

Consultation on the Use of experts

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Dear Madam

Consultation on the Use of Experts

I write in response to this consultation on behalf of the Immigration Law Practitioners' Association.

Much of the consultation paper deals with matters outside ILPA's remit, and we note that it is planned to publish a separate consultation on immigration cases. It would therefore be inappropriate for us to seek to respond to most of the specific questions raised in this paper. There are, however, some comments which we wish to contribute at this stage.

1. Nothing would please our members more than to be able to tap into a pool of quality assured experts. ILPA therefore has no quarrel in principle with the development of a system of accreditation, provided it is flexibly operated so as to extend, not limit, practitioners' choice. We certainly agree with the Commission's view that, even in the long term, compulsory accreditation is not practicable (consultation question 4.6).
2. Over the years ILPA has sought to facilitate the selection of appropriate country experts through the publication of our Directory of Experts, recently re-launched in electronic form in conjunction with the Electronic Immigration Network. The importance of high quality expert evidence to quality decision making in the immigration field is demonstrated by reactions to the initiative, which have included the following:

Professor Stephen Castles, Chair of the Home Office's statutory Advisory Panel on Country Information said he "very much welcomed the initiative";

Crispin Passmore, Head of Immigration Services at the LSC, said that he hoped that the "register of experts develops to become the core of asylum experts used";

UNHCR said:

"We have noticed here in the United Kingdom that the use of expert evidence has become an increasingly important variable in the refugee status determination process. As such, your efforts aimed at ensuring that practitioners and decision makers - therefore indirectly asylum seekers - have access to a high level of expertise is something that UNHCR would like to welcome - with open arms.

3. Much in the current consultation paper seems to be predicated on an assumption of the availability of choice from an ample supply of experts. This is alien to our members' experience. Immigration practitioners more commonly face a dearth of experts on country conditions who are able to address the issues in particular cases with sufficient authority. This is especially so in view of the volatility of conditions in most refugee-producing countries, the need for the most up to date information in asylum cases, and the frequent need for narrow focus on specific regions, ethnic groups, political organisations, legal provisions or social attitudes and customs. Even where the relevant expertise exists, many academics and professional commentators are not eager to take on the role of court expert in immigration cases, but need to be cajoled into doing so, while those who are willing may be overwhelmed by the demand. It is not a buyer's market. The LSC must bear all these factors in mind in formulating any guidelines for the selection and remuneration of such experts.
4. Immigration practitioners also have frequent need to instruct medical experts, particularly in the fields of scar identification, psychiatric injury and psychological assessment. Our members commonly encounter difficulties, not least because of the practical difficulties imposed by tight Home Office and appellate authority timetables, the NASS dispersal of so many of our clients and the detention of others. The doctor, psychiatrist or psychologist willing to offer the quickest appointment and report is not necessarily the best or most appropriate expert. Access to a pool of quality assured experts in these fields, especially if nationwide, would be beneficial, but we are concerned at the low levels of remuneration contemplated for such experts in Annex F to the consultation paper. The best psychiatric experts tend not to be those who rely on churning out asylum reports for a living, but to be those who have thriving practices and other pressing professional commitments and who therefore require adequate compensation for making time to accept instructions as experts in immigration cases.
5. Our members also frequently have specialised needs for experts in cases involving children, not only the unaccompanied but also sometimes in families. Paediatric age assessments, child and educational psychologists' reports and independent social work assessments, in addition to country of origin reports, may be needed. It is imperative that whatever arrangements are devised for the funding of experts in immigration cases be sufficiently generous and flexible to meet the special needs of these cases.
6. Another consideration is that it is often most appropriate to instruct the treating clinician to prepare an expert report in immigration cases, perhaps more so than in other areas of legal practice. Indeed the Immigration Appellate Authority has indicated that it is apt to attach more weight to psychiatric and psychological

evidence from a treating professional than from one who has examined the appellant solely for the purposes of a report. This is an additional argument not only against a compulsory accreditation scheme, but also against a rigid or too parsimonious fees regime.

7. For all the reasons indicated above the notion floated in paragraph 9.25 of the consultation paper of specifying fees “on a block basis” in immigration cases for country of origin and medical reports may be impractical, in part because we doubt the existence of sufficient numbers of high enough quality experts willing to be treated in this way. The proposal may also be inimical to good practice. Immigration practitioners should not be encouraged to commission similar reports on a regular basis as suggested in paragraph 9.25, but should be instructing their experts to address very case specific questions within the context of the country or medical background. The Immigration Appeal Tribunal itself has emphasised that expert evidence is far more worthwhile if it is properly focussed on the facts of the individual case than if it is largely 'generic'. For example, in country of origin reports we do not need our experts simply to generate word processed general accounts of a country’s history or human rights record, but also to answer questions arising from the client’s personal history and circumstances. In some cases this will involve time spent in special research on, for example, the outcome of local elections at a particular date, the structure of a particular minority political organisation, the foreign relations between a government and its neighbours at a particular time, the incidence of the implementation of certain provisions of a penal code, and so on. Any expert worth instructing should be accorded the professional dignity of fair payment for additional time spent on a complex case or arcane point.
8. I now turn to the question of interpreting. This is indeed an expert service in which quality is of the highest importance, but whereas other experts are usually commissioned on a strictly occasional basis, many of our members have developed continuing working relationships with a small pool of trusted individual interpreters in the languages of their main client groups, including localised dialects and tribal languages. Such interpreters may not be registered, but may nevertheless be highly experienced and skilled. They are resources that should not be lost. We welcome the fact that the consultation seems to contemplate a system flexible enough to accommodate them. The indication in Annex F that the registered may be paid at a slightly higher rate than the unregistered interpreter seems to us fair enough, provided the distinction does not become too great.
9. Finally I take the opportunity to remind the LSC that as yet it has not responded to a paper on the use of experts and interpreters which ILPA prepared and submitted, at the LSC's request, following a meeting in late 2003. I enclose another copy now. It addresses questions which were raised by the LSC at that time.

We look forward to commenting on the consultation paper on the use of experts in immigration cases once it is available, and hope that this contribution, and our enclosed 2003 paper, may have some influence on its contents.

Yours faithfully

Rick Scannell

Chair

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