ILPA IMMIGRATION LAW PRACTITIONERS' ASSOCIATION
PRESIDENT: IAN MACDONALD QC

RESPONSE OF IMMIGRATION LAW PRACTITIONERS ASSOCIATION TO THE CONSULTATION ON THE DRAFT UPPER TRIBUNAL (ADMINISTRATIVE APPEALS CHAMBER) PROCEDURE RULES 2008

ILPA is a professional association with some 1,000 members, who are barristers, solicitors and advocates practising in all aspects of immigration, asylum and nationality law. Academics, non-government organisations and others working in this field are also members. ILPA exists to promote and improve the giving of advice on immigration and asylum, through training, disseminating information and providing evidence-based research and opinion. ILPA is represented on numerous government and other stakeholder and advisory groups.

At this stage ILPA has no clear indication that it is government policy that the Asylum and Immigration Tribunal (AIT) should be part of the Upper Tribunal (subject always to parliamentary approval in any event). If it is or becomes government policy that the Asylum and Immigration Tribunal should be part of the Upper Tribunal, the question still remains as to whether it should join the Administrative Chamber. We have been informed that the date of the next stakeholders' meeting of the AIT has been changed to allow Lord Justice Carnwath to attend to discuss possible integration of the AIT into the First Tier and Upper Tribunal structure. We should of course wish to respond to any further consultation on this specific question.

Given that the inclusion of the Asylum and Immigration Tribunal within the Administrative Upper Chamber is a real possibility, we submit this brief response as an expression of our interest and to draw attention to a couple matters within our area of expertise.

ILPA welcomes the overriding objective of the Draft Procedure rules at **rule 2(1)** and considers this appropriate for asylum and immigration cases.

If these rules were to be applied to cases currently within the jurisdiction of the AIT, ILPA would have particular concern at casework management provisions of **rule 5(2) (o)** to dismiss a case 'if it there is (sic) no reasonable prospect of it succeeding'.

Immigration and asylum cases may involve appellants at risk of persecution and torture, and grave breaches of a range of human rights, including the right to private and family life. ILPA is concerned that unrepresented clients, particularly those with language difficulties, would be prevented from having their case properly heard. They would be unable to explain to the tribunal where their cases were more complex and stronger than appeared and may be unable even to understand that their cases as stated might be considered to have no reasonable prospect of success. ILPA therefore considers that provisions allowing for summary dismissal of cases without a hearing should be deleted.

Having been faced with the infamous 'ouster clause' in the Asylum and Immigration (Treatment of Claimants etc.) Bill, ILPA will watch with particular interest the

development of the powers under **Part 5** of the draft rules, concerning 'judicial review'. The 'ouster clause' did not survive the Bill's passage through parliament from which it emerged as the Asylum and Immigration (Treatment of Claimants etc.) Act 2004. The scrutiny of the administrative court has repeatedly proved to be an essential safeguard in immigration and asylum cases and ILPA considers it vital that judicial oversight be maintained in these cases.

We trust that this brief submission will be taken as an indication of our interest in the Upper Tribunal as it develops and of our desire to contribute to ensuring that the highest standards of fairness apply in immigration and asylum cases.

Sophie Barrett-Brown
Chair
ILPA
12 July 2008