

IMMIGRATION LAW PRACTITIONERS' ASSOCIATION (ILPA)
MEMORANDUM ON WRITTEN QUESTIONS FROM
CONSTITUTIONAL AFFAIRS COMMITTEE

Question 1

Under the proposed Bill, only the President of the Tribunal will have power to refer a point of law to an appellate court. How will this impact upon the quality of legal authorities in asylum proceedings?

1. At present, any Chairman of the Immigration Appeal Tribunal could by statute grant permission to appeal to the Court of Appeal. This ensures that the gateway to the Court of Appeal is not guarded by one man alone. It ensures that a range of personnel put their minds to considering what sorts of issues the Court of Appeal should deal with. ILPA believes that this variety of opinion is healthy. Under the Bill, the President is the sole gatekeeper to the Court of Appeal: the skills of other members of the AIT will have no part to play in this regard.
2. As currently drafted, the President could refer or not refer points of law at his whim. There is nothing in the Bill that would compel him to refer complex or important points of law. On the contrary, new clause 108B(2) expressly leaves this to his discretion [*may* refer a point of law

- under this section’]. If he chooses not to refer a point of law, there is no redress against his decision.
3. Under the Bill, the President has the power to require the AIT to treat certain AIT decisions - chosen by him - as binding. We assume that this is intended to mirror to some degree the current system of starred Tribunal decisions. There would be no legal restraint on the President electing to make AIT decisions binding and then refusing to refer matters up to the Court of Appeal. ILPA strongly believes that the higher courts must scrutinise the AIT, otherwise the quality of justice will decline or disappear. We refer to the oral evidence of Stephen Irwin QC in this regard.
 4. It is inevitable that, irrespective of who is appointed President, he will bring his own stamp to the post. It is simply not human to be completely right or objective all the time about the sorts of issues that should go to the Court of Appeal. Yet, there are no checks or balances on the President.
 5. The reference procedure is not the same as an appeal procedure. The reference procedure takes place during the course of proceedings before the AIT. There would be no avenue for an aggrieved party to challenge a final decision of the AIT in the higher courts. Yet, the final decision may reveal errors of law in the adjudicator’s approach that had not arisen

at the time of the reference. For example, many procedural errors do not crystallise until the end of a case. Thus, there would be a paucity of good, developing law on procedural issues. Many other errors may become apparent to the parties only when they read the determination. Yet, they would be left without redress and the errors would remain unclarified by the higher courts.

Question 2

What disadvantages will be caused by the prohibition on appeals to the House of Lords contained in the new Bill?

The disadvantage is that major points of legal principle affecting the overall development of refugee, human rights and immigration jurisprudence in the UK would not be subject to the extra value that the House of Lords can contribute to any case. The impact of one case in the House of Lords can affect the lives of thousands of people. The House of Lords can turn the tide of immigration law one way or the other. It may not deal with many cases but each case is of tremendous importance. It roots down legal principles. It embeds and shapes the law. The contribution of the House of Lords has been huge. Every day in hearings throughout the land, adjudicators apply its case law.

Question 3

What do you believe would be the result of a reduction of Legal Help in asylum cases?

We believe that this would detract from the LSC's stated objective of 'right first time'. We believe that reduction of Legal Help would mean that solicitors and counsel would simply be unable to do a competent, reputable job on asylum cases. It is ironic that the Government on the one hand deprecates the quality of work carried out by asylum lawyers but on the other hand seeks to remove the financial resources for them to carry out a diligent job.

We refer to our written and oral evidence to the Committee in its inquiry on the proposed changes to publicly funded immigration work.

Laurie Fransman QC

ILPA, February 2004