



Proposed changes to publicly funded immigration and asylum work

Introduction

The Department for Constitutional Affairs (formerly known as the Lord Chancellor's Department) has issued a consultation paper entitled *Proposed Changes to Publicly Funded Immigration and Asylum Work*. The paper outlines far-reaching changes in the legal help system, which have serious implications for asylum seekers and established migrant communities in the UK.

The aim of the proposals is to severely restrict the time that lawyers can spend in preparing and representing asylum cases. The fear is that the restrictions are so severe that significant numbers of legal practitioners will, in fact, cease to represent people at all. The remaining practitioners will face impossible time scales within which to deal with asylum or immigration cases. Or, they may end up making only the most cursory attempts to present their clients' cases.

As a result, people requiring legal advice will turn in desperation for advice to community organisations and advice centres, which will not have the necessary resources, nor will they be qualified to assist in asylum or immigration matters.

What are the changes?

1. The paper proposes the financial limits for different types of work at various stages in the procedure:

Asylum

- Only five hours for an initial asylum application will be allowed. This is substantially below what experienced representatives require and indeed what the current Legal Services Commission Manual allows. The five hours will also have to cover advice on human rights, the National Asylum Support Service (NASS) and travel documents.
- Similarly, at appeal only four hours is to be allowed. This will have to include counsel's preparation of the case, brief and 'bundles' of relevant background material.
- There will be a maximum of £150 allowable to cover grounds for appeal to the Immigration Appeal Tribunal.

Immigration:

- For immigration applications the restrictions are even more limited. Three hours will be allowed for an initial application and four hours for the appeal, including counsel's preparation. Again, this includes advice on human rights aspects, welfare benefits and travel document advice.
 - There are some small additions where people are detained or in hospital.
 - Attendance at interviews is liable to stop as the time spent will count against the advice limit.
 - Derisory financial caps are allowed for interpreters, medical reports and country experts.
2. The paper also introduces a system where a unique legal help number is allocated to track the amount of work done for each client.
 3. Compulsory accreditation for representatives receiving public funding for immigration and asylum work. The Law Society is already operating an accreditation scheme. This, however, is voluntary and take up is low. The Government proposes to introduce a compulsory scheme operating at a variety of levels from probationary to advanced.

What are the concerns?

The major concerns relate to the reduced time limits listed above. Experienced practitioners commonly spend considerably more than five hours preparing cases. This involves interviewing, making phone calls, researching country information, commissioning medical evidence and so forth. A maximum of five hours is hopelessly unrealistic for a substantial number of cases. Furthermore, five hours is an absolute limit, which does not allow anything for flexibility even if, for example, much of that time is spent sorting out delays and mistakes made by the Home Office, or if a case is particularly complex

The purpose of the unique legal help number is to keep track of cases to ensure that the total allowable of five hours is never exceeded. The Legal Services Commission itself concedes that there are issues of quality. Still, it means that a client's five hours could be completely used up by poor quality advice. They then do not have the option of approaching an alternative lawyer for advice. It is very common that when a committed and experienced legal representative intervenes, cases are transformed. The removal of this safeguard is a serious loss of protection.

The consultation paper states that the presence of legal representatives at substantive interviews is an unnecessary expense based on alleged Home Office experience of representatives who fail to intervene or to take notes. This is extremely disingenuous given the history of controversy over the ability of representatives to intervene in interviews. The Home Office has been extremely hostile to such interventions and an uneasy accommodation has been reached in the form of a protocol of behaviour, which has been imposed by the Home Office. To use this resistance now as an excuse to remove the ability for representatives to be present at all is extremely questionable. We regard the presence of an independent adviser in the interview as an essential safeguard to the integrity of the system. Practitioners report that the interviews are far more likely to give rise to problems if there is

no representative present. The Home Office is already expanding the nationalities that can be removed without an appeal – for these people, if these proposals go through, their representatives will never engage directly with the decision-maker.

What will the effects be?

It is already evident from meetings held by the Immigration Law Practitioners' Association (ILPA) that many practitioners will simply cease to take on asylum and immigration cases. It simply will not be practical either in financial terms or in terms of their ability to adequately do their job. Rather than do their job badly, many will conclude that they will not do it at all and revert to more amenable areas of law. As a result, it is precisely those practitioners that are the current source of concern that are likely to remain in the field, complicit partners in a severely degraded system.

We are in favour of compulsory accreditation for immigration lawyers – the variable standards of immigration lawyers are a long running issue, as the Legal Services Commission acknowledges. However draconian restrictions across the board on the amounts that can be spent should follow this general raising of standards not precede it. There is little point in accreditation at a standard already pared down beneath a realistic level.

Similarly, a unique number for tracking expenditure is relatively uncontroversial where qualities and standards are known to be reliable – it is clearly reasonable to keep track of how much is spent on each individual case. Where this becomes problematic is if it then rigidly restricts the time available and effectively removes the possibility of seeking alternative advice.

Does this concern you? What can you do?

There are two things you can do:

1. If you agree that this is a serious further inroad into asylum seekers' rights to a fair hearing, you may wish to respond to the Department of Constitutional Affairs Consultation Paper. You can view the paper at the (former) Lord Chancellor's Department website at: <http://www.lcd.gov.uk/consult/leg-aid/asylum.htm>.

Responses have to be in by 27th August 2003.

2. The Refugee Council will be sending its own response to the Consultation. If you wish to let us have your views please send them to Richard Lumley at: richard.lumley@refugeecouncil.org.uk or phone him on 020 7820 3067. We are particularly keen to get evidence of casework where the effect would have been severe, had these proposed restrictions already been in place.

We are also particularly keen to feed in views directly to relevant parliamentarians. If you are interested in being part of this process, please contact Richard Lumley.