

Proposed Changes to Publicly Funded Immigration and Asylum Work

The Advice Services Alliance's response to the Lord Chancellor's Department's Consultation Paper issued in June 2003 and the Draft Immigration Specification (NfP) issued by the Legal Services Commission in July 2003

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1 Introduction

- 1.1 This paper has been prepared in response to the Lord Chancellor's Department (now the Department for Constitutional Affairs) consultation paper "Proposed Changes to Publicly Funded Immigration and Asylum Work" and the Draft Immigration Specification (Not for Profit) circulated by the Legal Services Commission.
- 1.2 ASA welcomes the opportunity to respond to this consultation. This paper will start by giving details of ASA's purpose and membership. It will then state ASA's concerns about the overall impact of the proposed changes and about the assumptions behind those proposals. The paper will finish by considering the detail of the changes.
- 1.3 The Advice Services Alliance (ASA) was established in 1980, and is the umbrella organisation for independent advice services in the U.K. Our aims are to:
- Champion the development of high quality information, advice and legal services;
 - Ensure that people are not denied access to such services on account of lack of means, discrimination or other disadvantage;
 - Encourage co-operation between organisations providing such services;
 - Provide a forum for the discussion of issues of common interest or concern to advice organisations.
- 1.4 Full membership of ASA is open to national networks of independent advice services in the U.K. Current full members are:
- Advice UK (formerly Federation of Information and Advice Centres)
 - Age Concern England
 - Citizens Advice (formerly National Association of Citizens Advice Bureaux)
 - Citizens Advice Scotland
 - DIAL UK (the disability information and advice service)
 - Law Centres Federation
 - Scottish Association of Law Centres
 - Shelter
 - Shelter Cymru
 - Youth Access
- 1.5 Our members represent over 2,000 organisations providing a range of services to diverse groups and working mainly on a local level throughout the U.K.

2 Overview

- 2.1 The importance of ensuring that immigration and asylum work is of the highest quality cannot be underestimated. In many cases people's lives are dependent on the receipt of accurate and comprehensive advice from competent, conscientious advisers. It is ASA's view that the proposals, if implemented, will dramatically lower the quality of immigration advice and leave many people without effective representation. At worst this will mean that individuals who are genuinely seeking protection from persecution will be unable to assert their rights in the UK and will be wrongfully returned to their countries of origin.

3 Quality of advice

- 3.1 The DCA paper states that the government wishes to address the "continuing issues of poor quality advice". It also states that it wishes to "develop quality representation in the area of asylum and immigration".
- 3.2 Whilst ASA shares the concern over poor quality advice and accepts that bad quality immigration advice is still an issue, it is ASA's view that the proposals will not succeed in solving the problem. Indeed ASA fears that the overall effect of the proposed changes will be to drive down the quality of asylum and immigration advice. Furthermore, the proposed changes contradict and undermine the LSC's welcome efforts, particularly in London, to improve the quality of immigration advice in recent years.
- 3.3 In particular ASA believes that the proposed time limits for both asylum and immigration work at Legal Help level are unrealistic for any competent adviser carrying out quality work. It is ASA's view that the proposed changes will punish the expert and conscientious practitioners for the poor quality work of a minority of advisers. If implemented, the proposals will have the effect of requiring all practitioners to provide precisely the level of advice that the DCA claims it wants to eradicate.
- 3.4 ASA considers that the task of improving the quality of immigration advice will best be achieved by the LSC if it differentiates between good and bad suppliers rather than treating all suppliers as if they were carrying out work of the lowest quality. The LSC should continue to take action against those suppliers of advice whose work they know to be of poor quality. At the other end of the spectrum, suppliers doing high quality work should be rewarded with less restrictive time and financial limits and a less onerous audit process.

4 Impact on the not for profit sector

- 4.1 The proposed changes will affect the not for profit (nfp) sector in two ways. They will have a direct impact on organisations with LSC contracts in immigration and an indirect impact on generalist advice agencies and on community organisations to which migrants and refugees currently turn for non-legal help and support.
- 4.2 It is hard to predict exactly the number of private practice solicitors who will give up their contracts if the proposed changes are implemented, however there are strong indications from informal surveys by ILPA that a significant number take the view that they will be unable to continue under the proposed scheme.

- 4.3 Organisations within the nfp sector have a commitment to providing a service to the most vulnerable members of their communities and will therefore be extremely reluctant to stop provision of asylum and immigration advice. However, in the absence of alternative funding, it is unlikely that they will have any choice.
- 4.4 ASA notes that the Draft Immigration Specification for the General Civil Contract makes provision for private practice solicitors to charge their clients if they wish to continue working beyond the proposed time limits. This provision is not in the Nfp Specification presumably because the LSC recognises that it is contrary to the purpose and ethos of the nfp sector to charge clients. However no suggestion for alternative funding for the nfp sector is made at all. ASA would like to point out that although the nfp sector does not charge its clients for its services, the provision is not cost-free. If nfp organisations want to continue providing asylum and immigration advice they will have to locate other sources of funding. It is ASA's view that such funding will be very difficult to find. As an example, the Community Fund, which is a major funder of the advice sector does not fund any work for which LSC funding is available. There would therefore not be funding for specialist level asylum and immigration work from this source.
- 4.5 If as we predict, significant numbers of private practice solicitors and nfp organisations give up their LSC contracts, the question arises as to where individuals seeking asylum and immigration advice will turn for help. It is most likely that they will turn to the community groups from whom they are already receiving non-legal assistance and general support and other advice agencies providing generalist advice. It is now a criminal offence for a non-solicitor nfp organisation to provide advice in immigration if it has not been exempted by the OISC. Apart from CABx who have a block exemption at level 1, there are only 192 nfp agencies exempted at level 1, 80 at level 2 and 76 at level 3. Asylum applicants and most individuals seeking immigration advice require specialist level help. As demonstrated by the figures above, community organisations do not have the expertise nor are they allowed under law to provide this. However, it is ASA's view that because of the lack of supply of specialist help from other sources, these organisations will be faced with unprecedented demand. Out of a desire to help their clients, some may feel pressured into the illegal provision of advice.

5 Access to justice

- 5.1 We have described above some of the effects of the changes proposed by the DCA. In our view, the overall result of those changes is likely to be a depleted sector providing low quality advice. Many of the high quality private practice solicitors will have given up their contracts and it is probable that nfp organisations will have followed suit, organisations currently providing poor advice will be flourishing and community organisations and generalist advice agencies will be trying their best to help their clients but without the expertise to do so properly.
- 5.2 This will mean that significant numbers of clients needing asylum and immigration advice will either not get it at all or will receive poor advice. High quality advice and representation is essential if justice is to be done but this will be denied to clients who will have to find their way through complex Home Office procedure and rapidly changing law on their own. The proposed changes will mean that immigration clients whose cases should succeed will be refused. They will for example be wrongfully denied citizenship or separated from their families. Most alarmingly of all, asylum clients whose cases should succeed will be refused. They will be wrongfully returned to their countries where some will be tortured and some will be killed.

6 Reasons for the proposals

- 6.1 The DCA paper gives details of the rising cost of providing advice and representation in immigration and asylum work and gives some examples of the factors contributing to this increase. ASA agrees that the increases in the numbers of asylum seekers and the introduction of the dispersal policy are significant, however we believe that there are a number of other factors that are not addressed in the paper. ASA has had the benefit of seeing the response to this consultation prepared by the Immigration Law Practitioners' Association (ILPA). We agree with all of ILPA's suggested reasons for the increasing costs of immigration work. It is ASA's view that those costs could be significantly reduced if Home Office practices were reviewed and administrative errors eliminated.

7 Time limits

- 7.1 ASA is opposed in principle to the introduction of absolute time limits for publicly funded legal work. The nfp sector provides advice on social welfare law to the most vulnerable and socially excluded members of society. Clients may have mental health problems or language/communication difficulties that make it hard to take clear instructions. They may be distressed about their situation, which can again make communication difficult. Their legal problems are hardly ever straightforward and it is rare that two cases are the same. However, the imposition of absolute time limits suggests that all clients are the same and that all cases are the same. Furthermore, ASA is concerned that capping the number of hours that can be spent on a case is likely to cause an adviser to become more concerned about complying with time limits than about achieving the best result for the client.
- 7.2 ASA would however like to make it clear that it is not opposed to time guidance in the form of the current contract time standards. So long as those standards are agreed through proper consultation with practitioners and allow for advisers to take more time if they can justify it, we accept that advisers should be expected to work within them. ASA notes that the current time standards for immigration, produced by the LSC allow for significantly more time than the current proposals. We question how the LSC can have changed its view so radically about the length of time it takes to conduct an immigration or asylum matter competently.
- 7.3 ASA is not a practitioner organisation and we will therefore not comment in detail on the length of time required to conduct an immigration or asylum case competently. However it is our view that given the complex and rapidly evolving nature of immigration and asylum law and the fact that clients have often suffered trauma, are distressed when giving instructions and in most cases require interpreters, the time limits proposed are completely unrealistic. We find that ILPA's response which sets out in detail why the proposed time limits are not sufficient, reflects the experience of our members and we therefore give it our full endorsement.

8 Attendance at interviews

- 8.1 ASA notes that attendance at "routine" substantive interviews will no longer be funded under contract. If, however, a representative does choose to attend an interview, the time spent will be taken as part of the relevant advice limit. In effect this will make attendance at interviews impossible unless the representative is prepared to do the work pro bono. It is ASA's view that there is no such a thing as a "routine" substantive immigration or asylum interview at which representation is not

needed. The interview is the client's opportunity to state his or her case and it is the occasion for the Home Office to test the client's credibility. It is a fundamental part of any immigration application and is the basis for the Home Office's acceptance or refusal of that application. Representatives ensure that the interview is conducted properly, that misunderstandings are clarified, that important lines of questioning are pursued and that an independent record is kept. As such they make an essential contribution to the adviser's job of ensuring that the client's case is properly heard. Removing funding for their work will only serve to lower the quality of service that an adviser is able to provide to the client.

9 Appeals

- 9.1 Considerable effort has been made in recent years by the Immigration Appellate Authority to speed up the appeal process. New adjudicators have been appointed and new hearing centres opened to deal with the backlog of cases. It is ASA's view that if the proposed time caps are introduced, this effort will have been wasted. With only five hours for asylum or three hours for immigration to first decision and only four hours to appeal, the adviser is unlikely to have had sufficient time to take full instructions from the client. In particular, it will be difficult for any adviser to comply with directions to prepare a chronology, bundle and full statements for the appellant and all witnesses. Without these, the advocate (or the adjudicator if the client is unrepresented) will have to take considerable time in court questioning the appellant and any witnesses to ensure that all the evidence has been heard. As a result hearings are likely to take much longer, the whole appeal process will slow down and there will be no saving in time or money.

10 Unique file number

- 10.1 This has been proposed to prevent clients "shopping around" looking for more favourable advice from another adviser and to ensure that the proposed time limits for an individual's case are not exceeded. ASA accepts that there may be clients who seek advice from a number of sources. However, given the acknowledged levels of poor advice within the field it is ASA's view that many of those clients will have a legitimate reason for doing so. Nonetheless, we are not opposed to the introduction of a unique file number so long as it is solely for the purpose of preventing clients seeking advice from more than one source without good reason.
- 10.2 However ASA is opposed to the use of the Home Office reference number by the LSC. By linking the funding of advice to the Home Office in this way there is a considerable risk that advisers will not be perceived to be independent by their clients. Clients who have made applications for asylum have often suffered abuse from people in positions of authority and therefore find it hard to trust their adviser. They are unlikely to understand the legal system and the asylum process and initially many clients think their adviser is a Home Office employee. Use of the Home Office number for tracking by the LSC will make it harder to convince the client of the adviser's independence and establishing a relationship of trust with will become even more difficult and time consuming.
- 10.3 Furthermore, we understand that there are frequently practical problems with the allocation of Home Office reference numbers. It is often the case that a client may be without one for a considerable time or never receive one. We therefore suggest that if the LSC wishes to introduce a system of unique file numbers, it should develop its own numbering system.

11 Transfer of files and previous legal advice

- 11.1 It is proposed that if a client changes representative, there will be no new allocation of hours unless the previous representative has been negligent and the matter has been reported to the OSS or OISC. ASA takes the view that this system is both unfair and unworkable.
- 11.2 In those cases where a client alleges negligence, the new representative is unlikely to be able to assess the validity of the claim without a detailed examination of the file. The file may never arrive or may take a considerable time to do so. If it does, it seems that the new representative must investigate the negligence claim without being paid for it. The new representative will therefore have no incentive to investigate the case properly. Furthermore, if a case has been handled negligently, it is usually necessary for the new representative to act quickly to put matters right or at least prevent them getting any worse. This will not be possible if the negligence claim has to be investigated and reported before any work on the immigration case can be undertaken. In order to be able to start work immediately and to get a fresh allocation of hours the new representative may resort to reporting the case straightaway. As a result it is possible that the OSS and OISC will be inundated with reports of negligence.
- 11.3 The approach also ignores those cases where a client has a legitimate reason for changing representative other than the previous adviser having been negligent. For example, the client may be dispersed to another part of the country, the current representative may stop providing immigration advice, there may be a conflict of interest or in certain cases a representative may decide to refer a case on to another representative with particular expertise for example about a particular tribe or region. In such cases, the client is not at fault and should not be penalised.

12 Accreditation

- 12.1 ASA welcomes efforts to improve the quality of immigration and asylum advice provision and is not in principle opposed to a scheme to accredit advisers individually. However, immigration is already one of the most regulated areas of legal work: solicitors are regulated by the Law Society and OSS, non-solicitors are either registered or exempted by the OISC and LSC contracted agencies are audited for compliance with the contract and the Specialist Quality Mark. If an accreditation scheme is introduced, care must be taken to ensure that there is not unnecessary overlap with the quality systems already in place. ASA is concerned that becoming accredited will be a time consuming and costly process that will impose an unnecessary burden on advisers who are already working at full stretch. This will be a particular concern for advisers working in non-solicitor nfp agencies who have recently completed the OISC exemption process and will now find themselves having to comply with yet another scheme.
- 12.2 Although we are not opposed in principle to an individual accreditation scheme, it is ASA's view that it runs contrary to all the other proposed changes. Giving good quality advice and representation requires thorough preparation of a case. As discussed above, this will not be possible if the proposed time limits are introduced. An accreditation scheme will not improve quality in a system that requires advisers to cut corners and leave clients without representation as soon as their allocation of hours is up. Furthermore, the accreditation scheme proposed envisages that advisers will work their way up through four levels as they become more experienced. ASA questions how less experienced advisers will increase their

expertise and knowledge when working within the proposed time limits. The limits will not allow them to gain experience in the more complex areas of immigration law and will restrict the development of their skills and knowledge to the most rudimentary.

13 Form filling

- 13.1 We note the prohibition at section 13.2.7 of the draft specification on “simple form filling...which does not require legal advice”. This includes travel document applications, applications for citizenship and basic entry clearance forms. ASA rebuts the assertion that assisting clients with such applications is not legal work. Part V of the Immigration and Asylum Act 1999 created the Office of the Immigration Services Commissioner to prevent unqualified people giving advice on immigration matters. According to the Act, immigration advice includes “an application for, or for the variation of, entry clearance or leave to enter or remain in the UK” and “nationality and citizenship under the law of the UK”. Under the Act, someone who advises on these matters without being regulated or exempted by the OISC is liable to criminal prosecution. Behind this legislation lies the understanding that these applications require knowledge of the law and that serious mistakes can be made if legal advice is not received early on. ASA therefore cannot understand on what basis the LSC now states that this vital work is not legal and must not be conducted by nfp agencies under their contracts.

14 Alternative proposals

- 14.1 ASA supports attempts to improve the quality of immigration advice. Whilst we believe that individual accreditation may go some way towards improving the quality of immigration advice it is ASA’s view that a scheme involving regular, external peer review of advisers’ files is a much more effective guarantee of quality and is considerably less onerous for advisers. The LSC has already made use of immigration peer reviewers to check the quality of work done under contract and ASA takes the view that this scheme should be extended so that peer reviews of all providers were carried out on a regular basis.
- 14.2 The DCA paper asks for other ways to reduce expenditure on immigration work. ASA understands the desire to do this but believes that capping the time spent on immigration cases by all agencies regardless of their track record does not make sense. ASA accepts that where there are concerns about a particular firm or agency, the LSC needs to maintain a tight control on their expenditure. We therefore suggest that upper casework limits be lowered for category three agencies, thereby forcing them to justify their work more regularly. At the other end of the spectrum, firms or agencies known to do good work should have higher casework limits enabling them to continue providing a quality service to their clients.