

A solicitor from Rotherham eventually agreed to take on his case, but dropped it two days before he was due in court, because he believed that his appeal would fail. The asylum seeker represented himself and was granted refugee status.

A Somali asylum seeker who fled to the UK with her daughter, had problems accessing legal support to fight her appeal. She told the Commission of the difficulties she experienced when she was moved from Liverpool to Barnsley and had to find a new solicitor. She had to sell her support vouchers to pay for legal help and when she eventually found one, there was not enough time to prepare her case:

“I think about me and my child and I wish we had never come to the UK – nobody wants us. They say claiming asylum is not a crime, so why are there these invisible bars around us?”

Hearing: Leeds. For full testimony please visit www.humanrightstv.com

4.3 Changes to legal aid

In July 2006 the Department for Constitutional Affairs and the Legal Services Commission launched a consultation on the recommendations of Lord Carter's independent review into legal aid procurement. Proposed changes to the current system include: the introduction of 'fixed fees' for immigration and asylum work; the incorporation of translation and interpretation costs into the fixed fee; and the introduction of an enhanced rate for 'complex cases' that require four times the value of fees.

A number of concerns have been raised by legal practitioners and advocacy organisations in relation to the proposals. It is felt that fixed fees and an enhanced rate will deter advisors from taking on cases that are too complex and encourage practitioners to cut corners. There are concerns that the costs of interpreters and translators will not be adequately covered by the fee and representatives will be tempted to rely on untrained interpreters, such as the friends and family of the client, which could impact cases negatively. Finally, it is feared that these proposed reforms will mean that small specialist practices will find that it is no longer viable to work within the LSC funding model and there will be even fewer quality advisers in the field.⁵⁶

“My appeal failed and I spent four months homeless and hungry. One day it became too much and I tried to kill myself at Leeds train station. I will never forget the kind lady who took my hand and stopped me – but I would prefer to die than go back to Sudan.”

From an asylum seeker dropped by his lawyer the day before his appeal.

**Hearing: Leeds. For full testimonies please visit www.humanrightstv.com
Submission: Anonymous**

Commissioners' Interim Findings – How we decide who needs sanctuary

The UK needs a fair and just asylum system that assures sanctuary to those who genuinely need it and denies it to those who do not. The Commissioners recognise the efforts made to improve initial decision-making through initiatives such as the New Asylum Model.

Despite some improvements there has been insufficient appreciation of the fact that asylum seekers are in a unique position and require to be recognised as such and to be treated distinctively from other areas of Home Office responsibility such as economic migration.

The strongly adversarial nature of the current decision-making process frequently results in unfairness. Some asylum seekers are unable to do justice to their own case because of ignorance or extreme vulnerability, coupled with a prevalent 'culture of disbelief'. Decision makers appear to be given inadequate training and little encouragement to take a more inquisitorial approach to ensure that any apparent weaknesses in the applicant's case are not due to health or language problems, or lack of adequate representation.

Key findings:

- **That there have been commendable efforts to improve the calibre and training of decision-makers in recent years**
- **Despite these efforts, a 'culture of disbelief' persists among decision-makers which coupled with inadequate qualifications and training is leading to some perverse and unjust decisions**
- **That the adversarial nature of the asylum process (though not inherently unfair) stacks the odds against the asylum seeker seeking sanctuary**

The Commissioners affirm:

That the UK Government remains committed to the principle of protection for refugees and provides refugee status or other forms of protection to thousands of people each year

That the Government recognises the need to support asylum seekers while their claim is processed and that for applicants whose claim is refused support continues to be provided for families with children under 18 until they are removed

That the Government resources a wide range of NGOs including the Refugee Council, Refugee Action and Migrant Helpline to provide independent advice to asylum seekers and refugees while they go through the system

The Government's intention to improve the quality and speed of decision-making under the New Asylum Model and Case Resolution

That the Border and Immigration Agency involves the United Nations High Commissioner for Refugees in quality checking a sample of asylum decisions

That Country of Origin Information is unclassified and publicly available for independent scrutiny

The Government's intention to simplify asylum legislation by consolidating the numerous Acts passed since 1993

The Commissioners express concern:

At the difficulty of accessing the asylum system for people who need sanctuary

- ◆ That the lives and welfare of people in need of sanctuary are put at risk as a consequence of policies designed to prevent illegal immigration to the UK and Europe
- ◆ That some new arrivals have extreme difficulty claiming asylum in-country due to the limited number of Asylum Screening Units and the inadequacy of their opening hours
- ◆ That some asylum seekers are penalised when they arrive in Britain with a forged passport or without any passport having done so for understandable and non-criminal reasons

At the unacceptably poor standard of some initial asylum decisions

- ◆ That there is inadequate understanding among decision-makers of the different circumstances faced by asylum seekers who are seeking sanctuary from persecution
- ◆ That there is a lack of consistency in the quality of first-instance decision-making and that the workloads of New Asylum Model case owners may be too high
- ◆ That the high rate of cases won on appeal indicates a high rate of poor initial decisions
- ◆ At the style and content of substantive interviews by BIA decision-makers. The Commission received evidence of the inappropriate use of leading questions at interview; non-implementation of gender-guidelines when engaging with traumatized women; inappropriateness of interpreters with regards to ethnic and religious sensitivities; inappropriate questions to assess religious conversion; and errors in transcription
- ◆ That BIA decision-makers may not always have access to up-to-date and relevant Country of Origin Information, nor apply it appropriately to each case to help them make good decisions.
- ◆ That the appeal stage is becoming part of the first-instance decision-making process rather than a process of independent review, meaning that Border and Immigration Agency decision-makers do not always conduct a proper analysis of the individual protection claim

That the adversarial asylum system is heavily weighted against the asylum seeker

- ◆ That some asylum seekers who have their initial decisions 'fast-tracked' have less chance of receiving a fair hearing
- ◆ That there is a lack of legal advice for asylum seekers during their initial interview leading to unjust decisions
- ◆ That the right to appeal is curtailed if an asylum seeker comes from a supposedly safe third country
- ◆ That there is a shortage of solicitors to represent appellants and that asylum seekers are denied justice if their solicitors do not appeal in time or do not have the relevant information
- ◆ That cuts in the legal aid budget have led to an increase in appellants appearing unrepresented
- ◆ That there is insufficient opportunity for redress if an asylum seeker's appeal is not heard, if they are not properly represented, or if they are failed through maladministration or other human error
- ◆ That the Asylum and Immigration Tribunal may not issue adequate guidance for immigration judges assessing the credibility of appellants
- ◆ That good medical expert reports to support an appellant's case are hard to obtain, expensive and are not always given due consideration
- ◆ That the way courts use expert witnesses and Country of Origin Information is not consistent
- ◆ That segmentation of fast-track appeals and the tight time-frame for preparing a case for detained fast-track leads to too many people appearing without proper legal or other representation