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CHAPTER 2

How asylum decisions are appealed

"We are dealing with a particularly vulnerable client group – who could face torture and even death if a wrong decision is made – so it would be wrong to rule out looking at the legal aid rules again."

1 The appeals process

1.1 The right to appeal

In most asylum cases, a refusal of asylum is accompanied by an immigration decision; this is a decision that the applicant has no legal right to be in the UK and in such cases the applicant is able to lodge an appeal. The right to appeal against a negative decision on an asylum application has been increasingly restricted over the last few years; as a result there are certain categories of asylum applicants that are unable to pursue an appeal within the UK. These include individuals with cases certified as clearly unfounded and detained at Oakington; those identified as third country cases; and those with an earlier right of appeal or granted leave for 12 months or less.

The refusal of an asylum or human rights claim cannot be appealed if the Secretary of State certifies the claim by asserting that the matters that have been raised by the applicant should have been raised in an earlier appeal or in response to a one-stop notice. With some exceptions applicants can appeal the decision to refuse them refugee status, even if they are awarded an alternative form of status such as humanitarian protection or discretionary leave.[1]

Amnesty International (AI) has argued that the number of successful appeals proves that initial decision-making is seriously flawed. AI argues that the appeals stage is necessary for legitimate asylum seekers to present their cases again.[2] While this may be true to an extent, others have noted that changes in circumstances over time such as country situations and additional evidence may change the nature of the claim and partly explain the additional successes.[3] Amnesty share the view of the Home Affairs Select Committee that resources should be front-loaded to improve initial decision-making and thus reduce the need for appeals and decrease related costs.[4]

1.2 Managing appeals

In April 2005, the Asylum and Immigration (Treatment of Claimants, etc) Act 2004 abolished the Immigration Appellate Authority (IAA) and replaced it with a single-tier body; the Asylum and Immigration Tribunal (AIT). Since May 2007, the Ministry of Justice has been responsible for the AIT. Previously, the AIT formed part of the Department of Constitutional Affairs. With the exception of national security-related cases which are heard by the Special Immigration Appeals Commission (SIAC) all appeals against decisions made by the Home Office on asylum, immigration and nationality matters are heard by the AIT.[5]

AIT appeals are heard by one or more immigration judges and are sometimes accompanied by non-legal members of the tribunal. Immigration judges and non-legal members are appointed by the Lord Chancellor and form an independent judicial body.[6] The AIT and its members adhere to a series of procedure rules and practice directions, the latter of which are issued by the President of the AIT.

A ‘notice of decision’ is issued to all asylum seekers who make an appeal. The notice explains the right to appeal, the time limit for appealing, whether the appeal can be made in-country and the

1 **Joint Council for the Welfare of Immigrants** (2006) *Immigration, nationality and refugee law handbook*
2 **Amnesty International** (Feb 2004) *Get it right – how Home Office decision making fails refugees*
3 **Thomas, R.** (2006) *Assessing asylum and immigration determination processes*, paper presented at the Asylum, Migration and Human Rights Centre
4 **Amnesty International** (Feb 2004) *Get it right – how Home Office decision making fails refugees*
5 **Home Office** (May 2007) *Asylum appeal hearings overview*
6 **Joint Council for the Welfare of Immigrants** (2006) *Immigration, nationality and refugee law handbook*

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grounds on which the appeal can be brought.[7] An individual has ten working days after the notice of decision is served to lodge an appeal and five days if they are being detained. For non-suspensive appeals from abroad, an appellant has twenty eight days to make an appeal.[8]

Appellants are required to complete a 'notice of appeal' form, within the timeframes specified above.[9] The notice of appeal form is an opportunity for the applicant to state their reasons for appealing, as well as request an interpreter. The AIT is responsible for booking an independent interpreter for appeals hearings where necessary.[10] The notice of appeal form requires the appellant to state their grounds for making an appeal. An appellant must state all grounds for appeal, as the AIT may not allow them to be mentioned at a later stage. To ensure speedier processing, all notice of appeal forms are now sent directly to the AIT rather than to the Home Office.[11]

Asylum seekers with an in-country right of appeal against an asylum decision cannot be removed from the UK whilst their appeal is pending and the appeal remains pending while it is waiting to be heard by the AIT. Furthermore, the Home Office cannot remove an asylum seeker who is still within the allocated timeframe to ask permission to appeal. An appeal ceases to be pending if the appellant withdraws the appeal, leaves the UK or if the Home Office certifies the appeal as a national security case, thereby transferring the appeal to SIAC.[12]

1.3 Non-suspensive appeal cases

The Nationality, Immigration and Asylum Act 2002 removed 'suspensive' or in-country rights of appeal from anyone whose asylum or human rights claim is certified to be clearly unfounded. A clearly unfounded claim is one that is so evidently without substance that it is certain to fail, for example if the case does not raise a fear of persecution for one of the reasons stated in the Refugee Convention.[13] In such cases, known as 'non-suspensive' appeals (or NSA), an asylum seeker can only appeal against a negative decision from abroad (in the country of origin) within 28 days.[14]

The Home Office has created a list of 'safe' countries whose nationals are likely to have their cases declared non-suspensive. At present the list consists of all member states of the European Union, as well as nationals from the following countries: Albania, Bolivia, Brazil, Ecuador, India, Jamaica, Macedonia, Moldova, Mongolia, South Africa, Serbia (including Kosovo, but not Montenegro), Ukraine, Ghana (male applicants only) and Nigeria (male applicants only).[15] A draft order was laid in Parliament on 22 May 2007 proposing designation of NSA for the following additional countries: Bosnia-Herzegovina; Gambia (in respect of men); Kenya (in respect of men); Liberia (in respect of men); Malawi (in respect of men); Mali (in respect of men); Mauritius; Peru and Sierra Leone (in respect of men).

7 **Joint Council for the Welfare of Immigrants** (2006) *Immigration, nationality and refugee law handbook*
8 **Home Office** (May 2006) *Operation Enforcement Manual, Section C – Appeals, asylum, human rights and racial discrimination claims, Chapter 20 – appeals*
9 **Home Office** (Nov 2006) *Immigration Directorates' Instructions – Chapter 12, section 4 – handling Appeals*
10 **Joint Council for the Welfare of Immigrants** (2006) *Immigration, nationality and refugee law handbook*
11 Ibid.
12 Ibid.
13 **Immigration Law Practitioners' Association** (January 2004) *Asylum – a guide to recent legislation*
14 **Joint Council for the Welfare of Immigrants** (2006) *Immigration, nationality and refugee law handbook*
15 **Home Office** (July 2007) *Non-suspensive appeals (NSA)*

In addition to the designated safe country list outlined above, the Home Office also has the authority to certify the case of an asylum seeker from any country as clearly unfounded, if they believe the claim to be without substance.[16] The only way to challenge a case that is certified as clearly unfounded is by judicial review.

It has been observed by various organisations[17] that NSA cases give rise to several problems. First, as a result of being certified 'clearly unfounded', an asylum seeker could be returned to a country where they fear persecution before being able to appeal. The Asylum Rights Campaign recommends that 'any reasoned dispute over the safety of country of origin should always attract an in-country right of appeal.'[18] Furthermore, it has been noted that in practice it is extremely difficult for an asylum seeker to be able to appeal from abroad and it remains unclear what responsibility the Home Office has for helping a successful appellant to return to the UK.[19]

1.4 The one-stop system

The one-stop procedure was introduced in October 2000 under the 1999 Act and was subsequently amended under the 2002 Act. It is intended to ensure that people applying to enter or remain in the UK are only able to make one application detailing all their reasons for seeking permission to enter or remain in the UK, receive one decision taking into account everything relevant to their case, and lodge only one appeal, if refused.

When an appeal is lodged, the appellant is also required to respond to a 'one-stop notice' and complete a 'statement of additional grounds' form outlining any additional reasons they have for wishing to stay in the UK, other than those they have already disclosed in their initial application. This includes human rights grounds and any other compassionate circumstances. All these issues will then be considered at the appeal hearing.[20]

1.5 Special Immigration Appeals Commission

Under Section 97 of the Nationality, Immigration and Asylum Act 2002 an appeal to the AIT against a negative asylum/human rights decision will not be allowed if the person's exclusion from the UK is in the interests of national security and the reasons for the decision can not be disclosed. In this small number of cases, there is instead a right of appeal to the Special Immigration Appeals Commission (SIAC). At SIAC hearings, appellants are entitled to two legal representatives: a special advocate appointed by the government who is allowed to view any sensitive material in closed session and make representations on behalf of the appellant; and another representative that represents the appellant in the open sessions. The SIAC panel consists of a High Court judge, an immigration judge and an expert in security matters and is subject to its own separate procedural rules.[21]

16 **Immigration Law Practitioners' Association** (January 2004) *Asylum – a guide to recent legislation*
17 **Asylum Rights Campaign** (2004) *Providing protection in the 21st century – Refugee rights at the heart of UK asylum policy*
18 Ibid.
19 **Joint Council for the Welfare of Immigrants** (2006) *Immigration, nationality and refugee law handbook*
20 **Home Office** (July 2006) *Immigration Directorates' Instructions – Chapter 12, section 1 – rights of appeal*
21 Ibid.

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Asylum and Immigration Tribunal where appeals are heard

Diagram A – The asylum appeals process [22]

22 Diagram adapted from the AIT: http://www.ait.gov.uk/forms_and_guidance/documents/pdf/Asylum%20Appeals.pdf

2. Appeal hearings

Birmingham Hearing

2.1 Types of appeal

There are three types of appeal hearings: case management review (CMR) hearings, substantive appeal hearings and reconsideration hearings.

The substantive hearing is the main hearing in the appeals process and is normally attended by the appellant, their legal representative and a representative from the Home Office. The appellant is required to provide evidence at the hearing; this may include specific documents, expert evidence, country reports and witnesses. The burden of proof lies with the appellant, with the standard of proof being relatively low: i.e. a reasonable degree of likelihood of persecution under the Refugee Convention. The immigration judge (or panel) decides whether the appeal against the original decision of the Home Office should be allowed or dismissed. This is provided in writing to both parties within ten working days and is called a determination.[23]

Once the AIT has made its decision and issued a determination, either party can request a reconsideration on the grounds that the AIT made an error of law. This is known as an onward right of appeal. Reconsiderations are first considered by a senior immigration judge at the AIT and if successful, will result in an order for the AIT to reconsider the original determination and hear the case again. If a reconsideration is refused then in limited cases, the AIT's decision can be reviewed by the High Court[24] on the grounds that the Tribunal made an error of law. Reconsiderations cannot be sought if the AIT sat as a panel of three or more legally qualified members when it heard the original appeal and any appeal is instead directed to the Court of Appeal on a point of law.[25]

If there is a negative outcome as a result of a reconsideration hearing at the AIT, then it is possible to apply for permission to appeal to the Court of Appeal. A further appeal against the decision of the Court of Appeal can be brought, with permission, to the House of Lords, the highest court in the UK. Cases that are unsuccessful before the House of Lords may be brought before the European Court of Human Rights in Strasbourg.[26]

As long as all statutory rights of appeal have been exhausted, an asylum seeker is also entitled to apply to the Administrative Court for permission to move a judicial review of any decision taken during the asylum process. A judicial review looks at whether a decision has been made fairly and properly rather than examining the facts of the claim. The test for a judicial review is whether or not the decision was 'Wednesbury unreasonable'. This means that the decision may be successfully challenged if it is considered so unreasonable that no 'reasonable public body' could have made such a decision. This is a very narrow test and limits the courts' power to supervise the executive. The Home Office is also entitled to apply for permission to move a judicial review.[27]

23 **Home Office** (Nov 2006) *Immigration Directorates' Instructions – Chapter 12, section 4 – handling appeals*
24 The High Court operates in England and Wales, in Scotland it is known as the Outer House of the Court of Session and in Northern Ireland it is called the High Court in Northern Ireland.
25 **Home Office** (Nov 2006) *Immigration Directorates' Instructions – Chapter 12, section 4 -handling appeals*
26 **Joint Council for the Welfare of Immigrants** (2006) *Immigration, nationality and refugee law handbook*
27 **ICAR** (2006) *Asylum law and process navigation guide*

2.2 Fast-track appeals

An appeal becomes 'fast-tracked' in cases where an asylum seeker receives a negative initial decision whilst being detained in one of four Immigration Removal Centres (IRCs) (Campsfield, Colnbrook, Harmondsworth or Yarl's Wood). The process operating in Harmondsworth for male asylum seekers and Yarl's Wood for female asylum seekers is often referred to as the 'super fast track' process and is administered so that asylum seekers remain in detention throughout the asylum application process, including for any appeal they may lodge.[28] Asylum seekers in this expedited process are given two working days to lodge an appeal against a negative initial decision, in comparison to five working days for asylum seekers detained in other IRCs and ten working days for non-detained asylum seekers.[29]

Kerry Jopling, a solicitor from the Refugee Legal Centre in Leeds, speaking at the Commission's Leeds Hearing, criticised the fast track process for placing unrealistic time constraints on asylum applicants and legal representatives:

"Just because something is done quickly, does not mean it is done well. The over-riding concern should be to achieve a fair and just decision. Unfortunately, speed seems to have pushed justice into second place"

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

The human rights organisation Justice has also commented that the accelerated process does not allow an asylum applicant sufficient time to receive proper legal advice or effectively challenge a negative decision on appeal.[30] However, the Home Office maintains that there are several safeguards within the fast track process, including the option for legal representatives to make an application to transfer the claim from the fast track system to the mainstream system. [31]

3. Making decisions

One woman from Cameroon described her hope going into her tribunal:

"When I was refused by the Home Office initially I didn' t take it too badly as all the reasons for refusal I had answers for. I thought that people can make mistakes and the interviewer at the Home Office obviously didn' t understand everything that I was saying. I thought at the court I will have more of a chance to explain my story. I had faith because I was telling the truth that it would be ok."

28 **Joint Council for the Welfare of Immigrants** (2006) *Immigration, nationality and refugee law handbook*
29 Ibid.
30 **Justice** (2003) *Inquiry into asylum and immigration appeals: Committee on the Lord Chancellor's Department.*
31 For further information on Home Office safeguards regarding the detained fast track process see **Oakley, S.** (April 2007) *Accelerated procedures for asylum in the European Union: fairness versus efficiency,* Sussex Migration Working Paper no. 43

However, her hope turned to disappointment at the way she was treated by the judge at her appeal hearing:

"At my asylum tribunal the judge had concentrated on my health rather than the other things that had happened to me in Cameroon. She made me feel that I was just here to receive medical treatment" ***Submission: Anonymous***

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3.1 Approaches to decision-making

Prior to 2003, the appellate authority was experiencing a large backlog of cases. Measures introduced to increase the capacity to deal with larger numbers of appeals included recruiting more adjudicators, expanding courtroom space and making better use of court time.[32] The Department for Constitutional Affairs (now the Ministry of Justice) and the Home Office jointly agreed targets for processing appeals, meaning that judges hear three cases per day and make determinations on the next day. This led to criticism from some commentators that the appellate authority was 'imbued with a managerial culture' with a target-driven mandate that may compromise the quality of the appeals process. [33]

The Tribunal employs an adversarial approach in court, which means that judges remain strictly impartial and avoid intervening in the arena other than to seek clarification of points.[34] Several commentators have argued that an inquisitorial approach would be more appropriate for asylum appeals, where judges take a more active role in court.[35] This would enable judges to examine more closely the credibility of an appellant's account.[36] It has also been noted that under the Human Rights Act, judges are required to consider the impact of the European Convention on Human Rights on individual cases, and this may require a greater involvement on their part.[37] The Council of Immigration Judges has asserted that the standard of legal representation is 'very variable in quality' which raises the question of whether judges should take a more interventionist approach in court. It has also been argued that standards of representation are likely to fall as a result of legal aid cuts, creating disincentives for good quality caseworkers, thus increasing the need for such an approach.[38]

3.2 Use of evidence

There is an obligation on the state for collecting evidence for appeals, in the form of country information, and on the applicant, in the form of expert reports. Additional sources of information for the Tribunal are the appellant's oral testimony and the AIT's country guidelines determinations. The evidence used to judge appellants is based on the past history of the applicant and the social

32 **National Audit Office** (June 2004) *Improving the speed and quality of asylum decisions*
33 **Thomas, R.** (2005) Evaluating tribunal adjudication: administrative justice and asylum appeals, Legal Studies 25 (3)
34 **Migration Watch**, *House of Commons Select Committee on Constitutional Affairs Briefing paper*
35 **Thomas, R.** (2006) *Assessing asylum and immigration determination processes*, paper presented at the Asylum, Migration and Human Rights Centre;
36 **Migration Watch**, *House of Commons Select Committee on Constitutional Affairs Briefing paper*
37 **Blake, C.** (2001) Judging Asylum and Immigration Claims: The Human Rights Act and the Refugee Convention, *Public Money & Management* 21 (3)
38 **Thomas, R.** (2005) Evaluating tribunal adjudication: administrative justice and asylum appeals, *Legal Studies* 25 (3)

and political situation in their country of origin; the appellant's story must be consistent with the country information.

The Tribunal must also assess the credibility of the appellant's account. The AIT have been reluctant to issue guidance on assessing credibility and instead have urged adjudicators to use 'common sense and experience' in judging individual cases.[39] Adjudicators are required to scrutinise the behaviour of appellants for efforts to conceal information or to mislead, obstruct or delay the claim. This measure has been criticised for linking behaviour with credibility, when in certain circumstances there is no causal link between the two. For example, concealing a passport does not necessarily compromise the credibility of an appellant's story. Further, delays in presenting evidence may arise from appellants' histories of trauma or sexual violence which may cause them shame and difficulties expressing themselves openly.[40]

3.3 Expert reports

Legal representatives may request expert reports to support an appellant's application. Expert reports are usually written by country experts, such as academics or NGOs, or by medical experts, such as doctors at the Medical Foundation for the Care of Victims of Torture. Details of the case are relayed to the expert who then tailors the report to the individual case. One country expert has highlighted the importance of stating the impartiality of experts in the report – specifically that they do not know the appellant and that they cannot judge the credibility of their case. The expert must acknowledge points which question an appellant's account as well as those that corroborate it. It is also crucial that the expert does not act as an advocate on behalf of the appellant.[41] This latter point is included in the AIT's November 2006 practice directions outlining the duties of country experts. Also highlighted in the directions is that the duties of experts to the Tribunal override those to the appellant.

There is evidence of some disagreement between the Tribunal and individual experts on the question of who has greater expertise on the issues relating to appellants' cases. The AIT has claimed on occasion that experts have exceeded their role, whilst experts have criticised the AIT for not paying sufficient attention to their opinions. In addition, the Court of Appeal has criticised the Tribunal for insufficiently considering country expert reports, and the latter have been required to explain why they do not accept an expert report.[42]

Medical expert reports are sought to support a claim that an appellant has been tortured or ill-treated; this may be of a physical or psychological nature. Medical experts are required to match their clinical findings to the testimony of the appellant.

The Tribunal has been criticised for considering medical evidence after they have made their judgement on an appeal, and subsequently rejecting the evidence presented leading some commentators to argue that the evidence should rather be considered as part of the totality of evidence presented during an appeal.[43] It may however be argued that medical reports do not

39 **Thomas, R.** (2007) Risk, legitimacy and asylum adjudication, *Northern Ireland Legal Quarterly* 58 (1)
40 Ibid.
41 **Good, A.** (Oct 2003) Anthropologists as experts: asylum appeals in British Courts, *Anthropology Today* 19 (5)
42 **Thomas, R.** (2007) Expert evidence in asylum appeals: an update, *Immigration Law Digest* 2 13(2)
43 **Thomas, R.** (2007) *Expert evidence in asylum appeals: an update, Immigration Law Digest* 2 13(2); **Jones, D.** and **Smith, S.** (2004) Medical evidence in asylum and human rights appeals, *International Journal of Refugee Law* 16 (3)

provide conclusive proof of an appellant's account because doctors are not obliged to scrutinise the credibility of the account.[44]

A practical problem associated with expert reports is that they are often requested only days in advance of the court appearance, which does not provide sufficient time to prepare a high quality report.[45]

3.4 Country of origin information (COI)

The Country of Origin Information Service (COI Service) in the Research, Development, Statistics (RDS) department of the Home Office produces information on asylum seekers' countries of origin, for use by BIA officials involved in the asylum determination process. COI products focus on matters frequently raised in asylum and human rights claims, are compiled from material produced by external information sources, and are in the public domain. COI material produced by the Home Office is reviewed by the independent Advisory Panel on Country Information.

The COI Service currently publishes four products:

1. COI Reports: These are detailed summaries focusing on the main asylum and human rights issues in the country. They also provide background information on geography, economy and history. They are produced on the 20 countries which generate the most asylum applications in the UK and have been published twice yearly since 1997 but are now updated more frequently.
2. COI Key Documents: For countries outside the top 20 asylum intake countries but within the top 50, COI Service provides a product called 'COI Key Documents'. This brings together the same sorts of documents that feature in the source material for COI Reports, but with a brief country profile and index rather than an actual report. They are updated annually and may be issued on countries outside the top 50 asylum intake countries where there is a particular operational need.
3. COI Bulletins: Bulletins are issued throughout the year to provide up to date COI as required on countries for which a COI Report is not produced.
4. COI Fact Finding Missions: These are reports produced following fact finding missions to countries of origin.

The Tribunal has described the reports as providing a "reliable, reasonably impartial and up-to-date assessment" of country situations.[46] Country of origin information (COI) has however been criticised by refugee advocacy groups and country experts. It has been perceived to lack independence due to the position of the COI service within a government department.[47] It has been argued that information is repeated year after year, that the reports are not adequately sourced[48] and that undue weight is given to the reports compared with expert reports.[49] Audrey Smith of the Calderdale Immigration Support Service, speaking at the Commission's Leeds

44 Ibid.
45 **Bail for Immigration Detainees and Asylum Aid** (Apr 2005) *Justice Denied – Asylum and Immigration Legal Aid – a system in crisis*
46 **Thomas, R.** (2007) Risk, legitimacy and asylum adjudication, *Northern Ireland Legal Quarterly* 58 (1)
47 **Good, A.** (2004) Expert evidence in asylum and human rights appeals: an expert's view, *International Journal of Refugee Law* 16 (3); **Thomas, R.** (2007) Risk, legitimacy and asylum adjudication, *Northern Ireland Legal Quarterly* 58 (1)
48 **Good, A.** (Oct 2003) Anthropologists as experts: asylum appeals in British Courts, *Anthropology Today* 19 (5)
49 **Immigration Advisory Service** (Feb 2005) *Country Guidelines Cases: benign and practical?* http://www.iasuk.org/module_images/Country%20Guideline%20Cases-Benign%20and%20Practical%20TPPS.pdf

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Hearing, recounted cases where asylum seekers' appeals had been hindered by outdated country information used by the Home Office, suggesting that the country the appellant comes from is safe when it is not:

"From the experience of our clients it seems clear that the Home Office is hellbent on finding reasons to discredit their stories. Caseworkers who should be assessing whether people are in danger and need protection just seem intent on disbelieving them"

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

In addition to COI reports, the Tribunal publish Country Guideline Cases (CGC), which detail situations in asylum seeker-producing countries and aim to make decision-making more consistent. The cases establish 'factual precedent' on which similar cases are subsequently adjudicated. The Immigration Advisory Service has expressed concern over the use of CGCs, which they see as based on poor, irrelevant, outdated or no country information, and citing no references for material used. [50]

4. Legal aid and accessing legal support

Publicly-funded legal advice and representation is available for asylum cases, as it is for other areas of the law. In England and Wales the legal aid fund is called the Community Legal Service Fund and is administered by the Legal Services Commission (LSC). Free assistance is available throughout the asylum process, for asylum seekers who either have no income, or a very low income. The LSC will only fund advisers that they have a contract with to provide specialist immigration advice.

Restrictions on legal aid have forced many law firms to withdraw from offering advice on asylum claims as they do not believe they can operate effectively within the new restriction of only being able to claim for five hours work per case. As a result it has been observed that many asylum seekers are unable to continue with their asylum application or mount a successful appeal against a decision that could be overturned, leading to the withdrawal of Home Office support and impending destitution.[51]

50 Ibid.

51 **Refugee Action** (June 2005) *Leicester Refugee and Asylum Seekers' Voluntary Forum, A report of destitution in the asylum system in Leicester.*

4.1 Legal aid

In April 2005, the government introduced legal aid cuts for asylum appeals (in addition to the cuts made in 2004 as described in the previous chapter), whereby retrospective decisions are made regarding the payment of legal fees for appeals work. This measure requires lawyers to make judgements about the potential of a case's success in order to assess the financial implications of representing a client. The government recognises that cases may not be clear prior to the appeal and therefore provide suppliers a risk premium to offset the risks of taking on clients; this comes to 35% of Controlled Legal Representation rates or 35% uplift of working hours for non-profit organisations.[52] Cost orders are made by the Tribunal following the appeal or by the High Court at review stage. Legal suppliers can apply for a review of the decision to the AIT, through a paper-based process. The review of a funding decision is made by a different senior immigration judge to the one who made the initial funding decision.

The former Department for Constitutional Affairs launched a six-week consultation in November 2004 seeking views from a range of organisations on the proposed legal aid cuts. As a result of the consultation, the government made some alterations to the proposals. However, the Coalition Against the Legal Aid Cuts (CALAC), a pressure group with 120 members including human rights groups, refugee community organisations (RCOs) and law centres, argued that the cuts would deter good quality lawyers and enable poor quality lawyers to prosper. One organisation highlighted that since the introduction of the new contract, the number of asylum seekers unable to access legal representation has increased, especially at the appeals stage. It has also been argued that the cuts exploit appellants, who may need to fund appeals privately.[53] Germain, a political activist from the Democratic Republic of Congo, explained to the Commissioners how his story had not been believed by the Home Office, and that he had been forced to attend his appeal despite being extremely ill.

"Back home my father was beheaded because of our political activities. I was arrested, gaoled, beaten daily, sexually assaulted and was forced to watch my sister being raped by guards. I claimed asylum in the UK, was refused and appealed. I was ill but the judge refused to adjourn the hearing – I travelled to Bradford but was immediately hospitalised."

Germain, an asylum seeker from the Democratic Republic of Congo
Hearing: Leeds. For full testimony please visit www.humanrightstv.com

Since that hearing, Germain has had to represent himself. His appeal has been rejected and he is destitute – sleeping rough and relying on charity.

"There is a major lack of legal representatives in Leeds and we try to fill the hole by using volunteers – but demand always outstrips what we can supply. The impact on the asylum seeker of not having proper support to prepare for an appeal is huge."

Karen Gray, Manuel Bravo Project

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

52 **Department for Constitutional Affairs** (Nov 2004) *The Asylum and Immigration Tribunal – the legal aid arrangements for onward appeals*

53 **ILPA response to Department for Constitutional Affairs** (Nov 2004) *The Asylum and Immigration Tribunal – the legal aid arrangements for onward appeals*

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Further, refugee advocacy groups have criticised the LSC for lacking independence from the government, yet they are making decisions relating to legal aid that should be made by independent adjudicators at the appeal hearing.[54]

Paul Newell, Head of Civil Legal Aid at the Legal Services Commission, the government body responsible for overseeing legal aid, told Commissioners at the Leeds Hearing that reforms in the past few years had reduced the available budget for asylum appeals:

"The reforms that cap legal aid available to asylum seekers were designed to derail what the Prime Minister, as was, described as the legal aid gravy train – we were spending a lot of money on appeals and too many were failing. But we are dealing with a particularly vulnerable client group – who could face torture and even death if a wrong decision is made – so it would be wrong to rule out looking at the rules again"

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

4.2 Issues with legal representatives

The Immigration and Asylum Act 1999 established an independent public body, the Office of Immigration Services Commissioner (OISC), to regulate immigration advisers and to promote good practice. Immigration advisers do not have to be trained solicitors, although many are. Since 1 April 2005 the Legal Services Commission (LSC) has required that all advisers are accredited if they wish to provide legally-aided immigration advice. The level of advice that an adviser can give is determined by the level of accreditation they have achieved. Nevertheless, it has been observed that the quality of asylum advice varies enormously and although there are some excellent practitioners, poor quality advice is still a major issue.[55]

Combined with a shortage of legal firms willing to take on cases and the exploitation of appellants forced to fund appeals privately, there are also numerous examples of poor and miscommunication, with appellants receiving the wrong information from their representatives, the relevant information being waylaid, appellants being dropped shortly before a case, and cases where appellants are moved and have to find new representation at short notice.

A written submission from a man from Guinea, settled in Hull, describes his difficulty in finding a local solicitor to take his case:

"I want people to understand that there are no asylum solicitors in Hull so we have to travel a long way with a minimum amount of resources."

54 **Bail for Immigration Detainees and Asylum Aid** (Apr 2005) *Justice Denied – Asylum and Immigration Legal Aid – a system in crisis*

55 **Mayor of London** (2005) *Into the Labyrinth: Legal advice for asylum seekers in London,* (Greater London Authority)

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

56 **Children's Society** (2006) *Response to Legal Aid: A Sustainable Future*
Immigration Law Practitioners' Association (October 2006) *Response to Legal Aid: A Sustainable Future*
Asylum Aid (2006) *Response to Legal Aid: A Sustainable Future*
Hansard (20 November 2006) *Uncorrected transcript of oral evidence for Joint Committee on Human Rights on the Treatment of Asylum Seekers*
http://www.publications.parliament.uk/pa/jt200607/jtselect/jtrights/uc60-i/uc6002.htm