Immigration Law Practitioners' Association

A Briefing for Peers on the Asylum and Immigration (Treatment of Claimants, etc.) Bill

Second Reading in the House of Lords

15th March 2004

Clause 14 - the Unification of the Appeal System

A challenge to the Rule of Law.

'The Bill attempts to immunise manifest illegality. It is an astonishing measure. It is contrary to the rule of law. It is contrary to the constitutional principle on which our nation is founded that Her Majesty's courts must always be open to all, citizens and foreigners alike, who seek just redress of perceived wrongs.'

Lord Steyn - 3rd March 2004.[1]

'It is a novel, bizarre and misguided principle of the legal system that if the exercise of legal rights is causing administrative inconvenience, the solution is to remove the right..... a right of appeal is a valuable and necessary constraint on those who exercise original jurisdiction.'

Tony Blair - in 1992**.** [2]

1. Summary of ILPA's concerns on Clause 14

As long ago as 1771 the principle was established that an African slave was no less entitled to the protection of the courts than was a British subject. Clause 14 threatens to end that principle. It takes decisions about asylum and immigration away from the courts. In so doing, it disapplies the rule of law and will upset the constitutional checks and balances on government power. It threatens to provoke a constitutional crisis between the courts and the executive. It is fundamentally undemocratic and sets a dangerous precedent of restricting the basic legal rights of an unpopular minority.

2. <u>What Clause 14 says.</u>

Clause 14 creates a single tier tribunal called the Asylum and Immigration Tribunal – or AIT - to hear all immigration appeal cases [sub clauses (2) to (6)]. (This single tier tribunal replaces the existing structure of a first tier appeal to an adjudicator with a right of appeal to the second tier Immigration Appeal Tribunal – or IAT.) Much more significant is the removal (or 'ousting') of *all* supervision by the higher courts of *all* immigration appeals *and* Home Office removals in appealable cases [sub clause (7), new clause 108A]. In place of rights of appeal, it is proposed that the new Tribunal will have the power to review its own decision [clause 14(6)], and, if it wishes, seek a non-binding opinion from the Court of Appeal [clause 14(7) new clause 108B].

This will mean that there will be:

- ***no*** rights of appeal to the Court of Appeal or the House of Lords;
- ***no*** judicial and statutory review by the High Court of the Tribunal's decisions or procedures; and
- ***no*** legal challenges to Home Office acts of deportation or removals following an appealable decision.
- ***no*** right to challenge decisions or acts on the grounds that they contain an error in law, or breaches of natural justice or the Human Rights Act [new clause 108A sub clauses (3) and (5)].

Clause 14 affects ***all those subject to immigration control,*** not just refugees**.**

3. The need for proper judicial safeguards

The current constitutional legal safeguards are needed to protect basic human rights and to consider complex issues of law. The law in question is constantly developing and involves interpretation and application of increasingly complex national law and rules, international treaty provisions and principles of international law, including EU law. Because of the gravity of the issues under consideration, abolition of access to the courts will undoubtedly lead to miscarriages of justice. As a High Court judge said in such a case recently:

> *If the possibility of judicial review had not existed the claimants would wrongly have been returned to the Ivory Coast.*[3]
>
> In other words, Britain will be sending refugees abroad to torture and death.

4. Passage of the bill so far

The Government did not make the full extent of their proposals clear at the time of the few weeks of unspecific consultation in October 2003. At Committee in the Commons, the junior minister David Lammy struggled in the face of a barrage of criticism. The bill was amended slightly to reflect new ideas about how the single tier should review itself. The clause was then roundly criticised in reports by the Commons Home Affairs Committee, the Joint Committee on Human Rights and the Commons Constitutional Affairs Committee. At report stage on 1st March new amendments clarified and reduced the scope of the ouster of judicial review of Home Office acts. In over 2 ½ hours of debate on the floor of the House of Commons only Mr Lammy stood up to defend the bill, and over 30 Labour back benchers voted with the Liberal Democrats to delete the appeals clause. The Tories put forward and voted on their own amendment, which was supported by the Liberal Democrats.

5. The Government's case – multi-layered appeals and abuse

Ministers have said the proposals are necessary to counter abuse and delay in the appeals system[4], and to reduce costs[5]. These problems are overstated, in our view, and it is wholly disproportionate to rely on them as justification for the proposed attack on access to the courts.

The current two-tier system with onward rights of appeals on a point of law is the general model advocated for Tribunals by the report of Sir Andrew Leggatt in his 2001 report *Tribunals for users: one system, one service*[6]. This was the first major review of Tribunals for 40 years. Sir Andrew further recommended that precedent set by second tier tribunals should bind the first tier, leading to uniformity and consistency of decision-making in the lower tier and greater certainty for tribunal users. The Leggatt model balances fairness and efficiency. The government has to argue that immigration is a special case.

Abuse

It is a much-peddled myth that the great majority of asylum claims are abusive. Recent Home Office figures show that 20% of asylum appeals are allowed by the first tier adjudicator – i.e. one in five Home Office asylum decisions are found to be wrong. Other appeals are successful at later stages - the Refugee Council estimate that in 2001, 51% of asylum seekers were successful either at the different stages of appeal or where the Home Office withdrew their refusal decision.[7] A quality appeal system clearly is vital to protect human rights.

It is easy *but wrong* to think all failed appeals are abusive. The President of the soon to be abolished Immigration Appeal Tribunal, Sir Duncan Ouseley, recently suggested that *none* of the cases that proceeded to the Tribunal against the decision of the first (Adjudicator) tier of appeal should be considered abusive.[8] Proper legal safeguards are vital to protect cases with merit.

Weak cases can be effectively targeted by existing measures addressing the merits of individual cases – such as improved decisions on legal aid funding, the targeted use of costs penalties, striking out of actions by the courts or certificates curtailing appeal rights. The government legislated radically in these areas in 2002, and is now implementing strict new controls on legal aid in March and April 2004. The Court of Appeal gave strong new guidance on striking out weak judicial review applications in December 2003.[9] We need time for such changes to bed down, not new experimentation with basic constitutional safeguards.

Delay

The government say that it is only in immigration law that weak appellants want to draw out their cases and delay proceedings. This is not true – a litigant in any field who has a weak case is likely to want to delay judgement against him. Further, the government say genuine refugees want quick decisions. This is of course true, but the biggest cause of delay is the Home Office. ILPA's members are constantly trying to speed up Home Office procedures on behalf of clients who are sick of delays – and they frequently have to judicially review the Home Office to get a decision. It has not been uncommon for asylum claimants to be in limbo with no decision for up to 5 years. Most decisions on new claims are now made in two months - but there are still 20,000 asylum claimants in a backlog going back many years. Further, there are often delays of many months if not years between the Home Office receiving a request for an appeal and them notifying the courts. Delays in the system can be best tackled by improving Home Office and tribunal bureaucracy and decision-making.

All avenues of appeal are already subject to strict timetables. This includes the new *Statutory review* –introduced in the Nationality, Immigration and Asylum Act 2002 as a restricted and rapid High Court replacement for judicial review of the Tribunal's decisions granting permission to appeal. Introduced in 2003, Statutory Review takes

only 4 weeks, but is now to be scrapped by the Government before there has even been time to assess its impact.

Although delays at the existing Tribunal have arisen over the last year or so, this is because the Tribunal has not been properly resourced to deal with a rise in the number of appeals against decisions of adjudicators. This is the view of the President of the Tribunal.[10] Now that asylum claims are falling drastically, we can expect the Tribunal to catch up over the next few months.

The government has said there are between 5 and 13 layers of appeal to suggest asylum seekers routinely "play the system." In fact, on its own figures, only about 14% of appeals ever get to the second layer. This is because about half of those who lose their first appeal do not even try to appeal further, and only a third of those that do try are allowed to do so. Weak cases are filtered out because they are not given permission to appeal. It is simplistic to try to avoid any level of complexity in the appeal procedure – this reflects the importance and complexity of the legal issues that need differing levels of court scrutiny. Higher appeals are vital for checking issues of fundamental human rights, particularly when poor Home Office decision-making means that 20% of decisions are still overturned on appeal.[11]

Cost and legal aid cuts

The government are already instituting a new tightened regime of legal aid, aiming to drastically cut the immigration legal aid budget. Many quality solicitors are stopping legal aid immigration work. ILPA believes these changes may in fact prevent cases with merit to fail on appeal because proper representation is not funded. It is reckless to justify further reforms that will restrict access to justice on the basis of cost – particularly before the full effect of the legal aid measures has been felt.

6. Numbers and abuse - the misuse of statistics

Ministers have relied on misleading statistics. They argue that the changes are proportionate as in only a small percentage of asylum cases is the first appeal outcome changed by further appeal. The implication is drawn that the remainder of cases are abusive, and the resources are wasted on them.

The value of precedent

This approach ignores the qualitative value of appeals. It overlooks the value that appeals add in terms of legal precedent. Even an unsuccessful appeal may identify important legal errors that do not change the final result in that particular case. But in a later case, the same error may be the difference between life and death. So whatever the outcome, the Tribunal's decision provides essential guidance for future decisions. The precedent set means that future appeals (and Home Office decisions) are more likely to get it right first time. Legal precedent is the tried and tested mechanism to ensure quality and consistency in first tier appeal decisions. It is the way in which case law lives and evolves.

The Immigration Appeal Tribunal

In any event the use of appeal statistics has been misleading. In respect of the current second tier of appeal – the Immigration Appeal Tribunal (or IAT):

- The figures available[12] are inherently unsatisfactory, as they do not track cases

over time and do not take into account the effect of increasing backlogs at the Tribunal.

'On the basis of the Home Office's published figures, it is not possible to say what proportion of applicants whose claims are rejected by the adjudicators seek leave to appeal to the Tribunal.'[13]

- Further, the figures exclude all immigration (non asylum) appeals.[14]

- At Commons Standing Committee the junior minister, David Lammy, claimed the IAT makes a difference in final outcome only 3-4% of appeals.[15] This percentage is wholly irrelevant to the question of abusive misuse of the Tribunal. It judges the Tribunal's performance against *all* appeals, not just those where an application was even made to the Tribunal.

- The Government ignore the fact that many of the appeals against adjudicators' decisions are brought by the Home Office not by refugees. The figures do not differentiate these cases

- At Report debate in the Commons Mr Lammy said the IAT allowed only 2,000 out of 33,000 applications. This ignores the initial filter of refusal of permission, which takes only 2-4 weeks and filters down the 33,000 applications to the Tribunal by two thirds.

- In fact the IAT gave permission for a full hearing in10,699 cases – this is only 14% of the total number of appeals heard by adjudicators (78,050).

- The figures show the proposed unification of the appeal system would impact directly on *thousands* of asylum appellants a year[16] – not to mention non-asylum immigration cases. Even if it were only hundreds, as the minister has suggested, is this really an acceptable level of miscarriage of justice to sacrifice in the name of expediency? Would such an argument be accepted for removing access to the courts in, say, criminal law? What area of justice is next for such treatment?

A Tribunal decisions not to allow an appeal to itself is regulated by Statutory Review. This is perhaps the third layer of review. In the year 2003 there were only 322 applications and almost 20% were successful.[17] The entire procedure takes only 4 weeks and those that fail have no other remedy.

Court of Appeal

In the Court of Appeal – the next layer - the figures show there are *not* large numbers of abusive and time-wasting applications.

- During the 'legal year' (October – September) 2000 – 2001, the Court of Appeal heard only 57 appeals from the Immigration Appeal Tribunal.

- During the legal year 2001 – 2002, the Court of Appeal heard only 66 appeals from the Immigration Appeal Tribunal[18].

- During 2002 there may have been as few as 38 substantive appeals at the Court of Appeal – while the Tribunal determined 5,565 appeals[19].

- In other words, only about 1% of Immigration Appeal Tribunal determinations are appealed to the Court of Appeal.

- This is less than 0.01% of all asylum appeals.

- In an analysis by ILPA of appeals to the Court of Appeal from the Immigration Appeal Tribunal for 2002, half of the 38 cases were successful.[20]

House of Lords

In the House of Lords – the final layer - there were only 2 full hearing in 2002. The Home Office brought one of them. Both set significant points of principle.

In general, it is clear that appeals to the Court of Appeal and the House of Lords are not time wasting or abusive; they preserve the quality and development of our law.

'The argument for removing the jurisdiction of the House of Lords cannot rest securely on the principle of removing scope for unmeritorious appeals, since few cases proceed to the highest court. The House of Lords should retain its usual overall jurisdiction in immigration cases.'

Constitutional Affairs Committee[21]

Judicial Review

Statistics for judicial review are unstable and difficult to interpret. All applications are initially filtered by a decision on whether to grant permission, or "leave" to proceed. Many cases settle after the permission stage. This is often with the Home Office conceding there has been an error, and in statistical terms such cases may be recorded as withdrawn. According to the House of Commons Library[22], typically "about one quarter to one third of such [permission] applications are granted." Of those that go to a full hearing, the Library suggests "There are no apparent trends in the outcome of judicial review hearings. In some years the majority of cases are successful, whereas in others most cases are dismissed."

While we would not seek to defend some weak or time-wasting applications that are made, the problem is of a scale and nature that can be tackled by measures other than abolition of the right of access to the courts. As David Heath MP said in Standing Committee

'It is indeed a novel principle of dealing with an abuse of process by removing the process rather than the abuse**.'**

7. <u>The supervision of the tribunal by itself</u>

'We are concerned that the limited system of review proposed is insufficient to guarantee that an appellant will receive a just determination of his application'

Constitutional Affairs Committee*[23]*

The Government says the new AIT could provide adequate legal safeguards because it will supervise itself without the courts. At Report debate the minister even sought to argue that the internal review was "independent" in a legal sense[24]. This is all muddled and dangerous thinking:

- Instead of any appeal, there is the opportunity to apply to the AIT itself for a limited

review of its own decision offends the basic principle of natural justice that 'no one should be a judge in their own cause'. This is a rotten foundation on which to build a new legal institution.

- The internal review occurs only once and is limited to written grounds raised. Only exceptionally can there be oral argument or evidence at the review. This clearly inhibits justice. It will prevent review of important issues that may have arisen late or have been overlooked. It is of particular concern when many appellants are poorly represented – a problem likely to be exacerbated by new restrictions in legal aid.

- The ability of the Tribunal to seek an opinion from the Court of Appeal is clearly inadequate. It prevents the courts from intervening in cases where the Tribunal is blind to its own error.

- The new Tribunal President will have unprecedented and unchecked power to supervise his own law making.

- The Government plans to call members of the new tribunal "immigration judges", as if this gives them more authority to review themselves in isolation from the rest of the legal system, and in the hope of blurring distinctions between administrators (which they are) and the judiciary (which they are not).

In the new AIT speed is valued over justice and over getting the result right. Without the courts supervising and making law the new Tribunal will inevitably fail to safeguard the human rights of refugees and immigrants. The law and legal culture of the Tribunal will stagnate, cut off from the mainstream courts.

8. The value of judicial review of removal decisions

The amended ouster of judicial reviews of Home Office removal decisions [subclause 7; new clause 108A (2)(e)] will exclude only a fraction of current challenges to the Secretary of State. Yet supervision of immigration service removals is vital –there have been cases of fresh but compelling evidence being ignored, of removal effected of the wrong person and to the wrong country, and of removal in breach of an undertaking to court. Without judges looking over their shoulder the quality of Home Office decision-making in this vital area is bound to fall still further.

'We are deeply concerned that the provisions of the new ouster clause are intended to prevent the courts from reviewing any deportation or removal decision; this may include cases involving serious error, for example where the wrong person has been identified for removal'

Constitutional Affairs Committee[25]

9. Constitutional crisis - the "nuclear option"

Several leading lawyers and retired judges have expressed the view that any legislation seeking to end the courts' inherent jurisdiction to enforce the rule of law would stand to be struck down by the courts as unconstitutional.[26] The Lord Chief Justice has spoken of the danger that the proposed ouster clause "could bring the judiciary, the executive and the legislature into conflict." Such a battle between two arms of the realm would be unprecedented in modern times and potentially destabilising. The government is toying with what has been called the "nuclear option".

10. The innocent bystander – immigration appeals

The proposals have been justified purely in terms of the need to get to grips with the problem of abuse by asylum seekers. But clause 14 affects *all those subject to immigration control,* not just refugees**.** It is proposed that, husbands, wives, sons and daughters wishing to visit or join family in the UK will be barred from using the courts to challenge the new Tribunal's decisions. These cases often raise important and complex issues of the right to family life – a right enshrined in article 8 of the European Convention of Human Rights. Such issues demand court scrutiny just as asylum cases do – yet access to the courts is to be denied without a word of justification. Fixated on the high profile politics of asylum, the government seems impervious to the inevitable adverse consequences of the changes on race relations.

11. Who agrees with us?

The proposals have been roundly criticised by three parliamentary committees and leading judicial and legal figures and academics. Many have voiced an expectation that the House of Lords will reject the measure as unconstitutional and disproportionate.

- ***The Joint Committee on Human Rights***: "The Committee considers that it could be strongly argued that there is a real danger that the ouster of judicial review of tribunal decisions contemplated by clause 14 would violate the rule of law and that the differences of legal authority and seniority between the proposed Tribunal on the one hand and the Court of Appeal and the House of Lords on the other make it inappropriate to allow self-review by the Tribunal to be the only way of correcting errors which affect Convention rights or rights under the Refugee Convention."[27]

- ***House of Commons Constitutional Affairs Committee*** – "We are deeply concerned that the provisions of the new ouster clause are intended to prevent the courts from reviewing any deportation or removal decision; this may include cases involving serious error. ….An ouster clause as extensive as the one suggested in the Bill is without precedent. As a matter of constitutional principle some form of higher judicial oversight of lower Tribunals and executive decisions should be retained. This is particularly true when life and liberty may be at stake[28].

- ***The Home Affairs Committee:*** "the real flaws in the system appear to be at the stage of initial decision making, not that of appeal.." It recommended that the appeals proposals "should not be brought into force until the statistics show a clear reduction in the number of successful appeals at first tier adjudicator level."[29]

- ***The Council on Tribunals***: "It is of the highest constitutional importance that the lawfulness of decisions of public authorities should be capable of being tested in the courts. … In the Council's view it is entirely wrong that decisions of tribunals should be immune from further legal challenge."[30]

- ***Lord Woolf – the Lord Chief Justice***: " Extensive consultation took place with myself and other members of the judiciary before the Bill was introduced….Our advice was that a clause of the nature now included in the Bill was fundamentally in conflict with the rule of law and should not be contemplated by any government if it had respect for the rule of law.

  "We advised that the clause was unlikely to be effective and identified why….In addition we argued that ouster was not necessary and action could be taken which

was more likely to be effective than a clause of this nature. Importantly, we pointed out that the danger of the proposed ouster clause was that it could bring the judiciary, the executive and the legislature into conflict. Apparently this was of little concern."[31]

- ***Lord Mackay of Clashfern - former Lord Chancellor*** "I just hope that Parliament is not prepared to say we will prevent the ordinary courts of law from intervening to protect claimants ... from, for example, breaches of natural justice."*[32]*

- ***Sir Andrew Collins – High Court judge and former Tribunal President****:* "And do not forget that this jurisdiction can be life and death. It is all very well to talk about the problems of asylum and flooding in with bogus cases but the fact is there are some genuine ones and, if you make a mista1ke, you can be costing someone his life."*[33]*

- ***Professor Vernon Bogdanor of Oxford University****:* "The clause….is not to be condemned merely because it will promote inefficiency. It is a constitutional outrage, and almost unprecedented in peacetime."[34]

- ***David Pannick QC – leading Government Barrister:*** "If Clause 14 were to be enacted, the courts would decide on a judicial review that that rule of law is a basic principle of our constitution, access to the courts is vital to the rule of law and even the legislature must abide by constitutional norms…Parliament must respect the jurisdiction of the courts to interpret the law."[35]

- ***Claire Curtis-Thomas MP*** – "We will return after a year or so…. but we will not have served those people [asylum appellants] well…They will have been denied justice by an ineffective and inefficient system that needs to be revised." *[36]*

- ***Edward Garnier MP*** – "This is a an unnecessary disproportionate and wholly irregular attack on the rights of the citizens and non citizens who bring themselves within the jurisdiction of our courts."[37]

- ***Humphrey Malins MP*** – " [Clause 14] has been described by one senior judge as a clause that would "no doubt appeal to Mr Mugabe."[38]

- ***Dominic Grieve MP*** – " That all in this country should be subject to the rule of law and have the protection of the law is a fundamental right, and fundamentally underpins the ethos and ethics on which this country was built and developed"[39]

- ***Annabelle Ewing MP*** – "The clause places the tribunal above the law…our founding constitutional principles should not be used as a plaything of the Government"[40]

- We would also refer you to the briefings and opinions of many non-governmental and professional organisations with expertise in this field who have been unanimous in their opposition to clause 14. These - include the Bar Council, the Law Societies of England and Wales and of Scotland, Liberty, Justice, Amnesty International, Legal Action Group, the British Institute for Human Rights, The Children's Society, the Refugee Council, the Refugee Legal Centre and the Joint Council for the Welfare of Immigrants.

Proper judicial oversight is vital in this complex area of human rights law. Clause 14 is

fundamentally undemocratic, institutionalising second-class legal treatment of refugees and immigrants. It is an unprecedented and unconstitutional assault on the right of access to justice.

About ILPA

President Ian Macdonald QC

ILPA members are barristers, solicitors and advocates practising in all aspects of immigration and asylum. Academics, NGOs and others working in this field are also members. The Association exists to promote and improve the giving of advice on immigration and asylum, through teaching, provision of high quality resources and information. It represents members on numerous government and Tribunal Stakeholder and Advisory Groups.

ILPA has advised parliamentarians of all parties on five immigration and asylum acts in the last 10 years: drafting amendments, briefing; sitting in the Advisors' box – we are busy people, but this matters to our clients: we know your procedures, and we are happy to help.

ILPA can provide detailed written briefings for those wishing to speak in debates, or improve their own understanding of this field and experts to speak to individual and groups of parliamentarians.

Please do not hesitate to contact the ILPA office on 0207 251 8383 or 0207 490 1553 or email billteam@ilpa.org.uk

Extract from speech of Lord Steyn

Inner Temple Hall: Wednesday, 3rd March 2004

The Home Office is attacking our democratic institutions on both fronts. Consider what has happened in the last couple of days in the United Kingdom. I am referring, of course, to the Asylum and Immigration Bill. The Bill completed its House of Commons stages on Monday this week (1 March) and was introduced into the House of Lords and given its formal first reading this afternoon [3 March]. The second reading debate in the Lords takes place on 15 March. The question can be posed whether the implications of this Bill and its potential consequences for our system of government were fully appreciated in its passage through the House of Commons.

The Bill aims to replace immigration adjudicators and tribunals with a single tier appeal tribunal. In isolation that may be unobjectionable. But the Bill seeks in effect to oust the jurisdiction of ordinary courts in all but limited cases, for example bad faith. It will preclude judicial review on the ground of lack of jurisdiction, irregularity, error of law, breach of natural justice and any other matter. These are the very areas in which the higher courts have repeatedly been called on to assert the sovereignty of the law. The Bill attempts to immunise manifest illegality. It is an astonishing measure. It is contrary to the rule of law. It is contrary to the constitutional principle on which our nation is founded that Her Majesty's courts must always be open to all, citizens and foreigners alike, who seek just redress of perceived wrongs.

It is a wholly disproportionate approach to the undoubted abuses in the immigration system. Instead of addressing those abuses the Bill by and large abolishes justice and due process. If such legislation is effective in this corner of the law - not even involving the endless war against terrorism - what are the portents for our democracy? Why should the Bill not serve as a model in other areas?

I am inclined to think that as a matter of interpretation the language may be watertight….. The draftsman has done an excellent technical job in carrying out the outrageous instructions of the Home Office.

Does that mean that our courts are helpless to protect this challenge to the structure of our democracy? If so, it follows that Parliament could abolish judicial review of abuse of executive power altogether, abolish the court system, entrust decisions on guilt of criminal defendants to civil servants, and so forth. This prompts fundamental questions about the principle of the supremacy of Parliament. Where does it come from? Not from the Monarch. Not from the Treaty of Union with Scotland. But it must come from somewhere. Henry VIII gave a clue. In 1542, he declared that "we be informed by our judges, that we at no time stand so highly in our estate royal, as in the time of Parliament", whose prerogative "is so great (as our learned counsel informs us) as all acts and processes coming out of any other inferior courts must for the time [being] cease and give place to the highest". Since then the judges have on countless occasions described the supremacy of parliament as the first principle of our constitution. It is strongly arguable that the judges created the principle. If that is so, the House of Lords may have to consider whether judicial review is a constitutional fundamental which even a sovereign Parliament cannot abolish. The Home Office either acted in full knowledge of a possible constitutional crisis or it was extraordinarily naive in constitutional matters. But you will not be surprised to hear me saying that I have not heard all the arguments and that tonight I express no concluded view on what the House of Lords may or may not do. But I wonder whether British common sense may cause the government to think again about tampering with our unwritten constitution in such an unnecessary way.

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[1] Speech at Inner Temple Hall, 3.3.04, fuller text annexed to the end of this document.

[2] Tony Blair, then shadow Home Secretary, attacking Conservative proposals to limit immigration appeals, House of Commons 2nd November 1992.

[3] R(Konan) and SSHD 21 January 2004

[4] Standing Committee 20.1.04

[5] David Blunkett at 3rd reading 1.3.04 – Hansard HC col 720

[6] Recommendation 98.

[7] Refugee council statistics 2002:
http://www.refugeecouncil.org.uk/infocentre/stats/stats004.htm

[8] Evidence to Constitutional Affairs Committee 20 January 2004

[9] R (app. Nine Nepalese Asylum Seekers) v Immigration Appeal Tribunal [2003] EWCA Civ 1892

[10] Sir Duncan Ouseley in evidence to the Constitutional Affairs Committee 20.1.04

[11] Home Office statistics and press release 24.2.04

[12] The current figures from the DCA, in a letter to Marion Roe MP, the Chair of the Standing Committee, dated 9.2.04, are for the 12 months up until 30 September 2003. In this period there were:

a. 78,050 adjudicator asylum determinations;
b. 33,304 applications to the IAT;
c. 10,699 grants of leave to appeal by the IAT;
d. 7,509 appeals determined by the Tribunal; including
e. 1,096 appeals (14.6% of Tribunal determinations) allowed outright by the Tribunal; and
f. 3,318 cases (44.2% of Tribunal determinations) were remitted by the Tribunal for reconsideration by an adjudicator;
g. 1,249 remitted cases (16.6% of Tribunal determinations) were overturned on rehearing.

[13] Home Affairs Committee report *Asylum Applications* 26.1.04; HC 218-1.

[14] Non asylum immigration appeals – such as family visit visa appeals – form about 20 - 25% of all immigration appeals. There are no figures available to show a breakdown of result or further appeal, but anecdotally it would seem

[15] Figures given in standing committee on 20.1.04 - differ from those given to the Home Affairs Committee by Beverly Hughes on 8.12.03.

[16] On DCA figures, in the 12 months to 1 Oct 2003 there were 2345 cass. However, when the effect of the increase in the Tribunal backlog is taken into account, the figure is likely to be nearer to 4,000. ILPA's full analysis of the figures is available on request.

[17] Evidence of Sir Andrew Collins to Constitutional Affairs committee 4th February 2004, and statistics from the Administrative Court.

[18] Court of Appeal Review of the Legal Year 2001 - 2002

[19] Control of Immigration Statistics United Kingdom 2002 (Cm 6053)

[20] The great majority set important points of legal precedent. The full analysis is available on request.

[21] Asylum and immigration appeals – HC211-1, 26.2.04, para 58

[22] Research Paper 03/88 11 Dec 2003 – Asylum and Immigration: the 2003 Bill.

[23] Asylum and immigration appeals – HC211-1, 26.2.04, para 45

[24] Hansard 1.3.04 HC col 699.

[25] Asylum and immigration appeals – HC211-1, 26.2.04, para 69

[26] See for example the opinion of Michael Fordham on http://www.refugee-legal-centre.org.uk

[27] HC304 published 10.2.04.

[28] HC211-I 26th Feb 2004

[29] HC109 published 16.12.03

[30] In written submission to the Constitutional Affairs Committee

[31] Lecture to Faculty of Law, Cambridge University, 3 March 2004.

[32] Reported in Daily Telegraph 4 March 2004

[33] Evidence to the Constitutional Affairs Committee, 3rd February 2004.

[34] Times 9th January 2004

[35] Times 27th Feburary 2004

[36] Debate in Standing Committee, 20 January 2003 Hansard col 237

[37] Debate in Standing Committee, 20 January 2003 Hansard col 279

[38] Debate in Standing Committee, 20 January 2003 Hansard col 230

[39] Hansard 1 March 2004 668

[40] Debate in Standing Committee, 20 January 2003 Hansard col 276