ILPA Response to the Independent Chief Inspector of Borders of Immigration for the Inspection of Asylum Casework

Immigration Law Practitioners' Association (ILPA)

The Immigration Law Practitioners' Association (ILPA) is a registered charity and a professional membership association. The majority of members are barristers, solicitors and advocates practising in all areas of immigration, asylum and nationality law. Academics, non-governmental organisations and individuals with an interest in the law are also members. Founded in 1984, ILPA exists to promote and improve advice and representation in immigration, asylum and nationality law through an extensive programme of training and disseminating information and by providing evidence-based research and opinion. ILPA is represented on advisory and consultative groups convened by Government departments, public bodies and nongovernmental organisations.

Screening and routing of asylum applicants

While the focus is very often on the Asylum Screening Unit at Croydon, this is far from being the only locus at which initial interviews take place. Others persons have claimed and are screened while in a form of immigration detention, for example at port or having being taken to immigration detention by the police. The inspection should take care not to focus solely on the Asylum Screening Unit.

The focus for screening has in the past been very much on 'suitability' for inclusion in the detained asylum fast-track. The current detained asylum casework procedure is operating so that the focus is on whether persons meet the Home Office criteria for detention, rather than on separate criteria for asylum cases which the Home Office considers can be determined while the person is in detention. The Ministry of Justice proposals for accelerated appeals procedures (not limited to asylum cases) in detention[1] proceed on the assumption that there will not be criteria separate from the criteria for detention.

ILPA has long protested that whether a person meets the many of criteria that the Home Office considers render persons 'unsuitable' for detention or, previously, inclusion in the detained fast track, cannot be determined at an initial screening interview. Whether a person has been tortured or trafficked for example will very often emerge only as a result of disclosure, after a relationship of trust and confidence has been established. In the past the criteria that appeared to be used to identify whether a case could be included in the detained asylum fast track appeared to be nationality and method of travel to the UK, often the only matters about which at least the person's assertions were known at the point of screening. The result was that for all the lip service paid to 'front loading', the initial triage was a matter of pure guesswork.

The decoupling of screening and the criteria for entry into asylum procedures in detention may provide an opportunity to look again at screening and take a new view on what needs to be established at this stage. Rather than waste energy at the initial stage trying to categorise cases the Home Office should concentrate on obtaining the best possible information with which to decide the case. Categorisation may not be necessary at all or, if it is, should only be done at the

[1] Available at https://consult.justice.gov.uk/digital-communications/expedited-immigration-appeals-detained-appellants/

stage where information has emerged. There should be no expectation that a decision to detain is made at the screening stage.

Processing of asylum decisions, including the management and impact of case delays

Home Office delays in decision-making remain a serious concern and continue to have a significant impact on individuals awaiting a decision on their application for protection in the UK.

Delays in decisions on asylum claims

Since the last inspection in April – July 2015, the number of cases awaiting an initial decision has increased, from 15,487 (Quarter 3, 2015) to 20,442 (Quarter 1, 2017). Though the number of cases pending an initial decision at the end of 2016 was higher (21,475 in Quarter 4, 2016), the proportion of those cases awaiting a decision for more than six months has continued to increase. The proportion of cases awaiting an initial decision that were outstanding after 6 months was 23% at the end of July 2015 (Quarter 3, 2015) and has steadily increased to 41% by the end of 2016 (Quarter 4, 2016) and 42% during the first quarter of 2017[2].

The statistics reflect ILPA members' experience of Home Office delays and how these can become more significant once the current Home Office target of six months for making an initial decision on an asylum claim has not been met.

We identify particular delays in decision-making on unaccompanied children's applications for protection, with initial decisions on cases delayed beyond six months and even delayed beyond twelve months, despite the priority that should be afforded to children's cases in accordance with their best interests and with the need to minimise the impact of uncertainty on children waiting for a decision on their claim.

Letters from the Home Office sent to applicants, including to unaccompanied children, informing them that their case will take longer than six months to be decided, have been accompanied with information about how to withdraw their claim and return to their country of origin. Such letters, which can be interpreted by applicants as pressure to leave the UK and can cause distress at this stage of the process, are especially injurious in the context of delay on the part of the Home Office and in their issue to unaccompanied children.

The delays experienced by applicants are further increased as a result of the poor and deteriorating quality of Home Office decision-making on asylum claims, making it necessary to bring an appeal in increasing numbers of cases in order to access protection and lengthening the process even further (see below). Delays are also experienced by applicants awaiting decisions on fresh applications for protection on asylum or human rights grounds. On a separate point, access to the procedure for determining a fresh claim is restricted by the requirement imposed on applicants, who in many circumstances will be destitute, to travel to the Home Office in Liverpool to make their claim. Practitioners have also recently reported difficulties in getting through on the telephone appointments line to make appointments for clients needing to lodge their fresh claim. The telephone rings and is not answered, and no recorded message cuts in. At previous visits to the further submissions unit in Liverpool, ILPA representatives were shown detailed statistics on

[2] UK Visas and Immigration, *Immigration Statistics January to March 2017*, Asylum Data Tables Volume 1, Table as_01_q

numbers of calls, proportion answered and waiting time. The inspection should ask to see these figures. If they are not still collected, it should establish when this stopped, and why.

Impact of case delays

The implications of Home Office delays in deciding asylum applications are significant as they not only delay the recognition of individuals as refugees and access to their rights as refugees, but they may also undermine those rights by undermining the ability of individuals successfully to rebuild their lives in the UK. In its research on refugee integration in Europe, the United Nations High Commissioner for Refugees (UNHCR) identifies the process of seeking asylum and the time spent in the asylum determination procedure as among the key elements affecting refugee integration[3]. The All Party Parliamentary Group on Refugees Inquiry into the experience of new refugees in the UK found:

> *Although our inquiry focused on refugees once they have been granted status, for those who have been through the asylum system we found that what happens while awaiting a decision on an application can have a significant impact on the future prospects of successfully integrating. The asylum system can be very stressful for applicants, and we are concerned both by the increase in the number of decisions the Home Office makes which are found to be wrong by the courts, and by the length of time the Home Office is taking to make those decisions[4].*

The importance of the principle of family unity as an essential right of refugees was highlighted by the conference of the General Assembly concluding the drafting of the 1951 Refugee Convention and UNHCR has stated that it is of vital importance to the refugee integration process, the refugee's family often providing the strongest and most effective emotional, social and economic support network for a refugee adjusting to a new culture and social framework[5]. UNHCR has further emphasised the importance of the importance of ensuring the reunification of separated refugee families with the least possible delay[6]. As the preamble to the EU Qualification Directive 2004/83/EC highlights, family members of refugees may be in the same danger as the refugee recognised by the member state and be vulnerable to persecution themselves[7]. The delayed recognition of refugees by the Home Office inevitably leads to delays in refugees being able to exercise their right to refugee family reunion, a process which in itself is subject to barriers and delay in the UK[8], and results in the separation of refugee families over long periods of time.

The failure to recognise refugees at an early stage extends the period in which they suffer social exclusion as asylum seekers in the UK. Currently, those seeking asylum are only permitted to work if they have not received an initial decision within twelve months and then only if they can qualify for a limited list of skilled jobs on the UK's shortage occupation list. Delays in the asylum determination procedure can mean those recognised as a refugee may have been outside of the work place for lengthy periods of time, making it difficult for skills to be maintained and improved

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[3] UNHCR (2013) *A new beginning: refugee integration in Europe*, at: http://www.unhcr.org/uk/protection/operations/52403d389/new-beginning-refugee-integration-europe.html

[4] All Party Parliamentary Group on Refugees, *Refugees welcome? The experience of new refugees in the UK*, April 2017 at: https://www.refugeecouncil.org.uk/refugees_welcome_inquiry, p.8

[5] UNHCR Executive Committee, *Conclusion on Local Integration*, No.104 (LVI) – 2005, A/AC.96/1021, 07 October 2005 at: http://www.unhcr.org/uk/excom/exconc/4357a91b2/conclusion-local-integration.html

[6] UNHCR Executive Committee Conclusion, *Family Reunification*, No.24 (XXXII) – 1981; No.85 (XLIX) – 1998.

[7] 27th preamble, EU Qualification Directive, 2004/83

[8] *An inspection of family reunion applications: January to May 2016,* Chief Inspector of Borders and Immigration, 14 September 2016

and creating gaps in an employment history that can act as a barrier to refugees accessing employment or employment commensurate with their skills.

Most asylum-seekers are therefore dependent on Home Office asylum support during the determination process, provided under section 95 of the Immigration and Asylum Act 1999. At the same time as the delays in Home Office decision-making have increased the period in which asylum applicants are dependent on asylum support provision, the value of this support has severely reduced in recent years. Asylum support rates were frozen between 2011 and 2015 and rates for asylum seeking families with children cut on 10 August 2015 by the Asylum Support (Amendment No.3) Regulations, SI 2015/1501. All asylum seekers in receipt of section 95 support who would otherwise be destitute now receive the same flat rate of support which is set at £36.95 per week, or just over £5 per day. This means that asylum seeking families with children are now living on rates that are some 60% below Income Support and single adult asylum seekers are living on rates around 50% of this poverty line. The original level of support was justified during parliamentary debates on the Bill that became the Immigration and Asylum Act 1999 on the basis that it would be for a short period, with Home Office targets for determining the asylum claim set at two months for an initial decision and four months for dealing with any appeal in all cases[9]. When the asylum support scheme under section 95 of the Immigration and Asylum Act 1999 was introduced, provision was made through regulation 11 of the Asylum Support Regulations 2000 for asylum seekers who were waiting for an initial decision on their claim for more than 6 months to receive an additional payment (then £50). This ended when the Asylum Support (Amendment) (No.2) Regulations 2004/1313 came into force in June 2004 but similar provision could be introduced and would be appropriate in the current context.

Evidence submitted to the court in *R (Refugee Action) v Secretary of State for the Home Department* [2014] EWHC 1033 (Admin) identified that persons seeking asylum were missing meals, with parents prioritising feeding their children over themselves. People were struggling to buy adequate clothing, particularly in winter, to replace items of clothing and shoes when they wore out and to buy adequate toiletries or household cleaning products, and non-prescription medications. Popplewell, J found:

> *141. Whatever the best intentions of the Secretary of State… asylum support is required for periods which average almost 18 months, and in a significant number of cases will be measured in years. It is not "temporary" in a sense which justifies any meaningful distinction from the position of those on Income Support, save that it justifies the provision of furnished and equipped accommodation.*

The social exclusion experienced by asylum seekers living in extreme poverty may be exacerbated where asylum applicants are housed in substandard accommodation, accommodated in isolated areas away from community services and subject to frequent moves by housing providers contracted by the Home Office. The House of Commons Home Affairs Committee found that, '*in too many cases providers are placing people in accommodation that is substandard, poorly maintained and, at times, unsafe. Some of this accommodation is a disgrace and it is shameful that some very vulnerable people have been placed in such conditions*'[10]. The Committee identified the system of allocation of properties as '*chaotic*' and highlighted the disruption to social networks, to children's education and the emotional distress caused to individuals moved around the asylum system[11].

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[9] See parliamentary debates during the passage of the Bill that became the Immigration and Asylum Act 1999

[10] House of Commons Home Affairs Committee, *Asylum Accommodation*, Twelfth Report of Session 2016/17, HC 637, 17 January 2017 at: https://www.publications.parliament.uk/pa/cm201617/cmselect/cmhaff/637/637.pdf, para 68

[11] *Ibid*, para 102

Applications for settlement protection

In 2005, it was determined that rather than being given indefinite leave to remain when recognised as refugees, those so recognised should instead be given five years limited leave to remain with the possibility of applying for indefinite leave to remain at the end of five years. At that stage, the case would be subject to an 'active review', triggered either by a significant and non-temporary change announced by the Home Secretary in parliament or (more usually in practice) by an individual's activities suggestive of no longer being in need of protection (such as a return to the country of origin) or by criminal activity that might place them outside the scope of the protection of the Refugee Convention[12]. In February 2016, the Home Office changed its approach to applications for settlement by refugees again to require 'safe return reviews' in every case, involving caseworkers considering whether there have been changes to country conditions or the personal circumstances so that only those who continue to need protection are allowed to settle.[13]

The changed approach carries significant human and social costs as well as making extra demands on Home Office' resources. The All Party Parliamentary Inquiry into the experience of new refugees in the UK stated:

> *We are concerned that the automatic use of safe return reviews at the end of the initial leave to stay in the UK for both those with refugee or humanitarian protection status will create significant uncertainty and risk for both the individuals and families affected but also for the public and third sectors and local communities supporting their integration. The prospect of these reviews will affect the ability of refugees to successfully integrate. The reviews will both undermine the UK from realising their full potential of refugees and the extent to which refugees feel protected and secure in the UK. Employers may be less willing to employ a refugee if their long term status in the UK is uncertain, UK causing needless mental anguish and exerting specific harm to children in terms of their education and stability, as well as practically impeding enjoyment of family reunion rights[14].*

Many of those recognised as refugees or granted humanitarian protection do not feel safe until they have been granted settlement or, in some cases, British citizenship. As the time draws closer for the application of renewal of leave, the terror experienced by refugees that they will be sent back increases. Memories of their ill-treatment intrude and it is harder to maintain the new life in the UK. It is difficult to provide reassurance, especially to a person who was refused at first instance and only succeeded following an appeal. The practice also militates against fulfilment of the UK Border Agency's duty under section 55 of the Borders, Citizenship and Immigration Act 2009 to have due regard to the need to safeguard and promote the welfare of the child.

The UNHCR has expressed concern that the new approach:

> *"may have a serious impact on the wellbeing of refugees and their ability to settle and be in long-term employment. It will also put an additional strain on the government's services and resources. We also*

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[12] UK Visas and Immigration, *Asylum Policy Instruction: Settlement Protection*, 06 March 2015, archived at: http://webarchive.nationalarchives.gov.uk/20160115040211/https://www.gov.uk/government/publications/settlement-protection-asylum-policy-instruction

[13] UK Visas and Immigration, *Asylum Policy Instruction: Settlement Protection*, 02 February 2016 at: https://www.gov.uk/government/publications/settlement-protection-asylum-policy-instruction, para 1.3

[14] All Party Parliamentary Group on Refugees, *Refugees welcome? The experience of new refugees in the UK*, April 2017 at: https://www.refugeecouncil.org.uk/refugees_welcome_inquiry, para 199

feel that this is not needed, because under British and international law, there are already mechanisms in place to review refugee status."[15]

In a context where the Home Office has the onus of demonstrating that one of the cessation criteria applies before making a decision to withdraw recognition and where those who no longer stand in need of international protection will have a strong case for settlement on human rights' grounds on account of the length of their lawful residence in the UK, including whilst their asylum claim was being determined, the decision to review every case appears to create extra work for the Home Office for little purpose. This adds to the prospects of delays and backlogs in all cases because caseworker resources must systematically be directed to reviewing all these cases and in deciding these cases themselves.

ILPA members have already reported delays in their clients receiving decisions on settlement protection applications. During the period that the application is under consideration, refugees, particularly those in insecure forms of work, can face difficulty maintaining or accessing employment as the Home Office does not provide documentation confirming the extension of leave under section 3C of the Immigration Act 1971 that can provide reassurance to employers wary of becoming criminally liable for employing a person without leave to remain.

The quality of asylum interviews and decisions

Statistics on the increased numbers of Home Office asylum decisions overturned at appeal by the First-tier Tribunal (Immigration and Asylum) Chamber reflect the experience of ILPA members who report that the quality of Home Office decisions on asylum cases has deteriorated even further in recent times.

In 2016, the First-tier Tribunal overturned Home Office decisions on asylum claims in 41% of the 12,304 appeals brought before it by applicants.

Home Office decision-making appeared to be particularly poor in relation to asylum cases from Eritrean nationals, with 75% appeals against negative decisions by the Home Office overturned by the Tribunal (a further 15% of appeals brought were withdrawn). However, it is clear from the statistics that Home Office decision-making on Eritrean asylum claims is not an isolated case, with high proportions of Home Office decisions overturned by the Tribunal in cases from many other countries, including Sudan (58%), Libya (49%), Afghanistan (49%), Sri Lanka (47%), Iran (44%), Ethiopia (44%) and Uganda (44%).

The statistics available on the proportion of Home Office decisions overturned by the Tribunal at appeal over the last ten years demonstrate a deteriorating picture. The proportion of asylum appeals allowed has almost doubled in ten years, from 22% in 2007 to 41% in 2016.

Year	Number of appeals determined[16]	% Determined appeals allowed	% Determined appeals withdrawn	% Determined appeals dismissed
2016	12,304	**41**	5	54

[15] *Ibid,* para 198

[16] Source: UK Visas and Immigration, *Immigration Statistics, October to December 2016*, Asylum Data Tables Volume 4, Table as_14: Asylum appeal applications and determinations, by country of nationality and sex, at: https://www.gov.uk/government/statistics/immigration-statistics-october-to-december-2016 (percentages calculated)

2015	9,224	35	5	60
2014	6,178	28	5	66
2013	8,325	25	7	68
2012	8,285	27	7	66
2011	10,597	26	6	67
2010	14,723	27	4	68
2009	12,813	29	4	67
2008	9,209	23	5	72
2007	12,395	22	5	73

Whilst the proportion of Home Office decisions overturned at appeal during the first quarter of 2017 appears to have decreased (35% of the 5205 appeals determined), this could be explained by the high proportion of Eritrean appeals that were withdrawn (51%) rather than determined and allowed by the Tribunal (33%)[17]. Home Office decision-making continued to be poor with high rates of negative decisions overturned at appeal for asylum applicants from Libya (63%), Somalia (56%), Afghanistan (52%), Sri Lanka (47%), Syria (46%), Sudan (45%), Iran (43%) and the Democratic Republic of Congo (40%).

The proportion of Home Office decisions overturned during the first quarter of 2017 is even higher than the 30% of decisions identified by the Home Affairs Committee as *'an unacceptable rate of error on the part of the Home Office'*:

> *In addition to increasing its capacity to process applications for asylum, the Government should do more to ensure that its initial decisions are correct. Around 30% of decisions to refuse asylum are overturned in the courts, and this figure is much higher for certain nationalities such as Eritreans and Iranians. This is an unacceptable rate of error on the part of the Home Office. Incorrect decisions, if appealed, mean that those affected will require asylum accommodation for longer, adding further pressure to an already stretched system. The Government needs to improve its decision-making and commit to regular reviews of its approach to those nationalities which the courts are consistently identifying as receiving incorrect decisions. We have highlighted specific nationalities, such as Eritreans and Afghans in this and previous Reports. We need to see progress in this area and for this to show in future quarterly immigration statistics*[18].

The Home Office has sometimes argued that the proportion of decisions overturned cannot act as an indicator of the quality of its decision-making because of additional factors that may arise at appeal, for example, the production of new evidence. However, as evidence may only be available at appeal because the Legal Aid Agency will not normally fund expert evidence prior to the Home Office decision, this position ignores the responsibility of the Home Office for the management of the asylum determination process and its failure to engage with the Legal Aid Agency to ensure that the evidence needed to support good quality decision-making is funded by legal aid and available to first instance decision-makers.

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[17] UK Visas and Immigration, *Immigration Statistics, January to March 2017*, Asylum Data Tables Volume 4, Table as_14_g: Asylum appeal applications and determinations, by country of nationality, at: https://www.gov.uk/government/statistics/immigration-statistics-january-to-march-2017-data-tables

[18] House of Commons Home Affairs Committee, *Asylum Accommodation*, Twelfth Report of Session 2016/17, HC 637, 17 January 2017, para 19 at: https://www.publications.parliament.uk/pa/cm201617/cmselect/cmhaff/637/637.pdf

It would be useful to explore the reasons for the decline in the quality of decision-making on asylum cases within the Home Office. ILPA considers that one of the reasons will relate to the practice, introduced for administrative reasons, of decisions on cases being taken on asylum cases by caseworkers who did not themselves conduct the interview with the applicant. Attempts were made to eradicate this practice under the former New Asylum Model, and it was reduced. We consider that decision-makers who have met and interviewed the applicant take greater responsibility for the decision made and are able to make their decision based on the increased level of nuance and information available from having been present at interview as well as having developed lines of enquiry necessary to their decision.

ILPA considers that processes that ensure decisions are made by the same caseworker who interviews the applicant should be firmly embedded within the Home Office and that it would be helpful to identify:

- What proportion of decisions are made by Home Office caseworkers who have not interviewed the applicant?
- What differences are there between grants of asylum between cases where the decision-maker has conducted the substantive interview and those where the person making the decision has not interviewed the applicant?

Practitioners also report that in the absence of a named caseworker dealing with the case within the Home Office, it is difficult to make sensible contact with UK Visas and Immigration in relation to individual cases.

It would also be important to consider the extent judicial findings overturning Home Office decisions in individual cases are used to inform and create change in Home Office practice. Practitioners have the experience of presenting evidence to establish the same points in case after case when the Home Office fails to review its practice or guidance, for example in the light of expert country evidence submitted at appeals.

Home Office transparency data identifies that in 2016, 21 people were granted asylum in the UK having previously been refused protection and removed from the UK[19]. It is important to understand the circumstances in these cases, which suggest failures of protection, and to identify whether there are processes to identify and implement learning from these examples, such as through serious case review processes similar to those conducted by other public authorities.

Towards the end of 2015, there was a flurry of instances in which Home Office caseworkers have sought to prevent legal representatives attending Home Office interviews with unaccompanied asylum-seeking children from attending with their independent interpreter. ILPA members arrived at interview with their minor client and their independent interpreter to find that their interpreter was denied access to the interview, a situation that caused unnecessary distress to their minor client. Practitioners were proffered different reasons at different times for the new approach. It

[19] UK Visas and Immigration, *Asylum transparency data: February 2017* at: https://www.gov.uk/government/publications/asylum-transparency-data-february-2017, table ASY_09q (4 claimants, Q4 2016); *Asylum transparency data: November 2016* at: https://www.gov.uk/government/publications/asylum-transparency-data-november-2016, table ASY_09q (6 claimants, Q3 2016); *Asylum transparency data: August 2016* at: https://www.gov.uk/government/publications/asylum-transparency-data-august-2016, table ASY_09q (4 claimants, Q2 2016); *Asylum transparency data: May 2016* at: https://www.gov.uk/government/publications/asylum-transparency-data-may-2016, table ASY_09q (7 claimants, Q1 2016).

was only following the threat of litigation and issue of a pre-action protocol by a legal representative challenging the exclusion of a their interpreter at the interview of their minor client, that the Home Office confirmed that there was change to their guidance and, specifically, no official policy in place which prevents legal representatives from being accompanied by interpreters at asylum interviews[20].

Since then, the Home Office introduced guidance on processing children's asylum claims stating that:

> *Croydon AIU staff will try to accommodate requests for interpreters to be in attendance but will also consider whether it is in the child's best interests to allow an additional interpreter into the welfare interview. Factors that will be taken into account will include the number of people wishing to attend the interview and the impact on the child. If a decision is taken to exclude an interpreter from the welfare interview, Croydon AIU staff must notify a senior manager (minimum SEO or HMI) and the decision must be fully explained to the legal representative*[21].

The guidance was made operative in July 2016 at the same time that it was issued for consultation and has not so far been updated. In its current draft, the guidance raises the risk of legal representatives' interpreters being excluded from the substantive interview in the same way. ILPA considers that the guidance does not properly take into account the best interests of the child as it will be in the best interests of the child to be represented by their legal representative accompanied by an independent interpreter.

It has been consistently identified that it is best practice for a legal representative who does not speak the child's language to be accompanied by an independent interpreter. A legal representative needs to be able to communicate with their client, including during the interview, in order to ensure their welfare and represent them effectively. The independent interpreter may also identify difficulties in understanding between the child and the Home Office interpreter. In terms of the number of people wishing to attend the interview referenced in the guidance, it is more intimidating for a child to be in a room with a number of strangers they do not understand and to have no one to whom they can ask what is happening or express any problems with the interpreter in their own language than one additional friendly face.

The role of the Home Office in support provision (e.g. financial, integration services) once an initial asylum decision has been taken

ILPA gave evidence to the All Parliamentary Group on Refugees Inquiry into the experiences of new refugees in the UK and its recent report[22] addresses many of the areas of support for integration that should be taken following a decision to grant asylum.

We emphasise, however, as does the report of the Inquiry, that the treatment of asylum seekers during the asylum determination process and the promotion of their safety, security and stability

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[20] Letter from Government Legal Department to Duncan Lewis Solicitors, 10 December 2015

[21] UK Visas and Immigration, *Asylum Policy Instruction: Processing Children's Asylum Claims*, version 1.0, 12 July 2016, at: https://www.gov.uk/government/publications/processing-an-asylum-application-from-a-child-instruction, p.24

[22] All Party Parliamentary Group on Refugees, *Refugees welcome? The experience of new refugees in the UK*, April 2017 at: https://www.refugeecouncil.org.uk/refugees_welcome_inquiry

through early recognition as a refugee and settlement are as relevant to successful integration as access to appropriate support and services subsequent to the grant of asylum.

Transition to mainstream welfare support provision and employment

The period of transition experienced by refugees after their formal recognition as a refugee and grant of protection is acknowledged as being a time of significant difficulty, when they must adjust psychologically to their future being one of exile and when they experience the heavy responsibility, after securing their own protection, for ensuring their family members may also reach safety. At the same time, it is a period of time when their existing structure of support as an asylum seeker comes to an end.

Individuals supported under section 95 of the Immigration and Asylum Act 1999, who are granted leave to remain thereafter are currently given a "grace period" of 28 days from the date of the determination of their claim, during which they may continue to receive section 95 support whilst obtaining work or applying for mainstream benefits. This period is prescribed in regulation 2(2A) Asylum Support Regulations 2000, SI 2000/704 (as amended).

A period of 28 days from the date of the determination of the claim has been found to be insufficient to protect refugees and others granted leave to remain from destitution. Freedom from Torture clinicians have identified that this is the period when torture survivors under their care most frequently experience destitution, including street homelessness[23]. Two further research reports published in 2014 by the British Red Cross[24] and by the Refugee Council[25] highlight the difficulties that refugees face during this 'move on' period due to problems with Home Office and Department of Work and Pensions processes, including delays in receiving Biometric Residence Permits and difficulties in obtaining a National Insurance number.

The significant problem of the gap between a grant of leave and access to support was vividly and tragically highlighted by the death of child EG, a little boy who starved to death in this period. The case is relevant not just to those granted leave, but to all situations in which there is a gap and an emergency response is needed. We cite from the Executive Summary of the Westminster Council Safeguarding Board Serious Case Review, as amended as directed by the High Court[26]:

> *11.1.8 An initial post mortem examination on 10.03.10 found there was no food in EG's stomach or digestive tract. EG was described by the paediatric pathologist as 'severely underweight and dehydrated' and he concluded that 'this was clearly the immediate cause of death'.*

EG's mother died two days later. The serious case review identifies the following "National issue":

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[23] Freedom from Torture (2013) *The Poverty Barrier: The Right to Rehabilitation for Torture Survivors in the UK* at: http://www.freedomfromtorture.org/sites/default/files/documents/Poverty%20report%20FINAL%20a4%20web.pdf (accessed 30 September 2016)

[24] British Red Cross (2014) *The Move-on Period: An Ordeal for New Refugees*, at: http://www.redcross.org.uk/~/media/BritishRedCross/Documents/About%20us/Research%20reports%20by%20advocacy%20dept/Move%20on%20period%20report.pdf (accessed 30 September 2016)

[25] Refugee Council (2014), *28 days later: experiences of new refugees in the UK*, at: http://www.refugeecouncil.org.uk/assets/0003/1769/28_days_later.pdf (accessed 30 September 2016)

[26] https://www.westminster.gov.uk/sites/default/files/uploads/workspace/assets/publications/EG-Executive-Summary-April-2012-1336483036.doc (accessed 01 March 2016)

5.1.4 Westminster Local Safeguarding Children Board should write to the National Asylum Support Service and Department for Work & Pensions to express its concern about the adverse consequences on vulnerable children and the resulting additional pressure on local professional agencies which are triggered in the transitional period between withdrawal of support by the National Asylum Support Agency and entitlement to Benefits.

Provision should enable asylum support to cease only once mainstream benefits and/or employment has commenced and should facilitate transition between the asylum support and mainstream benefits system without requiring asylum seekers to make separate applications. This requires joined up working between the Home Office and the Department for Work and Pensions.

'Hostile environment'

Many of the measures introduced by the Government under the Immigration Act 2014 and the Immigration Act 2016 aimed at creating a 'hostile environment' for those who do not have leave to enter or remain have a harmful effect on the integration of newly recognised refugees to through their creation of a hostile and discriminatory environment for all migrants and Black and Minority Ethnic communities.

The All Party Parliamentary Group on Refugees found that the 'right to rent' provisions of the Immigration Act 2014 have led to some refugees finding it harder to rent in the private rented sector as landlords are wary of accepting the documentation that refugees will have[27].

Although it was raised by Lord Avebury in the debates on the Bill that became the 2014 Act, and although ILPA has raised it repeatedly in formal responses and at meetings with the Home Office ever since, the position of persons seeking asylum who do not live in Home Office accommodation but in the private rented sector has never been addressed. Indeed, they are replicated in the new bill. Lord Avebury explained the problem succinctly:

> ***Lord Avebury (LD):*** *.. Can my noble friend elucidate what provisions are being made for documents to be produced by those who are occupying rooms in private houses because they are not covered by the provisions of Schedule 3, to which he has referred? They deal only with the accommodation that is provided to most asylum seekers under the 1999 Act when they cannot afford to pay for accommodation of their own. However, there is still an important residual group of people who find space in private houses. They will need documentary proof that they are allowed to live in those houses and thus ensure that landlords are not breaching the conditions by taking them in.*[28]

The problem arises because the definitions in the Act work on the basis of having leave, whereas most persons seeking asylum are on temporary admission. The Minister's reply evidences that he did not understand the question, for he refers to "failed asylum seekers", not the cohort under discussion. He went on to say "the Home Office will provide the necessary documentation to show that they have a right to accommodation.[29]" But subsequently the Home Office declined to do this. Instead, it requires landlords and landladies to telephone a helpline. But why should they

[27] All Party Parliamentary Group on Refugees, *Refugees welcome? The experience of new refugees in the UK*, April 2017 at: https://www.refugeecouncil.org.uk/refugees_welcome_inquiry, para 63

[28] 12 March 2015, col 1800.

[29] *Ibid.*

do this, when all the evidence is telling them clearly that the person does not have the right to rent because it tells them that to have the right to rent a person must have leave?

The requirement placed on banks under the Immigration Act 2014 to check that a person has leave to remain in the UK before they may open a bank account has also resulted in recognised refugees facing difficulties opening bank accounts[30].

Measures such as these, which undermine efforts to support host communities in welcoming refugees, should be reviewed.

The impact of any forthcoming proposals or current pilots you are aware of which impact upon the decision making process

The Home Office has run a number of pilots affecting the decision-making process in the last couple of years, but practitioners and members of the Home Office's National Asylum Stakeholder Forum, including ILPA were not usually notified about these pilots before they commenced, or at all, instead finding out about them by accident. In one case a client turned up to find that his interview was to be conducted by video link. This situation has led to confusion and runs the risk of litigation being brought.

Pilots have not always been developed in a structured way, neither taking account the available evidence from research and practice in the design of pilots, nor ensuring rigorous and transparent processes of evaluation. Many do not have a clear end date and become 'business as usual' without having been evaluated. It is unlikely that such 'pilots' will lead to the implementation of practice that supports high-quality decision-making.

Video-conferencing

These concerns are illustrated in ILPA's attached correspondence to UK Visas and Immigration of 17 June 2016 on the use of video-conferencing for substantive asylum interviews (to which we received no reply).

The pilot was developed without reference to the research literature on interviewing, obtaining disclosures, and the use of technologies. At a Home Office stakeholder meeting, ILPA and other organisations raised a number of concerns about the use of video-conferencing, including:

- That a relationship of trust between interviewer and interviewee cannot be established, with the result that relevant information may not be disclosed.
- The loss of visual clues and other information that might help to guide the interview.
- Fear of making disclosures. While it may not be rational to regard information transmitted over a video link (which could potentially be stored) on third party premises as any more risky than giving information orally, which is recorded in writing, this is how many people feel and may affect what they disclose.
- Confusion over the role of the interpreter and concerns about inappropriate communications between interviewer and interpreter where they are sitting in one location and the applicant in another.

[30] *Ibid,* para 54

- Confusion for an applicant: because an interpreter is interpreting what is said and because what they can see may well be inferior to what the interviewing officer can see; the latter is likely to have a head and shoulders view of the person being interviewed whereas the latter will see two people at a wider angle. The sound quality may be inferior at their end but this may not be known to the interviewer.
- Concern about the inability to discuss documents in the interview or to hand them up.

Whilst at a subsequent meeting, the Home Office stated that unaccompanied children, people with medical concerns, victims of torture or potential victims of trafficking were not interviewed by video conferencing, ILPA and other organisations have real concerns around how such cases might be identified where video conferencing is used.

There has been no involvement of legal practitioners or non-governmental organisations that work with asylum seekers in evaluating the pilot and it is unclear whether there will be a formal evaluation.

Personal Information Form

By contrast, the pilot conducted in Scotland to examine the use of Personal Information Forms to obtain statements from applicants prior to their substantive interview, in order to enable interviews to be informed and focused, was undertaken effectively. A similar process had been operated by the Home Office in the past and was supported by legal practitioners and organisations working with asylum applicants. Legal representatives whose clients were involved in the pilot were sent a questionnaire to provide their feedback on the pilot process.

All the applicants in the pilot were represented by practitioners who, under the different system of legal aid in Scotland, were funded to undertake the work involved in representing their clients under the piloted process. This was a key difference with an earlier pilot of the Personal Information Form undertaken in England in which the Home Office failed to engage with the Legal Aid Agency to ensure that legal aid funding was available for representatives to advise their clients on the completion of the Personal Information Form. As legal practitioners are paid a limited fixed fee for advice and representation in asylum claims, no funding was available to advise on this additional step in the process and meant that the process could not be fully trialled or evaluated.

Summary Interview Notes

ILPA also has concerns about a current and ongoing Home Office pilot to provide applicants with a summary note following their interview rather than a full written interview transcript, no such transcript having been made. While tapes of such interviews are generally available, legal aid lawyers are not funded to listen to hours of tape. The Home Office has stated that the pilot was being run to test whether summary notes would correctly capture the relevant case information and identify whether could be placed in interviewers to record information correctly.

Asylum applicants do not have the opportunity of having their statements read back to them at interview to check for any omissions or inaccuracies. Nor are legal representatives generally funded to attend and represent at substantive asylum interviews. Both the applicant and representative rely on the interview transcript to check for omissions, misunderstandings and inaccuracies in order to make further submissions to the Home Office and, where necessary, prepare for an appeal to the First-tier Tribunal. It is not appropriate that applicants should not have available to them the written information relied upon by the Home Office in making its

decision and have their participation in the process limited, particularly where poor written records of interviews and inaccurate interpretation of these by decision-makers are often issues leading to negative decisions by the Home Office decisions being successfully challenged. In the context of the deteriorating quality of Home Office decision-making, the pilot raises even greater concern.

Matthew Robinson

UK Visas and Immigration

By email

17 June 2016

Dear Mr Robinson

Use of video-conferencing for substantive asylum interviews

I write to express ILPA's concern about the use of video-conferencing for substantive asylum interviews.

We have previously raised at meetings and in written communications with the Home Office the difficulties that have been caused by the failure to provide clear and timely information about pilots either to ILPA or to representatives whose clients have been involved.

Following ILPA's request for details of all pilots in operation, Nicola Hey, Strategy and Change at UK Visas and Immigration advised us on 25 February 2016 that the Home Office was in the process of running a pilot on the use of video-conferencing for substantive interviews from its Sheffield offices that had started early in the New Year and would continue until 31 March 2016.

The pilot was discussed at the meeting of the National Asylum Stakeholder Forum Decision-Making Sub Group on 29 March 2016, at which members of the group raised objections to the use of video-conferencing for these interviews. These included:

- That a relationship of trust between interviewer and interviewee cannot be established, with the result that relevant information may not be disclosed.
- The loss of visual clues and other information that might help to guide the interview.
- Fear of making disclosures. While it may not be rational to regard information transmitted over a video link (which could potentially be stored) on third party premises as any more risky than giving information orally, which is recorded in writing, this is how many people feel and may affect what they disclose.
- Confusion over the role of the interpreter and concerns about inappropriate communications between interviewer and interpreter given that they are sitting in one location and the applicant in another.
- Confusion for an applicant: because an interpreter is interpreting what is said and because what they can see may well be inferior to what the interviewing officer can see; the latter is likely to have a head and shoulders view of the person being interviewed whereas the latter will see two people at a wider angle. The sound quality may be inferior at their end but this may not be known to the interviewer.
- Concern about the inability to discuss documents in the interview or to hand them up.

We are disappointed that the Home Office has proceeded with the pilot in the face of these concerns. Video-conferencing now appears to have been extended beyond the end of the time-frame for the pilot project and outside the geographical remit of the original pilot. Neither ILPA as an organization, nor representatives in areas where clients are affected have been notified of this, nor has anyone been in touch about any formal evaluation of the pilot project prior to its extension. We are so far aware from practitioners of video-conferencing taking place in Birmingham, Bradford, Manchester and London Paddington.

ILPA was alerted to the extension of the use of video-conferencing for substantive asylum interviews by the following example of unacceptable practice at VFS Paddington.

An applicant attended VFS Paddington for his substantive asylum interview accompanied by his legal representative. They had not received prior notification that the interview would be conducted by video-conferencing and were shocked at the prospect of the interview taking place through the use of what they were told was 'Skype'.

The client had specific documents he wished to refer to during the interview and had brought them with him. The client was informed he would be unable to submit his statement prior to interview. He started to become distressed that the Home Office interviewer would also not be able to receive or see the specific documents he wished to refer to during the interview.

Whilst waiting outside the windowless booths in which the interviews were being conducted, it became apparent to the applicant and his legal representative that people in the waiting area could easily hear what was being said. When the legal representative raised this concern with the security guard, he was told that it was because the speakers were on louder than usual as an interpreter was being used. However, even after the security guard entered the booth and reduced the volume, it was still easy to hear everything that was being said during the interview. At this point, the applicant became distressed that his interview would be overheard, particularly due to the sensitive nature of his asylum claim.

The legal representative got in touch with the Home Office to highlight the serious breach of its data protection duties and was advised to write and request a face-to-face interview for his client.

Following a complaint made by the legal representative, the Home Office has acknowledged that its service "may have fallen below the levels, we and our partners aim to provide" and stated that it will investigate further. We are concerned that the response does not indicate that the applicant will be offered a face to face interview but instead that this will be "considered".

This case has implications for other cases considered in this venue and potentially at other sites. Breaches of confidentiality are taking place. It is likely that applicants without a legal representative would not have been similarly empowered to halt the interview and may have been fearful of disclosing relevant aspects of their experience of persecution, with deleterious effects on their asylum claim.

Further problems are:

Lack of information about the use of video-conferencing

The lack of information about the use of video-conferencing and alternative interview venues in specific areas, has made it difficult for advisers to help clients understand how to travel to and find the relevant venue. Our knowledge of the location of interviews has only been gathered from the experiences of clients.

Applicants are having to make long, difficult and in some cases unnecessary journeys applicants to reach the substantive interview. In one example, a Syrian client living in Liverpool was invited to an interview in Manchester while the interviewing officer conducting the interview was based at the Home Office in Liverpool.

We are aware of cases in which applicants and their legal representatives have not been notified in advance that their interview would take place by video-conferencing. This prevents applicants from being able to anticipate or mentally prepare for how their substantive interview might proceed and denies them the opportunity to request a face to face interview.

There is a real risk that individuals whose asylum claim includes experiences of torture, sexual violence or other sensitive matters will be unable to describe, or to describe adequately, the persecution they have suffered, with harmful effects on the determination of their application for international protection.

Submission and receipt of documents

ILPA is aware of further cases where the lack of opportunity to submit documents has caused difficulty. Clients are unable to provide evidence and refer to documents during the course of their interview. The following examples illustrate the inadequacy of mechanisms for the submission of documentary evidence.

In one case, the applicant had original documents for consideration by the Home Office. The interviewing officer conducting the interview by video conference advised the applicant that the documents should be sent to the email address provided in the notes of interview that would be sent by post. The Home Office only accepts original documents, however and therefore an emailed copy would not have been adequate.

One member had a client whose asylum interview was conducted by video-conferencing. No advance notification of this was provided and they had planned to submit original documents to the Home Office at interview as is normal practice. As there was no caseworker present, this was not possible and the legal representative was told to send the documents by post after the interview. The address of the asylum team was provided but the officer refused to provide a named caseworker as a contact indicating that the documents would be forwarded to the assigned caseworker. More than six weeks after the interview, the caseworker got in touch with the legal representative requesting the documents as they had never received them. The representative was only able to send copies because the originals had been sent to the asylum team in Solihull. The applicant was subsequently refused asylum. One of the reasons for refusal given was that the Home Office do not accept the applicant's identity as the applicant only provided a copy of her identity document and not the original.

There remain problems of clients not being sent a copy of their interview record following an asylum interview conducted by video-conferencing. A Sudanese applicant interviewed through video-conferencing and granted Refugee Status has been unable to apply for family reunion with his wife and child who are still in Sudan as he needs his interview record in order to make the application.

We ask that the pilot be halted and that meetings are arranged with representatives to discuss these and related concerns.

Yours faithfully

Adrian Berry

Chair

ILPA

Cc Graham Clark, UK Visas and Immigration