

**ILPA/HIG response to IND Initial Consultation on Policy Bulletin 75****25 August 2006**

The Housing and Immigration Group (HIG) is a national network established by members of ILPA and HILPA to exchange information about housing and welfare issues affecting asylum-seekers and other people from abroad. HIG members are experts in this field and have acted in most of the leading cases in the area including *Limbuella*.

ILPA is a professional association with some 1200 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 teaching, provision of high quality resources and information. ILPA is represented on numerous government and appellate authority stakeholder and advisory groups.

**Introduction**

It is ILPA and HIG's view that to refuse IND support to destitute asylum-seekers because of a slight delay in making a claim for asylum is irrational and inhumane. It is disappointing that after the compelling judgements of the House of Lords in *Limbuella*, the opportunity was not taken to scrap section 55. Instead IND has decided to continue to apply it where possible, mainly in cases of asylum-seekers who have managed to find accommodation with friends or relatives but need help with food. In our members' experience, in the majority of such cases the accommodation-provider will eventually have to evict the asylum-seeker leaving IND with the bill for both accommodation and subsistence. So it is difficult to follow the rationale for this policy, when it is a costs-saving to IND where asylum-seekers claim subsistence-only.

We would propose a costs-benefit analysis of the amount of administrative/ staff resources used in applying the S55(1) and S55(5) test eg carrying out assessments of all applicants, compared with the savings where support is refused. Any such analysis should take into account the number of cases where accommodation has to be provided because subsistence-only support has been refused under s55(5).

**Response to Draft Bulletin****Section 3****3.1**

It is correct here to say that the legislation provides for s55 to be applied to s4 of the Immigration and Asylum Act 1999 as well as s95 and s98. However it is questionable whether it is appropriate or even lawful to exclude failed asylum-seekers from access to s4 support because they have made a late claim as a general rule. There are already strict criteria for s4 support including that the person must be destitute within the next 14 days. One of the routes to s4 support is where support is needed to avoid a breach of the Human Rights Convention. Will the test be applied twice? S4 support is accommodation plus vouchers only so the possibility of staying with a friend and claiming subsistence-only does not apply. By applying the s55 test to s4 cases, IND is denying such applicants the right of appeal to the Asylum Support Adjudicators. We consider that a refusal of s4 support on s55 grounds will be difficult for IND to sustain and that the limited circumstances in which it might apply should be highlighted in the guidance.

**3.2**

Following the points made in the introduction, why is it necessary to make a s55(1) decision in cases where an asylum-seeker clearly meets the s55 criteria eg is street homeless? This appears to be a waste of resources causing unnecessary stress to the asylum-seeker being subjected to such an interview.

### **3.3**

The guidance states ‘ Even in cases where a negative section 55 decision is made, the Secretary of State may still provide asylum support in limited circumstances...’ It should be amended to read ‘...a negative section 55(1) decision...’ However it is still misleading to case-workers because it implies that s55(5) decisions are in the minority of cases. In fact Home Office statistics show that the majority of applicants will qualify under s55(5).

### **Section 4**

Please note previous comments re IND’s policy of carrying out a s55 interview even where support will be provided under s55(1).

### **Section 5**

Somewhere in this section eg in the flowchart it should be made clear that the interviewee should be given a copy of their interview notes at the end of the interview.

### **5.5**

This suggests that support will be refused if an applicant fails to attend an interview without reasonable excuse. Many applicants may have difficulty in attending the interview due to not receiving travel expenses in time or getting lost, especially if they are recent arrivals. The guidance should make clear provision for a prompt second interview in such circumstances.

### **Section 6**

#### **6.7**

We would suggest adding here or elsewhere that the state of the asylum-seeker’s physical or mental health on arrival is also a relevant consideration when deciding whether he applied for asylum as soon as reasonably practicable.

#### **6.26**

This suggests that IND could refuse support to an asylum-seeker who came to the UK as a child dependent on their parent’s application and claimed asylum after reaching 18. It is difficult to see how such a decision could be lawful. The guidance should be amended to make it clearer that in most cases the delay will be justifiable.

### **Examples**

#### **Example 2**

This needs amending to show the other enquiries which need to be made such as those concerning the asylum-seeker’s condition on arrival eg by cross-referencing to para 6.5.

Chris Randall  
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