

# Improving Asylum Decisions through Early and Interactive Advice and Representation

Proposition paper by:

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## Guiding Principles

- Faster, higher quality and more sustainable asylum decisions leading to:
  - Faster recognition and integration of refugees;
  - More sustainable negative decisions and fewer successful appeals;
  - A reduction in unmeritorious applications;
  - Faster and less controversial enforcement of negative decisions;
- Cost neutrality or cost savings for the legal aid budget;
- Cost savings for the NASS support budget;
- Costs savings for the AIT;

## Testing a Possible Model – Legal and Voluntary Sector Advice

With these guiding principles in mind, NAM is examining a variety of different and new approaches to various aspects of the refugee determination process with a view to testing the validity of and, where necessary, responding effectively to some of the criticisms levelled at the current system by stakeholders. Some of these criticisms include the “down time” on asylum applications between the initial application and the asylum interview, the subsequent late identification of issues in dispute and requiring proof, the determination of the claim by IND before all relevant evidence is available and the lack of information provision, advice and support to the applicant throughout the process. One of the options to be canvassed in attempting to examine and respond to these criticisms is the front-loading of resources in the asylum process. An aspect of such front-loading is to include access by claimants to quality information and advice, both from legal advisors and from the voluntary sector, from the very earliest stages of the process and a more interactive role for legal representatives before and during the asylum interview. This paper proposes a small-scale test of this approach

## Operational Objectives

The operational objectives of this approach will be as follows:

- To give all parties an earlier opportunity to identify relevant evidence through a much closer working relationship before the interview and a more interactive role for the representative at the asylum interview itself, including through the early and funded provision of factual claims, country information, documentary evidence and/or expert opinions.
- To ensure that most cases are decided within tight time limits but on the overriding understanding that the entire case has been put forward before the initial decision rather than coming to light fully only at the appeal stage.
- To ensure applicants at the very beginning of the process understand the system they are going through and their rights and responsibilities within it through access to objective and impartial information.
- To ensure fast access to quality legal advice immediately upon dispersal and contact between the case owner and legal representative from the moment the file reaches the NAM team.

## **Methodology**

### Pre-Screening Information Service

A duty information service is established on-site in each Asylum Screening Unit to provide pre-application information to asylum-seekers before their first contact with IND. This advice covers the entire asylum process and possible outcomes, the rights and responsibilities of the applicant in the process, the time scales to which they are likely to be subjected, the information they will be expected to provide in the decision-making process as well as information relating to NASS and other aspects of the process. The advice provided will be generic and will ensure the applicant is fully briefed before first contact and information gathering by IND regardless of whether or not they already have legal representation.<sup>1</sup>

The initial screening interview and any subsequent screening interview will be recorded and a recording of the proceedings made available to the subsequent legal representative to ensure that all parties can deal effectively with information arising there from.

Once segmentation and routing decisions have been made, the duty advice service will (where the applicant is not already represented) immediately arrange referral to a quality legal representative in the area to which the applicant is to be dispersed, providing an initial appointment date to the applicant before s/he leaves for the dispersal area. The service will also provide information on voluntary sector advice provision in the dispersal area and, where necessary, arrange an onward appointment.

### Legal Advice Post-Screening and Prior to Asylum Interview<sup>2</sup>

Upon arrival in the accommodation area the applicant will have an initial appointment with the legal representative who will take full instructions. Before this appointment the legal representative and the case owner will have been in contact to establish the initial time lines of the case, which may alter as the case progresses if this is necessary to ensure that relevant evidence can be obtained and submitted before the initial decision. The legal representative, or the applicant where there is no representative, will be expected to submit a statement of the claim at a point after the initial appointment which has been agreed with the case owner in advance. In general, the legal representative and the case owner will have a very close and interactive relationship throughout the initial process with a view to ensuring that all relevant evidence has been identified and placed into account before the initial decision is made, rather than coming to light fully only at the appeal stage.

### Funded Evidence Gathering

After submission of the statement of claim the legal representative and the case owner will seek to agree on matters which do not appear to be in dispute so that all parties can concentrate on genuinely contentious matters. This will require the case owner to have formed a preliminary view of the matters which may require specific evidential support. In most cases, it is expected that such evidence will be documents already in the public domain. In the minority of cases where specific evidence gathering, for example from medical or other experts, may be required, the case owner will be expected to decide whether such evidence would genuinely assist in determination of the claim and advise the legal representative accordingly to ensure the evidence is available before the initial decision is made. This preliminary decision by the case owner is particularly important at this stage to ensure that the legal representative can ensure LSC funding for relevant evidence gathering at this stage rather than only on appeal and so that the LSC can be confident that the evidence required relates to a relevant matter genuinely in issue from the perspective of the Home Office.

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<sup>1</sup> This service could be provided either by agencies within the voluntary sector, by legal advisors or by a combination of both.

<sup>2</sup> If it is not feasible to establish on-site advice services in ASUs quickly, subsequent aspects of this proposal could be tested independently.

### The Asylum Interview

The asylum interview, or the final asylum interview if there is more than one, will be the forum for clarifying issues which have already been put before the case owner and testing claims which are considered to be in dispute, including any which arise in the interview itself. The legal representative will be expected to attend the substantive asylum interview and to play an active role within it (rather than simply sending a clerk to take notes). The case owner will control the interview and will expect the legal representative to make oral submissions and to request the case owner to re-examine the applicant on specific issues which need to be clarified if this is necessary during the course of the interview. In general the case owner and the legal representative will jointly ensure that all matters relevant to the claim have been put forward, tested and considered before the interview is complete, including any legal submissions from the representative.

It will be open to the case owner to allow the legal representative to submit any further evidence and/or legal submissions in writing within an mutually agreed deadline if the case owner considers this is absolutely necessary but the general rule will be that these matters should have been resolved by the end of the interview.

### Regional Working Groups

To facilitate this change in working practices for both legal representatives and case owners, regional fora where all sides can meet outside the context of individual casework need to be established. Initially, in any regional where this approach is to be tested and then, should the test be successful, in each region where a NAM CCMT is to be established, a regional working group will be set up to bring together local case owners and legal representatives. This forum will be jointly chaired and will enable working practices and methodologies to be considered and any disagreements and difficulties to be identified in a non-casework environment. Of course, Ministers will retain final authority to approve any changes in working practices or any other relevant matters identified by these working groups.

### Implementation

Once it has been agreed in principle that such an approach may be tested, it is likely to be tested during the roll out of one or two of the new NAM teams. This is most likely to be in Solihull given the ready availability of legal advice in the West Midlands. Before implementation, detailed evaluation criteria will be developed in partnership with relevant stakeholders by reference to the guiding principles set out above.