

# **BREAKING DOWN THE BARRIERS**

**A report on the conduct of  
asylum interviews at ports**

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## A report on the conduct of asylum interviews at ports

**Heaven Crawley**

With a foreword by His Honour Judge David Pearl

This report is the result of research conducted by Heaven Crawley in conjunction with a steering group:

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**ILPA** Immigration Law Practitioners' Association

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# List of acronyms

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ACLEC	The Lord Chancellor's Advisory Committee on Legal Education and Conduct	ICD	Integrated Casework Directorate
ADIs	Asylum Directorate Instructions	IDIs	Immigration Directorates' Instructions
AIR	Asylum Interview Record	IND	Immigration and Nationality Directorate
ALO	Airline Liaison Officer	IO	Immigration Officer
ALU	Asylum Liaison Unit	IS	Immigration Service
ARC	Asylum Rights Campaign	ISPD	Immigration Service Ports Directorate
ASU	Asylum Screening Unit	JCWI	Joint Council for the Welfare of Immigrants
CAC	Complaints Audit Committee	PAQ	Political Asylum Questionnaire
CIO	Chief Immigration Officer	PAS	Port Administration System
CLA	Immigration (Carriers' Liability) Act (1987)	PMI	Port Medical Inspection
DSI	Dublin Screening Interview	RFR	Reasons for Refusal
ECHR	European Convention on Human Rights	RLC	Refugee Legal Centre
ECO	Entry Clearance Officer	SCQ	Self-Completion Questionnaire
ELE/ELR	Exceptional Leave to Enter/Remain	SEA	Secondary Examination Area
HOPO	Home Office Presenting Officer	SP	Short (now Standard) Procedure
IAA	Immigration Appellate Authority	SSHD	Secretary of State for the Home Department
IAS	Immigration Advisory Service	TA	Temporary Admission
IAT	Immigration Appeals Tribunal		

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# Foreword

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Asylum interviews are the key to a fast, fair and sustainable decision making process. There has been considerable concern expressed by various reports that current procedures fail to meet minimum standards. A recent critical study, *Still No Reason At All*, published by Asylum Aid in May 1999 echoes many earlier documents.

It is therefore timely that ILPA has initiated a major research project into asylum interviews at the ports, concentrating to an extent on the role of legal advice and representation. The detailed research findings underline the importance of 'front loading' decision making. *Breaking Down the Barriers* demonstrates that the quality of information gathering leaves a great deal to be desired at the present time, and that concentrating on improving this essential aspect of asylum

status determination is a prerequisite for full compliance of our obligations under the Geneva Convention and the European Convention on Human Rights.

It is hoped that all those involved in the current efforts to ensure the successful implementation of new legislation will give careful attention to the 28 recommendations in this report. Government may not necessarily accept them all, but they require careful scrutiny.

As someone who has been involved in both the first tier and second tier of asylum appeals over the last five years, I welcome this report and commend it as a blueprint for the highest standards of decision making.

**His Honour Judge David Pearl**



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**SECTION 1**

# Introduction

This research project was formulated following the publication of the Asylum and Immigration Bill 1995 and associated Social Security Regulations. It set out to examine how asylum applicants would be served by immigration officers and legal representatives when an increased number of substantive asylum interviews were held at ports; how best those in need of protection could be assisted to present their claim; and why relations between legal representatives and Immigration Service staff at ports were seen as problematic and how these could be improved. During the course of this research, legal representatives, asylum applicants, Immigration Service staff and other Home Office officials, have contributed to the development of these objectives and the organisation of the project.

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- 1.1 In November 1997 the Immigration Law Practitioners' Association (ILPA) began research into current practice and procedures associated with substantive asylum interviews conducted by the Immigration Service. The substantive asylum interview is the principal opportunity for the applicant to present details of his or her claim for asylum; the information gathered forms the basis of the initial decision and subsequent stages of the asylum process. On the basis of the information gathered, the Secretary of State may grant refugee status under the 1951 UN Convention relating to the Status of Refugees ('the 1951 Convention') or exceptional leave to enter/remain (ELE/ELR),<sup>1</sup> or refuse the application. The focus of this research on substantive asylum interviews reflects the importance of the information collected for the decision making process, and the potentially deleterious consequences for the applicant if the information gathering process is inappropriate or

inadequate. The specific focus on interviews held at ports – as opposed to those undertaken by staff in the Immigration and Nationality Directorate's (IND) Asylum Directorate – was largely a reflection of practical constraints resulting from the on-going re-organisation of the Asylum Directorate.<sup>2</sup>

## Research aims

- 1.2 This research has three main aims:
- to examine whether current procedures best serve the needs of asylum applicants in need of protection under the 1951 Convention;
  - to consider whether the substantive asylum interview conducted on arrival provides appropriate information to enable a fast, fair and sustainable decision making process;
  - to make recommendations about the future conduct of substantive asylum interviews.
- 1.3 ILPA has been particularly concerned to examine the role of legal advice and representation in the substantive asylum interview. This concern arose partly as a result of increasing tensions between immigration officers (IOs) and legal representatives about the role of legal advice and representation during asylum interviews, particularly as Short (now Standard) Procedure (SP) interviews were becoming commonplace. ILPA was concerned that this situation might be failing asylum applicants in need of protection and leading to unsustainable refusals, long drawn out appeals and additional work for the Immigration Service and the Asylum Directorate.
- 1.4 Concerns both about the role of legal advice and representation during interviews and the relationship between legal representatives and IND staff have also been expressed by the IND's own Complaints Audit Committee Annual Reports over a number of years.<sup>3</sup>

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1 Exceptional leave to enter or remain is given to people who have sought asylum in the UK, who have not been granted refugee status, but who have been allowed to remain outside the normal provisions of the Immigration Rules. Exceptional leave may be granted on the basis of: evidence of difficulties in the country of origin that are insufficient to justify refugee status; general compassionate circumstances; or likely difficulty in enforcing departure from the United Kingdom.

2 It should be noted that while this research was being conducted the Asylum Directorate was responsible for asylum casework and is therefore referred to throughout this report. In December 1998 the Asylum Directorate became part of the Integrated Casework Directorate (ICD).

3 The Complaints Audit Committee (CAC) was established in January 1994 in an effort to enhance public confidence in the system of complaints investigation within the IND. Its remit is to satisfy itself as to the effectiveness of the procedures for investigating complaints, to draw attention to any weaknesses and to make an annual report to the Home Secretary.

- 1.5 The Complaints Audit Committee (CAC) has noted that a number of specific issues are repeatedly raised by legal representatives. These include:
- a perception that interviews are adversarial rather than inquisitorial;
  - the non-disclosure of interview notes in certain types of cases;
  - the refusal to admit interpreters acting on behalf of applicants;
  - the actual conduct of asylum interviews, including clashes of personality involving interviewing officers and applicants' representatives.<sup>4</sup>
- 1.6 The CAC has made a number of recommendations about how the relationship between legal representatives and members of IND might be improved (► *figure 1*).
- 1.7 In response to the recommendations of the CAC, the Asylum Directorate produced a draft protocol outlining the role of the legal representative during the asylum interview and providing guidance on the conduct of such interviews. This draft guidance was disseminated for comment in November 1996 by Mrs C Drew of the Asylum Directorate (► *figure 2*). In this guidance the role of the legal representative is limited to that of an observer.
- 1.8 A number of individuals and organisations objected to the draft guidance and requested clarification of both the purpose of the interview and the role of the interviewing officer. In particular, they argued that representatives should attend interviews to represent the interests of their client as opposed to merely observe proceedings as is the case in other contexts where so much is at stake for the person being interviewed.
- 1.9 ILPA drafted alternative guidelines which were submitted to the Asylum Directorate (► *figure 3*). The Home Office did not respond to these guidelines.
- 1.10 The initiative by IND was not taken forward and the guidance for legal representatives was never formally or officially introduced.
- 1.11 At the time that this research began, the relationship between legal representatives and the Immigration Service had not improved. Indeed the circulation of similar guidance by some terminals and some ports at the beginning of 1998 was perceived by some legal representatives

<sup>4</sup> Although the volume of complaints made by legal representatives and others has led some staff to conclude that such complaints are tactical, the CAC recently concluded that those falling into this category are relatively small in number. See Complaints Audit Committee 1997, paragraph 2.7

<sup>5</sup> This is one of the users' groups established by IND on 28 October 1997. This group has been extended to on-entry and nationality casework. It meets quarterly and ILPA is one of many organisations represented.

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**FIGURE 1**

**Recommendations of the Complaints Audit Committee (IND)**

'We believe that most of the complaints from representatives, some on their clients', some on their own behalf, could be eliminated by better liaison, a better understanding by each side of the others' responsibilities and difficulties, more efficient organisation and more goodwill on both sides.' (1994)

'IND should urgently produce a draft protocol for discussion with representatives of the legal profession.' (1995)

'We recommend that IND urgently sets up an internal working party of adequate seniority...to consider the whole interface with legal representatives, particularly in the light of newly introduced procedures. We recommend that a policy document be produced for discussion with representatives of the legal profession, and that the responsibilities as well as the rights of each side should be clarified.' (1996)

'In our three previous reports we have drawn attention to the number of complaints from lawyers and others on organisational matters and in 1996 recommended urgent work on a protocol to be agreed with lawyers' representatives...After some prompting by the Committee, a draft protocol for working with legal representatives was produced towards the end of the year...We hope that the draft protocol will soon be ready for discussion with representatives of relevant lawyers' organisations.' (1997)

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as amounting to the unilateral implementation of these procedures. The guidelines were introduced without consultation or discussion, despite the existence of the IND After-Entry Casework Users' Group.<sup>5</sup>

- 1.12 The IND maintains that the guidance for legal representatives simply reflects existing practice. However this research suggests that such guidance also reflects a particular understanding of the purpose of the asylum interview and its function in terms of the overall process of asylum determination. The way in which the changes were introduced (initially by one terminal within one port but subsequently extended to most ports) indicates a lack of consistency in understanding about the purpose of the interview and about the roles and responsibilities of those involved.
- 1.13 In addition, it is clear that some representatives do not agree that the guidance represents best practice or that it promotes an environment in which an applicant can give an appropriately detailed account of his or her claim for asylum.
- 1.14 It has become evident during the course of this research that the guidance circulated in 1998 has itself been the cause of considerable tension and

has not clarified or improved the relationship between legal representatives and Immigration Service staff. This is principally because the guidance for legal representatives has never been agreed.

- 1.15 This research has examined the roles and responsibilities of all those involved in the asylum interview – the interviewing officer, legal representative and interpreter(s) – as well as the information-gathering process itself, in order to identify best practice which could form the basis of agreed guidelines. The findings of this research should therefore be relevant to consideration of changes in procedure arising from the review process currently being undertaken by the government.
- 1.16 Until there is a consensus about the purpose of the interview and the roles and responsibilities of those involved it will not be possible for the substantive asylum interview to meet the needs of both asylum applicants and decision makers.
- 1.17 It is also important to acknowledge that there are concerns about the quality of legal advice and representation currently available to asylum applicants. These concerns are shared by both the Immigration Service and ILPA.
- 1.18 Concerns about the quality of legal advice and representation are the subject of a joint consultation document issued by the Home Office and the Lord Chancellor's Department in January 1998 entitled *Control of Unscrupulous Immigration Advisers* which sought comments on the kinds of conduct to be controlled and the options for achieving it.
- 1.19 The Immigration and Asylum Bill 1999 introduces a system of compulsory regulation for all persons giving immigration advice where their work is not being supervised by a designated body such as the Law Society or the Bar Council. It is proposed that it will be an offence for any person to give such advice if not regulated.
- 1.20 The Legal Aid Board has for some time been concerned to ensure that the taxpayer gets value for money with regard to the provision of advice under the publicly funded legal aid scheme. The concern is particularly acute since less than 20 per cent of the legal aid spent on immigration advice and assistance is currently going to franchised legal aid firms. The proposals for exclusive contracting which will come into force as from 1 January 2000 will mean that only firms that are franchised will be eligible for a contract for legal advice and assistance in immigration work under the legal aid scheme.
- 1.21 Although measures are being introduced which aim to raise the level of competence and professionalism of legal advice and representation available from a range of different service providers, the Home Office does not acknowledge

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## FIGURE 2

### Draft guidance for legal representatives (IND November 1996)

'The purpose of the asylum interview is to assess the applicant's claim to asylum under the 1951 Convention and 1967 Protocol relating to the Status of Refugees. The interviewing officer will ask questions to establish if the individual has a well-founded fear of persecution and the applicant is expected to answer these questions. If the applicant wishes to add additional information in support of their claim this may be done at the end of the interview.'

Representatives and their interpreters may attend interviews as observers at the discretion of the interviewing officer. Interviews regularly take place in secure areas, observers may need to produce identification.

Observers must refrain from interrupting during the interview, they will be invited to make their comments at the end of the interview. Observers who persist in making interruptions will be asked to leave the interview.

Breaks are permitted at the discretion of the interviewing officer.

Minor discrepancies in translation should be noted throughout the interview and brought to the attention of the interviewing officer at the end of the interview.

The interviewing officer should be made aware immediately of any major difficulties over interpretation.

Mobile telephones, pagers etc. must be turned off during the interview. Observers must refrain from behaviour likely to distract the applicant and the interviewer, observers who fail to comply with this request will be asked to leave the interview.

Interviews will not be delayed or curtailed if the observer fails to attend on time or wishes to leave to assist another client.

The applicant and the interview should sign each page to confirm that it is an accurate record of the interview, the observer may also sign the interview record if they wish. The applicant will be given the opportunity to have the interview notes read to them. A copy of the interview notes will be given to the applicant.

Errors identified in the interview notes and points which need clarification should be noted within the timescale for the submission of additional material.'

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that access to competent legal advice and representation at the initial stage of the asylum process is a useful or necessary contribution to the process of asylum determination. The government's White Paper *Fairer, Faster and Firmer – A Modern Approach to Immigration and Asylum* concludes that 'legal representation at the asylum interview is not necessary to enable an applicant to set out his or her case truthfully... While the

**FIGURE 3****ILPA's proposed guidance for representatives at asylum interviews  
(December 1996)**

The purpose of the asylum interview is to assess the applicant's claim to asylum under the 1951 Convention and the 1967 Protocol relating to the status of refugees. The interviewing officer is embarking upon a fact finding exercise to collect all the relevant information for the central decision making body, the Home Office, for it to come to a view on whether the individual qualifies under the Refugee Convention.

The interview is also to collect information as to whether removal of the applicant would be in breach of the UK's other international obligations, or should not take place because of other humanitarian or compassionate circumstances.

The representative is there to ensure that the applicant is able to put his/her case to the best of his ability.

The UNHCR Handbook contains useful guidance for the interviewing officer as to their task in relation to asylum applications (see para 195–205). The active participation of the representative is entirely consistent with the material in the Handbook.

Representatives at interviews may be asked to produce identification if the interview is in a secure area.

The overriding aim for all parties is to allow the applicant the best opportunity to present his/her case as fully as possible (Handbook para 205b(i)). Consistent with this each party should refrain from interrupting during the interview. However, the representative may:

- assist the client, the official interpreter and the immigration officer in ascertaining any relevant information facts and evidence which may have a bearing on the application;
- clarify questions or comments made by the interviewing officer if these are unclear, ambiguous or misleading;
- prompt the interviewing officer when relevant enquiries are being curtailed or have not been pursued;
- ensure that the independent interpreter is present if necessary and that the official interpreter undertakes the role of interpreter and does not engage in conversation or discussion with the client without that information being passed to the interviewing officer;
- ensure that any significant problems with interpreting or apparent problems are brought to the attention of the interviewing officer and acted upon immediately;
- ensure that the interview record is accurate and contains statements made by the client and that he/she has had the opportunity to amend or add to the record;
- ensure that breaks are taken at relevant points in the interview, and that the interview is re-scheduled if the client is not fit to continue.

There should be a procedure which allows comments and corrections to be made at the end of the interview.

The applicant and the representative should then sign each page to confirm that it is an accurate record of the interview. The representative may also sign the interview record if they wish but a copy will be given to the assisted person as is a copy of the decision.

Mobile telephones, pagers etc must be turned off during the interview. Representatives must refrain from behaviour likely to distract the applicant and the interviewer. Representatives who unreasonably fail to comply with this request will be asked to leave the interview.

government neither encourages or discourages the presence of legal advisers at the asylum interview, it believes that their presence is not essential to a fair asylum process so as to merit changes in existing procedures in this respect.<sup>6</sup>

- 1.22 The government recognises that access to legal advice is an essential component of a fair system and is prepared to examine whether there is a need for better provision of information for asylum applicants after the interview about the availability of legal advice.
- 1.23 This report begins from the proposition that the quality of the information gathered about a claim is critical to ensuring that a fast and effective initial decision is made on an application for asylum. It is also concerned that the procedures for information-gathering should be fair, both in terms of practice and perception. Fairness and efficiency are closely related. If a system is perceived to be fair, then it will also be more effective and efficient. Fairness and objectivity might be conveyed through, for example, a general uniformity of approach between applications that are made at the port of entry and those which are made in-country.
- 1.24 Although the focus of this report is on the interview process and not on the outcome of an asylum claim or the mechanisms for decision making, its findings have significant implications for both.
- 1.25 This report has been written in the light of the findings of previous research relating to the conduct of asylum interviews and in particular the reports produced by the Commission for Racial Equality (1985), Asylum Rights Campaign (ARC) (1996a, 1996b), ILPA (1994), ILPA, Law Society and Refugee Legal Group (1997) and the Refugee Legal Centre (1997).

## Research process

- 1.26 This research aims to make a constructive contribution to ongoing discussions about the conduct of asylum interviews. Although this report suggests that substantive asylum interviews held at ports raise particular issues for both legal representatives and interviewing officers (as well as for the relationship between them), its findings are intended to benefit the Immigration Service – and the Immigration and Nationality Directorate in general – as well as legal representatives and applicants for asylum who are in need of protection.
- 1.27 ILPA was concerned that research into the conduct of asylum interviews should proceed with the support and co-operation of the

Immigration Service, and that it should itself play an important part in the process of establishing an improved working relationship between the Immigration Service and legal representatives. This concern is reflected in the way this project has developed over a period of eighteen months and in the research methods which were adopted.

- 1.28 The absence of a good working relationship between legal representatives and the Immigration Service has meant that existing 'evidence' about the conduct of asylum interviews was largely anecdotal. Both legal representatives and Immigration Service staff had allowed a number of examples of incompetent and/or unprofessional behaviour to distort and undermine their relationship and to influence how each 'side' perceived and worked with the other. This was reflected in the absence of any proper understanding of each other's responsibilities and difficulties.
- 1.29 Whilst the conduct of the interview has been criticised by legal representatives, ILPA is also aware that there has been criticism of some representatives in asylum interviews and welcomed the opportunity to assess independently the conduct and roles of all those involved in the interview.
- 1.30 A steering group with practitioner and academic members was established at an early stage in the research process. It was decided that the research would be conducted with three different groups: Immigration Service staff, legal representatives, and asylum applicants. The steering group appointed a consultant for the research and members met with the researcher on a regular basis to discuss how the research could best be conducted, its progress and future direction.
- 1.31 This research has employed both quantitative and qualitative methodological approaches to ensure the reliability, validity and analytical rigour of its findings.

## Questionnaire for representatives and clerks

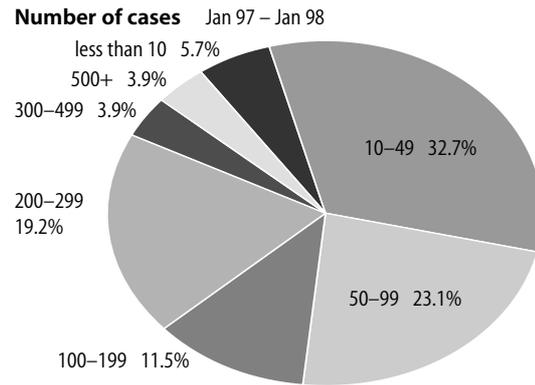
- 1.32 Information about the conduct of asylum interviews was gathered from legal representatives through a number of different methods. In-depth semi-structured interviews were held with 28 practitioners, all of whom are ILPA members. A number of key themes and issues arose from these discussions and formed the basis of a questionnaire survey for legal representatives who are responsible for the conduct of cases and clerks who often attend interviews on their behalf. This was distributed to 350 ILPA members who were either known to be involved in initial advice and representation of asylum applicants or not known not to be involved in initial advice and representation of asylum applicants. 53 questionnaires were completed by legal representatives and 28 by clerks.<sup>7</sup>

<sup>6</sup> Home Office (July 1998) *Fairer, Faster and Firmer – A Modern Approach to Immigration and Asylum*, CM4018 paragraph 8.10

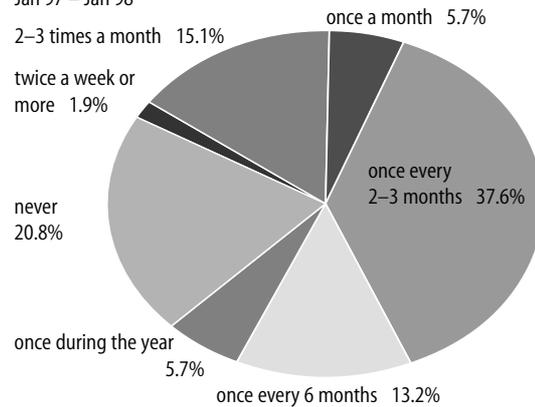
<sup>7</sup> This represents a return rate of 23 per cent.

- 1.33 A large number of respondents are partners of, or work for, private firms of solicitors. A quarter of respondents work with specialist organisations including the Refugee Legal Centre (RLC) and Immigration Advisory Service (IAS). There were six responses from individuals working at law centres. None of the respondents are immigration 'consultants'.
- 1.34 Those who feel more confident about the service they are giving are more likely to have responded to the questionnaire. The findings of the questionnaire do not purport to be representative. Even within this group of respondents there was considerable variation in the responses which were given. When combined with observations of current practice by representatives and their clerks at ports, this research suggests that there is considerable variation in both competence and professionalism.
- 1.35 There was considerable variation in the number of cases for which respondents were responsible. These differences result in variations in expertise and practice between legal representatives. The average frequency with which legal representatives attend asylum interviews is once every two to three months (► figure 4).
- 1.36 A separate questionnaire was distributed to clerks. The term 'clerk' refers to articled clerks/trainee solicitors, outdoor clerks, volunteers and others who attend asylum interviews but are not responsible for the overall conduct of cases.
- 1.37 In addition to the questions which were asked of representatives regarding the conduct of the asylum interview, clerks were also asked to provide details of training which they had been given by the firm or organisation which is their primary employer and procedures for briefing and de-briefing.
- 1.38 Many of the clerks who responded to the questionnaire had been attending interviews for more than two years and some had done so on a very regular basis (up to twice a week). Five respondents had been attending asylum interviews for more than five years and were able to comment extensively on the issues which were raised in the questionnaire. This is probably a reflection of the fact that the majority of clerks who responded to the questionnaire work for firms or organisations who employ more experienced clerks, provide adequate training and ensure that procedures are in place for their appropriate supervision. A significant proportion of respondents had been attending asylum interviews for less than one year and many of these attended interviews infrequently (once every two to three months).

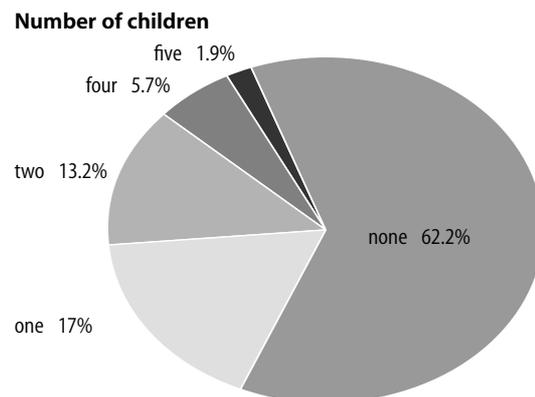
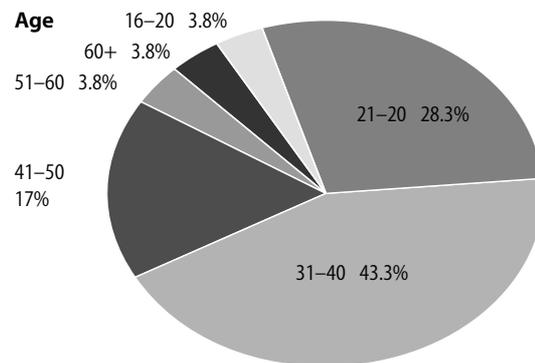
**FIGURE 4**  
**Characteristics of legal representatives**



**Frequency of attendance at asylum interviews**  
Jan 97 – Jan 98



**FIGURE 5**  
**Characteristics of asylum applicants**



### Semi-structured interviews with asylum applicants

- 1.39 Applicants for asylum were also asked about their experiences of the substantive interview. In order to ensure consistency, a semi-structured interview questionnaire was devised with members of five community organisations who were responsible for carrying out this part of the research. As in the questionnaire for legal representatives, the collection of data through a semi-structured interview questionnaire was intended to ensure that all aspects of the interview were discussed and to allow for both qualitative and quantitative analysis.
- 1.40 Semi-structured interviews were conducted with 53 respondents of five nationalities: Colombian, Sri Lankan, Iranian, Ghanaian and Kurdish. One third of respondents were female. More than 80 per cent of the substantive asylum interviews about which information has been collected took place during or after 1996. Nearly half of the respondents were aged between 31 and 40 years of age at the time the substantive interview was conducted.<sup>8</sup> Half were single and half were married or cohabiting. More than half of the respondents had no dependent children at the time of the substantive interview. One respondent arrived with, and was responsible for, two brothers aged 14 and 8 (► figure 5).
- 1.41 Nearly half the respondents were awaiting an initial decision on their application for asylum. Fifteen respondents had been refused asylum. Nine respondents (17 per cent) had been granted refugee status and a further five (9 per cent) had been given exceptional leave to remain (ELR). These figures are lower than for those granted refugee status and ELR in 1998.<sup>8</sup>
- 1.42 There was considerable variation in the current status of respondents according to nationality (► figure 6):
- of those awaiting an initial decision on their asylum application, nearly half were Kurdish. The remainder was divided between the respondents of the four other nationalities;
  - of those respondents whose asylum applications had been refused, just over half were Ghanaian, a quarter were Sri Lankan and twenty per cent Colombian. None of the Iranian or Kurdish respondents had been refused, although only one of Kurdish respondents had received an initial decision (the rest were still pending). Of those who had been refused, virtually all were at various stages of the appeals process. Two respondents had made fresh applications and were awaiting a judicial review of their cases;

<sup>8</sup> Comments made by the Minister for Immigration. See *Hansard* Second Sitting Special Standing Committee 16.03.99 col.113

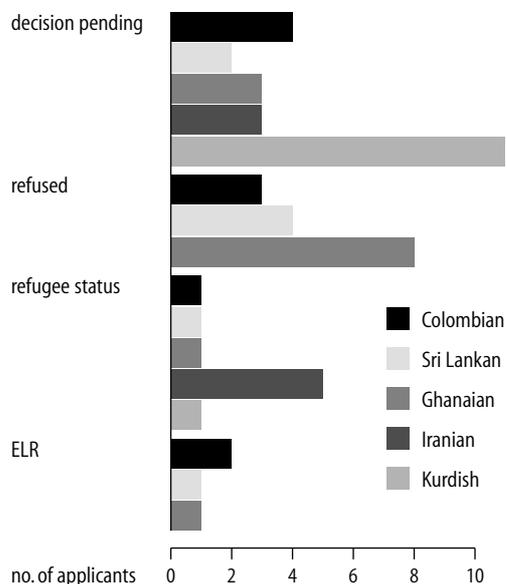
- of those respondents who had been granted refugee status more than half of these were Iranian, one was Colombian, one was Sri Lankan, one was Ghanaian and one was Kurdish;
- of those respondents who had been granted exceptional leave to remain, two were Colombian, two were Ghanaian and one was Sri Lankan.

### Participant observation at ports

- 1.43 The Immigration Service provided ILPA with an unprecedented opportunity to observe current practice and procedures.
- 1.44 An initial approach for access to observe asylum interviews was made in September 1997, and following a meeting with the Immigration Service Enforcement Directorate, a revised detailed proposal was presented to the Immigration Service Ports Directorate. The title of this report is taken from correspondence from Terry Farrage (Director, ISPD) to Immigration Service colleagues and ILPA during 1998, and reflects a recognition on the part of ISPD of the importance of *Breaking Down the Barriers* to effective communication between the Immigration Service and legal representatives. It established a spirit of dialogue that all involved in this project were keen to develop.
- 1.45 In May 1998 the steering group was invited to Heathrow Terminal 3 for a preliminary visit and the researcher was subsequently based at Terminal 3 for two weeks in June, during which time one day was spent at Terminal 4. The steering group was also invited to visit Gatwick South and the Gatwick Asylum Unit, as well as Dover East, before further periods of participant observation were undertaken at each in October 1998. This was followed by two further visits, each of three

FIGURE 6

### Current status of applicants by nationality



days, to Heathrow Terminal 3. Invitations to other ports could not be taken up due to lack of time.

- 1.46 During the periods of participant observation at ports the researcher had access to all aspects of the Immigration Service's work including passport control, baggage checks, the Secondary Examination Area (SEA), Political Asylum office (PA) and Casework office. The researcher was also able to speak informally and at length with both immigration officers (IOs) and chief immigration officers (CIOs) about their experiences of working at Heathrow and other ports.
- 1.47 In addition to gaining an insight into the overall context in which interviews are carried out, the researcher was able to observe the conduct of asylum interviews and to discuss these with immigration officers and chief immigration officers. Asylum applicants were informed of the purpose of the research and the reasons for the researcher wanting to observe the interview.
- 1.48 The researcher observed 23 substantive asylum interviews with applicants from various countries of origin, as well as a wide selection of other (asylum and non-asylum) interviews, including marriage applications, reasons for refusal (RFR) interviews and Dublin Screening interviews (DSI). The researcher did not observe interviews of any minors or of applicants whose age was in dispute.
- 1.49 The number of substantive asylum interviews observed could potentially have been larger. The fact that it was not was not a reflection of any reluctance on the part of Immigration Service staff to allow interviews to be observed, but rather reflects the circumstances under which interviews are currently being conducted. Interview programmes were unavoidably cancelled on several occasions when the ports were visited. A number of interviews did not go ahead as expected because the applicant did not turn up, or an immigration officer was not available, or an appropriate interpreter had not been arranged.
- 1.50 A set of criteria for the assessment of the asylum interview was developed against which current practice could be assessed. These criteria enabled the researcher to identify areas of best practice with regard to: the timing and circumstances of the interview; the conduct of the legal representative, interviewing officer and interpreter(s); and interviewing, information-gathering and communication techniques.
- 1.51 As with the questionnaires which were completed by legal representatives and clerks, it is acknowledged that the sample of interviews which were observed is not representative. Furthermore the presence of the researcher as an observer will have influenced the conduct of the interview, and the behaviour of some or all of those involved.

## The consultation process

- 1.52 Informal discussions have been held with Immigration Service staff, legal representatives and members of refugee community organisations to gather feedback about the emerging findings of this research.
- 1.53 Members of the steering group were invited to attend the Senior Managers' Conference in Coventry for Immigration Service Directors, Assistant Directors, inspectors and other senior IND officials in November 1998. Together with two inspectors from Heathrow Terminal 3, members of the steering group and the researcher led a series of workshops on the preliminary findings of the research. These provided a useful opportunity for discussion about the conduct of asylum interviews and the relationship between the Immigration Service and legal representatives, as well as enabling the research project to become known to a wider audience. The researcher wrote an article outlining the project for the Immigration Service's staff magazine *Focus*.
- 1.54 A working draft of this report has been made available to participants in the research for comment and discussion. Consultation seminars were held with legal representatives, Immigration Service staff, Home Office officials and representatives from refugee community organisations, both separately and together.
- 1.55 There has been a positive response to this report from those involved in this research and the consultation process. ILPA is confident that the research process, the findings of the report and its recommendations will further improve the relationship between legal representatives and the Immigration Service.

## Structure of the report

- 1.56 **Section 2** of this report examines the context within which the asylum interview is conducted. It considers the implications for asylum applicants of the aim of conducting interviews immediately on arrival at the port of entry. It is suggested that the practice of interviewing on arrival is applied inconsistently and undermines the ability of applicants to provide as much information as possible about the basis of their claim.
- 1.57 The conduct of substantive asylum interviews cannot be considered without an understanding of the context in which such interviews are held and the nature of Immigration Service operations at ports. This includes an increase in both overall arrivals and asylum applications which results in competing pressures on staff and resources. The evidence collected during the course of this research and presented in **Section 3** suggests that there are inconsistencies in current practice both within and between ports. There is also a perception that the asylum system, and in turn the integrity

of the Immigration Service, is being undermined and abused. This is a cause of considerable frustration for Immigration Service staff who do not have a formal decision making role in asylum casework, and is reflected in attitudes towards applicants, towards the decision making process and in prevailing perceptions of genuine refugees.

- 1.58 **Section 4** deals with the role of legal advice and representation during the substantive asylum interview. Legal representatives have been severely criticised in recent times, and the Immigration and Asylum Bill 1999 proposes the introduction of regulation for all non-solicitor advisers and representatives, and effective regulation for all qualified lawyers. This report accepts that there are incompetent and unprofessional legal representatives, but there are also excellent ones. It will be suggested in Section 4 of this report that the ability of such legal representatives to represent competently at an asylum interview is limited by the role of observer currently assigned to them. The contribution of competent legal representation towards ensuring that an applicant is able to provide full and relevant details of his or her claim should be recognised as essential to the asylum determination process.
- 1.59 **Section 5** critically examines the purpose of the asylum interview as currently understood by Immigration Service staff, legal representatives and asylum applicants. As there is currently no common or mutually agreed understanding of the purpose of the interview, this gives rise to a perceived conflict between information gathering and credibility testing. This in turn can lead to conflict between the interviewing officer and legal representative. This section examines the usefulness of the semi-structured interview as a method for gathering information about the basis of an applicant's claim for asylum. It is proposed that the same principles should be applied to the asylum interview as are applied to other kinds of research which adopt this method. In this context the legal representative is able to play a positive role and assist in ensuring that a fair, fast and sustainable initial decision is made.
- 1.60 Throughout this report it will be suggested that the conduct of the interview is strongly influenced by: the nationality of the asylum applicant; the model of a genuine refugee; and the port at which the claim is made. **Section 6** examines the implications of these issues for the actual conduct and content of the substantive asylum interview including: the circumstances in which the interview is conducted; the length of the interview and provision of breaks; the appropriateness of the questions asked; and the record of the interview. This section also provides some evidence and analysis of both the linguistic skills and role and conduct of the official interpreter during the substantive interview where this is relevant to the conduct of the interview and/or the relationship between the immigration officer and legal representative.
- 1.61 **Section 7** presents the report's conclusions and proposes a variety of strategies and approaches to take forward the findings of the research and to further develop the dialogue between legal representatives and the Immigration Service which has already begun.



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**SECTION 2**

# The asylum interview in context

This section examines the context within which the asylum interview is conducted. It considers the implications for asylum applicants of the aim of conducting interviews immediately on arrival at the port of entry. It is suggested that the practice of interviewing on arrival is applied inconsistently and undermines the ability of applicants to provide as much information as possible about the basis of their claim.

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- 2.1 The substantive interview currently forms the core of the application for asylum and it is essential that the interview process itself should have integrity if the system is to be fair, fast and firm.
- 2.2 The conduct of the asylum interview must be seen in the context of both recent and on-going changes in asylum policy and practice, and in particular the emphasis on a fairer, faster and firmer decision making process. In July 1998 the government published a White Paper which sets out a 'comprehensive, integrated strategy to deliver a fairer, faster and firmer approach to immigration control'.<sup>9</sup> At the time of writing, the Immigration and Asylum Bill which was published on 9 February 1999 was in Committee Stage in the House of Commons. The Bill does not refer to any aspects of the asylum procedure. However in March 1999 an Asylum Process Project was announced by the Asylum Policy Unit of IND. Asylum procedures from the initial application to the final decision will be the subject of this project. This will include the information-gathering process.
- 2.3 In order to process an asylum claim the decision maker has to identify the nationality of the applicant or, if he or she has no nationality, the country responsible for the asylum applicant. The way in which an application for asylum will be processed under current procedures is dependent upon the country of origin of the applicant and the circumstances of the claim. For applicants from a limited number of countries a Self Completion Questionnaire (SCQ) generally continues to be issued.
- 2.4 Establishing the nationality or country of origin of an asylum applicant is an increasingly prominent aspect of current asylum procedures. This has been made more difficult because the success of visa requirements and the Immigration (Carriers' Liability) Act (1987) (CLA) has led to an increasing use of fraudulent or mutilated documents. Where applicants for asylum have destroyed their documentation it is more difficult for their application for asylum to be processed.
- 2.5 Obtaining proof or evidence of nationality and identity at the earliest possible stage has therefore become a greater priority than previously and has influenced the process of information gathering in relation to the asylum claim. This is the case for both the Immigration Service and for legal representatives.
- 2.6 In 1995 a Short Procedure (SP) was introduced for applicants from particular countries who are not considered to be in need of protection and whose claims can therefore be dealt with quickly. Under this procedure substantive asylum interviews are to be conducted where possible immediately on arrival by Immigration Service staff. Following the interview the case is referred to the Asylum Directorate for a decision to be made with the aim of disposal within six weeks. Unaccompanied minors are not usually interviewed.
- 2.7 The Short Procedure was initially a pilot scheme but has now become Standard Procedure for the majority of applicants. By implication, applicants whose claims are dealt with under the Standard Procedure are not considered to be in need of protection.
- 2.8 The Asylum and Immigration Act 1996 ('the 1996 Act') limited access to welfare benefits to those whose applications for asylum are made on arrival at the port of entry. The 1996 Act also limited appeal rights and expanded the categories which could be dealt with by fast-track appeals. Cases can be certified where applicants originate from specified 'safe countries', or arrive without valid documents or because their fears are 'manifestly unfounded'.
- 2.9 The effect of these changes has been an emphasis on interviews conducted on arrival at the port of entry. Current procedures assume that genuine

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<sup>9</sup> Home Office (July 1998) *Fairer, Faster and Firmer – A Modern Approach to Immigration and Asylum*, CM4018

refugees will claim asylum immediately upon arrival in the UK. It is also assumed by the Home Office that people who are in need of protection will be able to explain their reasons for seeking asylum in appropriate detail at that time. This is despite assurances by Ministers that the proposed changes in the 1996 Act would not mean that asylum applicants would be interviewed substantively about the details immediately on arrival. For example, in July 1996 the Minister of State Department of Social Security reassured the House of Lords that '...those who apply for asylum when they arrive here do not have to go into detail; they do not have to give a great story; they just need to say, "I am applying for asylum", and they will be allowed in. Their story will come at a later stage.'<sup>10</sup>

2.10 The Home Office disputes that there is any contradiction between the practice of conducting interviews on arrival and these ministerial statements of intent. The Home Office has stated that 'the purpose of the comments was to make it clear that to be entitled to benefits all that was required of an asylum seeker was for them to say on arrival that they wished to claim asylum or that they had a fear of return to their own country. They would not be required on arrival at the immigration control area to give the details as to their reasons for claiming asylum. However, the comments are in no way relevant to procedures after leaving the control area in order to obtain details of the basics of a person's claim.'<sup>11</sup>

2.11 These changes to procedures were intended to enable faster and more efficient handling of some asylum cases without compromising an applicant's ability to present a claim. The Home Office's own report on the pilot concluded that despite the 100 per cent refusal rate for those dealt with under the new procedures, 'there is no evidence to suggest that an applicant's ability to put forward the basis of his or her claim has been compromised by being interviewed at the beginning of the considerative process.'<sup>12</sup>

2.12 Justice, ILPA and ARC (1997), the Refugee Legal Centre (1997) and the Refugee Council (1996) remain concerned that these changes to procedures and, in particular, the emphasis on interviews conducted on arrival wherever possible, can gravely impair the presentation of an applicant's claim for asylum. The quality of information

gathered at speed does not necessarily put the decision maker in possession of all relevant information or address all relevant issues.

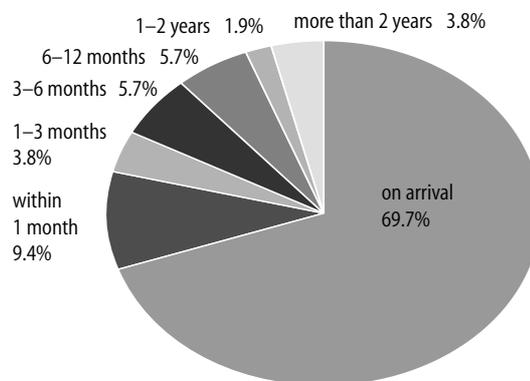
2.13 Interviews conducted on arrival may in fact have the effect of slowing down the decision making process. A former Chief Adjudicator indicated to the Thanet House Users' Group his concern about the adequacy of Short Procedure interviews, and that he has on occasion felt compelled to exclude the interview record and hear evidence *de novo*.<sup>13</sup>

2.14 Concerns about interviews conducted on arrival have been raised in the Legal Aid Board's recommendations to the Lord Chancellor which were published in May 1999: 'Interviewing clients on entry may not be the most cost effective method of determination. First it requires immigration officers to be available on the spot, second it places in jeopardy an important part of the subsequent process – information from the initial interview will be relied upon later but clients are often confused, frightened and exhausted from many hours' travel. Clients in this state are unlikely to be effective at interview.'<sup>14</sup>

2.15 These concerns about the conduct of interviews which are carried out immediately on arrival are substantiated by the findings of this research.

**FIGURE 7**

**Timing of making asylum claims**



2.16 Almost 70 per cent of the sample of 53 asylum applicants claimed asylum on the day of their arrival at the port of entry (► figure 7). This proportion is higher than the overall proportion of applications made at ports compared with the offices of the Asylum Directorate. Nearly three quarters of these respondents arrived at Heathrow (all terminals) with the remainder divided almost equally between Gatwick and Dover East. One application was made at Stansted. Fifteen respondents claimed asylum after they had entered the UK. Five respondents claimed asylum within one month of their arrival, two between one and three months after arrival, three between three and six months, three between six and twelve months and one between one and two years after arrival. Two respondents claimed asylum more than two years after their arrival in the UK.

<sup>10</sup> Minister of State Department of Social Security Lord Mackay of Ardbrecknish, HL Consideration of Commons Reason and Amendments *Hansard* (HL) 22.7.96, cols.1208-1209

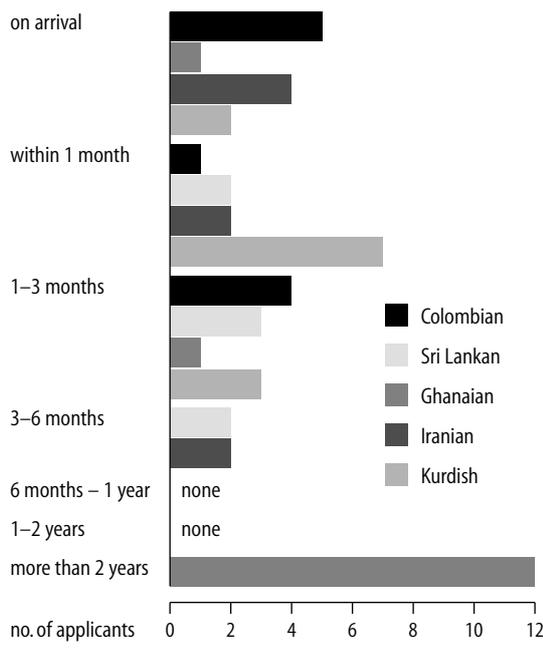
<sup>11</sup> Home Office letter to Asylum Rights Campaign dated July 1996

<sup>12</sup> Home Office Evaluation of the Short Procedure, August 1995

<sup>13</sup> See ILPA, Law Society and Refugee Legal Group (1997)

<sup>14</sup> Legal Aid Board (May 1999) *Access to Quality Services in the Immigration Category: Exclusive Contracting*, paragraph 4.18

**FIGURE 8**  
**Timing of asylum interview by nationality**



- 2.17 There were significant differences by *nationality* in the timing of the asylum interview (► figure 8).
- 2.18 Current practice and procedures assume that the earlier the interview is conducted, the fresher the applicant's recollection of events is likely to be. This approach does not make allowances for the fact that some applicants may be traumatised. In addition, the demand for instant and full disclosure fails to recognise that the majority of asylum claims may not arise from one-off events and that many asylum seekers will have left their homes after a long period of persecution, or for a variety of complex reasons. It is precisely because a genuine refugee may have events of persecution fresh in the mind that a fast track procedure to process claims runs the risk of failing individuals who may be in a traumatised or withdrawn state.
- 2.19 Research conducted by the Refugee Legal Centre (1997) raises concerns about the state of applicants who contact a legal representative from the port, or from a detention centre: '[e]xhaustion, distress, fear, confusion and panic are the norm, not the exception in such cases. There must be the gravest concerns about interviewing anyone in this condition. It is also likely to be unproductive in the long term, for in such cases it will always be possible to assert the state of the applicant what s/he said in initial interviews becomes a matter of dispute'.<sup>15</sup> This report supports these findings.
- 2.20 The conduct of interviews immediately on arrival was a significant cause of concern amongst both legal representatives and asylum applicants who participated in this research. All the asylum

applicants (except one) who were interviewed for the purposes of this research and who had been interviewed on the day of their arrival in the UK commented on the problems they faced.

- 2.21 Many asylum applicants commented that they were tired, anxious and confused, and therefore unable to explain adequately their reasons for claiming asylum.
- 'After a fourteen hour journey [the interview] was too soon. If it had been a polite interview perhaps I could have felt better. I was very fearful, I had just got out of Colombia and was trying to find a place of safety for myself and my family. Although I was frightened I also hoped to find protection. The interview was the exact opposite of what I expected.'
- COLOMBIAN ASYLUM APPLICANT
- 'I was horrified with the way I was handled right from my arrival to the time of the interview. I feel it was very short – I was not even rested when I was sent from one place to another in the immigration.'
- GHANAIAN ASYLUM APPLICANT
- 'It was too soon. I was very nervous. I did not want my daughters to see me in such a state. I had the memories, all the pains we had gone through, losing my husband; and my daughters were sitting with me throughout the interview...all I had in mind was security for my daughters.'
- IRANIAN ASYLUM APPLICANT
- 2.22 Several legal representatives pointed out that applicants are not asked whether they are too tired to be interviewed. However the Home Office is satisfied that because all asylum seekers are asked at the outset of the interview whether they are 'well and ready to be interviewed', this provides the asylum seeker with ample opportunity to say that they are tired. The Home Office maintains that where an applicant indicates that they do not feel well and ready to be interviewed the interview will, if necessary, be postponed to a later date.
- 2.23 Some asylum applicants, particularly those interviewed soon after arrival, do not realise that the substantive asylum interview is the principal opportunity to state the basis of their claim for asylum. Where an applicant is not aware of either the purpose or importance of the interview, he or she will not be well placed to make an informed decision about whether they are willing for it to be conducted at that time. The limitations of the preamble to the interview are discussed in Section 5 of this report.
- 2.24 This problem reflects one of the broader concerns of this research, namely that the purpose of the substantive asylum interview and its role in the overall asylum determination process is ambiguous to all involved in the interview, most particularly to the asylum applicant.

<sup>15</sup> Refugee Legal Centre 1997, 33

**FIGURE 9****Interviews conducted on arrival****CASE STUDY 1**

An Iranian woman arrived at Heathrow TN1 in May 1997 and claimed asylum immediately. She was unwell and requested a short delay before being interviewed:

*'I arrived full of pain and with my serious period pain I asked for delay in the interview. I asked for one hour's time to rest. They said I can't and I have to wait until morning. I agreed believing I will sleep and rest. They took me to an airport transit section and asked me to sleep on a chair with all the pain I had. It was torture for me and I was left alone until morning without having any blanket or anything to cover myself with. When I went for an interview they did not even offer me a glass of water and I had to go through the interview tired, exhausted, thirsty, and with lots of anger...'*

The respondent was unable to obtain legal advice prior to her substantive asylum interview. She commented at length on a number of difficulties with the interpreter which arose during the interview and with the questions which were asked by the immigration officer. An initial decision on her claim for asylum is pending.

**CASE STUDY 2**

An Iranian respondent described how he had been in ill-health when he arrived at Heathrow. He had been operated on shortly beforehand. He was asked to wait and during this time it was decided that he should be sent to hospital. However he was subsequently returned to Heathrow and given temporary admission (TA) to the concourse:

*'It was very soon and extremely uncomfortable. I was in Arab states for the last several years to avoid the Islamic regime's persecution, and because I had arrived from [country] they treated me badly. I was physically and mentally very weak. I was shivering and feeling very cold while in this situation. Police forces began to search my body, took my shoes off and ignored me totally. Eventually it was so bad that they had to send me to hospital. After a few hours being in hospital they returned me to Heathrow. They left me there until the following morning and I had to sleep on a bench.'*

The following morning the applicant was interviewed for more than four hours about his application for asylum:

*'I did not have any support, knowledge or information about what was going on. When I said that I am ill and cannot continue they gave me a blanket to sleep there in the hall where everyone was walking and talking around me. This was mental torture for me.'*

After the interview the respondent was detained for fifteen days at Heathrow. He was subsequently sent to Rochester Prison:

*'I was very ill, they ignored me totally. It was very cruel to ignore my condition. I was sent to detention and prison during which I had to be interviewed time and again. It was a way of checking me and catching me. I realised that they will use this information against me.'*

After he was released from prison, the respondent contacted the Iranian Community Centre who arranged for a solicitor to represent him. He was subsequently granted refugee status.

► *'I felt nervous. I didn't know what to expect. I had never been through this before and never thought I would be in this situation. I felt quite desperate.'*

COLOMBIAN ASYLUM APPLICANT

► *'The first interview was one hour after arrival. I was very confused. I wish they gave me some time with a little explanation as to what was going on.'*

IRANIAN ASYLUM APPLICANT

2.25 In addition, on several separate occasions during the period of observation at ports, applicants indicated that they were not feeling 'fit and well to be interviewed' but the interviewing officer continued on the basis that further information in support of the application could be submitted at a later date.

2.26 The timing of interviews conducted on arrival may also be inappropriate because such interviews

may have to be undertaken at times when the arrivals hall is not busy. One immigration officer commented that interviews occasionally take place late at night or in the early hours of the morning.

2.27 For those who were interviewed on the day after their arrival in the UK, where they have either been detained overnight or given temporary admission to the concourse pending an interview, the current situation is also unsatisfactory. This is of particular concern where the applicant has requested that the interview be delayed due to tiredness or ill-health (► figure 9).

2.28 Stress and anxiety about the interview is exacerbated where the applicant has been detained on arrival. For applicants who are detained, access to legal advice and representation is also a problem.

- ▶ *'On my arrival in Dover, I was detained for two days. The condition was very bad. I waited for two days for an interpreter. First they provided an Arabic interpreter and I didn't understand, then during the third day they provided a Kurdish interpreter. I did not have an opportunity to seek advice and to be represented by a solicitor. I was taken from detention to the interview room.'*  
KURDISH ASYLUM APPLICANT
- ▶ *'I was very unhappy about the timing because I had to wait about seven hours, then the substantive interview started at 10pm. I was very nervous before it started because I was in detention between my arrival and my interview. I could not get any advice and did not have a solicitor.'*  
KURDISH ASYLUM APPLICANT
- 2.29 Comments made by asylum applicants suggest that the preferred time for the interview to be conducted is between two and four weeks after arrival in the UK. However it is not easy to determine the optimum timing of the interview.
- ▶ *'The timing was fine. I knew what I wanted to say. I wasn't frightened as I know this country respects human rights – that's why I came here. I did have a bit of a shock though when we arrived the month before, and it did make me wonder a bit before the interview about how we would be treated. When we arrived the officer at the desk, when I said I had come here to ask for asylum, slammed my passport on the desk and thumped it aggressively.'*  
COLOMBIAN ASYLUM APPLICANT
- ▶ *'With reference to my circumstances, leaving my loved ones behind in Turkey, I was very disturbed. I am happy that a time of one month was given to me to pull myself together, to organise myself and get ready for the substantive interview. My feeling before the interview was very positive. I felt I could be given the chance to live once again, I trusted the system and I was comfortable.'*  
IRANIAN ASYLUM APPLICANT
- ▶ *'I was interviewed two weeks after my arrival. It was neither too long nor too soon. During this period of time I was able to get legal advice, prepare my case and for the interview. I am glad that I was not interviewed on my arrival because it would have been very different. The circumstances were okay, I was not nervous or frightened.'*  
KURDISH ASYLUM APPLICANT
- 2.30 There was considerable variation in comments made by those who were interviewed in the first six months after arrival. Many respondents indicated that they were nervous before the interview began. Their comments suggest that their anxieties were exacerbated, in part, by their experiences on arriving in the UK, as well as expectations of, and fears about, the asylum interview.
- 2.31 Respondents interviewed more than twelve months after claiming asylum, particularly those who were interviewed between three and six years later, were extremely anxious about the interview, frustrated about the delays experienced and suspicious of the reasons why an interview was being conducted at that late stage.

#### RECOMMENDATION 1

**Interviews should not be conducted on arrival. The asylum interview is most appropriately conducted after applicants have been able to rest and organise their thoughts and have had an opportunity to obtain advice and support from community organisations and a legal representative.**

**Applicants should not be interviewed if they exhibit signs of trauma, illness or other related problems. Immigration Service staff should receive intensive training from specialist agencies to assist them detect these problems, and make appropriate referrals.**

**Applicants should be reminded that they must request a deferment of the interview, and of the fact that they may request a break during the course of the interview, if they begin to feel tired, unwell or distressed. Applicants should be advised of the services of specialist medical agencies and treated sympathetically.**

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**SECTION 3**

# Immigration Service operations at ports

The conduct of substantive asylum interviews cannot be considered without an understanding of the context in which such interviews are held and the nature of Immigration Service operations at ports. This includes an increase in both overall arrivals and asylum applications which results in competing pressures on staff and resources. The evidence collected during the course of this research and presented in this section suggests that there are inconsistencies in current practice both within and between ports. There is also a perception that the asylum system, and in turn the integrity of the Immigration Service, is being undermined and abused. This is a cause of considerable frustration for Immigration Service staff who do not have a formal decision making role in asylum casework, and is reflected in attitudes towards applicants, towards the decision making process and in prevailing perceptions of genuine refugees.

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- 3.1 The Immigration Service Ports Directorate is responsible for operating immigration control at the ports of entry. It aims to do so effectively while inconveniencing as little as possible the great majority of the travelling public who are entitled to enter the UK.
- 3.4 Immigration Service staff face two competing pressures in managing operations at the ports. They must carry out sufficient checks to ensure that only passengers entitled to enter are admitted and they must also ensure that passengers are able to pass through the controls with minimal delay.
- 3.2 The work of the Immigration Service must be seen in the context of overall increases in passenger traffic. In recent years the number of passengers travelling to the UK, including returning British, has increased by an average of nearly eight per cent each year. Over the past five years, arrivals have increased from 55 million in 1992/3 to 80 million in 1997/8.<sup>16</sup> The vast majority of these are citizens of the European Economic Area. Heathrow Terminal 3 alone dealt with some 12.8 million passengers during 1996. At Gatwick similarly the number of passengers arriving has risen, from 8.78 million arriving passengers in 1992 to 12.43 million in 1997/8.
- 3.5 In managing the arrivals control, the desire to process passengers quickly has to be squared with both the necessity to identify those who ought to be refused leave to enter and dealing with asylum applicants. Achieving a balance between these conflicting demands is complicated by peaks and troughs in passenger traffic at different times of the day and year.
- 3.3 According to a report by the National Audit Office (1995), the efficiency of each port is influenced by a number of factors. These include: the volume of passengers; the demand-led nature of the work, in particular the need to provide 24 hour cover and the bunching of early morning arrivals at some airports, especially Heathrow; the physical layout of the port and the lack of control over aircraft and ferry schedules including changes to schedules at very short notice. It is also influenced by the size of the asylum caseload.
- 3.6 The number of passengers dealt with per staff day at the arrivals control and passenger waiting times are important indicators of a port's efficiency. This is reflected in efforts to schedule the optimum number of staff per shift to provide acceptable coverage on the arrivals control. Most large ports operate a system of early, late, day and night shifts providing 24 hour coverage. Some ports – including Heathrow Terminal 3 – have introduced an early shift starting at 5.30am in an attempt to meet fluctuating levels of demand.
- 3.7 The Immigration Service is responsible for facilitating the access of asylum seekers to the determination process, and for ensuring that information relevant to the application is gathered for the decision maker. According to the National Audit Office, 'this workload impinges upon both the efficiency and effectiveness of the Service, particularly at Heathrow terminals where the majority of asylum applicants arrive.'<sup>17</sup>

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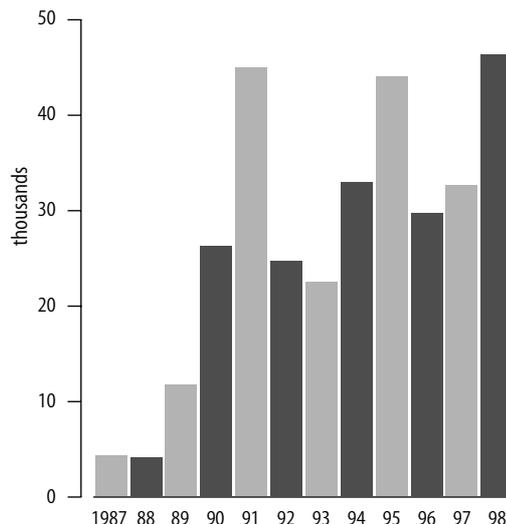
<sup>16</sup> Home Office (July 1998) *Fairer, Faster and Firmer – A Modern Approach to Immigration and Asylum*, CM4018

<sup>17</sup> National Audit Office 1995, 15

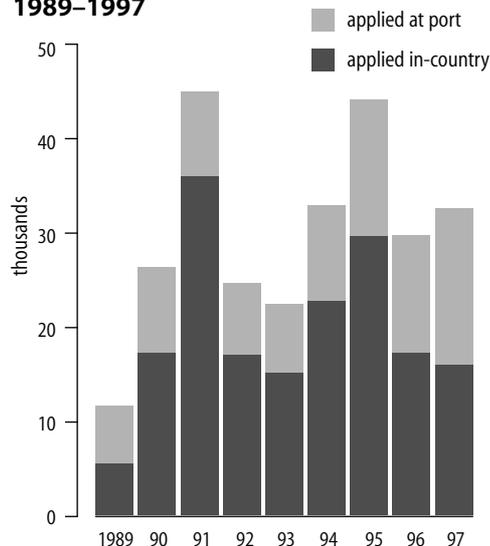
- 3.8 In practice, the responsibility for processing an asylum application at the initial stage includes:
- issuing an IS81;<sup>18</sup>
  - checking baggage;
  - setting up port and CLA files (as appropriate);
  - entering the passenger’s details into the Port Administration System (PAS);
  - referring the applicant for a medical examination;
  - photographing and fingerprinting the applicant;
  - conducting ‘third country’ interviews (DSI);
  - conducting the substantive asylum interview;
  - granting temporary admission (TA) or detaining an applicant;
  - dealing with further enquiries from legal representatives, relatives or other concerned parties.
- 3.9 The Immigration Service is responsible for ensuring that the applicant has access to appropriate assistance, where necessary by referral to the Refugee Arrivals Project (Heathrow) or Migrant Helpline (Dover East),<sup>19</sup> as well as for submitting the information which has been gathered, along with any additional evidence, to the Asylum Liaison Unit (ALU).
- 3.10 The Immigration Service Ports Directorate is responsible at a later stage for taking the necessary action once the Asylum Directorate’s decision is known. This includes conducting reasons for refusal (RFR) interviews where leave to enter is refused, granting leave to enter where refugee status or exceptional leave to remain is given, and removing failed applicants who have exhausted the appeals process.
- 3.11 The Immigration Service has the power to detain passengers. A number of those detained by the Immigration Service are asylum applicants. There is a substantial workload associated with detention, including, for example, exercising a duty of care for detainees, reviewing decisions to maintain detention and dealing with representations from concerned parties. The exercise of the power to detain asylum seekers is not the subject of this report but has been criticised extensively elsewhere.<sup>20</sup>
- 3.12 Asylum as opposed to immigration is an increasingly important – and time-consuming – aspect of the work of the Immigration Service. This is in part a reflection of the overall increase in asylum applications in recent years (► *figure 10*).

<sup>18</sup> An IS81 is a form requiring a passenger to submit to further examination.  
<sup>19</sup> How this responsibility is exercised at ports other than those visited during this research is not known.  
<sup>20</sup> See for example Detention Advisory Service (1993), JCWI (1993), Amnesty International British Section (1994), Amnesty International UK (1996), ARC and Churches Commission for Racial Justice (1996) and Pourgourides, Bracken and Sashidharan (1996).

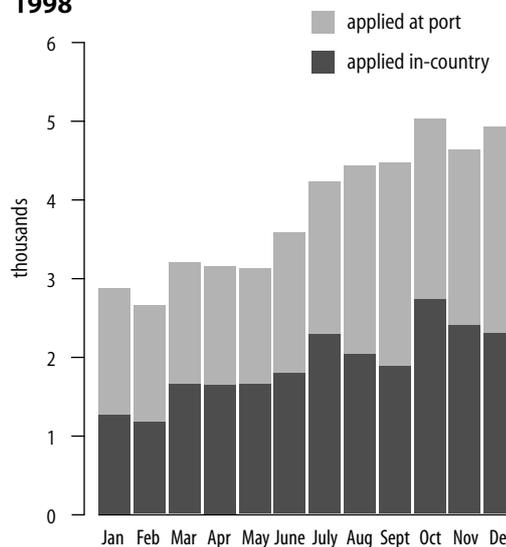
**FIGURE 10**  
**Applications for asylum 1987–1998**



**FIGURE 11**  
**Asylum applications at-port and in-country 1989–1997**



**FIGURE 12**  
**Asylum applications at-port and in-country 1998**



The number of applications for asylum in the UK increased from 4,256 in 1987 to 44,840 in 1991. Although numbers have fallen in the intervening period, 1998 was the highest year on record for asylum applications although there were substantial fluctuations over the course of the year. There were particularly high numbers of applications in the latter part of year associated with the situation in Kosovo.

- 3.13 In addition, and perhaps most significantly for ports, there have been some changes in the proportion of applications made at port and in-country (► *figure 11*).<sup>21</sup> In 1989, whilst overall numbers were still relatively low, there were slightly more applicants claiming asylum at port than in country. During the early 1990s around one third of applications for asylum were made at the port of entry. However the proportion of applications made at port subsequently rose to around 51 per cent in 1997. The proportion of applications made at port and in-country was virtually equal in 1998 (► *figure 12*).
- 3.14 Although the change in the proportion of applications made at ports of entry has not been as dramatic as was expected, even the shift of around 15 per cent, when combined with an overall increase in the total number of applications, has placed significant additional pressures on ports and on Immigration Service staff. In overall terms it means that in 1998 ports were responsible for processing around 21,000 new asylum claims as opposed to around 14,500 if the proportion had remained unchanged.
- 3.15 Heathrow Terminal 3, where the majority of the participant observation was conducted, has the busiest arrivals hall in the country. As at all ports, overall passenger numbers fluctuate significantly during the course of the year but tend to be at their highest during the period June to October. In the two weeks in June when the majority of the participant observation research took place, 263,000 passengers passed through the arrival controls, of which 655 (0.25 per cent) were required to submit to further examination.<sup>22</sup> Of these 128 (19.54 per cent) subsequently claimed asylum. These figures were provided by the Immigration Service at Heathrow Terminal 3. However it was not possible to collect statistics on the numbers of decisions which were taken to detain during the observation period.
- 3.16 The number of asylum applications made at ports such as Heathrow and Gatwick represents a relatively small proportion of arriving passengers. However these cases require a disproportionate amount of time and resources to process. For this reason even relatively small increases in the number of asylum applications can have a significant effect on Immigration Service staff and resources.
- 3.17 At the time this research was conducted, Heathrow Terminal 3 had around 11,000 'live' cases and Terminal 4 had around 6,000.<sup>23</sup> At Gatwick, the Asylum Unit deals with cases from the North and South terminals once the substantive asylum interview has been conducted, and was then responsible for around 11,000 cases. The evidence collected during the course of this research suggests that ports are struggling to cope with current pressures on their staff and resources.
- 3.18 Although conducting substantive asylum interviews on arrival remains a policy priority, in practice this is increasingly difficult. There is considerable variation in current practice and procedures both between and within ports. For example, whilst staff at Heathrow Terminal 3 continue in their efforts to interview applicants immediately upon arrival, the Immigration Service at Dover East are no longer attempting to do so. One chief immigration officer commented that 'nothing happens quickly and in the meantime more people are arriving'. Immigration Service staff at Heathrow Terminal 3 expressed some concern that applicants who are not interviewed on arrival may fail to attend an interview arranged at a later date. By contrast, those at Dover East insisted that this was not a major problem. One chief immigration officer suggested that only five percent of applicants fail to attend their substantive interview. His explanation for this is that they cannot access welfare support until they have documents. Staff at Dover East did not feel that there were any particular advantages involved in conducting substantive asylum interviews on arrival.

## Differences between ports

- 3.19 There are significant differences between ports in terms of the overall context in which the substantive interview is conducted and the particular pressures experienced at each port. There are considerable inconsistencies in current Immigration Service practice both within and between ports with regard to the context and circumstances of the interview. At some ports the Immigration Service is currently unable to interview applicants on arrival because other duties are prioritised and because of difficulties in securing appropriate interpreters. This was evident from comments made by both Immigration

<sup>21</sup> At Heathrow terminals, the British Airport Authority (BAA) has displayed small notices warning that 'refugees seeking asylum must apply now to avoid future problems'. The notices, which are in English, French, German and Spanish, advise arriving passengers to get further information from an immigration officer in the arrivals hall.

<sup>22</sup> Those who are issued with an IS81 count as a 'stop' for the purposes of IS statistics.

<sup>23</sup> A 'live' case is defined as a case on which a final decision has not yet been taken and which requires input from Immigration Service staff.

Service staff and legal representatives during the course of this research and was also observed by the researcher.

3.20 The nationality of applicants may have a disproportionate impact on specific ports. In 1997 the main nationalities seeking asylum were from Somalia, former Yugoslavia, former USSR, China and Sri Lanka. In 1998 the principal nationality of applicants reflects the crisis in Kosovo. The number of applications for asylum from Kosovar Albanians started to rise significantly in June. A substantial number of applications were made at Dover East. At around the same time there was an increase in the number of asylum applications made by Lithuanian nationals at Heathrow Terminal 3 (► *figure 13*).

3.21 There was an increase in asylum applications made by Slovak nationals at both Heathrow Terminal 2 and Dover East during the summer months of 1998.<sup>24</sup> At Dover East in particular, unpredictable pressures caused by significant increases in overall passenger numbers have presented managers and staff with the considerable challenge of ensuring a high quality and professional service in all aspects of their work, at a time when resources have not kept pace with the growth in workload.

3.22 Undocumented or inadequately documented passengers are the focus of considerable concern at all ports, although the number of these cases is falling as a result of fines imposed under the Immigration (Carriers' Liability) Act (1987) (CLA) and the operation of Airline Liaison Officers (ALOs). ALOs are able to telephone Immigration Service staff to ask advice about whether an airline should carry a particular passenger where there are concerns about documentation.

3.23 At Dover East there is particular frustration, not only because the provisions of the CLA are not easily enforceable, but because its very success with airlines has pushed passengers towards seaports which are less 'sterile' and secure. Many of the Immigration Staff at Dover East with whom discussions were held commented on the fact that, in contrast with airports which carefully regulate and direct passengers on arrival, seaports have a greater mixture of traffic and are less easy to police. On arrival there is effectively nothing to prevent a passenger from wandering through the port, exiting by a different route or joining other traffic. As one chief immigration officer at Dover

<sup>24</sup> In contrast with a similar increase in applications made by Lithuanian nationals, the government responded by imposing a visa restriction on Slovak nationals (Statement of Changes in Immigration Rules Cm 4065, October 1998).

<sup>25</sup> In a letter published in the *Daily Telegraph* dated 21.01.99, the Home Secretary acknowledged that '[t]he reason particular individuals and groups choose a particular country in which to seek asylum are many and various, including historical links and other cultural factors'.

**FIGURE 13**

### Nationality of asylum applicants

Heathrow Terminal 3 14–26 June 1998

Country of origin	No.	Country of origin	No.
Lithuania	23	South Africa	2
Afghanistan	22	Somalia	2
Pakistan	16	Nigeria	2
Sri Lanka	11	India	2
Bangladesh	9	Togo	1
Iraq	8	Saudi Arabia	1
China	6	Latvia	1
FRY	3	Jamaica	1
Uganda	3	Eritrea	1
Zimbabwe	2	Nationality not available	8
Zaire	2		
Sudan	2	<b>Total</b>	<b>128</b>

East commented, 'the CLA has stopped a tremendous number of people coming here but they also come in other ways...it has reduced numbers at the airports but increased the work for us'. This frustration is exacerbated by the inability to return passengers under the Dublin Convention when they are not adequately documented.

3.24 The Dublin Convention which was ratified by the UK in 1992, and came into effect on 1 September 1997, provides a mechanism for determining which member state of the European Union (EU) should be responsible for deciding an asylum application made in the EU. The criteria are based on factors such as whether the applicant has a close family member recognised as a refugee in another member state; whether another member state has granted the person a residence permit or visa; the location of any illegal entry into the EU; and the existence of a previous asylum application. An applicant can only be transferred to another member state if it agrees that it is responsible under the Convention. This has limited severely the removal of those who have come through a 'third country', particularly where people have no travel documents on arrival.

3.25 According to Immigration Service staff at Dover East, this situation provides the context for asylum casework at the port. All applicants for asylum arriving at Dover have passed through Europe and there is a strong perception that they could have applied for asylum before reaching the UK. The failure to do so leads Immigration Service staff to conclude that the application is unfounded or lacking merit. However the Home Secretary has recently commented that there are many reasons why an asylum seeker might not want to claim asylum in a 'third country'.<sup>25</sup>

3.26 The Immigration Service is required to carry out Dublin Screening Interviews (DSI) to assess

whether an individual can be returned to a 'safe third country' even though in practice only a limited number will be returned. Immigration Service staff at Dover East therefore view this as a pointless and time-consuming exercise.

- 3.27 Very few, if any, substantive asylum interviews are conducted immediately on arrival at Dover East; asylum applicants are almost always asked to attend an interview at a later date. Facilities at the port have been modified to respond to these changes, including, for example, the layout of waiting facilities and interview rooms.
- 3.28 All ports have to deal with the unexpected. This situation is particularly acute at Dover East and was reflected in significant variations in application rates over the two day period of observation, including the arrival of 37 undocumented passengers from a variety of different countries of origin (including Afghanistan, Turkey, Iraq, Somalia, Ghana, Eritrea and Kosovo) during the course of one night shift. This can be compared with an average of nine asylum applications per day during the observation period at Heathrow Terminal 3.

#### RECOMMENDATION 2

**There should be consistency in practice and procedures within and between ports. A general uniformity of approach would convey an impression of fairness and objectivity. Instructions to Immigration Service staff for dealing with on-entry asylum applications should be published.**

### Resources, staff and training

- 3.29 Staff at all levels within the Immigration Service complained about a lack of resources to enable them to carry out their work properly and about the impact which this has had on staff morale. For immigration officers this problem was perhaps most evident and reflected in a lack of appropriate (and functioning) office equipment. There were repeated complaints about the inadequacy of information technology (IT) resources and services, and recognition among immigration officers in particular that some conflicts with legal representatives arise because of assumptions that the Immigration Service is more technologically sophisticated than it is.
- 3.30 The Port Administration System (PAS) is a computerised system on which details of passengers subject to further examination are held. When the PAS was set up in 1991 it was recognised that it would have a limited life-span of seven years. It is ill-equipped to deal with current demands, for example, there is no link between terminals and/or ports and the Asylum Directorate (now part of ICD). Immigration Service staff are awaiting the arrival of a new system which is being developed by Siemens but feel that there has been a lack of consultation about their needs and requirements. At the time of writing this report the introduction of the new system is seriously behind schedule and is recognised by Ministers as needing further development before it will achieve the anticipated advantages for all IND staff and applicants.<sup>26</sup>
- 3.31 Whilst the unpredictability of the current situation is viewed positively by some staff – one immigration officer commented that 'one of the interesting features of the job is that it changes so much with world events' – it also means that it is very difficult to plan staffing levels on either a day to day or long term basis.<sup>27</sup> A recruitment freeze which is only beginning to be addressed by the Home Office has meant that there is an overall shortage of staff particularly at immigration officer grade. This problem has been exacerbated by a lack of opportunities for promotion within the Service, which has led to low morale and increasing resignations by staff, particularly immigration officers.
- 3.32 A significant proportion of immigration officers recruited in recent years are graduates. Several chief immigration officers pointed out that the graduate intake in particular had become very disillusioned by the lack of opportunities for promotion and alternative duties (for example ECO positions). One chief immigration officer commented that, 'it's very frustrating for them. They are very well educated staff but the promotion structure doesn't allow them to move upwards'.
- 3.33 The problems of low staff morale and lack of resources are both reflected in, and exacerbated by, a shortage of staff training. New recruits (of which there have been very few in recent years) are given a six week induction training course at Status Park (near Heathrow), Gatwick or Dover. For the first four weeks on duty they are given one-to-one coaching from a trained immigration officer. Consolidated courses are held for all staff who have been in post for two years. No further training is provided.
- 3.34 Many immigration officers felt that further training – particularly in asylum procedures and interview techniques – would be useful, especially as they had been in the Service for a number of years since their initial training. Several commented that they did not feel that they had been given enough training on asylum issues,

<sup>26</sup> See for example comments made by Mike O'Brien Parliamentary Under-Secretary of State, *Hansard* (HL) Special Standing Committee 04.05.99, col. 1246–1247

<sup>27</sup> The relationship between the number of staff and arriving passengers was also influenced by other factors during the observation period at Heathrow Terminal 3, including a strike on the London Underground.

particularly interviewing techniques, relative to the proportion of time they spend on asylum-related duties.

### RECOMMENDATION 3

**During the course of this research Immigration Service staff identified a number of areas in which improvements could be made. These include improvements in information technology, opportunities for promotion at all grades and increases in the overall level of training. Given that asylum interviews and casework are an increasing proportion of the work of the Immigration Service, there were concerns that more training time be devoted to these areas. Whilst these issues are beyond the scope of this report, ILPA supports the Immigration Service's continuing efforts to address these concerns.**

## Attitudes to applicants

- 3.35 During the course of this research it was evident that dissatisfaction and low morale within the Immigration Service are not solely due to the problem of being overworked and under-resourced. They are also due in part to a perception that the asylum system, and in turn the integrity of both the Home Office and of the Immigration Service, is being undermined and abused by those who are not genuinely in need of protection.
- 3.36 The most commonly held perception is that asylum is simply a means to an end and that the majority of those who claim asylum are actually economic migrants who are able to abuse the asylum system in order to gain entry to the UK.
- ▶ *'Historically the numbers of asylum seekers in Western Europe increased to hundreds of thousands in the 1980s when people realised that there were alternative ways of bettering themselves. These people will just hang their hat on any coat peg in order to achieve what they are after...this is a particular coat peg.'*  
CHIEF IMMIGRATION OFFICER, HEATHROW
- ▶ *'Some openly admit that they are economic migrants.'*  
IMMIGRATION OFFICER, GATWICK
- 3.37 Some Immigration Service staff accuse some applicants of 'seasonal asylum', meaning that they come to the UK each year for three months and voluntarily depart at the end of the summer. This is reflected in requests for 'the three month asylum' which were observed at Heathrow Terminal 3. One Lithuanian applicant claimed asylum but wanted to return in October in order to marry and return to University. When the immigration officer enquired as to why he would not be afraid of the people he claimed were harassing him when he returned, the applicant responded that 'it will be dark and they won't be able to see my face'. The fact that some Lithuanians said that they would return can be in their favour; it is assumed that they will comply and voluntarily depart and that it is therefore unnecessary to detain them. Towards the end of the observation period the researcher was informed of a 'special exercise' to detain Lithuanians which, according to one CIO, was intended to deter further arrivals. However according to Alan Craig (Assistant Director), this was simply a monitoring exercise of those who already fulfil the existing detention criteria.
- 3.38 There was a consensus amongst Immigration Service staff at ports that any abuse of the asylum system is motivated by the prospects of possible employment as opposed to welfare benefits. This is reflected in the fact that despite changes to access to welfare benefits resulting from the 1996 Act, the proportion of those claiming at ports relative to those making in-country asylum applications has not changed as much as was expected. One chief immigration officer commented that 'it's not benefits led, it's jobs led... just like it was ten years ago... People coming to London looking for a job and when they get here they live in horrendous conditions... but still they feel, and their families feel, that they have made it'. Another talked about the fact that 'it is a loss of face to go back' so that even if people might want to return they are often unable to.
- 3.39 In addition to perceived abuse of the asylum system for the purpose of economic migration, there is also concern among Immigration Service staff that the 1951 Convention is being undermined by the granting of refugee status to applicants whose experiences of persecution are not sufficient to make them genuine refugees, and who are therefore undeserving of protection.
- 3.40 The exclusion of the Immigration Service from the decision making process means that individual immigration officers and chief immigration officers often misunderstand the 1951 Convention and its interpretation in current case law and practice. This extends across all elements of the Convention: 'serious harm'; the failure of state protection; and Convention grounds, particularly the concept of 'political opinion'.
- 3.41 There is no apparent awareness among Immigration Service staff of other international Conventions, for example the European Convention on Human Rights (ECHR), which may be able to provide protection for those who are not considered Convention refugees, but who nonetheless are unable to return to their countries of origin. Neither was there any apparent awareness of the implications of the Human Rights Act for current policy and practice.
- 3.42 This issue is important because it has implications for the ability of Immigration Service staff to

gather information relevant to the claim. It is also important as the Immigration Service is able to recommend that a claim should be certified. The basis for the certification may be that the claim does not raise any protection issues, or is 'non-Convention' or is 'frivolous or vexatious'. The following examples are illustrative of assumptions which are made about certain types of claim. These assumptions both curtail the information gathering process and undermine the access of an asylum applicant to the full determination process.

- ▶ *'If she [Ghanaian applicant] was raped by government officials then this would be an illegal act and a matter for the Ghanaian authorities to deal with.'*

CHIEF IMMIGRATION OFFICER, HEATHROW

- ▶ *'Sometimes people turn up claiming asylum because of domestic wrangles...they say "I was having an affair" and claim asylum but it's clearly nothing to do with the Convention.'*

CHIEF IMMIGRATION OFFICER, HEATHROW

3.43 Until recently an immigration officer who was promoted to chief immigration officer would spend six months as a Home Office Presenting Officer (HOPO) representing the Home Office at appeals before the Immigration Appellate Authority (IAA). Several chief immigration officers commented that time spent as a HOPO had been useful because it had given an insight into the kinds of information which need to be gathered in order for an appropriate and sustainable decision to be made.

- ▶ *'It shows the wider view and the thinking behind the decision...it gives you much greater depth...I really enjoyed it and it helps because it gives you knowledge of the decision making process and when you read through the notes [of the interview] I know that if they want to cross-examine it will help to clarify this now so that when it comes to appeal the points are covered. When you are interviewing as an IO and the applicant goes off on a tangent, having done appeals it's often possible to pick things up and make sure that they are covered for later on.'*

CHIEF IMMIGRATION OFFICER, HEATHROW

## Asylum casework

3.44 It was noted above that although 'conventional' immigration work continues to exist, asylum casework at ports has significantly increased and requires a disproportionate amount of time and resources. The changing nature of work at ports has implications for the decision making role of Immigration Service staff.

3.45 As the proportion of asylum casework relative to immigration casework has increased, the decision making capacity of the Immigration Service has decreased. Unlike immigration casework, the Immigration Service does not have a decision

making role in asylum cases, but rather collects information for a decision to be taken elsewhere. This can lead to significant frustration on the part of Immigration Service staff because they are often unable to resolve or conclude a case. This is particularly evident where an immigration case becomes an asylum case. Staff repeatedly contrasted asylum applicants with other passengers who can be refused leave to enter. For example, one chief immigration officer commented 'an American arrives and tells the truth and gets refused, whereas an asylum seeker who tells blatant lies, we have to let him in...this is sapping morale...these people are benefiting over people applying [for entry] in the normal way...the people who are lying benefit more than the people who are telling the truth'.

- ▶ *'Asylum permits entry, that's the point...it's the magic word that gains entry.'*

IMMIGRATION OFFICER, HEATHROW

- ▶ *'The asylum system singles out a particular kind of passenger for preferential treatment...it represents a door which is at least half open.'*

CHIEF IMMIGRATION OFFICER, HEATHROW

- ▶ *'They know that British IOs are good and that they find people out...but if you say the magic word 'asylum' then you're in.'*

IMMIGRATION OFFICER, GATWICK

3.46 The evidence collected during the course of this research suggests that the absence of a formal decision making role has also led to less care on the part of Immigration Service staff (immigration officers and chief immigration officers alike) in ensuring that relevant information is gathered for the decision maker. The information gatherer plays a critical role in the asylum determination process. However it is sometimes unclear to the immigration officer and/or chief immigration officer what information is required by the decision maker.

3.47 Frustration at the absence of a formal decision making role in asylum casework was evident from comments made by Immigration Service staff during the course of this research. This frustration is most evident where multiple and/or fresh applications for asylum are made.

- ▶ *'The fact that we can't make the decisions is taking away the job satisfaction...it was much more cut and thrust. We would be applying the rules and then at the end of the line we would see the result. We have face-to-face dealings here unlike at Croydon and we want to get a decision made. Croydon and the whole legal process is just seen as very slow.'*

INSPECTOR, HEATHROW

- ▶ *'Immigration is generally okay...it's just the asylum thing that really gets to everyone.'*

IMMIGRATION OFFICER, HEATHROW

- ▶ *'It's not just the fact that there is no tangible outcome...the desire to exercise power over others is frustrated...There's a loss of power associated with asylum...the IO is powerless, just a cog in the machine...and they just think, "what's the point". It seems that most of what you are doing is futile...there's no outcome. But also asylum work is accorded very low status by managers...it's the poor relation and seen as not 'real' immigration work...so they've only got themselves to blame because they have accorded asylum a low status in the first place.'*  
IMMIGRATION OFFICER, GATWICK
- ▶ *'People make a claim on one basis and then make a claim on another basis...it's simply wrong that people should be able to do that...they are on their fifth asylum claim. And when you see those kinds of things it's not surprising that there is a level of cynicism...its because of the wind-up element.'*  
IMMIGRATION OFFICER, HEATHROW
- 3.48 Several immigration officers drew comparisons between asylum casework and 'proper' or 'old style' immigration work. One IO who had previously spent six years at the Home Office bemoaned the fact that he had to conduct asylum interviews because 'that was why I left the Home Office in the first place'.
- 3.49 The evidence collected during the course of this research suggests that Immigration Service staff find greater job satisfaction where they are able to make a decision. In asylum casework they are specifically excluded from decision making, although are inevitably involved in either granting leave to enter or enforcing removal. It was observed that making a positive decision can give job satisfaction. For example, in the case of a marriage interview about which the researcher was informed, the immigration officer commented that 'we like to be able to see the smile on people's faces when they get the good news'.
- 3.50 The frustration expressed by immigration officers is not limited to asylum casework. Many immigration officers are equally frustrated if required to grant leave to enter passengers when they would rather not, for example, because staffing the arrivals desk is a priority. There is a perception among some immigration officers that passengers may be 'landed' to prevent an asylum application being made. Examples of this practice involving Lithuanian passengers were given by IOs at Heathrow Terminal 3.
- 3.51 This frustration is often directed back at asylum applicants who are held responsible for taking up considerable time and resources and for undermining the ability of the Immigration Service to carry out 'proper' immigration work.
- 3.52 There is considerable frustration about the decision making process generally and a perception that the current system is not credible, both in terms of the length of time taken to conclude a case and in terms of the decision which is sometimes reached. One chief immigration officer at Heathrow commented that 'more than anything we need to get it done quickly...justice delayed is justice denied. If people qualify [for asylum] then we should give it to them'.
- 3.53 There was considerable divergence of opinion among staff on the question of whether the Immigration Service should have increased decision making powers in asylum casework. Many chief immigration officers view the separation of the information gatherer from the decision maker as a positive and necessary measure to ensure the integrity of the decision making process, and indicated that they would not want an increased role in formal decision making *per se*.
- ▶ *'The Immigration Service has to be seen to be independent.'*  
CHIEF IMMIGRATION OFFICER, HEATHROW
- ▶ *'I wouldn't want to make the decisions personally... I think it's better to be an independent body.'*  
CHIEF IMMIGRATION OFFICER, HEATHROW
- ▶ *'We are one step removed from the determination process and it has advantages because it is not our decision.'*  
CHIEF IMMIGRATION OFFICER, HEATHROW
- 3.54 Although there was no agreement among Immigration Service staff about their general role in the decision making process in asylum cases, there is a consensus about the need for a 'manifestly well-founded' fast-track procedure which should apply to applicants who are not removable. Some immigration officers believe that it should be possible for them to grant exceptional leave to enter or remain on a time-limited basis as soon as nationality is established in these cases. This would be broader than the current system of giving Self-Completion Questionnaires (SCQs) to applicants from a limited number of countries. When commenting on the requirement to conduct lengthy and often difficult interviews, one immigration officer stated: 'I don't know why we bother to go through the process...we should just give them ELR if we can't remove them'.
- 3.55 Such an approach would raise additional concerns about how the Immigration Service could identify the nationality of an applicant, especially where he or she is inadequately documented or has travelled on fraudulent or mutilated papers.
- 3.56 Perceived abuse of the asylum system for the purposes of economic migration is viewed by many Immigration Service staff as undermining access to protection for those who are genuinely in need. As one CIO commented, 'if there is large scale abuse then some of the genuine ones are going to suffer'. Another admitted that 'genuine refugees are tarred with the same brush and are not getting proper consideration of their claims'.

## Perceptions of genuine refugees

**‘Since the examiner’s conclusion of the facts of the case and his [or her] personal impression of the applicant will lead to a decision that affects human lives, he [or she] must apply the criteria in a spirit of justice and understanding and his [or her] judgement should not, of course, be influenced by personal consideration that the applicant may be an “undeserving case”.**

UNHCR HANDBOOK 1979, PARAGRAPH 202

- 3.57 The operation of the current system for determining asylum applications – including the conduct of the asylum interview – is determined in part by a perception of what a genuine refugee looks and/or behaves like. This perception is informed by a variety of factors which reflect the personal characteristics of the applicant and the overall context in which he or she arrives. These factors include:
- the circumstances in which the asylum claim is made;
  - personal characteristics including nationality, gender, class, age and demeanour;
  - whether the applicant is appropriately documented.
- 3.58 These assumptions and understandings are formalised through the certification process. Although the Immigration Service does not have a formal decision making role in asylum cases, it was noted earlier that immigration officers will make recommendations as to whether a claim ought to be certified for fast track appeal on the grounds that it raises no protection claim. In this context the question of who is considered to be a genuine refugee is critical.
- 3.59 This understanding has equally important effects on how the substantive asylum interview itself is conducted, the appropriateness of questions asked, the types of information gathered and the conduct and attitude of the interviewing officer.

### Circumstances of the claim

- 3.60 There was some evidence that even the act of reaching the UK and claiming asylum may be seen to undermine the credibility of an application.
- ▶ *‘Genuine refugees can’t get out...it galls the staff when middle class people claim to be fleeing persecution and yet they’ve got time to stop in duty-free on the way out...the starving babies don’t get out.’*
- CHIEF IMMIGRATION OFFICER, HEATHROW
- 3.61 The circumstances under which the asylum claim is made may have a significant impact on the

assumed credibility or otherwise of the application. Claiming asylum after arrival, even days after arrival is, according to the Secretary of State, ‘contrary to the behaviour which could reasonably be expected of a genuine refugee’. Applicants are required to apply for asylum upon arrival, explaining the danger they would face if they had to return. The failure to do so may be held against the applicant. For example one immigration officer commented that ‘he didn’t claim asylum straight away which is what you would do if you were genuine’. Yet in 1995 in-country applicants were more than fifty per cent more likely to be recognised as refugees by the Home Office.<sup>28</sup>

- 3.62 An application for asylum will be seen to be lacking in credibility where the application is made after the applicant has been refused leave to enter, or where the applicant has been recommended for deportation, or where he or she has been notified of the Home Office’s decision to deport.<sup>29</sup>
- 3.63 This makes no allowances for the fact that some people may not want or be able to claim asylum on arrival because they are fearful or anxious about what will happen to them. Some may not know the correct procedure for applying for asylum, and may feel it is safer to enter the UK in another category, for example, as a visitor, and/or have been advised to enter in this way.
- 3.64 The Immigration Appeal Tribunal (IAT) has stated that ‘it seems to us entirely understandable that a potential refugee would think it far preferable to obtain admission before applying for asylum when arriving at the airport’. One adjudicator has said that: ‘I do not condone his attempted deception of the Immigration Authorities on entry the UK...but such practices are found amongst genuine as well as false asylum seekers and do not, in my view, reflect ill on the applicant’s general credibility.’<sup>30</sup>

### Nationality

- 3.65 Current policies and procedures create a situation where a decision is effectively made about an application on the basis of nationality. This is encapsulated in the soon-to-be-abolished ‘white list’ of countries where there is generally considered to be no risk of persecution. People are even less likely to be deemed credible where they arrive from one of the designated countries. These countries currently include Bulgaria, Ghana, Pakistan, Romania, Cyprus, India and Poland. One chief immigration officer commented that ‘Pakistan is a mess, it’s a horrible place...I’m not sure it should be on the list’. Another suggested that ‘the interview system is incompatible with the consideration of cases by nationality and country of origin’.
- 3.66 These assumptions based on nationality are self-perpetuating and self-defining. The fact that an applicant is a national of a particular country means that he or she will be dealt with through a particular set of procedures. Even more

<sup>28</sup> See ILPA (1997) for further information

<sup>29</sup> Rule 341 of HC 395 as amended (in particular by CM3365)

<sup>30</sup> See ARC (1996a) for further information

importantly for the purposes of this research, the process through which information is gathered about their application will vary, in turn affecting the likelihood of being recognised as a refugee under the 1951 Convention.

3.67 Personal experience of a particular country may influence the assessment of credibility made by both the immigration officer and the chief immigration officer. One chief immigration officer who had been an ECO in Sri Lanka for two years commented, 'I was in Colombo...great place'. Another had spent a significant period of time in Pakistan and commented at length on the experiences of the Ahmadiya. Current case law contradicts his views.

▶ *'Really as a 'set', they are very rich...they have the odd stone thrown at them but when I was there the leaders admitted that 'we can't really grumble'. When I got back here I was shocked that there were so many Ahmadis [claiming asylum]. From my own experience I knew that what they were telling the IOs was manifestly untrue and yet the adjudicators do find in their favour....but I have had first hand experience and I have spoken to the leaders...'*  
CHIEF IMMIGRATION OFFICER, HEATHROW

3.68 The converse of this is a model of the genuine refugee. Again this is self-perpetuating because the procedures for gathering information are more reflexive, sympathetic and detailed. It is not clear that applicants of other nationalities who arrived and presented themselves in this way would be similarly treated.

▶ *'The obviously genuine ones tend to be Arabs...they have a pre-prepared statement, hand over their ticketing...For example, there was an Iraqi who came from Dubai. When he arrived he had his passport, ticket, and a statement all typed up. Nobody believed for a minute that it was not true.'*  
CHIEF IMMIGRATION OFFICER, HEATHROW

3.69 Applicants from certain countries are treated as genuine refugees because the situation in their country of origin does not allow for return. These applicants are currently given a Self-Completion Questionnaire (SCQ) and are not generally interviewed substantively about their asylum claim.

3.70 The focus on nationality as a basis for determining whether an applicant is in need of protection means that the principal concern of Immigration Service staff is often to identify whether an applicant is a national of the country of origin claimed. For example, it is often difficult to establish whether an applicant is a genuine Afghani national, especially given that a significant number of passengers arrive undocumented. However the consequences of being identified as an Afghani are considerable; one immigration officer commented that 'with a genuine Afghani there is no doubt that they've got a claim'.

3.71 In the case of Kosovar Albanians, a short interview is often conducted to establish whether the

applicant knows anything about Kosovo (including important dates and geographical features). If the applicant passes this test and is treated as a Kosovar Albanian it is likely that he or she will be given an SCQ.

3.72 In some cases there remains uncertainty about the passenger's nationality regardless of whether or not he or she is documented. Applicants who present themselves as Somali nationals often face this problem.

▶ *'Somalis turn up anywhere. It's relatively easy to get out of Somalia, considerably easier than returning them. There's no government so people do largely as they want. But the Somali passport isn't worth the paper it's written on.'*

IMMIGRATION OFFICER, HEATHROW

▶ *'The mere fact that you claim to be a Somali doesn't make you a Somali...We had lots of Kenyans at one point claiming to be Somali.'*

CHIEF IMMIGRATION OFFICER, HEATHROW

3.73 It was observed that the procedure for determining an applicant's nationality may be inappropriate and impressionistic. For example an interpreter may be used to provide an assessment of the applicant's accent and/or dress.

### Personal characteristics

3.74 The gender of the applicant can have a significant impact on whether an applicant is considered to be genuinely in need of protection. Men, especially those who are young and single, are often assumed to be economic migrants. Women are assumed to have no political identity or fear of persecution which might be independent of spouses and other male relatives. A chief immigration officer at Gatwick insisted that 'women in developing countries are very rarely involved in activities which would come to the attention of the government'. Both of these gender stereotypes are reflected in the questions which are asked during the asylum interview and are discussed in detail later in this report.

3.75 The socio-economic status of the applicant is a significant factor in determining how his or her claim for asylum will be viewed, although comments from Immigration Service staff were contradictory.

▶ *'It's difficult to see how anyone from Somalia could qualify [for refugee status]...A large number of asylum seekers are economically active males, they are not political...internationally it's the middle-classes who are political opponents of the regime.'*

CHIEF IMMIGRATION OFFICER, HEATHROW

▶ *'You have to look at their circumstances, at the clothes they're in. If they are immaculately dressed you think, well, are they fleeing for their life or not?'*

IMMIGRATION OFFICER, HEATHROW

▶ *'If you looked at him you wouldn't think he was an asylum seeker.'*

IMMIGRATION OFFICER, GATWICK SOUTH

- 3.76 The age of the applicant, particularly when combined with gender, may lead an immigration officer or chief immigration officer to conclude that an applicant is or is not in need of protection. As with nationality however, there are often significant difficulties in establishing the age of the applicant where he or she arrives undocumented. In these cases Immigration Service staff may draw conclusions from the applicant's appearance. A chief immigration officer at Gatwick described the case of a woman from Burundi who had evaded various controls and then claimed to be a minor...but she didn't immediately strike them as a minor...on the contrary her appearance was more in keeping with an adult'.
- 3.77 Immigration Service staff are aware that they should not interview minors. A young woman who was an Iraqi Kurd returned for her interview at Heathrow Terminal 3 accompanied by a legal representative. Her date of birth was recorded on file simply as 1980. A chief immigration officer commented, 'well, if it's 1980 we can assume she is eighteen'. Another pointed out that 'it could just as easily go the other way'. An immigration officer was sent to find out her date of birth. The representative said that the applicant was only seventeen and requested that the interview be postponed. The applicant insisted that she was eighteen and the interview went ahead as planned. Arguably the IO should have established the applicant's age when she first arrived in the UK and was given a date to return for her interview. Had it turned out that she was actually seventeen then the interview would have had to be cancelled at considerable expense (legal representative plus two interpreters). This would also have caused unnecessary stress for the applicant. The professionalism of the representative is also questioned by this example.

### Demeanour

- 3.78 It is not always possible to draw conclusions about the credibility of an application from the manner in which the information is given, usually through an interpreter, by a person from a different society and cultural background.
- 3.79 Applicants may be unwilling to discuss their experiences because they fear reprisals against either themselves or, more particularly, colleagues and relatives remaining in the country of origin. They may have been specifically told not to reveal certain aspects of their application or their journey to the UK. These concerns may be foremost in the minds of asylum applicants.
- 3.80 Any inability or unwillingness of the applicant to talk about his or her experiences in detail is

generally seen to undermine the credibility of the asylum claim. There is some recognition that trauma may cause difficulties for a very limited number of passengers. However immigration officers generally have a stereotyped view of the symptoms of trauma and distress. This reflects a lack of appropriate training and can have very significant implications for applicants. For example, there was general hostility to those cases where the effects of trauma and distress are not raised until the appeal stage. Several chief immigration officers commented on 'the use of the trauma argument'.

▶ *'The odd genuinely traumatised refugee shines out like a beacon.'*

IMMIGRATION OFFICER, HEATHROW

▶ *'The passenger who is distressed shines through.'*

IMMIGRATION OFFICER, HEATHROW

▶ *'The claims we see that are genuine shine out like a beacon because of the detail and because they have a genuine air of plausibility...but the overwhelming majority are not genuine.'*

CHIEF IMMIGRATION OFFICER, GATWICK

### Undocumented arrivals

- 3.81 As was noted earlier in this report, undocumented or inadequately documented passengers are the focus of considerable concern at ports. Although the Immigration (Carriers' Liability) Act (1987) (CLA) has significantly reduced the number of such arrivals at airports, a number of undocumented or inadequately documented passengers arrived during the observation period. These cases substantially increase the workload for Immigration Service staff.
- 3.82 An application for asylum is treated as lacking in credibility where, on arrival in the UK, the applicant failed to produce a passport, without reasonable explanation, or produced an invalid passport and did not explain the reasons why. Lack of appropriate documentation is viewed as symptomatic of the abuse of the asylum system, designed both to frustrate removal and also to enable applicants to claim that they are nationals of countries receiving preferential treatment under the current system.
- 3.83 Some Immigration Service staff view the fact that a passenger has obtained fraudulent or mutilated documents in order to leave his or her country as undermining the credibility of the application for asylum. The Immigration Rules and the 1996 Act (Section 1) expressly codify this perception and elevate it to law.
- 3.84 The visa regime is a substantial barrier to asylum seekers. It encourages the use of false documents and deceit to circumvent it, yet the use of these documents is then used to attack the credibility of asylum seekers.

▶ *'If you are genuinely seeking refuge then you would just follow people over the border. To get yourself involved with agents and false passports and get yourself half way across the world does not strike me as the way a genuine refugee behaves.'*

CHIEF IMMIGRATION OFFICER, HEATHROW

3.85 Others accepted that it might be necessary for the applicant to acquire forged documents in order to leave their country of origin and said that 'provided that it is made clear straight away then their credibility is undamaged'. The destruction of documents on arrival was seen to undermine the credibility of the claim.

▶ *'I wouldn't say that travelling on a forged passport prevents access to asylum...on the contrary, someone with a forged passport, who has needed a forged passport to be able to get out, is probably more credible than someone who has got travellers cheques, his own passport...but it's very annoying when everything get chucked away...then it just causes a massive problem. If someone has to get a forged document and they've got a reasonable excuse then fair enough.'*

CHIEF IMMIGRATION OFFICER, HEATHROW

▶ *'Their credibility starts to take a dive. Some of the deceit is difficult to rationalise...It's difficult to justify why they won't just say 'yes, we were put on board with Indian passports'. I can't understand why they don't tell us...they just damage their own credibility when they won't tell us. Sometimes it's obvious that it will look bad but they won't change their story. You can hardly call it oppression, just downright dishonesty. It's much more unusual to get someone come up and be honest. The motivation for deceit may vary but it is very common.'*

CHIEF IMMIGRATION OFFICER, HEATHROW

3.86 Several legal representatives drew attention to increasing concerns about the arrest of passengers using fraudulent or mutilated documents to embark onto onward bound flights. Canadian airline staff at Heathrow airport who suspect that a passenger waiting in the transit lounge is not genuinely in transit or appropriately documented may contact the police. The passenger is then arrested and charged with the offence of 'possession of a false instrument' contrary to Section 3 of the Forgery and Counterfeiting Act 1981. Some have also been charged with the offence of 'attempting to obtain services [namely air travel] by deception' contrary to Section 1 of the Criminal Attempts Act 1981. Prison sentences ranging from 14 days to six months have been imposed.<sup>31</sup>

3.87 Legal representatives are concerned that these passengers, many of whom may genuinely be in transit, are not routinely presented to the Immigration Service and instead are assumed to

be failed asylum seekers attempting to leave the UK; one chief immigration officer commented that 'the chances are most of them have an asylum claim here already or they are failed asylum seekers going off for a second bite of the cherry...they go off to Canada for another go at the system'. This problem has been exacerbated by the removal of embarkation control. There is growing concern that passengers who may be intending to seek asylum in another country such as Canada are not being given access to the asylum determination process in the UK.

3.88 Increasing use of powers under the CLA is generally viewed as the only way forward for the asylum system given that once an arriving passenger claims asylum the application must be considered. A chief immigration officer at Heathrow commented that 'you can't get toothpaste back into a tube...the only thing you can do is to make it more difficult for people to get on planes'.

3.89 There was some unease expressed about effectively preventing access to asylum process for those who are genuinely in need of protection. One CIO acknowledged that 'if we are pushed to keep people at arms length then we are effectively preventing genuine refugees from coming here. But if you make a system accessible then people will abuse it'.

#### RECOMMENDATION 4

**Each individual application for asylum must be assessed on its own merits on the basis of information given by the applicant and in light of information on the country of origin.**

**Assumptions about whether an applicant is in need of protection must not be made solely on the basis of the circumstances in which the asylum claim is made, or the applicant's nationality, gender, age, class or demeanour. Any decision made without full examination of all the evidence may be flawed and subject to legal challenge.**

**Guidelines and policy statements which refer to the criteria under the 1951 Convention and wider forms of extra-Convention protection should be produced for Immigration Service staff. All guidelines should be published.**

**Appropriate training should be provided for Immigration Service staff on the 1951 UN Convention relating to the Status of Refugees, the European Convention on Human Rights (ECHR) and other forms of extra-Convention protection. Such training should reflect the implications of the Human Rights Act 1998.**

<sup>31</sup> See Amnesty International (1996) for further information

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**SECTION 4**

# Legal advice and representation

The role of legal advice and representation during the substantive asylum interview is viewed with a mixture of indifference and disdain by many Immigration Service staff. Legal representatives have been severely criticised in recent times, and the Immigration and Asylum Bill 1999 proposes the introduction of regulation for all non-solicitor advisers and representatives, and effective regulation for all qualified lawyers. This report accepts that there are incompetent and unprofessional legal representatives, but there are also excellent ones. It will be suggested in this section that the ability of such legal representatives to represent competently at an asylum interview is limited by the role of observer currently assigned to them. The contribution of competent legal representation towards ensuring that an applicant is able to provide full and relevant details of his or her claim should be recognised as essential to the asylum determination process.

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| <p>4.1 This research has identified two key issues which need to be considered when examining legal advice and representation in the substantive asylum interview:</p> <ul style="list-style-type: none"> <li>• the role of the legal representative;</li> <li>• the quality and quantity of advice and representation which is currently available to asylum applicants.</li> </ul> <p>4.2 Much of the conflict between legal representatives and the Immigration Service stems from the perceptions that each has of the other. This problem is exacerbated by the situation which was described in Section 1 of this report, namely the on-going disagreement about what the role of the legal representative is or should be. Representatives believe that their current status in the asylum interview, that of observer only, is inappropriate. Comments by Immigration Service staff suggest that where the legal representative intervenes to represent their client this is sometimes regarded as being disruptive to the flow of the interview.</p> <p>4.3 The lack of agreement about the role of legal advice and representation in turn reflects a lack of clarity about the purpose of the interview itself, and in particular, whether it is to gather information about the application or to assess the credibility of the applicant. Currently the two are perceived as mutually exclusive by both parties.</p> | <p>It will be suggested in Section 5 of this report that until the purpose of the interview is clarified for all those involved it will not be possible to arrive at a situation in which the contribution of representatives is viewed positively.</p> <p>4.4 Both Immigration Service staff and ILPA are concerned about the quality of legal advice and representation currently available to asylum applicants.</p> <p>4.5 These problems are exacerbated by a lack of appropriate and meaningful procedures through which the concerns of both legal representatives and Immigration Service staff can be addressed. Many legal representatives who participated in this research indicated that they did not have any confidence in the current complaints procedure. Immigration Service staff similarly feel unable to address the problem of incompetent and/or unprofessional legal representatives.</p> <p>4.6 The evidence collected during the course of this research suggests that there is consensus that improvements to the working relationship between the Immigration Service and legal representatives would be mutually beneficial.</p> <p>4.7 Such improvements to the working relationship between the Immigration Service and legal representatives would also benefit asylum applicants and the decision making process.</p> |
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## The role of legal advice and representation

*'Where national legislation provides for the participation of legal or other counsel to assist an applicant in presenting his or her claim, it is essential to allow such counsel to participate in the interview. The presence of a legal representative or other counsel who is familiar with the refugee criteria and local jurisprudence and the applicant's claim, is helpful not only to the applicant but also to the interviewer.'* (emphasis added)  
UNHCR 1995, 15

- 4.8 One of the key tasks identified by ACLEC for advisers of asylum applicants is 'attending the interview with the client'.<sup>32</sup> Many of the current concerns about the conduct of the asylum interview stem from the failure of the Home Office to recognise that legal representation at the asylum interview is necessary and can ensure good practice.
- 4.9 This position is reflected in the Asylum Directorate's Instructions on Interviewing (ADIs).<sup>33</sup> There is not normally any objection to the presence of a legal representative, but where legal representatives attend asylum interviews with their clients it is expected that they will attend as observers only.
- 4.10 According to both the ADIs and the guidance for representatives, legal representatives must refrain from interrupting during the interview but will be invited to make their comments at the end of the interview. Observers who persist in making interruptions will be asked to leave the interview. According to the ADIs, this is because interruptions can be disruptive to both the interviewer and to the applicant. However this is not a rigid instruction; 'Interviewing officers should use their discretion and be flexible if that seems to be appropriate. For instance, if there seems to be a legitimate reason for the interruption (e.g. a minor query about translation), then it is acceptable to take account of what is said. What is not acceptable are constant interruptions when the representative appears to be trying to influence the course of the interview'.
- 4.11 Opinion as to whether legal representatives should be allowed to attend asylum interviews, even as observers, varied significantly among Immigration Service staff who participated in this research.

▶ *'It's difficult because there is no right under the current rules for the representative to be present. It helps lead to misunderstanding on behalf of the passenger if he thinks that he has the right to a representative.'*

CHIEF IMMIGRATION OFFICER, HEATHROW

▶ *'Some 'reps' seem to forget that they are here on tolerance rather than right of access.'*

IMMIGRATION OFFICER, HEATHROW

▶ *'We would have no difficulties with there being a right of access for representatives but it would be unhelpful.'*

IMMIGRATION OFFICER, GATWICK

▶ *'We within the IS would have more to lose by people not being represented.'*

CHIEF IMMIGRATION OFFICER, HEATHROW

▶ *'They are there at our invitation and if they are not prepared to abide by our rules then they will have to leave.'*

CHIEF IMMIGRATION OFFICER, GATWICK

4.12 There was also considerable divergence of opinion about the role of the representative during the interview. Some immigration officers commented that the behaviour of some representatives during interviews makes their job more difficult. However it is not possible to know whether the comments and interventions said to have been made by legal representatives were legitimate or deliberately disruptive, as is the implication.

▶ *'Some 'reps' have been behaving very unreasonably...constant interference, unreasonable comments...sometimes you know from the minute you arrive that there is going to be a complaint. Sometimes it's just unnecessary unpleasantness.'*

CHIEF IMMIGRATION OFFICER, HEATHROW

▶ *'Sometimes it is very frustrating for the IO who is in the middle of trying to unpick complex issues and the 'rep' keeps interrupting...The IO must always maintain control of the interview.'*

CHIEF IMMIGRATION OFFICER, HEATHROW

▶ *'Sometimes the IO has to suspend the interview because the 'rep' keeps interrupting and remind them that they are only there as an observer. You do get to know which ones are the trouble makers and you expect problems, especially if there has been a bad incident.'*

CHIEF IMMIGRATION OFFICER, HEATHROW

▶ *'The IO is required to test what he or she is being told...to get a free flow the IO has to be allowed to follow a logical chain...they have to be allowed to test something, and if there are interruptions it will block the flow of the interview. The interview should proceed to the end. The 'rep' can make notes and when the interview notes are read through to confirm them, they will have an opportunity to add. The 'rep' can say the points they would like to raise, but they should allow the interview itself to take*

<sup>32</sup> ACLEC (July 1998) *Improving the Quality of Immigration Advice and Representation: A Report*, paragraph 2.23

<sup>33</sup> The disclosable version of the Asylum Directorate Instructions (ADIs) was published in July 1998. The disclosable version of the Immigration Directorates' Instructions (IDIs) was made available in September 1998.

*place. They will have ample opportunity to make relevant interventions without stopping the flow.'*

CHIEF IMMIGRATION OFFICER, HEATHROW

- *'Provided that people are reasonable with us then we will be reasonable with them, but we don't want to waste time on minutiae. The time we come into conflict is when we think that they are being unreasonable.'*
- CHIEF IMMIGRATION OFFICER, HEATHROW
- 4.13 Several chief immigration officers acknowledged that a legal representative can make their job more difficult because he or she is competent and professional and 'does his damndest to get all the facts and fight the case'.
- 4.14 Both the position of the Home Office, and comments made by Immigration Service staff regarding the role of legal advice and representation during the asylum interview contrast sharply with the views of UNHCR, legal representatives, community groups and asylum seekers themselves who maintain that the presence of a legal representative is advantageous to the interviewing officer as well as the applicant.
- 4.15 Legal representatives who were interviewed during the course of this research conclude that applicants for asylum need information and legal assistance in presenting their claim before any substantive interview is conducted. Applicants may speak little English and may have no information on either the asylum determination process or which elements of their personal history are relevant to an asylum claim.
- 4.16 The importance of legal advice and representation was considered by many respondents to be essential if asylum seekers were to be able to put forward the salient facts of their case. The asylum interview has now become the main opportunity to do this. Without advice and representation applicants are left unaware of what is required of them in order to show a well-founded fear of persecution. This is particularly problematic because of the differential status given to information revealed subsequent to the asylum interview.
- 4.17 The effect of the current approach to legal advice and representation is to undermine the constructive role that representatives can play in assisting the information gathering process. An example of this is the fact that tight deadlines imposed for the submission of further information are unrealistic.
- 4.18 Both legal representatives and clerks were asked what they considered their role to be during the asylum interview. The following is a summary of the key responsibilities as outlined by respondents:
- to ensure that the applicant is able to give a full account of his or her claim such that a decision maker is able properly to assess whether an applicant is eligible for protection;
  - to keep an independent record of the proceedings as a whole, including times, breaks, interventions, 'off the record' questions, demeanour of the applicant and manner and demeanour of the interviewing officer;
  - to check that the interviewing officer ensures that the interpreter fulfils his or her role properly;
  - to intervene where there has been unresolved confusion or misunderstanding which cannot wait until the end of the interview;
  - to intervene if the interview is being conducted in an improper manner;
  - to provide support and reassurance to the applicant;
  - to ensure that the interview is conducted fairly with appropriate breaks and refreshments;
  - at the conclusion of the interviewing officer's questions to make any appropriate observations or representations regarding either the conduct of the interview, or further questions or clarifications which need to be put;
  - to make any post-interview representations relating to detention, conditions of temporary admission, extension of time for submission of evidence or other relevant matters.
- 4.19 All the legal representatives who responded to the questionnaire considered the conduct of the interview to be worse in cases where there was no legal advice and representation before or during the asylum interview.
- *'Often very brief; frequent complaints of mistranslation; clients do not feel confident about complaining or correcting mistakes; officers are often ignorant of country conditions and may have asked irrelevant or misleading questions; frequent mistakes in records and spelling etc.'*
- *'Immigration officers take less time overall, explain far less, are far more curt/abrupt, take answers that obviously were given because client misunderstood question, focus more on areas such as journey avoiding substance of asylum claim.'*
- *'No independent record of interview to judge from but client is more likely to be at ease if fully prepared and accompanied and thus more able to give a full account. Also errors/omissions/impatience of interviewer less likely if good 'rep' in attendance.'*
- *'There is no independent check on the quality and fairness of the interview.'*
- *'Where a representative is present, the interviewer's notes tend to be longer and more comprehensive.'*
- 4.20 All the asylum applicants who did not have access to legal advice and representation and who were interviewed for the purpose of this research believed that legal representation would have improved the conduct of the substantive asylum interview. A variety of explanations were given for this.

4.21 A number of these respondents commented that legal representation before the interview would have assisted them in organising their thoughts to ensure that they provided all the necessary and relevant information to enable an appropriate decision to be made on their asylum application.

▶ *'I think I would have had a better interview – I was confused and couldn't think straight.'*

COLOMBIAN ASYLUM APPLICANT

▶ *'If I had got good advice it would have helped to prepare me. I would have known how to express things and would not have felt so confused.'*

COLOMBIAN ASYLUM APPLICANT

▶ *'I found out that time and space could help me to concentrate better and someone with expertise to help me articulate my case.'*

IRANIAN ASYLUM APPLICANT

4.22 Many respondents felt that it was important to have some understanding of asylum law generally, and UK procedures in particular, in order that they could both be reassured about the process and aware of the significance of various aspects of the determination process.

▶ *'I would have been advised on what was at stake and given guidance and assurance about the interview.'*

GHANAIAN ASYLUM APPLICANT

▶ *'Having legal advice helps to emphasise point on the law that established the Convention.'*

GHANAIAN ASYLUM APPLICANT

▶ *'If I had any legal advice a while before the interview it would have reassured me of what to expect, and I would have sought some clarifications before the interview.'*

IRANIAN ASYLUM APPLICANT

4.23 Asylum applicants may be fearful of the nature of the asylum interview. The fact that they are seeking safety in the UK does not automatically mean that they should understand the asylum interview process or trust the interviewer whom they have never previously met. Many distrust government officials, having experienced persecution at the hands of officials in their country of origin. Some applicants have had no experience of dealing with officials. Comments made by several asylum applicants who participated in this research suggest that access to legal representation prior to the substantive asylum interview is important to establish confidence and trust. One respondent commented that 'I needed to go through all the past experiences with someone I could trust before presenting my case'. Another said that 'it would help me to have more confidence in

dealing with the authorities'. The report by ARC (1996b) also notes that 'applicants represented during their interviews may be reassured by and gain confidence from the fact that an independent account of what was said by them will be recorded by their representative who will also monitor the conduct of the interviewer'.<sup>34</sup>

## Quality of legal advice and representation

4.24 Disagreement over the role of legal advice and representation during the asylum interview is exacerbated by the conduct of incompetent and unprofessional practitioners. This research has been conducted at a time when there is increasing concern about the quality of legal advice and representation available to asylum applicants, and about the considerable public expense associated with the current system of service provision.

4.25 ILPA recognises that there are significant problems with the quality of immigration advice and assistance currently available and together with other organisations is addressing these issues, for example, by offering training for immigration practitioners and publishing best practice guides.

4.26 As was indicated in Section 1 of this report, these problems are also being addressed through a number of different strategies including accreditation by the Law Society, regulation of non-qualified advisers through the Immigration and Asylum Bill, extended powers for the Office for the Supervision of Solicitors (OSS) and changes to the regulation of legal aid providers. The Lord Chancellor's Advisory Committee on Legal Education and Conduct (ACLEC) is also looking into the issue of quality.<sup>35</sup> These measures should provide at least a partial solution to the problem of incompetent and unprofessional legal advice and representation.

4.27 It is however important to distinguish between the issue of competence of advisers and representatives currently available, and the question of dishonesty and fraud. Many of the measures which are proposed address the latter but not the former. There remain concerns for example, about the so-called access gap that will exist as a result of the implementation of exclusive contracting. In terms of access to quality advice and representation, the access gap already exists and indeed has existed for some years.

4.28 Legal advice and representation suffers from the twin problems of quality and quantity. At its best, legal advice on asylum is excellent, with specialist and committed representatives in both the salaried sector and private practice, who are usually working under severe budgetary constraints.

<sup>34</sup> ARC 1996b, 34

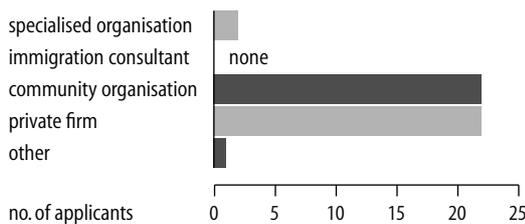
<sup>35</sup> See ACLEC (July 1998) *Improving the Quality of Immigration Advice and Representation*. A further report will be published before ACLEC is abolished later this year.

- 4.29 Community organisations and generalist advice agencies are often the first point of contact, and may have invaluable ancillary skills (such as language and cultural understanding). They may also become the only source of advice, if an applicant is unable to find a specialist practitioner who can take on a case.
- 4.30 Three quarters of asylum applicants who were interviewed for the purpose of this research obtained legal advice at some stage in the asylum process, from a variety of different sources. Forty per cent of respondents obtained legal advice from a private firm of solicitors and a further 40 per cent obtained advice from refugee community organisations. Kurdish applicants in particular had received legal advice and/or representation from both sources. Only two respondents had obtained advice from a specialised organisation; one from Refugee Legal Centre and the other from the Medical Foundation. None of the respondents had received advice from an immigration 'consultant' (► figure 14).
- 4.31 Although access to legal advice and representation was generally viewed positively by asylum applicants, it is also evident from some of their comments that both the quality and quantity of advice given prior to the interview varied widely. For example, whilst one respondent commented that 'my lawyer was very helpful and asked me lots of questions about my case so that I felt very clear and everything was in the forefront of my mind'. Another said of their legal representative, 'I have a brother here. He arranged

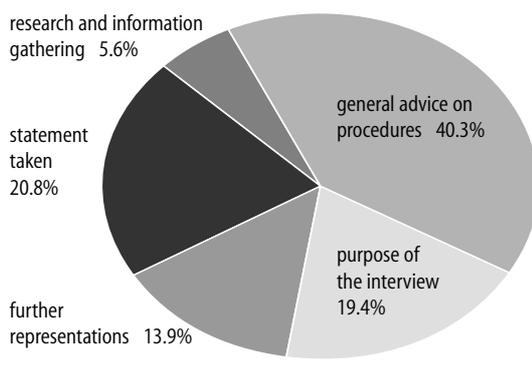
for his solicitor to be here when I arrived...he didn't do anything'.

- 4.32 Three quarters of asylum applicants who had obtained legal representation prior to the substantive interview were given general advice on asylum procedures. Three of the legal representatives only gave general advice on asylum procedures. Fourteen of the respondents had been given information about the purpose of the substantive interview. A significant number of representatives had taken other actions: for example, they had explained procedures, taken statements and submitted representations, but had not explained the purpose of the interview itself. Twenty per cent of representatives had taken a statement from their client. A smaller proportion had submitted representations on behalf of the applicant (► figure 15).
- 4.33 There is reason for concern about the combination of actions taken by some legal representatives. For example, the responses of two applicants indicate that a legal representative submitted further representations or conducted further research or collected information relevant to the application without taking a statement from the applicant about his or her experiences.
- 4.34 Concerns about the quality of legal advice and representation are reflected in comments made by Immigration Service staff during the periods of observation at ports. One senior manager of the Immigration Service described legal representatives as having 'an image problem'. Others described a variety of failings on the part of legal representatives which ranged from alleged incompetence and lack of professionalism to fraud.

**FIGURE 14**  
**Sources of legal advice and representation**



**FIGURE 15**  
**Legal advice and representation given to clients**



► 'Some of them have been generally disruptive, or have not acted correctly or have been seeking trade in the Further Examination Area. In these cases we would refer them to the CIO and the inspector, and they would be referred to someone from the 'reps' team. If they cause persistent problems, the inspector who deals with 'reps' would write to the company.'

CHIEF IMMIGRATION OFFICER, HEATHROW

► 'Sometimes even the applicants complain about how awful the representation has been.'

IMMIGRATION OFFICER, HEATHROW

► 'Some 'reps' are incompetent, inefficient and don't have a handle on what immigration control is about.'

CHIEF IMMIGRATION OFFICER, HEATHROW

► 'Solicitors are by and large up to scratch but it's the fly-by-night companies who are a hindrance even from their own client's point of view...Many of them don't have their client's interest at heart.'

CHIEF IMMIGRATION OFFICER, HEATHROW

► 'We're allowing 'reps' to bend and twist the system.'

IMMIGRATION OFFICER, GATWICK

- ▶ *‘Both good and bad lawyers take cases up and push them to the full...and that only reinforces the IO’s view that solicitors are only interested in pushing each and every case.’*  
CHIEF IMMIGRATION OFFICER, GATWICK
- ▶ *‘On a scale of one to ten, there are quite a lot at the 0–1 mark in terms of their standards of professionalism.’*  
CHIEF IMMIGRATION OFFICER, DOVER EAST
- 4.35 A number of specific examples were cited by Immigration Service staff as illustrative of the incompetence of legal representatives. These included sending information to the Asylum Directorate rather than the port of entry, not knowing the difference between leave to enter and leave to remain, and not being familiar with third country procedures.
- 4.36 Legal representatives can create additional work for Immigration Service staff. One example of this is where several firms of solicitors telephone the Immigration Service claiming to represent an applicant. As one chief immigration officer commented, ‘IOs don’t know which firm is actually representing...they all demand instant attention’. In some cases the applicant has in fact instructed several firms each of which will contact the Immigration Service.
- 4.37 A further example was given by a chief immigration officer based at Gatwick of an applicant who arrived for a substantive interview without his legal representative. The interview was delayed for a short period to allow the representative time to arrive. However the representative then telephoned the Immigration Service to say that the applicant could not come to the interview as he had no money for travel. The chief immigration officer explained that the applicant was already there and arranged for the interview to be further delayed to enable the representative to arrive. Twenty minutes later there was a telephone call to say that a legal representative had in fact been waiting downstairs for the applicant but they had missed each other. When the interview started the immigration officer questioned the competence of the legal representative given his apparent ignorance of asylum matters generally. Later in the interview the representative complained about the standard of the interpreting. The legal representative was excluded from the interview and escorted off the premises. The CIO recounted this example to the researcher who noted that none of these events were recorded in the Asylum Interview Record.
- 4.38 Some Immigration Service staff suggested that legal representatives were deliberately delaying the processing of the claim. Applicants who change legal representatives or on whose behalf applications for Judicial Review of the decision are made ‘at the eleventh hour’, were repeatedly cited as illustrating that the aim of some representatives is to create delay.
- ▶ *‘A lot of them regard their aim as being to buy as much time for the client in the UK as possible. So they spin it out, lodge an appeal, or by introducing new evidence, fabricated or otherwise, they can have several adjournments. Then they go to the Tribunal. And even after all that, there are other devices...marriages, secondary applications...Being in limbo is what a lot of people want because it’s a chance to find a wife.’*  
CHIEF IMMIGRATION OFFICER, GATWICK
- ▶ *‘I take exception to people who have one legal ‘rep’ through the process and then change firms at the last minute and then insist on making further ‘reps’. Why should we give them more time? They could just carry on giving information in order to get another bite of the cherry. And the problem is that it is happening more and more.’*  
CHIEF IMMIGRATION OFFICER, GATWICK
- 4.39 An example of the failure to competently represent an asylum seeker at a substantive asylum interview was cited by an immigration officer at Heathrow. It concerned two asylum interviews at which the applicants were represented by the same person. Two and a half hours into the second interview, the representative left because she said that legal aid time had elapsed. In fact, she should have allowed for at least three hours and/or could have applied for an extension of legal aid.
- ▶ *‘Some ‘reps’ are abusing the system because of Legal Aid for immigration.’*  
IMMIGRATION OFFICER, GATWICK
- ▶ *‘So many firms give bad advice or they don’t even bother to attend interviews...they are just interested in the Legal Aid forms.’*  
CHIEF IMMIGRATION OFFICER, DOVER EAST
- ▶ *‘Interpreters and ‘reps’ are swapping roles to abuse legal aid. The ‘rep’ is paid and then charges for the interpreter...so the Legal Aid Board is paying twice...for the representative and the interpreter.’*  
CHIEF IMMIGRATION OFFICER, HEATHROW
- 4.40 A further example which was observed by the researcher at Gatwick involved a legal representative who attended with two applicants who were interviewed separately. Although an offer was made by the immigration officer to run the interviews consecutively in order to enable the legal representative to attend with both applicants, this was declined and the representative instead observed part of each interview. She was also suspected of ‘touting’ for clients in the waiting area.
- 4.41 Although they are rare, incidents where legal representatives have ‘touted’ for business are a significant cause of concern within the Immigration Service. Staff at Heathrow Terminal 4 described several occasions where there had been problems with representatives in the waiting

areas. On one occasion a legal representative was handing out business cards. On another occasion the representative was not sitting where he should be. The IO asked whether he was touting but he claimed to have been 'just chatting up a detainee'. On all occasions representatives were warned that if it happened again they would be excluded. Despite these incidents, Immigration Staff at Heathrow Terminal 4 and other ports visited do not consider it necessary or desirable to separate legal representatives from their clients.

- 4.42 Detailed information provided by one legal representative suggests that allegations of touting for business can sometimes arise from misunderstandings and/or can arise in the context of other disputes and disagreements. Immigration Service staff at Heathrow Terminal 1 accused the representative and the representative's interpreter of 'touting' for business after an interpreter with whom the firm had an on-going dispute reported that they had approached an applicant in the waiting area and offered their services. The Immigration Service apologised for the misunderstanding and the resulting cancellation of the interview and offered to reimburse travel costs. They denied that there had been any intention of calling into question the integrity of the firm concerned.
- 4.43 Whilst at Dover the researcher was given a list of complaints which had been made about the conduct of legal representatives from specific firms. These included accusations of rude and aggressive behaviour by the representative 'designed to upset the interviewer and IS interpreter', and also unprofessional behaviour on the part of interpreters. Senior Immigration Service staff complained about the slowness of the response of legal representatives to such complaints and the fact that some firms had denied any wrong doing.
- 4.44 Several examples of incompetent and/or unprofessional conduct by both legal representatives and clerks were observed during the periods of research at ports. These include the failure to take any notes during the interview, not having proper instructions from the firm or organisation, turning up late and touting for business. In one case both the legal representative and his interpreter repeatedly fell asleep during an interview conducted at Heathrow Terminal 3. By leaning against the wall they set off the alarm on a number of occasions.
- 4.45 There are also many illustrations of competent and professional conduct by legal representatives and this is acknowledged by Immigration Service staff. It was also clear from some of their comments however that those who are generally considered professional and competent are, in some cases, perceived as being more problematic than those who are less competent and less specialised.

- ▶ *'Some of the big companies we deal with we are not always going to agree with, but they are professional and business like.'*  
CHIEF IMMIGRATION OFFICER, HEATHROW
- ▶ *'Some firms and organisations are very professional and very responsive to what we have to say.'*  
CHIEF IMMIGRATION OFFICER, HEATHROW
- ▶ *'Some know exactly what they are doing and they can be a pain in the neck sometimes because they can cause additional work.'*  
CHIEF IMMIGRATION OFFICER, HEATHROW

## RECOMMENDATION 5

**ILPA supports the regulation of non-qualified advisers and is of the view that professional bodies should regulate the conduct of their members more effectively than at present. ILPA would like to see the extension of these regulatory powers to competence. The Legal Aid Board's concern with quality standards is to be welcomed.**

**Applicants should be provided with information as to the service provided by members of the professions and regulated advisers, as well as how to make complaints where appropriate.**

**The shortage of competent immigration advisers must be addressed.**

## The use of clerks

- 4.46 The term 'clerk' refers to articulated clerks/trainee solicitors, outdoor clerks, volunteers and others who attend asylum interviews but are not responsible for the overall conduct of cases. It is more usual for a clerk to attend an interview than the legal representative responsible for the case. Clerks may become very experienced in asylum and immigration procedures but will not normally give legal advice.
- 4.47 It is important to differentiate between those clerks who are regular employees and outdoor clerks. Of those legal representatives who use clerks, a significant number only use clerks who are regular employees. Several respondents indicated that they do not use outdoor clerks 'on principle'.
- 4.48 The increasing use of clerks was noted in Section 1 of this report and is a trend which was commented upon by Immigration Service staff during the course of this research.
- 4.49 Nearly 20 per cent of legal representatives who responded to the questionnaire indicated that clerks never attend interviews on their behalf. These tended to be the firms with a smaller number of cases overall (less than 50). A third of respondents said that clerks sometimes attend on their behalf, with the remainder using clerks on a

regular basis. One quarter of respondents indicated that clerks always attend interviews on their behalf. The majority of those who always use clerks are those with responsibility for a very large number of cases and caseworkers at the Refugee Legal Centre (► figure 16).

4.50 A number of legal representatives commented on the increasing use of clerks and indicated that this is due in significant part to increasing caseloads. Increasing caseloads mean that those with conduct of cases are unable to attend the interviews, particularly given the amount of time spent travelling to ports, and the considerable delays which are often experienced. Current rates of pay for legal advice and assistance (previously known as the green form) do not make this a financially viable option for many firms, particularly those based in London.

- *'Substantive interviews take up a whole day – including travelling and waiting – on the whole it does not seem a good use of a solicitor's time.'*
- *'I work for a voluntary organisation struggling to break even. We use the legal advice and assistance scheme wherever possible – but find it difficult to obtain extensions to cover the full expense of time required – particularly for Heathrow interviews where travelling (from Brighton) is at least five hours and waiting can be several hours.'*

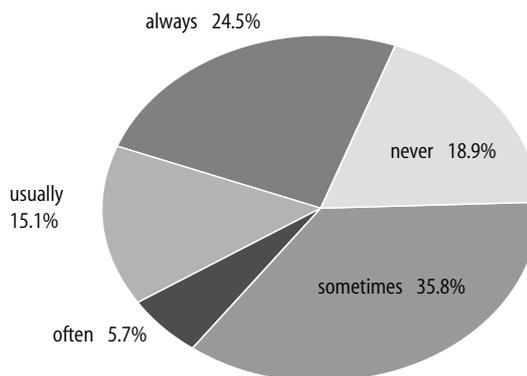
4.51 Several legal representatives made a point of saying that they would always try to attend the interview themselves and would only send a clerk if the interview clashed with another interview or engagement or due to unforeseen events. One respondent commented that 'I attend most interviews. I try to rearrange the appointment if I am booked somewhere else. In the last year I sent a clerk once'. The refusal of the Immigration Service to reschedule an interview can sometimes mean that a representative has no alternative but to send a clerk.

4.52 Several respondents commented that given they are only allowed to attend the interview in the capacity of an observer, there is little or no point in attending personally as it is a waste of their skills. In this context, some legal representatives also commented that they thought it was important that clerks become specialised and trained in attending interviews. Several respondents commented that the use of bi-lingual clerks in particular saves time and therefore money for the Legal Aid Board.

- *'Experienced clerks should be proficient enough to adequately represent clients' interests at the interview. If we had more proactive role it may be worth attending as qualified solicitors.'*
- *'I am the only person in the firm conducting asylum and immigration cases – as I only send experienced clerks, I deem it equivalent to me going.'*

**FIGURE 16**

**The use of clerks**



- *'Our clerks are trained, experienced and monitored. We do not use them unless we are happy with the standard of their work and by using clerks we have more time available for other services (e.g. large amount of pro bono advice work). Our clients are happy with the current system.'*

4.53 It should be noted that more than 80 per cent of respondents indicated that there are some circumstances in which the legal representative would always try to attend the substantive interview personally, regardless of how frequently a clerk was normally used. These circumstances varied considerably but included cases where the client is particularly vulnerable and the legal representative feels that he or she needs to be accompanied by someone with whom she has already established some trust and confidence. Specific examples of clients who might fall within this category included some very distressed, traumatised women and those with mental health problems. Other interviews for which a clerk might not be used include those where there has been a history of complaint, asylum applicants with an immigration history, national security cases and those where there is a 'third country' issue involved.

4.54 It should also be noted that, from the perspective of Immigration Service staff, where an interview is attended by a partner or senior solicitor, especially from one of the more highly regarded firms, this is seen as indicating that the case has merit. Comments made by legal representatives themselves suggest that this is one of the circumstances where a particular effort might be made to attend the interview; one legal representative indicated that he would only attend 'a case with high merit in my view'. There was some evidence from the observation at ports that this approach is self-perpetuating: because the legal representative considers the case to have merit, the interview is more likely to be well-conducted. Firms which are perceived as being less competent and professional are assumed to have clients with weak asylum claims and vice versa.

- 4.55 Immigration Service staff were generally dismissive of the increasing use of clerks and their ability to fulfil a useful role in the substantive asylum interview.
- ▶ *'Some 'reps' don't take any interest in what their clients are saying. A lot of these 'reps' are not very high up in the legal firm and they just come along to observe and take notes. You can tell the ones that are higher up...but generally you tend not to see the senior figures, especially from the larger firms.'*  
CHIEF IMMIGRATION OFFICER, HEATHROW
  - ▶ *'Clerks are less able to come to a decision if advice is needed...they have to seek advice. What's the point of them being here if they can't answer things?'*  
IMMIGRATION OFFICER, HEATHROW
- 4.56 Both the responses to questionnaires submitted by clerks and, more significantly, the periods of participant observation at ports, suggest that there are very substantial differences in the quality of clerks and the extent of their role in the substantive asylum interview. In the interviews observed some clerks took detailed notes of proceedings, others did not make an independent record of the interview. None of the those who were observed made any comment at the end of the interview regarding its conduct when requested to do so by the immigration officer, despite the fact that several were clearly unhappy about various aspects of the interview's conduct.
- 4.57 The failure of clerks (and some legal representatives) to note their observations or to participate in any way in the interview, leads some Immigration Service staff to conclude that clerks are simply being sent along to the interview for financial gain and not out of any concern to ensure that the interests of the applicant are best represented.
- 4.58 The evidence collected during the course of this research suggests that there is no necessary relationship between the increasing use of clerks *per se* and the quality of service provided by legal firms and organisations. Rather the competence and professionalism of the clerk will mirror the competence and professionalism of the firm or organisation. This is reflected in the extent to which clerks are given appropriate training and support, and the mechanisms for briefing and debriefing a particular case.
- 4.59 There is considerable variation in the ways in which 'outdoor' clerks are recruited and the training which they are given, as well as procedures for feeding back information on the conduct of the asylum interview. Many firms employ outdoor clerks with previous experience who have worked for other solicitors even if in a different area of work (for example, criminal or family law). Several respondents also indicated that where they use outdoor clerks they use a limited number, many of whom have been employed for a substantial period of time in this capacity. This probably reflects the fact that those whose conduct and professional standards are higher are more likely to have responded to the questionnaire.
- 4.60 The extent to which clerks are trained on the conduct of asylum interviews varies considerably. Whilst some legal representatives provide extensive and in-depth formal training programmes for clerks, both in-house and through ILPA, several firms indicated that they provide very little or no training for clerks. Significant variations in the extent of training and on-going support were reflected in comments made by clerks themselves.
- ▶ *'A talk beforehand about what to expect from the fee earner. Er, that's it!'*
  - ▶ *'I was trained on the pre-93 type of cases, but no further training after that. I have had to adapt and learn along the way. I have endeavoured to learn more about the rules and tried to apply that knowledge when needed.'*
  - ▶ *'No real training as such. Generally, more in the form of discussions with relevant lawyer as to possible problems that may occur and how to deal with them.'*
  - ▶ *'I have attended several training sessions – all valuable. Since conditions, port practices, HO policies etc. change all the time, such sessions are essential to keep up-to-date with issues, exchange experiences, and learn firm's policy re: how to deal with these situations.'*
- 4.61 Two thirds of clerks felt that the training they received could be improved. One clerk who had received extensive and regular in-house briefings and participated in ILPA training sessions commented that 'training can always be improved'. However a clerk who had never received any training felt that further training was not necessary because she considered herself to be 'over-qualified'. Another commented that 'training is confusing'.
- ▶ *'There is a need for a short training course to help people understand their role; Role of IOs, when to intervene, how to deal with IO and represent client's best interests.'*
  - ▶ *'I feel that training gives us the opportunity to put to our employers what difficulty we are having in our work, and will be an opportunity to get with together other clerks so that experiences can be exchanged and opinions shared/discussed by all concerned. I believe that training is of fundamental importance for a better prepared clerk who will be able to provide a better service for both the client and for the employer.'*
  - ▶ *'New clerks should have verbal and written instructions containing the latest information on asylum interview procedures and the firm's policy'*

*re: intervention, signing the notes, read-overs and briefing clients before and afterwards. This training should be continually updated, if only by memos.'*

- 4.62 The extent to which clerks are briefed on the particulars of a case before attending a substantive asylum interview with a client similarly varies considerably, both in terms of the methods used and the quality and extent of the briefing received.
- 4.63 A majority of legal representatives who responded to the questionnaire have procedures for clerks to feed back information on the conduct of the asylum interview. These vary considerably but include telephone calls to the office, submitting an attendance note, submitting details of questions asked and answered, a meeting with the fee earner and/or submitting full note/record of the interview together with comment on its conduct.

#### RECOMMENDATION 6

**Only clerks who have been adequately trained should attend asylum interviews on behalf of a representative. A programme of formal training and examination should be introduced similar to that of duty solicitors at police stations. The work of clerks should be closely supervised by the person responsible for the conduct of the case.**

## Access to legal advice and representation

**'All asylum applicants should have fair access to individual status determination procedures which includes the right of legal advice.'**

UNHCR 1995, 36

### Interviews conducted on arrival

- 4.64 UNHCR Guidelines state that basic standards should ensure the availability of legal counsel. However legal representatives are often unable to provide legal advice and representation from the beginning of the asylum determination process. This is usually because the interview has been conducted immediately on arrival, or because the legal representative has not been able to gain access to an applicant who has been detained, or because the timing or location of an interview has meant that the representative has been unable to attend.
- 4.65 Although applicants are informed that they can contact either the Immigration Advisory Service (IAS) or the Refugee Legal Centre (RLC), the timing and circumstances of the interview mean that it is highly unlikely that a representative would be able to attend even if contact were made.
- 4.66 Legal representatives were asked to give an estimate of the proportion of their clients who

had been interviewed substantively about their asylum application without a representative. A majority of respondents indicated that fewer than twenty per cent of their clients had been interviewed without a representative. Several representatives pointed out that 'the problem is that the client cannot seek advice until after interview'. Others suggested that the proportion of clients who are interviewed substantively about their asylum application without a representative is increasing because the aim is to interview immediately on arrival.

- 4.67 Nearly 40 per cent of legal representatives whose clients had not been represented during the interview said that they had been unable to represent a client due to the timing of the interview. All the examples given concerned port locations and involved cases where the interview had been conducted on arrival, or where the client had been taken on at short notice. In addition, a number of legal representatives indicated that they had been unable to attend an interview because it had been conducted out of office hours or held on a weekend or a Bank Holiday.
- 4.68 Just over a third of asylum applicants who were interviewed for the purposes of this research received no legal advice before the substantive asylum interview. Over half of these had been interviewed on arrival. Of those applicants who had not had any legal advice prior to the substantive asylum interview, three had been interviewed within two or three days of their arrival in the UK, two had been interviewed between one and three months of their arrival in the UK. Five had been interviewed more than two years after the substantive asylum application had been made and in one case, the substantive interview had taken place six years after the respondent had claimed asylum.
- 4.69 Whilst none of the applicants had been refused access to legal advice, the circumstances of the interview and/or a lack of knowledge about the asylum determination process combined effectively to undermine access to legal advice and representation.
- 4.70 Thirteen respondents said that they were not aware that they could have had legal advice. For example one Iranian respondent commented that '[w]hen I arrived I felt depressed and disoriented. I did not think about looking for advice. I did not know that someone could help me prepare my case'. Another said 'I was given one night and I had no idea about my legal rights'. Almost a quarter of asylum applicants participating in this research indicated that they had been unable to get legal advice in time.
- 4.71 The responses of both asylum applicants and legal representatives correspond with the observation of current practice at ports. Where an asylum applicant is interviewed immediately on arrival, he

or she will rarely have had legal advice and representation. By contrast those who return for an interview after arrival nearly always do so with a legal representative.

- 4.72 In addition, where a legal representative is waiting for the applicant on arrival at the port (for example, where a legal representative has been contacted by relatives living in the UK before the applicant has entered the country), this is regarded with suspicion and some hostility by Immigration Service staff, even though such conduct is permissible.
- 4.73 Comments made by Immigration Service staff indicated a number of reasons for this approach. These include suggestions that the legal representative does nothing to earn his or her fee, for example, when he or she does not request time with the applicant before the interview. There were also suggestions that applicants are prompted to make asylum claims.
- ▶ ‘Reps’ tell people to claim when they don’t want to.’  
CHIEF IMMIGRATION OFFICER, DOVER EAST
  - ▶ ‘The classic case is that they turn up as visitors and say that they are going to spend five days visiting Madame Tussaud’s and Buckingham Palace. And then firm X turns up, and when they are refused they claim their client has not been able to explain or express themselves properly and say that they want to claim asylum.’  
CHIEF IMMIGRATION OFFICER, HEATHROW
- 4.74 Several immigration officers and Senior immigration officers highlighted the difficulties which can arise where a legal representative is waiting for a passenger to arrive and the passenger does not present him or herself at passport control. In some cases this can be because the plane has been delayed or the passenger has arrived at a different terminal. There are occasions when legal representatives have alleged that Immigration Service staff have stopped passengers from leaving the plane or put passengers back on a plane thereby preventing access to procedures for asylum determination. This illustrates both a lack of trust between legal representatives and the Immigration Service and the absence of an appropriate forum to discuss such concerns.
- 4.75 A significant number of substantive asylum interviews which were observed during the periods of participant observation at ports were conducted on arrival or soon afterwards. None of the applicants had legal representation. In many of these cases, the applicant was unable to relate his or her thoughts chronologically and presented a very confused and confusing account of his or her experiences. This was extremely difficult for the IO who often struggled to record the narrative in a way which might make sense to the decision

maker. These interviews contrasted sharply with those applicants who returned for an interview at a later date with a legal representative.

- 4.76 The risk of allegations of unprofessional conduct by Immigration Service staff, both before and during substantive asylum interviews conducted on arrival, can only be exacerbated in cases where the Immigration Service insists on conducting the interview without legal advice and representation (▶ figure 17).

#### FIGURE 17

##### Lack of legal representation during the interview: a case study

The respondent, a Colombian, was interviewed at Heathrow shortly after his arrival in the UK with his wife and eighteen month old baby. The immigration officer who interviewed him was a fluent Spanish speaker and there was no Home Office interpreter:

*‘I was threatened, shouted at. I couldn’t explain in a relaxed manner because I was being told what I was saying was rubbish – it was false. The officer even called me a huevon – idiot... The officer jumped down my throat, repeating some of the questions several times – a simple question, a date for example. He kept trying to make me say which day, which date an incident happened. I just couldn’t be sure. And he asked again and again. It was like a torture session not an interview. I was not given a chance to say what I wanted, I was shouted at, called stupid, that it was false. It seemed the officer had something against Colombians... I think the officer had a personal problem. At one stage I shook my head to say ‘no’ and he told me not to move my head.... I asked him for my medicines back – they were taken away on arrival – he said ‘don’t worry, you’ll get them back, you won’t be in this country for long.’ When he asked if I was political – did I belong to a political party? – I paused. He said ‘are you a politician, are you the president of Colombia?’ When I said no he said ‘why are you asking for political asylum if you are not a politician.’ This officer was shouting – my wife was trembling outside. When I had finished everyone could hear. I felt humiliated. He told me I was talking rubbish, that my case was false. I thought I was back in Colombia the way I was being treated.’*

**The respondent did not have legal representation either before or during the interview because he did not know that he was able to:**

*‘If I had known it was possible to have legal advice I would have been thankful... I was treated badly and I didn’t know my rights. If a legal representative had been there I am sure I would not have been so poorly treated and threatened. I felt helpless during the interview.’*

### Pre-scheduled interviews

4.77 Lack of legal advice and representation is not limited to interviews conducted on arrival. Two asylum applicants said that they did not feel that they needed legal advice including one who commented that 'I was told that I would not be deported therefore I assumed legal advice was unnecessary at that time'. This evidence suggests that asylum applicants themselves are not always aware of the complexity of procedures for asylum determination and the need for legal advice and representation.

4.78 Attendance by legal representatives at interviews for which advance notice is given is not usually a problem, although difficulties sometimes arise because of the location of the interview. Several legal representatives working outside London (for example in Brighton, Bristol, Newcastle and Liverpool) commented on the problems of attending interviews held at Croydon and port locations. Others commented on problems of getting to Dover at short notice.

4.79 Legal representatives had varying experiences of arranging interviews for a mutually convenient time. Although this was usually possible, these efforts occasionally meet with hostility.

4.80 There was also some concern expressed by legal representatives that interviews have gone ahead even where the Immigration Service is aware that the representative will be attending. In some cases this has been because the legal representative or clerk has been unavoidably delayed.

4.81 Immigration Service staff are often unwilling, and sometimes unable, to suspend or delay interviews in order to wait for the legal representative to arrive. This partly reflects the overall context in which staff are working which was discussed in Section 3 of this report, and in particular the need to proceed with an interview as soon as an opportunity presents itself. It also reflects a belief that the legal representative does not have a useful or important role to play and in fact may only delay or disrupt proceedings. Legal representatives who fail to arrive on time only serve to confirm this perception and to downgrade the asylum interview itself through their lack of punctuality.

▶ 'IOs feel annoyed if they can't start the interview because they are waiting for a person to arrive.'

CHIEF IMMIGRATION OFFICER, HEATHROW

▶ 'We can't wait around...we want to get on with it so we tend to be fairly firm about getting on with the interview even if the representative hasn't arrived.'

CHIEF IMMIGRATION OFFICER, HEATHROW

▶ 'We won't delay starting the interview in order that the applicant can have access to a representative. If someone phones in and says I'll be here in x

hours time, we wouldn't delay unnecessarily if we were in a position to interview someone who has just arrived.'

CHIEF IMMIGRATION OFFICER, HEATHROW

4.82 Legal representatives frequently write letters of complaint because they are late and the Immigration Service has refused to delay the interview. Several IOs acknowledged that the refusal to delay an interview in order to wait for a representative to arrive was sometimes hypocritical given that legal representatives are expected to wait for extended periods on many occasions before an interview begins. However it was also pointed out that IOs 'haven't got time to sit around and wait'.

4.83 Concerns about the failure of the Immigration Service to ensure that applicants are represented during asylum interviews are particularly apparent where the applicant has been detained.

One legal representative gave the example of an interview conducted at Gatwick North in May 1998. The firm was on record and was assured by the Immigration Service that they would be contacted if the interview were to take place, but that it was unlikely that the interview would take place over the bank holiday period. In the event a clerk (not the solicitor with conduct) received a telephone call at 9.20am and was informed that the interview was scheduled for 10am at Gatwick on the same day. The clerk requested time to reach the location but the IO telephoned at approximately 10am to state that the interview would go ahead as scheduled without a representative and without an interpreter, despite the client's request for both. The client was informed that the solicitor had given permission for the interview to take place which was not the case. This was the subject of a complaint.

4.84 Ten legal representatives and clerks said that they had been prevented from seeing their client before the interview where he or she had been detained. One respondent commented that 'an attempt [to exclude] was made but immigration "backed down"'. It is recognised however that these are not decisions which are taken by the Immigration Service.

▶ 'In many detention centres the client is brought directly to interview and you are not able to see them before interview.'

▶ 'In most cases, a grudging 25 minutes is permitted – we would normally visit prior to interview. Rochester prison seems to be the worst.'

▶ 'Dover – client just arrived in UK. We were instructed to attend via client's family already in UK. Client told by IO before interview he would be detained therefore was very scared during interview and could not concentrate. We did not know this until took full instructions later.'

▶ *'HMP Rochester – The interview was due to start at 9am. We were told it would start at 9.30 so we arrived at 9.15. The IO was not aware I was attending despite the fact that I had sent a fax (which had been acknowledged) to Dover Surveillance Unit. She wanted to begin straight away and gave me no time to speak to the client first.'*

#### RECOMMENDATION 7

**All asylum applicants should have access to a competent legal representative before the interview. This may need to be provided in the form of a duty solicitor or clearing house scheme. It is essential that legal representation meets the needs of asylum applicants and that it is made available when the information gathering process is initiated.**

**The short fall in the availability of good quality immigration advice should be the concern of both the Home Office and the Lord Chancellor's Department. The Legal Aid Board's proposals to encourage expansion of immigration advice and representation by franchised solicitors should be given support.**

#### Separation of legal representative and asylum applicant

*'Applicants attend for interview voluntarily and may choose to end the interview or leave when they wish. In the event that there is reason to detain the applicant the interviewing officer should ask the applicant to wait in the reception area while they make enquiries.'*

ASYLUM DIRECTORATE INSTRUCTIONS ON INTERVIEWING

- 4.85 A further issue which arises in this context, and which is illustrative of the absence of a good working relationship between legal representatives and the Immigration Service, is the practice of separating an asylum applicant returning for an interview from his or her legal representative prior to the start of the interview, even where they have arrived together at the port.
- 4.86 Separation of the legal representative and asylum applicant is standard practice at Heathrow Terminal 3. This practice may go at least part way towards explaining a comment made by one IO that 'although a lot of staff have a good relationship with some "reps" it seems to be more confrontational here at Terminal 3'.
- 4.87 Chief immigration officers at Heathrow Terminal 3 explained that this practice arises from the fact that the applicant is liable to be detained when they return for their interview. However this does not explain why this practice is specific to Heathrow Terminal 3. It is also contrary to instructions issued by the Asylum Directorate.

4.88 Nearly forty per cent of legal representatives said that they had been separated from their client prior to the interview on at least one occasion. The proportion of clerks who had been separated from their client was higher.

4.89 Some legal representatives and clerks had been given limited explanations for this practice. These included lack of space in the waiting room, 'security' grounds or concerns that the client may abscond. The researcher was given similar explanations by Immigration Service staff.

▶ *'The only reason I have ever been able to wring out of them, is that the client may run away while awaiting the interview. They had no idea when I pointed out the illogicality of this idea.'*

▶ *'When challenged IOs never give a valid reason for separating clients from clerks. It is as if it is a form of intimidation against a client who is almost always suffering from anxiety already.'*

4.90 The separation of the asylum applicant from his or her legal representative (or equally, from family and friends) was described as 'intimidating' and 'unhelpful' by legal representatives and clerks. Several pointed to the negative effect which this practice can have on a client. According to one clerk, 'in one instance this resulted in the client's younger sister (aged 11) being left in the waiting area for applicants all alone while her brother was being interviewed. She was terrified. A friend whom she brought to the second interview to stay with her (the first interview was abandoned halfway through) was not allowed into that waiting area and had to remain in the arrivals hall'.

4.91 Evidence collected during the course of this research also suggests that this practice has a negative effect on the legal representative and the IO, as well as on the relationship between them. Many immigration officers commented that the practice appeared illogical in the case of applicants returning for interview and some were flexible where possible.

4.92 Some legal representatives have objected to this practice and have subsequently been reunited with their client. However where the immigration officer is unwilling to be flexible this can lead to conflict before the interview begins.

#### RECOMMENDATION 8

**Legal representatives should not be separated from their clients prior to or during the substantive asylum interview.**

## Interventions and complaints

- 4.93 Despite the current view of role of the legal representative during the asylum interview, the reality is that some legal representatives intervene during asylum interviews if they feel that they have good cause to do so. This is reflected in the responses from representatives and observations of current practice at ports. It should be noted however that there are variations in whether legal representatives and/or clerks intervene or complain about the conduct of the interview.
- 4.94 During the observation period at ports there were no cases in which a legal representative or clerk attending the substantive asylum interview intervened during the course of the interview to comment on its conduct or raise issues of concern. This is partly a reflection of the current position regarding the role of legal representatives during the interview.
- 4.95 There were no interviews observed where comments were made at the end of the interview on either its conduct or content, even though the legal representative was clearly dissatisfied in two cases. This may be a reflection of the fact that some firms explicitly instruct their clerks not to comment at the end of the interview. It is not known whether a complaint was made subsequent to the interview.
- 4.96 Among asylum applicants who were interviewed for the purpose of this research, four indicated that their legal representative intervened during the course of the interview. One example involved a representative intervening to clarify the difference between two political parties which were being confused by the interviewing officer; 'The interviewing officer told my representative not to intervene. He [the IO] said my representative was not there to answer anything, but was to merely observe.'
- 4.97 A further example of an appropriate intervention which was made by a legal representative during the course of the interview concerned the conduct and attitude of the immigration officer. The representative had requested a break in the hope that this would dissipate the tension, however it made no difference. The applicant commented that 'when he [the representative] realised that I was angry because of the way I had been treated by the immigration officer, he intervened and stopped the interview'.
- 4.98 Legal representatives and clerks were asked whether they had ever had reason to intervene during the course of an interview about the way in which the interview was being conducted (excluding interpretation problems which are specifically addressed in the Section 6 of this report). Eighty six per cent indicated that they had intervened on at least one occasion. Of these almost half had intervened on several separate occasions and a quarter had intervened often. One clerk commented that she intervened in the interview 'all the time...to protest the rubric, to protest the initial question and to allow the client to develop his own narrative'.
- 4.99 There are variety of reasons why legal representatives may intervene during the course of the asylum interview. Many of these reasons reflect the explanations given by both legal representatives and asylum applicants about why the conduct of the interview is less satisfactory where there is no legal representative present.
- 4.100 There were complaints from legal representatives that procedures are not followed properly where the applicant is not represented during the interview.
- ▶ *'In cases where there is no 'rep', the client's recollection of the interview is often at greater odds to the official AIR. Procedures, for example the read-back, are often not followed.'*
  - ▶ *'Clients are rarely (if ever) satisfied all that they have said has been recorded – generally the notes are a summary, sometimes this presents a distorted picture of what was said. The significance of the interview is never fully appreciated by clients not represented at that stage of the process. It is extremely rare to see interview notes relating to unrepresented applicants which show amendments have been made at the client's suggestion. This, in turn, suggests that the opportunity to amend/elaborate following a read through is not realistic in the absence of a representative.'*
- 4.101 The failure to follow correct procedures is also cited as a significant reason for interventions by the legal representative. For example, the legal representative may intervene where a client is distressed, or where a break is required, or where the immigration officer is not taking a verbatim record of the interview.
- 4.102 The attitude and general conduct of the immigration officer is generally considered to be 'more oppressive' by legal representatives and applicants where a legal representative is not present. However the attitude and general conduct of the immigration officer is also a cause of intervention by the legal representative.
- ▶ *'General attitude – not allowing the client to give information which they consider relevant – sometimes the client is said to have said something in a PAQ which they have not.'*
  - ▶ *'Irritation/impatience displayed by interviewing officer.'*
  - ▶ *'Immigration officer throwing papers at client saying that they were forged.'*

- ▶ *'Manner of interviewing of interviewing officer e.g. manifest reluctance to look into matters raised, marked by off-handedness or often indifference.'*
- 4.103 There were concerns that where the applicant is not represented the lines of questioning pursued by the immigration officer may be either insufficiently detailed, irrelevant or aggressive. The applicant may not understand what the immigration officer is looking for and so does not focus his answers; the immigration officer may be unable to obtain full facts because the applicant is not aware of how much information he/she is expected to give or what the immigration officer needs to know.
- ▶ *'I have noted huge differences in the quality of interviews – from quite acceptable to absolutely useless. 'Reps' can obviously have some influence but if the whole focus of questioning is wrong, then it is quite difficult to make much of an impact.'*
- ▶ *'Q and A is not always clear, the answers are not always examined in detail. The interviews are much shorter in length – not as many questions are asked.'*
- ▶ *'The IO often does not ascertain full case history because client not aware of information required.'*
- 4.104 The questions asked during the asylum interview were the principal reason for interventions made by legal representatives attending asylum interviews.
- ▶ *'The client was told to answer only the question, but the interviewer complained when the client did not give information which was not requested!'*
- ▶ *'Misleading questions; misunderstandings of answers leading to false assumptions by interviewer; wrongly recorded replies; failure to ask follow-up questions.'*
- ▶ *'Asking new questions before applicants have completed their answers; indicating answers are considered not relevant and then not recording this; omitting full answers or follow-on questions from the record.'*
- ▶ *'Effectively 'grilling' the client and he was obviously becoming distressed.'*
- ▶ *'IOs not allowing client to speak uninterrupted, aggressive behaviour, failing to write something which the client has said down, clock-watching and pressuring the client to 'get on with it', not allowing interpreter to correct the official interpreter, ridiculously disproportionate time spent on peripheral issues of the case.'*
- 4.105 The response of the immigration officer to these interventions varies considerably depending on the subject of the intervention, how the intervention is made and the attitude and professionalism of the immigration officer involved.
- ▶ *'The response varies. Polite and occasional interventions are usually (though not invariably) accepted, albeit sometimes grudgingly. Queries which go to the heart of the conduct of the interview are often ignored or challenged or taken in bad spirit.'*
- ▶ *'It will depend on the immigration officer. Usually – without problem. Occasionally with reluctance. Sometimes with hostility. Sometimes will refuse to alter but ensure it is noted.'*
- ▶ *'Varies – some resentful of any intervention; a few will welcome a constructive intervention.'*
- 4.106 Some interventions and comments are welcomed by the immigration officer because they are seen as assisting the process of information gathering. However other interventions and comments have been met with hostility.
- ▶ *'Generally in a positive way. Interpretation difficulties and follow-up questions always amenable dealt with. Sometimes the interviewer would insist on dealing with points raised by postponing till the end and presenting them as corrections or addendum.'*
- ▶ *'Client did not give a chronological account of what had happened to him – he seemed to 'jump around' from one incident to another in no particular order and without explanation of how incidents were linked. IO completely confused and asked me if I could clarify. IO was very good about it – because everyone (including both interpreters) were confused, he decided to scrap the first part of the interview and start again. But when he started with a new and clearer question, client provided new information which related to original AIR. IO decided to continue with first AIR and then asked lots of questions to fill in the gaps.'*
- ▶ *'I was told that I could not intervene and that if I had any comments I could make them at the end of the interview.'*
- ▶ *'They generally react badly to intervention. They mostly see it as an attack on their authority and state they are conducting the interview and you are there only as an observer.'*
- 4.107 The worst scenario for all concerned, and in particular for the asylum applicant, is where an intervention results in threats to expel the legal representative. Although attendance at interviews is still granted at the discretion of the Immigration Service, to exclude a legal representative without very good reason would indicate unfairness and could be raised at appeal or proceedings for judicial review. However the evidence gathered during this research suggests that the threat of exclusion remains a very powerful weapon against interventions and complaints being made by the legal representative.
- ▶ *'I have never been excluded but if interviewing officer believes I am interrupting too much, they threaten it.'*

- ▶ *'I interrupted interviews because of bad questioning by the IO and was told that I am an observer and will be excluded if I keep interrupting.'*
  - ▶ *'I have been threatened with exclusion many times, but the situation has resolved itself, sometimes on the intervention of a CIO.'*
- 4.108 A number of legal representatives and clerks indicated that a complaint had been made during the interview about their conduct. In several cases the immigration officer complained because the legal representative or clerk had intervened during the interview. One respondent commented that the immigration officer had 'complained that I was too much of an 'advocate' and had strayed over the border line between representative and observer'. In another case an informal complaint was made that a trainee solicitor 'did not properly control our interpreter when he intervened'.
- 4.109 Legal representatives were asked whether they had ever had reason to make a written complaint about the conduct of a interview following an interview. Perhaps surprisingly in view of the number of interventions which representatives said they had made during the interview, nearly half of the respondents said they had never had reason to make a formal complaint following an interview. Of the remainder, a quarter had complained once and a further quarter on several separate occasions. Two respondents said that they had often made a formal complaint following the interview.
- 4.110 From the responses given in the questionnaires which were completed by legal representatives and clerks, it is clear that there are a number of reasons why formal complaints are not made about the conduct of the interview. This may include a failure by clerks to make the legal representative aware of the need for a complaint: the majority of clerks had never made a recommendation that a formal complaint be made. Several representatives said that they do not make formal complaints about the conduct of the interview but will make the Home Office aware of any dissatisfaction about the conduct of the interview in further representations.
- 4.111 Several legal representatives expressed dissatisfaction with the current procedures for making a complaint and expressed concern that complaints are not taken seriously. The Complaints Audit Committee (1997) has also noted criticism of the complaints procedure itself including:
- the time taken to provide a substantive response to concerns;
  - the nature of the reply;
  - a perceived lack of independence of the system;
- an apparent unwillingness to support the word of the complainant against that of an official.
- 4.112 During the course of this research, several representatives commented that they do not feel that their complaints are properly addressed.
- ▶ *'I've never complained but I wish I had. I always complain as much as I can but feel that no-one will action any complaints.'*
  - ▶ *'Once I complained about rudeness of an IO who challenged my client for holding a piece of paper in his hand which was an aide memoir for the interview (although he was not using it at the time). Several times I complained about interpretation... In the first case, the investigating officer simply denied the incident had taken place. In the other cases usually accepted or re-interview granted without prejudice to the correctness of the complaint! It is usually very hard to get a complaint accepted. The nature of the process of investigation mitigates against fair and open consideration. Most complaints are initially answered with a bland denial and it is necessary to go into extended correspondence to get anywhere. Participants in interviews are rarely investigated, except the interviewing officer, giving a one-sided picture to the investigator. As a result there is usually little incentive to complain. This is not assisted by the lack of clear guidelines which make it hard to establish malpractice by an officer. In one recent case where the interpretation had been very poor and the interviewee had repeatedly expressed dissatisfaction with the interview (this was recorded by the IO) the Complaints Unit wrote back saying nothing was wrong, without having spoken either to the client or to the main subject of the complaint, or the interpreter. After further correspondence, the interview was treated as void and an SCQ issued – but the complaint itself was never accepted and it was claimed this action was taken for entirely separate reasons!'*
- 4.113 Legal representatives who have made formal complaints about the conduct of the interview, highlighted a number of specific issues which have been the focus of their concerns.
- ▶ *'The IO pressurised client into answering questions to which he did not know the answer e.g. the population of Seiks living in Kabul. Client is illiterate and was asked to comment on percentages. Client felt IO distorted his answers. I originally raised my concerns about the conduct of the interview in my written representations after the interview. This was picked up by Terminal 2 and I was asked if I wanted to complain officially. Although on reading the AIR the relevant facts about the substantive claim have been obtained, it was felt that we had a duty to the client and that it was in his best interests to make an official complaint about an interview which was unfair.'*

- ▶ *'The Immigration Service used to insist on interviewing minors but this was eventually conceded.'*
  - ▶ *'Hostile and aggressive behaviour of IOs at Heathrow.'*
  - ▶ *'The IO was very intimidating and refused to allow interpreting errors to be corrected at any stage. He threatened to send interpreter out of the interview on three occasions, failed to ask relevant questions in relation to evidence of scars/torture – told applicant to photograph his scars and send photos to Home Office within five working days. I have made other complaints about rudeness and various allegations of unprofessional conduct by IOs.'*
  - ▶ *'The client was exhausted and in no fit state for on-arrival full interview.'*
  - ▶ *'When the interview was perfunctory or incompetently conducted; and/or standard of interpretation or conduct of interpreter questionable.'*
  - ▶ *'Inadequate interview notes; aggressive or careless handling of interview by IO; problems produced by interpreter.'*
- 4.114 By contrast with complaints made about the general conduct of the asylum interview, more than half of the legal representatives who participated in this research had complained about the linguistic skills and/or conduct of Home Office interpreter on more than one occasion. The reasons for such complaints vary from minor errors in interpretation, poor linguistic skills and in particular a lack of proficiency in English, and/or lack of knowledge about appropriate political terms and expressions, the inappropriateness of the interpreter in terms of the dialect spoken by the applicant, and paraphrasing as opposed to directly interpreting the applicant's responses to questions put by the immigration officer. Complaints have also been made about the attitude and overall conduct of the interpreter including concerns that interpreters have 'taken over' the interview, been aggressive and hostile towards the applicant and have made threatening remarks. In some cases the interpreter has been hostile and defensive to criticism about his or her linguistic skills or conduct during the interview made by the legal representative as a result of concerns expressed by the representative's interpreter.
- 4.115 Written complaints made by legal representatives are met with a variety of responses. This might be a letter from the CIO at the port concerned. Sometimes such complaints are accepted and an apology offered by the Immigration Service. More often however, the comments made by representatives suggest that although the complaint has been noted the Immigration Service does not consider it necessary to take any further action.
- ▶ *'I received a letter from complaints section which said that they had investigated the incident but no action was to be taken.'*
  - ▶ *'The complaints were investigated and the Immigration Service concluded that the IO was only doing his job.'*
  - ▶ *'Complaints are usually responded with by opportunity to make written submissions or re-interview. Complaints about aggressive conduct are never upheld!'*
- 4.116 Some complaints which were described in detail by legal representatives have been the subject of lengthy correspondence with the Immigration Service with each party disputing the other's description of events and the implications for the asylum applicant. These examples suggest that current understanding about how an asylum interview is most appropriately conducted and the roles and responsibilities of the participants remains unresolved.

#### RECOMMENDATION 9

**Following consultation, the Immigration Service should establish procedural guidelines ensuring that interviews are not only carried out fairly but are perceived by applicants to be so. An essential component is the right to representation. Applicants should have the same right to legal advice as provided for under Code of Practice C (in particular paragraph 6) of the Police and Criminal Evidence Act (1984). Representatives should be allowed to assist in clarifying matters at the interview.**

**Agreed guidelines on the conduct of asylum interviews should be developed by concerned parties and should include an agreed code of conduct between legal representatives and the Immigration Service on the purpose of the interview and the roles and responsibilities of each.**

**Provision of training for legal representatives and clerks on best practice in the substantive asylum interview should be provided.**

**An independent complaints procedure should be established. Factsheets should be provided by the Immigration Service advising asylum applicants of their rights to complain and telling them how to make a complaint. Representatives need training in any complaints procedures that exist and how to activate them.**



## SECTION 5

# The purpose of the asylum interview

This section critically examines the purpose of the asylum interview as currently understood by Immigration Service staff, legal representatives and asylum applicants. It is suggested that there is currently no common or mutually agreed understanding of the purpose of the interview and that this gives rise to a perceived conflict between information gathering and credibility testing. This in turn can lead to conflict between the interviewing officer and legal representative. This section examines the usefulness of the semi-structured interview as a method for gathering information about the basis of an applicant's claim for asylum. It is proposed that the same principles should be applied to the asylum interview as are applied to other kinds of research which adopt this method. In this context the legal representative is able to play a positive role and assist in ensuring that a fair, fast and sustainable initial decision is made.

- 5.1 The perception of the purpose of the substantive asylum interview has critical implications for the way in which the interview is conducted and for the relationship between Immigration Service staff and legal representatives. The absence of a consistent and mutually agreed definition of the purpose of the interview is a key theme of this research.
- 5.2 There are currently a number of different and contradictory statements about the purpose of the asylum interview.
- 5.3 The guidance for representatives which has been drafted by the Asylum Directorate and referred to elsewhere in this report (► see Section 1 and figure 2), states that 'the purpose of the asylum interview is to assess the applicant's claim to asylum under the 1951 Convention and 1967 Protocol relating to the Status of Refugees. The interviewing officer will ask questions to establish if the applicant has a well founded fear of persecution and the applicant is expected to answer these questions. If the applicant wishes to add additional information in support of their claim this may be done at the end of the interview'.
- 5.4 According to Asylum Directorate Instructions on Interviewing, the purpose of the interview is to 'clarify the facts of the application; assist in establishing whether a claim is well-founded; determine whether there are other factors e.g. humanitarian or compassionate which should be taken into account when reaching a decision'.
- 5.5 A similar understanding is reflected in the government White Paper; 'The asylum interview is essentially a fact-finding exercise to enable asylum applicants to say in their own words why they fear persecution in their own country.'<sup>36</sup>
- 5.6 Inexplicably, in-country and port applicants are given substantially different explanations about the purpose and conduct of the interview. The leaflet which has been produced by the Asylum Directorate and which is intended for applications made after entry to the UK, gives a lengthy description of the purpose of the asylum interview, including the need to establish full details of the claim at an early stage, acknowledgement that some of the events which will need to be talked about may be painful and embarrassing, and reassurances that these details will be treated in confidence (► figure 18).
- 5.7 By contrast the leaflet which has been produced by the Immigration Service for applications made at a port on arrival in the UK states only that 'the interview is your opportunity to explain why you fear persecution in your home country. *Failure to make a prompt and full disclosure of the reasons for seeking asylum may result in your application being refused*' (emphasis in original). This leaflet is routinely handed out to asylum applicants but is available in English only (► figure 19).
- 5.8 No additional explanation of the purpose of the interview is given to applicants who are interviewed on arrival at ports. At the beginning of the Asylum Interview Record (AIR), the immigration officer states: 'You have asked for

<sup>36</sup> Home Office (July 1998) *Fairer, Faster and Firmer – A Modern Approach to Immigration and Asylum* CM4018, paragraph 8.10

**FIGURE 18****Extract from the IND Asylum Directorate's  
Asylum Applications – a brief guide to procedures in the United Kingdom\*****Part C: Assessing your claim****What happens at my asylum interview?**

**18.** You should read the information in the box below carefully. It will help you understand the purpose of the asylum interview and what you need to do to ensure that you can explain your claim clearly and fully.

**ABOUT YOUR ASYLUM INTERVIEW**

The purpose of your asylum interview is to establish full details of your claim. Although it is not necessary to repeat information already submitted in writing in support of your application, it is important that you explain as clearly and precisely as you can why you fear returning to your home country. You may be asked about the reasons that made you leave your own country and you should give all the information and details relevant to your particular circumstances. You may need to talk about events which are painful and embarrassing for you. These details will be treated in confidence and could be crucial to your case. It is important that you should recall any incidents of persecution, harassment or detention you have suffered in your home country which you think are relevant to your application for asylum. This is true even if you are not asked about such facts directly. If you feel that there are questions that you should have been asked, you should mention them at the end of the interview.

Nothing you say in the interview will be passed back to the authorities in your own country. You should therefore feel free to provide a full and honest account of your experiences.

It is not necessary to give a description of the general political situation in your home country. The people who will consider your application are specially trained for the task and know what the general situation is in your home country. You should therefore concentrate on explaining your own experiences and what you fear will happen to you if you return to your home country.

It is important that you give a true and complete report of your personal experiences which are relevant to your application, and of the dangers you think you would face on your return to your home country. Do not invent anything. If any details in your account are not true, you may harm your application.

**REMEMBER, THE INTERVIEW IS YOUR OPPORTUNITY TO EXPLAIN WHY YOU FEAR PERSECUTION IN YOUR HOME COUNTRY.**

**Will an interpreter be provided?**

**19.** If you do not speak or understand English well, an interpreter will be provided for your asylum interview. If you do not understand the interpreter fully, you must tell the interviewing officer immediately.

**Can I bring someone to help me explain my claim?**

**20.** It is your account that matters. But if you wish to bring a friend or representative with you, they will normally be allowed to observe the interview. They will not, however, be permitted to intervene during the interview. An interview will not normally be re-arranged purely because your representative cannot attend on the given date.

**How will the information I give at the interview be recorded?**

**21.** The interviewing officer will make a written record of the interview. This will be read back to you at the end of the interview to ensure that it is an accurate record of what you have said. If you disagree with any or part of the written record of the interview, or if you wish to add anything, you must tell the interviewing officer who will amend the record accordingly. You will then be asked to sign the written record to confirm that you agree that it is an accurate record of the interview.

**Can I submit additional information in support of my application after the interview?**

**22.** If you have any additional written evidence of the experiences you have suffered in your home country you should bring the documents to the asylum interview and hand them to the interviewing officer if you have not submitted them earlier. If you do not bring them to the interview, you must tell the interviewing officer what documents you intend to submit and then send them to the Asylum Directorate without delay. This information will normally need to reach the Asylum Directorate within 5 working days of your asylum interview.

**23.** It is very important that you put forward all details to support your application at the earliest opportunity. Failure to do so may damage the credibility of your account in general and the weight attached to the late evidence.

\* The 8-page leaflet about after-entry applications includes further information about the procedures for making and determining an asylum application.

**FIGURE 19****Asylum Applications – a guide to procedures in the United Kingdom (Immigration Service)**

The procedures are important because they determine whether you can remain in the United Kingdom as a refugee or whether you will be sent back to your home country or to a third country. *Failure to respond promptly at any stage may result in your application being refused or the loss of any appeal rights.*

**1. Making your application**

You have applied for asylum in the UK. The immigration officer will first establish your identity and nationality. You and any dependants will have your fingerprints and photographs taken. This is routine procedure to prevent fraudulent applications. *Failure to provide fingerprints may lead to a refusal of your application.*

**2. Standard Acknowledgement Letter (SAL)**

If you are given temporary admission to the United Kingdom you may be issued with a SAL. This is an acknowledgement of your application. *It is not a travel document or a document of identity.*

**3. Change of address**

If you are given temporary admission you must not change address without first informing an immigration officer. *Failure to inform the immigration officer of your address may lead to the refusal of your application.*

**4. Travelling abroad**

If you leave the United Kingdom whilst your application is outstanding the application or appeal will be deemed to be withdrawn.

**5. Asylum interview**

Usually an immigration officer will interview you. The interview is your opportunity to explain why you fear persecution in your home country. *Failure to make a prompt and full disclosure of the reasons for seeking asylum may result in your application being refused.*

**6. The asylum decision**

The Asylum Directorate of the Home Office will decide whether or not you will be granted asylum in this country. They may take some time in reaching a decision. The immigration officer will inform you of the decision when it is made.

**7. Appeals**

If you are refused asylum you may, if you wish, appeal to a special adjudicator. Your rights will be fully explained by the immigration officer, who will provide you with the appeal advice forms.

**8. Legal advice**

If you do not have a representative here and are unsure how to obtain legal advice you can contact one of the two following bodies:

The Refugee Legal Centre  
Sussex House  
39–45 Bermondsey Street  
LONDON SE1 3XF  
telephone 0171 827 9090

The Immigration Advisory Service  
2nd floor County House  
190 Great Dover Street  
LONDON SE1 3BY  
telephone 0171 357 6917

The Immigration Advisory Service (IAS) and the Refugee Legal Centre (RLC) are both voluntary organisations, independent of the Government. Other agencies will also provide free advice to asylum seekers, including Law Centres and the Joint Council for the Welfare of Immigrants. An interview will not normally be delayed solely because a legal representative is unable to attend.

asylum in the United Kingdom and I will now ask you questions to establish why you need asylum.'

- 5.9 Despite the differences between existing statements about the purpose of the interview, the above definitions imply that it is an information gathering exercise intended to establish the details of an applicant's claim in order to determine whether he or she is eligible for protection under the 1951 Convention. In practice however there is a focus on assessing and testing the credibility of the information given.
- 5.10 Several asylum applicants who were interviewed during the course of this research indicated that they did not understand the purpose of the interview. Among the remaining respondents, understanding of the purpose of the interview varied considerably between those who understood the purpose of the interview to be the collection of information about their asylum application, and those who thought that the IO would make a decision about their claim.
- 5.11 Several respondents said that the purpose of the interview had not been explained to them. None of these respondents had received legal advice prior to the interview.

## Information gathering vs credibility testing

'While the burden of proof in principle rests with the applicant, the duty to ascertain and evaluate all the relevant facts is shared between the applicant and the examiner. Indeed, in some cases, it may be necessary for the examiner to use all the means at his [or her] disposal to produce all the necessary evidence in support of the application.'

UNHCR 1979, PARAGRAPH 196

- 5.12 There are significant differences of opinion between Immigration Service staff and legal representatives, and also among Immigration Service staff, about the purpose of the asylum interview. These differences affect the way in which such interviews are conducted and have implications for the asylum determination procedure as a whole.
- 5.13 A chief immigration officer commented that 'the purpose of the interview is to collect evidence...as you can see we are just information gathering'. However the majority of Immigration Service staff consider that the purpose of the interview is to test the credibility of the application for asylum.
- ▶ 'The role of the IO is to make an assessment of truthfulness.'
- CHIEF IMMIGRATION OFFICER, HEATHROW
- ▶ 'Our job is assessing credibility...we can therefore offer an opinion on the credibility of asylum

applicants...we can at least suggest one way or the other. The great majority, say 90 to 95 per cent are just not credible.'

CHIEF IMMIGRATION OFFICER, HEATHROW

- ▶ 'Sometimes we will just be looking to tear that person's claim to pieces...that is the IO's job.'
- CHIEF IMMIGRATION OFFICER, HEATHROW
- ▶ 'The IO's job is to establish credibility...the individual IO should decide whether or not someone is having difficulties or making it up as they go along. Any IO worth his salt will know if it's a genuine asylum seeker.'
- CHIEF IMMIGRATION OFFICER, HEATHROW
- 5.14 The perceived need to test the credibility of the applicant is reflected in the current emphasis on conducting interviews immediately on arrival. For this reason some Immigration Service staff prefer to conduct the interview before the applicant can access legal advice and representation.
- ▶ 'If people are arriving at ports then an interview is done as soon as possible once they overcome the turmoil of the flight. That way they can give a spontaneous account. The sooner it can be done the better. Otherwise you are allowing people to think about it...it's better to test the information straight away. This is the opportunity to test the claim. Otherwise legal 'reps' are briefing applicants on what to say.'
- CHIEF IMMIGRATION OFFICER, HEATHROW
- 5.15 By contrast virtually all of the legal representatives who participated in this research consider that the purpose of the interview is to gather information about the basis of an asylum claim. Many complained that the current focus of the interview is often on testing credibility and that this prevents the immigration officer from collecting necessary and relevant information.
- 5.16 It was suggested in Section 3 of this report that there is a tension between the role of Immigration Service staff as decision makers in immigration casework and their role as information gatherers in asylum casework. This tension is reflected in current practice and in frustrations among Immigration Service staff about the decision making process itself. Although many Immigration Service staff acknowledge that it is not their responsibility to make a decision about whether an asylum applicant is in need of protection, there is a belief that day-to-day experience makes them a good judge of whether a claim is credible.
- 5.17 Some Immigration Service staff commented that they did not believe the Asylum Directorate should be making decisions because caseworkers are too far removed from the interviewing process and are unable to assess the credibility of the applicant. Some Immigration Service staff feel that decision makers do not pay enough attention to the information which is collected from the

applicant and that too much attention is paid to general country conditions rather than the details of individual cases; one CIO commented that 'they [the decision makers] don't attach enough weight to the credibility of individual interviews. We are experts in interview techniques and the assessment of credibility'.

- 5.18 The emphasis within the asylum interview on testing credibility is not consistent with current case law. For example in *Kasolo*<sup>37</sup> the Home Office accepted that the substantive asylum interview was an opportunity to provide further information, not an opportunity to 'catch out' the asylum applicant, and the IAT overturned an adjudicator who had relied on the failure to give information earlier. In *Salim*<sup>38</sup> the IAT concluded that where there are discrepancies (for example, between different interview records), 'the appellant should then be given the chance to explain why [there are discrepancies]. That opportunity would be more telling whichever way the responses went when the matter came on appeal'.
- 5.19 In addition to the factors which were discussed in Section 3 regarding the circumstances of the asylum claim and the personal characteristics of the applicant, a decision about whether an application is credible often turns on the amount and consistency of detail given during the substantive asylum interview.

### Detail

- 5.20 Although there are a variety of possible explanations for an applicant's inability or unwillingness to give a detailed account of their experiences, lack of detail is generally seen to undermine the credibility of asylum claim.
- ▶ 'You can tell the legitimate ones, the cases where there are real problems...immediately you can tell from the way they express themselves and the details they can give.'
- IMMIGRATION OFFICER, HEATHROW
- ▶ 'Personally you would have thought that someone would have remembered the date and time someone had held a gun to their head or when they were shot at.'
- CHIEF IMMIGRATION OFFICER, HEATHROW
- ▶ 'It gets very frustrating when they have difficulty even remembering dates. All we can do is say 'you said that date...' and ask for an explanation, but it is difficult to convey this confusion to the decision maker.'
- IMMIGRATION OFFICER, HEATHROW
- 5.21 However there was also evidence that immigration officers sometimes tell applicants not

to go into detail, suggesting instead that such information should be submitted at a later date. This is particularly evident where the IO considers that the information which is being given is general to the country of origin. In some cases the unwillingness to record detail is because the account is disturbing. During the observation at ports an immigration officer who was interviewing an Iranian applicant who had been tortured complained to a CIO about the amount of detail the applicant was providing; 'I can't get rid of this one...he talks like a politician and he keeps going on about what they have done to his testicles...I think he would have got them out to show me if I had given him the chance...'

### Consistency

- 5.22 The UNHCR Handbook states that where discrepancies or inconsistencies arise in the applicant's account of his or her reasons for claiming asylum, these should be clarified by the interviewing officer.

**'While an initial interview should normally suffice to bring an applicant's story to light, it may be necessary for the examiner to clarify any apparent inconsistencies and to resolve any contradictions... and to find an explanation for any misrepresentation or concealment of facts.'**

UNHCR HANDBOOK 1979, PARAGRAPH 199

- 5.23 In addition Asylum Directorate Instructions on Interviewing state that applicants should be 'given every opportunity at interview to put forward the basis of their claim, and to explain any apparent discrepancies'.
- 5.24 It was acknowledged by a chief immigration officer at Heathrow that 'where there are discrepancies the IO should try and clear them up...that's also the role of the CIO because the story might not have been credible'. Evidence from the periods of observation at ports suggests however that often an explanation is not sought and the inconsistency remains.
- 5.25 Several legal representatives commented on the failure of Immigration Service staff to address discrepancies in the account given during the interview. It was suggested that rather than refer back to an earlier answer and query the apparent inconsistency, these answers may be referred to in the Asylum Directorate's refusal letter as unexplained discrepancies demonstrating that the applicant is not in need of protection. Similarly where an applicant has been unwilling or unable to provide detailed information at the time of his or her interview, and/or has been informed that further information can be submitted at a later date, the Home Office may allege that the further details are an exaggeration of the person's claim and suggest that the 'elaborations' cast doubt on the credibility of the initial application.

<sup>37</sup> *Kasolo v SSHD*, IAT 1 April 1996 (13190) unreported

<sup>38</sup> *Salim v SSHD*, IAT 17 April 1996 (13202) unreported

- 5.26 The focus on credibility testing rather than information gathering has led the Refugee Legal Centre (1997) to conclude in their report on the asylum determination process that '[w]hen viewed beside the reliance on inconsistencies, omissions and discrepancies in the refusal letter to disbelieve the applicant, the interview looks more like a process of entrapment than any sort of investigation of the asylum application. An omission becomes ammunition for refusal, rather than a matter to be addressed and dealt with if possible'.<sup>39</sup>
- 5.27 There is also evidence that where the applicant's experiences are similar to those of another applicant this will also undermine the credibility of the application. For example, one immigration officer commented that 'we hear the same thing time and time again...well-rehearsed stories'.
- 5.28 One of the ways in which the credibility of the applicant's claim may be assessed is by reference to information which the Immigration Service holds but of which the applicant is unaware. Whilst this is may be appropriate in some cases, such information should not be allowed to dominate the examination to the detriment of other information relevant to the application being revealed.

#### RECOMMENDATION 10

**It is important that the substantive interview is not cursory and that the applicant is not prevented from providing full details by being encouraged to make further representations or add detail to their application at a later date. It should be explained to the applicant that, under the Immigration Rules, any delay in giving information will be seen as undermining the credibility of the claim. An amendment to the Immigration Rules is needed such that information disclosed subsequent to the interview is given equal weight when the claim is considered.**

### The semi-structured interview

- 5.29 The current differences in understanding of the purpose of the interview stem in significant part from the assumption that information gathering and credibility testing are mutually exclusive and/or incompatible. This is equally applicable to both Immigration Service staff (who view information gathering as a passive process) and legal representatives (who view attempts to clarify inconsistencies and discrepancies as overly aggressive).
- 5.30 The substantive asylum interview used to be based on a pre-defined interview structure with set questions. More recently a semi-structured approach has been adopted. A semi-structured interview is an interview in which some standard questions are used to elicit information. On the basis of the responses which are given further lines of enquiry will then be followed. Following a page of questions to establish personal details, there is now only one question which is routinely asked during the asylum interview: 'What particular event caused you to leave your country?' A series of questions are then asked by the immigration officer which lead on from the response to this question. This is the method through which information about the basis of an application is gathered in the majority of asylum claims.
- 5.31 This approach has considerable potential as a method for gathering information and is one which is widely used by academics and practitioners in a variety of fields. However many of the problems which are currently associated with the conduct of substantive asylum interviews stem from an assumption that semi-structured interviews automatically ensure access to the 'truth' of an applicant's experiences. Such assumptions have been widely criticised within academic critiques of the semi-structured interview as a research method.<sup>40</sup>
- 5.32 Semi-structured interviews cannot be treated as unproblematic 'sources' for the reconstruction of 'real' events and experiences. The process of gathering information for the decision maker through semi-structured interviews currently fails in significant part because it does not consider how the research process itself is affected by those who participate in this process and the relationship between them.
- 5.33 The structure and content of the asylum interview – and therefore the Asylum Interview Record (AIR) – will inevitably reflect the priorities of the researcher (interviewing officer) and the issues and concerns that the researched (applicant) believes to be important, as well as a complex series of interactions between the two.
- 5.34 It cannot be assumed that the substantive asylum interview automatically provides a context in which the applicant will provide all aspects of his or her experiences which are relevant to the claim, in other words, that 'the truth will out'. An asylum applicant may not recall details or specific events which have a direct bearing on a claim because these may not be considered important or relevant by the applicant.
- 5.35 There is an assumption that a genuine refugee will know the details and events which are relevant to the claim. He or she may not know the criteria for determining whether an individual can be protected under the 1951 Convention.

<sup>39</sup> Refugee Legal Centre 1997, 51

<sup>40</sup> See for example, Bulmer (1982), Kirk and Miller (1986), Singleton et al (1988), Marshall and Rossman (1989), Boden and Zimmerman (eds) (1991) and Silverman (1993)

- 5.36 There is no conflict between gathering information and assessing credibility, rather the two are integral to the research process. Although it may appear that a researcher is not being thorough or testing the account given, the reverse is often the case. The same is true of the immigration officer who understands the semi-structured interview as a research method. This can be illustrated through an example of good practice observed by the researcher at Gatwick South. The immigration officer was able to suspend his preconceptions about the applicant (derived from the port file) whilst the interview was being conducted. The immigration officer began by reassuring the applicant and making him feel at ease: although applicants are required to submit to an interview, it is also possible and important to ensure that they are willing and able to be interviewed. This in turn is dependent upon establishing an approach to interviewing which applicants view positively. Where an applicant is willing to talk openly about his or her experiences, the immigration officer generally finds the interview much less frustrating.
- 5.37 Over the course of the interview the immigration officer probed and investigated the account given by the applicant and showed interest in what was being said. The IO did not let the applicant off lightly, neither did he fail to assess the credibility of what the applicant was saying. On the contrary, the strengths and, in particular, the weaknesses of this particular case were only too evident by the end of the interview. On the basis of the information collected during the interview, it would seem more likely that the Home Office would be able to reach a sustainable decision on the application for asylum. The applicant left the interview feeling relaxed and happy that the procedures had been fair and that he had been able to say everything he wanted to say. The IO felt that a good job had been done. This approach is therefore the most appropriate for the immigration officer, legal representative and the asylum applicant.

#### RECOMMENDATION 11

**The semi-structured interview should be understood as a method for gathering information about the basis of a claim and not as a technique for testing the credibility of the application. Training should be provided for immigration officers and legal representatives about how to conduct a semi-structured interview.**

#### Structure and purpose of the interview

- 5.38 Applicants are often explicitly instructed not to give their entire life history and will therefore inevitably reveal selective details depending on what is asked, how it is asked and the circumstances under which it is asked. This will be based on (among other things) an understanding of the purpose of the interview and what is meant by the concept of 'asylum'. An additional factor will include the perception of others involved in the interview, particularly the immigration officer but also the interpreter and legal representative (where present).
- 5.39 The Asylum Interview Record (AIR) imposes the constraints of a narrative form on both the interviewer and the applicant. The interviewing officer, in order to make sense of the account, may attempt to impose coherence and chronological order. The applicant, to the extent that he or she accepts and internalises this order, is forced to re-order and re-present what may be disparate and loosely connected memories in a highly structured form. The Asylum Interview Record (AIR) is therefore a story about people, events and experiences which might equally have been told in other ways.
- 5.40 Despite the preamble to the substantive asylum interview, it is often not clear to the applicant that this is the main opportunity to provide information about why he or she is in need of protection in the UK. This is particularly apparent where the interview is conducted on arrival.
- 5.41 It is important that all those involved in the interview have a common understanding of the purpose of the interview and how it should be conducted, as well as its status in terms of the overall decision making process. It is also critical that the applicant is advised as to the meaning of the Convention and the general circumstances under which they might expect protection. Only under these circumstances (and even then not in all cases) will there be any semblance of a 'fixed point' from which to understand whether the applicant's experiences are both deserving of protection and credible. This can only be achieved if responsibility for giving such advice is given to the applicant's representative.
- 5.42 The UNHCR Training Module on Interviewing Applicants for Refugee Status states that prior to the interview commencing, applicants should be given 'the applicable refugee definition' and 'the procedures followed with respect to determination of refugee status'.<sup>41</sup> This should be done in advance in written form or orally at the start of an interview.
- 5.43 Concerns were raised during this research about the initial information gathering question which is asked of applicants: 'What particular event caused you to leave your country?' For the following

<sup>41</sup> UNHCR Training Module on Interviewing Applicants for Refugee Status 1995, 14

reasons this may not be an adequate or appropriate question to ask in order to elicit full details of an asylum claim:

- the applicant may not have fled because of a single event: for example, persecution may take place in a context of unrest, discrimination and repression, or the applicant may have had a history of opposition to the government, political or other views as a consequence of which he or she has been persecuted;
- this question does not allow the applicant to give a chronological account of how and why his or her problems began and how these difficulties increased to the point at which they feared or suffered an act of persecution;
- it invites the applicant to recite the last event first or only recount one of many events that may have occurred. Vital information may therefore be missed;
- it presumes that the applicant fled after persecution and takes no account of any fear of impending or future events;
- it is vague and leaves everything to the applicant who, unless he or she is represented, will not realise what is or is not important.

#### **RECOMMENDATION 12**

**The purpose of the interview is to gather information about the claim for asylum. This purpose should be explained to the applicant in advance of the interview, as well at the commencement of the interview. Any information which is produced about the purpose of the interview and procedures for asylum determination should be provided in writing in the main languages spoken by asylum applicants and explained orally in a language the applicant understands.**

**An asylum interview should take place in an informed manner. Both the interviewer and the applicant should be properly prepared and the applicant should be fully aware of the purpose of the interview, the types of questions to be asked and the information required.**

**There should be a right to receive legal advice and representation prior to and during the interview. Applicants should be provided with an opportunity to seek such advice before the interview begins.**

**The interview should begin with a request for information from an immigration officer to an applicant, for example: 'Please explain what has happened to make you fear going back to your country.'**

#### **Relationship between the interviewer and the applicant**

- 5.44 The quality of the information revealed during the asylum interview reflects in part the relationship between the immigration officer and applicant.
- 5.45 There is an assumption in current policy and practice that the interviewing officer is neutral and that the applicant can give a straight-forward and 'truthful' account of his or her experiences. It was suggested in Section 3 of this report that before the interview even begins, the immigration officer may have formed an opinion as to whether the applicant is in need of protection on the basis of the circumstances under which the claim was made and his or her personal characteristics.
- 5.46 In any interaction between two (or more) people, assumptions are made based on various aspects of appearance and presentation as well as the circumstances under which the interaction occurs. This is a feature of our everyday interactions with the people with whom we work and socialise. These relationships also exist in the asylum interview and are reflected in the ways in which the various participants in the interview (the applicant, immigration officer and legal representative) interact with one another.
- 5.47 In addition, a power relationship inevitably exists which is skewed in favour of the immigration officer. The immigration officer is not simply a straightforward receptacle for the views of others; by definition he or she is in a position of authority. The evidence collected during the course of this research, including during the consultation process, suggests that many immigration officers are unaware of this power relationship and the effects on the applicant.
- 5.48 Recognition that interviewing is an interactive process is further complicated by the use of an interpreter. Although this is not a central concern of this research, the conduct and role of the interpreter and the implications for the information gathering process are examined in more detail in Section 6 of this report.
- 5.49 Mutual trust and a rapport between the immigration officer and the asylum applicant is absolutely critical in order that the semi-structured interview can be an appropriate and useful research technique. Where a relationship of mutual trust is not established, the prospects for a full and conclusive information gathering process are particularly dismal. Such trust was not generally apparent during the observation at ports.
- 5.50 It was noted in Section 2 of this report that asylum applicants may lack confidence in the procedures for asylum determination and may be fearful or distrustful of the authorities. These fears may be exacerbated where the applicant has been

physically restrained by Immigration Service staff before the claim was made. This was observed by the researcher.

- 5.51 Many respondents felt that they had not given a full and clear account of their experiences during the asylum interview because of trauma, anxiety and nervousness. Several respondents said that because they had been interviewed immediately upon their arrival they had been unable to organise their thoughts sufficiently prior to the substantive interview.
- 5.52 The implications of this situation for an applicant's ability to make a full and open disclosure, without prior notice, about issues which are likely to be of a very sensitive nature, have been noted elsewhere.<sup>42</sup> It is also reflected in comments made by asylum applicants who were interviewed for the purpose of this research.
- ▶ *'I felt I could explain everything but I did not feel very confident. I don't think that I replied to the questions very well.'*  
COLOMBIAN ASYLUM APPLICANT
  - ▶ *'I did not feel free to come out with everything I wanted to say.'*  
GHANAIAN ASYLUM APPLICANT
  - ▶ *'It was a time full of anxiety. I found it difficult to concentrate. I knew that this was my only chance and that made me nervous.'*  
KURDISH ASYLUM APPLICANT
- 5.53 The conduct and attitude of the Interviewing Officer is critical in establishing trust and rapport. This process begins with the initial introduction and explanation about what will happen during the asylum interview.
- 5.54 Asylum Directorate Instructions (ADIs) outline procedures to be followed prior to the substantive asylum interview. The purpose of the interview should be explained to the applicant and persons in the interview room should be identified and their role during the interview explained. The applicant should also be asked if they are comfortable, fit and ready to be interviewed, and should be reassured about the confidentiality of any information disclosed.
- 5.55 The measures set out in the ADIs could potentially go some way towards establishing mutual trust between the immigration officer and the applicant. However the observation conducted at ports suggested that these procedures, if applicable, are not being adhered to routinely. The preamble to the substantive interview which is conducted at ports is much briefer than that recommended in the ADIs. According to one immigration officer, the aim of the preamble at

## FIGURE 20

### Preamble to the asylum interview at ports

*'I am an immigration officer. You have asked for asylum in the United Kingdom and I will now ask you questions to establish why you need asylum. I will write down what you tell me and this record will be passed to officers in the Asylum Directorate of the Home Office.'*

Officers in the Home Office's Asylum Directorate will decide whether you should be given asylum in the United Kingdom. These officers know about what is happening in your country. They may also make enquiries to see whether another country is responsible for deciding whether you should be granted asylum. If they decide that your claim should be decided in another country, they may refuse your application without giving it full consideration. You may then be sent to this other country.

You do not have to leave the United Kingdom while the Asylum Directorate is considering your application and you will be informed of the decision as soon as it is made.

Information you give us will be treated in confidence, but may be disclosed to other government departments and agencies, local authorities and international organisations to enable them to carry out their functions. Information may also be disclosed in confidence to the asylum authorities of other countries which may have responsibility for considering your claim.

At the end of the interview I will give you a copy of the notes I have taken. If at any time you do not understand you must tell me immediately.'

the beginning of the AIR 'is to try and put the applicant at ease as much as possible'. The current wording of the preamble, particularly the lack of reassurance about the confidentiality of information disclosed during the interview, means that it may actually have the opposite effect (▶ figure 20).

- 5.56 Even where an applicant perceives the immigration officer to be neutral and trustworthy, building and maintaining rapport during an interview is a complex task. There are some obvious techniques which might be employed such as beginning with innocuous topics and introducing more sensitive topics in an unthreatening way.

## RECOMMENDATION 13

**The preamble to the interview should be less threatening. Interviewing officers should be aware that any indication that an application may not be treated as confidential is likely to hinder seriously the applicant's willingness to provide full details of their claim.**

<sup>42</sup> See for example ARC (1996b), Refugee Council (1996), Justice, ILPA and ARC (1997)

### Differences and similarities between the interviewer and the applicant

- 5.57 The personal characteristics of the interviewing officer including his or her gender, age, marital status, race, children, educational background, length of time in the Service, past experiences and recent experiences, will influence the way in which the interview is conducted and, in particular, the relationship with the applicant.
- 5.58 Racial, class and gender differences and similarities enter into the consciousness of individuals and have implications for the way in which the interview is conducted. Both immigration officer and applicant position themselves and each other, and this affects their interaction. The asylum applicant may be inhibited from or unwilling to share his or her experiences with the immigration officer as a result of this positionality. This is particularly apparent when sensitive issues are involved in the claim.
- 5.59 Differences and similarities between the immigration officer and the applicant invariably have an impact on the information gathering process. Whilst this impact is not necessarily negative it always exists, and in some cases can be responded to positively, for example through the provision of female immigration officers and interpreters where appropriate.
- 5.60 Eight applicants who were interviewed for the purposes of this research indicated that the sex of the interviewing officer had affected their ability and willingness to discuss their experiences. Six of the applicants were female and two were male. An Iranian applicant commented that 'the person who interviewed me was a woman so I was able to discuss certain issues with her'. A Kurdish woman said that 'I felt more relaxed to be interviewed by a female immigration officer'.
- 5.61 The ADIs recommend that a female immigration officer should always attend an interview with a female applicant to avoid allegations of misconduct at a later date. In practice whether a female applicant is interviewed by, or in the presence of, a female immigration officer will be largely dependent on whether a female immigration officer takes responsibility for the case whilst on duty at passport control.
- 5.62 For pre-scheduled interviews the provision of female or male interviewing officers (as appropriate) is less of a problem than might be anticipated because of the high proportion of women IOs within the Immigration Service.
- *'If we know it's going to be a sensitive interview because at the initial interview she has mentioned something like rape, then we wouldn't ask a male IO. It only happens occasionally but there are always female IOs. And the 'rep' can get in touch in advance so we can arrange the allocation of a suitable officer...it's not a problem.'*
- CHIEF IMMIGRATION OFFICER, HEATHROW
- 5.63 However it should not be assumed that female immigration officers are automatically more sensitive or understanding of other women's experiences. A female Colombian applicant commented that 'the immigration officer was a woman but she seemed intent on trying to find a lie amongst the words I was saying, trying to show that I was contradicting myself'.
- 5.64 It is important not to assume that where a female interviewing officer is provided women will necessarily find it easy to describe their experiences of persecution. Women from societies where, for example, the preservation of virginity or marital dignity is the cultural norm, may be reluctant to disclose certain information relevant to their asylum claim or that of other members of their family. Women do not necessarily understand the importance of disclosing their experiences, particularly those of sexual violence or abuse. There may be good reason for this, which can range from the fact that it is very hard to do, to the fear that her experiences may become known to others and/or lead to her being ostracised from her family and/or community.

#### RECOMMENDATION 14

**The Immigration Service should adopt the *Gender Guidelines for the Determination of Asylum Claims in the UK* which have been produced by the Refugee Women's Legal Group. The *Gender Guidelines* suggest ways in which the asylum determination process, including the substantive interview, can be made more responsive to the experiences of women applicants. Guidelines for the determination of claims made by unaccompanied minors should also be developed in consultation with relevant organisations and agencies.**

#### The relationship between the interviewer and the legal representative

- 5.65 Where the semi-structured asylum interview is conceptualised as a research method designed to gather information about individual asylum applicants' experiences and the basis of their claim for asylum in the UK, the positive role which can be played by a legal representative becomes apparent.
- 5.66 Legal representation and advice can improve the information gathering process because it ensures that asylum applicants present their experiences in ways which are relevant to the criteria for determination, and ensures that relevant information is collected at an early stage in the decision making process. Legal representatives are

able to explain to the applicant the purpose of the interview as well as its format.

- 5.67 The presence of a legal representative gives applicants confidence and therefore renders more likely the development of the mutual trust and rapport which is crucial to the information gathering process. In this context it is important that the roles and responsibilities of those who participate in the interview are clarified, otherwise there is a situation of unequal power in which the immigration officer can, for example, expel the legal representative from the interview altogether or make threats to do so.
- 5.68 The legal representative is able to make the Immigration Service aware, in advance of the asylum interview, of any specific personal characteristics of the applicant which might affect trust, confidence and rapport, for example, where a female immigration officer and interpreter would be appropriate to encourage the disclosure of sensitive information.
- 5.69 Understanding the interview in this way also explains why conflicts between the interviewing officer and legal representative can sometimes arise. For example, problems often arise during the interview because the legal representative is already aware of the basis of the applicant's claim and is concerned that appropriate and meaningful questions are asked. Where the immigration officer is required to establish the narrative without any prior information about the basis of the claim, the questions which are asked may appear to be, and often are, inappropriate.

#### RECOMMENDATION 15

**All asylum applicants should have a right to legal advice and representation prior to and during the asylum interview. This right should be explained when the claim is made.**

**All those involved in the interview should have the same information about the purpose of the interview and their role within it. A protocol addressing these aspects should be produced jointly by the Immigration Service and legal representatives through a process of consultation and discussion.**

**The relationship between the immigration officer, legal representative and applicant could be greatly improved by ensuring that the basis of the claim is known before the interview begins. A written statement submitted in advance of the interview, and read by the immigration officer before the interview begins, would enhance the information gathering process and in turn improve the quality of the information available for the decision maker.**

**Immigration officers are capable of appreciating a more nuanced understanding of the asylum interview and should be made more aware of the importance of both the asylum interview itself and their role in information-gathering. This is particularly important because of the status given to the material collected during the asylum interview in the course of the determination process itself.**

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## SECTION 6

# The conduct of the asylum interview

Throughout this report it has been suggested that the conduct of the interview is strongly influenced by: the nationality of the asylum applicant; the model of a genuine refugee; and the port at which the claim is made. This section examines the implications of these issues for the actual conduct and content of the substantive asylum interview including: the circumstances in which the interview is conducted; the length of the interview and provision of breaks; the appropriateness of the questions asked; and the record of the interview. This section also provides some evidence and analysis of both the linguistic skills and role and conduct of the interpreter during the substantive interview where this is relevant to the conduct of the interview and/or the relationship between the immigration officer and legal representative.

- 6.1 Legal representatives and clerks were asked to give a general assessment of the extent to which they were satisfied with the conduct of the asylum interview. The average level of satisfaction with the conduct of the asylum interview was 4.5 on a scale of one to ten; in other words, slightly less than satisfied. Legal representatives were also asked to give an indication of the extent to which they were satisfied with specific aspects of the asylum interview conducted by the Immigration Service and Asylum Directorate (► *figure 21*).
- 6.2 Nearly three quarters of asylum applicants who were interviewed for the purposes of this research were satisfied with the overall conduct and approach of the interviewing officer during the interview: 6 on a scale of one to ten. The remainder were not and many commented at length about this. Applicants who have yet to receive a decision on their application for asylum tend to be more satisfied with the way in which the interview has been conducted than those who have received a decision, particularly where this is negative (► *figure 22*).
- 6.3 A third of respondents did not feel that they were fully able to outline their experiences during the asylum interview. Of these, more than half did not have legal advice and representation prior to or during the interview.
- 6.4 A detailed analysis of the responses submitted by legal representatives, clerks and asylum applicants indicates two principal areas of concern regarding the conduct of the interview which are addressed in this section of the report: firstly, the attitude and conduct of the interviewing officer; and secondly, the focus on testing credibility as opposed to gathering information and the implications of this for the questions which are asked.
- 6.5 The attitude and conduct of the interviewing officer was a recurring theme in comments made by both legal representatives and asylum applicants, not least because of the impact which this can have on the applicant's ability and willingness to explain the basis of his or her asylum claim. For example, a Colombian asylum applicant commented that 'because the officer seemed so angry, I got tangled up and confused about when events had happened. I did have proof with me but I didn't put across my case very well!'
- *'She was very severe. She did not shout but seemed to be trying to intimidate me with the barrage of repeated questions.'*  
COLOMBIAN ASYLUM APPLICANT
- *'The interviewing officer was keeping on saying that I should answer specific questions put to me. I did not feel free to bring in all the relevant facts.'*  
IRANIAN ASYLUM APPLICANT
- *'I was very much rushed, I did not have a chance to correct myself. My explanation was ignored in some cases.'*  
IRANIAN ASYLUM APPLICANT
- 6.6 Asylum Directorate Instructions (ADIs) state that the immigration officer 'should be sympathetic and obviously impartial with everyone'.

**FIGURE 21****Conduct of the asylum interview (legal representatives)**

Legal representatives who responded to the questionnaire were asked to give a general assessment of the extent to which they were satisfied with current practice on a scale of 1 to 10

1–4 not satisfied

5–7 satisfied

8–10 very satisfied

	Asylum Directorate	Immigration Service	Average
Information given to the applicant by the interviewing officer about the purpose of the interview	5.51	4.88	5.20
Checks made by the interviewing officer to ensure that the applicant is physically and emotionally able to proceed with the interview	4.4	4.18	4.29
Relationship between the interviewing officer and the representative/clerk	4.97	4.66	4.82
Relationship between the interviewing officer and interpreter(s)	5.14	5.16	5.15
Attitude of the interviewing officer towards the applicant including tone and body language	4.03	3.92	3.98
Awareness of, and responses to, issues of cultural difference	3.13	2.95	3.04
Provision of male/female interviewing officer (as appropriate) where requested or necessary to enable the applicant to proceed	4.67	4.82	4.75
Willingness to reschedule the interview if the applicant indicates s/he is unable to proceed	4.37	4.58	4.48
Provision of breaks for refreshment and rest	4.86	4.80	4.83
Familiarity of interviewing officer with relevant materials about a specific case	4.51	3.77	4.14
Knowledge of interviewing officer about the country from which the applicant originates	4.45	3.59	4.02
Ability/willingness of the interviewing officer to ask appropriate questions	4.12	3.90	4.01
Ability/willingness of the interviewing officer to ask follow-up questions	3.72	3.52	3.62
Ability/willingness of the interviewing officer to allow the applicant to speak without interruption	3.84	3.90	3.87
Information given to the applicant about the purpose of the 'read-back'	3.93	3.90	3.97
Quality of any 'read-back' given and record made of additional information/changes	4.47	4.36	4.42
<b>Average</b>	<b>4.39</b>	<b>4.18</b>	<b>4.28</b>

**'The manner of interviewing officers should be professional – neither excessively formal nor over-familiar. In particular, nothing should be said or done which might invite criticism which could be damaging to maintaining any decision reached in the case. Interviewing officers should be sympathetic and understanding of the feelings of the applicant, for whom the interview and subsequent decision will be of great importance. However, they must also be prepared to probe or, if necessary, challenge what the applicant says.'**

ASYLUM DIRECTORATE INSTRUCTIONS ON INTERVIEWING

6.7 This approach was not always evident during the periods of observation of asylum interviews at ports. The attitude and conduct of the

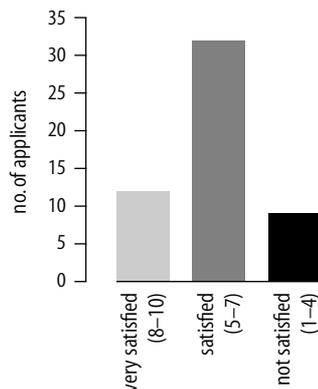
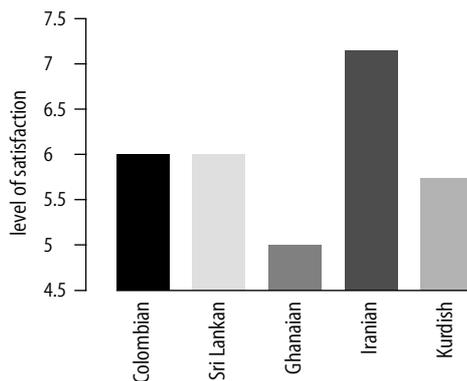
interviewing officer varies considerably. Whilst some IOs are courteous and try to make the applicant feel as comfortable as possible, others are abrupt and curt and provide little or no reassurance.

6.8 The focus on testing credibility rather than gathering information has significant implications for the overall conduct of the interview and in particular for the appropriateness of the questions asked during the interview. Many asylum applicants indicated that this focus had prevented them from fully outlining their experiences and the basis of their application for asylum in the UK. One Colombian respondent commented that she felt able to fully explain 'but only because I insisted. When I was asked if I had anything to add

**FIGURE 22****Conduct of the asylum interview  
(asylum applicants)**

Asylum applicants who were interviewed during the course of this research were asked to give a general assessment of the extent to which they were satisfied with current practice on a scale of 1 to 10

- 1–4 not satisfied  
5–7 satisfied  
8–10 very satisfied

**Overall****By nationality**

I had a lot to say. Before this point in the interview I had just been asked about dates, dates, dates. Even at this stage when I was describing the death of my colleagues, other journalists, she just interrupted demanding exact dates. I can't be sure I gave the exact dates'. Other respondents made similar comments.

- ▶ *'I feel I did not explain everything. When I began to explain my case the officer after a few minutes stopped me and started to fire questions at me. Instead of letting me explain uninterrupted, I was constantly stopped.'*

COLOMBIAN ASYLUM APPLICANT

- ▶ *'I was asked to answer the questions put to me. I felt appropriate questions were not asked.'*

IRANIAN ASYLUM APPLICANT

- ▶ *'Although she asked some questions this did not lead me to answer questions which outlined my experiences.'*

GHANAIAN ASYLUM APPLICANT

- ▶ *'He asked me to be very brief.'*

KURDISH ASYLUM APPLICANT

- 6.9 It was suggested in Section 5 of this report that the current structure of the asylum interview is unhelpful in this respect because it does not enable the applicant to give a chronological account of his or her experiences.
- 6.10 The current deficiencies in the information gathering process which are highlighted in this section can result in lengthy and costly arguments over what took place during the interview and cause considerable delay to the decision making process.
- 6.11 A principal focus of this research has been on whether the information gathered during the substantive asylum interview is of sufficient quality and quantity to enable a fast, fair and efficient decision to be made about an asylum claim. An important aspect of the questionnaire completed by legal representatives, clerks and asylum applicants was the extent to which the asylum interview provides an appropriate method for information gathering in this context. This was also a dominant theme during discussions with Immigration Service staff at all levels and inevitably informed the observation which was undertaken at ports.
- 6.12 The current conduct of the asylum interview reflects a perceived tension between information gathering and credibility testing by both Immigration Service staff and legal representatives. Immigration officers generally have a very negative perception of the asylum interview and usually enter it assuming that the applicant does not have a well-founded fear of persecution. This inevitably has an impact on the way in which interviewing officers approach the asylum interview, their attitude towards the asylum applicant, and their willingness and ability to ask appropriate questions. This has been discussed elsewhere in this report (▶ Section 3).
- 6.13 This problem is reinforced by what several chief immigration officers described as an on-going and pervasive tendency within the Immigration Service to marginalise asylum work and denigrate its importance. Not only has a low priority been assigned to substantive asylum interviews relative to other duties, but there has been a lack of appropriate training. Immigration officers who participated in this research complained that they felt ill-prepared and not sufficiently trained to carry out asylum interviews. Several were also aware that it is often difficult to ask pertinent or appropriate questions about the applicant's experiences when they know little or nothing

about the country of origin and circumstances from which the applicant claims to have fled. This is exacerbated in some cases where the immigration officer does not even have an opportunity to look at the file before conducting the interview.

## Context and circumstances of the interview

- 6.14 The circumstances in which the asylum interview is conducted include the timing of the interview and the consequences of delay, and the general facilities at ports. For the applicant, any one of these may have a deleterious effect on the conduct of the interview. Delay, poor timing or claustrophobic conditions can inhibit an applicant from fully presenting his or her claim.
- 6.15 Concerns about the circumstances of the interview are sometimes raised during the course of an appeal: some circumstances may be seen as making a review of the decision appropriate; others may be considered to be irrelevant.

### The effect of delays

- 6.16 The extent of delays experienced by asylum applicants at ports is dependent upon a number of factors, some of which were discussed in Section 3 of this report. These include pressures on the arrivals control, the extent and complexity of new immigration and asylum casework, and the point in the shift system at which the passenger arrives and/or claims asylum. There is a preference for taking on a case at the beginning of the shift in order that it can be concluded by the end of the shift. This is not always possible and may be dependent upon a number of factors including pressures on the Port Medical Inspection Unit (PMI) and the availability of interpreters.

▶ *'Sometimes it's difficult to get all the case assembled.'*

CHIEF IMMIGRATION OFFICER, HEATHROW

▶ *'It's very much a balancing act...we have to balance delays to the applicant with delays to the control.'*

CHIEF IMMIGRATION OFFICER, HEATHROW

▶ *'We have to choose between presumably genuine passengers as against those coming with some sort of a problem...in this situation we will always deal with the passengers. I don't think we can be expected to take someone off the floor to deal with [the case].'*

CHIEF IMMIGRATION OFFICER, HEATHROW

▶ *'Asylum interviews are not our priority...our priority has to be with standing passengers...asylum seekers are just a microcosm of the passengers we deal with.'*

CHIEF IMMIGRATION OFFICER, GATWICK

- 6.17 Competing pressures on Immigration Service staff and resources can lead to considerable delays for asylum applicants. Little, if any, explanation is given to passengers about such delay. In some cases asylum applicants are literally 'forgotten about'. For example a CIO at Heathrow Terminal 3 gave the example of a passenger who had arrived at 7am and was 'discovered' still waiting for his case to be processed at 7pm. An IO responsible for co-ordinating the Secondary Examination Area (SEA) admitted that staff were often unable to deal with the number of arrivals and would 'occasionally end up with a pile of passports at midnight'.

- 6.18 Many of the complaints about the waiting area which were made by asylum applicants stemmed from, or reflected, the extended periods that respondents had to wait for their interview to begin. This was combined with a lack of effective communication about the situation which exacerbated anxieties and stress.

▶ *'We felt totally lost. No one explained anything to us. From morning until four in the afternoon we were to sit in a room and wait for an officer to become available.'*

IRANIAN ASYLUM APPLICANT INTERVIEWED AT HEATHROW

▶ *'The feeling was cold and the environment was not humane. I was left alone and was treated as a criminal. It was very unpleasant in terms of a feeling of being rejected.'*

IRANIAN ASYLUM APPLICANT INTERVIEWED AT HEATHROW

▶ *'The waiting area was bad because during the waiting time I did not know what was going on and I was very frightened.'*

KURDISH ASYLUM APPLICANT INTERVIEWED AT DOVER

- 6.19 Where an applicant returns for a substantive asylum interview with a legal representative, lack of communication can be a source of considerable tension between the legal representative and the immigration officer.

- 6.20 This problem is exacerbated where the asylum applicant and legal representative are separated prior to the interview beginning. This is standard practice at Heathrow Terminal 3 and was discussed in Section 4 of this report. One asylum applicant was particularly anxious that he had been separated from his representative when he returned for his substantive interview and commented that 'before the interview the immigration authorities did not want me to sit with my legal representative, which first upset me'. The atmosphere of mistrust this causes was commented on by many representatives.

- 6.21 The availability of refreshments is limited in most cases. There was some evidence that where applicants are offered refreshments they may be declined because of uncertainty as to the start of the interview and how much longer they will be required to wait.

- 6.22 There is an acknowledgement amongst Immigration Service staff that the current situation in terms of delay and extended periods of waiting is unacceptable and that there is a need for better communication with legal representatives about both the cause and extent of such delays.

#### RECOMMENDATION 16

**The practice of conducting substantive asylum interviews on arrival has various consequences. One of these is delays for applicants. This practice should be discontinued. Whilst this practice continues, newly arrived applicants should be informed about the application process and the reasons why delay might occur should be explained in the applicant's own language.**

**There should also be better information provided to returning applicants and their legal representatives, especially regarding delays.**

**At the time when refreshments are offered or provided, applicants should be made aware of any anticipated delay before their case is to be processed and/or they are to be interviewed.**

#### Length of the interview and provision of breaks

- 6.23 Current procedures emphasise speed and the processing of large numbers of applicants in very short time periods. This is combined with increasing pressures on Immigration Service staff and resources which were discussed in Section 3 of this report. In this context there is concern that substantive asylum interviews conducted on arrival at ports will invariably be shorter, less detailed and, ultimately, less effective because a full examination has not been carried out.<sup>43</sup>
- 6.24 The evidence collected during the course of this research suggests that Standard Procedures which were previously Short Procedures tend to be equated with short interviews by Immigration Service staff. For example, when an immigration officer at Heathrow was asked how long an interview with a Lithuanian national had taken, he replied 'only 20 minutes because it was an SP'. Another commented that 'although strictly speaking there are no time limits, you wouldn't expect an SP with a Turkish-Cypriot or a Lithuanian to last more than two hours'. A chief immigration officer at Heathrow Terminal 3 said that 'Short Procedure interviews are better for us because it reduces our interview times'.

**FIGURE 23**

#### Length of the interview

length of interview	no. of respondents	%
less than 1 hour	3	5.77
1–2 hours	19	36.54
2–3 hours	16	30.77
3–4 hours	10	19.23
more than 4 hours	4	7.69
<b>total</b>	<b>52</b>	<b>100.00</b>

- 6.25 The length of the substantive interview as reported by asylum applicants varied considerably from less than one hour to more than four hours (► figure 23).
- 6.26 Legal representatives sometimes complain about the brevity of the interview at the time and about the failure of the immigration officer to investigate important aspects of the claim. Immigration officers generally suggest that further information should be submitted at a later date.
- *'There have been several occasions where officers have stopped the client and too much information was being provided. If they wanted to supply more detail then they should get the solicitor to do representations later. Also several times clients have been told 'these interviews are supposed to take 1½–2 hours so keep it brief.'*
  - *'It seems IOs wish interviews to be completed as quickly as possible.'*
- 6.27 Nearly three quarters of asylum applicants who were interviewed for the purpose of this research felt that they were given sufficient breaks for refreshment and rest during the interview. A Colombian respondent commented that 'we broke for lunch which I thought was very good and thoughtful'. A Kurdish respondent said that 'it was not a very long interview, I was asked if I needed a break but I did not need a break'. The remaining respondents did not feel that they were given sufficient breaks for refreshment and rest during the interview. In one case the substantive interview lasted more than four hours and took place immediately upon arrival. The applicant commented that 'I was not given any breaks. I had not eaten for ages and was hungry. I think I was offered some water during the interview'.
- 6.28 One respondent said that he felt unable to request a break even though he needed to go to the toilet: 'The interview was long and I felt exhausted by all the questioning. I was also desperate to go to the toilet and was uncomfortable for the first two hours. I felt embarrassed to ask if I could go to the bathroom but finally I was fidgeting during the interview. I thought the immigration officer thought I was getting nervous with all the questions because I was lying. I was just needing the bathroom. Eventually I just asked if I could go'.

<sup>43</sup> See for example ARC (1996b) and Refugee Legal Centre (1997)

- 6.29 Some respondents had declined the refreshments and breaks which were offered to them because they did not realise how long the interview would take.
- 6.30 There was evidence that taking a break for refreshment and rest is sometimes beneficial to the overall conduct of the interview and that legal representatives may suggest one when there has been a breakdown of communication between the immigration officer and the applicant. However this is not always a successful strategy. One respondent commented that ‘we had problems with her attitude then she gave us a break to discuss this problem. When she returned after the break, she was the same which meant that I could not continue.’

**RECOMMENDATION 17**

**It is not possible to define an appropriate length of an interview. The interview should provide an applicant with sufficient time to put forward all the relevant aspects of his or her claim. Where this is not possible within three hours, a further interview should be conducted at a later date.**

**A break is of benefit for all participants in the interview, including the immigration officer, for reasons of concentration, coping with distress and physical well-being. Applicants should be informed of the right to a break during the interview. This offer should be meaningful and fully explained.**

**Facilities at ports**

- 6.31 There are significant differences between ports in terms of the overall context in which the substantive interview is conducted and the particular pressures which each port experiences. There are also significant differences between ports (and even between terminals within one port) in the environment in which the interview is conducted and the facilities which are available.
- 6.32 Many asylum applicants indicated that they were satisfied with, or oblivious to, the physical environment at the location in which they were interviewed. Those who considered their interview to have been well conducted were generally less critical of various aspects of the physical environment in which they were interviewed.

▶ ‘I did not mind where they interviewed me. I had seen worse than this in Iran. It was pleasant to sit while they ask you questions. They also respect you.’  
IRANIAN ASYLUM APPLICANT INTERVIEWED AT HEATHROW

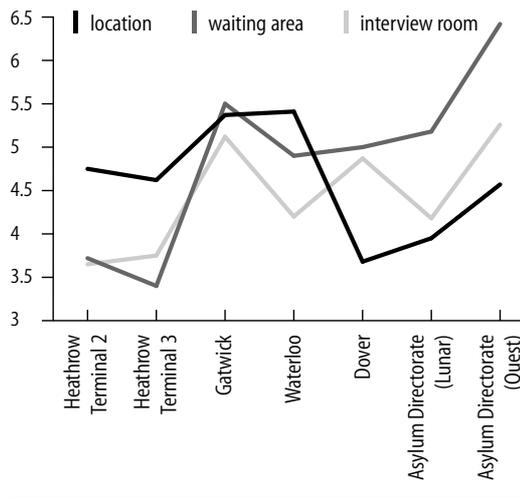
▶ ‘It was a pleasant environment. I was not feeling well and they constantly offered me a break after every half an hour. The privacy was okay.’  
IRANIAN ASYLUM APPLICANT INTERVIEWED AT HEATHROW

**FIGURE 24**

**Assessment of the physical environment (by legal representatives)**

Legal representatives who responded to the questionnaire were asked to give a general assessment of the extent to which they were satisfied with the physical environment at ports and the Asylum Directorate (now part of ICD) on a scale of 1 to 10

- 1–4 not satisfied
- 5–7 satisfied
- 8–10 very satisfied



▶ ‘I did not take any notice. I am indifferent to these things. I was more concerned with content than environment. I needed to be treated in a humane way rather than focusing on circumstances. The interview was short anyway.’

IRANIAN ASYLUM APPLICANT INTERVIEWED AT HEATHROW

- 6.33 The data which has been collected from questionnaires during the course of this research enables a comparative assessment of the environment and facilities at ports with the offices of the Asylum Directorate. Both legal representatives and clerks, as well as asylum applicants were more satisfied with many aspects of the physical environment (location, waiting area and interview rooms) at the offices of the Asylum Directorate than at the ports although the difference was relatively small (▶ figure 24).
- 6.34 The majority of negative comments made by respondents of all categories refer to port locations, most notably Heathrow (all terminals but particularly Terminals 2 and 3). There were relatively few negative comments about the physical environment at the offices of the Asylum Directorate, although one legal representative noted that ‘Lunar House and Quest House have good access but at Lunar House there is often a long wait before the interview and the interview rooms are very cold. Quest house – dirty interview rooms, old fashioned furnishing’. The same respondent also commented that ‘the disgusting grey ‘post-holocaust’ net curtains and surly door

- staff add to the unwelcoming environment – for clients and “reps” alike. Several legal representatives said that both interview rooms and the Asylum Screening Unit offices are poorly ventilated and often become overheated especially in summer.<sup>44</sup>
- 6.35 With regard to location, both asylum applicants and legal representatives commented that some ports (particularly Dover) are difficult to access. This is particularly evident from the comments of those who are not based in London who noted the difficulty in terms of expense for clients who are ineligible for benefits and dependent upon support under the National Assistance Act.
- 6.36 Several legal representatives commented that it is increasingly difficult to transfer files between ports.
- ▶ *‘It appears that the Asylum Directorate have changed the practice of transferring files to Bristol for those applicants who come under the Short Procedure. The effect of this is that we may not be able to accompany all clients at the interviews. We are currently assessing the situation. If this proves to be the case will try to raise it with AD and the local MPs. It would be impossible for many asylum seekers to attend the interview because of the cost of transport. The burden on our limited resources is too much.’*
  - ▶ *‘I believe it is essential to ensure asylum seekers are interviewed (screening and full) near their home. It is becoming increasingly difficult (the IND says it’s pressure on manpower) to transfer screening interviews in particular from Lunar House (a totally inappropriate place for Liverpool asylum seekers) and have experienced some difficulty in transferring full interviews from Heathrow to Manchester – with the result that we actually travelled to Heathrow to attend an interview.’*
- 6.37 A number of respondents complained about the facilities provided in the waiting area at ports. Waiting areas were variously described as ‘dirty and cold’ and ‘like a prison’. Applicants with dependants, particularly young children, complained about a lack of facilities, including toys, baby milk and nappies. This lack of facilities is particularly acute where waiting times are extended and where children are effectively detained with their parents. Several families and women with children who arrived during the observation period had to wait for considerable periods for their cases to be processed.
- 6.38 It was not evident from observations at ports that there is any particular consideration given to the added pressures for applicants who are interviewed and who have responsibility for children. For example, in the case of a Dublin Screening Interview (DSI) conducted at Dover East with a Sri Lankan woman whose small child was clearly unwell, the IO asked the interpreter to fetch the applicant who was sitting in the waiting area with a number of other Sri Lankan applicants, commenting that ‘you can tell her to leave the child with that lot... we don’t want a screaming brat in the interview’. The child became very distressed at being separated from his mother and ended up sitting on her knee. This was very distracting for the applicant, immigration officer and interpreter even though it was a very short interview.
- 6.39 The comments of asylum applicants, legal representatives and clerks about interview rooms suggest that at most ports these are generally regarded as too small, windowless and stuffy, and as not providing an acceptable degree of privacy. Although Heathrow Terminal 3 has made efforts to soundproof its interview rooms, this has reduced the circulation of air and the doors of the interview rooms are left open to compensate, thus negating the benefits of such measures.
- 6.40 Immigration Service staff at ports are aware of the inadequacy of some of the facilities which they are able to provide, and commented on the problems with interview rooms at all locations, especially Dover. Immigration Service staff at Heathrow Terminal 3 pointed out that improvements to current facilities are restricted by the lack of additional space which is available and associated expense. Heathrow Terminal 4 is generally considered by Immigration Service staff to provide better facilities because it was designed in consultation with the Immigration Service.
- 6.41 The Immigration Service has recently established a dedicated Asylum Unit at Gatwick for both North and South Terminals. It has potential advantages over facilities at other ports. These include a rota of staff from the two terminals dedicated to asylum casework and a suite of light and airy interview rooms. The Asylum Unit is ‘land-side’ as opposed to ‘air-side’ and no substantive interviews are currently conducted there. The potential of the Asylum Unit is not realised while substantive interviews continue to be conducted in the poorer facilities available ‘air-side’ to the Immigration Service at the two terminals.
- 6.42 Comments made by asylum applicants suggest that ports are an inappropriate place for the conduct of substantive asylum interviews. Several respondents, and in particular those who had been detained on arrival, were anxious about returning to the airport for their substantive asylum interview. One Kurdish asylum applicant commented that ‘my only problem was travelling back to Gatwick airport. I was nervous because initially I was arrested there. I was worried that they will send me back during my interview... I was worried to be deported back to my country’.

<sup>44</sup> It should be noted that at the time of writing Lunar House is being refurbished and temporary facilities are being provided in the Whitgift Centre.

**FIGURE 25**

## **Guide to areas to be covered in the asylum interview (Immigration Service)**

### **This is purely a guide to the areas that should be covered**

Did the applicant have problems obtaining a travel document? (If so obtain details)

If no document held on arrival how was departure effected?

If the document was destroyed, why was this done?

Did the applicant have any difficulties leaving his own country? (If so, obtain details)

### **Travel details:**

Countries travelled through en route to the United Kingdom

Time spent in each country

Details of asylum claims made in these countries or reasons for not claiming there

Details of any agent or organisation which arranged passage

Details of any previous travel

Details of any previous asylum claim made in any other country

Address fear of return to all relevant countries

Why did the applicant choose to come to the United Kingdom?

### **Party details:**

Does the applicant support any political party or religious group? If yes, ask for its:

- full name
- founder's name
- aims and objectives
- local and national leaders' names

Is the applicant a member or sympathiser of the group?

Which branch did he belong to, when did he join and why?

- Any posts held
- The geographical scope of the group
- Publications
- Details of bans or restrictions placed on the group

Is or has the applicant been a member of an organisation in the United Kingdom? (If yes, obtain details)

Does the applicant have any criminal conviction(s)? (If yes, obtain date(s), place(s) of offence(s) and trial(s), details of conviction and sentence)

Has the applicant completed military service? (Ask for dates of service completed, unit, rank and duties)

If he has not completed military service is he eligible for military service? (Ask for details of contact with the military authorities and if/when service is due)

### **Details of detention/harassment:**

Has the applicant ever been detained? If yes, ask for details of:

- dates of detention
- place of detention
- who detained the applicant
- reasons for detention
- charges brought/sentence passed
- how release was secured

Has the applicant experienced any other form of harassment? If yes, ask for details of:

- when this occurred
- why it occurred
- incidents leading to the harassment
- if the harassment was reported to the authorities

### **Family members:**

Have any family members been involved in political difficulties or faced persecution? (If yes, ask for details as above)

What contact has the applicant had with family members abroad?

### **Education:**

- dates
- school/college
- qualifications

### **Employment:**

- dates
- position held
- employer's name and address

- 6.43 Similar concerns were also raised by legal representatives and clerks. For example, one representative commented that 'I think it is inappropriate for asylum interviews to be conducted at the ports. This is because it is frightening for clients to be at sea/air ports – they often fear that they will be put on a plane. Hardly conducive to an atmosphere of trust'.

#### RECOMMENDATION 18

**It is important that the interview room and surrounding environment be conducive to open discussion. There must be sufficient time available for the interview and there should be no disturbances. Immigration officers should be aware of, and take into account, the responsibilities of applicants as carers.**

**Children, including those who are accompanied, should not be made to wait in 'holding facilities'.**

**This report recognises that the Immigration Service is dependent on the port authorities in providing accommodation for their entire operation. This accommodation is costly and the Immigration Service has to find the optimum fit between the likely demand for facilities. The model of the Asylum Unit at Gatwick could be used to expand facilities 'land-side' and provide a better environment for Immigration Service staff and applicants alike and at lower cost than those currently available 'air-side'. The Immigration Service may wish to consider setting minimum standards for the facilities they provide in further examination areas to guide the allocation of resources.**

**The Immigration Service faces competing pressures in managing operations at ports and is struggling to cope with current pressures on staff and resources. These problems are exacerbated by the difficulties in obtaining appropriate interpreters. This evidence, particularly when combined with the trauma and anxiety associated with being interviewed at ports as expressed by asylum applicants, suggests that ports are not an appropriate location for substantive asylum interviews to be conducted.**

## Questions asked during the interview

**'Careful, probing questions to elicit full details are important. If the claim put forward by an applicant does not have as its basis a fear of persecution for a Convention reason, the interviewer should go on to ask whether the applicant has any other grounds for requesting asylum. This is particularly important for assessing the credibility of any statement made by the applicant at a later stage e.g. at the appeal hearing, that there is a Convention basis to their claim.'**

ASYLUM DIRECTORATE INSTRUCTIONS ON INTERVIEWING

- 6.43 There is an expectation that those conducting asylum interviews will be appropriately trained and consistently capable of conducting interviews to the highest standards of best practice. This expectation was generally not fulfilled by the interviews which were observed during the course of this research.
- 6.44 It was suggested in Section 5 of this report that this problem reflects in significant part the failure to properly understand the semi-structured interview as a research method and the prevalent assumption that genuine refugees will simply be able to reveal all the relevant details of their experiences without even knowing what is or is not relevant. In this context concerns about the initial question were highlighted.

### Appropriateness of questions

- 6.45 The information revealed during the course of an interview will reflect the way in which questions are asked. The questions which are asked often reflect pre-conceived views about a genuine refugee which were discussed in Section 3. They also reflect a narrow conceptualisation of 'politics'. This can be seen in the guide provided to immigration officers which suggests areas and issues which should be covered in the interview. The guide emphasises party details and assumes high profile political activity based on a model of western democratic participation (► *figure 25*).
- 6.46 The focus on political activities and participation, narrowly defined, can mean that an immigration officer fails adequately to explore crucial aspects of the applicant's experiences. This was seen during an interview involving an Iranian applicant who stated at the outset of the interview that he was a Buddhist and subsequently went on to describe the assistance and support he had given to fellow Iranians regardless of their political or other affiliations. He was repeatedly asked by the immigration officer for details of the leader of the political organisation to which he belonged. The inability of the applicant to give these details was met with considerable scepticism by both the immigration officer and subsequently chief immigration officer. It was not until it was pointed

out that his beliefs and fears of persecution might stem from his Buddhism as opposed to any formal political activities against the regime that more appropriate and meaningful questions were asked.

- 6.47 The focus on narrowly defined political activities can also mean that the immigration officer fails to examine the ways in which particular aspects of the applicant's identity, for example gender, shape the refugee experience. Political activities also include community activism, providing food or shelter, message taking, hiding people or refusing to conform to particular social norms, all of which are activities in which women are more likely than men to participate. Women may also have a different perception of torture, which they may not equate with the types of harm they fear, for example, sexual violence, violence within the family, marriage-related harm, female genital mutilation and forced abortion and sterilisation.
- 6.48 Female applicants are not routinely asked questions relating to gender-specific or gender-related persecution. There is also a general lack of appropriate follow up questions because immigration officers are generally not familiar with the roles, status and treatment of women in the country from which an applicant has fled.
- 6.49 In addition, the responses of two asylum applicants suggest that the interviewing officer was more concerned about whether there was a 'third country' issue involved. One Kurdish respondent said that the immigration officer 'asked me why I did not apply for asylum in Turkey'. In one case the legal representative intervened to prevent questioning on these lines: 'Once or twice he asked whether I had come from a third country. This was an irrelevant point and my legal representative objected to this.'
- 6.50 There was also some evidence during the observation periods at ports that the focus on 'third country' information can give rise to inappropriate questions. For example, a Zairoise woman accompanied by her husband and two children who had been living in South Africa and who had previously lived in France and Belgium, was asked by the immigration officer on several occasions whether she would be prepared to go back to France or Belgium if the Immigration Service made representations on her behalf. The supervising chief immigration officer had to explain to the applicant that this question was not appropriate and that the claim would be considered in the UK.

### The focus on factual information

- 6.51 A further concern which was raised by respondents, and noted during the observations, arises where the immigration officer asks repetitive questions and/or requests details with the aim of 'catching out' the applicant. For

example, a Colombian respondent who has been granted refugee status commented that 'the questions may have been appropriate but if I paused she would ask me five questions more, repeating the same thing in different ways as if my pause meant I was lying. I was only trying to think'. Many respondents commented in particular on the tendency to ask the same question in a number of different ways. This focus on credibility does not enable the applicant to give a full account of their experiences and is generally perceived to be intimidating because it is interrogatory as opposed to inquisitorial.

- 6.52 The focus on credibility was also associated in the minds of respondents with an over-emphasis on dates and other details which could be 'checked'. Again this was seen as an exercise in assessing the credibility of the applicant rather than gathering information relevant to the asylum claim.

► 'All the questions she asked seemed irrelevant to my actual case – What date did my father die? What date did my mother die? What date did I finish secondary school? She was only interested in facts that did not help me explain my case – How did I get out of the country? How did I get my passport? How did I avoid the military if they came looking for me? I was never asked the fundamental question... what happened to me in my country which made me have to leave. All her questions seemed to imply that I was lying and ready to contradict myself. I was never asked anything which would help explore my case. I had to fight to explain because when I began to explain she kept stopping me to fire irrelevant questions at me.'

COLOMBIAN ASYLUM APPLICANT

► 'The questions were all about how I got papers to leave my country, who helped me, where did they live, what was their address. They wanted to know the telephone number of my relations of my mother-in-law who lived in a small village and has never had a telephone. It seemed a bit ridiculous to me. They seemed to be looking for details they could check by picking up the telephone to see if the person lived there or not.'

COLOMBIAN ASYLUM APPLICANT

### RECOMMENDATION 19

**At an interview, applicants should have put to them, and have the right to comment on, all information held by the Immigration Service which will be taken into consideration when making a decision on their claim.**

**Any apparent inconsistencies or contradictions arising from the applicant's account should be put to the applicant and he or she should be given the opportunity to comment on them.**

## Follow-up questions

- 6.53 Observation at ports suggests an inability or unwillingness on the part of an immigration officer to ask follow-up questions where appropriate. One example of this was a failure to ask someone who claimed to have been detained about the circumstances of their detention. Another case concerned a Chinese national who claimed to fear persecution because of the government's family planning policy. The immigration officer did not ask the applicant whether he had any children and the supervising chief immigration officer did not notice that critical information about the basis of the claim was missing.
- 6.54 In addition there was evidence from observation of interviews undertaken at ports that applicants are often asked to confine their answers to issues raised in the questions. Some applicants are interrupted when they try to give details of their claims, and told they will have the opportunity to give details at a later date. Others will assume that the Home Office does not require these details as the interviewer has not asked these questions directly. Some may be anxious about giving such information. However all applicants who do not provide sufficiently detailed accounts of such matters risk being refused, as lack of detail will be seen as implying lack of credibility.
- 6.55 Several immigration officers complained that they often find it difficult to ask appropriate and meaningful questions during the interview because they are not familiar with the relevant details about a specific case. This is in spite of the fact that Asylum Directorate's Instructions on Interviewing clearly indicate that thorough preparation is essential before an interview and that the interviewing officer should, wherever possible, know exactly what information is required in advance of the interview.
- 6.56 A final question as to whether the applicant has anything to add is no substitute for adequate follow-up questioning, as the applicant may not be aware of the significance of all aspects of their history.
- ▶ *'The decent 'reps' expect a very professional service but because of the sheer volume it creates a lot of pressure. We don't get set cases, the cases are allocated for each shift, and because the rep is waiting you sometimes have to go straight in rather than preparing.'*  
IMMIGRATION OFFICER, HEATHROW
  - ▶ *'Often you are lacking in time to prepare, to read the file and get some background information on the particular area of a country. The problem is time and resources and the lack of staff.'*  
IMMIGRATION OFFICER, HEATHROW

## RECOMMENDATION 20

**Interviewers should receive increased training in appropriate interview techniques. Such training should aim to show that information gathering and credibility testing are not incompatible and are actually mutually dependent. The important role of the immigration officer in collecting appropriate and detailed information to enable the decision making process to be fair, firm and efficient should be emphasised. The contribution of outside agencies and organisations to training should be increased.**

**Immigration officers should not commence interviews without familiarising themselves with the contents of the applicant's file and any other relevant information.**

**The questions asked during an interview should always be based on the elucidation of information already provided by the applicant and known to all involved in the interview. This information is best gathered with the assistance of a legal representative in advance of the interview, for example, though a Self-Completion Questionnaire. Follow-up questioning should be detailed and comprehensive.**

**At the conclusion of the interview the immigration officer should indicate to the applicant the importance of providing specific supporting evidence relevant to the claim if this is available.**

**The Immigration Service should consider developing greater specialisation with regard to interview techniques and the conduct of substantive asylum interviews.**

## Country of origin information

- 6.57 It was evident from the observation of interviews conducted at ports and from the comments of legal representatives, asylum applicants and immigration officers themselves, that many of the problems around the appropriateness or otherwise of questions asked during the interview stem from the fact that the immigration officer is often unfamiliar with conditions in the country of origin.
- 6.58 Immigration Service staff have no specialised training on country conditions. This contrasts with asylum claims made after entry for which interviews are usually conducted by interviewing officers who are specialised in the conditions prevailing in an applicant's country of origin. According to the report by Justice, ILPA and ARC (1997) it is said that immigration officers acquire that knowledge through contact with people from those countries seeking asylum in the UK.

There is concern that this is not an adequate basis on which to conduct well-informed interviews on the nature of an asylum claim. This concern has been expressed both by legal representatives who participated in this research and by the courts. For example in *Musisi*, Bridge LJ found it: 'strange that such an important interview as this should be entrusted to an immigration officer at a port of entry with no knowledge of conditions in the country of origin of a claimant for asylum.'<sup>45</sup>

6.59 The preamble to the interview at ports states that '[o]fficers in the Home Office's Asylum Directorate will decide whether you should be given asylum in the United Kingdom. These officers know about what is happening in your country'. However when the immigration officer is not familiar with the situation in the country of origin, this statement may prevent asylum seekers from properly presenting the basis of their claim. Many past complaints and problems have arisen from the confusion of an immigration officer who has failed to ask appropriate questions regarding the context and background to the claim. Community groups have complained about the ignorance they face from the Home Office regarding their countries of origin.

6.60 There was considerable variation in the response of asylum applicants when asked whether they felt interviewing officers were familiar with conditions in their country of origin.

▶ *'He seemed familiar with conditions – so it seemed strange that he did not believe what I was saying.'*

COLOMBIAN ASYLUM APPLICANT

▶ *'At first I thought she knew about my country but then she mentioned some point of law in our constitution which says that journalists will be protected and I realised that she did not know anything about the reality and level of violence.'*

COLOMBIAN ASYLUM APPLICANT

▶ *'I think everyone knows about the narcotics trafficking in Colombia. I presumed she knew something about the general situation. She didn't say anything in particular that led me to think she was well-informed.'*

COLOMBIAN ASYLUM APPLICANT

▶ *'He could pronounce the names of the guards, or political organisations I was referring to.'*

IRANIAN ASYLUM APPLICANT

▶ *'He was very familiar with political problems in my country.'*

KURDISH ASYLUM APPLICANT

6.61 Nearly 40 per cent of respondents said that they thought that the immigration officer was not familiar with conditions in their country of origin. Some respondents commented that they were

unable to assess the extent of the immigration officer's background information.

▶ *'The questions he asked me suggested he did not know much about Ghana.'*

GHANAIAN ASYLUM APPLICANT

▶ *'It was a one way interview. I did not have any chance to test, but my general feeling was that they did not have enough knowledge.'*

IRANIAN ASYLUM APPLICANT

▶ *'He did not have much knowledge and information about what is happening in my country.'*

KURDISH ASYLUM APPLICANT

▶ *'I had a feeling that the immigration officer was surprised when I was talking about political problems in my country.'*

KURDISH ASYLUM APPLICANT

6.62 Concern was also expressed by some immigration officers about the need for more information about particular countries of origin. Immigration Service staff currently have access to a 'potted history' of each country which is provided by the Asylum Directorate (now part of ICD) and is used to make assessments about credibility or to establish whether an applicant is a national of the country he or she claims to be.

▶ *'We can use these to test out whether or not a person is genuine...for example, what is the colour of the flag, the name of the political leader...if they can't answer than you do begin to wonder whether they are political, whether they are genuine.'*

IMMIGRATION OFFICER, HEATHROW

▶ *'We can't possibly deal with a weighty fifty page tome on each country we deal with...we need to just be able to have a quick look through...they [current information] are more of an idiot's guide to establish whether someone is a national of a particular country. For example, Ghanaians claiming to be Liberians.'*

IMMIGRATION OFFICER, HEATHROW

6.63 There were some complaints from immigration officers about the lack of country information received 'because it means that we can't challenge and probe'. Immigration Service staff are aware of, and sympathetic to, arguments that they should have more information. One IO commented that 'the "reps" do have a point...even though the IOs do build up a body of knowledge there can be gaps in their knowledge, and then the Home Office will have to ask additional questions'. Another said that the lack of country information was 'an understandable criticism by "reps"'.

<sup>45</sup> *Musisi* [1987] AC514

**RECOMMENDATION 21**

**Immigration officers cannot be experts on all countries from which applicants may originate. However they should be able to prepare themselves to understand, and if necessary clarify, issues which will be raised in the interview. This can best be achieved by the applicant submitting a written statement in advance of the interview in which issues on which the claim is based are raised. It may be appropriate for the immigration officer to consult country of origin reports including those produced by the Country Information and Policy Unit (CIPU), the US State Department and country information compiled by the Refugee Legal Centre.**

**Interpreters**

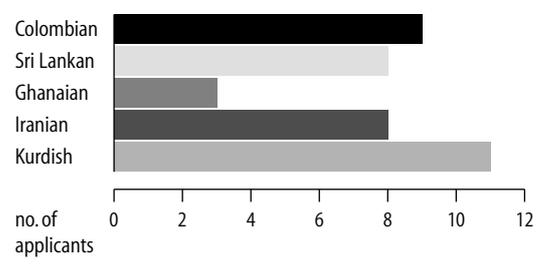
- 6.64 Many asylum applicants do not speak English and the interview will therefore need to be conducted through an interpreter, normally employed by the Home Office on a session basis.
- 6.65 The use of interpreters has important implications for the ability and willingness of the applicant to discuss his or her experiences, as well as the relationship between the immigration officer and the legal representative.
- 6.66 The presence of an interpreter at the interview, while obviously necessary, can add to the applicant’s difficulties. For example, the interpreter may be from the same country as the asylum seeker, and possibly from either the same or an opposing political or ethnic group. Giving details of themselves, their family, the circumstances of the flight and the help given by friends may understandably be worrying for the applicant.
- 6.67 As was noted in Section 4 of this report, numerous complaints about interpreters were made by both legal representatives and asylum applicants during the course of this research. These complaints concerned both the linguistic skills and the conduct and/or role of the interpreter.

**Arranging interpreters**

- 6.68 All the respondents who were interviewed on arrival required the services of an interpreter during the substantive asylum interview. By contrast a large number of in-country applicants who were interviewed for the purposes of this research did not require the services of an interpreter (► figure 26). Many of these were Ghanaian applicants for whom there had been considerable delay, either between arriving in the UK and making an asylum application or between making an application and the substantive interview.

- 6.69 The language and/or dialect which an applicant speaks is frequently an important factor in determining whether he or she can be interviewed on arrival. Difficulties faced by the Immigration Service in obtaining interpreters of the appropriate language and/or dialect means that it is often impossible to conduct interviews on arrival. Immigration Service staff pointed out that the extent of this problem is affected by location, an inability to employ those with extant asylum applications, and higher rates of pay for interpreters offered by the police and prison service. This research suggests that this problem is particularly acute at Dover East.
- 6.70 The interpreting requirements of new arrivals cannot be known in advance and there is generally little or no co-ordination between terminals regarding their use in interviews. The current system of interviewing on arrival at ports is therefore inefficient and expensive in terms of the costs associated with interpreters. It means that a number of interpreters are required to attend on the same day at a specific port or terminal but work only for a few hours. In each case travel and waiting time must be paid. At Heathrow terminals the Immigration Service is currently attempting to co-ordinate the use of interpreters for back-log clearance.
- 6.71 There were also examples from the periods of observation at ports where legal representatives and interviewing officers had failed to correctly identify the language or dialect spoken in advance of the interview. This has again resulted in an unnecessary waste of time and resources.
- 6.72 Two examples, illustrative of the failings of both legal representatives and Immigration Service staff in this respect, were observed. In the case of an Ethiopian woman who returned for an interview at Terminal 3, an Amharic interpreter had been booked but the applicant was only able to speak Tigrayan. The legal representative had informed the Immigration Service that he would be representing the client at the interview but had failed to advise on the language/dialect spoken. The interview was cancelled. On another occasion the Immigration Service arranged for a substantive interview of an ethnic Albanian from Kosovo which took place two months after his arrival in the UK using an Albanian interpreter. Although the applicant spoke

**FIGURE 26**  
**The use of interpreters by nationality**



good English and a Dublin Screening Interview had been conducted in English, both the immigration officer conducting the examination and the chief immigration officer on duty appeared to be unaware that a Self-Completion Questionnaire (SCQ) could have been issued once the nationality of the applicant had been established.

- 6.73 Some legal representatives said that they had written to advise the Immigration Service of their client's interpreting requirements only to arrive at the interview and find out that an appropriate interpreter had not been arranged.
- 6.74 Many immigration officers and chief immigration officers have language skills which are of considerable benefit in day to day duties, including dealing with passengers at passport control and taking pro forma information from those who are issued with an IS81. However it is generally considered inappropriate by both legal representatives and Immigration Service staff for the immigration officer also to act as the interpreter in the context of a substantive asylum interview. Knowledge of the language may be insufficient and/or inappropriate, for example, someone may be fully conversant in Spanish but not be familiar with the particularities of Spanish spoken in different Latin American countries. This was reflected in comments made by a chief immigration officer at Dover East; 'We won't use IOs who speak languages for AIRs...it leads to so many complaints that it's not worth the hassle... and anyway it's better to get native speakers.'
- 6.75 One third of legal representatives and nearly half of the clerks indicated that immigration officers sometimes act as interpreters. Sometimes this is useful for minor issues of interpretation; for example one respondent commented that 'once the immigration officer explained the meaning of a word to an Immigration Service interpreter because it was similar to a word in Arabic'. However it is both difficult and inappropriate for the immigration officer to conduct the interview *and* act as the interpreter at the same time.

#### RECOMMENDATION 22

**Many of the problems associated with interpreters are a consequence of the policy of interviewing applicants on arrival. Substantive asylum interviews should not be conducted immediately on arrival. Pre-scheduled interviews would enable the use of interpreters to be co-ordinated and would therefore considerably reduce expense to the Home Office and delay to applicants. The immigration officer should not also act as an interpreter for the purpose of the substantive asylum interview.**

#### Linguistic skills

- 6.76 Legal representatives and clerks varied in their views of the linguistic skills of Home Office interpreters. Around three quarters of respondents considered more than half to be competent but several made qualifying comments, for example, the linguistic skill was 'not always appropriate to the particular applicant' or 'not large enough sample to make a meaningful assessment' and 'it depends on the language'.
- 6.77 The majority of asylum applicants who were interviewed for the purpose of this research were satisfied with the linguistic skills of the interpreter provided. Several commented positively on the quality of the interpreter and their friendly attitude. For example, one respondent said that 'the interpreter made friendly jokes – was English, but spoke fluent Spanish and knew lots of 'Colombianisms.' Another commented that 'I did not have any problem with the immigration interpreter. She was speaking my dialect and we understood each other very well'.
- 6.78 Four respondents were not satisfied with the linguistic skills of the Home Office interpreter. One respondent commented that the interpreter was not familiar with political terms. As a result he had to provide her with a lengthy explanation which was not interpreted to the interviewing officer. Two respondents commented on problems with dialect/regional or national differences. For example, one respondent said; 'I could speak Farsi, Turkish and Kurdish and they brought a Kurdish interpreter who was an Iraqi Kurd. We had a language problem and I could not understand some of his interpretation'. Within the Kurdish community it is very often the case that the applicant and the Home Office interpreter speak two different dialects of the Kurdish language; although they can communicate there are often problems of understanding.
- 6.79 One Iranian respondent commented on the problems that can arise when the concern on the part of the interviewing officer to establish dates is complicated by the use of different calendar systems: 'The translation of dates caused a great deal of dispute. The inspector [immigration officer] had no knowledge of the Iranian dates in relation to the English diaries. This made me very worried. I was ill. I could not concentrate and no one helped me to make clear reference to the dates. I made a big mistake with not writing the Iranian dates next to the translated ones. This could help the confusion. Even my solicitor at the later stage got confused with the translated dates'.
- 6.80 Two respondents pointed out that it is actually very difficult to assess the linguistic skills of the interpreter.

► 'I don't know. She was quick and fluent but how technically skilful I don't know.'

IRANIAN ASYLUM APPLICANT

▶ *'I had no knowledge of English and it was difficult for me to decide on this.'*

IRANIAN ASYLUM APPLICANT

- 6.81 Information collected from legal representatives and Immigration Service staff suggests that the linguistic skills of Home Office interpreters are a common cause of complaint both during and after the interview. The Asylum Directorate's guidance for representatives states that 'minor discrepancies in translation should be noted throughout the interview and brought to the attention of the interviewing officer at the end of the interview. The interviewing officer should be made aware immediately of any major difficulties over interpretation'. If the asylum seeker does not understand the official interpreter, it is important that he or she makes this clear to the interviewing officer, and a new interview with an interpreter in the correct language or dialect should be arranged. In practice, this is likely to be very difficult when there is no independent corroboration of the interpretation problems. In addition however there is frequently conflict over what constitutes a 'minor discrepancy' and a 'major difficulty'. This may lead to a total impasse in the asylum interview which is beneficial for no-one, least of all the asylum applicant.
- 6.82 Many of the problems around the quality of interpretation stem from the ways in which something is recorded. If an applicant says something which is then interpreted imprecisely and then not written down verbatim by the immigration officer, the difference in emphasis or meaning between what the applicant has actually said and what is recorded can be considerable. This would not be so important were it not for the fact that firstly, the Asylum Interview Record is subsequently presented as if it were a verbatim account and secondly, minor differences and discrepancies in the AIR are often over-emphasised.
- 6.83 Again, this problem arises as a result of the absence of any agreed purpose of the interview. This has implications for whether a verbatim or non-verbatim interpretation is important. Currently many IOs and CIOs do not believe a verbatim translation to be necessary, although this is Home Office guidance. This can lead to conflict between the legal representative and the interviewing officer, as reflected in the comments of one CIO; 'The worst cases are where you have the passenger, the IO, the interpreter and the representative's interpreter, and the two interpreters are arguing over one word even though we don't want a verbatim account....what we need is an overall view of whether we think the passenger is fleeing for their life'.
- 6.84 More than half of the legal representatives and clerks within the research sample usually or always take their own interpreter to note any difficulties in interpretation. The Home Office has agreed that this is permissible. However the role of the representative's interpreter remains unclear. Several respondents commented that the representative's interpreter 'did not really say anything' or was told by the interviewing officer that they should not comment. In six cases the representative's interpreter had reason to intervene during the course of the interview about the linguistic skills or conduct of the Home Office interpreter. These interventions were related to 'technical difficulties' arising from different dialects and/or specific words requiring further explanation/clarification. One respondent who had particular difficulties with the Home Office interpreter said that the representative's interpreter 'had to intervene a couple of times. The Home Office interpreter just did not want to listen to me and I had to use the [representative's] interpreter to assist me to communicate with the Home Office interpreter'. There is no indication from any of the responses that either the interviewing officer or the Home Office interpreter acted with hostility towards these interventions.
- 6.85 In some cases however there is conflict about interpretation during the interview. In the worst case scenario this may result in threats to exclude, or the actual exclusion of, the representative's interpreter. Two respondents indicated that the immigration officer had threatened to exclude the interpreter because of comments which were made about the quality of the interpretation. One respondent said that 'the interpreter corrected the Home Office interpreter and made comments on the immigration officer's questions, neither of which were unreasonable to do. The immigration officer said she would be excluded. I then demanded that we terminate the interview'. Another said that 'interpreters have been threatened with exclusion for intervening too actively for the IO's liking'.

### Conduct and role

- 6.86 Complaints about the conduct of interpreters are not new. Allegations of interpreters 'running' interviews in place of immigration officers go back at least as far as the late 1980s. This resulted in the concession to allow representative's interpreters to be present at asylum interviews.
- 6.87 The Immigration Service has recently started distributing 'Instructions for Interpreters' produced by the IND Training Section. The stated purpose of this package, which includes a booklet and a video, is to clarify the role of the interpreter in an interview, and to reinforce the standards required and expected of interpreters. According to these instructions, interpreters are to be briefed before the interview as to the nature of the interview, and any forms and documents to be used or produced will be fully explained. The interpreter should be told of the interviewee's identity and

place of origin, and will be required to declare any personal knowledge of the interviewee, family or of any links that may exist.

- 6.88 The Asylum Directorate Instructions similarly point out that before the interview interviewing officers should:
- brief the interpreter as far as reasonably possible and in particular ensure that they are aware of their role during the interview;
  - ask if the interpreter has any personal knowledge of the interviewee, his or her family or has any 'tribal links' with the interviewee;
  - ask if the interpreter is familiar with the dialect concerned.
- 6.89 Both the 'Instructions for Interpreters' issued by the IND Training Section and the ADIs are clear about the role of the interpreter during the interview and the responsibility of the immigration officer in ensuring that this is adhered to.

**'The interpreter is there to assist both the interviewing officer and the interviewee. Their job is to be impartial and to bridge the linguistic gap between the two parties. Their role is to give a direct translation of questions put and answers given, no more. Questions should be addressed directly to the interviewee. The interpreter will translate into direct speech and then come back with the answer in English by the same method. Interviewing officers should always use the first person technique i.e. not instructing the interpreter to 'ask him for his date of birth', but speaking directly to the interviewee e.g. 'what is your date of birth?' The interpreter will then repeat it in direct speech and when the answer is received in the foreign language, will reply 'I was born'. Interviewing officers should use short simple and direct sentences and allow the interpreter time to interpret, listen and deliver the response. The interview will be conducted in DIRECT SPEECH throughout with the interviewing officer making contemporaneous notes of the interview. You must seek clarification from the interviewing officer if you have not fully understood any questions posed or if its literal translation, as required, will make it difficult for the interviewee to understand what is meant. It is the interviewing officer's responsibility to rephrase or amend the question to achieve full understanding. AT NO TIME MUST YOU TAKE IT UPON YOURSELF TO REPHRASE THE QUESTIONS POSED. Any difficulties encountered MUST be reported immediately to the interviewing officer. The interviewing officer is responsible for the conduct of the interview and the role of the interpreter. You must not, therefore, ask any questions not directly posed by the interviewing officer, nor must you be drawn into any conversation with the interviewee, his/her representative or their own interpreter who may be present other than through the interviewing officer'**

ASYLUM DIRECTORATE INSTRUCTIONS ON INTERVIEWING (emphasis in original)

- 6.90 There are two important points which should be made about these instructions. Firstly, at no time during the observation periods at ports were immigration officers observed following these procedures. Secondly, given the difficulties in obtaining appropriate interpreters for interviews conducted at ports and the increasing backlog which is currently developing, it seems unlikely that an immigration officer would refuse to work with an interpreter unless his or her attitude and conduct meant that it was impossible to continue.
- 6.91 Observation at ports suggests that the conduct and professionalism of interpreters employed by the Home Office very often falls below these required standards. Many interpreters fail to give a verbatim translation in direct speech. Several commented on whether they thought the applicant was telling the truth, or whether their experiences were likely. Others suggested by way of repeated body and facial gestures that they did not believe the interviewee. In none of these cases did the interviewing officer insist that the interpreter behave appropriately, nor that everything which the applicant said was interpreted.
- 6.92 The most common problem concerning the role and conduct of the interpreter is where he or she fails to translate in direct speech everything which is said by the applicant. There was no evidence to support the assertion of one chief immigration officer that 'the interpreters we use here we use all the time and they know only to ask what the IO said'. On two occasions the immigration officer sat back and put his pen down whilst a conversation lasting several minutes ensued between the interpreter and the applicant. A simple short response was then recorded in the AIR. In many of the interviews which were observed the immigration officer asked a question of the applicant which was interpreted. The applicant and the interpreter then discussed this at length before the interpreter gave the immigration officer an answer which did not correspond with what had been said in terms of length. It was acknowledged by both chief immigration officers and inspectors at all the ports which were visited that 'some IOs do let the interpreter talk too much'.
- 6.93 Following an interview with a Bangladeshi asylum applicant which had been conducted in significant part by the Home Office interpreter, the immigration officer asked for the researcher's views on the conduct of the interview. In response to comments which were made by the researcher about the appropriate role of the interpreter, the immigration officer said that it was necessary for the interpreter to both ask questions and be selective in what they interpreted 'because otherwise they would be there all day'. The immigration officer also pointed out that the legal representative who had been present during the interview seemed happy for this to happen and

- indeed had commented at the end that the interview had been well conducted.
- 6.94 Some respondents were not satisfied with the conduct of the interpreter provided by the Home Office. In one case the interpreter had been openly hostile towards the applicant:  
‘The interpreter was not supportive. She had an insulting view of Iran and Iranians. She asked me if I had even used escalators. When she came to invite me for the interview, I had gone to the toilet and when I returned she talked in a hostile language and said she thought I had decided to disappear.’ Another commented that ‘he was very angry with me. He was very insulting. He said “people like you make me nervous”’.
- 6.95 There was agreement among chief immigration officers however, that the immigration officer should maintain control of the interview and should not allow the interpreter to take over. Considerable disappointment was expressed by some chief immigration officers with whom the researcher spoke that this was not always current practice despite repeated requests to staff to ensure there was a verbatim record of everything said during the interview.
- 6.96 In addition it was noted elsewhere in this report that Home Office interpreters may be used to establish both the nationality of the applicant and the credibility or otherwise of the application. One chief immigration officer commented that ‘interpreters quite often can identify genuine claims’. Another said that an interpreter ‘can tell whether they [asylum applicants] are Afghan by the turban and the accent’. This practice raises serious concerns because it is not, and should not be, the role of the interpreter to identify genuine nationals of claimed countries of origin or genuine asylum claims.
- 6.97 The conduct and role of the Home Office interpreter both during and outside the asylum interview gives an impression to both asylum applicants and legal representatives that he or she is not ‘independent’. This is reflected in comments made during the research and is significant because it can undermine the ability of the immigration officer to gather information relevant to the application.
- ▶ ‘I was under the impression that the interpreter was working for the immigration department the way in which questions were put to me. He did not seem to be an independent person.’  
GHANAIAN ASYLUM APPLICANT
- ▶ ‘Although my interpreter was okay, I could not trust her to ask anything. I knew she was their interpreter.’  
IRANIAN ASYLUM APPLICANT
- ▶ ‘I could not trust the interpreter provided by the Home Office. It was difficult to see him on my side.’  
IRANIAN ASYLUM APPLICANT
- ▶ ‘The Home Office should select people who have sympathy with refugees and not hostility. I wished to refuse working with the Home Office interpreter, but I could not dare to do that. He was more in support of the Home Office than helping me to communicate with the interviewer.’  
IRANIAN ASYLUM APPLICANT
- 6.98 This is the context in which the representative’s interpreter can be important in providing reassurance to the applicant. All of the respondents were happy with the conduct of the representative’s interpreter. This is reflected in comments made by respondents who did not have an interpreter attending the interview with them.
- ▶ ‘If I had an independent interpreter it could have given confidence and I would not have had the anxiety I had. It could emotionally help.’  
IRANIAN ASYLUM APPLICANT
- ▶ ‘I believe I should have had an independent interpreter to establish the necessary confidence and trust.’  
IRANIAN ASYLUM APPLICANT
- 6.99 During the periods of observation at ports, Immigration Service staff complained about the conduct and professionalism of some interpreters who accompanied legal representatives. For example, an incident which had arisen at Dover East was relayed in some detail. The immigration officer decided to detain the head of an Albanian family pending the removal of the whole family (husband, wife and seven children) to Germany. The solicitor attending the interview was taken aback at the decision to detain, questioned it quite vigorously and sought justification for the decision. The immigration officer was replying to her questions when the interpreter attending with the representative started to join in ‘posing questions in an aggressive and disruptive manner’. The immigration officer warned the interpreter not to interject and said that he was not prepared to answer questions from the interpreter. The interpreter continued to interject and started walking around the room shouting at the immigration officer. The immigration officer considered that matters had exceeded permitted grounds and asked him to leave the room. The interpreter threatened the immigration officer before doing so. The interview was completed quite peacefully. According to the immigration officer who made the complaint, ‘I had the impression that [the representative] was quite relieved to be free of her interpreter and indeed when I spoke to her afterwards to explain why I had to exclude him she was most agreeable and understanding’. As a result of this incident it was decided to ban the interpreter from attending interviews at the port.

**RECOMMENDATION 23**

**It is the responsibility of both the Immigration Service and legal representatives to ensure that the language/dialect in which the interview is to be conducted is agreed in advance of the interview. Failure to do so leads to a waste of resources, increased anxieties for applicants and increased delays in the system.**

**Interpreters employed by the Home Office should be proficient in English as well as the language in which the interview is being conducted, and should be members of a professional body.**

**Training should be provided for interpreters to ensure that they are aware that their role is to act as an interpreter and nothing else. The role of the interpreter is to interpret truly, accurately, fully, distinctly and audibly using appropriate language and emphasis. It is the duty of the immigration officer to ensure that this role is fulfilled.**

**The immigration officer should maintain control of the interview and should require that the interpreter behaves appropriately. Training in working with interpreters should be provided.**

**Legal representatives should ensure that a competent trained interpreter accompanies a client to a substantive asylum interview. The representative's interpreter should not answer questions for the applicant but should be able to interject through the representative if there are discrepancies about interpretation. Representatives' interpreters need to be properly trained on their role in the interview.**

**A separate research project on issues concerning interpretation in the context of substantive asylum interviews should be conducted.**

## The record of the interview

*'Interviews should be recorded in question and answer format. Questions may be abbreviated but answers must be fully recorded. If a particular question and answer are central to the application it is advisable to record everything verbatim.*

*Any interruptions or disagreements by a representative must be recorded.*

*The interview notes will be sent to the Appellate Authorities if there is a refusal and appeal. It is therefore particularly important that the notes are clearly written and presented.'*

ASYLUM DIRECTORATE INSTRUCTIONS ON INTERVIEWING

- 6.100 Many of the issues and concerns regarding the record of the interview stem from a lack of clarity and consistency about what the Asylum Interview Record (AIR) is supposed to represent, and in particular whether it is a verbatim account of the interview.
- 6.101 Decision makers and adjudicators tend to treat the AIR as a verbatim transcript. However, contrary to Asylum Directorate Instructions cited at paragraph 6.89, interviewers sometimes omit to record information discussed during an interview. This may be because an interviewer must both write down information and consider questions to be asked. Anyone who has attempted to take a verbatim transcript of a conversation will know that without shorthand this is very difficult. This would not be a significant problem but for the fact that decision makers may later cite minor omissions or discrepancies as a basis for refusing a claim.
- 6.102 Virtually all the legal representatives who responded to the questionnaire thought that the record of the interview could be improved. A substantial majority of clerks also thought that the record of the interview could be improved.
- 6.103 Some of the concerns about the record of the interview were related to the presentation of the AIR: handwriting is often illegible, page numbers may be wrong and the quality of photocopies poor.
- 6.104 The majority of complaints made by legal representatives concerned what is actually recorded in, or omitted from, the AIR.
- ▶ *'Generally, the record should be comprehensive, not a summary or shortened version of what was said.'*
  - ▶ *'I always take a verbatim note, this gives a fuller impression of a client's answer and why it came out the way it did. IOs do not do this. Often they ask additional short questions to clarify an answer and never make a note of them – I feel they should take a better note of what's said so it appears in its proper context.'*

► *'IOs should record all exchanges between themselves and client's clerk and interpreter. IOs should record all their own questions – not all do. IOs should not treat the Certification Questions as though they have put them to client. They usually answer them themselves from the file – but still ask client to sign the page.'*<sup>46</sup>

- 6.105 Legal representatives were also concerned that applicants do not have a record in his or her own language to refer to. One representative said that the interpreter will sometimes write down questions and answers in his or her own language. It was suggested that this should be made standard, and that a full original language record should be kept as well as the official AIR.

#### RECOMMENDATION 24

**As it is very difficult for an immigration officer to simultaneously conduct the interview and take a verbatim record of everything which is said, the AIR should be regarded as the immigration officer's notes on the interview and should not be regarded as a verbatim record.**

#### The read-back

*'The read back is an essential part of the interview. Where an interpreter has been used, time may be saved by asking the interpreter to read back the interview notes, as long as he is willing to do so. If the interview has been conducted in English the interviewing officer may wish to consider giving the interviewee the interview notes to read, but he should remain until this process is complete.'*

ASYLUM DIRECTORATE INSTRUCTIONS ON INTERVIEWING

- 6.106 The vast majority of legal representatives and clerks in the research sample considered that it was always necessary for the information given by the applicant to be read back to the applicant by the interviewing officer. The remainder considered that it was usually necessary.
- 6.107 Information given to the applicant about the purpose of the read-back was generally considered to be inadequate by legal representatives. This problem reflects the lack of any clarity about what the AIR represents, which in turn influences the extent to which amendments are recorded and what these amendments represent.
- 6.108 The purpose of the read-back is not adequately explained. As a result some applicants may decline to check the record of the interview because they are too upset or distressed, too tired or feel that it is not necessary.

<sup>46</sup> This point was also made by several IOs who said that they felt very uncomfortable with the certification/designated country questions.

► *'I was so upset and wanted to cry – I said he didn't need to read back the interview.'*

COLOMBIAN ASYLUM APPLICANT

► *'The lawyer spoke Spanish and English and I felt safe. The immigration officer asked if I was happy with what I'd said and the lawyer indicated that everything was fine.'*

COLOMBIAN ASYLUM APPLICANT

► *'I told the interpreter if he said all I told him I was okay.'*

IRANIAN ASYLUM APPLICANT

► *'I did not need that. I was offered this but refused.'*

IRANIAN ASYLUM APPLICANT

- 6.109 Applicants were asked at what stage in the interview the read-back had been conducted. In a majority of cases the read-back had taken place at the end of the interview. There was also some evidence that this was the preferred option; one Iranian respondent commented that the immigration officer 'offered to read as we went along but I said at the end is better... I did not want to confuse myself'.

- 6.110 Legal representatives and clerks were asked when the read-back might be most appropriately conducted. Some respondents felt that it depended on the particular case, including its complexity and whether the applicant was articulate.

- 6.111 A third of legal representatives said that the record of the interview should be read-back to the applicant after every answer or section.

► *'At the end of every answer because the reply is fresh in everyone's mind and the reply can be further amended and added to appropriately at that stage. I would also like to see the entire transcript read back at the end of the interview.'*

► *'At the end of every section – if the read-back takes place at the end of the interview the client is tired and cannot remember exactly what was said anyway.'*

- 6.112 The majority of legal representatives and clerks prefer the AIR to be read-back at the end of the interview.

► *'At end of interview so that client can reflect on the whole account/narrative and not on relevance of events in piecemeal fashion which can be confusing/dislocating for client. Holistic approach in best interests of client.'*

► *'It is important for the applicant to have an overview of the interview and to know what has been said. Omissions are more likely if each section is read back as the interviewee may not notice that something has been left out.'*

► *'Read back at more frequent intervals could break the client's thoughts and the way giving account. Once they've answered questions they're more*

*relaxed and are able to recognise areas where maybe they weren't as clear as they could have been and they can provide clarification.'*

- 6.113 There are however some problems associated with conducting the read-back at the end of the interview especially where the interview has been lengthy.
- ▶ *'To read the whole thing in one go is too much – particularly if the interview has gone on for 2 or more hours.'*
  - ▶ *'It seems helpful to the interviewee to maintain the flow of recollection but to read back for accuracy soon enough to be effective. If too much is read back at once, attention is lost and the exercise reduced in effectiveness.'*
  - ▶ *'At the end of the interview many clients are tired and desperate to leave.'*
- 6.114 Observation at ports confirmed that many applicants are tired and generally want to leave as soon as possible after the interview has been completed. This is a problem which does not only affect the applicant: the immigration officer, interpreter and legal representative may similarly be reluctant for the read-back to be conducted at this stage.
- 6.115 Discussions with Immigration Service staff suggest that there is no particular preference about the point at which the read-back is conducted. However their comments suggest that requests for the read-back to be conducted in a particular way are sometimes interpreted as an attempt by the interviewee to gain an unfair advantage.
- ▶ *'There is no set way of proving whether it is an accurate record. In the more unlikely claims people try to put a spanner in the works by asking for it to be done in a different way...the ones who ask for it to be done page by page tend to be the ones who want to change things.'*
- CHIEF IMMIGRATION OFFICER, HEATHROW
- ▶ *'We are generally quite happy for the read-over to be done in whatever way, so long as the passenger is not attempting to gain the upper hand.'*
- CHIEF IMMIGRATION OFFICER, HEATHROW
- 6.116 This approach to the AIR is reflected in the way in which amendments or changes to the interview record which the applicant wishes to make arising out of the read-back are then recorded and interpreted.
- 6.117 Asylum Directorate Instructions state that the transcript should be read to the applicant in order to clarify any areas of disagreement and that where discrepancies have arisen the applicant should be given the opportunity to explain.
- 6.118 A substantial proportion of asylum applicants who were interviewed for the purposes of this research indicated that they had made amendments, changes or additions during or following the read-back. These amendments were mostly minor corrections, for example, changes to dates or clarification of points. However several respondents indicated that they had found more substantive problems with the interview record when it was read back to them. One respondent said that 'I made some corrections on points that were misrepresented'. Several respondents were unhappy with the read-back. For example one said 'I changed a few dates but I did not feel very happy about it. I could hear it sounded very confused'. Another commented that 'I was not happy with what they read back to me. The interviewer was tired and I did not know what to say. The intervention of the interpreter was useless'. A number of respondents said that they were told that they would be able to send in further information after the interview.
- 6.119 Of those who made amendments as a result of the read-back, virtually all indicated that these had been noted by the interviewing officer. However many added that they only saw something being written and did not know what had been written because it was not read-back to them again.
- 6.120 Others commented on the way in which amendments or additions had been recorded. For example, one respondent said that although an error had been amended 'it was as if I had made a change to my story. In fact I was correcting their mistake'. One legal representative commented that their client had not been permitted to amend the interview record on read-back. Although the representative had written to the chief immigration officer, no amendment was allowed on a crucial point.
- 6.121 Observations from ports suggest that there is significant variation in the way in which amendments and additions are recorded on the AIR. Some immigration officers crossed out and/or added into text. Others inserted an asterisk and noted the changes at the end. Some immigration officer refused to amend the interview record altogether and either suggested that the corrections were not important enough to bother with or recommended that written representations be made on a particular point after the interview.
- 6.122 At the end of the interview, legal representatives and applicants are usually asked by the IO whether they have any comments to make on the conduct or record of the interview. Immigration Service staff are annoyed when the applicant and/or his or her legal representative do not use this opportunity and instead take issue with the interview record at a later date.

However representatives and applicants alike need to review the record of the interview, sometimes with an interpreter, before they are able to identify any issue which may need to be raised. This is particularly necessary where the read-back has not been conducted in English.

#### RECOMMENDATION 25

**The read-back of immigration officer's notes on the interview should be mandatory.**

**The purpose of the read-back should be fully explained to the applicant.**

**Read-backs should be conducted at the end of an interview and in addition where appropriate and/or where requested by the applicant. Where an interview has been lengthy there should be a break before the read-back is conducted.**

**The read-back must always be conducted in English by the immigration officer through the interpreter, and not delegated to the interpreter.**

**There should be an agreed procedure for amending or adding to the interview record. Any amendments or additions which are made as a result of the read-back should be checked by the applicant.**

#### Signing the interview record

- 6.123 The evidence collected during the course of this research suggests that current practice regarding the signing of the interview record varies considerably. During the observations at ports some applicants were requested to sign the interview record at the end of each page before it was read-back to them. One Iraqi applicant was particularly anxious about this but was reassured by the immigration officer that 'it's okay because you can change anything later on if you want'. One applicant was asked to sign blank pages of the form before the interview began.
- 6.124 According to the ADIs, where an applicant or any representative declines to sign the transcript because they feel the interview was not carried out to their satisfaction, a note should be made of any difficulties or problems which arise. Interviewing officers should not demand that the form is signed.
- 6.125 Evidence collected during the course of this research suggests that the refusal of some legal representatives to sign the AIR has led to conflict. One particular incident at Heathrow Terminal 4 concerning the alleged false imprisonment of a clerk who refused to sign the AIR was relayed by both staff at Terminal 4 and legal representatives. It is clear from this example that such conflicts arise from the absence of an agreed understanding of the status of the AIR and significance of a legal representative's signature; whether the signature confirms that the applicant has nothing further to add and that the AIR is a 'true' account of the basis of the claim for asylum, or whether it simply confirms that the representative is satisfied with the overall conduct of the interview. It is no longer standard practice to request that a legal representative sign the AIR.
- ▶ *'Most 'reps' refuse to sign the interview record but we are only asking them to say that they are happy with the conduct of the interview. If they don't want to sign it they should say no, and if they keep saying no then there is not a lot we can do. Now it has been taken out of the form.'*  
CHIEF IMMIGRATION OFFICER, HEATHROW
- 6.126 Nearly half of legal representatives and clerks indicated that they would never sign the interview record if requested. In many cases this is the policy of the firm or organisation for which the representative or clerk works. Some respondents were prepared to sign the AIR with a disclaimer confirming only that the legal representative was present and/or was satisfied with the conduct of the interview. A quarter of respondents indicated that it would depend on the circumstances; they would only sign if satisfied with the conduct of the interview and that the AIR corresponded with the notes which he or she had taken.
- ▶ *'I see no reason to give a sort of endorsement to a process which is so often unsatisfactory.'*
- ▶ *'I have never been asked to do so but would not because the onus ought properly to be on the IO to ask appropriate questions to elicit the necessary information. My signature could give the impression that this onus had been completely discharged which is not always the case.'*
- ▶ *'A signature endorses the interview. Because of the rubric and structure of questioning, such an endorsement is inappropriate.'*
- ▶ *'It is not our role to sign to confirm accuracy and it is rarely made clear why a signature is required. In interviews where questions are specifically put to me, regarding conduct, I usually sign with a disclaimer.'*
- 6.127 Fifteen per cent of legal representatives indicated that they would always sign the interview record. There was evidence from the periods of observation at ports that some legal representatives will insist on signing the AIR even where this is not requested. In one case a legal representative attended with two clients and, although she did not represent each client for the entirety of the interview, insisted that she be allowed to sign the interview record to confirm her presence at each interview.

**RECOMMENDATION 26**

**Under no circumstances should asylum applicants be asked to sign blank pages of the AIR. Nor should they be requested to sign any pages before the information has been read-back to them. An applicant's wish not to sign the AIR should be respected.**

**The legal representative should not sign the interview record as it serves no purpose; a signature should not be requested.**

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### Tape-recording interviews

- 6.128 There are clearly problems with the way in which what is said during the interview is currently recorded. The need to write verbatim notes disrupts the flow of the narrative and may lead to applicants being asked to keep their answers brief. During the substantive interviews which were observed at ports some interviewers expressed dismay or signs of reluctance when presented with a detailed account which required extensive note taking. In some cases responses were summarised or important details omitted. This may create a distorted, inaccurate or contradictory account.
- 6.129 The pressures of having to write everything down at speed whilst simultaneously assessing the applicants answers and considering which further questions should be asked can produce interview notes that do not properly reflect the basis of the claim. The requirement that a written account be kept also increases the amount of time spent writing, thus leaving less time for proper consideration of the applicant's account and preparation of further questions. Eye contact is often lacking. Some applicants may find constant note-taking while they are talking disconcerting or even rude.
- 6.130 Substantive asylum interviews are not tape-recorded. Given disputes about the conduct of such interviews which have been documented in this report, and in particular about what has been said by whom and in what way, there have been widespread calls from organisations and individuals working with asylum seekers that asylum interviews should be tape-recorded and/or video-taped as are interviews which are conducted under the Police and Criminal Evidence Act (PACE).
- 6.131 The reports by ARC (1996b) and by Justice, ILPA and ARC (1997) suggest that tape-recording asylum interviews would be beneficial for a number of different reasons. These include the following: it would provide an accurate account of the information provided by an asylum seeker in support of their claim; it would speed up the interview process because it would mean that the IO would not be required to make verbatim notes of what is said; any interruptions, misinterpretations or bad conduct on the part of the interviewer or representative will be obvious; applicants would be unable to make unsubstantiated complaints; it would be obvious where applicant and interviewer were talking at cross-purposes; any hostile attitude on the part of the interviewer or representative would be exposed; an agreed interview account would enable a proper assessment of whether the Home Office had fulfilled its duty to enquire fully into an asylum claim.
- 6.132 The reports suggest that the introduction of tape-recording would avoid future disputes over what has or has not been said in the interview. It is suggested that the interview should be taped and the master copy sealed and held by the Home Office alongside a working copy and a copy tape and typed transcript be supplied to the applicant. The tape would have to be transcribed and typed for the purposes of casework officers and a copy can be sent to the applicant or representative.
- 6.133 Although the issue of tape-recording of interviews was not addressed in the questionnaire, 35 respondents suggested that it should be introduced in order to prevent discrepancies between the AIR and the applicant's and/or representative's account of the conduct of the interview. Most suggested that the interview should be transcribed and a typed AIR sent to the applicant.
- ▶ *'[The interview] should be taped as are police interviews so that greater accuracy can be ensured in content and interpreting and to get impression of tone, attitude, gaps – especially when written as one continuous piece of prose when in fact answers to numerous questions.'*
- 6.134 Immigration Service staff suggested that there would be enormous practical problems in introducing tape-recording as well as considerable financial implications. These included the costs and problems associated with soundproofing rooms and storing equipment and tapes particularly given the costs of port accommodation which is at a premium. In addition there were concerns about the costs of transcribing tapes and sending copies to the applicant and legal representative. In this context a chief immigration officer at Heathrow Terminal 3 commented that 'one thing which will never happen here is tape-recording...there are too many interviews, it would just cause delay and then there are the practicalities of storage. In any case people would just argue over words...why argue over the meaning of words?'
- 6.135 The written record which is made at the time of the interview and given to the applicant at the time of the interview remains the preferred

- option among Immigration Service staff. One immigration officer commented that 'there and then the applicant has a written record of the interview...the passenger is given a copy so that they can challenge anything they want to'.
- 6.136 Reticence about the value of tape recording interviews is not limited to practical and financial concerns. Comments made by Immigration Service staff also suggest that many have an entirely different understanding of the implications of PACE for the conduct of interviews generally. Representatives generally view interviews conducted under PACE (excluding the need for a caution) positively and as having potential benefits for the applicant. Some chief immigration officers by contrast view it as detrimental because it makes the interview both 'more formal' and 'more oppressive'; for example, one commented that 'the asylum interview is supposed to be informal and taping it would make it much more formal'.
- ▶ *'It's not as if the interview is conducted under PACE so it won't be used against [the applicant].'*  
CHIEF IMMIGRATION OFFICER, HEATHROW
  - ▶ *'As you can see it's not like a PACE interview where the person is under pressure...they are always given as much opportunity as possible to put their case.'*  
CHIEF IMMIGRATION OFFICER, HEATHROW
- 6.137 By contrast several immigration officers who had worked in enforcement felt that there were positive benefits to tape-recording interviews and drew parallels with the implementation of PACE in police station. One senior manager commented that 'eventually the penny dropped and people realised it worked in the interests of all involved'.
- 6.138 Tape-recording interviews could provide safeguards in the system which are clearly very important. However until the purpose of the interview is clarified and the roles and responsibilities of all of those involved agreed, tape-recording will not necessarily improve either the conduct of asylum interviews or the decision making process.
- 6.139 Tape-recording interviews would also not solve the problem of badly conducted substantive asylum interviews, not least because the definition of 'good' and 'bad' practice is not one on which Immigration Service staff and legal representatives currently agree.
- 6.140 This is reflected in current arrangements for interviews conducted under PACE. The tape-recording of interviews under PACE only works because other aspects of the interview and the roles and responsibilities of those participating in the interview are addressed by PACE Codes of Practice. The report by ARC (1996b) suggests that these codes of practice should be extended to IOs at ports: 'The rights contained in the Codes, if extended to asylum seekers, would not only protect their interests and ensure a more accurate account of their claim, but would provide recognition of the seriousness of an asylum claim and the need for corresponding legal safeguards. They would especially affect port applicants but would only be effective at ports of entry if a duty adviser scheme were in operation with unlimited access to applicants held by immigration, a pool of independent interpreters were available and if those applicants were informed of their legal rights immediately after they apply for asylum in a language they understand.'<sup>47</sup>
- 6.141 One of the aims of tape-recording is to 'pin down' what actually happens in the interview. However the extent to which this is possible is limited. It is not possible to record the circumstances of the interview or the applicant's experiences immediately prior to the interview and the recording will in any event be differentially interpreted, not least because it will then be transcribed and interpreted in a different context with a different set of intervening factors. There is also a danger that an over-emphasis on tape-recording interviews as 'the solution' would simply reflect and reinforce the development of stereotypes based on an understanding that someone sounds like they have been persecuted. Those who are more articulate will invariably benefit. It would not be clear whether an applicant's apparent refusal to speak was defiance, fear or distress.
- 6.142 It is also important to recognise that the presence of safeguards will not suffice to ensure that the substance of the asylum application can be dealt with at this stage. Taping may even increase feelings of fear and panic, and increase reluctance to reveal political or other allegiances whose discovery had led to persecution in the first place, or to speak of incidents of torture or sexual abuse.<sup>48</sup>
- 6.143 The Minister for Immigration decided last year that a pilot scheme for tape recording asylum interviews would be introduced. This was clarified in a recent statement: 'I have decided to pilot tape recording of asylum interviews. Some interviews, at ports and in Croydon, should be tape recorded from May [1999]. A report on the pilot including its impact on the Immigration Appellate Authorities is planned for the New Year.'<sup>49</sup> At the time of writing, the pilot was in progress.

<sup>47</sup> Asylum Rights Campaign 1996b, 48

<sup>48</sup> See also Refugee Legal Centre (1997)

**RECOMMENDATION 27**

**Tape-recording interviews could provide a level of accountability which does not currently exist and for this reason alone it should be carefully considered. However until the purpose of the interview is clarified and the roles and responsibilities of all of those involved agreed, tape-recording will not necessarily improve either the conduct of asylum interviews or the decision making process. Tape-recording interviews should not be seen as a substitute for an interview conducted by a competent and properly trained immigration officer in the presence of a competent and properly trained legal representative.**

## Concluding the interview

6.144 Following the substantive asylum interview the AIR is read by the chief immigration officer on duty in the Secondary Examination Area and any further lines of enquiry or discrepancies brought to the attention of the immigration officer who is then able to pursue these with the applicant. Until the chief immigration officer is satisfied that all the necessary information has been collected, he or she should not countersign the AIR and allow the immigration officer to end the interview. This is seen as a safeguard against any failing of the immigration officer conducting the interview.

- ▶ *‘During the interview the passenger is given every opportunity to say why they want asylum. We bend over backwards to be fair rather than anything else. If a CIO feels that an officer hasn’t covered the ground then they will be sent back in again. The CIO has a vetting role... That’s why the rep is asked to wait after the interview.’*

CHIEF IMMIGRATION OFFICER, HEATHROW

6.145 In practice, CIOs acknowledge that there are significant differences in skills between immigration officers in terms of the ability to conduct a good interview and willingness to clarify points when requested: ‘We know the ones who need to be goaded, and that’s why they have to go through a CIO... for example, if someone says that they were tortured but the IO hadn’t asked for any details about it, then the CIO would tell them to go back and ask exactly what happened... not “how did they torture you?” but about what happened, and the IO would be encouraged to say to the passenger “tell me some of the facts so that they can be recorded now”.’

6.146 The evidence collected during this research suggests that the level of accountability to a chief immigration officer which currently exists is inconsistent. On several separate occasions

during the periods of observation at ports the supervising chief immigration officer was unhappy with the way in which an interview had been conducted and requested that the immigration officer seek clarification and/or further details. On one occasion the immigration officer refused to ask further questions and did not do so; on several other occasions, further questions were asked but with considerable reluctance. For example, a request was made that an immigration officer ask an applicant whether she had been involved in politics. The immigration officer replied, ‘what’s the point, they never are’. On another occasion involving an Iranian applicant there was some confusion about the dates which had been recorded in the AIR. The immigration officer was reluctant to clarify this because she believed that further representations would be submitted. The chief immigration officer insisted that she do it anyway.

6.147 The lack of decision making power in asylum casework affects both immigration officers and chief immigration officer and was discussed in Section 3 of this report. Several CIOs stated that they are probably less conscientious and rigorous in overseeing asylum casework than casework for which they are directly responsible.

- ▶ *‘It used to be that the IS retained ownership of a case through port appeals... they took it on as if it was their own. If someone else makes the decision you are less inclined to be rigorous.’*

CHIEF IMMIGRATION OFFICER, GATWICK

6.148 Most asylum applicants interviewed on arrival will be given temporary admission (TA) as will those returning to the port for a substantive interview. In some cases a decision to detain may be made. The role of the representative at the conclusion of the interview is to ensure that his or her client is given a full opportunity to obtain TA and that he or she is issued with the necessary documents for accessing support.

**RECOMMENDATION 28**

**Chief immigration officers are responsible for ensuring that the immigration officer conducting the interview gathers further information where appropriate and necessary. This role is a safeguard against inadequate interviewing and as an important step towards consistency in information gathering, and should be taken very seriously.**

**A chief immigration officer should ensure that the immigration officer conducting the interview informs the applicant of the importance of submitting further information in support of the claim within the applicable time limit.**

## SECTION 7

# Conclusions

- 7.1 The need for high quality initial decisions on asylum applications has been identified as an urgent priority by all those involved in, or concerned about, the process of asylum determination including the Home Office, non-governmental organisations, legal representatives and refugee community organisations. A conclusion of this report is that a higher quality of initial information gathering is a pre-requisite for this to occur. *In order for the decision maker to reach a properly-reasoned and sustainable decision, all the information relevant to the claim must be collected in the initial stages.* Calls for the asylum determination process to be 'front-loaded' have been made by many organisations including in the Justice, ILPA and ARC *Providing Protection* report (1997).
- 7.2 Difficulties for the decision maker in reaching a properly-reasoned and sustainable decision where all the relevant information has not been collected during the asylum interview were noted by Mr Justice Brooke in *Akdogan*:<sup>50</sup> 'The applicant was not given a chance to do justice to himself...he is not asked single straightforward questions... There is always anxiety in the mind of a court if complicated long passages are put to an applicant through an interpreter...and if the questions he is asked are, in essence 'Do you have anything to say about that?' and 'do you wish to add anything?' in my judgement the examiner is not performing the duty the law requires of him.'
- 7.3 In 1998, 17 per cent of asylum applicants were recognised as refugees under the 1951 Convention and 12 per cent were granted exceptional leave to remain. Nine per cent of asylum appeals are successful.<sup>51</sup> For the vast majority of asylum seekers, the substantive asylum interview is currently the main opportunity they have to present their claim. The evidence collected during the course of this research suggests that those who are genuinely in need of protection are being failed by the current system. This cannot be justified on the basis that these are the minority of all asylum applicants. Unless and until appropriate procedures are followed it will not be possible to identify which applicants are in need of protection and which are not.
- 7.4 Many of the problems which arise both during and after the interview stem from a lack of clarity about whether the purpose of the asylum interview is to gather information or to test the credibility of the applicant's claim for asylum. Currently the two are perceived as mutually exclusive. This has important implications for current understanding of the roles and responsibilities of all those involved in the asylum interview, the conduct of the interview itself, and the ability of the asylum applicant to fully outline the basis of his or her need for protection.
- 7.5 This report concludes that those in need of protection are not best served by the current conduct of asylum interviews, and in particular that inconsistencies in procedures and practice within and between ports undermine their ability to fully present the basis of their claim. These inconsistencies are exacerbated by the policy of conducting asylum interviews immediately on arrival wherever possible; they undermine the actual and perceived fairness of the asylum determination process.
- 7.6 The context in which interviews are conducted at ports is one of competing demands on Immigration Service staff and resources. These demands combined with a lack of agreed guidance for immigration officers on how such interviews can best be conducted leads to considerable differences in the quality of the information gathering process, and in turn, the ability of the decision maker to reach a fair and sustainable decision on the applicant's need for protection.
- 7.7 The evidence collected during the course of this research also suggests that there is considerable divergence in the competence and professionalism of legal advice and representation currently available to asylum applicants. This report accepts the need for improvements in both the quality and quantity of immigration advisers and welcomes measures currently being

<sup>50</sup> *R v. Secretary of State for the Home Department ex parte Murat Akdogan* [1995] Imm AR 176, 181

<sup>51</sup> See *Hansard* Second Sitting Special Standing Committee 16.03.99 col.113

undertaken to ensure such improvements. The evidence collected during the course of this research suggests that where competent and professional legal advice and representation is available to the applicant from the beginning of the determination process, the decision making process will be fairer, faster and more efficient. Competent and professional legal representation and advice at an early stage can play a positive and constructive role in the process of determining asylum claims. It is difficult for legal representatives to fulfil this role whilst their status during the asylum interview is limited to that of an observer, and while there is no agreed protocol for their participation in interviews.

- 7.8 This report has made a number of recommendations about how improvements could be made to the current conduct of asylum interviews at ports. It is important that all of these recommendations are implemented for there to be significant improvements in the quality of the information gathered during the asylum interview and in turn the quality of the decision making process.
- 7.9 The findings of this research also raise the question as to whether the substantive asylum interview is the most effective and efficient method of gathering information about the basis of an asylum claim. The findings of this research suggest the need for the further development of an alternative system in which the applicant is given an opportunity to set out, with the assistance of a legal representative, his or her account prior to any interview. This account would then be available to the immigration officer before the interview begins and could form the focus of any further examination which might be required. The applicant's own account would provide the basis from which further questions could be asked to add detail and check discrepancies. A properly prepared interviewer who appreciates the basis of the claim is able to conduct the interview in a much more informed manner, will obtain much more relevant information and will instil in applicants more confidence in the asylum procedure.
- 7.10 Properly handled these changes to current procedure would not add to the length or cost of assessing the claim. On the contrary, they could actually save time and expense. Whereas substantive interviews are both costly and time-consuming, the presentation of the claim in a written format is an extremely efficient method of gathering information from applicants. This is in fact not a new procedure. A Self-Completion Questionnaire has been, and continues to be, used with applicants from some countries, and refugee

status or exceptional leave to remain is granted without any subsequent interview. The extension of this procedure to all applicants could be of benefit to all involved in the asylum process.<sup>52</sup>

- 7.11 Both immigration officers and legal representatives should receive appropriate training in how asylum interviews can best be conducted. There should be an agreed protocol on the role and responsibilities of those involved in such interviews and an independent complaints system to address any concerns or complaints which arise as a result of the way in which the interview is conducted.
- 7.12 This report proposes a variety of strategies and approaches for the findings of the research to be taken forward and to further develop the dialogue between legal representatives and the Immigration Service which has been initiated by the *Breaking Down the Barriers* project. These include the following:
- The Immigration Service Ports Directorate has already requested ILPA's opinion on various aspects of new practices which it has introduced (for example, the establishment of the Asylum Unit at Gatwick). ILPA wishes to continue to contribute to these and other policy discussions within the Home Office about the conduct of asylum interviews, including the Asylum Process Project which was announced by the Asylum Policy Unit of IND in March 1999.
  - The establishment of a 'user panel' by IND for those involved in asylum interviews would ensure that issues of concern for legal representatives, officials of the Integrated Casework Directorate and Immigration Service staff could be discussed on a regular basis. In this way it is hoped that the lack of communication on policy and practice and resulting tension which existed when this research was conducted may be avoided in the future.
  - It has been suggested by ISPD that ILPA should participate in regular, ongoing, informal visits to ports, particularly Heathrow Terminal 3, in order to maintain and further develop lines of communication.
  - There is a clear need for discussions between legal representatives and IND to draw up **agreed** codes of conduct for all those involved in the substantive asylum interview and clearly identifying the roles and responsibilities of interviewing officers, official interpreters and legal representatives.
  - An independent complaints body should be established.
  - Those involved in Immigration Service training programmes have already requested information on aspects of current practice which have been identified by this research as requiring improvement. ILPA has long been involved in the training of IND staff and is pleased to have been

<sup>52</sup> See also UNHCR (1995), ARC (1996b), Justice, ILPA and ARC (1997) and the Refugee Legal Centre (1997)

invited to contribute to the training of Immigration Service staff. It is hoped that this training will be in the spirit of this project and will be integral to both induction and consolidation programmes.

- ILPA provides training for legal representatives and clerks specific to the conduct of asylum interview. This training will address the issues and concerns raised in the report and will provide members with information on best practice during the asylum interview.
- On the basis of an agreed protocol for the conduct of asylum interviews, ILPA will produce best practice guidelines for representatives and clerks on the conduct of asylum interviews.
- Further research should be conducted on issues arising out of this project including, for example, the skills and conduct of interpreters, and the use of information gathered during the substantive asylum interview during both the initial decision making process and appeals.



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