daughters of the first appellant. Article 8 of the ECHR was relied upon heavily on this case. Mrs V and the dependants came to the United Kingdom with their two year visa period and later applied for an FLR (M). The appeal was refused on the grounds stated below. The respondents argued that the appellant's appeal must be refused because the level of English of the appellant was not sufficient.

The respondents argued that the second appellant's appeal should be refused as she did not meet the requirement of section 301 (i) (a) which stated that "one parent must be present and settled in the United Kingdom and the other parent is being or has been given limited leave to enter or remain in the UK with a view to settle. Respondents argued that because her mother's application for leave to remain was refused, she did not meet this criterion.

For the third appellant also, the respondents argued that she did not meet the requirements of

301 (i) where her mother ought to have been given limited leave to enter or remain in the UK with a view to settle. Furthermore, the respondents argued that the appellant had been resident in the UK for three years and had not lived continuously in the UK for twenty years.

The appellants then came to our organisation to ask for help. On appeal, the judge allowed the appeal under both Immigration and Human Rights Grounds. It would be a violation on human rights if Mrs V and her dependants were to be deported and separated from Mr A.

**3 FLR(O) - *FURTHER LEAVE TO REMAIN FOR OTHER CATEGORIES***

FLR (O) forms are for various categories of applicants who wish to extend their stay in UK. The categories include :-

a) General Visitor
b) Domestic worker in a private household
c) Visitor for Private Medical Treatment
d) Academic visitor
e) Dependants of a person who has limited leave to remain in the UK other than under the point based system.
f) Discretionary leave where the applicant has not been refused asylum or granted less than four years of Exceptional Leave.

**3.1 Eligibility Requirements**

Under FLR(O) category the applicant can apply for their partner and their children who are under the age of 18 as dependents per the immigration rule. Definition given by this category for **partner** is spouse, civil partner, unmarried or same sex partner.

Children over 18 , but who were initially granted leave when they were under 18, can be included, but it must be shown that she or he has not formed a family or has an independent life.

Dependants for those applicants who are an academic visitor or those visitors for private medical treatment are not allowed under this form. However, they are granted in exceptional circumstances.

**Time of the application:** The applicant and any dependant applying with you should apply before the end of the permitted stay in UK.

**Qualifying for an Extension to sta**

To qualify for an extension of stay in the categories of the Immigration Rules for which you must use form FLR(O), you must meet the requirements as set:-

- Appendix Armed Forces Part 9 - Members of Armed Forces who are not exempt from Immigration Control.
- Appendix Armed Forces Part 9A- those who are civilian employees such as doctors , nurses etc.
- Appendix Armed Forces Part 10 - Dependants of non HM Forces and Relevant Civilians Employees

**3.2 Application process fee for FLR(O)**

Standard application fee for an applicant to apply provisions under this form is £601. If they are including dependants then for each dependant the cost is also £601. Refund is not available if the application is refused or if the people wish to withdraw the case.

**Case Study 36**

Our client came to the UK in Feb 2010 as a student and got married to Mr S in Feb 2011. Mr S was working as a glass cutter at Super Toughened Glass Ltd. Our client was granted a 3-year limited leave visa which expired in Apr 2015. The couple have 2 children. Our client submitted an FLR (O) application which was returned in Jun 2015 with a request to resubmit the new version of the application. Our client applied to renew her visa as a dependant of her husband. We resubmitted the application with the relevant document and she was granted a biometric residence permit.

**4 FLR(P) :- *FURTHER LEAVE TO REMAIN FOR RELATIVES OF REFUGEES***

This form is used to extend the stay of applicants who are relatives to refugees who were granted leave in UK under Humanitarian grounds

**4.1 Eligibility requirements**

**Children: -** The children under the age of 18 granted entry to UK as a dependant (child of the relative) of a person who is granted limited leave to remain in UK as a refugee or beneficiary of humanitarian protection. The "child of the relative" is defined below :-

- Relative is not parent of the child
- Child can be nieces, nephew
- Step brother or step sister
- Cousins of the refugee

**Aged over 18;-** Parents , grandparents or other dependant relatives over the age of 18 person with limited leave to remain in UK as refugee or beneficiary of human protection.

**N.B:- the applicants must be in UK at the time of application.**

**4.2 Application fee :**For a single applicant includes £601.

**4.3 Case Study reports**

**Case Study 37**

Our client is a 71 year old man who has been residing in the United Kingdom since 2003. Our client previously made several attempts to obtain a SET (F) application for indefinite leave to remain in the United Kingdom. Unfortunately, the Home Office deemed it invalid on several occasions. Our client now wishes to make a SET (LR) application to extend his stay in UK with his spouse. Furthermore, it is noted that our client needs physical help from his wife and children due to his bypass operation in 2005.

When the application was sent to the Home Office, they said that they required the client's biometrics taken. In Feb 2016, our client was given his Biometric Residence Permit which was his right of stay in the UK and a proof of identity.

**5 SET(O) :-** ***SETTLEMENT FOR OTHER CATEGORIES***

This application process concentrates on various applicants who wish to get an indefinite leave to remain status in the country. The applicants fall into the categories specified below:-

a) Work permit holder or their dependants
b) Employment not requiring a work permit
c) Point Bases System (PBS) Dependants
d) Highly Skilled Migrant (HSMP) or those who are under the terms of HSMP in definitive leave to remain (ILR) judicial review
e) Self employed Lawyers
f) Categories of Tier 1 migrant including Entrepreneur , Investor
g) Tier 2 migrants

**5.1 Eligibility requirements**

In order to qualify for indefinite leave to remain the applicants should satisfy Immigration office rules specifically :-

a) Part 5 :- work permit holder
b) Part 6 :- businessperson, investor or innovator
c) Part 6A :- Tier 1 and Tier 2
d) Part 8 :- for the bereaved partner or PBS dependant.

**5.3 Qualification** :- The applicant should complete and pass the life in UK test and satisfy the English language requirement by acquiring a B1 certificate or holding a degree taught in English language which is approved by UKBA.

**Fee:-**The processing fee for this application is £1093 for a single applicant.

**6 SET(F) :-** ***SETTLEMENT FOR CHILDREN***

This form is used for children who are under age of 18 years old with parent or adoptive parents who are settled and present in UK . It is also required to be made before the current leave to remain in the country expires and must be made from UK.

**6.1 Eligibility requirements**

Must meet the conditions per the following sections of the Immigration Rules:-

Part 8, Section 2 - Children Under the age of 18
Part 9, Section 3- Adopted child under age of 18

**6.2 Applicants who may Qualify**

a) SET(F) does not allow any dependants

b) If there is any partner and /or children , they must apply separately either in one of the categories on form SET(F), if that is appropriate or on some other basis.

**6.3 Fee**

All applicant s that are applying for this visa are charged a fee of £1093.

**7 SET(PR) :-** ***SETTLEMENT UNDER PROTECTION ROUTE***

SET(P) forms allows an individual with a residence card as a refugee or a person under humanitarian protection, who wish to apply for an indefinite leave to remain in UK.

**7.1 Eligibility requirements**

a) To use this form the applicants have to have spent five years in UK
b) Must be devoid of any criminal records and prison terms
c) Required to show the authorities that the applicant did not take part in war crimes, terrorist activity or genocide.
d) The applicants should make the application during their last month of stay with a valid visa (if applied for before the stipulated time period the application might be refused).

**7.2 Applicants who may apply**

Partner or children of the applicant who live with the applicant can also apply along with the main applicant.

**7.3 Fee**

There are no special charges associated with these application.

**Case study 38**

MT claimed asylum in UK in Oct 2008 and she was granted asylum in August 2010. The client instructed us that her Limited Leave to Remain in UK was about expire in August 2015. The client applied for SET(PR) as she was under humanitarian protection . The client had married in 2009 and the couple have a baby boy born in 2010. We applied using SET(PR) application to extend her stay in UK as she had completed her 5 year of refugee status. We submitted the application in July 2015 and we received an acknowledgement from the Home Office that the application was under consideration. Her grounds for applying was that she is under risk of persecution by the Sri Lankan authorities. The client has shown good conduct as she did not have any criminal convictions. Whilst the application was under process she was provided a Biometric residence card in Aug 2015. In Sep 2015, however, our client's settlement application was refused. During the interview, she could not confirm which passport the agent had used to bring her into the UK. For this reason she was detained and sentenced for six months. At the moment we are waiting for essential funding to challenge the client's case.

**Case study 39**

Our client applied for settlement as a refugee as his limited leave to remain was going to expire in Dec 2015. The applicant qualifies for settlement as a refugee under paragraph 339R of the Immigration Rules HC 395. We requested the courts to grant our applicant an indefinite leave to remain in the United Kingdom pursuant to the Immigration Rules Part 11. Our client was issued with a biometric residence permit in Feb 2016.

**Case study 40**

This case concerned three appellants. The first appellant is the mother of the two other appellants and the wife of the sponsor. All three appellants have been residing in the United Kingdom for the past two years.

The first appellant sought an extension of stay in the UK believing her language skills were not sufficient enough to apply for ILR. Her application was refused under paragraph 284 (ix) (a) of the Rules and Appendix FM as they wanted an English language certificate which the client could not provide. Upon examination by a Clinical psychologist, it was found that the appellant had a low IQ and very limited literacy skills. Therefore, it was argued that the appellant should be exempt from taking the English courses on basis of exceptional compassionate circumstances. PA, the second appellant (17) was refused under paragraph 301(i)(a). This was held to be an unlawful decision. The third appellant, DA, is a 22 year old young adult who still resides in the same address as his family and is dependent on them. The main issue for this client was that, he was financially independent through his employment and therefore not financially dependent on his family. Secondly, he was in good physical and mental health and would have no problem establishing a private life in Sri Lanka. In response to the argument that he would not be able to keep in touch with his family members, it was put to the court that modern technological means such as emails and Skype allows them to

be in regular contact in addition to the father's visits to Sri Lanka. The appeal was however allowed by the tribunal considering the hardship the family had suffered through being separated for so many years earlier.

**Case Study 41**

Our client is married to a French national who has been exercising his treaty rights for the past five years in the UK. Consequently, our client was issued a residence card for an EEA family member valid from Mar 2010 to Mar 2015. She successfully completed this period and she wished to acquire permanent residence in the United Kingdom to continuously live in the United Kingdom with her family.

We applied for a SET (P) application for the client which was successfully accepted by the Home Office.

**Case Study 42**

Our client claimed asylum previously on the basis of his imputed political opinion and was granted Refugee status which was due to expire in Apr 2015. Our client works as a sales assistant and earns approximately £1600 per month. The applicant would now like to apply for settlement. We submitted SET (P) application to extend his stay in UK by granting him Indefinite Leave to Remain as he had completed 5 years of refugee status and had no criminal convictions. The risk to our client was still the same regarding persecution by the Sri Lanka authority. The Home Office granted our client indefinite leave to remain in the United Kingdom.

OTHER IMMIGRATION APPLICATIONS

**Visa Endorsements**

Existing visas cannot be transferred from an old passport to new passport. They would be transferred to a new biometric card. The application for this type of endorsement varies based on visa restrictions. Applications can be submitted through the post and also by premium service in person . The application service fee may vary with different application procedure.

**8** ***NO TIME LIMIT (NTL )***

Individuals who wish to transfer their indefinite leave to remain document to a new biometric card should use this application. The applicants can apply for their spouse or unmarried or same sex civil partner. Children over the age of 18 years cannot be included. They have to apply individually and pay a specific fee. The fee for each defendant is £104

**9** ***TRANSFER OF CONDITIONS (TOC)***

Transfer of conditions are for applicants who have limited leave to remain in UK and may use this form to transfer their visa to a biometric residence card or change their personal details. Both applicants and the dependants must be in this country at the time when the application is made. The fee charged for this application is £ 107 per applicant.

**10** ***TRAVEL DOCUMENTS (TD112 BRP).***

An individual who wants to travel outside UK has to apply for a travel document if they are not British citizens and do not hold a passport issued by their native country. Those who are granted refugee status or stay on an humanitarian basis are eligible to apply for a travel document. The applicant has to fill form TD112 BRP.

It is required from February 2012 that anyone who applies for a travel document, must also apply for a Biometric Residence Permit (BRP).

In order to qualify for a Home Office travel document other than a one- way travel certificate, the applicant should reside in UK when making the application.

**Conventional Travel document** (blue) A refugee who has been granted asylum under the terms of 1951 United Nations Convention Relating to Status of Refugees, may apply for a Convention Travel documents ( blue). The charge for the application for an Adult is £68 and for a Child is £46.

**Stateless person document** A stateless person who has been granted asylum under the terms of 1951 United Nations Convention Relating to Status of Refugees, may also apply for a Convention Travel document.

**One - way document** : If the applicant resides in UK but is not British , they can apply for a one - way document. The immigration status is not a requirement but they have to provide identity documents.

**Certificate to Travel ( Black) :- These groups are subjected to this type of document**

a) Applicant granted stay under humanitarian act
b) Applicant granted indefinite leave to remain
c) Applicant granted discretionary leave for limited period following a refused asylum claim.

There is a fee for this type of application : the adult has to pay an amount of £246 and the child £157.

**Children:-** There is a separate application for children who wish to hold a travel document and if they are under 16 they may apply for a child's document. If they are over 16 years old they should apply for an adult document. If the children are born in United Kingdom they should normally travel on a British passport.

**11** ***DISCRETIONARY LEAVE (DL)***

Discretionary leave is derived from Article 8 of the European Convention of Human Rights. This is a leave granted by the Secretary of the State outside of the Immigration rules for any exceptional compassionate circumstances where it is decided whether or not discretion should be exercised to grant Discretionary leave to remain. Apart from the above, in cases that involve human trafficking and unaccompanied minor children and similar relevant cases, DL is granted. The leave period is granted according to the circumstance and the applicant is expected to pay for further extension of their stay. Individuals who have DL have access to public funds and are also entitled to work. There is no fee application in this process.

**Case Study 43**

Our client came to the United Kingdom to seek asylum. Her claim was rejected in 2007 so she claimed again in 2011 and she was granted limited leave to remain valid until January 2015. The client's husband was granted indefinite leave to remain in the United Kingdom. In March 2015, the Home Office rejected her application on the basis that our client had filled in the wrong claim form. Home Office urged her to apply using the relevant form. We helped fill out the DL form and the Home Office replied back saying that the application was successful. She was granted FLR (DL) and was issued her residence card until Oct 2018.

**Case Study 44**

This case concerned our defendant, Mr S, who wished to apply for settlement as a Refugee as his limited leave to remain was to expire in Dec 2015. The applicant qualified for a settlement under Paragraph 339R of the Immigration Rules as Mr S had no previous criminal convictions either in the UK or abroad. He had also completed five years with refugee status limited leave to remain which was not revoked. We submitted a SET (P) application to grant him settlement as refugee applicant . This application was approved by the Home Office and he was issued with a residence card.

**Case Study 45**

Our client came to the United Kingdom as an asylum seeker claiming fear of persecution by the Sri Lankan armed forces. Her application was refused. On appeal she was later granted Discretionary Leave to remain outside the immigration rules for 3 years which was valid until Feb 2015. She is married to a British citizen who works as a warehouse assistant earning approximately £650 per month. For this application, we relied upon Paragraph 335B of the Immigration Rules. Our client holds no criminal records either in the United Kingdom or elsewhere; our client has complied with all conditions attached to the previously granted leave to enter or remain; Our client qualified under the Immigration Rules.

Our client was granted biometric residence card valid until Sep 2018.

***12 DERIVATIVE RESIDENCE CARD - DRF1***

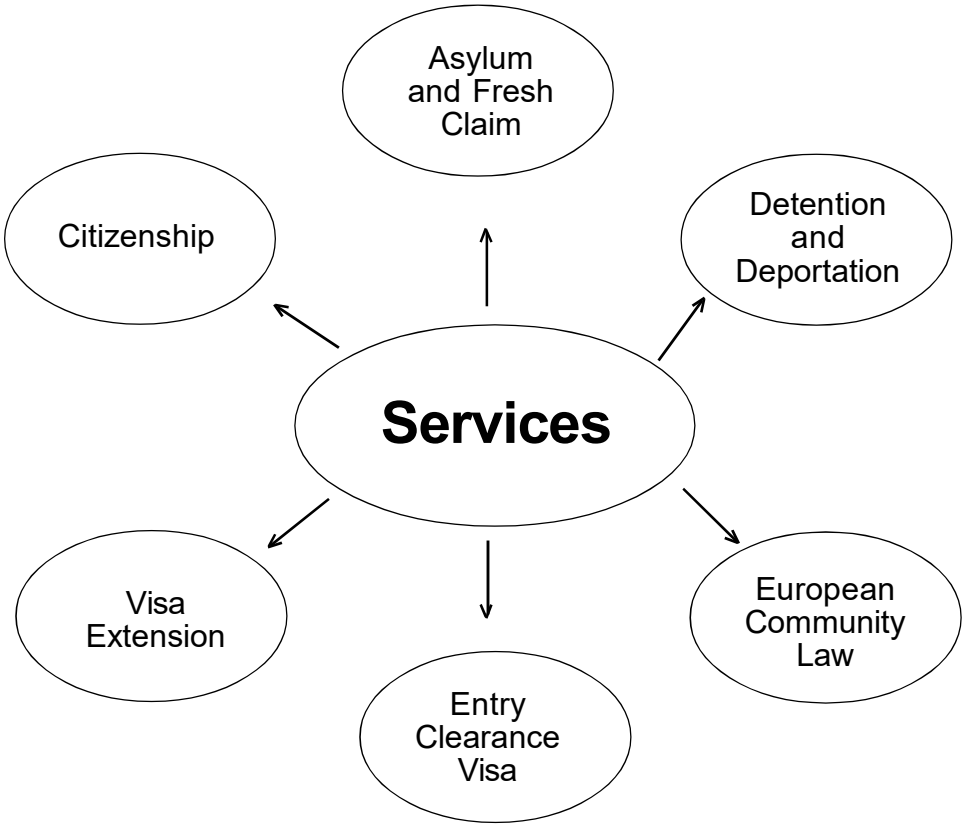
Applicants who do not exercise the treaty rights under the Free Movement directive, may qualify for another right of residence under EU law. These rights are called derivative rights as they don't come under the directive but are derived from EU law itself. Within those rights they have right to work in UK. Moreover they can stay in the country until they qualify. Using the DRF1 form they can have the right to live as a primary caretaker of a British citizen or a EEA child. The applicant must be in UK when they apply. If they are applying from outside UK they should apply under the EEA family permit. Children of a primary caretaker can apply on this same application form. The length of the stay can vary

depending on what the applicant is applying for or as long as the person they are caring for is living in UK.

**13** ***REPLACEMENT BIO-METRIC RESIDENCE PERMIT (BRP RC)***

The bio-metric residence permit holds information on an individual's biographic details and biometric information which shows their immigration status and entitlements while they remain in UK. An immigration status document is given to applicants following the grant of leave where no passport is held. This document also indicates the status that has been granted to the applicant which include Refuge, Humanitarian protection or Discretionary leave.

This application form is also used when a bio metric residence permit has been lost, stolen or damaged, if the permit expired after you received indefinite leave to remain. The same apply to refugees under humanitarian protection. This application can be made by the applicants who reside in UK. At time of the application , dependants cannot be included in the application. There is a charge of £40 for processing this application.




## Overview of casework:

During 2015, the legal casework was more demanding than previously but at the same time it was a successful area of service delivery. We had approximately 24 files per month opened for casework throughout 2015. In total there were 268 files open for casework under the immigration category. Of these, approximately, 56 asylum and fresh claim related files were funded by the Legal Aid Agency, the rest being funded by the Trust for London, London Legal Support Trust and Lloyds & TSB Foundation.

The provisions regarding legal aid came into force on the 1st April 2013, under the Legal Aid, Sentencing and Punishment of Offenders (LASPO) Act 2012. Following the enactment of this act, the Legal Services Commission ceased to exist and the Executive Agency of the Ministry of Justice became responsible for administering legal aid.

The LASPO, as per Schedule 1 Part 1 states the different aspects of asylum and immigration work which is and is not under its scope. For example, it covers asylum claims in which the right to enter and remain in the UK arise from Article 2 which is the right to life, and Article 3 which covers the prohibition of torture, inhuman or degrading treatment. However, refugee family reunions cannot be included as asylum, following the Ministry of Justices' position that refugee family reunion is an "element of refugee status" and is also not being considered under the UN Convention, but rather under immigration rules. The changes in the Legal Aid system created many difficulties, both for our clients and for this charity itself with regards to how we could continue our project into the foreseeable future. Fortunately, with the funding and assistance we received from the funders mentioned above, we were able to ensure that our door remained open for service and we continued our project with minimal interruption. The Lloyds and TSB Foundation funding ended in 2015. New funders since 2015 include the BBC Children in Need, Access to Justice Foundation and the City of London.

As we work with people who have migrated, the casework done by us relating to immigration has

been a much needed services to our users. We have continued to specialise in this area over the years and members of our community have continued to rely upon us heavily.
There is no other Tamil community organisation providing specialist legal casework in UK similar to ours. The other Tamil community organisations do provide legal advice and other community work but at a lower level. Local advisory agencies such as Citizens Advice Bureau, Law Centres and other similar organisations have been unable to take up cases such as the ones we deal with. This may be due to the limitations provided by their funders such as the local authority or because they are not specialised in this kind of immigration work ,or even that they have not got the capacity to deliver this service. Our success rate has been continually high and we are highly reputed in our community. We are in a position to provide top quality service continuously if we can get the resources and funding for our services.

## Asylum and Fresh Claims

As we have previously mentioned this asylum claim project is funded mainly by the Legal Aid Agency. This funding is key to our current service delivery for asylum claims and Article 3 of the Human Rights claims. Unfortunately, since April 2013, the Legal Aid Agency reduced their funding aid for each case by introducing a fixed fee and a cap on the number of matter start for the organisations or firm. Moreover geographical area restrictions prevent us from taking up cases outside of London and the South East. We are also unable to take on new cases in which the individuals are already in detention; for example if the person calls on assistance when he/she is already taken as a detainee then TWAN is unable to assist due to these restrictions.

Our organisation is only given 50 matter starts per year, as per our legal aid contract which means we are unable to take up further cases beyond this point. Also under the fixed fee system, regardless of the hours of work we are doing, we are only able to claim £425.00 per file on legal help work and £575.00 for controlled legal representation (CLR). With this available money and the matter starts, we have to employ a full time staff and have to comply with the legal aid agency's requirement to deliver our services.

Due to these restrictions we are unable to deliver our project in a profitable manner. Employing a full time worker in itself costs around £32,000 per annum, and maximum we are able to generate in funding for this project is 50,000. The remainder of the £18,000 is not enough to cover other overhead costs of this project. The Board of Directors are considering whether to withdraw from this legal aid contract in a few years time.

### Protection under the UN refugee convention

### Introduction

It is a basic human tendency where necessary to provide sanctuary for those who need it. If we are able as human beings to provide sanctuary for even animals and birds, why are we so reluctant to open our arms wide to provide such support to our fellow humans in need. The Refugee Convention designed and implemented in 1951 was to ensure protection for much needed peoples internationally. However this international protection is severely undermined by governments of many countries who narrow down the refugee convention through new legislation from time to time, and give it another interpretation depending on their existing political and economic situation. This action is criminalising innocent refugees and giving them unwanted names like Bogus Refugees , Illegal Immigrants , Asylum shoppers etc.
Being an asylum claimant in the UK requires "passing the Home Office test". If a particular refugee scores pass marks of 50% or over, then he will be called a refugee and given the status; if the person scores 49% marks or below, then he is called a Bogus Refugee or illegal immigrant or asylum shopper or any other name. The Refugee Convention states clearly if a person is facing persecution by their own government, they cannot always leave their country with their own identity. Therefore most of the refugees are using someone else's passport which leads to him/her being called a Bogus refugee. This is wrong. Moreover there is no system in place when an asylum seeker faces persecution - they cannot obtain an entry clearance (visa) to reach their destination. Due to this system the refugees become known as illegal immigrants or illegal entrants. When a person claims asylum in another country and the claim fails and he/she faces removal to their native country where he/she is in fear of persecution, it is common that the particular asylum seeker may seek asylum in another country. The countries which grant asylum

are not implementing or interpreting Geneva convention in the same way. Therefore under one country's Asylum Law the person who does not qualify for asylum can be granted asylum by another country under their legal system. Moreover, the timing of the asylum claim, the country situation at the time or new evidence could determine this second asylum claim. Therefore nothing is wrong with asylum shopping.

Most countries which accept asylum seekers are not approaching the refugee problem globally. When these countries start to discuss and find solutions globally, then and only then can this problem be resolved. Instead the countries are looking for this problem to chase it away from their door step and protect their own country interest. Ironically, many countries are united when they want to unsettle another country government which invariably creates the environment that causes that particular country's nationals to leave as refugees.

**Case study 46**

Mr RS claimed Asylum in France April 2008 and it was refused in 2010. He then returned to SL in March 2011 using a false passport to avoid Colombo airport officials indentifying him. On April 2012 he was taken into custody, tortured and questioned as having links with LTTE when he travelled to Vavuniya. He got released after 18 Days upon payment of bribe. He departed again from SL with the help of an agent by using another Portuguese passport in May 2012 & claiming asylum in June 2012. In June 2014 he was interviewed by Home office & in July his claim was refused by the Home office. Our client exercised his right of appeal and the appeal was heard by the immigration judge and it was dismissed by the immigration judge on July 2014. We lodged the appeal against the immigration judge's decision and permission was granted. The Upper Tribunal found error of law and remitted back to new hearing. This appeal was reheard in May 2015 and the judge allowed the appeal rights stating "I have considered the appellants position as a young Tamil man returning to Sri Lanka as a failed asylum seeker from the United Kingdom. The appellant was of interest to the authorities in Sri Lanka on suspicion of past LTTE activity and of being currently involved in anti-government separatist activities in the United Kingdom." As an asylum shopper, he became a refugee after the wrong decision by the French officials to reject his claim and he faced additional torture on his return to Sri Lanka in 2012.

**Case study 47**

Mr BY came to this county from Sri Lanka as an asylum seeker and claimed asylum at the terminal 4 Heathrow Airport without his passport. He was issued an illegal entrance notice and detained by the airport officers who stated that "he failed to produce a valid passport with photograph or some other document satisfactorily establishing his identity and nationality or citizenship.- an immigration officer does not consider that you have a reasonable excuse for the failure to provide a passport identification".

Moreover the notice IS91R confirmed "there is insufficient reliable information to decide on whether to grant you temporary admission or release if you have failed to give satisfactory or reliable answers to the immigration officer's enquires".

Two days later Mr BY was released with temporary admission IS96. Subsequently he approached us to represent his asylum claim and we took the case. He was interviewed on Sept 13 and two days later his claim for asylum was refused by the HO by stating that "you failed to establish a well-founded fear of persecution on your return to Sri Lanka" . Our client worked for LTTE as a carpenter & he was arrested 3 times by the SL security officers and tortured. Even after our client left SL his home was visited by the security officers and inquiry made about his whereabouts from his wife. The refusal letter stated that SL government's concern has changed since the civil war ended in May 2009. The LTTE in Sri Lanka itself is a spent force and there have been no terrorist incidents since the end of the civil war. The present objective is to identify Tamil activists in the Diaspora who are working for Tamil separatism and to destabilise the unitary Sri Lanka state enshrined in Amendment 6(1) to the SL constitution in 1983, which prohibits the violation of territorial integrity' of Sri Lanka. Its focus is on preventing both(a) the resurgence of the LTTE or any similar Tamil separatist organisation and (b) the revival of the civil war within SL. We lodged an appeal against the HO and the appeal was heard by the immigration judge on Dec 13 and, it was dismissed by the judge in spite of the fact that the appellant produced a number of evidence including medical report to confirm his torture. Moreover judge

stated that the appellant had not demonstrated that he was arrested & detained by the Sri Lankan authorities or that he would be of any ongoing interest to the authorities. More over the judge commented that the appellant had not demonstrated that he comes within any of the categories of persons identified in GJ . He also found that the appellant is likely to be considered as economic migrant by the authorities and would not be at risk from the authorities on his return. We lodged appeal against the immigration judge decision and permission was granted by the First tier Tribunal stating that the judge " rejected the credibility of his account noting inconsistencies in his evidence and the medical report. The case was heard by the Upper Tribunal in March 2014: the judge found error of law by the previous judge and remitted back to First-tier Tribunal for fresh hearing. In July 2014 this case was re-heard by another immigration judge and the judge allowed appeal under the refugee convention and human rights convention by stating that "I found Country Guidance in case of GJ. He found them to be relevant in the instant appeal. He also found the Sri Lankan authorities have evidence that the appellant was involved with the LTTE. Through this case we are able to understand how the illegal immigrant can become a refugee - in his first test he was failed by HO assessment and later he once again failed in front of immigration judge; however he finally succeeded on the asylum test.

**Case study 48**

Mr KN came to this country in June 2008 and claimed asylum at the port of entry. He was charged by the airport officials for entering the country illegally (without a valid passport). Consequently, he was convicted at Uxbridge Magistrates Court and sentenced to 12 weeks (3 months) imprisonment because not having a passport was against the law in force (Asylum and Immigration Act 2004). After his release, his claim for asylum was considered and he was granted refugee status. Eight years later, in 2016, he made the citizenship application and it was refused on the grounds that he had a criminal record as a result of his imprisonment for not having a valid passport. (therefore he was found to be of no "good character"!!!! )

**Case study 49**

MR JS came to this country as a student in 2010 with his own passport. In May 2013 he claimed asylum and he was issued an IS151A decision as an overstay in May 2013. He was interviewed in May 2013 and his asylum claim was refused in Jan 2015 by the home office challenging severely his credibility of the claim saying that they did not wish to interview his mother as the statement given about her resident in the house was not true. It is not credible that the appellant worked for LTTE and several other credibility checks were failed. We lodged his appeal to immigration & asylum Tribunal and the appeal was heard in June 2015. The Judge found appellant to be credible and allowed his appeal on asylum and human rights ground. The Judge looked at the evidence in the round and took account of all the evidence both oral and written. The appellant adequately explained the discrepancies which were raised by the respondent and the judge did not accept that any of the points raised by the respondent affect the credibility of the appellant's core evidence. The judge considered paragraph 339L of the immigration rules, which sets out the core issues that have to be considered when examining if an asylum claim is truthful. the judge accepted that the appellant has made genuine efforts to substantiate his asylum claim and found that his general credibility has been established and that the appellant is unable to internally relocate within Sri Lanka because he fears ill treatment by the same authorities. Allegations against the appellant for Bogus refugee and/or overstay was overruled and the appellant granted the right to appeal for asylum status.

## The Refugee convention

The Convention 1951 which came into force in 1954 recognises and protects persons seeking asylum from fear or actual persecution from their countries. The Convention was an instrument introduced after the Second World War and has since expanded through amendments to be the source which sparked Asylum and International Human Rights law.

Based upon the core principles of non-discrimination and non-penalisation, the Convention is the most comprehensive source of refugee protection at international level. To qualify for protection under the 1951 Convention one must satisfy the definition of a 'refugee'. Refugee is defined in Article 1A(2) as "someone who is unable or unwilling to return to their country of origin owing to a well-founded fear of being persecuted for reasons of race, religion, nationality,

membership of a particular social group or political opinion". In short, one must satisfy 5 elements specified in the definition to enjoy the rights and protection of the Convention: 1) **be outside their own country**, 2) **have a well-founded fear**, 3) **Persecution**, 4) **Reasons** (one or more of the reason specified in the convention) and 5) **is unable or unwilling to obtain protection in** or return to their **own country**.

**Case study 50**

Ms BB Left Sri Lanka with a student visa in March 2011 and studied according to her student visa. However she is unable to extend her 2 yr student visa and she faced removal at the beginning of 2014. At that stage she did not have any choice and claimed asylum because on her return she was going to face persecution due to her husband's political involvement. She had joined the LTTE together with her husband. She married him in 2006. Her husband however later joined the EPDP and as a result was killed by the LTTE in 2010. Ms BB could not attend her husband's funeral as she feared to be arrested by the Government forces due to her husband's political involvement. She was arrested in August 2010 and taken to Kartukanthor, where she was severely tortured and physically assaulted (her head was banged with a table). The officers asked her to report to Kartukanthor every month. Her medical report evidenced the injury that she suffered due to the above act. Having considered the medical evidence and danger of going monthly to report, MS BB left Sri Lanka.

The decision on the appeal on asylum grounds- Given these conclusions, the immigration judge found that the appellant has discharged the burden of proof of having a well-founded fear of being prosecuted for a convention or qualifying directive reason. The Judge decided that MS BB's removal would cause the UK to be in breach of its obligations under the qualifying Directive or the 1951 Convention. The decision on appeal was not given under article 8 of the 1951 Convention, but, in the First Tier Tribunal, was allowed on Asylum grounds.

**Case study 51**

MR RR is a Sri Lankan National. He brought this appeal in terms of section 82(1) of the Nationality, immigration and Asylum act 2002 against the decision of Home office in March 2015 to refuse to grant asylum under rule 336 of hc395, or to grant him protection and to give directions for the removal of the appellant from the UK. MR RR claimed asylum in October 2012 and there was substantial delays in the decision on his application, which was refused in March 2015.

Mr RR (teacher), his father (a combatant) and his sister (Trainee Nurse) all were working for LTTE. Mr RR was injured in hostilities and was captured in March 2009. He was detained for over 8 months & released in January 2010 having made confession of participation with LTTE. He was then sent to Kilinochi. There RR and his host were again detained on suspicion of aiding an opposition political party JVP. He was arrested, detained for another 7 months and released in August 2007 on condition 'to report'. With the help of agents RR was sent to the UK. Although Home Office accepted RR's involvement with LTTE they refused the claim. Following assessment of the credibility of RR and his family involvement with LTTE, he would have returned to SL as a failed asylum seeker under circumstances where he was reasonably likely to be identified 'as of interest' and to be detained for further investigation.

The case of GJ contains an acknowledgement by the home office that individuals in custody in Sri Lanka continue to be at risk of physical abuse that is persecutory. Home office found that RR has proven to the lower standard that he is at risk in Sri Lanka of persecution and any other harm protected under 1951 United Nations Convention and 1967 Protocol relating to the status of Refugees; under the immigration rules and qualification rules or under the European Convention on Human Rights. This finding makes it unnecessary to address any alternative ground of persecution. The judge finally allowed the appeal based upon the claim for Asylum under the refugee convention in the First-tier Tribunal.

**Persecution**

There is no clear definition of persecution but there have been many attempts to define the term. One widely accepted approach is from Professor James Hathaway who believes that refugee law is a branch of family and human right law which interlinks at international level. Professor Hathaway defines persecution in his book, The law of Refugee Status 1991, as "the sustained or systemic failure of the state protection in relation to one of the core entitlement which has been

recognised by the international community". This definition suggest that a person's rights has been taken away by the State of their origin and they can no longer rely upon the State to provide them with protection and other basic rights.

A simpler approach which is suggested by the Court of Appeal is to interpret the term using its ordinary English meaning. They also suggest that persecution will depend on individual cases and persecution does not need to be repeated or sufficiently systematic. This approach also requires the courts to take into account all circumstances such as the reasons behind the particular treatment and how serious the treatment was. The persecution needs to be unfair and serious inhuman treatment for the UK authority to grant international protection.

As there is no clear definition, decision makers have more discretion and depending on their belief and their reasoning will make decision they believe fits. Without any real guidance and framework available for decision makers, the definition of persecution can be interpreted widely and inconsistent decisions are highly likely. Consequently, the applicant must submit credible and reliable evidence for their claim, including medical report of their physical and mental injuries, to improve their case and this can often be problematic.

**Internal flight alternative**

Internal Flight Alternative (IFA) refers to the situation where the asylum seeker falls into the definition and shall receive refugee status and protection but the applicant has an alternative place to remain in their country of origin. The question is therefore whether the applicant shall receive refugee status even though the applicant has an alternative in their original State.
The cases of Rasaratnam and Thirunavukkarasu are the leading precedents on the matter. The courts introduced a two stages test which need to be applied to determine whether the asylum seeker must seek out the IFA or gain refugee protection in another country.
The test is as follows:

1. the decision maker shall satisfy on balance that there is no possibility that the applicant will be persecuted in the part of the country where IFA exists, and
2. The decision maker must ensure that the condition in the part of the country where IFA exist is not unreasonable in all circumstances and the applicant can seek refuge there.

If it is unsafe for the applicant to seek out the IFA or if the conditions are unsatisfactory, the applicant is likely to be granted refugee status. However if the decision maker can prove that it is safe and the conditions are reasonable, the application is likely to be refused and the applicant shall exhaust the IFA.

Dublin convention or third country removals

The Convention determining the state responsibility for examining applicants for asylum lodged in one of the Member States, (commonly known as the Dublin Convention) was first agreed upon by the European Union Governments in 1990, replacing the Schengen Agreement; the basic aim of this convention is to establish a common framework for determining which country in the European Union is to decide an asylum seekers application as well as to ensure that there is only one Member State at any given time, processing each asylum application.

The United Kingdom signed up to the Dublin Convention in July 1992 and ratified the European Law in 1997, bringing it into English legislation. It is now held that, if an asylum seeker passed through a 'safe' third country (which can be any of the Member States of the European Union, as well as the USA, Canada, Switzerland and Norway) before their entry into the United Kingdom, the United Kingdom may return the asylum seeker back to that safe country for the person to seek asylum there instead.

Following a 'Dublin Convention screening interview' , if the United Kingdom is then unable to remove an asylum seeker, due to insufficient evidence, the port immigration authorities will then carry out an immediate asylum interview and begin a normal asylum application procedure. If during this procedure, it comes to be understood that the asylum seeker had passed though a 'safe' country, then the whole procedure may be stopped and then seek removal.

If evidence did arise from the Dublin Convention screening interview, then the port immigration authorities will automatically go ahead with a third country interview, to understand how the asylum seeker entered the United Kingdom and through which way. If the results of this interview then

satisfies the Dublin Convention criteria, the United Kingdom will halt the claim and seek to remove the asylum seeker back to the 'safe' third country. This system is failing to give protection to the torture victims and asylum seekers instead it is shifting the responsibility to another country without adequate consideration of the individual claims. In our experience, the decision making on the individual asylum claim is not consistent with all the EU member states and the interpretation of the refugee convention law is implemented in different ways by the EU member states. If an asylum claimant claimed asylum previously at another member state and if that member state closed their files or is unable to give protection then the particular asylum seeker is entitled to seek asylum in another country in order to prevent future persecution by his or her native country authorities. In our experience some of our clients asylum claim were fully considered and they were forced to leave their host country. In this situation they were deported or voluntarily returned to their home countries. In their own country, they faced further persecution by the authorities and subsequently fled their own country to protect their lives and ended up in another country to seek asylum. In these circumstances the UK government is simply finding the way to deport that particular asylum seeker to the member state rather than considering his or her new asylum claim on its merits in UK.

**Case study 52**

Mr SN is a Sri Lankan national who was arrested in Oct 2015. He was served with illegal entry papers and was detained, when he attended ASU Croydon and claimed asylum. During his detention, Mr SN was interviewed, in which he stated that he had previously lived in Germany but had left in Sept 2014 to return to Sri Lanka after Germany had refused his asylum claim. He also stated during his interview that he had left Sri Lanka in fear of persecution and further medical evidence also showed that he had been a victim of torture in Sri Lanka. In Sept 2015, he left Sri Lanka by Sri Lankan Airlines and travelled to Oman; from Oman he then travelled to an unknown country. In this unknown country, he then boarded a lorry which then brought Mr SN to the United Kingdom on in Sept 2015. In Nov 2015, Germany was formally requisitioned under Article 18.1B of the Dublin Convention and they accepted responsibility for his case. Subsequently his UK asylum claim was refused and certified under Third Country grounds; he was detained and Removal Directions were prepared for his return to Germany in Feb 2016. We are now appealing on the basis of Article 3 and Article 8 of the ECHR, which were not recognised by the United Kingdom and on the basis that Mr SN's asylum claim in the UK is a new claim as he returned to Sri Lanka first before travelling here due to fear of being persecuted and being tortured again, rather than travelling from Germany. A judicial review has also been lodged with the aim to halt his deportation to Germany. It is submitted that, as a ground of appeal, Germany's responsibility towards Mr SN ceased as per Article 19(2) of Regulation (EU) No. 604/2013. Furthermore Article 19(3) also states that where the applicant had left the responsible Member States territory, in compliance with a return order or a removal order following the rejection of his/her appeal, then the responsible Member State's obligations will cease to exist. In addition to this, the United Kingdom, in coming to their decision to remove Mr SN, did not take into any consideration that Mr SN's wife is currently pregnant with their child and that they are married following a religious ceremony; thus he should not be removed till he has been properly detained and given his in-country right of appeal. Additionally, the issues raised in this judicial review for Mr SN's case are also being considered in Ghezelbash, case C-63/15. As the decision is expected soon, application for a judicial review has been stayed in other cases thus meaning that Mr SN's case should also be halted until the outcome of Ghezelbash is revealed. Once the JR has been lodged, the removal will be halted.

**Case study 53**

Mr RS came to this country as an asylum seeker in October 2014 and entered this country hiding in a lorry assisted by the agent. In this case, Mr RS was under the control of the agent who aided his escape from the authorities in Sri Lanka. As he moved from one country to another, the agent determined when and where to request asylum because of the risk involved. As such client was moved from country to another which he does not know before finally being allowed/released to claim asylum in the UK. Officials kept him in detention for 3 weeks to find out whether he could be removed to any one of the other European countries he passed through en-route to the UK but as he had not made an asylum claim in any of those countries he was not liable to be deported there and was released.

Fast track Procedure

The Government introduced the Fast Track Procedure which enables the Home Office to make a quick decision on asylum claims. If the applicant is successful with his or her asylum claim then the asylum can be granted refugee status and released. If they are not successful then it is easy for the Home Office to deport them swiftly. This system has not worked well and the Home Office has made a number of procedural errors which will be discussed in detail below.

Detained Fast Track Process is where an asylum seeker is detained for the purpose of handling their application for asylum and any subsequent appeals swiftly. There are many issues regarding the Fast Track Procedure, primarily regarding the argument that this is mainly done solely for the purpose of 'administrative convenience'. This means that cases are not handled properly and the asylum seekers case is not examined as cases going through the normal processes would. Having the asylum claim going through the fast track procedure also means that there is limited time and resources to present a case to the Home Office and it can also be difficult to prepare appeals in such a limited timescale. Due to these factors, and many more, Fast Track Procedure cases are less likely to be successful in comparison to having the asylum case heard normally.

The criteria for a case to be fast-tracked is set out in the Operational Enforcement Manual *Para 38.4*. This states the criteria for the Fast-Track process as: (i) it may be "any claim", (ii) the claimant may be of "whatever nationality or country of origin and (iii) where it appears, after screening, to be one that can be decided quickly.

The Suitability List (2007) and the Operational Enforcement Manual *Para 38.4* sets out many categories which are unsuitable for the Detained Fast Track and will mean that the claimant must be immediately removed from detention. Examples include unaccompanied minors, age disputed cases and pregnant families of 24 weeks and above.

There are ways however to get the case removed from the fast track procedure.

This can happen where it is not possible to consider the claim with a requisite degree of fairness within the fast track timescales or when supporting evidence is required

We, as legal representatives, are required to take instructions, advise and represent the client for their claim but we also have also got an important role of, where fairness allows, to have the client taken off the fast track procedure and to rather follow the normal route. Being taken of the fast track procedure would then inevitably mean that the client would be released from detention and have their case dealt through the normal procedure.

The Operational Instruction can be used in order to widen the timescale to allow for more flexibility in six ways. This however will not mean that the individual will be released from detention, rather, it allows for more time. These are flexibility (in the):

- Case of illness.
- Case of non-or late attendance of representative.
- Case of inadequate interpretation .
- Case of non co-operation.
- Flexibility if the applicant or their representative asks for more time to prepare for the interview.
- Post interview flexibility.

Flexibility in other circumstances is also available and is allowed where the representative believes that flexibility is required to ensure fair processing of the claim. If the claim is not being fairly processed in the Detained Fast Track, then the representative can make representation for the case to be taken out of the process or for the process to be operated flexibly.

The API Translations October 2006 can be relied upon where more time can be asked for in a case where client wishes to rely upon documents which are not in English, as it would require proper translation. This is however a tricky policy as these documents can come to prejudice the claimants case rather than support. The claimant will be informed that this may happen. However, if the claimant relies on these documents and it is decided that these documents are important in regards to the claim, then client can be released from the Fast Track as it would require time outside of the Fast-Track timescale.

The victims of torture and the API Medical Foundation ties in with the Suitability List (2007), which both together state that, where there is independent evidence, victims of torture are not suitable for fast-tracking.

A referral to the Medical Foundation for the Care of Victims of Torture, which is accepted for assessment before the service of a refusal letter, should invariably lead to your client's release from detention and the Fast Track process. A medical expert will examine the consistency between the Claimant's account of torture and the signs and symptoms apparent on examination, when producing their medical report. As particular care and sensitivity is required when interviewing claimants who are claiming that they have been a victim of torture, due to the detrimental and traumatic effects of torture; the victim may find it extremely difficult to deal with the serious and official environment that arises during an interview where they have been a victim of torture thus processing a case such as this on a fast track path is not appropriate and will require more care.

There are really three stages in the Foundation's considerations of referrals -

a) examination of the case on the papers to see whether there are grounds for consideration.
b) a 'pre-assessment' appointment with a MF caseworker, who determines whether a full examination is required.
c) A full assessment by a doctor with a view to completing a medico-legal report.

If the client has been accepted for a pre-assessment then the case will have to be put on hold, except in exceptional cases as the result of the pre-assessment is essential, as long as evidence of appointment is provided in writing. This will mean that the client's case will not fit into the timeframe required for a fast-track procedure.

If the caseworker is refusing to release the client from detention, even though they are not contesting the fact that the client is a victim of torture, then they should be referred to the Medical Foundation.

It is vital to establish at an early stage whether the client has been a victim of torture and seek urgently to put in place the process for documenting that torture- (as a victim of torture the client should be removed from the fast track procedure).

Referrals to the Medical Foundation (M.F) :

a) As the Medical Foundation operates on normal business hours, the Home Office will have to allow for evenings and weekdays.
b) The M.F will inform within 24 hours if they can take on offer an assessment.
c) The M.F will need to know in a much detail as possible what the actual torture amounted to, what the injuries you wish it to document are and the context in which those injuries were alleged to have happened - a detailed narrative description of the torture and its circumstances will be essential for a quick and sound decision by MF.
d) While it is not compulsory, having evidential medical notes can be of great help to the M.F. in deciding whether to offer assessment interviews.

- Other organisations who also do similar work to that of the Medical Foundation, like the Helen Bamber Foundation have also been accepted by the Home Office in the same way.

Detention and bail policies are of vital importance-being put on the Detained Fast Track process means that the individual is being detained. The detained individual has the same rights as that of any other detainee, regardless of the fact that he/she may be on the Detained Fast Track Process. This means that he/she will be able to apply for temporary admission, Chief Immigration Officer's (CIO) bail and bail from the Asylum and Immigration Tribunal (AIT) as any other detainee.

Bail can be granted during the examination of a claim for leave to enter and during the giving of removal directions. The provisions for this comes from paragraphs 22(1) and 34 of Schedule 2 to the Immigration Act 1971, thus bail can be granted to a person detained in the Fast Track for these purposes. If the individual has been detained for the purpose of examining their claim for leave to enter, then paragraph 22(1B) applies. This states that the individual cannot be released on bail 'until seven days have elapsed since the date of the person's arrival in the UK'.

**Judicial Review:**

Judicial review is a way in which a challenge may be made, but only as a last resort, where it is believed that the Home Office or the immigration judge has acted in an unfair manner.

Where the Home Office has failed to apply a policy or an application of that policy which is irrational,

then it can be challenged in the High Court by way of judicial review. An individual is fully entitled to know the reason behind why his or her claim cannot be transferred out of the Fast Track Procedure. If they have failed to give such reasons then, such a decision may be challenged by way of judicial review. Judicial review can also be used to challenge an immigration judge's decision.

While applying for a judicial review is somewhat simple, it still requires funding and the assistance of an experienced barrister to draft the grounds. The defendant will then need to make a decision of whether to challenge the claim and file a defence within 21 days.

**Legal Aid**

Currently detained clients may only use their choice of practitioner to assist them if that practitioner has already completed 5 hours of work for them. Otherwise the detained individual will have to choose from a very small group of practitioners, who will have rights to assist them. These are independent solicitors' firms who have an exclusive contract for the Detained Fast Track. In November 2015, the Legal Aid Agency released an updated list of providers who hold exclusive contracts at Immigration Removal Centres (Yarl's Wood and Harmondsworth have 6 contracted providers regarding detained asylum casework).

**Case study 54**

Ms. J. a Sri Lankan national, arrived in the United Kingdom in Nov 2014 seeking asylum here to escape from persecution in Sri Lanka. She had previously worked for the LTTE as an accounts clerk between 2001 to May 2005 and then again in July 2006 to January 2008. In September 2005, Ms J travelled to France but as her asylum claim was rejected, she returned to Sri Lanka in May 2006. Due to the fact that she had worked for them, she was suspected of being an active member of the LTTE and was initially arrested in May 2005 and was detained for two days. During these two days Ms J was severely beaten and tortured whilst being questioned. In 2009, she was again arrested by the Sri Lankan Police twice, during one of which she was abused. Then in 2010, Ms. J was kidnapped by the EPDP (a pro government political group) and held for three days. During these three days she was questioned, verbally and physically abused and raped. Following all this, in 2014 Ms J. was told to enter a rehabilitation centre in Sri Lanka. It was at this point, as she feared for her safety and life, she decided to leave the country. Ms J, having been a victim of torture, should not have been placed on the Fast Track Process. She claimed asylum at the first instance and informed them that she had been mistreated and tortured but due to the Home Offices' culture of disbelief, they refused to accept that she was a victim and put her case through the Fast Track Process, even though she did not meet the criteria. Even so, she again mentioned the fact that she was a victim of torture at the reception at Yarl's Wood Detention Centre and again with her first medical examination. This was again ignored. She then went on to notify another doctor during her second medical examination (who then produced her Rule 35- this rule states that the doctor at the immigration detention centre "shall report to the manager on the case of any detained person whose health is likely to be injuriously affected by continued detention or any conditions of detention) of what she had been through as well as proof of her scars from these events, but this was purposefully disregarded and her scars were ignored. This is clearly unjust and we decided to challenge this decision. This led to us explaining Ms. J's situation to the Helen Bamber Foundation and they trusted her claim from her screening interview and her witness statement. She is waiting to attend the assessment that will be scheduled at the Helen Bamber Foundation late 2017. Consequently, the Home Office has now released Ms. J from detention and her case taken off from the Fast Track Process, which she was incorrectly placed into.

**Case study 55**

Mrs K. is a Sri Lankan national who was also incorrectly placed into the Fast Track Process. Her case is another example in which we can see how the Home Office uses this process simply as one to punish rather than justly decide; it exhibits how they are rather sending out a message that they care little for the suffering experienced by the asylum seekers, and rather choose for an easier administrative purpose. Mrs K. entered the United Kingdom in August 2011 and claimed asylum in Croydon. She arrived with a 2 years and 6 months Student Visa. Mrs K. and her family had been involved in assisting the LTTE with housing, food, medication. In 2010, Mrs K. was arrested along with her father. She was taken to an army camp and detained for 37 days ( her father was taken elsewhere and released earlier). During her detention, Mrs K. was subject to interrogation and

physically abused (this included burning her with hot iron rods). She has scars to prove her torture. Three days into her detention, Mrs K. was subjected to beatings and then rape. She was also threatened with violence and murder by another political group. Mrs K.'s case was unjustly put onto the Fast Track Process and throughout her case, we see how the Home Office clearly behaved unfairly. Even though she clearly explained what she had experienced during her asylum interview and showed her interviewer some of these marks, in her Rule 35 report, it was stated that she has no marks to be shown as evidence of her torture, even though the interviewer at her asylum interview had noted that she had shown marks. Furthermore, the Rule 35 report concluded that there were concerns that Mrs K. may have been the victim of torture, this was disregarded by the Home Office. This consequently led to her case being directed to The Helen Bamber Foundation, who accepted her claims and issued an appointment. Due to this, the Home Office finally put Mrs K.'s case on hold and she was released from detention.

**Standard of proof for asylum cases**

In any cases, whether its criminal, civil or asylum cases, there are two extremely important concepts: these are burden of proof and standard of proof. For asylum cases, burden of proof rests on the asylum seeker and they are obliged to prove that their circumstances fit into the definition of 'refugee'. On the other hand, standard of proof refers to the degree of certainty to which matters need to be proven.

In the case of Sivakumaran, the House of Lords ruled that standard of proof which needs to be proven is that the fear is 'well-founded' and there is a 'serious possibility' or ' reasonable degree of likelihood' or 'real risk' of it occurring. This ruling made it clear that the standard of proof for asylum cases are at the lowest end of the scale having need to only prove high risk or high possibility of things happening.

There are mainly two reason for this low level standard of proof. Firstly, it is very difficult for the asylum seeker to be able to submit valid and reliable documents, if any at all. It is also very difficult for them to have witnesses to prove their cases. Having a high standard of proof will eliminate very high majority of asylum cases. Furthermore, the second reason is because the law wishes to protect people from serious harm. Due to this, imposing a high probability and risk of serious harmful treatments is sufficient.

Compared to such low standard of proof for the applicant, the decision-makers have a much more difficult standard of proof to determine that the asylum seeker is lying about their past and is making a false application or else to grant a decision that favours the applicant. Through the case of Karanakaran, the court ruled that the decision-makers must consider everything submitted unless they are certain that the history facts in question is false.

The procedure for asylum claim

To seek protection, you must be a refugee under the definition of the convention. In the UK, one must satisfy the following elements: 1) Unable to return to the country of origin or be stateless 2) there is a fear of persecution 3) unable to live safely in any part of the country of origin 4) have failed to get protection from the authorities in the state of origin 5) persecution due to race, religion, nationality, political opinion or being a member of a particular social group that puts you at risks because of the social, cultural, religious or political situation in the country of origin.

When applying, you may include any dependents in your application including your partner or children under 18. Children under 18 may complete their own application if they do not have any relative or adult applying for asylum. It is also very important to have documents which confirm the identifies and proof of address of yourself and your dependents.

Required documents:

- For main applicant : bring documents for yourself, partner and dependent children
  1. Passport and Travel Documents
  2. Police registration certificates
  3. Identification documents such as ID, birth, marriage certificates or school records
  4. Any other document that may help your application
- Proof of UK address - living on your own - documents showing your full and address
  1. Bank statement
  2. Housing benefit book
  3. Council tax notice

4. Tenancy agreement
5. Other household bills

- Proof of UK address - living with someone else
  1. A recent letter (within 3 months) from the person you are living with their permission for you to stay
  2. Documents showing the full name and address of the person you are living with such as tenancy agreement and household bills

With the appropriate documents, you may register your asylum seeker application. You can register as soon as you arrive in the UK or after you are in the UK. The registration process is call 'screening'. This is a meeting with an immigration officer. At the screening, you will be photographed and your finger print will be recorded. At the screening, you have an opportunity to tell the immigration officer who you are and where you are from. You can also bring all the documents required and any evidence that will support your claim.

After the screening, your case will be allocated to a case worker and you will be given an Application Registration Card (ARC) or Standard Acknowledgement Letter (SAL). These documents are necessary for you to report to meetings and collect asylum support from the Post Office. You may be detained in a immigration removal centre if your application can be dealt with quickly. You will be released if you get permission to stay or to be removed because you do not have permission to stay. You have the right to appeal against the decision.

After the screening, you will be asked to attend asylum interviews. You will receive a letter confirming the date of the interview. Before the interview, you may seek legal representation. On the date of the interview, time will not be granted for the applicant to seek legal representation. The interview will take place regardless of any legal representation. The applicant may ask the case worker to tape record the interview but such request should be made before the date of the interview. Furthermore, you may also send a written statement to your caseworker before the interview. The statement shall be written in English and includes the Home Office reference.

Usually, applicants are interviewed alone and with an interpreter if necessary. At the interview, you should take this opportunity to explain how you were persecuted and why you are afraid to return. During the interview, you will be asked difficult and sensitive questions. You shall tell your caseworker everything that you wish to be taken into consideration. You must also bring all relevant documents to support your application.

After the interview, you may be given copies of all documents and further evidence may be requested by the caseworker if it will improve your application. You shall receive a decision within 6 months. However it may take longer if more time is needed to deal with your case.

You may be granted leave to stay if you qualify for asylum, permission to stay for humanitarian reasons or other reasons. Permission to remain as a refugee means that you and your dependants qualify for asylum. You are granted permission to stay in the UK for 5 years. Permission to stay for humanitarian reasons means that you and your dependencies are granted permission to stay for 5 years in the UK for your protection. You may also be granted permission to stay for other reason. The length of your stay will depend on the circumstances of your case. At the end of your "permission to remain", you shall apply to extend your stay or to settle in the UK. However if the case worker has no reason to grant you permission to stay, you will be asked to leave. You can appeal against this decision and such appeal must be made within the stipulated time. You may leave by yourself or if forced by UK authority .

**Country Information and Guidance: Sri Lanka**

Basis of claim:

Fear of persecution by Sri Lanka SL authority because the person is suspected of supporting LTTE or involvement with Tamil Separatism including membership of or participation in Tamil separatist movements whilst in the UK

Who are at serious risk of being persecuted? Real Risk categories

- those activist working for Tamil separatism and or to destabilise the Sri Lankan State, regardless of their ethnicity
- those actively engaged or are perceived to be engaged in activities to encourage the resurgence of the LTTE or any other separatist Tamil armed group

- Those who are perceived to be a threat to the integrity of Sri Lanka as a single state because they are or are perceived to have a significant role in relation to the post-conflict Tamil separatism within the Diaspora and or a renewal of the hostilities in Sri Lanka
- Journalists critical of the government and Human Rights activists opposed to the Signalisation of the Sri Lankan State
- anyone whose present or past activities lead them to be placed on a stop list - being on the stop list is enough to receive international protection
- those witnesses to war crimes of May 2009 who have identified themselves as such
- those who are at risk of being detained for any of the above reasons
- Those who will be placed into a rehabilitation programme

if the client falls into the serious risk categories above, it is likely that the decision-maker will grant them international protection. For the other categories, namely, those who in the past were part of the rehabilitation programme or those on the watch list, more evidence will need to be provided to show that they are in serious risk.

The decision-makers shall consider whether the person's account of their involvement is both internally and externally consistent and creditable. This means that they shall research and ask questions to ascertain whether their ethnicity, perceived political opinion and past activities mean that they are likely to be perceived as supporting the LTTE upon their return to Sri Lanka. The decision-maker shall also take into consideration all supporting documentation and correspondents to make their decision.

GJ and Others

The Tribunal accepted that individuals have been ill-treated on their return to Sri Lanka after many reports and submitted evidence. However the Tribunal agrees that a person's ethnicity alone is not enough to receive international protection. This is because the GOSL focus has been shifted since the end of the civil war. It is now determined to identify those who are working for Tamil Separatism and actively working to destabilise the unity of the Sri Lankan state. Furthermore, the new constitution prohibits violation and territorial integrity. The State now aims to prevent the resurgence of the LTTE and other similar armed groups and the revival of civil war.

Those inside the real risk categories shall be entitled to rely on the country guidance. However the list should not be used, solely, by the decision maker to exclude those outside the category and refuse their applications and appeals.

In relation to cases where the applicants claim their involvement with Diaspora group and Tamil Separatist movements, the GOSL has a name lists of organisations and individuals which they match people against. The decision-maker shall check and identify the claimant against such lists. If a match is found, the person is likely to be at risk upon their return. It is therefore normal for the decision-maker to grant international protection and asylum.

Furthermore, it has been accepted that the GOSL have a sophisticated intelligence, face recognition programme that is used against photographs and filming at the demonstration which allows the SL authority to identify those who are against the state and actively working for Tamil Separatist movements. However, a mere attendance to one or more of the demonstration is not enough. Similarly, membership to such movement is not enough. The tribunal concluded that the individual's Diaspora activities must be significant to amount to real risk. However there are no clear definition of what amounts to significant. It is therefore up to the decision-makers to look at each individual case carefully and make a decision after full consideration of all relevant material of the case.

The Tribunal also acknowledges that a person who appears on the 'watch' list is likely to be monitored but not likely to be detained. The GOSL is not concerned with past members but only those who are actively aiming to destabilise the unity of the state. Therefore those on the watch list will be monitored; but that is not persecution and is not at serious risk of such. Moreover, a person who in the past, was part of the rehabilitation programme is also likely to be monitored but that is not enough to determine persecution. The Tribunal does recognise that these can be part of the evidence and shall be taken into account by the decision-makers.

The Tribunal also understands that applicants basis of claim is fear of ill-treatment from the Sri Lankan authority. They are therefore not able to rely and apply for protection from the authorities. Furthermore, persons returning are required to move to a named address once they are through the airport. Therefore, internal relocation within Sri Lanka is not an option and the person will be at real risk because the Government controls the whole of Sri Lanka.

Finally, the decision-maker must be satisfied that the applicant is able to produce evidence of their involvement in Tamil separatism; not only that they will receive adverse attention but also that they are perceived to be a present risk to the unitary Sri Lankan State. Moreover, the decision-maker must take into account that the LTTE have been responsible for horrific human right abuses and acts of terrorism with some amounting to war crimes and crimes against humanity. When considering matters involving LTTE, the decision-makers must consider whether one of the exclusion clauses apply or seek advice from Senior Caseworker if necessary.

## Case facts and decisions

### Case study 56

The client began supporting the LTTE whilst being a student in 2003. The client helped to recruit other students to join LTTE and also helped with supply food and transport. In 2005, the army noticed his involvement and intercepted him (with scolding, slapping and tripping) on his way to school. During the period between 2005-2007, the client helped the army transport meal parcels; on 6-7 occasions, together with a cousin, he collected bomb materials. The client was able to provide adequate information as to how this was done. His cousin was killed in 2007 and this caused the client to be scared for his life as he worried that the army may be actively hunting him. In 2008 the client travelled to India by boat, using a false passport. He then travelled to another country, which he is unable to remember and then went onto Congo. He finally reached France, where he claimed asylum but he was rejected. After returning to Sri Lanka, he was arrested and then beaten severely for 18 days. This left visible scars on his shoulders and chest. Cigarette burn marks are also visible on his body. He was released after a bribe was given and with the extra help of his father's friend, who was a Muslim minister. It was held that it was not acceptable that, if the army had seriously believed the client to be a member of the LTTE, they would only scold and slap the client and then let him continue his journey to school. Also, the fact that the client had failed to provide medical evidence to link his suffering to the effects of torture, was also found as a negative with this case. The Home Office also did not accept that the client was able to stay for almost a year without interference by the authorities following his cousins death, especially if they had known that the client helped the LTTE with food supply and transport as well as collecting materials for bombs. While it was accepted that there is corruption in Sri Lanka, they found it questionable that the SL authority would release the client without any charge or conditions simply because of a bribe of 5 Lakhs, especially since they had known that the client has gathered materials for explosives for the LTTE. The case went into appeal and the judge ruled that the findings of fact and the guidance showed that there was sufficient evidence that the appellant would be of interest to the SL authorities and that he would be at risk of persecution on return. He allowed the appeal under protection of human rights under the 1951 UN convention /Status of Refugees.

### Case Study 57

The client and family were involved with the LTTE. The client's mother cooked food for the members and father supported the LTTE, even though he did not do anything specific for them. Nevertheless, the clients father was detained for a week and beaten. Five of the clients sisters were involved in the fighting but they were abducted by the army and are registered missing. The client joined the LTTE during the last stages of war. The client did not actively fight himself but rather attended to the injured. The client also helped transport weapons. The client partook in a 6 months training course in self defence and using rifles. The client was detained for 8 months and was beaten and raped. The client was only released following a bribe with the help of an aunt, solicitor and an officer. After the release, the client did not get involved with the LTTE but in 2013, the client was detained again, this time for 33 days, during which the client was questioned and beaten. After more bribes and assistance from a priest, the client was released. The client was required to report once a month but once again was detained for 4 hours, without questioning. The client paid an agent to escape to the UK, passing 3 unknown

locations. After the client left , the army visited the client's home 4 or 5 times. As a result the client has not been in contact back home since December 2013. The Home Office found that, regarding the LTTE involvement, that the client's account with regards to the support of LTTE was vague and inconsistent; the client failed to consistently state when the different events happened and failed to fully describe and elaborate on what the training involved. Furthermore, the client failed to explain the personal desire to help LTTE, claiming that they were short of volunteers, whilst an earlier claim stated that the client felt compelled to join. The client claimed to have been detained twice, in 2009 and 2013, however during the interview, the client mentioned 3; the client was also unable to recall the questioning. The client provided no medical evidence for the injuries sustained. The client also claimed that the client did not obtain any medical treatment but merely tablets, which is inconsistent with the injuries suffered. The claim of release in 2010 is inconsistent as the client claimed to have been released after a court hearing but had previously claimed to have not attended court at the first detention. The client also could not provide an explanation for why bribe was necessary even though a court hearing was required. The client also gave a vague account of what happened during the court hearing. On the second detention, the client failed to give reason for the arrest, claiming that it was because the client was previously detained and hence they knew - this was considered vague. The clients account is inconsistent claiming to have not gone to court on the second detention but earlier stated that the client only attended court on the last detention. The client claimed to no longer be in contact with family due the army visits since December 2013 but claimed that the army visited in January or February 2014. This was considered inconsistent, vague and conflicting. The client claimed that whilst travelling to the UK, the client stayed for few hours at a house and later stated that the client in fact stayed for 2 days, and later 2 nights after given the opportunity to clarify. The fact that the client used a false passport to illegally enter the UK is considered a behaviour which damaged the client's credibility. The client failed to fully demonstrate that the client is of interest to the SL authority as a result of low level involvement rather than being an Tamil activist working for Tamil separatism working to destabilise the unity of Sri Lanka. Furthermore, the family's ability to bribe an official suggests that the SL authority believes they have insufficient reason to continue to detain the client on return. At appeal the client was able to clarify the inconsistencies and explain the variations in the testimony. The Judge of the First -tier Tribunal accepted the evidence in spite of the differences that were noted in the various interviews recorded. A credible witness corroborated the client's story and other documents was submitted as proof. The Judge assessed that the client was indeed at risk on return as the client was/would be of significant interest to the SL authorities given the family history and involvement with the LTTE. The appeal was allowed and client granted asylum. The appeal for humanitarian protection was however dismissed.

**Case Study 58**

After living in Bahrain for many years, the client believed that the SL authority would have lowered their interests in him. He took the risk and returned to Sri Lanka but was faced with problems straight away. This led him to immediately leave the country. His brother however did not have the same fortune as he was forced to join LTTE and fight. Consequently, the brother was killed by the army. This made the client's risk even higher as upon his return, the authorities became aware that they were brothers and the client was placed on the watch list. For 6 months, the client helped the LTTE build fibre glass boats. Furthermore, the client worked as a secretary helping LTTE member with their financial work. In November 1991, he was detained and tortured, when he applied for a Canadian Visa because of the ethnic discrimination in Sri Lanka. He was released after 3 days with the help of his father and his friend, possibly through bribing an officer. In January & May 1993 and January 1995, the client was arrested and detained for 2 days on suspicion of being an LTTE member but was released with the help of the manager and partner at the hotel the client worked for. The hotel later dismissed the client and the client moved back to Jaffna where he suffered bombing and other war problems. The client then joined LTTE and moved to Bahrain for his family to be able to come with him. The client's brother, however, was forced to join LTTE, train and fight and was killed in 2009. The father died soon after. The client returned to Sri Lanka for the 1 year anniversary of their deaths but believes to have been watched. Their neighbours also state the same view. 2 colleagues of the client are believed to have been abducted by the army and are missing. The client applied for multi business visa to the UK

twice but was rejected. In 2011 the client travelled to Paris and in 2012 travelled to UK with Canadian passport that did not belong to him. He was detained and he claimed asylum. In 2011 and 2013, the SL authority approached the client's mother and wife respectively to discover the whereabouts of the client and his brothers. In 2014, the client returned to register marriage to his wife. The claim that the client helped build boats and help the LTTE members financially merely shows an LTTE connection but not that he was a member. The claim that the client became a member later on was also rejected as he did not demonstrate and provide evidence to show knowledge about it. The Sri Lankan authority have the power to arrest and detain people up to 18 months for investigation. The fact that the client, despite being arrested on many occasions, was released within a few days show that the client was not considered a threat to the government. There is no clear evidence that the injuries were linked to the events described. There is also not enough medical evidence to support the claim of torture. It was considered that the client's injuries could have been 'everyday injuries'. The action to marry and take a three month holiday was also considered to be conflicting and severely undermined credibility in relation to his claim. The claim that the client felt that he was being watched was also not accepted as there was no clear evidence to prove that he was being watched by the authorities. This also undermined the credibility of his claim. The two colleagues disappearing is considered speculative as there are no certainty as to the reason why they did not return and no reason as to why their disappearance would put the client in more danger. The claim that the SL authority spoke to the client's wife and questioned the client whereabouts have all been received second hand and not with personal knowledge. Furthermore, the client had no evidence or explanation as to why this may be the case. It is clear that there are strict checkpoints at the airport and the fact that the client is unable to provide explanation as to how the client left the country is considered damaging to the credibility of his claim. This case is still ongoing. Though the appeal was lost, a new fresh claim application has been lodged.

**Case Study 59**

In 2005, the client helped some members of LTTE with their A level exams. The client later followed friends who were LTTE members to help the wounded soldiers. The client did not know the position held. In 2008, the client joined the LTTE and completed 3-4 months training which involved the use of riffles and medical assistance. The client then worked in the front line, supplying weapons, ammunition, medical supplies and food. The role was supportive and the client never carried weapon. She was once surrounded by the army in 2009 but was released as the client had changed into civilian clothing. However March 2012, the client was arrested together with her young brother and detained for 8 days on suspicion of being an LTTE member. Her release was due to a bribe and with condition to report once a month. The client remained in Sri Lanka for 6 months and later got out of the country on a student visa, using the her own passport, with the help of an agent. The client failed to recall the training and facilities and the people at the training camp. Information given was also not confirmed by objective evidence and therefore not conclusive as a Tamil person in such area would have some knowledge about the war and can give similar answers. The client also failed to recite the LTTE oath even though she claimed to have repeated it on a daily basis. The client also failed to name the medicines and weapons, even though she was directly involved with the supplies. It is considered conflicting that an arrest would happen 3 years later and not at the time when the client was an active member and that she was released presumed to be a civilian and have no further involvement since then. It was put forward that some people may have told the SL authority about her past, however the argument is considered speculative and not conclusive. Furthermore, there were a few people arrested which suggests that the SL authority do not have conclusive evidence of the membership to the LTTE. It is considered unreasonable for the SL authority to release a member of a terrorist group for a small bribe. Hence the SL authority do not believe the client was a member of LTTE. The fact that the client only had a small supportive role also suggests that the client is not wanted by the SL authority as they are more interested to those possess a threat to the unity of Sri Lanka. The photographs of the injuries do not add any weight as it was not clear whether it was the client's injuries and there were no medical and psychological evidence supporting the physical and sexual injuries claimed. The 6-months stay in Sri Lanka suggests that the client did not fear for her life. The fact that the client could leave the country using her own passport without any trouble suggests that the authorities are not interested in the client at all. It was also not acceptable that an

agent would be able to avoid multiple layers of security of an international airport, allowing a wanted person to leave without problems. It was also not accepted that the client has participated in pro LTTE demonstration as membership to any pro-LTTE organisations which was claimed, will have raised the client LTTE profiles.

In the appeal to the First-tier Tribunal, the Judge ruled that the client had shown that she was credible and her account of events were consistent though in some cases lacking. He concluded that the client was at risk on return and allowed the appeal on asylum grounds.

**Case Study 60**

The client's family supported the LTTE, with brother and sisters joining the LTTE too. The client also joined at a young age however only helped with food and medical support. Early 2005, the client was detained because the client had a black string on his hand which caused the police to suspect that the client was a member of LTTE. The client was severely beaten during the detention. The conditional release to report was triggered by the mother's appeal to the Justice of Peace. The client was very frightened, especially since a friend of his was abducted. The client then first applied for student visa but was rejected. However the client was able to travel to Malaysia and stayed from February 2007 to April 2009. The client then had to return as the client feared prison time for overstaying the visa. The second day upon return, the SL authority pushed their way into the client's house and detained the client for nearly 25 days. He was tortured with violence including cigarette burns. The client was asked about his relationship with LTTE and the whereabouts of the brother and sister. The client was hospitalised for back pain, ulcer problem, scars and broken tooth. The release was triggered when the client's father contacted an MP for help. The client asked for help from an agent and was able to escape the country. In the UK, the client was involved in pro-Tamil demonstration. The client since then also received threatening phone calls and message on social media making the client even more scared. During a visit to the hospital, the authorities visited his mother and came looking for him. He then had to arrange alternative place to stay. It was unclear whether the client was a member of the LTTE due to him claiming to have joined ' since a young age' and 'not joined, but helped them' and 'not full time member'. The client also stated that involvement only lasted for one and a half month which the client helped with supplying food and helped the injured. There was not a strong enough evidence to conclude that either the client or the siblings are in fact members of LTTE. Also, the client claimed that he was detained in early 2005 but then claimed that it was November 2005. Regarding his 2009 arrest, this claim was rejected because the previous claim that the client was an member of LTTE was rejected. Also the client was unsure who the people were that detained him was and his belief was that they were Criminal Investigation Depart was because 'they were saying information about my family' is unacceptable. The client was unable to explain how the release took place.

The client was unable to link the back pain to the torture giving varied reasons for the pain - to quote: " it due by the torture", and tha` t it "was worsened by the torture" and that it was "due to 5 years heavy lifting". The other scars were consistent however it was rejected as there are no evidence that they were inflicted in the circumstances claimed. Regarding the 2005 arrest, the claim is rejected because the client could not explain how the release was warranted by Sri Lankan SL authority. The ability to leave the country whilst subjected to an arrest warrant for failing to report suggests that the client is not wanted by the SL authority. The client's claim that it was because of bribery was rejected as the client was unable to explain how the bribing took place and how much it cost. The SL authority finds it unacceptable that a person fearing for their life would return. It was also not believable that a person subjected to arrest warrant and wanted by the SL authority would be able to pass through border control so easily. The claim that the SL authority simply left after an explanation that the client was abroad, just after 3-4 hours after the SL authority believed the client had just landed is considered inconsistent. The client failed to prove his attendance and the claim to have been at a demonstration 5-6 months after his arrival was wrong as it was in fact 13 months after his arrival. It was rejected as the client failed to provide evidence of the comment on Facebook. Regarding the phone call, the client did not report it to the police immediately but did so nearly 3 months later and 2 weeks after the asylum claim. The client was also unable to identify the caller and explain how they got the client's number. These apparent discrepancies lead the Home office to refuse the claim for asylum. It was later determined on appeal, after a thorough and proper

assessment that there was an "error of law" in the Upper Tribunal judgement. Client was found to be credible and granted asylum.

**Case Study 61**

The client was a member of a student union ran by LTTE. The client's role was to recruit students to LTTE. The client underwent 2 days of training involving taking orders from a military commander, learning self defence and running but had no weapon training. In 2006, the client was arrested and detained by armed police in a room containing weapons. The client was beaten, cut by glass and burnt with cigarettes. The client was later released (with a condition to report back), following help of a priest. In 2007, the client was arrested and detained at the same time as another student on suspicion of being involved in a bombing. The client was beaten and questioned. The client was released and moved to Trincomalee where the client stayed for 2 years with the help of the priest. During this period, the client helped the LTTE with hiding and supply. In 2009, the client was again arrested and detained for 2 months. The client was tortured and beaten with a stick and sustained injuries. Once when he reported to the police, the client was stripped naked and beaten for a whole day. With help from an agent, the client was able to come to the UK on a student visa in 2010. The client could not provide external evidence to support this claim even though it is internally consistent, regarding his LTTE involvement. It is implausible for the army to detain the client in a room with weapons and it is questionable as to why the SL authority would release an key perpetrator to a bombing. The injury photographs did not demonstrate a link between the mistreatments to the injuries. This along with lack of medical evidence means that little weights has been placed on the photographs. Country of information report states that the accused cannot apply for an arrest warrant which can easily be forged. it is therefore inconsistent as to how the client came to possess this copy and no weight can be given to the document as it could be relied on as genuine. It is implausible for the client to exit the country using own passport despite claiming to have link with LTTE and suspected of a terrorist attack. Therefore it suggests that the client is not of interest to the Sri Lankan authority. As per Section 8 Asylum and Immigration (Treatment of Claimants, etc) Act 2004, the fact that the client arrived in the UK on student visa and did not apply for asylum because, as he claims "I don't know" is not considered reasonable for a man who is educated at university level, which further damaged the client's credibility. The client also delayed asylum claim for 3 years which is considered more than sufficient time to obtain information on how to claim asylum and the client failed to provide a reasonable explanation as to why.

The case went into appeal. Three things were considered by the First-tier Tribunal: (i) the Judge found the findings of fact credible and stated that the client had provided a detailed consistent account of what had happened to him; (ii) the medical submissions confirmed the evidence of torture and PTSD ( iii) the client was seen to be at risk on return especially with past links to the LTTE. In addition there was an issued warrant for clients arrest and client was therefore likely on a stop list. The Judge of the Tribunal ruled to allow the appeal on asylum and human rights grounds.

In evaluating every asylum claim, the following are taken into consideration:

**Evidence:**

- Unless the evidence can show a clear link to the incident, it can be rejected by the Home Office. However the Home Office should understand that it is difficult to show evidence of the inflicted torture as those inflicting the injuries are fully aware of the crimes they commit and they develop techniques which would be difficult to identify- such as suffocation, hanging victims upside down and other sexual and mental abuse. This fact has been well documented and reported in various sources, including An Unfinished War: Torture and Sexual Violence in Sri Lanka 2009-2014 By Yasmin Sooka and the BHRC and International Truth and Justice project, Sri Lanka - Para IV - Findings.

- Evidence can also be rejected due to *inconsistency between the screening interview and full interview*. It is wrong in principle to compare records of these two events as the objective of screening interview is to invite an applicant and set out the facts which underlie his claim in the broader term rather than in great details as required in the full interview. The claimant may also find it difficult to trust the HO officials hence they struggle to truly describe events and give information they find

sensitive. The officials should be careful and consider that an account by an anxious asylum seeker whose reasons for seeking asylum may well be expected to contain inconsistencies in the process, and still be persuaded if the centrepiece of the story stands. Sources which support our argument are the YL China 2004, in which it was said that 'a screening interview is not done to establish in details the reasons a person gives to support her claim for asylum' and paragraph 198 of the UNHCR.

- Furthermore, evidence can also be rejected when the Home Office *decides that there is no clear evidence that the injuries are linked to events described* or when there is not enough medical evidence to support claim of torture. They state that it is considered that the client's injuries could be 'everyday injuries' as it can be established in many ways. However it is impossible to find evidence of the ill-treatment the victim suffers as the SL authority do not record them, simply because it is both inhumane and illegal at the international and national level and they can be held accountable, which they hope to avoid. Sources for this can be found in the International Covenant on Civil and Political Rights (ICCPR), Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture) and the Sri Lankan Constitution.

- Rejection can occur when there *is no evidence that the submitted photographs of the injuries was in fact the client's as it only show the injury*. Despite given the opportunity to gain medical evidence, no further evidence was submitted hence no weights are added to the photograph. The fact that there is no clear evidence in the photographs that links the injury to the victim is because the photographs are likely to be taken by the claimant themselves as proof and they may be unaware of the technical requirements. Furthermore, this can easily be resolved by having the officer look at the scar during the screening or interview and match it with the photographs. The scarring report, medical report and the medical treatment report can all be sources for our argument.

- *Claims of sexual assault and threats to post sensitive pictures of the client on a website are also rejected as no evidence was put forward* (psychiatric evidence). The Gender Issues in Asylum Cases Policy Document states that there may be reasons as to why a person may be reluctant to disclose information such as guilt or shame. Therefore this should not automatically count against the client's credibility. Sources for this is the Gender Issues in Asylum Cases Policy Document. It is also well documented in the 'An Unfinished War: Torture and Sexual Violence' in Sri Lanka 2009-2014. By Yasmin Sooka and the BHRC and International Truth and Justice project, Sri Lanka - Background A Page78.

- Evidence is also rejected on the basis of *'The Country of Information Report', which states that the accused cannot apply for an arrest warrant* which can easily be forged. Thus regardless of how the client came to possess this copy, no weight can be given to the document as it cannot be relied on as being genuine. It is widely known, however, that there is a great deal of corruption in Sri Lanka and the documents that the claimant possesses may not be the original copy nor an authentic one. However the claimant should not be considered at fault or lose his or her credibility due to corruption by others. How the claimant came to have the document in the first place can be found out when the claimant is questioned by the immigration officials and it is the responsibility of the Home Office to find out. Furthermore, there are ways to find out whether the documents are valid and these methods can be completed independently by the Home Office themselves or legal representatives acting on behalf of the client. Paragraph 199 of the UNHRC handbook states that untrue statements by themselves are not a reason for refusal of refugee status and it is the examiner's responsibility to evaluate such statements in the light of all the circumstances of the case. It also states that the applicant may not be able to support his statements by documentary or other proof. In most cases a person fleeing from persecution will have arrived with the barest necessities and very frequently even without personal documents. It may be for the examiner to use all the means at his disposal to produce the necessary evidence in support of the application. Even such independent research may not always be successful and there may also be statements that are not susceptible of proof.

**Return and Relocation:**

- Due to the fact that *the client has provided no evidence that the client will face hardship relocating and starting a life in the original state*, their applications may be refused. However, people are not seeking asylum to avoid hardship but because they fear persecution to themselves and their family if they return. It is unacceptable for the Home Office to argue that the claimant should relocate somewhere else where the police have not interfered yet. It is the same as suggesting that a person escaping from London to Newcastle to avoid torture as they simply will not look for them in Newcastle. The Upper Tribunal held that, in Para 169, GJ and Others, Internal Relocation is not an option for those who are of interest to the SL authority. Furthermore Lord Bingham in Januzi v SSHD argues that if the persecution is closely linked to the State, it is more than likely that a victim of persecution in some part of the state will be similarly vulnerable in another part of the State.

- *Clients may have spent 20 years in the UK and still have social and cultural ties to the original state*. This has been reason to refuse as well. The claimant shall not be removed and returned if they do not have a secure place to report to upon arrival. Those who are vulnerable and alone are especially at risk of human trafficking. Having cultural ties is not enough as the examiner must also take into account numerous other factors such as age, sex, vulnerability, health and many more outlined in Para 25 UNJRC handbook.

**Credibility:**

- *Delays in applying for asylum* can damage the client's credibility and even more so if the client has studied at university level and would have had the time to find out about asylum claims. Yet not everyone is aware of asylum claims and international protection. Most asylum seekers do not trust the officials and fear that if they contact the police, they would get deported and returned to place where they escaped from. Another reason maybe of language or other barriers. Sources for this arises from UNHCR Paragraph 198 and 190.

- *Credibility is damaged when the right to stay in the UK as a student whose visa has expired (because the sponsor withdrew their sponsorship due to the inability to pay tuition fees) and the client fails to claim asylum for a further 8 months* (given that the client had previous contact with Home Office whose information is freely available online, it is considered damaging to the credibility of the claim). The Home Office's point of view is to find fault and blame with a negative attitude. This coupled with the fact that refugees do not trust the HO and also because they fear the HO authorities due to their experience with authorities back in their country of their origin does not help. It is therefore difficult for them to open up and tell their stories at the first instant. It may take time to build trust and good relation for them to truly open up. A source for this can be found in the UNHCR Para 198.

- *Inconsistencies with the objective evidence* is a reason cited for rejection. This is because a case is judged with the guidance of objective evidence. However subjective evidence must also be used as objective evidence alone should not be relied on solely. Para 205 UNHCR (b) states that examiners should "assess the applicant's credibility and evaluate the evidence in order to establish the objective and the subjective elements of the case.

- *The fact that a client may use a false passport to illegally enter the UK is considered a behaviour which damages the client's credibility*. However if the person can use a false passport to escape from persecution, the person would take the opportunity to escape as quickly as possible as all they want to do is to escape and get away from the threats to their life. This should not be considered as being against their credibility but instead proof that the claimant is in fact fearing for his/her life. Care should be taken before placing undue weight on an fabrication told at the point of entry in order to get into this country. There may be, in certain cases reasons for telling that untruth. Some people arriving in this country may be in fear or may have very little understanding of what is required of them. Swinton Thomas LJ in Wakene v SSHD can be seen as a source for this.

- *Checkpoints at the airport and the fact that the client is unable to provide explanation as to how the client left the country is considered damaging to the credibility of his claim*. The ability to leave

the country is not inconsistent given that the claimant was assisted by an agent.

**Fear of persecution:**

- *The client being released due to a bribe without charges, warrant or court date is to be considered low profile* and the detention is informal, hence not serious enough to fall into the risk category. Since it is not in the nature of the society to behave responsibly, the strange or unusual cannot be dismissed as improbable and the decision maker should avoid re-characterising the nature of risk based on their perception of reasonable. People are not released because they have gone to trial and the SL authority no longer have interest in them. After all, the significant majority of people are not brought before a court to stand trial, instead they are forced to sign confessions without knowing its content. They are then released if they can afford bribe or 'disappear' if they cannot afford the price. They may well be picked up the next day and go through all the horrible incidents again. An Unfinished War: Torture and Sexual Violence in Sri Lanka 2009-2014. By Yasmin Sooka, BHRC and the International Truth and Justice project, Sri Lanka - International law , torture, page 99-101 are all sources for this argument.

- *The SL authority is also very relaxed and only arrest those threatening the State, others are merely subject to finger print sample, photograph and are to be released to a surety.*

  Para 201 UNHCR states that the examiner must consider all evidence both objective and subjective to make a sound judgment. The 'others' who are on the 'watch list' may well be abducted later at a more 'convenient' time and place. Again the sources are 'An Unfinished War: Torture and Sexual Violence in Sri Lanka 2009-2014.' By Yasmin Sooka, BHRC and the International Truth and Justice project, Sri Lanka - Abduction and "White Vans" pages 19-21

- The client is not interested if he or she was able to leave the country legally. GJ case suggests that there are no detention facilities at the airport hence leaving without difficulties is not probative of a lack of adverse interests.

- Another ground for refusal is that *the ability to leave the country is not inconsistent given that the claimant was assisted by an agent*. Checkpoints at the airport and the fact that the client is unable to provide explanation as to how the client left the country is considered damaging to the credibility of his claim. The background country information supports the high level of corruption and bribes which has motivated the actions of government officials. There are also daily instances of security breach at airports as these agents with knowledge of the layout can by-pass immigration control with no checks whatsoever together with corruption amongst staff at all level. Source is Para 170 Upper Tribunal GJ and other case. Mr Punethanayagam GJ and others Para 27 and 15.

- *The claim that the client felt he was being watched was not accepted as there are no evidence that the client was in fact watched or whether the watchers were the SL auth*ority. It is known that returnees can be taken into custody at the airport or later on. If it is later on, a person is often assigned to watch over the person in question which can be anyone including human right workers and charity fundraiser. The SL authority watches over the target to understand their activities and to identify them and to decide whether to abduct and/or to abduct later at a more secretive and hidden place without inference. Another reason for the 'watch' may be to scare people and this is common if the target works for a known organisation or persons in power to avoid 'complications'. Source is GJ and others case - Risk category.

- *The two colleagues disappearance is considered speculative as there is no certainty as to the reason why they do not return and no reason why their disappearance would put the client in more danger*. It is widely acceptable and known by the people that disappearances at the airport, check points or later elsewhere are very common. In fact, the former Defence Secretary of Sri Lanka was held responsible for many of the abduction and disappearances. There has been many complaints that a Presidential Commission to Investigate into Complaints Regarding Missing Persons was set up in 2013 to investigate missing persons between 1990 and 2009, It has since received over 21000 complaints with over 16000 from civilians. The claimant of course would be alert because two of his colleagues

disappeared and it is commonly known that those in custody are at real risk of ill treatment (this view is supported by the Upper Tribunal). Furthermore there are many reports that indicate that returnees are handed over to CID custody including a report which indicates that 40 Sri Lankans including 12 children and 25 women are handed over to CID and detained. It is therefore reasonable for the claimant to believe that he will be at real risk if he is to return. In addition, every returnee must declare his address. Thus the SL authority can easily arrest and torture him later if they find him to be linked with LTTE or believe him to be a threat to the State. The Human Rights report "An Unfinished War: Torture and Sexual Violence in Sri Lanka 2009-2014" written by Yasmin Sooka; BHRC and International Truth and Justice project; Sri Lanka - Abduction and "White Vans" pages 19-21 are all sources to support this argument, as well as the following links:
'http://www.pcicmp.lk/', 'http://eng.lankasri.com/view.php?22SAld0adTZYOd403cMC322cAm53 adeZBOe403eWAA2ecem5nace3JOe42' and Para 169 GJ and others.

- *The claim that the SL authorities spoke to the client's wife and questioned her about the client's whereabouts had all been received second-hand and not within personal knowledge, was a ground for refusal.* Furthermore, the client not providing evidence or explanation as to why this may be the case was also another ground. It may be impossible to receive this information first hand if the claimant was not in the house hiding at the time. Even if he did, it is not certain that the Home Office would believe the claim either way. It is therefore more likely that the claimant would have received this news second hand because these visits are common when the SL authority is investigating. The family or friends visited often deny knowing the whereabouts of the claimants and try later to warn the claimants about the visit. It is also common that the warning will not be a piece of paper in a form of a letter or through emails as this type of communication can be traced by the SL authority putting both parties at risk. Instead it is more likely to be mouth to mouth or other less visible or traceable ways. Providing proof of these visits is impossible. This is because the SL authority under the current law have extensive power allowing them to do what they wish without authorisations or paper trail as evidence of their visits pointing to their wrong doing. Prevention of Terrorism Act, Emergency Regulations and An Unfinished War: Torture and Sexual Violence in Sri Lanka 2009-2014. By Yasmin Sooka, BHRC and International Truth and Justice project, Sri Lanka - Conclusion p108, are all sources for this.

- *"The ability to stay in Sri Lanka for 6 months, which is considered a lengthy period of time without problem shows that the client did not fear for his life"*, the Home Office has argued. The fact that the claimant was unable to escape right away may be due to many reasons. The Home Office works with the presumption that people want to leave their country for "greener pastures" and disregard many factors. These factors may be because it takes time to arrange funding and route for the escape or basic reasons such as people are reluctant to leave and abandon their family, friends and other dependents. On the other hand, if the claimant was able to leave right away, the Home Office considered it 'hasty and ill-conceived'. The Report: "Still no Reason at all" published by Asylum Aid in 1999 (Para 5 - *Technical Obstacles*- page 35) is a source for this.

- *The ability to leave the country using one's own passport without any problem shows that the SL authority are not interested in the client at the time at all.* It is not acceptable that an agent would be able to avoid multiple layer of security at an international airport to allow a wanted person to leave without problem. It is accepted that it is possible to bribe yourself out of trouble with money power with no exception. There are cases of known LTTE members escaping from detention centres. It is even easier to go through any type of airport with bribery and help from an agent who has connection and money. Therefore leaving through the airport either with his/her own passport or false identity does not necessarily indicate a lack of interest on the part of the authorities. GJ and others Para 146 is a source of information.

**LTTE Involvement:**

- Inconsistent information as to whether the client is in some way connected to LTTE has been a ground for refusal. It is difficult for people to be able to tell the decision maker everything about LTTE as they are most likely

unaware of everything that goes on, after all they are often only recruited to help with operational tasks such as transport or treating the injured. Furthermore, it is totally unacceptable that the Home Office expects people who have suffered a great deal both physically and mentally to have perfect recall of everything they did and when they did what they did. Support for our argument comes from the Report: "Still no Reason at all " by Asylum Aid 1999 - Para 4 on Small Discrepancies.

- Small tasks such as "helping" is not enough to fall into the risk category. The fact that the client only has a supportive role suggests that the client is a low level member who never partook in combat and would not be considered a threat to the unity of the Sri Lankan state. However the risk categories are merely guidance and this alone should not determine or justify rejection of asylum claims. It should be considered with the subjective finding of the case to truly determine whether the person in question is at risk if the person is to be returned. Para 201 UNHCR.

- The claim of being a member of a pro-LTTE group in the UK is rejected as there is no evidence of such membership or claim that the client has participated in any demonstrations in the UK to raise the client's LTTE profile. It is a great risk to produce this requested evidence for many reasons. Firstly, being a member of pro LTTE group is illegal and banned in the UK. Secondly, organisers of the demonstration do not allow participants to take visual evidence of their protest as it could be used by the SL authority both in the UK and Sri Lanka to identify them- making it death serious. Having the evidence would also help the SL authority to confirm that the asylum seeker is in fact a pro-LTTE hence they would be at risk if they return. (Home Office - Prescribed Terrorist Organisations).

- Inconsistency as to when things take place is a reason for refusal too. Home Office had received many criticism for its 'unnecessary attention to small details' as the Home Office works with the expectation that the claimants who have suffered traumatic incidents are able to neatly provide all required evidence and have perfect recall. Sources are the Report: Still no Reason at all by Asylum Aid 1999 - Para 4 - Small Discrepancies.

- The Home Office has argued that it is implausible that the client would be able to remain in the State without harm for a long time (1 year) being suspected of serious crime. It is accepted that it is possible to bribe yourself out of trouble with money/power without exception. There are cases of known LTTE members escape from detention centres. It is even easier to go through any airport with bribery and help from an agent who has connection and money. Therefore leaving through the airport either with his/her own passport or false identity does not necessarily indicate a lack of interest on the part of the authorities (*GJ and others Para 146*).

- The fact that "*the client was unable to recall the training and the training camp*" or "*the information accounted was vague and not confirmed by objective evidence*" is another reason why the Home Office rejects a claim. They state that it is reasonable to expect a Tamil person living in such area to have some knowledge of the civil war and thus information given cannot be considered conclusive. There are many reasons as to why a person may not be able to recall details of their training and their camp. One, it is common practice, for security, that new recruits are blindfolded and taken to the camp for their training. Therefore they may not be able to recall the whereabouts of the camp or how they got there. Secondly, trainees are often just given things to do and material to use rather than properly taught about the material or trained. Therefore they may be unable to explain the method of training and the Home Office officials must take into consideration the trauma, including serious torture and other ill treatment, the claimant may have suffered and as a result that may have affected their memory. Benefit of the doubt , as explained in paragraph 196 states that claimant cannot always prove everything in their case. If the applicant had made a genuine effort and the examiner is happy with his credibility then benefit of the doubt should be given. In cases where the claimant claims to be mentally or emotionally disturbed, the examiner can seek medical and psychological advice and the application should not be disregarded

- Furthermore, the client failed to recite the LTTE oath which was claimed to be repeated on a daily basis and only gave a general gist of what

it stated. It is likely that they do not remember the full oath as the event happened a long time ago. It is fair to say that any citizen can forget parts of their national anthems and few people may know the full version of it. Normally, the case bundle will include a medical report supporting the arguments. As cited in many psychological reports, many victims are unable to recall all of the events as they can develop a blockage of the stressful and shameful memory. They are unable to calmly recite the event as they start to relive it and must have persons or tools to support and comfort them.

- The client failed to name the medical and weapon supplies despite being directly involved in treating the injured. This is because the person may have only had a supporting role- meaning that they are likely to be told what to do rather than knowing what it is they are exactly doing. For example, they just apply the medicine to the wound as they are told to do so by a superior personnel. Furthermore, during the war and while in the war zone, discussing medicine is not a popular topic and little information about the medicine is available for people to study. It is just something that does not happen. As cited by many war victims in their statements.

- Claims *that the client built boats and helped LTTE members financially merely show an LTTE connection and not that the client was a member. This is therefore is not a threat*. From the Sri Lankan Country Guidance, it is clear that not only members of LTTE are at risk but the risk category also includes many others ranging to 'anyone who is likely to face prosecution if returned to Sri Lanka' which includes fundraisers. It is right to believe that it is the courts responsibility to judge and impose adequate punishment if applicable. However the damage and suffering happens much earlier during arrest and detention. Those with power to arrest are less concerned with concrete evidence but only act on their suspicions. This means that everyone is at risk and once in custody, the people are at serious risk of being tortured or by other means mistreated and harmed. Many people are not given the chance to stand trial but are instead forced into making confessions and then have to bribe their way out or 'disappear' - GJ and others Sri Lanka Country Guidance Risk category, Prevention of Terrorist and Emergency Regulations and the 'An Unfinished War: Torture and Sexual Violence in Sri Lanka' 2009-2014. By Yasmin Sooka, BHRC and International Truth and Justice project, Sri Lanka - p101.

**Arrest and detention:**

- The fact that the client, despite being arrested on many occasions was released within days shows that the client was not considered a threat to the government. The 'release' is not necessarily a release as people are, in the majority of the time only released due to a bribe. The person accepting the bribe is unlikely to have the authority to change the status of the detainee and would usually only mark the 'release' as an escape. This means the "escapee" can still be wanted by the SL authority. (GJ and others Para 146).

- It was put forward that some people may have told the SL authority about the client's involvement with the LTTE, but this is speculative and not conclusive. If the Home Office finds the explanation unconvincing, they have the responsibility to question the interviewee further for more detailed explanation or proof for their claim. Furthermore, it is common practice that the SL authority identifies LTTE members using ex-LTTE members. This practice is often referred as "White-vaning" where masked men in a white van, and with Government authority, abducted people usually whom the ex-LTTE members pointed out were suspects. The SL authority normally do not give the arrestee the reasons for the their arrests. Hence the claimant may not be able to explain the reason why they were arrested and how it happened, simply because they are not aware of it. (Sources: An Unfinished War- Torture and Sexual Violence in Sri Lanka 2009-2014 by Yasmin Sooka; BHRC and International Truth and Justice project, Sri Lanka - Target p26.)

- The client also states that many people in the area were arrested. This suggests that the SL authority have little knowledge of who are members. It is wrong, in principle, to compare records of the two events as the objective of the screening interview is to invite an applicant to set out the fact which underlie his claim in the broad terms rather than in great detail (as required in the full interview). The claimant

may also find it difficult to trust the Home Office officials and therefore may not truly describe events and/or give information they find sensitive. (Sources: YL China Para 198 UNHCR).

- The client was unable to recall the questioning. Interrogation is not nice and simple. Reports suggest that everyone detained is violently abused. The typical scenario - client being interrogated is asked a question s/he may not have understood and before s/he can even answer is mercilessly beaten up. The questioning is likely to be in an improper manner such as shouting or screaming and the detainee is in constant fear and the more violence s/he suffers, the less s/he can and/or want to remember. (Source: the Human Rights Watch World Report 2014 - Sri Lanka p 338.)

- The claimant did not know for certain that the claimant was in fact detained by the SL authority as it may have been anybody else. It is well documented and known by organisations around the world that the SL authority abducts people without others noticing. The kidnappers are not in uniform but normal clothes making it more difficult to identify them and hold them responsible and there are no records authorising these abductions making it difficult to prove it ever happened. The abductees are blindfolded and often taken to places where they cannot be found or places that do not exist on a map or places not known by outsiders such as the media or organisations working to protect human rights. (Source: "An Unfinished War: Torture and Sexual Violence in Sri Lanka 2009-2014" by Yasmin Sooka; BHRC and International Truth and Justice project, Sri Lanka - Target p26).

**Release:**

- Inability to explain why it was so easy to be released through a bribe. The bribe-taker would not want to bring attention on him/herself when releasing the detainees. They would not want to take the risk with the money. It is well known, as confirmed in CG case of GJ that bribery and corruption is common-place in Sir Lanka, regardless of the party in power. (Source is GJ and other- Para 113 confirmation from Professors Good's report).

- Vague answers as to how the client got released and how it was achieved. It may well be that the detainee does not know. A release is likely due to a bribe or due to influence of someone powerful with connections. There are no records of these activities for the obvious reason that they did not exist in the first place or were erased to avoid conflicts. (Source: GJ and others Appendix F para 28).

- Why would the SL authority release a primary suspect of a serious crime (terrorist attack) merely on a bribe. It was suggested that the arrest was due to suspicion that the client was a member and that the group may revive. It would be unreasonable for the SL authority to release someone suspected of being a member of a terrorist group which could potentially be revived for a small bribe. It cannot be argued that only those with low interests are able to bribe their way out as it is also possible for those under significant interest to bribe their way out and still remain wanted. This is because the officer taking the bribe would not normally change the detainee's status to 'released' or 'no longer wanted' but to 'escaped' and thus the detainee's details is passed on to the national intelligence bureau. (Source: GJ and others Para 146 - Known LTTE leader can bribe out 28)

**Crossing Borders:**

Why would someone with a fear of death voluntarily return when there has been no interference from the Home Office authorities and/or whilst awaiting asylum decision. One reason may be family emergency. In some cases, a claimant may take the risk to visit their mother in hospital or attend their father's funeral.

## Asylum Appeal Process

**Taking instruction**

In the first instant of a refusal letter, the caseworker must consider discussing the possibility of an appeal with the client. The caseworker must have good understanding of various legislation, rules and policies to be able to give accurate advice as well as legal knowledge to identify possible grounds for appeal and prepare for the appeal if the caseworker believes that there is a good chance for the appeal to be successful.

On the other hand, if the caseworker believes that there are no sustainable ground for appeal, he/she should consider a second opinion and to discuss with the client their options.

**Is there a right to appeal?**

Appeal rights are subjected to limitations and exceptions. However they generally do not apply to cases regarding an unlawful decision on race discrimination or Human Rights.
Immigration decisions includes a wide range of decisions including the refusal of leave to enter and revocation of indefinite leave. These decisions are also known as appealable decisions as they may be appealed against in the Asylum and Immigration Tribunal.

However there are some grounds on which an appeal cannot be lodged. These include:

- if the person does not comply with the requirement of the immigration rules with regards to age, nationality or citizenship.
- The person does not have the necessary immigration documents.
- A person is applying to enter or remain for longer than the immigration rules allow.
- A person is seeking to enter or remain for a purpose not specified in the immigration rules.
- A decision about work permit is not an immigration decision thus there is no right to appeal.

Moreover some applicants have no right to appeal in some circumstances:

- Decision taken on national security ground or to protect interests of relations between the UK and other countries do not leave an option to appeal. However one may appeal to the Special Immigration Appeals Commission.
- A student cannot appeal against a decision to refuse entry clearance for the purpose of study if they seek a course lasting only 6 months or less or if they have not been accepted on any course.
- Dependants of the above also cannot appeal.

If there is no right to appeal, one should consider alternatives including further representation through an MP or judicial review.

**Appeals rights whilst in the UK:**

The appeal rights are available for those:

- Who appeal against refusal of entry and they hold entry clearance (however they do not have this right if they are seeking entry for a purpose contrary to the purpose the clearance was issued for).
- Who have made an asylum or Human Rights claim (unless the claim is certified as clearly unfounded'.
- Who hold a British passport.
- Who are EEA nationals, or a family member of one, (claim that the refusal decision would breach the right of entry or stay under the EU treaties).
- Who appeal against refusal of certificates of entitlement or decisions to make a deportation order.
- Who appeal against a refusal to change or extend leave or prove that the application was made before the previous leave expired and did not come within the exceptions or limitations.

**Grounds of appeal and the tribunal jurisdiction:**

Can be one or more of the following;

- the decision is not accordance with the immigration rules.
- the decision is unlawful under s19B of the Race Relations Act.
- The decision breaches Human Rights.
- The decision breaches an EEA person's right under EU treaties.
- The decision is not in accordance to law for some reason.
- The decision of removal would breach the person's rights under the Refugee Convention or the Human Rights convention

**The Tribunal's Discretion:**

- Where discretionary power is available, the tribunal has the power to decide whether the rules have been satisfied or to exercise discretion appropriately.
- The Tribunal must consider whether the decision maker has exercised its discretionary power when required. If it has not then the tribunal is likely to consider the decision unlawful and the appeal should be allowed. The Home Office should then reconsider the decision according to the

requirement of the policy and fact found by the immigration judge.

- If the Home office reconsiders the decision according the rules but based on wrong facts, then an appeal may be allowed on the basis that the Home Office should consider the facts found by the tribunal.
- The tribunal has jurisdiction to consider whether the conduct of the Home Office has given rise to legitimate expectation to which effect ought to be given.

Hearing at the Immigration Asylum Tribunal

The Immigration Asylum Tribunal deals with appeals against decisions made by the Home Secretary and his officials in immigration, asylum and nationality matters.

Main types of appeal brought here are concerning decisions to:

- Refuse a person asylum in the UK.
- Refuse a person entry to, or leave to remain in, the UK.
- Deport someone already in the UK.

Appeals are heard by one or more Immigration Judges who are sometimes accompanied by non-legal members of the Tribunal. Immigration Judges and non-legal members are appointed by the Lord Chancellor and together form an independent judicial body

The right to appeal to the First-tier Tribunal (Immigration and Asylum Tribunal/Chamber) is enclosed in section 15 of the Appeals under the Immigration Act 2014. This section is "*intended to simplify an overly complex appeals system...*" which has led to "*multiple appeals*" and the "*lodging of an appeal as of right where there is no arguable error or where there is a simple casework error that can be corrected more quickly and effectively by administrative review*".

Section 15(2) is the primary section on which the statutory jurisdiction of the First-tier Tribunal to receive appeals is established. This replaced section 82 of the Nationality, Immigration and Asylum Act 2002 (NIAA 2002). The new section 82 will now restrict the right to appeal (in non-EEA immigration cases) to the tribunal to only three circumstances:

1) where the Secretary of State refuses an asylum claim, which includes a claim for refugee leave and/or for humanitarian protection.

2) where the Secretary of State refuses a human rights claim

3) where the Secretary of State decides to revoke someone's protection status (refugee leave or humanitarian protection).

Section 15(3) repeals section 83 and 83A of the NIAA 2002 as it is considered that these provisions are no longer necessary as the circumstances in which the new section 82 provides a right of appeal are not conditional on whether the person has leave for any period of time or at all.

Section 15(4) has now replaced section 84 of the NIAA 2002; it now restricts the grounds upon which any appeal may be pursued. This section now only relates to appeals against a refusal of a protection claim, permitting and restricting grounds to that which the appellants removal would be contrary to:

- the Refuge Convention.
- "*...obligations in relation to persons eligible for humanitarian protection*".
- the Human Rights Act (1998).

The new section 84 covers both in-country human rights claims and overseas (e.g. entry clearance) human rights claims.

Section 15 removes rights of appeal against immigration decisions, bringing in new and/or revised provisions which are very restrictive in regards to the circumstances in which an appeal may be brought. It also removes various current grounds of appeal permitted by the current section 84 of the NIAA 2002. The new scheme means that it is now irrelevant whether a person would have (good) asylum or human rights grounds for appeal against a decision to refuse him or her leave. Rather, the decisive point of the relevant refusal decision would follow from the person making an asylum or human rights claim, in deciding whether the individual has a right to appeal.

Factors such as decisions to refuse leave to enter; to refuse entry clearance; to make deportation order etc, no longer attract any right of appeal. These can neither be amenable to an application for administrative review (Home Office reviewing their decision) nor a judicial review. A Judicial review of an administrative review decision may be the only remedy against such a decision.

It is important to consider whether there are human rights reasons -why leave to enter or remain should

be granted- when making an immigration application. If there is, it is then vital to decide whether to include this with the immigration application made under the immigration rules. Failure to do so will mean that any refusal of the said application will not be open to an appeal ( but could be open to administrative review and vice versa).

A human rights claim may be made when/if an immigration application under the immigration rules is refused. Many issues however arise with this:

1) Can be slower and more costly for the claimant.
2) Will have adverse implications for the claimant's continuation of leave.
3) Section 96 works together with section 120 which imposes an ongoing duty on individuals to raise new matters with the SSHD as soon as reasonably practicable after they arise.

It is possible that one can apply for administrative review of a refusal of an application, (*when there is no right of appeal*) if the said refusal is an eligible decision and as long as it is alleged that there was a case working error that had occurred.

The appeals system aims to prevent repeat representations which result in repeat appeals or late claims which then consequently leads to late appeals *(which all delay removal and deportation),* as well as unfounded claims which give rise to an appeal which would also delay removal of an individual. The system prevents the abuse of the system by such methods by maintaining various controls.

Appeals can be made in the first instance to the First tier Tribunal ( Immigration and asylum chamber) as long as the case has not been certified as a national security case under section 97 and 97A. The First tier tribunal can then either allow the appeal or dismiss the appeal.

The Tribunal can only consider a 'new matter', which has not been considered by the Secretary of State (SSHD), if the SSHD has given the Tribunal consent to do so. A new matter should not be raised before the Tribunal unless the SSHD has had a chance to consider the new matter.

Section 92 sets out where an appeal will take place. It should be read together with sections 94 and 94B which relate to certification when an appeal that would otherwise take place in the UK must be lodged after the appellant has left the UK. Section 96 provides that where the refusal of a claim would ordinarily result in a right of appeal, there will be no right of appeal if the claim should have been made earlier.

**Case Study 62**

Mr J. S is an Sri Lankan national who entered the United Kingdom with a Student Visa, using his own passport, in Apr 2010. Whilst in Sri Lanka, Mr J. S. had helped friend obtain certain items required for the said friend to leave Sri Lanka and travel to India. He helped him collect documents and obtain passport photos. Mr J. S. came to know this man after he had assisted Mr J. S.'s aunt when she had passed out from exhaustion and famine. This friend stayed with Mr J. S for approximately two weeks before he left for India. Mr J. S. assumed this friend to be a normal citizen but did not know much about him personally as they had just met. However, while Mr J. S. was in the UK, two men visited our client's mother, questioning her about the friends whereabouts as well as Mr J. S. They informed her that this friend was working against the authorities in Sri Lanka and because Mr J. S. was also now living in another country due to the fact that he had assisted the friend, they believed he too was working against the authorities in Sri Lanka. This meant Mr J. S. began to seriously fear for his life and worried that he would be taken by the authorities and tortured, even killed if he was to return to Sri Lanka. Our client also suffered from severe headaches. The Home Office rejected his case on two main grounds- they rejected Mr J. S.'s claim that his friend had" resided with him for two weeks and that his "mother had been threatened by the IB officers who are looking to harm" him. The decision was given appeal rights and it was appealed to the First tier Tribunal on the grounds that his claim had been determined "individually" (two clear and separate grounds for refusal) rather than "holistically", and that the refusal of one aspect would inevitably lead to the refusal of the other. It was also submitted that the precedent laid out in R (Sivakumar) v SSHD [2003], which required a global assessment of creditability was required. In the First tier Tribunal hearing. the judge accepted that the evidence given by Mr J.S. was broadly consistent and credible and pointed out that there was bound to be some minor "discrepancies with each retelling". The judge also stated that the appellant- Mr J.S., had clarified any discrepancies brought up by the respondent. The

account of how Mr J.S. met the friend was also accepted by the judge and that the friend had stayed with Mr. J. S. for the two weeks, and that he was a person linked to the LTTE. In total, Mr. J. S.'s claim and facts were accepted. The judge at the First tier Tribunal determined that Mr J. S. was at "reasonable risk on return of ill-treatment". The appeal was allowed on political asylum and Article 3 human rights grounds. Mr J. S. was given a biometric residence permit, for 5 years, with working rights.

**Hearing at the Upper Tribunal**

An appellant or respondent may be able to appeal to the Upper Tribunal (Administrative Appeals Chamber). If either party can find error of law on the immigration judge decision then appeal to Upper Tribunal can be lodged with grounds. Once the appeal is lodged, against the immigration judge decision, then one Upper Tribunal judge will consider the previous decision and grounds. If the judge agrees with the grounds or part of the grounds then permission can be granted by the judge for hearing to establish error of law on previous judgement. On the day of the hearing the Respondent ( normally Home Office) will send a representative and appellant representative also at the court to establish error of law in front of the judge. Sometimes Home Office may appeal against the immigration judge and the appellant will defend their initial judge decision. The Tribunal will hear the arguments of both parties and it will decide whether to uphold initial judge decision and dismiss the appeal or dismiss the initial judge decision and remit back to immigration judge for a new full hearing.

**Case study 63**

Mrs ST (69 year old) left her country in the middle of 2013 because of the problem she had with the Sri Lankan security forces. Her two sons and daughter were living in the UK. Because of this connection she managed to obtain an entry visa as a family visitor to UK and flee from her country in the beginning of 2014. Once she arrived in the UK she had 6 months visit visa and before her visa expired she claimed asylum at the Home Office in Croydon, because of her fear of persecution by the Sri Lankan SL authority. She was interviewed on her asylum application few months later in September 2014. Her asylum claim was refused by the Home Office. In the refusal letter, the respondent did not accept that the appellant had the profile of a person who remained of interest to the Government of Sri Lanka and it was not accepted that the appellant's life would be in danger upon any return to Sri Lanka. The appeal was lodged at the First-Tier tribunal and the case was heard October 15th and the judge dismissed the appeal on the asylum and human rights ground by stating that "I do not accept the Sri Lanka SL authority have continuing interest in the appellant". We lodged the appeal against the decision, which included protection under Article 8 of ECHR and permission was been granted on December 2015. The judge overturned the previous decision on the basis that there was sufficient scope to conclude that the approach to the expert evidence amounted to a material error of law. The appeal was heard by the Tribunal in May 2016 and the appeal allowed by the judge saying "there would be an interference with family and private life were the appellant to be removed to Sri Lanka".

**Case study 64**

Mrs BB came to this country in March 2011 with student visa. She was scared to live in Sri Lanka because her husband was killed in their house in unexplained circumstances. Her husband was active politically during his university life. After his death, our client also received threatening anonymous phone calls because of her political involvement with the LTTE. To save her life she fled from the country with false reason and claimed asylum when her student visa extension was refused. In January 2014 she claimed asylum at the Home Office , Croydon. She was interviewed on her asylum claim few months later and her asylum claim was refused by the Home Office on February 2015 because her claim was not adequately credible and because she left through the airport with her own identity. Also even though she was involved with the LTTE, it was a low-level of involvement. Our client exercised a right of appeal and the appeal was heard September 2015 and it was allowed by the immigration judge on asylum grounds by the judge stating that " I find that the appellant would be at risk on return, on the basis of the current circumstance in her home area, the level of militarisation, the female-headed household, her previous history of detention and arrest, the summons and the fact that she would be of interest to the authorities on her return all of which provide additional risk factors. The respondent ( Home Office) appealed against this decision and

permission was refused by the First-Tier Tribunal judge citing that the " Appellant is at real risk of persecution on return". Despite this decision Home Office appealed further and permission was granted on November 2015 and the appeal was heard April 2016. The Home Office grounds was dismissed and the Tribunal endorsed the immigration judge's decision will stand as he could find no material error of law in the First-tier Tribunal decision and subsequently the appellant was granted refugee status.

**Court of Appeal**

When the parties are unable to settle their immigration/asylum issues at the Upper Tribunal level and if any one of the parties (appellant/ respondent) thinks there is enough merit, they will take the case to the Court of Appeal to settle the legal issues. Normally whoever wishes to take the matter to Court of Appeal has to make an application to the Upper Tribunal by seeking permission to lodge an appeal at the Court of Appeal. If the Upper Tribunal grants the permission, they can lodge the appeal at the Court of Appeal. If permission is refused, it is still possible to lodge an appeal at the Court of Appeal. Then the Court of Appeal will hear that case and deliver its verdict.

**Case study 65**

Ms TK came to this country in April 2012 with a visitor's visa because she was an LTTE supporter since 2003. After the end of the civil war in 2009, the authorities started to harass LTTE supporters or members. This applicant was also arrested and tortured and later released by her parents influencing higher officials of the security forces. Immediately after her release, she used an agent to leave the country before she could be re-arrested or made to disappear by the plain clothes officers. She managed to obtain a passport and visitor's visa with the help of an agent and came to UK and claimed asylum. After the asylum interview, her claim for asylum was refused by the Home Office in August 2012. She exercised her right of appeal and her appeal was dismissed by the immigration judge. She lodged an appeal against the immigration judge decision on November 2012, and it was refused by the First-Tier Tribunal. Again she lodged an appeal to the Upper Tribunal and permission was granted in January 2013 by stating that they found error of law at the initial judgement. The Upper Tribunal heard the case in October 2013 and it was dismissed by the Upper Tribunal stating that " even though they accept her involvement with LTTE she is no longer in risk of being re-arrested on her return and her parents and siblings still manage to live in Sri Lanka. The applicant approached us at this stage and we took the case and lodged an appeal by seeking permission to appeal from the Court of Appeal in April 2014. Permission was refused by the Upper Tribunal and we lodged the appeal directly to the Court of Appeal in May 2014 and permission to appeal was refused again in November 2014. Then we exercised rights and demanded (shout) full oral hearing at the Court of Appeal after amending the grounds of appeal and permission was granted in November 2015. The case was heard by the Court of Appeal in September 2016 and it was allowed in September 2016. A few months later the appellant was granted refugee status.

**Case study 66**

JK came to the UK around September 2012 and immediately made an application for asylum. Several members of his family had involvement with the LTTE and his sister was killed fighting with them. He also joined the LTTE and was arrested six times and tortured on at least one occasion by the Sri Lanka authorities. He was released after payment was made to the authorities by his mother After several threats being made to himself and his family, he found a way to leave his country and come to the UK. His application for asylum was refused by the Home Office in October 2012. The applicant lodged an appeal in November 2012 which was heard by the First-Tier Tribunal. The Tribunal judge dismissed the claim. This initial decision was subsequently set aside due to legal error and the appeal was heard again by the First-Tier Tribunal in November 2013. The case was adjourned and reheard in February 2014. The Tribunal judge again dismissed the claim in March 2014. The applicant approached us and we took the case and lodged an appeal by seeking permission to appeal from the Upper Tribunal in April 2014. Permission was refused. We made a revised application to appeal on points of law to the Upper Tribunal in May 2014. Permission was granted. The Upper Tribunal again dismissed the case in August 2014. After two attempts, permission to appeal was granted by the Court of Appeal. The matter is still under deliberation

**Judicial Review (JR)**

When appeal rights are exhausted and all the other remedies come to an end, it may be possible to challenge the decision through making an

application at the Administrative Court for Judicial Review. If the case merited enough to lodge this application to find out the correct interpretation of law or find an answer for unsolved legal issues. In asylum cases it is common that many cases will go to the Admin court through JR application. However this approach was restricted through case law of Cart and others few years back.

## CART CASE LAW PRINCIPLE

In R (CART) v The Upper Tribunal, Mr Cart was refused judicial review of the decision of the Tribunal to refuse a revision in the variation of child support payable to his ex-wife. It was deemed that judicial review was only available in exceptional circumstances. Exceptional circumstances are seen as

1. when a material error of law is made by a public body which renders its decision a nullity
2. the existence of special factors which fully justify allowing a judicial review
3. un-appealable decisions
4. when the appeal would raise some important point of principle or practice or there
   is other compelling reason for the appeal to be heard

**Case study 67**

Mr. SS left Sri Lanka on a student visa after he was detained and tortured by the authorities for his involvement in the LTTE. He arrived in UK in October 2003. He returned to Sri Lanka whilst a student in 2006 and he was detained by the police again for his past activities with LTTE. He cut short his holiday and was able to return to the UK. On his return he claimed asylum from the Home Office. He was detained by the Home Office and sent to the detention centre. His case was fast - tracked and within 7 days it was heard. His application for asylum was refused by the Home Office. The applicant lodged an appeal against this refusal. The appeal was heard by the First - Tier Tribunal but it was dismissed by the judge in November 2013 stating he had no right to remain. We sought permission to appeal to the First-Tier tribunal in November 2013 which was refused. We lodged a second appeal seeking permission to appeal to the Upper Tribunal also in November 2013. This was again refused by the Upper Tribunal. At this stage we nearly ran out of appeal rights. After the refusal of the second appeal, we were left with no choice but to apply for a Judicial Review as removal direction was set up to remove Mr. SS by end of November 2013. We submitted the application to the High Court in December 2013. This application was unsuccessful under the CART principle. We revised the grounds and applied to the Court of Appeal in April 2014. This was also unsuccessful. At this stage all appeal rights were exhausted and the client continuously feared for his return. Subsequently new evidence emerged which resulted in making a fresh asylum claim.

[ NB: Application for a judicial review is risky in that the Claimant can have the application refused. If this happens, it will be a costly process and payment will have to be made to the Home Office in the region of tens of thousands of pounds. If, however, the applicants application for legal aid is successful then the costs of the hearing will be covered. If not a privately funded appeal is extremely costly].

## DETENTION AND REMOVAL

The 1971 immigration Act gave power to the immigration officers and home office to use detention as a tool to control or punish travellers where the officers thinks it is appropriate. This practice included asylum seekers as well.

The person who left his/her native country with a view to claim asylum also can be detained on arrival at the airport or ports of entry. The officers can detain the particular person and the particular asylum seeker can be deported to their native country if the officer thinks his claim is false or he breached immigration rules. The biggest setback in the legal system is that there is no legal representative allowed or available at this stage. If the officers decide or consider his asylum claim, then the person can be released on temporary admission or alternately detained at the holding centres until the officials wanted them to be released. Many asylum seekers do not know about the law and system in this country. They will end up in long-term detention unless some of their relatives or well-wishers get involved to advice them to obtain legal advice. The immigration act which came into force after 1971 gives more power to the officials to criminalise the immigrants or asylum seekers by simply saying "you entered in

this country without your own passport" or "you entered in this country with a false passport" or "you entered without valid visa" or "you entered into this country without satisfying the conditions" and so forth. In a way the government uses this practice as a tool to scare the people and reduce the net migration figure in UK. On one hand the politician will say the genuine refugees are welcome and we will comply with the 1951 Geneva convention agreement; yet on the other hand the government practice contradicts that statement. Clearly the 1951 Geneva convention is saying the refugees cannot flee from their government officials with their own identity therefore asylum-giving countries should not expect the asylum seekers to arrive in any particular country with their own passport or valid visa. In the legal system, it may take time for an asylum seeker to establish he/she is a genuine refugee. In practice, however, port officials or home office officials can make their decision by simply looking at a person and deciding he/she is not a genuine refugee and therefore liable to removal.

**Case study 68**

Mr KN came to this country in June 2008 and claimed asylum at the port of entry. He was charged by the airport officials for entering the country without a valid passport. Consequently, he was convicted at Uxbridge Magistrates Court and sentenced to 12 weeks (3 months) imprisonment because not having a passport was against the law in force (Asylum and Immigration Act 2004). After his release, his claim for asylum was considered and he was granted refugee status. Eight years later, in 2016, he made the citizenship application and it was refused on the grounds that he was found to be of no "good character" as he had been imprisoned for a period of less than 12 months in 2008 and ten years had not passed since the end of his sentence. The applicant was found to be of "no good character" under the naturalisation requirements. We are now assessing the merits to challenge this decision to lodge a JR application because there is no appeal rights against this decision and also applicant lost around £1200 pounds in application fees.

**Case study 69**

Mr. MK came to this country in 2008 and claimed asylum . He was not successful with his asylum claim and his appeal rights was exhausted. However applicant obtained new evidence to show he was at risk on return to Sri Lanka and he made a fresh claim in 2010 complying with his reporting condition. During his stay in UK, he married another asylum seeker and notified Home Office of the relationship. The couple were not allowed to register their marriage life in UK because they did not have valid passports or leave . When he went to Becket House in London Bridge to report in September 2011 he was detained. One week later his fresh claim was refused and he was served a removal order to Sri Lanka. The legal representative raised the issue about his relationship with another asylum-seeker whose asylum claim was under consideration by the Home Office at that time. However this representation was ignored and he was removed to Sri Lanka. Efforts to lodge JR application and take injunction against the removal was not successful due to the time constraint. Later, however, his wife was granted refugee status. With this status, she could not return to Sri Lanka. After she obtained travel documents she went instead to India in 2015 and registered her marriage. He joined her in India and they spent time there together. Several months later she gave birth to a son in the UK and the son was also granted refugee status. Now Mrs NM (and her son) want to reunite with her husband and, she is earning enough money. She sponsored her husband to apply for entry visa for the UK. This application was refused by stating that as Mr MK had been deported from the UK the Home Office policy is that he may not return until after ten years. The family is separated because of the law and system in this country and their son is growing without the father's input or care. The applicant lost his asylum claim but he could have been considered under article 8 (family life). Instead decision makers refused to consider his article 8 rights properly and this resulted in him being deported and thus separated from his family. His son does not know him and continues to grow without his father.

**Relevant Laws**

The Immigration Act of 1971 allowed detention of individuals at the discretion of the immigration officers at ports of entry

The Nationality Immigration Asylum Act (NIAA) of 2002 extended this power to the Home Office so that those people who make a claim for asylum or human rights could also be detained

The UK Borders Act of 2007 introduced automatic deportation for non-British citizens who are convicted and sentenced for a "particularly serious

offence" or are sentenced to a period of imprisonment of at least 12 months for any offence.

The Enforcement Instruction and Guidance Procedures of the Home Office governs all aspects of detention and removal.

The Asylum Immigration Act of 2004 spells out the treatment of claimants for asylum seekers.

**Policy guidance for enforcement**

The Home Office policy on detention is governed by the Enforcement Instructions and Guidance (EIG) procedures of the SSHD. This covers the normal situation of persons entering the UK. It is presumed that there will be temporary admission for all, at the different ports of entry, subject to the discretion of the immigration officers.

In principle, detention is used where the Home office or immigration officers

- want to deport someone
- want to establish someone's identity
- want to establish someone's basis of claim
- think there is reason to believe that the person "disappear" if allowed leave to enter

There are specific rules governing the treatment of persons who should never be detained. In each case , except in the case of undisputed minors, there must be "reasonable grounds" for such persons not to be detained

Persons who should not be detained are:

- Unaccompanied children and young persons under 18 years.
  Disputed minors- i.e. persons whom SSHD officials state are over 18 but who are claiming to be under 18- may fall under this category if they can prove they are under 18
- The elderly who require constant or significant supervision which cannot be provided in detention
- Pregnant women deemed at risk
- Persons with serious medical conditions
- Persons with serious mental illness
- Persons with proven evidence of torture
- Persons with serious disabilities who require constant or significant supervision not provided in detention
- Victims of trafficking

Most of the persons who meet the criteria above will not be kept in detention.

For those who end up being detained, there are grounds to challenge this.

In the first instance, based on the Hardial Singh principle. In this case *R v Governor of Durham Prison ex parte Hardial Singh (1984)*, it was maintained that

- the SOS must intend to deport the person and can only detain the person on that grounds
- the deportee must only be held for a " reasonable period"
- if deportation cannot be carried out within a reasonable time period the person must not be detained
- the SOS must act diligently to ensure effective removal

If these conditions are not met, the detainee can challenge the right to be detained.

In the second instance, detention can be challenged on the basis of public law error which consequently leads to a person being "falsely imprisoned" and makes the detention unlawful.

For example in the cases of *Lumba v SSHD and Kambadzi v SSHD*, the Supreme Court deemed it was not lawful to keep the person detained after they had served their prison sentence as this detention was not rested on a lawful decision. In the case of Kambadzi, he was entitled to damages

**Case study 70**

ST came to this country with student visa in 2013. Few months later, she claimed asylum at the Home office in Croydon. After the asylum interview, it was refused. She exercised her right of appeal and it was heard by the First Tier Tribunal in Oct 2013. The appeal was dismissed by the immigration judge stating that the appellant was of no interest to the authorities in Sri Lanka and that her claims lacked proof. Her credibility was also challenged. She again exercised her right of appeal to the Upper Tribunal and the permission was granted because of an error of law on the part of the first tier judge who failed to properly address evidence, explanations and make adequate findings as to her claims and who wrongly applied

sections of the asylum & immigration Act 2004. The case was heard by the Upper Tribunal judge in Feb 2014 and subsequently dismissed. Further attempts to take this matter to the Court of appeal was not successful and consequently her appeal rights were exhausted. She subsequently obtained new evidence about her continuous fear of persecution on her return and she made a fresh asylum claim at the Liverpool office. Few months later on her routine monthly reporting she was detained and a removal order was served. During her detention, she raised issues with the caseworker at the detention centre and her previous torture was confirmed by the doctors in the detention and rule 35 report was issued by the doctors. Based on this report, the Helen Bamber Foundation offered an appointment to prepare the full medical report in support of her fresh claim. Despite all this evidence, her fresh claim was refused and removal direction was set for middle of May 2015. We challenged this removal by lodging a JR application and obtaining an injunction order against the removal. Few hours before the removal, the duty judge heard the case over the phone and issued an injunction order that night around 00.15hrs. It was served to enforcement officers and she was stopped from her removal in the early morning to Sri Lanka. Even after this injunction order, the officers refused to release her on bail and we challenged her unlawful detention as well. A week later Home office released her on temporary admission and later permission was granted for a full hearing on her JR application. Other similar cases were also listed together to establish the point of law and the case was heard. The judge concluded that the Home Office (defendant) acted unlawfully in failing to take decision on the further submissions of the claimant in support of her case, and set aside the first judgement. In addition, the continued detention of the claimant after the submission was made was said to be unlawful and the judge awarded damages to the claimant. The Home office allowed her application for asylum to be heard as a fresh claim.

**Fast Track**

Under the fast track system, cases of claimants should be heard and a decision taken by the Home Office within two weeks of hearing. In practice ,however, this was not the case. A significant number of asylum seekers found themselves being held at the detention centres for long periods of time without any hearing or granting of temporary leave to enter the UK. It was determined that because it was easier for the authorities to have all applicants at a place where they could " keep an eye on them", they held them in detention.

This process was challenged at various times by applicants- as being on the fast track implied that claims would invariably be refused. Some applicants have been held for very long periods at the various detention centres which resulted in some illegal detentions. Due to many problems encountered with this practice, this procedure was discontinued in July 2015.

**Deportation or Removal**

Deportation or removal is another tool used by the Government to scare the international community seeking protection under the Geneva refugee convention, or other people wanting to visit the UK for various reasons. This is triggered with the media or the agenda set up by the Government when facing elections. In our observation, if it is going to be an election year we can expect to see charter flights booked and heavy number of deportations or removal taking place to balance the statistics and show the wider community the effectiveness of government. Moreover on many occasions the media or government fail to acknowledge the contribution made by the migrants. The systemic changes in the law and policies allow the officials to carry out removals or deportations regardless of the circumstances of the particular deportee. Many JR applications or injunctions against deportation are successful because the officials are not even complying with their own policies or applying the law appropriately. Further barring the people *(those deported)* for ten years is another way to prevent the people to return to UK. Due to this the families and children split up and uncertainty hangs around many migrants.

**Removal** (administrative removal), is the process of a country denying entry to an individual at a port of entry and expelling them. In other words where a person has not been granted a visa , e.g. the person smuggled into the country, and he/ she is stopped at a port of entry, if their claim for asylum or leave to remain is refused, that person can be subject to removal.

If, on the other hand, a person is granted a visa and on arrival the immigration officer is not convinced of their credibility, the immigration

officer may, after further investigation, revoke their visa and deport them. **Deportation** is the expulsion of a person or group of people from a place or country after they have acquired the legal right to remain in the country. Deportation often requires a specific process that must be validated by a court.

**Relevant laws**

The Immigration and Asylum Act 1999 Section 10 allows immigration officers to direct the removal of non-British persons deemed to be unlawfully in the UK. Unlawfully in the UK is further defined under the Nationality, Immigration and Asylum (NIA) Act 2002 as any person who is in the UK but who does not have the right or leave to remain in the UK. The law however provides that such persons who have already made a claim for asylum will not be removed until a decision has been reached on their claim.

The secretary of state has the right under the NIA Act to revoke a person's right of leave to remain under various circumstances but especially if such a person commits a criminal act which makes him liable for deportation. Where a leave to remain is obtained with deception, it can also be revoked and the person deported.

There are certain factors that will be considered in determining to deport or remove a person. These include: age, connections in UK, personal history, marital relationship, domestic circumstances, criminal record, compassionate circumstances and representation

Further consideration will be given to the period of time already spent in the UK whether lawfully or unlawfully.

**Policy guidance for enforcement**

The Home Office policy for detention and removal as stated in the Enforcement Instruction and Guidance Manual (2008 *paragraph 12:11*), states that "detention should always be for the shortest possible time" and that "individuals should only be detained where necessary" (*paragraph 12:10)*. Determining "where necessary" remains at the discretion of immigration and other enforcement officers.

It is largely expected that enforcement officers will ensure that there is a strong grounds for believing a person will not comply with conditions of temporary admission and /or all reasonable alternatives are considered BEFORE a person is detained.

In practice, where removal is imminent, the person is detained. When or if however, it is realised that the removal cannot take place as intended, the person must be released. However for administrative convenience, the Home Office has detained individuals for long periods of time....whilst their papers for removal are being processed.

Officials cite the detention criteria as the basis of doing so- *paragraph 12:11* of the enforcement guidelines assures that "*the Government is satisfied ….there should be no legal maximum period of detention*". Thus, for example, even though under the fast track system, provision was made for maximum seven days detention, in practice...people have been kept for up to three months and more with neither a decision made regarding their asylum claims nor gaining release from detention.

In effect, asylum-seekers are kept imprisoned for not committing a crime. This is contrary to Home Office policy which states that once detention has been authorised, it must be kept under review to ensure it continues to be justified. Failure to do this implies that the individuals in detention are being held unlawfully.

In our observation, where an individual has committed a crime and is liable for deportation, their detention pending removal is deemed justifiable no matter how long they are held within the confines of the law. In this case we assume, however, that where it becomes absolutely clear that the person cannot be deported, then arrangement must be made for their release or an order secured for their continued detention in order to comply with Home Office policy guidelines.

In practice detainees are not aware of their rights whilst they are in detention. The legal representatives who holds the contract to deal with that particular detention is the only person who can take the case under the legal aid scheme for free representation. Lack of choice in the legal representation also causes problems for the detainees. They cannot choose their preferred solicitor for their matter. Also the solicitors holding contract are not keen to take up the matters for

various reasons. The private solicitors are also reluctant to take up the cases because of the formalities and red tape involved (time constraints; visitation constraints; heavy security issues). Furthermore the detainees are not aware of their bail rights and knowledge to make the bail application. On the other hand the officers assigned to review individual detention cases do not inform detainees about routine review outcomes. Also the officials are unable to give precise reasons for the detention thereby confusing detainees. What happens effectively is that standard forms (*IS.91R*) which should give "notice to the detainee" are completed at the discretion of the officials - these forms should give the detainee reason why he/she is still being kept in detention (some reasons stated are- you are likely to abscond; your removal is imminent; you have not produced evidence of your identity etc). In most cases, the form is ticked off and given back to the detainee with no explanation as to what is written on it. If the detainee does not speak English, then he/she has no clue as to what is on the form. This causes a lot of confusion for the detainees.

**Case study 71**

Mr RS came to this country as an asylum seeker in October 2014 and entered this country hiding in a lorry assisted by the agent. On his arrival the lorry driver communicated with his relatives in UK and informed about his arrival. The driver left. Mr RS relatives went and collected him and the next day brought him to our office. We advised him on the asylum-claiming procedures and made the appointment with Home office for him to visit the Asylum Screening Unit (ASU) in Croydon. One week later, as scheduled, he went for his appointment at ASU Croydon. After his initial interview, he was detained at *Harmondsworth Detention Centre* with officials stating on form *IR91R* that he is an illegal entrant and liable to deportation. The next day at the detention centre doctors made an examination and produced rule 35 report which confirmed he is a torture victim - the scars on his body was evidence. Despite this report, officials kept him for 3 weeks to find out whether he could be removed to any one of the other European countries he passed through en-route to the UK. But, in keeping with what the applicant had told the officials, no evidence was found that he had applied for asylum in any other country. Because of TWAN's persistent intervention and legal action, he was released and one year later he was granted refugee status. In detaining Mr RS, the Home Office breached two of its own policies-

*(i) where evidence is clear that he has not applied for asylum elsewhere, his claim is to be considered*

*(ii)where an individual is found to have been a torture victim, the guidelines state he/she must not be detained*

In this case he was kept unlawfully for 21 days before being released.

## ASYLUM FRESH CLAIM AND HUMAN RIGHTS

The current asylum claim system, and legal system does not adequately deal with applicants' new evidence. In practice, any new evidence or change in the native country political system is not considered after the First-tier tribunal stage. This is one of the reasons applicants have to appeal to and wait for the higher court outcome and if it is not positive then they have to make a fresh claim with new evidence once their appeal rights are exhausted. Another reason is the ever changing political situation which triggers the applicants "risk on return". The third reason is that even though the applicant has not qualified for asylum, *their removal may not be achievable and their mental health problem related to their country situation may have to be reconsidered under the article 3 of the ECHR.* When the applicants are in fear, even though the decision makers decide the applicant is not going to get any adverse treatment by their authorities, applicants may refuse to accept the decision and take risk by returning to their native country. Though in asylum cases the law says " lower standard of proof" is enough to convince the decision maker to make positive decisions in favour of the applicant, in practice the decision makers expect higher level of evidence to succeed on their claim. Most particularly evidence to support a claimant's risk on return is very hard to build up—.

**Relevant laws**

Fresh claims are governed by the Immigration rules (*referred to as HC395*) in Section 3 (2) under the Immigration Act 1971. Rule 353 states:

*" 353. When a human rights or asylum claim has been refused or withdrawn or treated as withdrawn under*

*paragraph 333C of these Rules and any appeal relating to that claim is no longer pending, the decision maker will consider any further submissions and, if rejected, will then determine whether they amount to a fresh claim."*

Subsequent submissions will be allowed as a fresh claim if

1. the content of the submissions are **significantly different** from what was submitted before and has not already been considered and

2. **taken together with previous material considered**, the claim has " **a realistic prospect of success"**

The Home Office policy is that all evidence in support of a claim should be submitted at the start of an application. When this is not done, they are reluctant to consider further submissions unless in exceptional cases.

The case of Ladd v Marshall (1954) sets out this principle.....material would only be admitted where it could not, with reasonable diligence, have been put before the Judge in the earlier appeal.

**Home office policy on fresh claims**

The Home Office uses the following criteria to determine the exceptional situations under which fresh claims would be considered:

1) Significantly different material
   a) If this material was not considered before, why was it not considered
   b) There must be good reason why it was not submitted
   c) Where did this new evidence come from- is it genuine and can it be proven to be genuine
2) Taken together with previously considered material
   a) what is being submitted should be new but additional evidence
   b) This submission should confirm or prove that what you submitted earlier has materially changed or altered and should be considered afresh
3) Realistic prospect of success
   a) Is the new evidence relevant to the applicants case
   b) Is the evidence credible in relation to the applicantjjjjjjj

The Home Office can then make any one of three decisions:

1. In the first instance, Home office can accept the new evidence submission, treat the application as a fresh claim and grant refugee status, humanitarian protection or leave to remain to the applicant

2. Secondly the home office can accept the new evidence submission for a fresh claim but refuse to grant protection or leave to remain on human rights grounds. In this case, the home office will allow right to appeal to the applicant. Experience has shown that this is a good thing as the applicant stands a good chance of being granted leave by the Courts.

3. Thirdly, the home office can decide that the new evidence is not significantly different and is therefore not a new claim. The claim is dismissed and there is no right of appeal granted.

**Case study 72**

Mr. RS came to the UK as a student in Oct 2008. In Oct 2010 he requested further leave to remain and got married in Nov 2010. His application for leave to remain was refused and he returned to Sri Lanka in Mar 2011. He applied for a spouse visa whilst in Sri Lanka and after two attempts was granted the visa in Nov 2011. He returned to the UK in Dec 2011. In Feb 2014, he applied for further leave to remain as a spouse but this was refused in Mar 2014 as he was separated from his wife. He then applied for asylum in Oct 2014. Asylum was refused in Apr 2015. He however appealed against this decision but the case was dismissed in Sept 2015. He exhausted his appeal rights. His mental state deteriorated ( severe depression and anxiety) and he attempted suicide. TWAN was approached and in July 2016, new submissions were presented as grounds for a fresh claim which including article 3 of ECHR related to his deteriorating mental health issue and that he is unable to get appropriate treatment and care on his return to Sri Lanka. Furthermore new evidence emerged of his risk of fear of persecution on his return to Sri Lanka. The case is ongoing

**Case study 73**

Ms LR arrived in the UK in Oct 2007 on a false passport and on arrival was issued with an Illegal entry (entry without leave ) notice. She claimed asylum in Nov 2007 and this claim was refused by the First-tier tribunal in Aug 2009 because it was found that the claimant was not credible and that she had no risk on return to Sri Lanka. She submitted a fresh claim in Nov 2010 and this was refused without right of appeal. She lived in the UK without leave for a few years and , following advice, she approached us to prepare and submit a fresh claim for asylum on her behalf. This was submitted in Sept 2013. Whilst these submissions were being considered, the claimant married in Mar 2014. We then sent a second submission to the Home office in the form of a letter in Apr 2014 to inform them of this additional evidence to be taken into consideration in the deliberation. Home office replied in July 2014 refusing the fresh claim and stating that the marriage was not genuine. Appeal rights were exhausted. We commenced procedures, in Aug 2014, to apply for a judicial review of the decision to refuse the fresh claim. The home office initially refused the submissions. We applied for JR and whilst the matter was under consideration, the claimant had a baby. The home office reviewed her submissions and she was granted leave to remain in Oct 2016.

## EUROPEAN COMMUNITY LAW

This is the one piece of law allowing the migration and free movement among the European member states in recent years. This European Community law hugely facilitated third country nationals to move around and seek employment in the other member states and most particularly reuniting with their family members- in particular, the refugees who fled from their native countries without knowing their destination and ending up in different countries. The EC law facilitates them to reunite when they obtained the citizenship of that European member state. It is beneficial globally for everyone- individuals can chose or leave the member state according to their need and wish to fulfil their lifetime ambition. On the other hand the economy of individual countries can benefit from other member state persons coming in for employment reasons and thus contributing to the economy. Any particular member state which is lacking particular skills and relevant type of personalities can attract the correct type of workers from another member state. The individual governments of each member state can also have the opportunity to work with the other member states closely without much bureaucratic approach which will facilitate the particular nation to become a politically stabilised strong country. E.g. in the areas of security, intelligence gathering and helping each others' countries to establish themselves further - as achieved over the 30 years period of the European Union. It was also an example for the world as to how countries can come together and work together to build up the "ideal" world together instead of speaking nationalisation or separatism. This great piece of law and achievements is now put in question through the Brexit voting result of June 2016.

**Relevant laws**

Following the founding of the European Council in 1949, the European Convention on Human Rights is in force between contracting member states.

When the Treaty of Rome was signed in 1957 bringing the European Economic Area into existence, the six countries signing the treaty established a common market based on the unrestricted movement of people, goods, services and capital. This was to ensure development of prosperity and to promote development to the highest level possible for all the citizens of the territory. By 2004, the EEA had become the European Union(EU) and comprised 28 member states. The EU directive of 29 April 2004 (Council regulation 2004/38) gave rights to citizens of the Union and their family members to move and reside freely within the territory. This law was incorporated into the Statute of the UK as *The Immigration (European Economic Area) Regulations 2006* and came into force on 30 April 2006.
With this law, non-EU citizens who were married to EU citizens could acquire retained rights or continued rights of residence in the United Kingdom even in the event of divorce or death of the EU spouse or partner.

Welfare benefits also became accessible to EU nationals (like UK nationals) provided they are deemed to be resident workers living in the United Kingdom.

**Policy guidance for enforcement**

The EU directive of 29/4/2004 gives every citizen of any of the member states the right of entry, right of residence and right to work in the United Kingdom within the parameters of the existing laws

of the United Kingdom. The *Immigration (European Economic Area) Regulations 2006,* deals in detail regarding residency rights of EU citizens in the United Kingdom.

**Right of entry**

Article 5(1) of the Directive provides that every EU citizen and their family members have a right of entry to any other member state on production of a valid identity card or passport.

**Right to work**

This is in some way linked to the right of residency. There is a right of residency for *qualified persons* who are in the UK as jobseekers, workers, self-employed persons, self-sufficient persons and students. Dependant family members of qualified persons who are EEA nationals also have an automatic right to work. However, family members who are non-EEA nationals must first be registered and obtain a residency permit before they acquire the right to work.

Right of residence

Article 6 of the Directive provides for an initial right of residence for up to 3 months for EEA nationals and family members as well as an extended right of residence where the required conditions are met

**Residency applications**

EEA QP - Residency permit for EEA national qualified persons

EU citizens have a right of residence if exercising Treaty rights and have come to the United Kingdom to work or are looking for work or are self sufficient individuals or registered as self employed or are students. Such persons are considered qualified persons (QP) and they can confirm their rights of residence and apply for registration. In our community, there are European nationals who fled Sri Lanka during the civil war and later because of human rights violations. They obtained asylum or refugee status in other European countries. They have now exercised their treaty rights and are living in the United Kingdom without restriction. In the wake of Brexit, it will be a prudent move for all EU citizens living in the United Kingdom to ensure that they are properly registered. This is not a compulsory requirement but since it is unclear how the BREXIT negotiations will play out, it is advisable that EU nationals wishing to reside in the United Kingdom regularise their status and ensure they are properly registered as residents before 2019. Residents who travel abroad regularly should also consider applying for the European Health Insurance Card (EHIC) to ensure access to healthcare whilst abroad.

Residency registration can be done using form EEA QP. The application should accompany documents of identity and 2 passport photographs of the applicant as well as proofs that they are exercising treaty rights in the United Kingdom in one of the prescribed forms. The processing of the application attracts a fee of £65. The registration card is valid for five years.

**Case study 74**

Miss MM, an Italian national came to the UK in Sept 2015 exercising her treaty rights as an EEA national. She is employed and earning £1100 per month. In Jan 2017 she applied for registration certificate under EC law. She submitted her application with the required fee of £65.00. Her application is under consideration

**Case study 75**

Mr. KN a Swiss national came to the UK in 2012 and joined his family who relocated in 2011. He is self-employed and earning around £11000 per annum. He applied for and obtained the residency registration certificate in Dec 2016.

EEA FM - Residency for dependant family members of EEA national qualified persons

There are two categories of dependent family members of EEA nationals: dependants who are EEA nationals and dependants who are non-EEA nationals. In both cases they must prove that their family member is exercising treaty rights in the United Kingdom and that they have a subsisting relationship with their EEA national. A dependent family member can be the spouse or civil partner of the EEA national, a dependent child or grandchild of the EEA national (or of their spouse/civil partner) or the dependent parent or grandparent of the EEA national or of their spouse/civil partner.

In order to apply for residency for any of these two categories, form EEAFM has to be completed. One form must be completed for each family

member and a processing fee of £65 must be paid for each member. The dependants will be issued with a registration certificate (if they are EEA national) or residence card (if they are non-EEA national).

Included as family members are

- a person who is no longer the family member of a relevant EEA national but who has retained his/her right of residence under EU law, or

- the family member of a British citizen who you lived with in another EEA Member State before returning to the UK

Note however that if the EEA national only has a right of residence as a student, then the dependant family member can only be the spouse or civil partner of the EEA national, or the dependent child of the EEA national, or of their spouse/civil partner

**Case study 76**

Mr. VS who was granted refugee status in Denmark in 1980 married to a Danish national and moved with his family to the UK in Mar 2004. He held a Danish alien's passport on his arrival in the UK and applied for and obtained a registration card which expired in May 2016. Meanwhile, his Danish alien's passport expired in 2011 and , since he had lived outside of Denmark continuously for more than twelve months (2004-2011), his application for a new alien's passport was refused by the Danish authorities and he lost his permanent residency in Denmark. When he re-applied therefore for a new UK registration card in July 2016 he was without a valid identity document and his application was refused. As a refugee, he could also not apply for a Sri Lankan passport. We had to obtain documentation to verify his identity (father's birth certificate, old residency cards as well as other relevant proof of identity) and submit his application for residency. We await the decision.

**Case study 77**

Mrs PA first came to the UK in 2011 with her daughter's family (her daughter's husband was a German national) as a dependent family member of an EEA national. She lived with the family for the next 5 years in the family unit and never moved away to go and live on her own. Her son-in-law and daughter continued to work in this country and obtained P60s annually. She initially applied for and received a non-EEA national residency card which was issued in 2012. After five years, the whole family applied for permanent residency exercising their acquired rights. The applications were approved and Mrs PA received a permanent residency card and her EEA family members obtained their permanent residency certificates.

<u>EEA EFM - Residency permit for extended family members of EEA national qualified persons</u>

An extended family member (EFM) can be a relative of an EEA national or a member of their household who has residence in a country other than the UK or is living with them in the UK and who is dependent on the EEA national. A partner of an EEA national will be considered to be an extended family member if he/she can prove to have a durable relationship with the EEA national.

Thus an EFM can be a brother, sister, cousins, uncles, aunts, fiancé /fiancée etc as long as they meet the stated conditions.

In practice, each EFM must hold a valid passport in order to be considered for residency. They must also be able to prove the nature of and justify the relationship with the EEA national so as to show financial, emotional and other dependency.

**There has been a modification to this definition however, and from 1 February 2017 the rights of extended family members only applies to <u>relatives of the EEA national</u> and not to relatives of the EEA national's spouse or civil partner.**
In order to apply for residency as an extended family member, form EEAEFM has to be completed. One form must be completed for each extended family member and a processing fee of £65 must be paid for each person.

**Case study 78**

Ms. PS arrived as a student in the UK in Jan 2010 with a student visa. Her visa was extended to May 2015. Her uncle who is a Dutch citizen living in the Netherlands moved to the UK in Aug 2014. He had been taking care of his niece since they lived in Sri Lanka so when he moved to the UK, she applied for residency as an extended family member of an EEA national in Jan 2015. Her application was refused on the grounds that there was not sufficient evidence of her dependency on the EEA national both prior to and whilst living in the UK. On rejection of her application, she

withdrew the case from TWAN and contracted another firm of solicitors who was known to her family member. By the time the hearing came before the First-tier Tribunal, the decision had been made in the case of Sala Vs SoSHD. The judges concluded that with reference to Sala (2016) she was not entitled as an extended family member to have her visa extended. After the decision was made, the firm of solicitors did not take further action. Although TWAN was not able to further appeal on her behalf as she had withdrawn the case from us, we recognise that the appeal was poorly prepared by the new solicitors and this contributed to her losing her appeal. In TWAN your case is our case and we endeavour to represent each client with every resource at our disposal so that we will receive a favourable outcome as far as possible.

EEA PR - Permanent Residency permit for EEA nationals

EEA nationals or non-EEA nationals who have lived in the UK for a continuous period of five years and who wish to confirm their right of permanent residence can apply for this using form EEAPR.

Persons who can apply must be an EEA national qualified person (QP), or a family member or extended family member of an EEA national QP or permanent resident.

One form must be completed for each person applying and a processing fee of £65 must be paid for each member.

**Case study 79**

Mr. PA , a German citizen, arrived in the UK with his wife (a non-EEA national) and child in Dec 2009. They applied for residency and were registered and issued the certificates/card in Oct 2011. His second son was born in the UK. In Oct 2016, after working continuously in the UK for 6 years, he applied for permanent residency completing the required application form for himself and each member of his family. His application was approved and the family members were issued permanent resident certificates and card.

**Case study 80**

Mr. KJ, a German citizen living in Germany, married a non-EEA national and they had two children. In Mar 2009 he moved with his family to the UK. They applied for and were granted residency certificates and card (for his wife) in Jun 2009. These documents expired in July 2014. In June 2014, Mr KJ applied for permanent residency with his family in accordance with UK Immigration/EEA regulations for EEA nationals/ family members who have resided in the UK for a continuous period of 5 years. His application was refused by the HO on the basis that there was a lack of sufficient evidence of income during certain periods of his employment and self-employment, and that therefore during those periods he was not exercising his treaty rights. He appealed and the case was brought to the First-Tier Tribunal. The Judge admitted his appeal and saying that he found the appellant and his wife to be credible witnesses and that the evidence supplied (documented and oral) was sufficient to prove that he had resided for a continuous period of more than five years as an employed and then self-employed person. The family was awarded permanent residency.

## ENTRY CLEARANCE

UK immigration law requires any person intending to enter the UK from specified visa-national countries to obtain an entry visa before the start their journey. The visa nationals are defined as nationals or citizens of countries whose nationals are required to obtain entry clearance before travelling to the UK. The list of required countries can be found as an annex of the immigration rules 2017.

Distinction must be made between the entry clearance requirement for first-time visitors (which we will discuss in this section) and the residency stipulations for non-EU individuals who already live or are in the UK and wish to regulate their resident status (discussed in another section of this report).

The requirement for visas, however, is not applicable to people fleeing persecution who cannot be expected to go through this procedure. Birds and animals can migrate without restriction; yet, even though our civilised world has "grown smaller" through technological communication developments and air travel, movement by humans is still controlled by entry clearance/visa restrictions into countries. The restrictions have

become tighter in the United Kingdom since the first Immigration and Nationality Act was established in 1971. European Governments coming into power have effected this process even though they are aware that migration is needed for the countries like UK for many reasons. They are reluctant to open their country borders or reduce the requirements for those who wish to migrate. This is mainly as a result of the fear in the European community that migration is harming their facilities. History already confirms that migration played a major role in the development of Western nations. For example, the UK (and other countries of the European Union) invited/ encouraged people from its commonwealth nations to migrate to the UK after the second world war to provide the skilled and unskilled labour required for the rebuilding of the country's infrastructure, transport system and factories etc. Even today Europe continues to "persuade" the skilled and people with exceptional talents and wealth to migrate to the continent in order to invest in the European economies. It is refugee migrants that they do not wish to allow leave to remain in their countries. Yet these migrants can and do play a significant role in the development of the nations they are admitted into.

At present, it is predicted that the UK will need migrants to meet the labour requirements of the country. Statistics and other records show the positive side of that migration. In practice it is observed that the traditional native worker does not like to "get their hands dirty" or is unwilling to work "unsocial hours". As such, to meet the demand for service to the population, willing migrants are needed to do the work and provide the skills that are currently missing in the workforce.

The policies of the Government on migration also has its impact on the British citizens who have non-EEA family members who do not reside in the UK. The government stance has made it very difficult for family members to freely visit their EEA family member in the UK. The requirements for entry clearance have constantly been revised and changed and made tougher and tougher over the years. More and more countries are added to the list of countries whose nationals were required to have entry clearance.

Types of Entry Visas

In general, entry visas are classified under four broad headings:

1. Work- enabling the holder to work in the UK
2. Education- giving the holder the right to attend an education institution
3. Transit - visas for people travelling to another country via the UK
4. Social - visas issued to non- EEA family visitors/tourists etc who wish to visit the UK

**Work Visas**

British and EU/EEA nationals have the acquired right to work without restriction in the UK. The category of people who require work visas are non-EU nationals who seek the right to work in the UK.

Immigration regulations created distinctions between the different types of workers under the points based system for immigration control. There were five tiers under which individuals could apply for visas. Tiers one, two, four and five are active for visa purposes. The third tier, however, was never implemented but it is a category that could potentially be reopened with the onset of Brexit and the consequent restriction in free movement across European borders.

Under the points based system, visa applications could be made:

- as a business person or for a business-related activity (tier 1)
- as a skilled person offered employment (tier 2)
- as a student - students have a right to work but with restricting conditions (tier 4)
- as temporary workers (tier 5)

Details of the various requirements are summarised in **Tableau I**

**Education or Student visas**

A UK student visa permits the holder to be able to study at qualified educational institutions. The main visa requirement here is that the applicant must have had acceptance for the course of study at an approved institution and that the applicant can show proof that he/she has enough money to pay for the tuition and take care of themselves for the first year. Child student visas will also be issued for children aged 4 - 17 years who wish to attend independent fee-paying schools or higher institutions in the United Kingdom.

**Case study 81**

Mrs KB wished to visit her daughter and her family in the UK. Her application was supported by her son-in-law (who is a British citizen). He is in gainful employment earning over £1000 per month. The applicant had sufficient funds for the trip and had sufficient ties back in Sri Lanka to ensure she will return. The application was made for a tourist six months visa. The application was approved and the visa was issued.

**Transit visas**

These are for people who, for one reason or another, have to travel via the UK to get to another country.

A Direct Airside Transit Visa (DATV) can be applied for where the holder will not be going through airport control and will stay at the airport on arrival to catch the onward flight.

If however the applicant has to go through border control and leave within 48 hours or longer, a visitors-in-transit visa is issued

**Social or Tourist visas**

The most popular type of visa sought by non-UK/ non-EEA nationals is the visitors or tourist visa. It is a short-stay visa valid for six months. Applicants who wish to visit family and friends or just tour around can apply for this. The applicant must prove that he/she has sufficient funds to take care of themselves throughout the stay. Short-term business visitors, academics, special visitors for medical purposes and others must obtain this visa before entry into the UK.

There are various categories of the short- stay visa and it is important to note that they are each for a specific purpose. The prospective visitor should therefore be clear on what he/she wishes to achieve before entering the UK. For example, a person wishing to get married whilst on the short visit should not apply for a general visitors' visa as this would NOT allow the couple to "tie the knot" during the visit. The tourist visa **forbids** the holder to engage in paid or unpaid employment, produce goods or provide services, sell goods or services directly to members of the public, do a course of study, marry or register a civil partnership, or give notice of marriage or civil partnership or receive private medical treatment.

Application is done using visa application forms (VAFs). Relevant supporting documents must be submitted, and visa fees paid at the time of the application. Visa fees vary depending on the country the applicant is in but is denominated in pounds sterling. The fee for short term visa for up to 6 months is currently £89. Frequent visitors can apply for a longer term visa and pay the appropriate fees as follows: 2 years visa fee is £337; 5 years £612 and for a 10 years visa it is £767

There is a different application form for each visa required.

**VAF1A – General Visitor**

This form is submitted if an individual wishes to travel to the UK as a tourist or to visit friends. The applicant may have a sponsor (someone who will support them during their stay) or s/he may have own funds. Each applicant will have to prove that s/he does not intend to stay in the UK longer than the allowed period of 6 months and that s/he intends to leave the UK at the end of his/her visit to the UK. The applicant also needs to show that they have sufficient funds to support themselves and their dependants travelling with them, and that they do not intend to take up employment in the UK or seek public funds. In order to substantiate this, the applicant must show that they are currently employed or established in their home country; provide evidence of earnings over a period; show that s/ he is on temporary leave and, if applicable, that they have a settled family and therefore do not intend to live or work in the UK.

**VAF1B – Family Visit**

If an individual wants to travel to the UK to make a family visit then they should apply using this form. They can apply for a stay lasting no more than six months. The conditions that apply for general visitors apply to family visitors as well.

**Case study 82**

Mrs KS, a Sri Lankan citizen has a daughter and son-in-law who live in the UK. She wanted to visit her daughter who was going to have a baby and applied for a visitor's visa using form (VAF1). Her daughter acted as her sponsor and submitted necessary documents in support of her mother's application. The visa application in April 2017 was refused because Mrs. KS did not meet the requirements for visitors:

- her income was insufficient to support her for the duration of her stay and to cover travel costs to and from Sri Lanka
- there were anomalies with her financial statement from the bank as the income deposited did not reflect her correct financial situation based on her declared and justified monthly income
- Home office was not satisfied she was a genuine visitor who intended to leave at the end of her visit as a result of the above.

**VAF1C – Business Visitor/ Prospective Entrepreneur/ Permitted paid Engagements**

Prior to establishing a business or investing in the UK, the potential investor may wish to come to the UK as a visitor . This applicant will then be able to undertake activities such as registering a company, opening a bank account and doing market research study. With this visa, the holder has access that the regular tourist will not have. To apply, an individual must be able to show that they are over 18, intend to visit the UK for no more than 1 month and leave the UK at the end of their visit. They must also be able to show that they have enough money to support and accommodate themselves without working or seeking help from public funds; or they and any dependants will be supported and accommodated by relatives or friends. They should be able to meet the cost of the return or onward journey and should not be in transit to a country outside the 'common travel area'. Other applicants who can come under this category are people coming to carry out a permitted paid engagement like student examiners, assessors or participants in an academic panel. The applicant must have a formal invitation to carry out the engagement and this must have been arranged in advance. The engagement must relate to their field of expertise and/or qualifications and to their full-time occupation in their home country. All other restrictions regarding short-term visas- like no access to public funds and medical facilities-is applicable here too.

**VAF1D – Student Visitor**

To come to the UK as a student visitor, the applicant must have been accepted on a course of study in the UK. The institution that provides the course must be a licensed sponsor and should have appropriate accreditations. Those who come through this category should not intend to work, marry, stay after the visit period and carry out any activity permitted for other visitors.

**VAF1E – Academic Visitor**

An individual who is on sabbatical leave from an overseas academic institution, and wanting to use his leave to carry out research in the UK, to take part in formal exchange arrangements with UK counterparts, research, teaching or clinical practice can apply using this form. The visitor shouldn't be receiving any additional funding, undertake work or fill a vacancy in UK.

**VAF1F – Marriage Visitor**

A person who is aged 18 or over and intending to get married during the 6 month visit period and leave UK at the end of the visit should use this application. They must be able to show that they have enough money to support their travel and stay. They may be asked for the evidence of the arrangements for their wedding or civil partnership ceremony in the UK.

**VAF1G – Medical Visitor**

This application may be used by applicants to come to the UK as a visitor for private medical treatment for a maximum period of 6 months. They must be able to provide satisfactory evidence of their medical condition and the consultation or treatment that they are in need of. They must also be prepared to provide the estimated costs of the consultation or treatment and the likely duration of the visit. They are expected to leave the country after the treatment and have adequate finances for their stay, travel and treatment. Additionally they need to prove that their condition will not endanger public health.

**VAF1H – Visitor in transit**

To come to the UK as a visitor in transit, the applicant must be able to show that he is in transit to a final destination outside the Common Travel Area and is able to proceed at once to another country. The applicant should assure that they will enter there and intends and is able to leave the UK within 48 hours (or 24 hours).

**VAF1J – Sports visitor**

This application is used by individuals to come to the UK as a sports visitor for a maximum period of 6 months. They must be a sportsperson who wants to take part in a specific event, tournament, or series of events as an individual competitor or a member of an overseas team. The visa can be also used by the applicant to enrol as an amateur sportsperson, make a personal appearance or take part in a promotion such as a book signing or

television interview, negotiate a contract or discuss a sponsorship deal, take part in a trial and do a short period of training as an individual or as part of a team.

**VAF1K – Entertainer Visitor**
To come to UK as an Entertainer Visitor not exceeding 6 months this application can be used.

To be able to use this form the applicant should be a professional entertainer and an internationally famous person. An individual willing to take part in an audition and an amateur entertainer coming for a specific engagement as an individual performer can also make use of this from. Those who are part of a group of amateur entertainers, a professional entertainer taking part in a charity concert or show, an amateur or professional entertainer taking part in a cultural event sponsored by a government or a member of the technical or support staff, officials of amateur or professionalentertainers attending for the same event should also use this form.

**VAF2 – Employment**
This type of visa is used when an individual seeks to enter the UK to look for employment which falls outside the points based system. In other words, that is not on the specified list of "shortage professions" that is published every year by the Government for which an application can be made under tier 2. For example application for a Chef to be employed from Sri Lanka for a Sri Lankan restaurant specialising in authentic Sri Lankan cuisine.

**VAF3A – Prospective student and VAF3B – Student dependants visa applications have been abolished**

**VAF4A – Spouse Settlement**
Applicants who wish to join their spouse who is present and settled in the UK should apply using this form. In order to be successful, the applicant will need to show that they are both aged 18 or over at the date of application, not related to them in a w ay that means they could not marry under UK law, they and their partner have met in person, their relationship with their partner is subsisting. If they are married or in a civil partnership then they should be able to show that their marriage or civil partnership is valid under UK law. They must be able to prove that they meet the requirements, and any previous relationships that they had has permanently broken down. They and their partner should intend to live together permanently in the UK and they should further meet the financial and English language requirement.

**Case study 83**

Mr KT came to this country as a dependent child of refugee-status granted father in 2006. He lived over the years in UK and became a British citizen. He visited Sri Lanka in 2016 and got married to Ms JV. After he returned to the UK he approached us to obtain entry visa for his wife to UK. After the initial assessment we advised him he can bring his wife to the UK by making application (VAF 4) and we explained the minimum salary requirements ( £18600) and A1 English language certificate requirement for the applicant. After few weeks, the sponsor brought the relevant supportive documents and made the application for his wife for settlement. Also we made an online application to submit the application by the applicant in Colombo British High Commission office. According to our arrangements the applicant submitted her application and 4 months later it was approved and she travelled to UK.

**Case Study 84**

Ms MR approached us to obtain entry visa for her husband who is in Sri Lanka. Our client (the sponsor) came to this country as a asylum seeker and was granted refugee and later she became a British citizen. Her husband Mr. SP also came to UK in 2007 and claimed asylum. His asylum claim was not successful and he was deported in July 2010. During his stay in the UK he met Ms. MR and they got married during a religious ceremony and lived together as husband and wife for a year. When the applicant Mr. SP was threatened to be deported to Sri Lanka, he raised his article 8 family life claim to Home Office and it was unsuccessful and the Home Office stated "your wife also does not have any visa at this time". Subsequently he was deported. Few months later the sponsor Ms. MR had a son through their family life and later she become a British citizen and her child also became a British citizen. In 2013, she supported an entry visa application for her husband to return to UK to live with her and her son. This application was refused and the appeal wasn't successful due to the fact the Mr. SP had been deported and the immigration rules require a ten year lapse before a new visa application can be made. TWAN made a representation in July 2016 to the Home Office to try and get the rule overturned in this case, but it was not successful. The Immigration Rules states that if an applicant has breached an immigration rule which would lead to their visa application being refused- *under 320 (7B),* then applications

must be refused for *"10 years if they were removed or deported from the UK"*. The Home Office is sticking to the rules and the applicant is therefore not eligible to apply for return until July 2020.

**Case study 85**

Mr. BS came to the UK in September 2012 and claimed asylum. His claim was successful and he was granted refugee status in October 2015. Prior to coming to the UK he married his wife in 2008 and they had a child. He kept regular contact with his family and, after obtaining leave to remain, sponsored his wife and daughter's application for resettlement in the UK. This was deemed a VAF4-pre-flight family reunion as he already had a family before fleeing his country of origin. As such he did not need to meet the minimum required financial income criteria of £18,600 neither did his wife need to pass the English language exam. The visa application was approved and his wife and daughter relocated to the UK.

**Case study 86**

This relates to the case of a VAF4 application of someone who married after he was granted refugee status. Mr DY came to the UK in April 2012 and claimed asylum. He was granted refugee status and leave to remain for five years in June 2012. After receipt of his travel documents, he travelled to India in 2016 and got married by a religious ceremony and registered the marriage at the Registrar Office in India in November 2016. He lived together with his wife until Dec 2016 when he returned to UK and she to Sri Lanka. He hopes to sponsor his wife's relocation to the UK in the near future. To do this he must be earning a minimum of £18,600 and she would have to pass the required English language exam. He would also have to prove that he has regular contact with his wife.

**Case study 87**

Mr. MW came to the UK as a student in September 2009 after his divorce from his wife in August 2009. He later claimed asylum and was granted refugee status in 2014. In 2016 he sponsored his ex-wife (whom he remarried in 2013) and son to come to the UK to join him. Their application for entry under VAF4 was refused because she was not deemed eligible for entry as a partner. Evidence she had provided in an earlier visa application interview was used to determine her eligibility even though financial and language requirements were met.

**Case study 88**

Mrs SR applied for leave to enter the UK in order to join her spouse Mr. TR who was a British National. Her application was refused because her husband failed to submit sufficient employment details. The client appealed and the Home office decided to review the decision. The HO maintained their refusal because a letter confirming employment was not received though a payslip was provided. An appeal was made to the First-tier tribunal and the client was able to provide a confirmation letter. The appeal was allowed and Mrs.SR was granted a spouse VAF4 entry visa.

**Case study 89**

Mrs JM married Mr. GM, who is also her sponsor, in 2013. She applied for a spouse visa to enable her join her husband in the UK in Aug 2014. She was resident in Germany. Mr GM as sponsor met all conditions... he was earning above the required minimum of £18600; he had adequate rented accommodation; he was settled in the UK (having lived here since 2010 and he had been granted refugee status ILR). In addition Mrs JM had completed the English language course to level A1. They completed form VAF4 for spouse settlement entry visa and submitted this with all supporting documents. The application was refused on the grounds that the language training institution was not on the HO approved list and therefore not an accredited institution. The refusal was appealed against and the case was heard in the First-tier Tribunal. It was argued that the list relied on for accredited institutions was not published before April 2015 and was after the appellant had applied for entry visa in Aug 2014. In addition the appellant had been diligent to find a language course that met the required standard A1 CEFR which was a course approved by the Home Office. Her appeal was allowed in June 2015 and she was issued the spouse visa.

**VAF4B – Returning Resident**

A resident is someone who has been given permission to stay in the UK without any time limit. A returning resident is a resident who left the UK and wants to come back to live here again. An applicant may return to the UK as a resident if they were settled in the UK when they last left and if they have been away for 2 years or less. They are also expected to live here permanently and they were not given public funds to pay the costs of leaving the UK.

**VAF5 – EEA Family Permit**

An EEA family permit is a form of 'entry clearance' to the UK (similar to a visa). This form is for nationals of countries outside the European Economic Area (EEA) who are family members of EEA nationals and wish to join their EEA family member who is living in the UK. This form can be used if they wish to visit or come to the UK and live permanently with their EEA family members.

**Case study 90**

Mrs LP is the mother of an EEA national who is exercising her treaty rights and living in the UK. She (the daughter) wanted to bring her mother to come and live with her in the UK when her circumstances in Sri Lanka changed. The application was refused with the HO stating that she (the mother) was not a dependent of her daughter (the sponsor). TWAN filed an appeal on their behalf and the case was heard by the First-tier Tribunal. Based on the evidence of financial and other support submitted, it was determined that the appellant was indeed a family member of an EEA national. The decision of the HO was reversed and the appeal was upheld. The mother was eligible for a family permit as a dependent of an EEA national.

**Case study 91**

Mr. PV is resident in Germany but his wife relocated to the UK in Feb 2015. He tried unsuccessfully three times to obtain entry clearance as spouse under VAF 4. He has now submitted an application as the family member of an EEA national under VAF 5 family permit. His application was reviewed and he was granted an entry visa as spouse.

**VAF7 – Right of Abode & VAF8b – Commonwealth Territories**

All British citizens have the right of abode in the UK. Some Commonwealth citizens also have the right of abode. Children born before 1982 to British parents can exercise their right of abode; holders of British overseas passports have the right of abode but some others cannot claim the right of abode. Those who have right of abode do not need to get permission from an Immigration Officer to enter the UK. They can live and work in the UK without restriction. The **VAF8b** is used by Commonwealth territories citizens who wish to gain entry to the UK. The applicants are charged £80 for short visit 6 months visa, £278 for visit visa up to 2 years, £511 for visit visa up to 5 years, £737 for visit visa up to 10 years, £144 for extension of student visa, £851 for settlement visa, £407 for settlement of a dependent of refugee, £1096 for a dependent relative, £54 for transit visas and £278 for other types of visa.

With the onset of BREXIT however we expect changes in the law and forms that will be used for visa applications in the coming year. The VAF7 and VAF8b forms are withdrawn effective 9th January 2017.

## VISA EXTENSION

It is essential that people allowed with short stay visa to come and settle in the UK or continue their purpose of visit be able to extend their visa for a further foreseeable period. This process can be achieved through specific relevant applications with fees around £800-£1200. This is one of the day to day work in the office. We register around 3 cases per day for this purpose as part of our ongoing case work. The application process is complicated and requires documentary evidence which is not straightforward. Due to these reasons, users have to heavily rely on professionals to help them extend their visa regardless of their English language knowledge. A few years ago, the success rate of this extension applications were good and, even if refused, the applicant had the opportunity to correct their mistakes and reverse Home Office decisions. TWAN had the personnel and the funding to support this work and ensure a high success rate for applicants. In July 2012 the situation changed with the introduction of the financial and language requirement, and refusal of these applications increased; some applications were even refused without appeal rights. The main reason for this is that Legal Aid Trust withdrew funding for visa extension applications and as a result TWAN could no longer take the majority of the cases. Individuals had to represent themselves or pay exorbitant fees to immigration lawyers. Those who could not afford it tried to represent themselves but given the complexity of the paperwork, their applications were not usually successful. Unsuccessful applicants were returned to their native country. Even if they want to appeal it could only be allowed as an overseas appeal. The applicants stood to lose their application fees unless they could find a legal representative in time to challenge the decision at the High Court or through JR application. For this reason it has become essential to make a quality application the first time round to extend the visa or even take up

the matter further if it is refused. Our organisation has to rely on other funding assistance from Trusts or other funders to safeguard the migrants rights.

**EXTENSION OF STAY FOR A LIMITED PERIOD OF TIME**

**FLR (M)**

*Form to extend stay in the UK as the partner or dependent child of someone settled in the UK or is a refugee or under humanitarian protection*

This form is for those who applied for, or are applying for, leave to enter or leave to remain as a partner of a British citizen or a person who is settled in the UK. An applicant cannot apply in a partner category if he is the spouse or partner of a person who is settled in the UK or has British citizenship if their most recent permission to stay was under tiers 1, 2, or 5 of the points-based system and he does not qualify for settlement yet. The applicant must show that he and his partner are both aged 18 or over at the date of application, his partner is not related to him in a way that means he could not marry in UK law, he and his partner have met in person, his relationship with his partner is subsisting, if he is married or in a civil partnership, his marriage or civil partnership is valid in UK law, he meets the requirements, any previous relationship has permanently broken-down, he and his partner intends to live together permanently in the UK, he meets the financial requirement and English language requirement and if he is in the UK and wants to extend his leave or apply for settlement in the UK he will need to meet the suitability requirement.

If the applicant meets all these requirements then they may be given permission to live in the UK for two and half years. After that time they can apply to stay for a further 2 and half years on meeting the requirements. After successful completion of 5 years of stay in the country they are eligible to apply for permanent settlement in this country. An applicant may be allowed to switch into the category of partner if he is currently in the UK in a different immigration category. He will not be allowed to switch if he is in the UK as a visitor, with permission to stay that was given for a period of less than 6 months on temporary admission; or in breach of the Immigration Rules (a period of overstaying of less than 28 days will not be taken into account)

To proceed with the application the applicant has to provide the evidence of sponsor income. These can include wage-slips; tenancy agreements; Land Registry document with mortgage payment; bank statement; Benefits ; proof of address; HMRC information etc. The visa fees (£ 601) and TWAN admin fees also have to be paid.

**Case study 92**

Mrs KK came to join her husband ( a British citizen) in the UK after applying for and receiving a VAF4 spouse visa in Dec 2013. She was granted a 2.5years stay which was to expire in July 2016. At the time she applied for the VAF4 visa, her husband was earning the required £18,600 and she met the English language requirement. Before her visa expired, they approached TWAN to file an application for visa extension of her behalf. TWAN submitted her application under the FLR (M) route and her husband sponsored her. He was however earning lower than before as his earnings had dropped to £13,836 and consequently his wife's application was refused without appeal rights. (Applications under the FLR (M) category are usually successful for applicants who meet all requirements - both financial and language). She was invited by the Home Office for an interview and when she arrived, she was detained and a removal order issued. Her husband called TWAN immediately and a JR application was lodged. She was released.

(*It is worth noting here that TWAN operates and accepts cases to be reviewed under a means and merits based system. It is only on the basis of this that cases which go to the high court can receive required funding from the Legal Aid. The means assessment evaluates the income of the appellant to determine if they have the financial capability to pay for the associated costs of the hearing in the Court. The merits test considers the success rate of the appeal. If this rate is d" 60% then the case cannot proceed with Legal Aid funding*).

The couple in this case had saved up some money for health treatment. As a result of these funds they failed under the means assessment and they were not eligible for legal aid funding. A JR application was lodged and the Home office agreed to reconsider the case. It is still under review.

**Case study 93**

Ms US came to the United Kingdom as a student in Feb 2005. She was given two subsequent student visa extensions to April 2012. During her time as a student she met and eventually got married to Mr. DT in 2011. She applied for extension of her stay as the spouse of a settled person (FLR (M))

and she was granted leave to remain until Jan 2015. Before her visa expired, she made an application for a further extension her stay under FLR (M) submitting the necessary evidence for eligibility ( income and English language competency certificate. Her application was refused without appeal rights because the HO deemed that she had fraudulently obtained her certificate as the college where she had studied had been closed down due to fraudulent activity - which she took no part in and consequently should not have to be penalised for. TWAN lodged a JR review application against the refusal and the HO decided to review the case. The JR application was withdrawn. The HO carried out their review and refused yet again but with appeal rights. TWAN lodged an appeal to the First-Tier Tribunal on her behalf in May 2016 with evidence to support the appeal. We await the new hearing date.

**Case study 94**

Mrs KK gained entry into the UK as a student in Oct 2008. By 2011 she had married and she applied for a dependent visa through FLR (M) as the spouse of an EEA national. She was granted residency for the 2½ years to 2014 and she then further extended her stay via FLR (M) to 2016. She also studied and obtained the language exam certificate and passed the life in UK test. She applied again for an extension of visa FLR (M) in Feb 2016. Her application was approved and her BRP issued in April 2016

**Case study 95**

Mrs MBJ came to the UK with a student visa in 2011. She married in 2013 and, when her student visa expired, she applied for an extension of her stay as a dependent spouse. This was issued to her in Apr 2013 and expired in Jan 2016. She re-applied for extension under FLR (M) in Dec 2015. Her application was eventually approved and she was granted limited leave to remain for 30 months from Apr 2016. She will become eligible to apply for settlement after five years as a dependent spouse.

**Case study 96**

Mrs MB, entered UK on a spouse visa which was granted in 2012, as a spouse to Mr KB who is a resident in the country. Her visa is going to expire on 2014.

The client spouse is working in a cash and carry unit, with an monthly net pay. The couple have proof of residence address in UK. The client also has a minor (baby boy) who was born on 2013 . During the 2 year probationary period, the client has meet the language requirements, where she passed ESOL A1 from City and Guilds, which is a recognised centre by Home Office.

As she completed her 2 year probationary period since her arrival in UK ,with specified documents as describe above. The client has asked to move forward with the application for FLR(M) to extend her stay with her family ,with the support from grounds of Article 8[Right to private and family life ] of ECHR (European Convection of Human Right).

**FLR (FP/P) :- FURTHER LEAVE TO REMAIN FOR RELATIVES OF REFUGEES**

This form is used to extend the stay of the applicants who are relatives of the refugees who were granted leave to remain in UK under the Humanitarian protection. This form can also be used to under-write a child of parents who have limited leave. This form was only introduced in 2016.

Children under the age of 18 may be granted entry to UK as "child of relative" who is granted limited leave in UK as refugee or beneficiary of humanitarian protection. The "child of the relative" is specified below :-

- Relative is not parent of the child
- Child can be nieces, nephew
- Step brother or step sister
- Cousins of the refugee

FLR (FP/P) can also be used by parents , grandparents or other dependant relatives over the age of 18 person with limited leave to remain in UK as refugee or beneficiary of human protection. NB: the applicants must be in UK at the time of application. The application fee for a single applicant is £601.

**Case study 97**

Mrs A.S came to the UK in Dec 2000 as an asylum seeker and later met and married Mr. SS who was already a British citizen. She was granted leave to remain as a family member of an EEA national in 2005. In 2010 she was granted Discretionary leave to remain for 3 years and when this expired in 2013, she was granted an extension for a further 3 years to Jan 2017. She wishes to continue to exercise her right to family life under Article 8 ECHR and applied for leave to remain as a refugee under FLR/FP route. Her application was approved and

she was issued with a biometric resident permit in Oct 2017.

**FLR (O) WITHDRAWN ON 1/12/2016 AND REPLACED BY FLR (HRO)**

Form FLR (O) used to be used if an applicant is applying for an extension of stay as a General visitor, based on long residence in the UK, as dependants of exempt members of HM Forces, a domestic worker in a private household, individuals who hold UK ancestry, visitor for private medical treatment, those who have a family life as a parent of a child in the UK, private life in the UK and other purposes/reasons not covered by other application forms.

**FLR (HRO)**

This is the form used to extend your stay in the UK for human rights claims or leave to remain outside the rules and other routes not covered by other forms.

**Case Study 98**

Mr. RP came to the UK as a student in 2009. He applied for visa extensions and eventually made an appeal for further leave to remain based on human rights grounds and, after an appeal, was awarded leave to remain under Article 8 of the ECHR in Sept 2014. He now wishes to extend his stay in the UK and obtain leave to remain under FLR (HRO). He has lived in the UK for over seven years. His application was submitted to the Home Office in Jan 2017. Decision is awaited.

**SET (M) SETTLEMENT OF PARTNER**

Form SET (M) is used to apply for settlement in the UK as the husband, wife, civil partner or unmarried/same-sex partner of a British citizen or someone who is settled here. The applicant specified above has to satisfy the two year requirement of limited to leave to remain in this country as spouse or a partner of the person who is settled in this country.

This application should be made before the 2 year period ends, at least 28 days before the date of expiry otherwise it is likely to be refused and fees cannot be refunded.

It is important for all applicants aged 18 -64 to meet the knowledge of the Language requirement and to pass the Life in UK test. These can also be proven if the applicants has:-

- a qualification in English at B1 level
- a degree that was taught in Engl
- or if the applicant was from an English speaking country

The charges for making this application is £1,337 for the main applicant adult and an additional £687 for each child applying with the main applicant. Premium service charges are higher.

**Case study 99**

Mrs FM came to the UK as the dependent wife of an EEA national in Mar 2010. She applied for residency and obtained her residency card in Dec 2010 which was valid for five years. In 2015, before her resident permit was due to expire, she applied for the extension of her visa using the FLM (M) form. Her husband and sponsor had been exercising his treaty rights since coming to work in the UK in 2010. Her application was approved and her BRP was issued in May 2016.

**Case study 100**

Mrs PK joined her husband in the UK in Feb 2013 under the spouse visa (VAF4) application. She applied for the FLR (M) in April 2015 and she was granted another two year visa extension to April 2017. She applied for indefinite leave to remain SET (M) as she has lived here for over four years. Her application is still under consideration.

**SET (PR/P) PERMANENT RESIDENCY**

Application for settlement (permanent residency) by individuals who had been granted refugee status and leave to remain for an initial 5 year period.

**Case study 101**

Mr. KM arrived in the UK and obtained refugee status in 2015. His wife joined him after some time and she was given limited leave to remain (LTR) till 2015. Their two children were born in the UK. They applied for settlement as refugees under SET (P) under the immigration rules for settlement. They have no criminal record in the UK or abroad. The applications were approved and the residence permit for settlement as refugees issued for each family member- 8 years for adults and 5 years for children.

**Case study 102**

Mr. RI was granted refugee status and leave to remain for five years in 2012. He has a permanent job in the UK and no criminal record. The circumstances under which he was granted leave as a refugee remain unchanged. He has not been out of the country for more than three months since he was granted leave. He now wishes to apply for settlement in the UK under SET (P). His application was submitted in Feb 2017 and he was granted permanent residency within 6 months.

**SET (O) :- SETTLEMENT FOR OTHER CATEGORIES**

This covers the application for settlement by individuals who do not fall under the family or refugee status categories.

In order to qualify for indefinite leave to remain the applicants should satisfy under the Immigration office rules specifically :-

a) Part 5 :- work permit holder
b) Part 6 :- businessperson, investor or innovator
c) Part 6A :- Tier 1 and Tier 2
d) Part 8 :- bereaved partner or PBS dependant

**Case study 103**

Mr. RN came to the UK as a student in Feb 2006 and was granted initial leave to remain for 18 months. He studied at the University - Post Graduate level and on finishing, he was given a job and obtained a Tier 1 (post study work) visa for 2 years. This was extended a further two times to 2016. In 2010, his wife joined him in the UK as a dependent and has lived here since. They now have two children. He has submitted an application for indefinite leave to remain - SET (O) - under the Tier 1 category. The HO interview was conducted in Feb 2017 and the application is still under consideration.

**DL - DISCRETIONARY LEAVE TO REMAIN**

This is leave granted on a discretionary basis outside the immigration rules. It is intended to cover exceptional and compassionate circumstances under which a visa may be granted. Generally, those who do not meet the immigration rules are required to leave the UK. However there are times when requiring a person to do so will be unjustifiably harsh (especially in cases of human protection) and in such circumstances, DL can be applied. It is relevant for both asylum and non-asylum cases applying from within the UK. DL cannot be applied for from abroad. It will also not be granted where a person qualifies for asylum or humanitarian protection or for family or private life reasons.

**Case study 104**

Mr. SS came to the UK in Jan 2001 as a refugee and claimed asylum the day he arrived. His application was refused but he was granted discretionary leave in 2012 for three years. In Feb 2015 he applied for an extension and for ILR. He was granted limited leave (DL) till 2018 and his BRP issued.

<u>Biometric residency permit (BRP)</u>

The BRP is a permit that has a chip which has on it the biometric information about the holder. Biometric information includes your name, birth date, birth place, fingerprints and a photo of your face. The permit will also indicate your immigration status (e.g. permanent resident; refugee, student etc) and any conditions of your stay including access to benefits or health services (it may state for example "no recourse to public funds" or limit students working hours).

The BRP is issued to individuals who have leave to stay for longer than six months or who apply to settle in the UK.

**Case study 105**

Mr SS came to this country under VAF4 spouse settlement and was issued a biometric residence permit. He unfortunately lost this about a month later and reported to the police and obtained a police report. He applied for a replacement BRP submitting the required form BRP (RC) together with the police report and the fee payment of £56.00. He received his replacement BRP within 6 months.

**SET (DV) FOR DIVORCED PERSONS/ WIDOWED**

Sometimes a marriage can break down due to domestic violence. In such instances, where the victim is a non-EEA national spouse/partner of a violent EEA national, it is sometimes possible to obtain ILR in the UK as a result of domestic violence (without sponsorship by the EEA spouse/partner). Application can be done using form SET (DV) and attracts a fee of £2272 unless the applicant can prove s/he is destitute.

**SET (LR) LEAVE TO REMAIN ON THE BASIS OF LONG RESIDENCE**

This refers to settlement granted on the basis of compassionate grounds usually for health reasons or to aged persons who have lived for a while in the UK. There is no definition of "long" in this case. The emphasis is on compassionate ground

**DRF 1 DERIVATIVE RESIDENCE CARD**

EEA nationals have an automatic right of residence in the UK under the EC directive 2004/36 (for free movement of persons in the EU). Non-EEA national spouses and partners or family members can be granted a right of residence as a result of their relationship with an EEA national. Where, however, conditions for their acquired rights no longer exist, there are instances where such non-EEA persons will be deemed to have **a derived right to reside** in the UK and be issued a derivative residence card. This application must be made using form DRF1.

Persons who have a derived residence right are usually primary carers. There are three cases where the law allows such carers to be issued a residence card. These are where the person is:
The primary carer of someone who has the right to live in the UK. This was the ECJ ruling in the Zambrano case and this ruling extended to all the EU countries. Mr. Zambrano was seen to have derived rights of residence in Belgium as the primary carer of his two children who were Belgian nationals and minors. As long as the children were resident in Belgium, Mr. Zambrano had derived residency right. As such, where a person is the primary carer of a British citizen who resides in the UK and where, if the carer leaves, the citizen must also leave, then the person is deemed to have derived rights.

The primary carer of an EEA national child. A Chinese couple who had temporarily migrated to the UK for work had a daughter born in Belfast and she automatically obtained Irish citizenship though neither parents were Irish. Her parents returned with her to the UK. When they eventually applied for UK permanent residency, the HO rejected their application. They appealed and the ECJ ruled that as an EU citizen, their daughter had a right to reside anywhere in the EU. Denying her parents residency in the UK would deprive her of her rights as an EU citizen. It was also ruled that an EEA national child who held sickness insurance would have a right to reside in the UK (as a self-sufficient person) with his primary carer, provided that the primary carer had sufficient resources to ensure that the child did not become a burden on public funds.

The primary carer of the child of a former (EEA) worker who is at school, college or university in the UK. In the cases of Ibrahim &Teixeira, the two women had come to the UK on different dates to join their spouses. They were now both separated from their partners and relying on state benefits. They applied for housing and their application was refused on the grounds that they did not have right of residence. They appealed and the case was referred to the ECJ. The Court ruled that following the interpretation of Article 12 (Regulation (EEC) No 1612/68) in the case of Baumbast, the right of access to education for the child of a migrant worker also implies a right of residence for this child and for the parent acting as primary carer. This derived right would cease when the child reached the age of maturity (i.e. is self-sufficient) unless it is established that the child continues to need the presence and care of that parent in order to be able to pursue and complete his or her education.

**Travel documents application**

Application for travel documents becomes necessary after one has been granted refugee status or leave to remain as a stateless person. Four types of documents may be issued :

1. Refugees obtain a **conventional travel document** much like a passport
2. Stateless persons will receive a **stateless persons document**
3. Those wishing to voluntarily return will obtain a **one-way travel document IS137**
4. Persons who have been refused a passport by the SL embassy will receive a **certificate of travel.**

Each of these documents attract payment of fees. Adult applicants will pay £72 each but for a certificate of travel, the fee is higher at £267. Children pay 50% of the adult fee.

**Case study 106**

RS was born in May 2015. His mother had arrived in the UK as an asylum seeker in 2010 and obtained her refugee status in 2012 with leave to remain for 5 years. She also obtained her certificate of travel which was due to expire in 2017. She applied for a certificate of travel for her son as well as a BRP. RS was issued with both and these were valid until the date of expiration of his mothers documents.

**Case study 107**

Mr. SJ came to the UK as a student in 2010 and later claimed asylum. He was granted refugee status in 2014 with leave to remain until 2019. He applied for a travel document. His Sri Lankan passport had been submitted to the Home Office in 2011. He paid the required fees of £72.00 and submitted the required documents. His application was approved and he received his travel document in May 2016.

**Case study 108**

Ms SJ and her child came to the UK in 2007 as asylum seekers. Her second child was born in the UK in 2007. They were granted refugee status in 2008 (limited leave to remain). They were issued travel documents in 2011 which expired in 2015. Their stay was extended in 2015 and they applied for renewal of their travel documents in Feb 2016 and paid the required fees of £190. Their documents were issued in April 2016 by HO.

**Case study 109**

Mrs KP came to the UK as an asylum seeker in May 2012, and obtained refugee status in 2013. In Nov 2016, she applied for her travel documents and paid the required fee of £72.00. She received her documents a few months later in Mar 2017.

## BRITISH CITIZENSHIP

the process of naturalisation

**INTRODUCTION**

Regarding settlement and integration into any community obtaining citizenship is part of the process. The UK government from time to time says they are encouraging a swift integration of the migrant community. In practice, the system and law kept prevents the people to settle or integrate into UK society. In particular, finding fault in their immigration history or discouraging the members of the community from making nationality applications, through a number of procedural obstacles, is the main problem for the people seeking nationality in this country. The frustrating issue of this application is that there is no appeal rights if this application is refused by the caseworker at the Home Office. The applicant also stands to lose £1200 in application fees.

This system must be reviewed by the law-makers by providing appeal rights to the applicants or, the HO should consider refund of the full money if the application is refused - otherwise the system is flawed. Many applicants may want to challenge this decision through judicial review at the High Court but they are unable to do this because it is a very expensive exercise.

## OBTAINING BRITISH CITIZENSHIP

British citizenship can be obtained by birth, by descent, by adoption or by naturalisation. The British Nationality Act 1981 specifies that from 1 January 1983, a child born in the UK to a parent who is a British citizen or 'settled' in the UK is automatically a British citizen by birth. Where however, it is after the birth of the child that the parent acquires British citizenship or "settled" status, the child can be registered as a British citizen using **Form MN1** provided he/she is aged under 18

For a child (of non-British parents) who lives in the UK from birth until the age of 10, there is a lifetime entitlement to register as a British citizen using **Form T**. The immigration status of the child and his/her parents is irrelevant. During each of the first 10 years of the child's life, he/she must not have spent over 90 days outside the UK. The applicant must be of good character at the time the application is made.

In this section of the report, we will consider in detail the process of naturalisation as a British citizen. It must be remembered that the granting of citizenship is at the discretion of the Home Secretary- it is not a right and therefore there are no appeal rights if the application is refused.

The main conditions to be met in order to make an application for citizenship are :

- applicant must be a permanent resident
- permanent residency means that applicants have been resident with a valid visa for a minimum of 5 years *(NB residency requirement is 3 years for spouses/partners)*
- applicants should also have lived for one full year in the country after receiving permanent residency
- the applicant must be of good character
- the applicant must pass Life in UK test
- the applicant must meet language requirements by passing the exam at level B2.

The fee payable for naturalisation for adults is £1282 and for a child £ 973

- This must be paid at the time of application and sufficient proof of ID must be submitted with the application.

**Case study 110**

Mrs RT arrived in the UK on a spouse (VAF 4) visa in Dec 2009. She was granted indefinite leave to remain (ILR) in Apr 2012. She applied for naturalisation in Dec 2015 as she had lived a total of 6 years in the UK and at least 12 months after her ILR was granted. She had also passed her English language exam and Life in UK test. She had no criminal conviction. Her application was approved in Feb 2016 and the citizenship ceremony attended in March 2016

**Case study 111**

Mrs KK came to the UK in June 2012 on a spouse visa to join her husband who is a British citizen. She was granted ILR in Nov 2014. After passing her language exam and Life in UK test, and with no criminal conviction, she applied for her citizenship in Nov 2015, twelve months after she was granted ILR. Her application was approved and she attended the ceremony in July 2016.

**Case study 112**

Ms GT came to this country on a student visa. Her visa expired in Feb 2009. She applied for asylum and was granted refugee status in June 2010. In August 2016, she applied for naturalisation. Her application was refused because the applicant was deemed to be "of no good character" as she had committed a crime by staying in the country "without leave" between Feb 2009 and June 2010. TWAN took the case and sent a letter of clarification to the Home Office. The Client received confirmation of subsequent approval of her application for citizenship.

**Case study 113**

Mr. VP arrived in the UK as an asylum-seeker and claimed asylum in Jun 1998. He had been severely tortured in SL and escaped with the help of an agent. After the claim for asylum was submitted, nothing was heard again from the Home office and client continued to comply with the condition to report whilst his claim was being processed. In 2000, the client attempted suicide and notice was taken of his deteriorating mental state. Representation was made to the HO about his state of health. Again no response. Several letters were sent during the period from 2000 to 2008 before the HO finally reacted. Letters from the HO had been lost in their system and was never received by the client. As such he could not respond to or comply with what was required. Client was informed that his case had been decided back in 2001 and his asylum claim was refused. Appeal was made on grounds of his health and client was granted (ILR) discretionary leave, on compassionate grounds, to remain indefinitely in May 2009. In 2015, client made application for British citizenship (after having spent over 5 years in the UK he was thus eligible to apply). The application was refused on the grounds that client was not of "good character" as he had not complied with the immigration rules by staying in the country illegally during the period Jun 1998 to May 2009.

Several issues come to light with this case:

1. the client is being penalised for the mistake or oversight of the HO in not sending the asylum decision timely to the client (the client waited as it were 8 years to receive the HO decision that was made in 2001). If the client had received the HO decision, he would have had a chance to appeal and would have complied with the required immigration regulations and his stay not deemed illegal.
2. the HO claims he stayed illegally since 1998....whereas he waited 3 years before a decision was made in 2001 that he never received
3. with an application for UK citizenship, the fee of £1200.00 must be paid in advance and is non-refundable. Also the decision for British citizenship carries no rights of appeal. Thus a refusal means you can lose a significant sum of money.

With the decision for British citizenship, if the application is refused, the only recourse is an internal review. If this is also refused, the last resort is a judicial review by the high court- which is very expensive.

For the client, an application for an internal review considered why

- the eligibility for British citizenship was not taken into account since 1998 when the client came seeking asylum.
- if the above is not regarded, then consider that the client is already qualified for

naturalisation since he was granted ILR in 2009.
- as it is not the clients fault that documents were not submitted, why should client be penalised

One may wonder why it is important for the client who is already granted ILR to desire British citizenship. In this case several issues were at play: (i) the client could not get the Sri Lanka embassy to issue him a full passport (ii) he wanted to be able to visit his sick mother (iii) uncertainty with DL which may be revoked at any time if a crime is committed *(under the UK Borders Act 2007, a crime which leads to a conviction and imprisonment of at least 12 months means automatic deportation for a non-British citizen).*

**Case study 114**

Miss VY is the daughter of an EEA national father and SL mother who arrived in the UK in Dec 2007. Her father obtained registration under EEA-QP in May 2009. Her mother was granted EEA-PR in May 2014. Miss VY has lived in the UK for 8 years. She was granted PR in March 2014. She applied for and received citizenship registration.

## Administrative review

An administrative review will take place for eligible decisions for which there are no appeal rights. Mainly in visa applications for short-term or longer term and citizenship decisions. In these cases, when the application is refused, the applicant does not have any recourse to appeal. The Statement of Changes in Immigration Rules amended the immigration rules so as to bring into effect a scheme of administrative review for certain persons who would have had a right of appeal but for the limited commencement of section 15 of the Immigration Act 2014 by the Immigration Act 2014.

An individual can make an application for a administrative review when they have received an 'eligible decision' after making an application on or after the relevant date.

**Eligible decisions are those made on:**

- in UK Tier 4 applications made by either a main applicant or their dependant(s) on or after 20 October 2014
- in UK Tiers 1, 2 or 5 applications made by either a main applicant or their dependant(s) on or after 2 March 2015, including indefinite leave to remain applications under those routes
- in UK applications where the decision was made on or after 6 April, unless the applicant applied as a visitor or made a protection or human rights claim

and for which the outcome is that the application is either (i) refused or (ii) approved and a review is requested for the period or conditions of leave granted

Administrative review allows the applicant to raise any permitted case work error, which is defined in appendix AR of the Immigration Rules, that they think there has been on the application and, if an error has been made, have it corrected.

If the applicant has immigration leave which has been extended by the operation of section 3C and makes an application for administrative review within the time limit, they will continue to have immigration leave until the administrative review is determined, or they withdraw their application.

Note, however that administrative review is not available for decisions made on protection or human rights claims

A human rights or protection claim made in an administrative review application **will not** be considered. If the administrative review is refused, the applicant will be served with a notice under section 120 of the 2002 Act which will provide an opportunity to make any human rights or protection claim.

In UK, human rights and protection claims which are not eligible decisions are those specified in paragraph AR3.2(c) of Appendix AR of the Immigration Rules

Administrative review will only consider the following claimed case working errors.
The case working errors for decisions are where:

- the original decision maker's decision was incorrect (paragraph AR2.11(a)) in decisions to:
- refuse an entry clearance application on the basis of false representations, false documents or information, failure to

disclose material facts or previous breach of conditions.

- refuse an in UK application on the basis of false representations, documents or information or failure to disclose material facts.

- cancel leave to enter or remain which is in force as a visitor under paragraphs V9.2 or V9.4 of appendix V of the immigration rules.

- cancel leave to enter or remain which is in force at the border under paragraph 321A(2) (change of circumstances, false representations or failure to disclose material facts).

- the original decision maker's decision to refuse an application on the basis that the date of application was beyond any time limit in these Rules was incorrect (paragraph AR2.11(b))

- the original decision maker otherwise applied the Immigration Rules incorrectly (paragraph AR2.11(c))

- the original decision maker failed to apply the Secretary of State's relevant published policy and guidance in relation to the application (paragraph AR2.11(d))

- there has been an error in calculating the correct period or conditions of immigration leave either held or to be granted (paragraph AR2.12)

Section 3C of the Immigration Act 1971, as amended by the Immigration Act 2014, extends applicants' leave in the UK if it expires while they are waiting for a decision on their immigration application.

Applicants who are covered by the 3C leave and then apply in time for administrative review of an eligible decision have their leave further extended during the period when they are waiting for a decision on the review.

An applicant's leave is extended under section 3C if both the following apply:

- applicant makes a valid application for an extension of stay before their leave expires (an 'in time application').

- applicant's leave expires before the application is decided or withdrawn.

Section 3C extends the applicant's leave and any conditions attached to it:

- until the application is decided or withdrawn.

- for the period the applicant can make any in time, in UK appeal.

- for the period whilst any appeal is pending (if the applicant is in the UK).

- for the period whilst any administrative review of the decision either:

  - could be brought (if the applicant is in the UK).

  - is pending (if the applicant is in the UK).

The burden of proof is on the appellant to show that there are substantial grounds for believing that she/he would meet the requirements of the Qualification Regulations and that he is entitled to be granted humanitarian protection in accordance with Paragraph 339C of the Immigration Rules and that returning to Sri Lanka will cause the UK to be in breach of the protected human rights under the ECHR.

In human rights appeals, it is on the appellant to show that there has been an interference, or that there is a real risk of interference with his or her human rights, as protected by the ECHR. If the appellant is able to show this, then it is on the respondent to establish that such interference is justified except where the protected right is an absolute right, where no derogation is permitted.

●●●

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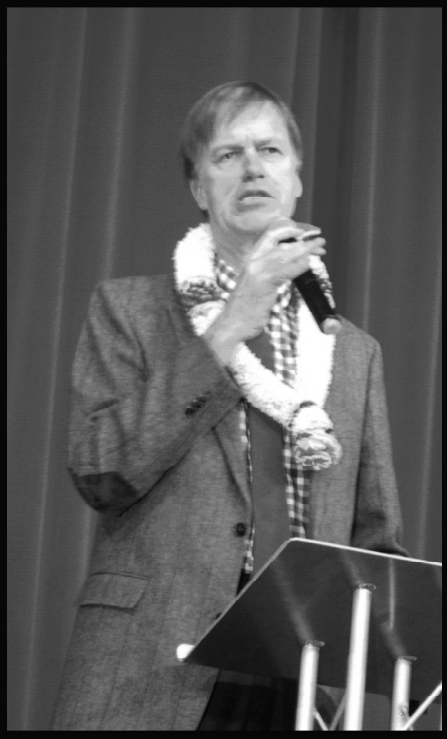
Our accountants, Advanced Auditing Practice,
Glory community accountancy project and Manor Park Community Centre
are all of great help in the smooth running of the organisation.
We also appreciate the commitment of our Fine arts Academy students and for their spectacular performances.

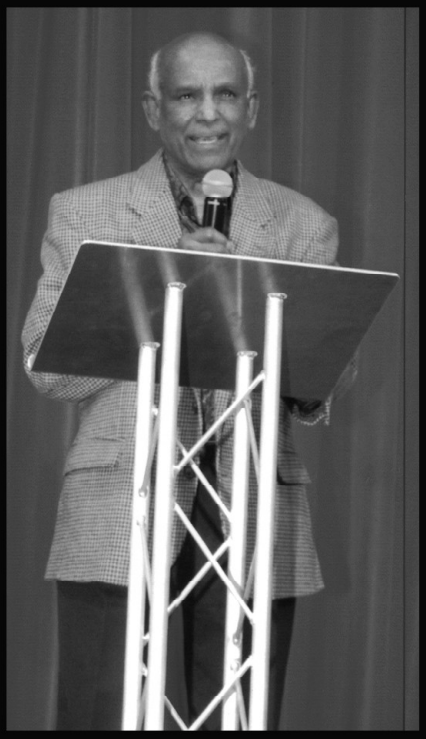


# Cultural Evening 2017



# Cultural Evening 2017

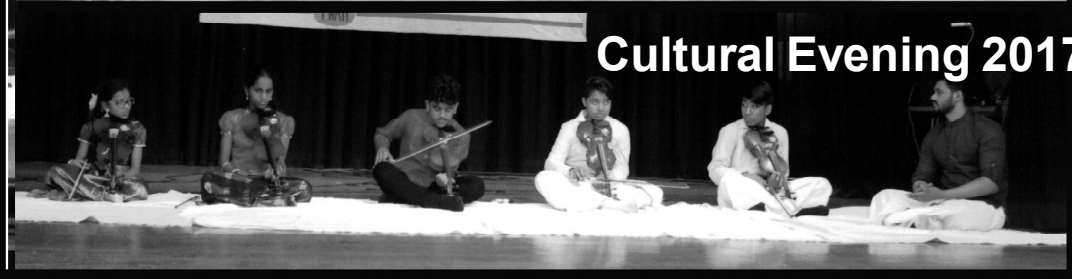





## Cultural Evening 2017




# Cultural Evening 2017

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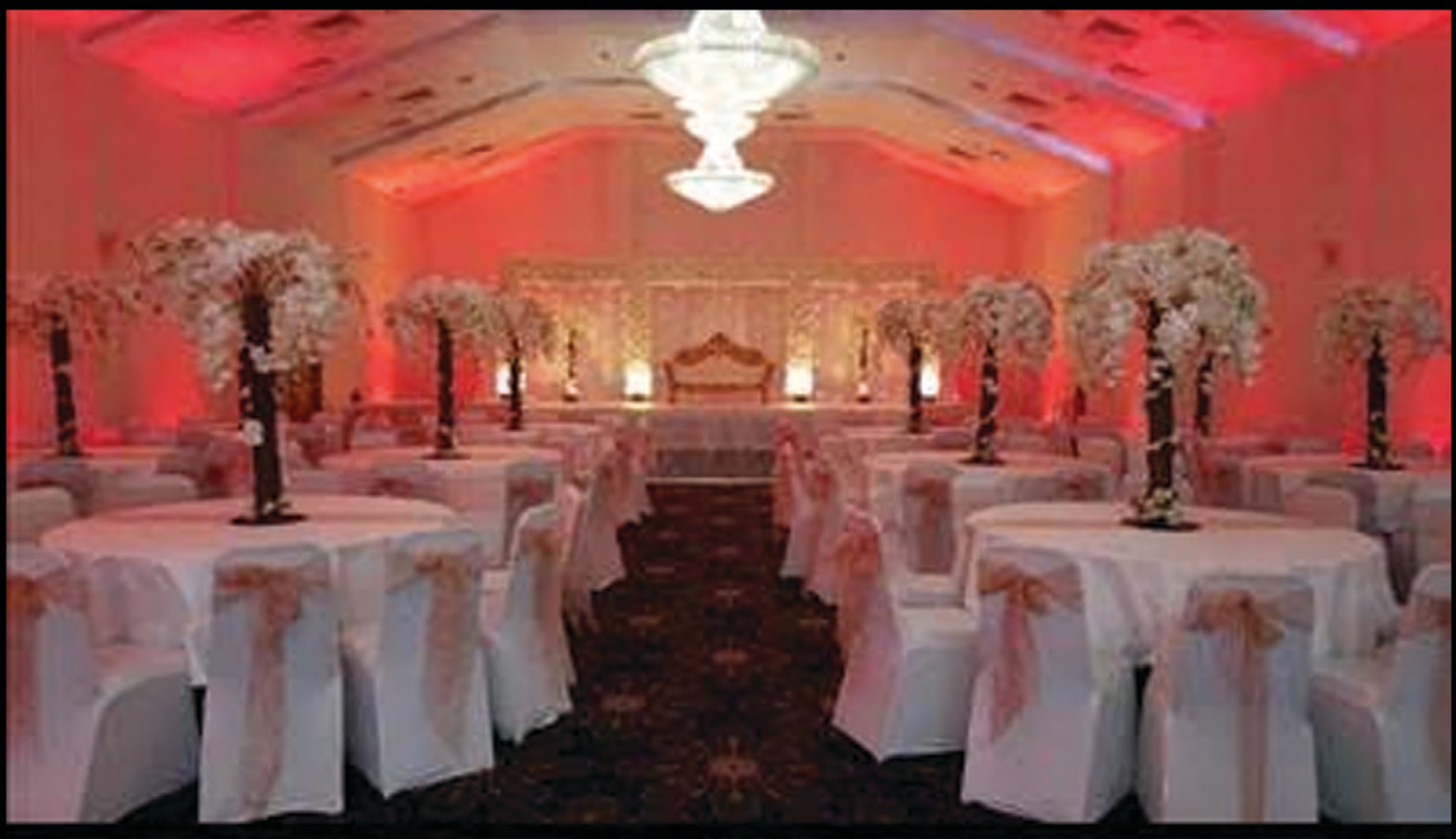

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