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Access to Legal Services for Asylum-seekers in Britain
An exploratory study of recent developments

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Summary

This paper examines asylum determination procedures in the UK, and argues that these are founded on the principle of immigration control, rather than on assessing each application for asylum on its merits. As a result, asylum-seekers require legal services to pursue their claims. However, a number of new policies are being implemented simultaneously. Changes to the asylum support policy, and to the system of providing publicly-funded legal services, are being implemented at the same time as the Home Office is increasing the speed with which it makes decisions, and is making a concerted effort to reduce the backlog of cases. The paper seeks to assess the impact of these changes so far, and concludes that each of them represents a significant challenge to legal practitioners, and that collectively they risk leading to an intolerable pressure on service providers, as a result of which asylum-seekers will find it extremely difficult to gain access to the legal advice that they need.

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List of abbreviations

CLS	Community Legal Services
ECRE	European Council on Refugees and Exiles
IAS	Immigration Advisory Service
ICD	Integrated Casework Directorate
IND	Immigration and Nationality Directorate
LSC	Legal Services Commission
NASS	National Asylum Support Service
RLC	Refugee Legal Centre
SCQ	Self-Completion Questionnaire
SEF	Statement of Evidence Form
SP AIR	Short Procedure Asylum Interview Record
UNHCR	United Nations High Commissioner for Refugees

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Preface

This paper seeks to fulfil two purposes. Firstly, it argues that asylum-seekers need legal services in order to pursue their applications for refugee status. This is because legislative changes over the last decade have created a system aimed at controlling immigration, rather than assessing the merits of individual claims.

Secondly, this paper seeks to demonstrate that policy changes presently being implemented have placed significant pressure on legal service providers throughout the country. It outlines three broad policy changes that are likely to have a detrimental impact on asylum-seekers' ability to access legal services:

- Under the National Asylum Support System, asylum-seekers with very limited funds are being dispersed to areas unaccustomed to providing the services they require;
- Simultaneously, a new legal franchise system is reducing the number of Immigration Legal Service providers
- Lastly, the Home Office is simultaneously focusing on swift decisions, and making a concerted effort to reduce a large backlog of cases.

Any one of these developments would be likely to pose a challenge to legal service providers; implementing the policies simultaneously is putting an intolerable pressure on providers, and therefore limiting asylum-seekers' likelihood of accessing their services.

It should be noted that this is a very current issue, and none of the policies mentioned above are fully established. Issues that require further study in order to assess the full impact of recent changes are clearly highlighted.

In seeking to establish the need for legal services, the paper refers to a range of secondary sources. Outlining and assessing recent policy changes has required significant recourse to primary sources. I approached a number of organisations for information, including the Immigration Legal Practitioners' Association, the Law Society, and the Legal Services Commission. I also approached the Immigration and Nationality Directorate, and thereafter the National Asylum Support Service. I interviewed practitioners at the Refugee Council, the Refugee Legal Centre and Asylum Aid. In addition, I designed a postal questionnaire, which was sent to Immigration legal practitioners.

I am indebted to Dr Richard Black for his guidance and to the University of Sussex for support in conducting a postal questionnaire. I am also grateful to David Hitchin for his invaluable

help in using software to analyse questionnaire responses. My thanks to Paul Ward, whose insights into immigration legal representation were particularly helpful. I would especially like to thank all those who responded to the postal questionnaire, and all those who spent precious time sharing information with me.

Introduction

Britain was one of the first 24 countries to sign the 1951 Convention relating to the Status of Refugees, which defines a refugee as a person who,

*'owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion [...] is outside the country of his nationality [...] and is unable [...] or unwilling to avail himself of the protection of that country.'*¹

The 1951 Convention is an international legal instrument, which supports the awarding of a legal status to individuals who fit the description above. The term 'refugee' has come to denote not simply those who have fled persecution, as described above, but more specifically those whose persecution and flight has been legally recognised. In this sense, the term is used with a degree of legal and moral authority – the case has been proven. In contrast, the term 'asylum-seeker', though ostensibly literal and neutral, has come to define those who are viewed with suspicion, because their alleged fear of persecution has not been proven.

In political discourse, mass media reporting and public perception, the two terms have come to be almost inseparable from particular adjectives: 'genuine refugees' are contrasted to 'bogus asylum-seekers,' who 'abuse the asylum system'² because their motivation is possibly the search for economic opportunities, rather than flight from persecution. In practice, the difference between a refugee and an asylum-seeker is the difference between someone who has successfully completed an application for legal status, and someone who has not. It is thus appropriate that asylum-seekers should have legal advice and representation throughout the process of their application.

Unfortunately, the need for legal advice and representation for asylum-seekers is not merely based on the logic that such services are appropriate to anyone going through a legal process: the 1980s and 1990s saw an unprecedented number of changes to immigration law. Restrictions on entry to Britain were supplemented by three wide-ranging and successively more restrictive Parliamentary Acts passed between 1993 and 1999. As a result, it is now harder than ever for asylum-seekers to enter

the country, to navigate the determination criteria, and to survive in the time before a decision is made. The law, and the determination procedures, have become an obstacle course. Without adequate information about a system designed to control immigration, few people would be able to complete the course, regardless of the validity of their claim. Considering that many asylum-seekers do not speak English, are likely to be socially isolated, and may furthermore be traumatised by their experiences, it is incredible that anyone should be expected to represent themselves in a matter of such complexity, and of such importance to their future. Through an examination of the impact of the law and new determination procedures, this paper will argue that asylum-seekers should have an explicit right to legal services, rather than merely be permitted to avail themselves of such services if they choose to.

Two further changes are in the process of occurring now. Support for asylum-seekers began to separate from the national welfare system in 1996. The 1999 Act introduced a new support system for asylum-seekers, which is presently being phased in, and will be established by the end of September 2000. The system involves providing asylum-seekers with accommodation on a 'no-choice' basis, and dispersing them around the country, to alleviate the burden on local authorities in London and the South-East, the areas in which asylum-seekers and refugees have traditionally settled. Asylum-seekers are being sent to areas of the country that are unprepared for their needs. In particular, there are insufficient legal practitioners with experience in immigration, resulting in a shortfall of services in the regions.

Secondly, a new system of legal service provision is being established. Franchise contracts are being awarded to firms meeting the required quality standards. The aim of the new system is to control expenditure, and to regulate the activities of some unscrupulous immigration advisors who have preyed on vulnerable asylum-seekers. While the intention is well founded, and the method may be efficient, the new system is effectively reducing the numbers of firms providing immigration advice. Though this may be rectified in the long-term, in the short-term, this will increase the shortfall of legal services for asylum-seekers nationally.

All of the changes above are taking place at the same time as the Home Office has introduced shorter time limits for the submission of application evidence, has streamlined its own decision-making procedures, and is making a concerted effort to reduce the backlog of cases.

¹Article 1 of 1951 UN Convention relating to the Status of Refugees

² For example, 8.6, Fairer Faster Firmer White Paper, July 1998

The first part of this paper outlines the legal and administrative framework of refugee determination and argues that the present context increases the degree to which asylum-seekers require legal services. It also examines changes to the asylum support system and the provision of publicly funded legal services, showing that these increase the number of asylum-seekers urgently requiring legal services at any one time. The second part of this paper examines the impact of the changes so far, and demonstrates that these are already putting pressure on legal services in all areas of the country. Particular reference will be made to the responses from a questionnaire administered for this paper, as well as data and observations from a range of literature. Viewed individually, the legal and administrative changes can be seen to pose significant challenges to legal practitioners and those seeking their services. Viewed collectively, it is a system in crisis.

Part 1: Law and Policy

1. British Immigration Policy

Britain's 'long tradition of welcoming refugees' is often referred to, though usually as a preface to reasons for controlling immigration.³ An early example of this can be found in a 1938 Home Office Memorandum, which states that

*'it has long been the traditional policy of successive British governments to give shelter to persons who are compelled to leave their own countries by reason of persecution [...] but the Government are bound to have regard to their domestic situation and to the fact that for economic and demographic reasons, this policy can only be applied within narrow limits.'*⁴

This statement perfectly illustrates the real nature of Britain's 'long tradition', which has always been founded on willingness to welcome refugees, so long as economic and political circumstances do not make this inconvenient. Schuster and Solomos provide a detailed account of the economic and political contexts for changing attitudes to immigration and asylum in the UK, noting that up until the last decades of the nineteenth century, immigration was viewed as highly desirable. Against the backdrop of a thriving economy and the need to replenish a workforce diminished by high rates of emigration to the Colonies, Victorian ideals of individual freedom and free trade helped to create the image of Britain as a generous State. There was no legal definition of a refugee, and providing asylum meant little more than doing nothing to prevent immigrants entering the country or staying. The lack of a legal framework for asylum, combined with the absence of a welfare system, meant that Britain had no responsibility towards refugees, and could use them as a convenient workforce⁵.

The 1905 Aliens Act marked the start of Britain's tradition of creating legislation to restrict immigration. With the economy in decline, and fear of mass influxes from Russia and Poland, the 1905 Aliens Act was significant in two ways: first, it prohibited entry of all immigrants who could not support themselves, thus making clear that immigrants would be allowed entry so long as they would offer more to the country than they

would take away.⁶ However, secondly, the 1905 Act made a first reference to refugees, by allowing entry to those coming to Britain

*to avoid persecution or punishment on religious or political grounds or for an offence of a political character or persecution involving a danger of imprisonment or danger to life or limb, on account of religious belief.'*⁷

The historical link between immigration policy and economic conditions has been supplemented by responses to public opinion in various ways. In 1938, the government '*chose to appease [anti-Semitic sentiments] by restricting the numbers [of Jews] allowed into the country.'*⁸ However, a public outcry following *Kristallnacht* later that year resulted in increased ease of entry for persecuted Jews⁹. Overall, though, successive governments have followed the line that immigration controls are necessary to ensure good race relations, as made clear by Jacques Arnold's assertion: '*We have good race relations [...] but that improvement is based on public trust in our tight immigration controls.'*¹⁰

Recent developments in immigration policy have continued in this vein, focusing on assurances that 'genuine' refugees will be welcomed, while those with unfounded claims must not merely be rejected, but 'deterred.' In 1998, the 'Fairer Faster Firmer' White Paper stated that '*the real issue is how to run an asylum system which serves the British people's wish to support genuine refugees whilst deterring abusive claimants.'*¹¹ The White Paper went on to assert that '*the Government believes that it is essential that the procedures for dealing with asylum applications should be seen within the framework of an integrated immigration control.'*' This statement summarises British asylum policy just as concisely as the 1938 Home Office Memorandum did: refugees' claims will be considered, but only within the 'narrow limits' of a policy aimed at controlling immigration.

⁶ Miles and Clearly, 1993. In V. Robinson ed, *The International Refugee Crisis: British and Canadian Responses*.

Cited p4, Bloch 2000

⁷ Aliens Act 1905, section 1(2)

Cited p 54, Schuster and Solomos

⁸ p55, Schuster and Solomos, 1999

⁹ Brochmann, G (1992) 'Control at What Cost?' Paper prepared for the workshop on migration into Western Europe, *What Way Forward?*, London, Royal Institute of International Affairs.

Cited p11, Bloch, 2000

¹⁰ Jacques Arnold, Hansard 2nd November 1992, Column 71

Cited p66, Schuster and Solomos, 1999

¹¹ Section 8.5, Fairer Faster Firmer White Paper, July 1998

³ For example, section 8.1 Fairer, Faster, Firmer White Paper, July 1998

⁴ Memorandum of instructions to UK delegates at the Evian Conference, 1938.

Cited p158, Dummet and Nicol 1990

⁵ Schuster and Solomos, 1999

1.1 Immigration and Asylum Law

Legislation enacted between 1962 and 1988 brought nearly all primary migration to an end, partly through changing the citizenship rights of former colonial subjects,¹² though European Union nationals gained increased freedom of movement within the EU. The inability, for most, to migrate to Britain in any way other than claiming asylum probably had some influence on the dramatic increase in asylum applications in 1989. Nonetheless, if some 'economic migrants' tried to claim asylum following restrictions on primary immigration, it must also be considered that some people who might justifiably have applied for asylum were not doing so prior to the restrictions, because they did not have to. Though the increase in applications was dramatic, in numbers per capita, Britain was still receiving very few applications. Between 1983 and 1993, Germany received between 5 and 20 times more applications than Britain in any given year. Even Germany's applications must be put in perspective worldwide: in 1994, it was listed as number 30 in a list the countries worldwide which was receiving the most applications per capita. Britain did not figure in the top 50 countries.¹³ Table 1 displays applications for asylum in Britain between 1988 and 1998.

Table 1: Asylum applications between 1988-1998

Year	Application numbers	% change from previous year
1988	3998	+6
1989	11640	+191
1990	26205	+125
1991	44840	+71
1992	24605	-45
1993	22370	-9
1994	32830	+47
1995	43965	+34
1996	29640	-33
1997	32500	+10
1998	46010	+42

Source: Refugee Council, cited by Bloch (2000)

The increase in asylum applications heralded the beginning of acute political concern about immigration, and with it an unprecedented rate of change to immigration and asylum law over the

¹² p1, Bloch 2000

¹³ p63, Schuster and Solomos. Figures sourced from UNHCR Report 1994

next decade. Dummett notes that the British government, in common with other European Union governments, opines that '*many asylum-seekers are economic migrants in disguise, and that entry for asylum has somehow to be limited without breaching the obligations [undertaken] in subscribing to the UN Convention on Refugees.*'¹⁴ In fact, not breaching the provisions of the UN Convention is relatively unproblematic, as the Convention does not challenge sovereign States' right to decide who may remain on their territory, and does not make any specific specifications on how determination must be considered. Apart from the definition of the refugee, the most significant provision of the UN Convention is that of non-refoulement, which prohibits signatory States from expelling refugees '*in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.*'¹⁵

However, the UN Convention is based on the right to asylum specified in the Universal Declaration of Human Rights,¹⁶ and this right is effectively negated by British law, in two principal ways: firstly, restrictions on entry into the country severely limit people's ability to reach Britain to seek refuge. Secondly, in addition to placing the burden of proof on the asylum-seeker, the law stipulates criteria for 'credibility' which are irrelevant to the possible validity of any given claim.

1.2 Entry Restrictions

Restrictions on entry into Britain were increased with the introduction of visa requirements. Morris notes that visas cannot be issued for the purpose of seeking asylum,¹⁷ and indeed visas tend to be imposed specifically on nationals from countries that tend to produce refugee flows.¹⁸ The recent exposure of practice in Khartoum emphasises the extent to which UK authorities will go to restrict entry for asylum-seekers: in order to be granted a visa to Britain from Sudan, applicants had to sign a statement asserting that they had no reason to fear return to the Sudan, and which went on:

¹⁴ p150, Dummett, 1990

¹⁵ Article 33, 1951 Convention

¹⁶ Article 14 of the Universal Declaration of Human rights.

The preamble to the Convention takes into consideration 'the principle that human beings shall enjoy fundamental rights and freedoms [prescribed in the Universal Declaration of Human Rights] without discrimination.'

¹⁷ p952, Morris, 1998

¹⁸ p132, Dunstan 1995

'I have not experienced harassment, persecution, detention or prosecution by any authority, organisation of individual, that might constitute a reason to seek refuge in the UK or elsewhere. I know of no reason why I should remain in the UK beyond the period I have stated to the interviewing officer.'

Refusal to sign the statement would result in rejection of the application. For those who did need to flee persecution, the statement could be used as evidence against them. When the practice was made public, it was immediately suspended. There is no knowledge about how many individuals it may have affected, either before travel or on arrival in the UK.¹⁹

When visa restrictions did not appear to sufficiently curtail asylum applications, the 1987 Carriers' Liability Act was introduced. Under the Act, fines were imposed on airlines that carried people who did not have visas, or other documentation such as passports. In 1988, the government fined British Airways around £2.5 million for not detecting undocumented travellers,²⁰ and by 1995, fines totalling £79 million had been imposed on airlines and shipping companies.²¹ Grave concern has been expressed about the 1987 Act's lack of differentiation between 'ordinary passengers' and people fleeing persecution, and the consequent removal of the right to seek asylum.²²

Technically, restricting entry does not constitute *refoulement*. This loophole in the UN Convention has allowed the British government to ignore the above concerns, and even extend carrier's liability to bus and coach carriers, as well as freight trucks.²³ The main objective of carrier's liability legislation is to limit the number of people who may apply for asylum. The present Home Secretary, Jack Straw, has recently floated the idea of exclusively considering asylum applications from the country of origin,²⁴ a practice which would give the Home Office increased power to refuse applications since it would not run the risk of 'refouling' asylum-seekers.

1.3 Determination criteria

The government's wish to limit immigration is made clear not only by the legal restrictions placed on entry into the country, but also by legislation regarding determination procedures.

¹⁹ The Guardian, 9th August 2000

²⁰ p6, Bloch 2000

²¹ p135f, Dunstan 1995

²² p587, Nicholson, 1997; p213-217, Randall, 1994

²³ Jack Straw, Hansard, 2nd February 2000, column 1066

²⁴ The Guardian, 20th June 2000

Though *'nothing in the Immigration Rules [...] shall lay down any practice which will be contrary to the [UN 1951] Convention'*,²⁵ the Home Office is entitled to make administrative changes in how it deals with applications.²⁶ Such 'administrative changes' can have significant impact on the chances of a positive decision for asylum-seekers, particularly where criteria have no logical connection to the validity of their claim, but rather are measures introduced specifically to reduce Britain's responsibilities. Where the rates of positive decisions are low, this is often used as a justification of the view that most asylum applications are ill-founded, or even 'abusive.'²⁷ This argument has been countered by Rogers' argument that there is not necessarily a correlation between the validity of a case and the decision made, citing foreign policy considerations that may influence the government's decisions.²⁸ However, it will become clear that the most influential factor in determining most cases is neither foreign policy, nor the validity of each case, but the policy of limiting immigration. During the 1990s, a number of changes were made to the law regulating determination procedures, which have made it increasingly difficult for asylum-seekers to have their cases assessed on their merits, and which make it essential that they have access to legal services while they pursue their application.

a. Credibility

The 1951 Convention does not stipulate how to determine whether an asylum-seeker may be given refugee status. Goodwin-Gill asserts that

*'clearly, the onus is one the applicant to establish his or her case, but practical considerations and the trauma which can face a person in flight, impose a certain responding duty upon whomever must ascertain and evaluate the relevant facts and the credibility of the applicant.'*²⁹

However, one of the most baffling elements of British determination legislation is the range of criteria stipulated for claimants' 'credibility.' Changes made to Immigration Rules in 1994 and 1996 resulted in credibility being jeopardised by,

²⁵ Section 2, 1993 Asylum and Immigration Appeals Act.

Cited p 169, Care, 1999

²⁶ p89, Joint Council for the Welfare of Immigrants, 1999

²⁷ For example, Peter Lilley, then Secretary of State for Social Security, Hansard 11th January 1996, Column 331.

²⁸ Rogers, International Migration Review 1992 26 (2) p1112 – 1143.

Cited p7, Bloch, 2000.

²⁹ p35, Goodwin-Gill, 1998

inter alia, 'a failure, without reasonable explanation, to make a prompt and full disclosure of material factors, either orally or in writing, or otherwise to assist the Secretary of State in establishing the facts of the case.'³⁰ Other factors affecting credibility of the applicant include the time lapse between arrival in the UK and making the claim for asylum (the sooner the application is made, the more 'credible' it is); the immigration status of the applicant (they should not have been refused leave to enter, or be subject to a deportation order); the presentation of 'manifestly false' evidence, (such as a false name or identity document), and the inability to produce a valid passport.³¹

Where one or more 'discrediting' factors exist, the Secretary of State may refuse the application for asylum. However, the prescribed factors of 'credibility' have little relation to the possible validity of a claim for asylum. Furthermore, asylum-seekers may not be confident of when to end the subterfuge necessary for their escape, and they may not have access to valid identity or travel documents. Perhaps most importantly, these legal requirements are not likely to be known by asylum-seekers before they make a claim. Particularly with regard to the prescribed factors of credibility which bear little relation to the merits of the case, and which could not be anticipated through common sense, it is crucial that asylum-seekers have access to information and guidance.

b. Claims 'without foundation'

As well as imposing apparently irrelevant criteria for credibility, legislation in the 1990s introduced the notion of claims without foundation.³² A case is declared 'without foundation' where the claimant arrived in the UK without a passport and where no reasonable explanation for this was given; where the claimant's fear of persecution is not based on one of the five reasons listed in the 1951 Convention, or is considered to be a 'subjective' fear of persecution which is considered 'manifestly unfounded'; where the claimant applies for asylum after they have been refused leave to enter, or has been issued with a deportation order; or where the determining authorities decide that the application is 'manifestly fraudulent', or where 'the evidence adduced in its support is 'manifestly false', or

³⁰ Para. 340, Statement of Changes to Immigration Rules – HC 395, 1994

³¹ para.340 - 341, Statement of Changes to Immigration Rules – HC 395, 1994 as amended by paras 13-14, Statement of Changes to immigration Rules – CM 3365, 1996.

³² The concept was introduced in the 1993 Appeals Act, and the category was extended by the 1996 Act.

where the application is viewed as 'frivolous or vexatious.'³³

Where a claim is declared 'without foundation', it is certified, which means that the claimant has limited rights to appeal when they receive a negative decision. An exception is made where evidence supplied by the asylum-seeker establishes a reasonable likelihood that the appellant has been tortured. Applicants whose cases have been certified have only two days in which to appeal against the decision.³⁴ Thereafter, they have only five days in which to submit further information. If the appeal is allowed, the asylum-seeker may have to argue their full asylum case only days after their refusal, with little opportunity to prepare the case. If the negative decision is upheld, applicants with certified cases do not have the right to turn to the Immigration Appeal Tribunal.³⁵

The practice of certifying cases is just one example of methods employed to limit asylum-seekers' opportunity to have their cases assessed on their individual merits. When it is considered that an asylum-seeker may have their case certified because they could not provide a 'reasonable' explanation for not having a passport, and that as a result of certification that asylum-seeker's case is refused, has five days to submit evidence in defence of his or her case, and is denied any further opportunity to appeal against the decision, it is clear that the determination procedures are not designed to allow asylum-seekers to explain their circumstances so that these may be rationally assessed. Rather, the 'procedures' constitute an elimination process, which often has little to do with whether or not the applicant requires asylum. As early as 1991, Amnesty International warned that '*various devices to "screen out" or separate types of claims from the normal procedures, [...] often have the effect of [...] diminishing procedural safeguards.*'³⁶ As the new measures were introduced, Chris Randall noted that, '*since the motivation thus far revealed by the Government is to reduce the number of asylum-seekers, this makes the protection community more suspicious of the effect of change.*'³⁷

Following from Chris Randall's assertion, it seems ironic that the United Nations High Commissioner for Refugees (UNHCR) has not reacted more

³³ p352, Joint Council for the Welfare of Immigrants, 1999

³⁴ p6, Bloch 2000

³⁵ p353, Joint Council for the Welfare of Immigrants, 1999

³⁶ p1, Amnesty International, 1991

³⁷ p225, Randall, 1994

vociferously to the use of accelerated procedures for 'manifestly unfounded cases.' In fact, its 'position paper' seems to view asylum-seekers' circumstances almost as simplistically as the British government does, which is disconcerting when the government's main aim is to control immigration, while UNHCR's role is to advocate for refugees. For example, the paper states, realistically, that

'the mere fact of having made false statements to the authorities does not [...] necessarily exclude a well-founded fear of persecution and vitiate the need for asylum, thus making the claim "clearly fraudulent".'

However, the paper goes on to say that

*'only if the applicant makes what appear to be false allegations of a material or substantive nature relevant for the determination of his or her status could the claim be considered "clearly fraudulent".'*³⁸

This position is self-contradictory. Indeed, if an asylum-seeker feels obliged to make false statements because they are afraid and ill-informed, it is quite likely that the issues they will make false statements about will be regarding their application for asylum. There is no logic in allowing a presumption of 'unfoundedness' because an applicant makes any kind of false statement. Clearly, false statements complicate the matter of ascertaining what the applicant's circumstances really are, but they do not necessarily bear any relation to the validity of the claim, and certainly do not prove that it is 'manifestly unfounded.' UNHCR's position on the use of false documents is even more incredulous:

*'As to the use of forged or counterfeit documents, it is not the use of such documents which raises the presumption of an abusive application, but the applicant's insistence that the documents are genuine.'*³⁹

The question must be asked: why would an asylum-seeker use false documentation, only to declare they were false as soon as they were asked? The paper seems to concede that this point 'should be borne in mind', but this does not detract significantly from the position taken, which is that illogical presumptions may be made regarding asylum claims. It should be emphasised that the impetus behind lying, or using false documents, is just as likely to be a desperate

search for safety, as a search for better opportunities. Given that a presumption will be made, it is clear that asylum-seekers require good information about the serious consequences potentially incurred by making false statements at the point of application.

c. Safe countries of origin

At the time that the notion of 'manifestly unfounded' cases was introduced, a 'White List' of 'safe countries' was established. Though the White List has since been abolished, it has been replaced by a country list, which works on the same premise, and it is worth examining its legal implications. When the White List was operating, asylum-seekers from designated 'safe countries' were considered to have 'manifestly unfounded' cases, which were therefore certified. As Kay Hailbronner has argued, the measure was in direct opposition to the principles put forward by the 1951 Convention, according to which asylum should be granted on an individual basis.⁴⁰

Some regional legal instruments, notably the 1969 OAU Refugee Convention⁴¹, prescribe awarding asylum on a group basis – for example the 200,000 Sudanese refugees in Uganda were all granted asylum on the basis that civil war in their country of origin had caused them to flee. The individual determination procedures used by the UK, under the 1951 Geneva Convention, do not allow for asylum to be granted in this way. Thus, the White List sought to use mass determination criteria for refusing asylum, while maintaining use of individual determination criteria for granting asylum.

A summary of new procedures issued by the Immigration and Nationality Directorate (IND) earlier this year notes that '*country policy advice is used to help identify cases which are likely to be straightforward.*'⁴² This is a reference to a regularly updated list of countries that the Home Office believes will tend to produce 'straightforward cases', i.e. cases which are unlikely to be well-founded. It is somewhat disconcerting that early in 2000, Zimbabwe was added to that list. Along with people whose cases have been declared 'manifestly unfounded', asylum-seekers from these countries are sent to Oakington Reception Centre for a seven-day decision-making process. Thus the difference between the erstwhile White List and the present list of 'easy to decide' countries of origin is that the former affected the appeals process, while the

³⁸ UNHCR's position regarding the Resolution on Manifestly Unfounded Applications for Asylum, which was adopted by the Ministers of the Member States of the European Communities responsible for Immigration in London on 30 November - 1 December 1992.

³⁹ Ibid.

⁴⁰ p52, Kay Hailbronner, 1993

⁴¹ Organisation of African Unity: 1969 Convention on the Specific Aspects of Refugee Problems in Africa.

⁴² p2, Asylum Pilots and Procedures – Summary. IND, January 2000

latter affects the initial determination process. The illogical nature of applying both group and individual assessment criteria is highly dubious in both instances, and equally convenient to a policy of controlling immigration. Furthermore, it is not clear how any particular country can be declared 'safe' for all its citizens.⁴³

The impact of supplementary credibility criteria and the notion of claims 'without foundation' introduced in 1993 can arguably be seen in Table 2, which shows that from 1994, the proportion of refusals increased significantly, while the proportion of awards of refugee status and Exceptional Leave to Remain (ELR) decreased. ELR is a secondary status, which allows recipients to remain on 'humanitarian grounds', but does not confer the moral legitimacy of refugee status, nor the rights which are outlined for recognised refugees in the 1951 Convention.

Table 2: Decisions on asylum applications 1990-1997

	Refugee Status		ELR		Refusal	
	No.	%	No.	%	No.	%
1990	920	23	2400	60	705	17
1991	505	10	2190	44	2325	46
1992	1115	6	15325	80	2675	14
1993	1590	9	11125	64	4705	27
1994	825	5	3660	21	12655	74
1995	1295	5	4419	19	17705	76
1996	2240	6	5055	14	28040	80
1997	3985	13	3115	11	22780	76

Source: Refugee Council's Asylum Statistics, 1987-1997, cited by Bloch (2000)

Immigration law adds an extra layer of criteria to those laid down by the 1951 Convention. It places an excessive burden of proof on asylum-seekers, and does so according to confusing criteria which are based on controlling immigration rather than seeking to establish the merits of every asylum-seeker's case. The Joint Council for the Welfare of Immigrants (JCWI) draws a succinct conclusion: *'Because the administrative and legal systems are new, and so rapidly changing, it is particularly important to get good advice and representation in dealing with asylum applications.'*⁴⁴ Legal advice and representation is necessary not only because of the restrictive legislation, but also

because of the restrictions placed on asylum-seekers' opportunity to relate their case.

As will be seen in the following section, criteria for determination are not alone in affecting individuals' chances of being granted asylum. The form of the determination procedures can also have significant impacts, and these emphasise the need for legal services.

2. Refugee determination procedures

Despite severe restrictions on entry to Britain and the measures taken to deter asylum-seekers, applications continued to rise throughout the 1990s, except for a decrease in 1996. In May 1995, a new 'Short Procedure' was piloted with in-country applicants from Nigeria, Ghana, India, Pakistan, Poland and Romania. The pilot scheme assessed the cases of 6,734 asylum-seekers, who were interviewed almost immediately on submitting their application, and then given five days in which to produce supporting evidence.⁴⁵ Of these, three were granted asylum, and 5,735 were refused. The remaining 996 did not have their cases assessed within the period of the pilot scheme. This clearly demonstrated that accelerated procedures could dramatically reduce asylum-seekers' chances of being awarded refugee status.

By March 1996, the Home Office announced the extension of the scheme to all asylum-seekers except nationals of a small number of named countries.⁴⁶ The piloted 'Short Procedure' had effectively become the standard procedure, with exceptions made only for nationals of countries which were more likely to be sites of persecution.

2.1 Applying for asylum

The 'short procedure' introduced in 1995 quickly became the 'Standard Procedure'. It applied to all asylum-seekers, with the exception of cases which the Asylum Screening Unit believe should be assessed through the 'Non-Standard Procedure,' which allowed for more information to be provided by the asylum-seeker, by means of a 'Self-Completion Questionnaire' (SCQ), outlining their background and the reasons for their flight. Though the IND website still refers to 'Standard' and 'Non-Standard' procedures, new procedures and 'process pilots' have been in use since January 2000. Though they are still called 'pilots', they apply to all applications made now, with a

⁴⁵ p107, Joint Council for the Welfare of Immigrants, 1999

⁴⁶ *ibid.* At the time the named States were: Afghanistan, Bosnia, Croatia, Gulf States (Except Kuwait), Iran, Iraq, Libya, Liberia, Palestine, Rwanda, Somalia, and the former Yugoslavia.

⁴³ Patricia Tuitt, 1999

⁴⁴ p90, Joint Council for the Welfare of Immigrants, 1999

phasing in stage for backlog cases, depending on how far the case has already proceeded. The new procedures differ from the previous ones in two respects: firstly, asylum-seekers have even less time to submit statements, and there is an explicit emphasis on quick decision-making. Applicants have only two weeks to return their statement forms, whereas previously they had between four and six weeks to do this. Caseworkers are expected to make decisions within hours. Secondly, the Self-Completion Questionnaire is being replaced by the Statement of Evidence Form. Applicants given 14 days to complete a form are not allowed a further 5 days to submit further evidence as they once were – it is believed that this is not necessary.⁴⁷

There are three categories of procedure now being used, and each is sub-divided into 'Process A' and 'Process B', which correspond, broadly, to the previous 'Standard' (Short) and 'Non-Standard' procedures. All applicants are screened, some complete a statement form, and all are interviewed unless a positive response can be given without an interview. Screening involves a short interview to establish identity and travel route for all applicants. In-country applicants will also be questioned about their method of entry. All applicants and their dependants are fingerprinted. They may then be permitted to reside at a named address, or may be taken into detention.⁴⁸ Following screening, different procedures are used according to whether the application is made immediately at the port of arrival, or from within the country.

It would appear that most port applications are dealt with through the shorter procedure, Process A, since the IND-issued summary of new procedures states that '*Process B is currently only in use for priority cases.*'⁴⁹ Priority cases include unaccompanied minors, and those put into detention.⁵⁰ The summary goes on to note that '*country policy advice is used to help identify cases which are likely to be straightforward,*'⁵¹ thus justifying use of the shorter procedure, or even being sent to Oakington for a seven-day process.

Process A for port applications involves carrying out both the screening interview and the 'substantive' interview on arrival. The substantive

interview addresses the reasons for the applicant's reasons for seeking asylum. The Immigration Officer completes a Short Procedure Asylum Interview Record (SP AIR) or a Statement of Evidence Form (SEF). Following this interview, the applicant has five days in which to submit any further information or supporting material. According to the pilot aims, the SP AIR or SEF is faxed to the Integrated Casework Directorate (ICD), where a caseworker will make a decision within two hours. If it is decided to grant Refugee Status or Exceptional Leave to Remain, the process is complete. If the decision is negative, the '*applicant [is] interviewed at port and served with decision and appeal papers if appropriate.*'⁵²

It is worth contrasting the sequence of procedures outlined here, with IND guidelines which state that '*Applicants should always be interviewed before their application is refused (unless it is refused on non-compliance grounds.)*'⁵³ This guideline implies that unless a positive decision can be made, an interview must be carried out in order to give the applicant the opportunity to clarify their claim. In fact, it appears that decisions are made prior to an interview. Where Process B is used, a Statement of Evidence Form (SEF) is issued, to be returned to the ICD within 14 days. ICD then make a decision – if it is a negative decision, an interview is booked five days ahead. 'Immediately after interview ICD decide application' and the process is then the same as in Process A – the decision is reported to the applicant, and they may seek to appeal.⁵⁴ Again, the intention to make a decision immediately after interview is disconcerting: there does not appear to be any intention of researching what may be a complicated account.

After-entry claims for asylum seem to be distinguished only by whether or not the application is made by post. Process B is used for postal applications: a screening interview is booked within two weeks of receiving the application, whereas under Process A, for applications made in person, the asylum-seeker is immediately screened at the Asylum Screening Unit (ASU). Both postal and in-person applicants are issued with a SEF to return within two weeks. Once the SEF is returned, ICD decide to grant asylum or ELR, or book a substantive interview for five days hence. Again, the decision is made immediately after interview, and this is to be reported to the applicant within two hours. As with port applicants, '*nationality is used as a way*

⁴⁷ Lord Bassam, Hansard 16 Mar 2000 : Column WA224

⁴⁸ p105-106, Joint Council for the Welfare of Immigrants, 1999

⁴⁹ p2, Asylum Pilots and Procedures – Summary. IND, January 2000

⁵⁰ Chapter 1, 1.3 Handling Claims Immigration and Nationality Directorate Law and Policy

⁵¹ p2, Asylum Pilots and Procedures – Summary. IND, January 2000

⁵² p1, *ibid.*

⁵³ 2.5, Chapter 1 Section 1, Handling Claims Immigration and Nationality Directorate Law and Policy

⁵⁴ p1, Asylum Pilots and Procedures – Summary. IND, January 2000

*of identifying cases to be examined for whether they appear to be manifestly unfounded; but [as before] each claim is considered on its own individual merits.*⁵⁵ The summary further notes that applicants from Albania, Czech Republic, Poland, Romania, Lithuania, Latvia, Kenya and India *'may be identified for the fast track procedures being tested.'*⁵⁶

In summary, port applicants are not automatically issued with a SEF to complete, and may instead undergo a substantive interview at port. In contrast, all in-country applicants are given a SEF to complete. Thus, port applicants may have substantially less opportunity to seek advice and relate their case than in-country applicants do. This may well be connected to Monica Feria's assertion that port applicants are much easier to remove than in-country applicants.⁵⁷

For 'backlog cases', where applications were made after 1st January 1996, but before the new procedures were in place, the emphasis is on replacing the old style SCQ's and AIR's with the Statement of Evidence Form. 'Backlog' port applicants are dealt with just as new port applicants, though some variation may occur depending on which stage of the procedure has already been reached. Procedures such as substantive interviews or completion of a record form will not be repeated. Backlog in-country applicants are dealt with in the same way as new in-country applicants. If there has been no substantive interview and no SCQ has been completed, a SEF will be issued for return within 14 days. If ICD cannot make a positive decision based on this information, an interview is booked. The notes add that *'illegal entry interview may be conducted immediately after substantive interview, if appropriate.'*⁵⁸ Such an interview may result in the asylum-seeker being detained.

2.2 Detention

The 1971 Immigration Act granted the Home Secretary and police officials the power to 'detain indefinitely, and without bringing before a court, anyone whose application for entry to the UK is being considered or has been refused by the Home Office, and anyone whom the Home Office has made a decision to deport, or who is alleged to be an illegal entrant, pending removal.'⁵⁹ These powers were not originally intended to be used to detain asylum-seekers, but Dunstan notes that in

1985 and 1986, asylum-seekers began to be detained, and that since then the use of detention has dramatically increased. In the early 1990s, 200 asylum-seekers were detained at any one time in Britain, and by December 1996, this had increased to over 810.⁶⁰

Helton has noted that the use of detention has evolved from being used as a form of immigration control which facilitated removal, to a fully-fledged form of deterrence, according to which *'those in detention will be encouraged by their treatment (or mistreatment) to leave, and, more generally, others will be discouraged from coming to the territory where detention is practised.'*⁶¹

Determining who should be detained is an administrative decision, which does not appear to be subject to particular scrutiny. Recent research by Leanne Weber and Loraine Gelsthorpe concluded that

*many [reported uses of detention] are legally and ethically questionable, and represent short-term and arguably ineffective solutions to the real underlying problems they seek to address, i.e. large scale population movements; gaps in welfare provision; administrative overload; and increasing suspicion and doubt over applicants' identity and intentions, which has been exacerbated by the imposition of visa restrictions.*⁶²

2.3 The need for legal services

If the British government's main concern were providing protection to those in need, and if asylum-seekers were given the benefit of the doubt, the procedures outlined above might be appropriate. However, as we have seen, the government's main concern is controlling immigration, and the burden of proof is on applicant. Given this context, particular regard must be paid to those elements of the determination procedure that put asylum-seekers at an intolerable disadvantage. The requirements of the SEF, and the policy of refusing applications on the grounds of non-compliance make it essential that asylum-seekers have access to legal services. The acceleration of all procedures heightens the need for good advice and representation. However, the IND does not acknowledge this.

For those who are given one, the Statement of Evidence Form is the prime opportunity for asylum-seekers to relate the grounds of their application. In theory, the substantive interview is also a forum for relating events leading to flight,

⁵⁵ p4, *ibid*

⁵⁶ *ibid*

⁵⁷ p91, Feria 1996

⁵⁸ p5, Asylum Pilots and Procedures – Summary. IND, January 2000

⁵⁹ p97, Joint Council for the Welfare of Immigrants, 1995

⁶⁰ p3-4, Dunstan, 1996

⁶¹ p137, Helton, 1990

⁶² p115, Weber and Gelsthorpe, 2000

but as has been indicated above, it would appear that interviews are carried out as a matter of course, and that in many or most cases a negative decision is likely to have been made beforehand. An examination of the SEF reveals a number of factors indicating that without legal services, asylum-seekers have little chance of being able to complete it adequately.

- Firstly, the form is only provided in English, and must be completed in English. Any supporting evidence must be submitted *'with the appropriate information relevant to [the] claim translated into English. Any translations should be provided by/from a recognised/authorised source or signed by a solicitor as a true translation of the original.'*⁶³
- Secondly, the SEF requires applicants to categorise themselves: they must state on what basis they fear, or have experienced persecution, using the criteria stated in the 1951 Convention – race, religion, political opinion, 'any other reason including membership of a particular group' (the applicant must specify), and, in addition, 'avoiding military service.' However, the UNHCR Handbook on Procedures states that *'the applicant himself may not be aware of the reasons for the persecution feared. It is not, however, his duty to analyse his case to such an extent as to identify the reasons in detail. [Rather,] it is for the examiner, when investigating the facts of the case, to ascertain the reason or reasons for the persecution feared and to decide whether the definition in the 1951 Convention is met with in this respect. It is evident that the reasons for persecution under these various headings will frequently overlap.'*⁶⁴ Furthermore, though the IND chose to make applicants self-categorise, no examples are given of accepted 'social groups' such as those characterised by gender or sexual orientation, nor does the form refer to imputed political opinion. Interpretations of 'social group' categories are supposed to have changed since the House of Lords ruled that while member of a social group must have 'an immutable characteristic', the group in question need not have any degree of cohesion.⁶⁵ Given this ruling, the SEF should

point out what social groups might be accepted, if it is to force asylum-seekers to categorise themselves.

- Thirdly, the SEF's design does not allow for a chronological recounting of events – having to recount experiences in categories can lead to confusion and omissions.
- Fourthly, the design of the form appears inappropriate for its purposes – though the introductory notes state that extra pages may be attached, the space provided within the form is clearly never likely to be adequate: for example, approximately seven lines are given to respond to the question *'What form has this persecution or harassment taken? Please give full details of any incidents, giving dates if possible.'*⁶⁶

Considering the quality of desktop publishing now available, the SEF is also striking for its apparent lack of professionalism – this may in part explain why, according to many solicitors and charity workers, asylum-seekers do not realise how important the form is, and why many wait until it is late – or too late – to complete it. This last point may seem trivial, but it is but one tangible example of the disregard for asylum-seekers' perspective, and their need to for a reasonable opportunity to relate their case.

The SEF must be returned within 14 days. It is possible to apply for an extension on this requirement,⁶⁷ but this is not stated on the form. Where an asylum-seeker does not return the SEF in time, their application for asylum will be refused on the grounds of non-compliance. The speed with which asylum-seekers and their legal representatives must complete the form, in tandem with the other obstacles above, mean that it is difficult to relate circumstances in full. Nonetheless, the last page of the SEF requires the asylum-seeker to declare that the information is 'complete and true', and that they are aware that it is an offence under the 1971 Act to give false information. Paul Ward, a solicitor providing representation to asylum-seekers, states that he frequently adds a disclaimer stating that given the conditions in which the SEF has to be completed, such a declaration could not be made in full confidence.⁶⁸

Addressing the issue of refusals on the grounds of non-compliance, guidelines issued by the European Council on Refugees and Exiles (ECRE) state that *'an asylum request should not be*

⁶³ Introduction notes, Statement of Evidence Form, IND

⁶⁴ Paras 66-67, Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees, 1992

⁶⁵ Shah and Islam case, cited in IND law and policy, chapter 1 section 2 :Assessing the claim

⁶⁶ Question 3, Annex 1, Statement of Evidence Form.

⁶⁷ Letter from IND Major Projects Team to Susan Rowlands, General Secretary of the Immigration Legal Practitioner's Association, 25th January 2000.

⁶⁸ Paul Ward, interview 31/07/00

excluded from the asylum procedure for non-fulfilment of formal requirements.⁶⁹ This recommendation follows the logic that an asylum-seeker's ability or inability to fulfil formal requirements has no bearing on the validity of their case. An asylum-seeker refused on grounds of non-compliance may appeal. However, as with all measures which reduce asylum-seekers' opportunities to present the details of their case to be assessed on merit, the concern here is that though there is the opportunity to appeal, such an appeal would be the first occasion to present the facts of the case. This means that in practice, there is no appeal. Furthermore, the later facts are presented to the authorities, the more the credibility of the applicant is questioned.

Access to legal services would limit the risk of being refused on non-compliance grounds, or because the statements made in the SEF were not sufficiently detailed and relevant to adequately relate the merits of an individual case. The ECRE guidelines state that

*'each applicant for asylum should immediately be informed upon requesting asylum, of the right to qualified independent legal advice and representation, and how to exercise it without delay. This includes, where the financial situation of the asylum-seeker requires, the provision of free legal assistance by the host state. Legal assistance should be available throughout the procedure.'*⁷⁰

Emphasising this point, ECRE adds that where states *'persist in the use of accelerated procedures, minimum guarantees from which there can be no derogation must include: access to free qualified and independent legal advice...'*⁷¹

However, though asylum-seekers are allowed to seek legal advice and representation, they do not have an explicit right to such services. This means that the inability to access legal services will not be taken into account when assessing an application for asylum. An IND leaflet aimed at asylum-seekers states: *'You do not have to get advice for the completion of an application, but you may feel that you need assistance, perhaps in completing some of the forms or if your application is not straightforward.'*⁷² The same leaflet states that if an asylum-seeker considers they have received *'poor or incompetent advice,'* they should *'complain to the Office for the Supervision of Solicitors.'* There is no reference to

how the applicant may contact anyone regarding the consequences of poor advice, and no mention that incompetent advice would be considered. In line with the stance that legal services are not necessary, the IND summary of procedures notes that though legal advisors or representatives are allowed to attend interviews, *'postponements will not normally be allowed solely to enable a representative to attend.'*⁷³

The assertion that legal services are not essential at every stage of the determination process is clearly ill-founded, given the considerations above. In the absence of an explicit right to legal representation for asylum-seekers, the focus must be on the administrative frameworks upon which access to legal services depends. Before examining the legal services system, it is relevant to note some recent developments at the Integrated Casework Directorate – these will be shown to have an indirect but significant impact on asylum-seekers' ability to gain access to legal services.

2.4 Swift decisions and the backlog blitz

As has been seen above, the swiftness of all asylum procedures increases asylum-seekers' need for legal services. Up until recently, though, the time restrictions imposed on asylum-seekers were contrasted with the slow rate at which decisions were made. This meant that though asylum-seekers did not have the opportunity to adequately relate their case, a backlog of cases began to grow.

From asylum-seekers' perspective, a long wait is problematic, as Home Office research has indicated:

*'the time taken for the [IND] to arrive at a decision on whether an asylum-seeker will be allowed to stay has always been a major problem. [It is time spent] "in limbo" that is both practically and psychologically damaging to those who fear returning home and at the same time are unsure that they can re-orientate themselves to life in a new country.'*⁷⁴

It is worth noting that this assertion was made before conditions for asylum-seekers were made considerably harsher, under the 1996 and 1999 Acts. The backlog was also problematic from the perspective of a government intent on immigration control, as noted by the 'Fairer Faster Firmer' White Paper: *'Backlogs and delays create additional inefficiencies in processing, and do*

⁶⁹ Paragraph 3, ECRE Guidelines on Fair and Efficient Procedures for determining refugee status, 1999

⁷⁰ para 4, *ibid*

⁷¹ para 20, ECRE, 1999. My emphasis.

⁷² IND leaflet. Information about: getting advice on Immigration matters

⁷³ p2, Asylum Pilots and Procedures – Summary. IND, January 2000

⁷⁴ p107, Carey-Wood, Duke, Karn & Marshall, 1995

*nothing to foster the morale of conscientious caseworking staff.*⁷⁵

In 1998, the government decided that where decisions had not yet been made on asylum applications made before 1st July 1993 'delay in itself will normally be considered so serious as to justify, as a matter of fairness, the grant of indefinite leave to enter or remain.' It was estimated that this decision would benefit approximately 10,000 cases.⁷⁶ Of the 20,000 cases still undecided which dated from between July 1993 and the end of 1995, the time already spent in the UK would possibly be taken into account, if there were factors such as children's schooling or 'a continuing record of voluntary or other work by the applicant in the local community.'⁷⁷

However, attempts to improve case processing were mismanaged, and a botched computerisation project and an ill-timed move of the directorate's headquarters led to one of the biggest bureaucratic breakdowns in the history of Whitehall. At one point the number of decisions taken each month fell to 800 and the backlog soared from 50,960 in February 1998 to a peak of 104,000 earlier this year.⁷⁸

Attempts to rectify this situation have included the IND 'focusing new staff on asylum casework before developing wider ICD skills', and 'cutting down the layers of decision making (one pair of eyes), enabling caseworkers to take ownership of cases.'⁷⁹ Furthermore, in July 2000 the government announced that as well as £400 million a year over the following three years, an extra £600 million was being awarded to the Home Office, in a bid to drastically reduce the backlog within six months. Large-scale recruitment campaigns were already underway, and it was estimated that the overall number of staff would increase from 6,500, to around 9,000 by March 2001. A Home Office spokesperson announced that they planned to make between 130,000 and 150,000 decisions in the upcoming financial year. Nick Hardwick, of the Refugee Council, cautiously welcomed the news, noting that delays had been caused by an administration unable to assess complex cases.⁸⁰

It is clearly to be welcomed that the number of staff available to assess cases has already increased, and will increase further over the next few months. It must also be hoped that they will

receive training that includes adequate emphasis on the need to study the individual merits of each application for asylum, and that complex cases will be handled with the care they require. Whether or not these necessities can be guaranteed, one consequence emerges very clearly: legal service providers are going to be called on more than ever. Though efforts are being made to improve the quality of legal services, there is no indication that the £1 billion awarded to the Home Office this year, with more to follow, is being met with proportionate support for the legal services system.

2.5 Oakington: a processing experiment

The Oakington 'reception centre' was opened on 20th March 2000. The Minister of State, Barbara Roche, explained its function:

*'In addition to the existing detention criteria, applicants will be detained at Oakington where it appears that their application can be decided quickly, including those which may be certified as manifestly unfounded. [...] Detention will initially be for a period of about seven days to enable applicants to be interviewed and an initial decision to be made. Legal advice will be available on site. If the claim cannot be decided in that period, the applicant will be granted temporary admission or, if necessary in line with existing criteria, moved to another place of detention.'*⁸¹

In essence, Oakington is a processing centre which enables determination decisions to be made with unprecedented speed, and in this respect, it is an extreme example from a system which aims to limit asylum-seekers' opportunity to relate the full details of their case.

However, practices at Oakington are different to other determination procedures in one important respect: asylum-seekers who are sent there are guaranteed legal services. The Refugee Legal Centre (RLC) and the Immigration Advisory Service (IAS) have offices on-site, and the Home Office has agreed not to send any more asylum-seekers to Oakington than can be handled by these two organisations. Not only are asylum-seekers at the centre guaranteed a legal representative, but there appear to be none of the access problems which have been reported by legal practitioners and their clients around the country. Chris Rush, who is running the RLC at Oakington, reports that if a legal representative wishes to see a client, they need only request that the client be brought to them, and this is effected

⁷⁵ 8.27, Fairer Faster Firmer White Paper, July 1998

⁷⁶ 8.29, *ibid*

⁷⁷ 8.30, *ibid*

⁷⁸ The Guardian, July 24, 2000

⁷⁹ Immigration and Nationality Directorate Report, 1999

⁸⁰ The Guardian, July 24, 2000

⁸¹ Barbara Roche, Hansard, 16th March 2000, column 263W

immediately. He asserts that access is just as straightforward when it is a client who makes the request.⁸²

Between the centre's opening on 20th March and 31st May 2000, 338 main applicants were accommodated at Oakington, and 265 cases were decided. Of these, three were granted refugee status or Exceptional Leave to Remain. Thus, 262 received a negative decision, and 73 cases were presumably taken out of the Oakington system. Either a negative decision, or an extension of the decision time might result in release to a private address, detention, or a move to another part of the country under the dispersal scheme. Indeed, 147 applicants were dispersed, 101 were released to a private address, and 49 were detained elsewhere. Thirty-seven of those refused left the country, of whom 11 were removed after their appeal failed.

As far as the Home Office is concerned, the processing experiment is proving successful – so much so that substantial funds are being channelled to the centre, and the RLC had recently recruited an additional 25 caseworkers. It is estimated that when the system is running at full capacity, it will be able to process 240 cases per week, that is 12,000 cases every year⁸³. Though Oakington has not yet developed full capacity, its swift processing may yet have a serious impact on legal practitioners in other areas of the country. The rate of negative decisions made at Oakington is clearly very high, as outlined above. It is also clear from the figures above that a majority of refused applicants from Oakington choose to appeal, since if they did not, they would not be dispersed, nor would they normally be granted temporary leave.

Chris Rush noted concern regarding the continuity of legal service provision for applicants who are released from the centre, in particular those who are dispersed to areas in the North of the country where the RLC does not have offices.⁸⁴ Though the IAS does have offices in the North of the country, it is not clear whether any attempt is made to send asylum-seekers to areas where they will be able to access them.

What is clear is that swift processing tends to result in a high rate of appeals. Though asylum-seekers initially dealt with at Oakington have access to legal services while they are there, there is no specific provision for ensuring they continue to have such access when they choose to appeal. In this respect, the swift case processing at Oakington would appear to add to

the shortfall problem in the rest of the country, since it increases the rate at which asylum-seekers will be seeking advice for pursuing appeals.

2.6 Appeals

Under Section 8 of the 1993 Act, asylum applicants who are given a negative decision may appeal, and for the duration of their appeal, any deportation orders must normally be suspended. However, as the IND 'Law and Policy' paper states, *'in certain "safe third country" cases [...] the right of appeal is exercisable only after removal.'*⁸⁵ In such cases, the appeal must be conducted from outside of the UK.

Appeals are heard by the Immigration Appellate Authority (IAA), an independent judicial body whose members are appointed by the Lord Chancellor's Department. The first appeal is heard by a special adjudicator, who must consider whether return to the country of origin would be in breach of the 1951 Convention. In order to do this, the adjudicator questions the applicant on the circumstances that led to flight, and *'questions of credibility, applying the test of "reasonable degree of likelihood" are frequently of paramount importance.'*⁸⁶

There has been a change in the way appeals are dealt with where an asylum-seeker has been refused on non-compliance grounds. Previously, such appeals assessed whether the applicant had good reasons for failing to comply, and if this was found to be the case, the application would be re-considered. However, in February 2000 the Immigration Appeal Tribunal (IAT) ruled that, where *'the appellant [seeks] to justify his failure to co-operate by relying on the experiences which have led him to claim asylum'* the special adjudicator has to consider not only whether the reasons provided are reasonable, but also whether or not the events related really happened. The IAT asserted that *'in those circumstances, it would be absurd not to reach a conclusion on the whole claim.'*⁸⁷ The ruling is problematic. It means that in many cases, the full details of the case are only revealed for the first time at the appeals stage, often in a confrontational setting. Such a setting may not be conducive to relating complex circumstances. Even more important is the result that such cases effectively have no appeal, since the appeals stage is being used as the first opportunity to relate the facts and assess the case. As has been

⁸² Chris Rush, interview 09/08/00

⁸³ *ibid.*

⁸⁴ *ibid.*

⁸⁵ 1.1 chapter 12, section 1, IND Law and Policy p3, David Pearl, 1998

⁸⁷ p3, Immigration Appeal Tribunal – Key case Ali Haddad vs the Secretary of State for the Home Department. 15/02/2000

seen above, the strict time limits imposed on the return of Statement of Evidence forms increase the likelihood that applicants will be refused on non-compliance grounds. In August this year, 35% of decisions made on asylum applications were to refuse on non-compliance grounds.⁸⁸

Swift procedures not only increase the likelihood of non-compliance – they also increase the risk of refusal, because even when asylum-seekers have access to legal services, they and their representatives may not have enough time to relate their case in sufficient detail. Furthermore, it is possible that the time limits set on ICD caseworkers will restrict their ability to consider apparent contradictions or complications. Where an individual is refused asylum because of these factors, the appeal will be the first opportunity to address such complications. The result is that the appeal is becoming part of the determination process, and cannot fulfil the function its title implies. Nonetheless, following a negative decision by an adjudicator, there remains the possibility of appealing to the IAT, except for certified cases.

On the basis of the evidence above, it would appear that the Home Office is not giving adequate attention to the individual merits of each case, and is tending towards a policy of refusing claims, leaving a more considered decision to the IAT. This is a serious charge, and it cannot be proven since Immigration decisions are *'administrative and discretionary rather than judicial and imperative'*, as was stated during an appeals process in 1987.⁸⁹ However, Richard Dunstan has noted with alarm a suspicious consistency in recognition rates between 1993 and 1996, and suggested that

*'the Home Office has operated an unofficial and undisclosed quota system, whereby the total number of applicants granted either asylum or ELR is kept below an arbitrary ceiling of approximately 20% of all decisions made. [...] In short, it is Amnesty International's view that the current low recognition rates reflect the narrowness of the Home Office's application of the refugee definition, and the imposition of an arbitrary ceiling on the granting of asylum and ELR, rather than the legitimacy or otherwise of individual asylum claims.'*⁹⁰

If any such arbitrary system is operating, it has serious consequences not only for individual asylum-seekers, but also for legal practitioners, who must, almost as a matter of course, prepare not only initial applications, but also appeals. This may contribute to an increase in workload, and thus exacerbate any existing shortfalls in services. The system for providing legal services to asylum-seekers must be considered.

3. The Legal Services System

The 1999 Immigration and Asylum Act contains provisions for the statutory regulation of the provision of Immigration services, by a newly established Immigration Services Commissioner. Under the Act, it is a criminal offence to provide immigration advice and services when not registered to do so, unless exemption from the requirement to register has been given.⁹¹ A new Immigration Services Tribunal is to hear cases against unscrupulous immigration advisers, brought by the Immigration Services Commissioner. There appears to have been no recognition of the Refugee Council's recommendation that the Immigration Services Commissioner *'should have the power to reopen an appeal where an asylum-seeker's case has been damaged, through no fault of their own, by poor quality representation.'*⁹²

The entire legal aid system is in the process of change. Previously, individuals could approach any legal service provider, and apply for legal aid to cover the costs incurred. Concern about the quality and cost-efficiency of some of these services has spurred the creation of a new Community Legal Services section within the Lord Chancellor's Department, responsible for coordinating services and providing information to the public about what type of service they might need, and where they can find it.

The Legal Aid Board has been replaced by the Legal Services Commission (LSC). Under the new scheme, the LSC awards franchise contracts to *'any solicitors' firm, [...] Law Centre or independent advice agency employing a solicitor with a current practising certificate and [complying with all principles of conduct]'*⁹³ which meets the franchise criteria. The LSC puts forward two broad aims for the new scheme: improved regulation of the quality of legal services, and improved management of expenditure. Currently, firms or agencies may apply at any time for a franchise contract. When the scheme is further established, there will be strict timetable

⁸⁸ NEED REF FOR THIS – I WAS INFORMED BY PAUL WARD

⁸⁹ Bugdaycay v Secretary of State for the Home Department (1987) 1 All ER 940
Cited p 71 Schuster and Solomos, 1999

⁹⁰ p41, Dunstan, 1996

⁹¹ part 5, 1999 Asylum and Immigration Act

⁹² p8, Refugee Council, March 1999

⁹³ p4, Legal Aid Franchise Quality assurance Standard – 4th Edition, April 2000

requirements.⁹⁴ It is hoped that the system will be fully established by Spring 2001.⁹⁵ Immigration and nationality form one of 15 categories in which a firm may apply for a franchise contract.⁹⁶

3.1 Awarding franchise contracts

The LSC publishes detailed requirements for a prospective franchise. Criteria include adequate management and supervision of staff, good financial management and cost control, and standards of internal quality control. The application form consists of a 12-page-long checklist of standards, which applicants must confirm they meet. When this application form is received, the LSC conducts a 'preliminary audit' to *'establish that the organisation is capable of meeting the appropriate supervisor standards for the category(ies) applied for and has a set of office procedures that prima facie meet the obligations of the quality assurance standard.'*⁹⁷ This assessment is carried out by regional office audit staff. If the preliminary audit is successful, the organisation receives 'pre-franchise' status. During the 'pre-franchise' period, the LSC will assess all publicly funded work submitted to it by the applicant organisation, over a 3- to 6-month period. This is to assess, *inter alia*, *'the organisation's ability to present documentation in a way that represents the client's best interests and that does not cause unnecessary delay to clients through poor administration.'*⁹⁸

If the pre-franchise monitoring is not satisfactory, the LSC may extend the monitoring period for a maximum of 3 months. If the organisation cannot prove its capabilities during this extended period, the application will be refused. If the pre-franchise period is successful, the organisation moves on to the next stage, the 'pre-franchise audit,' which focuses on the likelihood of the organisation being able to maintain compliance with the quality standards. This involves an auditor examining at least two file reviews. If the pre-franchise audit is successful, a franchise contract is awarded. Thereafter, a post franchise audit is carried out between 6 and 12 months from the contract award, and annually thereafter.

Since one of the aims of the franchising scheme is to limit unscrupulous practices, it may be assumed that the process would result in a decrease in the number of legal service providers. However, due to the high demand for legal

services in the immigration category, the LSC has opted to phase in the franchising process. Thus, a large number of legal service providers who have passed the preliminary audit now have a temporary right to provide publicly funded services. When the full series of audits have been successfully completed, these firms will be officially awarded franchise contracts, so long as there is sufficient demand in their area. As will be seen, this will almost certainly be the case for firms providing services for asylum-seekers anywhere in the country. If the firm cannot successfully complete all stages of the franchising process, their right to provide relevant services will be withdrawn.⁹⁹ On 7th June 2000, 194 franchise contracts had been awarded.¹⁰⁰ Currently, there are 487 firms operating immigration services, under the phasing in programme above.¹⁰¹ A survey carried out in June 2000 found that all immigration practitioners in London deal with asylum cases, as do 97% of those outside London.¹⁰²

The impact of the new legal services system on asylum-seekers' ability to access services must be seen in conjunction with the new system for supporting asylum-seekers while they await a decision on their case.

4. The National Asylum Support System

The support system for asylum-seekers has been in flux ever since the 1996 Asylum and Immigration Act distinguished port applicants from in-country applicants, and granted standard welfare benefits only to port applicants. This meant that in-country applicants and those pursuing appeals lost any entitlement to income support, and associated benefits, and all asylum-seekers lost their entitlement to wider family benefits, such as child benefit, disability living allowance, and family credit. However, in October 1996, the High Court ruled that local authorities had a duty under the 1948 National Assistance Act to provide services such as shelter, warmth and food to asylum-seekers with no other means of support.¹⁰³ Largely as a result of separating many asylum-seekers from the national welfare system, local authorities came under pressure, particularly in London and the South-East, where

⁹⁴ *ibid*

⁹⁵ Immigration and Nationality Directorate, Immigration advice leaflet

⁹⁶ p11, Legal Aid Franchise Quality assurance Standard – 4th Edition, April 2000

⁹⁷ *ibid*

⁹⁸ p12, *ibid*

⁹⁹ personal communication, LSC employee, 23rd August 2000

¹⁰⁰ List of franchises, provided by Legal Services Commission on 7th June 2000.

¹⁰¹ p59, Audit Commission, June 2000

¹⁰² Law Society Questionnaire, CLS Contracted Suppliers, Asylum-seekers and the Completion of SEFs: Preliminary Findings. Survey conducted June 2000.

¹⁰³ p139, Minderhoud, 1999

most asylum-seekers and refugees have tended to settle.¹⁰⁴

In response to the disproportionate burden on London and South-East authorities, and in the belief that asylum-seekers were drawn to Britain for its income support arrangements, a separate support system for asylum-seekers was developed. The National Asylum Support Service (NASS) is a new department within the Home Office, responsible for administering support to all asylum-seekers in Britain. Under the Asylum Support Regulations 2000, asylum-seekers who are defined as 'destitute,' or likely to become so within 14 days, can apply for support for 'essential living needs.' Where applications for support are accepted, asylum-seekers may be provided with vouchers, to be exchanged for goods in specified outlets. Accommodation may also be provided, 'on a no choice basis.'¹⁰⁵

It was originally intended that the Asylum Support Regulations 2000 would come into effect on 3rd April 2000. However, establishment of NASS has had some 'teething problems', and as a result, the new system is still being phased in. In the meantime, interim arrangements, which began in December 1999, still apply. The interim arrangements¹⁰⁶ followed on from changes made to welfare support for asylum-seekers in 1996, when in-country applicants were denied income support, and, following a decision by a High Court ruling, it became local authorities' responsibility, under the 1948 National Assistance Act, to provide services such as shelter, warmth and food to asylum-seekers with no other means of support.¹⁰⁷ Under the 1999 interim arrangements, port applicants continue to receive welfare benefits. In-country applicants are to be supported by their local authorities, which should offer voucher payments to asylum-seekers to the value of 70% of income support. All asylum-seekers who receive a negative decision and who appeal against this decision will be supported by their local authorities, and all those who receive Refugee Status or Exceptional Leave to Remain become eligible for normal welfare benefits.¹⁰⁸

From the end of July 2000, asylum-seekers who made their application in London became supported under NASS, and from 1st September, asylum-seekers who make in-country applications anywhere in England or Wales are supported

under the scheme. Since 25th September 2000, all those whose applications are refused are being moved onto NASS arrangements for the duration of their appeal.¹⁰⁹ In the meantime, asylum-seekers will continue to be supported by the local authorities where they made their claim. Assuming this timetable is adhered to, the rate at which all asylum-seekers will be moved on to NASS arrangements will thus depend on the speed with which backlog cases are assessed.

The support provided by NASS has two facets: dispersal, and the voucher scheme. Both of these policies affect asylum-seekers' ability to access legal services. First, it is necessary to outline the implementation of these policies, and their general impact so far.

4.1 Dispersal

Dispersal is a programme according to which asylum-seekers are not given any choice about where they live, if they are to benefit from State-assisted accommodation. Under the 1999 Act, the Secretary of State must consider the temporary nature of such accommodation, and should bear in mind where accommodation is most freely available. However, he '*may not have regard to any preference that the supported person or his dependants (if any) may have as to the locality in which the accommodation is to be provided.*'¹¹⁰

Eighty-five% of asylum-seekers and refugees in Britain live in London.¹¹¹ The logic of spreading the perceived burden of supporting asylum-seekers remains the most oft-repeated basis for the dispersal programme, as confirmed by Barbara Roche's statement in July this year: '*London and the South-East have had to manage a disproportionate number of asylum-seekers and there is a recognised need to disperse asylum-seekers to suitable areas throughout the United Kingdom.*'

However, asylum-seekers' tendency to settle in London has meant that '*the capital has gradually built up a support infrastructure that attracts incoming groups. This includes well-established voluntary and community support networks, and a range of specialist services, such as legal advice and medical treatment for victims of torture.*'¹¹² Dispersal of asylum-seekers throughout the country means that services have to be developed

¹⁰⁴ p15, Carey-Wood, Duke, Karn & Marshall, 1995

¹⁰⁵ 8.21, 8.22, Fairer Faster Firmer White Paper, July 1998

¹⁰⁶ Asylum Support (Interim Provisions) Regulations 1999,

Came into force 6th December 1999

¹⁰⁷ p139, Minderhoud, 1999

¹⁰⁸ p4, Refugee Council, October 1999

¹⁰⁹ 11 Jul 2000 : Column: 515W, Hansard written answers

¹¹⁰ para. 97, 1999 Immigration and Asylum Act

¹¹¹ p13, Audit Commission Report. The Audit Commission Report sourced this information from

Refugee Health in London: Key Issues for Public Health, by the Health of Londoners Project 1999

¹¹² p13, Audit Commission Report

in areas unaccustomed to addressing asylum-seekers' needs.

From December 1999 to March 2000, a voluntary dispersal scheme was run between local authorities, and sponsored by the Local Government Association and the Association of London Government. By mid-March 2000, 1,910 'cases' had been dispersed.¹¹³ On 3rd April, the scheme ceased to be voluntary and was taken over by NASS. Between then and 24th July 2000, 4,106 asylum-seekers, including dependants, had been dispersed.¹¹⁴

In June 2000, the Audit Commission produced a report about dispersal of asylum-seekers.¹¹⁵ It assessed the conditions of asylum-seekers dispersed under the voluntary scheme, and forecast which matters would have to be considered if dispersal was to be achieved without causing significant harm to asylum-seekers and strain on local authorities and professionals unused to providing the services required by asylum-seekers.

First of all, this report noted that dispersal is not a new concept: Vietnamese refugees who arrived in Britain in the 1970s and 1980s, and later Bosnians in the 1990s were also sent to specified areas across the country. The programme for Vietnamese refugees used the availability of housing as the main criteria for determining locations, and as a result settlement was problematic, particularly where refugees were subject to racial harassment or had difficulty finding work. Many Vietnamese refugees migrated towards major cities such as Birmingham or London, which offered more economic opportunities and community support networks.¹¹⁶ The report noted in contrast that the policy of 'clustering' Bosnians *'promoted the development of new community support networks and led to more successful settlement.'*¹¹⁷ However, when Kosovan Albanians were dispersed following airlifts from camps in Macedonia, Bloch noted that since *'community networks, appropriate information and legal advice are located mainly in*

*London, and refugees want to be in areas where such networks exist,*¹¹⁸ in the early stages of the programme, around 30% of dispersed Kosovan Albanians had already moved to London.¹¹⁹

It is clearly very important that if dispersal is to take place, asylum-seekers must be sent to areas where the services they need are available to them, and where the local population is prepared to live in a multicultural community. This was part of the aims originally outlined for the scheme, and the Audit Commission Report notes that *'in theory, [asylum-seekers] will be housed in regions where there is already a multi-ethnic population and the scope to develop voluntary and community sector support. As far as possible, dispersal will aim to create language-based 'clusters' across the UK.'*¹²⁰

However, the Refugee Council has noted that *'though availability of accommodation is listed [in the 1999 Act] as a key factor [in deciding where to send asylum-seekers], other crucial issues such as specialist community services or access to legal support in pursuing their claims are not mentioned.'*¹²¹ The Audit Commission Report confirmed that 'in practice, the availability of accommodation is likely to be the determining factor in the final placement – the Home Office acknowledges that, if accommodation is in short supply, the other criteria will assume a lesser priority.'¹²²

The Audit Commission Report has also warned that local communities in the new dispersal areas need to be better prepared, as legal, health, education and social services were inadequate for the imminent challenge:

*For local agencies with little knowledge of the cultural needs of asylum-seekers, or the problems that new arrivals often face in using services, dispersal will represent an immense challenge. Local government and its partners need to learn fast and plan well if they are to meet the needs of this vulnerable group. Failure to do so could escalate community tensions and incur substantial long-term costs.'*¹²³

Dave Garrett, the Northern Director of Refugee Action, commented less reservedly, asserting that the dispersal programme was *'heading for failure*

¹¹³ p 19, Audit Commission Report. Original source: Local Government Association, (LGA), *Asylum-seekers Voluntary Dispersal Scheme, Bulletin No. 5*, LGA, week ending 11 February 2000.

Asylum-seekers are frequently referred to as 'cases.' In this instance, it must be presumed that the figure refers to asylum application cases, and thus does not include dependants.

¹¹⁴ Personal communication from Frances Platel, at the National Asylum Support Service.

¹¹⁵ Another Country - Implementing Dispersal Under the Immigration and Asylum Act 1999.

Audit Commission, June 2000

¹¹⁶ p16, Audit Commission Report ; Joly, 1989

¹¹⁷ p16, Audit Commission Report

¹¹⁸ p25, Bloch 1999 (FMR)

¹¹⁹ p13, Bloch 2000

¹²⁰ p14, Audit Commission Report. Statement sourced from Immigration and Nationality Directorate (IND), *Cluster Areas*, February 2000

¹²¹ p11, Refugee Council, March 1999

¹²² p14, Audit Commission Report.

¹²³ p6, Another Country, Audit Commission Report June 2000

on every level' and referring to suspicions that dispersal was at least as much about deterring economic migrants who wished to settle in areas where they would be able to quickly improve their financial circumstances:

*'It will not work for asylum-seekers. They will be put in areas not used to multiculturalism, so that will lead to antagonism. They will not have health, legal or education services. And it will not work for the government because it will not stop people coming to Britain.'*¹²⁴

Of more immediate concern for the dispersal programme is the possibility that bad implementation might lead to complete failure of the scheme, as feared by the authors of the Audit Commission Report: *'Without effective support, asylum-seekers could easily become locked in a cycle of exclusion and dependency in their new community. Alternatively, they could simply 'vote with their feet' and return to London, again putting pressure on health and education services in the capital.'*¹²⁵

There is already some evidence that asylum-seekers are reluctant to accept accommodation provided on a 'no-choice' basis. When asked in the Commons how many asylum-seekers had refused offers of accommodation, Barbara Roche did not offer a clear answer, but did note that *'not all claims for support will involve a request for accommodation. Of [the 5,100 claims for NASS support between April and July 2000] 2,190 were offered accommodation.'*¹²⁶ It must be assumed that of the 2,910 applicants who were not 'offered accommodation,' some will have been refused full support under NASS, while others will have refused to accept accommodation on a no-choice basis. Whatever the ratio between those refused accommodation and those who refuse to take it up, it remains that over half of the applicants for NASS support in the first three months of the scheme were not dispersed. The Refugee Council has found that 70% of single asylum-seekers, and 42% of family applicants who come through their reception centre choose not to apply for accommodation.¹²⁷ Lisa Neal of the Refugee Council's Emergency Legal Referrals Project has noticed that some of the asylum-seekers at the One Stop Service in Brixton are refusing accommodation in remote areas. Neal asserts that this is often due to hearing about other asylum-seekers' experiences following dispersal, particularly where there have been incidents of

racially-motivated attacks.¹²⁸ The police in Hull have recorded over 100 incidents of racial abuse or violence in Hull since refugees began arriving in the city eight months ago.¹²⁹ However the Refugee Council has noted that even where asylum-seekers cite racial harassment as a reason for leaving a place they were dispersed to, NASS representatives have told them to return.¹³⁰

Though Barbara Roche insists that reports of poor implementation of the dispersal scheme are exclusively based on the (voluntary) *'ad hoc, back-door dispersal,'* rather than the NASS supported national scheme,¹³¹ the concerns have not abated, a point pressed by David Lidington:

*Why do we constantly hear complaints from local authorities such as Blackpool, and from voluntary organisations such as the Refugee Council, to the effect that the dispersal programme is being carried out in a shambolic fashion? Many people are not given adequate accommodation and access to legal advice and interpreters, despite the Government's continual promises. Why is there a steady flow of people back from the areas of dispersal to London and the South-East, as the Evening Standard reports only today? Is that not the clearest evidence that the Government's policy is not working in the way they promised us?*¹³²

4.2 The voucher scheme

Support for 'essential living needs' is provided by NASS in the form of accommodation where appropriate, and also *'in the form of vouchers redeemable for goods, services and cash.'*¹³³ In practice, one voucher to the value of £10 is to be given to each asylum-seeker every week, which they can exchange for cash.¹³⁴ The rest of the vouchers are only redeemable for goods in specified outlets. If asylum-seekers are designated accommodation where other 'essential living needs' are included, such as meals, the value of these provisions are to be deducted from the asylum-seekers' weekly voucher allowance. It is worth noting the exact amounts provided, simply to consider how much can be bought with these weekly incomes. Table 3, below, shows the weekly support given to asylum-seekers, including the £10 cash, and excluding the value of accommodation.

¹²⁴ The Guardian, 1st June 2000

¹²⁵ p6, Audit Commission Report June 2000

¹²⁶ Barbara Roche, Hansard, 11th July 2000 column 517W

¹²⁷ p23, Refugee Council August 2000. (inexile)

¹²⁸ Lisa Neal, interview 15/08/00

¹²⁹ p9, inxile August 2000

¹³⁰ p23, inxile August 2000

¹³¹ The Guardian, 1st June 2000

¹³² David Lidington, 24th July, Hansard column 744

¹³³ Section 10.2, The Asylum Support Regulations 2000

¹³⁴ Section 10.6, ibid

Table 3: Levels of NASS support, excluding accommodation

Asylum-seekers	Weekly support
Qualifying couple	£57.37
Lone parent aged 18 or over	£36.54
Single person aged 25 or over	£36.54
Single person aged between 18 and 25	£28.95
Person aged between 16 and 18 (except member of a qualifying couple)	£31.75
Person aged under 16	£26.60

Source: Section 10.2, *The Asylum Support Regulations 2000*

The support outlined above is approximately equivalent to 70% of normal income support. Where accommodation is provided, it is calculated that the total amount given is equivalent to 90% of income support.¹³⁵ The limited nature of these provisions was justified not only by its intended deterrence effect, but also on the premise that the Home Office would process all claims for asylum within six months.¹³⁶ Pressure groups lobbied the government to assure asylum-seekers that they would not be penalised for the Home Office's inability to reach their own target, and suggested that after six months, asylum-seekers should be eligible for income support, but this was not accepted.

Concerns focus on the three aspects of the voucher scheme. First, it provides less than income support (itself a 'minimum' standard), despite Home Office research confirming that when asylum-seekers arrive, they usually have *'immediate needs for food, clothing and housing,'* and are hence more rather than less likely to have to purchase extra goods.¹³⁷

The second point of concern about the voucher scheme is that it stigmatises asylum-seekers. Dianne Abbot MP noted early on that: *'We all know that the system carries a built-in stigma.'*¹³⁸ The Refugee Council has received numerous reports of asylum-seekers being told they cannot purchase particular goods¹³⁹, as well as discriminatory treatment such as being followed

around a supermarket by security guards.¹⁴⁰ Even more disconcertingly, vouchers provide a simple means of identifying asylum-seekers, at a time when political discourse and media reporting has fuelled racist beliefs and behaviour, and some asylum-seekers are being sent to communities unused to ethnic diversity.

Most importantly in this context, the voucher scheme severely restricts asylum-seekers' ability to choose what they purchase and where, and what services they may pay for, even where there are no overt prohibitions. Vouchers are only valid in participating chain stores, which may not offer the best value for all goods. The restrictions imposed by the use of vouchers rather than cash have a strong impact on asylum-seekers' ability to prioritise how to spend their very limited funds. They must sometime travel significant distances to reach participating shops, and yet are unlikely to have the funds to pay for public transport.¹⁴¹ Complicated calculations must be made to ensure using the vouchers as well as possible, as no change may be given, despite the fact that participating supermarkets receive the full value of any vouchers given. It is not illegal to give change for vouchers, but an administrative decision to that effect was made by the Home Office.¹⁴²

The Home Office argues that asylum-seekers may use their weekly £10 to top up the difference between their vouchers and the value of their purchases. However, it also cites the weekly £10 as the solution to transport needs, recreation facilities and access to better value shops and markets.¹⁴³ It has not explained how £1.43 a day can cover these costs. Vouchers must be collected from post offices. Referring to circumstances in his 'cluster area', Lord Greaves expressed the dilemma posed for many:

*'There is one local problem that I have already raised and will continue to raise until it is dealt with. The NASS told me, helpfully, that post offices where vouchers could be obtained should not be more than three miles away. The fact is that Nelson is well over four miles from Burnley. A return on the bus costs £1.30. One has a voucher for goods and also a voucher that can be cashed for £10. To get that £10 one must spend £1.30 return on the bus.'*¹⁴⁴

¹³⁵ p2, Refugee Council, Briefing: Immigration and Asylum Bill 1999 October 1999

¹³⁶ section 8.18 and 8.17 respectively, Fairer Faster Firmer White Paper, July 1998

¹³⁷ p13, Carey-Wood, Duke, Karn & Marshall, 1995

¹³⁸ Dianne Abbot MP. Quoted, p15, Refugee Council, June 1999

¹³⁹ Refugee Council, June 1999

¹⁴⁰ p4, Refugee Council, September 1999

¹⁴¹ p14, Refugee Council, June 1999

¹⁴² The Guardian, 15th March 2000

¹⁴³ p2, Refugee Council, March 2000

¹⁴⁴ Lord Greaves, Lords Hansard 7 Jul 2000 : Column 1756

The White Paper assured that as well as living essentials, other basic needs would be catered for, such as '*facilities to enable asylum-seekers properly to pursue their applications, for example by telephoning their representatives or travelling to attend an interview at the Immigration and Nationality Directorate.*'¹⁴⁵ Arrangements are indeed made for asylum-seekers to attend interviews at the IND, but it would appear that the government decided to recant on the remainder of its assurance. The Asylum Support Regulations 2000 specify certain items and expenses that will not be considered 'essential': these include the cost of faxes; computers and the cost of computer facilities; the cost of photocopying; and travel expenses (except for travel for the purpose of dispersal).¹⁴⁶ Stationery, stamps and telephone calls are not considered 'essential' either. Quite simply, any access to their legal representatives will have to be paid for with the £10 cash – the same £10 which asylum-seekers are expected to use for transport to participating food outlets, and topping up vouchers.

As is clear from the point made above, the serious concerns about the voucher scheme tend to be exacerbated when seen in conjunction with concerns about the dispersal programme. In fact, it will be seen that all of the policies outlined so far have individual impacts, which are heightened in conjunction with each other. The following part of this paper seeks to demonstrate how each of the policies outlined above affects access to legal services for asylum-seekers in Britain.

5. Conclusion to Part 1

Most of the policies above were either introduced or adapted by the 1999 Immigration and Asylum Act. Implementation of all the policies has begun, but while swifter case processing and the backlog blitz are well underway, dispersal and the voucher scheme are still in their infancy. The initial franchising process is also several months away from estimated completion. Any assessment of the impact of these policies must take this into account.

So far, it can be suggested that unless a serious attempt is made to rectify the negative impacts emerging, the situation regarding access to legal services for asylum-seekers is likely to worsen as implementation progresses, for various reasons:

- Accelerated procedures aimed at immigration control is likely to have increased asylum-seekers' need for legal services;
- The Home Office's concerted effort to rapidly reduce the backlog of cases built up over more than a decade is likely to have increased legal practitioners' workload in London;
- Dispersal has led to a shortfall of services in the regions, at the same time as the franchising process is decreasing the number of firms allowed to provide publicly-funded services.
- The voucher scheme places severe restrictions on asylum-seekers' ability to access services. This is likely to place additional pressure on legal practitioners who appreciate their circumstances, and feel an obligation to ease access problems.

These issues are addressed in more depth in Part 2 of this paper.

¹⁴⁵ Section 8.21, Fairer Faster Firmer White Paper, July 1998

¹⁴⁶ Section 9.4, 9.5 The Asylum Support Regulations 2000

Part 2: Access to legal services: the impact of recent policy changes

The second part of this paper is based on a questionnaire entitled 'Access to Legal Services for Asylum-seekers', which was sent to the 194 solicitors and organisations listed as having franchises on the 7th June 2000. In total, 57 completed questionnaires were returned and used to compile data on the impact of the recent policy changes to date.¹⁴⁷ All questionnaires were completed by employees or partners directly involved in immigration work. Responses to the Access Questionnaire are reported below. Comments made during interviews and general enquiries are also included, as are the insights offered by several key institutional actors.¹⁴⁸

The Access Questionnaire reveals that legal practitioners face a range of difficulties. They are overwhelmed with requests for representation, and face obstacles in the provision of their services. Though it was anticipated that the dispersal scheme would have the most significant impact, the findings show that other practices, including swift case processing, and the reduction of the backlog are also causing problems for practitioners both in and out of London.

1. Impact of the franchising system

The franchising system's aims are to regulate the quality and cost-efficiency of provision of publicly funded legal services. While these aims are to be welcomed, there remain concerns regarding the criteria for awarding Quality Marks, the expertise of those who conduct audits, and the administrative implications of the franchise system.

1.1 Deficient quality standards

The Access Questionnaire asked franchised practitioners whether they had been 'satisfied that the Quality Mark process assessed the skills and resources [they believed] most important to Immigration Advice work.'¹⁴⁹ Overall, responses were at best ambivalent, with only 28% of those who answered the question expressing confidence in the franchise criteria, 42% reporting they were

¹⁴⁷ The questionnaire 'Access to Legal Services for Asylum-seekers', is in the appendix, together with some information about its administration. The rate of return of questionnaires, around 30%, is considered reasonable for a postal survey.

¹⁴⁸ I am particularly grateful to Paul Ward, a practising Immigration solicitor; Lisa Neal, at the Refugee Council's Emergency Legal Referrals Project, and Zoe Harper, Asylum Aid's Public Affairs Officer, for their comments.

¹⁴⁹ Question 2a, Access Questionnaire.

'more or less' satisfied, and 30% expressing dissatisfaction.

However, despite the overall lack of confidence in the franchise criteria, there seemed to be confidence that the incidence of poor legal services would be reduced following the full implementation of the franchising system. Of the 95% of respondents who had had to deal with an asylum-seeker who had received inadequate legal services elsewhere, a majority (63%) believed that such incidences would be less likely following franchising. Many who expressed dissatisfaction with franchise criteria nonetheless shared this attitude.

One explanation for this apparent discrepancy is that the Quality Assurance Standard makes very basic requirements, such as recording the requirements or instructions of the client, the advice given and the action taken.¹⁵⁰ As such, the franchising process should at least eliminate practices that do not follow such basic procedure. In this limited respect, the process is likely to reduce the incidence of inadequate services, even if this hardly merits the title of 'Quality Assurance Standard' in any literal way.

Several questionnaire respondents supported this view. One noted that 'more attention seems to be given to formalities rather than the advice', while another stated: *'It's just a management process. My experience with regional offices of the LSC is that they sometimes lack understanding of immigration cases, with the result that the bureaucracy experienced by practitioners is very off-putting for those who are devoted to legally aided work. One cannot service the client properly.'*

However, the same respondent complained that the franchising process *'has diminished the number of suppliers'*, while another suggested the new system would mean some people go without advice. It would appear that in the short-term, there are insufficient providers of adequate legal services. The dilemma this poses is hard-felt the Refugee Council's Emergency Legal Referrals Project in Brixton. Their role is to find solicitors willing to represent asylum-seekers who come to a 'one-stop' reception and advice service. Though based in London, where there is the greatest concentration of immigration franchises, they reported difficulty finding solicitors for everyone with urgent legal needs, and a regularly need to

¹⁵⁰ Paul Ward, pers. comm. See P1.1.1 – P1.1.3, Section 6, Legal Aid Franchise Quality Assurance Standard (LSC, April 2000)

decide *'which is better, bad advice or no advice?'*¹⁵¹

Despite only turning to firms that have franchises, the Emergency Legal Referrals Project team reported some poor practice. In one case, an interpreter reported that the solicitor had told him to complete a SEF with the client, without any input from the solicitor. The result was that the SEF was completed without any legal advice, though the solicitor in question was able to claim payment from the LSC for the 'service.' The Emergency Legal Referrals Project began in April 2000, and there is still discussion about a number of issues, including devising a policy on handling such incidents, apart from no longer referring asylum-seekers to such firms. To this end, the Referrals Project already asks clients or their interpreters to fill in a short evaluation form to have some impression of the quality of service provided.

1.2 Disbursement rules

There appears to be some confusion about LSC disbursement rules, and some dissatisfaction. It should also be noted that all franchise arrangements are new, and subject to frequent review.

The Emergency Legal Referrals Project has noticed that franchisees' knowledge of disbursement rules is inconsistent. On a number of occasions clients have been sent to the Refugee Council's One-Stop-Service by their solicitors to have identity photographs taken, because they do not realise that the cost of these will be reimbursed by the LSC. Many lawyers also appear to believe that the cost of translating letters from clients is not covered, though Paul Ward asserts that it is logical to argue that the representative must know what their client has tried to communicate. It seems that some representatives are sufficiently motivated and informed to make the system work as well as possible for their client, but others are not. Regardless of whether the fault lies with practitioners, the LSC, or both, it is clear that that confusion about disbursement results in wasted time, and an increased risk of misunderstanding or incompleteness in the preparation of asylum cases.

Another issue raised by the Emergency Legal Referrals Project is that of travel costs for asylum-seekers contacting a legal advisor for the first time. Though the LSC has assured the Referrals Project that it will cover the travel costs of asylum-seekers referred by them, it will only

reimburse costs, rather than pay them 'upfront.' While such arrangements may be practicable in other areas of law, they do not take into account asylum-seekers' financial constraints. Lack of funds for travel is causing serious problems, forcing project workers to advise asylum-seekers to either borrow money from friends or walk to their solicitors, neither of which are always possible.¹⁵²

Asylum Aid is one organisation providing legal services to asylum-seekers that has chosen not to apply for a franchise. It cites disbursement conditions among the reasons for its decision. Asylum Aid's public affairs officer, Zoe Harper, stated that where necessary, they undertake research to establish the facts of a client's case, and the background to their need for asylum. Very little of such research would be covered by LSC disbursement arrangements¹⁵³.

Since disbursement rules are still being developed, more time and research is needed to assess their impact on practitioners' ability to provide efficient services. Of more immediate concern is the question of whether asylum-seekers can actually access legal services at all.

2. Access to Legal Services according to location

*'Access to justice for most people is heavily dependent upon the nature and extent of their access to legal services, which in turn is largely governed by who a person happens to be and where he or she happens to reside. Wealth and social status are always factors in determining individual levels of service, but proximity to the services themselves also plays a vital role.'*¹⁵⁴

These assertions were made in a study of access to legal services for the general population in rural Britain. But they are also relevant to dispersal of asylum-seekers, who are being sent to areas on the basis of available accommodation rather than access to relevant services. Responses to the Access Questionnaire indicate that immigration legal practitioners are experiencing a variety of pressures. Practitioners in every part of the country are turning asylum-seekers away, whilst there is clearly a severe shortfall in legal service providers nationwide.

It should be remembered that excluding dependants, only 4,100 asylum-seekers had been

¹⁵¹ Interview, Lisa Neal, Emergency Legal Referrals Project, 15th August 2000

¹⁵² Lisa Neal, interview

¹⁵³ Interview, Zoe Harper, 31st August 2000

¹⁵⁴ p24, Justice Outside the City, by Blacksell, Economides & Watkins, 1991

dispersed at the end of July 2000.¹⁵⁵ This figure represents just over 4% of the estimated 100,000 case backlog. As more of these cases receive negative decisions, many of those who appeal will come under NASS support, and will be dispersed. The pressure on legal practitioners in the regions is thus likely to increase dramatically. The following section looks at the distribution of immigration legal practitioners, and the national shortfall in services.

2.1 Distribution of immigration legal services

It is not yet known what the geographical distribution of immigration franchises will be when the first round of franchising is complete in April 2001. In the meantime, we can refer to two sets of data: a list of 194 firms which had completed the franchising process on 7th June this year, provided by the LSC¹⁵⁶, and the number of firms currently allowed to provide immigration services, despite not all of them having completed the full auditing process yet. The distribution of immigration legal advisers according to these two data sets is shown in Table 4, with the latter derived from 186 responses to a Law Society survey which was sent in June 2000¹⁵⁷ to all 487 providers. The LSC list provides a complete, and therefore accurate account, but is likely to become out-of-date very quickly. In contrast, responses to the Law Society questionnaire only include those who responded, but these may still give a better idea of the distribution expected after completion of the first round of franchising. The geographical distribution of responses to the Access Questionnaire is also included in the table.

In its report, the Audit Commission states that *'less than one half (of franchises) are based outside London'*¹⁵⁸, a statement supported by the data in Table 4. However, although the proportion of franchises awarded in London by June was only one third of all franchises awarded nationally, responses to the Law Society questionnaire suggest that this figure may rise.

Ideally, we should be able to compare the location of legal services with the location of asylum-seekers. However, there is no information so far about exactly where asylum-seekers have

been sent under NASS¹⁵⁹. The only information made available by the Home Office has been about which 'cluster areas' have received asylum-seekers, namely the East Midlands, North East, North West, Scotland, South West, Sussex, West Midlands and Yorkshire¹⁶⁰. This does nothing more than confirm that all nine of the cluster areas named as likely dispersal areas have been used to some degree.

Table 4: Geographical distribution of legal services

	LSC list		Law Society		Access Q'naire	
	N	%	N	%	N	%
London	64	33	96	52	19	33
Cambridge	15	8	6	3	4	7
Reading	12	6	12	7	4	7
Brighton	7	4	5	3	2	4
Bristol	14	7	10	6	7	13
Cardiff	7	4	7	4	2	4
Birmingham	11	6	6	3	1	2
Nottingham	21	11	10	6	5	9
Newcastle	2	1	7	4	2	4
Leeds	16	8	11	6	3	5
Manchester	20	10	12	7	5	9
Liverpool	3	1	2	1	3	5
Chester	2	1	0	0	0	0
Total	194	100	186	100	57	100

Note: Firms are categorised according to their proximity to the 13 LSC offices around the country. *Source:* Access questionnaire, 2000

Without detailed information about exactly where asylum-seekers are, it is difficult to make an objective assessment of whether the distribution of services is adequate. Furthermore, it is important to be wary of coming to conclusions about the availability of services in any given administrative region. This was demonstrated by Blacksell *et al.*, who noted that a particular town with a high concentration of services may be at the centre of a region which has very poor availability of services. For example, Cambridge

¹⁵⁵ This figure was arrived at by adding the number of main applicants dispersed under the voluntary scheme, and the number of awards of accommodation between the inception of NASS and July 2000.

¹⁵⁶ List of Immigration Franchises provided by Legal Services Commission on 7th June 2000.

¹⁵⁷ Law Society Questionnaire, CLS Contracted Suppliers, Asylum-seekers and Completion of SEFs: Preliminary Findings. Survey conducted June 2000. Report forthcoming.

¹⁵⁸ p59, Audit Commission Report, June 2000

¹⁵⁹ Barbara Roche has been repeatedly asked this question by members of parliament. In June, she insisted: *'The National Asylum Support Service does not record details of the local council areas to which it disperses asylum-seekers,'* and added that such information was not available either for the voluntary scheme which preceded the NASS-run dispersal scheme.

Hansard 8th June Column 366W

¹⁶⁰ Barbara Roche, Hansard 17th July 2000, Column 59W

was shown to be one of the 20 best-provided districts in Britain, with 641 people per solicitor, yet South Cambridgeshire had the second worst provision in the country, with 53,659 people per solicitor¹⁶¹.

In this respect, the number of legal service providers in Birmingham – or indeed *categorised* as being under the authority of the Birmingham LSC office – does not necessarily tell us about the ease of access to these services for asylum-seekers sent to the West Midlands cluster area. Frustration has been expressed at the government's insistence that services are adequate, with Lord Greaves relating in a House of Lords debate his encounter with an asylum-seeker in Nelson, who:

*'seemed to have an excellent lawyer and to be receiving excellent advice. Unfortunately, that firm of solicitors is 300 miles away in Ramsgate; they are the people with whom the asylum-seeker was put in touch on arrival. The amount of legal advice that is available, its quality, and access to such advice are huge problems.'*¹⁶²

Given that only a fraction of those asylum-seekers who might be dispersed have already been moved, it must be emphasised that demand for immigration legal services is likely to increase outside of London. It is thus significant to note that, as well as more franchises being granted in London than in any other location, there is also a marked difference between the capacity of firms in London and elsewhere. Questionnaire responses revealed that on average, London practices have 3.2 full-time workers dealing exclusively with immigration cases, while those outside London have, on average, 1.8. London practices also have slightly more employees working part-time on immigration cases, with an average of 2.4, compared to an average of 2.2 outside London. If two part-time workers may be counted as equivalent to one full-time worker, that means that on average, London practices have 4.4 full-time workers, while practices outside London 2.9 full-time workers in the immigration field. Such a disparity between practices nationally is likely to cause increased shortfalls in services outside of London.

2.2 Supply of legal services

Location is clearly a very significant factor of access to services. However, as well as an appropriate geographical distribution of services, there must be an adequate supply. All evidence thus far points to a severe shortfall in immigration

legal services in the UK. Though London has by far the greatest concentration of legal services, until dispersal is effected, it also has the greatest concentration of asylum-seekers.

The Access Questionnaire asked practitioners if they had had to turn away prospective clients, and if so, how many asylum-seekers they had had to turn away in the previous month. Nationally, 72% of respondents had been obliged to turn clients away. However, data presented in Table 5 shows that though London has the greatest concentration of legal services, it is also the area where the greatest proportion of practitioners reported turning away asylum-seekers.

Table 5: Firms turning away asylum-seekers, by location

	Yes		No		Total	
	Freq.	%	Freq.	%	Freq.	%
London	18	95	1	5	19	100
Cambridge, Reading & Brighton	9	90	1	10	10	100
Newcastle, Leeds, Manchester & Liverpool	8	62	5	38	13	100
Birmingham & Nottingham	3	50	3	50	6	100
Bristol & Cardiff	3	33	6	67	9	100

Source: Access questionnaire, 2000

The overwhelming majority of respondents in London and the South East, and nearly two thirds of respondents in the North-East regions reported turning away clients. Half the respondents in Birmingham and Nottingham reported having to do this, as did one third of respondents in Bristol and Cardiff. Practitioners were asked how many asylum-seekers they had turned away in the previous month. Nationally, 43% of firms responding had turned away more than 10 asylum-seekers in the previous month, and 16% had turned away more than 30. Table 6 breaks these figures down by area.

Overall, London and North-East practices appear to be under the most pressure: 95% of London practices were turning away asylum-seekers, and of these 47% refused 10 or more in the previous month, and 13% refused 30 or more. In the North-East areas, 62% of practices had to turn away prospective clients, and of these 57% had to turn away more than 10, and 43% had to turn away more than 30 in the previous month.

It would appear that many of those who turn away 'more than 30' clients tend to turn away significantly more. While 16% of respondents to

¹⁶¹ p39, Blacksell, Economides & Watkins, 1991

¹⁶² Lord Greaves, Hansard 7th July 2000, Column 1756

the Access Questionnaire stated that they turned away 'more than 30' asylum-seekers every month (the biggest option on the questionnaire), the preliminary findings of the Law Society's survey of legal service suppliers notes that though *'estimates given of the number of asylum-seekers taken on since the beginning of April 2000, and the number of requests for assistance from either asylum-seekers or referrals which have been turned away, requires further detailed analysis, but it is clear that [nationally], 16% of respondents have turned away 41 plus requests.'*¹⁶³ Though the Law Society surveyed a greater number of practitioners, and an exact comparison cannot be made, the similarity of responses to the question of having to turn away asylum-seekers is enough to conclude that there is a serious shortfall in services throughout the country, including in London.

Table 6: Number of asylum-seekers turned away, by location

	1-10		11-30		30+	
	Freq.	%	Freq.	%	Freq.	%
London	4	22	10	34	4	13
Cambridge, Reading & Brighton	4	44	4	44	1	11
Newcastle, Leeds, Manchester & Liverpool	3	43	1	14	3	43
Birmingham & Nottingham	2	66	1	33	0	0
Bristol & Cardiff	2	66	0	0	1	33

Source: Access questionnaire, 2000

In July this year, an article in the *Times* reported that lawyers both in and out of London 'could not cope.'¹⁶⁴ The article quoted solicitors in Newcastle, Leeds and Birmingham who were overwhelmed with work, with one estimating that for every asylum-seeker his firm took on, there were another three they had to turn away. Meanwhile, one lawyer in London asserted that she was turning away up to 15 asylum-seekers every day, largely because of the 'blitz' on old applications. She reported, *'We've had 30 refusals in the last three or four weeks, so all these claims will have to go to appeal. We have to reactivate cases that have been sitting around for six years.'*¹⁶⁵

The pressure caused to London practitioners by the backlog 'blitz' is likely to be exacerbated by a lack of thought given to the need for legal services when the NASS system was devised. In theory, London practitioners should not be taking on great numbers of new cases, since new applicants are being dispersed. However, in practice most applicants either come through a port of entry in the south¹⁶⁶, or are make their claim 'in-country', usually within London. They then apply for NASS support, but it takes at least a week for this to be considered, before arrangements are made for dispersal. It is at precisely the same time that they must return a Statement of Evidence form (within 14 days), such that the need for legal help arises before they leave London.

This situation is made clear by work carried out by the Emergency Legal Referrals Project at the Refugee Council's Brixton One-Stop-Service. On the day that an asylum-seeker arrives at the One-Stop-Service, they make an application for NASS support if they wish, and if they have not yet completed a SEF, the Legal Referrals Project aims to secure a legal advisor for them. At this stage, the referrals team can have no idea of where the asylum-seeker will be sent, and even if they did, they could not assume that he or she would be sent there in time to find legal advice, and complete and return their SEF by the deadline.

Once the clients are sent to a cluster area outside London, they may keep their solicitor in London, or they may find a new one. It is clear that neither solution is ideal: one results in the client living far from their legal representative, while the other results in a change of solicitors, and no doubt causes a degree of duplication in the work carried out.

2.3 Clients' ability to access services

The Access Questionnaire asked practitioners' opinions on their clients' ease of access to their services, and what they believed posed obstacles to clients' access. When asked, *'how do you rate your clients' ease of access to you in person, by phone, and by post?'*, most respondents answered positively (Table 7).

However, more difficulties were observed for access by telephone, whilst comments added to their answers indicated that many viewed the question as being related to *their* availability, rather than clients' ability to make a journey, telephone or send a letter. One respondent also

¹⁶³ p2, Preliminary findings of the Law Society Survey of CLS Contracted Suppliers: Asylum-seekers and Completion of SEFs

¹⁶⁴ The Times, 16th July 2000

¹⁶⁵ *ibid*

¹⁶⁶ Hansard, 8th June 2000, Column: 360W . Barbara Roche provided a breakdown of applications at each relevant port in the United Kingdom between May and the end of December 1997

noted that access via post is easy only if it is assumed that clients are literate.

Table 7: Clients' ease of access to legal representatives

	In person		By phone		By post	
	N	%	N	%	N	%
Always easy	4	7	9	16	28	51
Usually easy	39	70	26	46	17	31
Usually difficult	12	21	20	35	10	18
Always difficult	1	2	1	2	0	0

Source: Access questionnaire, 2000

When asked what constituted the main obstacles to their clients gaining access to them, some 48% of respondents nationally agreed that lack of funds was a problem. Other obstacles mentioned included *'immigration officials not pointing out legal help available,'* a *'lack of information,'* the fact that asylum-seekers are *'strangers to the UK,'* and *'not knowing the area and the system.'* Six respondents specifically cited clients' language problems, whilst seven noted a shortage of the practitioner's time as a barrier to access.

One solicitor offered a detailed explanation of the factors involved in a client being able to reach her. She noted that though it was 'usually easy' to reach her by phone, this might be misleading as she was often unavailable when clients actually rang, and would have to return their calls. However, as many clients did not leave messages, they might well view it as difficult to reach her on the phone, particularly where they did not have easy access to a phone, or relied on friends or relatives to telephone on their behalf. It should also be noted that asylum-seekers in hostels with shared phones may not be able to rely on their co-tenants to communicate messages.

The same solicitor also noted that though she tended to book appointments two or three weeks in advance, clients often had to wait to be seen because urgent matters arose with great frequency. 'Urgent matters' usually related to an asylum-seeker arriving with a SEF to be completed and returned within a very short time. She also reported that she was not able to help all those who arrived with urgent deadlines for SEF completion, as her firm simply did not have the capacity to provide services to the increasing numbers who requested them.

Practitioners were aware of a range of difficulties for their clients, and many endeavoured to help

them to gain access to their services. Nationally, 32% of respondents said that their organisation provided some form of assistance to enable their clients to gain access to them (see Table 8). This ranged from informal cash donations to cover clients' travelling expenses, to formal arrangements with local voluntary groups. One respondent referred to their organisation's 'open door' policy, while two reported that they had established a free phone line for advice and leaving messages. One respondent said that they issued clients with pre-paid envelopes. Meanwhile, eight respondents reported either physically travelling to visit clients, or holding outreach clinics.

Table 8: Organisations providing some access assistance

	Yes		No		Total	
	N	%	N	%	N	%
London	7	40	11	60	18	100
Cambridge, Reading & Brighton	1	11	8	89	9	100
Bristol & Cardiff	3	33	6	67	9	100
Birmingham & Nottingham	2	33	4	67	6	100
Newcastle, Leeds, Manchester & Liverpool	5	45	6	55	11	100

Source: Access questionnaire, 2000

This section has shown there are a wide range of obstacles for asylum-seekers gaining access to their representatives. Demands on their representatives' time are significant, and language difficulties and problems associated with housing also play important roles. Given the implementation of dispersal and the voucher scheme, it is important to note problems with lack of funds and travelling. These issues indicate that the issue of access is a literal one: asylum-seekers are experiencing significant difficulties in physically reaching their representatives. In turn, many hard-pressed practitioners are reacting by devising methods to help their clients gain access to them.

3. Legal representatives' ability to provide services

As seen above, legal practitioners are presently unable to provide services to all those who request them. This section focuses on the difficulties encountered by legal representatives in

providing their services. These obstacles can have an effect on individual cases, but particularly where they are time-consuming, they create an extra pressure, and exacerbate the shortfall in services. All questionnaire respondents assisted their clients in completing their SEFs, and the Law Society has found that on average, four and a half hours were necessary to take instructions, complete and return a SEF.¹⁶⁷ All but three respondents said they attended substantive interviews with their clients. Of the three who said they did not, one noted that an agent was always appointed, while another stated that they had not had to yet, but would do so 'if needed.'

3.1 Obstacles to attending substantive interviews

In this section, two main points will be considered: the logistics of legal representatives attending substantive interviews with their clients, and the degree of involvement they are allowed to have when they do attend. Overall, 63% of respondents reported difficulty attending substantive interviews. The main obstacles cited are listed in Table 9:

Table 9: Factors cited as obstacles to attending substantive interviews

Factor	N	%
Location of interview	13	36
Short notice	11	31
Obstruction	6	17
Lack of staff	5	14
Cost of attending	4	14
Other	21	58

Source: Access questionnaire, 2000

Overall, there was no significant difference in the rate of obstacles cited by respondents according to their location. Unsurprisingly though, London practitioners did not report the location of interviews as an obstacle to attending interview, with one exception, whereas this becomes a greater obstacle the further away from London.

The Audit Commission report notes *that 'in some cases, interviews have been held in regional offices, and there is a strong argument for IND to extend this practise.'*¹⁶⁸ The Report also notes that NASS funds travel for asylum-seekers to attend interviews and appeals at the IND offices in Croydon, but that no funds are available for possible overnight stays, or for any other extra

costs which might be incurred by one or two days of travel.¹⁶⁹ Respondents' references to cost referred sometimes to their own resources, and sometimes their clients' lack of funds. All those who referred to their clients' lack of funds were outside London, suggesting either that NASS is either not paying for travel as it is supposed to, or that clients and their representatives are not aware that they can request funding from NASS for this purpose. A similar confusion may be found regarding costs incurred by the representative, which in theory should be reimbursed by the LSC.

It is also worth commenting on the responses categorised as 'obstruction,' or 'other' in Table 9. Obstruction included: *'refusing to admit to offices in Croydon'; 'refusal of entry'; 'representatives not being allowed into Dublin Screening interviews at Dover'; 'obstructive officials'* and also *'if the client has already entered the Whitgift Centre at Home Office Croydon, the legal representative may have problems entering the building.'* These responses, seen together with the lack of account taken of legal representatives by IND when booking interviews, are consistent with the Home Office's attitude that legal services are not strictly necessary. Though legal representatives may attend the interview, bookings will not be changed to allow them to attend, as is made clear by respondents' complaints of short notice and inflexibility regarding interview dates. This attitude is categorical as stated in the IND Law and Policy document: *'Representatives have no right to attend at interviews. However, the presence of a representative should not be objected to without specific reason and prior reference to line management.'*¹⁷⁰

When legal representatives do attend the interview, the role imposed on them by Home Office policy is often frustrating for them. Policy guidelines state that *'Representatives should be asked NOT to intervene during the interview. Instead they should be advised that they will have an opportunity to comment at the end of the interview, if they so wish. If they do so in spite of this, they should be reminded firmly that they will have an opportunity to comment or ask questions at the end of the interview. This is because interruptions can be disruptive both to the interviewer and to the applicant.'*¹⁷¹ The document adds that at the interviewing officer's discretion, there may be a legitimate reason for a point being made, but *'what is not acceptable are constant interruptions when the representative*

¹⁶⁹ *ibid*

¹⁷⁰ Chapter 16, Section 3, no.3, IND law and policy (Interviewing)

¹⁷¹ *ibid.* Emphases in original

¹⁶⁷ p2, Law Soc Preliminary findings

¹⁶⁸ section 91, Audit report, June 2000

*appears to be trying to influence the course of the interview.*¹⁷²

Of the three respondents who cited conduct as an obstacle to attending interviews, one put it simply: *'Home Office guidance on the role of representatives is at odds with our view of [their] role – [we] are often threatened with exclusion.'* There is clearly a frustratingly fine line to tread – a representative will want to intervene wherever they think it appropriate, but if they do so they may be excluded from the interview. It seems the Home Office views representatives with a high degree of suspicion, even though representatives may be able to clarify some points and save time. It must also be considered that an interviewee may be doing their best to cooperate with the process, and may not feel able to contradict the interviewer.

A report published by the Immigration Legal Practitioners' Association (ILPA) noted that *'much of the conflict between legal representatives and the Immigration Service stems from the perceptions that each has of the other. The problem is exacerbated by [...] the on-going disagreement about what the role of a legal representative is or should be.'* It went on to note that *'the lack of agreement about the role of legal advice and representation in turn reflects the lack of clarity about the purpose of the interview itself and in particular, whether it is to gather information about the applicant or to assess the credibility of the applicant. Currently the two are considered mutually exclusive by both parties.'*¹⁷³

The ILPA report focussed on substantive interviews conducted at port by Immigration Officers. One interviewee noted a difference between such interviews, and those conducted by ICD caseworkers, according to which the former are significantly more confrontational, with some Immigration Officers appearing to take it as a personal mission to make asylum-seekers admit to inconsistencies and retract them¹⁷⁴. ICD caseworkers appear less driven when conducting interviews, rarely seeking new information or clarification of apparent inconsistencies.

However, such inconsistencies are often referred to as reasons for refusing an application. It seems that decisions may often be made prior to the interview: the same respondent cited a case when a 4-page refusal letter was issued the morning after a 3pm interview, and which referred only to information previously provided in writing, and with no reference to the interview in question. Such anecdotal evidence is supported by the

IND's own summary of procedures, where 'decision' precedes 'interview.'¹⁷⁵

The IND's apparent lack of concern for whether or not legal representatives can attend interviews constitutes a significant obstacle to practitioners being able to provide their services efficiently. Where both asylum-seekers and their representatives are made to travel great distances to attend interviews, this is at some financial cost, but it also costs time: if a legal advisor must spend a day travelling to and from an interview, that is time during which they are unable to provide services, which will inevitably exacerbate any shortfall in service provision. Practitioners' frustrations with obstacles to attending interviews are compounded by difficulties regarding their role when they are able to attend. In practice, these issues are born of the lack of recognition that legal services are essential to asylum-seekers, and it becomes clear that the 'laissez-faire' attitude to legal services actually creates obstacles for practitioners trying to provide services.

The picture emerging of the practitioner's predicament is one of a struggle on almost every front: trying to cope with increasing need and numbers of clients, while armed with inadequate resources. As will be outlined in the next section, the need for interpreters adds to the difficulties faced by legal representatives.

3.2 Access to interpreters

In August this year, the Refugee Council reported that a common problem related to dispersal was already emerging: *'the severe shortage of solicitors who can do asylum work, [and] the lack of interpreters. Refugee workers in Manchester, for example, report that the asylum-seekers who have been dispersed to the region speak a total of 34 different languages.'*¹⁷⁶

All the practitioners who responded to the questionnaire reported some reliance on interpreters. 39% reported that 'some' of their clients spoke fluent English, while 61% reported that 'few' of their clients spoke fluent English. If an asylum-seeker cannot speak English fluently, they should have access to an interpreter in order to relate complex experiences, and to understand the procedures detailed by their legal representative.¹⁷⁷ As a result, increasing practitioner caseloads nationwide must also mean a greater need for interpreters.

¹⁷² *ibid.*

¹⁷³ p29, Heaven Crawley, 1999

¹⁷⁴ Paul Ward, pers. comm.

¹⁷⁵ Asylum Pilots and Procedures – Summary. IND, January 2000

¹⁷⁶ p23, Refugee Council, August 2000

¹⁷⁷ This is stipulated by, among others, the ECRE guidelines 2000, section 6.

Immigration legal practitioners were asked whether they could rely on access to an interpreter 'whenever they needed one', 'most of the time', or 'rarely.' One respondent pointed out the gap between the last two options, and noted that he had access to an interpreter 'some of the time.' The omission of such an option should be considered when analysing the responses – it is possible that the questionnaire options may have led to a slight over-estimation of how well practitioners can rely on access to an interpreter.

Nationally, 20% of respondents reported that they could rely on access to interpreter whenever needed, 75% said they could do so most of the time, and 4% said they could do so only rarely. The responses varied according to location, as can be seen in Table 10:

Table 10: Reliability of access to interpreters

	Whenever needed		Most of the time		Rarely	
	N	%	N	%	N	%
London	5	26	14	74	0	0
Cambridge, Reading & Brighton	1	10	0	0	0	0
Bristol & Cardiff	2	25	6	75	0	0
Birmingham & Nottingham	3	50	3	50	0	0
Newcastle, Leeds, Manchester & Liverpool	0	0	10	83	2	17

Source: Access questionnaire, 2000

Birmingham and Nottingham appeared to have the best access overall, while London, Bristol and Cardiff categories reported the next best levels of access. The North-East category reported significantly worse access to interpreters than any other. One respondent noted that the availability of interpreters depended on the language required – a point which may emphasise the importance of the dispersal scheme being implemented according to its original promise of sending asylum-seekers to language cluster areas.

Where interpreters are not available, it is sometimes necessary to conduct an interview without one, given the time limits imposed by swift determination procedures. However, this carries dangers. Nationally, 24% of respondents reported experiencing at least one serious

misunderstanding due to working without an interpreter. Several respondents noted that they would never work without an interpreter if one were required. This degree of professionalism is commendable, but it is not clear what the consequence might be when a SEF deadline is looming. Practitioners are being faced with impossible choices.

Only 36% of respondents reported that the interpreters they used were always trained and qualified. The availability of trained interpreters also varies geographically (see Table 11).

Table 11: Exclusive use of trained and qualified interpreters

	Always use trained interpreter (%)
London	48
Cambridge, Reading & Brighton	33
Bristol & Cardiff	22
Birmingham & Nottingham	33
Newcastle, Leeds, Manchester & Liverpool	33

Source: Access questionnaire, 2000

It is worth noting that respondents in Bristol and Cardiff were the least likely to only use trained and qualified interpreters, since these areas also reported the best access to interpreters. Again, issues relating to quality and quantity arise, just as they do with regard to availability of legal services.

One respondent noted that though he used only qualified interpreters, he could not always be sure what their qualifications meant¹⁷⁸. He noted that there is no national accreditation scheme, and that he had sometimes found qualified interpreters to be inadequate. When an interpreter was not suitable, this was rarely due to any deficiency in their language skills, and more often related to their lack of understanding of, or willingness to abide by their designated role. Problems he had encountered included interpreters telling clients not to talk about specific issues, being rude to clients, or 'over-interpreting', that is, not relating exactly what the client has said, but choosing to relate what they think this may have implied. Nationally, 44% of respondents reported that they had experienced a serious misunderstanding due to working with an inadequate interpreter.

¹⁷⁸ Paul Ward, pers. comm.

3.3 Access and service provision for detainees

So far, this report has assumed that though asylum-seekers may experience obstacles in certain places, that they have freedom of movement to seek services elsewhere if need be. This section deals with the particular problems faced by those who are detained, and so are unable to move. Thirty-one respondents (54%) reported that they currently have clients in detention. Of these, 67% reported that it was always or usually easy to visit their clients, while 33% reported that it was usually or always difficult. Fifty-five% reported that it was always or usually easy to contact their clients by phone, and 45% stated that this was usually or always difficult. Contact by post was reported as the most reliable form of communication, with 88% reporting that it was usually or always easy to contact their clients by post, with just 13 % stating that this was usually difficult.

The different views on how easy it is to contact clients in detention is partly explained by the range of detention centres which exist in Britain. Asylum-seekers may be held in normal prisons, along with convicted criminals, or in detention centres specifically for immigration detainees. One respondent noted that access varied significantly between the two. He stated that, for example, Campsfield and Harmondsworth detention centres are relatively easy to access, despite some exaggerated emphasis on security measures, such as thorough searches of any visitors. In contrast, prisons could be difficult to access as they had specified visiting times, and it was sometimes necessary to book visits in advance, both of which made it harder to ensure an interpreter would be available. He added that detained clients' cases drew disproportionately on his firm's resources because they presented so many logistical obstacles, and estimated he would have to turn down three non-detained clients for every detained client he took on. As a result he tended to avoid representing asylum-seekers in detention.

Another questionnaire respondent noted that his/her firm did not take on such cases, as the nearest detention centre was still too far from the respondent to consider representing detained clients.

The Access questionnaire asked respondents to indicate whether they had met with three specific obstacles to contacting clients in detention, and their responses are shown in Table 12. Lack of resources on the part of the practitioner was seen as the most severe problem; this may refer to a variety of factors, but is likely to involve lack of funds and/or time. One respondent noted that *'limited resources and bureaucracy from the LSC*

means that one may not be able to service those who are detained properly.' This statement is likely to refer to LSC disbursement procedures and regulations.

Table 12: Obstacles to accessing detained clients

	N	%
Burdensome regulations	6	26
Lack of staff/infrastructure	10	42
Lack of resources	15	63

Note: 33 responses are missing from this question – 26 correspond to those who do not have clients in detention; 7 responses are missing from those who have clients in detention *Source:* Access questionnaire, 2000

What is clear from Table 12 is that various factors jeopardise access to such a degree that some solicitors avoid taking on clients in detention. The Access Questionnaire also asked practitioners how they rated their detained clients' ease of access to them by phone, and by post. The responses are displayed in Table 13 below.

Table 13: Detained clients' ease of access to their representatives

	By phone		By post	
	N	%	N	%
Always easy	3	10	3	10
Usually easy	7	23	18	60
Usually difficult	18	60	7	23
Always difficult	2	7	2	7

Note: 27 responses were missing from this question – 26 correspond to those who do not have clients in detention. *Source:* Access questionnaire, 2000

The results indicate that access to clients in detention is easier by post, with 70% of respondents asserting that this type of contact is usually or always easy. Nonetheless, 30% stated that such contact is usually or always difficult. Clients' ability to contact their representatives by phone is significantly poorer, with 67% of respondents asserting that their clients usually or always find it difficult to reach them in this way.

Language difficulties and demands on practitioners' time presumably apply as much to clients in detention as they were shown to cause difficulties for non-detained asylum-seekers. It must also be considered that solicitors will have varying degrees of knowledge about their clients' difficulties, depending on how active an interest

they take in conditions, or how much time they have available to enquire. Where there are restrictions on communication, whether applied formally or informally, this is likely to affect solicitors' ability to know about their clients' difficulties in detention. However, the most disturbing point raised here is the indication that some legal practitioners view it as unfeasible to represent asylum-seekers in detention.

Conclusion

The first issue of the Electronic Immigration Network began by stating, *'The year 2000 will be a demanding one for immigration law practitioners.'*¹⁷⁹ This is proving to be an understatement. This exploratory study reveals that immigration law practitioners throughout Britain are working within an asylum determination system that makes their services essential to asylum-seekers, and yet does not acknowledge their role.

Legislative changes in the past decade have focussed on immigration control and deterring unfounded claims for asylum. This has increased the extent to which asylum-seekers require legal services, and policies presently being implemented have increased the number of asylum-seekers requiring legal representation at any one time. As a result, a shortfall in legal services has arisen.

Though London has the greatest concentration of legal services, it is also facing the highest demand. The Home Office's efforts to reduce the backlog of asylum applications are having the greatest impact on practitioners in the capital, where refugees have hitherto tended to settle. Furthermore, though dispersal is presently being implemented, this does not appear to have alleviated the pressure on London practitioners. The time limits imposed on asylum-seekers returning their Statement of Evidence Forms mean that if asylum-seekers are to benefit from legal advice, they must seek a representative prior to their support claim being assessed. Since most port applications are made at Southern ports, and in-country applicants tend to settle in or near London, the capital is still faced with service needs of new applicants.

Practitioners in areas that are receiving dispersed asylum-seekers also have to cope with a significantly increased demand, while facing difficulties related to their distance from most Home Office interviews. Where asylum-seekers are not able to access legal services before they

are dispersed, they are likely to have very urgent needs when they arrive in their appointed area.

The voucher system not only results in asylum-seekers having a very small income, but also means that they are unable to prioritise their spending to any great degree. As a result, they are not in a good position to seek out legal services. Legal practitioners are recognising asylum-seekers' difficulties in accessing their services, and many are endeavouring to facilitate access, through travelling to visit clients and holding outreach clinics. However, there is a limit to how much practitioners can facilitate access when they are overwhelmed with work. Furthermore, it may be argued that having to travel to meet individual clients may reduce practitioners' capacity to take on other cases.

At the same time, the new franchising system is likely to reduce the number of legal service providers, and though the aim of eliminating poor quality services is important, practitioners have not reported any great confidence that the franchising criteria recognise the skills and resources necessary for representing asylum-seekers. Furthermore, a significant number report dissatisfaction with LSC disbursement rules, as these do not appear to recognise the particularities of representing asylum-seekers.

In particular, the lack of any specific recognition of detained asylum-seekers' circumstances means that many legal practitioners avoid taking them on, as representing detained asylum-seekers draws disproportionately on their resources.

The impact of simultaneously implementing three challenging policies is clearly detrimental to asylum-seekers' ability to access the legal services they need to pursue their applications for refuge. How immigration legal service providers respond to these challenges in the medium term remains an important matter for further research.

¹⁷⁹ New Life, New Times. Electronic Immigration Network, Issue 1, Spring 2000

Appendix: The Questionnaire

The questionnaire below was sent to the 194 solicitors and organisations listed as having franchises on the 7th June 2000. In total, 57 completed questionnaires were returned and used to compile data, a 30% return. An additional 10 responses of some kind were received: one firm replied but declined to complete the questionnaire, two questionnaires were returned by postal services because the addressees had moved away, two questionnaires were returned by solicitors because another member of their firm at a different address had already replied. One completed questionnaire was returned by a firm that noted they were not, in fact, franchised. This questionnaire was not used. Three responses were received from firms that stated they no longer provided immigration services. Two completed questionnaires were received after data had been analysed.

All questionnaires were completed by employees or partners directly involved in immigration work. The high return rate can hopefully be partly attributed to its design and other considerations, such as the explanation given about its purpose, the enclosure of an addressed envelope, and the offer of emailing a copy of the finished paper. However, a more important consideration may be based on the spectrum of motivations brought to publicly funded immigration legal services. Though this area of legal service is no less prone to misuse of public funds than any other, it should be noted that many lawyers and legal workers in the Immigration field are deeply aware of the importance of their work, and have significant interest in optimising the legal services system for asylum-seekers. Questionnaire responses revealed that legal service providers are under intense pressure – though this might make them less inclined to spend time filling in questionnaires, the level of interest from practitioners is highlighted by a preliminary finding of a forthcoming survey report by the Law Society, which found that *‘the overwhelming majority of the respondents would be prepared to participate in further research.’*¹⁸⁰

¹⁸⁰ p3 Law Society Questionnaire: CLS Contracted Suppliers, Asylum-seekers and Completion of SEFs – Preliminary Findings, August 2000



Questionnaire:
Access to Legal Services for Asylum-seekers in Britain

1. General information

a. What is your job title? _____

b. How many people in your organisation work full-time on Immigration cases? _____

How many people in your organisation deal with Immigration cases as part of their portfolio? _____

c. How many asylum-seekers does your organisation have on its case-load today?

1-5 6-10 11-15 16-20 more than 20

d. Approximately how many new asylum-seeker cases has your organisation taken on in the last 3 months?

1-5 6-10 11-15 16-20 more than 20

e. Are any of your asylum-seeker clients women? (This does not include applications with women as dependents.)

Yes No

f. If yes, how many women-headed applications do you have on your case-load this month?

1-5 6-10 more than 10

g. Does your organisation ever have to turn away prospective asylum-seeker clients?

Yes No

If yes, how many have been turned away in the past month?

Less than 5 5-10 11-20 21-30 more than 30

k. Does your organisation help asylum-seekers fill in Self-Completion Questionnaires when they are given one?

Yes No

l. Do legal representatives in your organisation attend Home Office/Immigration interviews with clients?

Yes No

m. Have you experienced any obstacles in attending such interviews?

Yes

No

If yes, please specify: _____

2. *Franchising process*

a. *Were you satisfied that the Quality Mark process assessed the skills and resources you believe most important to Immigration advice work?*

Yes

No

More or less

b. Have you ever had to deal with an asylum-seeker who has received inadequate legal services elsewhere?

Yes

No

c. How likely do you believe such occurrences will be following the full implementation of the franchise system?

Less likely

More likely

No difference

Don't know

3. *Detention*

a. Are any of your clients

in detention?

in reception centres ?

Yes

No

If 'no' to both questions, please go to Section 4. Language

c. How do you rate your ease of access to clients held in detention and reception centres?

Always easy

Usually easy

Usually difficult

Always difficult

At detention centres:

In person

By phone

By post

At reception centres:

In person

By phone

By post

e. If you have problems gaining access to your clients in detention/reception centres, are these due to
 regulations centre staff/infrastructure your limited resources

Detention Centres

Reception Centres

f. How do you rate your detained clients' ease of access to you

Always easy Usually easy Usually difficult Always difficult

By phone

By post

4. Language

a. What proportion of your current caseload speaks fluent English?

Please tick as appropriate

All Most Some Few None

b. Can you rely on having an interpreter

Whenever you need one Most of the time Rarely

c. Are the interpreters you use always trained and qualified?

Yes No

d. Have you ever experienced a serious misunderstanding due to

working without an interpreter working with an inadequate interpreter

Yes

No

5. Your clients' circumstances

a. How many of your clients are supported through the National Asylum Support System?

All Most Some Few None Don't know

b. According to your experience, how do you rate your clients' ease of access to you

Always easy Usually easy Usually difficult Always difficult

In person

By phone

By post

c. In your opinion, what are the main obstacles for your clients when trying to contact you?

Lack of funds

Demands on their time

Other

d. Is your organisation able to provide any assistance to asylum-seeker clients to help them gain access to you?

Yes

No

If yes, please specify: _____

f. Do you any of your clients receive assistance from anyone else to help them gain access to you?

Yes

No

If yes, please specify _____

Thank you very much for completing this questionnaire. Please return it in the envelope provided. All responses will be anonymous and confidential.

If you wish to receive an emailed copy of the final paper, please write your email address on the returned questionnaire, or email me separately at trine_lester@onetel.net.uk