

**Public consultation on proposed
changes to publicly funded
immigration and asylum work**

**Response by the Immigration Law
Practitioners' Association**

Public consultation on proposed changes to publicly funded immigration and asylum work: ILPA's response

Introductory note

The Immigration Law Practitioners' Association (ILPA) is the UK's professional association of immigration lawyers, advisers and academics practising or engaged in immigration, asylum and nationality law. Founded in 1984, it exists to:

- ⇒ promote and improve the advising and representation of immigrants
- ⇒ provide information to members on domestic and European immigration, refugee and nationality law
- ⇒ secure a non-racist, non-sexist, just and equitable system of immigration, refugee and nationality law

ILPA has more than 1,100 members including lawyers, advice workers, academics and law students. ILPA is regularly consulted by the Government on key issues relating to immigration, refugee and nationality law.

This response covers not only the Consultation Paper published by the DCA/LCD but also the Draft Immigration Specification issued by the LSC, as well as including some preliminary comments on the LSC Discussion Paper on an Immigration Accreditation Scheme.

Attached to this response is an opinion prepared for ILPA by Rabinder Singh QC. This stands as a separate document to the response, but references to paragraph numbers of the opinion (henceforward, referred to simply as 'Opinion') are given in some places in this response.

Public consultation on proposed changes to publicly funded immigration and asylum work: ILPA's response

Summary

- i. ILPA has extremely serious concerns about the proposals to limit the amount of time which will be funded in immigration and asylum cases. They represent a gross and unjustifiable interference with basic principles of access to justice. It will become extremely hard to provide a professional, conscientious service within the time limits proposed. Quality of representation is secured not just by high levels of knowledge and experience, but by spending time on preparing cases. The proposals will drive out many good representatives from the sector, leading to a diminution of quality and even greater wastage of resources.
- ii. The proposals reverse entirely the recent efforts by the LSC and the legal profession to encourage and develop high standards of advice. They are ill-considered and logically flawed: they propose to deal with poor representation by making it virtually impossible to provide good representation. No rational justification can be found in the Consultation Paper for such a radical shift in policy by the LSC, compared to its position only a few weeks ago.
- iii. The effect of the proposals will be to restrict very significantly the availability of high-quality publicly funded advice and representation in immigration and asylum cases. It is clear from consultations with ILPA members that many of the most knowledgeable and conscientious representatives will simply cease to operate in the sector, or will severely reduce their caseloads.
- iv. Nor will the proposals tackle the problem they purport to address, namely that of poor advice; on the contrary, they will drive the best representatives out of business whilst having no effect on those providing poor advice, other than swelling their numbers.
- v. The effects of the proposed measures will be enormous and far-reaching:
 - a large proportion of applicants will have no access to legal representation
 - a large proportion of applicants will fall into the hands of poor-quality or unscrupulous representatives
 - most publicly funded applicants will be unable to put forward their cases adequately
 - significant numbers of practitioners, including many of those with the greatest knowledge and expertise, will withdraw entirely from the sector
 - standards in the sector will be destroyed, in the absence of the peer-reviewers, trainers and mutual support networks needed to maintain quality

- the efficiency of the immigration and asylum system, particularly the appeals system, will be gravely affected by the proposals
 - they will prevent proper scrutiny of the activities of the Home Office Immigration and Nationality Directorate (IND), resulting in ever greater wastage of public money by the IND
 - greater pressure will be placed on the voluntary sector, including refugee and migrant community groups, which will be unable to cope
 - Members of Parliament will also come under even greater pressure as the only available source of free advice to many refugees and migrants
- vi. Above all, the proposals, if enacted, will lead to wrongful refusals of valid and meritorious applications. This means in reality the abuse of human rights on a major scale, whether it be asylum seekers returned to face imprisonment, torture or death because they cannot present their claims properly, or the separation of families, damage to people's health, the unfair deportation of UK residents or the unnecessary disruption of people's work and studies.
- vii. The measures discriminate, in effect, against black and minority ethnic communities in the UK and risk an increase in racial tension.
- viii. The measures will not save public money; indeed, they are likely to increase wastage of resources by increasing the inefficiency of the system. They fail to address the primary cause of wasted resources in the immigration and asylum system, namely the incompetence of the Home Office IND. Whilst accepting that this is technically outside the scope of the DCA or LSC, ILPA considers that this shows the lack of coherent thinking in government about the issue.
- ix. The proposed accreditation scheme for practitioners in the sector, though not itself objectionable, is totally undermined by the proposed time limits. Accreditation can only operate within a system which encourages and rewards high-quality work. The effect of the time limits will be the opposite of this.
- x. The proposal for a unique file number is again not objectionable in itself, but will not work if the number is to correspond to the Home Office reference number; the maladministration at the Home Office will prevent this idea from working and lead to injustice. Restricting the time spent on a case before the reference number is issued will also be counterproductive and unfair.
- xi. ILPA believes that the measures are illogical, unjust and misconceived. ILPA strongly urges the government to abandon them in favour of a comprehensive and independent review of the immigration and asylum system as a whole, in order to improve both its fairness and its use of public money.

Public consultation on proposed changes to publicly funded immigration and asylum work: ILPA's response

Answers to questions posed

ILPA offers the following brief responses to the questions posed in the Consultation Paper, with directions to the relevant paragraphs of our full response. We set out our concern at this point that the questions are too limiting and are in some cases unanswerable outside their proper context. Our full response is therefore broader in scope, reflecting this concern.

1. *What impact will focusing advice and representation through the maximum limits have on clients and particular client groups?*

Widespread, competent, publicly funded advice and representation in immigration and asylum cases is likely to become a thing of the past. It will be extremely difficult to maintain any sort of standard of professionalism or expertise within the time limits proposed. ILPA is opposed in principle to the idea of maximum time limits, but in any event believes that those proposed are absurdly and irrationally short (Paragraph 46-51, Paragraph 22, Paragraphs 68-69, Paragraphs 70-144, Paragraphs 154-158). Many reputable, conscientious practitioners are likely to stop working in the sector, at least as far as publicly funded work is concerned, and those who do carry on will cut back their workload hugely (Paragraph 17, Paragraphs 177-179). The proposals represent an unacceptable interference with basic principles of access to justice (Paragraphs 52-54, Paragraph 186). The result will be abuse, on a very considerable scale, of the human rights of refugees, migrants and indeed British citizens, especially those of minority ethnic background (Paragraph 186-187, Paragraph 115).

2. *Are there any other ways in which unnecessary expenditure can be reduced?*

This question cannot be answered sensibly without looking at the asylum and immigration system as a whole, and ILPA strongly urges the government to review the entire system so as to improve both its efficiency and its fairness (Paragraph 7, Paragraphs 188-190).

Among the ways in which unnecessary expenditure might be reduced are:

- drastically improving the administration and the standard of decision-making at the Home Office, to reduce the wastage of resources caused by this across the system as a whole (Paragraph 21, Paragraph 29,

- Paragraphs 63-66, Paragraph 79, Paragraphs 93-94, Paragraph 101, Paragraphs 147-150)
- improving the administration and the standard of decision-making at the Immigration Appeals Authority (Paragraph 153, Paragraph 140), and empowering Adjudicators to take effective action against the Home Office in cases of maladministration (Paragraphs 151-152)
 - reinforcing existing procedures aimed against unscrupulous practitioners (Paragraph 10, Paragraph 19)
 - raising standards of representation and providing genuine incentives for high-quality representatives to continue to work in the sector (Paragraphs 3, 10, 40 & 99)
 - establishing an independent documentation centre of country information relating to asylum claims (Paragraph 21)
 - allowing asylum seekers to take employment so they can pay for their own advice and representation (Paragraph 189)

ILPA believes the entire asylum process is in urgent need of radical review, rather than a continuation of the process of piecemeal and often inconsistent change which has occurred in recent years (Paragraph 7, Paragraph 188). Detailed and dispassionate consideration ought to be given to the replacement of the current system with an independent decision-making body, both on grounds of fairness and on grounds of cost (Paragraph 189). (ILPA expresses no definitive view at this stage on the merits of such a move, but believes it needs further consideration.)

3. *Do you believe that concentrating funding on the preparation of a statement of case at the initial stage is the most appropriate use of limited funds?*

ILPA believes that this question is too narrowly phrased to be answerable in 'yes' or 'no' form. Indeed, it appears, unaccountably, to contradict the LCD's own views on the work of the representative at the initial stage.

As noted above, if funds are limited, ILPA considers the first step must be to tackle the bureaucracy at the Home Office, which is a source of colossal wastage of public money, and to focus efforts on getting asylum and immigration decisions right more often (Paragraphs 8, 21, 29).

Whilst ILPA is in principle in favour of 'front-loading' the asylum system (i.e. focussing on the initial stage), this presupposes that the advice and representation given at the initial application stage will be comprehensive and not artificially time-limited (Paragraph 48). Front-loading without proper advice at that stage is a contradiction in terms. It is simply not possible, in most cases, to prepare a statement in the time suggested, and indeed *any* rigid

time limit would create unfairness in at least some cases (Paragraphs 70-77, Paragraphs 102-104). If the DCA also believes that the preparation of a statement is important (which is implicit in the question), it is difficult to understand why it proposes to restrict so severely the time available to do this.

It must also be noted of course that preparation of a statement is not the only activity carried out at the initial stage: other necessary actions include taking instructions from the client, preparing them for interview, communicating by letter and telephone with the client, the immigration authorities and third parties, researching the case and instructing experts (Paragraph 78). It also includes making representations to the Home Office to argue the merits of the claim, a process which is described in Paragraph 4 of the main Consultation Paper as ‘add[ing] major value to the asylum process’ (Paragraphs 80-81). If this is the DCA’s view, it is difficult to understand why Question 3 limits itself to discussion of the preparation of a statement. If the DCA believes, as it apparently does, that making representations is an important aspect of the representative’s work, it ought to be prepared to fund such work.

ILPA does not, however, accept that even a generous allowance of time to create the statement would be acceptable in isolation, or that it is appropriate to concentrate funds on one stage of the process to the exclusion of proper funding at another stage. The need for legal advice and representation arises at all stages of an asylum or immigration case, and it is impossible to create a fair system which provides only limited funding, and/or provides it only at a particular stage of the case (Paragraph 49).

4. *Are there specific aspects of appeal work, which are not covered in the above proposals?*

Since the proposals make no allowances for the complexity and sensitivity of conducting appeals conscientiously, it might well be said that all aspects of appeals work are not covered. There appears to be no rational or evidential basis for the idea that four hours is sufficient to prepare an appeal (Paragraphs 123-129). There is no provision either in the Consultation Paper or in the Draft Specification for conferences with counsel (Paragraphs 130-139) and no provision for meaningful compliance with the IAA’s standard directions (Paragraphs 124-125). Other specific omissions appear to include provision for compliance with case-specific directions by the IAA (at present disbursements necessitated by directions are paid for, but not time taken by the representative in complying); anything related to remitted hearings; preparation for hearings which are adjourned, in particular where this is through no fault of the appellant; updating cases where there has been delay in listing the appeal; and the production of respondents’ notices before the IAT. This is not intended to

be a comprehensive list, but merely illustrative of the inadequacies of the approach in both the Consultation Paper and the Draft Specification.

5. *Is there a need to include other exceptions to the maximum limits?*

ILPA is opposed in principle to the idea of generally applicable maximum limits, believing that cases can only be limited by the amount of work which is justified in each individual case (Paragraphs 46-51). The proposals, as they currently stand, do not come anywhere near covering the multiplicity of scenarios which arise in immigration and asylum cases. Flexibility on a case-by-case basis, coupled with the encouragement of conscientious, expert representation, and with appropriate scrutiny of expenditure in each case, is key (Paragraphs 9-10, 27, 40 & 49). If maximum limits were imposed, the exceptions would have to be so numerous as to make the limits themselves meaningless (Paragraphs 49-50, Paragraph 69). Nor would it always be clear whether a case fell into an exceptional category until significant amounts of work – often more than currently proposed – had been undertaken (Paragraph 50). It might also be necessary for the LSC to determine whether a particular client fell within a particular ‘exceptional’ category, a decision which should properly belong to the Home Office or IAA (Paragraph 51).

6. *What impact will the proposals for maximum limits have on businesses, charities and the voluntary sector?*

The proposals for maximum limits will drive many private-sector solicitors out of the immigration/asylum sector, at least as regards publicly funded work, or will at least make them greatly reduce their caseload (Paragraph 17, Paragraphs 177-179). Nor does the intended implementation date leave sufficient time for the private sector to amend business plans and make provision for the intended changes (Paragraphs 17-18, Paragraph 180). The measures will greatly increase pressure on voluntary sector providers (and on MPs’ constituency surgeries) with which they are simply not equipped to cope (Paragraph 176, Paragraph 183). It is very unlikely that the voluntary sector (including CABx, Refugee Community Organisations etc) will be able to expand sufficiently to cope with the shortfall caused by the withdrawal of private-sector providers, and quite unthinkable that they will be able to do so within the short timescale proposed (Paragraph 176, Paragraph 183).

7. *Do you believe a separate system of accreditation is appropriate for immigration/asylum work?*

ILPA welcomes any measures which will have the effect of providing incentives for practitioners to provide a high-quality service (Paragraph 23). ILPA recognises the concern that practitioners are able to move from one firm

to another and recognises that there may be a need to introduce individual accreditation (Paragraph 24). However, ILPA considers that the proposal for accreditation runs entirely contrary to the thrust of the rest of the paper (Paragraphs 23-38), which will have the effect of imposing bad practice across the sector as a whole and depriving it of many of the factors (expert peer-reviewers, mutual support networks etc) which help to drive standards up (Paragraph 36, Paragraph 185). Accreditation can only operate sensibly in the context of a system which encourages and rewards high-quality work (Paragraphs 26, 28, 30, 40 & 189). The effect of the maximum time limits will be precisely the opposite.

8. *What impact will the proposed accreditation scheme have on clients and particular client groups?*

ILPA cannot respond to this question in detail without knowing more of the practical detail of the proposals. However, ILPA points out that quality of representation in an immigration or asylum case is secured not merely by a high level of knowledge and experience, but by spending significant amounts of time on the preparation of the case (Paragraphs 27-29). Therefore, if the proposed accreditation scheme is implemented alongside measures which prevent practitioners, at whatever level they are accredited, doing a professional job by restricting the amount of time they can spend on it, the accreditation scheme will be entirely pointless, and will indeed represent a waste of money and effort (Paragraphs 23-24, 28, 30).

9. *What impact will the proposed accreditation scheme have on businesses, charities and the voluntary sector?*

ILPA cannot respond to this question in detail without knowing more of the practical detail of the proposals, and looks forward to the chance to discuss these in full. The answer will depend on how much additional effort the scheme will involve on the part of those accredited and their employers. Time-consuming application processes or burdensome additional training, unless counterbalanced by significantly higher levels of remuneration, would add to the existing problems faced by practitioners in the sector, and act as a disincentive to them to practise in the sector (Paragraph 25). We reiterate our point above about the wastage of time and money ensuing from any accreditation scheme introduced alongside the maximum time limits proposed.

10. *Are four levels of accreditation necessary? If not, how many, and what should they be?*

ILPA cannot respond to this question without knowing more of the practical detail of the proposals, and looks forward to the chance to discuss these in full. We reiterate our general comments above about the proposed scheme.

11. *What work do you believe those at each level should be considered competent to perform?*

ILPA cannot respond to this question without knowing more of the practical detail of the proposals, and looks forward to the chance to discuss these in full. We reiterate our general comments above about the proposed scheme.

12. *How should competence be assessed and by whom?*

Competence should be assessed by experienced and conscientious practitioners – precisely those who are likely to be driven out of the sector by the proposed caps on funding (Paragraphs 31 & 36). ILPA is unable to see how applicants for accreditation can possibly be either trained or assessed when it will become virtually impossible, under the new time limits, for individuals to practise to the requisite standard (Paragraph 35).

ILPA cannot respond to this question in any greater detail without knowing more about the proposals. We reiterate our general comments above about the proposed accreditation scheme.

13. *How soon do you believe accreditation can become compulsory?*

ILPA believes it is impossible to answer this question without knowing more about what is proposed, and looks forward to the chance to discuss the proposals in full. We reiterate our general comments above about the proposed scheme. As a general point, however, we consider that the timescale for this entire set of proposals is absurdly short.

14. *Are there other ways in which quality can be ensured?*

In ILPA's view (see Paragraph 40, Paragraph 189), quality can best be secured by:

- Ensuring that the amount of work judged necessary on any given case by an experienced, knowledgeable, highly trained and scrupulous representative is properly funded, where the client cannot afford it, out of the public purse

- Providing genuine financial incentives for practitioners to develop a high level of expertise and service
- More vigorous implementation of existing LSC policies on quality
- Providing more effective mechanisms for encouraging and enabling clients to complain about quality of representation, and to get effective redress (including reconsideration of their cases) where complaints are upheld
- Securing the co-operation of the Home Office and IAA in a general drive to raise standards of quality across the entire sector, i.e. both for representatives and for decision-makers

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Detailed comments

A. Introduction

1. ILPA is pleased to note the stated commitment in the Consultation Paper 'to provision of publicly funded legal services as a means of promoting social justice, economic well being and tackling social exclusion', and to providing protection to those 'at real and immediate risk of loss of liberty or life'. (We assume that the last phrase is rhetorically expressed and is not intended as a dilution of the UK's commitments under the UN Refugee Convention and the ECHR, both of which go wider than preventing 'real and immediate risk of loss of liberty or life'. We would, of course, deplore any such dilution.)
2. However, ILPA considers that the proposals put forward plainly contradict these stated aims. They will have the twin effects of exacerbating the social exclusion of an already marginalised group of people, and of preventing those in need of protection from persecution from establishing their claims properly.
3. In ILPA's view, the proposals are fundamentally flawed. They seem to presuppose that the way to deal with poor representation is to make it virtually impossible to provide a high standard of representation in most cases. ILPA believes strongly that the way to ensure a high standard of representation, which provides not only justice for asylum seekers but value for money for the taxpayer, is to provide financial incentives for conscientious and honest representatives, not to penalise them, or even drive them out of the market, because they refuse to compromise on the quality of their work.
4. Whilst ILPA shares the LSC's concern over poor representation, we believe that the LSC has not done enough to tackle the problems posed by firms known by the LSC to be overclaiming or to be providing a poor service. Conscientious practitioners are deeply disturbed at being blamed for the activities of firms against which, in the view of many ILPA members, the LSC has failed to take appropriate action.
5. ILPA does not consider that the result of implementing the proposals will be an overall reduction in the cost of the asylum system, nor that the proposals

will provide value for money in the sector. ILPA's reasons for this belief are set out in detail below.

6. In short, conscientious, expert practitioners are not only being blamed for the failings of less skilled or reputable lawyers, but are now also being asked to adopt the latter's working methods.
7. ILPA maintains its view¹ that there should be an independent review of UK asylum policy, aimed at providing a basis for fair and cost-effective laws and procedures. ILPA notes that the present proposals come in the context of constant changes to the immigration and asylum system, which has included no less than four Acts of Parliament in the ten years since 1993, and is apparently due to include a fifth Act later this year. Despite the frequency with which the law has been changed, the government appears to be no nearer to finding long-term solutions. This demonstrates, in ILPA's view, that the solutions are not to be found in constant legislative activity. The need for a comprehensive, independent, long-term review of policy has never been greater.
8. In particular, it is ILPA's view that the costs of legal representation cannot be examined in isolation from the way in which the system as a whole operates. A competent and even-handed decision-making body is the *sine qua non* of a fair and efficient asylum process, and the serious defects of the determination procedure in the UK, about which ILPA has frequently commented, are a cause not only of injustice, but of much unnecessary cost.
9. A constructive attitude to legal representation, conceding that high-quality advice has a vital role in ensuring justice and efficiency in the system, must also be a starting-point for any discussion. However, the Home Office's approach of excluding legal representation wherever possible, for instance by adopting fast-track procedures which do not allow for adequate preparation of cases, or by introducing interview 'protocols' which deny representatives an appropriate role in the information-gathering process, has helped to institutionalise poor advice and impeded both the justice and the efficiency of the process.
10. ILPA accepts that there is evidence of poor-quality work by suppliers funded by the LSC, and of overclaiming. ILPA considers however that the work that the LSC has already started to undertake, and with which ILPA members often co-operate by acting as peer reviewers, will have a beneficial effect on these problems. This programme has included taking contracts

¹ see *Providing Protection*, report by ARC, ILPA and JUSTICE, 1997, p13

away from poor-quality suppliers and recovering overpayments, together with funding training programmes and providing incentives to do better quality work, such as lighter audit touches and more devolved powers. ILPA considers that the LSC's sanctions against poor-quality suppliers should be more strictly implemented. The measures in this proposed scheme, which limit access to all advisors, whether competent or incompetent, are not the answer (see Opinion, Paragraph 35(2)).

11. Indeed, the proposals will keep poor-quality providers in the scheme, and will restrict or drive out the competent providers who know that there will be no funding for the work, above the suggested time limits, which they feel they must do in order to operate ethically and professionally (see Opinion, Paragraph 35(5)). It seems to ILPA that these proposals sacrifice quality entirely to budgetary issues.

B. Analysis of the background to the proposals

General comments

12. It appears to ILPA that much of what is said by way of statistical or financial justification for the proposals is questionable. Important information has been omitted or presented in an ambiguous way. There is insufficient explanation for a radical shift in policy from positions apparently adhered to by the LSC only a few weeks prior to the consultation period (see Opinion, Paragraph 35(4)). We set out below our concerns as to the explanations offered of why costs have increased. We do not believe that the government has made the case for yet further changes in the funding of asylum and immigration cases, let alone made the case for changes of the sort proposed.
13. We note that the LSC is obliged under a direction made by the Lord Chancellor in 2000 to give top priority to ‘civil proceedings where the client is at real and immediate risk of loss of life or liberty’ (a phrase of course echoed in the Consultation Paper: see Paragraph 1 above), and to ‘proceedings against public authorities alleging ... significant breach of human rights’ (see Opinion, Paragraph 35(6)). It is difficult to understand how these proposals meet this obligation.
14. Should it appear to the government that there is need for change, this ought to be based on a longer-term process of working out the costs and benefits of the proposals, and of meaningful consultation with the legal profession and other relevant bodies. ILPA is concerned at the timescale of these proposals, which apparently has not permitted them to be openly discussed before being set out in detail, and leaves insufficient time for responses to be considered before the proposals are implemented.
15. ILPA notes that no Regulatory Impact Assessment has been published, in contrast to that done by the Home Office in regard to the proposal to charge for consideration of applications for leave to remain by in-country work permit applicants.
16. ILPA notes further that no race impact study appears to have been carried out, contrary to the duties of both the DCA and the LSC under the Race Relations Act 1976 (see Opinion, Paragraphs 40-41).
17. Nor does the intended implementation date (1st January 2004) leave sufficient time for practitioners to amend business plans and make provision for the intended changes. Already we are receiving reports that reputable firms are not taking on new clients because they do not know what the

future holds and fear that they may otherwise be taking on clients whom they will be unable to represent professionally and ethically if the proposals are implemented. We are aware of several solicitors' firms which are considering closing, or have already closed, their immigration departments, at least as far as publicly funded work is concerned. Others are likely to reduce very significantly the number of publicly funded cases they will take on.

18. We note that practitioners will need to be applying for new contracts from 1st October 2003, and wonder how this can be possible when they will not be aware of what contractual obligations they are placing themselves under or what financial arrangements will exist in future. It appears to us extraordinary that these proposals are being made in such a rush.

19. We note that the LSC's way of dealing with poor representation has recently been becoming more effective, as outlined in Paragraph 10 above. We see no reason (and none is provided in the Consultation Paper) why such measures should not continue, and indeed be intensified.

Statistical and financial justification for the proposals

20. With reference to the specific points made in the Consultation Paper, we make the following comments (in line with the paragraph numbering in the paper itself).

Paragraph 3

- i. Reference is made here to 'a number of factors [which] have increased expenditure on legal aid for immigration and asylum'. No indication is given of how much each of these is estimated to have increased expenditure. That being so, it is difficult to see how much weight can be given to them or how important it is to tackle them.
- ii. Reference is made to the increased number of asylum seekers which is said to have led to an increase in expenditure. However, since government is reported to be on course to meet its target of cutting by 50% the number of people claiming asylum in the UK², it is not unreasonable to assume that the legal aid budget for asylum cases will fall in proportion. This fundamental fact would appear to undermine much of the claimed need for the proposed changes, yet no mention of it appears in the paper.
- iii. Similarly, the increase in the scope of non-suspensive appeals, now covering 24 countries, is also likely to reduce expenditure under CLR.

² See Home Office press release, 22nd May 2003

- iv. No mention is made of whether the impact of the Human Rights Act 1998 was factored in to the anticipated increase in costs; if not, this would appear to be a very serious omission which would undermine suggestions that the increase in costs is attributable to illegitimate reasons.
- v. It is noted that ‘With the introduction of funding for representation before the IAA and IAT it was anticipated that there would be a rise in total spend’. It is surprising, in our view, that no indication is given of the extent to which total spend was anticipated to rise. If, for instance, the anticipated rise was 90%, then the actual increase of 93% in cost per case would not appear to be very significant. Indeed, if the anticipated increase was, say, 100%, then an actual increase of 93% would appear to be good news. But if the expected increase was significantly less than 93%, clearly some further analysis and action might be needed (although not the action actually proposed). In the absence of proper information on the basis of which a comparison might be made, the figures given seem largely meaningless and certainly do not provide any support for the proposed changes.

Paragraph 4

ILPA welcomes the repeated commitment to high standards of advice. ILPA moreover shares the concerns expressed in the paper about the quality of some representatives. What appears to be lacking in the Consultation Paper is any sort of connection between the problem outlined and the solution suggested (see Opinion, Paragraph 35(2)). We simply do not understand the justification for making all practitioners, including those acknowledged by the LSC to be providing a quality service, pay for the actions of a minority (and indeed the paper states clearly that those practitioners whose actions cause concern are in a minority). There is no evidence provided of a connection between poor representation and the need to restrict drastically the time expendable on any given case (see Opinion, Paragraph 35(2)). On the contrary, we suggest that bad representatives are not likely to be ones who have spent too much time on their clients’ cases, but those who have spent too little (although they may have overcharged or claimed for work which they have not done, which is a separate issue). As one of our members comments, ‘[t]he most common complaint that my clients have of previous representatives is that they did not spend sufficient time with them to elicit their statement’.

Paragraph 5

- i. It is claimed that a disparity exists between the number of new asylum claims and the number of new matter starts in 2002: asylum

claims are said to represent some 54% of matter starts. This is relied upon as ‘evidence of duplication of work’. No indication is given in the paper, however, of how many of these new matter starts were not asylum claims at all. ILPA understands from correspondence with the LSC³ that between 70% and 85% of matter starts were asylum claims (some cases apparently being categorised as asylum claims when they finish but not when they start). This in itself explains between one third and two thirds of the disparity. We are concerned that, as a result of this important omission from the paper, a misleading impression has been created of the extent of the claimed duplication of work.

- ii. There appear to be a number of other innocent explanations for why matter starts on asylum may exceed the number of asylum claims over the same period of time. None of these factors appears to have been taken into account, yet all would appear to have a clear bearing on why matter starts exceed asylum claims and therefore to undermine the justifications given for the proposed changes. Among these, we would suggest:
 - a. first, many clients will change advisors when dispersed, as indeed the LSC appears to want;
 - b. second, when firms close down (and we understand that at least 50 have recently been closed down by LSC action), transfers to new representatives count as new matter starts;
 - c. third, clients who were previously unrepresented or were represented by immigration consultants or voluntary organisations (and were therefore not LSC-funded) may transfer to a solicitor, so the number of new asylum matter starts will partly represent asylum claims from previous years; this is likely to be happening more frequently with increased regulation, and the closure of some firms, by the OISC.
- iii. It is also suggested that there is ‘evidence of clients “shopping around” for advice’, although no indication is given of the extent of this practice, nor indeed why it is considered a problem. If, as conceded in the paper, a ‘significant minority’ of practitioners are providing a poor service, it is not surprising that their clients should be looking to change representative. Indeed, it is conceded in Paragraph 5 of the Consultation Paper that there may be legitimate reasons for a change in representative, and no indication is given of the extent to which ‘non-legitimate’ changes of representative are a genuine problem.

³ letter to ILPA from LSC, 3rd July 2003

- iv. In any event, ILPA points out that just because an applicant changes lawyer, it does not follow that work is being duplicated. The new representative may build on, rather than replicate, the work done by the previous one.
- v. As for the statement that unmeritorious claims are being pursued with public funding, again no indication of the extent of this problem is given, nor is it clear why it cannot be tackled by appropriate monitoring of the application of the existing merits test.

Paragraph 6

It is suggested here that measures aimed at monitoring and regulating expenditure 'have not been sufficient to ensure that immigration and asylum work falls within budget'. Again, no analysis is offered of why this might be. Given that removal of devolved powers in judicial review cases only came into force on 1st April 2003, it is difficult to see how the effectiveness of this measure can possibly have been monitored meaningfully, let alone properly analysed.

21. ILPA suggests that there are in fact a number of reasons for the increase in costs, none of which bears directly on the question of quality:
- An increased rate of decision-making in asylum cases by the Home Office⁴, in an attempt to clear the backlog of cases, has led to a concentration of costs in a short space of time which would otherwise have been spread out over a longer period of time; as the backlog clears and the number of decisions reduces, the costs are likely to reduce.
 - The introduction of the Human Rights Act in October 2000, as noted above, greatly increased the complexity of immigration and asylum procedures, and increased the range of matters on which applicants could legitimately seek advice; any analysis of costs which failed to take this into account would, as noted above, appear to be of little value.
 - The hourly rate payable by the LCD to contracted firms in London has risen twice since the beginning of 2000: from £48.25 to £52.11 on 1st July 2000, representing an 8% increase, and a further increase on 2nd April 2001, by approximately 10% to £57.35, which remains the current rate. The total increase in the hourly rate since the beginning of contracting has been just under 19%. We are greatly surprised that this is not mentioned in the Consultation Paper as an obvious source of increased costs per case.
 - Practices at the Home Office greatly increase the amount of time which needs to be spent on each case; these include:

⁴ 33,720 initial decisions were made by the Home Office in 1999, 109,205 in 2000, 119,015 in 2001, and 82,715 in 2002: Parliamentary Answer by Beverley Hughes MP, 29th January 2003

- refusing meritorious claims, which leads to unnecessary appeals as well as requiring all cases to be prepared even more thoroughly than before, in anticipation of a wrongful refusal
- appealing more cases to the IAT than in the past, even where the Home Office has failed to attend the hearing before the Adjudicator
- refusing applications and then either conceding the appeal at the door of the hearing, or not bothering to attend the appeal hearing at all
- relying on partial or inaccurate information about human rights conditions in asylum seekers' countries of origin, and disputing the most basic facts about those countries' human rights practices
- causing huge delays in the asylum screening process for minors, where attendance is currently funded
- requiring applicants and their representatives to travel long distances in order to attend substantive interviews, solely on the basis of the administrative convenience of the Home Office, including the remarkable decision in recent years to invite applicants based in London to travel to Leeds or Liverpool for interview, whilst requiring applicants based outside London to travel to Croydon
- losing files and delaying consideration of cases: much time is wasted in attempting to get the Home Office to make decisions, find files, reply to letters or even acknowledge receipt of documents
- failing to respond to representations post-refusal, usually because appeal cases are not allocated to Home Office Presenting Officers until the day before an appeal hearing, which often necessitates last-minute adjournment of hearings
- making large numbers of unnecessary refusals of asylum on non-compliance grounds
- issuing incorrect documentation (for instance issuing status letters with the wrong names or dates of birth on them)
- at the same time, making itself almost impermeable to external enquiries: it is increasingly difficult and time-consuming to get even the most basic response from the Home Office as to progress on a case, let alone to get it to respond to representations or information submitted (even the IAA has found it impossible to get the Home Office to respond to its directions: see Paragraphs 148-150 below)
- The IAA's practice of listing appeals away from where either the appellant or their representative is based adds to costs under CLR. The same applies to the practice, of which we have been advised, of listing IAT hearings in Birmingham even where both the representative and the IAT panel itself are based in London.
- The government's dispersal policy has added to costs by either requiring applicants to be represented by solicitors well away from their homes, or

- requiring them to transfer cases to solicitors nearer their homes, which inevitably duplicates work in at least some cases.
- Similarly, the policy of not allowing asylum applicants to work is likely to have increased the LSC budget by preventing many of them from paying for advice and representation.
 - Changes in the claims made by several client groups have also occurred because of international events. For instance, Afghan claimants almost invariably used to be granted at least exceptional leave, and few went to appeal; now most are refused⁵ and are likely to appeal. Similarly, Iraqi Kurds are now frequently refused by the Home Office rather than being granted at least exceptional leave. Kosovans also generally had relatively straightforward cases but now raise more complex issues. Each of these represents a large proportion⁶ of the claims made in the UK over the past few years, and in each case the result of global events has been to make relatively straightforward cases more complex and therefore more costly.
 - More has to be expended on expert reports, partly as a result of the increasing tendency of the Home Office to refuse apparently meritorious claims (see above), but partly because of the Immigration Appeal Tribunal's tendency to require that separate reports be commissioned in each case, rather than (as used often to be the case) having a report commissioned for one client and 'recycled' for other cases⁷. (Some of the pressure on the LSC's budget could be relieved by the establishment of an independent documentation centre to produce objective human rights information about asylum seekers' countries of origin, as well as on individual cases.)
 - The increasing cost of expert evidence is particularly acute as regards medical reports, where the Home Office regularly refuses to accept applicants' accounts of the causes of injuries with which they present.

22. We deal in more detail below with the issue of the amount of time required at each stage of the asylum application, but at this point we note simply that we doubt whether any research whatsoever exists to support the view that the time limits proposed are appropriate; there appears to be no rational or evidential basis for them. There is in ILPA's view no justification at all for the suggestion that these times are adequate or that they will not lead to a reduction in the quality of representation.

⁵ 83% in the first quarter of 2003: see Home Office Asylum Statistics, 1st Quarter 2003

⁶ According to the Home Office Asylum Statistics, 1st Quarter 2003, over 28% of applicants in 2002 were from Afghanistan, Iraq or the FRY, although it cannot be established from the official figures which of those from Iraq or FRY were Kurds or Kosovans respectively; anecdotal evidence suggests it is a high percentage in each case

⁷ see e.g. *Slimani* (01 TH 00092) IAT, at paragraph 20; ILPA recognises and to some extent shares the IAT's concerns in this regard, but notes that they clearly increase costs to the CLR budget

C. Accreditation

23. ILPA welcomes any measures which will have the effect of providing incentives for representatives to provide a high-quality service. We do not consider, however, that the system proposed in the Consultation Paper will in fact have this effect. We include in this response some preliminary comments on the LSC's July 2003 'Discussion Paper: Immigration Accreditation Scheme' (hereafter 'the Accreditation Discussion Paper'), which we have seen.
24. It is difficult for ILPA to respond definitively to the proposal to introduce a system of accreditation, since we regard the proposal as pointless in view of the linked proposals for caps on public funding of cases. Generally, however, we would accept the proposal that 'payment out of public funds will only be made to individual advisors who are accredited' (paragraph 13) as a sensible extension of the principle of allowing only certain firms and organisations to offer immigration work. ILPA recognises that there are problems with advisors moving from firm to firm, and accepts that individual accreditation may be necessary.
25. Any system of accreditation should not present significant obstacles to appropriately qualified people becoming accredited at the relevant level. That is to say, time-consuming application processes or burdensome additional training, unless counterbalanced by significantly higher levels of remuneration, would add to the existing problems faced by practitioners in the sector, and act as a disincentive to them to practise in the sector.
26. We note that it is proposed to pay 'enhanced fees to those suppliers who offer clients a consistently high level of service'. However, it is unclear to us exactly what these 'top-drawer' representatives will be paid to do. It does not appear that this means that they will be paid to provide more advice to clients, merely that they will be paid more for providing the same (limited) amount of advice⁸.
27. In the experience of ILPA members, quality of representation is secured not merely by a high level of knowledge and experience, but by spending significant amounts of time on the preparation of the case, in terms of interviewing the client fully, preparing detailed written submissions, consulting with counsel in the event of any appeal, and commissioning and submitting relevant country reports and expert or medical evidence. This process does not take less time because the representative is an experienced

⁸ letter to ILPA from LSC, 3rd July 2003

or expert practitioner; indeed, it will often take more time, because such a representative will foresee more issues that are likely to arise and will take more care over asking the right questions and checking back the answers.

28. We stress that sub-standard practitioners are likely to be those who spend too little time, not too much time, on their clients' cases (the question of how much they actually claim for being a separate one). We indicate elsewhere in this response that it is impossible to see how representation of a high standard can be offered within the proposed time limits, no matter how good the practitioner. That being so, we are not sure what will be achieved by paying practitioners an enhanced fee to do what must be a second-rate job.
29. It is also the experience of ILPA members that success in asylum and immigration cases is often the result of persistence on the part of the representative in following up the case and demanding appropriate action from the Home Office – in other words, it depends directly on the amount of time they are able or prepared to spend on the case. Artificially reducing this amount of time will inevitably allow the Home Office to get away with poor decision-making and maladministration to an even greater extent than now.
30. Furthermore, we suggest that the outcome of the proposals will be that the better practitioners may, because they care about their clients and the quality of their own work, do more than the maximum amount of work allowed, without charging either the LSC or the client for it. The result would be that the more conscientious practitioners will, in effect, be paid less per hour than others. Far from providing incentives for high-quality work, we consider that this provides incentives to represent applicants badly. We do not understand how this can sensibly be the government's intention.
31. Nor is it clear to ILPA how practitioners are expected to acquire the experience and expertise to 'move up the ladder' of accreditation, if they are so severely limited in the number of hours they can spend on a case. As things stand, the LSC appears to be recommending, in the Draft Specification, standards of representation for expert practitioners which would currently be regarded as customary for only the most sloppy and inexperienced of practitioners.
32. ILPA draws attention to the fact that in 2002 the LSC both funded and endorsed ILPA's *Making an Asylum Application – a Best Practice Guide* (henceforward 'the *Best Practice Guide*' or 'the BPG'). This sets out far

higher standards of good practice than will be possible under the proposed scheme.

33. Indeed, we note that the BPG is specifically mentioned at Paragraph 10 of the Accreditation Discussion Paper as part of the LSC's measures to drive up standards. Obviously, therefore, the LSC does in fact still regard the standards contained in the BPG as applicable.
34. Accordingly, it would appear likely that most practitioners will fail the assessments required to become accredited, at least at the higher levels, and quite possibly at lower levels, since the standard of work they will be funded to do will fall so far below that required in the BPG and by other measures of quality control used by the LSC.
35. For instance, we note that at Paragraph 42 of the Accreditation Discussion Paper, those applying for accreditation at the Advanced level will be required 'to demonstrate that they have personally had conduct of exceptionally complex cases, in which they have conducted their own advocacy'. In the circumstances, this is risible. There will simply be no possibility of anyone conducting 'exceptionally complex cases' at all under the proposed funding restrictions, and we fail to see how anyone will be able to qualify at this level (unless of course they have been doing privately funded work, in which case it is unclear why they might wish to take underpaid publicly funded work⁹).
36. Further, the loss of large numbers of expert and experienced practitioners from the sector, which is what ILPA believes will be the result of the proposals, will drive down standards generally. There will be fewer practitioners capable of acting as trainers or peer-reviewers, nor will practitioners, particularly probationers, be able to benefit from the informal contacts with experienced practitioners provided, for instance, by ILPA and the Refugee Legal Group.
37. We note the concerns of the judiciary, mentioned in the Accreditation Discussion Paper, e.g. at Paragraph 8, and reiterate that we fail to understand how these concerns will be allayed by presenting the courts with representatives who will have been effectively barred from preparing cases properly. We wonder whether it is really the desire of the courts that the current system, where representatives are admittedly of uneven quality, should be replaced with a body of representatives who will uniformly either be underprepared or possess a low level of expertise.

⁹ and see Paragraph 28 above

38. The proposal for accreditation thus in our view runs entirely contrary to the thrust of the rest of the paper, which will have the effect of largely eliminating the differences between better practitioners and lower-quality ones, to the detriment of the former.
39. With regard to the proposals to accredit interpreters and experts, ILPA would welcome the opportunity to discuss these in detail with the LSC, although we would reiterate our concern that an accreditation scheme which did not operate within a system providing adequate remuneration for interpreters and experts would be pointless.
40. In our view, quality can best be secured by:
- Ensuring that the amount of work judged necessary on any given case by an experienced, knowledgeable, highly trained and scrupulous representative is properly funded, where the client cannot afford it, out of the public purse
 - Providing genuine financial incentives for practitioners to develop a high level of expertise and service
 - More vigorous implementation of existing LSC policies on quality
 - Providing more effective mechanisms for encouraging and enabling clients to complain about quality of representation, and to get effective redress (including reconsideration of their cases) where complaints are upheld
 - Securing the co-operation of the Home Office and IAA in a general drive to raise standards of quality across the entire sector, i.e. both for representatives and for decision-makers.

D. Unique File Number

41. ILPA has no objection in principle to the introduction of a Unique File Number (UFN), but has practical concerns over the suggestion that the UFN should correspond to the Home Office reference number.
42. It is stated in the Consultation Paper that the Home Office reference number 'is issued to all clients when they make an immigration application'. This is simply not correct. ILPA would point out:
- Not all applicants do in fact get a Home Office reference number when they first apply: in the case of entry clearance applications from abroad, no Home Office reference number is generally issued on an initial application; where an initial application is refused, no reference number is issued before the case is listed for hearing, and sometimes not even then.
 - Many applicants in the UK do not get a Home Office reference number when they apply: it is not uncommon for applicants to be turned away from the Asylum Screening Unit (ASU), and for representatives to spend considerable amounts of time trying to rectify this. In one case in which an ILPA member was involved, it took six hours' work to get the applicant through the door of the ASU, during which time the applicant of course had no Home Office reference number. Another member has reported to ILPA two cases where the minor client and the representative spent three entire working days at the ASU. Whilst it is not suggested that every case is the same as these examples, they do indicate that there are cases where substantial delays are encountered in getting reference numbers issued. Funding may therefore be required before the number is issued, or indeed in order to get it issued at all.
 - Relying on the administrative procedures of the Home Office as a basis for efficient monitoring is generally unwise. It is common, in the experience of ILPA members, for the Home Office to issue duplicate or even triplicate reference numbers for the same application. It is also common for the reference number to change during the course of the application. At least once in recent years, the Home Office has reissued all active files with a new reference number. It is far from clear how the LSC would anticipate dealing with such matters.
 - At present all members of the same family often retain the same Home Office reference number, even if some of them subsequently claim asylum separately. It is not clear how the LSC would envisage dealing with this, particularly given that there may be good reasons (e.g. family breakdown) why it would be completely inappropriate for people's affairs to be linked in any way.

- ILPA notes that the practice of linking local authority support and NASS payments to information that should be provided by the Home Office has led to delay and consequent hardship. There is every reason to suppose that this sort of inefficiency will be replicated under the proposed scheme, leading to the incorrect denial of access to legal help for some clients.
- In any event, even if there were no practical obstacles to be overcome, it appears wrong in principle for the availability of legal advice to be made dependent on the actions of the other party in the proceedings: this ought to be a separate matter, administered by the LSC, and entirely independent of the Home Office.

43. ILPA would therefore strongly suggest that any system of UFNs should not be linked to the Home Office reference number, but should be a system of numbers separately issued by the LSC.

44. Moreover, ILPA cannot accept the limitation of advice to one hour before the UFN has been obtained. This is partly because of the administrative problems mentioned above, and partly because, even with the best procedure imaginable for issuing Home Office reference numbers, there are many instances where it is necessary to undertake significant amounts of work on cases before making the application, simply in order to find out whether an application to the Home Office is appropriate, and if so on what basis. This might include exploring the applicant's reasons for wishing to claim asylum, discussing their family ties to the UK or discussing the state of their health with a view to making a claim under Articles 3 or 8 of the ECHR or on compassionate grounds.

45. Indeed, the proposals would appear to make it likely that inappropriate or unnecessary applications will be made to the Home Office simply in order to get a UFN; once the UFN has been received, and further work can be undertaken, these applications may be amended and in some cases withdrawn. By that time significant amounts of public money may have been wasted which would not have been wasted had the representative been able to spend more time discussing the possible application with the applicant. In terms of saving public money, therefore, the one-hour limit would appear to be self-defeating.

E. Time limits

The principle of time limits

46. ILPA is opposed in principle to the idea that any fixed time limits should be imposed on the preparation of asylum or immigration applications and appeals.
47. ILPA would suggest that the notion of capping the amount of time which can be spent on cases which involve a risk to individual life and liberty is unprecedented. Indeed, it appears that more public money is to be available in future for advice on relatively minor civil matters than for matters where people's life and liberty are at stake.
48. Particularly in asylum cases, ILPA has repeatedly stressed¹⁰ the value of a 'frontloaded system' of decision-making, i.e. one which puts time and resources into ensuring that relevant information comes out as early as possible in the process. This includes an active role for the representative in assisting the applicant to bring this to the attention of the decision-maker. A system which effectively ensures that important information either does not come out at all, or comes out only at a late stage in the proceedings, is a more expensive one as well as an unjust one. Yet precisely this is what will be created by the system envisaged, for the reasons set out below.
49. In our view the simple principle is that the time taken on each case must depend entirely on the nature and complexity of the case (see Opinion, Paragraph 35(1)). Thus the need is for flexibility in all cases. Since, the need for legal advice and representation may arise at any stage of a claim, that flexibility must apply at all stages: 'front-loading' is not a substitute for proper advice throughout the process. This does not of course mean that representatives should not be prepared to justify their decisions on the conduct of cases, nor that the LSC should not take action against representatives who can be shown to be overclaiming. It does however mean that any rigid time limit cannot work, no matter how many exceptions to it exist.
50. Indeed, ILPA points out that even if more sensible time limits were to exist in certain categories of supposedly 'exceptional' cases, it may not become clear that a particular client falls within one of those categories until significant amounts of time have been spent on the case. For instance, although the time limits proposed are clearly inadequate for handling cases of torture survivors, it may not be clear that a client is a torture survivor

¹⁰ See for instance *Providing Protection*, p10

until they have been interviewed extensively and sensitively over a period of time. This reinforces ILPA's view that flexibility, on a case-by-case basis, is the only answer.

51. Establishing exceptions for some categories of vulnerable client would also risk shifting the focus of discussion from the Home Office or IAA to the LSC: in other words, the LSC could be expected to face lengthy arguments over whether a particular client fell within a particular category, and to be making decisions on such matters which properly belong to the Home Office or IAA. This appears to ILPA to be highly undesirable and wasteful of resources.

Access to justice

52. For the reasons given above, the proposals also represent, in ILPA's view, an unjustifiable interference in the basic principle of access to justice (see Opinion, Paragraph 37). It appears quite unacceptable to ILPA that the government should seek to interfere to such an extent in the ability of individuals to challenge decisions and actions taken by the government itself. Access to justice must be effective and not merely theoretical, and must therefore include access to a legal representative. Such access will effectively be denied by the proposals.
53. ILPA believes it is even more vital that the government should neither obstruct, nor be seen to be obstructing, individuals' access to justice, where what is at stake is the legality of executive decisions affecting fundamental individual rights. Here, the need for transparency and judicial oversight is even greater.
54. We also point out that the time limits, by definition, apply only to those who are unable to afford to pay for advice. Therefore they create a two-tier asylum system, in which wealthier applicants will have better access to justice, and will be better able to safeguard their human rights than impecunious ones. We question whether this is truly an appropriate way to ensure that human rights are respected in a non-discriminatory fashion.

Actual time limits proposed

55. In ILPA's view the maximum time suggested in the Consultation Paper and Draft Specification grossly underestimates the amount of time likely to be spent in all but the most straightforward of cases.
56. The proposals go against much of what is today considered by the Legal Services Commission to be an acceptable level of service (see Opinion,

Paragraph 35(4)), and contradict the stated aim of the proposals, i.e. to ensure high-quality advice in the immigration and asylum sector.

57. The current guidance for time standards issued by the LSC, which was drawn up in consultation with ILPA, is instructive, although it must be recalled that the LSC often allows longer periods in particular cases. (The comments below must of course be read in the context of ILPA's stated opposition to the imposition of any kind of time limit, however generous.)
58. In an asylum claim, according to ILPA's understanding, the guidance acknowledges that 2 hours (up to 4 hours in complex cases) is considered reasonable for taking initial instructions. A further 4 hours is considered reasonable for completing the SEF. It will be noted that this already adds up to more than the maximum time limit now proposed, and that is without any of the other activities carried out at the initial application stage.
59. ILPA understands that a further 6 hours, plus travelling and waiting time, is given for attendance at the Home Office interview.
60. If an application for asylum is refused, an extension of 1 hour is currently considered reasonable by the LSC for preparing and lodging an appeal. However, given that the new Procedure Rules require substantive grounds of appeal to be lodged, additional time may well be required in many cases. For preparation of an appeal, further extensions up to 4 hours are considered reasonable and it is acknowledged that in complex cases, significant extensions may be justified. (ILPA members have given examples of cases where 25-30 hours or more are needed to prepare particularly difficult cases.) 6 hours are considered acceptable by the LSC to prepare a case to the Immigration Appeal Tribunal (although ILPA members report that grounds of appeal to IAT may take 4-5 hours or more in some cases), while 2 hours are considered reasonable for an application for legal aid for a judicial review (for which now read Statutory Review) of a refusal of leave by the Immigration Appeal Tribunal. The existing guidance times also exclude the preparation for the hearing itself, including production of skeleton arguments, chronologies etc.
61. The time standards for non-asylum immigration matters acknowledge that more than 3 hours may be required for initial applications.
62. Since these time standards were published, there have been significant changes in law and in procedure at the Home Office, notably as a result of the Human Rights Act which came into force in October 2000; the Nationality, Immigration & Asylum Act 2002; the Immigration and Asylum

Appeals Procedure Rules 2003; and Practice Directions issued by the Immigration Appellate Authority.

63. ILPA also points out that the amount of time spent on a case will depend to a very large extent on the attitude of the Home Office: where the Home Office chooses to dispute certain facts, the cost of representation will be higher than in cases where it does not choose to dispute what may be similar facts. It is common for the Home Office to fight a case for a long period of time, even several years, only to concede at a late stage. There is often no obvious reason why the claim could not have been accepted earlier, but the Home Office's change of mind will be partly down to the refusal of the representative to abandon the case. Representation in immigration cases, particularly asylum cases, is therefore to a large extent a reactive process which does not depend solely on the nature of the case or the competence of the representative.
64. The poor standards of service at the Home Office, of a sort which would not be tolerated in any other government department, also create enormous difficulties. These do not appear to be improving significantly, and in some respects (for instance in respect to the lack of access to the Home Office from outside) are deteriorating. There seems to be no culture of personal responsibility or accountability in the Home Office. Mistakes are made all too often, and are solved only by practitioners making detailed representations and entering into lengthy correspondence and telephone calls. Passports, written correspondence and even entire files are lost on a regular basis. Status letters and travel documents are regularly issued with incorrect personal details. Even when action is promised by the Home Office (for instance issuing a fresh status letter, or considering representations which have been submitted), this is often not done, and it is impossible to get anyone to take responsibility for it. It is almost impossible to have any meaningful discussions with the Home Office on the telephone, as all calls, if they are answered at all, are dealt with not by the decision-making section but by the Immigration and Nationality Enquiry Bureau (INEB). Written correspondence is not read or not even linked to the relevant file.
65. One ILPA member provides the following examples, which are typical, in ILPA's experience, of the unnecessary complications which can arise:
- A Pakistani man made an application under the regularisation scheme for overstayers in June 2000. Numerous calls and letters were made to follow this up, but no decision was sent. In November 2002, because his father in Pakistan was very ill, several phone calls & faxes were sent to the Home Office to ask for a decision to be made. In March 2003 the

Home Office replied that the claim had in fact been refused in July 2001, but the applicant had not been notified. Eventually, in August 2003, the Home Office decided to grant ILR as the applicant has been here over 13 years. The ILPA member estimates that at least 34 phone calls and 14 letters and faxes had to be sent, as well as at least ten appointments held with the client.

- A Somali man applied for asylum in 1999 and was refused. He lost his appeal as a refugee but the Adjudicator found as a fact that he is a Somali national of Bajuni ethnic origin, so he cannot be removed. He was on temporary admission, but was called in by the Immigration Service for interview and was, for no obvious reason, detained. He was released 4 days later, but with conditions preventing employment (before his detention his conditions had permitted employment). Helping to get him released took 4 phone calls, then trying to get his conditions altered took 3 phone calls and 2 faxes to the Home Office, and lots of calls with him as he had no means of support. No decision has been made to grant him leave to enter, despite the Adjudicator's findings and a long letter of representations that he should be given exceptional leave (as it then was). His TA ran out in late July 2003, but despite being told that this would be extended, nothing has been received, and he has been marked on the Home Office computer as being in breach of conditions.

66. It is impossible to stress too much what these errors mean to the applicant, or to the representative who has to try to sort them out. Even the most basic error by the Home Office can lead to complications, which may take hours of work, spread over weeks or even months, to rectify. Applicants who try to sort these errors out for themselves are often given unhelpful or incorrect information by the Home Office, and make no progress without advice.

67. As a consequence of this sort of incompetence, it is common for those providing a quality service to their clients to apply to increase the existing financial limits. These applications are of course monitored by representatives at the Legal Services Commission, most of whom have experience of working in this field.

68. It is clear, in ILPA's view, that the time limits being proposed in the Consultation Paper have little or no bearing to the current time standards or to what has until now been generally regarded as reasonable and necessary to offer clients a quality service.

69. We do not accept that time limits would be appropriate even if exceptions existed for certain categories of case. The number and the complexity of the exceptions needed to create a fair system would be so great as to render the

time limits themselves meaningless. The system is extremely complex, and a huge number of different scenarios can arise in immigration and asylum cases; it is therefore not a sector which lends itself to the imposition of rigid time limits, with or without exceptions. Certainly under the time limits now proposed, the exceptions would be the cases which could be satisfactorily dealt with inside the time limits, not those which could not.

Asylum – initial application stage

70. It is ILPA's view that the five-hour limit proposed for all action prior to any refusal is completely insufficient. It bears no relation at all to the amount of work required at this stage of an asylum claim.

71. ILPA points out that taking detailed instructions on any aspect of an asylum claim can be a very lengthy process. An interpreter is needed in most cases, which virtually doubles the amount of time any interview or discussion with the client is likely to take. Interpretation is absolutely vital for the administration of justice, yet no proper provision is made in the proposals for this. (The same of course applies to non-asylum immigration cases: see Paragraph 114 below.)

72. ILPA reiterates that in 2002 the LSC both funded and endorsed ILPA's *Making an Asylum Application – a Best Practice Guide* (the BPG), and that the LSC's Accreditation Discussion Paper appears to endorse it once again. The BPG sets out far higher standards of good practice than will be possible under the proposed scheme. We see no reason why the LSC should have resiled from these standards.

73. Many asylum applicants, and some of those seeking advice on non-asylum immigration issues (for instance under the domestic violence provisions) are traumatised, fearful or untrusting, and have to be handled with considerable sensitivity. Rushing an interview or cutting a client off in the middle of an interview because of an artificially imposed time limit could be disastrous both for the development of a relationship of trust and confidence between the client and the representative and for the quality of the information gleaned from the interview. It is impossible to see how a solicitor could be acting in the best interests of their client by refusing to listen to their account or failing to pose all the questions which might be relevant to their case.

74. The importance of getting full, detailed instructions in an asylum claim at an early stage cannot be overstated. Asylum claims are frequently refused precisely because the information provided by the applicant is said to be 'vague and lacking in detail'. Information provided at a later stage by the

applicant is frequently treated with suspicion by the Home Office, and failure to mention an important matter which is raised later is likely to lead to an accusation that the applicant is embellishing or indeed fabricating their account. These proposals are thus likely to impact most seriously on clients who are inarticulate, are unwell or have, for whatever reason, difficulties discussing painful or sensitive experiences. In many cases, these are the applicants most likely to be in need of this country's protection.

75. Therefore the proposals seriously undermine the commitment, repeatedly stated by the government and reiterated at the start of the Consultation Paper, to offer asylum to those who genuinely need it. ILPA points out that, according to the government's own figures, at least 40%, perhaps up to 50%, of applicants are granted leave to remain on asylum, human rights or humanitarian grounds¹¹. Such people will be disproportionately affected by these proposed measures.
76. In addition to the human rights implications of a lack of early disclosure, raising matters at a late stage which have not been mentioned early on complicates and lengthens the appeals process, adding to the cost of the process.
77. ILPA notes that paragraph 24 of the Consultation Paper states that 'we see the key to putting the client's case to be the statement of case prepared on behalf of the client by the representative in setting out the reasons for applying for asylum which is then submitted to the Home Office'. If that is really so, it is impossible to see how it can be rational to restrict the time available for these tasks, in every case, to a fraction of the time currently spent by competent advisors.
78. The following are some of the principal matters set out as necessary in the preparation of an initial asylum claim in the ILPA *Best Practice Guide* (this is not intended to be an exhaustive list of what is desirable in the preparation of an asylum claim or of what is set out in the BPG):
- Taking initial instructions from the client; if inappropriate or unnecessary asylum claims are to be avoided, and if the representative is

¹¹ Total figures can only be approximate because of inadequacies in the Home Office's published statistics, but some 26% of applicants were granted refugee status or exceptional leave at first instance in the first quarter of 2003, and 22% of appeals succeeded; admittedly not everyone appeals, and the appeals do not relate to decisions made in the same time period, but equally some people succeed in having their claims reconsidered independently of the appeals process, and it is reasonable to estimate a total success rate of between 40% and 50%. The percentage is larger if only those whose claims were decided on their merits are included (i.e. excluding those refused on 'non-compliance' grounds): it does not of course follow that those who were refused on non-compliance grounds did not have meritorious claims. Before the Court of Appeal in *R(Q) v SSHD*, the Attorney-General submitted that 19% of applicants in 2002 had been granted refugee status and 27% exceptional leave, a total of 46%, which tallies with ILPA's estimates.

- to fulfil their professional duty towards the client, this initial interview is itself likely to be a time-consuming activity, which includes:
- Establishing the client's current and previous immigration status in the UK, including whether an asylum claim has already been lodged
 - If a claim has not been lodged already, finding out whether the client has any fear of returning to her/his country of origin, and/or whether any human rights issues arise in her/his case
 - Discussing with the client whether an asylum and/or human rights claim is appropriate
 - If an asylum claim is appropriate, explaining the asylum process and explaining the role of the solicitor, including issues such as confidentiality, early disclosure of information and procedural time limits
 - Checking the client's passport and any other documents presented
 - Establishing any alternative basis for remaining in the UK, e.g. by virtue of nationality, parentage, marriage etc
 - Asking about how the client left her/his country of origin, including whether any visa application has been made to the UK or another state
 - Establishing the client's mode of entry to the UK
 - Checking whether the client has claimed asylum elsewhere and/or has travelled through any other countries en route to the UK
 - Opening a file on the client and recording all necessary information in it
- Advising the client over lodging the initial asylum claim if this has not already been done, including the screening process and the Section 55 interview, and sorting out any problems which arise (as they frequently do) at the Home Office in this regard
 - In the case of minors, attendance at the screening interview
 - Taking a full statement from the client as to her/his reasons for seeking asylum in the UK: this will be necessary whether or not a SEF has been presented for completion, and whether or not the client has already been substantively interviewed before contacting the advisor; it may involve a number of interviews, especially where the client is traumatised or hesitant over divulging information, and is likely to be the most time-consuming aspect at this stage of the process
 - In many cases, drafting, checking and submitting a statement of the client's reasons for claiming asylum: again, a rushed, incomplete or inaccurate statement is contrary to the interests of the client and simply stores up more complications for the future¹²

¹² as to what the statement should include, see e.g. p46-51 of the BPG

- Submitting a Statement of Additional Grounds in response to a One-Stop Notice served by the Home Office
- Attending any substantive interview carried out by the Home Office (see below)
- Submitting observations regarding the interview, where appropriate
- Compiling background information such as human rights reports and submitting these to the Home Office, where appropriate (this may have to be done more than once if consideration of the case by the Home Office is delayed)
- Considering, commissioning and submitting an expert report or medical report, where appropriate
- Making representations on the case (see below)

79. It will furthermore be necessary for the representative to monitor progress on the case, ensuring that the application is being considered in a timely way, and raising any delays in arranging interviews or determining the case with the Home Office. ILPA draws attention to the fact that the Home Office frequently loses files, misplaces correspondence, or fails to reply to letters or phone calls¹³. ILPA considers that in many cases the only effective control on the inefficiency of the Home Office is applicants' representatives. No-one else is in a position to know, for instance, whether documents have been served or received or whether the case has been dealt with to an appropriate time-scale. Without effective representation, the scope for maladministration increases greatly.

Making representations (whether before or after the initial decision)

80. ILPA notes that Paragraph 4 of the Consultation Paper states: 'we believe that written representations in initial applications and representation on appeal in meritorious cases can add major value to the asylum process as a whole'. ILPA concurs. This being so, it is impossible to understand how the LSC believes that useful representations can be drafted and submitted in the small amount of time proposed.

81. ILPA agrees that making representations on the merits of a claim, whether before or after the initial decision, is a vital part of the process of representing an asylum applicant. This is a complex process which needs to be approached with care and attention to detail. It is likely to include careful consideration of the evidence and of the legal principles applicable to the case. This is not something which can be rushed. It may include hours of research in technical publications or on the internet. It may include instructing an expert, which, in order to be of any assistance to the decision-

¹³ See for instance examples given at Paragraph 65 above

making process, needs to be done on the basis of clear and detailed instructions: vaguely worded requests for expert reports are likely to yield reports which are unhelpful or at worst misleading to the Home Office or IAA. Given the number of cases in which human rights information and/or expert evidence is crucial to the applicant's chances of success, it is impossible to see how justice can be done without time being spent on obtaining this.

Attendance at the asylum interview

82. The BPG makes it clear that the representative's attendance at a substantive asylum interview is an 'essential' part of representing an asylum applicant¹⁴. It also makes clear that the role of representatives goes far beyond that envisaged by the Home Office.

83. The Home Office has repeatedly stated that since the substantive interview is simply an opportunity to state facts, attendance of a representative at the interview is unnecessary. But even the limited role ascribed to representatives in the so-called 'protocol' on interviews published by the Home Office in 2002¹⁵, i.e. intervening in cases of misunderstanding or problems with interpretation, and making observations at the conclusion of the interview, is vitally important.

84. ILPA has always regarded the Home Office's position as a gross simplification of what goes on at a Home Office interview¹⁶, and has pointed out that attendance at an interview is necessary for a number of reasons. As noted above, ILPA's view is matched by that expressed in the BPG and thus endorsed by the LSC. As noted above, the current time standards set out by the LSC include provision for attendance at substantive interviews.

85. ILPA believes that representatives should, by definition, be assigned the role of a legal representative and not that of an observer. They should intervene where appropriate to ensure that the interview enables the applicant to present their case fully. This includes, for instance, pointing out where a question or an answer has been misunderstood, or where the style or tone of questioning is likely to inhibit the client.

¹⁴ BPG, p71

¹⁵ It should be noted that this 'protocol' has been imposed on representatives by the Home Office, and has not, as the word 'protocol' might seem to suggest, been agreed by representatives or by any body representing their interests.

¹⁶ although ILPA readily concedes that it is the client's role, and not the representative's, to answer the Home Office's questions

86. It is simplistic to regard the role of the applicant at interview as being purely to state facts. What matters are covered in the interview is dictated by the interviewer and not the interviewee¹⁷. If the correct questions are not asked, or if they are posed in a way which is (even unintentionally) confusing or intimidating, the relevant information will not be given, however co-operative the interviewee is intending to be. A properly briefed and prepared representative can help to ensure that problems of this nature are avoided. The representative's presence provides support to applicants who may be scared or disorientated. It includes ensuring that applicants are treated with courtesy, that the nature and style of the questioning is not confusing, aggressive or otherwise unprofessional, and that any problems with interpretation are identified and, where possible, resolved.
87. Indeed, it is the experience of ILPA members that good Home Office interviewers recognise that a constructive role for the representative at the interview does assist them in their duties.
88. Attendance at interviews can have a direct effect on the outcome of applications, particularly (but not exclusively) in asylum cases. ILPA would point out that discrepancies and misunderstandings at interview frequently lead to negative findings by the Home Office as to an asylum applicant's credibility, and therefore to a refusal of asylum. Attendance of a properly briefed representative at the interview helps to prevent these, both because the representative can draw the interviewing officer's attention to them at the time, and because the solicitor can compare the official record of the interview with those made by the clerk and make representations to the Home Office, after the interview, correcting any inaccuracies. Representatives are often able to pick up points in the interview requiring clarification or explanation (whether because of misunderstandings or because of misinterpretation) which may not be obvious to the interviewer. They can also ensure that the interviewer explores issues which, if left unexplained, may later be used as reasons to doubt the applicant's credibility.
89. It was accepted by Pitchford J in *Mapah v SSHD*¹⁸ that an unrepresented applicant 'will be at a disadvantage in identifying errors of translation' at a substantive interview¹⁹; moreover, the existence of a representative was one of the safeguards which led the judge to conclude that the interview process

¹⁷ See the comments of the IAT in *Uhumwango-Asemu* (00/TH/01406): 'the [asylum] interview is ... effectively led by the interviewer'

¹⁸ [2003] EWHC 306 (Admin)

¹⁹ *ibid*, paragraph 62(5)

was procedurally fair despite the absence of a statutory code of practice or a policy of taping interviews.

90. An ILPA member involved in the 'Harmondsworth fast-track' procedures advises us that the short time limits which apply under these procedures prevent resolution of credibility problems which arise at interview, because the solicitor simply does not have enough time to discuss them with the client and iron them out. The same would be likely to be true under the proposed system.
91. Often the discrepancies which arise have no real bearing on the believability of an applicant's account, and are either entirely innocent misunderstandings or slips of the tongue, or have to do with mistakes or ignorance on the part of the interviewing officer. However minor, they may still be used as reasons for the Home Office to dispute the applicant's veracity. Without the presence of a representative at interview, it can be expected that more innocent discrepancies and more misunderstandings can be expected to go uncorrected, leading to an increased risk of inappropriate and unnecessary refusals of asylum. This is of course both unjust and costly.
92. ILPA notes particularly that appeal hearings will take much longer if representatives are not present at the interview, as there will be far greater scope for legitimate disagreement about what was said at interview; this will be exacerbated if there is no opportunity for detailed witness statements to be taken before the hearing (see below, Paragraph 125).
93. The experience of ILPA members also suggests that there is increased scope for abuse or misconduct by Home Office officials if representatives are not allowed to attend interviews. The policy of not reading back the notes of the interview to the applicant so that the latter has a chance to check their accuracy (as used to be the case) means that in the absence of a representative there is no external check whatsoever on the accuracy of the record kept by the interviewing officer, or of what has gone on generally in the interview.
94. ILPA has received accounts from its members of incompetent, offensive and unprofessional behaviour on the part of Home Office officials at the Asylum Screening Unit, as well as at substantive interviews. The situation at the ASU, where applicants are not generally represented, is particularly instructive, and ILPA has raised its concerns with the Home Office. There is also evidence of malpractice at substantive interviews even where representatives are present. Although ILPA is aware of some cases where

complaints have been upheld, ILPA has encountered little readiness on the part of the Home Office to accept that this occurs regularly or systematically. Nonetheless, ILPA can only conclude, with regret, that there is a risk of increasing levels of unprofessional conduct at interviews if these are not subject to monitoring by independent representatives.

95. Indeed, ILPA would suggest that if there appears to be a limited role for representatives at interview, this may be an indication, not that their presence is superfluous, but, on the contrary, that their presence is succeeding in ensuring professional conduct by all concerned.
96. Therefore, even if the interview ‘protocol’ is accepted as setting out the purpose of an interview and the role of the representative (which ILPA would not concede), it is clear that a representative is necessary at substantive interviews. Until recently the LSC had appeared to accept this view.
97. ILPA is therefore alarmed to note that the LSC appears to have reversed its position and to have decided that attendance at an interview is not necessary. ILPA notes that although it is not explicitly stated that attendance at the interview will not be paid for, this is implicit in the fact that such attendance, including travel and waiting time, has to be paid for out of the limited funding available. This fact will in practice, as the LSC cannot fail to be aware, almost invariably mean that applicants cannot be represented at interview. ILPA regards this apparent adoption of the Home Office’s view on this point as incomprehensible.
98. As to the quality of representatives at interviews, ILPA would suggest that the decision of some solicitors’ firms not to send experienced or knowledgeable staff to interviews is not unconnected with the reluctance of the Home Office to allow the representative any meaningful role at the interview. Nevertheless, ILPA would suggest that many firms do nonetheless send experienced and knowledgeable clerks to interviews (on the basis that their role ought to go beyond that envisaged by the Home Office, as explained above). The decision, in effect, to exclude representatives from interviews thus appears to penalise those who provide a quality service in favour of those whose level of service will be in essence unaffected by the proposed changes.
99. ILPA believes that the way to tackle the perceived problem of poor-quality representatives at interview is to give the representative a meaningful role; to provide genuine financial incentives to firms to send good-quality clerks;

to penalise firms who do not do this; and to provide training to enable clerks to increase their expertise and enhance their role.

100. ILPA notes that there appears to be no provision for attending interviews with child asylum seekers. Although the need for representation at interviews is not restricted to cases of children, ILPA regards it as unthinkable that a minor client could be expected to attend an asylum interview without a representative being present. (Generally, ILPA notes that the proposals contain no provision for children at all.)

101. Finally, ILPA would add that applicants cannot possibly be held responsible for the decision of the Home Office routinely to schedule interviews long distances from where applicants live and where their representatives are based; nor do they generally have any control over the length of the interviews, something dependent on the number of questions the Home Office chooses to pose, as well as the complexity of the case. ILPA would therefore insist again that the notion of a cap on funding is completely inconsistent with the realities of the asylum system and with any notion of fairness.

Immigration – initial application stage

102. As regards non-asylum immigration cases, ILPA reiterates its complete opposition to fixed maximum time limits in any cases. Whilst in ILPA's view there may well be some basic cases, such as applications for entry clearance as a visitor, which could be resolved in three hours or less, this cannot possibly justify imposing a cap on those many cases which do not, especially given that those cases are likely to be more complex or sensitive.

103. Even in what may appear to be straightforward cases, it may be necessary to go in detail through the client's family tree in order to establish whether s/he has, for instance, a right of abode. As noted above, some immigration cases involve interviewing vulnerable and traumatised clients, such as children or survivors of domestic violence. Many involve not simply people's prospects of visiting or studying in the UK (important though those are) but their entire future (as in deportation cases), their health and the integrity of their family life. The notion that such complex cases ought to be subject to the same time limits as might be appropriate in straightforward cases is, in ILPA's view, untenable.

104. Indeed, it is precisely in these more complex cases that expert advice and representation are most needed but will be least available to those unable to pay privately. (ILPA does *not* of course intend to suggest by this that advice

and representation are unnecessary in apparently straightforward cases, for the reasons set out below.)

105. ILPA notes the claim at Paragraph 26 of the Consultation Paper that ‘Many applications involve form filling rather than the need for expert advice on immigration law’. In the first place, ILPA does not accept the distinction being drawn here between form-filling and the need for expert advice.
106. ILPA would point out that completing an application form comes within the definition of ‘advice’ under s.82 of the 1999 Immigration and Asylum Act. Completion of a form by an unauthorised person may constitute a criminal offence. We find this statutory definition difficult to reconcile with the notion that form-filling does not require legal advice.
107. Indeed, the establishment of the OISC by the government is predicated on the idea that even the most basic advice should be given by properly qualified persons. This is on the basis, firstly, that forms are not in themselves simple to complete, and secondly, that without legal advice at an early stage there is a chance that important issues will go unnoticed, with potentially serious consequences both for the success of the case and for the amount of time it takes to resolve. We are astonished at the apparent abandonment of this important principle.
108. It is the experience of many ILPA members that, whilst some clients may be capable of completing application forms accurately or fully without advice, many more are not. Most clients, particularly those with poor English, do not fully understand the concepts expressed in the forms, nor do they understand the level of detail and of supporting evidence required. Many do not even understand which form to complete (and cannot necessarily rely on the Home Office to tell them correctly). Many solicitors simply do not ask their clients to complete even basic forms because it takes longer to correct mistakes or omissions by the clients than for the advisors to complete the forms themselves in the first place.
109. With the introduction of the £155 charge for making the application, it is particularly important that it should be done correctly, so applicants do not lose money by, for instance, making the application on the wrong form, or making an inappropriate application which has to be refused (e.g. applying for settlement straight after marriage because they do not know about the probationary period).

110. Nor is it possible to see how the efficiency of the immigration system is served by the submission of what are likely, in many cases, to be inadequately completed or poorly expressed application forms. Again, we question whether proper account has been taken of the role of the representative in the process.
111. ILPA also suggests that even if forms are completed by clients, it is always necessary for advisors to check them before sending them; indeed, not to do so would almost certainly be negligence on the part of the advisor. That being so, we cannot understand why the LSC does not consider it appropriate to pay for these forms to be completed.
112. ILPA also notes that the new entry clearance application forms introduced on 1st August 2003 are more complex, with the express intention of reducing the amount of time spent in entry clearance interviews.
113. The government has been at pains, in particular through the one-stop procedure (now enacted at s.92 of the Nationality, Immigration and Asylum Act 2002), to encourage or require applicants to raise all relevant matters at an early stage of their applications, and to reduce the scope for matters to be raised only once an application on different grounds has been rejected. Restricting legal representation at the early stage of an application, and indeed asserting that it may not even be necessary, appears to be an effective way to subvert the intention of s.92, and to ensure that applicants will raise matters belatedly which could, given proper advice, have been raised in a timely fashion.
114. The comments made at Paragraph 71 above about the extra time required in asylum claims where interpreters are needed apply, of course, to non-asylum immigration cases as well.

Detention

115. ILPA notes the additional time limits given in the case of those in detention, but considers these time limits again to be far too short. Detention, as has frequently been recognised by the courts, involves a *prima facie* violation of the detainee's human rights. That violation may only be justified in particular circumstances, or else a breach of the ECHR ensues. It appears to us extraordinary that people should be restricted in their capacity to challenge such violations of fundamental rights.
116. ILPA considers that it will be impossible to represent detained clients within the time limits suggested. Particular problems are encountered in taking instructions from detained clients and in maintaining contact with

them. It may be difficult for them to contact their representative by phone (and vice versa), and they may be moved regularly between detention centres without warning. Because they are especially likely to be vulnerable or distressed, they need to be treated with additional sensitivity when interviewed, and particular care needs to be taken to keep them informed of the status of their claim. Detainees who are sick or depressed (as many are), or who are minors whose age is disputed by the Immigration Service, require even greater care. The time limits, which are already insufficient for non-detained clients, therefore become completely fanciful in detention cases.

117. As to the additional times for bail or temporary admission applications, 30 minutes is completely inadequate to discuss such an application with a client. This is likely to include detailed discussion of the reasons given by the Immigration Service for detaining the client and the client's reactions to those reasons, including their explanations for any aspects of their personal conduct which may have contributed to the decision to detain.
118. Nor will two hours always be sufficient to prepare a bail application. Preparation may include investigating and communicating with sureties, liaising with the Immigration Service to establish the reasons for detention, obtaining medical or other evidence to support the application for bail and obtaining documentary evidence where the client's identity, age or nationality are in doubt. In view of the seriousness of the consequences for the client, it appears to us unconscionable that this process should be artificially limited.
119. We cannot understand why, if a temporary admission (TA) application has been refused, it will only be possible to advise the client on a bail application if their circumstances have changed. Yet this seems to be the effect of Paragraph 3.2 of the Draft Immigration Specification. Where a TA request has been turned down, the logical (and ethical) next step is to apply for bail, and this is not dependent on circumstances having changed.
120. We note that there appears to be no provision in the Draft Specification for an application for CIO bail. As with a TA request, an application for CIO bail is an alternative to, and not a replacement for, an application for bail to an Adjudicator, and if CIO bail applications are to be funded (as they naturally must be) there should be no requirement for circumstances to change between a CIO bail application and an application to the IAA.
121. Nor do we understand why there is no additional allowance of time for a TA application to be prepared, even though there is an additional allowance

for a bail application. This appears to push practitioners towards a bail application, which is more costly to the public purse, and more time-consuming, than a TA request. Although provision of additional time for a TA request would do nothing to reduce ILPA's opposition to the time limits as a whole, this does illustrate how ill-considered the time limits are, and how little bearing they have on the realities of immigration practice.

122. Furthermore, if practitioners are going to have to travel for hours to visit a detained client (as can easily be the case) in order to see them for only a limited time, the process becomes completely uneconomic. Indeed, practitioners will actually be losing money on the journey. This, along with the other measures, will act as a powerful disincentive to take on detained clients.

Time limits for Adjudicator appeals

123. ILPA stresses that appeals to Adjudicators are complex matters, the conduct of which depends to a huge extent on the nature of the case in question. Any attempt to impose artificial maximum time limits on them is thus entirely inappropriate and contrary to the interests of justice or efficiency. It is recognised by the IAA²⁰ and by the DCA/LCD²¹ that high-quality representation assists the appeals process. ILPA believes that the effect of the proposals will be to lengthen and complicate that process, with corresponding effects on its cost.
124. The IAA expects, as per Practice Direction CA1 of 2003, that representatives will produce witness statements, a skeleton argument, a chronology and a paginated bundle in advance of the hearing. Doing this properly is a time-consuming matter, and ILPA's view is that it will become completely impossible within the time limits suggested. We wonder whether the IAA has been consulted as to the amount of time it expects that compliance with the Practice Direction takes, or whether it is intended that the Practice Direction should no longer apply. If the latter, we can again see no reason for the change in policy, and wonder whether any thought at all has been given to the effect of the time limits in this regard.
125. In particular, we suggest that it will become extremely difficult for practitioners, within the time given, to draft full witness statements for appellants or any others giving evidence at the hearing, as is presently required by Practice Direction CA1. Precise witness statements at the appeal stage are, if anything, even more important than those produced

²⁰ See Practice Direction CA1 of 2003, para 7

²¹ See LCD Press Release, 24.7.00, note 6: 'Effective legal representation and quality interpreters are needed to speed up the legal process'.

earlier in the process. The Practice Direction will no doubt have to be amended. Instead, it will be necessary for evidence-in-chief to be given orally before the Adjudicator. This will particularly be the case if the interview has been inadequately conducted (see above), if new evidence has come to light, or if the appellant has comments to make on the Home Office refusal letter. It is impossible to understand why this will be paid for by the LSC (at considerable extra cost to the IAA and the Home Office, whose staff will obviously need to attend during the oral evidence-in-chief), but adequate preparation of witness statements in advance will not be funded.

126. Indeed, there appears to be no provision whatever for people who may be in a position to produce witnesses of fact at their hearings. Such witnesses are often crucial to the outcome of an appeal, but there would appear to be no time available for interviewing them or preparing written statements. The potential for miscarriage of justice, if people are effectively prevented from calling witnesses, particularly in asylum cases, where the veracity of the appellant's account is usually the central issue, is clearly huge.
127. There also appears to be no scope for allowing representatives to keep up to date with human rights developments in a client's country of origin. It has been clear for many years, from the Court of Appeal judgment in *Ravichandran*, that the Adjudicator or Tribunal has to assess the case on the basis of the human rights situation at the date of hearing. However, the proposals seem to leave no scope whatever for representatives to provide further information if developments take place, or information comes to light, after the time limit for preparation for the appeal has passed. This clearly creates the likelihood that Adjudicators may be making decisions based on inaccurate or out-of-date information.
128. Moreover, such a situation would inevitably lead to fresh asylum applications which could well meet the *Onibiyo* criteria in that information would be available which had not been available at the time of the initial appeal. This would increase, not decrease, overall costs.
129. Nor is it clear how representatives will be able to comply with Rule 4.5.5 of the Draft Specification, which requires, among other things, early requests for adjournments to be made. If counsel cannot, in effect, see the client until the day of the hearing, inevitably issues will arise which can only be dealt with by an adjournment on the day.

130. It has been confirmed by the LSC²² that it is ‘clearly’ intended that barristers should take instructions from the appellant ‘at the hearing’ and that ‘this will be included as part of the hearing costs’. In fact this does not appear at all clear from the Draft Specification: see for instance Rule 4.5.4, which appears to contradict the above comment by the LSC.
131. Be that as it may, ILPA is surprised by the suggestion that it is appropriate for counsel to take instructions on the day of the hearing. In the first place, this would appear to make proper preparation of the case dependent on the appellant’s place on the court list, those due to be heard later in the day apparently being at an advantage, as far as preparation time is concerned, over those higher in the list. This appears to us to be an unacceptable way of discriminating between cases.
132. In any event, proper preparation of cases involves, where possible, consulting with counsel in advance of the hearing; without this, it is very difficult to see how all relevant documents, including a skeleton argument, can be submitted in advance of the hearing, as is called for in Practice Direction CA1 of 2003.
133. In effect, the proposals assume that, in all cases, counsel should and will be able to present a case without the need for a conference beforehand. It is the view of many ILPA members that it is not possible for counsel to present an appeal professionally without a conference in advance of the date of the hearing.
134. Even if a conference is considered possible on the date of the hearing, the four-hour cap on preparation will put an unacceptably high burden on counsel, who will in effect have to ‘mop up’ by taking instructions on the day, meeting the client for the first time, in the absence of a solicitor, and in the public space of the hearing centre. The stakes for clients are often too high for this sort of last minute preparation. The issues, legal or factual, may be too complex for counsel to get to grips with by a short meeting with the client at court. New issues or evidence may arise which counsel will have to deal with, in the absence of any input from solicitors. These sorts of working practices are regarded as unprofessional conduct in other areas of law. We see no reason for immigration and asylum cases to be different.
135. We draw attention to the Quality Mark for the Bar Standard Annex A Framework for Opinions at paragraph 7. This draws a link between having a conference and counsel’s ability to assess the reliability of the client’s

²² letter to ILPA, 3rd July 2003

evidence. It is very doubtful, at least in cases where credibility is in issue, whether counsel will be able to give any useful advice at all, without a conference. In other cases, even where credibility is not in issue, counsel's advisory role will be, at the very least, severely limited without a conference. The proposals thus have the effect of downgrading counsel's advisory role. ILPA believes that independent advice from counsel is as valuable in immigration and asylum cases as in any other. Long-term economic value suggests that advice from counsel should be taken at the earliest stage in the appeals process. The number of suppliers willing and able to present appeals to adjudicators will tumble if counsel are unable to take them on.

136. ILPA's *Best Practice Guide* states that

‘Briefing counsel at the last minute before your client’s appeal is completely against your client’s best interests.... Again, the conference should not take place at the last minute since it is not uncommon for conferences to require further work to be carried out or enquiries made. counsel may wish to advise on the contents of the witness statement.’²³

137. ILPA continues to stand by these statements and is surprised that the LSC apparently does not.

138. If it is the case, as the LSC has claimed²⁴, that the hearing costs will include holding the conference on the day of the hearing, it is far from clear what is gained financially by this. It is no more expensive to hold the conference in advance than to do so on the day of the hearing. Indeed, as noted above, holding the conference on the day may lead to adjournments which could have been avoided had the conference been held in advance.

139. It is also unclear to ILPA how it is expected that counsel will be able to confer with the client on the day of the hearing if an interpreter is needed, but cannot be funded because the maximum level of disbursements has already been reached.

140. ILPA has in the past recorded its opposition to the practice of listing appeals of London-based appellants outside London. Whilst perhaps convenient for the IAA, this clearly adds to the costs of representing at hearings. It also makes it appreciably more difficult for counsel to confer with appellants on the day of the hearing, if this is what is intended, when both have to travel long distances to reach the hearing centre.

²³ BPG, p108

²⁴ See Paragraph 129 above

141. Given the short time limits for preparation, it will become almost impossible for representatives to co-operate in the efficient running of the appeals system by narrowing issues in dispute or seeking directions from the Adjudicator, both of which will demand additional time to that already more than consumed by basic preparation of documents.
142. Nor is it clear how appellants will be expected to comply with any directions with which they may be required to comply by the Adjudicator, where time limits have already been used up. Effectively, the appellant will be unrepresented at such a point, which does not promote efficiency on the part of the IAA.
143. It appears to us illogical to allow additional disbursements where these are required by an Adjudicator's direction²⁵, but not to allow the time taken by the representative to comply. Where the direction relates to the provision of a further skeleton argument, for instance, or to the production of a statement for a witness who has come to light, it is impossible to understand why this should not be paid for. Indeed, the arbitrary nature of the position is well illustrated by the fact that where, for instance, a representative is directed to provide an expert's report on a particular issue, the expert will be paid to produce the report but the representative will not be paid to instruct the expert or serve the report on the IAA and/or the Home Office. This hardly seems either logical or fair, nor does it promote sensible use of resources, given that an inadequately instructed expert will not assist the court.
144. Equally, where a hearing is adjourned (particularly, but not exclusively, for reasons outside the appellant's control), there is apparently no provision for the representative to be remunerated for preparation for the adjourned hearing. The same applies where there has been delay between the refusal and the listing of the appeal (for instance because the Home Office has taken a long time to pass the appeal bundle to the IAA), and the case needs to be updated because of developments in the client's circumstances or in the human rights situation in their country of origin. It is impossible to see how representatives can be expected to participate effectively in a hearing for which they have not had any chance to refresh their memory.
145. Indeed, if, as evidence from our members suggests (see Paragraph 177 below), significant numbers of representatives would leave the sector if these proposals were implemented, large numbers of appellants would

²⁵ Draft Specification, para 2.10.6

inevitably be left unrepresented. This again would have a negative effect on the efficiency of the appeals process (see Paragraph 123ff above).

146. It will be noted of course that the Home Office will not be subject to any restrictions (other than ones imposed by its own lack of organisation) on the amount of time it can spend on preparing for a hearing. This creates an obvious inequality of arms in the appellate process which would be likely to have a very serious effect on its fairness.

147. Among the reasons why the appeals process is so lengthy is the failure of the Home Office to take any steps to improve its own efficiency in defending appeals. The Home Office generally refuses to narrow the issues in dispute at appeals, either by making it absolutely clear in its refusal letters which matters are contested and which are accepted, or by negotiating with the appellant's representative before the hearing. It rarely passes cases to its Presenting Officers more than a day before the hearing, making constructive negotiation of issues an impossibility. These matters significantly increase the length of appeal hearings, with obvious additional cost to the IAA as well as the LSC.

148. Nor are these views unique to ILPA. The Immigration Appeal Tribunal has regularly had cause to complain about the culture of incompetence at the Home Office, which frequently leads to wastage of time and costs. For instance, the President, dismissing a Home Office appeal without consideration of the merits in *Tatar*²⁶, observed (emphasis added):

'3. ... when we sat this morning we discovered that [the Presenting Officer], who has the misfortune to appear on behalf of the Home Office, had not been provided with the file, was not even aware what the grounds of appeal were, and was not in a position to present the appeal at all. This is the more surprising since the grounds of appeal were lodged by the Treasury Solicitor. We suffer this sort of incompetence from the Home Office again and again. Files are not provided, documents are not available, they do not put in evidence that they ought to put in, they fail totally to produce any skeleton arguments, the list goes on and on and the Tribunal is simply getting fed up with it. We have issued directions, the Home Office disobey them in, I am bound to say, most cases. They do not seem capable of dealing with the appeals in the manner in which they ought to be dealt with...

²⁶ 00/TH/01914

‘5. We have of course considered whether we ought to adjourn the matter, but this case has been listed now for some time. It has been hanging over Mr Tatar’s head for nigh on two years now and he is entitled to have the matter brought to a conclusion. There is no basis upon which it would in our view be proper to grant an adjournment, particularly as we are encouraged not to grant adjournments unless satisfied that it is in the interests of justice so to do. The whole tenor of our rules is that we should get on with it; indeed we are told by the Secretary of State that we must do all we can to ensure that appeals are heard speedily. If the Home Office are incapable of producing material so as to enable those presenting cases on their behalf to do what they ought to do, then we are not going to be able to fulfil those requirements and we see no reason why we should accommodate the Home Office yet again.

‘6. In all those circumstances, as we say, without being able to consider the merits of this appeal, we are bound to dismiss it.

149. In *Mefaja*²⁷, the IAT commented on “wholly inappropriate” Home Office conduct:

‘It means that cases which ought not to clutter the Tribunal and the Adjudicators do so. It means that time and money is wasted and it is particularly unfortunate in circumstances where there is enormous pressure on the Appellate Authorities to deal with cases as speedily as possible. How the Home Office can expect the IAA to deal with its cases with appropriate speed when they do nothing to assist is beyond our comprehension.’

150. In *Razi*²⁸ (a case which had been adjourned on several occasions without the Home Office complying with directions issued), the IAT commented (emphasis added):

‘If we took the charitable view, that their conduct of the case ... was no more than institutional incompetence, *it is hard to imagine any other department of state in this country where such incompetence would be tolerated....*

‘[Home Office behaviour went] beyond mere institutional incompetence, into the realm of an institutional culture of disregard for adjudicators,

²⁷ [2002] UKIAT 1188

²⁸ 01/TH/01836

who are the primary judicial authority in this country for making sure that immigration powers are efficiently, as well as fairly exercised.’

151. Despite these complaints, ILPA would suggest that Adjudicators (and indeed the LCD generally) have failed over the course of many years to respond properly to the incompetence of the Home Office, and that this failure has exacerbated the problems complained of by the IAT. The failure of the Home Office to respond to directions stems at least in part from the failure of the LCD to impose Procedure Rules which give Adjudicators sufficient powers to compel the Home Office to comply, as well as the failure of Adjudicators to exercise those powers they do have. This compares unfavourably with the existence of powers to dismiss appeals by individual applicants for failure to comply with directions, and the enthusiasm with which such powers are wielded by at least some Adjudicators.

152. Amendments to the Procedure Rules providing for appeals to be allowed, or for the Home Office to be prevented from relying on certain legal or factual submissions, where directions have not been complied with, would, therefore, if enacted and if appropriately used, reduce considerably the cost of the appeals process.

153. Nor is the IAA immune from inefficiency, although by no means on the same scale as the Home Office. ILPA members complain of letters not being answered and correspondence not being linked to files. Hearings are often adjourned through lack of court time (often caused by overlisting) or failure to provide a competent interpreter. Reasonable requests for adjournments are not considered on time, or are rejected, necessitating expensive attendance at court before the matter is appropriately dealt with. It can be difficult to persuade Adjudicators to set case-specific directions which would regulate proceedings and reduce costs.

Disbursements

154. ILPA is opposed to the notion of a maximum level of disbursements. As with the time spent on preparation, this must be a flexible amount depending on the case. A wide variety of matters may require expenditure, such as interpretation and translation, and medical or expert reports, and the amounts needed will vary from case to case.

155. In particular, proper interpretation is absolutely axiomatic in asylum and immigration cases. It is completely contrary to the notion of a just system that applicants should be unable to communicate with their representatives

because money has run out to pay an interpreter. This view is endorsed by the LSC in the ILPA *Best Practice Guide*²⁹.

156. Furthermore, many applicants will have documents in languages other than English which need translating. The Home Office has repeatedly said that it will not consider documents which are not translated into English. The same applies to the IAA. Especially, but not only, in asylum cases, these may be documents crucial to the case (such as arrest warrants, identity cards, letters from friends or family members and newspaper articles relevant to the case). It appears to us quite extraordinary that applicants should be denied the chance to get such documents translated, and therefore effectively denied the chance to put forward their case, because of the imposition of an entirely arbitrary limit on disbursements.
157. Expert reports are required in a large number of cases, sometimes because the issues arising are not covered in publicly available material, and sometimes because the Home Office simply refuses to accept the most basic facts about human rights conditions in the applicant's country of origin. The sub-standard nature of Home Office country reports and its readiness to place in issue even the most obvious facts about what is going on in certain countries vastly increases both the time required to prepare a case properly and the expert evidence needed.
158. For instance, one typical solicitor from among ILPA's members provided us with a sample of their caseload from spring 2003. This shows that an average of £734 had been spent on disbursements. On asylum cases, the average was £833. 56% of cases, all relating to asylum, had exceeded the combined total of £600 allowed under the new Draft Specification. Of those, 84% had been successful in their claims (i.e. had been granted ELR or refugee status at first instance, or had won their appeals before Adjudicators). Below are three examples given to ILPA, all of whom won their appeals; these illustrate graphically the iniquity of a fixed maximum level of disbursements:
- In one case, an expert report had been commissioned on the treatment of lesbians in Kazakhstan, a subject on which little information was publicly available, and on which the expert had to carry out specific research; this report alone cost more than the total suggested under Legal Help and CLR in the Consultation Paper.
 - In a second case, a report had been commissioned on religious persecution in Russia, as well as medical reports; because the case had

²⁹ BPG, p66ff

dragged on for so long, a second medical report had had to be commissioned concerning the client's current mental state.

- In a third case, the client had been shot and tortured on a number of occasions, and required a comprehensive medical report as well as a report from a ballistics expert; a report from his GP was also required in order to demonstrate that his injuries required ongoing treatment in the UK.

Transfer of files

159. ILPA further notes that a fresh allocation of hours will be allowed after a transfer of representative, but only where a report on the previous representative is made to the OSS or OISC. Whilst ILPA is in favour of making genuinely poor representation subject to sanctions from the appropriate authorities, we do not support the notion that the making of a report should be the only circumstances in which the clock will be 're-started'.

160. Nor do we accept that work undertaken by a new representative on the transfer of a file will necessarily constitute inappropriate duplication of work, even if some of the work has to be done again: where a second-rate statement has been taken, or an inadequate bundle of documents submitted, it will clearly be necessary for a conscientious representative to do this again. Indeed, undoing the effects of poor representation may take longer than starting the case from scratch, meaning that more, not less, time ought to be available on transfer of a file. Given the acknowledged problem of poor advice, it must surely be accepted by the DCA that this is inevitable in some cases. But again, this is a point where flexibility and not rigidity is needed.

161. As to the mechanism suggested on transfer of files, this seems to be completely unworkable. We would question in particular how the second representative can be expected to know whether it may be appropriate to make a report to the OSS/OISC until s/he has examined the case in some detail, something which will take time and for which s/he will not be paid.

162. Nor, to our understanding, will the cost of making the report to the OSS/OISC be met. A properly presented complaint is itself likely to take a number of hours. Requiring solicitors to make complaints in their own time, *pro bono*, or else requiring clients to pay privately for complaints to be made, hardly seems to provide an adequate incentive for them to lodge complaints at all. On the contrary, we suggest that if the LSC genuinely wishes to encourage a culture in which poor work is appropriately

investigated and tackled, then it needs to be prepared to offer reasonable remuneration for reports to be made.

163. We also doubt whether encouraging solicitors to complain in order to secure vital extra hours for their clients' cases is really the appropriate way forward. If the only way in which the clock in any case can be restarted is to make a complaint, the OSS and OISC will soon be overwhelmed with complaints, many of which would not have been pursued previously, simply because (as is often the case) the client wanted to avoid the stress of doing so and preferred to let the matter rest.
164. We wonder also whether the OISC and OSS have been consulted on their capacity to undertake the significant amounts of extra work which will result from these proposals, and whether the OISC in particular will be given extra state funding to meet the new demands on it.
165. Additionally, we reinforce the point made elsewhere in this submission that if the LSC wishes to encourage appropriate official action where poor advice has been given, it should continue to examine the contracts it has given to solicitors who are judged to be providing consistently poor advice.
166. We suggest therefore that there should be no requirement that a complaint be lodged before a new representative is entitled to undertake work on a case. The introduction of the Unique File Number, if properly implemented (see Paragraphs 41-45 above) ought to provide a mechanism for the LSC to ensure that work is not duplicated. We see no reason why, if properly enforced by the LSC, this system should not work, thus rendering the requirement for a complaint unnecessary.
167. The requirement that the new representative should have to ask the old one how much work has been undertaken on a file appears to provide an unnecessary additional hurdle, especially in urgent cases. We note again that the enquiry by the new representative will presumably not be paid for by the LSC, and therefore note again that solicitors are apparently being expected to meet, from their own pockets, costs of monitoring which ought to be undertaken by the LSC.
168. All these comments are of course made in the context of ILPA's opposition to any form of rigid time limit in any event.

NASS matters

169. Practitioners currently spend increasing amounts of time advising and assisting asylum seekers in relation to difficulties with NASS. As the

government has recently acknowledged³⁰, NASS has been administered very badly. Communication between NASS and the Home Office has been extremely poor³¹.

170. The Draft Specification indicates that suppliers can open a separate Welfare Benefits matter where advice on NASS takes more than 30 minutes. However, ILPA understands that many Immigration suppliers do not have Welfare Benefits contracts and that it would be cumbersome for them to do so simply in order to take on NASS matters. ILPA would suggest that if it is considered necessary to separate NASS matters from immigration matters, it might be appropriate to allow immigration providers to get a welfare benefits contract limited to this type of benefits advice alone, without the need for a welfare benefits supervisor.

171. At the present time, NASS matter starts count as immigration matter starts. Under the proposed half-hour cap, immigration practitioners will not have the time to even begin taking proper instructions in relation to NASS problems. Inevitably, applicants will have to turn elsewhere. However, ILPA understands that there is already a shortage of welfare benefits advice in London, and it is unlikely that the not-for-profit sector will be able to take up the demand for welfare benefits advice, particularly given the short timescale for implementation.

Charging for services

172. ILPA is profoundly opposed to the idea that solicitors should be allowed to charge their clients privately, once clients have reached the limit of the publicly funded hours. This appears to us to open up enormous scope for abuse. The prohibition on legally aided clients being charged privately exists for a reason, namely the avoidance of fraud. In a sector where there is already concern about unscrupulous advisors, giving some people the opportunity to charge both the state and their clients for what may be a poor standard of work appears to us extraordinary.

173. It appears to ILPA that, subject to the usual means and ‘sufficient benefit’ tests, if work needs to be done on a case at all, the LSC should pay for it. The same of course applies to disbursements.

174. In any event ILPA points out that asylum applicants are not permitted to work, and, if publicly funded in the first place, will by definition have no other income or capital. This being so, it is far from clear how they can be

³⁰ see Home Office press release, 15th July 2003

³¹ or, as the Home Office press release puts it, NASS needs to ‘get better at working with the rest of IND in a fully joined up operation’

expected to pay for advice which cannot be provided under public funding (see Opinion, Paragraph 35(5)), and it seems somewhat far-fetched to suggest that additional work or disbursements can, in practice, be paid for legally.

175. Of course, were the Home Office to reconsider its current policy of not allowing asylum seekers to work, some reductions in the LSC budget could be expected, although this would not justify requiring people to pay for advice which they could not afford.

176. ILPA notes furthermore that no provision for charging exists in the proposed not-for-profit sector contract (as indeed must be correct, given the ethos of the non-profit sector). It is therefore far from clear how non-profit organisations will be able to continue to represent clients once the time limits have been reached, given that the (profoundly unsatisfactory) provision for the private sector to charge clients does not exist for the non-profit sector. Clearly it cannot be expected that the Community Fund or charitable trusts will be able to meet the huge shortfall in funding which will exist; in any event, if an organisation is providing a sufficiently good service to merit Community Fund or charitable funding, it is ILPA's view that it must be providing a good enough service to merit public funding.

F. Effects of the proposed measures

177. The principal effect will be to reduce the number of solicitors and barristers working in the field. ILPA's discussions with its members demonstrate that practitioners who are committed to providing a conscientious, high-quality service will face serious difficulties in continuing to work within a system which prevents them from acting in their clients' best interests. Nor, in many cases, will it be financially feasible for them to continue their work in the sector.
178. There is no evidence that those who withdraw from the sector will be readily replaced, let alone that, if replaced at all, they will be replaced by conscientious and knowledgeable representatives. Numerous applicants will therefore be completely unrepresented. Others will be very poorly represented.
179. Some practitioners have already made the decision to stop taking on new legally aided clients, for the simple reason that they are unable to plan for the future given the uncertainty created by the new proposals, and because they are not prepared to take on clients now who would have to be effectively abandoned (or represented *pro bono* for an indefinite period) after 1st January 2004. We are aware of several solicitors' firms which are considering closing, or have already closed, their immigration departments, at least as far as publicly funded work is concerned. Many more will be reducing significantly reducing the number of cases they will take on.
180. Indeed, in October 2003, suppliers will be expected to submit their bids for contracts commencing in April 2004. This is scarcely possible in current circumstances and indicates to ILPA a lack of planning or forethought behind these proposals.
181. In ILPA's view, in order to continue operating in the sector, practitioners will have no choice but to provide a second-rate service to many clients. The proposals will therefore have the effect of inhibiting everyone who remains in the sector from providing a high-quality service.
182. Therefore, large numbers of applicants will either be unrepresented from the start, or will find themselves abandoned by their representatives once the time limits have been reached (see Opinion, Paragraph 35(5)).
183. In order to get any advice at all on their claims, the vast majority of asylum seekers and others with immigration problems will increasingly have to resort to one or more of the following:

- going to less skilled or conscientious lawyers who will provide a much worse service both to the individual clients and to the taxpayer
- taking advice from unscrupulous, even non-OISC-registered immigration consultants
- going to voluntary sector organisations, including community groups, who will be completely unable to respond to the volume of demand
- seeking the help of Members of Parliament at constituency surgeries: pressure on MPs, as a source of free advice, is likely to grow enormously³²

184. The result of this will be to ensure that many applicants whose cases would succeed through high-quality representation will actually be refused under the new system. Evidence from our members demonstrates that the best immigration and asylum firms boast success rates far above the average. Such success rates do not come about by accident, nor are they achieved simply because of the level of knowledge and expertise of the practitioners in question. They are achieved because that knowledge and expertise tells these practitioners that time is required to present and prepare a case properly. Without adequate time, the most proficient practitioner will simply be unable to maintain high standards.

185. Such standards have an effect not only on individual cases but also on the system as a whole. The same firms act as a constant watchdog on standards at the Home Office and IAA and provide a spur for these bodies to maintain the highest of standards. Groups such as ILPA and the Refugee Legal Group, which help to disseminate information and promote good practice, will be significantly weakened. The sector as a whole will thus see a significant drop in quality of representation and decision-making.

186. As noted above, the proposals mean the obstruction of access to justice for people whose cases involve fundamental issues of human rights. It is clear that access to justice must be effective and not merely theoretical; but theoretical is what it will be for publicly funded applicants in asylum and immigration cases if these proposals are enacted.

187. This is therefore not a bland fiscal exercise, or a matter relevant only to lawyers. People will be killed, tortured or wrongfully imprisoned as a result of the introduction of these measures. Others will be separated from their families, subjected to domestic violence or simply unfairly deported.

³² whilst ILPA naturally has great respect for the work MPs do, they often do not have expert knowledge of the immigration system, cannot represent people in appeals and cannot be regarded as a substitute for representation by a qualified advisor

G. Proposals for change

188. During the course of this response, ILPA has pointed to a number of measures which would improve the standard of advice and representation in the sector, whilst ensuring value for money in the use of public funds. Some of these measures are already in place and should be continued and not abandoned. Others would require a review of the system which went far beyond the scope of the measures now proposed, but which is unavoidable if the sector is to be seen, as it should be, as a coherent whole, rather than as a series of discrete areas of activity which have no bearing on each other.
189. Some of these suggestions are set out here, for the sake of convenience:
- The administration and the standard of decision-making at the Home Office need to be improved drastically, so as to reduce the wastage of resources caused by this across the system as a whole.
 - Adjudicators need to be empowered to take effective action against the Home Office in cases of maladministration.
 - The administration and the standard of decision-making at the Immigration Appeals Authority also needs to be improved.
 - Existing procedures undertaken by the LSC to tackle unscrupulous practitioners need to be developed and continued; this includes taking contracts away from poor-quality suppliers and recovering overpayments.
 - The LSC should commit itself to the idea that public funding should be provided, where the client's financial circumstances require it, if an experienced, knowledgeable, highly trained and scrupulous representative judges particular action on a case to be necessary.
 - The LSC should therefore commit itself to providing genuine financial incentives for high-quality representatives to work in the sector, and to develop their skills and knowledge, particularly if the LSC is proposing to introduce an accreditation scheme.
 - At the same time, the LSC needs to continue funding training programmes and best practice guides and providing incentives to do better quality work, such as lighter audit touches and more devolved powers.
 - Consideration should be given to establishing an independent documentation centre of country information relating to asylum claims.
 - The Home Office should allow asylum seekers to take employment so they can pay for their own advice and representation.
 - More effective mechanisms need to be put in place for encouraging and enabling clients to complain about quality of representation, and to get

- effective redress (including reconsideration of their cases) where complaints are upheld.
- The LSC should aim to secure the co-operation of the Home Office and IAA in a general drive to raise standards of quality across the entire sector, i.e. both for representatives and for decision-makers.

190. Finally, ILPA reiterates its belief that the entire asylum process is in urgent need of radical review. Constant piecemeal changes in law and procedure, which all too often fail to treat the system as a coherent whole, where change to one aspect affects all other aspects, have demonstrably failed. Detailed and dispassionate consideration ought to be given to the replacement of the current system with an independent decision-making body, both on grounds of fairness and on grounds of cost. (ILPA expresses no definitive view at this stage on the merits of such a move, but believes it needs urgent further consideration.)