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

Trine Lester,
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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

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

[1] Article 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.

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

‘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.’

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 if 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

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(persec)6.2(u)6(t)-0.3(ion)9.96 56.6clperse6.4(at5c6m9t0-5.9(in)ra)-5(*

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

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

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*

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[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

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

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

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

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 year[83]. 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

[82] Chris Rush, interview 09/08/00
[83] ibid.
[84] ibid.

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]

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

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

most asylum-seekers and refugees have tended to settle.

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 un-used 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:

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[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

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,*

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[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)

Table 3: Levels of NASS support, excluding accommodation

Asylum-seekers	Weekly support

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

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 where 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 '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

[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.

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 LSC[156], 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 2000[157] to all 487 providers. The LSC list provides a complete, and

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]

[163] p2, Preliminary findings of the Law Society Survey of CLS Contracted Suppliers: Asylum-seekers and Completion of (.')]TJ6.48 0 0 6.48 8[(Comp)aaI rcc9.96 93.02.0803 Tm-0.0060 96 or fture

noted that access via post is easy only if it is

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

[167] p2, Law Soc Preliminary findings

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 them[174]. 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 in4(g)ewlllllllllllllll(legal

[172] ibid.
[173] p29, Heaven Crawley, 1999
[174] Paul Ward, pers. comm.

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 meant[178]. He noted that there is no national accreditation scheme, and

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

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

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

Sussex Centre for Migration Research

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

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