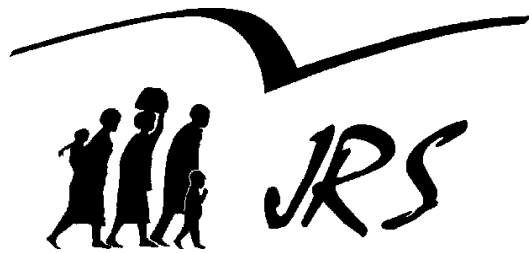


**A Lord Chancellor's Department/
Department for Constitutional Affairs
Consultation paper:
Proposed Changes to
Publicly Funded Immigration
and Asylum Work**



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Mission Statement of Jesuit Refugee Service UK

The Jesuit Refugee Service (JRS) is an international Catholic non-governmental organisation, at work in over 50 countries, with a mission to accompany, serve and defend the rights of refugees and forcibly displaced people.

The purpose of JRS UK is to accompany, to serve and to advocate on behalf of all asylum seekers from their first arrival until they are satisfactorily settled. This work is carried out in collaboration with other JRS offices round the world, other Church and secular organisations, voluntary and governmental, which are active in the same field.

Values Statement

JRS is grounded in Catholic social teaching and draws on the principles of Ignatian spirituality in discerning with whom we work. All Members share a common set of values and principles concerned with justice, the dignity of the person and a responsibility to carry out the social mission of the Church.

With a priority to working wherever the needs of displaced people are urgent and unattended by others, JRS offers a human and pastoral service to refugees and the communities who host them through a wide range of rehabilitation and relief activities. Services — pastoral care, education for children and adults, social services, counselling, and health care—are tailored to meet local needs according to available resources.

JRS UK's work

The main focus of JRS UK's work is with asylum seekers in detention through visits, phone calls and letters. We produce news sheets to keep them in touch with events in their country. When they are released we keep in touch with them and offer practical support.

JRS UK does neither carries out any casework nor offers immigration advice to asylum seekers. JRS UK "signposts" the services offered by other NGOs and by legal practitioners in this area.

Our comments in this response are limited to asylum cases as we do not deal with general immigration applicants.

Proposed Changes to Publicly Funded Immigration and Asylum Work

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

JRS UK is gravely concerned about the introduction of maximum limits of publicly funded advice work in asylum cases.

The maximum limits¹ suggested in the paper appear to us to be impossibly small to cover all the aspects of an asylum case. According to our NGO partners providing immigration advice to asylum seekers – and in our own experience as well – it can take some considerable time for an asylum seeker to build up enough confidence and trust in an adviser in order to be able to give the full details of his or her particular circumstances and the reasons why he or she fled his or her own country. This is especially so when his or her case is particularly

¹ 5 hours for the initial case (paragraph 24), 4 hours to prepare an appeal (paragraph 33)

distressing or traumatic, involving the death of a loved one, rape or torture. It seems unreasonable to suggest that these entirely natural inclinations towards reticence by some individuals who have gone through such experiences be time limited in this way. In addition due to stress and trauma some individuals – again quite naturally – only remember everything which is relevant to their own cases after confidence has been built up and some counselling or friendship has been found in the UK. The maximum limits will place undue burdens on immigration legal practitioners, either NGOs or private legal firms, to get all the information needed in a caring and sensitive manner and to do justice to the individual's case.

In addition, in our experience and that of other agencies and organisations, a number of cases are subject to interminable delays. Some asylum applicants wait months or even years for an interview. One man in Glasgow with whom we are in contact had his interview in February 2002 but has still not had a decision. There can be delays at every stage though obviously not in every case. If the result of interview has not been given then there is a delay in participating fully in British society or in pursuing an appeal. Delays at this and later stages obviously cost money as solicitors are relied on to follow up with the Home Office to find out what is happening in an individual client's case. An asylum seeker subject to delays would soon run out of his or her allotted legal aid.

JRS is concerned that the imposition of maximum limits at first instance will not assist legal practitioners to make the best possible case for their clients. Much argument is made in the paper of the need for proper accreditation of legal practitioners², but the imposition of maximum limits can only lead to less thorough work being done on behalf of a client if that client is unable to pay for private advice. Time pressure and the pressure of running a business or meeting organisational budgets can only have an impact on the quality of representation asylum seekers will be able to obtain, regardless of the good intentions individual legal firms or NGOs reliant on Legal Service Commission funding may have.

To our mind it seems an impossible task to prepare an appeal in 4 hours. This, according to colleagues at the Immigration Legal Practitioners Association (ILPA), would include counsel's preparation of the case, conference, the brief and court bundles.

In JRS' opinion it is likely that these measures will result in the withdrawal of some practitioners from the provision of publicly funded immigration advice – and in our experience in many parts of England and Wales there are already shortages of competent legal advisers who provide publicly funded advice in this area.

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

While JRS appreciates that the government may have budgetary concerns over the increased level of public funding for asylum cases, it seems incongruous to us that arguments regarding the overspend in the Legal Services budget be allowed to result in poorer representation for asylum seekers.

It seems unduly harsh that asylum seekers be forced to pay the price of the budget overspend through a decreased chance of getting legal advice in their cases and the likely decrease in standards of care taken in their case by legal advisers.

² Paragraphs 46 and ff.

In common with many other NGOs in this field, JRS has long maintained that the current asylum process in the UK is overly complicated and in many cases badly administered. The percentages of cases taken to appeal either because of high percentages of non-compliance refusals, incompetent legal advice initially or poor decision making at the Home Office are high. In our opinion it is time to look at the whole asylum process and to put the individual asylum seeker and his or her protection needs first, rather than focussing on deterrent measures. Once the process has been got right then there will be fewer appeals and considerably fewer costs to the public purse.

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?

This would be the most logical use of limited funds given that the initial stage should provide a good foundation from which to proceed with the asylum case. But this would only be the case if the initial decision making process at the Home Office and access to competent legal advice could be greatly improved. In our experience large numbers of asylum seekers are issued with non-compliance refusals due to difficulties in getting their Statement of Evidence Forms completed, either because they are unable to access legal advice in time, or an interpreter is not available; or because they were unable to attend an interview due to not receiving notification or transport difficulties.

Given that there are problems with both the decision making process at first instance and with access to competent publicly funded legal advice in many parts of England and Wales JRS is of the opinion that the maximum limit for appeal preparation will have to be significantly increased.

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

As noted above, JRS does not provide legal advice, so this question is beyond our experience. We can only reiterate that the maximum limit of 4 hours to prepare an appeal would seem to make for an impossible task given all the preparation work needed for an appeal, according to our colleagues at ILPA.

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

JRS is heartened to note that cases pertaining to detainees are among the exceptions noted in the paper³. According to colleagues at Bail for Immigration Detainees (BID) and ILPA, who have had regard to the Draft Legal Service Commission's Immigration Contract Specification as well, the exception amounts to waiting and travel costs in addition to the maximum advice limit⁴. The exception also covers an additional 30 minutes' advice about the right to apply for bail or Temporary Admission at Legal Help stage. At Court Legal Representation stage an additional two hours' preparation is allowed, as well as time for travelling, waiting and representation for a bail hearing. If bail is refused however then further additions are only allowed where there is a change of circumstance.

³ Paragraph 28

⁴ This exception for travel and waiting costs also pertains to asylum seekers in hospital or where a home visit may be justified.

However, we feel that we must point out that our reservations to the maximum limits noted in question one are even more pronounced with regard to detainees. Detained asylum seekers are doubly traumatised – by their experiences in their country of origin and by being detained and not understanding why and not having a limit on how long they are detained for. It is even more difficult to gain the trust and confidence of a detainee in our experience sufficient to that individual being able to explain the details of his or her case in their entirety. It is also more difficult to obtain legal representation for the detainee asylum seeker and to have access to any necessary interpreters. To our mind, therefore, the maximum limits for asylum cases are even more inappropriate and harsh for detainees – especially if there are also limits to be put in place on the publicly funded advice they can obtain on their right to bail or temporary admission.

JRS has long maintained that the administrative detention of asylum seekers is wrong and should not take place except for a very brief time before removal. It is unconscionable that after the right to automatic bail hearings⁵ (unfortunately never implemented) was removed by the Nationality Immigration and Asylum Act 2002 that the right to seek bail or temporary admission is further limited by advice limits in bail matters.

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

As noted in the consultation paper⁶, there are currently only 617 contracted suppliers throughout England and Wales able to provide publicly funded legal advice in asylum cases. In 2002 there were 85,865 asylum claims⁷. It is our experience at JRS that there are insufficient numbers of legal advisers who are publicly or charitably funded in England and Wales already. We believe that these new measures to limit the amount of publicly funded advice available will tip the balance for some firms and NGOs and lead to a withdrawal from immigration advice to more lucrative areas of the law or a limit on how many advisers an agency or NGO can provide – leading to an even greater shortfall in the availability of competent legal advice for asylum seekers.

It is likely that charities, the voluntary sector and others working with asylum seekers will have to fundraise to provide legal assistance to their own clients making an asylum claim.

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

As stated before, JRS do not provide legal advice to asylum seekers, but rather “signposts” the services and advice available elsewhere. We also feel unqualified to comment in any detail on the proposed accreditation scheme; this should be left to those who will be directly impacted and who have experience of working in a legal firm and in publicly funded work.

In our opinion, however, accreditation is essential especially given the vulnerability of the clients (asylum seekers), the complexity of the asylum process and the results which could occur if incompetent or inadequate advice is given (possibly removal to persecution).

⁵ Given under Part III of the Immigration and Asylum Act 1999

⁶ Paragraph 2

⁷ Paragraph 5

The establishment of the Office of the Immigration Services Commissioner (OISC) has in our opinion improved the quality of legal advice in the voluntary sector. The accreditation by the OISC allows us a measure of confidence in recommending an agency and the system of accreditation provides an easy reference of what level of work the advisers in the organisation concerned are entitled to carry out. There is also an easy procedure to follow should a complaint be necessary.

We would welcome an accreditation scheme that offered a similar measure of confidence when it comes to looking for a solicitor to provide immigration advice to one of our clients.

- 8. What impact will the proposed accreditation scheme have on clients and particular client groups?**
- 9. What impact will the proposed accreditation scheme have on businesses, charities and the voluntary sector?**

We would hope that an accreditation scheme, whether the proposed one or another, would provide a measure of confidence in the services provided and a way to complain easily and quickly if the advice received has not been or is thought not to be competent.

- 10. Are four levels of accreditation necessary? If not, how many, and what should they be?**
- 11. What work do you believe those at each level should be considered competent to perform?**
- 12. How should competence be assessed and by whom?**
- 13. How soon do you believe accreditation can become compulsory?**
- 14. Are there other ways in which quality can be ensured?**

JRS does not have the necessary experience to comment in detail on the proposed accreditation system, as stated above.

However, it seems essential to us that any accreditation system is administered by an outside and independent body. This will increase confidence in the system as a whole and in its merits.

Louise Zanré, 27 August 2003