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Dear Ms Johns

Consultation on draft Lord Chancellor's Authorisation for the New Asylum Model Early Legal Advice Pilot at Solihull

I write to provide ILPA's response to this consultation.

In our response to the recent Home Office consultation on this topic we gave wholehearted support to the aim indicated in the title of the proposition paper "Improving Asylum Decisions through Early and Interactive Advice and Representation". We identified some potential pitfalls, emphasised the need for the preservation of the independence of legal representatives and raised a number of questions which we hope we will see resolved once the proposal begins to be implemented. It is our hope that it can be successfully piloted with a view to improving the quality and fairness of asylum decision making by permitting more effective representation from the earliest stages.

In connection with the current consultation we have 3 principal observations to make:

1. Limitation of the pilot to Solihull:

For the reasons indicated above, ILPA in principle welcomes the fact that matters are moving forward towards enabling the Legal Services Commission to fund representation at interviews in the pilot project. We are, however, disappointed that it is limited to a single pilot in one area where, as set out in our response to the Home Office consultation, we have reason to believe

there may be a shortfall in the number of quality suppliers needed to make the project the success that we hope it will be. We continue to hold the view that it would be preferable to conduct pilots in more than one area for comparison purposes, with a view to enabling a more effective assessment.

We would therefore prefer the authorisation to be couched in somewhat wider terms, so it might not be limited to Solihull but extend to such New Asylum Model Early Legal Advice Pilots as may be carried out by the Commission in conjunction with the New Asylum Model being implemented by the Home Office. This would not commit either the Commission or the Home Office to further Early Legal Advice pilots, but would permit them if it was deemed appropriate, either for the reasons we have put forward or in the light of experience of the Solihull pilot itself.

2. Wording of the draft authorisation:

This is an authorisation under AJA 1999 s.6(8), so the expression "such services through Legal Help" must be taken to refer back to s.6(8) and thence to Schedule 2 which lists the services excluded from funding under the Community Legal Service. Paragraph 1 of the Schedule covers legal help. It lists a number of legal help services which are plainly irrelevant to present purposes. It is only paragraph 1(i) which bars representation at Home Office asylum interviews. There is no reference to this in the draft authorisation, and it does not otherwise specify that it is talking about attending and representing at interview. In the absence of express reference to Schedule 2 paragraph 1(i), the words "such services . . . for the client's Home Office interview" do not seem to us to be sufficiently apt, or at least not sufficiently clear on their face, to convey this. We suggest revision to the following effect:

By this authorisation, the Lord Chancellor authorises the Commission to fund, from 1 August 2006, such services through Legal Help, provided in accordance with the provisions of the General Civil Contract, for attendance and representation at the client's Home Office interview as would otherwise be excluded from funding as part of the Community Legal Service. This authorisation is limited to interviews conducted under the New Asylum Model Early Legal Advice Pilot at Solihull, West Midlands carried out by the Commission in conjunction with the New Asylum Model being implemented by the Home Office.

Consistent with our observations above about facilitating more than one pilot, we also suggest that the second sentence of the draft be further amended to read:

This authorisation is limited to interviews conducted under New Asylum Model Early Legal Advice Pilots carried out by the Commission in conjunction with the New Asylum Model being implemented by the Home Office.

3. Funding:

Looking ahead towards implementation of the proposals, ILPA has funding concerns which we wish to flag up for the DCA's consideration now, albeit we appreciate that they are not the direct subject of the present consultation.

We understand that the proposed scheme is intended to be costs-neutral in relation to the Legal Services Commission's asylum budget overall; but in our view it ought not to be expected that this result is achieved immediately. If early interactive advice and representation succeeds, then fewer unsustainable refusal decisions will be made, and so some savings at appeal stage may be anticipated in the future. But it will take some time for this effect to be felt, if indeed it occurs at all, as much as we hope it will. Part of the assessment of the pilots will need to be the monitoring of the effect on appeal rates and CLR budget. It is vital that the CLR budget is not limited pre-emptively in the expectation of a happy result that cannot be guaranteed in advance. The NAM Early Legal Advice pilot must not be funded at the expense of current appellants in the as yet untested belief that there will be fewer appellants meeting the CLR merits test in future.

I enclose for your reference a copy of our response to the Home Office consultation to which I have referred. I hope that this contribution to the present consultation will be found useful.

Yours sincerely

Chris Randall
ILPA Chair

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