ILPA Response to Draft Asylum and Immigration Practice Directions Consultation

ILPA comments on the draft Practice Directions as follows:

Para 2.1(4): ILPA has serious concerns that appeals may have to be reheard simply on the basis that an appellant happens to have had his appeal heard by a two-person panel which cannot agree. New procedures and funding arrangements present genuine claimants with enough obstacles without the additional burdens in terms of time and resources that this sort of rehearing would entail.

Para 6.6: We suggest that the AIT takes this opportunity to clarify that bundles and other documents should be served 7 calendar days before the hearing. Paragraph 57 of the 2005 Procedure Rules means that the Practice Direction as currently drafted requires service of documents 7 working days before the hearing, which cannot be intended. ILPA's regular experience is that the HOPOUs do not cope with bundles served more than 7 calendar days in advance. It is a waste of funds for solicitors to be forced to give a spare bundle to the HOPO at the hearing because the HOPOU has failed to link the bundle to the Home Office file when served more than a week before the hearing. Further time is then wasted whilst the case is put back to enable the HOPO to read the bundle for the first time. The inevitable practice is that bundles are served 7 calendar days before the hearing: this should be recognised in the Practice Direction.

Para 6.6(a)(ii): To the extent that there is some overlap with para 8.2(c), we believe that a requirement *both* to draw up a schedule of essential reading *and also* to outline essential passages in the skeleton argument (or highlight the passages in the bundle) is otiose and onerous. One or the other surely suffices.

Para 6.6(a)(iii): We take this opportunity to highlight that standard directions are not even handed between the parties when it comes to advance disclosure of authorities to be cited at the hearing. Standard directions require appellants to give advance notice of authorities in the skeleton argument. There is no requirement for the Home Office to give advance notice of authorities on which it intends to rely. Citation of, and reliance on, authorities should be treated as a serious matter: they set out the legal framework on which the appeal may proceed. Representatives cannot be expected automatically to deal with all Home Office cases on the day of the hearing: counsel or other representatives may wish to carry out further legal research or to have time to think about an authority. We would be grateful if the practice direction could rectify this imbalance - for example, by a requirement that the Home Office bundle contain a list of authorities to be relied on.

Para 10.2: We do not believe that it is 'inappropriate' for someone holding a judicial office to express his view of the case in a determination. On the contrary, judicial responsibility may on occasions involve expressing a view of the case even if this is inconvenient or uncomfortable for other members of the

Tribunal. We oppose a situation where determinations may purport to reflect the views of each panel member whereas this may not be the reality. If a Tribunal member feels that he cannot put his name to a determination, then there should be a mechanism for him to avoid this. It is best achieved by allowing scope for minority judgment.

Para 14.7: ILPA is concerned about the potential waste of resources which will be occasioned by the necessity of having appellants and all witnesses present at both stages of reconsideration hearings. It is appreciated that representatives will always need to be prepared to argue both whether the original Tribunal made an error of law and ultimate merits. However, if the case is one in which evidence must be reheard it will rarely be practicable for any such hearing to be concluded on the same day. Moreover, it is understood that in such event the hearing may be concluded elsewhere and even before a differently constituted Tribunal. In these circumstances there would seem to be little if any justification for requiring the attendance at the first stage of both appellant and all witnesses.

Para 17.8: It is impossible for any party save the Home Office to certify that he has undertaken an exhaustive search of determinations of adjudicators because these are not documents available in the public domain. Citation of determinations of adjudicators may be rarely appropriate but the Practice Direction effectively rules it out in limine for one party albeit not for the Home Office.

More generally, ILPA is disappointed that this consultation takes place so close to commencement of the AIT. It means that the final Practice Directions will be promulgated extremely close to commencement, giving users little time to familiarise themselves. It is hoped that the Practice Directions will be put on the AIT web site as soon as possible and that the AIT will take steps to draw them to the attention of users with hearings listed in April 2005.

ILPA, March 2005