

ILPA's Response to the ICIBI's Call for Evidence: An Inspection of Asylum Casework 2023

Background

1. The Immigration Law Practitioners' Association ('ILPA') is a professional association and registered charity, the majority of whose members are barristers, solicitors and advocates practising in all aspects of immigration, asylum and nationality law. Academics, non-governmental organisations and individuals with a substantial interest in the law are also members. ILPA exists to promote and improve advice and representation in immigration, asylum and nationality law, to act as an information and knowledge resource for members of the immigration law profession and to help ensure a fair and human rights-based immigration and asylum system. ILPA is represented on numerous government, official and non-governmental advisory groups and regularly provides evidence to parliamentary and official inquiries.

Background	1
Introduction	2
The efficiency and timeliness of asylum decision making	4
Severe Delay	4
The Impact of Delay	7
The 'Streamlined Asylum Process'	8
The Home Office's responsiveness to queries and challenges	17
Change of Address	20
The quality of asylum screening interviews, substantive asylum interviews and initial asylum decisions, including for asylum seekers who have protected characteristics	24
Asylum Screening Interviews	24
Substantive Asylum Interviews	27
Initial Asylum Decisions	28
BRP Delays	30
The impact of the Nationality and Borders Act 2022 on the efficiency and effectiveness of asylum decision making	32
Differential Treatment	32
Legacy and Flow Cases	35
Standard of Proof	36

Introduction

2. This a response to the Call for Evidence by the Independent Chief Inspector of Borders and Immigration ('ICIBI') on asylum casework, informed by the input of ILPA members.
3. It is the experience of ILPA members, as borne out in the published statistics, that since the ICIBI's last inspection of asylum casework from August 2020 to May 2021,¹ the Home Office has remained unable to keep on top of the volume of claims it receives. Our members have experienced extreme delays and disorganisation in every aspect of asylum decision-making, from screening interviews, preliminary information questionnaires ('PIQ'), streamlined asylum questionnaires, and substantive interviews through to receipt of application registration cards ('ARCs'), decisions, and BRPs.
4. The delay has serious ramifications for the capacity of legal representatives to assist further claimants in need of legal advice and representation and also a detrimental impact on the mental health of claimants. Furthermore, the 'streamlined asylum process' has lacked the necessary stakeholder engagement and transparency, and has been far from 'streamlined' or effective. It has placed greater capacity constraints on legal representatives, but has not resulted in any clear timeframe for decisions.
5. A service standard is urgently needed. Furthermore, the Home Secretary should seek to comply with the Immigration Rules and provide expected timeframes for decision-making:

333A. The Secretary of State shall ensure that a decision is taken on each application for asylum as soon as possible, without prejudice to an adequate and complete examination. Where a decision on an application for asylum has not been taken within:

- a) six months of the date it was recorded; or*
- b) within any revised timeframe notified to an applicant during or after the initial six-month period in accordance with this paragraph, and*
- c) where the applicant has made a specific written request for an update,*

the Secretary of State shall inform the applicant of the delay and provide information on the timeframe within which the decision on their application is to be expected. The provision of such information shall not oblige the Secretary of State to take a decision within the expected timeframe.

¹ David Neal ICIBI, *An inspection of asylum casework (August 2020 - May 2021)* (November 2021) <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1034012/An_inspection_of_asylum_casework_August_2020_to_May_2021.pdf> accessed 9 June 2023.

6. Although there is now a third country removal agreement with Rwanda,² it remains the case, as with the ICIBI's report in 2021, that the 'inadmissibility process is simply deferring consideration of claims'.³ It is also an inefficient use of the Home Office's limited resources. The May 2023 statistics show that more than fifty thousand individuals have been considered for inadmissibility, but only 83 inadmissibility decisions have been served, with even fewer removals conducted. For the 27,644 individuals subsequently admitted into the UK asylum process, for substantive consideration, the inadmissibility process was an inefficient roadblock in disposal of their claim:

'Between 1 January 2021 and 31 March 2023:

- 55,447 asylum claimants were identified for consideration on inadmissibility grounds
- 24,083 'notices of intent' were issued to individuals, to inform them that their case was being reviewed to determine whether removal action on inadmissibility grounds was appropriate and possible
- 83 individuals were served with inadmissibility decisions, meaning the UK would not admit the asylum claim for consideration in the UK system, because another country was considered to be responsible for the claim, owing to the claimant's previous presence in, or connection to a safe country
- there were 23 enforced removals of individuals considered for removal on inadmissibility grounds
- 27,644 individuals were subsequently admitted into the UK asylum process for substantive consideration of their asylum claim

The 23 returns were made to Belgium, Denmark, France, Germany, Ireland, Italy, Slovenia, Spain, Sweden and Switzerland.⁴

7. The experience of our members is that the Home Office is not responsive to queries, but rather the Home Office provides generic standardised responses, which are of little assistance and time and resources are wasted on sending pre-action correspondence and complaints to seek substantive responses. ILPA also has multiple concerns regarding

² Home Office, 'Migration and Economic Development Partnership with Rwanda' <<https://www.gov.uk/government/collections/migration-and-economic-development-partnership-with-rwanda>> accessed 9 June 2023.

³ *ibid* 3.

⁴ Home Office, 'How many people do we grant protection to?' (published 25 May 2023) <<https://www.gov.uk/government/statistics/immigration-system-statistics-year-ending-march-2023/how-many-people-do-we-grant-protection-to#inadmissibility>> accessed 9 June 2023.

communication by the Home Office, directly with applicants, and regarding its record-keeping and updating of claimants' addresses.

8. ILPA has noted UNHCR UK's findings and observations, in relation to legal advice in asylum screening, in its recently published report on 'Asylum screening in the UK'. ILPA would welcome the Home Office facilitating access to legal advice and representation at an early stage, prior to the screening interview taking place, and invites the ICIBI to consider in his examination of the quality of screening interviews the impact of lack of access to legal advice at the point of screening. ILPA members raised multiple issues in relation to the quality of screening and substantive asylum interviews. Our members also observed that negative asylum decisions are often poorly drafted with key information/evidence not being taken into account, and that there are delays in receipt of BRPs following a positive asylum decision.
9. In relation to the impact of the Nationality and Borders Act 2022 on the efficiency and effectiveness of asylum decision making, we note the negative impact that the differential treatment regime has had, the lack of clarity regarding prioritisation of legacy and flow cases, and that the new standard of proof in section 32 of the Nationality and Borders Act 2022 will undermine the efficiency of asylum casework and disproportionately affect vulnerable groups of individuals.
10. In addition to addressing the particular issues outlined in our evidence, to facilitate more efficient asylum decision-making, ILPA would recommend an end to the inadmissibility process and differential treatment, restoration of the single lower standard of proof, further transparency and consultation on 'streamlining', and facilitation of greater access to legal advice and representation. ILPA would also welcome a less adversarial and more communicative approach to the resolution of asylum claims.

The efficiency and timeliness of asylum decision making

Severe Delay

11. Our members report extremely long delays in asylum casework, particularly for 'legacy cases' (i.e. those made before the commencement of certain provisions of the Nationality and Borders Act 2022, on 28 June 2022). Claimants have been left in limbo with no indication of Home Office progress on their claim.
12. Our members report significant delays in interviews:



- (a) A well-documented strong asylum claim was submitted in September 2019. It is still pending, with barely any progress. The client has not been sent a PIQ nor has she been asked to attend a substantive asylum interview. Her ARC has long expired.
- (b) An asylum claim submitted in March 2020 is still outstanding. The claim was made while the claimant was in detention. They were then released following a Rule 35 report confirming vulnerability. The initial screening interview was postponed due to Covid and still has not taken place. A subject access request ('SAR') reveals that caseworkers regularly review the file, but no action has been taken due to there being no biometrics on file. There are no biometrics on file as a screening interview has not yet taken place. There are biometrics from earlier applications, made before the asylum claim, but notes indicate that it is considered necessary for biometrics to be re-done before the asylum claim can progress. Another team was requested to arrange biometrics, but then no action is taken until the next review. This has happened multiple times on the file, yet the client has still not been asked to attend a biometric appointment, a screening interview, or a substantive interview.
- (c) An Afghan national claimed asylum in July 2021. A PIQ was completed and returned in October 2021. A letter from their GP, outlining the claimant's significant depression and PTSD, was sent to the Home Office along with multiple and regular requests to progress the case. A pre-action protocol letter was sent due to the delay and the Home Office agreed to interview the claimant, and an interview took place in August 2022. Despite further requests for updates and for the decision to be served, our member still does not have the decision. This is also despite this case falling within the Home Office's Streamlined Asylum Process.
- (d) In one of our member's oldest legacy cases, the asylum claim was made in January 2019. The claimant has not yet been invited to a substantive interview.
- (e) A member reports that one of their clients has had a claim outstanding since November 2021, and they are yet to receive an invitation to interview, despite recent requests for an update on the case.
- (f) One member noted that they increasingly have to gather evidence of their client's mental distress to secure an interview for their client.

13. Our members also report disorganisation in the arrangement and cancellation of interviews:

(a) One member reported that one of their clients had been interviewed three times, and there were interviews at short notice. This provided a very short period of time to arrange travel. There was also a lack of clarity on the part of the Home Office, in inviting the claimant to an interview, as to whether it was to be an interview to collect biometrics or a further substantive interview.

(b) Another member reported that two of their clients' interviews had been cancelled without notice. After waiting years, she states that *"it is horrific for interviews to be cancelled"*. However, to make it worse, neither she nor the clients were informed that the interview had been cancelled, *"so both clients travelled from Bristol to Cardiff for the interviews and were only told on arrival at the Home Office"*. We understand the Home Office had the clients' mobile numbers and emails, as well as the legal representative's numbers and emails.

14. Our members report that delays have been exacerbated by multiple substantive interviews and requests for further information:

(a) An Iraqi national claimed asylum, and their screening interview took place in December 2021. The first substantive interview took place in August 2022, a second substantive interview in September 2022, and a third substantive interview in October 2022. Despite the Home Office having undertaken three substantive interviews of the claimant, in November 2022, our member was then asked follow up questions in writing and was requested to provide answers within 13 days. In January 2023, a second set of follow up questions was asked, with a request to provide answers within 14 days. Our member suspects that now a questionnaire will also be sent for this client, in light of the extension of the streamlined asylum process to this cohort of nationals.

(b) The Home Office agreed to interview an Iranian national, who had converted to Christianity, following a pre-action protocol letter. The claimant had to attend one interview in Solihull, which was cancelled on the day, one in Cardiff, and one in Croydon: our member's client attended substantive interviews in three different places. Our member states that the *"evidence was overwhelming even prior to the first interview"*, and this asylum process *"caused severe anxiety"*.

15. Additionally, ILPA members report delay in decision-making:

- (a) An Iranian national who had converted to Christianity claimed asylum on arrival at the airport in June 2022. The claimant was substantively interviewed in February 2023. Extensive evidence was provided to support the claim. The claimant has both physical and mental health difficulties. Despite a number of requests for the decision to be made and served, our member is still waiting for a decision on this case. This case has now been referred to the safeguarding teams at the Home Office.
- (b) Our member's male client had a screening interview in August 2019. He was too unwell to be interviewed, so the Home Office agreed to consider his case on the papers. Although the Home Office did not need to substantively interview him to arrive at a decision, the claimant waited 3 years and 9 months for an initial decision on his asylum claim.
- (c) Our member's client claimed asylum as an unaccompanied asylum seeking child, at the age of 15. She waited 3 years and 8 months for an initial decision, and was finally granted in December 2022. She received a positive conclusive grounds decision, as a victim of trafficking, but was only granted asylum after judicial review proceedings were issued.
- (d) Another unaccompanied asylum seeking child claimed asylum at the age of 15, and waited 4 years and 8 months for an initial decision. They also received a positive conclusive grounds decision, as a victim of trafficking, but were only granted asylum after judicial review proceedings were issued.

The Impact of Delay

16. The consensus of our members was that the inefficiency of decision-making along with extreme delays are contributing to, and causing, mental distress to already vulnerable and traumatised clients. One of our members has said, *"I have worked in this job for 16 years and never experienced this level of trauma; two of my clients have actively tried to kill themselves, directly because of the delays. I am having to refer more and more to the safeguarding team."*

17. It is also important to recognise that Home Office delay in progressing cases may lead to further delays and work for the Home Office and for legal representatives. A delay in the progress of a case often means that circumstances have changed, or details previously provided need to be updated. For example, upon their introduction, the cover letter for the streamlined asylum questionnaire for Iranian and Iraqi nationals stated on the second page, 'If you have previously returned a completed Preliminary Information Questionnaire (PIQ), please use this questionnaire to provide additional or updated information for example, if your circumstances have changed'.⁵ Furthermore, questionnaires requesting updates are often sent out, giving the impression that a decision is imminent, but then no decision is made. This may mean that further updating information must subsequently be provided by the claimant/legal representative and considered by the Home Office.
18. The impact of the delay in decision-making, and the substantial backlog of asylum claims, is that legal representatives do not have capacity to take on new cases, including assisting new entrants to the asylum system.

The 'Streamlined Asylum Process'

19. In February 2023, the Home Office introduced the Streamlined Asylum Process, in a manner contrary to Wendy Williams' Windrush Lessons Learned Review Recommendations. It was done without any stakeholder consultation and engagement, let alone meaningful engagement. In 2020, Wendy Williams stated the Home Office's 'lack of engagement is compounded overall by a defensive culture in the department, which often defends, defects and dismisses criticism. It also has a detrimental effect on the quality of the department's analysis of the impact and effectiveness of its policies'.⁶ The introduction of the Streamlined Asylum Process, and the accompanying asylum questionnaire, are representative of such an attitude.
20. ILPA, and 179 others, wrote to the Home Secretary on 1 March 2023, detailing our concerns and providing constructive recommendations:

⁵ ILPA, 'Home Office update on the Streamlined Asylum Process and Clearing the Asylum Backlog' (1 June 2023) <<https://ilpa.org.uk/home-office-update-on-the-streamlined-asylum-process-and-clearing-the-asylum-backlog-1-june-2023/>> accessed 9 June 2023.

⁶ Wendy Williams, *Windrush Lessons Learned Review* (HC 93, 19 March 2020) 141 <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/874022/6.5577_HO_Windrush_Lessons_Learned_Review_WEB_v2.pdf> accessed 9 June 2023.

'We write as concerned organisations and individuals supporting and representing individuals seeking asylum in the United Kingdom and their interests.

We welcome the Government's recognition that there is an urgent need to clear the backlog of undecided asylum claims. Too many people are waiting unacceptable lengths of time for a decision, leaving them unable to rebuild their lives, to be granted permission to work, and to reunite with their families, while all too frequently being left to languish in inappropriate contingency accommodation. We are pleased that the Government recognises this to be an issue and is willing to take action to conclude manifestly well-founded claims more efficiently. However, we believe the Government's approach to doing so is fundamentally flawed.

As accepted by the Government, the countries specified for inclusion, Afghanistan, Eritrea, Libya, Syria and Yemen, have high grant rates of over 95%. The aim should be for the Government to obtain only the information it needs in the questionnaire to make a quick positive decision to grant refugee status.

We are dismayed that the new 'Streamlined Asylum Process' and the 'Asylum Questionnaire' upon which it relies have been introduced without stakeholder consultation and engagement, in a manner contrary to Wendy Williams' Windrush Lessons Learned Review Recommendations.

The essence of the problem is the false assumption that a person seeking asylum, who may not be literate in English or at all, who may be experiencing mental health problems or trauma, who may not have mental capacity, and who may be homeless, will be able to receive and complete this long, complex, and poorly drafted questionnaire without legal representation. It is essential that people who need it are able to access legal representation before being required to return this questionnaire. The Home Office has imposed short deadlines for responding - they are too short for a person who is unrepresented to find a legal representative and give sufficient instructions to respond to the form. A poorly completed questionnaire will only result in the Home Office needing to seek more information or conduct interviews, defeating the aim of this policy: to make decisions swiftly without a substantive interview.

Individuals seeking asylum should be informed, in the policy, the questionnaire, and any information provided, that if they wish to have access to legal advice in order to complete and return the questionnaire, they are permitted to do so and will be given the time they need to do so. This is to ensure that individuals are able to meaningfully participate in the decision-making process, and that decisions are made fairly and in accordance with the Refugee Convention, the procedural fairness guarantees inherent in the European Convention on Human Rights, and the constitutional right of access to justice.

Failure to complete the questionnaire places an individual at risk of their pending asylum claim being treated as withdrawn, losing their asylum support, being subjected to the hostile environment, and being considered inadmissible or a 'Group 2 refugee' in any future asylum claim. This proposed plan of withdrawing claims will only give the appearance of reducing the backlog, whilst in fact adding to the backlog of fresh asylum claims being made.

We urge the Government to rethink its plan and to remedy it.

The system of legal representation for those seeking asylum is already at breaking point. Legal representatives are over-stretched. There is an extreme shortage in capacity. Many individuals making asylum and human rights claims are without any legal aid representation. The Government must take urgent action to make immigration legal aid sustainable and address advice deserts, including by urgently increasing legal aid fees.

Due to the crisis in immigration legal aid, there are simply not enough immigration legal aid representatives to assist 12,000 individuals who must complete their questionnaires within short timeframes, or face the grave repercussions of their claim being withdrawn. No statistics have been published regarding the number of individuals in this cohort or the further 70,000 pending asylum claims made before 28 June 2022 who are presently without legal representation.

Appropriately qualified legal practitioners in the third sector, who are not legal aid funded, are unlikely to have the time, capacity or the funds to complete these questionnaires outside of the scope of legal aid. These organisations are not funded for the thousands of hours of interpretation that would be required to take instructions, advise, and complete these questionnaires in English.

The Government has said 'local refugee organisations' might be able to assist, or that a 'friend who does understand English can also assist'. Individuals who are not appropriately qualified but provide immigration advice are at risk of committing a criminal offence. We understand that the [OISC's position](#) is that persons who are not regulated to the required level can offer assistance related to language issues, the technicalities of completing and submitting the forms, and requests for time extensions, so long as it does 'not stray into giving immigration or asylum advice'. However, our position is that there is a very high risk that anyone attempting to assist someone to complete the questionnaire would stray into giving regulated advice. Immigration advice is defined in statute in very broad terms. A discussion with an individual seeking asylum about what information is relevant to a question will almost always involve immigration advice.

The lack of capacity among legal representatives combined with the threat of a claim being withdrawn may drive vulnerable and desperate individuals, who have objectively strong claims, to incur debt to pay for this work privately and place them at risk of

financial exploitation. We are concerned that it will encourage a culture of assistance and advice from unregulated organisations, undermining the protections sought to be imposed by a rigorous regulatory framework.

As for the reality facing individuals who cannot find free representation or afford private representation, the Government has placed them in a position where they must complete the questionnaire in English, by themselves, using 'online translation tools', or face withdrawal of their claim.

Therefore, we call on the Government to:

1. Confirm that the Home Secretary will not treat an asylum claim as implicitly withdrawn if the questionnaire is not completed. Completion should not be mandatory. Further or alternatively, the Home Office should create a process for reinstating any withdrawn claims that individuals wish to continue, and treat them as never having been withdrawn. If a questionnaire is not returned, including within any extended timeframe for completion, then unless the Home Office is able to grant protection on the information already available to it, it should result in the Home Office reverting to the ordinary interview process.
2. In consultation with legal representatives and others in the sector:
 - urgently simplify the questionnaire;
 - write it in plain English;
 - have it accompanied by a translation in the relevant language, and ensure that it can and will be made available in any language requested, to make it better accessible to unrepresented individuals who have that level of literacy;
 - only ask for information which the Home Office truly needs to quickly grant refugee status to individuals from these high-grant nationalities, in order to clear the backlog, and consider children's best interests;
 - create a user-friendly guide for the completion of the questionnaire that accompanies it; and
 - make it very clear to families whether they need to fill in a separate questionnaire for each child or not.
3. In the first instance, only issue the questionnaire to individuals with legal representatives, and ensure the Home Office has the correct details for the representative, until lessons can be learned from the first cohort and the guide and questionnaire can be further adapted if necessary. If this results in grants of status to those with legal representatives, it will also free up capacity to enable those legal representatives to assist others.

4. Provide an option for individuals to decline to complete the questionnaire, on receipt, and instead request an interview. This will be particularly important for individuals who cannot access interpreter services.
5. Make explicit both in the policy, the questionnaire, and any information provided to individuals who receive the questionnaire, that if they wish to have access to legal advice in order to complete and return the questionnaire, they are permitted to do so and will be given the time they need to find and access legal representation. The Home Office should confirm it is willing to take these steps and if it is not, it should confirm how the policy in its existing form guarantees procedural fairness and respects the right of access to justice.
6. Provide a published blanket extension for all unrepresented individuals to complete the questionnaire. The Home Office must check its records or make relevant enquiries to determine whether an individual has a legal representative. If an individual does not, a blanket further extension of at least 20 working days should be granted, pending the caseworker making enquiries to ensure the individual has received the questionnaire and knows how to access legal advice should they want it. Failure to do so will leave the Home Office processing a great number of applications for an extension of time.
7. Accept identity documentation without accompanying translations from individuals without legal aid representation, as such individuals are highly unlikely to have funds for translations. Digital copies should be accepted initially, so that identity documents are not lost in the system, and originals can be provided on specific request.
8. Ensure the Home Office contacts individuals to verify their up-to-date contact details. If the aim of the policy is to identify whether an individual still wishes to make an asylum claim, this is a better method of ensuring an individual remains in touch than requesting complex information under threat of withdrawing their claim.
9. Confirm in the guidance that no adverse credibility inference will be drawn from inconsistencies or gaps between this questionnaire and any other past or future representations or statements (whether in writing, interviews, or at appeal). We are particularly concerned about adverse credibility inferences being drawn if the questionnaire is completed without the benefit of legal representation. If it is truly the case that what is provided in the questionnaire 'doesn't need to be perfect', reflect this in the credibility guidance.

10. Confirm in the guidance that the Home Office will only grant refugee status, and never refuse asylum claims, without a substantive interview. Thus, the grounds in Immigration Rule 339NA will not be invoked on the basis of questionnaire responses/non-responses.
11. Publish clear guidance on the regulatory requirements a person must meet to assist an individual seeking asylum to complete the questionnaire and the extent of assistance that can be provided at different levels of accreditation/qualification.
12. Publish a service standard for decision-making following submission of the questionnaire.

These suggestions are made solely on the basis that this policy applies only to adult and family asylum claims made before 28 June 2022 by nationals of five high grant nationalities, Afghanistan, Eritrea, Libya, Syria and Yemen. A different set of concerns may apply for other nationalities, unaccompanied children, and for cases made on or after 28 June 2022 for which a person may be given Group 2 refugee status.

It is not too late for the Government to make our recommended changes and remedy its approach. We remain willing to engage with the Government to find the best way to process asylum claims efficiently and fairly.⁷

21. The roll-out of the questionnaire has been unsuccessful and flawed for the reasons that we foresaw.
22. Although we appreciate that legal aid goes beyond the scope of this inspection, the accessibility of legal aid assistance is integral to an efficient system of asylum decision-making. Representatives assist the Home Office by presenting translated documentary evidence and interpreted witness evidence, as well as legal submissions explaining the legal basis of the claim, to enable a decision to be efficiently made. They develop the trust, confidence, and rapport with the claimant that is necessary to elicit and understand the full reasons why a claimant fears return to their country of origin or habitual residence; they provide independent legal advice to help the claimant understand what essential information relevant to their claim must be provided; and they collect expert country, medico-legal and other information/reports that would not otherwise be available for the review of the Home Office. However, given the financial

⁷ ILPA, 'Joint Open Letter to Home Secretary Re: Remedying the 'Asylum Questionnaire'' (1 March 2023) <<https://ilpa.org.uk/joint-open-letter-to-home-secretary-re-remedying-the-asylum-questionnaire-1-march-2023/>> accessed 9 June 2023.

circumstances of the vast majority of asylum claimants, they cannot afford private legal representation. Due to the legal aid crisis, and the crisis of capacity which many representatives face, there is an insufficient number of legal representatives available to assist claimants on a legal aid basis. This will necessarily detrimentally impact the ability of the Home Office to progress and decide these claims efficiently.

23. Unfortunately, instead of the Home Office working with legal representatives to efficiently 'clear' the legacy backlog, the questionnaire process adopted has resulted in further constraints on the limited capacity of legal representatives, particularly legal aid representatives, operating in this sector.
24. For example, questionnaires have been sent to claimants who have previously submitted evidence of their identity, PIQs, witness statements, and/or who have been substantively interviewed. One of our members provided an example of an email from the Home Office that confirmed a legal representative was required to complete and submit the completed questionnaires even in cases where the individual already had a substantive asylum interview:

'Good Afternoon,

Thank you for your email dated 9th March 2023.

I can confirm your client is required to complete the Asylum Claim Questionnaire.

The information provided in response to the questionnaire will be used to determine the most efficient way to progress your client's case, which could include a shorter/targeted interview or a decision being made on the information provided in the questionnaire.

Please can you send your clients completed Asylum Claim Questionnaire with the appropriate verifiable signatures:

- A handwritten digital signature
- A wet signature
- Copy of the signature audit report for the typed digital signature

Kind Regards

[name of officer redacted]

Administrative Officer

Asylum Customer Communications Hub (ACCH), Stoke-on-Trent

Asylum Operations, Asylum & Protection

25. The asylum questionnaire was also inconsistent with the Home Office's stated position in Strategic Engagement Group meetings, but it was consistent with practice as reported by certain frontline organisations. The questionnaire states, *'What you provide us with doesn't need to be perfect: we can always ask you for further details either by writing to you or ringing you to collect further information, or by inviting you to interview'* (emphasis added). Certain frontline organisations reported that the Home Office had been calling applicants to request additional information. It was unclear if such calls were being recorded, or whether a transcript was being provided. Upon this being queried in a Strategic Engagement Group meeting, the Home Office stated it would not be phoning claimants to ask questions.
26. Additionally, our members noted that the "streamlined" asylum claim questionnaire asked for the names, dates of birth, and current address of non-immediate family members, whereas the PIQ only asked for details of the partner and children. One claimant had nine siblings that a legal representative had to list on the new questionnaire. Other excessive information required included the questionnaire asking claimants to list 'all the places you have lived in your home country over the past ten years and how long you lived there'.
27. Without any assessment as to whether the Home Office has the relevant information needed within the initial legacy cohort (described by the Home Office as equating to approximately 12,000 claimants), the Home Office bulk sent questionnaires to all within the cohort. This meant questionnaires were unnecessarily completed by legal representatives, under threat of their client's claim being withdrawn, within an extremely short time frame of 20 working days, all so that Home Office caseworkers need only look at a single questionnaire to decide the claim. Many of the overstretched legal representatives operating in this area had multiple clients in the same position.
28. Therefore, the capacity constraints placed on the Home Office were displaced to legal representatives.
29. We understand that many legal representatives were rightly cross-referring to Witness Statements and PIQs already completed, rather than repeating this information afresh in the questionnaire. We understand this was a position with which the Legal Aid Agency agreed, and was sensible to reduce any unnecessary expenditure of that fund. However,

in the vast majority of cases that do not reach the ‘escape fee’ threshold, there is no additional funding, only adding to the unsustainability of legal aid practitioners operating in this field, with likely long-term damaging effects for the sector.

30. It is clear that this streamlined process has not been a great success. Our members report a lack of efficient decision-making following the submission of a questionnaire. One member notes, *“we promptly returned all the Questionnaires in full and with significant details. We are still waiting [for] responses to these two months on.”* There is still no clear timeframe for Home Office decision-making following completion and return of the questionnaire.
31. Although we understand the Home Office has stated that the majority in the initial cohort, sent a questionnaire, had a representative supporting them with their asylum claim,⁸ ILPA was informed by many frontline organisations and pro bono advice services (with no disbursement funds for interpretation) that they were contacted by a large number of applicants without a legal representative, who were struggling to find a legal aid representative in the 20-day period to assist them to complete the questionnaire.
32. There was also a significant lack of clarity in the initial questionnaire, and that lack of clarity remains in the published guidance, as to whether an individual could request to go directly to a substantive interview without a questionnaire. On 21 March 2023, ILPA urged the Home Office to make clear in its guidance the extent to which partial completion or very minimal information might be provided in the questionnaire, particularly for those without a legal representative, mental capacity, or sufficient English literacy. ILPA also urged the Home Office to consider whether a claimant could request to go directly to an interview, if they were not in a position to complete the questionnaire by themselves. It was not until an Asylum Strategic Engagement Group meeting on 19 May 2023, that the Home Office confirmed, ‘To add one point of clarification on the final intervention for non-returnees of SAP questionnaires - this will include an option for the claimant to respond and simply confirm they wish to continue with their asylum claim, after which they will be invited to an interview. Equally, a returned questionnaire will be gladly received at this point but for absolute clarity, there will be an option for claimants to go straight to an interview by responding to this contact.’

⁸ ILPA, ‘Letter from Robert Jenrick in response to Joint Open Letter to Home Secretary Re: Remedying the ‘Asylum Questionnaire’ (2 May 2023) <<https://ilpa.org.uk/letter-from-robert-jenrick-in-response-to-joint-open-letter-to-home-secretary-re-remedying-the-asylum-questionnaire-2-mav-2023/>> accessed 9 June 2023.

33. We also understand from the meeting on 21 March 2023 that a policy impact assessment, including an equality impact assessment, was conducted by the Home Office but that the Home Office had no plans to publish it or share it with stakeholders.
34. There has been insufficient transparency and consultation in this 'streamlined' process. Nevertheless, we remain willing to engage with the Home Office and across the Government to find the best way to process asylum claims efficiently and fairly.

The Home Office's responsiveness to queries and challenges

35. The consensus of our members is that the Home Office's automated e-mail responses lack compassion and understanding of the difficult situation currently facing both legal representatives and claimants. The situation is a direct result of Home Office delays and poor communication with claimants. There is no consideration of the client's particular vulnerabilities in the generic standardised responses received. Representatives are also forced to send pre-action protocol letters and complaints, in order to receive any substantive response from the Home Office. This is a waste of time and resources for claimants, legal representatives, and the Home Office.
36. One member notes that since December 2022, asylumcustomercommunicationshub@homeoffice.gov.uk is the main email address that legal representatives are asked to use for several types of correspondence, including serving documents. However, it has several faults:
 - (a) There is no auto reply to confirm receipt of documents.
 - (b) Often the caseworker or interviewing officer informs our member's clients that they have not received documents sent to this email address. It is unclear whether the inbox is properly monitored.
 - (c) Recently, a member followed up on an asylum claim questionnaire that was emailed on 20 March 2023 to be informed that the Home Office had no record of it.
37. The fundamental problem with the Home Office's communication is the lack of any, or any adequate, response.
38. First, we have received many reports from members of the lack of any response from the Home Office:

- (a) One of our members notes that there is often no response to queries and chaser emails. They note that some teams are better than others, for example, NSA Hub *“are fairly responsive”* although not as responsive to *“non-standard queries”*. However, *“Asylum Operations Mersey never respond”*. The Refused Case Management Customer Service Unit (‘CSUEC’) *“are somewhere in the middle, but their responses are greatly delayed”*.
- (b) Another member provides an example of an asylum claim outstanding for almost a year. The client was issued an ARC card with her name spelled incorrectly, despite the Home Office having her passport with her correct name. Numerous requests for the corrected ARC card have been sent, as well as a PAP, and there has been no response.
- (c) A member sent an email to Sheffield Asylum Enquiries in September 2022, to notify them of medical conditions affecting their client and his family, and asking for the case to be expedited. The client’s daughter has a severe learning disability, ASD, ADHD, and epilepsy and his wife has had treatment for breast cancer. Medical evidence was provided. The family are unable to access the support they require with their current immigration status.
- (i) The member, having received no response, followed up in mid-October 2022 to ask for an urgent update. They did the same in the first week of December 2022 and January 2023, also copying in Asylum Operations Mersey General Enquiries on the latter date and attaching a further letter from a doctor in relation to the family.
 - (ii) AOM General Enquiries responded in January 2023, requesting a letter of authority. The member had already sent the letter of authority in August 2022. A further email was received later that day apologising for the error in communications, and asking for the original correspondence to be sent to the Asylum Support Team Managers inbox.
 - (iii) In January 2023 (four months after the initial email was sent), the Home Office staff member confirmed that the request had been forwarded to their technical specialists to determine if the claim could be expedited. He said he would follow up with an answer in due course.
 - (iv) In early February 2023, our member asked the Home Office staff member for an update. As they received no response, in March 2023, the member followed up again reminding him of the family’s circumstances and asking for an update. As they were still without a response, at the end of May

2023, eight months after the initial request was sent, the member followed up once more asking for an update on whether the case can be expedited given it involves a young child with severe disabilities, unable to access support she needs.

39. Second, our members report the lack of any adequate response from the Home Office:

(a) One member notes that when a question is asked, there is no direct response from the Home Office, but only that ‘we acknowledge safe receipt of the supporting documents the contents of which have been duly noted and uploaded onto our system.’ There was a consensus across members on this point, with another member stating, *“Often when responses are sent, they do not address the substance of the original query (or only a partial response is sent). Asylum Customer Communications Hub sends out standard responses fairly regularly, but staff there do not seem to be able to provide any substantive information beyond ‘your email is noted’ and cannot action requests”.*

(b) One of our members provides an example of a client’s case, for which they sought expedition on medical grounds, on 4 January 2023. The Home Office responded, with a standard email, that had no acknowledgement or consideration to the body of the email to which they were responding that described the client’s medical condition:

‘Dear Sir/ Madam,

I acknowledge receipt of your letter dated 4-1-2023. I can confirm that we are aware that your client is currently awaiting a decision on their asylum claim. UK Visas and Immigration Services aim to ensure that those who apply for asylum in the UK have their applications processed as quickly as possible and we endeavour to decide on the outstanding asylum claim.’

40. The Home Office’s lack of any or adequate response gives rise to the need for a complaint or pre-action protocol letter before claim (‘PAP’) to be sent, particularly in respect of delays. Additionally, it is noted by our member that where a timeframe is provided, *“clients’ circumstances are not taken into account and in any event, the timeframes given are not adhered to. If accurate timelines were given, perhaps PAPs could be avoided.”*

Change of Address

41. Our members note that communication for updating the address of their clients is unnecessarily difficult, both in respect of clients within and outwith Home Office accommodation.
42. A member who had encountered multiple problems with the online system, which clients who were living in Home Office accommodation were previously required to use to inform the Home Office of a change of address. The member told ILPA that they were informed in December 2022 to instead send all change of address requests for asylum claimants to a particular email address, but they have recently received a few responses referring back to the online system.
43. Some claimants live with friends, or are supported outside of Home Office accommodation. It is crucial for the Home Office to have claimants' up-to-date and correct address, and legal representatives are assisting in this process. However, where a claimant is not in Home Office accommodation, the Home Office insists on documents (such as an ARC that has not been issued, or official bills in the claimant's name) that a claimant does not necessarily have.
44. One of our members provides the following example. A client made a fresh claim and does not have an ARC, and cannot apply for an ARC. He has no other form of ID. Evidence of his address from the housing provider and mental health services was sent and the circumstances were explained to the Home Office. The response our member received was, 'Good afternoon Thank you for your email of 12 May 2023. We note your comments regarding your client's change of address but unfortunately, we will be unable to do this until they are able to provide appropriate ID. Therefore, we have updated the correspondence address to the [the legal representative's address]. We have also forwarded your email to the relevant units for them to action accordingly'.
45. We are concerned with this approach. If a legal representative ceases to represent the claimant, all correspondence will then be sent to the wrong address, even though the claimant did all they could to inform the Home Office of their correct address.
46. One of our members has stated, *"Despite our best efforts to ensure the Home Office have the up to date address of clients this is rejected over and over again."* The result is that the Home Office's records contain the incorrect address for claimants.

47. Another example provided by a member is of their client who was housed in Napier Barracks, and had moved to Bristol. Our member states, *“The Home Office will know full well from their own records that he is no longer at Napier. We have informed [the Home Office] of [the client’s] correct address in Bristol. The Home Office will not update it and continue to send correspondence to our client in Napier Barracks.”*
48. One of our members noted that they had seen an Afghan client in a clinic, who should have received a questionnaire in the initial roll-out but did not. He only received a text message asking him to complete the questionnaire. He was moved from hotel accommodation to dispersed accommodation for health reasons, which could have been the reason for his lack of receipt of the questionnaire. However, due to the communication process, he could not respond to the text message as it was a short code. It was only through information sharing between representatives that it became apparent that the claimant would need to request a questionnaire from asylumcustomercommunicationshub@homeoffice.gov.uk.
49. On 31 May 2023, ILPA wrote to the Home Office, with further concerns regarding communication of asylum questionnaires to Iranian and Iraqi nationals. On 1 June 2023, the Home Office promptly replied to members of the Strategic Engagement Group, stating:

‘In addition – we are contacting you to advise that the Home Office has made a clerical error on letters we sent to some Legal Representatives regarding the use of an online Asylum Questionnaire, dated 19 May 2023.

Those affected will receive a new letter detailing the correct information.

Any questionnaires which have already been submitted will be processed by the Home Office.

Any questionnaires currently in progress and saved at www.gov.uk/guidance/questionnaire-continue-your-asylum-claim, should be continued and submitted. The Home Office will process all Questionnaires received to decide the asylum claim as efficiently as possible.

For all other questionnaires you are yet to complete on behalf of your clients, please refer to the information in the new letter we are sending to you via post. You will receive this by no later than 10th June 2023. You do not need to take any further action until

then. You will have 30 working days from the date on the letter to complete the questionnaire.

Furthermore, we would like to address some specific enquiries received:

Problems with Addresses / Identification

An ILPA member has stated three letters were received at their office address with the ID Codes to enable the forms to be completed online. Although the name of the clients involved were their clients, (1) the dates of birth were not correct for any of them, (2) the letters were sent to their address but named two other law firms which are not at their address, (3) there were no Home Office reference numbers on the letters to know to which client the letter was meant to be sent.

This clerical error has now been identified. Those affected will receive a new letter detailing next steps.

The member also noted that the Home Office places too many restrictions on allowing legal representatives to update new addresses for their clients. Our member has had two clients recently who are not in NASS (but in the asylum process) and as their clients cannot provide the specified evidence, the Home Office will not amend the address nor take the legal representative's written confirmation as sufficient.

We have liaised with colleagues and are reassured that the address should be changed when the relevant administrative (@Asylum Customer Communications Hub and/or relevant Decision Making unit) team are notified of this. Please, refer to this email should you encounter further problems.

Our member is concerned that with this new online system it is not clear what safeguards are in place to ensure that when a letter is sent to the wrong address (which will happen if the Home Office does not let a legal representative update it) what is to stop others from using the ID Code to enter their details / pretend to be that person or present their own case to the Home Office?

The Home Office will validate claims using the name, address and case details entered. The case ID and DOB allow access to the online form but no details are pre populated.

A different ILPA member noted that at least two of their clients (from the Iran/Iraq cohort) have received questionnaires, but they have been sent directly to the clients rather than to the legal representative. We would like to gently remind the Home Office that a legal representative should be the primary point of contact for their client.

We strive to ensure we send all correspondence to the correct person/s.

Problem with Phrasing in Cover Letter

The second issue I wish to raise is with the phrasing on the cover letter. The first paragraph on the second page states, 'If you have previously returned a completed Preliminary Information Questionnaire (PIQ), please use this questionnaire to provide additional or updated information for example, if your circumstances have changed'.

Our members have raised with us that this is confusing for representatives and for applicants. It is unclear whether a claimant who has previously returned a completed PIQ, and who has no additional or updated information to provide, must complete and return the new Questionnaire.

Similarly, if a claimant has already provided a Witness Statement, would they be expected to complete the Questionnaire if there is no additional or updated information to provide?

Wording has now been changed for future letters dated 2nd June onwards to make it clearer:

'If you have previously returned a completed Preliminary Information Questionnaire (PIQ) or witness statement, please complete the questionnaire online and state in the appropriate section that information is available in the PIQ/witness statement. You can also use this questionnaire to provide additional or updated information for example, if your circumstances have changed'.⁹

50. Nevertheless, the communication flaws in relation to this part of the streamlined process give rise to concerns both for its efficiency, and as to whether sufficient safeguards are in place. We remain concerned that if a letter is sent to the wrong address, given the online system for completion of the questionnaire, which requires a person to input the Case ID and date of birth, if their name and (incorrect address) is also contained in the correspondence, the Home Office may incorrectly validate the claim with details entered by a person other than the claimant.

⁹ ILPA, 'Home Office update on the Streamlined Asylum Process and Clearing the Asylum Backlog' (1 June 2023) <<https://ilpa.org.uk/home-office-update-on-the-streamlined-asylum-process-and-clearing-the-asylum-backlog-1-june-2023/>> accessed 9 June 2023.

51. We would also welcome the ICIBI's inspection of Home Office communication, including whether the Home Office treats the legal representative as the primary point of contact for their client.

The quality of asylum screening interviews, substantive asylum interviews and initial asylum decisions, including for asylum seekers who have protected characteristics

52. As detailed above, our members have experienced an overall lack of interviews and decisions, which makes it difficult to comment on their current quality.

Asylum Screening Interviews

53. We would draw the attention of the ICIBI to the recently published report on 'Asylum screening in the UK' by UNHCR UK, which comprises 'An audit of the UK's asylum intake, registration and screening procedures and recommendations for change.'¹⁰ In particular, we note UNHCR's observations that '[a]ccess to legal advice prior to the screening interview is influenced by a range of factors, including capacity in the legal sector in the region, law firms' practices, and the scheduling of screening interviews', but that 'there is limited consideration given to facilitating access to legal advice' and '[a]lthough UNHCR is aware that access to legal advice is limited in part by factors outside the control of the Home Office, in our view this disregard for early access to legal advice is short-sighted'.¹¹ We would further highlight UNHCR's recommendations that the Home Office '[p]rovide guidance and training that recognizes the positive contributions of independent legal advice to the efficiency and fairness of asylum systems' and '[t]ake the impact on access to legal advice into account when considering reforms to the registration and screening process, and promote policies that facilitate access to legal advice'.¹²
54. UNHCR has observed that '[i]t is generally accepted that most asylum applicants will have had no or limited access to legal advice prior to screening', noting that:

'[...] there are a range of reasons that it is in fact rarely available prior to the screening interview. There is no duty advice scheme for intake and screening

¹⁰ UNHCR UK, 'Asylum screening in the UK: An audit of the UK's asylum intake, registration and screening procedures and recommendations for change' (26 May 2023) <<https://www.unhcr.org/uk/media/asylum-screening-uk-1>> accessed 9 June 2023.

¹¹ *ibid* 83.

¹² *ibid*.

units or short-term holding facilities, and those screened within days of arrival are unlikely to have been able to arrange legal advice themselves during that time, due to factors including lack of familiarity with the system, language barriers, pressing health and welfare needs, lack of finances, or detention in short-term holding facilities with limited means of communication with the outside world [...]. In addition, as noted above at para. 74, registration of a claim is often a necessary step to obtaining Asylum Support and with it the “evidence of means” required to obtain legal advice funded by the Legal Aid Agency. We further note that nothing in the guidance discusses the possibility of suspending or postponing a screening interview should a request for legal advice be made. Even for asylum seekers already in the country, obtaining legal advice prior to screening may be difficult due to the general scarcity of free legal advice, especially in England and Wales’.¹³

Indeed, a solicitor within our membership remarked that clients tend to come to their firm after the screening interview rather than before.

55. We, therefore, invite the ICIBI to consider in his examination of the quality of screening interviews the impact of lack of access to legal advice at the point of screening. For example, we understand from UNHCR’s report that, *‘In Northern Ireland, initial registration was carried out by a third sector partner in central Belfast, with the screening interview conducted afterwards by appointment at Home Office premises at Drumkeen House’*.¹⁴ We would welcome the Home Office facilitating access to legal advice and representation at an early stage, prior to the screening interview taking place. Work across government, including with the Legal Aid Agency, should be conducted, to ensure that other requisite evidence is provided to satisfy the Legal Aid Agency that the means test is met. Such access will be particularly important, if the Illegal Migration Bill were to pass in its current state, to make relevant representations regarding the four conditions in what would be section 2, prior to any inadmissibility decision being made and removal notice being issued.
56. We endorse UNHCR’s observation that ‘[p]rovision of legal aid and legal representation can go a long way in strengthening the quality of decision-making and can contribute to the efficiency of the asylum process, because it can strengthen a claimant’s understanding of and trust in the process, lower the number of appeals and subsequent applications, shorten adjudication timelines, and reduce late challenges to removal. This

¹³ *ibid* 53, footnote 123.

¹⁴ *ibid* 10.

not only promotes more reliable access to protection by those who need it, but can also give those with less well-founded claims a more realistic view of their chances of success; where this information is provided by non-governmental actors, this has proven to increase the acceptance of the information provided.’¹⁵

57. ILPA has noted, with concern, the Home Office’s opposite direction of travel. It has failed to recognise these important reasons for access to legal advice and representation. For example, in the Home Office guidance on ‘Streamlined asylum processing for children’s casework’, it is stated in relation to a preliminary information meeting (‘PIM’), ‘the presence of a legal representative is not required and a PIM will not be delayed to ensure the attendance of a legal representative where a Responsible Adult is already present’.¹⁶ Similarly in response to questions posed by stakeholders in the decision-making sub-group of the Strategic Engagement Group, the Home Office said in relation to the asylum questionnaire, ‘Legal representatives are not required for the claimant to respond to this questionnaire, although they may wish to utilise such support in the timeframe provided. [...] Legal representation is not required for the claimant to explain the reasons for seeking protection in the UK. [...] Automatic extensions will not be granted on the basis that the claimant does not have a legal representative.’¹⁷ In fact, the asylum claim questionnaire stated:

‘If you do not have a legal representative, you can complete the questionnaire yourself. You do not need to have any knowledge of the asylum system; we only need you to explain why you are claiming asylum.

Assistance might also be available from parties such as local refugee organisations.

Questionnaires must be completed in English. If you do not speak, write or understand English, you can use online translation tools. What you provide us with doesn’t need to be perfect: we can always ask you for further details either by writing to you or ringing you to collect further information, or by inviting you to an interview.

¹⁵ *ibid* 83.

¹⁶ Home Office, ‘Streamlined asylum processing for children’s casework’ (version 1.0, published on 16 March 2023)
<https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1143305/Streamlined_asylum_processing_for_children_s_casework.pdf> accessed 9 June 2023.

¹⁷ ILPA, ‘Home Office responses to the DM SEG Questions on the Streamlined Asylum Process and Questionnaire’ (21 March 2023)
<<https://ilpa.org.uk/home-office-responses-to-the-dm-seg-questions-on-the-streamlined-asylum-process-and-questionnaire-21-march-2023/>> accessed 9 June 2023.

A friend who does understand English can also assist you to explain why you are claiming asylum, but they must not provide you with immigration advice.’

58. As we have indicated above, we have concerns that this cavalier approach to the importance of legal aid assistance has resulted in the streamlined asylum process being less efficient than it otherwise could have been, and has resulted in the Home Office needing to collect further information and conduct further interviews.
59. On the subject of the quality of screening interviews, we received feedback from a member that screening interview record quality is often poor and that clients report that there are frequent communication issues with interpreters assisting over the phone, connection problems, and attempts to correct inaccuracies are not being recorded or taken into account. Our member observed that the length of screening interview records is inconsistent, noting that these interviews are meant to be short, but sometimes very detailed information is requested, with the interviewing officer questioning applicants’ responses, which is inappropriate, given that detailed questions are meant to be asked at the substantive interview, and also that applicants are often exhausted, soaking wet, and/or hungry etc. during the screening.
60. Our member also reported that victims of trafficking may not disclose their experiences for numerous reasons, but screening interviews seem to be predicated on the assumption that applicants will disclose detailed reasons for claiming *“to a complete stranger when they mostly have little or no idea of what is going on”*. Further, our member’s experience was that while UNHCR guidance on interviewing children is comprehensive and helpful, it is not followed, and *“screening interviews seem to take place in a vacuum where the evidence base and guidance are completely ignored”*.

Substantive Asylum Interviews

61. ILPA members raised multiple issues in relation to the quality of substantive asylum interviews.
62. The quality of interview records formed one area of concern. We received feedback that like screening interviews, *“[s]ubstantive interview records are also very much hit-and-miss”*, which is *“often tied in with the quality of the interview itself”*. A member noted that quite often the quality of either the typing or the interpretation is very poor, there are frequent grammatical/syntactical errors and meaning is often obscured, and that this appears to go well beyond simple typing errors. Our member further reported

that quite often the interview record gives the impression that either the interviewing officer or the Home Office interpreter's grasp of English leaves a lot to be desired. Our member further stated that there are also frequent factual errors, noting that questions are often asked in a confusing manner, which leads to confused/confusing answers and the misunderstandings are not always cleared up. In addition, we heard that there are frequent delays with sending out interview records – if the provider is not registered on Move-IT, it can take weeks or even months to receive the interview record.

63. A further issue reported was that frequently the interviewing officer had not read medical evidence prior to interview – even where this evidence gives detailed guidance on the potential for retraumatising very vulnerable clients during interviews and where representations have been sent in advance with clear signposting to relevant sections.
64. Another point of concern was the length of interviews. Our member reported that interviews are still very long, even for children, and that whilst there has been a notable attempt to make them shorter and more focused recently, this is not the case across the board. In addition, our member relayed that sometimes the interviewing officer appears to be *“following a script”* with little regard for what the child is actually saying. For example, if a traumatic experience is described, the interviewing officer moves on to the next question on the list without offering any sympathy or a break, which gives the impression that *“asylum seekers (even children) are not perceived as people with real emotions, but are rather viewed as statistics to be counted, nothing more”*.
65. In late 2022, ILPA members noted an increase in clients being invited for additional interviews and therefore being interviewed more than once (see also our comments above regarding members reporting that delays have been exacerbated by multiple substantive interviews). For example, one member reported that their client had been interviewed three times.

Initial Asylum Decisions

66. Our members observed that negative asylum decisions are often poorly drafted with key information/evidence not being taken into account, and reported the following:
 - (a) One member stated that assertions in Reasons For Refusal Letters often make no sense with internally and externally inconsistent findings and numerous factual errors, reporting that sometimes there are contradictory facts in different sections (e.g. nationality or lack of documentation is accepted in one section, but not accepted in another) and quite often reasoning is questionable at best, e.g. it

is accepted that an applicant's family abused/trafficked them, but they are expected to rely on their support on return; or it is accepted that family have/had no financial means, which led to trafficking, but it is nonetheless asserted that family can support the applicant on return, etc.

- (b) Our member further stated that for recognised victims of trafficking, frequently only cursory mention of this is included in the Reason For Refusal Letter and this aspect of an asylum claim is often poorly considered. In addition, our member reported that often clarifications to the interview record sent in by legal representatives are not taken into account (sometimes because emails were not checked or passed on to the decision maker, despite being sent months prior). Reasoning for not accepting an aspect of the case is often very brief and insufficient. Quite often large swathes of text are copied and pasted from Home Office Country Policy Information Notes with just a paragraph or two afterwards saying that 'it is not accepted that...' with very little actual justification.
- (c) The same member reported that at their organisation they have had quite a few negative asylum decisions after PAP responses agreeing to reconsider, but the new decision is almost identical with key evidence still disregarded.
- (d) Another member provided an example of a Russian LGBT case, refused in January 2023. The refusal letter did not take into account the up-to-date law in Russia. Five months since lodging the appeal, there has been no progress, as they now face substantial delays in the Tribunal. Our member has expressed that the initial asylum decision would have been different had the correct situation in Russia been considered by the Home Office.
- (e) A further member described negative decision letters they had seen in which the list of documents seen by the Home Office omitted half of the documents that had been provided and explained that in a recent one, they had missed a couple of documents which were discussed in the interview, expressing concern that rushing to meet the Prime Minister's deadline for clearing the backlog would undermine the quality of decision-making.
- (f) Another member expressed disappointment in a case in which they had waited approximately just short of four years for the decision, which was a refusal, that it had been so poorly thought out and drafted, describing it as a let down both in the outcome and the working out.

- (g) A member reported very similar Albanian asylum claims being refused by one Home Office team (with very questionable reasoning) whilst a grant is issued by another for a similar case, noting that such cases usually succeed on appeal and sometimes refusals are withdrawn prior to a hearing, which is not a good use of anyone's time or public funds.
67. Members have also reported that the format of the new Reasons for Refusal Letter is very unhelpful. The issues highlighted include:
- (a) there are no paragraph numbers, which makes it difficult to comment on the letter;
 - (b) information is often copied and pasted into the different sections, so there is a lot of unnecessary repetition;
 - (c) key aspects of cases are not addressed; and
 - (d) a member did not welcome the insertion of tables in the letter.

BRP Delays

68. ILPA members reported many delays in the receipt of BRPs following a positive asylum decision and described the following:
- (a) One member stated that if the asylum decision is positive, there are frequent delays with receiving BRPs. Quite often information on the BRP is not correct and then it takes weeks if not longer to correct. Often the client's Home Office support/accommodation is due to be stopped shortly, but they are still waiting for the correct BRP (the incorrect one has to be returned) and cannot request homelessness assistance. This would be extremely distressing for anyone, but it is particularly distressing for those who are already vulnerable. We understand from a Home Office colleague that the BRP team within the Home Office is not allowed to correct the BRP, but rather they must go back to the asylum team for correction.
 - (b) The same member reported that further submissions for one of their clients was submitted in December 2021, and their client was granted asylum in January 2023. However, they are still waiting for a BRP. Our member explains that the client is very unwell and the stress of this wait has been extremely damaging. He was initially happy to be granted, but is now convinced that was a mistake and

panics/freezes every time he sees a policeman. He has had numerous nights without any sleep because he worries he will be stopped, arrested, and removed.

Our member informed us that the client is assisted by social services, who keep asking for the BRP. Our member further stated that apparently, he has been told that certain opportunities, including help with travel costs, college courses and possibly other financial and medical assistance, are not available to him without the BRP. He is disabled but cannot access disability benefits without the BRP. He also needs more suitable accommodation, but has been told this cannot be accessed without a BRP and neither can employment training/support for individuals with disabilities. He is currently too afraid to go anywhere because he is terrified that it is not safe, so is extremely isolated, staying in his room most of the time. Our member stated that *“It is absolutely heartbreaking to watch, hugely prejudicial and could have been avoided so easily.”* Several PAPs have been sent to challenge the delay, all to no avail so far, and they may need to issue judicial review proceedings to progress this. Once more, such challenges are not a good use of the time of either party or public funds, when they could be easily rectified by the Home Office.

- (c) Our member also reported that in their previous job (which they left in January 2023), they had numerous examples of single mothers with young children being extremely stressed after receiving letters terminating their Home Office accommodation, but who were unable to approach the local authority for homelessness assistance or apply for Universal Credit due to BRP delays (mainly when BRPs had mistakes and needed to be returned, but also sometimes due to BRPs not being issued promptly). Our member explained that there were many, many people like that. In a few cases, the BRP finally arrived just a few days before the eviction date from Home Office accommodation, and naturally, the clients were absolutely terrified about being made homeless without any further assistance.
- (d) Another member provided examples of cases in which a BRP has yet to be issued months after an asylum claim had been granted, or was only issued months after the decision following a pre-action protocol letter being sent.

The impact of the Nationality and Borders Act 2022 on the efficiency and effectiveness of asylum decision making

Differential Treatment

69. We note that on 8 June 2023, Robert Jenrick MP, Minister of State for Immigration, made a statement in Parliament, indicating that the Home Office will ‘pause the differentiation policy in the next package of Immigration Rules changes in July 2023. This means we will stop taking grouping decisions under the differentiated asylum system after these Rules changes and those individuals who are successful in their asylum application, including those who are granted humanitarian protection, will receive the same conditions. Individuals who have already received a “Group 2” or humanitarian protection decision under post-28 June 2022 policies will be contacted and will have their conditions aligned to those afforded to “Group 1” refugees. This includes length of permission to stay, route to settlement, and eligibility for Family Reunion’.¹⁸
70. We welcome this change of approach by the Home Office.
71. However, we would remark that the implementation of the policy between 28 June 2022 and 9 June 2023 has been a hugely unnecessary resource-intensive exercise, causing avoidable anxiety for and resources spent by legal representatives, claimants, and various government departments including the Legal Aid Agency.
72. In any case, even if we had not seen the positive reversal of this policy, we would remark that differential treatment has not contributed to efficient and effective asylum decision-making.
73. For example, for high-grant nationalities, the essence of what is needed from claimants is to confirm their identity, that they are not excluded from the Refugee Convention, and to identify any safeguarding concerns. However, due to the complex test for the differential treatment of refugees introduced by section 12 of the Nationality and Borders Act 2022, a claimant, their legal representative, and a Home Office caseworker, would need to turn their mind to details of the journey of a claimant including whether they have come ‘directly from a country or territory where their life or freedom was threatened’, whether they ‘have presented themselves without delay to the authorities’, and whether there is ‘good cause’ for any unlawful entry or presence.

¹⁸ Robert Jenrick, ‘Illegal Migration Update’ (Statement UIN HCWS837, 8 June 2023) <<https://questions-statements.parliament.uk/written-statements/detail/2023-06-08/hcws837>> accessed 9 June 2023.

74. The test of whether a refugee has come directly to the UK also requires interpreting section 37 of the 2022 Act to consider whether they could reasonably have been expected to seek protection under the Refugee Convention in a country in which they stopped. Countless hours will have been spent by claimants, legal representatives, and the Home Office gathering information on the time spent by claimants in third countries, their ability to access the asylum system in those countries, mitigating factors, personal circumstances and vulnerabilities relevant to why they did not claim in those countries.¹⁹
75. Furthermore, the group 2 provisional determination and the rebuttal process only lengthened and complicated the decision-making process.
76. A member gives the example of a client that claimed asylum at the airport in July 2022. They were substantively interviewed in January 2023. An email was received directly from a Home Office Caseworker at the end of January 2023 stating, ‘Good Morning, I am currently working on the asylum claims for ... and requested that a Rebuttal Letter was sent out to you, on 27th January 2023, in order that you could provide a response for your clients by the 9th February 2023. Both cases are ready for the decisions to be served and I would like to get this completed at some point this week. I understand that this is very short notice, but I would be grateful if you could provide this information at your earliest convenience.’ A rebuttal response was sent on 8 February 2023, within the 10 working day timeframe, following the legal representative meeting with their client. This was followed up in April and May 2023, but the legal representative received no response. A decision is still awaited, despite the indication that a decision was ready to be served at the end of January 2023.
77. Finally, it is ILPA’s opinion that the Government has misconceived the rebuttal process. For example, the Ministry of Justice stated on 20 December 2022, ‘We consider that work on the rebuttal mechanism is a separate process that begins from when an individual is issued correspondence by the Home Office to notify them of their provisional grouping status and has been offered the opportunity to submit representations as to why they should not be in that group within 10 working days. Advice can be provided on the provisional grouping and the way to rebut that

¹⁹ Home Office, ‘Assessing credibility and refugee status in asylum claims lodged on or after 28 June 2022’ (version 11.0, published 28 June 2022) 69-78 <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1086137/Assessing_credibility_and_refugee_status_post_28_June_2022.pdf> accessed 9 June 2023.

grouping.’²⁰ The effect of this misconception is that, ‘work conducted prior to the receipt of the correspondence would fall under the existing funding scheme applicable to the case. A new matter start for rebuttal work is only to be created if correspondence is received informing of the provisional grouping to group 2 and an individual needs advice in rebutting the claim.’²¹

78. As we previously explained to the Ministry of Justice, it is ILPA’s view that the rebuttal mechanism is not a ‘separate Matter Start’ or separate to the preparation of the asylum claim: ‘It is not an add-on standalone piece of work, like an asylum interview. Rather, it is something that runs through the life of a case. From the outset providers must consider, and take instructions on, matters relevant to rebutting any allegation by the Home Office that the person is a Group 2 rather than a Group 1 refugee. It will run through every piece of evidence: from witness statements to medical and other expert reports. Considering the rebuttal as the end of the process does not accord with the approach of practitioners or the Home Office.’²² As we warned, the structure of the legal aid system may also ‘perversely encourage a practitioner to only think of ‘rebutting’ any allegation that a person may be a Group 2 refugee, at the end of an asylum claim. They will be incentivised to do the bulk of the work when they would be paid for it at hourly rates rather than under the fixed fee arrangements for legal help.’²³
79. The Home Office’s own Guidance accepts that matters relevant to Group 2 refugee status determinations run through the the life of a case: ‘The decision-maker may utilise the screening interview, substantive interview (where one has been conducted), and any other information available - for example case notes from Border Force or a Preliminary Interview Questionnaire - to determine which group a refugee falls into.’²⁴ Therefore, it is clear that this is a matter of relevance, from the outset.

²⁰ Ministry of Justice, ‘Government response to Immigration Legal Aid: A consultation on new fees for new services’ (20 December 2022) <<https://www.gov.uk/government/consultations/immigration-legal-aid-a-consultation-on-new-fees-for-new-services/outcome/government-response-to-immigration-legal-aid-a-consultation-on-new-fees-for-new-services#responses-to-the-consultation-and-the-governments-conclusions>> accessed 9 June 2023.

²¹ *ibid.*

²² ILPA, ‘ILPA and PLP Response to Ministry of Justice Immigration Legal Aid consultation on new fees for new services’ (10 August 2022) 46 <<https://ilpa.org.uk/ilpa-and-plp-response-to-ministry-of-justice-immigration-legal-aid-consultation-on-new-fees-for-new-services-10-august-2022/>> accessed 9 June 2023.

²³ *ibid* 46, §128.

²⁴ Home Office, ‘Permission to stay on a protection route for asylum claims lodged on or after 28 June 2022’ (version 1.0, 28 June 2022) <<https://www.gov.uk/government/publications/permission-to-stay-on-a-protection-route-caseworker-guidance/permission-to-stay-on-a-protection-route-for-asylum-claims-lodged-on-or-after-28-june-2022-accessible>> accessed 9 June 2023.

80. It is likely that a significant and unnecessary amount of stress has been caused during the life of the asylum casework for these flow cases. We would welcome a permanent end to the differential treatment regime.

Legacy and Flow Cases

81. The commencement of various provisions within the Nationality and Borders Act 2022 caused a distinction between cases made before and those made on or after 28 June 2022. It has also been unclear whether legacy cases (made before 28 June 2022), or flow cases (made between 28 June 2022 and 7 March 2023), were the priority.

- (a) For example, one of our members notes that Afghan nationals who claimed asylum in August 2022 are still waiting for an update on their cases. They have not been substantively interviewed. The only response our member receives from the Home Office is a standard response, 'Our current focus is building our capability to handle new claims under the 2022 Act and transitioning to our new structure. We are very conscious we have people who have been waiting some time for an interview or decision. However, due to the large volume of claims both pre and post 2022 Act, no precise date can be given as to when claims will be processed. If necessary, we will contact individuals to request any information required to conclude their claim and provide details of the Decision Making Unit. Please only contact us to tell us about a change of address or a significant change in circumstances'.
- (b) Another member notes that, *"decision making for the cohort of applicants who arrived post-28 June 2022 seems to also be delayed. A number of people who arrived in summer or autumn 2022 are yet to be interviewed."*
- (c) A further member states that it now appears that legacy claims are being prioritised over the flow cohort, *'Dear customer, Thank you for your email. As this claim was raised after 28 June 2022, the application falls within the asylum flow cohort of claimants. The decisions of legacy claimants (those whose claims were raised before 28 June 2022) have been outstanding for longer than flow decisions. In line with the Prime Minister's statement our focus is to clear the backlog of legacy claims by the end of December 2023. However, if you believe there is a reason for this claim to be prioritised for progression ahead of the decisions of other claimants, please provide documentary evidence and we will review each case individually.'*

82. Greater clarity regarding prioritisation would assist, to help manage the expectations of claimants and the work of legal representatives across their caseload.

Standard of Proof

83. ILPA is concerned that section 32 of the Nationality and Borders Act 2022 will undermine the efficiency of asylum casework.
84. Section 32 introduces a complicated split in the standard for proving a person seeking asylum has a 'well-founded fear'. It requires decision makers to test part of an asylum claim on the civil standard, 'the balance of probabilities', and part on the lower 'reasonable likelihood' standard of proof.
85. The decision-maker must determine on the 'balance of probabilities' that the reason for which they fear persecution is covered by the Refugee Convention, and that they indeed fear that they will be persecuted if returned. Assessments against the balance of probabilities are inherently more vague, 'because it posits an absolute standard of probability which does not, in fact, exist.'²⁵
86. On a visit to the Leeds test and learn site, a decision-maker mentioned to ILPA's Legal Director that they had received training on the new 'burden of proof'. While this may be a slip of the tongue, it raises the question as to whether there is sufficient training and understanding in the application of this new standard of proof, and whether the correct standard of proof is being applied in legacy and flow cases.
87. According to section 32(3), only if this is established to the new higher standard, will the decision-maker determine whether there is a 'reasonable likelihood' that a person would be persecuted, and not protected, if returned.
88. Section 32(3) appears to conflict with the Home Office's guidance on assessing credibility, which states, 'Where the first stage of the test has not been met and the asylum claim has been refused (as the claimant has not established that, on the balance of probabilities they have a characteristic, or are perceived to have a characteristic, based on Convention reason, or that they fear persecution as a result of these characteristics), you must still go on to consider the second stage of the test even though this is not a determining factor of the claim'²⁶ (emphasis added).

²⁵ Rudolph Spurling, 'Analysis: the Borders Bill and the Refugee Convention' *Free Movement* <<https://www.freemovement.org.uk/nationality-and-borders-bill-and-the-refugee-convention/>> accessed 9 June 2023.

²⁶ Home Office, 'Assessing credibility and refugee status in asylum claims lodged on or after 28 June 2022' (version 11.0, published 28 June 2022) 59.

89. Throughout the passage of the Nationality and Borders Bill, we warned the introduction of this test will result in protection wrongly being denied to people at genuine risk of persecution.
90. As we stated in our joint briefing, ‘Many people already struggle to have their claims properly investigated and recognised by the UK’s asylum system. Over the years, findings from NGOs, the United Nations, parliamentary committees and even Government inquiries have revealed how decision makers at the Home Office apply an unrealistically high burden of proof towards people seeking asylum, leading to incorrect refusals of protection. This in turn leads to higher numbers of appeals, increasing costs and delays in the asylum system.’²⁷ According to the latest statistics, half of the appeals against the Home Office’s decisions on asylum, protection, and revocation are successful in the First-tier Tribunal,²⁸ and the long-standing culture of disbelief in Home Office decision-making has been well-documented.²⁹
91. We warned that the increased standard of proof would ‘disproportionately affect particularly vulnerable groups’³⁰ including individuals who must prove their sexual orientation, gender identity, or that they are members of a particular social group (who are also subject to the more difficult conjunctive test in section 33 of the 2022 Act) such as ‘abused women’ or ‘women who have been trafficked’. They ‘will need to prove on the balance of probabilities that they have a Convention characteristic. For example, they may need to prove their sexual orientation or gender identity to this higher standard. For certain other groups, such as “abused women” or “women who have been trafficked”, they will need to prove it is more likely than not that they have been abused

²⁷ ILPA, ‘Joint Briefing on Clause 31 Well-founded Fear Test Nationality and Borders Bill, House of Lords Report Stage’ (24 February 2022) 2 <<https://ilpa.org.uk/wp-content/uploads/2022/02/ILPA-Women-for-Refugee-Women-and-Others-Joint-Briefing-Clause-31.pdf>> accessed 9 June 2023.

²⁸ Ministry of Justice, ‘Tribunal Statistics Quarterly: January to March 2023: Accessible Main Tables (January to March 2023) FIA_3’

²⁹ See, for example: British Red Cross, ‘We want to be strong, but we don’t have the chance’: Women’s experiences of seeking asylum in the UK’ (January 2022) <<https://www.redcross.org.uk/about-us/what-we-do/we-speak-up-for-change/womens-experiences-of-seeking-asylum-in-the-uk>> accessed 9 June 2023; Wendy Williams, ‘Windrush Lessons Learned Review’ (March 2020) <<https://www.gov.uk/government/publications/windrush-lessons-learned-review>> accessed 9 June 2023; Freedom From Torture, ‘Lessons Not Learned: The Failures of Asylum Decision Making in the UK’ (September 2019) <<https://www.freedomfromtorture.org/news/lessons-not-learned-report-september-2019>> accessed 9 June 2023.

³⁰ ILPA, ‘Joint Briefing on Clause 31 Well-founded Fear Test Nationality and Borders Bill, House of Lords Report Stage’ (24 February 2022) 2-3 <<https://ilpa.org.uk/wp-content/uploads/2022/02/ILPA-Women-for-Refugee-Women-and-Others-Joint-Briefing-Clause-31.pdf>> accessed 9 June 2023.

or trafficked.³¹ Additionally, the test perversely impacts those who cannot conceive or articulate their subjective fear, such as children, and individuals with certain cognitive disabilities.³² As we stated, '[t]he new test could result in a situation where, even though there is a reasonable likelihood that the person will be persecuted if returned, they would be denied refugee protection because they were unable to prove subjective fear to the 'balance of probabilities' standard. But surely, if there is a reasonable likelihood that a person will be persecuted, it would be perverse to find they are not a refugee simply because they have not proven it is more likely than not that they have a subjective fear.'³³

92. ILPA would welcome the ICIBI inspecting whether the Home Office has sufficient mechanisms in place to monitor the impact of provisions of the Nationality and Borders Act 2022 on vulnerable groups, including those with protected characteristics.
93. We would also note that the higher standard of proof also has serious implications for asylum decision-making. The higher standard of proof necessarily makes it more difficult for claimants to prove certain aspects of their claims. Under the streamlined asylum process, in which the Home Office wishes to make applications on paper, or only conduct targeted/shorter substantive interviews, it must still be satisfied that the higher standard of proof is met. This means that applicants must be able to put forward the strong evidence needed to satisfy that standard. With the new standard of proof, access to legal advice and representation becomes ever more crucial in assisting applicants to present their case and put forward the strong evidence needed to satisfy decision-makers.

ILPA

9 June 2023

³¹ *ibid* 3.

³² Joint Opinion of Raza Hussain QC, Jason Pobjoy, Eleanor Mitchell, and Sarah Dobbie 'Nationality and Borders Bill' for Freedom from Torture (7 October 2021) [191] <<https://www.freedomfromtorture.org/sites/default/files/2021-10/Joint%20Opinion%2C%20Nationality%20and%20Borders%20Bill%2C%20October%202021.pdf>> accessed 9 June 2023.

³³ ILPA, 'Joint Briefing on Clause 31 Well-founded Fear Test Nationality and Borders Bill, House of Lords Report Stage' (24 February 2022) 4 <<https://ilpa.org.uk/wp-content/uploads/2022/02/ILPA-Women-for-Refugee-Women-and-Others-Joint-Briefing-Clause-31.pdf>> accessed 9 June 2023.