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AFTER ARRIVAL, THE PROBLEMS FACING REFUGEES AND THEIR FAMILIES: A CLINICAL LEGAL RESPONSE

James Marson and Katy Ferris*

ABSTRACT

Since 2016, a Refugee Family Reunion Law Clinic has operated from Sheffield Hallam University's Helena Kennedy Centre for International Justice (hereafter HKC Law Clinic). Given the austerity-driven political agenda of the UK government in cutting public funding to advisory services, the effects of LASPO and a continuing refugee crisis, refugees in many parts of the UK were in need of legal and non-legal assistance. To fill this gap in services university law clinics, including our own, began to offer specialised services to assist the refugee population. This has included family reunion and exceptional case funding applications, and expert legal advice for individuals who find themselves stateless, yet in many instances the formal assistance ends at this stage.

The HKC Law Clinic and its staff have remained in contact with many of our refugee clients (some are now engaged as interpreters). Through this interaction we have observed a particular problem of the lack of post-arrival support for refugees and their families. Developing the Therapeutic Jurisprudence philosophy upon which the clinic is based, and thus ensuring a therapeutically positive experience for the Clinic's users, we have begun a process of creating a more holistic clinical experience. Following the refugee clients' successful family reunion application, and when building their new lives together in the local region, our clinic offers a range of support services to assist in the pragmatic issues facing the family.

This aspect of the HKC Law Clinic is in its infancy, but this paper aims to demonstrate what university law clinics can achieve and provides examples of our experiences so far.

INTRODUCTION

In this paper we aim to highlight a number of issues facing refugees and their families following reunion in the UK (and specifically to England and Wales). The authors run a law clinic in a university in England which specifically offers guidance for refugees in the local community to be reunited with their families living abroad. Far from being a straightforward system,¹ refugee family reunion cases are often very complex, time-consuming, require considerable research² and, frequently, financial contributions to assist in gathering the required evidence to substantiate an application.³ With the removal of legal aid for such cases

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¹ See Jacob Beswick, NOT SO STRAIGHTFORWARD: THE NEED FOR QUALIFIED LEGAL SUPPORT IN REFUGEE FAMILY REUNION, British Red Cross (2015) and Anne Staver, *Family Reunification: A Right for Forced Migrants?* REFUGEE STUDIES CENTRE WORKING PAPER SERIES 51 (2008).

² For instance, there is relatively little information regarding published or consistent time scales for the application process and overcomplexity in the use of the online visa application system (the TLS contact website) and ancillary online registration services.

³ The use of DNA evidence is such an example. On the basis that the refugee cannot prove to the Entry Clearance Officer's satisfaction that they are the father of the applicant DNA evidence is required. However,

through the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO), and pending the successful passage through Parliament of the Refugees (Family Reunion) Bill, university law clinics, among other pro bono actors in the sector, are filling the gap in guidance.

We begin by identifying, to place the discussion in context, a range of problems which may affect the refugee in their application for family reunion.⁴ This process may involve hardship and, at first, recourse to non-legal but possibly legal action to secure this right. Once the application is successful however, typically the law clinic has completed its task and moves to the next client (wishing prosperity and happiness to the now reunited family).

Our clinic has, adopting a Therapeutic Jurisprudence philosophy, recognised the need for additional care and support after the family has been reunited. This “post-arrival” support may even be seen as more significant to ensure the transition from disunited family to an effective, functioning and happy family unit. It is at present a severely under-researched area of practice in clinical legal education and our clinic has only made the first tentative steps to providing the holistic service needed. We present in this paper a series of case studies noting, not only the process of supporting the refugee client through their family reunion application, but also the problems they have encountered and our attempts to mitigate the worst of these. It has demonstrated the need for an effective system of post-arrival support and one which we aim to roll out from October 2018.

A RANGE OF PROBLEMS AFFECTING REFUGEES IN THE UK

In 2012 the government enacted LASPO. The result led to significant cuts in available legal aid. This had a direct effect on groups including the victims of trafficking and unaccompanied children pursuing immigration advice. Refugees (in England and Wales) seeking family reunion applications were also adversely affected by being denied access to legal aid. A concession was made available where the refusal of legal aid would lead to a breach of European Convention or European Union law rights. In such circumstances an application under a system known as Exceptional Case Funding (ECF) may be made.⁵ The system of ECF has been subject to criticism by organisations including Amnesty International due to its inadequacy and complexity. It does, however, at least provide a mechanism for the most vulnerable to obtain legal advice and to assistance with associated costs.

Individuals in the UK and with refugee or humanitarian protection status are legally entitled to apply to be joined by their immediate and pre-flight family members (spouse/civil partner/partner and children under the age of 18).⁶ To do so they must complete an

detailed instruction as to when, where, how, and who should pay are not provided to the refugee. Without support from an experienced advisor it may be difficult for the refugee to know where to gather this evidence. See Beswick supra note 1, and Judith Connell, Gareth Mulvey, Joe Brady, Gary Christie, ONE DAY WE WILL BE REUNITED: EXPERIENCES OF REFUGEE FAMILY REUNION IN THE UK, Glasgow: *Scottish Refugee Council* (2010) where the costs of acquiring DNA evidence, along with the costs of submitting appeals hearings in court (not to mention the emotional cost to family) are considered.

⁴ As such the students need awareness of the specific cultural and emotional needs of this category of client. See Christine Zuni Cruz, *[On the] Road Back in, Community Lawyering in Indigenous Communities*, 5 *CLINICAL LAW REVIEW*, 557 (1999).

⁵ See <http://www.legislation.gov.uk/ukpga/2012/10/section/10/enacted>.

⁶ The right to family reunion arises from the 1951 Refugee Convention and is only a right given to recognised refugees who have been granted refugee status or, since October 2006, five-years limited leave to remain under

application form and submit evidence to the Home Office. Submission of the application form is free, but problems arise where, for example, the person does not have experience of completing forms or where language barriers exist. They are reliant on their own abilities to complete what is often complicated paperwork and application forms, and/or to represent themselves in tribunals to secure their rights provided under international law.

The recent Syrian Resettlement Programme⁷ has impacted the advice sector because dispersal of individuals will by necessity be wide and will likely include areas that are not well supplied with immigration lawyers. Assumptions may be held that refugees do not need legal assistance because they are resettled and protected persons. Of course, they will need post-integration services such as family reunion, travel documentation and so on. They may only trace missing family member's months after arrival in the UK and need support in this task. Political and media hostility towards the refugee crisis has been exacerbated during and post the referendum on the UK's continued membership of the EU. Safe and supported refugee advisory services and clinics is paramount.

British nationality and travel documentation applications are pivotal to refugees' integration, but, again, neither attract legal aid. Not having a travel document can lead to a child not being able to take part in a school trip and families being ostensibly trapped in the UK. Refugees without access to free advice can easily fall prey to unscrupulous advisors when seeking assistance with these claims. They and their families can lose substantial sums of money and time if they make mistakes on the forms. There are many examples of refugees using out of date application forms that are still circulating when seeking refugee family reunion. The language barrier further may lead them misunderstanding a question on the application form or to omit evidence.

Prior to LASPO claims could be made from the legal aid fund for a lawyer to help the individual prepare and submit the application. Now the individual must pay a lawyer to provide this service. These are significant practical problems yet, despite calls for reform from organisations including the British Red Cross, legal aid is still denied. At the time of writing, the Refugees (Family Reunion) Bill, a private members' bill, is progressing through Parliament and with cross-party support. It seeks to address two of the most significant limitations in the current system – the reintroduction of legal aid for refugee family reunion cases (to mirror the access that continues to be available in Scotland) and to allow children to sponsor their family members to join them in the UK.

In response to the lack of legal aid, regional and national not-for-profit organisations, charities and (some) lawyers have been offering their services for free. More recently universities have been assisting on refugee-related issues. The Universities of Plymouth and of Bedfordshire offer advice on Refugee Family Reunion. The University of Liverpool provides an advice service on statelessness (persons who are not considered as a national by any state). The University of Kent offers representation in tribunal and High Court proceedings and in complex failed-asylum cases. The University of Strathclyde assists destitute asylum seekers who have exhausted all rights of appeal but who may have grounds for a fresh application for asylum in the UK. More recently, Sheffield Hallam University opened its law clinic in Refugee Family Reunion. It provides guidance on refugee family

the Humanitarian Protection mechanism. The right to family reunion is written into Part 8 and the relatively new FM section (Family Dependents) of the immigration rules (not under the Part 11 Asylum section).

⁷ See <https://www.gov.uk/government/publications/syrian-vulnerable-person-resettlement-programme-fact-sheet>.

reunion, has successfully completed two ECF applications and is adding post-arrival support mechanisms to its service provision.

That six universities have undertaken to provide specific advice and guidance in immigration and asylum for refugees is encouraging. Collectively they provide a mechanism for helping refugees and in producing the next generation of lawyers who have firsthand experience of the problems faced by refugees. Without this service, many refugees would continue to be displaced and separated from their families, be unable to complete applications for citizenship and the myriad other negative effects that status of a refugee can impose.

A THERAPEUTIC JURISPRUDENCE APPROACH TO CLINICAL LEGAL EDUCATION

When offering legal and non-legal forms of advice or guidance to a group such as refugees, with unique problems and backgrounds dissimilar to many of the clients 'typical' law clinics may face, the adoption of a specific philosophy is required. For our purposes this was Therapeutic Jurisprudence (TJ).

TJ is a legal philosophy that focuses on aspects of the law or the legal process from an emotional and psychological side.⁸ It recognises the human component of those involved in the law, with its rules and in their application. Whether the person involved in this process is aware or not, whether they are detached from the individual subject to the process or maintain a professional distance and apply the law without prejudice, the entire system may have adverse therapeutic and anti-therapeutic effects.⁹ TJ develops approaches to help maximise positive (psychological/emotional) effects and has a history of bringing the behavioural sciences into its scholarship to help inform its development and to tease out therapeutic outcomes. It covers all legal domains, it is certainly not restricted to clinical legal education, and it applies to a range of stakeholders involved in the legal process.¹⁰

The law relating to refugee family reunion is particularly in need of a TJ focus and many law clinics will, generally, be acting in a TJ key (whether they have defined it as such or not). The wellbeing of the individual client (and in the case of family reunion also the members of the family the sponsor wishes to have join them in the UK) is at the centre of their activities. Information is provided to the student members of the clinic in their training about the nature of the conflicts around the world, information on geography and politics, it will seek to instil awareness of the plight of refugees and how they arrive in the UK. Much of this training seeks to dispel myths about refugees and their reasons for travelling to the UK (as negatively and erroneously propagated in the UK-centric media) and considers the treatment of the refugee from initial interview, to gaining status, and finally being granted leave to remain. The effects of the process as a whole on the individual, and the mechanisms that can aid

⁸ Bruce J. Winick and David B. Wexler: *Judging in a Therapeutic Key, Therapeutic Jurisprudence and the Courts* CAROLINA ACADEMIC PRESS DURHAM, NORTH CAROLINA, Introduction, xvii, (2003); and David B. Wexler, *From Theory to Practice and Back Again in Therapeutic Jurisprudence: Now Comes the Hard Part* (December 16, 2011). 37 MONASH UNIVERSITY LAW REVIEW, 33, 34 (2011).

⁹ David B. Wexler *Therapeutic Jurisprudence: An Overview* PUBLIC LECTURE GIVEN AT THE THOMAS COOLEY LAW REVIEW DISABILITIES LAW SYMPOSIUM, Para 41 (1999).

¹⁰ Tali Gal and David B. Wexler *Synergizing Therapeutic jurisprudence and Positive Criminology* cited in POSITIVE CRIMINOLOGY (ROUTLEDGE FRONTIERS OF CRIMINAL JUSTICE) edited by Natti Ronel and Dana Segev, Chapter 6, (2015); and David B. Wexler, *Getting and Giving: What Therapeutic Jurisprudence Can Get from and Give to Positive Criminology* 6 PHOENIX LAW REVIEW 907 ARIZONA LEGAL STUDIES DISCUSSION PAPER NO. 13-13 (2013).

wellbeing or alleviate the more negative effects of this adversarial, complex, and at times Byzantine system of justice can be addressed through applying a TJ philosophy.

In our training, we focus on the behaviour, language and emotion components of TJ (and their effects on the recovery of refugee clients). This uses perspectives gained primarily from the behavioural science literature where a more emotionally sensitive,¹¹ or psychologically aware and holistic legal system is envisioned. Further, both TJ and behavioural science facilitate the development of a creative¹² approach to problem solving. TJ is complex in the sense that it holds both a law reform agenda with the aim of assigning therapeutic goals to current legal systems within the practical limits of due process and justice.¹³ Underlying the philosophy is a belief in a system which, as holistically as possible, ensures the most positive and therapeutic interaction with the law and legal process for all involved.

TYPICAL CASES IN A REFUGEE FAMILY REUNION CLINIC AND THEIR POST-ARRIVAL IMPLICATIONS

Every case handled by the HKC Law Clinic is unique, compelling and requires a personalised approach to ensuring the strongest case is presented in the application. Some cases have proven successful, others have been rejected or they continue, pending a formal decision. Each, however, has the common thread of involving an individual wanting to be joined in the UK by their families and facing significant problems, which would potentially be insurmountable, save for the assistance available from university law clinics. The Refugees (Family Reunion) Bill, if passed, would offer considerable help to refugees in the UK and specifically England and Wales, but whilst it is presently at its Report Stage in the Lords and has cross-party support, there is also the issue of Brexit and how this will dominate Parliamentary time for the foreseeable future. Consequently, university law clinics with a specialist refugee focus are likely to remain relevant.

The Helena Kennedy Centre for International Justice hosts a number of work-based learning clinics, providing students with experience of advising clients on civil and criminal issues, on national and international bases, each with human rights components. Given the long history of Sheffield Hallam University in clinical legal education, the centre was deemed to be an effective resource for providing a basis of assistance in response to the consequences of the developing refugee crisis. The clients who use the HKC Law Clinic are typically vulnerable and have experienced significant disruption to their lives. They are separated from their families and frequently display signs of distress and mistrust of organisations in authoritative positions. They may also fall victim to the requirements of the refugee family reunion

¹¹ Also referred to as “emotional lawyering.” Here there is a moving away from the traditional lawyerly “rational-analytical problem solving and an adversarial approach to conflict.” Susan Douglas, *Incorporating Emotional Intelligence in Legal Education: A Theoretical Perspective*, 9 E-JOURNAL OF BUSINESS EDUCATION & SCHOLARSHIP OF TEACHING, 56, 56 (2015). Also, on the topic of emotional intelligence see Marjorie A. Silver, *Emotional Intelligence and Legal Education*, 5 PSYCHOLOGY, PUBLIC POLICY, AND LAW, 1173 (1999).

¹² David B. Wexler *Therapeutic Jurisprudence: An Overview* PUBLIC LECTURE GIVEN AT THE THOMAS COOLEY LAW REVIEW DISABILITIES LAW SYMPOSIUM, Para 41, (1999).

¹³ Mark W. Patry, *Better Legal Counseling Through Empirical Research: Identifying Psycholegal Soft Spots and Strategies*, 34 CALIFORNIA WESTERN LAW REVIEW, 439 (1998); David B. Wexler and Bruce J. Winick, *Law in a Therapeutic Key: Developments in Therapeutic Jurisprudence* CAROLINA ACADEMIC PRESS, DURHAM, NORTH CAROLINA, (1996); and David B. Wexler *Therapeutic Jurisprudence: An Overview* PUBLIC LECTURE GIVEN AT THE THOMAS COOLEY LAW REVIEW DISABILITIES LAW SYMPOSIUM, Para 41, (1999).

system. This may include limited IT skills to complete the on-line application form, and frequently they have a different perspective to Western constructs regarding the celebrating and registering births. Further the collection, collation and maintenance of supporting documents necessary to substantiate their application may have been lost or be non-existent. These, along with the language and cultural barriers present, create an environment where emotional care for the clients is paramount. Thus, the perspective advanced by Wexler and Winick¹⁴ and Gould and Perlin¹⁵ acts as an antidote to the negative effects affecting refugees within its legal and administrative system.

We could present a number of examples of cases our Clinic has dealt with since its inception. Over one hundred applications have been submitted and many successes, along with some rejected applications have resulted. In this section of the paper we are attempting to demonstrate what happens in and following our students' interactions with clients and the operation of a TJ approach. The narrative provided by the client and contextualising this is essential to facilitate the client's healing and to provide a meaning to the traumatic experience on their journey to the UK. Further, this narrative finds its way into the statement presented by the client to explain and make intelligible to the Entry Clearance Officer (ECO)¹⁶ the circumstances around the client fleeing their country of origin and their contact (and sometimes lack of contact) with their family.¹⁷

Throughout the exchanges between the client and the students, the students embody certain fundamental principles. They must demonstrate respect for the client and ensure the client's voice is heard and meaning is applied through their accompanying statement to the application. They explain to the client the procedures and requirements involved in a family reunion application, gain the trust of the client, support their legal, non-legal and emotional needs, and understand the clients' ultimate goals when seeking assistance. To encourage the clients in seeking help, to reassure them and to facilitate cross-cultural communication,¹⁸ many of our interpreters are former refugees who can ensure the client's narratives are presented as authentically as possible. These interpreters assist the students in the questioning process and have regular discussions with the students to debrief and allow them to reflect on the interactions with clients. These interpreters are part of the education and training element of the Clinic and help "... raise provocative questions about roles, perceptions, and ethics,

¹⁴ David B. Wexler and Bruce J. Winick, *Law in a Therapeutic Key: Developments in Therapeutic Jurisprudence* CAROLINA ACADEMIC PRESS, DURHAM, NORTH CAROLINA, (1996); David B. Wexler and Bruce J. Winick, *Essays in Therapeutic Jurisprudence*. CAROLINA ACADEMIC PRESS, DURHAM, NORTH CAROLINA, (1991); and David B. Wexler and Bruce J. Winick, *The Use of Therapeutic Jurisprudence in Law School Clinical Education: Transforming the Criminal Law* 13 CLINICAL LAW REVIEW, 605 (2006).

¹⁵ Keri K. Gould and Michael L. Perlin, "Johnny's in the Basement/Mixing Up His Medicine": *Therapeutic Jurisprudence and Clinical Teaching* 24 SEATTLE UNIVERSITY LAW REVIEW, 339 (2000).

¹⁶ An Entry Clearance Officer assesses and determines whether the application for refugee family reunion should be approved or refused.

¹⁷ "... storying one's experience also entails (1) learning to attribute meaning in terms intelligible to one's community, and (2) positioning oneself (or, sometimes, being positioned) in the context of such accounts." Robert A. Neimeyer et al., *The Meaning of Your Absence: Traumatic Loss and Narrative Reconstruction*, in LOSS OF THE ASSUMPTIVE WORLD, A THEORY OF TRAUMATIC LOSS, 13-30 (Jeffrey Kaufman Ed. 2002). Here, the lawyer / advisor helps to articulate the client's story in a way that is understandable to the Entry Clearance Officer in a way which has meaning to them, their culture and their laws. This ultimately facilitates their recovery.

¹⁸ Here the student does not allow their own views to cloud the issue of the client's goals and perceptions. See Evelyn H. Cruz, *Through the Clinical Lens: A Pragmatic Look at Infusing Therapeutic Jurisprudence into Clinical Pedagogy* 30 THOMAS JEFFERSON LAW REVIEW, 463 (2009).

while promoting proactive lawyering.”¹⁹ The interpreters have also been helped either through our Clinic or one of our referral partners. This aids with the legitimacy of the work of the Clinic, its underlying holistic²⁰ approach and in enabling refugees to give something back to the communities who are in most need of help. A virtuous circle is thereby created.

The rationale for selecting which case studies are included in the paper was based on an interpretivist model.²¹ We wished to gain an understanding of the post-arrival problems affecting refugees who had been reunited with their families and therefore a “typical case study”²² sampling strategy was adopted. This ensures the chosen case studies illustrate the typical / normal issues facing refugees following their successful family reunion (and thus is considered to be representative). Here, a criteria-based sampling model was used. The first criterion involved maximising learning, and for Stake (1995), the selection should include those cases which “... are likely to lead us to understandings, to assertions, perhaps even to modifying of generalizations.”²³ The other criteria are: a typical unique case; cases representative of others; accessibility and hospitality (a research environment conducive to the collection of data); the identification of informants; and an intrinsic interest in the case. Therefore, we are confident that our case studies offer insights into the refugee experience which require attention and action.

The following case studies identify facts of cases we have heard at our clinic. These have been modified to protect the identity of the clients (although the salient features of the case remain) and the names applied to the clients are fictitious. This, again, ensures the confidentiality of clients whilst allowing for important principles to be presented.

CASE STUDY ONE

An ongoing case involved assisting a woman from the Democratic Republic of the Congo (DRC) to be reunited with her four adopted children²⁴ still residing in the country of origin. The client had been in contact with the children since she fled the country, she continued to send financial support to help with their maintenance and was making decisions about their lives including education and health, and, despite referring to the children in her screening interview when she first arrived in the UK, she was refused entry clearance for the children to join her. Under refugee family reunion procedure, following her referral to our Clinic, we advised the preparation of a new application containing a fully detailed personal statement,

¹⁹ Keri K. Gould and Michael L. Perlin, “*Johnny's in the Basement/Mixing Up His Medicine*”: *Therapeutic Jurisprudence and Clinical Teaching* 24 SEATTLE UNIVERSITY LAW REVIEW, 339 (2000) at 365.

²⁰ In this regard see William van Zyverden, *Holistic Lawyering: A Comprehensive Approach to Dispute Resolution*, 3 BOSTON UNIVERSITY PUBLIC INTEREST LAW JOURNAL, 5 (1993).

²¹ See Kristin Braa and Rickard Vidgen, RESEARCH: FROM OBSERVATION TO INTERVENTION in PLANET INTERNET Kristin Braa, Carsten Sorensen, and Bo Dahlbom (eds) (Studentlitteratur AB 2000).

²² Jason Seawright and John Gerring, *Case Selection Techniques in Case Study Research: A Menu of Qualitative and Quantitative Options*. 61 POLITICAL RESEARCH QUARTERLY, 2, June, 294 (2008).

²³ Robert Stake, THE ART OF DOING CASE STUDY RESEARCH, 4 (Sage Publications 1995).

²⁴ Whilst family reunion refers to the immediate family of the applicant (sponsor), provision is made for individuals (such as wider family members – nieces, nephews and grandchildren) to join them. Paragraph 319X manifests this right where the child is under the age of 18 at the date of application; is able to demonstrate serious and compelling family or other considerations which make the child's exclusion undesirable and alternative and appropriate arrangements have not been made for their care; the child is not leading an independent life; they are not married or in a civil partnership; they have not formed an independent family unit; they have been part of the family unit of the applicant at the time when they left the country of origin; and the child can and will be maintained and accommodated adequately in the UK without the need for recourse to public funds.

along with more substantial evidence of proof of contact and financial support (we discovered her first application, assisted through a lawyer, contained neither and relied on an irrelevant regurgitation of her asylum claim). The importance of the personal statement cannot be underestimated. Whilst court cases can concentrate on legal facts, official reports on the application and written justifications for decision-making, the statement offers numerous therapeutic benefits for the client. First, it provides the client with a voice.²⁵ It helps them to explain and contextualise their situation, why they had to flee their country of origin, what had led them to ostensibly abandon their family (including their children), their fears, emotions, their previous and on-going relationship with their family, and it facilitates putting in place these issues in an emotional and humane context. The process of writing of highly negative experiences also promotes wellbeing and has a therapeutic effect.²⁶ The students who help the client prepare this narrative are also affected by it. They share in the life experience of an individual who needs help, who is vulnerable and has faced significant adversity in reaching the UK. They gain an appreciation of the experiences refugees can encounter due to troubling personal and world events, they establish that they are invested in the client's case,²⁷ and it also demonstrates starkly that each client has their own story, and unique circumstances which have impacted on their lives. The client understands that the students appreciate their concerns and this validates their experience. Deep learning and emotional development is evident.

The client, her husband and biological children had fled their home in the DRC and were frequently moving between this country and Rwanda to avoid government agencies who were persecuting the family. The client had given evidence to the International Criminal Court against the government for its involvement in war crimes committed in Eastern DRC. This is a very complex case for a number of reasons. First, the client's health and medical conditions mean that prompt reunion is required or the client faces the possibility that the Home Office will reject her family's application for reunion due to her becoming too ill to care for the children. Secondly, applications for refugee family reunion refer to nuclear, pre-flight families. This is typically the spouse and biological children of the client, but does extend to adopted children. However, the DRC is not a signatory to the Hague Adoption Convention²⁸ and therefore the UK does not recognise adoptions nor does it, as such, include these adopted children as part of the refugee family reunion application process. To circumvent this impasse, the students preparing the client's statement had to ensure they invoked European Convention on Human Rights (ECHR) Art. 8 to compel the ECO to consider the case (which remains to be assessed on its merits) and this provides a route of appeal if the application is unsuccessful.

²⁵ Anthony V. Alfieri, *Reconstructive Poverty Law Practice: Learning Lessons of Client Narrative*, 100 YALE LAW JOURNAL 2107 (1991); Gerry Lopez, REBELLIOUS LAWYERING: ONE CHICANO'S VISION OF PROGRESSIVE LAW PRACTICE (Westview Press 1982); Binny Miller, *Give Them Back Their Lives: Recognizing Client Narrative in Case Theory*, 93 MICHIGAN LAW REVIEW, 485 (1994); and Jack Susman, *Resolving Hospital Conflicts: A Study on Therapeutic Jurisprudence*, reprinted in LAW IN A THERAPEUTIC KEY (David B. Wexler and Bruce J. Winick eds., Carolina Acad. Press 1996) (discussing the impact on patients and their sense of validation when nurses allowed them to "ramble").

²⁶ Joshua M. Smyth, *Written Emotional Expression: Effect Sizes, Outcome Types, and Moderating Variables*, 66 JOURNAL OF CONSULTING & CLINICAL PSYCHOLOGY, 174 (1998).

²⁷ James W. Pennebaker, OPENING UP: THE HEALING POWER OF CONFIDING IN OTHERS (William Morrow & Co. 1990).

²⁸ The Democratic Republic of the Congo is not a party to the *Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption*.

This case has challenged the students to control their emotions and focus on issues such as ensuring the client's narrative and reasoning is based within the parameters of the law and the application process. They needed to be mindful not to revert to sympathy or a patronising approach to the client's distressing circumstances. They have had to prepare a detailed personal statement (of some nine pages) which uses the ECHR and external sources (for example books and reports) to verify the factual information presented in the client's application. The students have also had to endure a protracted application process that has extended to the interviews of the client's family. Following the conclusion of interview arrangements, the authorities would not undertake the assessment due to the children not being in possession of passports. This is contrary to the guidance produced by the government and led to (respectful) arguments being presented to the agency to reconsider and to expedite the interviews due to the dangers faced by the children.²⁹ This case continues but has provided further experience for our students of the multitude of problems encountered in applications of refugee family reunion.

Post arrival problems

The applicant's case is on-going and thus the client and family are not yet reunited. The case is included here because it shows the problems of an on-going application and the anti-therapeutic effects this has for everyone involved. The students have learned a valuable lesson in the continued struggle to satisfy the State's requirements for refugee family reunion. They appreciate the illness facing the sponsor and that if the case is not remedied promptly the sponsor's health may deteriorate to such an extent that reunion will be denied because she will be deemed too ill to care for the children applicants. The students have recognised the need for careful accompanying evidence to be presented to the State in supporting the client's application, the toll this process takes on the wellbeing of the client and family members trapped abroad, and the sense of helplessness when applications are not progressed.

CASE STUDY TWO

An Iranian national applied to be reunited with his two children and wife. He had arrived in the UK in 2009 after suffering physical abuse by the military and then persecution by the Iranian government for involvement in political protests. He was physically well (despite experiencing three months' abuse by the Iranian military) when he arrived in the UK but was suffering from the trauma associated with Post-traumatic Stress Disorder (PTSD)³⁰ (although this was undiagnosed at the time). The condition had led to a lack of direct contact with his family for a two-year period. He had experienced significant problems first in his applications for asylum status³¹ and then in his applications for family reunion. He had, with the assistance of solicitors in the first instance, made two previous applications for refugee

²⁹ For further discussion of the role clinical legal education plays in the development of students as vigorous advocates see Michael Perlin, Catherine Barreda, Katherine Davies, Meghan Gallagher, Nicole C. Israel, and Stephanie K. Mendelsohn, *Creating a Building a Disability Rights Information Center for Asia and the Pacific Clinic: Of Pedagogy and Social Justice*, 17 MARQUETTE BENEFITS & SOCIAL WELFARE LAW REVIEW, 1 (2015).

³⁰ Which adversely affected his ability to convey his story to the satisfaction of the government (the ECO). For broader discussion of this subject see Stephen Paskey, *Telling Refugee Stories: Trauma, Credibility and the Adversarial Adjudication of Claims for Asylum*, 56 SANTA CLARA LAW REVIEW, 457 (2016).

³¹ A not uncommon phenomenon in immigration / asylum claims with refugees. See Kate Aschenbrenner, *Ripples Against the Other Shore: The Impact of Trauma Exposure on the Immigration Process through Adjudicators*, 19 MICHIGAN JOURNAL OF RACE & LAW, 53 (2013) and Linda Piwowarczyk, *Seeking Asylum: A Mental Health Perspective*, 16 GEORGETOWN IMMIGRATION LAW JOURNAL, 155 (2001).

family reunion, however, due to the poor drafting, bundling and interviewing,³² these were rejected by the Home Office's ECO. Interestingly, following the rejections the client's lawyers failed to provide him with reasons. The client was left with failed applications and the distress of not fully understanding why³³ or what could be done to resolve the matter beyond submitting an appeal. Failed applications such as these are not uncommon due to a range of factors which may include physical and emotional problems³⁴ affecting the client's ability to articulate the factual elements of their application. Further, the stress the client is experiencing and linguistic difficulties will each influence judgments of the client/applicant's disposition, the consistency and veracity of testimonial evidence, and the details of accounts presented to ECOs and/or the immigration judge.

He came to the HKC Law Clinic following a referral from the British Red Cross and our team devised and rebuilt an application including a bundle of documentary evidence and a clear statement explaining the medical reasons for the lack of contact (which is usually devastating to the success of a claim of family reunion). Supporting statements (which are akin to a covering letter to the application) are not a requirement for applications of refugee family reunion but we insist on our students taking the time to interview the client in sufficient depth to produce a statement which outlines the reasoning and background of the client's circumstances. This is used to clearly articulate the pre-flight family members' relationships, the reason why the client fled the country of origin, the danger facing the existing family and hence their need to join the client in the UK, and, where appropriate, a reference to the ECHR³⁵ which obliges the UK government to dutifully consider the client's application for family reunion and enables an appeal should it become necessary. This method of interview, implementing "contextual interviewing" ensures the students, by adopting client-centred representation, do not simply receive advice on their legal position, but involves the students acknowledging the client as a person. It has also been recognized that Narrative Exposure Therapy can be an effective method for treating people with PTSD with its focus on the power of speech in the healing process (and has been used by asylum lawyers, advisors and counsellors with their refugee clients in preparation of their claim and to manage trauma).³⁶

The client lodged an application in April 2016 and he was informed in the following July that this was unsuccessful. The client was, naturally, distraught by the news but we had spent time with him, our students employed the skills we developed in them at the training stage. The client displayed obvious signs of emotion and distress. He was anxious, agitated and upset

³² Where, for instance, he was unable to articulate the consequences of the abuse he suffered whilst on military service – see Maggie Schauer, Thomas Elbert and Frank Neuner, *NARRATIVE EXPOSURE THERAPY: A SHORTTERM INTERVENTION FOR TRAUMATIC STRESS DISORDERS AFTER WAR, TERROR OR TORTURE* 2 ed (Hogrefe & Huber 2005).

³³ Michele Cascardi, Alicia Hall and Norman G. Poythress, *Procedural Justice in the Context of Civil Commitment: An Analogue Study*, 18 *BEHAVIORAL SCIENCES AND THE LAW*, 731 (2000).

³⁴ Which may include symptoms including hypervigilance, emotional numbing, emotional detachment, nightmares and flashbacks or re-experiencing the trauma. In relation to its effects on adults see Judith L. Herman, *TRAUMA AND RECOVERY: THE AFTERMATH OF VIOLENCE—FROM DOMESTIC ABUSE TO POLITICAL TERROR*, (Basic Books 1992). For research into its effects on adolescents see Sabrina J. Stotz, Thomas Elbert, Veronika Müller, and Maggie Schauer, *The Relationship between Trauma, Shame, and Guilt: Findings from a Community-Based Study of Refugee Minors in Germany*, *EUROPEAN JOURNAL OF PSYCHOTRAUMATOL*, 6 (2015).

³⁵ A right to private and family life is provided under Article 8 of the European Convention on Human Rights, 1998.

³⁶ Nicolas Gwozdziwycz and Lewis Mehl-Madrona, *Meta-Analysis of the Use of Narrative Exposure Therapy for the Effects of Trauma Among Refugee Populations*, 17(1) *PERMANENTE JOURNAL*, 70 (2013).

when he came to the Clinic. The student volunteers explained the service we provide, how the process operated and what the likely success and failures were going to be. In so doing they helped to empathise with his situation, explained that the clinic would help him to prepare the best application possible, and that due to expected lack of success of this application to the ECO, that an appeal would be made in the event of his application being rejected. We reiterated that we would help and support him to the exhaustion of any legal redress available. After the negative result in July 2016 we resourced a lawyer who submitted his appeal and who would represent him in the First-tier Tribunal (Immigration and Asylum) Chamber, and provided this service on a pro bono basis. The client's appeal was heard in December 2016 and his claim was successful. The judge remarked favourably on the comprehensive bundle of evidence and its very good organisation. The Home Office subsequently informed the applicants³⁷ client that it would not be appealing this decision and therefore the client was to be joined in the New Year with his wife and two sons. This, on face value, appears to be a successful outcome. And it is, yet there are anti-therapeutic elements present. In the preparation of a client for their court hearing they are advised on the questioning likely to come from the Home Office and the judge, on which aspects of their case they should focus, they work with an interpreter to most effectively explain their situation and how to address the issues raised by the ECO in refusing their application for family reunion. This adds to existing distress³⁸ of a prolonged and uncertain application process, the negative effects attending court can have on clients, and the possibility of another rejection of their application. Having prepared for the case, when the judge makes a decision based on a seemingly (to the client at least) cursory examination of the bundle of evidence, and the representative of the Home Office appears disinterested in contesting the application in court or in appearing at all (and appealing the decision of the court), the client can feel emotionally drained, they can feel cheated, they can feel that having sought an opportunity to explain their circumstances to a person in authority, this has been denied to them and the initial positive reaction to the news of the judgment soon changes to one of negativity. Again, the importance of the legal representative, of the support system offered through advisors in clinics, becomes evident.

The client's case has taken nearly eight years to be resolved.³⁹ Having left his young sons to seek asylum in the UK, he is reunited with sons who are now young men. It is likely that the transition for all the family will be difficult, but the students involved in the case have had first-hand experience of how separation of families affects the individuals concerned, the problems involved in the application process for refugee family reunion, the implications of the cuts in legal aid and how this may impact on the role of legal advice for vulnerable individuals, and how they can positively impact on the lives of people in great need. For these students, this is an experience that will live with them for the rest of their lives. It has instilled in them a sense of pride and accomplishment, and a desire to fulfil the ethos of the legal profession's pro bono initiative. It also demonstrates that whilst the client's case may have come to an end, the story of the client's life is simply turning to a new chapter. We are

³⁷ Significantly they do not inform the refugee (sponsor) about the decision therefore the refugee is unaware if the Home Office will counter appeal or not until either the applicants provide details of such a development or they have counted down the requisite number of days available for the appeal to be lodged.

³⁸ Although at least through information and awareness of the process the client can feel control over the stressful situation. See Susan T. Fiske and Shelley E. Taylor, *SOCIAL COGNITION* (New York Random House 1984).

³⁹ This period of isolation from his wife and sons and members of his local community appeared to exacerbate his declining mental health. Similar findings were presented in C. Gorst-Unsworth and E. Goldenberg, *Psychological Sequelae of Torture and Organized Violence Suffered by Refugees from Iraq: Trauma-Related Factors Compared with Social Factors in Exile*, 172 *BRITISH JOURNAL OF PSYCHIATRY* 90, 90 (1998).

committed to educating our student advisors on the holistic nature of advice and support. This particular client needed assistance with the travel arrangements for his family to leave Iran and reach the UK, and he requires help in obtaining accommodation to reflect his new needs. The children require educational placements and English language support and probably health checks and vaccinations. The family may require some form of counselling in order to bond and work towards a future together. To this end the Clinic staff made several relevant “safe” referrals ensuring they had the mandate to do so from the client. Texts between the client and staff members made him feel we still cared and were interested and would provide on-going specialist support as required.⁴⁰ We wanted to ensure that the students did not consider that they had dealt with the client, a successful outcome has been achieved and they should move on to the next person on the Clinic’s waiting list. Their caring, their support, their commitment to helping the client in the next non-legal aspects of his life are important aspects of their development.⁴¹ The students see the impact of their work, but also how the legal system is merely a snapshot of the client’s world. Refugee family reunion, even successful cases, does not necessarily lead to the parties walking happily together into the sunset. Often, a family being reunited is merely where a new set of challenges begin. Maintaining contact and thereby observing a justice system as just that – a system – are important lessons of which our students gain first-hand experience.

Post arrival problems

Being one of our very first cases we were of course delighted with the result though recognised the exceptionally long wait and anticipated that the family would face challenges when reuniting. What we did not expect were housing problems. The Clinic has been unable through capacity to offer formal post arrival support, however one of the clinic leads unexpectedly met the client whilst passing through the City centre and he told her of the problems the family faced immediately upon arrival. He had been told by the local council that he could not apply for larger accommodation until the family arrived in the city and when they did they were told they would have to go onto a waiting list or into homeless accommodation. The client had lived in the same single bed-sit style property for five years and had taken it on as a lease when he had finally been granted status. Terrified of what he had heard about homeless accommodation and how the individual can be moved anywhere, he agreed to be placed on a waiting list. The newly arrived family were crammed into his single room property which had inevitably led to bewilderment, frustration and a high level of stress and tension.

A few weeks later, again crossing town the Clinic lead again saw the client and was struck with his physical appearance. He looked noticeably stressed and anxious, even though he was surrounded by his family. Having rung him a week later whilst at the Clinic he told of how further problems had emerged in accessing education for his adolescent sons, though both had performed well academically in Iran they were told they would only be allowed to undertake English classes for three hours a week for the first few months and given the housing situation, and the interest in assimilating into their new surroundings, they were very much wanting and needing more. Furthermore, a misunderstanding with his wife's benefit claim, that he believed stemmed from poor interpretation and a member of staff from the Department for Work and Pensions not understanding the immigration status his newly

⁴⁰ From the housing needs of a single man to a family residence for four individuals.

⁴¹ Beyond the work of the HKC Law Clinic, many of our students have previously volunteered at national and international agencies to assist in the refugee crisis, working in the UK and abroad to aid the plight of individuals suffering in, for example, Syria.

arrived wife and children had, led to the family being taken off the housing waiting list. He was unaware of this though and only found out after several months had elapsed, he had heard nothing and queried what was happening when he paid rent at a local office. The Clinic lead was able only to advise him to attend a drop-in support session but it took several weeks to sort out the family's issues and they faced the risk of having to leave the city where he had social networks and established medical support and assistance. Concerned, the Clinic lead followed up on the client's case and was informed that he was eventually advised to seek a private tenancy, which he did, with some difficulty because of having to find a deposit, references but also much more furniture than he had ever had before.

CASE STUDY THREE

Mr Adonay, as a sportsman, was quite famous in his own country and lived an opulent lifestyle until he was targeted by the authorities and persecuted because of his religious beliefs. Mr Adonay was almost immediately granted refugee status having claimed asylum upon entering the UK. He has three biological daughters with two women and had assumed care of all three after the relationships broke down. Fleeing his country of origin he had left the children under the care of his brother. Having gained refugee status he could not find anyone who would conduct the family reunion case for less than a fee of £1,500. Indeed, he actually struggled to find anyone in his home city to represent him through the application process. Having contacted a local British Red Cross representative he was referred to the HKC Law Clinic despite residing some 40 miles away.

Although living outside the area from where we accept clients, we decided to take the case on given the circumstances. Mr Adonay's first application was refused, and we helped him to appeal the decision and asked for a review. However, given the lack of birth certificates or other accepted proof of fatherhood we decided that the only way to have the case accepted was to order DNA testing. We were interested in pursuing the DNA matter on a policy level and wished to gather evidence around the issue. We successfully negotiated a discount with a major DNA testing provider and all three children were sampled together with their UK based sponsor/father. Having established the biological linkage we decided it would be prudent to submit a fresh application. There were further costs and complications with TB testing and increased fees from when the children were first tested (the first tests should have stood but the Embassy refused to accept them) but eventually the children were accepted. A number of issues were raised in this case which are beyond the scope of this paper to fully explore. However, at its core, the refusal to accept evidence of Mr Adonay being the children's father required him to provide DNA evidence to effectively sponsor the children arriving in the UK. This involved a cost of several hundreds of pounds which the HKC Law Clinic funded through the generous support of an external funder. Without this money, Mr Adonay would not have been reunited with his children. Further, the costs of accepted DNA evidence are proportionately high and the Clinic staff are in discussions with the Home Office for this restriction on accepted service providers and the associated costs to be reconsidered.

Post arrival problems

Anxious to find work, frustrated by the lack of opportunities in the North and lured by the offer of a job Mr Adonay moved to London. On hearing the children had been granted a visa he tried to source suitable accommodation with the help of the community, but to no avail. The children arrived quickly via the British Red Cross travel assistance and the family were

forced to enter the homeless system. Mr Adonay phoned one of the Clinic leads daily at one point and was reduced to tears on the phone stating ‘My children are in a terrible place, there are bad people in the hostel we are living in and they do bad things to children.’ The three little girls (the eldest being 11, the youngest only seven) were forced out of the hostel during the day as there was no play area and nowhere to cook. The newly reunited family are still sharing just one room and three single beds. Mr Adonay now wishes to return to the North and is having to remotely apply for housing. He does not wish to return to where he originally arrived as he feels there are no job opportunities and little by way of a community, advising he was the only person from his home country he knew of in the area. He wishes to re-locate to another Northern city close by but is inevitably facing problems because of the ‘local connection’ test.⁴² In the meantime, the children have not been placed in school due to lack of available places and presumably their precarious housing situation. They have also not been able to register at a local GP practice, having instead been forced to go through the homeless medical route. Photos Mr Adonay shared of his family show a family pleased to be together but also display strain on the faces of the young children and their father. There is continued dialogue between clinic staff and Mr Adonay but all we are able to do because of capacity is to refer him to local agencies, some of whom have already turned the family away because of their own limited resources. Mr Adonay has not at any stage complained about his housing situation and facing homelessness, instead he has blamed himself for the reduced circumstances he and the girls are in. He has lost a lot of weight and says he is particularly worried about the oldest daughter who he informs us cries most nights and asks why she is here in the UK.

It is hoped that the family will soon return to the North but are likely to have to enter the same homeless system they did in London. However, they believe they should eventually be able to secure larger and more suitable accommodation and more quickly find schools and health care.

IMPLICATIONS

There is a significant lack of post-arrival support for refugees having been reunited with their families, and its negative effects, in many regions of the UK. This is often due to a lack of resources and, we consider, a lack of policy and applied academic research to develop mechanisms which can be rolled out more broadly to effectively address the issue.⁴³ To give just a few examples of the specific experiences of clients to our clinic, it is clear to see the need for post-arrival support to prevent the housing crises, pressure on the family unit and homelessness affecting refugees. Timely information and practical assistance in navigating the welfare benefits system, ensuring the correct housing is sourced, ensuring educational facilities (both academic institutions for children and language classes for all who may have deficiencies in English) are identified and arranged in good time are frequently missing. Medical services for the physical and psychological issues arising from the separation and reunion, and numerous other aspects of legal and non-legal advice and guidance are required.

⁴² This test enables a local authority to refer the applicant to another council for help to house them where they do not have a local connection to the area. Local connection includes links based on living and working in the area; close family in the area and other special reasons.

⁴³ Policy guidance does exist – for example Local Government Association, *RESETTLING REFUGEES: SUPPORT AFTER THE FIRST YEAR. A GUIDE FOR LOCAL AUTHORITIES* (2017). From an academic perspective, research from Western Australia has been presented. See Val Colic Peisker and Farida Tilbury, “Active” and “passive” resettlement: *The influence of support services and refugees’ own resources on resettlement style*, 41 *INTERNATIONAL MIGRATION*, 5, 61 (2003)

In this last category, for instance, at Sheffield Hallam University a mentoring system operates where refugees to the local area are paired with a mentor who can assist them to integrate into the local community, give advice on how to gain the qualifications/experience/training necessary to continue their previous careers but in the UK (or indeed to start a new career) and so on. This is just one way in which non-legal advice and help is so important following the refugee and family's arrival to allow them to focus on their lives and begin, positively, to build a future together.

CONCLUSIONS

Legal and non-legal assistance for refugees has been adversely affected by the austerity measures of successive governments since 2008 and by the enactment of LASPO. This has affected not only the provision of legal practitioners working in areas typically used by refugees (including family reunion and nationality applications) but more broadly in the not-for-profit sector generally. Universities have begun to offer dedicated clinical programmes to fill this gap and as a unique learning opportunity for their students, but the overall provision of these services is limited in geographic scope and availability.⁴⁴

Whilst the services offered through these dedicated forms of clinical legal education are of a very high quality (in most cases subject to regulatory body review and audits), they often stop following the specific area of assistance provided. Individual members of such clinics may offer some form of post-arrival support and/or signposting of relevant advisory agencies on a case by case basis. However, a more formal, holistic service which aids the refugee client in their assimilation to the community and transition to their new life with their family is necessary.

Key areas include clinics offering guidance on British nationality and travel documentation applications, welfare benefits, housing, fuel, employment, education, language development and training and emergency services to avoid homelessness affecting clients. It is perhaps implausible for a single law clinic at a university to offer all of these services in-house. However, if strategic alliances were developed in regions where clients could thereby be referred as a matter of course, resources could be maximised as could the therapeutic and positive effects for the refugee clients.

Innovative practices are being offered across the university sector. Sheffield Hallam University offers a mentoring system for refugees with professionals in the community. This helps to assist and inspire refugees to reassume roles and occupations held in their country of origin. At the University of Plymouth, a law clinic has been established to help refugees to start new businesses and to encourage entrepreneurship and innovation. This is a further aspect of original post-arrival support which is advantageous to all members of the community. Hence, we are very positive about the future of law clinics to continue to support and develop links with community groups. The more who provide these bespoke services, the greater the impact for the refugees, the local and wider communities, and all in the legal sector.

⁴⁴ James Marson, Katy Ferris and Clare Tudor, *Family Reunion in a University Law Clinic: A Model for Law Schools* 23 EUROPEAN JOURNAL OF CURRENT LEGAL ISSUES, 2 (2017).