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Dear Mr Islam

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

I am preparing this response to the public consultation on proposed changes to publicly funded immigration and asylum work which has been initiated by the Department of Constitutional Affairs on behalf of my firm, which is a specialised solicitors' practice working exclusively in the area of British immigration and nationality law.

Introduction

The contents of that consultation (and the suggestion as to how the changes would be implemented reflected in the draft immigration specification recently issued by the Legal Services Commission) are a matter of grave concern to us. Regrettably, our firm has decided that, if these changes were implemented in their present form, we could not continue to carry out publicly funded immigration and asylum work because, in our experience, it would be **impossible** to provide an appropriate quality of service to clients.

Essentially, it seems to us, the proposed changes would create a system where asylum seekers and other individuals with immigration problems would not be afforded the bare minimum of proper representation and we feel that we could not continue to participate in a system which, at best, would provide "fig leaf justice" – i.e. a system where the participation of lawyers would give the appearance that justice is being administered when, in fact, those lawyers are prevented from providing an adequate level of representation to which any client should be entitled. Such concerns are all that much greater for clients – such as asylum seekers – where inadequate representation and a negative result will mean that the individual concerned is sent

back to a country where he or she faces persecution, including the possibility of detention, torture or even death.

Given the serious nature of the issues raised and their impact on a client base whose fundamental human rights are at stake, our firm has participated in the preparation of a number of other responses to the consultation, including those prepared by the Law Society, the Immigration Law Practitioners' Association (ILPA) and the Legal Aid Practitioners' Group (LAPG). We fully endorse the comments made in those responses and do not propose to reiterate here all the points included in those responses.

Instead, we thought that a useful contribution which our firm could make to the consultation would be to provide you with an analysis of a random sample of cases funded by the Legal Services Commission which we have closed during the last year so that you will have a "snapshot" of the work actually entailed in representing asylum seekers and other individuals with immigration problems. In particular, we felt that a random selection of such cases would be more useful to the Department of Constitutional Affairs in understanding the day-to-day work which we undertake than would be a pre-selected group of "exceptional" case studies. To that end, we have, by the methodology described below, made a random selection of 25 of the 601 matters which were finally reported by us under our General Civil Contract with the Legal Services Commission between 1 March 2002 and 30 April 2003. The appendix to this letter is a case-by-case analysis of the work undertaken in these matters and the time expended in performing that work.

This analysis demonstrates clearly that, with respect to most such cases, the proposed changes to publicly funded immigration and asylum work would leave us in a position where we could not come close to achieving what we believe to be an appropriate level of work on such cases.

Background information regarding our firm

Perhaps it would be helpful, before turning to some general comments arising from our sample, to provide you with some background information regarding our firm. We are a firm which consists of 5 solicitors, 1 trainee solicitor and 7 paralegals and we specialise exclusively in immigration and nationality law. In total, we have 21 staff members, including support staff. We have been in operation since 1995 and, throughout the more than eight years of our existence, have always had a commitment to carrying out legally aided work to a high standard.

Two years ago, because of our concern regarding the constancy of funding by the Legal Services Commission, we took a conscious decision to increase the proportion of our work which is privately funded and, at present, about 30% of our income arises from privately-funded work, with our solicitors charging rates between £90 and £170 per hour. We have always had a commitment to ensuring that both our publicly and privately funded clients receive the same standard of care.

In fact, we would find it impossible to continue to exist if we did exclusively legally aided work since, given that the bulk of such work is carried out at the relatively low rates of remuneration afforded by the legal help and controlled legal representation schemes, it would be financially unfeasible to continue to run a legal practice in London exclusively on the basis of such remuneration. This is partly because, unlike many other practices, we do not also work in other more highly remunerated areas of legal work to help subsidise immigration work.

During the three tax years ending in 2000, 2001 and 2002, we showed a modest profit of approximately £10,000 in two of the years and a slight loss in the third year. We are, therefore, operating very “close to the margin” financially but have, until now, chosen to include legally aided work as the majority component of our workload because of the commitment of all of our staff to the legal aid system.

We like to think that we have an excellent reputation in the work that we do and, since one year after our inception, we have always been included in the Chambers Guide to the UK Legal Profession as one of the leading personal immigration firms in London, having been included consistently in the past few years in the highest category of such firms recognised for their excellence by their peers. I am the sole principal of the firm. I am a dual US-British national and came to the United Kingdom in 1980 as Deputy Representative and Legal Adviser to the Office of the United Nations High Commissioner for Refugees in the United Kingdom. I subsequently served for a number of years as Deputy Head of the Research Department at the International Secretariat of Amnesty International where, amongst other responsibilities, I was the co-ordinator of Amnesty International’s refugee work and policy throughout the world. Two of my colleagues are lecturers in immigration law in the law faculties of London universities. Two of us received our initial training in a large commercial setting, myself having trained and worked for a number of years at Shearman & Sterling, one of New York City’s largest law firms, and one of my colleagues having completed her training at Freshfields. Other solicitors have worked at some of London’s leading legal aid practices and voluntary bodies, including Bindman & Partners, Birnberg Peirce & Partners, the Refugee Legal Centre and the Terrence Higgins Trust.

Because of our expertise, we tend to attract complex and difficult cases and have particular expertise in cases relating to individuals affected by serious physical and psychological illness, unaccompanied minors, victims of torture and trafficked women. We played an instrumental role in lobbying for change with respect to the immigration position of foreign partners of UK-based gay men and lesbians and also were involved in efforts to bring about the “domestic violence concession” (now incorporated into the immigration rules) relating to foreign wives who were forced to separate from their British resident husbands because of violence during the initial period of leave to remain granted to them on the basis of their marriage.

While, at least until now, the Legal Services Commission has not monitored closely the success rate in work undertaken in the field of immigration law under legal help and controlled legal representation, we ourselves believe that our success rate is a crucial indicator of how we are performing our job and, therefore, we monitor it from time to time. During the period since controlled legal representation has become available for immigration appeal cases, we are very proud that, with respect to those cases which have come to an end, our overall success rate has fluctuated between 80 and 90%. We would like to think this is a considerable achievement given that the overall success rate of appeals to the Immigration Appellate Authority has fluctuated between 17 and 24%. Of course, part of our success rate no doubt arises from the fact that, given our reputation, we have the luxury of selecting clients whose cases we believe to be particularly worthwhile and worthy ones as well as being challenging ones. At the same time, however, we believe that this success rate is also a direct reflection of the intensive preparation which we devote to our cases which you will see reflected in the analysis of our random sample.

I should point out that, often, our approach on such cases is at great financial cost to ourselves since, in many such cases, we feel the need to commission medical reports, expert reports and the translation of documents which we consider to be crucial. As you are probably aware, from a cash-flow point of view, this is to our severe detriment since the amount of our standard monthly payment is a fixed amount and, the more we spend on such disbursements, the less is available with respect to the running of our firm, salaries, profits, etc. Again, however, given our commitment to ensure that our legally aided clients are treated in exactly the same way as our private clients, we simply feel that it would be inappropriate to economise on what we believe to be essential steps to take in case preparation. We feel that any other approach would be unconscionable given that, in most such cases which we are undertaking, failure may mean that the most fundamental human rights of the client may be violated.

Methodology of our sample

As indicated above, in preparing a sample of cases to provide you with a “snapshot” of our publicly funded immigration and asylum work, we felt that it was appropriate to provide you with a random selection of cases which, hopefully, would demonstrate a cross-section of the approach which we take to our cases and the problems which we face. In order to accomplish this, we decided to choose 25 matters from the list of 601 total matters finally reported by us under our General Civil Contract during the period between 1 March 2002 and 30 April 2003. These matters were given an index number from 1 to 601 in ascending date of reporting order. Twenty-five random numbers in the range 1 to 601 were chosen using the Microsoft Excel spreadsheet function RANDBETWEEN (1,601). The matters whose numbers corresponded to the randomly-generated numbers constitute the sample examined.

Is the sample representative?

Obviously, a sample of 25 out of a total of 601 matters is not, from a statistical point of view, going to provide a perfectly accurate cross-section of our caseload. At the same time, however, given the considerable work involved in preparing the summary of cases and our desire to keep our submission to a reasonable length for your consideration, we chose the figure of 25 with the hope that it would throw up a reasonable cross-section of cases on which we carry out publicly funded work.

In the event, we believe that the exercise has, generally speaking, been successful in this regard. You will note, first of all, that the cases selected are almost exactly evenly split between 12 asylum cases and 13 non-asylum cases, which accurately reflects the approximately 50-50 breakdown of our overall caseload. With respect to each category, there is a sample of both relatively straightforward applications and extremely complex ones. The cases also provide a representative sample of the many problems arising in such cases from Home Office inefficiency which lead to many additional hours of preparation and attendance and a substantial number of follow-up letters and calls to the Home Office, clients and their members of parliament.

In two key respects, perhaps, the sample is not perfectly accurate. First of all, with the exception of the five cases with respect to which the client ceased to give instructions (in three cases because of the inability of the client to take essential steps to continue to pursue applications for family reunion [in two cases] and in naturalisation [in one case], in a fourth case because of a breakdown in the solicitor-client relationship after the client proved unable to reconcile discrepancies in her asylum claim and in a fifth case because of the client’s fears of coming forward and

pursuing an asylum claim), every one of the cases in the sample was successfully resolved. This represents a slightly better track record than the firm's overall success rate which, as previously indicated, fluctuates between 80 and 90%.

Further deviation from the norm is represented by the number of asylum cases which were resolved at the initial application stage rather than on appeal. Eight of the 12 asylum cases were resolved at the initial application stage and did not need to go into the appeal process. In our experience, generally more than half of all asylum cases go into the appeal process thereby necessitating a substantial additional expenditure by the Legal Services Commission for controlled legal representation. Interestingly – and atypically – 2 of the 4 cases which went to appeal, were successfully resolved without the appeal hearing actually taking place. In case 4, this occurred because the Home Office itself conceded the case on the day of the hearing – but only after some 30 hours of preparation for the appeal had been done and disbursements in excess of £1,300 had been made for country expert reports, medical expert reports and counsel's fees. In case 18, throughout the entire appeal process, the Home Office consistently failed to comply with repeated directions by an adjudicator that the Home Office review the case in light of the substantial documentation which had been prepared for the appeal. The appeal was finally determined under Rule 33(2)(a) of the Immigration Appeal Procedure Rules 2000 – at a hearing which the Home Office did not attend – because of the continued non-compliance by the Home Office with the adjudicator's directions. The adjudicator found the Home Office's continued non-compliance "extraordinary" and said that it had caused "insupportable prejudice" to the client. The controlled legal representation phase of this case included 21 hours and 42 minutes of attendance and preparation, a total of 171 telephone calls and letters, disbursements for a medical report and a country report on Zambia of £318 and disbursements to counsel of £570.42, much of which expenditure would have been avoided if the Home Office had complied with the adjudicator's instructions.

Conclusions drawn from our sample

Are the maximum time limits for advice under the legal help and controlled legal representation schemes acceptable?

The simple and straightforward answer to this question is "no".

You will note that, with respect to applications for political asylum lodged under the legal help scheme, the time expended on preparation and attendance as well as telephone calls and letters (each of which is billed at an amount slightly less than a 6-minute attendance period) tended to range from 10 to 20 hours, with a couple of particularly complex cases exceeding the 20-hour point. With respect to the appeal stage of such cases funded under the controlled legal representation scheme, time expended tended to range between 20 and 30 hours. The proposed maximum limits, therefore, represent only a fraction of the amount of time which we expended on the cases analysed.

With respect to non-asylum cases, the more straightforward applications (such as naturalisation applications and simple family reunion applications) were completed at or near the proposed 3-hour limit. At the same time, case 2 provides a good example of a non-asylum case which took some 15 hours to complete under the legal help scheme, the result largely of a 5-year delay in the Home Office taking a decision on the application, which was based on compelling and compassionate health-related and other factors, during which time, in order to properly represent the client, it was necessary to withdraw her previous application for further leave and submit a fresh

application under a special scheme for overstayers. Continued delay on the part of the Home Office and its failure to respond to any communications meant that, in total, there were 47 letters and 33 telephone calls between ourselves and the client, her MP and the Home Office with an added complication arising in the middle of the case when the Home Office admitted that it had lost her file altogether and a fresh set of application documentation had to be prepared and submitted.

In all of these cases, we endeavoured to pursue what we believed to be the best practice with respect to the applications being made. With respect to all political asylum applications and appeals and with respect to complicated non-asylum applications, such as the example given, it is clear that it would be absolutely impossible for us to have adequately represented the clients concerned within the proposed maximum limits. This should come as no surprise to the Department of Constitutional Affairs because, with respect to political asylum cases in particular, the Legal Services Commission has, in an attempt to increase the quality of service provided by its immigration suppliers, funded the publication by ILPA of a “best practice” guide which sets out all of the steps which should be taken in pursuit of a client’s political asylum application. A cursory review of that guide would make clear that it would simply be impossible to carry out the necessary steps within the proposed maximum time limits. Furthermore, the Legal Services Commission’s own internal guidelines with respect to the granting of extensions in political asylum cases currently anticipate that the initial application process may take up to 17 hours and that preparations for an appeal may regularly take up to 13 hours or more. Furthermore, the Legal Services Commission itself, in complex cases, regularly authorises extensions beyond these limits. It is not clear, therefore, what the possible source of the proposed new figures could be.

While one of the justifications set out in the consultation paper is to “address quality issues” it seems clear that, by proposing such draconian restrictions on the preparation of cases, only so-called “rogue practitioners” will be willing to maintain immigration contracts with the Legal Services Commission. They will only be encouraged in this regard by the proposal (included in the Legal Services Commission’s draft immigration contracts specification) which would allow such practitioners to demand private payment from clients to do further work on their cases beyond the initial limit. Such a proposal is all the more reprehensible in a context where the clients concerned are pursuing cases involving the protection of their fundamental human rights and are not likely to have the means to pay for advice and representation given that, if they are receiving any financial support at all, it will have been set at levels equivalent to 70% of welfare benefits.

The scheme proposed is all the more untenable because, while the Department of Constitutional Affairs’ consultation document suggests that there may be some exceptions to a maximum costs scheme, the Legal Services Commission has suggested that the only exceptions will be with respect to bail applications on behalf of detained clients, travel expenses to and from clients who cannot attend the office and (with respect to transferred clients) cases where an official complaint concerning publicly funded work done by a previous legal adviser has been lodged. Most striking is the fact that no exception is proposed to deal with complex and sensitive cases.

Under the circumstances, we strongly oppose the suggestion that maximum time limits should be imposed and would suggest that, if such limits were imposed, the Legal Services Commission would be in breach of Section 4(1) of the Access to

Justice Act 1999 which places a responsibility on the Legal Services Commission to “secure that individuals have access to services that effectively meet their needs”.

We would also express concern that the maximum time limits appear to have been proposed without providing any advice with respect to the basis for the figures proposed and, indeed, are in direct contradiction to the suggestions of the Legal Services Commission thus far as to the best practice to be followed in such cases. We would suggest, therefore, that the proposals for the imposition of maximum time limits represent an irrational and unlawful decision by the Department of Constitutional Affairs.

Even if the Department of Constitutional Affairs were to suggest more reasonable maximum time limits, we would be concerned at the failure to make provision for exceptions with respect to such time limits in the case of complex and sensitive cases.

The Legal Services Commission already has in place systems available for seeking approval of extensions of entitlement to legal help and controlled legal representation and we would suggest that the Legal Services Commission could and should monitor and control expenditure on such cases by continuing to apply such controls.

Is the imposition of maximum units on disbursements reasonable?

Similarly, with respect to the imposition of maximum limits on the amount of disbursements, you will note that in a number of our sample cases, particularly political asylum cases where an interpreter was required, we have significantly surpassed the proposed limits. Again, we feel that the imposition of absolute limits is unacceptable and irrational. Provision should be made for a flexible approach with procedures available to make applications to the Legal Services Commission to justify expenditure over a certain limit with respect to complex cases.

We would also make the point that imposing limits with respect to disbursements is inherently prejudicial to those clients who do not speak English or have a friend or family member to translate at an acceptably professional level. In fact, in many cases, it would not be appropriate to use a friend or a family member as an interpreter because clients may need to disclose very sensitive and traumatic issues material to their cases. This particular point is, again, raised in the best practice guide funded by the LSC. Such clients would necessarily be precluded from obtaining medical and other expert reports in their cases if the entire disbursement budget had to be used up for interpreters' fees.

We would point out, further, that some categories of specialist medical reports, including psychiatric reports often of critical relevance to a case, are likely to entail fees in excess of the total limit for disbursements with respect to the commission of a single report.

Finally, we would point out that the Immigration Appellate Authority has to a certain extent itself exacerbated the position with respect to expenditure on disbursements by stating that it will not accept as evidence in a given asylum appeal an expert report of general relevance which has been prepared for an earlier appeal.

What does the sample illustrate about the need for the presence of a representative and interpreter on behalf of the client at the Home Office interview?

The Legal Services Commission, in its draft specification for the implementation of the proposed changes, indicates that it “would not expect to see attendance at

[political asylum] interviews in routine cases” and indicates that “where a representative is sent, the costs incurred with respect to the representative’s attendance, including travel and waiting, would result in a reduction of the maximum time limit.”

This provision would effectively preclude any attendance at political asylum interviews since, as reflected in each of the cases in the sample where we attended an interview (case numbers 1, 4, 6, 8, 13, 14 and 22), the cost of attendance at the interview, including travel and waiting, in itself would have exceeded the proposed maximum limit. This position is only exacerbated by the Home Office practice, in many cases, of scheduling interviews a great distance from the client and his or her lawyer. In this regard, you will note in case 7 that the scheduling of an interview in Liverpool necessitated a total of 12 hours 10 minutes travel and waiting in addition to the 2 hours spent at interview and reading the interview notes back to the client following the interview. In addition, it required a substantial number of telephone calls liaising with the Home Office, NASS and the client because the client had not been sent a travel voucher for his interview.

The suggestion that representatives should not be sent to “routine interviews” ignores the fact that problems can, and frequently do, arise in the context of an interview which, if conducted without the presence of the client’s representative and interpreter, would go undetected leading, ultimately, to the potential refusal of a well-founded application for political asylum or, at the very least, the need for considerable action at a subsequent stage of the case, including in some cases the necessity of a case going to appeal and incurring further costs because of an incorrect refusal.

Six of the cases included in our sample illustrate the importance of the attendance of the client’s representative and own interpreter:-

Case 1

We had specified at the time of submission of our client’s SEF that he spoke the Bahdini dialect of Kurdish. The initial Home Office interpreter, while insisting that he was speaking Bahdini and had interpreted in “hundreds of Bahdini cases” spoke only Sorani, a dialect which is not comprehensible to Bahdini speakers. When our client and interpreter (who spoke both dialects) pointed this out to the Home Office representative, the interview was delayed and recommenced with a Home Office interpreter who spoke mainly the Kermanji (Turkish Kurdish) dialect and who, while speaking some Bahdini, was not fluent. Again the interview had to be suspended while an alternative interpreter was sought. A third interpreter was brought forward who, again, spoke a little Bahdini but his main language was Sorani and, yet again, the interview had to be postponed. Only the fourth Home Office interpreter spoke Bahdini to a level competent enough for the interview to be conducted and translated properly. As a result, the Home Office interview, after these repeated delays, was conducted successfully in 1 hour 20 minutes and, following the interview, our representative and interpreter conducted a read-back of the interview record to the client who confirmed that he was happy with its contents. There was, as a result, no need for further representations to the Home Office because of the presence of our representative and interpreter at the interview, the problems with interpretation being highlighted early on in the process. The client was subsequently granted exceptional leave to remain in the United Kingdom and decided not to appeal against the decision.

Case 4

Interviews in this case were conducted at the Oakington Reception Centre, where our

client was being held. Further representations were submitted to the Home Office as a result of observations by our representative at the interview. Most importantly, however, our representative, while attending Oakington Reception Centre for interview, overheard the Group 4 security staff discussing our client's case in a derogatory manner and in a way which made it obvious that they had read confidential information which has been sent by fax to our client at Oakington. They were laughingly referring to a rape which he had suffered at the hands of other men in Pakistan, our client being a Pakistani national who is gay with very effeminate characteristics, a history of cross-dressing and involvement in dancing female roles in Pakistan. Our complaint about this matter, which we were able to raise because of our representative's presence at the interview, was accepted as a valid complaint by the Home Office and, as a result, the Home Office took steps to install a fax machine in a secure environment at Oakington dedicated to detainees' needs.

Case 6

Again, problems arose during the course of the interview with respect to different dialects of Kurdish spoken by our client and the Home Office interpreter. These problems were resolved as the interview progressed because our interpreter was able to intervene and clarify matters where confusion arose. The interview record was then read back to the client by our representative and consideration given to whether further representations ought to be made but it was decided that no representations were required as the problems in interpretation had been sorted out at the interview. Our client was subsequently recognised by the Home Office as a refugee.

Case 8

At an interview conducted by an immigration officer at Gatwick, the immigration officer was extremely confrontational in his approach and our representative had to intervene in order to clarify matters because the client was not given a proper opportunity to explain his case and the immigration officer had not properly recorded what the client had said. The immigration officer implied throughout the interview that the client was fabricating and exaggerating his claim. (When, for example, the client, an Iraqi national, indicated that an attempt had been made by Iraqi agents to shoot him dead, the immigration officer referred to it several times during the course of the interview as "the incident when someone took a pot shot at you".) Following the interview, we entered into a protracted correspondence involving preparation of detailed representations to the immigration authorities regarding the conduct of the interview (including three detailed letters responding to points raised by the immigration authorities in response). It was ultimately agreed by the immigration authorities, in the light of the complaint raised, that no decision would be taken regarding the client's case until a full statement had been submitted in support of his case as we had asserted that the client had not been provided with a proper opportunity at his interview to reveal full details in relation to his case. The initial application was negatively decided by the Home Office but the client's appeal was allowed by an adjudicator. While the Home Office applied for leave to appeal to the Immigration Appeal Tribunal and leave was granted, the Home Office decided to withdraw their appeal and grant the client refugee status. The client's case would have been significantly weakened if no representative had attended the initial interview to monitor its conduct and to provide information with respect to the complaint made to the Home Office.

Case 14

This was the exceedingly strong case of a Turkish Kurdish man who had been a political prisoner in Turkey and who had been on hunger strike for some six months while in prison until he was temporarily released from detention by the Turkish authorities because he was about to die. He fled Turkey and arrived in the United Kingdom suffering from dire physical and psychological problems as the result of what he had been through and was diagnosed by the Medical Foundation as suffering from post traumatic stress disorder. Given his ill health and vulnerability, it was judged particularly important that a representative and interpreter be present at this interview. Various matters which were inadequately reflected in the interview record then became the subject of representations made by us to the Home Office and, shortly thereafter, the client was recognised as a refugee.

Case 22

Slight problems and misunderstandings on the part of the client occurred at the interview which necessitated further representations being made to the Home Office leading to the client being granted exceptional leave to remain in the United Kingdom. The client chose not to appeal the refusal of political asylum.

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Thus, with respect to virtually all of the cases in the sample where interviews were conducted, problems arose with respect to the conduct and/or record of the interview necessitating further representations to the Home Office. In several of the cases, the problems would not have come to light but for the presence of our representative and interpreter. The Legal Services Commission has in the past made the point that many firms do not send properly qualified representatives to political asylum interviews and that, in many cases, verbatim records of the interview are not made by representatives attending. We agree with the Legal Services Commission that these are improper practices. We believe that it is the responsibility of the Legal Services Commission, however, to ensure that such practices are not tolerated but believe that the Legal Services Commission already has sufficient weapons in its arsenal of sanctions to deal with such shortcomings, such as refusal to remunerate for such inadequate work, noting and disciplining such practices at audit and, ultimately, if necessary, withdrawing contracts from such firms.

It has been acknowledged as the best practice in political asylum cases in the best practice guide financed by the Legal Services Commission that attendance at such interviews by the client's representative and interpreter are a crucial element in the representation of asylum seekers. It is, therefore, unacceptable to withdraw the facility of carrying out this important part of the representative's role from reputable firms as a way of dealing with the bad practices of firms providing inadequate representation.

What does the sample illustrate about the responsibility of the Home Office for delays and confusion in individual cases resulting in increased costs and disbursements?

Again, the selection of cases in our sample reflects the fact that Home Office inefficiencies, including inordinate delays, the loss of files and failure to respond to letters and telephone calls, has a significant impact on increasing the costs and disbursements in individual cases. In this regard, it is important to point out that,

under the proposed Legal Services Commission specification for implementing the proposed changes, costs incurred with respect to telephone calls and letters, as well as costs incurred with respect to travel and waiting, are meant to be included in the total prescribed time limits. As you will note, with respect to a number of cases, simply the letter and telephone call component of an individual case would have used up the proposed standard maximum, with large numbers of such communications being occasioned by the need to liaise with the client, the Home Office, the Immigration Appellate Authority, MPs, etc. because of problems encountered with respect to Home Office inefficiency.

Some of the main examples included in our sample are described below:

Case 2

The application to which this case relates – an application for exceptional leave to remain in the United Kingdom on the basis of compelling and compassionate health related and other problems – remained pending from April 1998 to 18 February 2003. While the client initially was able to pay privately, a legal help matter was opened with respect to the case on 21 March 2000 and, because of continuing delays between 21 March 2000 and the resolution of the case on 18 February 2003, 80 telephone calls and letters had to be made liaising with the authorities, the client and her MP to seek to bring about resolution of the case. After the application had been pending for more than two years, it became particularly important to push the Home Office for a resolution of the case because, as a result of a regularisation scheme for overstayers announced in mid-2000, the client would lose important rights under the regularisation scheme for overstayers if her application had not been decided by 1 October 2000, the deadline for making applications under that procedure, in the event that a negative decision were taken in her case. It then became of crucial importance to push the Home Office for a decision so that, if a negative decision were forthcoming, she could take advantage of the regularisation scheme which would give her a further right to apply for leave to remain in the United Kingdom and a full right of appeal against deportation were that renewed application under the scheme refused. Many letters and calls were made to the Home Office by ourselves and the client's MP without effect until, shortly before the deadline, the Home Office admitted that the client's file had been lost. While the original application was re-submitted, no decision was forthcoming and, in the end, we had no choice but effectively to turn the client into an overstayer by withdrawing her application so that, on 28 September 2000, we could lodge an application on her behalf under the terms of the regularisation scheme. This application, given the client's long and complicated immigration history, required four additional hours preparation. No decision was taken by the Home Office with respect to this fresh application until she was granted indefinite leave to remain in the United Kingdom on 18 February 2003, almost 2½ years later and 5 years after the first application. During the few months immediately prior to the positive resolution of the case, it became necessary to initiate many further telephone calls to the Home Office, the client and the client's MP in order to speed up consideration of the application because, in the meantime, the client's mother had become seriously ill and she needed to travel to see her but could not leave the United Kingdom until a decision was taken on her application.

Case 4

This was the case of the gay Pakistani national whose case was refused under the Oakington procedure. It was a strong and extremely well-documented case but, as you

may be aware, only a minute percentage of cases in the Oakington procedure are granted political asylum during the initial application procedure, the Home Office apparently believing that all individuals from the countries included in that procedure have claims which are not well-founded. Further intense preparation of the case was carried out for the appeal stage, including the obtaining of various medical reports, a psychological counsellor's report, and an expert report with respect to the situation of gay men in Pakistan (which was particularly difficult to obtain because of a singular lack of expertise in this area amongst the experts). Nearly 30 hours of preparation needed to be done for the appeal, including 76 letters and telephone calls, disbursements for expert reports in the amount of £450 and disbursement to counsel for some £890 (including a component for counsel's preparation and attendance). In fact, in the end, the Home Office conceded the appeal before it began on the scheduled day of the hearing but only after all the considerable preparations had been done, counsel had been briefed and counsel had attended the hearing fully prepared to present the case. If the Home Office had taken a proper decision at the initial phase, all of the appeal expenses would have been saved. At the very least, if someone at the Home Office had looked at the materials prepared for the appeal a few days before the appeal, when they were sent to the Home Office, the initial negative decision could have been withdrawn by the Home Office prior to the actual date of the appeal hearing saving at least several hours of costs.

Case 7

As already indicated above, an additional 12 hours 10 minutes of travel and waiting was occasioned by the Home Office in scheduling this interview, with respect to a client and legal representative based in London, in Liverpool. As also has previously been noted, there were a substantial number of telephone calls liaising with the Home Office, NASS and the client in relation to the fact that the client had not been sent a travel voucher for his interview. Once a positive decision was taken in the case, a number of follow-up contacts needed to be made regarding the client's problems in obtaining benefits to which he was entitled as a refugee and, ultimately, the matter needed to be referred to a benefits expert. In all, 82 telephone calls and letters were billed, a large proportion of them occasioned by various inefficiencies in the Home Office and NASS systems.

Case 8

In this case, where the asylum applicant was initially refused and won his appeal before an adjudicator with respect to that refusal, the Home Office applied for and was granted leave to appeal to the Immigration Appeal Tribunal. Before the case came for hearing before the Immigration Appeal Tribunal, however, the Home Office decided to withdraw the appeal. In our experience, it is becoming common practice for the Home Office to seek leave to appeal to the Immigration Appeal Tribunal in a much larger proportion of cases where the asylum applicant has received a successful determination at adjudicator stage. In this particular case, the Home Office withdrew its appeal although in most such cases it does not. This has particularly been the situation in cases where the Home Office itself has chosen not to send a representative to the initial appeal before an adjudicator. The Home Office has then, subsequently, in applying for leave to appeal to the Immigration Appeal Tribunal, made the point that various issues with respect to credibility have not been properly canvassed at the hearing before an adjudicator because of the lack of a Home Office Presenting Officer. In a surprising number of such cases, leave to appeal to the Immigration

Appeal Tribunal has been granted. We would submit that, with respect to such cases, considerable expense and preparation with respect to appeals to the Immigration Appeal Tribunal would be spared if the Home Office were required in every case to send a representative to hearings before an adjudicator. This would facilitate the conduct of hearings before adjudicators to the benefit not only of the asylum applicant and his or her representative but also to the benefit of the Immigration Appellate Authority. It would also substantially reduce the costs currently being incurred with respect to appeals to the Immigration Appeal Tribunal.

Case 14

This case was an extremely strong asylum application which was resolved positively at the initial stage by the Home Office. It also, however, represents a case where many of the bureaucratic delays by NASS and the Home Office kept occasioning substantial need for telephone calls and letters (of which there were 92 during the case). Initially, the client having arrived in this country ill and vulnerable shortly after coming off a six month hunger strike in Turkey, there was correspondence with NASS trying to arrange urgent support. There were also a number of follow-up calls when he continued to experience problems accessing such support. Subsequently there was correspondence with the Home Office in relation to problems arising with respect to the status letter issued to him (which on two occasions contained mistakes requiring correction) and with the immigration authorities at the port where he applied for asylum endeavouring to recover original documentation submitted when the client first applied for asylum but which, despite repeated requests, was not sent back expeditiously.

Case 16

This was a relatively straightforward application to extend exceptional leave or upgrade to full refugee status on the basis of the client's membership of a minority clan usually recognised as refugees by the Home Office. It remained pending for some three and half years. Seven "chasing" letters had to be sent to the Home Office seeking resolution of this matter. In addition, repeated letters needed to be written during this period to the Benefits Agency so that the client could continue to receive the support to which she was entitled while the application was pending.

Case 18

This is the case referred to above where, after we prepared a very full appeal bundle, the adjudicator, impressed by the strength of our case, repeatedly directed that the Home Office review its decision. The adjudicator clearly was seeking to avoid wasting court time. Ultimately, at the last scheduled hearing in the case, which the Home Office chose not to attend, having not adhered to any of the directions issued by the adjudicator, the adjudicator allowed the appeal under Rule 33 (2) (a) of the Immigration Appeal Procedure Rules 2000 because of the Home Office's continued non-compliance with court directions. The adjudicator found the Home Office's persistent failure to respond to the directions issued "extraordinary" and found that there had been "insupportable prejudice" to the client. A number of letters and calls were required to assist the client with problems she experienced in the interim in accessing support before, eventually, it became necessary to refer her on to a specialist firm. A further problem arising was the failure by the solicitor previously acting to transfer her file to us and demanding payment for the transfer. The file was eventually received four months after we began acting for the client but did not

contain all of the relevant documentation necessitating contact with the Home Office to try to obtain copies of relevant documentation.

Case 21

This should have been an absolutely straightforward case relating to submission of an application for the client to the Home Office for a travel document, the client having been granted an extension of exceptional leave to remain in the United Kingdom after the failure of an asylum claim on the basis of compelling and compassionate health reasons. The Home Office were also requested to place an endorsement of further exceptional leave to remain in the dependent daughter's national passport.

Representations were made for expeditious resolution of the matter because the client's dependant needed to travel urgently and the Home Office agreed to expedite the application in September 2001, one month after the application. When, by December 2001, there was still no progress, we needed to liaise with the client's MP. When, eventually, the Home Office endorsed the dependent daughter's passport, an incorrect stamp was placed in the passport and there were further letters liaising with the Home Office and the client's MP in an attempt to expedite the required correction. When, by February 2002, there was still no response from the Home Office, there were further letters to a senior officer at the Home Office and the client's MP. The Home Office claimed that they had not received the passport which had been sent to them. There was then further contact with them to provide them with the recorded delivery reference number under which the passport had been sent to them. ***Most of the 26 telephone calls and letters billed in this case, which represent more than half of the costs claimed, arose from Home Office incompetence.***

Case 23

This as well was an absolutely straightforward application for our client and his dependants to be granted indefinite leave to remain in the United Kingdom following a period of exceptional leave to remain in this country. While it should have been resolved within a few months, it took nearly four years to resolve. During this period, the client experienced continuing problems with the Benefits Agency as he had no documentation proving his status and we had to liaise with the Benefits Agency on a number of occasions to confirm his immigration status. We began to chase the Home Office in earnest after the first year and when, finally, a decision was taken, they omitted two of the family members of the client from the relevant documentation necessitating further representations to the Home Office. When no response was forthcoming for nine months, representations were forwarded to the client's MP. We needed to be in repeated contact with the client during the four year period the case was pending regarding problems he was experiencing through having no documentation to prove his status or that of his family and, further, chasing progress regarding his family members' documents. ***Again, most of the 32 telephone calls and letters in this case, which constitute approximately half of the costs incurred, were a direct result of Home Office delay and incompetence. This case should be contrasted with case 24, a similar application, which was resolved with 36 minutes attendance time, 18 minutes preparation time, 4 letters and 1 telephone call. It shows just how substantially our costs are reduced when the Home Office operates efficiently.***

Some Additional Points

As indicated earlier in this letter, we have felt that, given the substantive representations being made to you by other bodies such as the Law Society, ILPA and the Legal Aid Practitioners Group, our most useful contribution to the consultation would be to supply actual hard data regarding the conduct of individual cases and we hope that you will find the attachment to this letter and the comments we have made about it above useful in this regard. There are, however, a few general points which, while already made to you by others participating in the consultation, in our view are particularly worth reiterating here.

1) Our Professional Obligations

We have not taken lightly our decision to cease doing publicly funded immigration and asylum if the proposed changes are implemented. Every one of our staff members – most of whom have qualifications which would allow them to obtain more highly remunerated positions elsewhere – have taken the decision to work at our firm because of its commitment to carry out work for vulnerable people to a high standard in order to ensure that the human rights of those individuals are protected. Since we stopped taking on legally aided cases about six weeks ago – in anticipation that the changes might be implemented and we could not complete cases which we would be commencing – we have been very sorry to turn away clients whose cases we know to be meritorious. At the same time, however, we feel that we would be in violation of our own professional responsibilities to commence work on cases which we felt that we could not complete to the requisite standard because of the proposed maximum time limits. The Law Society in its submission has suggested that we would risk being in violation of our professional responsibilities both to our clients and to the courts were we to do so.

We would find it impossible to condone and participate in a proposed system which, by its very nature, will require a solicitor to limit the amount of work he or she is able to do to a level below that which the solicitor believes essential to the proper administration of justice. We find such a system completely at odds with fundamental standards of justice. Furthermore, as we suggested earlier in this letter, we believe that the Legal Services Commission, in implementing such a proposal, would be in breach of its obligations under Section 4(1) of the Access to Justice Act 1999 which requires the Legal Services Commission to “secure that individuals have access to services that effectively meet their needs”. We are aware of no other area of legal aid where, in seemingly arbitrary fashion, the amount of publicly funded assistance to a vulnerable client group whose human rights are being violated has been so curtailed.

Our participation in the proposed system would leave us in an unconscionable position at the point where we reached the proposed maximum limit. The Legal Services Commission, in its proposed specification implementing the proposed changes, has indicated that we should be entitled to charge our clients privately at that point. We know from our own experience that the vast majority of our clients currently receiving Legal Help and Controlled Legal Representation would not be able to pay privately. Even if some were, we would find it reprehensible to participate in a system where legal representation with respect to issues involving basic human rights provided adequate legal representation only to those who could pay.

Furthermore, while in an ideal world we could carry out the additional work required on a pro bono basis, the tight profit margins on which private practices carrying out immigration and asylum work operate simply would not permit this.

Furthermore, neither the Department of Constitutional Affairs nor the Legal Services Commission has provided any explanation whatsoever as to the basis for the maximum time limits proposed. Indeed, these time limits literally fly in the face of the time limits previously judged reasonable by the Legal Services Commission in its current guidelines relating to work under the Legal Help and Controlled Legal Representation Schemes and, further, suggest a time frame making it impossible for a practitioner to adhere to the requirements of the Best Practice Guide with respect to asylum applications published by ILPA and funded by the Legal Services Commission.

2) Faulty premises upon which the proposed changes are based

We are also singularly concerned that various bases articulated for implementing the proposed changes are faulty. First of all, it is suggested that one of the concerns which the changes are seeking to address is the continuing provision of poor quality advice in immigration and asylum work. We of course recognise that, unfortunately, there continue to be a small but not insubstantial minority of unscrupulous lawyers carrying out publicly funded immigration and asylum work. We applaud the efforts made by the Legal Services Commission thus far to address this issue in terms of improved auditing, peer review and a clear policy of ultimately closing down firms consistently found to be in breach of their obligation to provide good quality service.

At the same time, we feel that the imposition of the proposed maximum time limits will necessarily drive out a substantial number – if not the majority – of good quality representatives. We feel that they, like us, will not be prepared to compromise their standards to an extent where they will prejudice performance of their ethical responsibilities. It is, in our view only the very same rogue practitioners that the Commission, with the profession's help, has spent the last two years trying to eliminate who will be prepared to do the minimum amount of work which the maximum time limits would permit, to demand money from their clients when the limits have been reached and then, if such private funding were not forthcoming, to leave the client unrepresented.

Furthermore, while we accept that, necessarily, the government needs to keep a watchful eye on the legal aid budget, the increases recorded in the consultation paper for the years 2000-2001, 2001-2002 and 2002-2003 clearly arise because of a number of factors. One obvious factor cited is the increased number of asylum seekers coming to the United Kingdom during the relevant period. It seems clear, however, that various steps taken by the government over the past year to reduce the number of asylum seekers have, at last, begun to take effect. The number of asylum seekers fell 32% between the final quarter of last year and first quarter of this year. As this letter is being finalised, there are press reports that, on 28 August 2003, the government is to release figures for the second quarter showing substantial further decreases, perhaps even reaching the government's September target of a 50% reduction in asylum seekers three months early. It seems likely that the legal aid budget for asylum cases will fall in proportion. This is all the more the case since, during the previous three years, the Home Office has also

given particular emphasis to clearing its backlog of outstanding asylum claims, some of which have dated back 6-7 years or more.

Further reasons for the reported increases include the fact that, during the relevant periods, the hourly rate for attendance and preparation in legal help cases has, through two increases, risen nearly 20% (e.g. from £48.25 to £57.35 in London). In addition, during the period, the introduction of controlled legal representation has necessarily resulted in increased expenditure. Finally, at two points during the relevant periods, changes were made with respect to the stage billing provisions under which suppliers can claim for work completed. During most of the first financial year, they were only allowed to make claims once a case had been completed, often some years after it had started. Two further claim stages were introduced into the contracts of legal aid immigration suppliers on 1 November 2000 allowing claims to be made when an initial application had been completed and when an adjudicator's determination had been promulgated, and a further stage was introduced in April 2002 allowing costs and disbursements also to be claimed after a six-month period had elapsed and at least £500 of expenditure had arisen. This meant that, as time went on, practitioners were able to claim for work carried out on a more regular basis and some work which had not been claimed in the first or second of the financial years cited, although done in those years, could only be claimed subsequently after a case was completed, artificially inflating the amounts claimed in later years.

3) Introduction of unique file number

The Department of Constitutional Affairs has suggested that, in order to track individual asylum and immigration cases, it would be appropriate to introduce a unique file number with respect to each case. In principle, this seems a useful idea for purposes of tracking individual clients. The suggestion, however, that this number should be based on the current Home Office reference number is not feasible. With respect to various categories of clients, no Home Office reference number will have been assigned or, if one has been assigned, neither the client nor his or her legal representative is likely to be informed of it for substantial periods of time.

Categories of clients who would have no Home Office reference number assigned would include clients who have not yet filed an application with the Home Office, clients whose applications are made in person at the Public Enquiry Office and non-asylum applications made at a port. Furthermore, while clients applying for political asylum at a port would, in due course, be assigned such a number by the Home Office, this number is often not notified to the client or his or her representative for months or, in some instances, years – with the first such notification often coming at the time that the client is invited to the Home Office for an interview.

We would also suggest that the evidence provided in the consultation document with respect to duplication of work is faulty. The document notes that there were 85,865 asylum claims in 2002 whereas the Legal Services Commission issued over 158,000 new matter starts in immigration. As previously indicated, our firm's matters starts are more or less evenly divided between asylum and non-asylum cases. Even with respect to asylum cases, there will often, as indicated in the consultation document, be legitimate reasons why clients need to change legal representative, most importantly because they have been dispersed to an entirely

different area of the country, requiring them to consult a new legal representative, or because of an inadequate level of representation by their previous legal representative.

4) Accreditation scheme

The Department of Constitutional Affairs is proposing what appears to be a rather complicated four-tier system of accreditation for individuals working in the field of publicly funded immigration and asylum work. As previously indicated, we welcome any initiative which will encourage lawyers to represent their clients to an appropriately high standard. We would point out, however, that such high quality service derives not only from a technical knowledge of immigration law but, of equal or greater importance, from a careful, meticulous and time-consuming dedication to preparing the case properly, ensuring that the basis of the client's application has been properly elicited and conveyed to the Home Office. In our view, a four-tier system seems unduly complex.

Furthermore, it is worth pointing out that seeking accreditation under any such system, in order to be meaningful, is a time-consuming and costly process for practitioners whose profit margins are already strained. In the case of our firm, none of the solicitors has sought accreditation under the existing Law Society panel procedures simply because, to do so, would entail something in the order of two days work with respect to the application procedure by each solicitor. If, therefore, accreditation were to become required, we would hope that some system would develop for the costs of such accreditation to be funded by the Legal Services Commission.

Conclusion – responses to specific questions asked at the end of the consultation document

We hope that the information contained in this letter and its attachment will prove useful to the Department of Constitutional Affairs with respect to its consideration of the proposed changes to publicly funded immigration and asylum work. While, in the course of this letter, we believe that we have answered a number of the specific queries raised at the end of the consultation paper, it may be worthwhile to summarise our responses here:-

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

As we have indicated, we believe that it would be impossible to provide adequate advice and representation in immigration and asylum cases were the maximum limits to be imposed. We believe that our own professional and ethical standards would be compromised too seriously for us to operate in such a system imposing time limits which, until a few weeks ago, the LSC itself would have accepted were inadequate in many cases for carrying out work to a "best practice standard". We believe that many other reputable practitioners share our views.

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

As illustrated by our sample of cases, serious steps need to be taken to improve the efficiency of the Home Office, NASS, immigration officials at ports and the Benefits Agencies. Considerable expense could in particular be saved if the standard of decision-making at the initial stage of a case by the Home Office

were improved, thereby avoiding unnecessary appeals. In addition, the Home Office should be required, as are we, to attend appeal hearings and to adhere to directions given by adjudicators. Finally, the Legal Services Commission should continue to pursue their strategy of identifying practitioners failing to provide a quality service and, where appropriate, shutting them down.

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

The answer to this question would be “yes” if there were a fair and efficient initial decision-making process currently in effect at the Home Office. As indicated in our representations, at least half of our cases – probably more – are won at the appeal stage rather than at the initial application stage. Since we are winning between 80% and 90% of those appeals, this would seem clearly to indicate that the standard of initial decision-making is worryingly low and that, at least for the present, we must give equal priority in preparation of our cases at the appeal stage.

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

There does not appear to be provision for hearings involving repeated adjournments through no fault of the appellant or the appellant’s representative or for remitted hearings. We have also suggested that, with respect to expert reports, it would be helpful if the Immigration Appellate Authority were prepared to accept, in appropriate cases, expert reports prepared for similar previous appeals rather than requiring expenditure on the preparation of a fresh report.

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

As we have made abundantly clear in these representations, we do not accept the concept of maximum limits. We find extraordinary that, in proposing maximum limits, no provision has been made for exceptions with respect to complex cases. This would appear to go against fundamental standards of justice. There clearly also need to be exceptions for vulnerable groups such as children and those suffering from serious physical and psychological problems. Absolute time limits should not be the method to decide appropriate levels of expenditure in individual cases but, rather, with respect to cases going over a certain limit, very careful scrutiny and approval procedures implemented by the Legal Services Commission. The Legal Services Commission has, in our experience, begun to give particular emphasis to this aspect of their work in recent months.

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

As indicated, private practitioners wishing to carry out work at an appropriate level of quality will simply find it impossible to continue to function within the maximum limits. This will necessarily mean an increased strain on the resources of charities, the voluntary sector, Citizens Advice Bureaux and MPs’ surgeries. It seems unlikely that these alternative sources of advice will easily be able to cope.

(7-13) Proposed accreditation scheme?

See our comments in the accreditation section above.

(14) Are there other ways in which quality can be assured?

First and foremost, the quality of representation can be assured by allowing qualified practitioners to carry out the work necessarily required to represent effectively a client whose fundamental rights to life, liberty and freedom from torture and ill-treatment are at stake.

To this end, the LSC should continue to give emphasis to its present policy of implementing procedures to improve the quality of its immigration suppliers. The Home Office should be required to raise its level of efficiency and to ensure that good quality decisions are taken at the earliest possible stage in the case.

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We welcome the opportunity which the Department of Constitutional Affairs has given us to prepare these representations and we hope that they will be taken into account. I should add that, if it would be useful for the department to examine any of the case files cited in our appendix, we would be happy to provide access to those files.

We can only hope that, as a result of this consultation, the proposed changes will not be implemented in their present form and that we will be able to continue the cooperative partnership which we have sought to develop with the Legal Services Commission over the last 8_ years.

Yours sincerely

Wesley Gryk